

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BULL STAR LTD., et al.,</b>	:	
<b>Plaintiffs,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>JACK MARTIN &amp; ASSOCIATES,</b>	:	
<b>INC., et al.,</b>	:	<b>No. 03-2694</b>
<b>Defendants.</b>	:	
	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**August 19, 2004**

Plaintiffs Bull Star Limited and Remy Fox bring this action against Defendants Jack Martin & Associates, Inc. (“Martin”), Northern Insurance Co. of New York (“Northern”), and MAN Engines & Components, Inc. (“MAN”) for various claims arising out of an explosion on Plaintiffs’ yacht.<sup>1</sup> Presently before the Court is Defendant Northern’s motion for summary judgment on Plaintiffs’ claims for breach of insurance contract. For the reasons set forth below, Defendant’s motion is granted.

**I. BACKGROUND**

On May 6, 2002, the starboard engine of Plaintiffs’ motor yacht exploded. It is undisputed that the engine was a MAN engine model no. 2866-LE401 and that, at the time of the accident, Plaintiffs’ yacht was insured under a policy provided by Northern (the “Policy”). (Def. MAN’s Ans.

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<sup>1</sup> On March 30, 2004, by agreement of the parties, this Court dismissed Plaintiffs’ claims for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“PUTPCPL”), violation of the Pennsylvania Unfair Insurance Practices Act (“PUIPA”), breach of fiduciary obligations, and breach of good faith and fair dealing against Defendant Martin and Plaintiffs’ claims for violation of the PUTPCPL, violation of the PUIPA, and punitive damages against Defendant Northern.

¶ 6(e); Def. Northern's Ans. ¶ 3; Def. Northern's Mot. for Summ. J. Ex. G (First Expert Rep.).) The Policy provides, in relevant part:

We will cover the insured yacht against direct accident physical loss or damage or any loss caused by a latent defect in the insured yacht, except as otherwise excluded  
...

(Def. Northern's Mot. for Summ. J Ex. C at 5 (Insurance Policy).)

We will not pay for any of the following, or for loss or damage caused by or resulting from any of the following, regardless of whether any other cause or event contributed concurrently or in any sequence or in any way to the loss:

...

2. The cost of replacing or repairing any latent defect, any manufacturing defects or defective or improper design of the insured yacht.

(*Id.* at 7.)

Latent defect means a hidden flaw in the material of a component part of the insured yacht existing at the time of the building of the component part which is not discoverable by visual observation, or common or ordinary methods of testing at the time the component part was manufactured.

(*Id.* at 4.)

On July 18, 2002, Northern advised Plaintiffs that there was no coverage under the Policy for the costs of replacing or repairing the engine and further requested information regarding whether the clean-up costs exceeded the Policy's \$7,000.00 deductible. (Am. Compl. Ex. D.) On April 30, 2003, Plaintiffs commenced the instant action.

## **II. STANDARD OF REVIEW**

Summary judgment is appropriate when the admissible evidence fails to demonstrate a dispute of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c) (1994); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). When the moving

party does not bear the burden of persuasion at trial, the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry its burden of persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Thereafter, the nonmoving party demonstrates a genuine issue of material fact only if sufficient evidence is provided to allow a reasonable jury to find for him at trial. *Id.* at 248. In reviewing the record, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994). Furthermore, a court may not make credibility determinations or weigh the evidence in making its determination. *See Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

### **III. DISCUSSION**

#### **A. Choice of Law**

The instant claims concern a marine insurance contract and therefore fall under this Court's admiralty jurisdiction pursuant to 28 U.S.C. § 1333. *See Centennial Ins. Co. v. Lithotech Sales, LLC*, 187 F. Supp. 2d 214, 217 (D.N.J. 2001) (asserting admiralty jurisdiction in declaratory judgment action involving marine insurance contract); *N. Amer. Speciality Ins. Co. v. Bader*, 58 F. Supp. 2d. 493, 496-97 (D.N.J. 1999) (noting that admiralty jurisdiction arises in case involving marine insurance contract); *see also Gibbs v. Carnival Cruise Lines*, 314 F.3d 125, 132 (3d Cir. 2002) (noting that federal admiralty law applies to case sounding in admiralty regardless of whether complaint invokes diversity or admiralty jurisdiction). Under federal maritime law, courts generally apply state law when interpreting the language of marine insurance policies. *Wilburn Boat Co. v.*

*Fireman's Fund Ins. Co.*, 348 U.S. 310, 316 (1955) (“[T]he scope and validity of the policy provisions here involved and the consequences of breaching them can only be determined by state law.”); see *Calhoun v. Yamaha Motor Corp.*, 40 F.3d 622, 627 (3d Cir. 1994) (noting that state law may provide rule of decision in admiralty case so long as it does not conflict with federal maritime law); *Gulf Tampa Drydock Co. v. Great Atl. Ins. Co.*, 757 F.2d 1172, 1174 (11th Cir. 1985) (“As the parties correctly point out in their briefs, admiralty courts will generally look to appropriate state law in determining questions involving a marine insurance contract.”); *Centennial Ins. Co.*, 187 F. Supp. 2d at 217 (noting marine insurance is contract governed by state law unless it conflicts with an established rule in federal admiralty law); *N. Amer. Specialty Ins. Co.*, 58 F. Supp. 2d at 497 (same). Thus, this Court must determine which state law to apply.

A court exercising admiralty jurisdiction must apply federal choice-of-law principles. *Calhoun*, 216 F.3d at 343. Under federal choice-of-law rules, the court analyzes which state has the most significant relationship to the incident and the dominant interest in having its law applied. *Id.* (citing *Lauritzen v. Larsen*, 345 U.S. 571 (1953)). This Court will not embark on a lengthy analysis of the relevant factors, as Bull Star is a Pennsylvania corporation, Fox is a Pennsylvania citizen, the policy was issued in Pennsylvania, and all of the parties agree that Pennsylvania law applies to the instant action. Furthermore, no party has identified any conflicting maritime law relevant to the disposition of this motion.

## **B. Analysis**

The question before the Court is whether Plaintiffs are entitled to coverage for engine replacement under the Policy. In Pennsylvania, the interpretation of an insurance contract is a question of law that is properly decided by the court. *Reliance Ins. Co. v. Moessner*, 121 F.3d 895,

900 (3d Cir. 1997) (citing *Standard Venetian Blind Co. v. Amer. Empire Ins. Co.*, 469 A.2d 563, 566 (Pa. 1983)). The general contours of contract law in Pennsylvania are familiar and well-established. When interpreting an insurance contract, a court must consider the parties' intent as manifested by the language of the instrument. *Nationwide Ins. Co. v. Horace Mann Ins. Co.*, 759 A.2d 9, 11 (Pa. Super. Ct. 2000) (citing *Bowers by Brown v. Estate of Feather*, 671 A.2d 695, 697 (Pa. Super. Ct. 1995)). When an insurance policy's language is "clear and unambiguous, a court is required to give effect to that language." *Standard Venetian Blind Co.*, 469 A.2d at 566. A provision of an insurance contract is only considered ambiguous "if reasonable persons considering the relevant language in the context of the entire policy could honestly differ as to its meaning." *Lucker Mfg. v. Home Ins. Co.*, 23 F.3d 808, 814 (3d Cir. 1994). "Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement." *Standard Venetian Blind Co.*, 469 A.2d at 566.

Northern argues that the MAN engine was defectively designed and that, under the unambiguous terms of the policy, there is no coverage for the cost of replacement. Plaintiffs and Martin raise two main arguments in response. First, they argue that the piston contained a latent defect under the terms of the policy and that, therefore, the resultant damage to the remainder of the engine caused by the defective piston is compensable. Second, they contend that their aforementioned interpretation at least suggests an ambiguity in the policy that should be construed against the insurer.

Plaintiffs and Martin's attempt to manufacture an ambiguity in the Policy by claiming that the piston contains a latent defect is unsupported by the evidence in the record and the terms of the

Policy. According to the unrebutted expert reports,<sup>2</sup> it was not a latent defect in the piston itself, but rather the incompatibility of the “extreme high power of a MAN Diesel engine and the lightweight composition of the pistons they use in these engines” that caused this accident. (Def. Northern’s Mot. for Summ. J. Ex. G at 6 (First Expert Rep.), Ex. H. at 2 (Second Expert Rep.)) The “inferior metal compound” used in the piston was susceptible to thermal expansion beyond the parameters of the cylinder sleeve. (*Id.* Ex. H at 2.) As the piston expanded, it became jammed in the cylinder, causing a violent shock that eventually resulted in the failure of the engine block. (*Id.*) Thus, the report reveals that the failure was caused by the design of the piston in relation to the rest of the engine, including the diameter of the cylinder, rather than by a latent defect in the piston itself. As the report concludes, “the catastrophic failure of the starboard engine of this vessel appears to be a manufacturer engineering design of *the engine*.” (*Id.* at 3 (emphasis added).) Thus, Plaintiffs have brought forward no evidence to support their contention that the piston contained a latent defect and this Court must conclude, based upon the currently undisputed record, that the engine, rather than the piston, was defective.<sup>3</sup> Accordingly, Plaintiffs’ damages for replacement of the engines are not

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<sup>2</sup> Although experts Russell, Reynolds & Donnelly, Inc. were originally retained by Northern, Plaintiffs have identified Russell, Reynolds & Donnelly, Inc. as their experts in this litigation as well. (Def. Northern’s Mot. for Summ. J. ¶ 32; Pls.’ Resp. ¶ 32.) It should be noted that although the Russell report is the only evidence concerning the cause of the explosion presently before this Court, Martin asserts that MAN “contends that the engine failure resulted from a seized piston, which could result from improper maintenance or other reasons.” (Def. Martin’s Resp. at Part IV.A (unpaginated).) As MAN has not raised this argument, (Def. MAN’s Resp.), and as there is no evidence supporting it before this Court, Martin’s bare assertion does not create a factual dispute precluding summary judgment at this time.

<sup>3</sup> This Court has not made a factual finding as to the actual cause of the engine failure. Rather, this Court has concluded that Northern is entitled to summary judgment because Plaintiffs have failed to present any evidence supporting their theory of a latent defect in the piston and the record presently before this Court fails to raise a genuine dispute of material fact as to Northern’s coverage. This holding does not preclude the remaining Defendants from

covered under the clear and unambiguous terms of the policy, which excludes the “cost of replacing or repairing any latent defect, any manufacturing defects or defective or improper design of the insured yacht.”

**C. Damages for Marina Fees and Loss of Use**

In addition to engine replacement costs, Plaintiffs seek \$1,680.00 from Northern for various marina fees and \$100,000.00 for loss of use of the yacht. (Def. Northern’s Mot. for Summ. J. Ex. B.) It is undisputed that Plaintiffs’ policy carried a \$7,000.00 deductible and, therefore, the marina fees are not recoverable. (*Id.* Ex. C (Insurance Policy).) Furthermore, the Policy does not cover loss of the yacht’s use and Plaintiffs have provided no legal support for recovery against Northern on such a claim. (*Id.*); *cf. Cent. State Transit & Leasing Corp. v. Jones Boat Yard*, 206 F.3d 1373, 1376 (11th Cir. 2000) (noting that pleasure boat owner is not entitled to recover for loss of use of boat resulting from collision or other maritime tort) (*citing The Conqueror*, 166 U.S. 110 (1897)).

**IV. CONCLUSION**

In conclusion and for the foregoing reasons, the Court grants Defendant Northern’s motion for summary judgment. An appropriate Order follows.

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contesting the cause of the engine failure at trial.

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<b>INC., et al.,</b>	:	<b>No. 03-2694</b>
<b>Defendants.</b>	:	
	:	

**ORDER**

**AND NOW**, this 19<sup>th</sup> day of **August, 2004**, upon consideration of Defendant Northern Insurance Company's Motion for Summary Judgment and all responses thereto and replies thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant Northern Insurance Company's Motion for Summary Judgment (Document No. 37) is **GRANTED**.
2. Judgment is entered in favor of Defendant Northern Insurance Company and against Plaintiffs.

**BY THE COURT:**

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**Berle M. Schiller, J.**