

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

GENERAL REFRACTORIES CO., et al. : CIVIL ACTION
 :
v. :
 : NO. 88-2250
TRAVELERS INSURANCE CO., et al. : NO. 88-2167

MEMORANDUM AND ORDER

HUTTON, J.

February 1, 1999

Presently before the Court is the Motion for Reconsideration by Defendant Liberty Mutual Insurance Company ("Defendant" or "Liberty Mutual") (Docket No. 151), the Memorandum of Law in Opposition thereto by Plaintiffs, General Refractories Company ("General") and Grefco, Inc. ("Grefco") (collectively, "Plaintiffs" or "GRX") (Docket No. 154), the Defendant's Reply Memorandum thereto (Docket No. 155). Also before the Court is the Defendant's Motion Seeking to Correct Two Factual Misstatements (Docket No. 152) and the Plaintiffs' Memorandum of Law in Opposition thereto (Docket No. 153). For the foregoing reasons, the Plaintiffs' Motion for Reconsideration is **DENIED** and the Plaintiffs' Motion for Correction of Two Factual Misstatements is **GRANTED in part and DENIED in part**.

I. BACKGROUND

This is an insurance coverage case that has spanned ten years. The case concerns the claim of General Refractories Company

("General") and Grefco, Inc. ("Grefco") (collectively, "Plaintiffs" or "GRX") for reimbursement from Liberty Mutual Insurance Company ("Liberty Mutual" or "Defendant"), under insurance policies issued by Liberty Mutual to its insured Great Lakes Carbon Corporation ("Great Lakes") before 1966, of all defense and indemnity costs paid on Grefco's behalf by its own insurers for claims brought against Grefco. The Defendant has filed the instant motions in response to this Court's decision denying its Motion for Partial Summary Judgment.

On December 14, 1998, this Court rendered an opinion denying the Motion for Partial Summary Judgment by Liberty Mutual. The Defendant now moves for reconsideration of that Memorandum and Order. Moreover, the Defendant moves this Court for an Order correcting two factual misstatements contained in that Memorandum and Order. On December 28, 1998, the Defendant filed its Motion for Reconsideration. The Plaintiffs filed their response thereto on January 6, 1999. The Defendant filed a Reply Memorandum on January 11, 1999. On December 28, 1998, the Defendant also filed a Motion Seeking to Correct Two Factual Misstatements Contained in the Court's December 14, 1998 Memorandum and Order. The Plaintiffs filed their response thereto on January 6, 1999. The Court now considers Defendant's two motions.

II. DISCUSSION

A. Motion for Reconsideration

1. Standard

It is unsettled among the courts how to treat motions to reconsider:

The [United States] Supreme Court has noted that "[s]uch a motion is not recognized by any of the Federal Rules of Civil Procedure. The Third Circuit has sometimes ruled on such motions under Federal Rule of Civil Procedure 59(e) and at other times under Rule 60(b). A motion to reconsider may, therefore, be treated as a Rule 59(e) motion for amendment of judgment or a Rule 60(b) motion for relief from judgment or order.

Broadcast Music, Inc. v. La Trattoria E., Inc., No. CIV.A. 95-1784, 1995 WL 552881, at *1 (E.D. Pa. Sept. 15, 1995). In this case, the Court will treat the instant motion for reconsideration as a motion pursuant to Rule 59(e), rather than as a motion pursuant to Rule 60(b).

Federal Rule of Civil Procedure 59(e) provides in relevant part that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). Generally, a motion for reconsideration will only be granted if: (1) there has been an intervening change in controlling law; (2) new evidence, which was not previously available, has become available; or (3) it is necessary to correct a clear error of law or to prevent manifest injustice. Reich v. Compton, 834 F. Supp. 753, 755 (E.D. Pa. 1993) (citing Dodge v.

Susquehanna Univ., 796 F. Supp. 829, 830 (M.D. Pa. 1992)), aff'd in part, rev'd in part, 57 F.3d 270 (3d Cir. 1995); McDowell Oil Serv., Inc. v. Interstate Fire & Cas. Co., 817 F. Supp. 538, 541 (M.D. Pa. 1993). Furthermore,

"With regard to the third ground,... any litigant considering bringing a motion to reconsider based upon that ground should evaluate whether what may seem to be a clear error of law is in fact simply a disagreement between the Court and the litigant." Motions for reconsideration should not relitigate issues already resolved by the court and should not be used "to put forward additional arguments which [the movant] could have made but neglected to make before judgment."

Compton, 834 F. Supp. at 755 (quotations and citations omitted).

2. Analysis

In this case, Liberty Mutual has filed a Motion for Reconsideration on the basis that the Court failed to consider its reply memorandum and accompanying documentation regarding its Motion for Partial Summary Judgment. The Defendant states that at the outset of its December 14, 1998, Memorandum and Order, the Court sets forth the various motion papers before the Court. The Defendant contends that Liberty Mutual's Reply Memorandum in Support of its Motion for Partial Summary Judgment ("Reply Brief"); the Supplemental Affidavit of Stephen G. Schweller, sworn to July 31, 1998; and the Appendix of Unreported Cases Cited in Support of Liberty Mutual's Motion for Partial Summary Judgment (collectively, "Reply Papers") are not listed.

The Defendant admits that a review of the Dockets for the case (Nos. 88-2250 and 88-2167) on the electronic PACER system does not reveal entries for Liberty Mutual's Reply Papers. Nonetheless, the Defendant contends that on August 1, 1998, it sent by Federal Express to Michael E. Kunz, Clerk of the Court, for filing the originals of Liberty Mutual's Reply Papers. The Defendant also contends on that same day it sent courtesy copies of the Reply Papers to this Court. In its Motion for Reconsideration, the Defendant has provided the Court with a copy of its Reply Papers.

In its Reply Brief, the Defendant raises no new arguments. Rather, Liberty Mutual merely reiterates each of its prior positions. Indeed, in its Motion for Reconsideration, the Defendant does not allege that an argument in its Reply Brief was not addressed in the Court's earlier decision. Moreover, the Reply Papers do not add anything to this Court's decision to deny Defendant's Motion for Partial Summary Judgment. Thus, Liberty Mutual's Motion for Reconsideration is denied.

B. Motion to Correct Factual Misstatements

Liberty Mutual alleges that this Court's December 14, 1998, Memorandum and Order contains two factual misstatements. First, Liberty Mutual contends that the number of insurance policies under which Grefco acquired rights to the pre-1966 Liberty Mutual CGL Insurance Policies is misstated as thirteen (13) in the last sentence of the first full paragraph on page three of the

Opinion. (Def.'s Brief at 2-3.) Liberty Mutual seeks to change the Opinion in the following ways: (a) to delete the phrase "thirteen (13)" and replace it with the phrase "ten"; and (b) add on the phrase "pre-1966, i.e., covering the years 1954 through 1965." The number of insurance policies at issue is of no consequence here, and Liberty Mutual's proposed change is meaningless. What is of consequence--and what Liberty Mutual does not contest the Court got correct--is all of Great Lakes Carbon Corporation's rights for the thirteen policy years were transferred to Grefco.

Second, Liberty Mutual argues that the Court's reference to Liberty Mutual's refusal to pay in the last two sentences of section I.A on page four of the Opinion is inaccurate. (Def.'s Brief 3-4.) Grx agrees that Liberty Mutual made its first payment to Grefco on July 31, 1998. However, the Plaintiff argues that such payment related solely to open underlying occupational disease actions. The Plaintiff contends that no payments were made for any open or closed claim already defended and indemnified by General or General's own insurance companies. The Defendant does not refute Plaintiff's contention.

An appropriate Order follows.

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O R D E R

AND NOW, this 1st day of February, 1999, upon consideration of the Motion for Reconsideration by Defendant Liberty Mutual Insurance Company ("Defendant" or "Liberty Mutual") (Docket No. 151), the Memorandum of Law in Opposition thereto by Plaintiffs, General Refractories Company ("General") and Grefco, Inc. ("Grefco") (collectively, "Plaintiffs" or "GRX") (Docket No. 154), the Defendant's Reply Memorandum thereto (Docket No. 155), and the Defendant's Motion Seeking to Correct Two Factual Misstatements (Docket No. 152) and the Plaintiffs' Memorandum of Law in Opposition thereto (Docket No. 153), IT IS HEREBY ORDERED that the Plaintiff's Motion for Reconsideration is **DENIED** and the Plaintiff's Motion for Correction of Two Factual Misstatements is **GRANTED in part** and **DENIED in part**.

IT IS FURTHER ORDERED that:

(1) the last sentence of the first full paragraph on page three (3) of the Court's December 14, 1998, Memorandum and Order is deleted and replaced with the following:

As a consequence, Grefco acquired all of the rights of the GLCC entities under the pre-1966 comprehensive general liability ("CGL") insurance policies sold to Great Lakes by Liberty Mutual.

(2) the last two sentences of the last paragraph of Part I.A of the Court's December 14, 1009, Memorandum and Order are deleted and replaced with the following:

As of the date of this Order, Liberty Mutual has not provided any money to defend or indemnify Grefco against any of the closed or open claims previously paid by General or General's other insurers.

BY THE COURT:

HERBERT J. HUTTON, J.