

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

KANSAS CITY FIRE & MARINE	:	CIVIL ACTION
INSURANCE COMPANY and	:	
CIRCLE V. TRANSPORTATION, INC.,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION and	:	
UNION PACIFIC RAILROAD COMPANY,	:	
Defendants.	:	NO. 97-8134

VAN SEUMEREN HOLLAND B.V. and	:	CIVIL ACTION
VAN SEUMEREN U.S.A., INC.,	:	
Plaintiffs	:	
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION and	:	
UNION PACIFIC RAILROAD COMPANY,	:	
Defendants.	:	NO. 98-2694

MEMORANDUM AND ORDER

J. M. KELLY, J.

JULY 14, 1999

The Court recently found Defendants Consolidated Rail Corporation (“Conrail”) and Union Pacific Railroad Company’s (“Union Pacific”) liability in this case was limited by an agreement Conrail entered into with Plaintiff Circle V. Transportation, Incorporated (“Circle V”). The Court subsequently invited Circle V and co-Plaintiffs Van Seumeren Holland B.V. and Van Seumeren U.S.A., Incorporated (“Van Seumeren”) to submit memoranda discussing how, if at all, the \$50,000.00 Defendants are liable for should be apportioned. Presently before the Court are those memoranda, as well as Circle V’s and Van Seumeren’s motions for reconsideration and

Circle V's motion to amend the complaint. For the reasons that follow, the Court will deny both motions for reconsideration and Van Seumeren's motion for leave to amend its complaint.

Further, the Court will award Kansas City Insurance Company ("Kansas City"), Circle V's and Van Seumeren's subrogee, the \$50,000.00 Defendants are obliged to pay.

A. Plaintiffs' Motions for Reconsideration

To prevail on their motions for reconsideration, Plaintiffs must point to a manifest error of law or fact, present newly available evidence, or cite to an intervening change in the controlling law.¹ See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir.), cert. denied, 476 U.S. 1171 (1986); Drake v. Steamfitters Local Union No. 420, No. 97-CV-585, 1998 WL 564486, at *3 (E.D. Pa. Sept. 3, 1998). The Court will reconsider its earlier ruling to prevent a manifest injustice. See Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). Mere dissatisfaction with the Court's factual or legal rulings, however, does not meet the manifest injustice standard; the motion for reconsideration should be more than a forum to express dissatisfaction with the result ordered in the Court's opinion. See Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993).

Both Plaintiffs essentially argue the Court erred in making various factual findings. The Court's review of the record and its Memorandum, however, discloses no manifest errors of fact that warrant reconsideration. Plaintiffs' motions are denied.

¹Parties also must move for reconsideration within ten days of the Order's entry. Local R. Civ. P. 7.1(g); see also Fed. R. Civ. P. 59(e). Neither Plaintiff filed their motion within ten days, although Circle V realized this and moved to file its motion nunc pro tunc. The Court will grant this motion, and, although Van Seumeren failed to recognize it filed its motion out of time, also will excuse Van Seumeren's untimely filing.

B. Van Seumeren's Motion to Amend Its Complaint

Van Seumeren moves to amend its complaint in light of the Court's ruling on Defendants' summary judgment motions. This ruling, argues Van Seumeren, created the issue of which party is entitled to receive the \$50,000.00 for which Defendants are liable. Van Seumeren apparently envisions an entire case revolving around this issue.

The Court will decline to allow Van Seumeren to amend its complaint. Setting aside the fact that this new case's amount in controversy falls far short of the jurisdictional requirement of 28 U.S.C. § 1332(a), the Court already has requested and received memoranda briefing the issue. Moreover, as the Court will discuss shortly, the damages issue is resolvable as a matter of law. Amendment at this point in the proceedings therefore would be futile and unduly prejudicial, see Averbach v. Rival Manufacturing Co., 879 F.2d 1196, 1203 (3d Cir. 1989), not to mention a galactic waste of judicial resources.

C. Kansas City's Entitlement to the \$50,000.00.

Van Seumeren believes it is entitled to at least some portion of what Defendants must pay, primarily because it claims its damages far exceed what it has recovered. Kansas City combines a factual argument with a legal one, and points out that Van Seumeren assigned its rights to recover for property damage to Kansas City. Because Defendants' limited liability is restricted only to property damages, Kansas City argues it alone is entitled to recover from Defendants.

The Court finds Kansas City's argument compelling. As Kansas City correctly argues, Texas law is applicable here, see Associated Press v. Berger, 460 F. Supp. 1003, 1005 (W.D. Tex. 1978), and under Texas law the Court must give effect to the parties' intentions as

expressed in the contract when that contract is unambiguous, see Chandler v. Chandler, 991 S.W.2d 367, 396 (Tex. App. 1999). An unambiguous contract is one susceptible to only one reasonable interpretation, Dechon v. Dechon, 909 S.W.2d 950, 955 (Tex. App. 1995), and the Court concurs with Kansas City's view that the assignment is unambiguous and plainly manifests Van Seumeren's intent to assign its property damage rights to Kansas City. Van Seumeren argues that nothing in the assignment prohibits it from pursuing property damage not compensated by Kansas City. Even assuming this is true, this argument fails to address why the assignment should not be satisfied first. Van Seumeren freely assigned its property damage rights to Kansas City in exchange for \$425,000.00, and Kansas City now is entitled to collect the \$50,000.00 for which Defendants are liable.

An Order follows.

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VAN SEUMEREN U.S.A., INC., :
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UNION PACIFIC RAILROAD COMPANY, :
Defendants. : NO. 98-2694

ORDER

AND NOW, this 14th day of July, 1999, upon consideration of Plaintiffs Kansas City Fire and Marine Insurance Company and Circle V. Transportation Company's, and Van Seumeren Holland B.V. and Van Seumeren U.S.A., Incorporated's Motions for Reconsideration; Plaintiffs Van Seumeren Holland B.V. and Van Seumeren U.S.A., Incorporated's Motion for Leave to Amend its Complaint; Plaintiffs Kansas City Fire and Marine Insurance Company and Circle V. Transportation Company's Motion to File its Motion for Reconsideration Nunc Pro Tunc; and Plaintiffs Kansas City Fire and Marine Insurance Company and Circle V. Transportation Company's, and Van Seumeren Holland B.V. and Van Seumeren U.S.A., Incorporated's memoranda concerning the apportionment of damages, it is hereby **ORDERED**:

1. Plaintiffs Kansas City Fire and Marine Insurance Company and Circle V. Transportation Company's Motion to File Its Motion For Reconsideration Nunc Pro Tunc (Document No. 30) is **GRANTED**;

2. Plaintiffs Kansas City Fire and Marine Insurance Company and Circle V. Transportation Company's, and Van Seumeren Holland B.V. and Van Seumeren U.S.A., Incorporated's Motions for Reconsideration (Document Nos. 23 and 26) are **DENIED**;

3. Plaintiffs Van Seumeren Holland B.V. and Van Seumeren U.S.A., Incorporated's Motion for Leave to Amend its Complaint (Document No. 27) is **DENIED**;

4. Judgment is entered in favor of Plaintiffs Kansas City Fire and Marine Insurance Company and Circle V. Transportation Company, and against Defendants Consolidated Rail Corporation and Union Pacific Railroad Company, in the amount of \$50,000.00;

5. In accordance with the accompanying Memorandum, Defendants Consolidated Rail Corporation and Union Pacific Railroad Company are not liable to Plaintiffs Van Seumeren Holland B.V. and Van Seumeren U.S.A., Incorporated, and judgment is entered in favor of Defendants and against Plaintiffs Van Seumeren Holland B.V. and Van Seumeren U.S.A., Incorporated; and

6. The Clerk of Court is ordered to mark this matter closed.

BY THE COURT:

JAMES McGIRR KELLY, J.