EFiled: Dec 21 2017 04:39PM 25T Filing ID 61494784 Case Number 381,2017

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MOTORS LIQUIDATION COMPANY DIP

LENDERS TRUST,

Plaintiff Below,

Appellant/Cross-Appellee,

Appenanti Cross-rippence,

v.

ALLSTATE INSURANCE COMPANY, et al.,

Defendants Below, Appellees,

and

et ano.,

Appellees/Cross-Appellants.

No. 381, 2017

Court Below - Superior Court

of the State of Delaware,

C.A. No. N11C-12-022 PRW

[CCLD]

ONEBEACON INSURANCE COMPANY,

Defendants Below,

THE AIG MEMBER COMPANIES' JOINDER TO THE ANSWERING BRIEFS OF THE TRAVELERS CASUALTY AND SURETY COMPANY AND MUNICH REINSURANCE AMERICA, INC.

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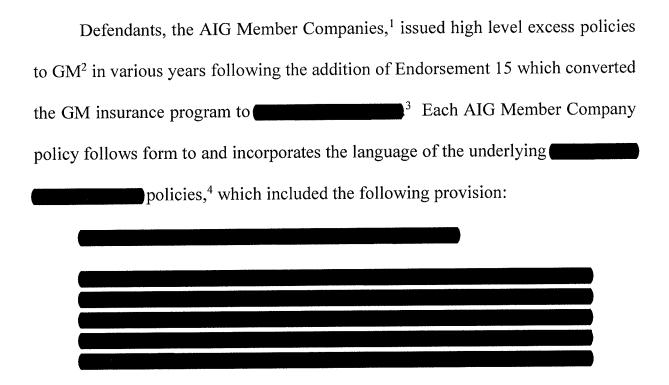
Attorney for Defendants Below, Appellees, Lexington Insurance Company, Insurance Company of the State of Pennsylvania, AIU Insurance Company, Granite State Insurance Company, Landmark Insurance

Company, and National Union Fire Insurance Company of Pittsburgh, Pa.

Dated: December 8, 2017

PUBLIC VERSION

FILED DECEMBER 21, 2017



(B28-B53); (A787-A809), (A644-A657).

¹ "The AIG Member Companies" for purposes of this motion are Lexington Insurance Company ("Lexington"), Insurance Company of the State of Pennsylvania ("INSCOP"), AIU Insurance Company ("AIU"), Granite State Insurance Company ("Granite State"), Landmark Insurance Company ("Landmark"), and National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union").

² "GM" refers to the Delaware corporation that declared bankruptcy on June 1, 2009, changed its name to Motors Liquidation Company, and dissolved on December 15, 2011. B765-B468.

⁴ AIU Policies B204-B206, B241-B244, B323-B326, B461-B464; Granite State Policies A914-A917, A947-956, A974- A986, B465-B470; INSCOP Policies A830-A835, B57-B62; Landmark Policy B471-B479, Lexington Policies A886-A892, B76-B87, B320-B322, B327-B329, B480-B482; and National Union Policies A814-A820, A821-A829, B63-B72, B207-B209, B245-B256, B330-B332, B483-B492.

The Superior Court found⁶ and GM conceded that the underlying

"'7 which are triggered only by

None of GM's asbestos liabilities for which the Trust seeks

to recover (the "Asbestos Claims")

and, therefore,

In the Superior Court, the AIG Member Companies joined the motions by Travelers Casualty and Surety Company ("Travelers") (B1303-B1307) on the trigger of coverage and Munich Reinsurance America, Inc. ("MRAm") (B1761) regarding judicial estoppel, and the Superior Court granted both motions as to the AIG Member Companies.⁸ The AIG Member Companies now join the Answering Briefs filed by Travelers and MRAm. For all of the reasons set forth in those briefs and herein, the Court should affirm the Superior Court's November 25, 2015⁹ and

attaching above them.

⁵ A561, A791, B31, B394.

⁶ Motors Liquidation Co. DIP Lenders Tr. v. Allianz Ins. Co., No.: N11C-12-022 FSS (CCLD), 2015 Del. Super. LEXIS 1063, at *7 (Del. Super. Nov. 25, 2015) (Ex. B to Appellant's Opening Brief).

⁷ B1, B659, B680-681, B498.

⁸ Motors Liquidation Co. DIP Lenders Tr., 2015 Del. Super. LEXIS 1063, at *30.

⁹ Motors Liquidation Co. DIP Lenders Tr. v. Allianz Ins. Co., No.: N11C-12-022 FSS (CCLD), 2015 Del. Super. LEXIS 1063, at *30 (Del. Super. Ct. Nov. 25, 2015) ("Defendants' Motion for Summary Judgment is GRANTED").

March 2, 2016¹⁰ decisions finding that the excess policies issued to GM by the AIG Member Companies are not triggered by the Asbestos Claims and the Trust is estopped from taking positions here that contradict the positions taken by GM in previous litigation with Royal, including GM's position that Michigan law applies to the policies at issue.

The Superior Court's trigger decision is firmly supported by 1) the language of the AIG Member Company policies;¹¹ 2) the language of the underlying Royal occurrence reported policies to which AIG Member Company policies follow form;¹² 3) the treatment by GM and Royal of every claim as a triggering only the triggering only t

¹⁰ Motors Liquidation Co. Dip v. Allianz Ins. Co., No.: N11C-12-022 PRW (CCLD), 2016 Del. Super. LEXIS 110, at *10 (Super. Ct. Mar. 2, 2016) ("Plaintiff's Motion for Reargument is DENIED.").

¹¹ AIU Policies B204-B206, B241-B244, B323-B326, B461-B464; Granite State Policies A914-A917, A947-956, A974- A986, B465-B470; INSCOP Policies A830-A835, B57-B62; Landmark Policy B471-B479, Lexington Policies A886-A892, B76-B87, B320-B322, B327-B329, B480-B482; and National Union Policies A814-A820, A821-A829, B63-B72, B207-B209, B245-B256, B330-B332, B483-B492. ¹² A644-A657, A787-A809, B28-B53, B391-B460.

¹³See, e.g., B93-B203, B387, B390, B495.

expired.¹⁴ These inescapable facts are fatal to the Trust's claims against the AIG Member Companies.

Except for certain Granite State policies addressed *infra*, in the Superior Court, the Trust did not even attempt to challenge the fact that the AIG Member Company policies follow form to the underlying policies. Accordingly, the Trust cannot now argue otherwise. 16

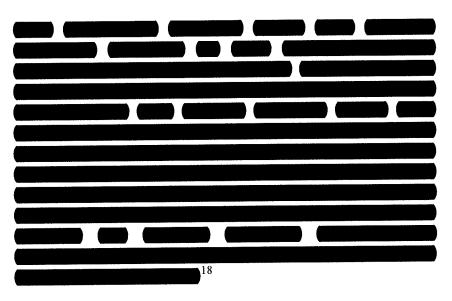
¹⁴ Motors Liquidation Co. Dip v. Allianz Ins. Co., No.: N11C-12-022 PRW (CCLD), 2016 Del. Super. LEXIS 110, at *10 (Super. Ct. Mar. 2, 2016) ("The salient and undisputed fact is that no claim at issue was made against or reported to old-GM, much less Royal, while a Royal policy was on-risk as to that claim.").

¹⁵ B2383, B2402-B2403; B204-B206, B241-B244, B323-B326, B461-B464;
A914-A917, A947-956, A974- A986, B465-B470; A830-A835, B57-B62; B471-B479, A886-A892, B76-B87, B320-B322, B327-B329, B480-B482; A814-A820, A821-A829, B63-B72, B207-B209, B245-B256, B330-B332, B483- B492, A644-A657, A787-A809, B28-B53, B391-B460.

¹⁶ See Del. Supr. Ct. R. 8; *Del. Elec. Coop. v. Duphily*, 703 A.2d 1202, 1206 (Del. 1997) ("It is a basic tenet of appellate practice that an appellate court reviews only matters considered in the first instance by a trial court. Parties are not free to advance arguments for the first time on appeal.") (cited in *Thompson v. State*, 149 A.3d 1020, 1020 n.3 (Del. 2016)).

I. The Granite State Policies Follow the Royal Form and Therefore, are not Triggered by the Asbestos Claims

The Superior Court correctly entered summary judgment in favor of Granite State because its policies¹⁷ follow the form of underlying Royal policies:



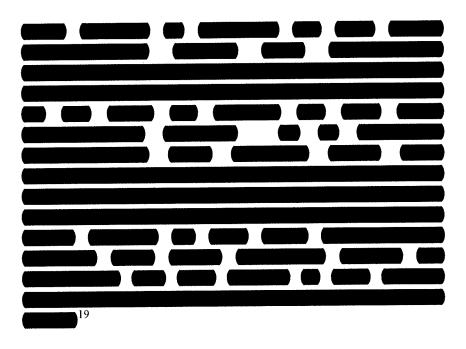
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Issuing Company		Reference
Granite State		A914-17
Granite State		A952-56
Granite State		A947-51
Granite State		A980-86
Granite State		A974-79
Granite State		B465-B470

¹⁸ A915, A948, A953, A977, A981 and B466. The bracketed language reflects the minor variations in the Granite State policy language.

Each Granite State policy also includes an

provision, which provides, substantially, as follows:

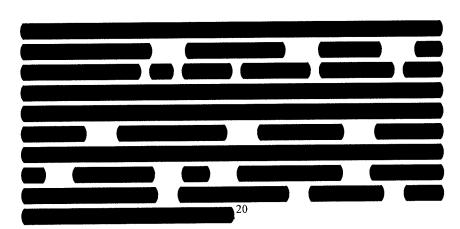


The Trust's reliance on the

clause

in the Granite State policies is misplaced. The clause contains no

but provides, in part:



¹⁹ A916, A949, A954, A978, A982 and B467.

²⁰ A916, A949, A954, A978, A982 and B467.

Instead, the clause states the
The underlying
policy applies to
" ²¹ and
" ²² The
phrase appearing in the clause, read together with the underlying
Royal policy, indisputably refers to the There can
be no genuine dispute regarding the fact that the Granite State policies follow form
to and incorporate that policy's Since none of the
Asbestos Claims were made or reported during the Granite State policies, those
policies cannot be triggered.

I. The AIG Member Company Policies in Effect During the are not Triggered by the Asbestos Claims at Issue, and are also Entitled to Summary Judgment.

As with the all of the other AIG Member Company policies at issue in the matter, in the Superior Court the Trust did not dispute that the AIG Member

²¹ A561, B394.

²² A561, B394.

Company policies in the	tower follow form to underlying Royal
policies, ²³ that th	ose underlying Royal
policies are	
Because none of the As	bestos Claims at issue were reported during
the effective dates of the	those claims do not trigger the
underlying Royal polici	es or the AIG Member Company excess
policies.	

²³ A821–A829, A830–A835, A886–A892, and B2383.

CONCLUSION

For the foregoing reasons and those set forth in the Travelers' and MRAm answering briefs, the Court should affirm the Superior Court's November 25, 2015 and March 2, 2016 Orders as those Orders pertain to the AIG Member Company excess policies.

ROSENTHAL, MONHAIT & GODDESS, P.A.

By: /s/ Carmella P. Keener

Dated: December 8, 2017

OF COUNSEL:

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