



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MOTORS LIQUIDATION COMPANY DIP	:	
LENDERS TRUST,	:	No. 381, 2017
Plaintiff Below,	:	
Appellant/Cross-Appellee,	:	Court Below – Superior Court
	:	of the State of Delaware,
v.	:	C.A. No. N11C-12-022 PRW
	:	[CCLD]
ALLSTATE INSURANCE COMPANY, <i>et al.</i> ,	:	
Defendants Below, Appellees,	:	
and	:	██
	:	██
ONEBEACON INSURANCE COMPANY,	:	
<i>et ano.</i> ,	:	
Defendants Below,	:	
Appellees/Cross-Appellants.	:	

**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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Dated: December 8, 2017

PUBLIC VERSION  
FILED DECEMBER 21, 2017

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██

Defendants, the AIG Member Companies,<sup>1</sup> issued high level excess policies to GM<sup>2</sup> in various years following the addition of Endorsement 15 which converted the GM insurance program to [REDACTED]<sup>3</sup> Each AIG Member Company policy follows form to and incorporates the language of the underlying [REDACTED] [REDACTED] policies,<sup>4</sup> which included the following provision:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> “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”).

<sup>2</sup> “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.

<sup>3</sup> [REDACTED]  
[REDACTED]  
[REDACTED] (B28-B53); [REDACTED] (A787-A809), [REDACTED]  
[REDACTED] (B391-B460) and [REDACTED] (A644-A657).

<sup>4</sup> 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.

[REDACTED]

[REDACTED]

to the [REDACTED]  
[REDACTED]<sup>5</sup>

The Superior Court found<sup>6</sup> and GM conceded that the underlying [REDACTED]  
[REDACTED]<sup>7</sup> which are triggered only by [REDACTED]  
[REDACTED] None of GM's asbestos liabilities for which the Trust seeks  
to recover (the "Asbestos Claims") [REDACTED]  
[REDACTED] and, therefore, [REDACTED]  
attaching above them.

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.<sup>8</sup> 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, 2015<sup>9</sup> and

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<sup>5</sup> A561, A791, B31, B394.

<sup>6</sup> *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).

<sup>7</sup> B1, B659, B680-681, B498.

<sup>8</sup> *Motors Liquidation Co. DIP Lenders Tr.*, 2015 Del. Super. LEXIS 1063, at \*30.

<sup>9</sup> *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, 2016<sup>10</sup> decisions finding that the excess [REDACTED] 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;<sup>11</sup> 2) the language of the underlying Royal occurrence reported policies to which AIG Member Company policies follow form;<sup>12</sup> 3) the treatment by GM and Royal of every claim as a [REDACTED] triggering only the [REDACTED],<sup>13</sup> and 4) the uncontroverted fact that each of the Asbestos Claims was first made and reported long after every AIG Member Company policy (and underlying Royal policy) had

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<sup>10</sup> *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.").

<sup>11</sup> 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.

<sup>12</sup> A644-A657, A787-A809, B28-B53, B391-B460.

<sup>13</sup> *See, e.g.*, B93-B203, B387, B390, B495.

expired.<sup>14</sup> 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 [REDACTED] policies.<sup>15</sup> Accordingly, the Trust cannot now argue otherwise.<sup>16</sup>

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<sup>14</sup> *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.”).

<sup>15</sup> 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.

<sup>16</sup> 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)).



Each Granite State policy also includes an [REDACTED]

provision, which provides, substantially, as follows:

[REDACTED]

The Trust's reliance on the [REDACTED] clause

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

[REDACTED] but provides, in part:

[REDACTED]

<sup>19</sup> A916, A949, A954, A978, A982 and B467.

<sup>20</sup> A916, A949, A954, A978, A982 and B467.

[REDACTED]

Instead, the clause states the [REDACTED]  
[REDACTED]  
[REDACTED] The underlying [REDACTED]  
policy applies to [REDACTED]  
[REDACTED],<sup>21</sup> and [REDACTED]  
[REDACTED]<sup>22</sup> The  
phrase [REDACTED] appearing in the  
[REDACTED] clause, read together with the underlying  
Royal policy, indisputably refers to the [REDACTED] There can  
be no genuine dispute regarding the fact that the Granite State policies follow form  
to and incorporate that policy's [REDACTED] 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 [REDACTED]  
[REDACTED] 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

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<sup>21</sup> A561, B394.

<sup>22</sup> A561, B394.



Company policies in the [REDACTED] tower follow form to underlying Royal [REDACTED] policies,<sup>23</sup> that those underlying Royal [REDACTED] policies are [REDACTED].

[REDACTED] Because none of the Asbestos Claims at issue were reported during the effective dates of the [REDACTED], those claims do not trigger the underlying Royal [REDACTED] policies or the AIG Member Company excess policies.

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<sup>23</sup> 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.

Dated: December 8, 2017

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