

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Plaintiff,

v

Case No. 14-139843-CB
Hon. Wendy Potts

XL INSURANCE AMERICA, INC, et al,

Defendants.

OPINION AND ORDER RE: ALLIANZ GLOBAL RISKS US INSURANCE COMPANY'S
MOTION TO RECONSIDER THE COURT'S FEBRUARY 11, 2015 ORDER

At a session of Court
Held in Pontiac, Michigan

On
AUG 27 2015

This complex insurance coverage dispute came before the Court on the excess insurers' cross motions for summary disposition regarding the priority of the excess insurers' coverage. After extensive briefing and considerable review, the Court issued a detailed analysis of the coverage dispute concluding that the excess policies issued by Allianz Global Risks US Insurance Company and ACE Property and Casualty Insurance Company are higher in priority than the excess policy issued by Ironshore Specialty Insurance Company.

Allianz now moves the Court to reconsider its decision claiming error in the Court's interpretation of the policy language. The Court has discretion to grant or deny reconsideration. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Reconsideration is warranted if a party identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3).

Allianz's arguments for reconsideration mostly mirror its arguments for summary disposition, and thus are insufficient to demonstrate palpable error warranting reconsideration. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). The fact that Allianz disagrees with the Court's reasoning or conclusions does not amount to palpable error. *Herald Co v Tax Tribunal*, 258 Mich App 78, 83; 669 NW2d 862 (2003).

The sole new assertion in Allianz's motion is that the Court misread the language of Allianz's other insurance clause, which states:

If valid and collectible insurance applies to damages that are also covered by this policy, this policy will apply as excess of the "other insurance" and will not contribute with the "other insurance." However, this provision will not apply if the "other insurance" is specifically written to be excess of this policy.

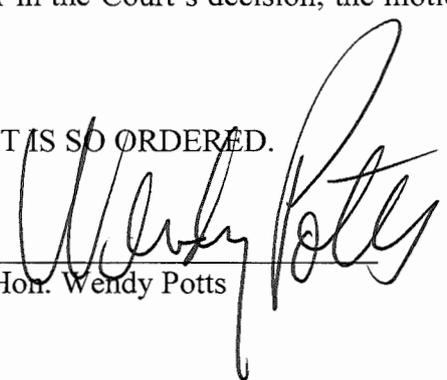
Allianz asserts, and the Court agrees, that the summary disposition opinion misquoted this language by unintentionally dropping the term "specifically" in the last sentence. Allianz asserts that the phrase "specifically written to be excess of this policy" is a term of art in the insurance context and dictates that the Ironshore policy is excess to the Allianz policy only if it specifically designates the Allianz policy as the underlying insurance. However, Allianz bases this position on the case law of other states and cites no Michigan case adopting this position. The decisions of other state courts are not binding on this Court, *Hiner v Mojica*, 271 Mich App 604, 612; 722 NW2d 914 (2006), and Allianz cannot rely on the out-of-state opinions to demonstrate error warranting reconsideration.

Because Allianz has not demonstrated palpable error in the Court's decision, the motion for reconsideration is denied.

Dated:

AUG 27 2015

IT IS SO ORDERED.


Hon. Wendy Potts