IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

I.U. NORTH AMERICA, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 01C-02-007 MJB
v.	)	
	)	
A.I.U. INSURANCE COMPANY, et al.,	)	
	)	
	)	
Defendants.	)	

Submitted: June 12, 2006
Decided: August 24, 2006

Upon Motion for Reargument of
Plaintiffs Pfizer, Inc. and Quigley Company, Inc.
DENIED.

ORDER

Theodore A. Keyes, Esquire, Valerie Sheaffer, Esquire, Schulte Roth & Zabel LLP, New York, New York; Attorneys for Plaintiff Quigley Company, Inc.; John E. Heintz, Esquire, Richard D. Martindale, Esquire, Jennifer A. Brennan, Esquire, Gilbert Heintz & Randolph LLP, Washington, D.C., Attorneys for Plaintiff Pfizer, Inc.; John E. James, Esquire, Richard L. Horwitz, Esquire, Potter Anderson & Corroon LLP, Wilmington, Delaware, Attorneys for Plaintiffs.

James A.A. Pabarue, Esquire, Thaddeus J. Weaver, Esquire, Christie Pabarue Mortensen & Young, Philadelphia, PA; Dade D. Werb, Decollo And Werb, P.A., Newark, Delaware, Attorneys for Defendant CGU Insurance Company.

BRADY, J.

Background

This is a Motion for Reargument filed by Defendant Pfizer, Inc. and Quigley Company, Inc. ("Pfizer/Quigely") regarding a previous ruling of this Court denying their Motion for Summary Judgment and granting Summary Judgment in favor of CGU Insurance Company ("CGU").[1] Because this litigation has been bifurcated into liability and damages phases, the judgment was granted only as to liability.[2] The complete facts of this case may be found in the previous ruling in this matter.[3]

Standard of Review

"The manifest purpose of all Rule 59 motions is to afford the Trial Court an opportunity to correct errors prior to appeal…"[4] "A motion for reargument is not a device for raising new arguments or stringing out the length of time for making an argument. It will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has

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[1] At the hearing on this motion, counsel for Pfizer/Quigley argued it was appropriate for the Court to deny the Motion for Summary Judgment it filed against CGU, but it was inappropriate for the Court to grant summary judgment in favor of CGU without first conducting a hearing on the matter. As stated in the opinion issued deciding the Motion for Summary Judgment, this Court has the authority to grant summary judgment to a nonmoving party when no material facts remain in dispute. The Settlement Agreement was fully integrated, as ruled by two judges of this Court. No questions of fact requiring a hearing on the Settlement Agreement remained after the Court ruled the document was fully integrated.

[2] Counsel for Pfizer/Quigley questioned whether language in the summary judgment opinion this Court issued could be construed as deciding the scope of damages in this bifurcated litigation. The opinion issued by the Court decided only the liability portion of this action. The extent of damages remains to be decided by the separate damages phase of this litigation.

[3] *I.U. North America, Inc, et al. v. A.I.U. Insurance Company, et al*, 896 A.2d 880 (Del. Super. Ct. 2006).

[4] *Beatty v. Smedley*, 2003 WL 23353491, *2 (Del.Super.); *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

misapprehended the law or facts such as would have changed the outcome of the underlying decision."[5]

Relevant Facts

Pfizer/Quigley and CGU entered into an agreement to resolve disputes regarding liability to pay certain compensation amounts to tort claimants. Several other documents, the Wellington Agreement, the Producer Agreement and the Sharing Agreement, were referenced in the Settlement Agreement.

This Court has held the Settlement Agreement is a fully integrated document.[6] Resolution of the dispute therefore, is made by the analysis and interpretation of the document itself.

Contentions of the Parties

The primary argument Pfizer/Quigley advances is that the Producer Agreement was incorporated by reference into the Pfizer/Quigley/CGU Settlement Agreement and is the document that should be considered controlling in determining CGU's liability for Shortfall Amounts.[7] Pfizer/Quigley further argues that the Court should not consider Appendix A-1 to the Wellington Agreement because it was succeeded in time by the Producer Agreement. Further, they contend, their proposed construction of

[5] *Beatty v. Smedley*, 2003 WL 23353491, at *2.
[6] *I.U. North America, Inc, et al. v. A.I.U. Insurance Company, et al*, 896 A.2d at 886; *Motion for Protective Order Hearing Transcript* at 53.
[7] *Pfizer/Quigley Motion for Reargument* at 1.

the Settlement Agreement is consistent with the parties' intent.[8]

Pfizer/Quigley argues in the alternative, that even if Section E of Appendix A-1 to the Wellington Agreement limits CGU's payment obligations, CGU should remain liable for most of the Shortfall Amounts, and judgment should be entered for Pfizer/Quigley for those amounts.[9]

CGU responds that the Producer Agreement was not incorporated by reference into the Settlement Agreement and that the Wellington Agreement was, and therefore, the Court properly found CGU's liability was governed by section E of Appendix A-1 to the Wellington Agreement. CGU contends, as a result, it is not liable for the Shortfall Amounts Pfizer/Quigley seeks to recover from it.[10]

The two documents conflict: the Producer Agreement obligates producer parties to pay shares of the obligations of defaulting members; and section E of appendix A-1 to the Wellington Agreement provides members will not be liable for the shares attributable to defaulting members. Therefore, both documents cannot be incorporated in their entirety into the Settlement Agreement without conflict.

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[8] *Id* at 3.
[9] *Id*. This Court notes, however, because this matter had been previously bifurcated for purposes of determining liability separately from damages, precisely what amounts are owed is not decided here.
[10] *CGU Answering Brief* at 3-7.

Applicable Law

The Court outlined the law of incorporation by reference in the previous opinion. Pfizer/Quigley argues the Court must find the Producer Agreement was incorporated into the Settlement Agreement because such a reading comports with the intentions of the parties.[11] "Courts will not torture contractual terms to impart ambiguity where ordinary meaning leaves no room for uncertainty. The true test is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant."[12]

Pfizer/Quigley cites *Falcon Steel Co. v. Weber Engineering Co., Inc.*[13] in support for its argument that the Court must incorporate the Producer Agreement and disregard Appendix A-1 to the Wellington Agreement. In *Falcon Steel*, the court was called upon to decide how arbitration clauses in a prime contract and subcontract interacted with each other and which governed the relationship between the parties.[14] The court held the subcontract did not incorporate all the terms of the prime contract because the agreements "would make little sense if so construed."[15] For example, the prime contract referred

[11] *Pfizer/Quigley Motion for Reargument* at 3.
[12] *Rhone-Poulenc Basic Chemicals Co. v. American Motorists Ins. Co*., 616 A.2d 1192, 1196 (Del. 1992) (internal citations omitted).
[13] 517 A.2d 281 (Del Ch. 1986).
[14] *Id* at 285-286.
[15] *Id* at 286.

to duties involved with steel erection for which the subcontractor had no responsibility.[16] Moreover, the court held:

> Falcon's proffered interpretation would require this Court to find that the parties, having explicitly agreed to the broad arbitration clause in their subcontract, also "implicitly" agreed in the same contractual document to be bound by the inconsistent provisions of the much narrower prime contract arbitration clause. While such a result is theoretically possible, it is hardly the way that two commercially sophisticated parties bargaining at arm's length normally conduct their affairs.[17]

The Court now turns to the language of the Settlement Agreement at issue.

The only reference to the Producer Agreement in the Pfizer/Quigley/CGU Settlement Agreement is parenthetical, and is in section 1.0:

> "Asbestos-Related Bodily Injury Claims" mean claims or lawsuits for which Pfizer or Quigley is alleged to be or may be responsible by judgment, order or settlement (including but not limited to the Wellington Agreement, the **Producer Agreement** Concerning Center for Claims Resolution dated September 28, 1988, as amended, and the CCR Defendants' Sharing Agreement Concerning That Stipulation of Settlement Between the Class of Claimants and Defendants Represented by the Center For Claims Resolution dated January 15, 1993, as amended), by whomever brought and in whatever procedural posture such claims or lawsuits may arise, seeking monetary relief (whether or not such relief is the only relief sought) for bodily injury, sickness, disease or death, alleged to have been caused in whole or in part by any asbestos, or asbestos-

[16] *Id*.
[17] *Id*.

> containing materials and/or product(s). Asbestos-Related Bodily Injury Claims do not include claims, lawsuits or demand solely for conspiracy or concert of action, willful breach of warranty or other intentional tort. Asbestos-Related Bodily Injury Claims do not include statutory claims for compensation by an employee against his employer (such claims being commonly called "workers' compensation claims"). (Emphasis added.)

On the other hand, very specific reference is made in the Settlement Agreement to the Wellington Agreement. Section 3.0 of the Settlement Agreement states in relevant part:

> CGU will make Liability Payments and pay Allocated Expenses for Asbestos-Related Bodily Injury Claims to the extent that CGU would have been obligated to do so had CGU became [sic] a Signatory to the Wellington Agreement as to Pfizer and Quigley…

Section 3.3 of the Settlement Agreement states in relevant part:

> A copy of the Wellington Agreement is attached hereto as Attachment B. All terms and conditions of the Wellington Agreement are incorporated herein by reference to the extent that they are not inconsistent with this Agreement. As to any conflict between the terms of this Agreement and the Wellington Agreement, the terms of this Agreement will govern…

In order to hold the Producer Agreement is controlling of the obligation of CGU to make payments, this Court would have to rule that the explicitly incorporated Wellington Agreement that explicitly governs the liability of CGU, was intended to be conflicted by a provision in the generally referenced Producer Agreement. "While such a result is theoretically possible, it is

hardly the way that two commercially sophisticated parties bargaining at arm's length normally conduct their affairs."[18] To find the Producer Agreement was incorporated by reference into the Settlement Agreement would make a common sense reading of the Settlement Agreement nonsensical because of the conflicting terms.[19] This Court will not torture the terms of the Settlement Agreement to incorporate by reference the terms of the Producer Agreement and give them controlling authority over the language of the Settlement Agreement itself. A reasonable person in the position of the parties would have understood from the Settlement Agreement that CGU was only obligated to pay for liabilities of Pfizer/Quigley, including those that arose from the Producer Agreement, "to the extent that CGU would have been obligated to do so had CGU became [sic] a Signatory to the Wellington Agreement as to Pfizer and Quigley." Because CGU would not be obligated to pay shortfall amounts if it were a signatory to the Wellington Agreement, it is not obligated to pay Pfizer/Quigley for such amounts.

The Court finds this situation analogous to the established rule of law that states "[s]pecific language in a contract controls over general language…"[20] The Producer Agreement is referenced once, in a general manner, in the definition of Asbestos Related Bodily Injury Claims. The

[18] *Id*.
[19] *See Star States Development Co. v. CLK, Inc*., 1994 WL 133954, *4 (Del.Super.).
[20] *DCV Holdings, Inc. v. Conagra, Inc., et al*, 889 A.2d 954, 961 (Del. 2005).

Wellington Agreement is referenced generally in the definition section, but is also specifically referenced in two more sections of the Settlement Agreement. Therefore, the specific incorporation of the Wellington Agreement governs over the singular, general reference to the Producer Agreement.

The Court directly inquired of counsel for Pfizer/Quigley at the hearing on the instant motion where in the Settlement Agreement or case law they could point to support giving priority to the once-referenced-but-not-attached Producer Agreement over the Wellington Agreement and counsel could not.[21] Pfizer/Quigley has failed to point to any convincing reason why the Court should disregard the express language of paragraphs 3.0 and 3.3 of the Settlement Agreement, which specifically incorporate the terms of the Wellington Agreement and make CGU liable pursuant to those terms.

Conclusion

For the reasons stated herein, the Motion for Reargument is hereby **DENIED**.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

[21] *Motion for Reargument Hearing Transcript* at 11-15.