

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

MINE SAFETY APPLIANCES	)	
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N10C-07-241 MMJ
	)	
AIU INSURANCE COMPANY, et al.,	)	
	)	
Defendants.	)	

Submitted: April 7, 2014  
Decided: May 20, 2014

Upon Defendant Travelers' Motion for Reargument  
**DENIED**

**OPINION**

Jennifer C. Wasson, Esquire, Michael B. Rush, Esquire, Potter Anderson & Corroon LLP, Mark A. Packman, Esquire, Jenna A. Hudson, Esquire, Gilbert LLP, Attorneys for Plaintiff

Seth A. Niederman, Esquire, Neal J. Levitsky, Esquire, Fox Rothschild LLP, Daren S. McNally, Esquire, Barbara M. Almeida, Esquire, Clyde & Co US LLP, Attorneys for Defendants Travelers Casualty and Surety Company

Richard M. Beck, Esquire, Sean M. Brennecke, Esquire, Klehr Harrison Harvey Branzburg LLP, James P. Ruggeri, Esquire, Joshua D. Weinberg, Esquire, Michele L. Backus, Esquire, Shipman & Goodwin LLP, Attorneys for Defendants Hartford Accident and Indemnity Company, First State Insurance Company, and Twin City Fire Insurance Company

**JOHNSTON, J.**

By Opinion dated March 24, 2014, the Court held:

[T]he expected/intended provision is either an exclusion or the functional equivalent of an exclusion. [Mine Safety Appliances Co. (“MSA”)] has established a prima facie case for coverage. Therefore, the burden shifts to Defendants to show that the expected/intended provision applies to negate coverage.

Defendants have failed to show: (1) that MSA intended or was substantially certain that the respirators would fail; and (2) that such expected or intended known failure would result in occupational lung diseases. The Court finds that the undisputed facts, and the facts viewed in the light most favorable to the non-moving party, do not support the application of the expected/intended provision to negate coverage. Defendants have failed to identify with specificity entitlement to additional discovery on these issues.

**THEREFORE**, MSA’s Motion for Partial Summary Judgment is hereby **GRANTED**.

Defendant Travelers Casualty and Surety Company and Travelers Indemnity Company (“Travelers”) has moved for reargument. Hartford Accident and Indemnity Company, First State Insurance Company, Twin City Fire Insurance Company (collectively “Hartford”), The North River Insurance Company, and Employers Insurance Company of Wausau have joined Travelers’ Motion (collectively “Movants”). Movants argue four points. First, the Court misapprehended the nature of the evidence presented by the Insurers. Second, the burden of proof does not shift to Travelers to establish expectation. Third, even if the burden of proof shifted to the Insurers, the burden of proof the Court imposed

on the Insurers was improper. Fourth, the Court's ruling could potentially interfere with the underlying claimants' actions against MSA.

In its Opposition to Motion for Reargument, MSA asserts that Movants improperly rehash their legal arguments, and that Movants wrongly reargue factual allegations that were considered and rejected by the Court.

The purpose of moving for reargument is to seek reconsideration of findings of fact, conclusions of law, or judgment of law.<sup>1</sup> Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision. It is the moving party's burden to show that the Court's misunderstanding of a factual or legal principle is both material and would have changed the Court's ruling.<sup>2</sup> A motion for reargument should not be used merely to rehash the arguments already decided by the Court.<sup>3</sup> Reargument only is available to re-examine the existing record. New evidence generally will not be considered on a Rule 59(e) motion.<sup>4</sup>

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<sup>1</sup> *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del.1969).

<sup>2</sup> *In re Mobilactive Media, LLC*, 2013 WL 1900997, at \*1 (Del. Ch.).

<sup>3</sup> *Middletown Square Assoc., LLC v. Jasinski*, 2012 WL 6845689, at \*1 (Del.Super.).

<sup>4</sup> *Reserves Dev., LLC v. Severn Sav. Bank, FSB*, 2007 WL 4644708, at \*1 (Del.Ch.).

The Court has reviewed and considered the parties' submissions. Movants argue that the Court has misapprehended the Insurers' evidence by dismissing the claims as "unsupported allegations." Insurers omit the Court's additional finding that the evidence, viewed in a light most favorable to Insurers, did not support a finding of genuine issues of material fact sufficient to overcome entitlement to summary judgment.

The Court fully considered the issues regarding the shifting burden of proof and the standard of the burden of proof in reaching its decision. The reasons for the Court's rulings are set forth in its Opinion.

Movants argue that the Court's ruling:

[I]f left in place, would preemptively declare that MSA did not expect or intend to cause injury when a jury in a different jurisdiction finds exactly the opposite. MSA would be relieved of its obligation to establish the unintended nature of the harm even though a jury concludes that the loss, by definition, is not insurable. Alternatively, this Court's ruling may serve to negate the findings of a future jury in a different state, which this Court presumably did not intend to do.

The March 24, 2014 Opinion speaks for itself. The ruling determined the legal issue of whether, under the evidence presented in support of and in opposition to Plaintiff's Motion for Partial Summary Judgment, the contractual expected/intended provision applies to negate coverage. The Court found that in this case, the provision does not prevent coverage. The Court's holding is nothing

more and nothing less. There is no reason to revise the Opinion to address issues that are neither ripe, nor before this Court.

There is no basis upon which the Court should alter its Opinion. The Court did not overlook a controlling precedent or legal principle, or misapprehend the law or the facts in a manner affecting the outcome of the decision.

**THEREFORE**, Defendant Travelers' Motion for Reargument is hereby **DENIED**.

**IT IS SO ORDERED.**

/s/ *Mary M. Johnston*

The Honorable Mary M. Johnston