IN THE SUPREME COURT OF THE STATE OF DELAWARE

AIU INSURANCE COMPANY,	§	
INSURANCE COMPANY OF THE	§	
STATE OF PENNSYLVANIA and	§	No. 695, 2011
LEXINGTON INSURANCE	§	
COMPANY	§	Court Below: Superior Court of
	§	the State of Delaware in and for
Defendants Below-Appellants,	§	New Castle County
	§	
v.	§	C.A. No. 09C-01-170
	§	
AMERICAN GUARANTEE &	§	
LIABILITY INSURANCE CO.	§	
	§	
Plaintiff Below, Appellee,	§	

Submitted: November 19, 2012 Decided: January 15, 2013

Before STEELE, Chief Justice, BERGER, and RIDGELY, Justices.

ORDER

On this 15th day of January 2013, it appears to the Court that:

(1) Defendants Below/Appellants AIU Insurance Company, Insurance Company of the State of Pennsylvania and Lexington Insurance Company (collectively "Chartis") appeal from a Superior Court grant of Plaintiff Below/Appellee American Guarantee & Liability Insurance Co.'s ("AGLI") motion for voluntarily dismissal without prejudice. Chartis argues the Superior Court erred in granting AGLI's motion to dismiss *without* prejudice, and instead the motion should have been granted *with* prejudice. After our decision in *Intel*

Corp. v. American Guarantee,¹ we asked the parties for supplemental briefing and scheduled the appeal to be considered on-briefs. As all of AGLI's claims against Chartis have been extinguished by the *Intel* decision, and there are no other pending appeals in related cases, we dismiss this appeal as moot.

- (2) AGLI filed a two-count Complaint in Superior Court. The first count sought a declaration that AGLI owed no duty to defend or indemnify Intel for pending anti-trust litigation (the "AMD" litigation). The second count, directed towards the Chartis Companies, sought "a declaration concerning the allocation and/or apportionment of any defense of indemnity obligations for the AMD Actions...." AGLI provided Intel an excess insurance policy that was not triggered until the primary insurance, provided by XL Insurance Company, was exhausted to its limit. "AGLI sought and obtained a declaration from the Superior Court that AGLI had no duty to reimburse Intel for defense costs or indemnity claims in connection with Intel's defense of various antitrust lawsuits, because the underlying insurance policy limits of \$50 million were not exhausted as required by the AGLI policy." Intel appealed the grant of partial summary judgment to this court.
- (3) As the coverage litigation was proceeding in Delaware, parallel litigation was underway in the U.S. District Court for the Northern District of

¹ Intel Corp. v. American Guarantee and Liability Insurance Co., 51 A.3d 442 (Del. 2012).

California. The District Court made a similar exhaustion ruling as the Delaware Superior Court, and that ruling was on appeal to the U.S. Court of Appeals for the Ninth Circuit. While that appeal was pending, AGLI moved to voluntarily dismiss, without prejudice, its claims against the Chartis insurers in the Superior Court. Chartis argued the trial court should dismiss the claims with prejudice. The trial court found that due to "the possibility that [the trial court's decision] could be reversed," a dismissal with prejudice may limit AGLI's future right to assert contribution claims. The Superior Court dismissed the claims without prejudice and this appeal followed.

- (4) We affirmed the Superior Court's grant of partial summary judgment and Intel has voluntarily dismissed its appeal in the Ninth Circuit. As AGLI notes, "With the affirmance by this Court...and the dismissal of Intel's appeal...the possibility no longer exists that AGLI's contribution claims may be asserted...." Chartis agrees, stating that this Court's opinion "fully and finally eliminate[ed] any right of recovery Intel might have against AGLI[]" and also "eliminates any possible right of contribution that AGLI[] might have against the Chartis Companies."
- (5) We may dismiss an appeal for mootness under Supreme Court Rule 29(b).² "Under the mootness doctrine, 'although there may have been a justiciable

² Stotland v. GAF Corp., 469 A.2d 421, 423 (Del. 1983).

controversy at the time the litigation was commenced, the action will be dismissed if that controversy ceases to exist.' A proceeding may become moot if the legal issue in dispute is no longer amenable to a judicial resolution."

(6) Chartis seeks dismissal with prejudice to protect themselves from future litigation from AGLI on this same matter. But Chartis candidly admits that it is legally impossible for future coverage claims relating to this matter to be successfully brought by AGLI. Though Chartis argues AGLI may bring "patently unmeritorious" claims, these hypothetical, frivolous claims do not create an ongoing "controversy" in this case. Although there was a justiciable controversy at the time this appeal was filed, the controversy ceases to exist.

(7) NOW, THEREFORE, IT IS ORDERED that this appeal is **DISMISSED** as moot.

BY THE COURT:

/s/ Henry duPont Ridgely Justice

³ American Littoral Soc., Inc. v. Bernie's Conchs, LLC, 954 A.2d 909, 2008 WL 2520634, at *2 (Del. 2008) (TABLE) (citing Gen. Motors Corp. v. New Castle County, 701 A.2d 819 (Del 1997)).