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

CNH AMERICA, LLC, a Delaware limited liability company f/k/a Case Corporation		N12C-07-108 JTV
Plaintiff,	) )	
V.	) )	
AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA, a Pennsylvania corporation, et al	) ) )	
Defendants.	) ) )	
AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA, a Pennsylvania corporation; and The CONTINENTAL INSURANCE COMPANY, a Pennsylvania corporation,		
Third-Party Plaintiffs,	) )	
V.	<i>)</i> )	
EPEC EQUIPMENT CORPORATION, a Delaware corporation,	) ) )	
Third-Party Defendant.	<i>,</i> )	

Submitted: January 21, 2014 Decided: April 29, 2014 CNH America v. American Casualty Company, et al.

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John C. Cordrey, Esq., Reed Smith, LLP, Wilmington, Delaware. Attorney for Plaintiff.

Carmella P. Keener, Esq., Rosenthal, Monhait & Goddess, Wilmington, Delaware. Attorney for American Casualty, Continental Insurance, and Centre Insurance.

Seth A. Niederman, Esq., Fox Rothschild, LLP., Wilmington, Delaware. Attorney for Travelers Indemnity Company.

Upon Consideration of Defendants'
Motion for Reargument Pursuant to Rule 59(e) **DENIED** 

## VAUGHN, President Judge

## **ORDER**

Upon consideration of the defendants' Motion for Reargument pursuant to Superior Court Civil Rule 59(e), the plaintiff's opposition, and the record of the case, it appears that:

1. The defendants, The Continental Insurance Company and Centre Insurance Company, as successors-in-interest to some or all of the relevant insurance obligations of London Guarantee and Accident Company, Ltd., and American Casualty Company of Reading, Pennsylvania (collectively, the "CNA Defendants"), have moved for reargument of a January 6, 2014 opinion issued by this Court which granted the plaintiff's, CNH America, LLC ("CNH"), Motion for Partial Summary Judgment Regarding the Duty to Defend.

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- 2. The standard of review for a Rule 59(e) motion for reargument is a familiar one. A motion for reargument will usually be denied unless the court has "overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision." More specifically:
  - [a] motion for reargument should not be used merely to rehash the arguments already decided by the Court, nor will the Court consider new arguments that the movant could have previously raised. The movant has the burden of demonstrating newly discovered evidence, a change in the law or manifest injustice.<sup>2</sup>
- 3. The CNA Defendants move for reargument on the question of whether a "loss" occurred prior to 1994 for purposes of determining whether the anti-assignment clause precluded transfer of rights under CNA Defendants' policies to Plaintiff. More specifically, the CNA Defendants seek reargument to obtain clarification of the Court's finding that "[i]t is undisputed that the alleged losses pertain to policy years preceding the 1994 reorganization." They contend that the finding just quoted fails to recognize that the parties clearly disputed the relevance of and extent to which an alleged "loss" occurred in the context of the anti-

 $<sup>^{\</sup>rm 1}$  Lamourine v. Mazda Motor of Am., Inc., 2007 WL 3379048, at \*1 (Del. Super. Sept. 31, 2007).

<sup>&</sup>lt;sup>2</sup> Reid v. Hindt, 2008 WL 2943373, at \*1 (Del. Super. July 31, 2008) (citations omitted).

<sup>&</sup>lt;sup>3</sup> Def.'s Mot. for Reargument, p.1, quoting (*CNH America, LLC v. American Casualty Co. of Reading, PA, et al.*, 2014 WL 626030, at \*8 (Del. Super. Jan. 6, 2014).

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assignment clause. They contend that to the extent the Court misapprehended the

position of the parties with respect to this issue, clarification is warranted, as the

distinction is determinative of whether the anti-assignment clause applies in this case.

4. The word "losses" in the above-quoted finding refers to occurrences of

alleged exposure to asbestos during the policy years. The assignment of the policies

in the 1994 reorganization assigned the right to a defense against claims arising from

such occurrences, even though the claims were not asserted until the three year period

preceding the filing of this action. My decision was not based on the chose in action

analysis described by the CNA Defendants.

5. Since the standard for granting a motion for reargument has not been

satisfied, the motion is denied.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc:

**Prothonotary** 

cc:

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