

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

CNH INDUSTRIAL AMERICA LLC)	
)	
)	C.A. No. N12C-07-108 EMD CCLD
Plaintiff,)	
)	
v.)	
)	
AMERICAN CASUALTY COMPANY OF)	
READING, PENNSYLVANIA, et al.,)	
)	
Defendants.)	

ORDER

Upon Consideration of the Defendant The Travelers Indemnity Company’s Motion For Summary Judgment That There Has Been No Effective Assignment of Rights Under Any Travelers Policies to CNH Industrial America LLC

DENIED

DAVIS, J.

This 8th day of June, 2015, upon consideration of the Defendant The Travelers Indemnity Company’s Motion For Summary Judgment That There Has Been No Effective Assignment of Rights Under Any Travelers Policies to CNH Industrial America LLC (the “Motion”) filed on October 17, 2014; and Plaintiff’s Answering Brief in Opposition to Travelers’ Motion for Summary Judgment That There Has Been No Effective Assignment of Rights Under Any Travelers Policies to CNH Industrial America LLC (the “Answer”) filed on December 10, 2014; and Defendant The Travelers Indemnity Company’s Reply Brief in Support of Its Motion for Summary Judgment That There Has Been No Effective Assignment of Rights Under Any Of The Travelers Policies to CNH Industrial America LLC (the “Reply”); the Court having held a

hearing and heard arguments from the parties on the Motion, the Answer and the Reply on May 18, 2015 (the “May 18 Hearing”), the Court finds as follows:

1. The standard of review on a motion for summary judgment is well-settled. The Court’s principal function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of material fact exist, “but not to decide such issues.”¹ Summary judgment will be granted if, after viewing the record in a light most favorable to a non-moving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.² If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment will not be granted.³ The moving party bears the initial burden of demonstrating that the undisputed facts support his claims or defenses.⁴ If the motion is properly supported, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the ultimate fact-finder.⁵

2. As set forth at the May 18 Hearing, the Court determined that Wisconsin law will apply to the insurance policies issued by the Travelers Indemnity Company that are at issue in this civil action (the “Insurance Policies”).

3. The Court determines and holds that the Insurance Policies were effectively assigned to CNH Industrial America LLC (“CNH”) as part of the 1994 reorganization agreements. In coming to this determination and holding, the Court follows and adopts the

¹ *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99-100 (Del. 1992) (internal citations omitted); *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Ct. 1973).

² *Merrill*, 606 A.2d at 99-100; *Dorr-Oliver*, 312 A.2d at 325.

³ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962); *see also Cook v. City of Harrington*, 1990 WL 35244, at *3 (Del. Super. Ct. Feb. 22, 1990) (citing *Ebersole*, 180 A.2d at 467) (“Summary judgment will not be granted under any circumstances when the record indicates ... that it is desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.”).

⁴ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979) (citing *Ebersole*, 180 A.2d at 470).

⁵ *See Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

decision, the factual findings and legal reasoning as set forth in *CNH Am., LLC v. American Cas. Co. of Reading, Pa.*, C.A. No. N12C-07-108 JTV, 2014 WL 626030 (Del. Super. Jan. 6, 2014).

4. The Court incorporates by reference its decision as set forth on the record at the May 18 Hearing.

For the foregoing reasons the Motion is **DENIED**.

IT IS SO ORDERED.

/s/ *Eric M. Davis*
Eric M. Davis
Judge