SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LORI S. SATTLER** **PART** **02M**

Justice

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The Archdiocese of New York et al

Plaintiff,

- v -

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Co. of North America and as successor to Indemnity Insurance Company of North America et al

Defendant.

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INDEX NO. 652825/2023

MOTION DATE 03/13/2025

MOTION SEQ. NO. 018

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 018) 351, 352, 353, 354, 355, 356, 357, 358, 369, 385, 400, 401, 402, 403, 404, 405, 406, 413, 414, 458, 459

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

In this declaratory judgment action, Plaintiff the Archdiocese of New York and its associated policyholders (collectively "Archdiocese") move for partial summary judgment against Defendants Certain Underwriters at Lloyd's, London and Certain London Market Companies, collectively referred to in the papers as "London Market Insurers" ("LMI") declaring that LMI must pay its solvent shares of the full policy limits and that these limits are not reduced by the retention amounts. LMI opposes the motion, while the remaining defendants take no position.

Between 1956 and 2003, the Archdiocese purchased general and excess liability insurance policies from defendant-insurance providers (collectively "Defendants"). LMI insured the Archdiocese from May 1, 1975 to September 1, 1978 pursuant to Policy Nos. SL3015 and

SC5022. The terms of the Policies are set forth in Policy No. SL3015 (NYSCEF Doc. No. 357, "LMI Policies").

In 2019 and 2022, New York enacted the Child Victims Act and Adult Survivors Act, respectively, which provided for a revival period for filing certain civil suits that were otherwise time-barred. As a result, the Archdiocese has faced nearly 1,700 lawsuits alleging sexual abuse by members of the clergy and other employees at the Archdiocese's facilities while Defendants' policies were in effect (collectively "underlying claims"). The underlying claims allege that the Archdiocese negligently hired, supervised, or retained individuals who physically or sexually abused claimants.

In this action, the Archdiocese and certain Defendants seek declaratory judgments about the scope of policy coverage for the underlying claims. In this motion, the Archdiocese moves for summary judgment declaring that, under the LMI Policies, LMI must pay its solvent shares[1] of the full policy limits of $200,000 per covered occurrence in excess of a $100,000 per occurrence retention, and that the policy limits are not reduced by the $100,000 per occurrence retention. In opposition, LMI argues the Policies provide that of the $200,000 per occurrence limit, the Archdiocese is responsible for paying the first $100,000, and LMI must cover up to the remaining $100,000.[2]

The Policies provide aggregate and specific excess coverage as follows:

PART I (AGGREGATE AGREEMENT)

[1] It is undisputed that LMI insured 90% of the policy limits, and that a third-party who is now insolvent insured the remaining 10% (NYSCEF Doc. No. 401, LMI's Counter Statement of Undisputed Material Facts, ¶ 12).
[2] It is undisputed that the final policy period was extended from May 15, 1978 to September 1, 1978 and the extension contained a policy limit of $300,000. As to this period, the Archdiocese maintains LMI is obligated to cover up to $300,000 while LMI maintains it must cover up to $200,000. For purposes of clarity, throughout this decision the Court will refer only to the $200,000 policy limit in effect from May 1, 1975 to May 14, 1978.

> LIMITS OF LIABILITY: The Underwriters' Limits of Liability under this Agreement shall be only for the Excess of Loss over
>
> A) An annual aggregate Loss Fund of $1,400,000. ultimate net loss (hereinafter referred to as "Assured's Loss Fund"). As respects any one loss the Assured's Loss Fund shall not be charged with
>
> 1) an amount in excess of the amount stated in B) below or
>
> 2) any loss arising under Section I (except Automobile Comprehensive Perils) and Section III which is less than $100.00.
>
> OR
>
> B) $100,000. Ultimate Net Loss as respects any one loss under Sections I, II, or III or any combination thereof
>
> and then in excess of the above amounts up to $500,000. ultimate net loss in the aggregate in any one period of insurance in respect of the Assured's Loss Fund.
>
> . . .
>
> PART II (SPECIFIC EXCESS AGREEMENT)
>
> LIMITS OF LIABILITY: The Underwriters' Limits of Liability under this Agreement shall be only for the excess of loss over $100,000. ultimate net loss each and every loss and/or occurrence up to a further $400,000. ultimate net loss each and every loss and/or occurrence, under Section I, II or III or any combination thereof.

(LMI Policies, 9).

The Policies offer overall coverage limits subject to certain sublimits depending on the type of coverage. The overall coverage is listed on the Declarations page as:

> $400,000. Each & Every Loss and/or Occurrence
> $500,000. In the Aggregate Annually – Excess Of
> $100,000. Each & Every Loss and/or Occurrence
> $1,400,000. In The Aggregate Annually

(id. at 3). The sublimits are then set forth in Part IV as follows:

> In calculating the amount of Ultimate Net Loss under Part I (Aggregate Agreement) and Part II (Specific Excess Agreement) this Insurance is deemed to have the following maximum limits which will apply for all purposes to the Assured's Loss Fund and to the Specific Excess Agreement:-

(a) $250,000.00	in the aggregate annually as respects any Flood loss under Section I.
(b) $200,000.00	any one occurrence Combined Single Limit Public Liability/Property Damage under Section II Agreements C, D and E, but in the aggregate annually as respects Errors and Omissions provided by Endorsement #1 attached.
(c) $25,000.00	each and every loss under Section III Agreements G and H.
(d) $25,000.00	each and every loss under Section III Agreement I.
(e) $100,000.00	any one occurrence under Section II Agreement F Workmen's Compensation and/or Employers' Liability and/or Occupational Disease.
(f) $5,000.00	any one person as respects Automobile Medical Payments under Section I Agreement B.
(g) $200,000.00	any one person as respects other than Automobile Medical Payments under Section I Agreement C. (Coverage excludes payments to or for students).

(*id.* at 18). The Archdiocese and LMI agree that Section II Agreement C covers the conduct alleged in the underlying claims, and therefore the above subsection (b) is the applicable sublimit (NYSCEF Doc. No. 352, Archdiocese's Mem. of Law in Support, 7; NYSCEF Doc. No. 400, LMI's Mem. of Law in Opp., 4).

As to payment, the LMI Policies provide that once liability under the Policies is determined, LMI shall "reimburse the Assured for all payments made in excess of the amounts stated in Subparagraphs A and B of the Limits Agreement" (*id.* at 31).

On a motion for summary judgment, a movant must make a prima facie showing that they are entitled to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any issue of material fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). After the movant makes this showing, "the burden shifts to the party opposing the motion . . . to

produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require trial of the action" (*id.*). "Courts bear the responsibility of determining the rights or obligations of parties under insurance contracts based on the specific language of the policies" (*Nautilus Ins. Co. v Matthew David Events, Ltd.*, 69 AD3d 457 [1st Dept 2010] [internal citations omitted]).

It is well settled that insurance contracts are to be interpreted "so as to give effect to the intention of the parties as expressed in the unequivocal language employed" (*Slattery Skanska Inc. v Am. Home Assur. Co.*, 67 AD3d 1, 13 [1st Dept 2009] quoting *Breed v Ins. Co. of N. Am.*, 46 NY2d 351, 355 [1978]). The best evidence of what the parties' agreement intended is the language of the agreement (*Slattery Skanska*, 67 AD3d at 13, citing *Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]). Where a policy's provisions are "clear and unambiguous, they must be given their plain and ordinary meaning, and courts should refrain from rewriting the agreement" (*Slattery Skanska*, 67 AD3d at 14 [citing *United States Fid. & Guar. Co. v Annunziata*, 67 NY2d 229, 232 (1986)]). Courts "may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing" (*Vermont Teddy Bear, Co. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004] [internal citations omitted]).

The test for ambiguity is whether the language of the policy is "susceptible of two reasonable interpretations" (*DMP Contr. Corp. v Essex Ins. Co.*, 76 AD3d 844, 846 [1st Dept 2010] quoting *State of New York v Home Indem. Co.*, 66 NY2d 669, 671 [1985]). In that regard, policies should be read in light of common speech and interpreted "according to the reasonable expectations of ordinary businesspeople when making ordinary business contracts" (*DMP*

Contr., 76 AD3d at 846; *see also ZZZ Carpentry, Inc. v Mt. Hawley Ins. Co.*, 225 AD3d 562, 563 [1st Dept 2024]).

The parties agree that the Policies afford two types of excess coverage. The first is aggregate coverage whereby an amount paid by the Archdiocese in a given policy period is allotted toward a Loss Fund, and after the Loss Fund reaches a specified amount, LMI is responsible for up to $500,000 in excess coverage during that period, subject to certain other restrictions. The second is specific excess coverage which applies on a per occurrence basis. To trigger that coverage, the Archdiocese must first pay $100,000 toward the loss, and thereafter LMI is responsible for coverage up to the applicable sublimit set forth in Part IV. The parties each claim that the Policies are unambiguous, however they have different interpretations as to whether the sublimits are inclusive of or in excess of the Archdiocese's $100,000 payment.

The Court finds that the plain language of the Policies provides that the sublimits set forth in the Policies' Part IV are not reduced by the $100,000 retention. The parties agree that the $100,000 payment is a "self-insured retention" (Archdiocese's Mem. of Law in Support, 2; LMI's Mem. of Law in Opp., 1), which courts have interpreted to be an amount that an insured covers before insurance coverage begins to apply rather than a deductible limiting the coverage amount (*cf. Trumbull Equities LLC v Mt. Hawley Ins. Co.*, 191 AD3d 587, 588 [1st Dept 2021] citing *NY State Thruway Auth. v KTA-Tator Eng'g Servs., P.C.*, 78 AD3d 1566, 1567 [4th Dept 2010] and *Tokio Mar. & Fire Ins. Co. v Ins. Co. of N. Am., Inc.*, 262 AD2d 103, 103 [1st Dept 1999]). This is congruent with the language of the Policies, which consistently use the phrase "excess over $100,000," indicating that LMI's liability is on top of the $100,000 retention rather than inclusive of it (LMI Policies, 3, 9, 18, 31; *see KTA-Tator*, 78 AD3d 1567-1568).

Contrary to LMI's allegations, the language in Part IV does not clearly reflect an intent to reduce the sublimits by the retention. It plainly states "this Insurance is deemed to have the following maximum limits which will apply for all purposes to the Assured's Loss Fund and to the Specific Excess Agreement." To interpret the sublimits as inclusive of the retention would render the specific excess coverage inapplicable to four of the seven categories of losses listed in Part IV, for which the sublimit is less than or equal to $100,000. LMI's argument that there is no specific excess coverage for these four categories of losses is unavailing. If the intent was to exclude those types of losses from the Specific Excess Agreement, the Policies would have explicitly done so. A contrary interpretation, that the parties must infer that specific excess coverage does not trigger for some types of losses even though the language plainly states that those limits "apply for all purposes," does not accord with the reasonable expectations of an insured party.

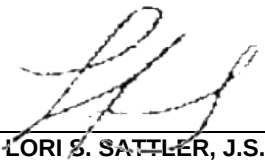
Because the Court agrees with the parties that the Policies are clear and unambiguous, it may not consider extrinsic or parol evidence of the parties' intent. Even if it could, the evidence presented by LMI is insufficient to cause the Court to reach a different conclusion than it has. The explanations of similar policies obtained by other dioceses do not contradict the interpretation put forth by the Archdiocese here, and where other courts have outlined other policies' retention and limit amounts, they do not cite the policy language such that this Court could determine whether those courts interpreted the policies differently.

Accordingly, for the reasons set forth herein, Motion Sequence No. 018 is granted, and it is hereby:

ORDERED, ADJUDGED, and DECLARED that the policy limits are not reduced by the $100,000 per occurrence retention and LMI must pay its solvent shares of the full policy limits

of $200,000 per covered occurrence from May 1, 1975 to May 14, 1978 and $300,000 per covered occurrence from May 15, 1978 to September 1, 1978 in excess of the $100,000 per occurrence retentions.

All other relief sought is denied. This constitutes the Decision and Order of the Court.



9/5/2025
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[X]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**