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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

AIU INSURANCE COMPANY; GRANITE STATE INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.; THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Plaintiffs, v. FLUOR CORPORATION; FLUOR ENTERPRISES, INC.; MIDDLE EAST FLUOR, Defendants.	Case No. 2:16-CV-1212 **COMPLAINT FOR BREACH OF CONTRACT AND DECLARATORY RELIEF**

Comes now, AIU Insurance Company, which upon information and belief is the successor to the rights and obligations under certain insurance policies issued by Commercial Insurance Company of Newark, N.J.; Granite State Insurance Company; National Union Fire Insurance Company of Pittsburgh, Pa.; and The Insurance Company of the State of Pennsylvania (collectively, the "Insurers") and state their claims against Fluor Corporation; Flour Enterprises, Inc.; and Middle East Fluor (collectively, "Fluor") as follows:

NATURE OF ACTION

1. This coverage action arises out of an asbestos lawsuit against Fluor and numerous other companies, arising from the claimant's alleged exposure to asbestos while working in Iran from 1951 to 1979. The Insurers fully defended Fluor against that lawsuit under their primary policies. These policies were issued to Fluor to cover only its international risks. During the course of the lawsuit and through trial, the Insurers repeatedly authorized settlement authority and communicated their willingness to participate in settlement negotiations to resolve the underlying claimant's case against Fluor.

2. Given the reports received during trial, Fluor and the Insurers were surprised when the jury issued its verdict finding Fluor liable for a 40% share of over $5 million in economic and non-economic damages. The Insurers expressed their willingness and desire to appeal this verdict if a reasonable settlement could not be reached. However, prior to the jury announcing its final verdict on punitive damages and without the consent of its Insurers, Fluor unilaterally settled with the claimant. Fluor agreed to and entered into the settlement and obligated itself to pay sums of money without the agreement or approval of the Insurers.

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3. The Insurers seek a determination that there is no coverage for any portion of the settlement because, by settling without the Insurers' consent or agreement, Fluor breached the Insurers' rights to control the defense and settlement. In the alternative, the Insurers seek an equitable determination by this Court of the amounts of the settlement attributable to non-economic damages, economic damages, punitive damages, and wrongful death, taking into consideration that by settling Fluor took away the ability to get the benefit of Iranian law and to contest other errors that occurred at trial. The Insurers also seek an allocation of the settlement between covered and non-covered damages under the policies, including that the policies do not cover the portion of the settlement paid to resolve punitive damages.

PARTIES

4. Plaintiff AIU Insurance Company is a New York corporation with its principal place of business in New York, New York.

5. Plaintiff Granite State Insurance Company is an Illinois corporation with its principal place of business in New York, New York.

6. Plaintiff National Union Fire Insurance Company of Pittsburgh, Pa. is a Pennsylvania corporation with its principal place of business in New York, New York.

7. Plaintiff The Insurance Company of the State of Pennsylvania is a Pennsylvania corporation with its principal place of business in New York, New York.

8. Upon information and belief, Defendant Fluor Corporation is a Delaware corporation with its principal place of business in Irving, Texas.

9. Upon information and belief, Defendant Flour Enterprises, Inc. is a California corporation with its principal place of business in Irving, Texas.

10. Upon information and belief, Defendant Middle East Fluor is a California corporation with its principal place of business in Irving, Texas.

JURISDICTION AND VENUE

11. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because none of the plaintiff Insurers is incorporated or has its principal place of business in the same state as Fluor, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

12. Venue is proper in the Western Division under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the Insurers' claims occurred here. The lawsuit was filed and tried in Los Angeles. The jury issued its verdict and damage awards against Fluor in Los Angeles. Upon information and belief, Fluor entered into its settlement with the claimant in Los Angeles. Further, venue is proper in the Western Division pursuant to General Order No. 14-03, as no plaintiffs or defendants reside in the Southern Division or Eastern Division.

THE POLICIES

13. Each of the Insurers issued primary general liability policies to Fluor, or upon information and belief is the successor to the rights and obligations under primary general liability policies issued to Fluor, effective during certain periods between April 1, 1964 and June 1, 1986.

14. The Insurers defended Fluor under one or more of the primary general liability policies, which had been issued to Fluor to cover its international risks. The primary policies afford the Insurers the right to control the defense of lawsuits against Fluor and the right to participate in and control settlements of lawsuits the Insurers are defending.

15. The primary policies impose a duty on Fluor to cooperate with the Insurers in the defense and settlement of lawsuits.

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16. The primary policies provide that Fluor shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense.

17. The primary policies provide that no action by Fluor shall lie against the Insurers unless, as a condition precedent, Fluor has complied with all policy terms, and the amount of Fluor's obligation to pay shall have been finally determined either by judgment against Fluor after actual trial or by written agreement among Fluor, the claimant, and the insurer.

18. The Insurers and other insurers also issued excess and/or umbrella polices to Fluor. There were always adequate limits to pay the covered part of any judgment against Fluor.

FACTS

19. On or about May 7, 2015, Fared Malek and Mary Malek filed the lawsuit titled *Malek, et al. v. Blackmer Pump Company, et al*., Case No. BC589695, in the Superior Court for the State of California for the County of Los Angeles (the "Lawsuit"). The Lawsuit contained seven causes of action arising out of Fared Malek's alleged exposure to asbestos in Iran between 1951 and 1979, with four of those causes of action asserted against Fluor: (1) Negligence; (2) Strict liability; (3) Premises owner/contractor liability; and (4) Loss of consortium.

20. On or about May 20, 2015, Fluor tendered the Lawsuit to one or more of the Insurers and the Insurers agreed to defend Fluor against the Lawsuit.

21. Fluor was fully defended against the Lawsuit through trial.

22. Before and during trial, the Insurers in conjunction with Fluor evaluated the risks and the Insurers extended settlement authority to settle the Lawsuit.

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23. Throughout trial of the Lawsuit, counsel defending Fluor and Fluor's national coordinating counsel advised the Insurers and Fluor about the trial.

24. Fluor moved pretrial for the application of Iranian law to the claimant's claims, arguing that, under Iranian law, the claimant's non-economic damages are capped at approximately $48,000 and no punitive damages award is permitted.

25. Fluor moved to preclude the claimant's medical causation expert from relying on certain evidence and subsequently moved for non-suit, as the causation testimony and evidence was unreliable and unscientific.

26. On or about February 11, 2016, the jury returned a verdict with an allocation to Fluor that exceeded expectations. The jury awarded $4.95 million in non-economic damages plus $254,048 economic damages, with a 40% share of fault allocated to Fluor.

27. While the verdict entered was within the coverage provided by the policies, Fluor had good arguments to raise on appeal, including that: (1) Iranian law should apply, such that non-economic damages would be capped at approximately $48,000 and punitive damages would not be permitted, (2) the 40% allocation of fault to Fluor was grossly disproportionate to Fluor's actual fault for the claimant's injuries, and (3) the jury's verdict was based on "junk science," an expert's testimony that should have been excluded, and insufficient evidence of causation.

28. The defending Insurers believe Fluor would greatly benefit in other similar cases involving alleged asbestos exposure in Iran if an appellate court were to rule that Iranian law should be applied where the claimant's exposures to asbestos were in Iran.

29. The Insurers were willing and prepared to pay for the appeal.

30. On February 15, 2016, after the verdict and before the next phase of trial, Fluor demanded that the Insurers commit to engage in settlement negotiations initiated by the claimant's counsel, and to resolve the Lawsuit before any punitive damages were awarded by the jury. The Insurers indicated they would do so.

31. During the afternoon of February 16, 2016, Fluor informed the Insurers that the claimant had indicated a willingness to settle for a specific amount. Even though the verdict against Flour for $2.1 million was well within the limits of the Insurers' policies, Fluor demanded the Insurers extend "full policy limits" to fund the proposed settlement (including a compromise of the punitive damages), and represented that the offer would not extend beyond the forthcoming jury verdict on punitive damages that same afternoon.

32. Late in the evening of February 16, 2016, Fluor advised the Insurers that the claimant purportedly had agreed to keep the settlement demand open until the next morning, with Fluor demanding that the Insurers confirm their agreement to extend their policy limits on behalf of Fluor no later than 10:30 am EST the following morning.

33. Early the morning of February 17, 2016, the Insurers inquired about the proposed terms in the claimant's demand, and Fluor described the claims that could be included in the settlement.

34. However, the Insurers are informed and believe that, on February 16, 2016, unbeknownst to them and without their knowledge and consent, Fluor had already settled all claims against Fluor, including the claimant's claim for punitive damages and any future wrongful death action against Fluor.

35. The Insurers are further informed and believe that at the time Fluor was representing to them that the claimant's demand still remained

open and was pressuring the Insurers to commit their full policy limits before the demand closed, Fluor had already unilaterally agreed to its settlement with the Claimant.

36. The day after settling, on February 17, 2016, Fluor informed the Insurers that Fluor had unbeknownst to the Insurers taken control of the settlement negotiations and settled all of the claimant's claims against Fluor without the Insurers' knowledge. Fluor demanded that the Insurers fund the settlement up to the limits of the Insurers' policies.

37. The Insurers did not authorize, agree, or consent to Fluor's settlement with the claimant.

38. Upon information and belief, a significant portion of Fluor's settlement with the claimant is attributable to avoiding Fluor's exposure for punitive damages. The settlement also includes payment of amounts Fluor would not have been required to pay if an appellate ruling could have been obtained regarding the application of Iranian law, or successfully contesting other errors that occurred at trial.

FIRST CLAIM FOR RELIEF

Breach of Right to Control Defense and Settlement

39. The Insurers re-allege and incorporate by reference the allegations in paragraphs 1 through 38 as though set forth fully here.

40. Fluor entered into a number of insurance contracts with the Insurers.

41. The primary general liability policies afford the Insurers defending Fluor the right to control the defense and to participate in and control settlement of the Lawsuit.

42. The primary general liability policies impose on Fluor a duty to cooperate with the Insurers in the defense and settlement of the Lawsuit.

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43. The primary general liability policies provide that Fluor shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense.

44. In addition, in each insurance contract, there is an implied covenant of good faith and fair dealing that requires both parties to the contract to act in good faith and to deal fairly with each other.

45. The Insurers agreed to defend Fluor against the Lawsuit and Fluor was fully defended against the Lawsuit by one or more of the Insurers, including through trial.

46. The verdict was excessive and erroneous as to Fluor but was not in excess of the Insurers' policy limits.

47. Fluor unilaterally entered into a settlement with the claimant of the Lawsuit without the Insurers' knowledge and approval, and in doing so cut off the Insurers' right to appeal the jury's verdict.

48. By entering into the settlement with the claimant without the Insurers' consent, Fluor violated the Insurers' right to control the defense and settlement of the Lawsuit and breached Fluor's express and implied contractual obligations under the policies, and harmed the Insurers' (and Fluor's) interests.

49. As a result of Fluor's actions, the Insurers request that this Court determine that Fluor is not entitled to any coverage for the settlement into which Fluor entered.

WHEREFORE, the Insurers pray for judgment as set forth below.

SECOND CLAIM FOR RELIEF

Declaratory Relief – Allocation and Valuation

50. The Insurers re-allege and incorporate by reference the allegations in paragraphs 1 through 49 as though set forth fully here.

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51. Fluor entered into a settlement with the claimant of the Lawsuit, agreeing to settle all claims against Fluor, including claims for punitive damages and any future wrongful death action.

52. Punitive damages are not covered by the policies and are against the public policy of California to insure. *PPG Industries, Inc. v. Transamerica Ins. Co.*, 20 Cal. 4th 310, 975 P.2d 652 (1999).

53. The Insurers contend their policies cover only a fraction of the settlement because: (1) significant amounts were paid for and must be allocated to non-covered punitive damages; and (2) significant amounts were paid for and must be allocated to amounts for which the Insurers would not have been obligated to pay if permitted to pursue an appeal of the Lawsuit on Fluor's behalf. Upon information and belief, Fluor does not agree with the Insurers' position.

54. The Insurers seek a declaration as to the value of each component of the settlement amount, and an allocation between amounts covered and not covered under the Insurers' policies.

WHEREFORE, the Insurers pray for judgment as set forth below

PRAYER FOR RELIEF

WHEREFORE, the Insurers pray for judgment as follows:

1. For a determination that the Insurers have no duty to indemnify any portion of the settlement because of Fluor's breach of the express and implied terms in the policies.

2. For a judicial declaration and order as to the value of each component of the settlement and an allocation as to what is and is not covered.

3. For costs of suit; and

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4. For such other and further relief as this Court deems just and proper.

Dated: February 22, 2016

NICOLAIDES FINK THORPE MICHAELIDES SULLIVAN LLP

By: *_/s/ Sara M. Thorpe_*

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