

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

AXIALL CORPORATION and
WESTLAKE CHEMICAL CORPORATION,

Plaintiffs,

vs.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.; ALLIANZ
GLOBAL RISKS US INSURANCE COMPANY;
ACE AMERICAN INSURANCE COMPANY;
ZURICH AMERICAN INSURANCE COMPANY;
GREAT LAKES INSURANCE SE; XL
INSURANCE AMERICA, INC.; GENERAL
SECURITY INDEMNITY COMPANY OF
ARIZONA; ASPEN INSURANCE UK LIMITED;
NAVIGATORS MANAGEMENT
COMPANY, INC.; IRONSHORE SPECIALTY
INSURANCE COMPANY; VALIDUS
SPECIALTY UNDERWRITING SERVICES,
INC.; and HDI-GERLING AMERICA
INSURANCE COMPANY,

Defendants.

Civil Action No. 19-C-59

Judge Christopher C. Wilkes

**Discovery Commissioner:
Russell M. Clawges, Jr.**

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JUL 13 2022

**ORDER DENYING DEFENDANTS' MOTION TO STRIKE
AND EXCLUDE PROFFERED EXPERT OPINIONS
FROM MICHAEL HUDSON AS MOOT**

On a previous day to wit, came the parties, Defendants National Union Fire Insurance Company of Pittsburgh, Pa.; Allianz Global Risks US Insurance Company; ACE American Insurance Company; Zurich American Insurance Company; Great Lakes Insurance SE; XL Insurance America, Inc.; General Security Indemnity Company of Arizona; Aspen Insurance UK Limited; Navigators Management Company, Inc.; Ironshore Specialty Insurance Company; Validus Specialty Underwriting Services, Inc.; and HDI-Gerling America Insurance Company; and Plaintiffs Axiall Corporation and Westlake Chemical Corporation (collectively, the "parties"), by and through their respective counsel, and presented the Court with their respective arguments

on Defendants' Motion to Strike and Exclude Proffered Expert Opinions from Michael Hudson. The Court, having fully considered the arguments of the Parties, enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This matter surrounds an insurance coverage dispute. The Plaintiffs brought this civil action claiming, *inter alia*, that Defendants breached their insurance contract.

2. Pursuant to a previous Order entered by the Court, the parties disclosed experts and served reports from disclosed experts on September 27, 2021. The parties subsequently served certain rebuttal expert reports on October 25, 2021. Plaintiffs' disclosed experts included Michael Hudson.

3. On a prior day, Defendants filed their Motion to Strike and Exclude Proffered Expert Opinions from Michael Hudson, asking the Court to preclude Mr. Hudson from offering opinion testimony concerning the meaning of any Policy provision or whether any portion of Plaintiffs' claim is covered. Defendants contend such opinions are improper in that they invade the purview of the Court and offer opinions on pure legal issues.

4. On a prior day, the Court entered Orders granting summary judgement on the very coverage issues that were the subject of Mr. Hudson's opinions at issue in the Defendants' Motion to Strike. By deciding the coverage issues as a matter of law, the Court implicitly determined it did not require Mr. Hudson's opinions on the coverage issues. As such, those Orders mooted the Insurers' Motion to Strike as to those coverage issues.

5. On a prior day, Plaintiffs filed their Opposition to Defendants' Motion to Strike and Exclude Proffered Expert Opinions from Michael Hudson. Plaintiffs contend Mr. Hudson's

opinions, although rendered moot by the Court's summary judgment Orders as to the coverage issues, are admissible because they may be relevant to Plaintiffs' bad faith and damages claims.

6. On a prior day, Defendants filed their Reply.
7. The Court finds that the issue is ripe for adjudication.

CONCLUSIONS OF LAW

1. The parties agree that the Policy in this matter is governed by Georgia law pursuant to a valid choice of law provision in the Policy.

2. The Georgia Code governs who decides the meaning of contracts under Georgia law. Pursuant to Georgia Code Annotated § 13-2-1, "The construction of a contract is a question of law for the court." This principle is uniformly recognized by Georgia courts, including in the context of insurance policies. *See Holmes v. Clear Channel Outdoor, Inc.*, 679 S.E.2d 745, 749 (Ga. Ct. App. 2009) ("[Party] submitted the actual insurance policies, whose language was a matter for the court to construe"); *Fidelity & Guar. Life Ins. Co. v. Brooks*, 580 F. App'x 781, 783 (11th Cir. 2014) (in declaratory judgment action concerning insurance policy, Eleventh Circuit noted "Georgia law provides that the construction of a contract is a matter of law for the court.") (internal quotations omitted); *Churchill Downs, Inc. v. Commemorative Derby Promotions, Inc.*, No. 1:12-cv-0517-JEC, 2013 WL 5350830, at *12 (N.D. Ga. Sept. 23, 2013) ("Under Georgia law, the construction of a contract is a question of law for the court.") (internal quotations omitted).

3. Georgia law is clear. Courts decide what contracts mean. Thus, expert opinions concerning what an insurance policy means and what is covered under an insurance policy invade the province of the court and are not allowed. *See Magnolia Bankshares, Inc. v. Fed. Ins. Co.*, No. 312-055, 2014 WL 12703719, at *3 (N.D. Ga. Apr. 28, 2014) (excluding expert opinions and noting: "Mr. Black first provides his personal construction of various provisions of the bonds.

However, the construction of a contract is a matter of law for the court, and expert legal opinion is not admissible By offering his interpretation and construction of the bonds, Mr. Black impermissibly steps into the role of an advocate under the guise of an expert witness.”) (internal quotations omitted); *N. Am. Specialty Ins. Co. v. Wells*, No. CV412-146, 2013 WL 4482455, at *3 (S.D. Ga. Aug. 19, 2013) (“Mr. Kentfield testified that under his interpretation of the insurance policy, Plaintiff NAS has a duty to provide coverage for the event in question. Here, that opinion is nothing more than a reiteration or recasting of Defendant Wells’s interpretation of the insurance contract. Mr. Kentfield’s opinion is excluded because it offers nothing more than what lawyers for the parties can argue in closing argument.”) (internal quotations and citations omitted).

4. The Court previously determined that expert opinions were not needed for it to decide preliminary coverage issues. The Court allowed letter briefs from each side addressing the propriety of a separate coverage summary judgment briefing schedule that concluded prior to the close of expert discovery. Plaintiffs took the position that dispositive motions concerning coverage issues would implicate expert opinions; thus, the Court should not have set a separate briefing schedule for coverage motions. The Court disagreed and maintained a Scheduling Order that called for coverage summary judgment motions prior to the end of expert discovery.

5. The Court further determined that expert opinions were not needed for it to decide preliminary coverage issues by granting summary judgment as a matter of law on all of the coverage issues. As a result, Defendants’ Motion to Strike and Exclude Proffered Expert Opinions from Michael Hudson was rendered moot as to the coverage questions.

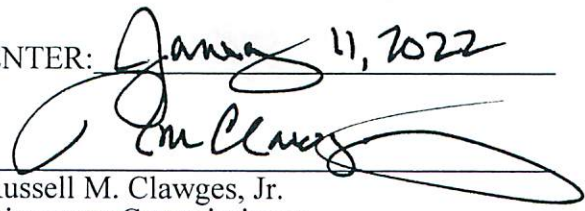
6. Clearly any of Mr. Hudson’s opinions relating to the coverage issues were rendered moot by the Court’s Orders on summary judgment. Whether any of Mr. Hudson’s other opinions are relevant to issues of bad faith and/or damages or are admissible relative to those issues has not

been adequately developed in the submissions by the parties in the context of this motion and are, as a result, not ripe for ruling.

Accordingly, it is hereby ADJUDGED and ORDERED that Defendants' Motion to Strike and Exclude Proffered Expert Opinions from Michael Hudson is hereby DENIED, having been rendered MOOT by the Court's summary judgment Orders on the coverage issues

IT IS SO ORDERED.

The Clerk is directed to send a copy of this Order to counsel of record.

ENTER: January 11, 2022

Russell M. Clawges, Jr.
Discovery Commissioner

A Copy Teste:
Joseph M. Rucki, Clerk
By  Deputy