

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1001

CA 17-00305

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, NEMOYER, AND CURRAN, JJ.

UTICA MUTUAL INSURANCE COMPANY,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

ALFA MUTUAL INSURANCE COMPANY, AMERICAN AGRICULTURAL INSURANCE COMPANY, ARROWOOD INDEMNITY COMPANY, DORINCO REINSURANCE COMPANY, EMPLOYERS MUTUAL CASUALTY COMPANY, FACTORY MUTUAL INSURANCE COMPANY, FARMERS MUTUAL HAIL INSURANCE COMPANY OF IOWA, GENERAL SECURITY NATIONAL INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, GREATER NEW YORK MUTUAL INSURANCE COMPANY, GUARANTEE INSURANCE COMPANY, HANOVER INSURANCE COMPANY, THE HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY, HASTINGS MUTUAL INSURANCE COMPANY, MERASTAR INSURANCE COMPANY, MERRIMACK MUTUAL FIRE INSURANCE COMPANY, METROPOLITAN GROUP PROPERTY AND CASUALTY INSURANCE COMPANY, MITSUI SUMITOMO INSURANCE USA INC., MOSAIC INSURANCE COMPANY, MOTORISTS MUTUAL INSURANCE COMPANY, PARTNERRE INSURANCE COMPANY OF NEW YORK, FORMERLY KNOWN AS WINTERTHUR REINSURANCE CORPORATION OF AMERICA, FORMERLY KNOWN AS "WINTERTHUR" SWISS INSURANCE COMPANY, U.S. BRANCH, PRAETORIAN INSURANCE COMPANY, SEATON INSURANCE COMPANY, SENTRY INSURANCE A MUTUAL COMPANY, SIRIUS AMERICA INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, UNITED FIRE AND CASUALTY COMPANY, WAUSAU UNDERWRITERS INSURANCE COMPANY, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, WESTPORT INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS.

HUNTON & WILLIAMS LLP, WASHINGTON, D.C. (SYED S. AHMAD, OF THE WASHINGTON, D.C. AND VIRGINIA BARS, ADMITTED PRO HAC VICE, OF COUNSEL), FELT EVANS, LLP, CLINTON, FOR PLAINTIFF-APPELLANT.

HOGAN LOVELLS US LLP, NEW YORK CITY (SEAN THOMAS KEELY OF COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court, Oneida County (Samuel D. Hester, J.), entered August 22, 2016. The judgment granted the motion of defendants-respondents for partial summary judgment.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by granting judgment in favor of defendants-respondents as follows:

It is ADJUDGED and DECLARED that plaintiff is not entitled to recover from defendants-respondents any amounts exceeding the "reinsurance accepted" amount set forth in item 4 of the relevant reinsurance certificates,

and as modified the judgment is affirmed without costs.

Memorandum: Plaintiff commenced this action seeking, inter alia, judgment declaring the rights and obligations of the parties with respect to reinsurance policies issued by defendants to plaintiff. We conclude that, for reasons stated in its decision, Supreme Court properly granted the motion of defendants-respondents seeking partial summary judgment. The court erred, however, in failing to declare the rights of the parties, and we therefore modify the judgment by making the requisite declaration (*see Maurizzio v Lumbermens Mut. Cas. Co.*, 73 NY2d 951, 954).

Entered: October 6, 2017

Mark W. Bennett
Clerk of the Court