IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BEAZLEY UNDERWRITING, LTD., Plaintiff, v. MAX & MIA REALTY, LLC, Defendant.	
MAX & MIA REALTY, LLC, Third-Party Plaintiff, v. E.K. MCCONKEY & CO., INC., Third-Party Defendant.	CIVIL ACTION NO. 3:22-cv-01404-KM

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF, BEAZLEY UNDERWRITING, LTD'S MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

This matter concerns a dispute over insurance coverage for fire damage to a building owned by Defendant, Max & Mia Realty, LLC ("MMR"). Plaintiff, Beazley Underwriting, LTD ("Beazley") provided scheduled limits coverage as requested by MMR, based on "Agreed Values" contained in the schedule of values spreadsheet that MMR submitted. Following the loss, Beazley paid MMR its full scheduled limits for the building, $3,413,330.00, as well as $108,479.96 for business personal property and $240,000 for one-year of lost rents. Believing now that the building was underinsured, MMR alleges that the insurance policy provides blanket coverage, based solely on misstatements made by its retail broker, Third-Party Defendant, E.K. McConkey & Co. ("McConkey").

As discussed in more detail below, the policy provides scheduled coverage. Scheduled coverage provides coverage limits on an item-by-item basis by location, separating out the limits for the building, business personal property, and loss of business income. By contrast, a "blanket" policy, which few insurers offer to businesses the size of MMR, provides a single policy limit with separately listed sub-limits.

MMR requested blanket coverage only for its loss of rents in its application for insurance, and expressly sought building coverage based on "Agreed Values" leaving the selections for each blanket building coverage empty. Beazley provided a quote for insurance which contained scheduled coverage for each scheduled item by location, as requested by MMR. Along with the quote, Beazley attached a full copy of the specimen policy, so that there could be no confusion. Additionally, MMR's surplus lines broker specifically warned that any reference to scheduled limits of liability or statements of value in the quote indicated that the Policy did not provide blanket coverage. Nevertheless, MMR accepted that quote and ordered the Policy as it had requested. Beazley then sent a Binder to MMR's agent and advised MMR to review the Policy,

noting it contained scheduled coverage for the building locations. MMR accepted the binder and the proposal for scheduled coverage. Beazley then sent the Policy to MMR's agent and advised, once again, that building coverage was scheduled. This same process was followed each year for five years before the loss. In short, MMR and its agent were notified at least fifteen times over the years that the Beazley policy was scheduled, not blanket.

The Statement of Values, as reported by MMR, indicates that the individually stated value for the subject building is $3,413,330. It is undisputed that Beazley timely paid this limit to MMR. Based on the foregoing, Beazley does not owe any additional coverage for loss to the building. Despite not requesting blanket coverage and being told at least three times – during the subject policy year – that Beazley was only providing scheduled limits, McConkey advised MMR that the Policy provided blanket coverage. To be certain, MMR's claim for blanket coverage is wholly based on a statement of values – contained in a presentation prepared by McConkey and provided only to MMR – which contains a sentence stating "blanket building, contents & EDP" which *McConkey admits was never sent to Beazley prior to the loss.* As a result, this case is a simple insurance broker malpractice claim, with Beazley stuck in the middle.

The clear and unambiguous language of the Policy provides exactly what MMR requested in exchange for the premium that MMR sought to pay – scheduled coverage based on the individually stated value of the structure submitted by MMR. Based on these reasons and those that follow, the Court should grant Beazley's summary judgment on Count I of the Complaint declaring that the Policy is subject to a Scheduled Limit of Liability which applies to coverage for the subject building.

FACTUAL BACKGROUND

I. THE PARTIES AND THE PROPERTY

MMR owns a 43,000 square foot building, also known as Location 1-1 (the "Building"), located at 1020 Chestnut Road, Orwigsburg, Pennsylvania (the "Property").[1] (Plaintiff's Statement of Undisputed Material Facts ("PSOF"), ¶9). The rear of the Building was a warehouse that was approximately 35,0000 square feet and occupied by MMR's tenant, Clearly Clean Products, a manufacturer of plastic products for supermarkets. (PSOF, ¶10). Clearly Clean Products leased the warehouse space from MMR for $10,000 per month. (PSOF, ¶11). The front of the Building contained two levels totaling approximately 8,000 square feet that was occupied by MMR's tenant, Heim Construction Company, Inc. ("Heim Construction"). (PSOF, ¶12). Heim Construction leased the office space from MMR for $10,000 per month.[2] It should be noted that Heim Construction is owned by Roy Heim, who is also a member of MMR. (PSOF, ¶13).

McConkey was the retail insurance broker for MMR in connection with the Policy and, as its agent, agreed to "act as [MMR's] exclusive representative in the marketplace to locate . . . insurance coverage." (PSOF, ¶5). Among other things, McConkey submitted the application for insurance on behalf of MMR (the "Application") to Ryan Turner Specialty ("RT Specialty") and assisted MMR with obtaining the Policy. (PSOF, ¶¶6, 21, 25, 28, 32, 38). RT Specialty is a surplus lines insurance broker that served as an agent of MMR in connection with the Policy. (PSOF, ¶¶6, 7). According to its website,

> [RT Specialty] work[s] as an extension of our retail clients assisting them in creating the optimal solution for their clients' risks. Our deep bench of property professionals joins forces alongside retail agents and brokers throughout the

[1] It should be noted that the Property was actually described as Location 1-2 in the statement of values. However, given that the building at Location 1-1 more accurately reflected the square footage of the Building and had a higher limit, Beazley gave MMR the benefit of the doubt and paid the claim for the higher valued building. If anything, Beazley has already paid more than it owed.

[2] An amendment to the lease, dated 4/1/2018, indicates that the rent to be paid by Heim Construction increased to $20,000 per month for the rest of the term. (*See* PSOF ¶13, fn 2).

> entirety of the contract – from placing a comprehensive risk program to servicing the evolving needs of our clients throughout the policy term and beyond.

(*See* PSOF, ¶ 8).

II. THE POLICY

Beazley subscribed to Policy No. W25073D210501 (the "Policy"), issued to MMR for the period of October 11, 2021 to October 11, 2022 (the "Term"), which provided scheduled coverage for certain buildings located across nine locations subject to the Policy's terms, conditions, limitations, and exclusions. (PSOF, ¶¶ 1-3). The Policy's scheduled limit of liability for property damage to the building is $3,413,330, inclusive of debris removal, and the business personal property limit is $440,740. (PSOF, ¶¶ 22-23). The Policy also provides extension of time element coverage for lost rents during the period of restoration. (PSOF, ¶ 27).

It should be noted that Beazley issued insurance policies providing schedule coverage to MMR for the four policy terms immediately preceding the Term (i.e., Beazley provided coverage to MMR for the 2017/2018 term, the 2018/2019 term, the 2019/2020 term, the 2020/2021 term). (PSOF, ¶14). In each of those years, the policies contained a limit of liability clause noting that coverage was scheduled and, in each case, Beazley provided a quote with policy forms, binder, and advised that the policy was subject to scheduled limits. The process in 2021, like those in preceding policy years and as detailed below, was no different. In each instance, Beazley made it abundantly clear that coverage was scheduled.

A. The Application Requested Scheduled Coverage for Buildings

On August 5, 2020, an application for insurance (the "Application") was submitted on behalf of MMR by its retail broker, McConkey, to its surplus lines broker, RT Specialty. (PSOF, ¶15). Significantly, the Application expressly requested that the buildings be covered for replacement cost based on "Agreed Values." (PSOF, ¶18). This selection was affirmatively typed

into the application by McConkey. (PSOF, ¶17). Although there were boxes next to the building descriptions for "blanket" summaries, those boxes were blank. (PSOF, ¶20). Indeed, McConkey admitted that there was nothing indicating a request for blanket coverage for the buildings in the property section of the Application. (PSOF, ¶20). Conversely, MMR requested blanket coverage *only* for Business Income/Loss of Rents coverage in the amount of $420,000. (PSOF, ¶¶16, 17). This request was typed into the application by McConkey. (PSOF, ¶17).

B. The Statement of Values Limited Coverage for the Building to $3,413,330

MMR, through McConkey, also submitted a spreadsheet of the Statement of Values for each building (the "SOV") to RT Specialty for the purpose of obtaining insurance. (PSOF, ¶¶21, 22). The SOV provided "individually stated values" for each "scheduled item" at nine different locations:

Loc	Address	Occupancy	Sq Ft	Building	BPP	EDP	BI/Loss of Rents	Totals
1-1	1020 Chestnut Road	Building occupied - shop space, storage, small equipment, and large contractors equipment.	43,000	$3,413,330	$440,740		included	**$3,854,070**
1-2	1020 Chestnut Road	Building occupied - office and leased storage	35,000	$2,574,968	$260,296	$203,600	included	**$3,038,864**
2-1	1032 Chestnut Road	Building - tenant occupied	1,000	$62,853	$0		included	**$62,853**
2-2	1032 Chestnut Road	Mobile - tenant occupied	850	$62,853	$0		included	**$62,853**
2-3	1032 Chestnut Road	Mobile - tenant occupied	850	$62,853	$0		included	**$62,853**
2-4	1032 Chestnut Road	Well/ Pump House	500	$20,951	$0		included	**$20,951**

3-1	608 Fawn Circle	Occupied by Roy Heim and Project manager	1,914	$391,550	$20,354		included	**$411,904**
4-1	1040 Chestnut Road	Tenant occupied - Building	1,040	$205,000	$0		included	**$205,000**
4-2	1040 Chestnut Road	Tenant occupied - Garage	2,400	$51,250	$0		included	**$51,250**

(PSOF, ¶22).[3] Based on the SOV submitted by MMR, the individually stated value of the Building at Location 1-1 was $3,413,330. *Id.* Conversely, the individually stated value for loss of rents was "included" which is consistent with MMR's request for blanket coverage for business income and lost rental income coverage. *Id.* Based on the Application and SOV, it is clear that MMR sought scheduled coverage for its buildings and personal property based on individually stated values and blanket coverage for business income/loss of rents. That Application was submitted to Beazley for procurement of an insurance policy that met those expectations.

C. The Insurance Quote and Quote Policy Clearly Indicated that the Policy provided Scheduled Coverage

In accordance with MMR's request for coverage, Beazley issued a Scheduled Policy and made it abundantly clear it was doing so. On September 9, 2021, Beazley sent an email to MMR's surplus lines broker, RT Specialty, confirming the renewal and enclosing the Schedule of Values (as submitted by MMR) and the proposed Policy which, provided in big, bold letters that it was a **SCHEDULED POLICY** (the "Quote Policy"). (PSOF, ¶¶25, 26). More specifically, the Quote Policy contained Form FS C 590 03 21, A Scheduled Policy Form, which provided the following:

A SCHEDULED POLICY

This Policy is based on a Statement of Values for each scheduled location.

[3] Some of the columns/rows from the SOV have been removed so that the chart could fit on the page and remain legible.

(PSOF, ¶26).

Additionally, the Quote Policy also attached the "Scheduled Limit of Liability Clause" endorsement, eliminating any potential for confusion, which provides, in relevant part:

> It is hereby understood and agreed that the following Special Terms and Conditions apply to this policy:
>
> * * *
>
> (2) The premium for this policy is based upon the Statement of Values on file with the Company, or attached to this policy. In the event of loss hereunder, and subject to any Co-Insurance provisions if stated within this Policy, the liability of the Company shall be limited to *the least of* the following for each individual loss:
>
> A. The actual adjustment amount for each individual loss; or
>
> B. *100% of the individually stated value for each scheduled item of property, time element or other coverages at the location which had the loss as shown on the latest Statement of Values on file with the Company*; or
>
> C. The Limit of Liability or Amount of Insurance shown on the Supplemental Declarations Page of this Policy or endorsed onto this policy
>
> less applicable deductible(s).
>
> The Policy shall not cover for more than any aggregate amount separately stated in respect of specified causes.
>
> * * *
>
> STATEMENT OF VALUES – The phrase "Statement of Values" wherever used in this Policy means any document(s) which lists values by coverage and/or structure for each individually Scheduled Location on file with the Company or attached to this Policy. A "Statement of Values" is not required to be titled as such and may include, but is not limited to, property spreadsheets, schedules of location or, schedule of values.

(PSOF, ¶27 (emphasis added)). Under the Scheduled Limit of Liability Clause, if the actual adjustment amount of the loss for the Building exceeds its total stated value that MMR listed in the SOV, Underwriters' liability is limited to the amount listed on the SOV for the Building (i.e., $3,413,330) (PSOF, ¶¶21-23, 27).

D. The Quote Summary Advised that References to Scheduled Limits Meant that Blanket Coverage was Not Provided by the Policy

On September 14, 2021, RT Specialty sent McConkey a Quotation Summary, which included a copy of the Quote and Quote Policy. (PSOF, ¶28). Notably, the Quotation Summary advised McConkey that "[a]s the broker with the direct relationship with [MMR], it is your responsibility to carefully review with [MMR] all of the terms, conditions, limitations and exclusions in the quote, and to specifically reconcile with [MMR] any differences between those quoted and those you requested." (PSOF, ¶29). Most significantly, RT Specialty specifically advised McConkey that if the policy referenced a Scheduled Limit of Liability Clause, the policy did not provide blanket coverage and would be limited to the amounts set forth on the SOV:

> Please note that your quote/binder may not provide coverage on a blanket basis and, based on current market conditions, a blanket coverage option might not be available. Any reference(s) to an Occurrence Limit of Liability Endorsement (OLLE) . . . and/or scheduled limits indicate that blanket coverage is not provided. Instead, the amount of recovery afforded by the policy is limited in some respect to the amount(s) set forth on the Statement of Values (SOV) provided to the insurer. This potentially can materially reduce the insured's recovery in the event of a loss as compared to blanket coverage. Additionally, the policy language for these clauses may vary by insurer and some insurers limit the amount recoverable for extensions of coverage, additional coverages, and additional covered property to the values as shown on the SOV. As such, we strongly recommend that you confirm that the insured is in agreement that they have provided full and accurate amounts for the values set forth on the SOV. . .

(PSOF, ¶30). The attached Quote from Beazley contained a list of "Forms and Endorsements Effective at Inception," which included, among others, the "A Scheduled Policy" form and the "Scheduled Limit of Liability Clause" endorsement (PSOF, ¶31). The Quote Policy contained complete copies of, among others, each of those forms. (PSOF, ¶¶25-31). Additionally, the Quote Policy contained full copies of those forms and endorsements for review. (PSOF, ¶¶25-31).

E. The Binder Advised that the Policy Provided Scheduled Coverage

Following receipt of the insurance quote and Quote Policy, MMR placed an order for the quoted insurance. (PSOF, ¶32). On October 11, 2021, Beazley sent an email to MMR's surplus lines broker, RT Specialty, confirming the order for insurance and attached a copy of the Statement of Values ("SOV"), the General Cover Binder, and the invoice. (PSOF, ¶¶33, 34). In the email, Beazley again instructed to "review [the Binder] carefully as it details the coverage provided by the company to the insured" and to "[p]lease contact us if you have any questions or if we can be of any assistance." (PSOF, ¶34) Beazley also expressly advised that:

> This binder is issued and coverage is bound based on the attached schedule of locations and values which has been accepted by the Underwriter. *Coverage does not apply to locations or for coverages unless a specific value is shown in this schedule, which has been provided by the Named Insured*." (emphasis added).

Id. The Binder contained a list of "Forms and Endorsements Effective at Inception," which included, among others, the "A Scheduled Policy" Form and the "Scheduled Limit of Liability Clause." (PSOF, ¶35). Thereafter, on October 13, 2024, RT Specialty sent McConkey a "Binder of Insurance" which enclosed the documents sent by Beazley. (PSOF, ¶36). The Binder of Insurance, once again, contained the same warning that references to a "schedule of values" and "**scheduled limits indicate that blanket coverage is not provided**." (PSOF, ¶¶37 (emphasis added)).

F. Consistent with the Application, Quote, and Binder, the Policy Provides Scheduled Coverage for Buildings by Location

On November 4, 2021, Beazley provided a copy of the Policy and Schedule of Values to MMR's surplus lines broker and the cover email explicitly stated:

> "This policy is issued and coverage is bound based on the attached schedule of locations and values which has been accepted by the Underwriter. *Coverage does not apply to locations or for coverages unless a specific value is shown in this schedule, which has been provided by the Named Insured*." (emphasis added).

(PSOF, ¶38). According to the Supplemental Declarations, the Policy provides coverage for certain locations "As per Schedule on File with the Underwriter." (PSOF, ¶41). The Policy's Supplemental Declarations Page also states, "Insurance at the Described Premises applies only for Coverages for which a Limit of Insurance is shown." ((PSOF, ¶42). The Described Premises are the nine premises listed in the SOV (i.e, Locations: 1-1, 1-2, 2-1, 2-2, 2-3, 2-4, 3-1, 4-1, and 4-2. (PSOF, ¶22). The Building is listed in the SOV and described as "Location 1-1" with an individually stated value for the "building" in the amount of "$3,413,330" and "BPP" (business personal property) in the amount of "$440,740" (PSOF, ¶¶22, 23).

1. The First Page of the Policy States it is "A Scheduled Policy"

To avoid any confusion, prominently located on the very first page of the Policy – even before the Lloyd's Certificate and declarations – is the "A Scheduled Policy" form, FS C 590 03 21, which states in big, bold letters:

A SCHEDULED POLICY

This Policy is based on a Statement of Values for each scheduled location.

(PSOF, ¶25-39). From the outset, there can be no ambiguity that the Policy provided scheduled coverage for each scheduled location, and Beazley and RT Specialty went to extraordinary efforts to ensure MMR knew blanket coverage was not being provided for building losses.

2. The Scheduled Limit of Liability Clause Endorsement Provides that Coverage is Limited to the Stated Value for each Scheduled Item at the Location of the Loss

The Building and Personal Property Coverage Form, provides, in relevant part:

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

> **1. Covered Property**
>
> Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, *if a Limit of Insurance is shown in the Declarations* for that type of property.
>
> **a.** **Building**, meaning the building or structure described in the Declarations . . . .

(PSOF, ¶40 (emphasis added)). Based on this language, read in conjunction with the Declarations, which provides coverage is as per the SOV, there can be no coverage for the Building above and beyond the limit of liability set forth in the SOV.

Consistent with the insurance requested by MMR, the Policy also contained the "Scheduled Limit of Liability Clause" endorsement, which was identical to the endorsement provided in the Quote Policy and approved by McConkey. (PSOF, ¶¶27, 44). Under the Scheduled Limit of Liability Clause, if the actual adjustment amount of the loss to the Building at Location 1-1 exceeds "100% of the individually stated value" for the Building as showing in the SOV, Underwriters' liability is limited to the amount listed on the SOV for the Building (i.e., $3,413,330). (PSOF, ¶¶22, 23, 27, 44)

> **3. Costs for Debris Removal are Subject to the Scheduled Limit of Liability for the Building**

The Policy also contained a "DEBRIS REMOVAL ENDORSEMENT." (PSOF, ¶45). The Debris Removal Endorsement provides:

> Any provision within this Policy (or within any other Endorsement which forms part of this Policy) which insures debris removal is cancelled and replaced by the following:
>
> 1. In the event of direct physical damage to or destruction of property, for which Underwriters hereon agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay (hereinafter referred to as "Damage or Destruction"), this Policy also insures, within the Sum Insured, *subject to the limitations* and method of calculation below, *and to all the other terms and conditions of the Policy*, costs or expenses;

a) which are reasonably and necessarily incurred by the Assured in the removal, from the premises of the Assured at which the Damage or Destruction occurred, of debris which results from the Damage or Destruction; and

* * *

2. In calculating the amount, if any, payable under the Policy for loss where costs or expenses for removal of debris are incurred by the Assured (subject to the limitations in paragraph 1 above):

a) the maximum amount of such costs or expenses that can be included in the method of calculation set out in (b) below shall be the greater of US$25,000 (twenty-five thousand dollars) or 10% (ten percent) of the amount of the Damage or Destruction from which such costs or expenses result; and

b) the amount of such costs or expenses as limited in (a) above shall be added to:

i) the amount of the Damage or Destruction; and

ii) all other amounts of loss, which arise as a result of the same occurrence, and for which Underwriters, hereon also agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay; and

The resulting sum shall be the amount to which any deductible or underlying amount to which this Policy is subject and the limit (or applicable sub-limit) of this Policy, shall be applied.

(PSOF, ¶45). By the express terms of the Policy, the cost of debris removal is subject to the terms of the Policy, including the Scheduled Limit of Liability Clause endorsement and the individually stated value for the Building at Location 1-1 as set forth in the SOV. Debris removal is not Business Income or Rental Income, and thus, 2(B) of the Scheduled Limit of Liability Clause endorsement applies to limit coverage to the scheduled amount.

4. McConkey Reviewed Endorsements and Approved the Policy

In early-2022 – and approximately 1-month prior to the fire– McConkey performed a review of the Policy, which included a comparison of the Policy's forms and endorsements with

those of the policy from the preceding term (the "Policy Review"). (PSOF, ¶46). According to McConkey, if changes need to be made to the Policy following review, McConkey would advise the broker that it does not agree and request changes. (PSOF, ¶48). Notably, the policy review document noted that the "A Scheduled Policy" Form was added, and that Scheduled Limit of Liability Clause was "updated with edition date." (PSOF, ¶47). Following the Policy Review, McConkey determined that the Policy was "fine," did not recommend any changes to the Policy, and McConkey did not advise MMR of any issues with the Scheduled Limit of Liability Clause endorsement. (PSOF, ¶48).

5. MMR Never Reviewed the Policy

For its part, MMR did not read or review the Policy prior to the loss (PSOF, ¶49). Additionally, MMR testified that McConkey did not provide MMR with the Quote or Quote Policy, nor did McConkey review the Policy with MMR after it was issued. (PSOF, ¶50).

III. The Fire and the Insurance Claim

During the early morning hours on March 5, 2022, a fire erupted in the Building at Location 1-1 and spread throughout the entire structure. (PSOF, ¶51). On March 5, 2022, McConkey submitted a "Property Loss Notice" on behalf of MMR in connection with the Loss. (PSOF, ¶52). Sedgwick, an independent adjuster firm appointed by Beazley, investigated the fire and sent MMR a reservation of rights letter, dated April 15, 2022, which stated, among other things, that:

> The Statement of Values provided to Underwriters in connection with the Policy reflects a value of $3,413,330 for the fire-damaged building and $440,740 for business personal property. Based on the Policy language above, in particular paragraph 2.B. of the Schedule Limit of Liability Clause, this would be the maximum recoverable amount under the Policy's Building coverage in connection with this loss. While our investigation is in its early stages, it appears possible that the damage to the fire-damaged building may meet or exceed that amount.

(PSOF, ¶53).

A. MMR Disputed that the Scheduled Limit of Liability Clause Applied

MMR disputed the scheduled limit of liability for damage to the building and demanded that Beazley issue payment for the total cost to rebuild the Building. (PSOF, ¶54). On March 15, 2022, notwithstanding the application, McConkey sent an email to RT Specialty falsely alleging that it requested blanket coverage, sold blanket coverage to MMR, and that the Policy provided blanket coverage. (PSOF, ¶55). McConkey testified that the sole basis for its position that it requested blanket coverage was that it allegedly provided RT Specialty with a signed SOV (the "Blanket SOV") which contained a sentence at the bottom of the coverage summary stating: "Blanket Building, Contents, & EDP . . . $7,770,598," (PSOF, ¶¶56, 58). However, it is undisputed that McConkey *did not* send the Blanket SOV to RT Specialty, *until after the loss*, and Beazley was not in possession of this version of the SOV at any time prior to the loss. (PSOF, ¶59). More specifically, McConkey testified that it did not send the Blanket SOV with the application for renewal; did not send it with the request to bind coverage; and did not send it or prior to the Policy being issued. (*Id.*). Of course, even if it had, the application was clear.

Following the loss, even RT Specialty – MMR's advocate and agent – confirmed that no blanket coverage was offered or requested prior to the loss, specifically noting that:

1. All Beazley documentation for 3 years has had scheduled PD values, not blanket.

2. Most recent submission for this policy period from McConkey attached

3. Quote and binder delivery emails to McConkey citing scheduled limits on RT cover notes and on Beazley policy forms

4. The PDF that McConkey references in support of "blanket" position was never received by RTS until this week. The numbers match what was presented by the agency as a spreadsheet of values that was, in turn, provided to Beazley in support of the Scheduled values and Policy limit of $8.2MM for the loss term.

5. Submission 20/21 from McConkey references blanket for BI only on the accord apps . . .

(PSOF, ¶57).

B. Beazley Paid MMR the Agreed Values for the Building, Business Personal Property and the Amount Claimed for Lost Rents

In or around August 10, 2022, Underwriters issued payment to MMR in the amount of $3,761,809.96, which represents the following payments under the Policy: (1) $3,413,330 for damage to the Building; (2) $108,479.96 for the lost business personal property identified as of September 8, 2022; and (3) $240,000 for twelve months of lost rent – based on the projected period of restoration. (PSOF, ¶¶60, 61). Underwriters also agreed to forego the requirement that MMR sign the proof of loss, without waiving its rights in the future to demand it, to issue payments under the Policy. (PSOF, ¶62).

LEGAL ARGUMENT

I. THE LEGAL STANDARD

Under Fed. R. Civ. P. 56(a), summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." The essential inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. *Anderson*, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. *Id.* at 248. To defeat summary judgment, the non-moving party cannot rely on unsupported assertions,

conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. *Williams v. Borough of W. Chester*, 891 F.2d 458, 460 (3d Cir. 1989) (citing *Celotex*, 477 U.S. at 325). If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. *Celotex*, 477 U.S. at 322-23.

II. THE COURT SHOULD GRANT SUMMARY JUDGMENT ON COUNT I OF THE COMPLAINT BECAUSE THE POLICY CLEARLY AND UNEQUIVOCALLY PROVIDES THAT COVERAGE FOR THE BUILDING WAS LIMITED TO THE SCHEDULED VALUE SET FORTH IN THE STATEMENT OF VALUES

The issue before this Court is whether the Policy provided scheduled coverage for each individually scheduled item of property listed on the SOV for Location 1-1, or if it provided blanket coverage. Beazley respectfully submits that the Policy's terms clearly and unambiguously provided scheduled coverage. As a threshold matter, in a "scheduled" or "specific" policy, "each separately treated item of property is in effect covered by a separate contract of insurance and the amount recoverable with respect to a loss affecting the property is determined independently of the other items of property." 12 Couch on Ins. § 175:90; *see also Core-Mark Int'l Corp. v. Commonwealth Ins. Co.*, No. 05-cv-0183(WHP), 2006 WL 2501884, at *5 (S.D.N.Y. Aug. 30, 2006) (same). In contrast, a "blanket" policy "attaches to, and covers to its full amount, every item of property described in it" and "[i]f the loss upon one item exhausts the full amount of the policy, the whole insurance must be paid . . . ." 12 Couch on Ins. § 177.72; *Core-Mark Int' Corp.*, 2006 WL 2501884 at *5 n.3.

A. Pennsylvania Courts Interpret Insurance Policies under Traditional Principles of Contract Interpretation

"Under Pennsylvania law, courts interpreting insurance policies 'are guided by the polestar principle that insurance policies are contracts between an insurer and a policyholder.'" *Kahn v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 517 F. Supp. 3d 315, 320–21 (M.D. Pa. 2021) (citing

Kurach v. Truck Ins. Exch., 611 Pa. 176, 192 (2020)). Thus, Pennsylvania courts – and District Courts sitting in diversity – apply traditional principles of contract interpretation in ascertaining the meaning of the terms used therein. *Id.* If policy terms are clear and unambiguous, then the Court must give those terms their plain and ordinary meaning, unless they violate a clearly established public policy. *AAA Mid-Atlantic Ins. Co. v. Ryan*, 624 Pa. 93, 84 A.3d 626, 633-34 (2014). Conversely, when a provision of a policy is ambiguous, the policy provision is to be construed in favor of the policyholder and against the insurer, as the insurer drafted the policy and selected the language which was used therein. *Prudential Property & Casualty Insurance Company v. Sartno*, 588 Pa. 205, 903 A.2d 1170, 1177 (2006). Policy terms are ambiguous only "if they are subject to more than one reasonable interpretation when applied to a particular set of facts." *Madison Construction Company v. Harleysville Mutual Insurance Company*, 557 Pa. 595, 606 (1999). Courts "will not, however, distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity." *Id.*

B. The Scheduled Limit of Liability Clause Provides that Coverage is Limited to the Individually Stated Value for Each Scheduled Item of Property at the Location of the Loss

Pennsylvania courts will uphold a scheduled limit of liability clause so long as the policy language is clear and unambiguous, like the language of the Scheduled Limit of Liability Clause at issue here. In *Sandia Partners, LLC v. Foremost Ins. Co.,* CV 15-4055, 2016 WL 5661717, at *3 (E.D. Pa. Sept. 30, 2016), the insured suffered damage to fifteen residential properties arising out of a hailstorm. A dispute arose as to whether the insured was required to pay a separate deductible for each property. There, the policy, like the Policy here, was a scheduled policy.

The court explained that "a scheduled policy separately schedules different items of property and each separately treated item of property is in effect covered by a separate contract of

insurance and the amount recoverable with respect to a loss affecting such property is determined independently of the other items of property." *Id.* at *3. Also, like the Policy here, in the *Sandia Partners* policy:

> each property is separately listed and described as a separate location with specific information regarding what is insured at each location. For example, under the heading of LOCATION #1, the address and premises description including the type of construction of the property, the use of the property, the year it was built and the County in which the property is located are set forth.

(*Id*; *see also*, Exhibit 2 at Beazley0000029). According to the court, "[a]s a scheduled policy, each separately delineated location is effectively covered by a separate contract of insurance." *Id.* From there, the court held that the insured was required to pay a separate deductible for each property that suffered a loss. *Id.* at *4.

Defendants cannot credibly argue that the Policy was ambiguous as to the limits of coverage available for the Building. Like the Policy at issue in *Sandia Partners,* here, the Scheduled Limit of Liability Clause clearly states that coverage was limited to 100% of the individually stated value for each scheduled item of property at the location of the loss and the building for Location 1-1 is separately listed from other locations, such as 1-2. The Scheduled Limit of Liability Clause endorsement clearly and unequivocally provides that coverage is scheduled:

> (2) The premium for this policy is based on the Statement of Values on file with the Company, or attached to this policy. In the event of loss hereunder, . . . the liability of the Company shall be limited to *the least of* the following for each individual loss:
>
> * * *
>
> B. 100% of the **individually stated value for each scheduled item of property**, time element or other coverages **at the location which had the loss as shown on the latest Statement of Values** on file with the Company . . .

((PSOF, ¶¶27, 39-44) (emphasis added)). There is nothing ambiguous about this language, and when the Policy is read as a whole, the intent of the language is even more clear. To be certain, the SOV on file with Beazley – and submitted by MMR's agent, McConkey[4] – identified nine locations with individually scheduled items of property, each of which was assigned a value by MMR. (PSOF, ¶¶21, 22). Here, the "location which had the loss" was separately delineated as Location 1-1. (*Id.*). The first "scheduled item of property" at this location was the Building, which had an "individually stated value" of $3,413,330. (PSOF, ¶22, 23). The second "scheduled item of property" was the business personal property, which had an "individually stated value" of $440,740. (*Id.*). Finally, the "time element" coverage for lost rents (noted as "included" on the SOV) did not have an "individually stated value" because it was subject to a blanket limit, as requested by MMR. (PSOF, ¶¶16-17, 22).

In a misguided attempt to manufacture an ambiguity, MMR alleges that the term "location" refers to the "property address" and therefore the limit for the Building that MMR requested should now be the combined total for each of the buildings at the same address. This argument fails for several reasons. First, the plain language of the Scheduled Limit of Liability Clause endorsement refers to the "location that had the loss as shown on the latest Statement of Values." On the SOV, the "location" of the loss is clearly identified as Location "1-1" – not Location 1 and not 1020 Chestnut Road. (PSOF, ¶22). It is clear that the intent was to delineate locations based on the individual structures and their contents – not by address. This is best demonstrated by the fact that

[4] "Where a person desiring to have his property insured applies not to any particular company or its known agent, but to an insurance broker, permitting him to choose which company shall become the insurer, a long line of decisions has declared the broker to be the agent of the insured; not of the insurer." *Rich Maid Kitchens, Inc. v. Pennsylvania Lumbermens Mut. Ins. Co.,* 641 F. Supp. 297, 303 (E.D. Pa. 1986), *aff'd*, 833 F.2d 307 (3d Cir. 1987), and *aff'd sub nom. Rich Maid Kitchens, Inc. v. Pennsylvania Lumbermen Ins. Co.,* 833 F.2d 307 (3d Cir. 1987), and *aff'd sub nom. Appeal of Rich Maid Kitchens, Inc.,* 833 F.2d 307 (3d Cir. 1987) (quoting *Taylor v. Crowe,* 444 Pa. 471, 475 (1971).

the "location" for the building located at 608 Fawn Circle is identified as Location "3-1," even though there are no other structures on that parcel covered under the Policy. (*Id.*). If the intent of the Policy was to provide coverage based on address rather than by structure, then Location "3-1" would simply have been identified as Location "3" just as Locations "1-1" and "1-2" would have collectively been designated at Location "1." Second, it is clear from the language of the Policy and the SOV that the intent was to identify locations by structure and contents – not physical address. There could be other structures on each property and not identified on the SOV that are not provided coverage. MMR was specific as to which items it wanted to insure and for what value. To be certain, both Locations 1-1 and 3-1 have individually stated values for the respective structures and business personal property ("BPP"), whereas Location 1-2 has individually stated values for the structure, business personal property, and electronic data processing equipment ("EDP"). (*Id.*). The common thread between each location is the existence of a separate structure and the accompanying contents contained therein (i.e., BPP and EDP), which are each assigned individually stated values. Stated differently, to reach the conclusion advocated by MMR, the Court would need to strain to find an ambiguity and re-write the Policy to provide blanket sub-limits for each item of property at a particular address. That is clearly not the intent of the Policy or the Scheduled Limit of Liability Clause endorsement. Nor is it what MMR requested in connection with this Policy or the policies for the prior years that were issued by Beazley.

Conversely, in *Abraxas Grp., Inc. v. Guar. Nat. Ins. Co.*, 648 F. Supp. 304, 307 (W.D. Pa. 1986), which is readily distinguishable from the Policy at issue here, the court held that a policy was ambiguous and provided blanket coverage where it contained elements of a scheduled policy but consistently referred to the *total* insured value and referenced blanket coverage. Unlike here, however, in *Abraxas Grp.* case, the policy listed a total amount of insurance without qualification

or reference to any separately valued items or properties. The policy also contained a "Replacement Cost Endorsement for Mixed Blanket Items," which indicated that it applied only to items of insurance which provide blanket coverage on a specifically designated property. Also, the "Agreed Amount Schedule" separately listed the properties but lumped the amount applicable (for which the company would be liable) as $3,709,267. Furthermore, the court determined that even the "schedule of values," arrived at a "Blanket Agreed Amount." *Id.* at 307. Based on the foregoing, the court held that the plain meaning demonstrated that the insurer "intended to and did issue a 'blanket' policy of insurance." *Id.*

Here, unlike the policy in *Abraxas Grp.*, the Policy contains a "Scheduled Limit of Liability Clause" endorsement and does not provide references to blanket coverage or blanket endorsements. Instead, here, the Policy's Supplemental Declarations specifically noted that the the "Scheduled Limit of Liability Clause, Item (2).B. is deleted in respects to Business Income & Rental Income" to show that business income and rental income were subject to blanket coverage – as requested by MMR. (Myles Decl., Exhibit 2 at Beazley000040). While the Supplemental Declarations provides a total limit of insurance for "all" locations, it clearly provides that it is subject to a "Schedule of Locations" which is "As per the Schedule on File with the Underwriter," and references the attached forms, including but not limited to, the "Scheduled Limit of Liability Clause" and the "Scheduled Policy" form. (PSOF, ¶¶26, 27, 31, 35, 37, 39-44). Furthermore, the SOV clearly delineates the individually stated limit of liability for each scheduled item of property on a location-by-location basis. (PSOF, ¶22). Thus, the Policy is easily and readily distinguishable from the policy language in *Abraxas Grp.*

C. Courts in Other Jurisdictions Hold that the Language of the Scheduled Limit of Liability Clause Endorsement Unambiguously Establishes Scheduled Coverage

Admittedly, there are few cases in Pennsylvania that address disputes concerning whether an insurance policy provides scheduled or blanket coverage, let alone interpreting the same language provided in the Policy. Thus, decisions from Federal Courts in other jurisdictions which have addressed the same or similar endorsements are instructive. In *Axis Specialty Ins. Corp. v. Simborg Dev., Inc.,* 07-C-5906, 2009 WL 765298, at *3 (N.D. Ill. Mar. 20, 2009), one of plaintiff's insured buildings was damaged by a fire causing over $22 million in replacement costs. *Id.* at *2. There, plaintiff insured 54 properties through a two-layer insurance program. *Id* at *1. The first layer, insured by Nutmeg, provided $10 million in coverage. *Id.* The second layer, insured by Axis, provided an additional $10 million per occurrence in excess of the Nutmeg policy. *Id.* Notably, the stated value of the subject building and contents in the statement of values was $6 million. *Id.* Following the fire, Nutmeg paid plaintiff its $10 million policy limit. Axis, however, denied coverage based on the policy's Excess Scheduled Limit of Liability Endorsement, which provided:

> 1. In the event of a loss hereunder, liability of the Company shall be limited to the least of the following:
>
> A. The actual adjusted amount of loss, less applicable deductible(s) or self-insured retention
>
> B. 100% of the individually stated value for each scheduled item of property, time element, or other coverages shown on the latest Application or Statement of Values on file with the Company, less applicable deductible(s) or self-insured retention(s) ...

Id. at *3. According to Axis, liability for the subject building was limited to 100% of the individually stated value of the subject building, which was $6 million. Plaintiff argued that the

language was ambiguous arguing that the word "each" is analogous to "total" thereby creating blanket coverage. *Id. at *4.* The court squarely rejected plaintiff's argument and explained:

> [T]he Axis Endorsement [establishes] a scheduled limit of liability policy because it requires the property values to be considered on an individual basis. Such an interpretation is further supported by the Endorsement's specific mention of the *"individually stated value* for each scheduled item of property . . ." This term unambiguously requires the value for a scheduled item of property to be considered individually, without regard to the total value of all of [plaintiff's] properties. In order for the Axis Endorsement to create a blanket policy, the reference to the "individually stated value" of an item of property must be completely eliminated, and even then, the word "each" suggests an individual property should be considered separately.

Id. at *4. Ultimately, the Court held that the policy language clearly and unambiguously established a schedule limit of liability policy and granted Axis' motion for judgment on the declaratory judgment complaint. *Id.* at *6.

In *Core-Mark Int'l Corp. v. Commonwealth Ins. Co.,* 05-cv-0183, 2006 WL 2501884 at *1 (S.D.N.Y. Aug.30, 2006), Commonwealth issued plaintiff an insurance policy for $10 million in excess of the primary insurance limits. The Commonwealth policy contained an Occurrence Limited Liability Endorsement ("OLLE") which provided:

> [I]n the event of loss hereunder, liability of the company . . . shall be limited to the least of the following:
>
> a. The actual adjusted amount of loss, less applicable deduction(s) and/or underlyer(s);
>
> b **The total stated value for the property involved**, as shown on the latest statement of values on file with the company plus 10%, less applicable deductible(s) and/or underlyer(s); or
>
> c. The limit of liability or amount of insurance shown on the face of this policy or endorsement onto this policy.

Id. at *2 (emphasis added). The statement of values listed several items associated with the property (e.g., equipment, furniture, etc.) and provided corresponding values which totaled $14,531,514. *Id.* at *1. Thereafter, the property was damaged by fire and plaintiff submitted a

claim for $19,294,939 in damages. *Id.* at *2. After receiving the limit from the primary carrier, plaintiff sought the remaining $9,294,939 from Commonwealth. *Id.* Relying on the OLLE, Commonwealth accepted coverage only for certain items contained in the statement of values and only for the amounts listed. *Id.* In an action for breach of contract, plaintiff argued, among other things, that the OLLE was ambiguous and provided blanket coverage. *Id* at *5-6. Ultimately, the court held that the language in paragraph (b) of the OLLE was ambiguous because it referred to "the total stated value for the property involved" which could be interpreted as providing a blanket limit up to the cumulative value for all of the property on the schedule for that building. *Id.* at *6. In reaching this conclusion, the court distinguished the clear and unambiguous language establishing scheduled coverage in an unreported case from the Northern District of New York, *Knowlton v. Specialty Papers, Inc. v. Royal Surplus Lines Ins. Co.,* No. 03-cv-705 (N.D.N.Y. Oct. 14, 2003).[5] The *Core-Mark* court held that the policy in *Knowlton*, like the Policy at issue here, "unambiguously established scheduled coverage" because "the policy limited the insurer's liability to 'one hundred percent of the individually stated value of each scheduled item of property insured as show on . . . the statement of values.'" *Core-Mark Int'l Corp.* 2006 WL 2501884 at *6 (quoting *Knowlton,* slip op. at *4).

Here, like the policies in *Axis* and *Knowlton*, the Policy clearly and unambiguously established scheduled coverage because the Scheduled Limit of Liability Clause Endorsement expressly limited liability to "100% of the individually stated value for each scheduled item of property . . . at the location which had the loss as shown on the latest Statement of Values." (PSOF, ¶¶26, 27, 31, 35, 37, 39-44).

[5] The *Knowlton* slip opinion is attached to the Myles Declaration as Exhibit 25.

D. Coverage for Debris Removal is Limited to the Scheduled Limit of Liability for the Building

Contrary to MMR's assertions, coverage for debris removal is subject to the limit for the individually stated value of the Building. The clear and unambiguous terms of the Debris Removal Endorsement provide that, within the sum insured," the "amount of such costs or expenses" for debris removal for covered damaged property "shall be added to: (i) the amount of the Damage . . . and (ii) all other amounts of loss, which arise from the same occurrence, and for which Underwriters hereon also agree to pay . . . and the resulting sum shall be the amount to which any deductible or underlying amount to which this Policy is subject and the limit . . . of the Policy shall be applied." (PSOF, ¶45). Under the plain language of the Endorsement, the cost of debris removal is added to the damage caused to the Building. From there, when read in conjunction with the Scheduled Limit of Liability Clause, it is clear that the costs for damage to the Building, which includes costs for debris removal, are subject to the scheduled limit for the Building (i.e., $3,413,330).

E. The Reasonable Expectations Doctrine Does Not Apply to Commercial Insureds

In Pennsylvania, commercial insureds cannot argue the reasonable expectations doctrine to prevail over the express terms of an insurance policy. *Hemphill v. Landmark Am. Ins. Co.*, No. 20-2544, 2023 WL 2783249, *3 (3d Cir. 2023) ("An insured's reasonable expectations may occasionally prevail over the express terms of a contract, but only in very limited circumstances **to protect non-commercial insureds** from policy terms not readily apparent and from insurer deception.") (emphasis added); *Scottsdale Ins. Co. v. City of Hazelton,* No. CIV.A 3:07-CV-1704, 2009 WL 3182002, *3 (M.D. Pa. 2009) (same). Here, MMR is a commercial insured and therefore, the reasonable expectations doctrine cannot be asserted to supersede the clear and unambiguous terms of the Policy.

Notwithstanding, even assuming *arguendo* that the reasonable expectations of the insured was relevant to the analysis – and it is not – the overwhelming undisputed facts demonstrate that MMR had an expectation of scheduled coverage. To be certain, MMR applied for property coverage based on "Agreed Values" for the buildings and business personal property. (PSOF, ¶¶18, 19). While MMR requested blanket coverage for lost rents in the Application (PSOF, ¶17), it failed to select any blanket options for building and contents. (PSOF, ¶¶18-20). Furthermore, the insurance quote, the Quote Policy, and the Quote Summary, Binders and the emails forwarding the Quote and Binders, each advised MMR or its agents that the Policy provided scheduled coverage and that references to Statements of Values indicated that the Policy did not provide blanket coverage. (PSOF, ¶¶25-44). Beazley provided MMR with exactly what it requested, namely, scheduled coverage for its buildings and contents. For these reasons, MMR had a reasonable expectation of coverage.

CONCLUSION

Based on the foregoing, taken separately or in combination, Beazley respectfully submits that the Court should grant Beazley's motion for summary judgment on Count I of the Complaint for Declaratory Judgement declaring that (1) the Policy is subject to a Scheduled Limit of Liability for each scheduled item of property at Location 1-1, which applies to coverage for the Building which is the subject of this action; (2) under the Policy, the scheduled limit of liability for property damage to the Building at Location 1-1 is $3,413,330, inclusive of debris removal; (3) the scheduled limit of liability for business personal property at Location 1-1 is $440,740; (4) that Beazley is not required to provide coverage for property damage and loss of business personal property in excess of 100% of the individually stated value for each schedule item of property, time element, or other coverages at Location 1-1; and (5) Beazley fulfilled its obligations under

the Policy. Beazley also respectfully seeks an order dismissing Defendant, Max & Mia Realty, LLC's, counterclaim for breach of contract with prejudice.

Dated: August 21, 2024

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