2023 WL 6194226
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United States District Court, M.D. Florida,
JACKSONVILLE DIVISION.

L. SQUARED INDUSTRIES, INC., Plaintiff,
v.
NAUTILUS INSURANCE COMPANY, Defendant.

Case No. 3:21-cv-1104-BJD-PDB
|
08/29/2023

ORDER

BRIAN J. DAVIS United States District Judge

***1 THIS CAUSE** is before the Court on Plaintiff's Motion for Reconsideration (Doc. 93) and Defendant's Response in Opposition (Doc. 99). [1]

"This lawsuit is about whether Defendant owes a duty to cover accidental releases of petroleum from underground storage tanks." (Doc. 89 at 1) (citation omitted). On June 23, 2023, the Court considered competing motions for summary judgment and ruled in favor of Defendant. Id. On June 27, 2023, the Court entered judgment in favor of Defendant. (Doc. 90). Twenty-four days after the Court entered Judgment, Plaintiff moved for reconsideration under Rules 59(e) and 60(a)(6) of the Federal Rules of Civil Procedure. (Doc. 93). Plaintiff argues the Court's Order "is based on [ ] manifest errors of law and fact that result[ed] in a manifest injustice." Id. at 1. Specifically, Plaintiff argues the Court misinterpreted the insurance contract between Plaintiff and Defendant. Id. at 4–5.

A. Legal Standard

The Federal Rules of Civil Procedure (Rules) prescribe two ways a party can seek review of a judgment entered against it absent an appeal to the Circuit Court. Rule 59(e) allows a district court to alter or amend a judgment if reconsideration is sought within twenty-eight days of judgment being entered, though such a motion will be granted only if there is newly discovered evidence, or the district court made a manifest error of law or fact. See Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007). Rule 60 allows a court to relieve a party from a judgment or order because of mistake, inadvertence, surprise, excusable neglect, or for any other reason that justifies relief and is not burdened by the same time constraints in Rule 59. See Rice v. Ford Motor Co., 88 F.3d 914, 918 (11th Cir. 1996).

The Eleventh Circuit has determined "a motion to reconsider is a limited remedy that should be used sparingly, and not to 'set forth new theories of law' or relitigate issues that have already been considered by the court." Watkins v. Johnson, 853 F. App'x 455, 459 n.5 (11th. Cir. 2021) (citing Mays v. U.S. Postal Serv., 122 F.3d 43, 46 (11th Cir. 1997)).

B. Discussion

Plaintiff argues five points in asking the Court to reconsider its Order. First, Plaintiff argues the court misinterpreted the insurance contract by not construing the contract in its entirety. (Doc. 93 at 7–18). Second, Plaintiff argues the Court incorrectly concluded that Plaintiff's notice was untimely. Id. at 18–20. Third, Plaintiff argues the Court made its conclusions based on incorrect facts in the record. Id. at 20–27. Fourth, Plaintiff argues the Court inconsistently applied Florida law in its Order. Id. at 27–28. Fifth, Plaintiff repeats its first argument that the Court misinterpreted the insurance contract, this time expanding the argument that the Court misinterpreted the term "pollution conditions." Id. at 28–31. The Court will address each argument.

a. The Court properly interpreted the insurance contract.

***2** "In Florida, insurance contracts are 'construed according to their plain meaning.' " Westchester Gen. Hosp., Inc. v. Evanston Ins. Co., 48 F.4th 1298, 1302 (11th Cir. 2022) (interpreting an insurance contract under Florida law) (quoting Garcia v. Fed. Ins. Co., 473 F.3d 1131, 1135 (11th

Cir. 2006)). "When interpreting these contracts, Florida's courts read all the policy provisions in tandem to find the most reasonable and probable interpretation." Westchester Gen. Hosp., Inc, 48 F.4th at 1302. Because Insurance coverage must be interpreted broadly and its exclusions narrowly,' ambiguities are construed against the insurer and in favor of coverage—so long as the provision at issue is ambiguous." Id. (cleaned up) (quoting Hudson v. Prudential Prop. & Cas. Ins. Co., 450 So. 2d 565, 568 (Fla. 2d DCA 1984)); see also Taurus Holdings, Inc. v. Fid. & Guar. Co., 913 So. 2d 528, 532 (Fla. 2005).

Ultimately, Plaintiff argues the Court erred in reading the term "pollution conditions" in the contract and therefore erred in interpreting what "first discovered" means under the contract. Coverage A of the insurance contract states in full:

> 1. We will pay on behalf of the **insured** those sums the **insured** becomes legally obligated to pay as damages because of **cleanup costs** in excess of the deductible, if any, resulting from **pollution conditions** on, at or under the **covered location(s)** listed in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy which result from a **release** of contents from any **covered storage tank system(s),** provided that the **pollution conditions** are first discovered during the policy period and reported to us in writing, during the policy period or **Extended Reporting Period,** if applicable. Such **pollution conditions** must commence on or after the Retroactive Date set forth in the Declarations and/or the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.
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> 2. We will pay on behalf of the **insured** those sums the **insured** becomes legally obligated to pay as damages because of **cleanup costs** in excess of the deductible, if any, resulting from **pollution conditions** emanating from the **covered location(s)** listed in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy which result from a **release** of contents from any **covered storage tank** system(s), provided that the **pollution conditions** are first discovered during the policy period and reported to us in writing, during the policy period or **Extended Reporting Period,** if applicable. Such **pollution conditions** must commence on or after the Retroactive Date set forth in the Declarations and/or the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.

(Docs. 49.20 at 11; 57.4 at 10) (emphasis in original). Plaintiff summarizes Coverage A as applying when "(1) there is a 'pollution condition'; (2) that is on, at, or under a 'covered location'; (3) that results from the 'release' of contents; (4) from any 'covered storage tank system(s).' " (Doc. 93 at 10).

First, what are pollution conditions? Under the heading "Reporting of a Pollution Condition, Claim or Suit," the insurance policy outlines how Plaintiff must notify Defendant for coverage. (Doc. 49.20 at 20–21). The policy outlines that Plaintiff "must see to it that [Defendant] is notified as soon as reasonably possible, but in any event, not more than seven (7) days after" Plaintiff first becomes "aware of, or should have become aware of[,] a pollution condition which may result in a claim or any action or proceeding to impose an obligation on [Plaintiff] for cleanup costs." Id. at 20; (see also Doc. 89 at 15).

***3** To understand which conditions are regulated, the Court must turn to the federal and regulatory scheme guiding this lawsuit. (See Doc. 89 at 2–4). "In 1976, Congress passed the Resource Conservation and Recovery Act [(RCRA)], which amended the Solid Waste Disposal Act of 1965, 42 U.S.C. §§ 6901–6992k." United States v. Kentucky, 252 F.3d 816, 821–22 (6th Cir. 2001). "Congress enacted the RCRA to end the environmental and public health risks associated with the mismanagement of hazardous waste." Id. at 822 (referencing Sierra Club v. United States Dep't of Energy, 734 F. Supp. 946, 947 (D. Colo. 1990)). "Generally the RCRA prohibits the treatment, storage, or disposal of hazardous waste at private or governmental facilities without a permit issued by either the United States Environmental Protection Agency [(EPA)] or an authorized state." Kentucky, 252 F.3d at 822; see also 42 U.S.C. §§ 6925(a), 6961. "The RCRA expressly contemplates that state and local governments will play a lead role in solid waste regulation." Kentucky, 252 F.3d at 822; see also 42 U.S.C. § 6901(a)(4).

Congress authorized the Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste to "promulgate release detection,

prevention, and corrective regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment." 42 U.S.C. § 6991b(a); see also 42 U.S.C. § 6911a (defining "Administrator" as used throughout the RCRA). The Administrator is tasked with promulgating specific regulations, including the "requirements for taking corrective action in response to a release from an underground storage tank" and the "requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank." 42 U.S.C. §§ 6991b(c)(4), (6).

In Florida, state legislators authorized the Florida Department of Environmental Protection (FDEP) "to control and prohibit" air and water pollution. Fla. Stat. § 403.061. Florida allows FDEP to promulgate administrative rules through the FDEP secretary. See Fla. Stat. 376.30701(2).

Within the rules, FDEP "provide[s] requirements for underground storage tanks systems that store regulated substances [ ] to minimize the occurrence and environmental risks of releases and discharges." Fla. Admin. Code r. 62-761.100 (2017). Those requirements include compliance inspections and what happens if a facility fails a compliance inspection. See Fla. Admin. Code r. 62-761.100(3) (2017); Fla. Admin. Code r. 62-761.430 (2017); Fla. Admin. Code r. 62-761.420 (2017). Under Florida Administrative law, "contaminants of concern" include "benzene," "ethylbenzene," "toluene," and "xylenes, total." Fla. Admin. Code r. 62-761.440(1) (2017); Fla. Admin. Code r. 62-780.900.

Returning to the original question, what are pollution conditions? The contract provides these criteria to define pollution conditions. Pollution conditions are those conditions that Plaintiff "becomes legally obligated to pay as damages because of cleanup costs." (Doc. 49.20 at 11). The conditions must be "release[d] ... from any covered storage tank system[.]" Id. The conditions must be discovered "during the policy period." Id. The contract does not explicitly define what contaminants are "pollution conditions." That is where Florida administrative law comes in. See Snyder v. Fla. Prepaid Coll. Bd., 269 So.3d 586, 591–92 (Fla. 1st DCA 2019) (explaining a contract preamble that places a plaintiff on notice that the contract "was subject to the statutory and regulatory framework" means the parties intended for the statutory and regulatory framework to apply to the contract's interpretation). [2]

***4** Applicable Florida law defines pollution conditions to include "benzene," "ethylbenzene," "toluene," and "xylenes, total." Fla. Admin. Code r. 62-761.440(1) (2017); Fla. Admin. Code r. 62-780.900. See also Fla. Stat. § 403.061 (authorizing FDEP to "control and prohibit" air and water pollution); Fla. Stat. § 376.30701(2) (allowing the Florida Department of Environmental Protection (FDEP) to promulgate administrative rules through the FDEP secretary); Fla. Admin. Code r. 62-761.710(3)(h) (requiring underground storage tank owners to "demonstrate insurance as the method of financial responsibility for storage tank systems").

Here, Plaintiff hired Taylor Environmental Consulting to perform a closure assessment for a replacement of dispenser sump (the "Report"). (See Docs. 61.13 at 1; 49.16). Within the Report, Taylor Environment Consulting identified a groundwater sample that "indicated benzene, ethylbenzene, toluene, total xylenes, bromodichloromethane, and dibromochloromethane" [3] that exceeded levels identified in the Florida Administrative Code. (Doc. 49.16 at 5). There is no ambiguity as to whether a pollution condition existed.

The second question is whether the pollution condition existed "at or under a covered location?" (Doc. 93 at 10). Neither party contests that the incident happened at a covered location. See generally id.; (see also Doc. 99).

The third question is whether the pollution conditions resulted from the "release" of contents? (Doc. 93 at 10). Plaintiff argues that the term "pollution condition" cannot be understood without analyzing the term "release" within the contract. (Doc. 93 at 12–14). Release is explicitly defined in the contract:

> **Release**
>
> Means the discharge, dispersal, or escape of any solid, liquid, gaseous or thermal irritant, contamination or pollutant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste from a covered location(s) and/or covered storage tank system(s) into groundwater, surface water, or surface or subsurface soils, which a

> pollution condition has been investigated and confirmed by or on behalf of an insured, utilizing a system tightness check, site check or other procedure approved by the Federal Environmental Protection Agency or a state or local agency having jurisdiction over the covered location(s) and/or covered storage tank system(s) and in accordance with 40 Code of Federal Regulations 280.52 or any other applicable federal or state regulation or state statute.

(Doc. 49.20 at 25).

In the Court's Order, a detailed factual background was provided. To analyze Plaintiff's argument on reconsideration, some of the background is provided:

> On May 23, 2017, FDEP inspected Plaintiff's St. Augustine gas station. (See Docs. 49.2; 57.6). In the report following the inspection, the FDEP identified two new violations, including not repairing a "component or piping which has or could cause a discharge or release." (Docs. 49.2 at 4; 57.6 at 3). FDEP directed Plaintiff to take corrective action, including to complete hydrotesting to "determine if a discharge could have occurred." (Docs. 49.2 at 4; 57.6 at 3). If the testing failed, then Plaintiff was required to collect "closure samples." (Docs. 49.2 at 4; 57.6 at 3).
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> ***5** ...
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> Inspectors twice contacted Plaintiff via letters requesting updates. (See Doc. 49.4). Plaintiff did not respond[.] (Doc. 49.1 at 16).
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> By June 13, 2017, Plaintiff hired a contractor to perform the corrective actions on the cracked boots and the hydrotesting. (Doc. 49.5). The contractor indicated that the hydrotesting failed. Id. at 2; (see also Doc. 49.6 at 10) (showing the contractor was "responding to a noncompliant notice" and that it was responding to specific instructions from FDEP, including running hydro-testing, which failed). By August 25, 2017, the contractor removed and replaced the cracked boots. (Doc. 57.8 at 3).
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> In August 2017, Plaintiff hired a company to conduct the sampling required by the FDEP because the hydrotesting failed. (See Docs. 49.2 at 4; 57.6 at 3; 49.9; 57.8). The 35-page report made several findings, including there was both hydrocarbon vapors and soil contamination present at the locations the FDEP deemed in violation. (Docs. 49.9 at 9; 57.8 at 8). The company then sent its report to FDEP. (See Doc. 49.11) (stating FDEP received the report on February 9, 2018).
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> ...
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> Within the correspondence [from FDEP to Plaintiff], FDEP explains that the latest information it "received regarding conditions existing" at Plaintiff's gas station "was an August 16, 2018 Closure Assessment for Replacement of Dispenser Sump (Report), submitted by Taylor Environmental Consulting." [(Doc. 61.13 at 1).]
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> In the Report, Taylor Environmental Consulting identified a groundwater sample that "indicated benzene, ethylbenzene, toluene, total xylenes, bromodichloromethane, and dibromochloromethane" that exceeded levels identified in the Florida Administrative Code. (Doc. 49.16 at 5).
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> Plaintiff had access to the Taylor Report in or about August 2018. (Doc. 49.1 at 25). Though Plaintiff had access and knew the contents of the Report, Plaintiff did not take further action to notify Defendant. Id. at 27; (see also Doc. 57.17 at 93–100).

(Doc. 89 at 4–5; 17–18).

The pollution conditions have been identified as the benzene, ethylbenzene, toluene, and total xylenes identified in the Report prepared by Taylor Environmental Consulting. See Fla. Admin. Code r. 62-780.900; (see also Doc. 49.16 at 5). Taylor Environmental Consulting was hired by Plaintiff to investigate the covered location after the FDEP identified violation in May 2017. (See Docs. 49.2 at 4; 57.6 at 3; 49.9; 57.8). Taylor Environmental Consulting completed its Report on August 16, 2018. (Doc. 61.13 at 1). Plaintiff had access to the Report in August 2018. (Doc. 49.1 at 25). The pollution conditions were "released" in August 2018, as identified in the Taylor Report. (See Doc. 49.20 at 25).

The fourth question is whether the pollution condition was released from any covered storage tank system? (Doc. 93 at 10). Again, neither party contests that the incident happened at a covered location. See generally id.; (see also Doc. 99).

Given a pollution condition was released from a covered location and that the release was identified in August 2018, the Court's analysis of the contract does not change.

> ***6** The insurance policy states Plaintiff "must" notify Defendant "as soon as reasonably possible, but in any event, not more than seven (7) days after [Plaintiff] first became aware of, or should have become aware of[,] a pollution condition which may result in a claim or any action or proceeding to impose an obligation on [Plaintiff] for cleanup costs." (Doc. 49.20 at 20) (emphasis altered).
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> Even if the contamination was new or related back to 1985, Plaintiff had a duty under the contract to notify Defendant within seven days of the Taylor Report. See Doc. 49.20 at 20–21. Plaintiff should have notified Defendant by August 23, 2018. Instead, Plaintiff waited until April 19, 2019 to report the contamination. Under the plain language of the insurance policy, and as a matter of law, Defendant is entitled to summary judgment.

(Doc. 89 at 18–19). [4]

Next, Plaintiff argues the Court incorrectly interpreted the reporting requirements provided under the contract. (Doc. 93 at 15–18). "Under Florida law, courts must construe an insurance contract in its entirety, striving to give every provision meaning and effect." Dahl-Eimers v. Mut. Of Omaha Life Ins. Co., 986 F.2d 1379, 1381 (11th Cir. 1993) (citing Excelsior Ins. Co. v. Pomona Park Bar & Package Store, 369 So. 2d 938, 941 (Fla. 1979)).

Reviewing the contract in its entirety, one section explains how to report a pollution condition, claim, or suit. (Doc. 49.20 at 20–21). The pollution condition reporting provision states:

> You must see to it that we are notified as soon as reasonably possible, but in any event, not more than seven (7) days after the insured first became aware of, or should have become aware of a pollution condition which may result in a claim or any action or proceeding to impose an obligation on the insured for cleanup costs. Notice should include:
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> (a) How, when and where the pollution condition took place;
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> (b) The names and addresses of any injured persons and witnesses; and
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> (c) The nature and location of any injury or damage arising out of the pollution condition.

(Doc. 49.20 at 20). Reading further, the provision also gives the requirements for reporting (1) a claim or (2) a suit. Id. at 20–21. Plaintiff first reported a claim on April 22, 2019. (Doc. 5 at ¶ 31). Plaintiff did not report the pollution condition in or around August 2018, which directly contradicts the plain language of the contract. (See Doc. 89 at 18–19).

b. The Court did not err in finding Defendant was entitled to judgment as a matter of law due to Plaintiff's untimely notice of the pollution conditions.

"Under Florida law, a failure to provide timely notice of an occurrence in contravention of an insurance policy's provision is a legal basis for denial of recovery under the policy." Scott, Blane, and Darren Recovery, LLC v. Auto-Owners Ins. Co., 727 F. App'x 625, 634 (11th Cir. 2018) (citing Ideal Mut. Ins. Co. v. Waldrep, 400 So. 2d 782, 785 (Fla. 3d DCA 1981)); see also Bod v. Pa. Nat'l Mut. Cas. Ins. Co., 195 So. 2d 259 (Fla. 4th DCA 1967); Kroerner v. Fla. Ins. Cuar. Ass'n, 63 So. 3d 914, 916 (Fla. 4th DCA 2011). "This is because an unsured has an obligation to adhere to the terms of the insurance policy, and it [the insured] violates the policy's terms, a breach has occurred." Scott, Blane, and Darren Recovery, 727 F. App'x at 634 (citing Indem. Ins. Corp. of DC v. Caylao, 130 So. 3d 783, 786 (Fla. 1st DCA 2017)). "A breach caused by a failure to give timely notice creates a rebuttable presumption of prejudice to the insurer." Scott, Blane, and Darren Recovery, 727 F. App'x at 634 (citing Bankers Ins. Co. v. Macias, 475 So. 2d 1216, 1218 (Fla. 1985)).

***7** "A notice of accident in most insurance policies is a condition precedent to a claim." Macias, 475 So. 2d at 1218. "Such a condition can be avoided by a party alleging and showing that the insurance carrier was not prejudiced by noncompliance with the condition. The burden should be on the party seeking an avoidance of a condition precedent." Id.

Here, Plaintiff argued it "was investigating whether there was a new release" between August 2018 and April 2019, and that investigation alleviated "any potential prejudice to Defendant." (Doc. 65 at 19). Not so. As the Court explained, on May 23, 2017, FDEP identified two new violations. (Doc. 89 at 4). On May 25, 2017 and August 27, 2017, FDEP contacted Plaintiff requesting updates, to which Plaintiff did not respond. Id. at 5; (see also Doc. 49.4). Plaintiff reported its claim to Defendant on April 19, 2019. (Doc. 89 at 17).[5] The Court, as a matter of law, does not find that Plaintiff rebutted the presumption of prejudice to Defendant. See Scott, Blane, and Darren Recovery, 727 F. App'x at 634; Macias, 475 So. 2d at 1218.

c. The Court did not err in interpreting undisputed facts.

Using Plaintiff's test, Defendant must cover Plaintiff when "(1) there is a 'pollution condition'; (2) that is on, at, or under a 'covered location'; (3) that results from the 'release' of contents; (4) from any 'covered storage tank system(s).' " (Doc. 93 at 10). The facts Plaintiff disputes in its motion for reconsideration do not affect the analysis the Court completed using Plaintiff's test. See id. at 20–27; see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (explaining substantive law determines the materiality of facts, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment"). Any perceived error of fact does not support the Court granting Plaintiff's motion.

d. The Court did not err in interpreting Land O'Sun Mgmt. v. Com. & Indust. Ins. Co., 961 So. 2d 1078 (Fla. 1st DCA 2007).

Plaintiff argues the Court incorrectly interpreted Land O'Sun. (Doc. 93 at 27–28). In a footnote in the Order, the Court explained:

> To be clear, the Florida appellate court explained that the Florida 'legislature has not specifically addressed forum selection clauses contained in environmental insurance policies; however [the legislature] has determined that the Office of Insurance Regulation must review and approve insurance policies drafted by insurance companies doing business in Florida.' Land O'Sun Mgmt., 961 So. 2d at 1080 (referencing Fla. Stat. §§ 624.401; 627.410(1)).
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> ***8** (Doc. 89 at 11 n.2).

The Florida legislature has not specifically addressed forum selection clauses contained in environmental insurance policies. But the Florida Department of Environmental Protection, an agency, has addressed the same. See Fla. Admin. Code r. 62-761.420 (2017). Regardless, the outcome of the summary judgment order does not change.

e. The Court did not err in identifying pollution conditions.

Plaintiff's final argument on reconsideration is that the Court misread the term "pollution conditions" within the full contract. (Doc. 93 at 28–31). The Court's explanation of pollution conditions, using the definitions identified in the Florida Administrative Code and the samples identified in the Taylor Report are consistent with the definition identified in the contract. The Court will not belabor the explanation already provided.

Accordingly, after due consideration, it is

ORDERED:

Plaintiff's Motion for Reconsideration (Doc. 93) is **DENIED.**

DONE and **ORDERED** in Jacksonville, Florida this 29th day of August 2023.

All Citations

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Footnotes

1 In a previous Order (Doc. 100), the Court accepted Plaintiff's overlength Motion. Defendant argues that the Court should deny Plaintiff's Motion for failing to comply with Rule 3.01(g) of the Local Rules for the United States District Court for the Middle District of Florida. While the Court expects strict adherence to the Local Rules, for expediency in resolving this case, the Court will consider Plaintiff's motion despite its technicaldeficiencies. See Equity Lifestyle Prop.. Inc. v. Fla. Moving & Landscape Serv., Inc., 556 F.3d 1232, 1240 (11th Cir. 2009) (“A district court has inherent authority to manage its own docket ‘so as to achieve the orderly and expeditious disposition of cases.’ ”) (citation omitted).

2 To be clear, in the opening pages of the insurance contract, a “Notice to the Insured” states, “This insurance is issued pursuant to the Florida Surplus Lines Law.” (Doc. 49.20 at 8). Generally, surplus lines insurance benefits “the insured public by accepting risks that admitted carriers decline for a variety of underwriting and market reasons.” Douglas R. Richmond, Surplus Lines Insurance and Wholesale Brokers, 25 No. 8 INS. LITIG. REP. 261 (May 16, 2003); see also Riverside Apartments of Cocoa. LLC v. Landmark Am. Ins. Co., 505 F. Supp. 3d 1293, 1299–1300 (M.D. Fla. 2020) (explaining surplus lines insurance generally).

3 The list of contaminants provided by Florida Administrative law includes various forms of dichloroethane, chloromethane, dibromoethane, and dichloroethane. Fla. Admin. Code r. 62-780.900. The Court is unsure whether bromodichloromethane and dibromochloromethane are expressly the kind of contaminants intended to be regulated; however, other contaminants explicitly written in the code were present in the Report's findings. The other contaminants’ presence is enough to create a pollution condition.

4 Plaintiff focuses on the Court's analysis of the 2017 Discharge Report Form as the “first discovered” date. (Doc. 93 at 14–15). However, the Court analyzed the contract using both the 2017 Discharge Report Form and the August 2018 dates as the date of discovery. (Doc. 89 at 16–19).

5 In its motion for reconsideration, Plaintiff for the first time raises specific arguments to rebut the presumption of prejudice without citing to the record. A motion for reconsideration is not the venue to litigate new issues that should have been raised in previous briefing on summary judgment. “Making district courts dig through volumes of documents and transcripts would shift the burden of sifting from [the appropriate party] to the courts.” Chavez v. Sec'y Florida Dept. of Corrs., 647 F.3d 1057, 1061 (11th Cir. 2011). “With a typically heavy caseload and always limited resources, a district court cannot be expected to do a [party's] work for [them].” Id.; see also Coleman v. Hillsborough Cnty., 41 F.4th 1319, 1328 (11th Cir. 2022) (“Apparently [appellee] would like for us to dig through the record in an effort to turn up facts that might make his case for him. But that is his job, not ours.”).

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