UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

-v- 6:09-CV-853

FIREMAN'S FUND INSURANCE COMPANY,

Defendant.

- -

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DAVID N. HURD
United States District Judge

MEMORANDUM-DECISION and ORDER

I. INTRODUCTION

A jury trial was held between November 27, 2017, and December 13, 2017, at the conclusion of which the jury returned a verdict in favor of plaintiff Utica Mutual Insurance

Company ("Utica" or "plaintiff") on its sole claim for breach of contract.[1] The jury awarded plaintiff $35 million in damages plus interest running from September 22, 2008. Prejudgment interest was calculated at $29,092,191.78 and judgment entered in favor of Utica for $64,092,191.78.

Defendant Fireman's Fund Insurance Company ("FFIC" or "defendant") now renews its motion for judgment as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure ("Rule __") or, in the alternative, for a new trial pursuant to Rule 59. FFIC also separately moves to correct the interest calculation in the judgment pursuant to Rule 60. The motions were fully briefed and have been considered on the basis of the submissions.

II. RELEVANT BACKGROUND

The parties' familiarity with the underlying facts established at trial is assumed.[2] This case has a lengthy history which all are familiar with, including years of discovery, multiple rounds of motion practice, and a jury trial spanning nearly three weeks.

III. LEGAL STANDARDS

A. Rules 50 and 59

Rule 50(a)(1) permits a court to render judgment as a matter of law and vacate a jury's verdict if it finds that "a reasonable jury would not have a legally sufficient evidentiary basis" to reach its conclusion. The standard is well settled:

> Judgment as a matter of law may not properly be granted under Rule 50 unless the evidence, viewed in the light most favorable to

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[1] The verdict was rendered on December 13, 2017 and the jury was dismissed. Proceedings continued through December 14, 2017, when defendant's counterclaims seeking rescission were dismissed as a matter of law.

[2] The official transcript is not yet ready, but the parties are both in possession of an unofficial transcript.

> the opposing party, is insufficient to permit a reasonable juror to find in [its] favor. In deciding such a motion, the court must give deference to all credibility determinations and reasonable inferences of the jury, and it may not itself weigh the credibility of witnesses or consider the weight of the evidence.

Galdieri–Ambrosini v. Nat'l Realty & Dev. Corp., 136 F.3d 276, 289 (2d Cir.1998) (internal citations omitted).

The standard for post-verdict judgment as a matter of law is the same as that for summary judgment under Rule 56. Nadel v. Isaksson, 321 F.3d 266, 272 (2d Cir. 2003). Thus, "a district court must deny a motion for judgment as a matter of law unless . . . there can be but one conclusion as to the verdict that reasonable persons could have reached." Id. (internal quotations omitted). The proponent of a motion for judgment as a matter of law under Rule 50(b) faces a "high bar," Lavin-McEleney v. Marist College, 239 F.3d 476, 479 (2d Cir. 2001), and the Second Circuit has cautioned that motions for judgment as a matter of law "should be granted cautiously and sparingly," Meloff v. N.Y. Life Ins. Co., 240 F.3d 138, 145 (2d Cir. 2001).

The moving party must also fulfill the procedural prerequisite of moving for judgment as a matter of law before the case is submitted to the jury. See Fed. R. Civ. P. 50(a)(2). And a party may only make a post-judgment Rule 50(b) motion based on grounds specifically raised at the close of evidence. Lambert v. Genesee Hosp., 10 F.3d 46, 53-54 (2d Cir. 1993). If the movant does not meet the Rule 50 specificity requirement, the court may not grant judgment as a matter of law unless the result is required "to prevent manifest injustice." Lore v. City of Syracuse, 670 F.3d 127, 153 (2d Cir. 2012). A "manifest injustice" exists only when "a jury's verdict is wholly without legal support." Jacques v. DiMarzio, Inc., 386 F.3d 192, 199 (2d Cir. 2004) (superseded by statute on other grounds).

The standard under Rule 59, which permits a court to "grant a new trial on all or some of the issues," see Fed. R. Civ. P. 59(a)(1), is less stringent, Manley v. AmBase Corp., 337 F.3d 237, 244 (2d Cir. 2003). "[I]n deciding a motion for a new trial, the district court is permitted to examine the evidence through its own eyes . . . [and] can grant such a motion even if there is substantial evidence supporting the jury's verdict." Green v. City of New York, 359 F. App'x 197, 199 (2d Cir. 2009) (summary order) (internal quotations and citations omitted).

Nevertheless, "'[a] motion for a new trial ordinarily should not be granted unless the trial court is convinced that the jury has reached a seriously erroneous result or that the verdict is a miscarriage of justice.'" Townsend v. Benjamin Enters., Inc., 679 F.3d 41, 51 (2d Cir. 2012) (quoting Medforms, Inc. v. Healthcare Mgmt. Sols., Inc., 290 F.3d 98, 106 (2d Cir. 2002)). Though a trial judge is free to weigh the evidence himself, the court should only grant a Rule 59 motion when the jury's verdict is "egregious" and "should rarely disturb a jury's evaluation of a witness's credibility." Ferreira v. City of Binghamton, No. 3:13-CV-107, 2017 WL 4286626, at *2 (N.D.N.Y. Sept. 27, 2017) (McAvoy, S.J.) (internal quotations omitted).

B. Rule 60

Rule 60(a) provides in relevant part: "(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Prejudgment interest is frequently the subject of Rule 60(a) motions in this Circuit. See Roberts v. Bennaceur, 658 F. App'x 611, 621 n.9 (2d Cir. 2016) (summary order). "[A] Rule 60(a) motion is appropriate where the judgment has failed accurately to reflect the

actual decision of the decision maker." Robert Lewis Rosen Assocs., Ltd. v. Webb, 473 F.3d 498, 504 (2d Cir. 2007) (internal quotations omitted).

IV. DISCUSSION

A. Motion under Rule 50

FFIC renews its motion for judgment as a matter of law pursuant to Rule 50(b). It argues it is entitled to judgment as a matter of law under Rule 50 both because Utica failed to present legally sufficient proof that there was a breach of contract and because FFIC proved its late notice defense as a matter of law.

Defendant raises three bases on which it claims the evidence was lacking and consequently require the granting of its Rule 50 motion for judgment as a matter of law. First, FFIC argues that the reinsurance certificates do not cover the loss at issue. Second, the follow the settlements doctrine does not apply. Third, notice was late and FFIC was economically prejudiced *or* Utica's failure to implement routine procedures constituted gross negligence or recklessness.

Utica opposes and contends the presence or absence of aggregate limits in the primary policies and the therefore subsequent question of whether the reinsurance certificates cover the loss at issue is irrelevant to the instant inquiry and it was not required to prove such at trial. Instead, the evidence was sufficient for a jury to conclude that its settlement decisions were objectively reasonable and that FFIC failed to meet its burden on its late notice defense.

Plaintiff is correct in that it was not required to prove by a preponderance of the evidence that the primary policies contained aggregate limits for bodily injury in order for the follow the settlements clause to apply and obligate FFIC to pay under the reinsurance

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