IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

CONTINENTAL CASUALTY COMPANY,

Plaintiff,

v.

MIDSTATES REINSURANCE COMPANY,

Defendant.

No. 12 CH 42911
Judge Mary L. Mikva
Calendar 6

ORDER AND OPINION

This cause comes on Defendant MidStates Reinsurance Company's Motion for Judgment on the Pleadings. For reasons that follow, MidStates' Motion is GRANTED.

Background

This case requires the interpretation of facultative reinsurance certificates. Facultative reinsurance insures a specific insurance policy or risk, as opposed to treaty reinsurance, which insures multiple insurance policies. The reinsurance certificates at issue are between Continental Casualty Company ("Continental"), the "reinsured" or "cedent," and MidStates Reinsurance Company ("MidStates"), the "reinsurer."

These reinsurance certificates contain abbreviations and are riddled with industry jargon. Not only are the reinsurance certificates filled with shorthand, they are also short; the reinsurance certificates at issue are two pages, not including amendments. The reason for brevity is the principle of concurrency – that is, the underlying obligations of the reinsurance policy generally mirror the obligations under the insurance policy. *See, e.g., Travelers Cas. & Surety Co. v. ACE Reinsurance Co.*, 392 F. Supp. 659, 665 (S.D.N.Y. 2005), *aff'd* 201 Fed. Appx. 40 (2d Cir. 2006).

At issue are five reinsurance certificates between Continental and MidStates. The first certificate reinsures a policy between Continental and RSR Corporation ("RSR"), and the

remaining four certificates reinsure policies between Continental and Borg-Warner Corporation. All of the reinsurance certificates are essentially identical in form. Located on the first page of each reinsurance certificate is a section titled "7. Details of reinsurance afforded," which are set out in relevant part below.

RSR Reinsurance Certificate

Item A **Description of Coverage**	Item B **Original Policy Limits**	Item C **Reinsured's Retention**	Item D **Reinsurance Assumed**
Excess General Liability	$500,000 each occurrence/$500,00 aggregate combined single limit	$100,000 each occurrence/$500,000 aggregate combined single limit	45% part of $400,000 each occurrence/none of the aggregate, excess $100,000 each occurrence/$500,000 aggregate combined single limit

Borg-Warner Reinsurance Certificates[1]

BORG-WARNER 1

Item A **Description of Coverage**	Item B **Original Policy Limits**	Item C **Reinsured's Retention**	Item D **Reinsurance Assumed**
Excess General Liability	$1,000,000 occurrence/ $4,500,000 aggregate, bodily injury $1,000,000 per occurrence/ $4,500,000 aggregate property damage	20% part of difference between $500,000 occurrence/ none of the aggregate bodily injury and property damage separately, and $350,000 per occurrence inclusive expense/ $4,500,000 aggregate bodily injury and property damage separately	20% part of difference between $500,000 per occurrence/none of the aggregate bodily injury and property damage separately and $350,000 occurrence inclusive of expense/ $4,500,000 aggregate bodily injury and property damage separately

BORG-WARNER 2

Item A **Description of Coverage**	Item B **Original Policy Limits**	Item C **Reinsured's Retention**	Item D **Reinsurance Assumed**
Excess General Liability	$1,000,000 occurrence/ $4,500,000 aggregate bodily injury $1,000,000 occurrence $4,500,000 property damage	NIL this layer	25% part of $500,000 each occurrence/ none of the aggregate bodily injury and property damage separately excess $500,000 each occurrence/ $4,500,000 aggregate bodily injury and property damage separately

[1] These reinsurance certificates contain handwritten alterations. The alterations are explained in "Endorsements," which are attached to the reinsurance certificates. The versions reproduced in this Opinion reflect the Endorsements.

BORG-WARNER 3

Item A **Description of Coverage**	Item B **Original Policy Limits**	Item C **Reinsured's Retention**	Item D **Reinsurance Assumed**
Excess General Liability	$1,000,000 occurrence/ $4,500,000 aggregate bodily injury $1,000,000 occurrence $4,500,000 property damage	10% part of difference between $500,000 occurrence/ none of the aggregate bodily injury and property damage separately and $350,000 occurrence inclusive expenses/ $4,500,000 aggregate bodily injury and property damage separately	22.5% part of difference between $500,000 per occurrence/none of the aggregate bodily injury and property damage separately excess and $350,000 per occurrence inclusive of expense/ $4,500,000 aggregate bodily injury and property damage separately

BORG-WARNER 4

Item A **Description of Coverage**	Item B **Original Policy Limits**	Item C **Reinsured's Retention**	Item D **Reinsurance Assumed**
Excess General Liability	$1,000,000 occurrence/ $4,500,000 aggregate bodily injury $1,000,000 occurrence $4,500,000 property damage	NIL this layer	25% part of $500,000 each occurrence/none of the aggregate excess $500k per occurrence inclusive of expense/ $4,500,000 aggregate bodily injury and property damage separately

Item A, "Description of Coverage," describes the type of coverage. All of the reinsurance certificates in this case are described as "Excess General Liability" coverage. Item B, "Original Policy Limits," describes the underlying insurance policy terms, which would be the terms of the Continental-RSR or Continental-Borg-Warner insurance policies. Item C, "Reinsured's Retention," describes the amount of coverage retained by the reinsured, Continental; any amount above that triggers MidStates' liability. Item D, "Reinsurance Assumed," describes the amount of coverage that the reinsurer has agreed to provide.

The second page of the reinsurance certificates contains boilerplate "Provisions." Paragraph A, commonly referred to as the "follow the form" clause, states:

> [Continental] warrants to retain for its own account or that of its treaty reinsurer(s) the amount of liability specified in Item 7C unless otherwise provided herein, and the liability of the Reinsurer in Item 7D shall follow that of [Continental], except as otherwise specifically provided herein, and shall be subject in all respects to all the terms and conditions of [Continental's] policy. . . .

Also relevant to this case is Paragraph D, commonly referred to as the "follow the fortunes" clause, which states:

> All claims involving this reinsurance, when settled by [Continental], shall be binding on the Reinsurer, which shall be found to pay its proportion of such settlements, and in addition thereto, in the ratio that the Reinsurer's loss payment bears to [Continental's] gross loss payment with respect to business accepted on an excess of loss basis and in the ratio that the Reinsurer's limit of liability bears to [Continental's] gross limit of liability with respect to business accepted on a pro rata basis, its proportion of expenses . . . .

The RSR reinsurance policy was called upon when RSR, a lead smelting company, was sued by individuals and the U.S. Environmental Protection Agency for bodily injuries resulting from hazardous waste disposal sites in West Dallas, Texas and Kent, Washington. RSR claimed coverage from its insurers, including Continental. Continental defended RSR and paid out settlements. Continental then billed MidStates for its reinsurance coverage of the Continental-RSR policy. Continental billed MidStates for the Texas and Washington disposal sites as two occurrences under the policy. In a letter accompanying the check, MidStates explained that it believed the amount Continental billed exceeded the limits of the reinsurance certificate and it was instead only obligated to pay $180,000 (or 45% part of $400,000) per occurrence.

The Borg-Warner policies were brought into play when Borg-Warner was sued by thousands of claimants for asbestos-related bodily injury connected to its manufactured products or products it distributed. Borg-Warner sought coverage from its insurers. Continental initially disputed coverage, but through litigation, Continental and Borg-Warner entered into a settlement agreement. Continental then billed MidStates for its reinsurance of the Continental-Borg-Warner contracts. MidStates paid a total of $313,750, though Continental had billed more than that amount. MidStates had calculated its reinsurance obligations as: $30,000 (20% of $150,000) for the Borg-Warner 1 reinsurance certificate; $125,000 (25% of $500,000) for the Borg-Warner 2 reinsurance certificate; $33,750 (22.5% of $150,000) for the Borg-Warner 3 reinsurance certificate; and $125,000 (25% of $500,000) for the Borg-Warner 4 reinsurance certificate. In a letter accompanying the check, MidStates explained that it believed the amount Continental billed exceeded the limits of the reinsurance certificate. Citing the "Bellefonte principle," *see Bellefonte Reinsurance Co. v. Aetna Cas. & Surety Co.*, 903 F.2d 910 (2d Cir. 1990), with an attached memorandum explaining its legal position, MidStates further stated that it "do[es] not provide coverage for loss or defense in excess of [certificate] limits."

On November 20, 2012, Continental filed a complaint against MidStates. Continental sought a declaration that none of the reinsurance certificates contained limits on expenses, and that MidStates therefore breached its reinsurance certificates with Continental by failing to pay the amounts Continental billed. On March 5, 2013, MidStates filed its Answer, Affirmative Defenses, and Verified Counterclaim. On April 5, 2013, Continental filed its Verified Answer and Reply to MidStates Verified Counterclaim, and Affirmative Defenses. MidStates now moves for Judgment on the Pleadings.

Discussion

Judgment on the pleadings is proper when the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-615(e); *State Bank of Cherry v. CGB Enters.*, 2013 IL 113836, ¶ 65; *Pekin Ins. Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010).

The issue before the Court is whether Item 7D, the "reinsurance assumed" provision, acts as an overall limitation on MidStates' obligations for both losses and expenses, or a limitation only on its obligation to reinsure losses. If MidStates is correct in its interpretation of the reinsurance certificates, then the pleadings establish that MidStates has satisfied its obligations under those reinsurance certificates and judgment on the pleadings is proper. But if Continental is correct in its arguments that the reinsurance certificates do not set limits for expenses, or are ambiguous, judgment on the pleadings must be denied.

MidStates argues that the "reinsurance assumed" provision limits its entire reinsurance obligation, inclusive of losses and expenses. "Reinsurance assumed" is simply the total amount of reinsurance, or indemnification, that MidStates has assumed. Paragraph A states that MidStates' liability follows that of Continental, "except as otherwise specifically provided herein," and "reinsurance assumed" amounts are "specifically provided" for in the reinsurance certificate. Paragraph D merely speaks to proportions of losses and expenses MidStates might pay, which still remain subject to the limits set forth under the "reinsurance assumed" provision.

Continental's principal argument is that the reinsurance certificate should not be read to limit MidStates' obligation to pay expenses. Instead, "reinsurance assumed" represents a share of losses, but not a limit on expenses. In support, Continental agrees with MidStates that Paragraph A establishes that the reinsurance certificate mirror the Continental insurance policies, "except as specifically provided herein." But because there is no mention of the word "limit" in Item 7D,

there is no reason to find that a limit on expenses is clearly and unambiguously provided for in the reinsurance certificate.

Continental further argues that Paragraph D reaffirms that losses and expenses are separate and that expenses are therefore not subject to the "reinsurance assumed" amount. Specifically, Paragraph D provides that all claims settled by Continental "shall be binding on [MidStates], which shall be bound to pay its proportion of such settlements, *and in addition thereto*, in the ratio that MidStates' loss payment bears to [Continental's] gross loss payment . . . its proportion of expenses . . . incurred by [Continental] in the investigation or settlement of claims or suits . . . ." (Emphasis added). In other words, MidStates had a duty to pay a share of losses per "reinsurance assumed," and "in addition thereto" it was obligated to pay its proportion of expenses, which are not subject to the limit under the "reinsurance assumed" provision.

Though Continental argues that its interpretation of the reinsurance certificate is correct, it also argues that, in the alternative, the reinsurance certificates are ambiguous and extrinsic evidence is required to interpret them. "When parties dispute the meaning of a contract provision, the initial question is whether the contract is ambiguous." *Ringgold Capital IV, LLC v. Finley*, 2013 IL App (1st) 121702, ¶ 19 (citing *Hillenbrand v. Meyer Medical Group S.C.*, 288 Ill. App. 3d 871, 875–76 (1st Dist. 1997). The existence of ambiguity is a legal question. *Cent. Ill. Light Co. v. Home Ins. Co.*, 213 Ill. 2d 141, 154 (2004). Under Illinois' "four corner rule" analysis, courts first look at the language of the agreement alone. *Air Safety Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999). If the language is unambiguous, extrinsic evidence is not needed to interpret the contract. *Id.* If, however, the court finds the contractual language susceptible to more than one reasonable interpretation, extrinsic evidence is permitted to establish the intent of the parties. *Id.*; *see also Area Erectors, Inc. v. Travelers Prop. Cas. Co.*, 2012 IL App (1st) 111764, ¶ 20 (noting that ambiguity exists if a contract is "reasonably susceptible" to two interpretations). Yet, ambiguity does not exist simply because the parties disagree on the meaning of a contractual provision. *Cent. Ill. Light Co.*, 213 Ill. 2d at 154; *Ringgold*, 2013 IL App (1st) 121702, ¶ 19.

The Court does not find these reinsurance certificates to be ambiguous. The type of insurance is "General Excess Liability" reinsurance. The amount of reinsurance liability MidStates assumed or accepted was set at a total amount in Item 7D, "reinsurance assumed," without reference to separate duties to pay losses and to pay expenses. There is nothing in the

language of the certificate to suggest that the "reinsurance assumed" amount did not encompass both the "reinsurance assumed" for losses and the "reinsurance assumed" for expenses.

Neither Paragraph A nor Paragraph D can reasonably be read to remove expenses from the amount set forth under the "reinsurance assumed" provision. Paragraph A – the follow the form clause – states that MidStates' obligations follow Continental's obligations, "except as otherwise specifically provided herein," and "reinsurance assumed" is specifically provided for. Paragraph D – the follow the fortunes clause – speaks to ratios of payment by the reinsurer with respect to "losses" and "expenses." Yet nothing suggests that the payments that should be made under those ratios are not subject to the total amount of "reinsurance assumed" by MidStates. That Paragraph D speaks to "losses" and "expenses" separately, while the "reinsurance assumed" provision speaks to MidStates' liability generally, supports MidStates' argument that "reinsurance assumed" is a limit on overall liability, including losses and expenses.

This outcome is in accord with the majority of cases that have dealt with similar reinsurance certificates. *See, e.g.*, *Bellefonte Reinsurance Co.*, 903 F.2d at 913 (finding that "reinsurance accepted" was "a cap on all payments under the certificate."); *Unigard Sec. Ins. Co. v. North River Ins. Co.*, 4 F.3d 1049, 1070–71 (2d Cir. 1993) (finding reinsurer "not liable for expenses beyond the stated liability limit in the Certificate."); *Excess Ins. Co. v. Factory Mut. Ins. Co.*, 3 N.Y.3d 577, 583 (2004) (finding that "[o]nce the reinsurers have paid the maximum amount stated in the policy, they have no further obligation to pay [the cedent] any costs related to loss adjustment expenses."); *Pacific Employers Ins. Co. v. Global Reinsurance Corp.*, No. 09-6055, 2010 U.S. Dist. LEXIS 40506, *9 (E.D. Pa. April 23, 2010) (finding the reinsurance accepted provision "clearly encompasse[d]" losses and expenses), *motion to reconsider denied*, 2010 U.S. Dist. LEXIS 56758 (E.D. Pa. June 9, 2010), *aff'd on other grounds*, 693 F.3d 417 (3d Cir. 2012).

Bellefonte Reinsurance Co. v. Aetna Casualty & Surety Co. was one of the first cases to confront this issue. The reinsurance certificate in that case included: "Provision 1," which stated that "in consideration of the payment of the premium and subject to the terms, conditions and amount of liability set forth herein, as follows. . . ."; "Provision 2," a reinsurance accepted provision, which provided for a coverage amount per occurrence, similar to the "reinsurance assumed" provision at issue in this case; and "Provision 4," which provided that

> claims . . . when settled by the [insurer], shall be binding on the Reinsurer, which shall be bound to pay its proportion of such settlements, and in addition thereto, in the ratio that the reinsurer's loss payment bears to the Company's gross loss payment, its proportion of expenses . . . incurred by the [Insurer] in the investigation and settlement of claims or suits. . . .

Id. at 911.

The court held that Provisions 1 and 2 prevented the insurer from "recover[ing] defense costs beyond the express cap stated in the certificates." *Id.* at 913. As for Provision 4 – the follow the fortunes clause – the reinsured there argued, as Continental does here, that the phrase "in addition thereto" indicated that the monetary limitation on liability set forth in the reinsurance accepted provisions capped only the reinsurers' liability for the underlying losses, not the reinsurers' liability for defense expenses and costs." *Id.* at 913. The court disagreed. *Id.* The court read "the phrase 'in addition thereto' merely to differentiate the obligations for losses and for expenses." *Id.* The court concluded, "The phrase in no way exempts defense costs from the overall monetary limitation in the certificates." *Id.* "'Follow the fortunes' clauses coexist with, rather than supplant, the liability cap. To construe the certificates otherwise would effectively eliminate the limitation on the reinsurers' liability to the stated amounts." *Id.*

The Second Circuit reaffirmed that reasoning in *Unigard Security Insurance Co. v. North River Insurance Co.* There, the reinsured argued "that the 'follow the form clause' was not considered in *Bellefonte* and that it require[d] [the Reinsurer] to pay expenses in excess of the policy limit." 4 F.3d at 1070. The follow the form clause in *Unigard* was identical to the one in this case; it provided that the liability of the reinsurer, "*except as otherwise provided by this Certificate*, shall be subject in all respects to all the terms and conditions of [the insurance policy]." *Id.* at 1070–71. The court reasoned that, because the certificate "otherwise provided" a limit, that limit was controlling. *Id.* at 1071. The reinsured in *Unigard* also attempted to introduce evidence that the reinsurer had paid expenses over the limit in the past. *Id.* But the court declined to consider that evidence because it would open identical certificates to different interpretations, depending on idiosyncratic facts of particular lawsuits. *Id.*

Most recently, in *Pacific Employers Insurance Co. v. Global Reinsurance Corp.*, the court held that a $1 million amount of reinsurance accepted encompassed both expenses and losses. 2010 U.S. Dist. LEXIS 40506, at *9. The court reasoned that "this broad and unambiguous language clearly encompasses expenses because it defines Global's maximum exposure under the Facultative Certificate." *Id.* The court went on to note that the reinsurance

certificate contained a preamble paragraph providing that the reinsurers obligations were "subject to the terms, conditions and limits of liability set forth herein and in the Declarations made a part thereof." *Id. at* *12. In the court's view, this preamble made it clear that any reinsurance obligations were "subject to" the limits on liability and "the only limit on liability in the Facultative Certificate is the $1million limit" on the amount of "reinsurance accepted," which therefore applied to the obligation to pay expenses; the follow the fortunes clause provided only proportions of losses and expenses, subject to the limit. *Id. at* *13.

Continental attempts to distinguish these cases on the basis that the reinsurance certificates at issue do not contain a preamble or other language stating that Midstates' obligations were "*subject to* the terms, conditions and *amount of liability* (or *limit on liability*) set forth herein." The absence of that boilerplate "subject to . . . limits" language, however, does not undermine the applicability of these cases. While the courts in those cases relied on that preamble as additional support, it was in no way the primary basis for the results that they reached.

The reasons that those courts gave for holding that "reinsurance assumed" or "reinsurance accepted" was a limit on both losses and expenses are equally applicable here. In the reinsurance certificates in those cases, as well as in the reinsurance certificates at issue here, there is a negotiated maximum amount of liability provided for on the face of the reinsurance certificate. That amount is clearly and unambiguously described as "reinsurance accepted" or "reinsurance assumed." Losses and expenses are differentiated only in the follow the fortunes clause. But in determining the amount of reinsurance assumed or accepted the insurer and reinsurer fill-in the negotiated amount that describes the limitations on the reinsurers' obligations. As recognized in *Bellefonte,* the follow the fortunes clause cannot be read to override the monetary limitation in the certificate: "This monetary limitation is a cap on all payments under the certificate." 903 F.2d at 913. The differentiation between losses and expenses and the use of the "in addition thereto language" in that provision, "merely outlines the different components of potential liability under the certificate. It does not indicate that either component is not within the overall limitation." *Id.*

Indeed, in *Excess Insurance Co. v. Factory Mutual Insurance Co.*, the court followed *Bellefonte* and *Unigard* and adopted that reasoning, over a vigorous dissent that insisted that the absence of the "subject to . . .limits" language mandated a different outcome. *See* 3 N.Y.3d at

582–84; *id.* at 585 (Read, J., dissenting). The appellate court recognized, in the opinion that was affirmed by the New York high court in *Excess Insurance*, "[t]he overriding determination in *Bellefonte* and *Unigard* was that the 'follow the fortunes' clauses of the reinsurance certificate considered there coexisted with, and did not supplant, the contract limitations." 769 N.Y.S.2d 487, 490 (App. Div. 2003). The absence of boilerplate "subject to . . . limits" language does not render the reasoning of these cases inapplicable. Nor does it persuade this Court that there is ambiguity, suggesting a different result.

There is one case, *Penn Re, Inc. v. Aetna Casualty & Surety Co.*, that does support Continental's position. No. 85-385-CIV-5, 1987 U.S. Dist. LEXIS 15252 (E.D.N.C. June 30, 1987). In *Penn Re*, the court held that the limitation on reinsurance did not apply to expenses. *Id.* at *20–21. In so doing, the court relied on the argument rejected by *Bellefonte* and its progeny – that the requirement that the reinsurer pay costs "in addition to" losses meant that the limitation on reinsurance did not apply to costs. For the reasons already stated, this Court disagrees with that interpretation. Notably, *Penn Re* was decided before *Bellefonte* and this Court finds the reasoning of *Bellefonte* and later decisions persuasive in rejecting the suggestion that the follow the fortunes clause and its "in addition thereto" language takes expenses outside of the amount of reinsurance assumed.

In the alternative, Continental argues that, if this Court rejects its interpretation of the certificates, the Court should deny judgment on the pleadings because of a latent ambiguity in the reinsurance certificates. Continental relies on *TIG Premier Insurance Co. v. Hartford Accident & Indemnity Co.*, in which the court denied summary judgment on the issue of whether the amount of reinsurance accepted was a limit on costs as well as losses. 35 F. Supp. 2d 348, 350 (S.D.N.Y. 1999). There, the court followed California law, which provides that "even if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible." *Id.* (citations omitted). Accordingly, the court permitted the reinsured to offer extrinsic evidence that "reinsurance accepted" was industry shorthand that set a cap only on the liability damages and not on expenses and that it was standard practice to pay costs that were in addition to the limit on losses. *Id.* at 351.

Midstates counters, citing *Air Safety Inc. v. Teachers Realty Corp.*, to show that Illinois does not adhere to the doctrine of latent ambiguity and would not allow extrinsic evidence where

the language of the contract is unambiguous. *See also Armstrong Paint & Varnish Works v. Continental Can Co.*, 301 Ill. 102, 106 (1921) (applying the four corners rule to initial determinations of integration and ambiguity of a contract). In *Air Safety* the Illinois Supreme Court held that "the four corners rule precludes the consideration of extrinsic evidence where a contract contains an integration clause and is facially unambiguous." 185 Ill. 2d at 466. The Illinois cases that Continental cites regarding latent ambiguity predate *Air Safety*. Since *Air Safety*, however, some appellate courts have allowed the "provisional admission" of evidence to demonstrate a latent ambiguity when there is no integration clause. *See Lease Mgmt. Equip. Corp. v. DFO P'ship*, 392 Ill. App. 3d 678, 686 (1st Dist. 2009) (citing Illinois appellate court decision permitting the provisional admission of extrinsic evidence, but finding the trial court erred by not following the four corners approach).

The short certificates at issue do not contain integration clauses. The question then becomes whether this provides a basis for allowing Continental to present evidence of a latent ambiguity. Assuming that the absence of an integration clause may matter in some cases, the absence of such a clause in these reinsurance certificates does not provide a basis for the provisional admission of extrinsic evidence. Even without integration clauses, the reinsurance certificates are "facially clear, complete, and unambiguous documents." *Air Safety*, 185 Ill. 2d at 463. As the court recognized in *Bellefonte,* "Evidence of industry practice may not be used to vary terms of a contract that clearly sets forth rights and obligations of parties." 757 F.2d at 528.

Continental's argument for the admission of extrinsic evidence was rejected in *Pacific Employers* for reasons that are persuasive to this Court. There, after the court had granted the reinsurer's motion for judgment on the pleadings, the reinsured argued on a motion to reconsider that it should have been allowed to present extrinsic evidence to support its interpretation of the reinsurance certificate. 2010 U.S. Dist. LEXIS 56758, at *14–*15. In rejecting this argument the court noted that

> the broad and unambiguous language of "Item 4" of the Declarations page of the Facultative Certificate clearly encompasses expenses because it defines [the reinsurer's] maximum exposure. The language simply provides $ 1 million total cap on liability for loss payments, expense payments, or any combination thereof. . . . [The reinsured's] alternative interpretation of the Facultative Certificate is unreasonable and merely a veiled attempt to redraft the relevant agreement. Thus, there is no latent ambiguity and the Court appropriately decided this contractual interpretation issue as a matter of law . . .

Id. at *18–19. Here, too, this Court finds that the interpretation of the reinsurance certificates at issue can and should be interpreted as a matter of law, based upon the plain language.

Continental also relies on *International Surplus Lines Insurance Co. v. Fireman's Fund Insurance Co.*, in which the court found a "reinsurance assumed" provision to be ambiguous. No. 88-C-320, 1990 U.S. Dist. LEXIS 12470, *9 (N.D. Ill. September 21, 1990). As Midstates correctly points out, however, the ambiguity issue there was quite different. In that case, the reinsurance certificate contained only a "per occurrence" limit and no "aggregate" limit. *Id.* at *8–9. The court found there to be ambiguity as to whether the amounts listed for reinsurance were intended to be aggregate amounts or per occurrence amounts since, in contrast to the certificates in this case, the word "aggregate" was never used. *Id.* at *9. Continental's reliance on *International Surplus Lines* is therefore misplaced.

Because the certificate is not ambiguous and "reinsurance assumed" limits both losses and expenses, Midstates is entitled to judgment based upon the pleadings.

Conclusion

MidStates' Motion for Judgment on the Pleadings is GRANTED. This is a final and appealable order. The status hearing set for September 10, 2013 at 9:45 a.m. is stricken.

IT IS SO ORDERED.

Entered:

Mary L Mikva 1890

Judge Mary L. Mikva
Circuit Court of Cook County, Illinois
County Department, Chancery Division

ENTERED
JUDGE MARY L. MIKVA 1890
AUG 29 2013
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK