

**STATE OF MICHIGAN
WASHTENAW COUNTY TRIAL COURT**

BEDIVERE INSURANCE
COMPANY, et. al,
Plaintiffs,

v

Case No. 17-563-CB
Hon. Archie C. Brown

TECUMSEH PRODUCTS
COMPANY, et. al.
Defendants.

**OPINION AND ORDER GRANTING
DEFENDANT TECUMSEH PRODUCTS COMPANY LLC'S, FIRST MOTION
THAT CERTAIN PRIMARY POLICIES DO NOT CONTAIN AGGREGATE LIMITS
OF LIABILITY FOR PROPERTY DAMAGE CLAIMS**

Held in Ann Arbor, MI
on March 8, 2019.

This action is before the Court primarily on Defendant's, Tecumseh Products Company, LLC ("Tecumseh"), First Motion That Certain Primary Policies Do Not Contain Aggregate Limits of Liability for Property Damage Claims. Other parties have filed motions, responses, concurrences, objections, etc.

After review of all the documents filed and after hearing oral argument in Court by counsel for the parties, pursuant to MCR 2.116(C)(10), the Court grants Tecumseh's Motion for the reasons set forth below.

Tecumseh's Motion seeks an order establishing that the following Primary Policies issued to Tecumseh do not contain aggregate limits of liability for property damage claims:

Travelers Indemnity Co.	RKSLG1899351
Travelers Indemnity Co.	RKSLG6637087
Travelers Insurance Co.	KSLG650261
Maryland Casualty Co.	R31-900280
Michigan Mutual Insurance Co.	SR320540520
Michigan Mutual Insurance Co.	SR3205405201

The question of whether aggregate limits exist under the above-referenced policies are resolved as a matter of law as the plain language of the policies controls. Summary Disposition is proper when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10). Tecumseh argues that the Court rule that the policy limits of the Primary Insurers are not subject to aggregate limits and the Motion should be granted. Bedivere Insurance argues that the policy limits of the Primary Insurers are subject to aggregate limits and the Motion should be denied.

Several of the excess insurers that had issued comprehensive general liability insurance coverage to Tecumseh brought suit seeking a declaratory judgment regarding Tecumseh's claims insurance coverage for property damage liability at four sites. Included as Defendants in the excess insurers' lawsuit are Tecumseh's primary insurers for the years 1951 to 1987. Tecumseh argues that this opinion and order will resolve the threshold issue of the primary and excess insurers' respective liability for Tecumseh's property damage claims. The dispute exists between the primary carriers and the excess carriers as to whether the Primary Policies contain aggregate limits for property damage claims.

The policies sold by the insurers to Tecumseh are "Comprehensive General Liability" or "CGL" policies. The present issue involves claims for coverage under "Property Damage" coverage. Tecumseh argues that this, and all other types of coverage, are irrelevant for resolution of this motion.

Once the Primary Policies' aggregate limits are exhausted, the Excess Insurers, will assume all payment obligations still due and owing under the Excess Policies for Tecumseh's property damage claims.

Tecumseh argues that if aggregate limits, instead, do not exist under a particular policy, then the Primary Insurers' policy limits will not exhaust on an aggregate basis, and the Excess Insurers will only be liable for claims that exceed the per occurrence limits that are not contested.

The Court finds that, under the express terms of the Primary Policies at issue in this motion, aggregate limits do not apply. The Primary Insurers have unlimited liability under the Primary Policies unless (a) there exist uncontested, per occurrence limits in the Primary Policies and (b) those limits are exhausted with respect to the particular policy in question and a particular site. Only in the event of (a) and (b) do the Excess Policies "kick in."

Beginning in 1964 and continuing through 1977, Tecumseh's Primary Insurers issued policies which provided \$200,000 in coverage per occurrence for property damage. The Declaration pages of these policies refer to a \$200,000 aggregate for property damage arising from operations or generally. Whether aggregate limits exist under the particular Primary Policies in question depends on how the policies were actually rated. To rate a policy means to determine the price of that policy. In rating a policy, an insurance company's underwriters take into account various factors. One possible factor in rating a policy is remuneration, the amount of money paid to employees for their work performed during the policy term. If the amount of remuneration goes up, the policy premiums likely go up. An alternative basis for rating a policy is sales. Under a sales-based rating system, as a company's sales increase policy premiums increase.

None of the policies contain any language indicating that the underwriters used or were authorized to use remuneration figures in the premium calculation. Based on the express terms of Primary Policies, no aggregate limits apply to property damage coverage in this case.

The Primary Policies in this matter contain plain and unambiguous language governing resolution of this motion as a matter of law. The Court further finds that it would construe any ambiguous language, if there were any, in favor of Tecumseh. The Court finds that there is no question of material fact and summary disposition is proper.

The Court finds that, notwithstanding the per occurrence limits that otherwise apply, an aggregate limit applies under the Primary Policies if and only if the operations are rated on a remuneration basis. The Primary Policies at issue in this motion were rated on a sales basis. Therefore, the Court finds that no aggregate limits apply to the property damage claims at issue before the Court.

IT IS ORDERED that Tecumseh's Motion is granted pursuant to MCR2.116(C)(10) as are the parties (Lloyd's, London and London Market Insurers) who sought joinder on Tecumseh's Motion are similarly granted their respective Motions for Partial Summary Disposition.

IT IS FURTHER ORDERED that the policy terms expressly provide that an aggregate limit only applies to property damage claims if the policy is rated on a remuneration basis and the policies in this case were rated on a sales basis. As a result, no aggregate limits apply to the

property damage claims at issue before the Court.

IT IS FURTHER ORDERED that the Court declares that the property damage aggregate limit for premises or operations rated on a remuneration basis does not apply to the property damage claims at issue as to the Travelers, Maryland and Amerisure Primary Policies set forth in this Motion.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Archie C. Brown", written over a horizontal line.

Hon. Archie C .Brown,
Trial Court Judge