

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 11-1961 and 11-2323

NORTH PLAINFIELD BOARD OF EDUCATION,

Appellant

v.

ZURICH AMERICAN INSURANCE COMPANY, and
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

ZURICH AMERICAN INSURANCE COMPANY,

Third-Party Plaintiff

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.,

Third-Party Defendant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 3-05-cv-04398)
District Judge: Honorable Mary L. Cooper

Argued on May 7, 2012

Before: SLOVITER and ROTH, Circuit Judges
and POLLAK*, District Judge

(Opinion filed: May 17, 2012)

William S. Greenberg, Esquire (**Argued**)
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Counsel for Appellant

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Counsel for Appellee

OPINION

ROTH, Circuit Judge:

The North Plainfield Board of Education appeals from the District Court's March 17, 2011 order denying reconsideration of the District Court's May 15, 2008 order denying summary judgment, docketed as No. 11-1961. The Board also appeals from the

*Honorable Louis H. Pollak, Senior Judge of the United States District Judge for the Eastern District of Pennsylvania, sat by designation. Judge Pollak died on May 8, 2012; this opinion is filed by a quorum of the court pursuant to 28 U.S.C. § 46 and the Third Circuit I.O.P. 12.1(b).

District Court's April 13, 2011 final judgment, which dismissed with prejudice the Board's claims against National Union Fire Insurance Company of Pittsburgh, Pennsylvania, docketed as No. 11-2323. Zurich American Insurance Company, a defendant and third-party plaintiff, does not participate in either appeal.

The Board alleged that, pursuant to a claims-made errors and omissions policy, National Union owed it an unlimited duty to defend and indemnify in three underlying actions: 1) *Am. Motorists Ins. Co. v. North Plainfield Bd. of Educ.*, SOM-L-543-05 (N.J. Sup. Ct.), 2) *P.J. Smith Elec. Contractors, Inc. v. North Plainfield Bd. of Educ.*, No. SOM-L-23-05 (N.J. Sup. Ct.), and 3) *D&D Assocs., Inc. v. North Plainfield Bd. of Educ.*, No. 03-1026 (D.N.J.). On May 15, 2008, the District Court issued a Memorandum Opinion and Order denying the Board's motions for summary judgment in all three actions and holding that National Union was obligated to pay up to an aggregate limit of \$100,000 for each of the three actions (i.e., \$300,000 total). On March 17, 2011, the District Court issued an Opinion and Order denying the Board's motion for reconsideration and finding that *Flomerfelt v. Cardiello*, 997 A.2d 991 (N.J. 2010), is not an intervening change in the law. The District Court subsequently entered final judgment.

After consideration of all contentions raised by the Board on appeal, we affirm the April 13, 2011 judgment of the District Court for essentially the reasons set forth in the well-crafted May 15, 2008 and March 17, 2011 opinions of the District Court. Costs are taxed against the Board.