

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED FINANCIAL CASUALTY
COMPANY, a foreign insurer,

Plaintiff,

v.

CHRISTENSEN, INC. GENERAL
CONTRACTOR, a Washington
Corporation; et al.,

Defendant.

CASE NO. 3:19-cv-05658-RBL

ORDER ON PLAINTIFF UNITED
FINANCIAL CASUALTY
COMPANY'S MOTION FOR
SUMMARY JUDGMENT

THIS MATTER is before the Court on Plaintiff United Financial Casualty Company's (UFCC) Motion for Summary Judgment. Dkt. # 31. UFCC initiated this action on July 18, 2019 to obtain a judicial determination of its defense and indemnity obligations in the underlying case of *Ireland v. Christensen, Inc., General Contractor, et al.*, Pierce County Superior Court Cause No. 19-2-07069-8.¹

¹ The original claims against Christensen arising from the subject automobile accident were filed in a subrogation action entitled *Hartford Casualty Insurance Company as subrogee of Leetta Ireland v. Christensen, Inc, General Contractor; John Clark., et al.*, Mason County District Court Case No. 18CV1362. However, that action was dismissed upon Ireland's filing of the Underlying Lawsuit and is no longer at issue.

1 That case was filed after John R. Clark, an employee of Defendant Christensen, Inc.
2 General Contractor,² was involved in an auto accident with Leetta Ireland on April 20, 2016.
3 After Ireland sued Christensen along with Clark, Christensen tendered the claim to UFCC, which
4 agreed to provide defense under a reservation of rights. UFCC now asks the Court to hold that it
5 owes no defense or indemnity obligations under the Policy because Clark was not driving an
6 “insured auto” at the time of the accident.

7 Summary judgment is proper “if the pleadings, the discovery and disclosure materials on
8 file, and any affidavits show that there is no genuine issue as to any material fact and that the
9 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). In determining whether
10 an issue of fact exists, the Court must view all evidence in the light most favorable to the
11 nonmoving party and draw all reasonable inferences in that party’s favor. *Anderson Liberty*
12 *Lobby, Inc.*, 477 U.S. 242, 248-50 (1986) (emphasis added); *Bagdadi v. Nazar*, 84 F.3d 1194,
13 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is sufficient evidence
14 for a reasonable factfinder to find for the nonmoving party. *Anderson*, 477 U.S. at 248. The
15 moving party bears the initial burden of showing that there is no evidence which supports an
16 element essential to the nonmovant’s claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).
17 Once the movant has met this burden, the nonmoving party then must show that there is a
18 genuine issue for trial. *Anderson*, 477 U.S. at 250.

19 “Interpretation of an insurance contract is a question of law.” *Woo v. Fireman's Fund Ins.*
20 *Co.*, 161 Wash. 2d 43, 52 (2007). Terms are to be interpreted as the “average person purchasing
21 insurance” would understand them. *Id.* While the insured has the burden of proving that claims

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23 ² Although Kevin and Barbara Christensen are also Defendants in this matter, Christensen, Inc.
24 was the UFCC policyholder and is the focus of this case. Consequently, the Court’s use of the
term “Christensen” refers to the company, not the individuals.

1 fall within a grant of coverage, the insurer has the burden of proving that an exclusion bars
2 coverage. *See McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 731 (1992).

3 An insurer’s duty to defend is broader than its duty to indemnify, which “exists only if
4 the policy *actually covers* the insured’s liability.” *Woo*, 161 Wash. 2d at 53. In contrast, the duty
5 to defend is triggered “if the insurance policy *conceivably covers* the allegations in the
6 complaint.” *Id.* This determination is made by considering “the four corners of the complaint and
7 the four corners of the insurance policy.” *Webb v. USAA Cas. Ins. Co.*, 457 P.3d 1258, 1265
8 (Wash. Ct. App. 2020) (quoting *Expedia, Inc. v. Steadfast Ins. Co.*, 180 Wash.2d 793, 806
9 (2014)). “If the complaint is ambiguous, it must be construed liberally in favor of triggering a
10 duty to defend.” *Id.* at 1266.

11 “When the facts or the law affecting coverage is disputed, the insurer may defend under a
12 reservation of rights until coverage is settled in a declaratory action.” *Am. Best Food, Inc. v. Alea*
13 *London, Ltd.*, 168 Wash. 2d 398, 405 (2010). The insured “must defend until it is clear that the
14 claim is not covered.” *Id.* Under this approach, “the insured receives the defense promised and, if
15 coverage is found not to exist, the insurer will not be obligated to pay.” *Id.* (quoting *Truck Ins.*
16 *Exch. v. Vanport Homes, Inc.*, 147 Wash. 2d 751, 761 (2002)). However, unless the policy
17 provides for reimbursement of defense costs, the insurer cannot recover money spent on defense
18 prior to a judicial declaration of non-coverage. *Nat’l Sur. Corp. v. Immunex Corp.*, 162 Wash.
19 App. 762, 778 (2011), *aff’d*, 176 Wash. 2d 872 (2013).

20 Ireland’s original complaint is short and conclusory, but it does allege that Clark
21 negligently caused the auto accident while acting within the scope of his employment with
22 Christensen. Dkt. # 34-2 at 3. The amended complaint adds an allegation that Christensen was
23 liable for the accident because it negligently trained and/or supervised Clark. Dkt. # 34-3 at 3.

1 Ireland makes no allegations about the type or ownership of the vehicle Clark was driving at the
2 time.

3 As for the Policy, Christensen's Policy with UFCC contains the following coverage
4 provision:

5 Subject to the Limits of Liability, if you pay the premium for liability coverage
6 for the insured auto involved, we will pay damages, other than punitive or
7 exemplary damages, for bodily injury, property damage, and covered pollution
8 cost or expense, for which an insured becomes legally responsible because of an
9 accident arising out of the ownership, maintenance or use of that insured auto.
10 However, we will only pay for the covered pollution cost or expense if the same
11 accident also caused bodily injury or property damage to which this insurance
12 applies.

13 We will settle or defend, at our option, any claim or lawsuit for damages covered
14 by this Part I. We have no duty to settle or defend any lawsuit, or make any
15 additional payments, after the Limit of Liability for this coverage has been
16 exhausted by payment of judgments or settlements.

17 Dkt. # 34-4 at 6. The Policy defines "insured auto" or "your insured auto" as:

- 18 (1) Any auto specifically described on the declarations page; or
- 19 (2) An additional auto for Part I - Liability To Others and/or Part II - Damage To Your
20 Auto on the date you become the owner if:
 - 21 a. you acquire the auto during the policy period shown on the declarations page;
 - 22 b. we insure all autos owned by you that are used in your business;
 - 23 c. no other insurance policy provides coverage for that auto; and
 - 24 d. you tell us within 30 days after you acquire it that you want us to cover it for
that coverage.
- (3) Any replacement auto on the date you become the owner if:
 - a. you acquire the auto during the policy period shown on the declarations page;
 - b. the auto that you acquire replaces one specifically described on the
declarations page due to termination of your ownership of the replaced auto or
due to mechanical breakdown of, deterioration of, or loss to the replaced auto
that renders it permanently inoperable; and
 - c. no other insurance policy provides coverage for that auto.
- (4) Trailers designed primarily for travel on public roads, while connected to your
insured auto that is a power unit;

1 (5) Mobile equipment while being carried or towed by an insured auto; and

2 (6) Any temporary substitute auto, . . . [which] means any auto you do not own while
3 used with the permission of its owner as a temporary substitute for an insured auto
4 that has been withdrawn from normal use due to breakdown, repair, servicing, loss or
5 destruction.

6 Dkt. # 34-4 at 2-3, 5, & 7. The only auto listed on the Policy's declarations page is a 2003 GMC
7 C7C, VIN No. 1GDK7E1C13F521896. *Id.* at 2. The "Related Driver" is Clark. *Id.* at 1.

8 UFCC was right to defend Christensen under a reservation of rights. Ireland's allegation
9 that Clark was acting as a Christensen employee when the accident occurred and her failure to
10 describe the vehicle made it conceivable that Clark was driving an "insured auto." Because
11 UFCC was not entitled to consider extrinsic facts when Ireland sued, the complaint triggered
12 UFCC's duty to defend.

13 However, further investigation reveals that Clark's accident with Ireland was not covered
14 under the Policy. Clark was driving a 1986 Chevrolet C2500 pick-up truck, VIN No.
15 2GCEC14H9G1211179, and towing a Christensen-owned trailer when he collided with Ireland.
16 Police Report, Dkt. # 34-1; Christensen (30)(b)(6) Dep., Dkt. # 35-2, at 29. Neither was included
17 on the Policy's declarations page. The vehicles also do not meet any other definition of an
18 "insured auto." The 1986 Chevrolet was not an "additional auto" or "replacement auto" because
19 it was not owned by Christensen (among other reasons). Christensen (30)(b)(6) Dep. at 24. It was
20 also not a "temporary substitute auto" because Clark was not driving it to replace an inoperable
21 Christensen vehicle. *Id.* at 25. And because the 1986 Chevrolet was not an "insured auto," the
22 Christensen-owned trailer was also not covered because it was not being towed by an "insured
23 auto." There was therefore no coverage for the accident.

24 Christensen does not contest that there is no coverage under the Policy's language.

However, Christensen does argue that its insurance broker, Nicholson and Associates,

1 represented that the UFCC Policy would cover Clark whenever he was pulling a trailer.
2 Opposition, Dkt. # 37, at 2. According to Christensen, these representations are binding on
3 UFCC and supersede the Policy language under Washington law. *See T-Mobile USA Inc. v.*
4 *Selective Ins. Co. of Am.*, 194 Wash. 2d 413, 420 (2019) (“[A]n insurance company is bound by
5 all acts, contracts, or representations of its agent, whether general or special, which are within the
6 scope of [the agent’s] real or apparent authority . . .”).

7 Christensen’s argument misconstrues both law and facts. First, *T-Mobile* does not hold
8 that *any* representation by an insurance broker magically binds the insurance company. Rather,
9 the Ninth Circuit had already held that the defendant was “an insurance company, that it had an
10 agent, and that the agent acted with apparent authority when it issued the certificate to T-Mobile
11 USA” that made the disputed representations. *Id.* at 420-21. Here, Christensen presents no
12 evidence or arguments that Nicholson had authority to make binding representations about the
13 UFCC Policy.

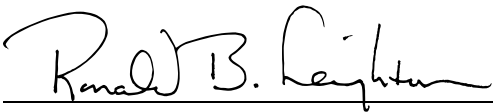
14 Second, even if Nicholson had such authority, there is no evidence of a representation
15 that Clark was covered when pulling a trailer using *any* vehicle at all. In fact, according to Kevin
16 Christensen’s declaration, “Nicholson selected the coverage and told [Christensen] to not allow
17 Mr. Clark to drive vehicles other than the 2003 GMC.” Dkt. # 38 at 3. The emails between
18 Christensen and Nicholson also do not represent that Clark was covered while pulling trailers
19 with his personal vehicle. Instead, Christensen presents an exchange from March 15, 2016
20 discussing Clark’s recent traffic citation and inability to drive the 2003 GMC. Dkt. # 39, Ex. B.
21 Christensen’s office administrator states, “We don’t want to suspend the coverage for the truck,
22 just the ability for Johnny [Clark] to drive it, as HE can’t.” *Id.* At no point does Nicholson make
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1 any representations about Clark’s unconditional coverage when pulling a trailer. Indeed, these
2 emails reinforce the idea that the UFCC Policy only covers Clark while driving the 2003 GMC.

3 UFCC’s Motion is for Summary Judgment is GRANTED. UFCC has no indemnification
4 or defense obligations to Christensen or Clark under its Policy in the underlying lawsuit filed by
5 Ireland.

6 IT IS SO ORDERED.

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8 Dated this 21st day of July, 2020.

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11 Ronald B. Leighton
12 United States District Judge
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