

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

HLTH CORPORATION and)
EMDEON PRACTICE SERVICES, INC.,)
) C.A. No. 07C-09-102 RRC
)
)
) Plaintiffs,)
)
)
) v.)
)
)
) AXIS REINSURANCE COMPANY)
) CERTAIN UNDERWRITERS AT LLOYD’S,)
) LONDON)
) FEDERAL INSURANCE COMPANY,)
) FIREMAN’S FUND INSURANCE)
) COMPANY,)
) NATIONAL UNION FIRE INSURANCE)
) COMPANY OF PITTSBURGH, PA,)
) NEW HAMSPHIRE INSURANCE)
) COMPANY,)
) OLD REPUBLIC INSURANCE COMPANY,)
) RSUI INDEMNITY COMPANY)
) SAFECO COMPANY OF AMERICA,)
) and)
) ZURICH AMERICAN)
) INSURANCE COMPANY,)
)
) Defendants.)
)

Submitted: September 20, 2009
Decided: September 30, 2009

Upon National Union Fire Insurance Company of Pittsburgh, PA.’s Motion for Clarification.

DENIED.

ORDER

COOCH, J.

This 30th day of September, 2009, upon consideration of defendant, National Union Fire Insurance Company of Pittsburgh, PA.'s Motion for Clarification of the Court's "Prior Acts" Opinion dated August 31, 2009, it appears to the Court that:

1. On August 31, 2009, the Court issued an opinion denying defendant insurers' Motion for Summary Judgment, which argued that a "Prior Acts" Exclusion contained within a Directors and Officers ("D&O") insurance policy should bar advancement of defense costs for directors and officers charged with criminal offenses in South Carolina. The opinion,¹ which the parties refer to as the "Prior Acts Order" (because on August 31, 2009 the Court issued a related opinion referred to as the "Prior Notice Order"²), held that the Prior Acts Exclusion did not bar advancement of defense costs because defendant insurers "failed to meet [their] burden of establishing that the Prior Acts Exclusion acts as a "clear and unambiguous" bar to [Plaintiffs'] claims for coverage because, bearing the burden, [defendant insurers have] failed to satisfactorily reconcile the conflicting terms of the Prior Acts Exclusion and Endorsement 13."³

¹ Dkt 267

² Dkt 268

³ *HLTH Corp. v. Clarendon Nat'l Ins. Co.*, 2009 WL 2849777, at *23 (Del. Super. Aug. 31, 2009).

2. Defendant, National Union Fire Insurance Company of Pittsburgh, PA., filed the instant “Motion for Clarification” on September 10, 2009. Defendant argues that the motion should be granted because “[the] Court’s Prior Acts Order deemed the National Union policy ambiguous.”⁴ Defendant argues that, as a result of this holding, further discovery is needed to “explore the grounds for Plaintiffs’ allegations of unlimited coverage.”⁵ Defendant alleges that the parties have never had the opportunity to pursue discovery and that discovery is needed to determine whether the insurance policy at issue is “ambiguous.”⁶

3. In response, Plaintiffs HLTH Corporation (“HLTH”) and Emdeon Practice Services, Inc. (collectively, “Plaintiffs”) argue that the motion is untimely and that further discovery is not needed because National Union never previously asserted the need for more discovery, agreed that the Court should decide the case “entirely based upon the existing record of uncontested material facts[,]” and “entered into a stipulation of facts with Plaintiffs[.]”⁷ Alternatively, Plaintiffs argue that the Court did not rely on any ambiguity in holding that the “Prior Acts” exclusion did not bar advancement of defense costs to the directors and officers and only held that Defendants failed to carry their burden of proof in showing that the exclusion applied.⁸ Finally, Plaintiffs assert that Defendant’s motion “is an attempt to

⁴ Def. Mot. for Clarification, Docket Item (“D.I.”) 272, at 2.

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ Pls. Opp’n to Mot. for Clarification, D.I. 283, at 1.

⁸ *Id.* at 2-3.

rewrite the long established rule that when a policy is ‘ambiguous or unclear,’ ‘the issue of coverage must be resolved in favor of the insured[.]’”⁹

4. In denying Defendant’s Motion, the Court need not reach the merits of the motion because the Court holds that the Motion for Clarification is a Motion for Reargument pursuant to Superior Court Rule 59(e).¹⁰ Pursuant to Superior Court Rule 59(e), “[a] motion for reargument shall be served and filed within 5 days after the filing of the Court’s opinion or decision.” In the present case, Defendant’s Motion was filed on September 10, 2009, which is a date beyond the time frame prescribed by Rule 59(e).

5. Therefore, because Defendant has failed to comply with the requirements of Superior Court Rule 59(e), Defendant’s Motion for Clarification is **DENIED**.
IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary

⁹ *Id.* at 3 (citing *HLTH Corp.*, 2009 WL 2849777, at *23).

¹⁰ *See Energy Partners, Ltd. v. Stone Energy Corp.*, 2006 WL 2947483, at *5 (Del. Ch. Oct. 11, 2006) (holding a motion for clarification amounts to a motion for reargument); *Cede & Co. v. Technicolor, Inc.*, 1994 WL 1753202, at *1 (Del. Ch. Dec. 6, 1994) (stating a motion for clarification is a motion for reargument and must follow the same time frame for filing).