

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

NARINDER G. SINGH, M.D.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 05C-04-228 WCC
)	
PROFESSIONAL UNDERWRITERS)	
LIABILITY INSURANCE COMPANY,)	
)	
Defendant.)	

Submitted: June 14, 2010
Decided: September 10, 2010

Upon Defendant's Motion for Summary Judgment - **GRANTED**

OPINION

Robert D. Goldberg, Esquire; Victor F. Battaglia, Sr., Esquire; Biggs & Battaglia, 921 Orange Street, P.O. Box 1489, Wilmington, DE 19801-1489. Attorneys for Plaintiff.

David R. Hackett, Esquire; Griffin & Hackett, P.A., 116 W. Market Street, P.O. Box 612, Georgetown, DE 19947. Attorney for Defendant.

CARPENTER, J.

Before this Court is Defendant Professional Underwriters Liability Insurance Company's ("Defendant" or "PULIC") Motion for Summary Judgment to dismiss the Complaint for Declaratory Judgment brought forth by Plaintiff Narinder Singh, M.D. ("Plaintiff" or "Dr. Singh") seeking a judgment declaring that PULIC must pay for the cost associated with defending a third-party contract action asserted against the doctor in a case filed in Pennsylvania by PULIC against their insurance broker. For the reasons set forth below, this Court hereby grants the Motion for Summary Judgment.

Facts

PULIC issued a professional liability insurance policy, Policy No. P90709-01 ("Policy"), effective March 1, 2000 to Narinder Singh, M.D. Thereafter, a medical negligence lawsuit was filed by Helen Zakrzewski ("Zakrzewski") against Dr. Singh in Delaware Superior Court. Subsequent to Zakrzewski's filing, PULIC attempted to rescind the Policy in October 2000 based on misrepresentations, omissions and/or concealment of facts in the insurance application relating to the claims history for Dr. Singh and other matters critical to underwriting the Policy.

Dr. Singh then filed a Declaratory Judgment Action against PULIC for breach of contract and sought to reinstate the Policy. In April 2002, the parties resolved the Declaratory Judgment Action with PULIC agreeing to reinstate the Policy for the

Zakrzewski claim only with a mid-term cancellation effective November 10, 2000, and PULIC also agreed to reimburse Dr. Singh for his litigation expenses and attorney's fees in the defense of the Zakrzewski action. In exchange, Dr. Singh agreed to voluntarily dismiss the Declaratory Judgment Action and executed a release regarding all other claims.

After PULIC paid out the one million dollar policy limit in the Zakrzewski claim, they subsequently filed a suit in Pennsylvania against the wholesale insurance brokerage, Swett and Crawford of Pennsylvania ("S&C"), claiming they failed to provide true and correct information in relation to Dr. Singh's application. S&C in turn joined Dr. Singh in a third-party complaint seeking indemnification and contribution from Dr. Singh. Dr. Singh then filed this Declaratory Judgment action seeking an order that PULIC must defend the third-party claim asserted against him by S&C pursuant to the Policy and Release. Subsequently, PULIC filed this Motion for Summary Judgment.

Parties' Contentions

PULIC contends that Dr. Singh generally released it from any and all claims except the Zakrzewski medical malpractice claim; and therefore PULIC has no duty to defend him in this third-party claim.¹

¹ See Def.'s Mot. for Summ. J. ¶¶ 8, 17.

Dr. Singh argues that PULIC must provide a defense and indemnify him because the third-party complaint relates to the underlying Zakrzewski claim in which PULIC agreed in the prior settlement to pay for expenses related to that claim.² Furthermore, they argue that PULIC cannot indirectly reclaim funds expended to defend Dr. Singh in the Zakrzewski malpractice case through this third-party action.³

Standard of Review

When considering a motion for summary judgment the Court must determine whether there is a genuine issue as to any material fact.⁴ It is the burden of the moving party to demonstrate that the legal claims are supported by undisputed facts.⁵ If the moving party properly supports his claims, the burden then shifts to the nonmoving party to demonstrate that there are issues of material fact to be resolved by a fact-finder.⁶ The Court must view the evidence in a light most favorable to the nonmoving party.⁷ However, when the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.⁸

² See Pl.'s Resp. Mot. for Summ. J. ¶¶ 7-8.

³ *Id.* at ¶¶ 9-11.

⁴ Super. Ct. Civ. R. 56(c).

⁵ *HCR-ManorCare v. Fugee*, 2010 WL 780020, at *3 (Del. Super. Jan. 26, 2010).

⁶ *Fugee*, 2010 WL 780020, at *3.

⁷ *Id.*

⁸ *Id.*

Discussion

Prior to addressing the present motion, it is important to note that the dispute before this Court is solely for monies already expended to defend Dr. Singh in the two Pennsylvania actions that related to the application for medical malpractice insurance for Dr. Singh. Both cases have been dismissed and thus, there currently is no pending or anticipated future litigation in this matter.

Defendant contends that Dr. Singh generally released PULIC from “any and all bad faith actions or extra-contractual claim(s)...”⁹ Conversely, Plaintiff contends PULIC must still provide a defense because the Release is not a general release but rather a specific release. It is well-settled Delaware law that a “general release” does not specifically identify each and all of the obligations it extinguishes while a “specific release” identifies each of the intended extinguished claims.¹⁰ In construing a release, the intent of the parties as to its scope and effect are controlling, and the court will attempt to ascertain their intent from the overall language of the document.¹¹

⁹ App. to Def’s Mot. for Summ. J. A-23.

¹⁰ *McDougall v. Air Products & Chemicals, Inc.*, 2005 WL 2155230, at *8 (Del. Super. Aug. 31, 2005).

¹¹ *Corporate Prop. Assoc. v. Hallwood Group Inc.*, 817 A.2d 777, 779 (Del. 2003) (citing *Adams v. Jankouskas*, 452 A.2d 148, 156 (Del. 1982)).

When considering the Release as a whole, the Court concludes that the intent of the parties was to release PULIC of all claims, except those related to the Zakrzewski malpractice action. The pertinent paragraph states:

In executing this Settlement Agreement and Release, the undersigned acknowledges that he has received consideration from or on behalf of the released parties as follows: PULIC agrees to reinstate the undersigned's professional liability insurance policy for one claim – the Zakrzewski claim – with a mid-term cancellation, effective November 10, 2000, providing the undersigned with a total of one million dollars in available coverage for the Zakrzewski claim, as well as the payment of the future defense costs, including attorneys' fees and litigation expenses.”¹²

The Court believes this release language suggests that the parties mutually agreed that PULIC was only obligated to defend the Zakrzewski medical malpractice claim. Additional language stating Dr. Singh “expressly releases any and all bad faith actions or extra-contractual claim(s)...” further indicates that the parties intended a general release of all claims not related to the Zakrzewski medical malpractice action. Based upon the Release language and the intent of the parties derived from the Release itself, the Court cannot find that the Release is ambiguous. As such, the Court finds that under the Release PULIC was generally released by Dr. Singh of all claims, except those directly related to the Zakrzewski malpractice action.

¹² App. to Def's Mot. for Summ. J. A-24.

Furthermore, Plaintiff does not suggest that the Release language is ambiguous, but instead takes the position that the third-party claim arises out of the Zakrzewski malpractice action and therefore the Defendant must provide a defense under the Policy.¹³ Although some relationship to the Zakrzewski claim can be found, the two claims are not of the same nature or directly related and instead are two separate and distinct causes of action. The original claim brought forth by Zakrzewski was a medical malpractice claim against Dr. Singh. However, the cause of action here involves a contract dispute between an insurance company and its broker regarding the failure to provide accurate information to the company relating to an application for insurance. While it is true that PULIC was attempting to recover in the Pennsylvania litigation the losses suffered by its payout of the policy limits relating to the malpractice claim involving Zakrzewski, this fact alone does not bring it under the umbrella of claims covered by the settlement of the Declaratory Judgment Action. There is a clear distinction between a claim for the failure to meet one's standard of medical practice and a claim for providing false or misleading information on an application for insurance. While all of the litigation has the same underlying genesis, the litigation claims are different and beyond the obligation PULIC agreed to provide.

¹³ Pl.'s Resp. Mot. for Summ. J. ¶¶ 7-8; the duty to defend language is found under the Policy.

Accordingly, the Court finds there is no duty to defend Dr. Singh in this third-party claim.

Furthermore, even if the Court were to find this third-party contract claim was related to the Zakrzewski claim, the Plaintiff's Complaint would still fail to survive this motion for summary judgment. The duty to defend language in the Policy clearly indicates that coverage will only extend to claims for medical malpractice against Dr. Singh acting in his capacity as a doctor in family and general medicine, excluding surgery.

The duty to defend language is found in Section I(B)(1) of the Policy, stating:

Subject to the Insured's compliance with the terms of this Policy and subject to the Limits of Liability as defined, and subject to the deductible provisions stated, *the Company will defend any Claim against the Insured reported to the Company during the Claims Reporting Period, even if the allegations of the Claim are groundless, false or fraudulent*¹⁴ (emphasis added).

The Policy goes on to define "Claim" in Section IX(A)(1):

"Claim" means both the receipt by the Insured of written notice received from the injured party or a representative of the injured party and a written notice filed by the Insured and received by the Company that alleges Damages to an injured party from an Incident, provided the Incident occurred during and is received by the Company during the Claims Reporting Period; the Company requires that the written notice contain a

¹⁴ App. to Def's Mot. for Summ. J. A-12.

description of specific events, the nature of the possible Injury, and the alleged error or omission¹⁵ (emphasis added).

Furthermore, “Incident” is “any act or omission which is part of the performance of Professional Service.”¹⁶ Lastly the Policy defines “Professional Services” as:

...services rendered by physicians or surgeons in the practice of the professional specialty designated in the Declarations, including services as a member of a county or state medical professional society and a member of a committee on the staff of any hospital accredited by the Joint Commission of Accreditation of the American Medical Association and American Hospital Association¹⁷ (emphasis added).

Based upon the language of the Policy and a review of the “Declaration”¹⁸ enacted between Dr. Singh and PULIC, Dr. Singh’s insurance coverage is limited and specific to medical malpractice claims against Dr. Singh in “Family/General Medicine – No Surgery.” Therefore, any non-medical malpractice claim not related to Dr. Singh’s practice of family or general medicine, would not obligate PULIC to defend.

While the Court acknowledges the Plaintiff’s concern that the Defendant is trying to reclaim monies expended to defend the Zakrzewski claim in a roundabout way,¹⁹ their action was against the broker and not directly against Dr. Singh. If these

¹⁵ *Id.* at A-18.

¹⁶ *Id.* at A-19.

¹⁷ *Id.*

¹⁸ *Id.* at A-4.

¹⁹ See *Lutz v. Boltz*, 100 A.2d 647, 648 (Del. Super. 1953) (holding that a contrary ruling would render the plaintiff indirectly liable for a claim upon which the plaintiff cannot be held directly liable).

actions had progressed to the point where PULIC was recovering money from Dr. Singh, the Court would have had a more difficult decision to resolve. However, that did not occur as the Pennsylvania matters were dismissed, and furthermore any judgment would have reflected the doctor's misconduct with the insurance broker and not his relationship with PULIC. As such, the Court cannot find that this third-party contract claim is sufficiently related to the Zakrzewski claim or covered under the Policy and therefore cannot find PULIC has a duty to pay money expended to defend the third-party action.

Conclusion

For the foregoing reasons, this Court hereby GRANTS the Defendant's Motion for Summary Judgment.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.