

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

POTOMAC INSURANCE)
COMPANY OF ILLINOIS,)
)
Plaintiff,)
)
v.)
)
CORPORATE INTERIORS OF)
DELAWARE, INC.,)
CORPORATE INTERIORS INC.,)
RAYMOND DELLA VELLA,)
WILLIAM CRAZO AND)
LOCAL 98, INTERNATIONAL)
BROTHERHOOD OF)
ELECTRICAL WORKERS)
)
Defendants.)

C.A. No. 01C-01-54 WCC

Submitted: May 4, 2001
Decided: November 1, 2001

MEMORANDUM OPINION

On Plaintiff Potomac Insurance Company's
Motion for Judgment on the Pleadings. **DENIED.**

On Defendant Corporate Interiors of Delaware Inc.'s
Motion for Judgment on the Pleadings. **GRANTED.**

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Cathy L. Reese, Andrea J. Faraone, Blank Rome Cominsky & McCauley LLP., Chase Manhattan Centre, 1201 N. Market Street, Suite 2100, Wilmington, DE 19801, Attorneys for Defendant, Corporate Interiors of Delaware, Inc.

CARPENTER, J.

INTRODUCTION

Plaintiff in this action, Potomac Insurance Company of Illinois (hereinafter “Potomac”) and Defendant, Corporate Interiors of Delaware, Inc., (hereinafter “Corporate Interiors”) have filed cross motions for judgment on the pleadings pursuant to Delaware Superior Court Civil Rule 12(c).¹ Potomac is the insurance carrier of Corporate Interiors and Corporate Interiors is a defendant in another pending lawsuit involving Local 98 International Brotherhood of Electrical Workers (hereinafter “Local 98”), a labor organization, and two of its members, Raymond Della Vella (hereinafter “Della Vella”) and William Crazo (hereinafter “Crazo”). In this action, Potomac seeks a declaratory judgment that Potomac “has no duty to defend” Corporate Interiors in the other pending lawsuit.² Similarly, Corporate Interiors seeks a declaratory judgment that Potomac is duty bound under its policy

¹ Super. Ct. Civ. R. 12(c) provides that “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.”

² Plaintiff’s Motion for Entry of Judgment on Pleadings at 3.

to defend Corporate Interiors. For the reasons set forth below, Potomac’s motion for judgment on the pleadings is **DENIED**, and Corporate Interior’s motion for judgment on the pleadings is **GRANTED**.

FACTS

On March 16, 1998, Della Vella and Crazo, members of Local No. 98, commenced handbilling activities at First USA, a Bank One Company (hereinafter “First USA”) to elicit support of the general public to boycott First USA’s banking activities. Apparently, First USA had hired a contractor who paid less than the prevailing area wages enjoyed by Delaware electricians and the handbilling activity was intended to inform the public of that situation. Corporate Interiors had been hired as a subcontractor to perform installation functions at First USA’s facilities in Wilmington, Delaware. On April 6 and 7, 1998, under the direction of a First USA employee, employees of Corporate Interiors allegedly accosted, harassed, confronted, threatened, shoved and pushed members of Local 98 engaged in the handbilling activity”³ for the purpose of intimidating and coercing those members. This conduct subsequently lead to Local 98, Della Vella and Crazo filing suit against First USA and

³ Local 98's Complaint at 4.

Corporate Interiors.⁴

⁴ *Local No. 98 v. First USA and Corporate Interiors*, Del. Super. C.A. No. 99C-11-114, Carpenter, J. (Oct. 31, 2001)(Mem. Op.).

On June 21, 2000 the Court considered Corporate Interiors' Motion to Dismiss Local 98's Complaint and dismissed all of the claims, with the exception of counts one, two, eight and nine.⁵ The Court reserved decision on the motion to dismiss counts one and two and after further briefing subsequently issued a written opinion denying that motion.⁶ As such, there remains four claims in Local 98's complaint to be litigated.

If the policy issued by Potomac to Corporate Interiors is enforced, they are obligated to defend them in the related litigation and potentially indemnify them if liability is established.⁷ However, the insurance policy as it relates to bodily injury and property damage excludes coverage for "expected or intended" injury stating in pertinent part that:

[t]his insurance does not apply to: (a.) Expected or intended injury.

Bodily injury or property damage expected or intended from the stand point of the insured. This exclusion does not apply to "bodily injury"

⁵ Count one and two allege common law civil conspiracy claims, whereas counts eight and nine allege common law assault claims.

⁶ *Local No. 98 v. First USA and Corporate Interiors*, Del. Super. C.A. No. 99C-11-114, Carpenter, J. (Oct. 31, 2001)(Mem. Op.).

⁷ The contract states that "[w]e will pay those sums that the insured becomes legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies." Coverage Form at §I.1.a.

resulting from the use of reasonable force to protect persons or property.⁸

It is the application of this exclusion to the claims made against Corporate Interiors that is the crux of this dispute.

Corporate Interiors asserts that Potomac is duty bound to defend them in the underlying lawsuit by Local 98 for several reasons. First, Corporate Interiors claim that this Court must look to the allegations in the underlying complaint to determine whether or not Potomac has a duty to defend. Therefore, according to Corporate Interiors, because the Local 98 Complaint contains allegations of negligence, under counts eight and nine, Potomac must continue to defend Corporate Interiors in the Local 98 lawsuit.

Potomac contends that it no longer has a duty to defend Corporate Interiors because the only remaining counts in the Local 98 lawsuit are assault and conspiracy claims. Potomac argues that regardless of the presence of the words “negligent” and “reckless” in the complaint as it relates to the assaultive conduct, such assertions cannot be legally sustained. As such, Potomac contends since the only legally sufficient conduct remaining in the complaint is an intentional tort, the policy exclusions would apply. Potomac further asserts that Corporate Interiors’ claim of

⁸ Commercial General Liability Coverage Form, page 1, at ¶ 2.a.

self-defense is essentially without merit, as the Local 98 complaint, according to Potomac, does not set forth any facts to infer self defense.

STANDARD OF REVIEW

A party is entitled to judgment on the pleadings when, accepting the well pleaded facts admitted in the pleadings to be true, there is no material fact in dispute and the moving party is entitled to judgment under the law. On such a motion, the nonmoving party is entitled to the benefit of any inferences that may fairly be drawn from the nonmoving party's pleading.⁹ Thus, on a motion for judgment on the pleadings, the Court may consider both the Complaint and the Answer.¹⁰ A motion for judgment on the pleadings "shall be treated as one for summary judgment and disposed of as provided in Delaware Superior Court Civil Rule 56."¹¹ A summary judgment will be granted when, in viewing the record in the light most favorable to the non-moving party, the movant has shown that no genuine issues of material fact exist and that the movant is entitled to judgment as a matter of law.¹² In a case

⁹*Harman v. Masoneilan Intern., Inc.*, Del. Supr., 442 A.2d 487 (1982); *Du Pont v. Du Pont*, Del. Supr., 90 A.2d 467 (1952).

¹⁰ *See Warner Comm., Inc. v. Chris-Craft Industries*, Del. Ch., 583 A.2d 962, 965 (1989)(holding that a motion for judgment on the pleadings will not be granted, unless it appears to a reasonable certainty that under no set of facts that could be proven under the allegations of the Answer would plaintiffs' claim be defeated.).

¹¹ Super. Ct. Civ. R. 12(c).

¹² Super. Ct. Civ. R. 56(c).

involving cross motions for summary judgment the parties implicitly concede the absence of material factual disputes and acknowledge the sufficiency of the record to support their respective motions.¹³

DISCUSSION

¹³ *Browning-Ferris, Inc. v. Rockford Enters, Inc.*, Del. Super., 642 A.2d 820 (1993).

An insurer's duty to defend is generally limited to suits that assert claims for which it has assumed liability under the policy.¹⁴ When determining whether a third party's action against the insured states a claim covered by the policy, this Court must look to the allegations plead in the underlying complaint.¹⁵ The test then becomes, whether or not the complaint alleges a risk within the coverage of the policy.¹⁶ If there is any doubt as to whether the complaint against the insured alleges a risk insured against, that doubt should be resolved in favor of the insured, and any

¹⁴ *Continental Casualty Co, v. A.I. duPont School District*, Del. Supr., 317 A.2d 101, 103 (1974)(citing 44 Am.Jur.2d, *Insurance*, § 1535; 7A Appleman, *Insurance Law and Practice*, § 4684 (1962); 14 Couch on *Insurance*, § 51:143 (2d Ed. 1965).

¹⁵ *Continental* at 103.

¹⁶ *Id.*

ambiguity in the pleadings should be resolved against the carrier.¹⁷ Further, even if only one count or only one theory of a plaintiff's complaint lies within the coverage of the policy, the carrier's duty to defend the insured arises.¹⁸

¹⁷ *Id.* at 105.

¹⁸ *National Union Fire Insurance Co. of Pittsburgh v. Rhone-Poulenc Basic Chemicals Co.*, Del. Super. C.A. 87C-SE-11, 1992 WL 22690, Poppiti, J. (Jan. 16, 1992) at *15; *See also Jackson TP. ETC. v. Hartford Acc. & Indem.*, N.J. Super., L., 451 A.2d 990, 995 (1982)(holding that when there are claims against an insured alleging intentional and willful actions, the carrier is not excused from its duty to defend, for if the claims are mixed or based on conflicting theories, one which requires coverage and one which does not, the carrier has no choice, it must defend.”).

In this case, the parties dispute centers around whether Potomac has a duty to defend and indemnify Corporate Interiors because the allegations in the complaint of the underlying lawsuit against Corporate Interiors contain causes of action that are traditionally intentional acts. However, whether by mistake or intentionally those actions have also been couched in terms of negligence and recklessness. While the parties to this litigation may question the sufficiency or legality of the allegations made by the Local 98 plaintiffs, the Court at this juncture is required to accept them as plead. As the Supreme Court of Delaware held in *American Insurance Group v. Risk Enterprise Management Limited*¹⁹ when the Court is required to determine whether the duty to defend exists, it “typically looks to the allegations of the complaint to decide whether the third party’s action against the insured states a claim covered by the policy,” thereby triggering the duty to defend.²⁰ Since the complaint of Local 98 plaintiffs contains multiple theories of liability of which one is potentially

¹⁹ *American Insurance Group v. Risk Enterprise Management Limited*, 761 A.2d 826, 829 (2000).

²⁰ *Id.*

covered under the policy, the Court finds that Potomac presently has a duty to defend Corporate Interiors in the related litigation.²¹

The Court recognizes that this is one of those unique circumstances where the appropriate course of action to take on behalf of the insurance company is not in the best interest of the insured client. Logic would dictate that the appropriate action by counsel would be to have the Court address the legality of the claim of “reckless” or “negligent” assault through the filing of a motion to dismiss. Obviously that decision by the Court would crystallize the obligation of Potomac to continue to represent Corporate Interiors in the related litigation. However, while Potomac may be providing the funding for legal representation, defense counsel’s primary obligation is to represent the interest of the insured, Corporate Interiors. Since the filing of a motion to dismiss would potentially be devastating to the interest of Corporate Interiors because it might lead to the loss of their insurance coverage and their legal representation, counsel would face an ethical dilemma if such a motion was filed. While this is a significant dilemma for counsel, the Court cannot maneuver the judicial process to simply resolve this conflict. What Potomac would like the Court

²¹ See *Continental Casualty Co. v. Alexis I. duPont School District*, Del. Supr., 317 A.2d 101, 105 (1974). *St. Anthony’s Club v. Scottsdale Insurance Company*, Del. Super., C.A. 97C-07-112, Herlihy, J. (July 15, 1998)(Mem. Op.) at 5.

to do is resolve the issue of the appropriateness of Local 98's pleadings without filing a motion, probably because they have no standing to do so in the related litigation.

While the Court appreciates the dilemma faced by Potomac, its effort to put the cart before the horse must fail. On the other hand, while under Local 98's complaint Potomac has an obligation to defend Corporate Interiors, whether it will have a similar obligation to indemnify will have to wait the outcome of the litigation.

Finally, because the Court has found an obligation by Potomac to defend in the related litigation, the arguments of Corporate Interiors regarding the self-defense exception to the policy's exclusion appear to be moot. However, the Court would note that it is difficult for it to imagine that the parties to this litigation can reasonably argue in good faith that there are no disputed issues of material fact regarding what occurred in April of 1998 at the First USA facility which would justify a self defense claim. Obviously a more thoroughly developed record would need to be created before a reasonable determination of a self defense claim could be made by the Court.

CONCLUSION

For the reasons set forth above, the Court GRANTS Corporate Interiors' Motion for Judgment on the Pleadings and DENIES Potomac's Motion for Judgment on the Pleadings.

Judge William C. Carpenter, Jr.