

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 07-CV-11807 RGS

WAREHAM FREE LIBRARY, INC. and
PRISCILLA PORTER, MARY NYMAN, HAZEL TABER,
MICHELLE BAUM, SANDRA WHEELER, JOHN LANCI,
MARTHA MAGUIRE, YELENA FARIOLI-BEAUPRE, and
DIANE LAZARUS, Individually and As Trustees of Wareham
Free Library, Inc.

Plaintiffs / Defendants in Counterclaim /
Plaintiffs in Counterclaim for Indemnification /
Third Party Plaintiffs

v.

THE TOWN OF WAREHAM

Defendant / Plaintiff in Counterclaim /
Defendant in Counterclaim for Indemnification

and

BRENDA ECKSTROM, BRUCE SAUVAGEAU, JOHN
CRONAN, JAMES POTTER, and M. JANE DONAHUE,
Individually and As Members of The Board of Selectmen of
Wareham

Defendants

v.

FRIENDS OF THE WAREHAM FREE LIBRARY, INC.,
and THE WAREHAM LIBRARY FOUNDATION, INC.

Defendants in Counterclaim

v.

MIIA PROPERTY AND CASUALTY GROUP, INC.

Third Party Defendant

FIRST AMENDED THIRD PARTY COMPLAINT
(Leave to File Granted on August 14, 2008)

1. Third Party Plaintiffs are Wareham Free Library, Inc. and Priscilla Porter, Mary
Nyman, Hazel Taber, Michelle Baum, Sandra Wheeler, John Lanci, Martha Maguire, Yelena

Farioli-Beaupre, and Diane Lazarus, Individually and as Trustees of the Wareham Free Public Library, Inc.

2. Third Party Defendant is MIIA Property and Casualty Group, Inc. (MIIA), an entity that issues insurance policies in Massachusetts, with a principal office in Boston, MA.

3. MIIA has issued a general liability insurance policy to the Town of Wareham.

4. This policy extends to elected, appointed, or employed officials of the Town; appointed members of commissions, committees, agencies, boards, and other units of the Town; persons providing volunteer services for the Town; and others.

5. The Town of Wareham has brought a Counterclaim in this action against Third Party Plaintiffs, alleging negligence by Third Party Plaintiffs among other claims. The Counterclaim alleges that Third Party Plaintiffs are “‘de facto’ trustees for the Public Library... entrusted with the public responsibilities of such position.”

6. Based on the Town’s allegation that Third Party Plaintiffs are “‘de facto’ trustees,” MIIA is obligated to provide a defense for Third Party Plaintiffs with respect to the Counterclaim. If Third Party Plaintiffs are found to be “‘de facto’ trustees,” MIIA is also obligated to indemnify Third Party Plaintiffs with respect to any judgment or settlement arising from the Counterclaim.

7. Third Party Plaintiffs have made demand upon MIIA to acknowledge coverage and to provide a defense and indemnification.

8. MIIA has refused to acknowledge coverage or to provide a defense or indemnification. MIIA purports to basis its refusal on the premise that Third Party Plaintiffs are private parties.

9. As a result of MIIA’s said refusal, Third Party Plaintiffs have incurred and will continue to incur substantial legal fees and expenses relating to the Counterclaim.

COUNT I
Breach of Contract

10. Third Party Plaintiffs repeat and incorporate the allegations above.

11. Third Party Plaintiffs are insured under the liability policy issued by MIIA to the Town, based on the allegations of the Counterclaim.

12. MIIA's refusal to acknowledge coverage with respect to the Counterclaim or to provide a defense or indemnification is a breach of contract, which has damaged Third Party Plaintiffs.

COUNT II
Declaratory Judgment/Injunctive Relief

13. Third Party Plaintiffs repeat and incorporate the allegations above.

14. There is an actual case or controversy between the parties.

15. Third Party Plaintiffs are entitled to a declaration that they are entitled to coverage with respect to the Counterclaim, including defense and indemnification, under the liability policy issued by MIIA to the Town.

16. Third Party Plaintiffs are entitled to an injunction ordering MIIA to defend and indemnify them with respect to the Counterclaim.

WHEREFORE, Third Party Plaintiffs demand the following relief:

1. Judgment against MIIA on all counts;
2. Compensatory damages;
3. Declaration that Third Party Plaintiffs are entitled to coverage with respect to the Counterclaim, including defense and indemnification, under the liability policy issued by MIIA to the Town;

4. Injunction ordering MIIA to defend and indemnify Third Party Plaintiffs with respect to the Counterclaim;
5. Costs and attorney's fees;
6. Interest; and
7. Such other relief as may be just and appropriate.

**THIRD PARTY PLAINTIFFS DEMAND TRIAL
BY JURY ON ALL CLAIMS SO TRIABLE**

PLAINTIFFS /
DEFENDANTS IN COUNTERCLAIM /
THIRD PARTY PLAINTIFFS

By their Attorneys,
BEAUREGARD, BURKE & FRANCO

/ S / Timour Zoubaidouline

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Dated: August 21, 2008

CERTIFICATE OF SERVICE

In accordance with the Electronic Case Filing ("ECF") Administrative Procedures of the United States District Court for the District of Massachusetts, I, Timour Zoubaidouline, hereby certify that the foregoing document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing ("NEF") and that paper copies will be sent to those indicated as non-registered participants by first class mail on August 21, 2008.

/ S / Timour Zoubaidouline

TIMOUR ZOUBAIDOUILLINE, BBO # 656212