

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 the Wareham Free
Public Library, Inc.,
Plaintiffs/Defendants-in-Counterclaim/Third Party Plaintiffs

v.

THE TOWN OF WAREHAM, and BRENDA ECKSTROM,
BRUCE SAUVAGEAU, JOHN CRONAN, JAMES POTTER,
and M. JANE DONAHUE, Individually and as Members of
The Board of Selectman of Wareham,
Defendants/Plaintiffs-in-Counterclaim

v.

MASSACHUSETTS INTERLOCAL INSURANCE ASSOCIATION,
Third Party Defendant

THIRD PARTY COMPLAINT

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 Massachusetts Interlocal Insurance Association (MIIA), an entity that issues insurance policies in Massachusetts, with a principal office in Boston, Massachusetts.
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 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;
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.

