

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

BARBARA and LEE LETWIN,	:	August Term 2007
Plaintiffs,	:	
v.	:	No. 2316
RAIN and HALE, LLC, GOETZ	:	
INSURORS, INC., INSURANCE	:	COMMERCE PROGRAM
COMPANY OF NORTH AMERICA,	:	
ACE PROPERTY and CASUALTY	:	Control Number 09011517
INSURANCE COMPANY and	:	
INDEMNITY INSURANCE COMPANY	:	
OF NORTH AMERICA,	:	
Defendants.	:	

ORDER

AND NOW, this 17th day of June 2009, upon consideration of Defendants Rain and Hale, LLC and Indemnity Insurance Company of North America’s Motion for Summary Judgment and Plaintiffs’ response in opposition and in accord with the attached Memorandum Opinion, it hereby is **Ordered** that the motion is **GRANTED** and all claims are dismissed against Rain and Hale, LLC and Indemnity Insurance Company of North America.

BY THE COURT,

ARNOLD L. NEW, J.

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OPINION

This is an insurance dispute. The plaintiffs are Barbara and Lee Letwin (hereinafter “Plaintiffs”) who are the owners of Grist Mill Farm. The defendants are Indemnity Insurance Company of North America an insurance company who issued a general liability insurance policy and an umbrella liability insurance policy to the Letwins for Grist Mill Farm; Rain and Hale, LLC who was the managing agent for Indemnity Insurance Company of North America and third party claim administrator¹ and Goetz Insurors, Inc. who was the exclusive producer of the equestrian insurance product.²

The Letwins owned a farm known as Grist Mill Farm in Boyertown, Pennsylvania where they boarded their horses, cats and dogs. Throughout their ownership of the farm, plaintiffs engaged individuals to assist in the care of their horses.

¹ Defendants Indemnity Insurance Company of North America and Rain and Hale, LLC will be referred to collectively as “Insurer”.

² Defendants Insurance Company of North America and Ace Property and Casualty Insurance Company have been dismissed as defendants by stipulation on November 25, 2008.

In 2000, Stacy Kitchline served as a caretaker for the Letwins at the farm. Kitchline had a contract and lease agreement whereby she rented an apartment on the farm premises in exchange for caring for the Letwins' horses. While on the farm Kitchline was injured and filed a complaint of personal injury against the Letwins in the Court of Common Pleas of Berks County. Kitchline initially alleged that she was injured in the course of her employment with the Letwins. Kitchline dropped this claim and instead alleged that she was an independent contractor. The complaint further alleged that at the time of the accident, Kitchline was an "invitee" to the Grist Mill property.

At the time of the Kitchline incident, the Letwins and Grist Mill Farm had a homeowner's policy of insurance issued by Chubb Group of Insurance Company. Chubb issued a reservation of rights letter because it was not clear whether Kitchline's claim was barred by the "business pursuits" exclusion. Chubb continued to represent the interests of the Letwins and the claim ultimately settled. On May 6, 2002, the Letwins received notice that the policy of insurance with Chubb would not be renewed because of the increased hazards attendant to the horses.

As a result, Mrs. Letwin sought the services of Goetz, the exclusive producer of equestrian insurance product, to obtain coverage for the farm. On May 8, 2002, Mrs. Letwin spoke with Pamela Hobbs (hereinafter "Hobbs"), a representative of Goetz, that she did not want to have an insurance coverage issue similar to the one involving Kitchline. Mrs. Letwin and Hobbs did not communicate at all with the insurer regarding placement of the insurance.

On May 17, 2002, Hobbs forwarded a proposal and cover letter to the Letwins. The May 17, 2002 proposal enclosure prepared by Hobbs stated:

Also, as I told you on the phone, my underwriter has said that you must obtain a separate workers' compensation policy if you decide to write the farm insurance with us.

The insurance proposal also stated that the workers' compensation claim is an "uninsured risk".

On May 31, 2002, Mrs. Letwin informed Hobbs that she was unable to obtain workers' compensation insurance. Hobbs, after consulting with Goetz's underwriter, advised that it would be sufficient to proceed without workers' compensation if the relationship between plaintiffs and their farm manager was converted to a lease whereby the caretaker paid rent to the Letwins. Coverage was bound with Goetz effective July 5, 2002.

In February 2004, plaintiffs entered into a lease agreement with Rechelle Knapp (hereinafter "Knapp") for the Grist Mill Farm. Plaintiffs also entered into a boarding contract with Knapp wherein Knapp agreed to provide boarding care to the Letwins' horses in accordance with a schedule of care provided by the Letwins for the sum of \$500 per horse per month.

On August 23, 2004, Knapp was sitting in the pasture with her boyfriend in the late evening when she was kicked in the head by a horse. Knapp sustained injury and ultimately lost vision in her right eye. Plaintiffs reported the loss to Rain and Hale on August 24, 2004.

One of Goetz's employees, upon learning of the loss, sent an email to her colleagues Kate Jilek and Hobbs at Goetz Insurors:

Barbara Letwin has a claim, please do not call her...,let Rain and Hale deal with her. Trust me.

Pam...Our worst nightmare came true. Barabara Letwin,,(the lady who was freaky about her coverage in case something ever happen (sic) to the person who leases her property)...Well, something happened to the lady that leases her property, Barbara's horse messed her up bad and she was helicoptered to the hospital. Plastic surgery and all...

The adjuster from Rain and Hale assigned to the claim spoke with Susan Browne of Goetz Insurors on August 26, 2002. The conversation was recorded by Susan Browne as follows:

Mark not sure what to think of the insured, he is worried that she might cahgne (sic) details in order to get the claim paid. He just wanted to make sure he and I were on the same side. I told him yes she is a little freaky and always has been. He is proceeding with caution.

On September 14, 2004, Knapp filed a Claim Petition for Workers' Compensation. In the Petition, Knapp alleged that she was employed by Barbara and Lee Letwin t/a Grist Mill Farm as a barn manager. Knapp further alleged that she was injured on August 23, 2004 when she was struck in the head by a horse.³ Plaintiffs forwarded the petition to Rain and Hale. Rain and Hale informed the Letwins that the insurer was undertaking an investigation of the claim and reserved it rights to deny coverage. The reservation was based on exclusions in the policy for any obligation of the Letwins under a workers' compensation law and for bodily injury to an employee of the Letwins arising out of and in the course of employment by the Letwins. On October 1, 2004, Rain and Hale informed the Letwins that the insurer would not provide coverage.

During the litigation of the workers' compensation claim petition, the Workers' Compensation Judge conducted a hearing limited to the issue of the employment relationship between Knapp and the Letwins. At the conclusion of the hearing wherein Knapp and Mrs. Letwin testified and submitted briefs, the Judge entered an interlocutory order finding that Knapp was an employee of the Letwins. Plaintiffs did not appeal the decision and negotiated a settlement with Knapp.

³ Workers' Compensation Claims Petition.

In August 2007, plaintiffs filed the instant action against defendant Rain and Hale and various other defendants alleging breach of contract, bad faith, fraud, negligent misrepresentation, promissory estoppel, negligence, breach of fiduciary duty and equitable estoppel. The court dismissed the claims against Rain and Hale for fraud, negligent misrepresentation, promissory estoppel, negligence, breach of fiduciary duty and equitable estoppel. Rain and Hale and Indemnity Insurance Company of North America now seek dismissal of the remaining claims for breach of contract and bad faith.⁴

DISCUSSION

At issue in this case is whether the insurer had a duty to defend and indemnify plaintiffs in the workers' compensation claim petition filed by Knapp and whether the insurer engaged in any bad faith conduct. An insurer's duty to defend and indemnify the insured may be resolved via declaratory judgment actions. In such actions, the allegations raised in the underlying complaint alone fix the insurer's duty to defend. The duty to defend is a distinct obligation, separate and apart from the insurer's duty to provide coverage. The insurer agrees to defend the insured against any suit arising under the policy even if such suit is groundless, false, or fraudulent. Since the insurer agrees to relieve the insured of the burden of defending even those suits which have no basis in fact, the obligation to defend arises whenever the complaint filed by the injured party may potentially come within the coverage of the policy.⁵

In order to determine whether a claim may potentially come within the coverage of the policy, the court must first ascertain the scope of the insurance coverage and then analyze the

⁴ Goetz has also filed a motion for summary judgment which will be addressed in a separate order.

⁵ Erie Insurance Exchange v. Claypoole, 449 Pa.Super. 142, 673 A.2d 348, 355 (1996) (en banc).

allegations in the complaint.⁶ This duty to defend, however, is not activated by every allegation raised against the insured.⁷ Only allegations contained within the underlying complaint pertaining to injuries which are either actually or potentially within the scope of the insurance policy obligate the insurer to defend the insured.⁸ If the complaint against the insured avers facts that would support a recovery covered by the policy, then coverage is triggered and the insurer has a duty to defend until such time that the claim is confined to a recovery that the policy does not cover.⁹

The Pennsylvania Supreme Court has set forth the well-settled standard to be followed in the interpretation of an insurance policy:

"The task of interpreting a contract is generally performed by a court rather than by a jury. . . . The goal of that task is, of course, to ascertain the intent of the parties as manifested by the language of the written instrument. . . . Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement. . . . Where, however, the language of the contract is clear and unambiguous, a court is required to give effect to that language."¹⁰

Exclusions from coverage contained in an insurance policy will be effective against an insured if they are clearly worded and conspicuously displayed, irrespective of whether the insured read the limitations or understood their import. Where an insurer relies on a policy exclusion as the basis

⁶ Britamco Underwriters, Inc. v. Grzeskiewicz, 433 Pa.Super.55, 639 A.2d 1208, 1210 (1994) (citations and quotation marks omitted).

⁷ Claypoole, 673 A.2d at 355.

⁸ General Acc. Ins. Co. of America v. Allen, 547 Pa. 693, 692 A.2d 1089, 1095 (1997).

⁹ Am. & Foreign Ins. Co. v. Jerry's Sport Ctr. Inc., 948 A.2d 834 (Pa. Super. 2008).

¹⁰ Standard Venetian Blind Co. v. American Empire Insurance Co., 503 Pa. 300, 304-305, 469 A.2d 563, 566 (1983).

for its denial of coverage and refusal to defend, the insurer has asserted an affirmative defense and, accordingly, bears the burden of proving such defense.¹¹

In the case *sub judice*, Knapp filed a workers' compensation claim petition alleging she was an employee of the Letwins and injured while working on the Letwins' Farm. The Policy at issue contains specific provisions excluding coverage for employment related injuries. The Policy states the following:

2. **Exclusions.** This insurance does not apply to:

d. **Worker's Compensation and Similar Laws**

Any obligation of the insured under a Workers' Compensation, disability benefits or unemployment compensation law or any similar law.

e. **Employer Liability**

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business
;...¹²

The Personal Liability Endorsement which modified the insurance provided under the Policy also contains the following exclusion:

2. **Exclusions**

This insurance does not apply to:

e. Any obligation of the insured under a Workers' Compensation, Disability Benefits, or Unemployment Compensation Law or any similar law.¹³

¹¹Madison Constr. Co. v. Harleysville Mut. Ins. Co., 557 Pa. 595, 735 A.2d 100, 106 (Pa. 1999).

¹² Commercial General Liability Coverage Form-CG-001 10 01 page 2 of 16.

¹³ Personal Liability Endorsement page 2 of 8.

Based on the petition's factual allegations, this court finds that the insurer did not owe plaintiffs a duty to defend. The allegations relate to the employment activities performed by Knapp for the Letwins which culminated in a work injury. Coverage for such allegations is specifically excluded by the Employer Liability Exclusion and the Workers' Compensation and Other Similar Laws Exclusion.¹⁴

Plaintiffs contend that this court should review the "entire underwriting file from Goetz" to determine whether a duty to defend existed. However, it is the face of the complaint, in this instance the petition, and not the truth of the facts alleged therein which determines whether there is a duty to defend.¹⁵

Moreover, even if the "entire underwriting file from Goetz" were examined, the doctrine of collateral estoppel would bar plaintiffs claim. Collateral estoppel bars the re-litigation of issues where (1) the issue decided in the prior case is identical to one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privity to the party against whom the doctrine is asserted has a full and fair opportunity to litigate the issue in the prior proceeding; (5) the determination in the prior proceeding was essential to the judgment.¹⁶

Here, the issue decided by the Workers' Compensation Judge was identical to the one presented in the instant action; that is the nature of the relationship between the Letwins and

¹⁴ The court does not find persuasive plaintiffs reliance upon an exception to an exclusion found in the Personal Liability Endorsement in section 2 d (2) (a) since the record does not contain any evidence of a contract in which the Letwins were obligated to pay damages. Additionally, the record fails to evidence that the insurer created a reasonable expectation of insurance for plaintiffs.

¹⁵ D'Auria v. Zurich Ins. Co., 352 Pa. Super. 231, 235 (Pa. Super. 1986).

¹⁶ Radakovich v. Radakovich, 846 A.2d 79, 714 (Pa. Super. 2004); Grant v. GAF Corporation, 608 A.2d 1047 (Pa. Super. 1992)(applying collateral estoppel based on a workers' compensation referees findings).

Knapp. The parties to the Workers' Compensation action had a full and fair opportunity to litigate the issue by presenting testimony and submitting briefs. The Workers' Compensation Judge issued an order which resolved the issue presented by finding that Knapp was an employee of the Letwins. This order was not appealed and the matter settled after entry of the order. The plea of collateral estoppel is asserted against one who was a party or in privity with the party to the prior adjudication and the plea is asserted against a party who has had a full and fair opportunity to litigate the issue in the question in the prior action. Since the foregoing elements are present here, plaintiffs are not free to re-litigate the issue which has already been decided adversely to them.

Based on the foregoing, Rain and Hale and Indemnity Insurance Company of North America's motion for summary judgment on the breach of contract claim is granted. Moreover, since this court finds that the insurer did not breach the duty to defend, a claim for bad faith can not exist.¹⁷

CONCLUSION

Based on the foregoing, defendant Rain and Hale and Indemnity Insurance Company of North America's Motion for Summary Judgment is granted and plaintiffs' complaint is dismissed against these defendants.

BY THE COURT,

ARNOLD L. NEW, J.

¹⁷ See, T.A. v. Allen, 868 A.2d 594 (Pa. Super. 2005), Cresswell v. Nat'l Mut. Cas. Ins. Co., 820 A.2d 172 (Pa. Super. 2003), Frog, Switch & Mfg. Co. v. Travelers Ins. Co., 193 F.3d 742 (3d Cir. 1999).

