DOCKET NO: X07-CV-19-6104759-S	:	SUPERIOR COURT
WILLIAM GHIO, ET AL.	:	COMPLEX LITIGATION DOCKET
v.	:	AT HARTFORD
LIBERTY INSURANCE UNDERWRITERS, INC., ET AL.	:	AUGUST 23, 2024

MEMORANDUM OF DECISION RE MOTION FOR SUMMARY JUDGMENT, # 295

Before the court is the motion for summary judgment of the defendant, Liberty Insurance Underwriters, Inc. (Liberty), in which Liberty asserts that no coverage is afforded to its insureds[1] under a Directors, Officers and Company liability insurance policy (the Policy).[2] The present plaintiffs, William and Janet Ghio, are assignees of the Insureds' rights under the Policy, following a lawsuit[3] in which the Ghio's alleged relevantly that the Insureds violated the Connecticut Uniform Securities Act (CUSA), General Statutes § 36b-1, et seq. That litigation (Underlying Action) was terminated by a Stipulation to Judgment in the total amount of $1,901,056 plus 10 percent interest, and included the aforementioned assignment of rights under the Policy and an agreement that the Ghio's would not seek satisfaction of that judgment from the Insureds.

Liberty asserts in its motion that the claim made by the Ghio's against the Insureds in the Underlying Action was not a "loss" within the meaning of the Policy[4] because the relief sought was restitutionary in nature and thus uninsurable under Connecticut law and the Policy. They

[1] The insureds, who are collectively referred to as the Insureds, are Paul Pendergast, J. Reid Gorman, Carlos Silva, Charles Cox and Back9 Network, Inc. (Back9). Pendergast, Gorman, Silva and Cox are collectively also referred to as the Individual Insureds and individually by their last name where necessary.

[2] The Policy bears the Policy No. DONYAAOAZK003. The relevant Policy provisions will be referenced by the ISO Form number and the constituent page number.

[3] *Ghio v. Pendergast*, Superior Court, judicial district of Hartford, Docket No. CV-15-6058382-S.

[4] "Loss" within the meaning of the Policy is defined as "the amount which the Insureds become legally obligated to pay on account of Claims made against them for Wrongful Acts for which coverage applies, including, but not limited to . . . judgments . . . ."

#316.00

further assert that the claim was not a "loss" because an exclusion operates to void coverage of any claim made against an Insured in any way related to any Insured gaining any personal profit, remuneration or advantage to which they are not legally entitled. Moreover, Liberty seeks summary judgment on the Ghios' claim for bad faith on the grounds that it had no duty under the Policy and, independently, the relevant facts fail to support a claim for bad faith.

The following facts and procedural history inform this decision. In the Underlying Action, the Ghio's alleged that the Individual Insureds, some of whom were officers and directors of Back9, a multimedia lifestyle and entertainment network for golf fans, actively encouraged the investments of funds from the plaintiffs in Back9. The investments by the Ghio's, some of which resulted in the purchase of stock in Back9, were made in 2012, 2013 and twice in 2014. Although Back9 was undercapitalized and required millions of dollars to make it viable, the Individual Insureds failed to disclose material statements of fact related to its financial viability and misrepresented other material facts. The operative complaint in the Underlying Action, the Fourth Revised Complaint dated September 18, 2017, # 215, contained a claim for the violation of CUSA in the first count on the grounds that the Insureds "utilized a non-licensed agent to solicit [the Ghio's] funds, employed a device, scheme or artifice to defraud the plaintiffs and rendered untrue statements of facts and/or omitted statements of facts necessary to make the statements not misleading in light of the circumstances and/or engaged in acts which operated to defraud or otherwise deceive the plaintiffs. The [Insureds] engaged in dishonest and unethical practices in regard to the sale of securities, all to the plaintiffs' special loss and damage."[5]

[5] The second count, mislabeled count three, claimed a violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-11a, et seq. (CUTPA). The CUTPA count is not at issue in this decision.

In March of 2015, Liberty received a notice of claims issued by Gorman, Back9's then Chief Administrative Officer.[6] Liberty issued a reservation of rights on April 30, 2015, which was addressed to Gorman as Back9's Chief Administrative Officer. In that letter, Liberty reserved the right to apply the terms of the Policy's definition of "loss" which provided: "Loss means the amount which the Insureds become legally obligated to pay on account of Claims made against them for Wrongful Acts for which coverage applies, including but not limited to . . . judgments . . . . Loss does not include . . . (4) matters uninsurable under the law pursuant to which the Policy is construed." (Uninsurable Clause) LIUIPCCP001-DO-CW-0709, "Definitions," p. 2. Liberty also reserved its rights under Exclusion IV.A.7 of the same Form, p. 3, as amended by Endorsement, which provided that Liberty "shall not be liable under any Insuring Clause in this Coverage Part for Loss on account of any Claim made against any Insured: . . . 7. based upon, arising from, or in any way related to any Insureds gaining any personal profit, renumeration or advantage to which they are not legally entitled, if a final adjudication establishes that such Insureds gains such personal profit, renumeration or advantage."[7]

Liberty retained counsel, Joshua Berman, Esq., to defend its Insureds from the claims asserted in the Underlying Action. Berman had the status of Cumis counsel in that he was hired by the Insureds to represent them but was paid by the insurer.[8] As the Ghio's relate in their

[6] The notice of claim included reference to a second potential claim not relevant to this decision.
[7] The clause shall be referred to herein as the Personal Profit Exclusion.
[8] Counsel for the Ghio's conceded at oral argument that Berman's representation of the Insureds was in the nature of Cumis counsel. Trans. of Proceedings, June 24, 2024, pp. 24-5. The term Cumis counsel refers to counsel retained by the insured but paid by the insurer where there is a potential conflict of interest, such as in the present case when an insurer provides a defense under a reservation of rights, and takes its name from *San Diego Navy Federal Credit Union v. Cumis Ins. Society, Inc.*, 162 Cal. App. 3d 358, 208 Cal. Rptr. 494 (Cal. Ct. App. 1984). See W. Barker, *Insurer Control of Defense: Reservations of Rights and Right to Independent Counsel Insurer Loses Right to Defend Only When There Is Conflict of Interest*, 71 Def. Couns. J. 16, 19–20 (2004) ("where there are divergent interests of the insured and the insurer brought about by the insurer's reservation of rights based on possible non-coverage under

Objection to the Motion for Summary Judgment, #300, Berman initially "consistently and boldly claimed that the Ghio's had no case and that there was no possibility for the [Ghio's] to prevail. He dramatically referred to the claims as extortionate and without any legal basis." With trial scheduled to start evidence on October 30, 2018, Berman changed his view of the case. On October 1, 2018, he informed Liberty's claims representative, Arlene Levitin, of what he claimed was a new claim spelled out in a recent pretrial brief, that the Insureds had, in violation of CUSA, untimely registered the securities that were issued to the Ghio's and another round of promissory notes issued to the Ghio's were not registered at all. Berman indicated in that e-mail to Levitin that there wasn't much he could do to prevent a directed verdict on this basis although he had "eviscerated" the theory of liability based on alleged false statements to induce the Ghio's into investing. Exh. F to Ghios' Obj. to Mot.for Summ. J., # 301.

On October 8, 2018, Berman suggested to Levitin that "the most important piece of settlement leverage we could have is a letter from Liberty . . . declining coverage in the event of a verdict for: (a) fraud; or (b) 'return of consideration' . . . ." Berman asserted that "we are not agreeing, on behalf of our clients that there is no coverage; we are simply asking that if this is Liberty's position, you please state it in writing inasmuch as our clients and Liberty have a common interest in lowering the Plaintiff's settlement 'ask.'" Berman reiterated that he could use such a declination of coverage to "drive settlement down." Exh. H to Ghios' Obj. to Mot. for Summ. J., # 301. By letter of October 10, 2018, R. Stacy Lane, Esq., retained as coverage counsel for Liberty, advised Berman: "We understand that a trial of the Lawsuit is scheduled to begin in a couple of weeks, and wish to point out that no coverage exists for any judgment that

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the insurance policy, the insurer must pay the reasonable cost for hiring independent counsel by the insured").

may be awarded in the Lawsuit for the following reasons." Exh. C to Ghios' Obj. to Mot. for Summ. J., # 301. In his letter, Lane referenced Exclusion IV.A.7., the Personal Profit Exclusion, as well as, inter alia, the Uninsurable Clause. As to the latter, Lane observed that the Ghio's "seek, among other things, recission as to each of their investments. If the Court awards rescission or the return of the consideration paid for the securities, such award would constitute uninsurable loss." Id.

Following receipt of Lane's letter, Berman forwarded it to Richard Weinstein, Esq., then counsel for the Ghio's, and indicated that the declination was a "major problem for both of our clients (the individuals have no money)" and requested a call "to discuss the most productive way forward." Mot. for Summ. J., Hoffman Aff., Exh. 17, # 297. Berman added that he thought "it's nonsense for a carrier to disclaim indemnity like this at the 11th hour." Id. Weinstein responded that "[a]s a practical matter, we should be allies in getting the insurance company to make a reasonable offer, or otherwise working cooperatively to make sure that there is coverage so that your four individual clients whom you claim you want to protect are not personally exposed." Berman thereafter drafted a stipulated judgment which was ultimately executed by counsel and filed with the court. *Ghio v. Pendergast*, Superior Court, judicial district of Hartford, Docket No. CV-15-6058382-S, # 320. Judgment was entered by the court in accordance with the terms of the Stipulation for Judgment. Id., ## 320.86 & 323.

The relevant terms of the Stipulated Judgment were that judgment was to enter on count one of the Ghios' complaint which asserted a claim for a violation of CUSA[9] "in the amount of of $860,000, statutory interest of $275,200, $350,000 in attorney's fees, and offer of judgment interest of S415,856, totaling $1,901,056." *Ghio v. Pendergast*, supra, Superior Court, Docket

[9] The only specific statute referenced count one of the Underlying Action was § 36b-1, et seq. *Ghio v. Pendergast*, supra, Superior Court, Docket No. CV-15-6058382-S, # 215, ¶ 12.

No. CV-15-6058382-S, # 320, ¶ 2. Liberty asserts, and the Ghio's do not dispute, that the $860,000 represented the amount of their investment in Back9 over the three year period between 2012 and 2014. In the Stipulated Judgment, the Individual Insureds admitted that at least one of them "made material omissions from information disclosed to the plaintiffs, which would have affected the plaintiffs' decision to invest in Back9. There were not intentional but negligent oversights . . . ." Id., ¶ 1. Moreover, the Ghio's agreed "to seek satisfaction of this or any related judgment not from the personal assets of any of the [Individual Insureds], but to seek satisfaction and recovery solely and exclusively from [Liberty], and the [Insureds] hereby unconditionally assign all of their rights under said D&O policy to the plaintiffs. Plaintiffs hereby covenant and agree not to bring any further claim, suit or cause of action, whether in law or equity, against any of the [Individual Insureds] relating in any way to this action or Plaintiffs' investments in Back9." Id., ¶ 5. Additional facts will be provided as necessary.

The present action was commenced against Liberty on December 5, 2018.[10] The operative complaint is the June 14, 2024 Amended Complaint. *Ghio v. Liberty Ins. Underwriters, Inc.*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV-19-61047759-S, # 311. The complaint seeks satisfaction of the Stipulated Judgment via General Statutes § 38a-321[11] and asserts a claim of bad faith.

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[10] Also named as defendants in the action were the individual defendants, Joshua Berman and his firm White & Case, LLP, and Stacy Lane and his firm, Bailey Cavalieri, LLC. The action against all of the above were ultimately dismissed.

[11] General Statutes § 38a-321 provides in relevant part that "[u]pon the recovery of a final judgment against any person, firm or corporation by any person, including administrators or executors, for loss or damage on account of bodily injury or death or damage to property, if the defendant in such action was insured against such loss or damage at the time when the right of action arose and if such judgment is not satisfied within thirty days after the date when it was rendered, such judgment creditor shall be subrogated to all the rights of the defendant and shall have a right of action against the insurer to the same extent that the defendant in such action could have enforced his claim against such insurer had such defendant paid such judgment."

In the present motion for summary judgment, as to § 38a-321, Liberty argues that it owes no coverage to the Insureds because the claim against them in the Underlying Action constitutes restitution, the essential remedy sought by the Ghio's in that action, which is uninsurable and thus, because of the Uninsurable Clause, does not fall within the ambit of an insured Loss under the Policy. Moreover, in its estimation, the Personal Profit Exclusion excepts coverage for these claims. As to the claim for bad faith, Liberty argues that (1) because it had no duty to provide coverage under the terms of its policy no express duty was owed to its insureds and (2) no evidence of bad faith has been demonstrated to exist. The Ghio's object on the grounds that the policy's definition of "loss" is ambiguous as to the "disclaimer for 'matter uninsurable under the law,'" the Personal Profit Exclusion is not applicable, and genuine issues of material fact prevent summary judgment on their bad faith claim.

The standard for adjudicating a motion for summary judgment pursuant to Practice Book § 17-44, et seq. is well known. "In deciding a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party. . . . Summary judgment is appropriate if there [is] no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." (Citation omitted; internal quotation marks omitted.) *Hartford Fire Ins. Co. v. Moda, LLC*, 346 Conn. 64, 71-72, 288 A.3d 206 (2023).

"[T]he proper construction of a policy of insurance presents a question of law . . . ." (Internal quotation marks omitted.) *Travelers Casualty & Surety Co. of America v. Netherlands Ins. Co.*, 312 Conn. 714, 741, 95 A.3d 1031 (2014). "[W]hen the words of an insurance contract are, without violence, susceptible of two [equally responsible] interpretations, that which will sustain the claim and cover the loss must, in preference, be adopted. . . . [T]his rule of construction favorable to the insured extends to exclusion clauses. . . . When construing

exclusion clauses, the language should be construed in favor of the insured unless it has a high degree of certainty that the policy language clearly and unambiguously excludes the claim. . . . While the insured bears the burden of proving coverage, the insurer bears the burden of proving that an exclusion to coverage applies." (Internal quotation marks omitted.) *R.T. Vanderbilt Co., Inc. v. Hartford Accident & Indemnity Co.*, 333 Conn. 343, 365, 216 A.3d 629 (2019).

Pursuant to § 38a-321, upon the failure of Liberty to satisfy the judgement against its insureds, the Ghio's acquired all rights and privileges relative to the Policy possessed by the Insureds. In like manner, Liberty may assert against the Ghio's any defenses to coverage available under the Policy that it had against the Insureds. See *Aetna Casualty & Surety Co. v. Jones*, 220 Conn. 285, 305-06, 596 A.2d 414 (1991). "[T]he intention of the [statute] is to give to the [judgment creditor] the same rights *under the policy* as the assured." (Emphasis in original; internal quotation marks omitted.) *Home Ins. Co. v. Aetna Life & Casualty Co.*, 235 Conn. 185, 198, 663 A.2d 1001 (1995).

The court finds that the Uninsurable Clause is an exclusion. This is so because an exclusion provision "is a provision which eliminates coverage where, were it not for the exclusion, coverage would have existed." (Internal quotation marks omitted.) *Hammer v. Lumberman's Mutual Casualty Co.*, 214 Conn. 573, 588, 573 A.2d 699 (1990). "An 'exclusion' is a term in an insurance policy that identifies a category of claims that are not covered by the policy." 1 Restatement (Third), Liability Insurance § 32 (2024). "Whether a term in an insurance policy is an exclusion does not depend on where the term is in the policy or the label associated with the term in the policy." Id. "Exclusions can appear anywhere in an insurance policy. Insurance law takes a functional approach to determine whether an insurance policy term is an exclusion. Under the prevailing conventions of insurance policy drafting, exclusions typically

appear in a part of the insurance policy with the specific heading 'Exclusions.' But exclusions can appear in almost any part of an insurance policy: the insuring agreement, the definitions section, endorsements, and even in the conditions section." (Emphasis omitted.) Id., comment (a). In the present case, the Uninsurable Clause identifies a type of claim that excludes form coverage which would otherwise be covered and is therefore an exclusion for which Liberty bears the burden of proof.

Neither the Ghio's nor Liberty, refer the court to any Connecticut appellate authority on the subject of an uninsurable clause and the court's research has found none. Liberty urges the court to adopt Judge Posner's reasoning in *Level 3 Communications, Inc. v. Federal Ins. Co.*, 272 F.3d 908 (7th Cir. 2001) in which the court held that under Illinois law a "Loss" within the meaning of an insurance contract does not include the restoration of an ill-gotten gain. In that case the insured, Level 3 Communications, Inc. (Level 3), settled an action claiming securities-fraud brought by shareholders of a corporation alleged to have been defrauded by Level 3. The shareholders claimed that they had sold shares in their corporation to Level 3 because of fraudulent representations that Level 3 had made and sought to reclaim the monetary value of their shares.

The defendant insurers in *Level 3 Communications, Inc.* declined coverage and indemnity to Level 3 on the grounds that it was as if "Level 3 had stolen cash from . . . the . . . shareholders and had been forced to return it and were now asking the insurance company to pick up the tab. [The insurer] continues that a D & O policy is designed to cover only losses that injure the insured, not ones that result from returning stolen property, and that if such an insurance policy did insure a thief against the cost to him of disgorging the proceeds of the theft it would be against public policy and so would be unenforceable." *Level 3 Communications, Inc. v. Federal*

Insurance Co., supra, 272 F.3d 910. The court found the underlying claim to be "restitutionary in character. [Level 3] [sought] to divest the defendant of the present value of the property obtained by fraud, minus the cost to the defendant of obtaining the property. In other words, it seeks to deprive the defendant of the net benefit of the unlawful act, the value of the unlawfully obtained stock minus the cost to the defendant of obtaining the stock." Id., 910-11. It held that "[a]n insured incurs no loss within the meaning of the insurance contract by being compelled to return property that it had stolen, even if a more polite word than 'stolen' is used to characterize the claim for the property's return." Id., 911. The court declined to answer the question of whether coverage would exist for a groundless fraud suit resulting in no ill-gotten gain that insurance would enable it to keep.

As observed by the Seventh Circuit Court of Appeals in *Astellas US Holding, Inc. v. Federal Ins. Co.*, 66 F.4th 1055, 1063 (7th Cir. 2023), the distinction between "compensation" and "restitution" can be a "tricky concept" to discern. To treat a settlement payment as uninsurable restitution, "there must be not only fraud, but also profit." (Footnote omitted.) Id., 1064. Profit may also be characterized as "the net benefit" of an unlawful act. Id. As Judge Posner explained in another case involving the public policy denying insurance coverage for "restitutionary" damages, "you can't, at least for insurance purposes, sustain a 'loss' of something you don't (or shouldn't) have. . . . And so *there is no insurable interest in the proceeds of a fraud.* . . . Whether a claim for restitution is based on fraud or on some other deliberate tortious or criminal act, or at the other extreme of the restitution spectrum merely on an innocent mistake or the rendition of a service for which compensation is expected but contracting is infeasible . . . and whether the plaintiff is seeking the return of property or the profits that the defendant made from appropriating it, a claim for restitution is a claim that the defendant has

something that belongs of right not to him but to the plaintiff." (Citations omitted; emphasis added.) *Ryerson Inc. v. Federal Ins. Co.*, 676 F.3d 610, 613 (7th Cir. 2012).

This reasoning has found acceptance in other jurisdictions. See *Twin City Fire Ins. Co. v. CR Technologies, Inc.*, 90 F. Supp. 3d 1320, 1325 (S.D. Fla. 2015) ("[c]ivil theft is not insurable as a matter of [Florida] public policy"); *Financial Resources Network, Inc. v. Brown & Brown, Inc.*, 754 F. Supp. 2d 128, 144 (D. Mass. 2010) ("[a]n insured does not incur an insurable loss when [he] is merely forced to disgorge money or other property to which [he] is not entitled" [internal quotation marks omitted]); *Executive Risk Indemnity, Inc. v. Pacific. Educational Services, Inc.*, 451 F. Supp. 2d 1147, 1162 (D. Haw. 2006) ("[T]he return of ill-gotten gains should not be insurable. Restitution is uninsurable under Hawaii law . . . ."); *O'Neill Investigations v. Illinois Employers Ins.*, 636 P.2d 1170, 1173-77 (Alaska 1981) (restoration of money acquired through unfair collection practices does not award "damages" as term is used in insurance policy); *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1268, 833 P.2d 545 (1992) (insurable damages do not include costs incurred in disgorging money that has been wrongfully acquired, violation of Unfair Business practices Act not insurable); *Graham Resources, Inc. v. Lexington Ins. Co.*, 625 So. 2d 716, 721 (La. Ct. App. 1993), ("as a matter of public policy people should not be allowed to insure themselves against acts prohibited by law such as securities fraud"), writ denied, 631 So. 2d 1164 (La. 1994); *Farmland Mutual Ins. Co. v. Scruggs*, 886 So. 2d 714, 720 (Miss. 2004) (acts prohibited by law are not insurable); Nortex Oil & Gas Corp. v. Harbor Ins. Co., 456 S.W.2d 489, 494 (Tex. App. 1970) ("An insured . . . does not sustain a covered loss by restoring to its rightful owners that which the insured, having no right thereto, has inadvertently acquired. . . . The insurer did not contract to indemnify the insured for disgorging that to which it was not entitled in the first place . . . ."). The court adopts

the reasoning of our sister courts and concludes that in Connecticut, claims for restitution, as this term is used in this context, are not insurable under our public policy.

Liberty asserts, and the Ghio's do not dispute, that the $860,000 main damages are restitutionary in nature, that is, the Ghio's sought to recover the amount that they invested in Back9 to which Back9 and the individual insureds were not entitled due to the misrepresentations, whether negligent or fraudulent, of the latter. Mot. for Summ. J., Hoffman Aff., Exh. 4, Janet Ghio Dep. Tr., at 39:8-19; id, Exh. 6, William Ghio Dep. Tr., at 10:8-15. The remaining claims for damages, which are derivative of the restitution sought, are also not insurable. On this basis, summary judgment is granted in favor of Liberty against the Ghio's. Cf. *New London County Mutual Ins. Co. v. Sielski*, 159 Conn. App. 650, 664, 123 A.3d 925, cert. granted, 319 Conn. 956, 125 A.3d 533 (2015) (damages flowing from misrepresentation by home seller to buyer of condition of property constitutes economic or pecuniary losses that do not fall within the scope of coverage afforded by a homeowner's insurance policy).

Liberty also asserts that no liability is provided under the Personal Benefit Exclusion. This exclusion bars coverage for any claim that is "in any way related to any Insured gaining any personal profit, remuneration or advantage to which they are not legally entitled." This exclusion mirrors the "restitution" theory discussed above as based on the insured's acquisition of profit or gain to which it was not entitled. The court has already concluded that the $860,000 and the attendant damages represent a gain or profit to which Back9 was not entitled and therefore no coverage applies under this exclusion.

Lastly, Liberty argues that it is not liable under a theory of the implied covenant of breach of good faith and fair dealing. This is so, in its view, because Liberty owed the insureds no duty for nonexistent coverage and further because its conduct, independent of a duty under the Policy,

was not in bad faith. The court, having already found no duty to indemnify the Insureds under the Policy, renders a finding that no claim for bad faith may stand. "[A] bad faith action must allege denial of the receipt of an express benefit under the policy." (Footnote omitted.) *Capstone Building Corp. v. American Motorists Ins. Co.*, 308 Conn. 760, 794, 67 A.3d 961 (2013). The court also agrees that the record before it reflects an absence of any conduct on Liberty's part that manifests bad faith.

"To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff's right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith. . . . Bad faith in general implies both actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. . . . Bad faith means more than mere negligence; it involves a dishonest purpose." (Citations omitted; internal quotation marks omitted.) *De La Concha of Hartford, Inc. v. Aetna Life Ins. Co.*, 269 Conn. 424, 433, 849 A.2d 382 (2004).

The Ghio's assert that Liberty demonstrated bad faith by its late denial of coverage and the potential motivation for issuing the declination of coverage, as written by Lane, on October 18, 2018. The argument ignores the fact that the October 18, 2018 letter, was issued at Berman's request. It cannot be ignored that Berman was retained by the Insureds as Cumis counsel. Instead of using the declination of coverage to negotiate a lower settlement demand, as he had proposed to Liberty, he collaborated with Weinstein, the Ghios' then attorney, to enter into the Stipulated Judgment. Moreover, the declination of coverage was entirely consonant with the grounds for

disclaiming coverage articulated in the April 30, 2015 reservation of rights that identified both the Uninsurable Clause and the Personal Profit exclusion as a basis to disclaim coverage.

"[A] reservation-of-rights letter is a notice of an insurer's intention not to waive its contractual rights to contest coverage or to apply an exclusion that negates an insured's claim." (Internal quotation marks omitted.) *Laiuppa v. Moritz*, 216 Conn. App. 344, 367 n.16, 285 A.3d 391 (2022), cert. granted, 346 Conn. 906, 288 A.3d 628 (2023) (citing *United States v. Hebshie*, 549 F.3d 30, 37 n.7 [1st Cir. 2008]). Thus, Liberty had already notified its insureds that it intended to avail itself of the very same contractual provisions upon which it ultimately disclaimed coverage. Accordingly, "no actual or constructive fraud, or a design to mislead or deceive another" is present. Liberty could have issued the declination of coverage after the verdict in the Underlying Action and the Ghio's provide no authority for the proposition that the timing of the issuance of the declination is indicative of bad faith. Thus, the court concludes that there is no genuine issue of material fact that bad faith existed on the part of Liberty in issuing the declination of coverage letter when it did.

For the foregoing reasons, the court grants the motion for summary judgment as to both counts of the present complaint and accordingly, enters judgment in favor of the defendant.

THE COURT

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Cesar A. Noble
Judge, Superior Court