UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-08895-MWF (JPRx) JS-6 Date: January 19, 2022
Title: Samantha B. et al v. American International Group, Inc. et al

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [84]

Before the Court is Defendants Lexington Insurance Company and AIG Claims, Inc.'s (collectively "Defendants") Motion for Summary Judgment (the "Motion"), filed on August 30, 2021. (Docket No. 84). Plaintiffs Samantha B., Crystal F., and Danielle W. (collectively "Plaintiffs") filed an Opposition on September 13, 2021. (Docket No. 90). Defendants filed a Reply on September 20, 2021. (Docket No. 91).

The Court has read and considered the papers filed in connection with the Motion and held a telephonic hearing on **October 4, 2021**, pursuant to General Order 21-08 arising from the COVID-19 pandemic.

For the reasons stated below, the Motion is **GRANTED** and the action is **DISMISSED**. The Motion asks the Court to enter summary judgment on the basis that Plaintiffs' claims are precluded by the plain language of the insurance agreements, among other reasons. In response, Plaintiffs offer an unsupported and unconvincing interpretation of the agreements.

I. BACKGROUND

The following facts are based on the evidence, as viewed in the light most favorable to Plaintiff, the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (On a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his [her,

or its] favor."). The Court references the First Amended Complaint ("FAC") and Defendants' Statement of Uncontroverted Facts ("DSUF") for relevant background information. Unless otherwise noted by the Court, the facts are undisputed.

In 2013, Plaintiffs were acute psychiatric patients at Aurora Vista Del Mar Hospital, a subsidiary of Signature Healthcare Services, LLC. (FAC ¶ 13). At that time, Juan Valencia was a mental health worker assigned to the Plaintiffs' respective units. (*Id.*)

During Valencia's employment, he commenced inappropriate, intimate relationships with each Plaintiff and was subsequently arrested for his misconduct. (DSUF Nos. 5-18). Valencia was charged with rape under California Penal Code section 261 because the Plaintiffs suffered from mental disorders and were thus unable to give legal consent. (*Id.*) (Valencia was also charged with additional sexual misconduct violations under California Penal Code sections 289(b) and 289.6(a)(1)). Valencia pled guilty to each count. (DSUF No. 24).

Plaintiffs each filed a civil lawsuit against Aurora, Signature, and Valencia, to recover damages based on Valencia's sexual misconduct (the "Underlying Action"). (FAC ¶ 13). The three cases were consolidated and proceeded to trial. (*Id.*)

After a trial on the merits, the jury returned a special verdict that found Valencia liable for sexual battery (an intentional tort) against the Plaintiffs. (*Id.* ¶ 14). The superior court entered judgment against all three Defendants for a total amount of $13,250,000, with an additional $150,000 in punitive damages against Signature. (*Id.*) The jury apportioned fault 65% against Aurora and Signature, and 35% against Valencia. (*Id.*) Valencia remains liable to Plaintiffs in the amount of $4,637,500. (*Id.*)

Plaintiffs filed this pending lawsuit against Defendants, which are Signature's insurance carriers, alleging that Valencia's liability to Plaintiffs is covered under the insurance policies issued by Defendants. (*Id.* ¶ 16). Plaintiffs allege six different causes of action, but the claims can be grouped into three different theories of liability. (*See generally* FAC).

Plaintiffs' first and second causes of action allege a Breach of Good Faith and Fair Dealing, and a Breach of Contract against Defendants. (*Id*. ¶¶ 22, 31). Plaintiffs, however, are not in contractual privity with Defendants. Instead, Plaintiffs obtained a written assignment of Valencia's rights and bring these claims against Defendants on Valencia's behalf. (*Id*. ¶ 21). Specifically, Plaintiffs allege that Defendants had a duty to defend Valencia in the Underlying Action and failed to do so.

Plaintiffs' third, fourth, and fifth causes of action also allege a Breach of Good Faith and Fair Dealing, and a Breach of Contract against Defendants, but these claims are brought as Judgment Creditors under Insurance Code section 11580(b)(2). (*Id*. ¶¶ 35, 40, 46).

Plaintiffs' sixth cause of action is for Declaratory Relief under 28 U.S.C. § 2201, which asks the Court to determine the parties' rights under the applicable insurance agreements. (*Id*. ¶ 50).

The insurance agreements under which Plaintiffs seek coverage were issued by Defendants to Signature, and the policies extend to Aurora as well. (*Id*. ¶ 15). Defendants issued both primary and excess policies to Signature, and both policies provide two types of coverage: (1) general liability on an "occurrence" basis, and (2) professional liability on a claims-made basis. (DSUF Nos. 26-33).

The primary policies apply over a Self-Insured Retention, meaning that Defendants have no obligation to pay any policy benefits until Signature pays $250,000 per "medical incident" (for professional liability coverage) or $100,000 per "occurrence" (for general liability coverage). (DSUF Nos. 26, 28, 30, 32). And the excess policies afford coverage for covered claims only after the limits of the respective underlying primary policies are exhausted. (DSUF Nos. 27, 29, 31, 33).

The primary and excess policies both include exclusions barring coverage for perpetrators of sexual misconduct. For example, the professional liability coverage for the applicable primary policy provides:

> This insurance does not apply to any medical incident, claim or suit arising out of . . .
>
> O. Sexual Misconduct
>
> Any sexual act, including without limitation to sexual intimacy (even if consensual), sexual contact, sexual advances, requests for sexual favors, sexual molestation, sexual assault, sexual abuse, sexual harassment, sexual exploitation or other verbal or physical conduct of a sexual nature. However, this exclusion does not apply to:
>
> 1. Any Specific Individual Insured who allegedly committed such sexual misconduct, **unless it is judicially determined that the Specific Individual Insured committed the sexual misconduct**. If it is judicially determined that the Specific Individual Insured committed the sexual misconduct we will not pay any damages.
>
> We will defend claims alleging such acts until final adjudication. As used in this exclusion, Specific Individual Insured includes employees and authorized volunteer workers while performing duties related to the conduct of your business.

(DSUF No. 30) (emphasis added). It is undisputed that each primary and excess policy includes a materially similar Sexual Misconduct Exclusion. (DSUF Nos. 26-33).

In the Underlying Action, Defendants provided a defense for Signature and Aurora, but not Valencia.

II. LEGAL STANDARD

In deciding a motion for summary judgment under Rule 56, the Court applies *Anderson, Celotex*, and their Ninth Circuit progeny. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "The court

shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The Ninth Circuit has defined the shifting burden of proof governing motions for summary judgment where the non-moving party bears the burden of proof at trial:

> The moving party initially bears the burden of proving the absence of a genuine issue of material fact. Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial. This burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence. The non-moving party must do more than show there is some "metaphysical doubt" as to the material facts at issue. In fact, the non-moving party must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor.

Coomes v. Edmonds Sch. Dist. No. 15, 816 F.3d 1255, 1259 n.2 (9th Cir. 2016) (quoting *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010)). "A motion for summary judgment may not be defeated, however, by evidence that is 'merely colorable' or 'is not significantly probative.'" *Anderson*, 477 U.S. at 249-50.

III. DISCUSSION

"The burden is on an insured to establish that the occurrence forming the basis of its claim is within the basic scope of insurance coverage . . . And, once an insured has made this showing, the burden is on the insurer to prove the claim is specifically excluded." *Aydin Corp. v. First State Ins. Co.*, 18 Cal. 4th 1183, 1188, 959 P.2d 1213 (1998) (citations omitted).

A. Plaintiffs' First and Second Causes of Action on Behalf of Valencia

Plaintiffs obtained a written assignment of Valencia's rights against Defendants to bring the first and second causes of action. The claims both turn on whether Defendants had a duty to defend Valencia in the Underlying Action. If there was no duty to defend, Plaintiffs' claims will fail.

Plaintiffs argue that an insurer has a broad duty to defend under California law. *Hyundai Motor Am. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 600 F.3d 1092, 1097 (9th Cir. 2010) ("The carrier must defend a suit which potentially seeks damages within the coverage of the policy."). Plaintiffs assert that Defendants had a duty to defend Valencia because the duty arises when "extrinsic facts known to the insurer suggest that the claim may be covered." *Scottsdale Ins. Co. v. MV Transportation*, 36 Cal. 4th 643, 655, 115 P.3d 460 (2005).

Defendants argue they had no duty to defend for these reasons:

1. Tender of the Underlying Action to Defendants

Defendants argue that an insurer's duty to defend, if any, begins upon the tender of an underlying action. *Montrose Chem. Corp. v. Superior Ct.*, 6 Cal. 4th 287, 295, 861 P.2d 1153 (1993). It is undisputed that Valencia never tendered the underlying lawsuit. (DSUF No. 19).

In response, Plaintiffs argue that Defendants did not need an official tender, but rather a "proof of claim" that gives the insurer any evidence or documentation indicating their policy has been triggered is sufficient. (Opp. at 23). Plaintiffs present evidence that Defendants' claims adjuster was undoubtedly aware of the lawsuit and that an employee of the insured was implicated as a defendant. (Opp. at 3).

The Court agrees with Plaintiffs. Valencia's failure to formally tender the Underlying Action does not frustrate Defendants' duty to defend because the insurance adjusters had knowledge that a claim against Valencia was potentially covered by the

policy. *See Scottsdale Ins. Co.*, 36 Cal. 4th at 655 ("If any facts stated or fairly inferable in the complaint, ***or otherwise known or discovered by the insurer***, suggest a claim potentially covered by the policy, the insurer's duty to defend arises and is not extinguished until the insurer negates all facts suggesting potential coverage.") (emphasis added).

Because Defendants had reason to know Valencia's claim was potentially covered by the policy, Defendants' duty to defend is not extinguished until they negate all facts suggesting potential coverage. *Id*.

2. Valencia was not potentially covered under the policy because coverage was barred by the Sexual Misconduct Exclusion

Both parties agree that an insurer's duty to defend is determined by comparing the allegations in the underlying complaint against the terms of the subject insurance policies. (Opp. at 12; Reply at 9). Therefore, the governing test is whether the complaints in the Underlying Action triggered a duty to defend when the allegations are compared to Defendants' insurance policies.

Defendants reviewed the Plaintiffs' complaints in the Underlying Action and concluded that each complaint alleged (1) Valencia sexually assaulted Plaintiffs while they were patients of Aurora; (2) Valencia was arrested for his sexual misconduct in violation of various California Penal Code sections; and (3) Valencia pled guilty to those sexual misconduct violations and was imprisoned. (Reply at 11; DSUF Nos. 5-18).

Defendants argue that, when one compares Plaintiffs' complaints to the insurance policies, coverage is barred under the Sexual Misconduct Exclusions. (Reply at 11). The policies all bar coverage if a "final adjudication" or "judicial determination" affirms that an individual insured committed sexual misconduct. (*Id*.) Because the Plaintiffs' complaints in the Underlying Action each alleged that Valencia pled guilty to his sexual misconduct offenses, and a guilty plea qualifies as a "final

adjudication" or "judicial determination," Defendants conclude that their duty to defend Valencia was extinguished. (*Id*.)

Plaintiffs respond that Defendants' determination was made in bad faith because the policy covered "allegations" against an insured's employee for sexual misconduct, until final adjudication. (Opp. at 15). Plaintiffs refer to a section of the policy that states Defendants "will defend civil claims alleging such [criminal] acts . . . until final adjudication." (Opp. at 16). Plaintiffs further contend that if guilty pleas were final adjudications, the jury would not have been tasked with answering the question on sexual battery. (*Id*.)

Plaintiffs' arguments are unavailing. As Defendants correctly point out, the language Plaintiffs quote is from a separate Dishonesty Exclusion in the policy rather than the Sexual Misconduct Exclusions at issue in the Motion. (Reply at 17). Moreover, Plaintiffs' assertion that a guilty plea does not qualify as a final adjudication or judicial determination is unpersuasive. Indeed, Plaintiffs fail to cite any legal authority supporting this contention.

Defendants, however, cite to persuasive authority that adopts a more common-sense approach. *See e.g.*, *Herley Indus., Inc. v. Fed. Ins. Companies, Inc.*, No. CIV.A.08-5377, 2009 WL 2596072, at *10 (E.D. Pa. Aug. 21, 2009) (applying an insurance policy exclusion and explaining that "a guilty plea is not distinct from a final adjudication on the merits"); *First Nat. Bank Holding Co. v. Fid. & Deposit Co. of Maryland*, 885 F. Supp. 1533, 1537 (N.D. Fla. 1995) (applying an insurance policy exclusion and rejecting a plaintiff's contention that guilty pleas are not a final adjudication because the argument is "frivolous."); *In re Enron Corp. Sec., Derivative & "Erisa" Litig.*, 391 F. Supp. 2d 541 (S.D. Tex. 2005) (same).

Plaintiffs alternatively argue that the "final adjudication" language only applies to civil matters because a broader reading would render the Sexual Misconduct Exclusion clause useless whenever a criminal case preceded a civil claim. (Opp. at 17). This argument is also unpersuasive. If contractual language is clear and explicit, it governs. *Bank of the W. v. Superior Ct.*, 2 Cal. 4th 1254, 1264, 833 P.2d 545 (1992).

And "this rule, as applied to a promise of coverage in an insurance policy, protects not the subjective beliefs of the insurer but, rather, the objectively reasonable expectations of the insured." *Id*. at 1265 (citations omitted).

Defendants make the better argument. If the "final adjudication" language did not equally apply to criminal matters, Defendants would always have to fund the defense of a perpetrator through the conclusion of a civil case, irrespective of whether the perpetrator was already found guilty of the underlying conduct. (Reply at 16-17). If the Court adopted this strained interpretation, it would render the "final adjudication" clause surplusage. *See* 2 Witkin, *Summary of California Law* (11th ed. 2021) ("Courts disfavor constructions of policy provisions that render other provisions surplusage").

At the hearing, Plaintiffs' counsel urged the Court to review *Mulkins v. Allstate Ins. Co*., an unpublished Ninth Circuit opinion that held, "[t]he district court erred in holding that [the insured's] guilty plea to a charge of assault with a deadly weapon precluded [plaintiff] from arguing that [the insured's] conduct was not criminal in nature." 216 F.3d 1083 (9th Cir. 2000). Plaintiffs claim that the Court should apply the same reasoning and allow Valencia to argue that his guilty plea is not a "judicial determination," which is excluded from coverage under the policies here.

Mulkins, however, is inapposite. The insured in *Mulkins* contested the underlying facts surrounding his guilty plea, and the Court found that fact issues remained as to whether the insured's act was criminal and thereby excluded under a criminal acts provision in the insurance policy. *Id*. at *1. But here Valencia does not dispute the underlying facts surrounding his guilty plea, so no fact issues remain. And even if he did, the guilty plea would still plainly qualify as a prior judicial determination and be excluded from coverage under the policies.

Defendants further argue that Insurance Code section 533 eliminates any duty to defend Valencia because it bars coverage of inherently harmful conduct. Defendants also argue that, even if there was a duty to defend Valencia, Plaintiffs cannot prove

recoverable damages. The Court need not reach these arguments because the Sexual Misconduct Exclusion extinguishes Defendants' duty to defend Valencia.

For the reasons set forth above, Defendants' Motion as to Plaintiffs' first and second causes of action is **GRANTED**.

B. Plaintiffs' Third, Fourth, and Fifth Causes of Action as Judgment Creditors

Plaintiffs' third, fourth, and fifth causes of action seek indemnity for their underlying judgment against Valencia as judgment creditors under California Insurance Code section 11580(b)(2). The California Supreme Court has made clear that "the insurer's duty to indemnify runs to claims that are actually covered, in light of the facts proved." *Buss v. Superior Ct*., 16 Cal. 4th 35, 45, 939 P.2d 766 (1997). Therefore, Plaintiffs' causes of action as judgment creditors will survive only if the Defendants' policies covered the ***judgment*** against Valencia.

The jury's special verdict in the Underlying Action found Valencia liable for sexual battery based on findings that Valencia "intended to cause a harmful or offensive contact with [Plaintiffs'] sexual organ / anus / groin / buttocks / or breasts," and that Plaintiffs did not "consent to be touched" and were "harmed or offended by Juan Valencia's conduct." (Motion at 12). As described above, the applicable policies all preclude coverage where either a final adjudication or judicial determination affirms that an individual insured committed sexual misconduct. Valencia was found liable for sexual battery after a full trial on the merits; accordingly, the Defendants' policies do not cover the judgment against Valencia and Plaintiffs' claims fail.

Defendants further argue that Insurance Code section 533 prohibits indemnity coverage for sexual battery, and that there is no indemnity coverage for Valencia because his sexual misconduct was not within the scope of his employment. The Court need not reach these arguments because the Sexual Misconduct Exclusion bars recovery through indemnification.

For the reasons set forth above, Defendants' Motion on Plaintiffs' third, fourth, and fifth causes of action is **GRANTED.**

C. Plaintiffs' Sixth Cause of Action for Declaratory Relief

Plaintiffs bring a claim for declaratory relief under 28 U.S.C. § 2201 that substantively restates all of the issues in the proceeding causes of action. (FAC ¶¶ 51-61). Declaratory relief, however, "is designed to resolve uncertainties or disputes that may result in future litigation" and "operates prospectively and is not intended to redress past wrongs." *StreamCast Networks, Inc. v. IBIS LLC*, No. CV05-04239MMM(EX), 2006 WL 5720345, at *3 (C.D. Cal. May 2, 2006). Declaratory judgment is to enable the parties to shape their conduct as to avoid a breach. *Babb v. Superior Ct.,* 3 Cal. 3d 841, 848, 479 P.2d 379 (1971).

Plaintiffs' sixth cause of action is an improper claim for declaratory relief because it attempts to redress past wrongs rather than help resolve uncertainties that may result in future litigation. Accordingly, Defendants' Motion as to Plaintiffs' sixth cause of action is **GRANTED**.

IV. CONCLUSION

The Motion is **GRANTED** as to all claims and the action is therefore **DISMISSED**.

This Order shall constitute notice of entry of judgment pursuant to Federal Rule of Civil Procedure 58. Pursuant to Local Rule 58-6, the Court **ORDERS** the Clerk to treat this order, and its entry on the docket, as an entry of judgment.

IT IS SO ORDERED.