

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

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MICHAEL B. WOLF, ESQUIRE	:	October Term, 2016
and	:	
WOLF LAW P.C. t/a WOLF LAW ASSOCIATES	:	Case No. 000066
	:	
<i>Plaintiffs</i>	:	
v.	:	Commerce Program
	:	
LIBERTY INSURANCE UNDERWRITERS, INC.	:	
and	:	
GARY COLLINS and WEATTA L. COLLINS	:	Control Nos. 16072029,
	:	16072077
<i>Defendants</i>	:	

ORDER-AND-MEMORANDUM OPINION

AND NOW, this 11th day of October, 2016, upon consideration of the cross-motions for summary judgment respectively filed by plaintiffs and defendant Liberty Insurance Underwriters, Inc., the response in opposition of defendant Liberty Insurance Underwriters, Inc. to the motion of plaintiffs, the respective *memoranda* of law, plaintiffs' Reply *Memorandum* in further support of their motion, and a sur-reply thereto of defendant Liberty Insurance Underwriters, Inc., it is **ORDERED** as follows:

- I. The motion for summary judgment of defendant Liberty Insurance Underwriters, Inc. is **GRANTED** and the complaint filed against all defendants in this action is **DISMISSED**.
- II. The motion for summary judgment of plaintiffs Michael B. Wolf and Wolf Law, P.C. is **DENIED** and the counterclaim of defendant Liberty Insurance

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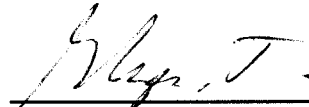


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COMMERCE PROGRAM

Underwriters, Inc. is **DISMISSED**.

BY THE COURT,

A handwritten signature in cursive script, appearing to read "Glazer, J.", is written above a horizontal line.

GLAZER, J.

MEMORANDUM OPINION

The cross—motions for summary judgment require this court to determine whether receipt of a lawsuit by the holder of a claims-made insurance policy triggered an insurer’s duty to defend, where service of such lawsuit upon the holder occurred after the expiration of the policy and the automatic extended reporting period. For the reasons below, the court finds that service of the lawsuit after expiration of the policy and the automatic extended reporting period did not give rise to a claim, and no duty to defend or indemnify was triggered under the policy.

BACKGROUND

Plaintiffs Michael B. Wolf, Esquire, and Wolf Law P.C. (together “Wolf”), are respectively an attorney and a law firm licensed to practice in Pennsylvania. At all times relevant to this action, defendants Gary Collins and Weatta L. Collins, husband and wife, (together “Collins”), were plaintiffs in an attorney malpractice action filed against Wolf in late December 2014 (the “Underlying Action”).¹ Defendant Liberty Insurance Underwriters, Inc. (“Liberty Insurance”), is a company licensed to engage in the insurance business in Pennsylvania. From December 1, 2013 to December 1, 2014, Liberty Insurance provided Wolf with a Lawyer’s Professional Liability Policy, No. LPA305240—0113 (the “Policy”).²

The Policy contained a provision titled “Automatic Extended Reporting Period.” This provision stated as follows:

¹ Gary Collins and Weatta L. Collins, H/W v. Michael B. Wolf, Esquire and Wolf Law, P.C., case No. 1412-03118, Exhibit E to the complaint.

² Lawyer’s Professional Liability Policy, Exhibit B to the complaint.

1. **Automatic Extended Reporting Period.**

If the **named insured** or **we** cancel or refuse to renew the policy, then the insurance afforded by this policy shall be automatically extended, subject otherwise to its terms, limits of liability, exclusions and conditions, to apply to **claims** first made against you during the sixty (60) days immediately following the effective date of such nonrenewal or cancellation, but only by reason of a **wrongful act** occurring before such effective date and otherwise covered by this insurance. Such period shall hereinafter be referred to as the “Automatic Extended Reporting Period.”³

On October 1, 2014, Liberty Insurance sent to Wolf a Notice of Non—Renewal of Insurance, which stated as follows:

We will not renew this insurance when it expires.

The reason for nonrenewal is Liberty Insurance ... will no longer be the carrier for Aon Attorneys Advantage Lawyer professional Liability insurance program produced and underwritten by Affinity Insurance Services, Inc.

This is a “claims—made” policy. You have a 60 day period after the policy expiration date to purchase an extended reporting coverage endorsement, also known as “tail coverage.” Please contact us or your agent for more information.

On December 22, 2014, Collins initiated the Underlying Action against Wolf in the Court of Common Pleas of Philadelphia County, and unsuccessfully attempted to serve the writs of summons upon Wolf at Wolf’s former address in King of Prussia, Pennsylvania. On January 20, 2015, Collins obtained re—issuance of the writs of

³ Policy, Exhibit A to the motion for summary judgment of defendant Liberty Insurance, p. 9 of 14, motion control No. 16072029.

summons and successfully served Wolf on February 27, 2015, at Wolf's new address.⁴ On March 3, 2015, Wolf sent a letter to Liberty Insurance. In pertinent part, the letter stated that—

[y]ou are hereby given notice of a malpractice suit filed against Michael B. Wolf, the undersigned, and Wolf Law, P.C.... Attached please find the writs of summons which were filed on December 22, 2014.⁵

Upon receipt of this notification, Liberty Insurance denied coverage and has refused to defend Wolf in the Underlying Action.⁶ Liberty Insurance denied coverage and has refused to defend Wolf on grounds that the claim asserted by Collins in the Underlying Action was first made against Wolf after expiration of the policy period and the Automatic Extended Reporting Period.⁷

On October 5, 2015, Wolf initiated the instant action by filing a complaint for declaratory judgment. According to the complaint, Wolf is “entitled to coverage and a defense” from Liberty Insurance in the Underlying Action.⁸ On November 12, 2015, Liberty Insurance filed an answer with new matter and a counterclaim. The counterclaims seeks a judicial determination that Liberty Insurance “has no duty to defend or indemnify” Wolf in the Underlying Action.⁹

On July 18, 2016, Wolf filed a motion for summary judgment. Attached to this

⁴ STIPULATION OF PARTIES OF UNDISPUTED FACTS, ¶ 12, Exhibit A to the motions for summary judgment of plaintiff Wolf, motion control No. 16072077.

⁵ Letter dated March 3, 2015 from Wolf to Liberty Insurance, Exhibit D to the motion for summary judgment of plaintiff Wolf, motion control No. 16072077; STIPULATION OF PARTIES OF UNDISPUTED FACTS, ¶ 13, *Id.*

⁶ STIPULATION OF PARTIES OF UNDISPUTED FACTS, ¶ 14.

⁷ Motion for summary judgment of defendant Liberty Insurance, ¶ 13, motion control No. 16072029.

⁸ Complaint, ¶ 19. The Collins defendants have been joined in this action pursuant to 42 Pa. C.S.A. § 7540(a) which states in pertinent part that “[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration....”

⁹ Answer with new matter and counterclaim, ¶ 2 of the counterclaim.

motion is a stipulation of undisputed facts executed by Wolf and Liberty Insurance. Liberty Insurance timely filed a response in opposition to Wolf's motion, Wolf filed a reply thereto, and subsequently Liberty Insurance filed a sur-reply in further response to the motion filed by Wolf. Also on July 18, 2016, Liberty Insurance filed against Wolf a cross-motion for summary judgment to which Wolf did not respond. The cross-motions for summary judgment are ripe for a decision.

DISCUSSION

The law on summary judgment is well settled:

[s]ummary judgment may be granted only in the clearest of cases where the record shows that there are no genuine issues of material fact and also demonstrates that the moving party is entitled to judgment as a matter of law.¹⁰

Under the [Pennsylvania] Rules [of Civil Procedure], a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law.... In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Finally, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt.¹¹

In the motion for summary judgment, Wolf asserts that the Underlying Lawsuit constitutes a claim because it was filed while the automatic extended reporting period was still in effect, even though service thereof was received after such period had expired.¹² In the response, Liberty Insurance asserts that pursuant to the language in the Policy, the Underlying Lawsuit did not become a claim because it was received by

¹⁰ *Trowbridge v. Scranton Artificial Limb Co.*, 747 A.2d 862, 864 (Pa. 2000).

¹¹ *Fine v. Checcio*, 870 A.2d 850, 857 (Pa. 2005).

¹² *Memorandum of law in support of the motion for summary judgment of plaintiff Wolf*, p. 1, QUESTION PRESENTED, motion control No. 1602077.

Wolf after the Automatic Extended Reporting Period had expired.¹³ Stated differently, Liberty Insurance asserts that under the facts in this case, there could be no claim asserted by Wolf unless Wolf received notice of the claim during the life of the Policy, or during the Automatic Extended Reporting Period thereof. To determine whether a claim arose, if at all, this court shall read and interpret the language contained in the Policy.

In Pennsylvania—

The task of interpreting an insurance contract is generally performed by a court rather than by a jury. The goal of that task is ... 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.... [C]ontractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts.... [Courts] will not, however, distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity.¹⁴

Turning to the pertinent sections of the Policy, the court notes the following language:

**THIS IS A CLAIMS—MADE POLICY. PLEASE READ IT CAREFULLY.
LAWYERS PROFESSIONAL LIABILITY POLICY**

Coverage

We agree with the **named insured** [Wolf] ... as follows:
We agree to pay on **your** behalf all damages in excess of the deductible amount and up to the limits of liability stated in the Declarations that **you** become legally obligated to pay, provided that such **damages:**

1. result from **claims**

¹³ *Memorandum* of law filed by defendant Liberty Insurance in support of its motion for summary judgment, control No. 1602077.

¹⁴ *Madison Const. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999).

- a. first made against **you** during the policy period or any extended reported period, if applicable, and
 - b. reported to **us** in writing; and
2. are caused by a **wrongful act** which takes place before or during the **policy period**....

Definitions

Whenever the specially defined terms below are used in the policy they will be printed in uncapitalized boldface type **thus**.

2. **claim** means a demand received by **you** for money or services, including the service of suit....¹⁵

To interpret the meaning of this language, the court lifted the term “**claim**,” as found in the section titled **Definitions**, and inserted it into item 1. of the section titled **Coverage**. This simple operation yielded the reading below:

Coverage

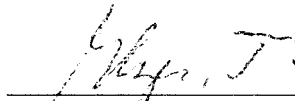
We agree with the **named insured** [Wolf] ... as follows:
We agree to pay on **your** behalf all damages in excess of the deductible amount and up to the limits of liability stated in the Declarations that **you** become legally obligated to pay, provided that such **damages**:

1. result from a demand received by **you** for money or services, including the service of suit ...
 - a. first made against **you** during the policy period or any extended reporting period, if applicable, and
 - b. reported to **us** in writing; and
2. are caused by a **wrongful act** which takes place before or during the **policy period**....

¹⁵ Lawyer’s Professional Liability Policy, Exhibit B to the complaint, pp. 1–3 of 14.

This clear and unambiguous language leaves no doubt: Liberty Insurance agreed to pay damages resulting from **receipt** by Wolf of **service of suit**, which service was required to be made either during the effective Policy dates, or during the Automatic Extended Reporting Period. Applying this clear and unambiguous provision to the facts in this case, the court notes that although Collins filed the original writ of summons while the Automatic Extended Reporting Period was still in effect, Wolf **received service** of the writ only after the expiration of that period.¹⁶ The court is aware that, had Collins directed service to Wolf's new address, such service would probably have been received by Wolf within the Automatic Extended Reporting Period.¹⁷ But notwithstanding the accident of mis-delivery of the writ of summons to a disused address, this court may not ignore the clear language of the Policy, nor circumvent the stipulated fact that Wolf received a re-issued writ of summons beyond the Automatic Extended Reporting Period. For this reason, Liberty Insurance properly denied coverage to Wolf, and properly refused to tender a defense in the Underlying Lawsuit. The motion for summary judgment of plaintiff Wolf is denied and the motion for summary judgment of defendant Liberty Insurance is granted. Wolf's complaint and Liberty Insurance's counterclaim are both dismissed.

BY THE COURT,



GLAZER, J.

¹⁶ A “‘claims made’ policy [is an insurance policy that] protects the holder only against claims made during the life of the policy. Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co., 908 A.2d 888, 892 (Pa. 2006).

¹⁷ Pursuant to the terms contained in the Policy, the Automatic Extended Reporting Period spanned 60 days, commencing on December 2, 2015, and ending sixty days thereafter, January 30, 2015. See Policy, p. 9 of 14, Exhibit A to the motion for summary judgment of defendant Liberty Insurance, motion control No. 16072029;