IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

GAGE COUNTY, NEBRASKA,

Plaintiff,

v.

NEBRASKA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION, WESTPORT INSURANCE CORPORATION, THE TRAVELERS INDEMNITY COMPANY, COUNTY REINSURANCE LTD., UNITED NATIONAL INSURANCE COMPANY, and AMERICAN ALTERNATIVE INSURANCE CORPORATION,

Defendants.

NEBRASKA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION,

Defendant/Third-Party Plaintiff,

v.

BERKSHIRE HATHAWAY HOMESTATE CO., NATIONAL CASUALTY COMPANY, NATIONWIDE MUTUAL INSURANCE COMPANY, UNITED NATIONAL INSURANCE COMPANY, and AMERICAN ALTERNATIVE INSURANCE CORPORATION,

Third-Party Defendants.

WESTPORT INSURANCE CORPORATION, as successor to COREGIS INSURANCE COMPANY,

Defendant/Counter-Plaintiff,

v.

GAGE COUNTY, NEBRASKA,

Plaintiff/Counter-Plaintiff.

WESTPORT INSURANCE CORPORATION, as successor to COREGIS INSURANCE COMPANY,

Case No. CI 17-0339

ORDER ON MOTIONS FOR JUDGMENT ON THE PLEADINGS

Third-Party Plaintiff,

v.

BURDETTE SEARCEY and WAYNE PRICE,

Third-Party Defendants.

TRAVELERS INDEMNITY COMPANY,

Defendant/Counter-Plaintiff,

v.

GAGE COUNTY, NEBRASKA,

Plaintiff/Counter-Defendant.

TRAVELERS INDEMNITY COMPANY,

Third-Party Plaintiff,

v.

BURDETTE SEARCEY and WAYNE PRICE,

Third-Party Defendants.

UNITED NATIONAL INSURANCE COMPANY,

Defendant/Counter-Claimant,

v.

GAGE COUNTY, NEBRASKA,

Plaintiff/Counter-Defendant

UNITED NATIONAL INSURANCE COMPANY,

Cross-Plaintiff,

v.

BURDETTE SEARCEY and WAYNE PRICE,

Cross-Defendants.

AMERICAN ALTERNATIVE INSURANCE CORPORATION,

Defendant/Counter-Claimant,

v.

GAGE COUNTY, NEBRASKA,

Plaintiff/Counter-Defendant.

AMERICAN ALTERNATIVE INSURANCE CORPORATION,

Cross-Plaintiff,

v.

BURDETTE SEARCEY and WAYNE PRICE,

Third-Party/Cross-Defendants.

On July 11, 2018, this matter came before the Court on Motions for Judgment on the Pleadings filed by Defendants Westport Insurance Company (Filing No. 43), American Alternative Insurance Corporation (Filing No. 44), United National Insurance Company (Filing No. 45), and Travelers Indemnity Company (Filing No. 48). Joel Bacon and Joel Nelson appeared for the Plaintiff Gage County, Nebraska (Gage County). Adam Fleischer appeared for Defendant Westport Insurance Company (Westport). David Dolendi appeared for Defendant American Alternative Insurance Corporation (American Alternative). Catalina Sugayan appeared for Defendant United National Insurance Company (United National). John Hackett and Ryan Kunhart appeared for Defendant Travelers Indemnity Company (Travelers). Charles Campbell appeared for Defendant Nebraska Intergovernmental Risk Management Association (NIRMA). Douglas Krenzer appeared for Defendant County Reinsurance Ltd. Gregory Kratz appeared for

Cross Defendants and Third-Party Defendants Burdette Searcey and Wayne Price. Being fully advised on the premises, the Court rules as follows.

I. BACKGROUND

In 1985, Helen Wilson was murdered in her apartment. 1st Am. Compl. ¶ 10. Gage County's employees arrested and charged six persons with the crime, who later became known as the "Beatrice Six." *Id.* at ¶ 11.

The key date for the coverage issues raised by the motions for judgment on the pleadings is August 2, 1989. Gage County's employees arrested and charged the Beatrice Six in March, April, and May 1989. Gage County Reply to AAIC Am. Counterclaim ¶ 8; Gage County Reply to United National Counterclaim ¶ 4. Two members of the Beatrice Six pleaded guilty before August 2, 1989. 1st Am. Compl. ¶¶ 12–13. Three members pleaded guilty and one was convicted by a jury after August 2, 1989. *Id.* at ¶¶ 14–17.

In 1997, NIRMA solicited Gage County's business. 1st Am. Compl. ¶ 24. In addition to NIRMA's coverage, Defendants Westport, Travelers, United National, and American Alternative (hereinafter the "Excess Insurers"), or their predecessors in interest, extended Gage County excess Law Enforcement Liability coverage. *Id.* at ¶¶ 3–4, 6–8. Although the Excess Insurers issued their policies in the 1990s and 2000s, the policies had a retroactive date for law enforcement liability coverage of August 2, 1989. *Id.* at ¶ 60.a.

In 2008, DNA evidence led to the exoneration of the Beatrice Six. 1st Am. Compl. ¶ 45. The Beatrice Six later filed civil rights lawsuits against Gage County and its employees under 42 U.S.C. § 1983. *Id.* at ¶ 46. In July 2016, a federal jury awarded the Beatrice Six $28.1 million against Gage County and its employees Burdette Searcey and Wayne Price after a consolidated trial. *Id.* at ¶ 50; *Dean v. Searcey*, 893 F.3d 504 (8th Cir. 2018).

The First Claim for Relief in Gage County's First Amended Complaint asks for a declaration that the Excess Insurers have a "duty to indemnify the County for claims for which the County was insured under the terms of those Defendants' policies." 1st Am. Compl. ¶ 59. Gage County alleges:

> Some or all of the claims brought and prosecuted by the Beatrice Six were covered claims for the following reasons:
>
> a. The claims of those members of the Beatrice Six who pled or who were convicted after August 2, 1989 were covered claims under the retroactive occurrence-based LEL coverage, as well as under all subsequent policies that contained the same language. Westport, The Travelers Indemnity Company, United National and American Alternative are obligated to provide excess coverage for such claims.
> b. . . .
> c. In the alternative, for the purposes of occurrence-based insurance coverage for wrongful conviction/wrongly obtained pleas, coverage does not trigger until exoneration, and the claims of each of the Beatrice Six were covered under the LEL occurrence-based coverage in place when the Beatrice Six were exonerated. . . .
> d. In the alternative, for the purposes of occurrence-based insurance coverage for wrongful conviction/wrongfully obtained pleas, coverage triggers continuously so long as the injured party continues to suffer damage, and the claims of each of the Beatrice Six were therefore covered under the LEL occurrence-based coverage in each of the agreements between the County and NIRMA. Each of the Defendant excess insurers is obligated to provide coverage for such claims to the extent they provided excess coverage during any or all of the applicable years.
>
> 1st Am. Compl. ¶ 60.

Because of the "follow form" nature of the insurance coverages, Gage County has represented to the Court that the policies issued by Westport's predecessor (Coregis Insurance Company) and United National "contain the controlling language." Gage County's Brief in Opposition to the Motions for Judgment on the Pleadings at 9 (hereinafter "Brief for Gage County"); see Gage County's Reply to Westport's 2d Am. Counterclaim ¶ 17. Gage County further represents that the "language in both the Coregis and [United National] policies as it relates to the Insurers' Motions is the same in all material respects." Brief for Gage County at 9.

Westport's policy issued in August 1997 provides in part:

> SECTION II:
> CASUALTY INSURANCE
> . . .
> Agreement D: Law Enforcement Officers' Professional Liability
> COVERAGE
> . . .
> We will pay those sums that the Insured must legally pay as damages due to an act, error or omission that occurs while:
> - performing duties as a law enforcement officer; and
> - acting in the furtherance of law enforcement.
>
> . . .
> These payments cover bodily injury, property damage and personal injury caused by an occurrence during any year of this insurance involving an:
> - act;
> - error; or
> - omission.
>
> . . .
> DEFINITIONS APPLICABLE ONLY TO AGREEMENT D
> . . .
> Damages. This means a monetary judgment, award or settlement.
> . . .
> Personal Injury. This means:
> - false arrest;
> - mistaken service of civil papers;
> - false imprisonment;
> - malicious prosecution;
> - libel, slander, defamation of character; and
> - violation of civil or property rights.
>
> . . .
> Occurrence. This means an event that results in damage. A series of related events, including continuous or repeated exposure from a common cause, is one occurrence.
>
> Gage County's Reply to Westport's 2d Am. Counterclaim ¶ 17; Westport's 2d Am. Counterclaim Ex. G.

An endorsement changed the definition of "Personal Injury" in later Westport policies to "mean[] injury, other than 'bodily injury,' arising out of one or more of the following offenses: . . . Malicious prosecution; . . . Violation of civil rights, including but not necessarily limited to violations of Federal Civil Rights Act and similar laws." Gage County's Reply to Westport's 2d

Am. Counterclaim ¶ 17; Westport's 2d Am. Counterclaim Exs., G, H. United National's polices defined "Personal Injury" like the later Westport policies. United National Counterclaim ¶ 21.

The Excess Insurers have all asserted counterclaims against Gage County for a declaration that their policies do not cover the Beatrice Six's judgment. The Excess Insurers have also asserted cross-claims or third-party complaints against Burdette Searcey and Wayne Price requesting declarations that their policies do not indemnify Searcey or Price.

Gage County's replies to the counterclaims assert affirmative defenses of estoppel and waiver. Searcey and Price's answers to the cross claims and third-party complaints generally deny the Excess Insurers' allegations and affirmatively allege estoppel, waiver, and failure to provide notice, among other defenses.

In their motions for judgment on the pleadings, the Excess Insurers ask the Court to enter judgments for the Excess Insurers and against Gage County, Searcey, and Price on the following claims or causes of action:

- Westport's motion: (1) Count I of Westport's Second Amended Counterclaim and Third-Party Complaint for Declaratory Judgment; and (2) the First Claim for Relief in Gage County's First Amended Complaint.

- American Alternative's motion: (1) the First Claim for Relief in Gage County's First Amended Complaint; (2) American Alternative's Amended Counterclaim against Gage County; and (3) American Alternative's Amended Cross-Claim against Searcey and Price.

- United National's motion: (1) the First Claim for Relief in Gage County's First Amended Complaint; (2) United National's Counterclaim against Gage County; and (3) United National's Cross-Claim against Searcey and Price.

- Travelers' motion: (1) the First Claim for Relief in Gage County's First Amended Complaint; (2) Travelers' Second Amended Counterclaim against Gage County; and (3) Travelers' Third-Party Complaint against Searcey and Price.

II. STANDARD

A motion for judgment on the pleadings admits the truth of all well-pled facts in the opposing party's pleading, together with all reasonable inferences from those facts. *Johnson v. State*, 270 Neb. 316, 700 N.W.2d 620 (2005). The moving party admits the untruth of movant's allegations that have been controverted by the opposing party. *Id.*

III. ANALYSIS

A. The terms of the Excess Insurers' policies do not indemnify Gage County for the Beatrice Six's judgment.

The Excess Insurers argue the relevant triggering events under their policies were the arrest and charging of the Beatrice Six. Gage County represented to the Court that each member of the Beatrice Six was charged and arrested before August 2, 1989. Brief for Gage County at 17–18. But Gage County argues, alternatively, that the policies were instead triggered by each "injury-in-fact," or continuously between charging and conviction, or upon conviction.

To summarize the policy language, the Excess Insurers cover sums that Gage County must legally pay as damages (including monetary judgments) due to an act, error or omission occurring while performing duties as law enforcement officers or acting in furtherance of law enforcement. These payments cover personal injuries (including malicious prosecution and civil rights violations) caused by an occurrence (an event or series of related events that results in damage) during the policy period which involve an act, error, or omission.

Like other contracts, courts give language in insurance policies its plain and ordinary meaning if the language is clear. *Henn v. Am. Family Mut. Ins. Co.*, 295 Neb. 859, 894 N.W.2d 179 (2017). Courts should consider what a reasonable person in the insured's position would have understood the language to mean. *Id.* But a policy is construed against the insurer only if it is ambiguous. *Id.*

Applying these principles, the Court concludes that the Excess Insurers' policies do not indemnify Gage County for the Beatrice Six's judgment. The Beatrice Six were injured when Gage County's employees charged and arrested them. This occurrence—an event resulting in damage—involved acts, errors, or omissions of Gage County's employees. Because the occurrences did not occur during any of the Excess Insurers' years of insurance, their policies do not indemnify Gage County.

After Gage County charged and arrested the Beatrice Six, its law enforcement personnel might have continued committing acts, errors, or omissions that were wrongful under federal law. These post-injury acts, however, did not create a series of new personal injuries under the policies. Rather, they continued the Beatrice Six's injuries that started before the relevant policy periods. This conclusion is consistent with the general rule that an "occurrence" under a liability policy is when the complaining party was damaged, not when the wrongful act occurred. See *Farr v. Designers Phosphate & Premix Int'l*, 253 Neb. 201, 570 N.W.2d 320 (1997) ("the time of the occurrence of an accident, within the meaning of a liability indemnity policy, is not the time when the wrongful act was committed, but the time when the complaining party was actually damaged.").

By so holding, this Court joins the "clear majority" of courts that have held that law enforcement liability coverage for malicious prosecution is triggered at the time of charging. *City of Erie v. Guaranty Nat'l Ins. Co.*, 109 F.3d 156, 160 (3d Cir. 1997). Many courts have reached the same conclusion for claims under 42 US.C. § 1983. See *Genesis Ins. Co. v. City of Council Bluffs*, 677 F.3d 806 (8th Cir. 2012); *City of Erie v. Guaranty Nat'l Ins. Co.*, 109 F.3d 156 (3d Cir. 1997); *Indian Harbor Ins. Co. v. City of Waukegan*, 33 N.E.3d 613 (Ill. App. 2015); *St. Paul*

Fire & Marine Ins. Co. v. City of Zion, 18 N.E.3d 193 (Ill. App. 2014); *City of Lee's Summit v. Mo. Pub. Entity Risk Mgmt.*, 390 S.W.3d 214 (Mo. App. 2012).

Courts following the majority rule have reasoned that a "personal injury" occurs when the complaining party is damaged, not when the elements of a constitutional tort have accrued:

> [W]e think it improbable that the term "personal injury" is used in a technical sense to speak of a time when a cause of action has fully matured. It is more likely intended to describe the time when harm begins to ensue, when injury occurs to the person, that is, in this case, when the relevant law suit is filed.
> *Genesis Ins. Co. v. City of Council Bluffs*, 677 F.3d 806, 814 (8th Cir. 2012), quoting *Royal Indem. Co. v. Werner*, 979 F.2d 1299 (8th Cir. 1992) (emphasis removed).

Policy language, not accrual of the underlying cause of action, determines coverage. *St. Paul Fire & Marine Ins. Co. v. City of Waukegan*, 82 N.E.3d 823 (Ill. App. 2017).

Gage County argues that we ought to buck this trend because some of the constitutional torts its employees committed might have occurred after August 2, 1989. Further, Gage County argues it is not clear when Sheriff DeWitt directed, authorized, or agreed to the civil rights violations for purposes of municipal liability.

But, as discussed, any post-charging constitutional misconduct continued the Beatrice Six's injuries that started before August 2, 1989. Other cases have reached similar conclusions. For example, in *City of Lee's Summit v. Missouri Public Entity Risk Management*, Theodore White was arrested and charged with sexual assault in 1999. 390 S.W.3d 214 (Mo. App. 2012). White was convicted but an appellate court remanded for a new trial. White's first retrial in 2004 resulted in a hung jury. White's second retrial in 2005 ended in an acquittal. White later filed a § 1983 suit based on the prosecution's failure to disclose exculpatory evidence. The insurance policy in question was in force between 2001 and 2006.

The insured city argued that the policy was triggered when White was exonerated. Alternatively, the city argued that, "based on White's allegation that the defendants withheld exculpatory evidence at each of his three criminal trials and his injuries were ongoing or repeated over a period of several years, there were multiple triggering events." *Id.* at 219. The Missouri Court of Appeals rejected both arguments because "White suffered injury when the charges were filed against him." *Id.* at 222.

The court rejected a similar argument in *St. Paul Fire & Marine Ins. Co. v. City of Waukegan*, 82 N.E.3d 823 (Ill. App. 2017). There, Juan Rivera confessed to a crime after days of intense questioning. In 1993, the state introduced his confession at his first trial, which ended in a conviction. DNA testing later excluded Rivera as the source of semen found at the scene. In 2009, the state retried Rivera. Police officers testified about his confession. Rivera was convicted again. But an appellate court reversed and the state released Rivera.

Rivera sued the City of Waukegan, alleging (among other claims) that the use of his coerced confession and withholding of exculpatory evidence violated the Fifth and Fourteenth Amendments. Waukegan had law enforcement liability coverage between 2006 and 2011. One of the policies provided:

> Law Enforcement Liability. We'll pay amounts any protected person is legally required to pay as damages for covered injury or damage that:
>
> * results from law enforcement activities or operations by or for you;
> * happens while this agreement is in effect; and
> * is caused by a wrongful act that is committed while conducting law enforcement activities or operations.
>
> . . .
>
> *Injury or damage* means bodily injury, personal injury, or property damage.
>
> . . .
>
> *Personal injury* means injury, other than bodily injury, caused by any of the following wrongful acts:
>
> . . .
>
> * Violation of civil rights protected under any federal, state, or local law.
>
> . . .

Wrongful act means any act, error, or omission.

Id. at 827–28.

Waukegan argued that the coverage was "triggered by 'wrongful acts' that occurred during Rivera's [2009 retrial], specifically, the use of Rivera's coerced confession in violation of the fifth amendment and suppression of exculpatory evidence pursuant to *Brady v. Maryland*." *Id.* at 827 (citation omitted). Like Gage County, Waukegan argued that the majority rule cases were distinguishable because they "addressed policies in effect at the time of exoneration, not during a trial." *Id.* at 834. Also, Waukegan argued that coverage should depend on Rivera's "'discrete' claims of constitutional violations.'" *Id.* at 829.

The appellate court rejected the city's argument, repeating its statement from a prior decision involving Rivera:

> We find that *all of the acts or omissions* alleged to have occurred after the date Rivera was charged are really continuations of the same alleged harm. The purported ongoing *acts* of conspiracy that prolonged Rivera's incarceration were not new harmful acts. Instead, they were the continuing effects of Rivera's arrest and ultimately his convictions of rape and murder.
>
> *Id.* at 829, quoting *Indian Harbor Ins. Co. v. City Waukegan*, 33 N.E.3d 613 (Ill. App. 2015) (emphasis by citing court).

Waukegan's argument improperly "focuse[d]on the elements of, or accrual of, a cause of action for a section 1983 *Brady* violation, as opposed to the policy language." *Id.* at 835.

B. Gage County's alternative triggers are not persuasive.

(1) Injury-in-fact trigger.

Gage County suggests three alternative triggering events. First, an "injury-in-fact rule" that would depend on when Searcey, Price, and Gage County (through its policymaker Sheriff

DeWitt) committed wrongful conduct and whether that conduct caused "new or additional injury" to the Beatrice Six. Brief for Gage County at 37. Gage County argues that the Sixth Circuit essentially used an injury-in-fact trigger in *Selective Insurance Co. v. RLI Insurance Co.*, 706 F. App'x 260 (6th Cir. 2017).

But Gage County admits that "this is not a situation where the injury-in-fact rule would normally be deployed" because the Court would have to decide "factually complex" issues of when individual constitutional torts occurred and whether those torts "contributed to" the Beatrice Six's injuries. Brief for Gage County at 37–38. The Court declines to apply an injury-in-fact trigger.

(2) Continuous trigger.

Alternatively, Gage County argues that the Court could use a "continuous trigger approach." Brief for Gage County at 38. Under this approach, "all events from date of arrest to date of conviction would [be] treated as one event" and liability "equitably allocated between all insurers on the coverage during this period." *Id.* at 39. The Nebraska Supreme Court approved a "pro rata, time-on-the-risk allocation" in a pollution case where the insured deposited industrial solvents for decades which, unknown to the insured, leached into the groundwater. *Dutton-Lainson Co. v. Cont'l Ins. Co.*, 279 Neb. 365, 367, 778 N.W.2d 433, 437 (2010).

But unlike in pollution and toxic tort cases, the injury from malicious prosecution is immediate: "The plaintiff faces incarceration, humiliation, and damage to reputation as soon as charges are filed." *Genesis Ins. Co. v. City of Council Bluffs*, 677 F.3d 806, 815–16 (8th Cir. 2012), quoting *City of Erie v. Guaranty Nat'l Ins. Co.*, 109 F.3d 156 (3d Cir. 1997); see *Billings v. Commerce Ins. Co.*, 936 N.E.2d 408 (Mass. 2010) ("A malicious prosecution is not a tort where it is difficult to ascertain when the injurious effects of the tortious conduct first become

manifest; any reasonable person recognizes that the injury occurs on the filing."). So this Court will decline to use a continuous trigger, as have all the other courts that have addressed the same question. See *Genesis Ins. Co.*, *supra*; *City of Erie*, *supra*; *City of Lee's Summit v. Mo. Pub. Entity Risk Mgmt.*, 390 S.W.3d 214 (Mo. App. 2012); *Commerce Ins. Co.*, *supra*; *Zurich Ins. Co. v. Peterson*, 232 Cal. Rptr. 807 (Cal. App. 1986); *Harbor Ins. Co. v. Cent. Nat'l Ins. Co.*, 211 Cal. Rptr. 902 (Cal. App. 1985).

(3) Conviction trigger.

Finally, Gage County suggests that the Court use a bright-line rule that conviction is the trigger. Gage County argues that this approach has the virtue of simplicity while recognizing that the Beatrice Six's convictions were a "culminating injury that result[ed] from a series of tortious acts." Brief for Gage County at 40.

But a conviction-as-trigger rule is inconsistent with the Excess Insurers' policies because the Beatrice Six suffered injuries before their convictions. None of the cases that Gage County cites used a conviction trigger, and this Court has found none.

(4) Favorable termination trigger.

The Court notes that a couple cases have held that the successful termination of the underlying malicious litigation triggers liability coverage. *Roess v. St. Paul Fire & Marine Ins. Co.*, 383 F. Supp. 1231 (M.D. Fla. 1974); *Security Mut. Cas. Co. v. Harbor Ins. Co.*, 382 N.E.2d 1 (Ill. App. 1978), rev'd on other grounds, 397 N.E.2d 839 (Ill. 1979). The Court concludes that treating exoneration as an occurrence (i.e., an event resulting in damage) is not consistent with the Excess Insurers' policies.

C. NIRMA's bad faith would not create coverage under the Excess Insurers' policies.

Even if the Excess Insurers' policies do not cover the Beatrice Six's judgment, Gage County contends that NIRMA created coverage because it "breached the covenant of good faith and fair dealing—i.e., acted in bad faith." Brief for Gage County at 40. Specifically, Gage County argues that NIRMA acted with bad faith by failing to defend Gage County and that such conduct bars an insurer from denying coverage. See, e.g., *Truck Ins. Exch. v. VanPort Homes*, 58 P.3d 276 (Wash. 2002) ("when an insurer wrongfully refuses to defend, it has voluntarily forfeited its ability to protect itself against an unfavorable settlement, unless the settlement is the product of fraud or collusion.").

But the question here is one step removed from the cases that Gage County cites. Gage County is not arguing that the Excess Insurers are barred from denying coverage because they acted in bad faith or breached the covenant of good faith and fair dealing implied in their policies. Rather, Gage County argues that ***NIRMA*** acted in bad faith or breached its contract and, therefore, the Excess Insurers are liable regardless of what their policies say. The Court declines to apply such a rule of transference.

IV. CONCLUSION

The Excess Insurers move for judgment on the First Claim for Relief in Gage County's First Amended Complaint and on their counterclaims for a declaration of noncoverage against Gage County. Gage County's First Claim for Relief alleges that the Excess Insurers have a duty to indemnify Gage County "under the terms of those Defendants' policies." 1st Am. Compl. ¶ 59. The Excess Insurers are entitled to judgment on this claim.

But Gage County's replies to the Excess Insurers' counterclaims affirmatively allege that waiver and estoppel prevent declarations of non-coverage. Similarly, in response to the Excess

Insurers' cross claims and third-party complaints, Searcey and Price deny all the allegations and assert several affirmative defenses. Motions for judgment on the pleadings cannot challenge the sufficiency of the responding party's affirmative defenses. 61A Am. Jur. 2d *Pleading* § 553; John P. Lenich, Nebraska Civil Procedure § 11:14 (2018). Thus, the Excess Insurers are not entitled to judgment on their counterclaims against Gage County and cross claims and third-party complaints against Searcey and Price.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

- The First Claim for Relief in the First Amended Complaint against the Excess Insurers is dismissed.
- The Excess Insurers' motions for judgment on the pleadings for their counterclaims against Gage County are overruled.
- The Excess Insurers' motions for judgment on the pleadings for their cross claims and third-party complaints against Searcey and Price are overruled.

DATED this 10 day of October, 2018.

BY THE COURT:

Jodi L. Nelson
District Court Judge