IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

TELLIGEN, INC., Plaintiff, v. ATLANTIC SPECIALTY INSURANCE COMPANY, Defendant.	**No. 4:18-cv-00261-RGE-SBJ** **ORDER GRANTING DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Now before the Court is the second motion for summary judgment filed by Defendant Atlantic Specialty Insurance Company (ASIC). ASIC moves for partial summary judgment on Plaintiff Telligen, Inc.'s claim for bad faith denial of insurance coverage. Because ASIC had an objectively reasonable basis for denying Telligen's claim for insurance coverage, the Court grants ASIC's motion.

II. BACKGROUND

The relevant facts are summarized in the Court's prior Order on the parties' cross motions for summary judgment. ECF No. 35. The Court provides only a brief summary here of the facts relevant to ASIC's second motion for summary judgment. These facts are generally undisputed. *See* Pl.'s Resp. Def.'s Statement Material Facts, ECF No. 62; Def.'s Resp. Pl.'s Statement Add'l Material Facts, ECF No. 69; Def.'s App. Supp. Second Mot. Summ. J., ECF No. 55-3; Pl.'s App. Supp. Resist. Def.'s Second Mot. Summ. J., ECF No. 62-2. To the extent there are disputed facts, the Court views them in the light most favorable to Telligen. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587−88 (1986).

ASIC issued claims-made insurance policies to Telligen. ECF No. 62 ¶¶ 4–6. Telligen sought coverage from ASIC for its expenses related to a lawsuit alleging violations of the Employee Retirement and Income Security Act (ERISA), 29 U.S.C. §§ 1001–1461. *See id.* ¶¶ 30–35. After ASIC denied Telligen's claim, Telligen sued ASIC for breach of contract (Count I), declaratory judgment (Count II), and bad faith denial of coverage (Count III). First Am. Compl., ECF No. 14.

ASIC first moved for summary judgment in December 2018. ECF No. 23. ASIC argued Telligen was not entitled to coverage because Telligen provided late notice of its claim by failing to report a 2015 letter from the Department of Labor announcing the Department's intent to conduct an on-site examination at Telligen's offices. *Id.* ¶ 3; *see also* ECF No. 62 ¶¶ 17, 51–55; ECF No. 55-3 at 323–24 (2015 Department of Labor letter). Telligen moved for cross summary judgment, arguing the 2015 Department of Labor letter was not a "Fiduciary Claim" under the policies, and therefore Telligen was not required to report it to ASIC. ECF No. 26; *see also* ECF No. 62 ¶ 7. The Court denied ASIC's first motion for summary judgment, finding the 2015 Department of Labor letter was not a "Fiduciary Claim" requiring notification to ASIC under the policies. ECF No. 35. The Court granted Telligen's cross motion for partial summary judgment to the extent it sought a declaration that the 2015 Department of Labor letter was not a "Fiduciary Claim" under the policies. *Id.* at 8–17. The Court did not reach the issue of ASIC's coverage obligations to Telligen. *Id.* at 18–19. Telligen subsequently filed a second amended complaint, asserting the same claims as the first amended complaint but adding factual allegations. ECF No. 53.

ASIC moves for summary judgment again, seeking judgment as a matter of law on Telligen's claim for bad faith denial of coverage (Count III). ECF No. 55; *see also* Def.'s Br. Supp. Second Mot. Summ. J., ECF No. 55. Telligen opposes ASIC's second motion for summary

judgment. ECF No. 64. Because of the ongoing COVID-19 pandemic, the Court did not hold oral argument on ASIC's motion. Text Order, ECF No. 73. The matter is fully submitted, and the Court now considers ASIC's second motion for summary judgment. *See* Fed. R. Civ. P. 78(b).

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 56, the Court must grant a party's motion for summary judgment if there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322−23 (1986). A genuine issue of material fact exists where the issue "may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248. Where there is a genuine dispute of facts, those "facts must be viewed in the light most favorable to the nonmoving party." *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

To defeat a motion for summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248 (omission in original) (quoting a prior version of Fed. R. Civ. P. 56(e)). In analyzing whether a party is entitled to summary judgment, a court "may consider only the portion of the submitted materials that is admissible or useable at trial." *Moore v. Indehar*, 514 F.3d 756, 758 (8th Cir. 2008) (quoting *Walker v. Wayne Cty.*, 850 F.2d 433, 434 (8th Cir. 1988)). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial" and the moving party is entitled to judgment as a matter of law. *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042–43 (8th Cir. 2011) (en banc) (quoting *Ricci*, 557 U.S. at 586).

IV. DISCUSSION

As the parties recognize, Iowa law governs Telligen's bad faith claim. *See* ECF No. 55-1 at 10; ECF No. 64 at 15; *see also Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). To establish a claim for bad faith denial of coverage under Iowa law, an insured must prove: 1) the insurer "had no reasonable basis" for denying insured's claim; and 2) the insurer "knew or had reason to know that its denial or refusal was without reasonable basis." *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005). The first element is objective, while the second is subjective. *Id.* As explained below, ASIC had an objectively reasonable basis for denying Telligen's claim; the Court need not address the second, subjective element of bad faith.

An insurer has a reasonable basis to deny coverage "if the insured's claim is fairly debatable either on a matter of fact or law." *Id.* "A claim is 'fairly debatable' when it is open to dispute on any logical basis." *Id.* And so, "if reasonable minds can differ on the coverage-determining facts or law, then the claim is fairly debatable." *Id.* "The fact that the insurer's position is ultimately found to lack merit is not sufficient by itself to establish the first element of a bad faith claim." *Id.*; *Thompson v. U.S. Fid. & Guar. Co.*, 559 N.W.2d 288, 292 (Iowa 1997) (holding as a matter of law that the insurer had a reasonable basis for asserting an intoxication defense, even though the defense was unsuccessful).

"Whether a claim is fairly debatable can generally be decided as a matter of law by the court." *Bellville*, 702 N.W.2d at 473. When there is evidence the insurer had a reasonable basis for denying coverage, it generally follows that the insured's claim was fairly debatable. *See id.* at 473–74; *but see Reuter v. State Farm Mut. Auto. Ins. Co., Inc.*, 469 N.W.2d 250, 254 (Iowa 1991) (rejecting the argument that "the mere denial of a plaintiff's motion for a directed verdict automatically establishes that the issue is 'fairly debatable'"). The objective element of a

bad faith claim is especially amenable to resolution by a court when the "pivotal issue" behind the underlying insurance claim is "purely one of law." *See Thompson*, 559 N.W.2d at 290.

Claims dependent on unsettled questions of law are usually "fairly debatable." *See Bellville*, 702 N.W.2d at 484 (collecting cases); *Wilson v. Farm Bureau Mut. Ins. Co.*, 714 N.W.2d 250, 263 (Iowa 2006). In *Bellville*, for example, the Iowa Supreme Court held as a matter of first impression that an insurance policy clause requiring an insurer to consent to an insured's settlement of a claim imposed a good faith duty to consent on the insurer. 702 N.W.2d at 484. Nevertheless, the court held the insurer did not act in bad faith by taking the position that it had no duty to consent. *Id.* at 484–85. The court reasoned: 1) the issue had not been previously decided by an Iowa appellate court; and 2) reasonable minds could differ on the question. *Id.*

Here, ASIC had a reasonable basis for denying Telligen's claim. ASIC rejected Telligen's claim because Telligen failed to report the 2015 Department of Labor letter. *See* ECF No. 69 ¶ 88; ECF No. 55-3 at 325–35 (ASIC's initial letter denying coverage). ASIC deemed the letter a "Fiduciary Claim" under the policies, which Telligen was required to report. *See* ECF No. 69 ¶ 88; ECF No. 55-3 at 325–35. As explained in the Court's Order denying ASIC's first motion for summary judgment, ASIC's interpretation of the policy language was incorrect. ECF No. 35 at 9–16. But that is not determinative. *Bellville*, 702 N.W.2d at 473. Rather, the question is whether the failure-to-report issue was "open to dispute on any logical basis." *Id.* The Court finds it was for two reasons.

First, Telligen's claim turned on an unsettled question of Iowa law. As discussed in the Court's prior summary judgment Order, the parties disputed whether the 2015 Department of Labor letter was an investigation "for a Wrongful Act." *See* ECF No. 35 at 9. If not, the letter could not qualify as a "Fiduciary Claim." *See id.* Neither party identified controlling or analogous Iowa

case law on the meaning of "Wrongful Act" under the policies. *See* Order Den. Def.'s Mot. Interlocutory Appeal 5–6, ECF No. 49 ("ASIC concedes that '[n]either party identified any authority interpreting the language of the ASIC Policy defining a Fiduciary Claim.'" (quoting Def.'s Br. Supp. Mot. Certification Interlocutory Appeal 5, ECF No. 42-1)). Therefore, the parties and the Court relied on the text of the policies, Iowa contract interpretation rules, and case law from other jurisdictions to resolve the issue. *See* Def.'s Br. Supp. Mot. Summ. J. 12–17, ECF No. 23-1; Pl.'s Br. Supp. Resist. Def.'s Mot. Summ. J. 10–18, ECF No. 26-4; ECF No. 35 at 9–16. The lack of controlling authority supports ASIC's argument that the failure-to-report issue was "fairly debatable." *Bellville*, 702 N.W. 2d at 484–85; *Wilson*, 714 N.W.2d at 263.

Second, ASIC had a "logical basis" for arguing Telligen was required to report the 2015 Department of Labor letter. *Bellville*, 702 N.W.2d at 473. ASIC argued the 2015 Department of Labor letter commenced a fact-finding investigation "for a Wrongful Act" because the stated purpose of the investigation was "'to determine whether any person has violated or is about to violate any provisions' of ERISA." ECF No. 23-1 at 13 (quoting ECF No. 55-3 at 323 (2015 Department of Labor letter)). The Court rejected this argument because the portion of the Department of Labor letter ASIC relied on was "a quotation from the statutory grant of authority to the Secretary of Labor, and not a description of the purpose of the 2015 letter." ECF No. 35 at 10. The Court further reasoned that "even if this quoted statutory language is read as the purpose of the letter, the language implies that the Department of Labor had not yet determined whether a breach of Telligen's duties occurred," meaning "the letter was not for a breach or alleged breach of Telligen's duties under ERISA." *Id.*

Nevertheless, it was not unreasonable for ASIC to interpret the quoted language as conveying the purpose of the investigation or to further conclude that an investigation into a potential breach was an investigation "for a Wrongful Act." *Cf. Wetherbee v. Econ. Fire & Cas.*

Co., 508 N.W.2d 657, 662 (Iowa 1993) (rejecting an insurer's interpretation of a statute but holding the insurer did not act in bad faith because the issue was "fairly debatable"). Indeed, ASIC cited multiple cases from other jurisdictions in support of its arguments. ECF No. 23-1 at 13–15 (citing *Bilyeu v. Nat'l Union Fire Ins. Co.*, 184 So. 3d 69 (La. Ct. App. 2015) and *Patriarch Partners, LLC v. AXIS Ins. Co.*, No. 16-CV-2277 (VEC), 2017 WL 4233078 (S.D.N.Y. Sept. 22, 2017), *aff'd*, 758 F. App'x 14 (2d Cir. Dec. 6, 2018) (unpublished)). The Court relied primarily on the Sixth Circuit's decision in *Employers' Fire Insurance Company v. ProMedica Health System, Inc.* and found ASIC's cited cases distinguishable. ECF No. 35 at 10–14 (citing 524 F. App'x 241 (6th Cir. Apr. 30, 2013) (unpublished)). But reasonable minds could debate the persuasiveness of these cases. *See Bellville*, 702 N.W.2d at 484.

ASIC also argued the 2015 Department of Labor letter qualified as "any other matter claimed against an Insured solely by reason of the Insured's service as a fiduciary of any Sponsored Plan"—another definition of "Wrongful Act" under the policies. ECF No. 23-1 at 15–17; *see* ECF No. 62 ¶¶ 8–9. The Court rejected this argument because, under the doctrine of *ejusdem generis*, the "any other matter claimed" language referred only "to things of the same kind as a breach of responsibility imposed by ERISA or a negligent act, error, or omission in the administration of a plan." ECF No. 35 at 15. Even so, ASIC's position—which relied on the policy language, dictionary definitions, and case law from other jurisdictions—was "fairly debatable." *See* ECF No. 23-1 at 15–17; *cf. Wetherbee*, 508 N.W.2d at 662.

Telligen's counterarguments are unavailing. First, Telligen relies on the *contra proferentem* doctrine, which holds that ambiguous insurance policies are construed against the insurer, to argue a claim is not "fairly debatable" unless the applicable policy language unambiguously favors the insurer's position. ECF No. 64 at 21. This argument is inconsistent with *Penford Corp. v. National Union Fire Insurance Company*, where the Eighth Circuit held ambiguous policy language is, by

definition, "fairly debatable." 662 F.3d 497, 504 (8th Cir. 2011) ("If the language was susceptible of two reasonable interpretations, it follows that the question . . . was 'fairly debatable.'"). Telligen argues *Penford* does not apply because the Eight Circuit found the doctrine of *contra proferentem* inapplicable in that case. ECF No. 64 at 22–23 n.3; *see* 662 F.3d at 505. But the Eighth Circuit's bad faith analysis did not address *contra proferentem*, even though the plaintiff—like Telligen—relied on the doctrine in support of its bad faith argument. *See* 662 F.3d at 504. Later in the opinion, the Eighth Circuit found the *contra proferentem* doctrine inapplicable. *Id.* at 505. But the Eighth Circuit gave no indication that this conclusion influenced its earlier analysis on the bad faith issue. *See id.* at 504; *cf. Shree Ganesh, Inc. v. Argonaut Great Cent. Ins. Co.*, No. 4:13–cv–00398–SMR–HCA, 2015 WL 12517436, at *13–15 (S.D. Iowa June 15, 2015) (relying on *Penford* to conclude an ambiguous policy provision was "fairly debatable" after applying the *contra proferentem* doctrine to adopt the insured's interpretation of the ambiguous provision).

Second, Telligen argues that even if ASIC's initial decision to deny coverage was "fairly debatable," its continued refusal to pay Telligen's claim constitutes bad faith. ECF No. 64 at 23. Telligen confuses the denial of a claim with the actual payment of the claim. The Court ruled the 2015 Department of Labor letter was not a "Fiduciary Claim," but it expressly reserved ruling on the scope of ASIC's coverage obligations. ECF No. 35 at 18–19. Because ASIC's coverage obligations have not yet been determined, it is not acting in bad faith by continuing to withhold coverage payments.

For these reasons, the Court concludes ASIC had an objectively reasonable basis for denying coverage. Telligen makes additional arguments related to the subjective prong of bad faith. *See, e.g.*, ECF No. 64 at 24 (asserting ASIC acted in bad faith by deliberately omitting the "Wrongful Act" language from its explanation of its decision to deny coverage). The Court need

not address these arguments because Telligen fails to demonstrate a genuine dispute of material fact on the objective prong of bad faith. *See Bellville*, 702 N.W.2d at 473.

V. CONCLUSION

ASIC had an objectively reasonable basis for denying Telligen's claim for insurance coverage. Therefore, ASIC did not act in bad faith. Telligen's claim for bad faith denial of coverage (Count III) fails as a matter of law.

IT IS ORDERED that Defendant Atlantic Specialty Insurance Company's Second Motion for Summary Judgment, ECF No. 55, is **GRANTED**.

IT IS SO ORDERED.

Dated this 16th day of April, 2020.

REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE