

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

| | | |
|-------------------------------|---|--------------------|
| JOHN TAGGART | : | |
| | : | October Term 2004 |
| Plaintiff, | : | |
| | : | No. 2802 |
| v. | : | |
| | : | Commerce Program |
| UTICA FIRST INSURANCE COMPANY | : | |
| | : | Control No. 070073 |
| Defendant. | : | |

ORDER

AND NOW, this 29TH day of December, 2005, upon consideration of the Motion for Summary Judgment of Defendant Utica First Insurance Company and the response thereto, and in accordance with the attached memorandum, it is hereby **ORDERED** and **DECREED** that the Motion for Summary Judgment of Defendant Utica First Insurance Company is **GRANTED** and that the Complaint of Plaintiff John Taggart is **DISMISSED**.

BY THE COURT,

C. DARNELL JONES, II, J.

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

| | | |
|-------------------------------|---|--------------------|
| JOHN TAGGART | : | |
| | : | October Term 2004 |
| Plaintiff, | : | |
| | : | No. 2802 |
| v. | : | |
| | : | Commerce Program |
| UTICA FIRST INSURANCE COMPANY | : | |
| | : | Control No. 070073 |
| Defendant. | : | |

MEMORANDUM OPINION

Presently before the court is Defendant Utica First Insurance Company's ("Utica") motion for summary judgment in this declaratory judgment action. Plaintiff John Taggart ("Taggart") filed this action seeking defense and indemnity coverage from Utica for claims made against him in the case of Gillespie v. Taggart, March Term 2004, No. 6019 (Phila. Ct. Comm. Pl.).

BACKGROUND

According to the complaint in the Gillespie matter, Taggart and Gillespie entered an agreement whereby Taggart was hired to perform demolition services on Gillespie's property. Def. Ex. C, at ¶4. During the course of the performance of the agreement, the property suffered damage when a wall collapsed. Def. Ex. C, at ¶5. The damage was caused solely by the negligence of Taggart and his agents or employees. Def. Ex. C, at ¶6. The negligence consisted of Taggart and his agents or employees failing to provide proper support during the demolition, destabilizing the support columns by removal of their lateral support, failing to perform their duties in a workmanlike manner, failing to prepare a demolition plan, and in being otherwise negligent. Def. Ex. C, at ¶7.

Taggart purchased an insurance policy from Utica that was in effect at the time of the alleged incident in the Gillespie matter. Compl., at ¶3. The Policy contains several exclusions. One exclusion covers property damage if the damage arises out of work performed by Taggart. Def. Ex. D, at Form AP-100 Ed. 2.0, p. 16 (“Exclusion 5”). Another exclusion covers property damage caused by faults in Taggart’s work. Def. Ex. D, at Form AP-100 Ed. 2.0, pp. 16-17 (“Exclusion 6”). A third exclusion covers collapse hazards caused by demolition or removal of structural support. Def. Ex. D, at Form GL-212 Ed. 2.0, p.1 (“Collapse Hazard Exclusion”). Another exclusion covers property damage indirectly caused by Taggart’s work. Def. Ex. D, at Form AP-100 Ed. 2.0, p. 17 (“Exclusion 9”).

DISCUSSION

Pursuant to Pa. R.C.P. 1035.2, a party may move for summary judgment when (1) there is no genuine issue of material fact as to a necessary element of the cause of action or defense or (2) an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense. The court must review the entire record in the light most favorable to the nonmoving party and resolve all genuine issues of material fact against the moving party. Basile v. H & R Block, Inc., 563 Pa. 359, 365, 761 A.2d 1115, 1118 (2000).

The interpretation of an insurance policy is a matter of law properly resolved in a declaratory judgment action. Old Guard Ins. v. Sherman, 866 A.2d 412, 416 (Pa. Super. 2004). In Old Guard, the court established the standard for an insurer’s obligation to defend a policyholder:

‘The insurer’s obligation to defend is fixed solely by the allegations in the underlying complaint. It is not the actual details of the injury, but the nature of the claim which determines whether the insurer is required to defend. The duty to defend is limited to only those claims covered by the policy. The insurer is obligated to defend if the factual allegations of the complaint on its face comprehend an injury which is actually or potentially within the scope of the policy.

Thus, the insurer owes a duty to defend if the complaint against the insured alleges facts which would bring the claim within the policy’s coverage if they were true. It does not matter if in reality the facts are completely groundless, false, or fraudulent. It is the face of the complaint and not the truth of the facts alleged therein which determines whether there is a duty to defend.’

Old Guard, at 416-17 (internal citations and emphasis omitted).

The complaint in the Gillespie matter asserts that the damage to Gillespie’s property was caused by and arose out of the work being performed by Taggart or his agents and employees. Such damage falls within the language of Exclusion 5, Exclusion 6, Exclusion 9, or the Collapse Hazard Exclusion. Therefore, the claims in the Gillespie complaint are not “covered by the policy” and Utica has no duty to defend Taggart.

Taggart’s sole defense to Utica’s motion is that neither he nor his employees caused any damage to Gillespie’s property. See Pl. Resp., Aff. Even if true, this contention has no bearing on the issue before the court because “the face of the complaint and not the truth of the facts alleged therein” determines whether Utica has a duty to defend. Summary judgment will be granted to Utica.

BY THE COURT,

C. DARNELL JONES, II, J.