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

WOLFBLOCK, LLP.	:	June Term, 2013
Plaintiff	:	Case No. 02528
v.	:	Commerce Program
FEDERAL INSURANCE COMPANY	:	Control Nos. 15043828, 15043829.
Defendant	:	

ORDER

And now, this 21st of September 2015, upon consideration of the motion for summary judgment of plaintiff, WolfBlock, LLP and cross-motion for summary judgment of defendant, Federal Insurance Company, the respective *memoranda* of law in support thereof, the respective responses in opposition with *memoranda* of law, and the replies in further support of the respective motions, it is **ORDERED** as follows:

I. The motion for summary judgment of plaintiff WolfBlock, LLC is **DENIED.**

II. The motion for summary judgment of defendant Federal Insurance Company is **GRANTED, JUDGMENT IS ENTERED** in favor of Federal Insurance Company, and the complaint of plaintiff WolfBlock, LLC is **DISMISSED** in its entirety **WITHOUT PREJUDICE.**

By The Court,

RAMY I. DJERASSI, J.

Wolfblock Llp Vs Federal Insurance Company C-ORDOP

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WOLFBLOCK, LLP.	:	June Term, 2013
Plaintiff	:	Case No. 02528
v.	:	Commerce Program
FEDERAL INSURANCE COMPANY	:	Control Nos. 15043828,
Defendant	:	15043829.

MEMORANDUM OPINION

The cross-motions for summary judgment ask this court to determine whether payments, to be made by an employer to its former employee pursuant to a separation agreement, constitute an "employee benefit, pension benefit or welfare benefit plan," as defined under a policy of insurance obtained by the employer. The cross-motions also require this court to determine whether any failure by the employer to remit the severance payments is a "wrongful act," as defined by the insurance policy, which triggered the insurer's duty to defend and indemnify the employer. For the reasons below, payments pursuant to the separation agreement do not constitute an employee benefit, pension benefit or welfare benefit plan, failure to remit such payments is not a "wrongful act" as defined by the insurance policy, and the insurer has no duty to defend and indemnify the employer for the employer's failure to pay the amounts contemplated under the separation agreement.

BACKGROUND

Plaintiff, "WolfBlock," a law firm, is a Pennsylvania limited liability partnership in dissolution. Defendant, "Federal," is an insurance company licensed to conduct

business in Pennsylvania. Between November 1, 2008, through February 28, 2010, Federal provided WolfBlock with an Executive Protection Portfolio Policy, No. 8153—1325 (the "Policy").[1]

In May 2003, WolfBlock entered into a Separation Agreement and *Memorandum* of Understanding with "Budin," an equity partner in the law firm.[2] Under the terms of the Separation Agreement, Budin's partnership interest in the law firm was terminated as of February 14, 2003, and WolfBlock agreed to provide Budin with severance payments in the amount of $26,646.00 per year, payable on or before a specific date, through the year 2017.[3] The *Memorandum* of Understanding specifically stated that the afore-mentioned payments would be made to Budin "in consideration of ... his withdrawal as a partner in the firm..."[4] In the year 2003, Budin began to receive timely severance payments in accordance with the terms of the Separation Agreement.

Budin received the expected severance payments from 2003 through the year 2009. However, on April 14, 2009, counsel on behalf of WolfBlock informed Budin that the firm had defaulted on its loans and was unable to make any future payments without prior approval by any creditor banks. Furthermore, counsel informed Budin that the partners of WolfBlock had voted to adopt a plan to wind-down the affairs of the law firm and to dissolve the partnership. Finally, counsel advised Budin that pursuant to a specific section of the law firm's partnership agreement, "payments to ... Former Partners [such as Budin] on account of disability, pension or death benefits c[ould] not

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[1] Exhibit 1 to plaintiff's complaint.
[2] Separation Agreement, Exhibits 4—A, 4—B to the motion for summary judgment of WolfBlock, control no. 15043828.
[3] Id. at ¶¶ 1—3.
[4] *Memorandum* of Understanding, Exhibit 4—B to the motion for summary judgment of WolfBlock, control no. 15043828.

be made until after payment to third party creditors."[5] On the same day, Budin sent a response to WolfBlock's counsel, via e-mail. The response stated in pertinent part:

> Dear Mr. ....
>
> I am familiar with the provision of the Partnership Agreement that you have cited. But the severance payments owed to me under the Separation Agreement are not on account of disability, pension or death. Instead, those payments are the fixed payments that were agreed upon in connection with my separation from the firm, resolving all claims that I might have against the firm.... Therefore, those severance payments do not fall under the provision you have cited. Instead, I consider myself to be a third-party creditor of the firm. Please reexamine the Separation Agreement and then let me know what arrangement is proposed in connection with the amounts I am owed.[6]

On April 21, 2009, counsel on behalf of WolfBlock replied to Budin's e-mail. In the reply, counsel stated as follows:

> In response to your latest email dated April 21, 2009, please note that the Firm continues to maintain its position that you are not [in lockstep] with third party unsecured creditors.... In any event, even if you were somehow considered to be a creditor, the Firm would still be unable to make any payment to you because the Firm has been declared in default ... and its ability to make any payments is subject to approval of its banks, it's [*sic*] only secured creditor.[7]

On June 9, 2009, counsel on behalf of Budin sent a letter to WolfBlock. The letter inquired whether WolfBlock intended or not to remit to Budin all future severance payments in accordance with the Separation Agreement. Budin's attorney included in this communication a draft Complaint to be filed against WolfBlock and its chairman, if

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[5] E-mail from counsel on behalf of WolfBlock to Budin, dated April 14, 2009, Exhibit C to the motion for summary judgment of WolfBlock, control no. 15043828.

[6] E-mail from Budin to WolfBlock's counsel, Exhibit D to the motion for summary judgment of WolfBlock, control no. 15043828.

[7] E-mail from WolfBlock's counsel to Budin, Exhibit E to the motion for summary judgment of WolfBlock, control no. 15043828.

WolfBlock failed to honor its commitment to remit the future payments owed to Budin.[8]

On July 30, 2009, WolfBlock informed Federal that Budin might assert a claim for severance payments in accordance with the terms of the Separation Agreement. WolfBlock specifically told Federal that the potential claim arose out of WolfBlock's decision to place Budin's right to collect the severance payments below the rights of other third-party unsecured creditors of WolfBlock.[9] On August 4, 2009, Federal acknowledged receipt of WolfBlock's letter concerning Budin's potential claim, and informed WolfBlock that it reserved the right to deny coverage pending analysis of the issues presented by that claim.[10]

On March 2, 2010, Budin filed a complaint against WolfBlock and its chairman (the "Budin Action"). The Complaint in the Budin Action asserted breach of the Separation Agreement against WolfBlock, and a second claim, under the statutory Pennsylvania Wage Payment Collection Law, asserted against WolfBlock and its chairman.[11] On March 15, 2010, WolfBlock forwarded copy of the Budin Complaint to Federal.[12] On July 15, 2010, Federal acknowledged receipt of the Budin Complaint from WolfBlock, and reiterated its right to deny coverage pending analysis of the issues presented by Budin's Complaint. On June 20, 2011, Federal forwarded a letter to WolfBlock. The letter specifically stated:

> As discussed with you a number of times, and also communicated to you via e-mails, as well as for the reasons

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[8] Letter to WolfBlock, Exhibit 11 to the motion for summary judgment of WolfBlock, control no. 15043828.
[9] Letter from WolfBlock to Federal, Exhibit 10 to the motion for summary judgment of WolfBlock, control no. 15043828.
[10] Letter from Federal to WolfBlock, Exhibit 16 to the motion for summary judgment of WolfBlock, control no. 15043828.
[11] Michael A. Budin v. WolfBlock, LLP and Mark Alderman, Case No. 1003-00419, Court of Common Pleas, Philadelphia County.
[12] Letter from WolfBlock to Federal, Exhibit 14 to the motion for summary judgment of WolfBlock, control no. 15043828.

> set forth below, Federal respectfully declines coverage for all ... matter comprising the claim. This denial is based upon the provisions in the Policy; [Federal] will neither defend nor indemnify any entity or person in this matter.[13]

On August 6, 2012, WolfBlock requested clarifications in support of Federal's denial of coverage. By letter dated August 21, 2012, Federal responded to WolfBlock's request for clarifications. In the response, Federal re-examined the pertinent language of the Policy and concluded again that the allegations contained in the Budin Complaint did not trigger coverage and did not impose upon Federal a duty to defend WolfBlock in the Budin Action.[14] Federal concluded that no coverage was triggered for two reasons: first, the Separation Agreement and *Memorandum* of Understanding between Budin and WolfBlock did not constitute an employee benefit plan –namely, a "Sponsored Plan", and thus was outside of coverage; and second, WolfBlock's decision to place Budin's rights below those of other unsecured third-party creditors was outside of the meaning of a covered "Wrongful Act," as defined in the Policy.[15]

On December 21, 2012, WolfBlock asked Federal to reconsider its decision to deny coverage. In its letter, WolfBlock argued that the Separation Agreement and *Memorandum* of Understanding constituted a covered Sponsored Plan under the Policy; in addition, WolfBlock argued that the Budin Complaint alleged facts which could be characterized as a "Wrongful Act" within the meaning in the Policy.[16] On February 20, 2013, Federal answered WolfBlock's request for reconsideration and

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[13] Letter dated June 20, 2011, from Federal to WolfBlock, Exhibit 19 to the motion for summary judgment of WolfBlock, control no. 15043828.
[14] Letter dated August 21, 2013, from Federal to WolfBlock, Exhibit 21 to the motion for summary judgment of WolfBlock, control no. 15043828.
[15] Letter dated August 21, 2012, from Federal to WolfBlock, Exhibit 21 to the motion for summary judgment of WolfBlock, control no. 15043828, pp. 2—4.
[16] Letter dated December 31, 2012 from WolfBlock to Federal, Exhibit 22 to the motion for summary judgment of WolfBlock, control no. 15043828, pp. 2—14.

reiterated its decision to deny coverage. In this response, Federal explained that the Separation Agreement and *Memorandum* of Understanding between Budin and Federal did not constitute a covered Sponsored Plan under the Policy; rather, Federal interpreted these two documents as being mere "agreement[s] or contract[s] for consideration."[17]

On June 18, 2013, WolfBlock filed a motion for summary and declaratory judgment in the Budin Action. The motion required the Court to determine whether the severance payments under the Separation Agreement constituted pension payments. After Budin filed a response to WolfBlock's motion for summary and declaratory judgment, this Court, the Honorable Judge Mark I. Bernstein, issued an Order and Opinion which denied WolfBlock's motion. In the Opinion, dated November 11, 2013, the Court stated as follows:

> The plain language of [the Separation Agreement] states that [Budin's] payments are severance payments, not pension payments.... The payments were designated as 'severance' rather than 'pension' payments because these payments were not pension-related. They were payments made to effectuate three aims: [Budin's] withdrawal from the firm, [Budin] foregoing all his rights under the Partnership Agreement, and [Budin's] release and waiver of all claims of any nature against WolfBlock.[18]

On June 19, 2013, WolfBlock commenced the instant action against Federal, and filed a complaint therein on October 22, 2013. WolfBlock's complaint asserts against Federal the claims of declaratory judgment in Count I, and breach of the insurance contract in Count II. In the meantime, Budin and WolfBlock reached a settlement in the underlying Budin Action, and Budin, on November 26, 2013, filed a praecipe to mark his

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[17] Letter dated February 2, 2013, from Federal to WolfBlock, Exhibit 23 to the motion for summary judgment of WolfBlock, control no. 15043828, pp. 3—4.

[18] Budin v. WolfBlock, LLP and Alderman, case no. 1003-00419, Order-and-Opinion dated November 20, 2013.

action against WolfBlock settled, discontinued and ended.[19]

On April 27, 2015, WolfBlock and Federal filed cross-motions for summary judgment in the instant action. The parties filed their respective responses in opposition to each other's motion, including *memoranda* of law in support thereof. The parties also filed reply briefs in further support of their respective motions for summary judgment.

DISCUSSION

> The Pennsylvania Rules of Civil Procedure that govern summary judgment instruct in relevant part, that the court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Under the Rules, 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.[20]

I. The Separation Agreement and *Memorandum* of Understanding are not a "Sponsored Plan".

WolfBlock's motion for summary judgment argues that the Separation Agreement and *Memorandum* of Understanding "are capable of interpretation under the Policy as a Sponsored Plan."[21] WolfBlock further argues that its decision to classify Budin as a second-tier creditor constituted a "Wrongful Act." WolfBlock concludes that

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[19] Praecipe to mark action settled discontinued and ended, Budin v. WolfBlock and Alderman, No. 1003-00419.

[20] Fine v. Checcio, 582 Pa. 253, 265; 870 A.2d 850, 857 (2005).

[21] WolfBlock's response in opposition to the motion for summary judgment of Federal, control no. 15043829, ¶ 66.

this "Wrongful Act" was covered under the Policy issued by Federal, and triggered Federal's duty to defend and indemnify WolfBlock in the underlying Budin Action. Opposing this argument, Federal asserts that the Separation Agreement and *Memorandum* of Understanding are not a "Sponsored Plan" within the meaning of the Policy; therefore, WolfBlock's decision to classify Budin as a second-tier creditor was not a "Wrongful Act" as defined by the Policy of insurance. Federal concludes that since there was no "Wrongful Act," there was no duty by Federal to defend and indemnify WolfBlock in the underlying Budin Action.

To determine whether or not the Separation Agreement and *Memorandum* of Understanding constituted a "Sponsored Plan," the court shall examine the language of the Policy. Before turning to the language of the Policy, the court notes that—

> [t]he task of interpreting a contract [including 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.[22]

The Policy states in pertinent part:

> *Fiduciary Liability Coverage Clause 1*
>
> The Company [Federal] shall pay, on behalf of the **Insureds**, **Loss** on account of any **Fiduciary Claim** first made against the **Insureds** during the **Policy Period**, or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed ... before or during the **Policy Period** by such **Insureds**, or by any person whose **Wrongful Acts** the **Insureds** are legally responsible, but only if such **Claim** is reported to [Federal] in writing....[23]

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[22] Maguire v. Ohio Cas. Ins. Co., 412 Pa. Super. 59, 62-63, 602 A.2d 893, 894 (1992)

[23] Executive Protection Portfolio—Fiduciary Liability Coverage Section, p. 3 of 17, attached as Exhibit 1 to

In addition, the Policy states that the term **Plan** means—

> (a) any **Sponsored Plan**; and
> (b) any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for **Employees**.[24]

Furthermore, the Policy defines the term **Sponsored Plan** as—

> (a) Any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in **ERISA** which is operated solely by the **Organization** or jointly by the **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of the **Organization** ... provided (i) any coverage with respect to any such Plan created or acquired during the **Policy Period** shall apply only for **Wrongful Acts** committed ... after the effective date of such creation or acquisition....
> (b) any other employee benefit plan or program not subject to **ERISA** which is sponsored solely by the **Organization** for the benefit of **Employees** or **Executives**, including any fringe benefit or excess benefit plan....[25]

Finally, the Policy states that a "**Wrongful Act** means with respect to any **Plan**"

> (a) Any breach of the responsibilities ... or duties imposed by ERISA[26] upon fiduciaries of the **Sponsored Plan**....
> (b) Any negligent act, error or omission in the **Administration** of any **Plan** committed ... by an **Insured** in the **Insured's** capacity as such; or
> (c) Any other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**.[27]

After reading the Policy's clear and unambiguous definitions, this Court

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the complaint.

[24] Id. p. 6 of 17. In this case, neither party argues that the Separation Agreement and *Memorandum* of Understanding are part of "**any government-mandated insurance program**," as defined in sub-section (b), *supra*. Therefore, the Court will focus exclusively on the term "Sponsored Plan," sub-section (a), *supra*, to determine whether or not the Separation Agreement and *Memorandum* of Understanding are part thereof.

[25] Id. p. 7 of 17.

[26] ERISA stands for Employee Retirement Income Security Act of 1974, see ERISA Pub. L. No. 93-406, 88 Stat. 829.

[27] Id. p. 8 of 17.

concludes that a "Sponsored Plan," is an "Employment Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan," or "any other employee benefit plan."[28] Having ascertained the meaning of "Sponsored Plan," as defined in the Policy, this Court turns to the pertinent language of the Separation Agreement and *Memorandum* of Understanding to determine whether these documents fall within the ambit of an "Employment Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan" or "any other employee benefit plan." The court is mindful that a fundamental rule of construction and interpretation of contracts requires that "words and phrases be given their plain and ordinary meaning when possible."[29]

The Separation Agreement states as follows:

> **WHEREAS**, the parties [Budin and WolfBlock] desire to resolve all issues relating to or resulting from the termination of Budin's partnership interest in the Firm and to settle ... all disputes between them ...
>
> **NOW, THEREFORE**, for and in consideration of the commitments and obligations set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:
>
> 1. Budin's partnership interest in the Firm terminated effective as of February 14, 2003.
>
> 2. The Firm shall pay Budin
> ***
> (b) As severance payments measured by the retirement payments referenced in the Firms' Partnership Agreement, Twenty Six Thousand Six Hundred Forty Six Dollars ... per year for fifteen years....
>
> 3. Budin ... releases and forever discharges the Firm ... from any and all actions, complaints ... lawsuits or claims of any kind ... which Budin ... ever had, now [has] or ... may

[28] Id. p. 7 of 17. A plan is defined as a "scheme for making, doing, or arranging something; a project; a program; as schedule." WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY—UNABRIDGED (2d ed. 1979).
[29] Toombs NJ Inc. v. Aetna Cas. & Sur. Co., 404 Pa. Super. 471, 477, 591 A.2d 304, 307 (1991).

have against [the Firm].[30]

The *Memorandum* of Understanding states as follows in pertinent part:

> This *memorandum* is intended to evidence certain facts in connection with the severance payments to be made by WolfBlock ... to Michael A. Budin.... After reviewing the terms of the Partnership Agreement and the facts in Budin's case ... the firm [WolfBlock] determined to provide payments to Budin in consideration of and commencing on his withdrawal as a partner in the firm, the termination and liquidation of his rights under the Partnership Agreement, and his release and waiver of all rights and claims against [WolfBlock], even though under the specific provisions of the Partnership Agreement he arguably would not have been eligible for the retirement benefits referenced in the partnership Agreement in light of his departure from the firm prior to age 63.[31]

The clear and unambiguous language of the afore-cited Separation Agreement leaves no doubt: the Separation Agreement was a mere contract executed by Budin and WolfBlock for the purpose of terminating Budin's interest in WolfBlock, fixing the amount of severance payments owed to Budin, and releasing WolfBlock from any claims that Budin may have had against the firm. Furthermore, an in-depth reading of the Separation Agreement shows that the parties thereto did not characterize the severance payments as being akin to an "Employment Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan," or "any other employee benefit plan." If the parties to the Separation Agreement had intended to characterize the severance payments as anything other than consideration, they would have certainly drafted the document to reflect this intent.

Likewise, the clear and unambiguous language of the *Memorandum* of

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[30] Severance Agreement, attached as Exhibit A to the Budin Complaint, Budin v. WolfBlock and Alderman, case no. 1003-00419.

[31] *Memorandum* of Understanding attached as Exhibit B to the Budin Complaint, Budin v. WolfBlock and Alderman, case no. 1003-00419.

Understanding shows that WolfBlock agreed to make severance payment in favor of Budin "in consideration of ... his withdrawal as a partner... the liquidation of his rights under the Partnership Agreement, and his release and waiver of all rights against Wolf, Block."[32] Nothing in the *Memorandum* of Understanding suggests that the severance payments owed to Budin were characterized as being part of an "Employment Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan," or "any other employee benefit plan." In fact, if the parties to the M*emorandum* of Understanding had intended to characterize the amounts payable to Budin as a plan –namely, as a scheme or arrangement designed to provide Budin with some form of employment, pension, welfare, or other benefit, they would have worded the document to reflect this intent. Instead, the experienced attorneys who negotiated and drafted the Separation Agreement and *Memorandum* of Understanding did not characterize the severance payments as anything other than mere consideration, owed by WolfBlock to Budin in exchange for his release of any claims, and payable to him once a year, for fifteen years. For this reason, the Court concludes that the Separation Agreement and *Memorandum* of Understanding are not a "Sponsored Plan" as defined in the policy of insurance.

II. WolfBlock's decision to curtail Budin's interests was not a Wrongful Act under the Policy.

To further determine whether or not WolfBlock decision to curtail Budin's rights was covered, this Court shall examine the term "Wrongful Act" as defined by the Policy of insurance. Under the Policy, a "**Wrongful Act** means with respect to any **Plan**"

> (a) Any breach of the responsibilities ... or duties imposed by ERISA[33] upon fiduciaries of the **Sponsored Plan**....

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[32] Id.

[33] ERISA stands for Employee Retirement Income Security Act of 1974, see ERISA Pub. L. No. 93-406, 88 Stat. 829.

(b) Any negligent act, error or omission in the **Administration** of any **Plan** committed ... by an **Insured** in the **Insured's** capacity as such; or
(c) Any other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**.[34]

A straightforward reading of this clear and unambiguous language convinces the Court that the Policy contemplates the occurrence of a Wrongful Act only upon the commission of a breach upon the fiduciaries of a Sponsored Plan, or when a negligent act, error or omission committed by an insured occurs during the administration of any plan, or when a claim is made against an insured solely because the insured was serving as a fiduciary of any Sponsored Plan. As noted earlier, the language of the Separation Agreement and *Memorandum* of Understanding does not qualify the severance payments as being part of a "Sponsored Plan," or any other type of plan. Since the Separation Agreement and *Memorandum* of Understanding do not qualify the severance payments as being part of a Sponsored Plan or any other plan, WolfBlock's decision to curtail Budin's rights may not be considered a Wrongful Act within the meaning of the Policy, and is not covered thereunder.

III. The alleged Wrongful Act occurred after coverage had expired.

Federal notes that WolfBlock's Policy was effective only for the period between November 1, 2008 and February 9, 2010.[35] Federal contends that pursuant to the Separation Agreement, WolfBlock was required to remit the severance payments no later than February 28 of each of the fifteen contractual years, ending in 2017.[36] Federal notes that by February 9, 2010, the day in which the Policy expired, WolfBlock's time to

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[34] Id. p. 8 of 17.
[35] *Memorandum* of law in support of Federal's motion for summary judgment, p. 20, control no. 15043829.
[36] Id.

comply with its obligation to remit the 2010 severance payment had not yet expired. Federal concludes that on the day the Policy expired, February 9, 2010, no alleged Wrongful Act could have occurred and no coverage could have been triggered in favor of WolfBlock.[37]

In its response in opposition, WolfBlock asserts that its alleged Wrongful Act occurred when WolfBlock decided to classify Budin in the second class of creditors –that is, when the Policy of insurance was still in effect.[38] WolfBlock argues that the alleged Wrongful Act occurred prior to February 28, 2010, as evidenced by letters, from Budin to WolfBlock, which sought reassurance from WolfBlock that Budin's rights were not second to other creditors.[39] Thus, according to WolfBlock, the letters of reassurance sought by Budin demonstrate that WolfBlock's decision to place Budin in the second class of creditors is "capable of interpretation as [a] Wrongful Act...."[40] The Court rejects WolfBlock's argument.

In Pennsylvania, a cause of action based on breach of contract requires a plaintiff to establish "(1) the existence of a contract, (2) a breach of a duty imposed by the contract, and (3) damages."[41] In this instance, the Budin Action asserted against WolfBlock the claim of breach of contract. Budin's Complaint specifically averred that Budin "has not been paid his **February 28, 2010** severance payment and [WolfBlock] is in breach of contract."[42] Thus, before February 28, 2010, Budin could not have asserted his claim of breach of contract against WolfBlock because until expiration of

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[37] Id. pp. 20-21
[38] *Memorandum* of law in support of WolfBlock's response in opposition to the motion for summary judgment of Federal, pp. 8—12, control no. 15043829.
[39] Id. Memorandum of law in support of WolfBlock's motion for summary judgment, pp. 28—33, control no. 15043828.
[40] Id., p. 29.
[41] Stein v. Magarity, 2014 Pa. Super. 239, 102 A.3d 1010, 1013-14 (2014)
[42] Budin v. WolfBlock, LLP and Alderman, case no. 1003-00419, Complaint, ¶ 27 (emphasis supplied).

that date he had suffered no damage. In conclusion, even if the Separation Agreement could be classified as a "Sponsored Plan," and even if WolfBlock's decision to downgrade Budin's rights could be defined as a "Wrongful Act," such act could only have occurred after the Policy had expired.

For all of the above reasons, the motion for summary judgment of defendant Federal is granted, judgment is entered in favor of Federal and the complaint of WolfBlock is dismissed. The motion for summary judgment of plaintiff WolfBlock is denied in its entirety.

BY THE COURT,

***RAMY I. DJERASSI*, J.**