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

DOCKETED
JUN 29 2017
R. POSTELL
COMMERCE PROGRAM

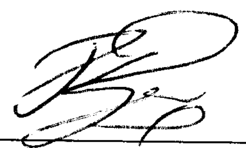
SEAGRAVE FIRE APPARATUS, LLC,	:	SEPTEMBER TERM, 2014
Plaintiff,	:	NO. 02677
v.	:	COMMERCE PROGRAM
CNA d/b/a CONTINENTAL CASUALTY COMPANY, et al.,	:	Control Nos.: 16112238, 17012255
Defendant.	:	

ORDER

AND NOW, this 28th day of June, 2017, upon consideration of defendant Admiral Insurance Company's ("Admiral") Motion for Summary Judgment, defendants Nationwide Indemnity Company, Steadfast Insurance Company, and Landmark American Insurance Company's ("NSL") Joint Motion for Summary Judgment, the responses thereto, and all other matters of record, and for the reasons set forth in the Opinion issued simultaneously, it is **ORDERED** as follows:

1. Admiral's Motion is **DENIED**;
2. Admiral has a duty under its 2010 and 2011 CGL Policies to contribute to the defense of plaintiff in the underlying lawsuits involving occupational noise induced hearing loss claims asserted by numerous firefighters; and
3. NSL's Motion is **GRANTED** and **JUDGMENT** is **ENTERED** in favor of NSL and against Admiral on NSL's Crossclaims against Admiral.

BY THE COURT,



RAMY I. DJERASSI, J.

Seagrave Fire Apparatus-ORDOP

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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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SEAGRAVE FIRE APPARATUS, LLC,	:	SEPTEMBER TERM, 2014
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CNA d/b/a CONTINENTAL CASUALTY COMPANY, et al.,	:	Control Nos.: 16112238, 17012255
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OPINION

Plaintiff Seagrave Fire Apparatus, Inc. ("Seagrave") is a Wisconsin corporation which has for many decades manufactured fire engines. Seagrave is a defendant in at least 455 occupational noise induced hearing loss claims brought by fire department personnel, who allege their deafness was caused by continued exposure to the sounds of the sirens installed by Seagrave on its fire engines. The exposure of some of the underlying plaintiffs allegedly began in the 1960's. In this coverage action, Seagrave seeks payment of defense costs by all the insurers who issued policies to it over more than 50 years.

Many of those insurers have agreed to share in the costs of Seagrave's defense of the underlying actions under reservations of rights. However, Admiral Insurance Company ("Admiral") refuses to provide a defense and has moved for a summary, declaratory, judgment that it has no duty to defend or indemnify Seagrave in the underlying actions. Three of the other defendant insurance companies, who asserted cross-claims for contribution and indemnity and

equitable contribution against Admiral, moved for summary judgment on those claims as well. These cross-Motions for Summary Judgment are presently before the court.[1]

> An insurer's duty to defend is broader than its duty to indemnify. An insurer is obligated to defend its insured if the factual allegations of the complaint on its face encompass an injury that is actually or potentially within the scope of the policy. As long as the complaint "might or might not" fall within the policy's coverage, the insurance company is obliged to defend. Accordingly, it is the potential, rather than the certainty, of a claim falling within the insurance policy that triggers the insurer's duty to defend.
>
> The question of whether a claim against an insured is potentially covered is answered by comparing the four corners of the insurance contract to the four corners of the complaint. Indeed, the duty to defend is not limited to meritorious actions; it even extends to actions that are "groundless, false, or fraudulent" as long as there exists the possibility that the allegations implicate coverage.[2]

Admiral issued a Commercial General Liability Policy to Seagrave which became effective September 8, 2009. It was renewed the following year, but ultimately cancelled by Seagrave effective June 1, 2011 (collectively, the "Policies"). The Policies provide coverage as follows:

> a. [Admiral] will pay those sums that [Seagrave] becomes obligated to pay as damages because of "bodily injury" . . . to which this insurance applies.
>
> * * *
>
> b. This insurance applies to "bodily injury" . . . only if:
> (1) The "bodily injury" . . . is caused by an "occurrence" that takes place in the "coverage territory;"

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[1] There is some question whether Wisconsin or Pennsylvania law applies. However, the court finds no conflict between the laws of the two states with respect to the issues raised by the parties, so it will cite to both states' cases.

[2] Transamerica Am. & Foreign Ins. Co. v. Jerry's Sport Ctr., Inc., 606 Pa. 584, 609–10, 2 A.3d 526, 541 (2010). *See also* Water Well Sols. Serv. Grp., Inc. v. Consol. Ins. Co., 369 Wis. 2d 607, 619–20, 881 N.W.2d 285, 291 (Wis. 2016) ("Longstanding case law requires a court considering an insurer's duty to defend its insured to compare the four corners of the underlying complaint to the terms of the entire insurance policy. The four-corners rule prohibits a court from considering extrinsic evidence when determining whether an insurer breached its duty to defend. We have, however, consistently explained that a court must liberally construe the allegations contained in the underlying complaint, assume all reasonable inferences from the allegations made in the complaint, and resolve any ambiguity in the policy terms in favor of the insured.")

> (2) The "bodily injury" . . . occurs during the policy period; and
> (3) Prior to the policy period, [Seagrave did not know] that the bodily injury . . . had occurred, in whole or in part.
> c. "Bodily injury" . . . which occurs during the policy period and was not known [by Seagrave] to have occurred . . . includes any continuation, change or resumption of that "bodily injury" . . . after the end of the policy period.[3]
>
> * * *
>
> This insurance does not apply to . . . Expected Or Intended Injury – "Bodily injury". . . expected or intended from the standpoint of the insured.[4]
>
> * * *
>
> "Bodily injury" means bodily injury, sickness or diseases sustained by a person.
>
> * * *
>
> "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.[5]

An "accident" is commonly defined as:

> An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; any unwanted or harmful event occurring suddenly, as a collision, spill, fall, or the like, irrespective of cause or blame.
>
> * * *
>
> The word "accident," in accident policies, means an event which takes place without one's foresight or expectation. A result, though unexpected, is not an accident; the means or cause must be accidental.[6]

In the underlying complaints, the firefighters allege that Seagrave was negligent, *inter alia,* in designing and building its firetrucks without adequate sound dampening and in failing to warn the firemen of the risks of exposure to the siren noise. The firefighters further allege that this negligence by Seagrave caused their continuous or repeated exposure to the harmful noise conditions on Seagrave's trucks, which resulted in the firefighters' deafness. Since the

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[3] Admiral Policy CG 00 01 12 07, p. 1, Coverage A, ¶ 1(a) – (c).

[4] *Id.*, p. 2, Coverage A, ¶ 2.

[5] *Id.*, pp 12-13, Definitions, ¶¶ 3, 13.

[6] Black's Law Dictionary (10th ed. 2014) *citing* 1A John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 360, at 455 (rev. vol. 1981).

firefighters allege acts and omissions by Seagrave that were negligent or accidental, rather than intentional, such conduct falls within the definition of "occurrence" under the Policies.

Admiral relies heavily upon a specially negotiated "Other Insurance – Continuous Losses" Endorsement (the "Endorsement"), in which Admiral and Seagrave agreed as follows:

> This insurance is excess over all valid and collectible primary, excess and contingent insurance that is available to [Seagrave], whether in the same policy period or other policy periods, for "bodily injury" . . . caused by an "occurrence" that involves the continuous or repeated exposure to substantially the same general harmful conditions:
> a) Beginning prior to and continuing after 09/08/2009 and ending by or before the end of the policy period [06/01/2011]; and
> b) When any insurer has a joint and several obligation (also known as all sums obligation) to defend and/or indemnify [Seagrave].
> When this insurance is excess, [Admiral] will have no duty to defend [Seagrave] against any "suit" if any other insurer has a duty to defend [Seagrave] against that "suit".[7]

Admiral claims this Endorsement limits the coverage it is obligated to provide under the Policies to only those firefighters who claim their exposure to the sirens began prior to, and continued after September 8, 2009, but ended by or before June 1, 2011. Conveniently, there are no plaintiffs who fit those narrow parameters, so Admiral believes it need not provide any defense or indemnification for any of the claims currently asserted against Seagrave.

Seagrave, as the insured, did not respond to Admiral's Motion, so Admiral argues Seagrave agrees with this reading of the Policies. However, Seagrave did file suit against Admiral demanding coverage, despite this Endorsement, and Seagrave has not moved to discontinue its claims against Admiral. Furthermore, Admiral's reading of the Endorsement flies in the face of the plain language of the Endorsement and the Policies.[8]

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[7] Endorsement to Admiral Policy, AI 08 76 02 03, p. 1.

[8] *See e.g.*, Pennsylvania Nat. Mut. Cas. Ins. Co. v. St. John, 630 Pa. 1, 23–24, 106 A.3d 1, 14 (2014) ("The goal in construing and applying the language of an insurance contract is to effectuate the intent of the parties as

The Endorsement does not say "this insurance will provide coverage for only the following limited occurrences." Instead, it reads "this insurance is excess over all [other] insurance" with respect to the following limited occurrences, *i.e.*, those firefighters who claim their exposure to the sirens began prior to, and continued after September 8, 2009, but ended by or before June 1, 2011. Therefore, in some very limited circumstances not applicable here, the Admiral Policies provide excess insurance to Seagrave. When such limited circumstances do not exist, the insurance coverage afforded by the Policies is not excess; it is primary under the general insuring provisions cited previously.

Admiral argues that, as a result of this limited excess coverage set forth in the Endorsement, all other primary coverage ceased to exist, but it cannot point to an express statement disclaiming all such primary coverage. Such a disclaimer of primary coverage for repeated noise exposure commencing before or after September 8, 2009, and/or continuing beyond June 1, 2011, is not contained in the Endorsement, nor anywhere else in the Policies. Instead, the general coverage provisions of the Policies contemplate primary coverage for any bodily injuries that occur during the policy period, even if they continue after the expiration of the Policies. Furthermore, while the Policies prohibit coverage for some bodily injuries that commenced before September 8, 2009, they do so only if Seagrave knew, prior to the policy period, that such bodily injury had occurred.

Admiral next argues, under the terms of the Policies and the known loss doctrine, that since Seagrave apparently knew of one firefighter's claims before it entered into the Policies

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manifested by the language of the specific policy. When the language of an insurance policy is plain and unambiguous, a court is bound by that language. . . . Finally, the language of the policy must be construed in its plain and ordinary sense, and the policy must be read in its entirety."); Danbeck v. Am. Family Mut. Ins. Co., 245 Wis. 2d 186, 193, 629 N.W.2d 150, 153–54 (2001) ("The words of an insurance policy are given their common and ordinary meaning. Where the language of the policy is plain and unambiguous, we enforce it as written, without resort to rules of construction or principles in case law. This is to avoid rewriting the contract by construction and imposing contract obligations that the parties did not undertake.")

with Admiral, Seagrave is barred from recovering for any subsequent claims for bodily injury brought by other firefighters. However, each underlying plaintiff's hearing loss constitutes a separate "bodily injury" claim under the Policies. "Bodily injury" is used in the singular throughout the insuring provisions of the Policies, including the provisions regarding prior knowledge, and "bodily injury" is defined as something happening to "a person", not multiple people. Therefore, Seagrave's knowledge of one firefighter's pre-Policies injury does not bar it from claiming coverage for any other firefighters' injuries, particularly those claims and injuries of which Seagrave did not learn until after the Policies were terminated.

Admiral also argues that Seagrave's self-insured retention ("SIR") allows Admiral to avoid its duty to defend Seagrave under the Policies. The SIR Endorsement states:

> 1. [Admiral's] total liability for all damages will not exceed the limits of liability as stated in the Declarations and will apply in excess of [Seagrave's] self-insured retention (the "Retained Limit"). "Retained Limit" is the amount shown below, which [Seagrave is] obligated to pay, and only includes damages otherwise payable under this policy.
>
> * * *
>
> $75,000 Per Occurrence-Products and Completed Operations
> 2. Expenses incurred under the SUPPLEMENTARY PAYMENTS provisions of this policy are . . . . [i]ncluded in the "Retained Limit."[9]

By its clear terms, the SIR applies only to "damages" paid to claimants and "expenses" incurred by the insured. "Expenses" are defined in the Supplementary Payment provisions to include, *inter alia*, things like loss of earnings, as well as

> all court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.[10]

Attorneys' fees are instead covered under the duty to defend portion of the Supplementary Payments provisions, which states that "attorneys' fees . . . will not be deemed to be damages for

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[9] Endorsement to Admiral Policy AI 08 75 11 03, p. 1, ¶¶ 1-2.

[10] Admiral Policy CG 00 01 12 07, p. 8, Supplementary Payments, ¶¶ 1(d), (e).

'bodily injury' and will not reduce the limits of insurance."[11] Since attorneys' fees are neither damages nor expenses, they are not the subject of the SIR Endorsement, and Seagrave's SIR obligations have no bearing on Admiral's duty to contribute to Seagrave's defense costs.

CONCLUSION

For all the foregoing reasons, Admiral's Motion for Summary Judgment is denied and the other insurers' cross-Motion is granted, and Admiral, like the other insurers, must contribute to the defense of Seagrave in the underlying firefighters' actions.

BY THE COURT,

RAMY I. DJERASSI, J.

[11] Admiral Policy CG 00 01 12 07, p. 8, Supplementary Payments, ¶ 2.