

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

ROUSE PHILADELPHIA, INC.	:	June Term 2004
	:	
Plaintiff,	:	No. 4261
v.	:	
	:	Commerce Program
ONEBEACON INSURANCE COMPANY	:	
	:	Control No. 042235
Defendant.	:	

ORDER

AND NOW, this 30th day of September, 2005, upon consideration of the Motion for Summary Judgment of Defendant OneBeacon Insurance Company and the response and reply thereto, and in accordance with the attached memorandum, it is hereby

ORDERED and **DECREED** as follows:

- 1) Defendant OneBeacon Insurance Company's Motion for Summary Judgment is **GRANTED**;
- 2) Plaintiff Rouse Philadelphia, Inc. is not an additional insured under the policy described in the Complaint;
- 3) Defendant OneBeacon Insurance Company is not obligated to indemnify, pay defense costs, reimburse for attorney's fees and expenses, or otherwise pay any monies to Plaintiff Rouse Philadelphia, Inc. for the Leon action described in the Complaint or this action; and

- 4) Plaintiff Rouse Philadelphia, Inc. cannot maintain a bad faith action pursuant to 42 Pa. C.S.A. §8371 against Defendant OneBeacon Insurance Company.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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MEMORANDUM

Presently before the court is the motion for summary judgment filed by Defendant OneBeacon Insurance Company (“OneBeacon”). In this declaratory judgment action, Plaintiff Rouse Philadelphia, Inc. (“Rouse”) seeks coverage under an insurance policy issued by OneBeacon to K&L Field Marketing, LLC (“K&L”) and relief for bad faith on the part of OneBeacon.

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).

Although Rouse asserts that it is an additional insured under the policy issued to K&L, there is no doubt that this position is incorrect. The policy does not list Rouse as an additional insured, Def. Mem., Ex. C, and, in another action before the court, Rouse admitted that it was not named as an additional insured on the policy, Def. Mem., Ex. D,

at ¶4. Rouse also contends the policy provides it with coverage through its lease with K&L. The construction of the insurance policy is a matter of law. Redevelopment Auth. of Cambria County v. International Ins. Co., 454 Pa. Super. 374, 383, 685 A.2d 581, 585 (1996). Under the policy, contractual liability coverage extends to an insured’s “liability for damages ... [a]ssumed in a contract or agreement that is an ‘insured contract.’” Def. Mem., Ex. C, at Section 1, Coverage A, Exclusion 2b. As defined in the policy, the lease between Rouse and K&L is an “insured contract.” Pl. Mem., Ex. D. The lease, however, contains no provisions in which K&L assumes any liability for damages, although it requires K&L to name Rouse as an additional insured, id., at ¶5, and to indemnify Rouse, id., at ¶6. As a corollary, since Rouse is not an insured under the policy, it cannot maintain an action for bad faith pursuant to 42 Pa. C.S.A. §8371. Tremco, Inc. v. Pennsylvania Mfrs.’ Ins. Co., 2002 Phila. Ct. Com. Pl. LEXIS 39, *26 n.12 (2002). Therefore, summary judgment will be granted OneBeacon.

BY THE COURT,

HOWLAND W. ABRAMSON, J.