

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

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<b>COLONY INSURANCE COMPANY</b>	:	March Term, 2009
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<i>Plaintiff</i>	:	Case No. 04853
	:	
<b>v.</b>	:	
	:	
<b>CHRISTI INSURANCE GROUP, INC.</b>	:	Commerce Program
	:	
and	:	
	:	
<b>EDWARD DOBRY</b>	:	
	:	
<i>Defendants</i>	:	Motion Control No.
	:	10062199
<b>v.</b>	:	
	:	
<b>ADMIRAL INSURANCE COMPANY</b>	:	
	:	
<i>Additional Defendants</i>	:	

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**MEMORANDUM OPINION**

The motion for Summary Judgment of Colony Insurance Company requires this Court to determine whether Colony is under an obligation to defend or indemnify Christi Insurance Group, Inc. in an underlying action captioned Edward Dobry as assignee of P.M. Associates v. Christi Insurance Group, Inc. et al., June Term 2008, Case No. 03483, filed in the Court of Common Pleas, Philadelphia County. For the reason explained below, Colony has no obligation to defend or indemnify Christi Insurance Group, Inc. in the action captioned above.

**Background**

Plaintiff, Colony Insurance Group. Inc., (“Colony,”) is a corporation authorized in Pennsylvania to issue insurance policies, including policies offering professional liability coverage to businesses. Additional Defendant Admiral Insurance Company (“Admiral,”) is also authorized in Pennsylvania to issue insurance policies, including policies offering professional liability coverage to businesses. Defendant, Christi Insurance Group, Inc., (“Christi,”) is an insurance broker based in Pennsylvania. Christi requires professional liability insurance to conduct its business. At all times relevant to this action, Christi was broker-of-record of P.M. Associates (“P.M. Associates,”) a non-party in this action. Individual Defendant Edward Dobry (“Dobry,”) is the assignee of any rights which P.M. Associates may have had against its broker-of-record, Christi.

In 2004, Dobry suffered permanent physical injury in an accident caused by a defective freight elevator. P.M. Associates was under a professional duty to inspect the elevator and discover any defects therein. At the time of the accident, P.M. Associates had insurance coverage under a general liability policy and a professional liability policy. In 2006, Dobry sued P.M. Associates to recover damages for his injuries.<sup>1</sup> Allegedly Christi, as broker-of-record for P.M. Associates, failed to tender the Dobry claim to the professional liability carrier of P.M. Associates, and P.M. Associates was left with no professional liability coverage.

Before trial, Dobry and P.M. Associates reached a settlement: under the terms of the settlement, P.M. Associates assigned to Dobry any rights which P.M. Associates may have had as against Christi for its failure to tender the Dobry claim to a

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<sup>1</sup> Edward Dobry v. P.M. Associates, Case No. 0605-03155, Court of Common Pleas of Philadelphia County.

professional liability carrier.

On 31 October 2007, shortly before Dobry and P.M. Associates settled, Christi received a telephone call from P.M. Associates. During the telephone call, P.M. Associates stated that it planned to settle the Dobry personal injury lawsuit by assigning to Dobry any rights which P.M. Associates may have had against Christi. P.M. Associates added that Christi could be the target of an action asserted by Dobry. P.M. Associates suggested that Christi should inform its professional liability carrier of the potential threat.<sup>2</sup> At that time, Christi was covered under a professional liability insurance policy issued by Admiral, for the period 20 May 2007—20 May 2008.<sup>3</sup>

The following day, 1 November 2007, Christi informed Admiral about the potential claim from Dobry. During the conversation between Christi and Admiral, Admiral told Christi to refrain from filing a report on the potential claim because no lawsuit had yet been asserted against Christi.<sup>4</sup> After receiving the call from Christi, Admiral prepared a one-page notation titled “Claim Incident”. The notation outlined the factual basis for the potential claim, and stated that Christi, as an insured of Admiral, might be exposed to a lawsuit asserted by Dobry as assignee of the rights of P.M. Associates.<sup>5</sup> Following the conversation with Admiral, Christi prepared its own handwritten note. The note states that Admiral advised Christi to wait “one week

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<sup>2</sup> Deposition of Andrew T. Lunney on behalf of Christi, attached as Tab 4 to the Motion for Summary Judgment of Christi, Tab 4. pp. 19-22.

<sup>3</sup> Policy No. E0000004883-02 issued by Admiral, attached as Exhibit D, Tab 3, to the Motion for Summary Judgment of Defendant Christi.

<sup>4</sup> Deposition of Andrew T. Lunney on behalf of Christi, attached as Exhibit 2 to the Motion for Summary Judgment of Plaintiff Colony, pp. 25-28, 85-86, 91-92.

<sup>5</sup> Claim Incident Report of Additional Defendant Admiral, attached as Tab 7 to the Motion for Summary Judgment of Defendant Christi.

unless served” before taking any action.<sup>6</sup>

On 20 May 2008, Christi’s insurance coverage under the Admiral policy expired. On the same day, Christi secured seamless professional liability insurance from Colony, Plaintiff herein, for the period beginning 20 May 2008 and ending 20 May 2009.<sup>7</sup>

In June 2008, Dobry filed suit against Christi.<sup>8</sup> On 7 July 2008, Christi was served with a writ of summons which Christi promptly tendered to Colony.<sup>9</sup> On 5 December 2008, Colony sent Christi a letter stating that Colony would “fund the reasonable and necessary cost of Christi’s defense in the Dobry Action.... subject to a full and complete reservation of Colony’s rights to cease funding Christi’s defense....”<sup>10</sup> Colony has been funding Christi’s defense until now.

In March 2009, Colony filed the instant Declaratory Judgment suit to determine whether it owes any duty to defend or indemnify Christi in the action asserted by Dobry as assignee of P.M. Associates. Discovery has closed and Colony filed a Motion for Summary Judgment. The Motion asks this Court to rule that Colony owes no duty to defend or indemnify Christi in the action asserted by Dobry. The Motion also asks the Court to rule that Colony may withdraw from its defense in that action.

### **Discussion**

Summary Judgment may be granted in cases where the record demonstrates there are no

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<sup>6</sup> Handwritten note of Andrew T. Lunney on behalf of Christi, attached as Exhibit 9 to the Motion for Summary Judgment of Plaintiff Colony.

<sup>7</sup> Insurance Agents and Brokers Professional Liability Policy No. EO608556, Exhibit 1 to the Motion for Summary Judgment of Plaintiff Colony.

<sup>8</sup> Edward Dobry as Assignee of P.M. Associates v. Christi et al., Case No. 0806-03483 Court of Common Pleas of Philadelphia County.

<sup>9</sup> Admission of Defendant Christi in its Response in Opposition to the Motion for Summary Judgment of Plaintiff Colony, ¶ 40.

<sup>10</sup> Letter from Colony to Christi, Exhibit 12C to the motion for Summary Judgment of Plaintiff Colony.

genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>11</sup>

Under the [Pennsylvania] Rules [of Civil Procedure], a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. For purposes of summary judgment, the record includes any pleadings, interrogatory answers, depositions, admissions and affidavits.<sup>12</sup>

The task of interpreting [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.<sup>13</sup>

In the Motion for Summary Judgment, Colony argues that there is no coverage for claims arising out of professional services rendered by Christi prior to the effective date of the Colony policy, provided Christi knew or could have reasonably foreseen that such professional services could give rise to a claim. Colony points to the record to show that Christi knew of the potential claim because Christi sought advice from Admiral on how to handle such a claim, long before inception of the Colony policy.<sup>14</sup>

The pertinent provisions in the Colony insurance policy state:

2. Exclusions

This Policy does not apply to any “claim”:

(a) Based on or directly arising from:

(1) A “professional service” rendered prior to

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<sup>11</sup> Trowbridge v. Scranton Artificial Limb, 747 A.2d 862 (Pa. 2000).

<sup>12</sup> Scalice v. Pa. Emples. Benefit Trust Fund, 883 A.2d 429, 435 (Pa. 2005) (citing Pa. R.C.P. 1035.2).

<sup>13</sup> Madison Constr. Co. v. Harleysville Mut. Ins. Co., 735 A.2d 100, 106 (Pa. 1999).

<sup>14</sup> Memorandum of Law in Support of the Motion for Summary Judgment of Plaintiff Colony, at ¶VI—C, pp. 13-12

the effective date of the [Colony] Policy if any insured knew or could have reasonably foreseen that the “professional service” could give rise to a “claim”....

\* \* \*

Section VII—Definitions....

1. “Claim” means a demand for monetary “damages” arising out of a “professional service” made against the insured by service of suit....
2. “Damages” means judgments, awards and settlements an insured is legally obligated to pay as a result of a “claim” to which this policy applies.

\* \* \*

6. “Professional services” means those services performed for others in the insured’s capacity as a duly licensed insurance agent, broker or consultant....<sup>15</sup>

In this case, Christi’s vice-president and minority owner, Andrew T. Lunney, admitted under oath that Christi foresaw a potential claim stemming from the assignment of the rights of P.M. Associates to Dobry. Lunney testified as follows:

Q. You said Mr. Lentz [from PM Associates] told you that there was a potential somebody was going to make a claim against Christi Insurance?

Lunney Yes.

Q. That claim was going to arise out of the ... alleged brokerage of services provided by Christi to PM Associates?

Lunney Yes....

\* \* \*

Q. ... Your understanding at that time was there’s a potential for a claim against Christi and that was, you were going to then call your E&O [Admiral] to

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<sup>15</sup> Insurance Agents and Brokers Professional Liability Policy No.EO608556, attached as Exhibit 1 to the Motion for Summary Judgment of Plaintiff Colony. at pp. 2, 9 of 9.

let them know that?

Lunney Correct....<sup>16</sup>

This testimony shows beyond any doubt that Christi foresaw the existence of a potential claim stemming from the assignment of rights from P.M. Associates to Dobry.

However, in the Response in Opposition, Christi asserts that “No reasonable policyholder could possibly have formed the subjective or objective belief that a claim had been asserted against it [because] its own professional liability insurer [Admiral] specifically told [Christi] that it was not a claim.”<sup>17</sup> Christi’s focus on the existence of an actual “claim” misses the meaning of the operative language in the professional liability policy issued by Colony. The operative language in the policy did not require Christi to form the subjective or objective belief that a claim had been asserted; merely, the language required Christi to foresee a potential claim that could arise sometime in the future. The testimony of Lunney on behalf of Christi shows that Christi, on 1 November 2007, sought the advice of Admiral because it foresaw a potential claim that could be asserted by Dobry in the future.

The action asserted by Dobry as an assignee of P.M. Associates is excluded from coverage because Christi foresaw the potential claim arising from brokerage services rendered by Christi to P.M. Associates. The Motion for summary Judgment of Plaintiff Colony Insurance Company is granted: Colony owes no obligation to defend or indemnify Christi in the lawsuit captioned Edward Dobry as Assignee of P.M. Associates v. Christi Insurance Group, Inc. et al., June Term 2008, Case No.

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<sup>16</sup> Deposition of Andrew T. Lunney on behalf of Christi, Tab 4 to the Exhibits attached to the Response in Opposition of Christi to the Motion for Summary Judgment of Plaintiff Colony, pp. 21-24.

<sup>17</sup> Memorandum of Law of Christi in support of its Response in Opposition to the Motion for Summary Judgment of Colony, p. 23.

03483, asserted in the Court of Common Pleas, Philadelphia County. Colony may withdraw from its defense of the above captioned case.

**By The Court,**

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**Arnold L. New, J.**