

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

UNITED STATES UNDERWRITERS)
INSURANCE COMPANY,)

Plaintiff,)

v.)

THE HANDS OF OUR FUTURE, LLC,)
et al.,)

Defendants.)

C.A. No. N14C-10-175 CEB

Submitted: May 27, 2016
Decided: August 19, 2016

*Upon Consideration of Plaintiff's
Motion for Summary Judgment.
GRANTED.*

John D. Balaguer, Esquire and James S. Yoder, Esquire, WHITE AND WILLIAMS, Wilmington, Delaware. Attorneys for Plaintiff United States Underwriters Insurance Company.

James J. Meehan, III, Esquire, SHELSBY & LEONI, Wilmington, Delaware. Attorney for Defendants Kylil Chandler, Tamika Chandler, Nashon Waters and Makeisha Gray.

BUTLER, J.

FACTS

This is an insurance coverage action for declaratory judgment stemming from a separate civil action for personal injuries. The plaintiffs in the underlying suit are Kylil Chandler, a minor, Tamika Chandler, individually and as parent, guardian and next friend of Kylil Chandler, Nashon Walters, a minor, and Makeisha Gray, individually and as parent, guardian and next friend of Nashon Walters (collectively “Claimants”). The underlying defendants are The Hands of Our Future LLC (“HOF”), a daycare center that operated in Dover, its owners, Teresa Perez and Colleen Grosso, and three HOF employees, Estefania Myers, Lisa Parker, and Tiana Harris. Claimants seek compensation for injuries sustained when Myers, Parker, and Harris forced, or at the very least allowed, the two children to physically fight each other and recorded the altercation via a cell phone camera.¹

This all came to light in November 2012, when, while conducting an unrelated investigation involving a stolen cell phone, the Dover Police Department discovered a video recording of two children, Kylil Chandler and Nashon Walters, punching and otherwise fighting with each other while three adults, later identified as Parker, Harris, and Myers, watched and permitted (perhaps encouraged) the

¹ In their complaint, Claimants allege that Parker, Harris, and Myers forced the toddlers to fight with each other, thereby causing injury to both. They also allege various forms of negligence against HOF, Perez, and Grosso.

fighting to continue. The discovery of the video prompted a new investigation, resulting in Parker, Harris, and Myers each being charged with Endangering the Welfare of a Child, Assault Second Degree, and Conspiracy Second Degree. Each subsequently pled guilty to Assault Second Degree and Conspiracy Second Degree.

At the time of the recorded incidents, HOF was insured under a commercial policy issued by United States Underwriters Insurance Company (“USUIC”). The coverages relevant to this litigation are the Commercial General Liability Coverage Part (“Coverage A”), the Personal and Advertising Injury Liability (“Coverage B”), the Professional Liability Coverage Part (“Coverage P”), and a global Molestation or Abuse Exclusion. HOF also purchased (or “bought back”) a Child Molestation or Abuse Coverage Endorsement (“Coverage M”) that is certainly relevant to this dispute. USUIC filed this action for declaratory judgment seeking a determination of its rights and duties to provide defense and/or indemnity under the HOF commercial policy.

PARTIES’ POSITIONS

In its Motion for Summary Judgment USUIC contends that there is no duty to defend or indemnify Myers, Parker, or Harris because the underlying claims fall within the scope of various exclusionary provisions. USUIC also argues that there is no duty to defend or indemnify HOF, Grosso, and Perez beyond the \$100,000

single occurrence limit available under the molestation or abuse coverage, Coverage M.

Claimants argue that the exclusionary provisions do not eliminate coverage under the policy. First, they argue that the global Molestation or Abuse Exclusion is ambiguous, and when constructed against the insurer, does not exclude coverage for their claims. Claimants also challenge the applicability of all exclusionary provisions contained within each individual coverage part. Finally, they urge that there is a minimum of \$3 million in coverage available under the policy, consisting of \$1 million under Coverage A, \$1 million under Coverage B, and \$1 million under Coverage P, in addition to \$300,000 under Coverage M.

STANDARD OF REVIEW

The Court may grant summary judgment only where the moving party can show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.² When the moving party meets its initial burden, the burden shifts to the non-moving party to show that a material issue of fact does exist.³ On a motion for summary judgment, the Court views all facts in a

² Super. Ct. Civ. R. 56.

³ *Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979).

light most favorable to the non-moving party and where the facts permit only one reasonable interpretation, summary judgment is appropriate.⁴

In Delaware, the interpretation of an insurance contract is a question of law in the absence of any dispute of material fact.⁵ As a general rule, insurance contracts are construed strongly against the insurer.⁶ Where the policy language is clear and unambiguous, however, the Court will not destroy or twist policy language under the guise of construing it.⁷ Rather, the Court must give the language its plain meaning.⁸ Ambiguity exists only when a contract provision is reasonably or fairly susceptible of different interpretations or may have two or more different meanings.⁹

DISCUSSION

The HOF insurance policy contains a provision titled “Molestation or Abuse Exclusion,” which states: “This insurance does not apply to any injury sustained by any person arising out of or resulting from alleged, threatened or actual molestation

⁴ *Keystone Ins. Co. v. Walls*, 2006 WL 1149143, at *4 (Del. Super. Jan. 31, 2006).

⁵ *Id.*

⁶ *Steigler v. Ins. Co. of N. Am.*, 384 A.2d 398, 400 (Del. 1978).

⁷ *Hallowell v. State Farm Mut. Aut. Ins. Co.*, 443 A.2d 925,926 (Del. 1982).

⁸ *O’Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 288 (Del. 2001).

⁹ *Hercules Inc. v. AIG Aviation, Inc.*, 776 A.2d 550, 558 (Del. Super. 2000).

or abuse by: (i) any insured; (ii) any ‘employee’ of any insured; (iii) any person performing volunteer services for or on behalf of any insured or (iv) any other person.” The Molestation or Abuse Exclusion explicitly eliminates all potential grounds for coverage under Coverages A, B, and P of claims arising out of child molestation or abuse. If the insured wants child molestation or abuse coverage notwithstanding the Exclusion, it can purchase coverage under Coverage M for an additional premium.¹⁰

The parties disagree on the meaning of the term “abuse” in the Molestation or Abuse Exclusion. The term is not defined under either the Exclusion or the other policy coverage parts. USUIC relies on a definition included under the “buy back” provision—Coverage M—that defines “child molestation or abuse” as “sexual or physical injury or abuse of any child, including assault and battery and/or improper touching.”¹¹ Claimants argue that because the phrase is contained in quotes each time it is used in Coverage M, the words cannot have the same meaning when they are used without quotes in the global exclusion.

The terms “molestation” and “abuse” are not defined under the Molestation or Abuse Exclusion specifically. The Court will apply the plain meaning of the

¹⁰ The Molestation or Abuse Exclusion contains a “buy back” provision stating: “Coverage for Child Abuse and Molestation may be provided if the Commercial Child Molestation or Abuse Insurance or the Residential Child Molestation or Abuse Insurance Endorsement [Coverage M] is attached to the Policy.”

¹¹ Coverage M § F(1).

words.¹² “Under well-settled case law, Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined in a contract.”¹³ Although a word might have more than one dictionary definition, mere disagreement between the parties as to which definition applies to their case does not create an ambiguity.¹⁴ Rather, both definitions must reflect a *reasonable* reading of the policy language.¹⁵

The parties do not dispute the definition of “molestation.” Thus, for purposes of interpreting the Molestation or Abuse Exclusion, molestation can be defined as “to harm through sexual contact; to touch in a sexual and improper way.”¹⁶

This brings us to the meaning of the word “abuse” in the Molestation or Abuse Exclusion. Claimants contend the word is ambiguous because it has two different meanings: it can mean “to commit sexual assault upon” or it can mean

¹² *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 740 (Del. 2006) (quoting *USA Cable v. World Wrestling Fed’n Entm’t, Inc.*, 766 A.2d 462, 474 (Del. 2000)) (“Where a term has been given no special definition or has “no ‘gloss’ in the [relevant] industry, it should be construed in accordance with its ordinary dictionary meaning.”).

¹³ *Id.* at 738 (internal citations omitted).

¹⁴ *See id.* at 740 (internal citation omitted) (“[I]f merely applying a definition in a dictionary suffices to create ambiguity, no term would be unambiguous.”).

¹⁵ *Aetna Cas. & Sur. Co. v. Kenner*, 570 A.2d 1172, 1174 (Del. 1990).

¹⁶ *Molest*, Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/molest> (last visited Aug. 19, 2016).

“to treat in a harmful or injurious way.”¹⁷ But a term is not ambiguous merely because it has two different definitions.¹⁸ According to Claimants, when used in conjunction with the word “molestation,” the word “abuse” should be interpreted using the former definition, i.e. to commit sexual assault upon. Interpreting abuse in that way would render the term redundant, as both “molestation” and “abuse” would refer to sexual mistreatment. Such a result contravenes the basic principle of contract interpretation that no part of an agreement should be rendered superfluous.¹⁹ “Delaware courts have consistently held that an interpretation that gives effect to each term of an agreement is preferable to any interpretation that would result in a conclusion that some terms are uselessly repetitive.”²⁰ Reading the terms in context, i.e. joined by the word “or,” indicates a clear intent to define the words differently.²¹ The Court must presume that the parties bargained for each term and the Court is bound to give effect to each.²²

¹⁷ *Abuse*, Random House Webster’s College Dictionary (2d ed. 2000).

¹⁸ See *Lorillard Tobacco Co.*, 903 A.2d at 740.

¹⁹ Restatement (Second) of Contracts § 203(a) (1981) (“[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”).

²⁰ *O’Brien*, 785 A.2d at 287.

²¹ See *Diversified Prop. Sols., LLC v. Spectrum Tax Consultants USA, Inc.*, 2016 WL 3681141, at *1 n.1 (Del. Super. June 10, 2016).

²² See *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 711 A.2d 45, 60-61 (Del. Super. 1995) (citing *N. Ins. Co. of N.Y. v. Aardvark Assocs., Inc.*, 942 F.2d 189, 192 (3d Cir. 1991)).

Claimants tell us in their brief that “molestation” can be understood by a Google search of the term that produced a Wikipedia definition for the word.²³ If we maintain consistency, the Wikipedia definition of the term “abuse” provides: “Abuse is the improper usage of an entity often to unfairly or improperly gain benefit. Abuse can come in many forms, such as: physical or verbal maltreatment, injury, assault, violation, rape, unjust practices, crimes, or other types of aggression.”²⁴ Indeed, even the dictionary definition of the term “abuse” submitted by Claimants supports a finding that the term “abuse” encompasses any physically, verbally, or sexually harmful conduct.²⁵ Reading all contractual terms to have meaning, where sexual mistreatment is covered by the term “molestation,” the only reasonable meaning of the term “abuse” in the context of the Molestation or Abuse Exclusion must be one that includes physically or verbally harmful conduct.

Moreover, because Coverage M is meant to “override” the global exclusion, the definition of “child molestation or abuse” contained in Coverage M must

²³ The Wikipedia definition for “molestation” provides: “[s]exual abuse, also referred to as molestation, is forcing undesired sexual behavior by one person upon another. When force is immediate, of short duration, or infrequent, it is called sexual assault. The offender is referred to as a sexual abuser or (often pejoratively) molester.” *Molestation*, Wikipedia, https://en.wikipedia.org/wiki/Sexual_abuse (last visited Aug. 19, 2016).

²⁴ *Abuse*, Wikipedia, <https://en.wikipedia.org/wiki/Abuse> (last visited Aug. 19, 2016).

²⁵ Random House Webster’s College Dictionary defines abuse: “1. to use wrongly or improperly; misuse; *to abuse one’s authority*. 2. to treat in a harmful or injurious way; *to abuse a horse*; *to abuse one’s eyesight*. 3. to speak insultingly or harshly to or about; revile. 4. to commit sexual assault upon.” *Abuse*, Random House Webster’s College Dictionary (2d ed. 2000).

encompass claims that are otherwise excluded by the exclusion. If the Court were to interpret the term “abuse” in the Exclusion such that the Exclusion only excludes coverage for sexual abuse, then purchasing Coverage M for claims stemming from physical abuse would make no sense, since physical abuse would still be covered under A, B, and P (i.e. not excluded under the Exclusion). Reading all of the relevant portions of the policy together,²⁶ Coverage M would merely provide “double coverage” for physical abuse, a result which the Court will not presume the parties intended.

The complaint alleges that the toddler claimants were forced by HOF employees to fight each other. The complaint further states that the HOF owners were aware of the neglect and abuse perpetrated by HOF employees but failed to take steps to prevent future reoccurrences. The claims stem from alleged child molestation or abuse. To the extent that the claims fall under Coverage A, B, or P, coverage is directly excluded the global Molestation or Abuse Exclusion.

The only coverage potentially available for the underlying claims is under Coverage M, the additional limited coverage that the insureds purchased for claims otherwise excluded by the Molestation or Abuse Exclusion.

²⁶ In interpreting contracts, the Court must examine all relevant portions of the policy and may not read any single passage in isolation. *Aetna Cas. & Sur. Co.*, 570 A.2d at 1174.

USUIC concedes that there is coverage for the claims against HOF, Grosso, and Perez under Coverage M. The parties disagree as to whether Coverage M provides coverage for claims against the Harris, Myers, and Parker. The Court finds it does not. Coverage M excludes coverage for “any person(s) who committed or is alleged to have committed any actual or alleged ‘child molestation or abuse.’”²⁷ As previously stated, Coverage M defines “child molestation or abuse” as “sexual or physical injury or abuse of any child, including assault and battery and/or improper touching.” Harris, Myers, and Parker are alleged to have forced two toddlers to hit each other. Claims against them arising out of their actions, or inactions, are excluded under Coverage M.

The only issue remaining for the Court to decide is the amount of coverage available under Coverage M for claims against HOF, Grosso, and Perez. USUIC contends that the sole coverage available to HOF, Grosso and Perez is the eroding \$100,000 single occurrence limit provided by Coverage M for negligence claims.²⁸ Claimants, on the other hand, argue that there is a minimum of \$3 million in coverage available under the Policy, including the \$300,000 aggregate limit under Coverage M.

²⁷ Coverage M § A(2)(a). The Coverage M endorsement is clearly intended to protect corporate or leadership liability, not that of perpetrators.

²⁸ Coverage M § A(1)(a) provides that any funds spent in defense of a covered claim erode the indemnity limit. In other words, every dollar spent on defense reduces the amount available to settle or otherwise resolve the claim by one dollar.

Coverage M provides a “single occurrence” limit of \$100,000 and a \$300,000 “aggregate limit” for all occurrences falling within the ambit of that coverage. Under either limit, USUIC’s coverage obligations include both defense and indemnity, such that defense costs erode the amount of coverage available for indemnity.²⁹

Coverage M § A(1)(c) provides, “Multiple acts of ‘child molestation or abuse’ of one or more children committed by any one person or . . . committed by more than one person acting in concert, shall be deemed to be one occurrence.” Claimants cite *Roman Catholic Diocese of Brooklyn v. National Union Fire Insurance Company of Pittsburgh*³⁰ to support their argument that each act of molestation or abuse constitutes a separate occurrence. But, the definition of “occurrence” in that case is substantially different from the definition provided in Coverage M.³¹ Claimants have raised no argument challenging the Coverage M definition.

²⁹ Coverage M § A(1)(a)(2).

³⁰ 991 N.E.2d 666 (N.Y. 2013).

³¹ The insurance policy at issue in *Roman Catholic Diocese of Brooklyn* defined “occurrence” as including “continuous or repeated exposure to substantially the same general harmful conditions.” *Id.* at 672.

The Coverage M definition is unambiguous and the parties are bound by its plain meaning.³² According to the Policy definition, the claims against the HOF, Grosso, and Perez constitute a single occurrence under Coverage M and therefore, the \$100,000 single occurrence limit applies.

The conduct referenced in the underlying complaint is obviously reprehensible and the actors involved have apparently all been dealt with by the criminal justice process. The Court's decision today in no way diminishes the Court's outrage at the underlying behaviors or its sympathies toward the toddlers or their parents. But we are duty bound to engage the direct question of insurance contract interpretation before us and for that there is no room for outrage or sympathies.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion for Summary Judgment is

GRANTED.

IT IS SO ORDERED.



Judge Charles E. Butler

³² *Hallowell*, 443 A.2d at 926.