IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

AT&T WIRELESS SERVICES, INC.,	)	
	)	
	)	
Plaintiff,	)	C.A. No. 03C-12-232 WCC
	)	
v.	)	
	)	
FEDERAL INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., ST. PAUL MERCURY INSURANCE COMPANY, AND CERTAIN UNDERWRITERS OF LLOYD'S LONDON, AND CERTAIN LONDON MARKET COMPANIES,	)	
	)	
Defendants.	)	

Submitted: August 1, 2005
Decided: January 31, 2006

MEMORANDUM OPINION

Upon Defendants National Union Fire Insurance Company of Pittsburgh, PA and St. Paul Mercury Insurance Company's Motion to Dismiss. **GRANTED**.

Upon Defendant Federal Insurance Company's Motion to Dismiss.
GRANTED IN PART. **DENIED IN PART**.

CARPENTER, J.

Upon consideration of the record and parties' submissions, the decision of the Court is as follows:

I. BACKGROUND[1]

On February 15, 2002, TeleCorp PSC, Inc. ("TeleCorp") merged with AT&T Wireless Services, Inc. ("AWS"). Following the merger, the TeleCorp shareholders filed a derivative action in the Delaware Court of Chancery alleging breach of fiduciary duties by the TeleCorp directors ("Chancery Action") and by AWS due to its control over the "timing, structuring, disclosure and pricing of the merger."[2] The Court of Chancery approved a settlement of the shareholder action in which AWS agreed to pay $47.5 million in exchange for a dismissal of all remaining claims against the Chancery Action defendants (the "Shareholder Settlement"). AWS has now filed this litigation seeking reimbursement from TeleCorp's insurance carriers – Federal Insurance Company ("Federal Insurance"), National Union Fire Insurance Company of Pittsburgh, PA ("National Union") and St. Paul Mercury Insurance Company ("St. Paul") (collectively, the "TeleCorp Insurers") for its appropriate share of the cost of the Shareholder Settlement and the fees associated with defending the

[1] Additional factual and procedural background is set forth in the Court's August 18, 2005 decision. The Court has merely delineated here such background as is necessary for a determination of the motions that are the subject of this opinion.

[2] Am. Compl., *In re TeleCorp PCS, Inc., Shareholders Litigation*, E-File 4284961 ¶184 (Del. Ch. C.A. No. 19260).

litigation. In addition, AWS is seeking reimbursement from its own primary insurer, Faraday Capital Limited ("Faraday"),[3] and its excess carrier, National Union (collectively, the "AWS Insurers"), relating to the service of AWS directors on the TeleCorp board as well as the company's own liability.

AWS filed its complaint on December 23, 2003, and the Court allowed AWS to file an amended complaint on September 28, 2004 to add claims of bad faith and an alleged violation of Washington's Consumer Protection Act ("Amended Complaint").[4] Shortly thereafter, the TeleCorp Insurers and the AWS Insurers each filed the present motions to dismiss the Amended Complaint. In June of 2005, while this opinion was pending, AWS attempted to voluntarily dismiss this case in preference for an identical action filed in the state of Washington. Both the AWS Insurers and TeleCorp Insurers contested the dismissal. In an opinion from this Court dated August 18, 2005, with respect to the AWS Insurers, the Court permitted the voluntarily dismissal of Faraday from this action, but did not dismiss National Union.[5] As to the TeleCorp Insurers, the Court denied AWS's voluntary motion to

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[3] Faraday is referred to in the Amended Complaint as Certain Underwriters of Lloyd's, London and Certain London Market Companies.

[4] AWS is headquartered in Redmond, Washington.

[5] *AT&T Wireless Serv. v. Federal Ins. Co.,* 2005 WL 2155695 (Del. Super. Ct.).

dismiss.[6] After having resolved AWS' motions to dismiss, the Court now turns its attention to the motions to dismiss filed by the AWS Insurers and the TeleCorp Insurers.

II. STANDARD OF REVIEW

When presented with a motion to dismiss under Superior Court Civil Rule 12(b)(6) the Court will consider all well-pleaded facts in the complaint and accept them as true.[7] "Dismissal under Superior Court Rule 12(b)(6) is appropriate only where it appears with reasonable certainty that [the plaintiff] would be unable to prevail on any set of facts inferable from the complaint." In viewing the facts, the court must draw "all reasonable inferences in favor of the non-movant."[8] The Court must determine "whether [the] plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."[9]

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[6] *Id.*

[7] *Crowhorn v. Nationwide Mut. Ins.,* 2001 WL 695542 at *2 (Del. Super. Ct.) (citing *Spence v. Funk,* 369 A.2d 967, 968 (Del. 1978)).

[8] *Lord v. Souder*, 748 A.2d 393, 398 (Del. 2000).

[9] *See Crowhorn*, 2001 WL 695542 at *2.

III. DISCUSSION

A. The Chancery Action

Lost in the various legal arguments asserted in this litigation is who the relevant parties were in the underlying Chancery Action that would potentially provide a legal basis to assert coverage under the various insurance policies. The Amended Consolidated Class Action Complaint filed in the Chancery Action listed the following parties as defendants:[10]

TeleCorp;
AT&T Wireless;
Gerald Vento - TeleCorp CEO and Director;
Thomas Sullivan - TeleCorp CFO and Director;
Michael Benson - AT&T Wireless Senior Vice-President and Chief Information Officer and TeleCorp Director;
William W. Hague - AT&T Wireless Executive Vice President, Corporate Development, Mergers & Acquisitions and TeleCorp Director and President of TL Acquisition Corp.;
Ann K. Hall - AT&T Wireless Director of Partnership and Affiliate Operations and TeleCorp Director;
Scott I. Anderson - TeleCorp Director formerly employed by AT&T Wireless as a Senior Vice President of the Acquisitions and Development Group;
Michael R. Hannon - TeleCorp Director and General Partner of JPMP, the venture capital unit of parent JP Morgan Chase;
JP Morgan Securities -Financial advisor to TeleCorp who lead negotiations on the merger;
James M. Hoak - TeleCorp Director;
Gary C. Wendt - Telecorp Director.

[10] Am. Compl., *In re TeleCorp PCS, Inc.*, E-File 4284961 ¶ 15-24.

Since it is these parties who were potentially at risk, it is their conduct that must form the basis for coverage under the officer and director policies in dispute here.

As the Shareholder Settlement was being finalized, AWS petitioned the Chancery Court to grant it permission to amend its answer to assert a cross claim against certain former directors of TeleCorp. The matter was fully briefed and decided by the Chancery Court on November 19, 2003.[11] AWS was granted the relief requested, which in essence allowed it to file a cross claim so that AWS would not be foreclosed from an independent action for contribution from the other defendants. In addition, the Shareholder Settlement specifically indicated that AWS defendants may wish to pursue any rights they have for contribution from the other defendants in connection with the settlement, and the plaintiffs specifically indicated they would not object to an assertion of any cross claim for contribution that may be requested of the Court. AWS subsequently filed an amended complaint in the Chancery Action asserting a cross claim only against Gerald Vento, Thomas Sullivan, and Michael R. Hannon, who were the key TeleCorp officers and directors unaffiliated with AWS. It is with this background in mind that the Court will now turn its attention to the various insurers of which AWS is seeking coverage under their policy.

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[11] *In re TeleCorp PCS, Inc.,* 2003 WL 22901025 (Del. Ch.).

B. AWS Insurers

AWS has two insurers relative to the conduct of its directors and officers. The primary insurer was Faraday, who was voluntarily dismissed from this case by the Plaintiffs on June 20, 2005.[12] Therefore, Faraday's motion to dismiss is now moot and the Court's analysis will address the possible coverage under AWS's excess carrier, National Union.

National Union's policy[13] provided for $25 million of excess coverage. The policy itself is not particularly helpful in addressing the issues raised in this litigation since, in general, it simply lists the name of the insurer, the policy period, the amount of coverage and the premium amount. The critical elements are incorporated by reference in a Lloyd's of London policy #QB405301 ("Lloyd's Policy"), and the terms and conditions relevant to this issue are set forth in that policy. The Lloyd's Policy was further amended by an endorsement[14] which modified the critical provisions that defined coverage under the National Union policy. Under the Lloyd's Policy there are three possible areas of coverage:

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[12] Count IV of the Amended Complaint seeks damages against Faraday for breach of contract. Because Faraday has been voluntarily dismissed from this action, Count IV is hereby dismissed.

[13] Compl. Ex. F (Policy # 873-61-45).

[14] Compl. Ex. D at 15 (Policy # 509/QB405301).

I. Insuring Clauses

(A) Underwriters shall pay on behalf of the Directors and Officers Loss resulting from any Claim first made against the Directors and Officers during the Policy Period for a Wrongful Act.

(B) Underwriters shall pay on behalf of the Company Loss which the Company is required or permitted to pay as indemnification to any of the Directors and Officers resulting from any Claim first made against the Directors and Officers during the Policy Period for a Wrongful Act.

(C) Underwriters shall pay on behalf of the Company Loss resulting from any Securities Action Claim first made against the Company during the Policy Period for a Wrongful Act.[15]

First, when one considers the definition of "Securities Action Claim" also defined in the Lloyd's Policy, it is clear that section (C) above is not applicable to this case. Therefore, if coverage is to be allowed, it must fit into either section (A) or (B) above. Section (A) relates to the requirement to pay for losses resulting from any claim made against a director or officer of AWS for a wrongful act. A claim includes a civil proceeding such as that instituted by the TeleCorp shareholders, and the allegations contained in the Chancery Action would meet the definition of "wrongful act" set forth in the policy. The only parties to the underlying Chancery Action that would meet the criteria, however, would be the three AWS officers and directors who had

[15] *Id.*

been appointed to the TeleCorp's board. They are Michael Benson, William W. Hague and Ann K. Hall. However, also contained in the policy is an exclusion provision[16] which reads as follows:

> III. Underwriters shall not be liable to make any payment in connection with any Claim:
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> K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the Directors and Officers service for any entity other than the Company except:
>
> 1. where such Directors and Officers serve as directors or officers of any not-for-profit or charitable organisation or Political Action Committee and such service is at the knowledge, request and consent of the Company;
>
> 2. whilst an employee of the Company serves as a director or officer of the Joint Venture between the Parent Company and British Telecommunications Plc until such time that the Joint Venture purchases a stand-alone Directors' and Officers' Liability Policy.[17]

[16] Compl. Ex. D at 5, 21 (Policy #509/QB405301).

[17] The Court has set forth the language as it appears in the Lloyd's Policy.

An insurance contract is to be interpreted by looking at the context of the entire contract by the Court. Interpretation of a contract is a question of law, and the Court is to determine the terms agreed upon by the parties.[18] If the Court can interpret the contract without any additional facts or evidence, and based solely on the language within the contract, then the terms are not ambiguous.[19] On the other hand, if the terms within the contract suggest more than one interpretation, then the terms are considered ambiguous.[20] If the contract is clear and unambiguous, the parties are bound by the plain meaning and the Court will not twist the words to create ambiguity.[21]

The Court finds that the exclusion found in exclusion K to be clear and unambiguous. If ones conduct is performed as an officer or director of AWS, it is covered. But, if the conduct that is forming the basis of the underlying claim is conduct performed for a separate business organization, the insurance of that

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[18] *O'Brien v. Progressive Northern Ins. Co.,* 785 A.2d 281, 286 (Del. 2001)(citing *Emmons v. Hartford Underwriters Ins. Co.,* 697 A.2d 742, 744-45 (Del. Super. Ct. 1997); *Rhone-Poulenc Basic Chems. Co. v. American Motorists Ins. Co.,* 616 A.2d 1192, 1195 (Del. 1992)). *See also Weyerhaeuser Co. v. Commercial Union Ins. Co.,* 15 P.3d 115, 122 (Wash 2001).

[19] *O'Brien*, 785 A.2d at 288 (citing, *Rhone-Poulenc,* 616 A.2d at 1196; *Holland v. Hannan*, 456 A.2d 807, 815 (1983 D.C. App.)).

[20] *Id* at 289.

[21] *Rhone-Poulenc,* 616 A.2d at 1195-1196. *See also Weyerhaeuser Co.,* 15 P.3d at 122.

company, not that of AWS, provides coverage. As such, the Court finds exclusion K prevents coverage under section (A) of the National Union policy, as incorporated from the Lloyd's Policy, for the AWS directors who were serving on TeleCorp's board .

As a result of the above, the only possible avenue for coverage under the National Union policy would be the indemnification provision set forth in Section (B). There are two problems under this provision. First, there has been no indemnification to an officer or director since there has been no finding in any litigation that those officers or directors were required to pay damages. Simply, at this point there is nothing for AWS to indemnify for. In addition, if AWS was to get beyond this barrier, the exclusion provision found in section K would again become applicable. Therefore, the Court finds there is no coverage under this provision either.

AWS, recognizing the difficulty of the argument relating to the specific conduct of its officers and directors while serving on the TeleCorp Board, has argued to the Court that the National Union policy provides coverage directly to the company as a separate entity. While the Court admits that AWS is an insured entity under the National Union policy, it still must fit a claim within the coverage provisions of that policy. The Court does not find a separate and independent contractual provision that

would allow recovery by AWS unrelated to the specific conduct of its officers and directors, and therefore finds this argument to be without merit.

From its review of the terms and conditions of the policy, the Court cannot find a basis for coverage as claimed by AWS in the present posture of this litigation. AWS has perhaps preserved, by its action in Chancery Court, a cause of action against its officers and directors which may provide a basis for such coverage, but at the moment it has not progressed its litigation position to that point. The emphasis here is AWS may have preserved some action since, it appears from its conduct in the Chancery Action, AWS had no interest in pursuing any litigation against any director that had an affiliation with AWS as they did not seek a contribution right in the Chancery Action against those individuals. The Court will not speculate on the motives of AWS in making that decision, but does find the inconsistency in positions taken now from that taken previously in the Chancery Action disturbing. In any event, the Court finds no coverage under the policy of National Union, and will dismiss Count V of the Plaintiff's Amended Complaint.

Since the Court has found that the exclusion provision clearly would have prevented coverage, and there is no basis for coverage of AWS independent of the actions of its directors and officers, National Union would have had no obligation to pay defense fees and costs, and therefore Count II is also dismissed. In addition, to

the extent the Plaintiff's Amended Complaint included a bad faith claim against National Union relating to its refusal to pay under the AWS policy, the Court, based on the above decision, finds no merit to that claim, and it too is dismissed.

C. TeleCorp Insurers

There are three insurers who provided coverage for TeleCorp officers and directors. Federal Insurance was the primary insurer whose policy covered up to $10 million once a million dollar retention had been met. National Union and St. Paul each provided excess policies. National Union would provide up to $10 million coverage following the exhaustion of the Federal Insurance limits, and then St. Paul would provide a final $10 million of coverage. It is these policies that AWS now claims provide a basis for coverage for the TeleCorp officers and directors in relation to the Chancery Action.

The Federal Insurance policy provided for two areas of coverage. The first was for executive liability coverage which states:

> The Company shall pay on behalf of each of the Insured Persons all Loss for which the Insured Person is not indemnified by the Insured Organization and which the Insured Person becomes legally obligated to pay on account of any Claim first made against him, individually or otherwise, during the Policy Period or, if exercised, during the Extended Reporting Period, for a Wrongful Act committed, attempted, or allegedly committed or

> attempted by such Insured Person before or during the Policy Period.[22]

The second area related to executive indemnification coverage which stated:

> The Company shall pay on behalf of the Insured Organization all Loss for which the Insured Organization grants indemnification to each Insured Person, as permitted or required by law, which the Insured Person has become legally obligated to pay on account of any Claim first made against him, individually or otherwise, during the Policy Period or, if exercised, during the Extended Reporting Period, for a Wrongful Act committed, attempted, or allegedly committed or attempted by such Insured Person before or during the Policy Period.[23]

"Claim" is defined to include a civil proceeding commenced by the service of a complaint or similar proceeding, so there is no dispute that the Chancery Action commenced by the stockholders of TeleCorp would be covered within this definition.[24] In addition, the allegations made in the Chancery Action would be included within the definition of "wrongful acts" set forth in the Federal Insurance policy. As such, the real dispute here centers around whether there is a loss under the policy that would trigger coverage. "Loss" is also defined by the insurance contract as:

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[22] Compl. Ex. A (Policy #8179-74-11).

[23] *Id.*

[24] *Id.* at ¶ 18, Definitions.

> . . . the total amount which any Insured Person becomes legally obligated to pay on account of each Claim and for all Claims in each Policy Period and the Extended Reporting Period, if exercised, made against them for Wrongful Acts for which coverage applies, including, but not limited to, damages, judgements, settlements, costs and Defense Costs . . .. [25]

In its simplest terms, the question for the Court is whether an officer or director of TeleCorp has become legally obligated to pay on account of the Chancery Action. Even under the standards for a motion to dismiss, the Court finds the answer to be no. The Court can find no document or reference in any court proceeding which specifically and clearly establishes an obligation personal to an officer or director of TeleCorp which would have required Federal Insurance to pay a portion of the Chancery Action settlement. Without such a finding, it is impossible for the insuring company to know the extent of its obligation or to what extent a damage or settlement award is contributable to the conduct of its insured officer or director. This is particularly true in a case of this type where the underlying litigation is not limited to the alleged wrongful conduct of just the officers and directors insured by the Federal Insurance policy. Under the present status of this litigation, it is impossible to determine whether the wrongful conduct which resulted in the Shareholder Settlement is only related to the aggressive controlling action of the

[25] *Id.*

takeover company with the assistance of a few directors that they controlled, or the result of the misconduct by other insured officers and directors which may fall within the Federal Insurance policy.

AWS took a reasonable litigation position and settled the Chancery Action. It further preserved cross claim and contribution positions against some officers and directors which presumably it is free to exercise. However, because of the manner in which the Chancery Action was settled, AWS cannot jump the liability or contribution step and look to the insurance companies to simply help finance the settlement. The insurance coverage is clearly dependent upon a finding of liability of a covered officer or director, and until AWS gets the litigation in that posture, it has no basis to seek coverage for a portion of the settlement under the TeleCorp policy with Federal Insurance.

The Court having found no present obligation for Federal Insurance to contribute to the settlement amount agreed to by AWS, it logically follows that there is no obligation under the excess policies issued by National Union and St. Paul. Both excess policies have provisions that limit their obligation to pay when the exhaustion of the previous policy has occurred. National Union references a reduction or exhaustion by "reason of losses paid" under the primary policy.[26] The

[26] Compl. Ex. B, Endorsement #1 (Policy #473-95-62).

St. Paul policy is even more specific, stating "the insurer shall only be liable to make payment under this policy after the total amount of the underlying limit of liability has been paid in legal currency by the insurers of the underlying insurances as covered loss thereunder."[27] Since these precedent conditions have not been met, these insurers have no obligation for any payment under their policies. As a result of the Court's ruling above, it will dismiss Count III of the Plaintiff's Amended Complaint.

D. Defense Costs

In Count I of the Amended Complaint, AWS asserts a claim against Federal Insurance for the payment of defense fees and costs associated with defending the Chancery Action. Federal Insurance's policy defines "defense costs" as follows:

> Defense Costs means that part of Loss consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the Insured Organization) incurred in defending or investigating Claims and the premium for appeal, attachment or similar bonds.[28]

The policy further imposes an affirmative duty upon the officer or director to defend claims made against them, and prohibits the company from unreasonably withholding consent to the expenditure of a reasonable defense cost.

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[27] Compl. Ex. C, Sect. 3(A)(Policy # 538CM0151).

[28] Compl. Ex. A ¶ 18, Definitions (Policy #8179-74-11).

While included in the overall definition of "loss," the Court finds that there is a distinction between Federal Insurance's obligation to pay for the settlement negotiated by AWS from its obligation to pay reasonable costs incurred in defending the underlying litigation. It is entirely reasonable, and clearly contemplated by the policy, that Federal Insurance has an obligation to pay reasonable costs associated with defending the litigation regardless of the ultimate outcome of the underlying claim. As such, even though the Court has agreed with Federal Insurance that they presently have no obligation to contribute to the payment of the Shareholder Settlement, it finds nearly as shocking that Federal Insurance asserts that they have no obligation for reasonable fees expended by the law firms that represented the TeleCorp directors. Paragraph 30 of the Amended Complaint states in part:

> The TeleCorp Shareholders Litigation was actively litigated and was scheduled to begin trial on June 2, 2003. Five of the TeleCorp Director defendants (Anderson, Hoak, Hannon, Sullivan, and Vento) were defended by Cadwalader, Wickersham & Taft and Richards, Layton & Finger, P.A. One TeleCorp Director defendant (Wendt) was defended by Prickett, Jones & Elliott, P.A. The three remaining TeleCorp Director defendants (Benson, Hague and Hall), as well as AWS, were defended by Wachtell, Lipton, Rosen & Katz and Morris, Nichols, Arsht & Tunnell.

While there may be some dispute regarding what fees of Wachtell, Lipton, Rosen & Katz and Morris, Nichols, Arsht & Tunnell are related to the defense of AWS, and what portion are connected to the defense of TeleCorp directors Benson, Hague and

Hall, the other TeleCorp directors were represented by prominent and independent law firms which have performed the directors and officers' obligation under the policy to defend the underlying action. While not specifically asserted, the Court must assume that AWS has paid these fees as a result of Federal Insurance's refusal to cover these expenses. If that is the case, the Court finds that Count I of the Amended Complaint remains as a valid claim against Federal Insurance. Unlike the dispute regarding the settlement amount, the Court finds no significance to the fact that AWS is pursuing the claim even though it technically is one belonging to the individual directors and officers to assert. If they have paid these fees, any rights of recovery that belong to the officers and directors has now been transferred to AWS. Of course, if the Court's assumption is not correct and the fees remain outstanding, AWS would have no basis to pursue this claim, as that right will remain with the officers and directors. Since all reasonable inferences go to the non-moving party on a motion to dismiss at this stage of the litigation, Count I of the Amended Complaint will not be dismissed.

In addition, the Court finds a dispute remains as to whether Federal Insurance reasonably withheld payment of defense costs, and whether it did so in bad

faith. As such, the bad faith claim found in Count VI will remain as to the conduct of Federal Insurance relating to these fees.[29]

While Federal Insurance's obligation for defense fees remains a valid dispute, the same is not true as to National Union or St. Paul. When Federal Insurance's limits are exhausted, the excess policies will kick in and stand in the footsteps of the primary policy. Until then, however, there is no obligation under these policies, nor could the insurers have acted in bad faith for failing to cover counsel's fees. As such, to the extent Count VI makes such claims against National Union or St. Paul, they are dismissed.[30]

E. Miscellaneous Counts

As a result of the findings in this opinion, the Court has addressed the primary counts of the Amended Complaint and its rulings have in all likelihood affected the litigation strategies and the positions of the parties regarding this litigation. In that vein, there are three counts of the Amended Complaint that have not been addressed. They are Counts VII, VIII and IX, which at best can be

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[29] The Court also notes that having obligated the directors and officers to defend these types of actions, Federal Insurance has little room to complain if they have hired the best, brightest and most expensive legal expertise to represent them.

[30] While the dollar amount of counsel fees and costs are not included in the Amended Complaint, the Court bases this decision on the assumption that those fees do not exceed $11 million.

characterized as afterthoughts to the primary litigation, or what the Court would consider as claims that simply piggyback the real dispute raised in this litigation. The issues surrounding these claims have not been well briefed by the parties, mainly because they pale in significance to the other counts. Having found no basis for coverage under the National Union policy with AWS, as well as finding no coverage under the TeleCorp excess carriers nor bad faith for any of their conduct, it is difficult for the Court to imagine any merit to Counts VII through IX as to these insurers, and thus they will be dismissed as to them.

While the Court also questions the merit of Counts VII through IX as to Federal Insurance, it will delay ruling on the dismissal of these counts until Federal Insurance and AWS parties have had the benefit of digesting the other parts of this opinion and how it affects the merits of this litigation proceeding in a manner in which it is now filed. Since the Court suspects some significant changes, and even perhaps a different complaint will be filed, it will wait to see what will remain once the litigation is reassessed. In addition, the Court will not dismiss Count X as it relates to Federal Insurance since there may be some issues that deserve further inquiry regarding this claim.

IV. CONCLUSION

In summary, the Court, for the reasons set forth in this opinion, takes the following action:

Count I - Dismissal is denied.

Count II - To the extent not voluntarily dismissed by the Plaintiff, it is dismissed by the Court.

Count III - Dismissed.

Count IV - Dismissed.

Count V - Dismissed.

Count VI - Dismissed as to all Defendants except Federal Insurance relating to defense costs.

Counts VII through IX - Dismissed as to all Defendants except Federal Insurance.

Count X - Dismissed as to all Defendants except Federal Insurance.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.