



IN THE SUPREME COURT OF THE STATE OF DELAWARE

STILLWATER MINING COMPANY,

Plaintiff-Below/
Appellant,

v.

NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA,
ACE AMERICAN INSURANCE
COMPANY, QBE INSURANCE
COMPANY,

Defendants-Below/
Appellees.

No. 24, 2022

ON APPEAL FROM THE
SUPERIOR COURT OF THE
STATE OF DELAWARE

C.A. No. N20C-04-190 AML CCLD
CONSOLIDATED

ANSWERING BRIEF OF DEFENDANT-BELOW/APPELLEE
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NATURE OF PROCEEDINGS

Defendant-Below/Appellee ACE American Insurance Company (“ACE”) incorporates by reference and adopts the Nature of Proceedings in the Answering Brief submitted by Co-Appellees National Union Fire Insurance Company of Pittsburgh, PA (“National Union”) and QBE Insurance Corporation (“QBE”).

SUMMARY OF ARGUMENT

1. DENIED. The argument by Plaintiff-Below/Appellant Stillwater Mining Company (“Stillwater”) that Montana law applies to the claims in its Amended Complaint is meritless. Stillwater presents a “false conflict” of law. Both Montana law and Delaware law hold that when there is no coverage, there is no duty to defend (or here, no duty to advance). Thus, this Court need not engage in a choice of law analysis. This case turns on the nature of an appraisal proceeding under 8 *Del. C.* § 262. This Court has held on two separate occasions that appraisal actions under Section 262 are: (1) not for a violation of law (*In re Solera Ins. Coverage Appeals*, 240 A.3d 1121 (Del. 2020)); and (2) not for a Wrongful Act (*Jarden, LLC v. ACE Am. Ins. Co.*, 2022 WL 618962 (Del. Mar. 3, 2022)). This Court’s determinations in *Solera* and *Jarden* are conclusive as to the nature of an appraisal action under Section 262 no matter which state’s law governs interpretation of the Policy. Thus, there can be no coverage in this case and, consequently, no defense obligation. Additionally, ACE joins in the Answering Brief of National Union and QBE at Argument I.C.2.

2. DENIED. ACE respectfully joins in the Answering Brief of National Union and QBE at Summary of Argument and Argument II.

3. DENIED. ACE respectfully joins in the Answering Brief of National Union and QBE at Summary of Argument and Argument III.

4. DENIED. ACE respectfully joins in the Answering Brief of National Union and QBE at Summary of Argument and Argument IV.

STATEMENT OF FACTS

ACE incorporates by reference and adopts the Statement of Facts in the Answering Brief submitted by National Union and QBE.

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THAT BASED ON EXISTING PRECEDENT IN CONNECTION WITH 8 DEL. C. § 262, THE APPRAISAL ACTION IS NOT COVERED UNDER THE POLICY

A. Question Presented

Whether the trial court correctly determine that the Appraisal Action did not constitute a covered Securities Claim within the meaning of the Policy, regardless of which state’s law applies. (Preserved at A0346-349; A0430-433; A0459-460.)

B. Standard of Review

This Court reviews *de novo* the grant of a motion to dismiss for failure to state a claim, as well as determinations as to choice of law. *See Wild Meadows MHC, LLC v. Weidman*, 250 A.3d 751, 756 (Del. 2021); *RSUI Indem. Co. v. Murdock*, 248 A.3d 887, 896 (Del. 2021).

C. Merits of Argument

Stillwater asserts that the trial court determined incorrectly that Delaware law applies to this case. As an initial matter, however, Stillwater’s argument is unavailing because it presents a “false conflict” of law. That is, there is no conflict between Delaware and Montana law because coverage is precluded under the laws of either state, and thus, there is no need for the Court to engage in a choice of law analysis.

Pursuant to Delaware’s choice-of-law principles, the first determination is whether there is an actual conflict between the laws of the respective states; here, between Delaware and Montana. *See Shook & Fletcher Asbestos Settlement Tr. v. Safety Nat. Cas. Corp.*, 909 A.2d 125, 128 (Del. 2006). To make this determination, there is “a single and simple query: does the application of the competing laws yield the same result.” *Laugelle v. Bell Helicopter Textron, Inc.*, 2013 WL 5460164, at *2 (Del. Super. Oct. 1, 2013). If the outcome would be the same under either state’s law, then “there is a ‘false conflict,’ and the court should avoid the choice-of-law analysis altogether.” *Dueley v. DynCorp Int’l, Inc.*, 8 A.3d 1156, 1161 (Del. 2010).

The coverage dispute here over whether a defense was owed to Stillwater presents a false conflict. Both Delaware and Montana courts essentially apply the same standard as to when defense obligations are implicated. Under Delaware law, the test as to whether defense coverage is implicated is “whether the underlying complaint, read as a whole, alleges a risk within the coverage of the policy.” *Pacific Ins. Co. v. Liberty Mut. Ins. Co.*, 956 A.2d 1246, 1254 (Del. 2008); *see also Legion Partners Asset Mgmt., LLC v. Underwriters at Lloyds London*, 2020 WL 5757341, at *6 (Del. Super. Sept. 25, 2020) (noting that a duty to advance arises “whenever the underlying complaint alleges facts that fall within the scope of coverage.”). As Stillwater concedes in its Amended Complaint, Montana applies virtually the same standard. (Stillwater’s Amended Complaint, ¶ 72 (A0188).) According to the

Amended Complaint, an insurer “owes a defense ‘when a complaint against an insured alleges facts which, if proven, would result in coverage.’” (*Id.* (quoting *State Farm Mut. Ins. Co. v. Freyer*, 312 P.3d 403, 410 (Mont. 2013).) Ultimately, “[i]f there is no coverage under the terms of the policy based on the facts contained in the complaint, there is no duty to defend.” *Fire Ins. Exch. v. Weitzel*, 371 P.3d 457, 461 (Mont. 2016) (quoting *Grimsrud v. Hagel*, 119 P.3d 47, 53 (Mont. 2005)); *see also* *Beaverhead County v. Montana Ass’n of Ctys. Joint Powers Ins. Auth.*, 335 P.3d 721, 724 (Mont. 2014) (holding that when an insurer “unequivocally demonstrates, based on the information before it, that the claim against an insured does not fall within the insurance policies coverage [,]” then the insurer has no duty to defend, or here, to advance).

Coverage in this case turns on the nature of an appraisal action under 8 *Del. C.* § 262. The plain language of the Policy requires that, for coverage to apply to the Appraisal Action, it must be a Securities Claim for a violation of law, and must also be for a Wrongful Act. This Court’s decision in *Solera* unequivocally established that appraisal actions under Section 262 are not for a violation of law, and do not adjudicate any wrongdoing. 240 A.3d at 1132. This Court’s decision in *Jarden* then held that appraisal actions under Section 262 are not for a Wrongful Act. 2022 WL 618962, at *1. This Court’s determinations in *Solera* and *Jarden* are conclusive as to the nature of appraisal actions under Section 262 and the Appraisal Action here

and thus foreclose any claim to coverage regardless of which State's law might apply to interpretation of the insurance policies. Absent the possibility of coverage, both Delaware and Montana courts have held that there can be no obligation to provide a defense, or here, advance defense costs.

Additionally, ACE incorporates by reference and joins in the Answering Brief of National Union and QBE at Argument I.C.2.

II. THE TRIAL COURT CORRECTLY DISMISSED STILLWATER'S AMENDED COMPLAINT

A. Question Presented

Whether the trial court correctly dismissed Stillwater's Amended Complaint in its entirety with prejudice. (Preserved at A0350-382; A0434-501.)

B. Standard of Review

The grant of a motion to dismiss for failure to state a claim is reviewed *de novo*. See *City of Fort Myers General Employees' Pension Fund v. Haley*, 235 A.3d 702, 716 (Del. 2020). Dismissal is warranted "if the plaintiff fails to plead specific allegations supporting each element of a claim or if no reasonable interpretation of the alleged facts reveals a remediable injury." *Buck v. Viking Holding Mgmt. Co. LLC*, 2021 WL 673459, at *3 (Del. Super. Feb. 22, 2021).

C. Merits of Argument

ACE incorporates by reference and joins in the Answering Brief of National Union and QBE at Argument II.

III. THE TRIAL COURT PROPERLY DENIED VOLUNTARY DISMISSAL

A. Question Presented

Whether the trial court abused its discretion in denying Stillwater's motion for voluntary dismissal. (Preserved at A044-51; A0078-100; A0101-103.)

B. Standard of Review

The denial of a motion for voluntary dismissal is reviewed for abuse of discretion. *Draper v. Paul N. Gardner Defined Plan Tr.*, 625 A.2d 859, 860 (Del. 1993). "An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances or so ignored recognized rules of law or practice to produce injustice." *Harper v. State*, 970 A.2d 199, 201 (Del. 2009).

C. Merits of Argument

ACE incorporates by reference and joins in the Answering Brief of National Union and QBE at Argument III.

IV. THE TRIAL COURT PROPERLY DENIED A STAY

A. Question Presented

Whether the trial court abused its discretion in denying Stillwater's motion to stay this action pending resolution of the Montana Action. (Preserved at A0152; A0502-599.)

B. Standard of Review

The denial of a motion to stay is reviewed for abuse of discretion. *Homestore, Inc. v. Tafeen*, 886 A.2d 502, 504-505 (Del. 2005).

C. Merits of Argument

ACE incorporates by reference and joins in the Answering Brief of National Union and QBE at Argument IV.

CONCLUSION

For the above reasons, as well as the reasons set forth in Co-Appellees' Answering Brief, this Court should affirm the ruling of the trial court.

DATED: June 6, 2022

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CERTIFICATE OF SERVICE

John L. Reed, hereby certifies that on this 6th day of June, 2022, I caused true and correct copies of

- (i) **ANSWERING BRIEF OF DEFENDANT-BELOW/APPELLEE ACE AMERICAN INSURANCE COMPANY; and**
- (ii) **CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION**

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