Superior Court of California
County of San Benito

Edgar Nolasco
Court Executive Officer

Tentative Decisions for June 30, 2022

Courtroom #1: Judge Thomas P. Breen (visiting)

CU-18-00162 National Union Fire Ins Co vs. Atlantic Specialty Ins Co

Cross-Complaint: Atlantic Specialty Ins. Co. vs. National Union Fire Insurance Co. of Pittsburgh, PA.

1. Motion for summary judgment on Cross Complaint:
2. Motion for summary adjudication of Issues in FAC

The Motion for Summary Judgment as to ASIC's cross complaint is DENIED.

The motion for Summary Adjudication asking to hold 1) National had no duty to defend FLA as respects any complaints or cross complaints arising from CU-15-00115; and 2) National had no duty to indemnify FLA as respects and complaints or cross complaints filed in CU-15-00115; and 3) National had no duty to defend McGuinness as to any complaints or cross complaints in CU-15-00115; and 4) National had no duty to indemnify McGuinness as to any complaints or cross complaints in CU-15-00115, is DENIED.

This case arises an aircraft accident on a grass runway at a small, private airfield near Hollister CA. A light aircraft collided with a riding lawn mower and a pick-up truck located on the runway. As a result of the incident the driver of the lawn mower was killed and a passenger in the aircraft was seriously injured. A wrongful death complaint was filed by the heirs of the lawn mower operator (CU-15-00115); the case included cross-complaints by the aircraft pilot and the passenger. The aircraft also struck a pick-up truck owned by the airfield and driven by one of its employees. The wrongful death and related actions were globally settled. Plaintiff, National Union Fire Insurance Co. of Pittsburgh, PA ("National") contributed the majority of both the settlement with the decedent's heirs and the aircraft's passenger. Atlantic Specialty Insurance Co. ("ASIC") insured the pick-up truck under an auto policy and declined to defend both the airport owner and driver on the ground the accident did not result from "use" of the pick-up. National brought this action against to recover amounts paid on behalf of the airport

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owner and pick-up driver and defense costs. National seeks summary Judgment as to the ASIC cross-complaint for declaratory relief, equitable indemnity, and equitable subrogation. National also seeks summary adjudication of one or more issues of duty raised in the First Amended Complaint (FAC), filed Sept 4, 2019: 1) National had no duty to defend Frazier Lake Airpark (FLA) as respects any complaints or cross complaints filed in CU-15-00115 (the "Jackson Action."); 2) National had no duty to indemnify FLA as respects any complaints or cross complaints filed in the Jackson Action; 3) National had no duty to defend McGuinness as respects any complaints or cross complaints in the Jackson Action; and, 4) National had no duty to indemnify McGuinness as respects any complaints or cross complaints in the Jackson Action.
The basis for the request for both summary judgment and summary adjudication are made from the same set of operative facts. Plaintiff/ Cross Defendant has filed extensive statements undisputed fact for each motion. The Defendant/Cross Complainant has objected to certain of these facts, and disputed others. Their separate statement mostly recapitulates the statements of undisputed material facts presented by the Plaintiff.
Preliminary matters: Plaintiff requests the court take Judicial Notice of its exhibits J, K, L, and M. Defendant joins in this motion. The request is for the court take to notice of the complaint, first amended complaint, cross complaints, and mandatory settlement conference order filed in CU-15-00115. The request for judicial notice is GRANTED. (See Evid. Code § 452, subd. (d).)
Evidentiary objections: All but the objection National's EX Z (National's FAC) are overruled. The objection to ex Z is Sustained.
National objects to ASIC's Corrected Response to National's Separate Statement in support of motion for Summary Judgment on Cross Complaint, filed 6-27-22, and asks the court to Strike the same. National objects on the basis that the filing is untimely. After reviewing both the Corrected and original Response, and the declarations filed on behalf of each party, the court finds that the Corrected Response serves to address a clerical error and adds nothing new of substance. National's motion to strike is Denied.
Legal Standard

Both Summary Judgment and Summary Adjudication serve the same function: they provide a mechanism to determine whether despite the allegations in the pleadings whether a trial is necessary to resolve the dispute. Summary adjudication is subject to the same rules and procedures as a motion for summary judgment. Summary judgment is properly granted if there are no triable issues of material fact and judgment is warranted as a matter of law. (CCP§437c (c); *Thompson v. Ioane* (2017) 11 Cal. App 5th 1180, 1195.) .) Summary adjudication serves a similar purpose and similar result on a more limited scale. Rather than resolving the entire case, summary adjudication narrows the issues that need to be tried by eliminating causes of action, defenses, and claims that lack merit. They are both statutory in nature and strict compliance with the statute is needed. (CCP§437c.) The party moving for summary judgment has the burden of persuasion to show there is no triable issue of material fact and thus it is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 845, 850.) If they meet their initial burden, the burden then shifts to the party opposing the motion. In reviewing the facts the court is to consider all reasonable inferences to be drawn from the facts in the light most favorable to the resisting party.
Review:

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The issue in both motions is whether the insurance contract by National precludes coverage for FLA and McGuinness based on Exclusion g, which would address an act by a pilot who is a member of FLA, who crashed his airplane while landing at FLA and in the process a man was killed and two others injured. National takes the position that the acts of the pilot (Niva) in operating his own aircraft for his own purposes fall under Exclusion g which limits their coverage to FLA and McGuinness (the driver of the pick-up truck) based on Niva's ownership and operation of his small private aircraft. ASIC argues that reading the exclusion clause in isolation, as National appears to propose results in an inequitable and inappropriate result. ASIC argues that the underlying accident and claim against National's insured addressed covered issues of the aviation business operations of the insured, including the need to properly maintain and assure the safety of the airfield's runway; to the extent the damage incurred relates to the airfield's operations, actions of its employees, and condition of its runway, FLA and McGuinness are covered and National bore a duty to defend and indemnify them. This is differentiated from the excluded events and individuals under Exclusion g; specifically the possible negligence of the owners/operators of aircraft using the airfield. This appears to be why the owners of aircraft using the airfield were required to have their own insurance which named the airfield as an insured under their policies. (National's UDF 4.) The matter hinges on the interpretation and reading of the underlying insurance contract and the exclusion clause referenced.

National is correct that the issue of contract interpretation is a matter of law in California. The interpretation of insurance policies as a matter of law, follow the general rules of contract interpretation, requiring the court to look first to the contract's language to determine it's plain meaning or the meaning a layperson would give to it. Where the language is clear, it governs; where it ambiguous the court is to construe the ambiguity in accord with *the insured's* reasonable expectation. National argues that based on the underlying facts, that the pilot (Niva) was "an insured" under the policy, that the aircraft flown that day fell within the meaning of aircraft within the exclusion, that bodily injury did occur, and that said injury and event arose from the operation of the aircraft by Niva. Therefore, as a matter of basic interpretation, they argue, National has no duty to indemnify nor defend FLA or McGuinness, as ASIC has argued. National has met the burden of showing that under Exclusion g, there is no triable issue of material fact as a matter of law, and the burden thus shifts to ASIC.

The interpretation of insurance policies is a matter of law. However, an insurance policy's coverage provisions must be interpreted broadly to afford the insured the greatest possible protection to that insured. Exclusion clauses are narrowly interpreted against the insurer. The burden therefore "rests upon the insurer to phrase exceptions and exclusions in clear and unmistakable language….This rule applies with particular force when the coverage portion of the insurance policy would lean an insured to reasonably expect coverage for the claim purportedly excluded….The burden is on the insured to establish that the claim is within the basic scope of coverage and on the insurer to establish that the claim is specifically excluded." (*MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal. 4th 635,348.) In interpreting insurance policies, the court must try to give effect to every clause and harmonize the various parts with each other, as it must with all contracts. (*ACL Technologies, Inc. V. Northbrook Property &Casualty* (1993) 17 Ca; App 4th 1773, 1785.) ASIC is therefore correct that the exclusion clause cannot be interpreted in

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isolation. The law of contract interpretation is also clear that the contract must be read as a whole, its clauses harmonized.

The law of interpretation of contract, and particularly insurance contracts is to give effect to each of the clauses therein, and when interpreting the contract the contract must be interpreted in favor of coverage for the insured. While the reply declaration states why event underlying the claim, the aircraft, and the pilot fell into the exclusion, it would be improper to view this clause in isolation from what the National policy actually covers and what the underlying claims against that policy included. The underlying undisputed facts presented and reiterated by both parties include an apportionment of liability between FLA and its employees in engaging in its business operation of running an airfield, and the separate liability of the pilot in the operation of his aircraft. The interpretation of the insurance contract by ASIC that the exclusion would cover only those bodily injuries flowing from aircraft operated by FLA and its agents or employees in the course of its business, is reasonable. As noted in National's cited case *Minkler v. Safeco Ins. Co. of America* (2010) 49 Cal. 4th 315, 332, the California Supreme Court recognized that California courts have also found that separation of insureds or severability clause such as the one in the aviation policy compels a finding of coverage, even where a categorical risk exclusion would otherwise preclude coverage. To the extent there is an ambiguity in harmonizing this clause with the whole, the law of interpretation requires it to be construed against the insurer. ASIC has sufficiently met its burden in opposition to the requests for Summary Judgment and for Summary Adjudication.

CU-20-00081 Stephens, Ian vs. Winn, Donald

The Motion is GRANTED. In light of the failure of Plaintiff to pose any timely objections whatsoever, the failure to seek protective orders, or to seek to quash the subpoenas. . Plaintiff will comply with the business records subpoena within 15 court days of this Order.

This case arises from a claim for personal injury and resultant damage to Plaintiff's as a result of Plaintiff falling from Defendant's water storage tank. Plaintiff claims damages including but not limited to the costs of his medical care, wage loss, and loss of earning capacity. (Complaint ¶¶ 7,8.)
Based on the alleged damages Defendant subpoenaed records on February 7, 2022 from Marine Diving Solutions, LLC, the company which Plaintiff is both owner and employee. The subpoena was accompanied by a notice to consumer or employee and for objections. The Defendant received neither objections nor the requested documents by March 7, 2022. (Zumstein Dec, ¶6.) Defendant's counsel discussed the subpoenas with Plaintiff's counsel April 5, 2022, and was informed he would not permit the company to produce any documents. (Id. ¶8) To date, no objections have been served, nor have motions to quash or for protective orders have been filed. The Plaintiff opposes, arguing that the motion is untimely, that the information sought was provided in response to a request for production, and that the Defendant seeks privileged information. The Defendant notes that the Plaintiff has served no objections at all, as such any objections now posed are untimely. Moreover, the responses to requests for production do not address the requests made in the subpoena. Finally, they argue the motion is timely and should be granted.

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Legal Standards and Analysis:

First, a motion to compel responses has a 60 day time limit which is jurisdictional. However, the clock for counting down that time only after the completion of the record of the deposition, or from when the deponent serves objections on the party. The record of the deposition is complete for purpose of the statute at the time objections are served. (CCP§2025.480(b); Unzipped Apparel, LLC. v Bader (2007) 156 Cal. App. 4th 123, 134.) Here there was no response to the subpoena nor were any objections posed to the requested document, thus the clock is not yet ticking. The motion is therefore timely. Generally speaking, the scope of discovery is broad, and is intended to assist both parties in fact finding, curtailing surprises, and to hopefully facilitate realistic settlement and efficient trials. (Williams v. Sup. Court (2017) 3 Cal., 5th 531,540.) The parties are free to use any of the prescribed methods of discovery, in any sequence they choose. (CCP§219.020.) The Defendant must an effort to meet and confer by declaration. (CCP§§ 2016.040; 2025.450 (b)(2).) However, as here, where a non-party is served with a deposition subpoena but fails to attend the deposition, refuses to be sworn, or fails to provide documents as requested, there is no requirement that the parties and counsel meet and confer. (CCP §§2020.240, 2025.440 (b).) Nonetheless, Defendant's counsel states there was an attempt to meet and confer prior to filing the motion. (Zumstein, ¶8.) In instances were there has been no response at all to an authorized method of discovery, the mandatory separate statement under Cal. Rule of Court 3.1345 is not required. (CRC 3.1345 (b).) However, compelling the production of tangible things at deposition requires a separate statement, unless, as here the court permits a concise statement of what is sought and why it is relevant. The court may make orders quashing a subpoena entirely, modifying it or directing compliance on such terms or conditions as the court shall declare." (CCP§1987.1). Further, the code states that unless limited by order of the court " any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved. " (CCP§2017.010) Admissibility is not the test of whether something is discoverable, unless it is privileged the information is discoverable if it might reasonably lead to admissible evidence. (Glenfed Dev'l. Corp. v. Sup. Ct. (1977) 53 Cal. App. 4th 1113.) Materials in the possession of a non-party, such as the business in this case, may be obtained via deposition subpoena (CCP§2010.010 sub (a)(1)-(3).) Objections must be posed timely or are deemed to have been waived. The Defendant correctly notes that in the absence of raising privacy issues, producing a privilege log, or even any documents or seeking a protective order, the objections are not properly or timely raised. Nor is the fact that the Plaintiff has provided a limited number of profit and loss statements with their opposition particularly compelling given the scope of information sought in the subpoena. (Ortega ¶5, ex1) To the extent that the information sought by subpoena includes private information, the court notes the right to privacy is not absolute. AT times a party's interest in privacy may need to give way to the opponent's right to a fair trial. The court must therefore balance the rights of civil litigants to discover relevant facts against the privacy interests of the person subject to discovery. (Vinson v. Sup. Ct. (1987) 43 Cao. 3d 833, 842.) Implicitly there is a waiver of constitutional privacy rights regarding discovery directly relevant to the claims and which is essential to the fair resolution of the suit (Ibid.) Here Plaintiff has placed his employment and business status directly at issue, moreover to substantiate or defend against Plaintiff's claims of lost earnings the records sought are either needed directly or will lead to discoverable evidence.

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CU-22-00057 Petition of Francisco Murillo Rodrigeuz

The Petition is GRANTED.

END OF TENTATIVE RULINGS

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