

[Judge Refuses To Dismiss All Misconduct Claims Against Insurer In Coverage Dispute](#)

Mealey's(R) Emerging Insurance Disputes

Online ISSN: 2158-9739, Print ISSN: 1087-139X

February 18, 2016

Copyright 2016 LexisNexis, a division of RELX Inc.

Copyright in individual articles as noted therein.

Cite: 21-4 Mealey's Emerg. Ins. Disps. 7 (2016)

Section: Volume 21, Issue #4

Length: 927 words

Dateline: CHICAGO

Body

An Illinois federal judge on Feb. 12 held that although an insurer's failure to provide independent counsel in an underlying wrongful termination dispute does not constitute vexatious or unreasonable conduct, the insured's remaining allegations of misconduct by the insurer are sufficiently supported by the facts (*DHR International, Inc. v. Travelers Casualty and Surety Company of America*, No. 15 C 4880, N.D. Ill.; [2016 U.S. Dist. LEXIS 17719](#)).

(Memorandum opinion and order available 13-160218-017Z)

Wrongful Termination Claims

On April 24, 2014, DHR International Inc., an executive search firm, sued Adam Charlson for breach of fiduciary duties.

The next month, Charlson sued DHR for wrongful termination and failure to pay compensation. The two lawsuits were consolidated and removed to the U.S. District Court for the Northern District of California.

On June 16, 2014, Angela Torres sued DHR in state court for wrongful termination, retaliation and owed wages based on Charlson's termination and her association with him. On Jan. 29, 2015, Kristen Barge filed a discrimination charge against DHR with California's Department of Fair Employment and Housing. The agency dismissed the discrimination charge and issued a right-to-sue letter. Barge then sued DHR in the Northern District of California for wrongfully terminated and owed wages. The Torres and Barge lawsuits eventually settled.

DHR sued its insurer Travelers Casualty and Surety Company of America for breach of contract in the U.S. District Court for the Northern District of Illinois, seeking a declaration that the three underlying lawsuits are considered one single claim subject to a single retention pursuant to the policy (count I). The insured also seeks a declaration that it is entitled to independent defense counsel in the Barge lawsuit and that the insurer is estopped from asserting any coverage defenses in the Barge case (count II). DHR seeks damages for the insurer's breach of its duty to defend

Judge Refuses To Dismiss All Misconduct Claims Against Insurer In Coverage Dispute

(count III) and damages under Illinois Compiled Statutes Annotated Chapter 215, Section 5/155, for the insurer's alleged "vexatious and unreasonable conduct" (count IV).

Travelers moved to dismiss or alternatively stay the case until the underlying lawsuit is resolved.

Judge Virginia M. Kendall found that the underlying settlements reached in Torres and Barge moot the insured's counts I and II, dismissing those claims with prejudice.

Duty To Defend

The judge granted Travelers' motion to dismiss count III in part.

"[A]fter considering Barge's complaint, the Policy, and Travelers's reservation of rights letter, it is implausible that a conflict of interest existed between appointed counsel and DHR as a result of the reservation of rights letter because Travelers's interest in negating coverage for certain claims alone is not sufficient to create a conflict of interest. . . . Thus, Travelers was under no obligation to appoint independent counsel or advise DHR of its right to independent counsel because no conflict of interest existed that triggered the need for independent counsel. The Court accordingly grants Travelers's motion to dismiss Count III with prejudice only with respect its claims for breach of duty to defend for failure to appoint independent counsel and advise DHR about its right to independent counsel in Barge. DHR's claim for breach of duty to defend in Count III for Travelers's failure to pay independent counsel in Torres remains viable as Travelers did not move to dismiss it."

The judge, however, denied the insurer's motion to dismiss the insured's request for damages under Illinois Compiled Statutes Annotated Chapter 215, Section 5/155.

"Travelers's failure to provide independent counsel in Barge was not a breach of its duty to defend and therefore does not constitute vexatious or unreasonable conduct. The remaining allegations of misconduct by Travelers are sufficiently supported by facts in the Complaint that if assumed true plausibly state a claim under Section 155 considering that determining whether conduct is vexatious or unreasonable is a factual question," the judge said, citing *Wheeler v. Assurant Specialty Prop.* (No. 15 C 673, [2015 U.S. Dist. LEXIS 114354](#) [N.D. Ill. Aug. 28, 2015]) and *Yourglass v. Progressive N. Ins. Co.* (No. 14-[CV-221-DRH-SCW](#), [2015 U.S. Dist. LEXIS 10588](#) [S.D. Ill. Jan. 29, 2015]).

The judge added that "because Barge has settled and the parties agree that any arguments over ripeness of the Complaint are moot as a result, the Court denies Travelers's motion to stay this case pending resolution in Barge."

Counsel

Edward F. Ruberry, Richard M. Kuntz and Zachary Paul Mulcrone of Ruberry, Stalmack & Garvey in Chicago represent DHR.

Michael J. Rosen of Peterson & Ross in Chicago and Peter F. Lovato and William Joel Vander Vliet of Skarzynski Black in Chicago represent Travelers.

(Additional documents available: Memorandum in support of Travelers' motion to dismiss 13-160218-018B

DHR's opposition to Travelers' motion to dismiss 13-160218-019B

Reply in support of Travelers' motion to dismiss 13-160218-020B

DHR's sur-reply in opposition to Travelers' motion to dismiss 13-160218-021B)

View today's headlines and listen to the latest podcast at www.lexisnexis.com/legalnews. Do you have news to share? Interested in writing a commentary article? Email the Mealey News Desk at Mealeys@LexisNexis.com

Judge Refuses To Dismiss All Misconduct Claims Against Insurer In Coverage Dispute

Load Date: February 18, 2016

End of Document