KPC Healthcare, Inc. v. Hudson Specialty Ins. Co.

United States District Court for the Central District of California

April 10, 2017, Decided; April 10, 2017, Filed

SACV 16-01483 AG (DFMx)

Reporter
2017 U.S. Dist. LEXIS 55443 *

KPC HEALTHCARE, INC. v. HUDSON SPECIALTY INS. CO.

Counsel: [*1] For KPC Healthcare, Inc., a Nevada corporation, previously known as Integrated Healthcare Holdings, Inc., Plaintiff: Gary W Osborne, LEAD ATTORNEY, Osborne and Nesbitt, San Diego, CA; Dominic S Nesbitt, Osborne and Nesbitt LLP, San Diego, CA.

Hudson Specialty Insurance Company, a New York corporation, Defendant: John F Stephens, LEAD ATTORNEY, Sedgwick LLP, Los Angeles, CA; Lisa M Henderson, PRO HAC VICE, Sedgwick LLP, Dallas, TX.

Judges: Honorable ANDREW J. GUILFORD, United States District Judge.

Opinion by: ANDREW J. GUILFORD

Opinion

CIVIL MINUTES - GENERAL

Proceedings: [IN CHAMBERS] ORDER REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT

Back in June 2008, KPC Healthcare, Inc. was sued by a former employee for, among other things, malicious prosecution and defamation. *See Fitzgibbons v. Integrated Healthcare Holdings, Inc.*, No. 30-2008-00108081 (Cal. Super. Ct. 2008). By April 2015, after much litigation and a few rounds of appeals, that state-court case came to a definitive close. *See Fitzgibbons v. Integrated Healthcare Holdings, Inc.*, No. G048443 (Cal. Ct. App. 2015). But during those seven years, KPC's commercial liability insurer, Hudson Speciality Insurance Company, refused to provide a defense or any reimbursement [*2] of attorney fees relating to the *Fitzgibbons* litigation. This declaratory judgment action is an attempt to resolve the ensuing insurance-coverage dispute.

The parties have stipulated to many of the salient facts, and the Court accepts that those representations are accurate. Two insurance policies are at issue here: policy "HCF 4000877" was in effect from March 8, 2005 to March 8, 2006, and policy "HCF 4001790" was in effect from March 8, 2006 to March 8, 2007. (Joint Stipulation, Dkt.

No. 24 at 2-3.) Both of Hudson's policies provided "commercial general liability" coverage to KPC. The underlying *Fitzgibbons* lawsuit alleged various instances of malicious prosecution and defamation that occurred during the 2005 policy, along with other instances of defamation that occurred during the 2006 policy. At any rate, the underlying lawsuit squarely presented a "claim" under the commercial general liability coverage sections of both policies. Still, Hudson's duty to defend the underlying lawsuit could only have been triggered after KPC satisfied the applicable "self insured retention." The parties also agree that the hourly billing rate ultimately charged by KPC's independent defense counsel [*3] was reasonable.

After extensive negotiations the parties couldn't reach a full settlement, so they decided to resolve their dispute for either a "high amount" or a "low amount." (KPC Mot. for Summary J., Dkt. No. 26-1 at 9.) KPC filed this lawsuit, and both parties apparently conditioned their settlement on the outcome of the declaratory judgment claims. Now, they ask the Court to resolve two narrow issues:

> (1) What was the total self insured retention that had to be satisfied before Hudson had a duty to begin paying for KPC's defense in the *Fitzgibbons* lawsuit—$500,000 (only the 2005 policy), or $2,500,000 (both the 2005 and 2006 policies)?
> (2) If Hudson had a duty to defend, was the self insured retention applicable to Hudson's defense obligation eroded at the rate described in California Civil Code § 2860(c), or at independent defense counsel's reasonable hourly billing rate?

(*Id.* at 9-10.)

Under Federal Rule of Civil Procedure 56(a), summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). At this stage, the Court must view the facts and draw all reasonable inferences "in the light most favorable to the party opposing the [summary judgment] motion." *Scott v. Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (quoting [*4] *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962) (per curiam)). Because cross-motions for summary judgment are at issue here, the Court must "evaluate each motion separately, giving the nonmoving party in each instance the benefit of all reasonable inferences." *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 790-91 (9th Cir. 2006). Both sides apparently agree that this matter can be resolved on summary judgment.

Question 1. Given the strict dichotomy presented by the parties, the Court concludes that satisfaction of the 2005 policy's self insured retention would have triggered Hudson's duty to defend. That self-insured retention was limited to $500,000. Critically, both the 2005 and 2006 policies contain similar "anti-stacking" provisions. The contracts provide, in

relevant part: "If this policy and any other policy issued to you by us . . . apply to the same claim," then "[t]he terms and conditions of the policy with the higher [or highest] limits will apply." The policies further state that "[w]hen more than one policy . . . potentially applies to a claim, the applicable . . . self insured retention, if any, is the one that attaches to the policy whose limit of insurance is determined to apply to the claim." (*See* 2005 Policy, Dkt. No. 26-9, Ex. B at 27-28; 2006 Policy, Dkt. No. 26-10, Ex. C at 70-71.)

As applied [*5] to the *Fitzgibbons* lawsuit, these provisions mandate that only "one" self insured retention attaches and that it would ordinarily be the policy with the "higher limit." But, as the parties point out, both insurance policies had identical policy limits—$1 million per occurrence, and $5 million in the aggregate. Given this stalemate, the Court shall give effect to the "objectively reasonable expectations" of the insured. *See Minkler v. Safeco Ins. Co. of Am.*, 49 Cal. 4th 315, 321, 110 Cal. Rptr. 3d 612, 232 P.3d 612 (2010) ("The 'tie-breaker' rule of construction against the insurer stems from the recognition that the insurer generally drafted the policy and received premiums to provide the agreed protection."); *see also* Cal. Civ. Code § 1654 ("In [certain] cases of uncertainty . . . , the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist."). The Court therefore finds that, given the obvious purpose of the anti-stacking provisions, no insured would reasonably expect that Hudson's duty to defend was conditioned upon satisfaction of two separate self insured retention provisions in two separate insurance policies. It simply doesn't follow that, by purchasing additional protection and paying additional premiums, that KPC would bargain to impose [*6] upon itself an almost insurmountable barrier to any coverage.

Question 2. Given the strict dichotomy presented by the parties, the Court also concludes that the relevant self insured retention eroded at defense counsel's reasonable hourly billing rate. Both the 2005 and 2006 policies provide that "[t]his self insured retention is applicable to indemnity payments for judgments and settlements as well as defense costs." (*See* 2005 Policy, Dkt. No. 26-9, Ex. B at 27-28; 2006 Policy, Dkt. No. 26-10, Ex. C at 88.) The term "defense costs" isn't defined in the policies.

The parties dispute whether defense costs erode at the so-called "*Cumis*" rate, or independent defense counsel's reasonable billing rate. *See San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y, Inc.*, 162 Cal. App. 3d 358, 208 Cal. Rptr. 494 (1984). The Court finds that, under the contract, "defense costs" has an ordinary meaning that is obvious to any speaker of the English language. *See Barron's Dictionary of Insurance Terms* 104 (2d ed. 1987) (defining "defense costs" as "expense of defending a lawsuit"). And Hudson provides no authority for the proposition that the *Cumis* rate should apply to the erosion of a self insured retention—a specified value that must be paid by the insured *before* the duty to defend kicks in. Further,

Hudson's [*7] approach ignores the plain language of the statute. California Civil Code § 2860, by its terms, only comes into play where "the provisions of a policy of insurance impose a duty to defend upon an insurer and a conflict of interest arises which creates a duty on the part of the insurer to provide independent counsel to the insured." *See also Hartford Cas. Ins. Co. v. J.R. Mktg., L.L.C.*, 61 Cal. 4th 988, 998, 190 Cal. Rptr. 3d 599, 353 P.3d 319 (2015). But here, the insurer made no attempt to retain counsel or to control KPC's defense. Quite to the contrary, Hudson consistently stated that its duty to defend could only have been triggered *after* satisfaction of the self insured retention. KPC accordingly secured its own independent counsel and conducted its own defense of the *Fitzgibbons* lawsuit.

Upon evaluating each motion separately, the Court DENIES Hudson's motion for summary judgment and GRANTS KPC's motion for summary judgment. (Dkt. Nos. 21, 26.) The Court will enter a simple judgment.

JUDGMENT

The Court enters judgment for Plaintiff and against Defendant.

Dated April 10, 2017

/s/ Andrew J. Guilford

Hon. Andrew J. Guilford

United States District Judge

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