

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
DIVISION II

ICT GROUP, INC. a Pennsylvania
Corporation, JOHN BRENNAN, VINCENT
PACCAPANICCLA, ANNE BEESON,
VINCENT DADAMO, TIMOTHY
KOWALSKI, JOHN CAMPBELL, JACK
MAGEE, DEAN KILPATRICK, CARL
SMITH, AND CHARLES FEITNER,

Plaintiffs,

v.

CIVIL ACTION 03-C-387
JUDGE WILKES

FEDERAL INSURANCE COMPANY, a
New Jersey corporation, NATIONAL UNION
FIRE INSURANCE COMPANY OF
PITTSBURGH, PA, a Pennsylvania
corporation, and JOHNSON, KENDALL &
JOHNSON, INC., a Pennsylvania corporation,

Defendants,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, a
Pennsylvania corporation,

Third Party Defendant.

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This matter came before the Court this 22 day of August 2005, pursuant to Plaintiffs' Motion for Summary Judgment. Upon the appearance of Plaintiff, ICT Group, Inc. ("ICT"), Plaintiffs John Brennan, Vincent Paccapaniccia, Anne Beeson, Vincent Dadamo, Timothy Kowalski, John Campbell, Jack Magee, Dean Kilpatrick, Carl Smith, and Charles Feitner (collectively with ICT "Plaintiffs"), by counsel Wm. Richard McCune, Jr., Richard F.

BERKELEY COUNTY
CIRCUIT CLERK
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VIRGINIA SINE, CLERK

McMenamin, and James E. DelBello and Defendant, National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), by counsel James F. Israel.

FINDINGS OF FACT

1. On October 20, 1998, William Shingleton filed a complaint against ICT and other defendants in Civil Action No. 98-C-517 ("Shingleton"), claiming violations of the West Virginia Wage Payment and Collection Act.
2. ICT has three insurance policies for Shingleton: a first level primary policy of \$5,000,000 ("Primary Policy"), issued by Federal Insurance Company ("Federal"), an excess insurance policy of \$5,000,000 ("First Excess Policy"), issued by National Union, and a second excess insurance policy of \$5,000,000 ("Second Excess Policy"), issued by Federal. The exhaustion of the Primary Policy triggers coverage under the First Excess Policy, and so forth.
3. On May 17, 2001, ICT provided its insurance agent, Johnson, Kendall and Johnson ("JKJ") a copy of the Shingleton second amended complaint.
4. On July 15, 2003, all parties to Shingleton, except National Union, participated in mediation but were unable to come to an agreement.
5. On March 29, 2004, Federal filed a Third-Party Complaint against National Union in the case, *sub judice*.
6. On October 8, 2004, this Court held that the Federal insurance policy covered unpaid wages, bonuses, and liquidated damages but not punitive damages.
7. On October 21, 2004, ICT amended its complaint to name National Union as an original defendant.

8. In December 2004, the parties started to schedule mediation with Richard L. Douglas as the mediator.
9. On December 15, 2004, ICT met with Federal and National Union.
10. On December 28, 2004, National Union proposed mediation dates of January 11, 13 and 14.
11. On December 30, 2004, Mr. Douglas notified the parties of a conflict of interest with National Union.
12. On January 4, 2005, National Union noted Douglas' conflict and proposed mediation dates of January 19 and 21.
13. On January 11, 2005, National Union objected to mediator Judge MacQueen. On the same day, this Court held that notice to JKJ constituted constructive notice to National Union because JKJ was National Union's agent.
14. On January 14, 2005, National Union agreed to mediator Oscar Beane, stated it was unavailable on January 28, and proposed February 1 and February 2.
15. On January 18, 2005, all parties except National Union agreed to a mediation of January 27, 2005.
16. On January 20, 2005, National Union proposed February 1, 2, 3, 4, 7, 22, and 23.
17. On January 26, 2005, counsel for National Union wrote a letter advising it would not attend the mediation and there was no coverage for the claim.
18. On January 27, 2005, all parties to Shingleton, except National Union, participated in mediation and settled the case.
19. On February 22, 2005, Plaintiffs and National Union participated in mediation but were unable to come to an agreement.

20. On June 27, 2005, this Court granted final approval of a \$14.75 million settlement in Shingleton.

CONCLUSIONS OF LAW

“Motion for summary judgment should be granted only when it is clear that there are no genuine issues of material fact to be tried and inquiry concerning facts is not desirable to clarify application of law. Rules Civ. Proc., Rule 56(c).” *Aetna Cas. & Sur. Co. v. Federal Ins. Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963). This Order delineates why no genuine issues of material fact remain, making summary judgment appropriate in the case *sub judice*.

I. ICT DID NOT NEED NATIONAL UNION’S CONSENT TO ENTER INTO A REASONABLE SETTLEMENT

“[W]here the insured settles...without the insurer's consent and does not prejudice the insurer's interests, the purpose of the consent to settle clause is lacking” *Nationwide Mut. Ins. Co. v. Lehman*, 743 A.2d 933, 941 (Pa. Super. Ct. 1999). “Where an insured has failed to obtain his/her insurer’s consent before settling with a tortfeasor but in settling has procured the full policy limits available under the tortfeasor’s insurance policy, the insurer must show that it was prejudiced by its insured’s failure to obtain its consent to settle to justify a refusal to pay” *Miralles v. Snoderly*, 216 W.Va. 91, 602 S.E.2d 534 (2004). The Court approved the Shingleton settlement and found it reasonable. The Shingleton settlement results from years of difficult litigation and two separate mediations. The Shingleton plaintiffs claimed damages exceeding \$20 million. Federal attended both mediations and had every reason to negotiate a reasonable settlement as it faced \$10 million in insurance liability. The reasonable settlement, negotiated at arms-length, does not prejudice National Union. “[The insurance company’s] position was that the cooperation clause gave it a right to force the insureds to reject any settlement, no matter how

National Union, the Court will award reasonable attorneys' fees incurred after March 29, 2004.

The attorneys' fees must not duplicate those incurred against Federal

Accordingly, it is hereby **ADJUDGED** and **ORDERED** that

1. The Court **GRANTS** Plaintiffs' Motion for Summary Judgment.
2. National Union shall indemnify the Plaintiffs for \$5 million under National Union Excess Insurance Policy No. 468-71-87 for the Plaintiffs' settlement of Shingleton, et al. v. ICT Group, Inc., et al., Civil Action No. 98-C-517.
3. National Union shall pay Plaintiffs' reasonable attorneys' fees incurred in this litigation in an amount the Court will determine. Within 30 days of the date of this Order, Plaintiffs shall file with the Court a petition setting forth the amount of attorneys' fees sought and support for such amount. National Union shall have 30 days after service of the petition to file any objections.

The Court notes the objections and exceptions of the parties to any adverse ruling herein.

The Circuit Clerk shall distribute attested copies of this order to the following counsel of record:

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ATTEST

Virginia M. Sine
Clerk Circuit Court
By: *Madha Mehta*
Deputy Clerk


CHRISTOPHER C. WILKES, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA