IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK MURPHY, ESQ., et al., Plaintiffs, v. COREGIS INSURANCE COMPANY, and WESTPORT INSURANCE CORPORATION Defendants,	: : : : : : : : :	CIVIL ACTION NO. 98 CV 5065

Newcomer, J. August , 1999

MEMORANDUM

This matter stems from a controversy regarding the provisions of a professional liability policy issued by the defendants, Coregis Insurance Company ("Coregis") and Westport Insurance Corporation (“Westport”), to the plaintiffs, Frank Murphy, an individual, Murphy & Oliver, P.C., and its successor Murphy, Oliver, Caiola & Gowen, P.C. (herein collectively “Law Firm”). Plaintiffs brought an action for a declaratory judgment that the defendants have: (1) a duty to defend and indemnify the Law Firm in the legal malpractice claim brought by Carol Daugherty (Count I); (2) acted in bad faith (Count II); and (3) violated the Pennsylvania Unfair Insurance Practices Act (Count III). Defendants moved for summary judgment on all counts. Presently before the Court are defendants’ Motion for Summary Judgment, plaintiffs' response thereto, and defendants’ reply thereto. For the reasons that follow, defendants' motion is denied.

I. Background

A. The Underlying Litigation

Plaintiffs are presently being sued in state court for a malpractice claim deriving from their representation of Carol Daugherty ("Daugherty") in a product liability case. Daugherty allegedly sustained multiple injuries when a pediatric hospital crib rail fell on her hand and wrist. The trial court in an Order dated August 15, 1996, granted summary judgment to the Daugherty defendants and dismissed the case. The Superior Court quashed Daugherty's appeal on November 7, 1996. On May 7, 1997 the trial court issued an opinion, in support of the August 15, 1996 Order, stating that it granted summary judgment against Daugherty on two grounds: "(1) Plaintiff failed to produce or demonstrate she could produce evidence during discovery identifying any or all Defendants as manufacturer of the allegedly defective crib and (2) Plaintiff's medical expert report was insufficient to establish medical causation." On November 7, 1997, the trial court granted summary judgment to three remaining defendants in Daugherty's case, for the same reasons provided in the May 7, 1997 opinion. The trial court noted that the plaintiff "made no attempt to cure the defect which caused [the court] to grant summary judgment." The Law Firm filed a timely appeal on December 16, 1997. On September 3, 1998, the Pennsylvania Superior Court affirmed the trial court's November 7, 1997 opinion. In December of 1998, the Law Firm again filed an appeal and the Supreme Court of Pennsylvania denied the appeal on June 4, 1999. The Law Firm continues to believe that both opinions were "patently erroneous"

and that the underlying November 7, 1997 decision should be reversed.

B. The Policy

Plaintiffs received one-year, claims-made policies from the defendants from March 17, 1995 through March 17, 1999. For the first three years the policy provisions were unchanged. In the final policy year of March 17, 1998 to March 17, 1999, the defendants decided to changed the policy form from the Pennsylvania Lawyers Professional Liability Insurance (“standard policy”) to the Customized Practice Coverage Lawyers Professional Liability Coverage Unit (“CPC policy”). The insurers represented that the new CPC policy would provide the Law Firm with “greater coverage and fewer restrictions.”

The CPC policy contains a slightly revised (from the standard policy) Exclusion clause ("Exclusion B") under § XIV of the "General Terms & Conditions." The clause excludes "any CLAIM based upon, arising out of, attributable to, or directly or indirectly resulting from:

> B. any act, error, omission, circumstance or PERSONAL INJURY occurring prior to the effective date of this policy if any INSURED at the effective date knew or could have reasonably foreseen that such act, error, omission, circumstance or PERSONAL INJURY might be the basis of a CLAIM.

Under the insurer's policy, a claim is defined as: "a demand made upon any INSURED for DAMAGES, including, but not limited to, service of suit or institution of arbitration proceedings against any INSURED."

D. The Daugherty Claim

On May 26, 1998, while the Law Firm's December 16, 1997 appeal of the Daugherty opinion was pending, the Law Firm received a Writ of Summons regarding Daugherty's malpractice action. Prior to sending the actual Writ of Summons to the Law Firm, neither Daugherty nor her attorney (who eventually represented her in the malpractice suit) made any indication to the Law Firm that Daugherty intended to bring a claim. The Writ of Summons was the first demand for damages that Daugherty asserted. The Law Firm reported Daugherty's malpractice claim on June 29, 1998. On August 24, 1998, Westport, Coregis' successor, denied coverage for the Daugherty malpractice suit based on "Policy Exclusion B." Westport sent a letter to the Law Firm explaining that due to the circumstances regarding the underlying Daugherty case, it was clear that the Law Firm "knew of the circumstances . . . that could be expected to give rise to a claim." Consequently, Westport advised the Law Firm that it would not provide a defense or indemnity coverage for the Daugherty claim.

The Law Firm filed the present lawsuit against Coregis and Westport, seeking declarations under the policy relating to coverage (Count I), damages for breach of contract in denying coverage (Count II), and damages for statutory bad faith in denying coverage (Count III). The two main issues facing this Court in the instant motion are whether: (1) the Law Firm could have reasonably foreseen that the trial court opinions might have

formed the basis of a claim and (2) the Law Firm has enough evidence to argue that it had a reasonable expectation of coverage despite the existence of Exclusion B.

II. **Summary Judgment Standard**

A reviewing court may enter summary judgment where there are no genuine issues as to any material fact and one party is entitled to judgment as a matter of law. White v. Westinghouse Electric Co., 862 F.2d 56, 59 (3d Cir. 1988). The evidence presented must be viewed in the light most favorable to the non-moving party. Id. "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

The moving party has the initial burden of identifying evidence that it believes shows an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Childers v. Joseph, 842 F.2d 689, 694 (3d Cir. 1988). The moving party's burden may be discharged by demonstrating that there is an absence of evidence to support the nonmoving party's case. Celotex, 477 U.S. at 325. Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings and designate specific facts by use of affidavits, depositions, admissions, or answers to interrogatories showing there is a genuine issue for trial. Celotex, 477 U.S. at 324. Moreover, when the nonmoving party

bears the burden of proof, it must "make a showing sufficient to establish the existence of [every] element essential to that party's case." Equimark Commercial Fin. Co. v. C.I.T. Fin. Servs. Corp., 812 F.2d 141, 144 (3d Cir. 1987) (quoting Celotex, 477 U.S. at 322). Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." White, 862 F.2d at 59 (quoting Celotex, 477 U.S. at 322).

III. **Discussion**

In the instant case, the defendants moved for summary judgment on Count I on the grounds that Exclusion B of the insurance policy precludes the plaintiffs from coverage in the Daugherty claim. Plaintiffs raise two issues in opposition to summary judgment. First, the plaintiffs assert that there is a disputed issue of material fact regarding the foreseeability of the Daugherty claim under Exclusion B. Second, the plaintiffs argue that even if they should have reasonably foreseen that the outcome of the Daugherty case could become a malpractice claim, there is a disputed issue of material fact concerning the reasonable expectations of the insured and the applicability of Exclusion B. This Court addresses both arguments.

A. Exclusion B

An insurer has a duty to indemnify its insured when it is established that the damages of the insured are within the policy coverage. Caplan v. Fellheimer Eichen Braverman & Kaskey,

68 F.3d 828, 831 n.1 (3d Cir. 1995).[1] In the instant case, the plaintiffs were insured under a claims-made policy. Claims-made policies protect the policyholder against claims made during the life of the policy. Consulting Eng'rs, Inc. v. Ins. Co. of N. Am., 710 A.2d 82, 85 (Pa. Super. Ct. 1998). The task of interpreting an insurance contract is to be performed by the court. Standard Venetian Blind Co. v. Am. Empire Ins. Co., 500 Pa. 300, 305, 469 A.2d 563, 566 (1983). The goal of that task is to ascertain the intent of the parties as manifested by the language of the written instrument. Id. Exclusions in insurance policies are strictly construed. First Pa. Bank, N.A. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 397 Pa. Super. 612, 618; 580 A.2d 799, 802 (1990). Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer. Standard Venetian Blind, 469 A.2d at 566. However, where the language is clear and unambiguous, the court is required to give effect to that language. Id.

The Third Circuit, applying Pennsylvania law, held that "[a] provision of an insurance policy is ambiguous if reasonably intelligent men on considering it in the context of the entire policy would honestly differ as to its meaning." Niagara Fire Ins. Co. v. Pepicelli, Pepicelli, Watts and Youngs, P.C., 821 F.2d 216, 220 (3d Cir. 1987) (quoting Northbrook Ins. Co. v. Kuljian Corp., 690 F.2d 368, 372 (3d Cir. 1982)) (internal

[1] It is undisputed that the law of Pennsylvania applies.

citations omitted). Ambiguity only exists where a policy provision is reasonably susceptible of more than one meaning, not where the parties differ on meaning. Tenos v. State Farm Ins. Co., 716 A.2d 626, 629 (Pa. Super. Ct. 1998). The Pennsylvania Eastern District Court, in Coregis Ins. Co. v. Wheeler, 24 F. Supp.2d 475, 478 (E.D. Pa. 1998), determined that the language of Exclusion B is clear and unambiguous. This court also finds that Exclusion B is clear and unambiguous and should, therefore, be construed in accordance with its plain and ordinary meaning. See also Standard Venetian Blind, 469 A.2d at 566.

Exclusion B, of the Law Firm's claims-made coverage policy, consists of two clauses. The exclusion applies if: (1) the claim at issue arose "out of an act, error, omission, circumstance or PERSONAL INJURY occurring prior to the effective date of [the] policy" and (2) the insurer shows that the "INSURED at the effective date knew or could have reasonably foreseen that such act, error, omission, circumstance or PERSONAL INJURY might be expected to be the basis of a CLAIM." Wheeler, 24 F. Supp.2d at 478.

In the instant case, the claim in dispute arises from Daugherty's malpractice suit against the Law Firm. In Daugherty, the trial court granted summary judgment against Daugherty on November 28, 1997 because her attorneys "made no attempt to obtain the essential discovery lacking in [the] case [and the] [p]laintiff made no attempt to cure the defect which caused [the court] to grant summary judgment." Coregis and Westport maintain

that the trial court's November 7, 1997 decision is the act, error, omission, or circumstance which triggered the applicability of Exclusion B. The Law Firm contends that it did not breach a duty to its client and that the trial court's decision was erroneous. The trial court's opinion was eventually upheld.[2] Yet, regardless of the outcome of the appeal, the record shows that the Law Firm, on at least one occasion, failed in its duty to its client. Specifically, the Law Firm did not comply with discovery rules in order to properly litigate its client's case. The Law Firm, thus, did not have the necessary evidence required to bring Daugherty's case to trial. The effective date of the professional liability insurance policy is March 17, 1998. On May 7, 1997, and later on November 28, 1997, the trial court strongly criticized the Law Firm's actions and dismissed Daugherty's causes of action. This Court finds that the act, error or omission forming the basis of the alleged legal malpractice took place prior to the inception of the CPC policy, thereby satisfying the first condition of Exclusion B.

Under the second condition of Exclusion B, defendants must show that the "INSURED at the effective date knew or could have reasonably foreseen that such act, error, omission, circumstance or PERSONAL INJURY might be expected to be the basis of a CLAIM." Wheeler, 24 F. Supp.2d at 478. The Third Circuit

[2] The Pennsylvania Superior Court affirmed the trial court's opinion in an Order dated September 3, 1998. See Daugherty v. Simmons Healthcare, 726 A.2d 1085 (Pa. Super. Ct. 1998), aff'd, No. 636 E.D. Alloc. Dkt.1998, 1999 WL 357321 (Pa. 1999).

reasoned that "coverage does not turn on psychoanalysis, yet the attorney is not made accountable for matters he did not know about, nor for matters that would not cause a reasonable attorney to foresee a claim." Selko v. Home Insurance Co., 139 F.3d 146, 151 (3d Cir. 1998) (emphasis added). The Law Firm asserts that the Court must consider its attorneys' subjective states of mind when considering whether reasonable attorneys, with their knowledge, could have foreseen that a claim might be filed against them. At the very least, the Law Firm argues that a genuine issue of fact exists as to whether its attorneys knew or had reason to believe that they would be sued for malpractice. The insurers, however, maintain that the clause should be interpreted under an objective standard and that the subjective belief of the Law Firm is irrelevant.

The Pennsylvania Supreme Court has not had occasion to interpret "reasonably foreseeable" in the context of professional liability contracts. Wheeler, 24 F. Supp.2d at 478. Therefore, in the absence of guidance from the Pennsylvania Supreme Court, this Court finds instructive recent federal district court cases and precedence from the Court of Appeals for the Third Circuit which, in affirming or applying Pennsylvania law, have interpreted the same or similar contract language.[3] The insured

[3] See generally Selko v. Home Insurance Co., 139 F.3d 146, 151 (3d Cir. 1998). Although the Selko Court interpreted a exclusionary provision containing different language, its analysis and reasoning is applicable to this case. The Selko Court noted that in Mt. Airy Ins. Co. v. Thomas, 954 F. Supp. 1073, (W.D. Pa. 1997) the District Court "wrote comprehensively to the same effect" in an opinion which rejected a subjective analysis in interpreting an exclusion clause identical to the one in this case. Wheeler, 24 F. Supp.2d at 479 (citing Selko, 139 F.3d at 151 and Thomas, 954 F. Supp. at 1079).

may not successfully defend on the ground that "he did not understand the implications of conduct and events that any reasonable lawyer would have grasped." Selko, 139 F.3d at 152. The court should apply a "reasonable person" standard to determine whether a lawyer "knew or could have reasonably foreseen" that his conduct might be expected to be the basis of a claim. Wheeler, 24 F. Supp.2d at 478. Disputes over whether the attorney being sued "believed, on the basis of his relationship with his client or his impression of that client's reaction to the situation, that the client would make a claim is not relevant to [the] analysis." Mt. Airy Ins. Co. v. Thomas, 954 F. Supp. 1073, 1080 (W.D. Pa. 1997). The Selko Court explained:

> [R]ewarding the attorney who is ignorant of the law, or . . . encouraging disingenuous, after-the-fact justifications, could result in totally capricious and unpredictable outcomes.

Selko, 139 F.3d at 152.

In the instant case, the insured subjectively knew of the existence of the trial court's opinions. Hence, the question becomes whether, objectively, a reasonable attorney in possession of such facts would have a basis to believe that the circumstance might lead to a claim. The Law Firm argues that it immediately filed an appeal, and therefore, Exclusion B should not apply because it could not have reasonably foreseen that its client would sue mid-appeal. In addition, the Law Firm asserts that it never received any indication from its client that she was

unhappy with the way it was handling her case, nor did it ever hear from her malpractice attorney, prior to the actual Writ of Summons. The Law Firm maintains that because it was actively pursuing an appeal, with a seemingly happy client, it could not have reasonably foreseen a malpractice claim. Finally, the Law Firm argues that all existing cases dealing with Exclusion B involve attorneys who committed egregious errors and thus, had to have reasonably foreseen that its act might be the basis of a claim. The Law Firm attempts to persuade the Court that because its attorneys' behavior was not egregious, it follows that it could not have foreseen that the Daugherty case might be the basis of a claim.

Given the facts, this Court finds that the only plausible interpretation of the record is that reasonable attorneys in the position of the plaintiffs would have realized sometime before March 17, 1998, when the Law Firm applied for the claims-made policy, that it had committed an act, error or omission that might be the basis of a claim. See Thomas, 954 F. Supp. at 1079-80. The Law Firm knew that it had not followed proper discovery procedures in the Daugherty case. The Law Firm even conceded that it failed to compel the defendants' discovery responses in the underlying case.[4] Furthermore, the Law Firm was fully aware that the trial court opinions contained overt criticism of the Law Firm's handling of the Daugherty case. As a

[4] See Plaintiffs' Exhibit I at 556-57 (Record of Proceedings of Daugherty v. Omni Mfg., Inc., (No. 3369) (August 7, 1996)).

result, the Law Firm knew that Daugherty would have no other recourse, but a malpractice suit, if it lost the appeal (which it did). Under these circumstances, even if the Law Firm was in the process of an appeal, it is difficult to imagine any reasonable attorney not foreseeing that the trial court's opinions might be the basis of a claim. In light of the facts, this Court rejects the plaintiffs' first opposition to the defendants' motion for summary judgment. However, this Court declines to grant summary judgment in favor of the defendants because the plaintiffs have produced sufficient evidence to show that there is a disputed issue of material fact regarding the reasonable expectations of the insured.

B. Reasonable Expectation of the Insured

The second argument the plaintiffs raise in opposition to the defendants' motion for summary judgment relies on the reasonable expectation doctrine. The plaintiffs claim that the past actions of the defendants under the "standard policy" gave them a reasonable expectation that the Daugherty claim would be covered. Under the new CPC policy, coverage for the Daugherty claim was denied and the plaintiffs attribute the alleged change in coverage to language changes (which the defendants assert are insignificant) that occurred in the new March 17, 1998 to March 17, 1999 CPC policy. The plaintiffs further state that the defendants did not give them notice concerning the ramifications of the changes or the change in coverage. In support of their argument, the plaintiffs rely on Bensalem Township v. Int'l

Surplus Lines Ins. Co., 38 F.3d 1303, 1311 (3d Cir. 1994), which held that when an insurer creates a reasonable expectation of coverage that is not supported by the terms of a renewal policy, the expectation of the insured will prevail. The insurer will be equitably estopped from asserting the exclusionary clause unless it meets its burden of proving that it both notified the insured and explained the significance of the change. Bensalem 38 F.3d at 1311.

In response, the defendants maintain that the CPC policy language is clear and should "trump" the reasonable expectation doctrine. It is true that in most cases there is a supposition that the language of an insurance policy will provide the best indication of the content of the parties' reasonable expectations.[5] However, "[c]ourts must examine the **totality** of the insurance transaction involved to ascertain the reasonable expectation of the insured." Dibble v. Security of Am. Life Ins. Co., 404 Pa. Super. 205, 211, 590 A.2d 352, 354 (1991)(Emphasis added). The purpose behind the reasonable expectation doctrine is to protect the insured from allowing the insurance companies to abuse their position vis-à-vis their customers. Bensalem, 38 F.3d at 1311-12. As the Pennsylvania Supreme Court noted, "the insurer is often in a position to reap the benefit of the insured's lack of understanding of the transaction." Id. at 1312 (citing Collister v. Nationwide Life Ins. Co., 479 Pa. 579, 594, 388 A.2d 1346, 1353 (1978), cert. denied, 439 U.S. 1089 (1979)

[5] See Bensalem, 38 F.3d at 1311.

and Tonkovic v. State Farm Mut. Auto. Ins. Co., 513 Pa. 445, 456, 521 A.2d 920, 926 (1987)). In consequence, the insured, "as a result of the insurer's either actively providing misinformation about the scope of coverage provided by a policy or passively failing to notify the insured of changes in the policy, receives something other than what it thought it purchased." Id. at 1312. Thus, Bensalem held that in certain situations the insured's reasonable expectations will be allowed to defeat the express language of an insurance policy. Bensalem, 38 F.3d at 1309. "Even the most clearly written exclusion will not bind the insured where the insurer or its agent has created in the insured a reasonable expectation of coverage." Bensalem, 38 F.3d at 1311; see also Reliance Ins. Co. v. Moessner, 121 F.3d 895 (3d Cir. 1997).

The defendants also argue that, even if Bensalem does apply, the plaintiffs cannot fulfill the conditions of Bensalem. According to the defendants, in order for the reasonable expectation to apply, Bensalem requires that: (1) the insured was unaware of a pertinent change in an exclusion before it elected to renew and the insurer made no representation that the scope of coverage would be reduced or (2) only after renewal did the insured learn about the reduced scope of coverage on which the insurer relied to deny coverage. ." Bensalem, 38 F.3d at 1312. The defendants explain that there were no pertinent changes in the policy and that the languages changes, to which the plaintiffs refer, were insignificant. Any languages changes, the

defendants claim, had no effect on the application of Exclusion B. The defendants argue that even under the standard policy, the Daugherty claim would not have received coverage. In response, the Law Firm asserts that it had a reasonable expectation of coverage as to the Daugherty claim and argue that the language changes were, in fact, significant. The plaintiffs further maintain that the defendants did not give them notice as to the ramifications of the language changes made in CPC policy.

The Law Firm relies on Coregis' coverage of the Houghton claim to support their arguments. On June 1, 1994, the Houghton case was dismissed due to a clear error on the Law Firm's part (failure to properly serve a defendant). In November 1994, the Law Firm's appeal of the case was quashed and on March 2, 1995, Houghton informed the Law Firm that she was terminating the attorney-client relationship. Houghton even requested the transfer of her case file to another attorney. The Law Firm renewed its policy on March 17, 1996 and did not notify its insurers of the Houghton case prior to the commencement of the March 17, 1996 policy. Houghton filed suit on May 31, 1996 and the Law Firm, on June 7, 1996, for the first time, informed Coregis of the Houghton claim. The Law Firm submitted a "Supplement Application"[6] regarding the Houghton claim on June

[6] The defendants stated, "When reporting the claim in June 1998, the [Law Firm] for some reason submitted a 'Supplement Application' (after the policy became effective and after Daugherty sued) that discusses the Daugherty claim." (Emphasis added.) On the surface, this statement makes the plaintiffs' behavior look suspicious. However, upon closer look at the record, it appears that in all cases where claims have been made and coverage was extended, a "Supplement Application" was filed with the insurers. In fact, in the Houghton case, it appears that like the Daugherty claim, the "Supplement Application" was submitted after the policy became effective and

14, 1996 after the commencement of the March 17, 1996 to March 17, 1997 policy. Yet, the actual error occurred prior to the beginning of the March 17, 1995 to March 17, 1996 policy coverage and Houghton terminated the attorney-client relationship and requested the transfer of her case file prior to the March 17, 1996 to March 17, 1997 policy coverage. Nevertheless, Coregis extended coverage to the plaintiffs for the Houghton claim.

The Houghton claim appears to be an even stronger case for a denial of coverage than the Daugherty claim. The act[7] in the Daugherty claim, like the Houghton claim, occurred before the Law Firm's March 17, 1998 to March 17, 1999 policy coverage began. Unlike Houghton, Daugherty never even expressed any dissatisfaction before the Law Firm's March 17, 1998 to March 17, 1999 policy coverage began. In fact, the Law Firm was in the process of an appeal when Daugherty filed the actual Writ of Summons on May 26, 1998. In both the Houghton and Daugherty cases the suit against the Law Firm occurred after its respective policy periods began and in both instances, the Law Firm gave notice soon after it received notice of the pending malpractice suit. Westport, Coregis' successor, denied coverage for the Daugherty malpractice suit even though Coregis had extended coverage for the Houghton claim.

There may be simple explanations for the apparent discrepancy of coverage. The defendants only addressed the issue

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after Houghton sued.

[7] The Law Firm's "act," which the defendants argue could have foreseeably resulted in a claim, was detailed in the trial court's May 7, 1997 opinion.

by stating: "The plaintiffs can point to no aspect of the past transactions between the parties that would lead any reasonable insured to conclude that it should expect to be covered under the Policy for a claim made and reported during the Policy period, where the claim also implicates Exclusion B." The Court disagrees, as the discussion above regarding the discrepancy in coverage between the Houghton and the Daugherty claims clearly demonstrates. This Court is concerned by the potential for unfair practice of an insurer who seeks to circumvent the law under Bensalem by altering the language of a policy and then claiming that the changes were insignificant, even though the actual coverage had, in fact, changed. By focusing on language changes, the defendants ignore the underlining purpose of the reasonable expectation doctrine.[8] Regardless of the existence of language changes, this Court must also "be concerned with assuring that the insurance purchasing public's reasonable expectations are fulfilled." Tonkovic v. State Farm Mut. Auto. Ins. Co., 513 Pa. 445, 456, 521 A.2d 920, 926 (1987) (quoting Collister v. Nationwide Life Ins. Co., 479 Pa. 579, 594, 388 A.2d 1346, 1353 (1978) cert. denied, 439 U.S. 1089 (1979)). Therefore, the Court rejects the defendants arguments that: (1) Bensalem does not apply in the instant case; (2) language changes should be the primary focus; and (3) coverage of a similar prior

[8] As stated above, the purpose behind the reasonable expectation doctrine is to protect the insured. Bensalem, 38 F.3d at 1311-12. In doing so, courts must examine the **totality** of the insurance transaction involved to ascertain the **reasonable expectation** of the insured. Dibble v. Security of Am. Life Ins. Co., 404 Pa. Super. 205, 211, 590 A.2d 352, 354 (1991)(Emphasis added).

claim is irrelevant in determining the insurer's reasonable expectations.

Viewing the facts in the light most favorable to the plaintiffs, and viewing the insurance transactions between the parties in their totality, the Court finds that a genuine issue of material fact has been created regarding plaintiffs' reasonable expectations of coverage.[9]

Finally, the defendants stress that the plaintiffs' policy is a claims-made policy, which only provides coverage for the life of the policy. Although this is true, it does not negate the fact that when renewing a claims-made policy, the insurer must notify the insured of any significant changes in coverage. Bensalem, 38 F.3d at 1312. "The supreme court made clear in Tonkovic, that an insurer may not make unilateral changes to an insurance policy unless it both notifies the policyholder of the changes and ensures that the policyholder understands their significance." Id. at 1311. The plaintiffs assert that this did not occur, leaving yet another material fact

[9]The Court also rejects defendants' argument regarding the policy being a claims-made policy, which only provides coverage for the life of the policy. Although this is true, it does not negate the fact that when renewing a claims-made policy, the insurer must notify the insured of any significant changes in coverage. Bensalem, 38 F.3d at 1312. "The supreme court made clear in Tonkovic, that an insurer may not make unilateral changes to an insurance policy unless it both notifies the policyholder of the changes and ensures that the policyholder understands their significance." Id. at 1311. The plaintiffs assert that this did not occur, leaving yet another material fact in dispute. In Bensalem, the court allowed the insured the opportunity "to demonstrate that the Insurers somehow misled it by indicating that despite the language of the policy, claims such as the one at issue . . . would be covered." Id. at 1312. Due to the disputed issues of material fact that exist in the instant case, this Court will allow the plaintiffs the same opportunity.

in dispute. In Bensalem, the court allowed the insured the opportunity "to demonstrate that the Insurers somehow misled it by indicating that despite the language of the policy, claims such as the one at issue . . . would be covered." Id. at 1312. Due to the disputed issues of material fact that exist in the instant case, this Court will allow the plaintiffs the same opportunity.

This Court finds that the plaintiffs' first argument in opposition to summary judgment, regarding the reasonable foreseeability of the Daugherty claim, is unsupported by the record in this case. The plaintiffs' second argument, however, is sufficient to preclude this Court from granting summary judgment of Count I. Accordingly, this Court hereby denies the defendants' motion for summary judgment of Count I.

The defendants also moved for summary judgment of Count II and Count III based on the dismissal of Count I. In light of this Court's denial of summary judgment of Count I, the defendants' argument for the dismissal of Count II and III also must fail.

AN APPROPRIATE ORDER FOLLOWS.

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Clarence C. Newcomer, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK MURPHY, ESQ., et al.,	:	CIVIL ACTION
	:	
v.	:	
	:	
COREGIS INSURANCE COMPANY, and WESTPORT INSURANCE CORPORATION	:	NO. 98-5065

O R D E R

AND NOW, this day of August, 1999, upon consideration of Defendants' Motion for Summary Judgment, Plaintiffs' response thereto, and Defendants' reply thereto, and consistent with the foregoing Memorandum, it is hereby ORDERED Defendants' Motion is DENIED. IT IS FURTHER ORDERED that a status conference, to be initiated by the plaintiff, is scheduled for Thursday, August 26, 1999, at 11:15 a.m.[10]

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.

[10]This conference will address issues regarding the trial of this case, and select a trial date.