

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

ADAM BROWN, d/b/a ILIAD ANTIK, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
ZURICH-AMERICAN INSURANCE CO., :  
Defendant. : No. 02-7838

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**MARCH , 2004**

Presently before the Court is a Motion for Summary Judgment filed by Plaintiff Adam Brown d/b/a Iliad Antik ("Plaintiff") seeking judgment as a matter of law pursuant to Federal Rule of Civil Procedure 56(c) that Defendant Zurich-American Insurance Company ("Defendant") must provide coverage for Plaintiff's loss pursuant to the terms of a 12-month all-risk insurance policy (the "Policy") issued by Defendant to Plaintiff. Plaintiff is in the business of selling antiques and other goods, and suffered a loss of its goods stored in a second floor workshop in Prague, Czech Republic as a result of water damage. Defendant denied Plaintiff's claim based on a "Territorial Limits" provision contained in the Policy that excluded coverage in "the former Iron Curtain countries." Plaintiff argues that the exclusionary provision does not apply in this matter because its loss occurred in the Czech Republic, a country that was born in 1993, after the fall of the Iron Curtain and, thus, it cannot be considered a former Iron Curtain country. Plaintiff also argues that, even if the Czech Republic can be considered a former Iron Curtain

country, judgment in favor of coverage must be rendered to avoid an absurd result. For the following reasons, Plaintiff's Motion for Summary Judgment is **DENIED**.

### I. BACKGROUND

Plaintiff is in the business of selling antiques, fine arts and other goods from its principal location at 237 East 58th Street in New York City. Plaintiff specializes in antiques known as Biedermeier Furniture, which was popular more than 150 years ago in Austro-Hungary, specifically, in and around the City of Prague. Plaintiff obtains most of its inventory from residents living in and around Prague who possess such furniture in various states of disrepair. Plaintiff's employees gather this furniture in Prague and ship large parcels of it to their New York City showroom. In January 2002, Plaintiff leased a workshop and holding facility in Prague where it restores the furniture to museum quality before shipping the furniture to New York City.

Previously, Plaintiff sought casualty insurance from his Pennsylvania insurance agent, the Robert J. McCallister Agency, Inc. ("McCallister"), to cover both consigned and purchased goods while in Plaintiff's custody and in transit. McCallister enlisted the New York broker, DeWitt Stern Group, Inc. ("DeWitt"), to obtain the coverage and, on or about December 26, 2001, Plaintiff was issued the Policy, No. 1M3501568-00, by

Defendant.

The Policy provided coverage for up to one million dollars for goods damaged "[w]hile in the custody and control of the Insured or while carried by any member of the Insured's firm or in transit to or from or while at any conventions, shows or exhibitions and auctions worldwide." (Pl.'s Ex. C, Declarations Page ¶ 8.) The Policy also contained a form entitled "Antique and Fine Arts Dealers Wording," which set forth "Territorial Limits," including the following limitation:

The Property insured is covered while at the Insured premises and/or in transit and/or exhibition and/or otherwise anywhere in the world excluding the former Iron Curtain countries subject to the limits defined in Clause 4 below.

(Pl.'s Ex. D, Antique and Fine Arts Dealers Wording ¶ 3 (emphasis added).) The Policy does not contain any other provisions defining the phrase "former Iron Curtain countries" or listing the specific countries intended for inclusion in this phrase.

On or about August 12, 2002, a one-in-five-hundred-year flood occurred in Prague, damaging approximately two million dollars worth of inventory on the second floor of Plaintiff's Prague workshop. Plaintiff timely submitted a claim to Defendant and, in a letter dated October 11, 2002, Defendant denied Plaintiff's claim based on the "former Iron Curtain countries" exclusion contained in the Policy.

Plaintiff brought the instant action against Defendant in

this Court seeking to recover for the loss of goods stored in the second floor workshop in Prague, Czech Republic as a result of the water damage.<sup>1</sup> Plaintiff now moves for summary judgment that it should be entitled to coverage for its loss pursuant to the Policy issued by Defendant. Defendant responded, and Plaintiff replied thereto.

## II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56(c), summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In resolving a motion for summary judgment pursuant to Rule 56, the Court must determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor.

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<sup>1</sup> Plaintiff commenced a separate suit arising from the same dispute against McCallister and DeWitt in the Court of Common Pleas for Chester County, Pennsylvania (the "State Court Action"). Those entities joined Defendant in the State Court Action. Plaintiff voluntarily discontinued the State Court Action without prejudice.

Id. at 255. Credibility determinations, the weighing of the evidence and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. Id.

Where the nonmoving party bears the burden of proof at trial, the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if admissible, would be insufficient to carry the nonmovant's burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). 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 the use of affidavits, depositions, admissions or answers to interrogatories showing that there is a genuine issue for trial. Id. at 324.

Interpretation of an insurance policy is a question of law that a court may resolve on a motion for summary judgment. Reliance Ins. Co. v. Moessner, 121 F.3d 895, 900 (3d Cir. 1997); Harleysville Insurance Company v. Aetna Casualty and Surety Insurance Company, 795 A.2d 383, 385 (Pa. 2002). The parties do not dispute that Pennsylvania law governs this case.

### **III. DISCUSSION**

Before addressing the merits of Plaintiff's arguments, we briefly turn to the history of the term, "Iron Curtain," which the parties do not dispute. Winston S. Churchill popularized the

term "Iron Curtain" in a speech he gave at Westminster College in Fulton, Missouri on March 5, 1946, after being conferred an honorary degree there. See Sinews of Peace (Iron Curtain) Speech published by The Churchill Centre available at <http://winstonchurchill.org/i4a/pages/index.cfm?pageid=429>. Churchill introduced the term to describe the political, military and ideological divide between Western Europe and the Soviet Bloc<sup>2</sup> from approximately 1945 to 1990, which ideological border extended approximately 1,600 miles from Travemuende, Germany to Trieste, Italy. (See Def.'s Ex. 7, Map of the Iron Curtain from 1945-1990, Iron Curtain Revisited available at <http://wire.ap.org/APpackages/ironcurtain/map.html>.)

The parties also do not dispute the history of Czechoslovakia, that it was among the Iron Curtain countries, formed following the First World War by a merger of the closely-related Czechs and Slovaks of the former Austro-Hungarian Empire,

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<sup>2</sup> Churchill's famous speech provided, in relevant part:

From Stettin in the Baltic to Trieste in the Adriatic, an iron curtain has descended across the Continent. Behind that line lie all the capitals of the ancient states of Central and Eastern Europe. Warsaw, Berlin, Prague, Vienna, Budapest, Belgrade, Bucharest and Sofia, all these famous cities and the populations around them lie in what I must call the Soviet sphere, and all are subject in one form or another, not only to Soviet influence but to a very high and, in many cases, increasing measure of control from Moscow.

Id. (emphasis added).

and fell within the Soviet sphere of influence after the Second World War. (Pl.'s Ex. G, The World Factbook 2002, Czech Republic, available at <http://www.cia.gov/cia/publications/factbook/print/ez.html>.) Then, following the collapse of the Soviet authority in 1989, Czechoslovakia regained its freedom through a peaceful "Velvet Revolution" and, on January 1, 1993, underwent a "velvet divorce" into its two national components, the Czech Republic and Slovakia. (Id.)

In support of summary judgment that Plaintiff's loss in the Czech Republic is covered by the terms of the Policy, Plaintiff argues that the phrase "former Iron Curtain countries" does not apply here, to a loss that occurred in the Czech Republic, a country that did not exist at the time of the Iron Curtain. Plaintiff also argues that, even if the language of the exclusionary provision is clear and unambiguous to include the Czech Republic in the phrase "former Iron Curtain countries," this Court should nevertheless find in favor of coverage to avoid an absurd result. Defendant responds that the "Territorial Limits" language is not capable of more than one reasonable interpretation and, further, that Plaintiff's action must be dismissed for its failure to join indispensable parties pursuant to Federal Rule of Civil Procedure 19. We address the parties' arguments in turn.

**A. Whether Contract Language Is Clear and Unambiguous**

The narrow issue before the Court is whether the term "former Iron Curtain countries" used in an exclusionary provision of an insurance contract is clear and unambiguous such that Plaintiff is precluded from coverage for a loss that occurred in the City of Prague, Czech Republic. As discussed above, the parties do not dispute that Czechoslovakia was among the Iron Curtain countries and that it ceased to exist as a country in 1993, nor do they dispute that the Czech Republic, formed in 1993, is not now an Iron Curtain country.

Instead, Plaintiff argues that, since its loss occurred in a country that did not come into existence until after the fall of the Iron Curtain, the phrase "former Iron Curtain country" cannot have been contemplated to apply to the Czech Republic. Defendant counters that coverage pursuant to the terms of the Policy is clearly precluded since Plaintiff suffered its loss in the City of Prague, which, while currently located in a country now known as the Czech Republic, is also the former capital of Czechoslovakia, an indisputable former Iron Curtain country.

Under Pennsylvania law, the task of interpreting an insurance contract is generally performed by a court rather than by a jury. Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983). A court must ascertain the intent of the parties as manifested by the language of the

written agreement, and where the policy language is clear and unambiguous, the court must give effect to the language of the contract. The Travelers Casualty & Surety Co. v. Castegnaro, 772 A.2d 456, 459 (Pa. 2001). Contractual language is ambiguous "if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." Hutchison v. Sunbeam Coal Co., 519 A.2d 385, 390 (Pa. 1986). A court, however, will not distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity. Steuart v. McChesney, 444 A.2d 659, 663 (Pa. 1982). If a material term is not defined, it is to be construed according to its natural, plain and ordinary meaning. Lititz Mutual Insur. Co. v. Steely, 785 A.2d 975, 980 (Pa. 2001). Furthermore, where an insurer relies on a policy exclusion as the basis for its denial of coverage, the insurer has asserted an affirmative defense that it bears the burden of proving. Madison Construction Co. v. The Harleysville Mutual Insur. Co., 735 A.2d 100, 106 (Pa. 1999).

Here, the Policy neither sets forth a definition of the phrase "former Iron Curtain countries," nor enumerates the countries contemplated by that phrase. Nevertheless, the parties do not dispute the origin or the meaning of the term "Iron Curtain," or the geographic scope of that ideological border. Rather, the ambiguity alleged by Plaintiff seems to stem from the meaning of the words "former" and "country." Accordingly, we

interpret the remaining words in the phrase, "former Iron Curtain countries," by invoking the canon of construction providing that words of common usage in an insurance policy are to be construed in their natural, plain, and ordinary sense. See Easton v. Washington County Ins. Co., 137 A.2d 332, 335 (Pa. 1957). Thus, we inform our understanding of these words by considering their dictionary definitions. See Madison Construction Co., 735 A.2d at 108.

Webster's Ninth New Collegiate Dictionary provides the following relevant definitions for the word "former:" "coming before in time;" "of, relating to, or occurring in the past;" and "having been previously." Webster's Ninth New Collegiate Dictionary 485 (9th ed. 1991). The relevant definition for "country" is "a political state or nation or its territory." Id. at 298 (emphasis added). As discussed above, the phrase, "former Iron Curtain countries," was found in the exclusionary provision of the Policy entitled "Territorial Limits." "Territory" is defined, in relevant part, as "a geographical area belonging to or under the jurisdiction of a governmental authority." Id. at 1218 (emphasis added).

A reasonable interpretation of the phrase "former Iron Curtain countries," located in the "Territorial Limits" section of the Policy, then, is a geographic one that encompasses all of the territory previously occupied by the Iron Curtain nations, of

which Czechoslovakia was indisputably one. Plaintiff concedes that in the place of the former Czechoslovakia are two countries: Slovakia with its capital city of Bratislava, and the Czech Republic with its capital city of Prague. (See Pl.'s Ex. G.) This interpretation, where the geographic scope of former Czechoslovakia includes both the Czech Republic and Slovakia, requires a determination that the Czech Republic derived from the geography of an Iron Curtain country and is, thus, itself, a "former Iron Curtain country."

Examining the same phrase grammatically, we arrive at the same conclusion that the Czech Republic is a "former Iron Curtain country." The word, "former," used here to modify the phrase "Iron Curtain country," or simply the word "country," means "coming before in time" or "having been previously." Putting the words together, we understand the phrase, "former Iron Curtain country," to include any political state that was previously an Iron Curtain country, without regard for what form that political state is in now. The Czech Republic, as discussed above, was not fashioned from whole cloth, but derived from the divorce of the Czechs and the Slovaks that made up Czechoslovakia. The Czech Republic, then, was previously or at a time in the past, Czechoslovakia, an Iron Curtain country.

Against this backdrop, Plaintiff is hard-pressed to advance its strained interpretation that the Czech Republic, simply

because it did not exist in its current geographic or political form before the fall of the Iron Curtain, is not formerly known as Czechoslovakia, an indisputable Iron Curtain country. Plaintiff's argument fails to persuade this Court that the phrase "former Iron Curtain country" is ambiguous and capable of more than one reasonable interpretation, and we will not strain to contrive some other seeming reasonable interpretation of the phrase to find an ambiguity. Whether examined geographically or grammatically, there is only one reasonable interpretation of the phrase "former Iron Curtain countries," and we find that the Czech Republic is a "former Iron Curtain country" as contemplated by the phrase contained in the exclusionary provision of the Policy. Accordingly, judgment as a matter of law is inappropriate here, and we deny Plaintiff's Motion for Summary Judgment.<sup>3</sup>

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<sup>3</sup> Plaintiff further contends that, even if the phrase "former Iron Curtain country" is clear and unambiguous so as to include the Czech Republic, justice and common sense demand an interpretation in favor of coverage in the Czech Republic to avoid the absurd result of coverage denial where coverage was intended. Plaintiff, however, proffers no evidence suggesting that coverage in the Czech Republic was intended, especially in light of the fact that the Policy predated the acquisition of the Prague workshop, and Plaintiff never notified his brokers or Defendant about the acquisition. (See Examination Under Oath of Adam Brown, Pl.'s Ex. A at 21.) Thus, summary judgment is also inappropriate as to this issue.

**B. Whether Plaintiff's Complaint Should Be Dismissed**

In its response to Plaintiff's Motion for Summary Judgment, Defendant contends that Plaintiff's Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 19 for failure to join "indispensable parties."<sup>4</sup> Specifically, Defendant argues that Plaintiff never dealt directly with it, but, rather, with McCallister, a local broker in Pennsylvania, who, in turn, passed on Plaintiff's application for insurance to DeWitt, who acted as Defendant's agent for placing the Policy, and that these parties are indispensable parties. Plaintiff responds to Defendant's contentions in its Reply, explaining that neither McCallister nor DeWitt is a necessary party.

Federal Rule of Civil Procedure 12 states that a defense of failure to join a party indispensable under Rule 19 may be made

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<sup>4</sup> Federal Rule of Civil Procedure 19(a) provides that a person must be joined as a party in the action if:

- (1) in the person's absence complete relief cannot be accorded among those already parties, or
- (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Fed. R. Civ. P. 19(a). The Court may dismiss the action for the absence of indispensable parties. Fed. R. Civ. P. 19(b).

in any pleading permitted or ordered under Rule 7(a),<sup>5</sup> or by motion for judgment on the pleadings, or at trial on the merits. Fed. R. Civ. P. 12(h)(2). Here, Defendant argues its defense of failure to join an indispensable party in a response to Plaintiff's summary judgment motion, rather than in the manner prescribed by Rule 12. Accordingly, we do not address the merits of Defendant's defense at this juncture.<sup>6</sup>

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff has failed to meet its burden of demonstrating that judgment as a matter of law is warranted in this matter and, accordingly, Plaintiff's Motion for Summary Judgment is **DENIED**.

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<sup>5</sup> Federal Rule of Civil Procedure 7(a) provides:

There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

Fed. R. Civ. P. 7(a).

<sup>6</sup> The Court acknowledges, however, that Defendant raised this issue as an affirmative defense in its Answer.

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ZURICH-AMERICAN INSURANCE CO., :  
Defendant. : No. 02-7838

**O R D E R**

**AND NOW**, this                    day of March, 2004, in consideration of the Motion for Summary Judgment (Doc. No. 5) and Memorandum of Law in Support of Summary Judgment (Doc. No. 4) filed by Plaintiff Adam Brown d/b/a Iliad Antik ("Plaintiff"), the Memorandum in Opposition filed by Defendant Zurich-American Insurance Company (Doc. No. 8), and Plaintiff's Reply thereto (Doc. No. 9), **IT IS ORDERED** that Plaintiff's Motion for Summary Judgment is **DENIED**.

BY THE COURT:

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JAMES MCGIRR KELLY, J.