

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

BAAL CORPORATION, INC. d/b/a	:	CIVIL ACTION
BARRY LEONARD CRIMPER,	:	
BARRY LEONARD,	:	
CHARLEEN D. LEONARD and	:	
JOSEPH BUTLER and KIMBERLY CRISAFI	:	
	:	
v.	:	
	:	
THE CONNECTICUT INDEMNITY CO.	:	NO. 00-571

MEMORANDUM

ROBERT F. KELLY, J.

AUGUST 13, 2001

Presently before this Court are three Motions for Summary Judgment: 1) by the Defendant The Connecticut Indemnity Co. (“CIC”); 2) by the Plaintiff Kimberly Crisafi (“Ms. Crisafi”)¹; and 3) by the Plaintiffs, Baal Corporation, Inc. d/b/a Barry Leonard Crimper (“BAAL Corporation”), Barry Leonard (“Mr. Leonard”), Charleen D. Leonard and Joseph Butler (“Mr. Butler”) (collectively “the BAAL Plaintiffs”).

This is a declaratory judgment action to determine whether CIC wrongfully denied coverage under a Beauticians Professional Liability and Products Hazard insurance policy. This action stems from a professional negligence suit filed March 10, 1999 in the Court of Common Pleas of Philadelphia County, Pennsylvania by Ms. Crisafi in which she seeks damages from an allegedly improper hair coloring procedure performed by Mr. Butler on August 1, 1997 at the

¹Crisafi was originally sued as a Defendant. However, on June 1, 2001, the parties stipulated that she be realigned as a party plaintiff.

Barry Leonard Crimper and Spa Salon.²

Plaintiffs contend that Joseph Butler was a “licensed” operator and/or that the subject policy is ambiguous. Defendant CIC contends that there is no ambiguity and that Butler was clearly not covered by reason of the policy exclusions.

KIMBERLY CRISAFI

CIC contends, among other things, that Crisafi has no standing to file this motion because she is not a contracting party or a third party beneficiary of the policy in question. Crisafi does not address this issue. “To be considered a third party beneficiary in this state, it is necessary to show both parties to the contract had an intent to benefit the third party through the contract and did, in fact, explicitly indicate this intent in the contract.” Strutz v. State Farm Mutual Ins. Co., 415 Pa. Super. 371, 374, 609 A.2d 569, 570, appeal denied, 615 A.2d 1313 (1992). In the Strutz case, the Court rejected the argument that injured plaintiffs were third-party beneficiaries under the liability policy of a tortfeasor as “[t]he parties’ intent was to exchange premiums for liability protection, with no eye toward benefitting persons such as plaintiffs.”

I hold, therefore, that Crisafi is not a third-party beneficiary of the policy of insurance between CIC and BAAL, and lacks standing to be part of this action for declaratory judgment.

THE BAAL PLAINTIFFS

In its summary judgment motion, CIC contends that there is no coverage because the

²At the time of the procedure, Mr. Butler had failed to pay the \$23 fee required to keep his Pennsylvania Cosmetology license registration current. The expiration and renewal of licenses is codified in the Pennsylvania Code (“the Code”) at 49 Pa. Code sec. 7.43(b). The specific Code provision applicable to expiration and renewal of licenses states, in pertinent part: “A licensee who fails to file the biennial renewal application or pay the required biennial renewal fee by renewal date shall have the license classified as unregistered.” 49 Pa. Code sec. 7.43(b).

policy contains at least two (2) relevant exclusions of coverage. The first is contained in “Section I - Coverage D”, section 2 - “Exclusions”, subpart (f)(2):

This insurance policy does not apply to: “Bodily injury” or “property damage” arising out of “beauty salon services” or resulting from “beauticians’ product hazard”: Rendered in whole or in part by any **unlicensed operator**, if license is required, irrespective of whether such injury or damage was occasioned or caused by that portion of the “beauty salon services” performed by such unlicensed operator. (emphasis added)

The State Board of Cosmetology confirms that Joseph Butler’s original licensure date was August 15, 1992, and his license expired as of January 31, 1994. See Verification of State Board of Cosmetology, attached as Exhibit D of Plaintiff’s Motion for Summary Judgment. At the time of the incident, Joseph Butler’s original license had been expired for three (3) years and was not renewed for 1 ½ years after the incident. See Deposition of the Joseph Butler, pp. 20-21, Exhibit A, CIC’s Memo in Response to Plaintiff’s Motion for Summary Judgment. On the date of the incident, because he had not paid the applicable biennial fees to the State Board of Cosmetology, Joseph Butler was unauthorized to render cosmetology services to Kimberly Crisafi. He was, therefore, in violation of the Regulations set forth by the State Board of Cosmetology, 49 Pa. Code sec. 7.43(b), which provides that:

A licensee who fails to file the biennial renewal applications or pay the required biennial fee by the renewal date shall have the license classified as unregistered. As long as a licensee holds an unregistered license, the licensee is **not permitted to practice in the commonwealth**. A licensee who practices during a period in which the license was unregistered shall be required to pay a penalty fee of \$5, as prescribed in sec. 7.2, for each month or part of a month that the licensee practices since the expiration of the biennial renewal and may be subject to disciplinary proceedings before the Board or criminal prosecution, or both. (emphasis added).

In interpreting an insurance policy, a Court must ascertain the intent of the parties as manifested by the language of the written instrument. When the policy language is clear and unambiguous, the Court must give effect to the language of the contract. However, if the policy provision is ambiguous, the policy provision must be construed in favor of the insured and against the drafter of the instrument. Riccio v. American Republic Insurance Co., 550 Pa. 254, 263, 705 A.2d 422, 426 (1997). “[T]he words of the insurance policy must be construed in their natural, plain and ordinary sense.” Id. at 264, 426.

The term “unlicensed” as used in the policy, should be interpreted using its plain and ordinary meaning. “License” is defined by Webster’s 9th Collegiate Dictionary as “permission to act,” “freedom to act” or “a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful.” Accordingly, the common, everyday meaning of the word “unlicensed” refers to not having the permission or freedom to act and/or not having the permission granted by competent authority to engage in a business or occupation or an activity otherwise unlawful.

Under Pennsylvania case law, the term “licensed” when used with reference to governmental regulation, has been defined as the “authority to do some act of carrying on some trade or business, in its nature lawful but prohibited by statute, except with the permission of the civil authority, but which would otherwise be unlawful.” Knecht v. Medical Service Assn, of PA, Inc., 186 Pa. Super. 456, 143 A.2d 820 (1958).

Under Pennsylvania law and common usage, the term “license” means that one has been given authority from a governmental power to carry on with certain otherwise prohibited activities. Conversely, one is “unlicensed” when one does not have authority from the

government to engage in such activities or to provide such services.

Plaintiffs argue that Butler is “licensed but unregistered,” and, therefore, he meets the licensing requirements of the policy. “Licensed but unregistered” is a status without a function. Under 49 Pa. Code sec. 7.43(b), a person who is “licensed but unregistered” is “not permitted to practice in the Commonwealth.” Compare that status with Webster’s definition of license, supra “permission to act,” “freedom to act” or “a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful.” The status “licensed but unregistered,” as defined and restricted by the Pennsylvania Code is the antithesis of the word license as commonly understood.

Based upon the foregoing, I find that Joseph Butler was unlicensed as that term is used in the policy.

As if anticipating the difficulty that Court’s would have in defining the word “unlicensed” as used in various state statutes, the policy, in addition, contains the following Exclusion (e) which provides that:

This insurance policy does not apply to: “Bodily injury” or “property damage” arising out of “beauty salon services” rendered or preparations, products, apparatus or equipment used **in violation of any law, rule or regulation of any Federal, State, Municipal or other local government**; however, your failure to perform the predisposition or skin test shall not be deemed a prohibition under any Federal, State, Municipal, or other local government law, rule, or regulations. (emphasis added)

This is a separate and independent reason for excluding coverage of the underlying incident. This section does not require the Court to engage in a definition of “unlicensed.” It merely states in effect that the policy doesn’t apply to any bodily injury arising out of beauty

salon services rendered in violation of any law, rule or regulation of any federal, state, municipal or local government. It is conceded that Joseph Butler failed to pay the appropriate fees required by 49 Pa. Code sec. 7.43(b). Services provided by Butler were clearly in violation of that Section and Exclusion (e) applies to prevent coverage for the services provided to Crisafi. For this additional reason, Plaintiff's Motion for Summary Judgment should be denied and Defendants' Motion for Summary Judgment should be granted.

I, therefore, enter the following Order.

**IN THE UNITED STATES DISTRICT COURT
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BAAL CORPORATION, INC. d/b/a	:	CIVIL ACTION
BARRY LEONARD CRIMPER,	:	
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CHARLEEN D. LEONARD and	:	
JOSEPH BUTLER,	:	
	:	
v.	:	
	:	
THE CONNECTICUT INDEMNITY CO. and	:	
KIMBERLY CRISAFI,	:	
	:	NO. 00-571

ORDER

AND NOW, this 13th day of AUGUST, 2001, it is hereby ORDERED and DECREED that:

1. Plaintiff Kimberly Crisafi's Motion for Summary Judgment (Dkt. No. 15) against the Defendant Connecticut Indemnity Company is hereby DENIED, the Court having determined that Kimberly Crisafi has no standing in this action.

2. The Motion for Summary Judgment of Plaintiffs, BAAL Corporation, d/b/a Barry Leonard Crimper, Barry Leonard, Charleen D. Leonard and Joseph Butler (Dkt. No. 16) is hereby DENIED.

3. The Motion for Summary Judgment of Defendant The Connecticut Indemnity Company (Dkt. No. 17) is hereby GRANTED. Summary Judgment is entered in favor of Defendant, the Connecticut Indemnity Company, on all claims against it.

It is further ORDERED and DECREED that Defendant, the Connecticut Indemnity Company, has no obligation to defend or indemnify Plaintiffs in the matter of Kimberly Crisafi v.

Barry Leonard, Individually and t/a Barry Leonard Crimper, Philadelphia Court of Common
Pleas, March 1998, Docket No. 840.

BY THE COURT:

ROBERT F. KELLY, J.