

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

UNIONAMERICA INSURANCE : CIVIL ACTION
COMPANY, LTD. :
 :
v. :
 :
 :
MARSHALL F. KAUFMAN : NO. 97-7185

M E M O R A N D U M

Padova, J.

March 31, 1998

Plaintiff Unionamerica Insurance Company, Ltd.
("Unionamerica") brings this declaratory relief action against
its insured, Defendant Marshall F. Kaufman ("Kaufman"), seeking
declaratory judgment in its favor that there is no coverage for a
state court action filed by Delores Wallace and Shawn Chase
against Kaufman because the policy issued by Unionamerica to
Kaufman contains a "Lead Contamination Exclusion." Before the
Court are Defendant's Motion for Judgment on the Pleadings and
Plaintiff's Cross-Motion for Judgment on the Pleadings. The
Court will deny Defendant's Motion and will grant Plaintiff's
Cross-Motion.

I. FACTS

The following facts are undisputed. Kaufman was and is the
owner of an apartment building at 3841 Fairmount Avenue,

Philadelphia, Pennsylvania ("Property"). Unionamerica issued a commercial general liability policy, Policy No. 95-27982 ("Policy"), to Kaufman covering the Property, effective as of November 11, 1995. The Policy contains a "Lead Contamination Exclusion" that states:

This insurance excludes occurrences at the insured property which result in:

- (a) "Bodily Injury" arising out of the ingestion, inhalation or absorption of lead in any form;
- (b) "Property Damage" arising from any form of lead;
- (c) Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise [sic], or in any way respond to, or assess the effects of lead; or
- (d) Any loss, cost or expense arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising [sic], or in any way responding to, or assessing the effects of lead.

(Pl.'s Ans. to Def.'s Mot. Ex. C.) As defined in the Policy, the term "Bodily Injury" means "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." (Id.) The Policy also excludes coverage for damages attributable to punitive or exemplary damages. (Id.)

In August 1996, Kaufman was sued in state court by one of his tenants, Delores Wallace, individually and on behalf of her minor son, Shawn Chase, for exposure to dangerous levels of lead paint at the Property. Wallace and Chase filed a Short-Form Complaint, Lead Case-Code #19, Court of Common Pleas of

Philadelphia County, Case No. 3756. (Id. Ex. D.) In the Short-Form Complaint, Wallace and Chase allege that they suffered injuries as a result of exposure to lead paint at the Property. The Short-Form Complaint also incorporates by reference portions of the Master Amended Long-Form Complaint for Lead Based Paint Litigation in the Mass Tort Division of the Philadelphia Court of Common Pleas. (Id. Ex. E.)

II. LEGAL STANDARD

The Court reviews a motion for judgment on the pleadings pursuant to Fed.R.Civ.P. 12(c) under the same standard as a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). See Constitution Bank v. DiMarco, 815 F.Supp. 154, 157 (E.D.Pa. 1993). Thus, in deciding a Rule 12(c) motion, a district court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 406 (3d Cir. 1993) (citations omitted). Under Rule 12(c), judgment will only be granted if it is clearly established that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law. Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 290-91 (3d Cir.

1988).¹

III. DISCUSSION

In his Answer to the Complaint in this action, Kaufman admits that the Policy contains a lead paint exclusion, that the state court action is based on exposure to lead paint while residing at the Property, that the Policy excludes coverage for bodily injuries at the insured Property arising from the ingestion, inhalation or absorption of lead paint, that the lead paint exclusion applies regardless of fault, that the exclusion applies even if the owner is negligent or had knowledge of the lead paint, and that the Policy does not include coverage for punitive damages. (Ans. at 1.)

Despite these admissions, Kaufman argues that Unionamerica has a duty to defend him in the underlying state action because allegations contained in paragraphs 18, 19, 39, 51, 52 and Count V of the Master Amended Long-Form Complaint are not limited to lead paint exposure claims. The Court disagrees. The prefatory allegations of the Master Amended Long-Form Complaint clearly state that actions brought via the Master Amended Long-Form Complaint are "lead paint poisoning actions" and that all claims raised therein are based on "exposure to the lead paint conditions within the subject premises." (Pl.'s Ans. to Def.'s

¹The Court notes that during a conference held in chambers on March 13, 1998, counsel for both parties agreed that this case can be resolved on the pleadings.

Mot. Ex. E.) Moreover, all of the allegations and Counts contained in the Master Amended Long-Form Complaint are based directly on the presence of lead paint at the Property. For example, although the Master Amended Long-Form Complaint contains language relating to the existence of conditions at the Property that are "unfit for human habitation," that claim is based solely on the presence of lead paint on the Property, not to any other condition of habitation.

Even when viewed in the light most favorable to Kaufman, the allegations and claims contained in the Short-Form Complaint and the Master Amended Long-Form Complaint are based exclusively on harm resulting from exposure to lead paint at the Property. The Court finds that, as a matter of law, the "Lead Contamination Exclusion" bars coverage for all of the claims raised by Wallace and Chase in their state court action against Kaufman. Accordingly, by the clear and unambiguous terms of the Policy, Unionamerica is under no obligation to defend or indemnify Kaufman in the underlying state court action.

The Court will deny Defendant's Motion for Judgment on the Pleadings, will grant Plaintiff's Cross-Motion for Judgment on the Pleadings, and will enter judgment on the pleadings in favor of Unionamerica and against Kaufman.

An appropriate Order follows.

