SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
PHILLIP LEWIS PALEY
JUDGE

MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 964
NEW BRUNSWICK, NEW JERSEY 08903 - 0964

June 12, 2009

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Re: Quick Service Management, Inc., et als v.
Underwriters of Lloyds, et als.(MID-L-4861-07)

Dear Counsel:

This is the decision on pending motions for partial summary judgment.

Plaintiffs, franchisees of Taco Bell Restaurants, sought protection from the consequences of publicity about contaminated food served at

restaurants. In 1999 they solicited insurance to protect against revenue losses from such events. They utilized a committee of the Taco Bell Franchise Management Advisory Council ("FRANMAC") to analyze insurance proposals, as well as a retail insurance broker, IMA of Kansas, Inc. ("IMAK") and a wholesale broker, first, Swett & Crawford of Illinois, Inc. ("Swett"), and, after 2005, Colemont Insurance Brokers of Illinois, LLC ("Colemont").

Defendants Lloyd's, London, England and Professional Liability Insurance Services ("PLIS") (here, collectively, "Underwriters") underwrote the insurance purchased by plaintiffs for those purposes. "Food Borne Illness" (FBI) was purchased for several years; later, "Trade Name Restoration, Loss of Business Income and Incident Response Insurance for Food Borne Illness" ("TNR") was purchased. TNR coverage (the "Policy") was issued for the period April, 2006, to April, 2007.

The marketing for TNR insurance stated: "even the best restaurants can suddenly be trapped in an infectious health situation ... due to a food borne illness or supplier mistake that ends up totally out of control." The pre-2003 FBI insurance contained no supplier sublimit. In late 2002, after FBI insurance was discontinued, the TNR policy contained an "Aggregate Supplier Incident Sublimit" ("Sublimit"). Plaintiffs contend that no one explained that that Sublimit would exclude coverage previously provided under FBI insurance. They apparently believed that the Policy would provide reimbursement for revenue losses from reports (true or not) of food borne illness arising out of their restaurant operations.

POLICY LANGUAGE: The Policy indemnifies against loss resulting from an "Incident", either a "Covered Event" or a "Public Announcement." A "Covered Event" is an "occurrence ... of a food borne illness [or] Accidental

Contamination . . . [resulting] . . . from operations at a Covered Location, at a location of any trade name listed in the Declarations, or at a location of any product supplier of the Insured." [4.4]. A "Public Announcement" is an "...announcement, publication or broadcast by the media ... of an actual, suspected or alleged Covered Event ..." [4.22]. All Covered Events or Public Announcements arising from the same common cause constitute one Incident, regardless of the number of persons, announcements or locations involved. [4.10].

The Sublimit reads:

> ... maximum liability for all losses affecting all "Covered Locations" insured hereunder resulting from all "Incidents" emanating from the operations of any product supplier of the Insured shall not exceed the "Aggregate Supplier Incident Sublimit" ... [3.4].

The Policy does not define "supplier", "supplier incident", "emanating from", "operations", "a product supplier of the insured", or "Sublimit". The Sublimit on the Declaration page is "$0."

THE INCIDENT: In late 2006, an outbreak ("Outbreak") of E. coli, an infectious disease, was traced to food sold at Taco Bell restaurants in the Northeast. The media called this the "Taco Bell Outbreak". The Center for Disease Control called the event the "Taco Bell Outbreak" and traced the source of the contamination to lettuce[1]. The lettuce originated with Ready Pac Produce, Inc. ("Ready Pac") and was delivered to various restaurants by

[1] One CDC report attributes the Outbreak to cheese.

McLane Food Services, Inc. ("McLane"). All parties agree that the Outbreak, and media coverage of it, is an "Incident" under the Policy [1.1, 4.22].

THE CONTENTIONS: Plaintiffs seek indemnification for lost income following publicity related to the Outbreak. Underwriters contend that the $0 Sublimit precludes indemnity. These contentions are reflected in opposing motions for partial summary judgment now before the court.[2] The Underwriters claim that the Policy is unambiguous, because the Sublimit is "$0". Plaintiffs argue that the Policy language is inherently ambiguous and must be construed in accord with their reasonable expectations.

In August, 2008, this court considered the Policy language, opining that the Policy was not "clear and capable of one interpretation only." It rejected plaintiffs' view that this case is simple; it allowed extensive discovery.

INTERPRETATIVE STANDARDS: If the language of a policy supports more than one interpretation, the interpretation favoring the policyholder controls. Gibson v. Callaghan, 158 N.J. 662, 669 (1999). Feszchak v. Pawtucket Mutual Ins. Co., 2009 WL 624060 (3d Cir. March 12, 2009) [there, the court held that the policy language was unambiguous]. Of course, the analysis centers on the words used; conclusions must be consistent with the policy language "... to the full extent that any fair interpretation will allow." Mazzilli v. Accident & Cas. Ins. Co. of Winterthur, Switzerland, 35 N.J. 1, 7 (1961), quoting Kievit v. Loyal Protective Life Ins. Co., 34 N.J. 475 (1961). A fair interpretation requires the divining of a policy's plain and ordinary meaning. Voorhees v. Preferred Mut. Ins. Co., 128 N.J. 165,

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[2] As to the defense citation of Mark Twain, he (hardly dispositive legal authority) would surely find clarity more salient than brevity.

175 (1992). Ambiguity exists where the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage. Rosario v. Haywood, 351 N.J. Super. 521, 530 (App. Div. 2002). No court may write for the insured a better policy than that purchased. Voorhees v. Preferred Mut. Ins. Co., supra, at 175.

Commercial insurance policies are typically drafted by the insurer with "boilerplate", standard and unvarying parlance. Therefore, the language of such policies must not be susceptible of more than one interpretation. The policy must be clear from the perspective of the average insured. Kievit v. Loyal Protective Life Insurance Company, supra; Linden Motor Freight Co., Inc. v. The Travelers Insurance Company, 40 N.J. 511 (1963); Gerhardt v. Continental Insurance Companies, 48 N.J. 291 (1966); DiOrio v. New Jersey Manufacturers Insurance Company, 79 N.J. 257 (1978); Gibson v. Callaghan, 158 N.J. 662 (1999); Werner Industries, Inc. v. First State Insurance Company, 112 N.J. 30 (1988); Pizzullo v. New Jersey Manufacturers Insurance Company, 196 N.J. 251 (2008). As the Supreme Court has noted:

> The construction of insurance policy language is not ordinarily controlled by the standards applicable to a contract negotiated at arms length between two parties on the same plane. Since the form of the agreement and the language used are prepared by the insurer in advance and the coverage generally must be purchased in that form without change, it is unrealistic to talk about the mutual intention of the parties. ... So, beyond the universal rule that ambiguities and uncertainties are to be resolved against the company, many courts, including our own, have looked at policies from what we conceive to be the reasonable expectations of the average

purchaser in light of the contract language...." Linden Motor Freight Co., Inc., v. The Travelers Ins. Co., supra, at 524-525.

Any purported exception from coverage must be "...read from the point of view of a reasonable and disinterested third party." Gerhardt v. Continental Insurance Companies, supra, at 295. Furthermore, an exclusion must be unequivocal and clear to the "... average insured..." Ibid.[3] If the policy is clear and unambiguous, the court may limit its analysis to the language used, rather than the insured's reasonable expectations. Diorio v. New Jersey Manufacturers Insurance Company, supra.

The interpretation of language entails the examination of words used; the context and arrangements of those words; the common usage of words, including dictionary definitions; meanings determined by other courts; and other evidence bearing on the parties' intended meaning at the time of contracting.[4] If an insurance policy is capable of multiple interpretations, a

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[3] In a different context, Judge Learned Hand famously noted: There is no surer way to misread any document than to read it literally. Giuseppi v. Walling, 144 F. 2d. 608 (1944), concurring opinion.

[4] O'Charley's Restaurants sued Lloyd's following an outbreak of Hepatitis A, later traced to onions served at O'Charley's, purchased from a produce company who bought them from a grower. The Lloyds policy there had many of the same policy terms - and definitional omissions - as occur here. The Sublimit there was $100,000.

Plaintiffs contend that Lloyd's, although it knew that its policy was unclear because of the O'Charley's suit, continued to sell the Policy without correcting any ambiguity. The court finds this analysis unpersuasive, although it acknowledges, as does Colemont, that the Underwriters "did nothing to enhance the clarity" of its policy following the lawsuit.

Similarly unpersuasive is the argument that meaning can be gleaned by changes in coverage or Sublimit amount post-Outbreak, such as the change

court must plumb the policy language to determine the objectively reasonable expectations of the insured. Cruz-Mendez v. ISU/Insurance Services of San Francisco, 156 N.J. 556, 572 (1999); Meier v. New Jersey Life Ins. Co., 101 N.J. 597 (1986); Sparks v. St. Paul Ins. Co., 100 N.J. 325 (1985); Gibson v. Callaghan, supra, at 669-71.

> "When members of the public purchase [insurance] policies they are entitled to the broad measure of protection necessary to fulfill their reasonable expectations. They should not be subjected to technical encumbrances or to hidden pitfalls and their policies should be construed liberally in their favor to the end that coverage is afforded 'to the full extent that any fair interpretation will allow...' Where particular provisions, if read literally, would largely nullify the insurance, they will be severely restricted so as to enable fair fulfillment of the stated policy objective." Allen v. Metropolitan Life Ins. Co., 44 N.J. 294, 305 at 306 (1965) citing Kievet v. Loyal Protective Life Ins. Co., supra, at 482-83 (1961).

Similarly, an insured's reasonable expectations may not be justly frustrated. Courts have molded their governing interpretative principles with that uppermost in mind. See Gibson v. Callaghan, supra, at 669-71. Therefore:

> "...Recognizing the position of the layman with respect to the insurance policies prepared and marketed by the insurer, our Courts have endorsed the principle of giving effect to the 'reasonable expectations' of the insured for the purpose of rendering a 'fair interpretation' of the boundaries of insurance coverage...Thus, the 'insured's' 'reasonable expectations' are bought to bear on misleading terms and ambiguities are resolved

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from "product supplier" to "supplier." Such changes, often, are responses to litigation, such as this very lawsuit.

against the insurer...In applying this principle, an objectively reasonable interpretation of the average policyholder is accepted so far as the language of the insurance contract in question will permit..." DiOrio v. New Jersey Manufacturers, Inc., supra, at 268-269.

Insurers often use "...perceptive and competent counsel..." who are aware of judicial interpretations of policy language and who express those interpretations explicitly.[5] Gibson v. Callaghan, supra, at 678-69.

The issue is whether an insured's interpretation is objectively reasonable in light of policy language. Linden Motor Freight Co. v. Travelers Ins. Co., supra, at 525. An objective standard requires the court to address what an objective average policyholder in the insured's position would have believed given the policy language presented.[6]

On any motion for summary judgment, the court must determine whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, considering the applicable evidentiary standard, permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995); a moving party is entitled to summary judgment if the pleadings and other materials show palpably that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Id., Judson v. People's Bank and Trust Co. of Westfield, 17 N.J. 67, 73, 75 (1954).

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[5] Often, as here, counsel for insureds are highly sophisticated also, especially in a commercial context. See Werner Industries v. First State Ins., supra.

[6] Therefore, the failure of a particular franchisee to have read any particular provision has little significance. The argument that 76 other franchisees must be deposed prior to summary judgment is not telling.

ANALYSIS: As noted, if an insurance policy is less than scrupulously clear, the insurer must provide coverage consistent with a reasonable interpretation of the policy. Any exclusion must be clear.

Here, an average, reasonable insured would expect coverage for the Outbreak. This Policy title, including "Food Borne Illness", reinforces this view; the Outbreak was food-borne illness. The marketing (unsurprisingly avoiding coverage limits) is additional reinforcement. A reasonable insured examining the Policy would find no definition for many crucial terms used [see p.3 above].

The defense suggests that the Sublimit applies to any "product" within the chain of distribution. If so, the Policy would state "any supplier", not "a product supplier of the insured". That latter phrase, itself, is undefined.[7] The Policy does state that a "product" is an item of food or drink:

> 4.13. "Insured Products" means those food and drink products the Insured(s) furnishes in the regular course of business ....

This is distinguishable from an "ingredient", something used to produce or prepare "the Insured's Products." [4.14]. To the same effect, [4.1] distinguishes between products and ingredients used to produce or prepare those products.

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[7] Were the Policy language similar to that in Archer-Daniels-Midland Co. v. Phoenix Assurance Co., 936 F. Supp. 534, 540 (S.D. Ill. 1996), "any supplier of goods or services", the court might well agree with the Illinois court that the words used are unambiguous and "denote[ ] an unrestricted group of those who furnish what is needed or desired.". The language used here is dissimilar.

Therefore, a reasonable insured would conclude that an "ingredient" is a component of a product, not the product itself. Lettuce is not a product, agricultural or otherwise; it is an ingredient. Taco Bell does not "produce" lettuce; it uses lettuce as part of its offerings, such as a hamburger sandwich. The Sublimit does not address suppliers of "ingredients"; it addresses suppliers of "products".

The defense suggests that plaintiffs' interpretation of "ingredient" in "guilt by association" cases is inconsistent with this view, but that suggestion does not help to clarify any Policy terms. The defense claim that "product" in [3.4] refers to tangible commodities rather than services or labor, or applies to both finished and raw material, is not based on Policy language. Describing beef as an "ingredient" is, on the other hand, absolutely consistent with Policy language.

The Underwriters note language used in Federal Court complaints (Ex. 26), agreements with providers (Ex. 30), Taco Bell crisis management presentations (Ex. 32), and e-mails[8], while underemphasizing the language of the Policy itself. The Underwriters note plaintiffs' reference to Ready Pac and McLane as suppliers in other lawsuits, ignoring that such reference occurred long after the TNR policies were issued. Contamination at multiple restaurants does not prove which entities are "suppliers", despite the defense argument.

Mr. Steves, a broker active in placing the Policy, understood that the Sublimit was zero. He believed that the remedy available to insureds for

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[8] Mr. Antonaccio, a franchise owner, emailed Taco Bell's Chief Executive Officer after the Outbreak, pointing out that the Outbreak did not "originate" at a restaurant and that Taco Bell is a victim. This hardly parses Policy language.

contaminated items were suits against suppliers, but did not define "supplier" or "supplier incident" (247:23-248:14; 366:19-25). Mr. Steves's linguistic analysis is not as important as the language that he tried to analyze. His understanding does not trump the specific language of the Policy.

Mr. Steves claims that he told IMAK about the Sublimit (which is disputed), but all he discussed was the Sublimit and that it was "zero"; he did not state what that meant. (191:16-17, 192:8-9; 248:22-249:4).[9]

In 2003 and 2005, Mr. Steves discussed a higher Sublimit: "...you're always trying to get higher sublimits..." (104:6-105:24; 178:11 – 179:1). This discussion does not explain how the Sublimit works or to what it applies.

Therefore, it is an exaggeration to assert that Mr. Steves or anyone else "knew" that "$0" meant zero dollars of coverage for "supplier" incidents or that the sole remedy available to plaintiffs for contaminated

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[9] Indiana Ins. Co. v. PANA Community Unity School District, 314 F.3d 895 (7th Cir. 2002), holds that a zero dollar designation was not ambiguous: "zero means zero. ... We can see no other reasonable interpretation of such an unambiguous term. ... To determine that the figure "0" is ambiguous would be an analytical leap of faith." Id. at 902-03. That holding, however, does not address what category the "0" applies to. Zero ("0") itself is represented in a way designed to eliminate ambiguity. Originally in Arabic numbering "zero" was a dot; a medieval Hebraic scholar changed the dot to a circle (in Hebrew "zero" is "galgal" – "wheel") to make the notation more visible and less ambiguous. See also Costello, Elvis, "Less Than Zero", on "My Aim is True," Stiff Records, 1977.

food a suit brought against a "supplier". As noted, "supplier" is not explicitly defined.[10]

Mr. Steves reportedly discussed that the Sublimit did not apply to 95% of food borne illnesses (those resulting from unsanitary restaurant practices – bad storage, lack of hand-washing, etc.) but did apply to other contaminative illnesses (73:5-13). The Policy does not distinguish between these categories. The issue is whether Policy language clearly explains what "$0" means. Mr. Steves may have forwarded documents indicating "$0" as a Sublimit, but there is no evidence that he explained the meaning of "$0" clearly.

In February, 2003, Mr. Steves did discuss that the Sublimit would apply if bad tomatoes were delivered to a restaurant (71:1-74:13), but that general discussion did not address the language of the policy. It did not define "supplier", "operation of a product supplier", "incident", or "emanate". It did not explain what coverage is available where contaminated food caused loss of revenue in a restaurant far from the contamination. Even now, Mr. Steves defines "supplier" (one bringing supplies to a restaurant) significantly differently from Underwriters (each link in the supply chain) (248:4-6). The court discerns no persuasive evidence that Mr. Steves or anyone else understood that contamination originating on a farm is a "Supplier Incident" or how the Sublimit would apply to a "Public Announcement". His views about the Sublimit and how it applies (247:5-248:21) are simply not dispositive.

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[10] Underwriters note that a dictionary defines "supplier" as a provider of goods, but it is not at all clear that lettuce is a "good". To argue, as Underwriters do, that a "supplier" is a party in the stream of commerce who makes a product available for use, begs the question why that definition is absent from the Policy.

Underwriters argue that pre-loss evidence of the intent of the Sublimit provisions is shown by a 2004 Realistic Disaster Scenario, discussing contaminated food provided by a link of the supply chain. This interpretation did not address Policy language and is not binding on plaintiffs.

If a "supplier" clearly includes every link in the supply chain, it is hard to understand why the Underwriters did not correct the multi-year interpretation of plaintiffs that McLane, the entity which provided items to them directly, was the only supplier[11]. Plaintiffs clearly did not reasonably expect that, whatever they had written on their applications, the Sublimit applied to items only because those items were delivered by McLane. Section 3.4 cannot be read so restrictively.

The point is this: one may recognize that a Sublimit exists without knowing what it means. Unquestionably, the Sublimit was referred to between 2003 and 2006; shown on the Declarations page of each year's policy; and was known to IMAK, the insurance committee, and counsel. None of this explains what the Sublimit means or how it applies to contaminated lettuce.[12] There is no persuasive evidence that, before the Outbreak, the plaintiffs reasonably expected that the Sublimit would preclude coverage for claims relating to illnesses arising from tainted ingredients or contaminated food.

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[11] Per Policy terms, the application for insurance coverage is part of the Policy. For each year, plaintiffs listed McLane as their only supplier on their application, even though plaintiffs were asked to name their "Top 5 suppliers." .

[12] The defense brief is clearly incorrect when it asserts that the Sublimit, "by its terms", addresses losses from contaminated produce at a restaurant. The only "term" of the Sublimit is "$0".

Whatever brokers, committees or other advisors may have done or not done is not dispositive in determining reasonable expectations for insureds. What is dispositive is policy language. Nevertheless, Underwriters suggest that the intent of the language is shown by meetings and statements of their own personnel. For example, Mr. Mercer, "architect" of TNR coverage, testified that [3.4] was designed to limit "supplier-related" losses; that it applied to media events of food borne illnesses caused by the supply of contaminated products to restaurants; that "Product Supplier" includes the entire supply chain, among other things. The policy language, however, does not clearly reflect these conclusions. Any contract must be interpreted according to the expressed intent, not the undisclosed meaning. The object of contract interpretation is not to discover undisclosed subjective intent. Krosnowski v. Krosnowski, 22 N.J. 376 (1956). See Dome Petroleum, Ltd. v. Employers Mut. Liability Ins. Co., 767 F. 2d 43, 47 (3rd Cir. 1985), in which the Third Circuit, applying New Jersey law, asserts: "The goal of contract interpretation is not the discovery of 'undisclosed intent', but rather, the 'objective intent manifested in the language of the contract in light of the circumstances surrounding the transaction."

The Sublimit appears on the Declaration page, the only page tailored to the particular insured, Lehrhoff v. Aetna Casualty & Surety Co., 271 N.J. Super. 340, 346-47 (App. Div. 1994), so that page sometimes reflects the insured's reasonable expectation, Zacarias v. Allstate Ins. Co., 168 N.J. 590 (2001). Here, no party suggests that the declaration page does not say $"0". The dispute is what "$0" means. Undisclosed intent, as noted above, is not helpful. Transactions between the parties before the Outbreak might be

relevant, but no claims were made by plaintiffs before 2006. The defense argument is unavailing.

A "Covered Event" under the Policy does not occur when crops are contaminated in a field. Taco Bell customers did not purchase comestibles from a farm or market. They purchased food prepared and sold at Taco Bell restaurants. The contaminated food was introduced to customers by the operations of the restaurant, where the food was assembled and served to customers. Revenues were lost not at the farm or the processing plant but only after media reports of contamination at restaurants.

The Underwriters argue that, if the contaminated products were never provided, they would never have been served, and there would have been no Outbreak and no media reports. Coverage here, however, is not determined by proximate cause. In New Jersey, if an act is a substantial factor in bringing about a result, it is a proximate cause thereof. See Conklin v. Hannoch Weisman, 145 N.J. 395 (1996). There may be two or more concurrent and directly cooperative and efficient proximate causes of a result. Davenport v. McClellan, 88 N.J.L. 653 (E. & A. 1915), quoted in Rappaport v. Nichols, 31 N.J. 188 (1959). This is why the argument that the Outbreak emanated from the operations of McLane, a supplier, lacks merit. The Outbreak is not subject to the "$0" Sublimit.

Plaintiffs expected that the Sublimit would apply if Taco Bell sold 7-Up soda, and if 7-Up were contaminated, and if resultant media coverage identified 7-Up as being sold in Taco Bell restaurants; in such event, the publicity would constitute a supplier incident subject to the Sublimit. This was similar to what triggered coverage in the pre-2006 FBI policies: ". . . if a

supplier is a "media target" and your restaurants, or other trade name restaurants, are noted as a buyer of their products."

This expectation is eminently reasonable. TNR insurance may differ from FBI insurance, but there is no evidence that the Franchisees were told that earlier coverage was being reduced. The Underwriters told no plaintiff specifically that the Sublimit would preclude coverage following adverse publicity for contaminated food (as with other outbreaks, such as Jack-in-the-Box). Plaintiffs reasonably believed that the Policy was tantamount to a "renewal" of those issued earlier which would "mirror. . . the terms of the coverage . . . afforded in the past." The premiums paid were substantially equivalent to those of earlier years, see, e.g., Reliance Ins. Co. v. Moessner, 121 F.3d 895, 907 (3d Cir. 1997). To the extent that the Policy is tantamount to a renewal, Bauman v. Royal Indemnity Co., 36 N.J. 12 (1961), suggests that earlier coverage will be renewed. The Underwriters did not state what the Sublimit meant; they did not communicate that it was an exclusion. The Sublimit does not exclude coverage for the Outbreak.

Underwriters also argue that the "zero" Sublimit means "no coverage" for a supplier incident. If true, the Underwriters had a duty to inform the insureds before premiums were paid that there was a substantial change in coverage. See Customized Distribution Services v. Zurich Ins. Co., 373 N.J. Super. 480, 493 (App. Div. 2004). A plaintiff who lost revenue because of media announcements of the Outbreak at other locations reasonably expected coverage for that loss.

Underwriters contend that knowledge of the insured's brokers can be imputed to insureds.[13] TWBC III, Inc. v. Certain Underwriters at Lloyd's London, 323 N.J. Super. 60, 66(App.Div. 1999); Mann v. Interstate Fire Cas. Co., 307 N.J. Super. 587, 595 (App.Div. 1998). See also Rider v. Lynch, 42 N.J. 465, 476 (1964), as to independent brokers.

A principal who selects an agent is generally bound by the acts of that agent within the agent's apparent authority. So, in TWBC III, Inc. v. Certain Underwriters, supra, brokers had authority to obtain insurance for plaintiffs, so obtaining notice of coverage was implicit in that authority and was imputed to plaintiffs. That holding, however, specifically related to the issuance and delivery of evidence of insurance, but does not address interpretation of Policy language. As IMAK's letter brief points out, no New Jersey case has held that the agent's knowledge can dispositively clarify an ambiguity. Plaintiffs are not bound by a broker's discussion of a "Realistic Disaster Scenario" or a broker's broad interpretation of [3.4], to include everyone in the supply chain. While Werner Industries Inc. v. First State Insurance Company, supra, supports imputation in some circumstances, that case addresses whether policy terms were specifically "understood and bargained for", not the reasonable expectations of the insured. The brokers' understanding of specific Policy terms – "Sublimit" and "supplier", for example, will not be imputed to the insureds.

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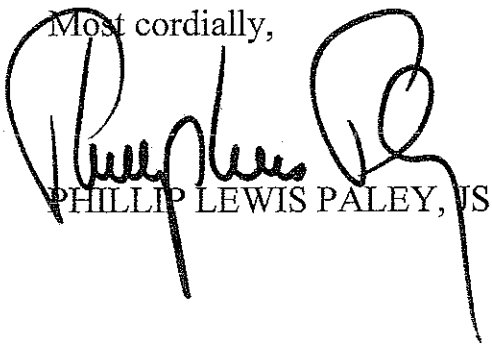
[13] In New Jersey, knowledge of the agent is knowledge of the principal. Stanley v. Chamberlain, 39 N.J.L. 565, 566 (1877). See also NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353 (2006). The doctrine is used to prevent principals "from obtaining benefits through their agents while avoiding the consequences of agent misdeeds." Id., at 366. Restatement of Agency (Second) §283(a).

CONCLUSION: For the foregoing reasons, the Underwriter's motion for Summary Judgment is denied. Plaintiffs' application for partial summary judgment as to coverage is granted. Forms of Order conforming to these rulings are enclosed.

The court notes appreciatively the high quality of the argument, oral and written, of all counsel in this complex matter.

Most cordially,



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PLP/hs