

ENTERED

August 24, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

QUALITY SAUSAGE COMPANY, LLC, *et al*,

Plaintiffs,
VS.

TWIN CITY FIRE INSURANCE CO.,

Defendant.

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CIVIL ACTION NO. 4:17-CV-111

ORDER

Before the Court is Defendant Twin City Fire Insurance Co.’s (“Twin City”) Motion for Summary Judgment (Doc. #34), Plaintiff HM International LLC’s (“HMI”) Response (Doc. #41), and Twin City’s Reply (Doc. #42); HMI’s Motion for Partial Summary Judgment (Doc. #36), Twin City’s Response (Doc. #40), and HMI’s Reply (Doc. #43).

Twin City rests its Motion for Summary Judgment and its opposition to HMI’s Motion on two grounds: (1) that the settlement of the claim cannot fall under coverage because the statute of limitations had run and HMI was therefore not “legally liable” for the claim settled, and (2) that the service for a fee exclusion and/or the contract exclusion applies and bars coverage in this case. As to whether the settlement of a claim barred by the statute of limitations would be covered under the policy, the Court finds that it would not. The governing D&O insuring agreement covers any ‘Claim’ for which the Insured suffers a ‘Loss’, and ‘Loss’ is defined as “Damages plus Defense Costs.” Doc. #34, Exhibit A at 9. “Damages” are defined as only those costs which the “Insureds are *legally liable* to pay solely as a result of a Claim covered by this Liability Coverage Part” *Id.* at 21 (emphasis added). In the very sense of the words “legally liable,” a claim barred by the statute of limitations cannot be a claim in which HMI faced legal

liability—the law actually bars liability. As such, the Court finds that the settlement of a time barred claim is not covered under the policy as it is not a claim in which HMI faced legal liability. Though HMI attempts to argue that the allegedly settled negligence claim could have related back to a previous filed suit, it is undisputed that even that suit was filed two days outside the statute of limitations. Though Texas recognizes the application of the discovery rule, the argument that a state district judge would have applied it in this case and then also allowed the Geibs to relate their negligence claim back to the date the Geibs and HMI filed a suit against Twin City is too contrived for this Court to accept. The claim settled by the Geibs was undisputedly settled more than two years after the Geibs discovered the potential negligence. As such, the negligence claim was not one in which HMI faced legal liability. As HMI fails to articulate a non-time barred claim that was settled and covered by the policy, the Court does not need to examine whether the exclusions apply as to the duty to indemnify. As such, summary judgment in favor of Twin City is appropriate as to this claim. In regard to the duty to defend, such a breach would have occurred prior to the running of the statute of limitations and on these facts could only seek damages associated with defense costs, as opposed to reimbursement of the settlement for a claim in which HMI did not face legal liability. As such, the articulated exclusions must be examined. As there are fact issues relevant to whether the transfers performed for the Geibs were done pursuant to a contract, for a fee, or gratuitously, summary judgment on the applicability of the exclusions is inappropriate. Accordingly, summary judgment on this claim is inappropriate and denied.

Additionally, there is a dispute regarding whether HMI appropriately pled and disclosed legal fees associated with the breach of the duty to defend. Based on the current briefing, the Court is not in a position to decide this dispute. As such, HMI is HEREBY ORDERED to file a

seven (7) page memorandum within fourteen (14) days of this Order explaining how their breach of the duty to defend claim alleges sufficient damages associated with legal costs expended prior to the running of the statute of limitation, and why it did not waive the right to such damages for the reasons articulated by Twin City. Twin City may file a seven (7) page response within fourteen (14) days of the filing of this memorandum. If, based on the memorandum by HMI, Twin City feels dismissal/summary judgment of HMI's duty to defend claim is appropriate because of the lack of damages, Twin City should include this request in its response. If necessary, HMI may then file a five (5) page reply within seven (7) days of the filing of the response.

For the foregoing reasons, HMI's Motion for Summary Judgment (Doc. #36) is DENIED; Twin City's Motion for Summary Judgment (Doc. #34) is GRANTED in regard to the duty to indemnify and DENIED in regard to the duty to defend.

It is so ORDERED.

AUG 24 2018

Date



The Honorable Alfred H. Bennett
United States District Judge