

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

CAROLINA CASUALTY INSURANCE
COMPANY,

Plaintiff/Counter-Defendant,

vs.

Case No. 16-02729-CBB

HON. CHRISTOPHER P. YATES

CUMMINGS, McCLOREY, DAVIS &
ACHO, PLC; CUMMINGS, McCLOREY,
DAVIS, ACHO & ASSOCIATES, P.C.;

Defendants/Counter-Plaintiffs,

and

ALLSTATE INSURANCE COMPANY,

Defendant.

OPINION AND ORDER GRANTING IN PART, AND DENYING IN
PART, OBJECTIONS TO PROPOSED DECLARATORY JUDGMENT

On January 24, 2017, the Court issued an extensive opinion and order that granted summary disposition to Plaintiff Carolina Casualty Insurance Company (“Carolina Casualty”) pursuant to the language of MCR 2.116(C)(10). In its conclusion, the Court stated that Carolina Casualty had won a ruling in its favor “absolving it of any duty to defend or indemnify Defendant Cummings McClorey with respect to any claims arising from the actions of Attorney Mudd that occurred in May and June 2014 in the Forrester case in Missouri.” The Court invited Carolina Casualty “to submit a proposed declaratory judgment under the so-called seven-day rule, see MCR 2.602(B)(3), memorializing the ruling of the Court on the issues of Carolina Casualty’s duty to defend and indemnify Cummings McClorey.” Carolina Casualty submitted a proposed judgment, and Cummings McClorey objected.

In most respects, the proposed declaratory judgment submitted by Plaintiff Carolina Casualty is entirely unobjectionable because it simply states the conclusions of the Court. Specifically, all of the language on page 4 of the proposed declaratory judgment perfectly reflects the Court's rulings, so the Court shall enter that portion of the proposed declaratory judgment. But the final paragraph of the proposed declaratory judgment goes farther than the Court's opinion by providing that "[t]his Declaratory Judgment disposes of all of Carolina Casualty's claims against Cummings McClorey and resolves the Counterclaim filed by Cummings McClorey against Carolina Casualty; except for paragraph H of Cummings McClorey's requested relief demanding reimbursement of the '\$50,000 self-insured deductible.'" The italicized language does not exactly track the Court's ruling, so the Court must modify some of that language.

On May 31, 2016, Defendant Cummings McClorey filed an answer including a counterclaim for declaratory relief. That counterclaim listed 12 requests for declaratory relief in paragraphs (A) through (L) of the prayer for relief. The opinion and order of January 24, 2017, effectively disposed of all the requests in paragraphs (A), (B), (C), (G), (I), (J), (K), and (L) of the prayer for relief in the counterclaim. In contrast, the Court's opinion reserved the request for declaratory relief in paragraph (H) regarding the \$50,000 deductible, which the Court shall resolve in an opinion and order issued separately to deal with the latest round of summary-disposition motions. Beyond that, although the Court offered comments about the viability of a legal-malpractice claim arising from the events in Missouri, the Court had to tread lightly in discussing those issues because many of the parties to such a claim were not before the Court. Now, the Court shall make clear what was implicit in its opinion and order on January 24, 2017: the Court shall decline to resolve the issues raised in paragraphs (D), (E), and (F) of the counterclaim filed by Cummings McClorey.

A request for declaratory relief is permissible under Michigan law, see MCR 2.605, but the Court need not wade into such a dispute. The language of MCR 2.605(A)(1) is “permissive rather than mandatory” in providing that “a Michigan court of record *may* declare the rights and other legal relations of an interested party seeking a declaratory judgment,” PT Today, Inc v Commissioner of the Office of Financial and Insurance Services, 270 Mich App 110, 126 (2006), so “it rests with the sound discretion of the court whether to grant declaratory relief.” Id. Here, as the Court has already noted, most of the likely combatants in any legal-malpractice case are not before the Court, so entry of a declaratory judgment on any aspect of the legal-malpractice dispute would be unwise and unfair to those potential parties who are not before the Court. Accordingly, in the exercise of its discretion, the Court shall not render any ruling on the requests for declaratory relief in paragraphs (D), (E), and (F) of the counterclaim for declaratory relief filed by Defendant Cummings McClorey. The Court shall draft and enter a declaratory judgment that makes clear that those three issues have not been resolved in the instant case.

IT IS SO ORDERED.

Dated: April 25, 2017



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge