

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

**FILED**

**2017 FEB - 9 PM 4: 06**

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VAUGHAN REGIONAL MEDICAL )  
CENTER, LLC, RALEIGH GENERAL )  
HOSPITAL, LLC, LIFEPOINT RC, INC., )  
HSCGP, LLC, PRHC-ALABAMA, LLC, )  
LIFEPOINT HEALTH, INC. and )  
LIFEPOINT WV HOLDINGS, INC., )

Plaintiffs, )

VS. )

STEADFAST INSURANCE COMPANY, )

Defendant. )

**NE**  
**NO. 16-238-BC**

**MEMORANDUM AND ORDER SETTING ORAL ARGUMENT  
ON 3/17/17 AT 9:00 A.M. ON DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND PLAINTIFFS' RULE 56.07 MOTION**

This lawsuit was filed by hospitals and health care companies, as policyholders, against the Defendant Insurance Company concerning construction of a Healthcare policy. The Plaintiffs/Policyholders seek a declaratory judgment that their construction of the insurance policy in issue prevails, that they are entitled to coverage for the incidents in issue, and that they are entitled to recover damages, including attorneys' fees, for the denial of coverage. The Defendant denies the Plaintiffs' construction of the policy and seeks recovery of its costs and expenses including attorneys' fees.

In dispute is whether two groups of medical negligence lawsuits, filed against the Plaintiffs in, respectively, Alabama and West Virginia, constitute one "medical incident,"

the term used in the policy. The Plaintiffs' construction of the policy is that the Alabama group of similar medical negligence lawsuits are batched and qualify as one "medical incident," and the West Virginia group are batched and qualify as one "medical incident." The Defendant's construction is that each individual lawsuit constitutes a "medical incident." The significance of this difference in construction is that a policyholder is subject to a \$5 million self-insured retention for each medical incident before coverage under the \$25 million policy is triggered.

On January 11, 2017, the Court entered an agreed Protective Order, filed that day by the parties, which enabled discovery to proceed apace. The deadline for all discovery to be completed in the case is June 9, 2017. This deadline includes discovery of expert witnesses.

Shortly after entry of the Protective Order, the Defendant, on January 20, 2017, filed a Motion for Summary Judgment. Pursuant to Tennessee Civil Procedure Rule 56.07, the Plaintiffs filed a motion to deny the Summary Judgment or, alternatively, to allow the Plaintiffs additional time to complete discovery before responding to Defendant's Motion for Summary Judgment.

It is Plaintiffs' Rule 56.07 Motion which is addressed herein. The clarity and thoroughness of the pleadings and the briefing of both sides on the Rule 56.07 Motion enable the Court to rule on the papers.

It is ORDERED that a ruling on the Plaintiffs' Rule 56.07 Motion is held in abeyance, and the Motion shall be supplemented, as detailed below, to show a plausible

basis for the belief that facts, extrinsic to the contract, exist which support Plaintiffs' construction of the policy or which demonstrate that the contract is ambiguous. The Rule 56.07 Motion shall be heard in conjunction with oral argument on Defendant's Motion for Summary Judgment.

It is further ORDERED that oral argument on Plaintiffs' Rule 56.07 Motion and Defendant's Motion for Summary Judgment shall be conducted on March 17, 2017, at 9:00 a.m. Plaintiffs' opposition, supplemental to its Rule 56.07 Motion, to Defendant's Motion for Summary Judgment shall be filed by March 8, 2017. The content of Plaintiffs' opposition shall provide any opposition to Defendant's textual analysis of the Healthcare policy, and the opposition shall state any factual averments and legal theories of matters extrinsic to the policy which support Plaintiffs' construction of the policy and/or that the policy is ambiguous. If declarations or affidavits cannot be obtained for these averments of facts extrinsic to the contract and/or legal theories, the Plaintiffs shall supplement its Rule 56.07 Affidavit to identify the discovery required to obtain these. Defendant's Reply is due March 13, 2017.

The bases for this ruling are threefold: Tennessee law on the two-step process of contract construction, the allegations of the *Complaint* in this case, and the specificity required by Tennessee Civil Procedure Rule 56.07 to delay summary judgment to obtain discovery.

Tennessee law provides a two-step process for resolving disputes concerning written contracts. The first step is a question of law for the court to determine whether,

from the text of the contract, an ambiguity exists. If the contract is unambiguous, its meaning and legal effect are questions of law for the court. If, however, there is an ambiguity, there exists a question of fact to ascertain the parties' intentions.

Resolving disputes concerning written contracts involves a two-step process. First, as a threshold matter, the court must determine whether the contract is ambiguous. This is a question of law. If the contract is ambiguous, then the finder of fact must ascertain the parties' intentions. If, however, the contract is unambiguous, then construing its meaning and legal effect are questions of the law for the court.

Summary judgments are particularly suited for disposing of purely legal issues. Since the existence of an ambiguity and the construction of an unambiguous contract are legal issues, they are particularly suited for adjudication by summary judgment.

Whether a contract is ambiguous can be determined by applying the following principles. The disputed language should be examined in the context of the entire agreement. Contract language is ambiguous when its meaning is uncertain or when it can be fairly construed in more ways than one.

If a contract's language is clear and unambiguous, the courts will interpret the contract according to its terms without going beyond the four corners of the agreement. Neither strained constructions nor disagreements concerning a contract's meaning are sufficient to create ambiguities in an otherwise unambiguous contract.

*Anderson v. DTB Corp.*, No. 89-172-II, 1990 WL 33380, at \*2-3 (Tenn. Ct. App. Mar. 28, 1990) (citations omitted).

\* \* \*

In determining whether the meaning of a contract is clear or ambiguous, courts apply the following principles. The language in dispute must be examined in the context of the entire agreement. As previously indicated, words must be given their usual and ordinary interpretation. The language of a contract is ambiguous when its meaning is uncertain and when it can be fairly construed in more than one way. "A strained construction may not be placed on the language used to find ambiguity where none exists."

Insurance policies are strictly construed in favor of the insured. If a contract of insurance is ambiguous and susceptible to two reasonable meanings, “the one favorable to the insured must be adopted.”

*Gredig v. Tennessee Farmers Mut. Ins. Co.*, 891 S.W.2d 909, 912 (Tenn. Ct. App. 1994)

(citations omitted).

\* \* \*

A court’s initial task in construing a contract is to determine whether the language of the contract is ambiguous. *Planters Gin Co. v. Federal Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 890 (Tenn. 2002). Summary judgment is appropriate in contract cases where the terms of the contract are not ambiguous making the issue a pure question of law. *Id.* If the terms of the contract are ambiguous, then the court applies established rules of construction to determine the parties’ intent. *Id.* “Only if ambiguity remains after the court applies the pertinent rules of construction does [the legal meaning of the contract] become a question of fact such that summary judgment is not proper.”

*Martin v. Doughtie*, No. M200900701COAR3CV, 2010 WL 22815, at \*4 (Tenn. Ct. App. Jan. 4, 2010)

With this context of Tennessee law, the Court reviewed the *Complaint*. The contract dispute detailed in the *Complaint* is textual analysis of the policy terms and provisions. While there are factual allegations in paragraphs 25 through 38 concerning the underlying claims and providing context on the claims to be batched, there are no averments of facts extrinsic to the policy text, such as trade usage, industry practice or that the dollar quantification of the result of Defendant’s construction of the contract renders the contract illusory, in support of Plaintiffs’ construction of the contract or to demonstrate the existence of an ambiguity. Only paragraph 24 of the *Complaint* refers, in general, to extrinsic facts of the “policyholders’ reasonable expectations” as support for

the Plaintiffs' textual analysis of the policy. No factual averments, however, of representations made to the Plaintiffs or requests made by the Plaintiffs regarding specific coverage are pled. The factual averments and legal theories of the *Complaint* assert textual analysis of the policy as the basis for the Plaintiffs' contract construction.

It is these averments and legal theory of textual analysis which are addressed and challenged in Defendant's Motion for Summary Judgment. The contextual facts of the underlying claims asserted in paragraphs 25-38 of the *Complaint* are not disputed. Based solely upon the policy text and its construction, the Defendant seeks summary judgment. Defendant's Motion for Summary Judgment fits the two-step process for resolving disputes concerning written contracts provided in Tennessee law and quoted above of presenting the threshold legal question for the Court to decide on whether an ambiguity exists.

In opposition the Plaintiffs have invoked Tennessee Civil Procedure Rule 56.07 to delay responding to and conducting a hearing on Defendant's Motion for Summary Judgment.

Rule 56.07 provides the following:

Should it appear from the affidavits of a party opposing the motion that such party cannot for reasons stated present by affidavit facts essential to justify the opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

The Court concludes that the role of Tennessee Civil Procedure Rule 56.07 in this case is that it works in tandem with the two-step process of Tennessee law on resolving written contract disputes. Rule 56.07 is not inconsistent with or contrary to that process.

Applying the provisions of Rule 56.07 and analyzing those provisions alongside the two-step process for resolving written contract disputes, the Court concludes that application of Rule 56.07 to this case requires the party seeking discovery to state specifically the legal theory and facts it cannot obtain by affidavit or declaration and on which discovery is necessitated. As articulated by the following federal court cases:

To satisfy Rule 56(f), a party must “articulate a plausible basis for the belief that discoverable materials exist which would raise a trialworthy issue.” *Price v. General Motors Corp.*, 931 F.2d 162, 164 (1st Cir.1991). The district court's denial of a Rule 56(f) motion is reviewable only for abuse of discretion. *Id.* We note that “a court may grant summary judgment despite an opposing party’s claim that discovery would yield additional facts where the opposing party has not alleged specific facts that could be developed through such discovery.” *Taylor v. Gallagher*, 737 F.2d 134, 137 (1st Cir. 1984).

*Bank One Texas, N.A. v. A.J. Warehouse, Inc.*, 968 F.2d 94, 100 (1st Cir. 1992)

\* \* \*

“Rule 56(f) is premised on the reality that completion of needed discovery may aid the court in its determination of whether there is a genuine issue of material fact. This is not the situation here. Since the contract between Riley and Federal was unambiguous, there was no factual issue. Therefore, there is no need to conduct additional discovery to reach this conclusion.”

*Trotter v. Fed. Ins. Co.*, 865 So. 2d 411, 417 (Miss. Ct. App. 2004)

As noted above, no legal theory or factual averments, besides textual analysis, are provided in the *Complaint*. Turning, then, to the Plaintiffs’ Memorandum and Affidavit filed in support of the Plaintiffs’ Rule 56.07 Motion, they explain in general terms the need for discovery:

Because the parties have not completed discovery, including concerning ambiguities in the insurance policy, the source of the key terms in dispute, the sale and interpretation of the policy by the Defendant, the understanding

of the key terms in the insurance industry, and the claims made against the Plaintiffs, Defendant's Motion for Summary Judgment is premature. Facts and expert opinion evidence on these points, including depositions of Defendant's representatives, are necessary to a full and fair adjudication of the Summary Judgment Motion. Extensive additional discovery is needed, as made plan by the parties' Joint Motion to amend the litigation plan, which the Court has now granted.

Although Defendant's summary judgment motion purports to set forth an issue of contract interpretation, the insurance policy cannot be interpreted in a vacuum. A full and fair interpretation of the insurance policy at issue, and application of its ambiguous terms to the facts at issue, as described in Plaintiffs' Complaint, requires sufficient time for fact and expert discovery, including to identify ambiguities and inconsistencies in the parties' mutual understandings and to clarify the insurance company's interpretation and application of the policy wording to the developed facts. Interpretation of the policy terms further requires full discovery regarding the underlying claims and allegations to which the policy wording is being applied.

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As further discovery will demonstrate, that historic statement of the purpose of insurance as recognized by Tennessee law will ultimately be applied to this dispute in which Steadfast asserts a strained policy interpretation contrary to industry practice that results in illusory or near-worthless coverage.

Extrinsic evidence and expert evidence will, among other things, aid the Court in recognizing and resolving the ambiguities discussed in Plaintiffs' Complaint so that they are applied in a sensible way to the underlying facts that continue to develop.

*Memorandum Of Plaintiffs In Support Of Motion Pursuant To Rule 56.07 Of The Tennessee Rules Of Civil Procedure*, pp. 4-5 (Jan. 27, 2017).

\* \* \*

5. Specifically, the Plaintiffs need additional formal and informal discovery in order to provide evidence of the actual parties' negotiations and true understandings of the policy wording and interpretative issues raised for determination in Defendant's Motion For Summary Judgment, as well as the basis for, status and resolution of the underlying lawsuits and claims,



and the manner in which Defendant has handled and continues to handle these matters. The Plaintiffs will also need time for fact discovery and to develop additional expert opinions as to these interpretative issues, the manner the insurance policy was sold, and the manner the insurance company has itself understood its policy wording previously and handled this claim specifically.

*Affidavit of John N. Ellison*, p. 2, ¶ 5 (Jan. 27, 2017).

The Rule 56.07 Affidavit in this case does not provide specificity or, as quoted from the federal court cases, the Rule 56.07 Affidavit does not articulate a “plausible basis for the belief that” discoverable facts, extrinsic to the contract, exist which support Plaintiffs’ contract construction or demonstrate that an ambiguity exists. For example, the Affidavit does not state any representations allegedly made to the Plaintiffs which inform paragraph 24 of the *Complaint* concerning their reasonable expectations and/or the Affidavit does not state, for example, the needs the Plaintiffs communicated to the agent in securing the policy that informed their understanding of the policy terms. Another kind of plausible basis would be facts of trade usage, for example, other lawsuits or coverage the Plaintiffs have experienced consistent with their construction of the policy or which show an ambiguity in the policy. Averments of these are not provided in the Affidavit. Other plausible possible alternatives are an opinion of an industry expert consistent with the Plaintiffs’ construction of the policy or that the policy is ambiguous; or a mathematical calculation of dollar amounts that the self-insured retention asserted by the Defendant renders the policy illusory. As the record now stands, however, there are no factual averments or legal theories provided in the *Complaint* or Rule 56.07 Affidavit articulating that there are plausible extrinsic facts which either support the Plaintiffs’

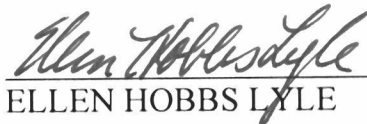
construction of the contract or render it ambiguous. No plausible extrinsic facts have been pled in the *Complaint* or articulated in the Affidavit to show why the Tennessee two-step process for contract construction in this case should not proceed with step one on summary judgment to determine if an ambiguity exists.

Based upon this analysis of the interplay between Rule 56.07 and the Tennessee law two-step process of contract construction as applied to this case, the Court concluded and ordered above that the appropriate way to proceed is to set deadlines for Plaintiffs' opposition, supplemental to its Rule 56.07 Motion, to be filed to Defendant's Motion for Summary Judgment; and deadlines for Defendant's reply in support of Summary Judgment. Oral argument on Defendant's Motion for Summary Judgment is scheduled in conjunction with oral argument on the Rule 56.07 motion. The content of Plaintiffs' opposition shall provide any opposition to Defendant's textual analysis, and the opposition shall articulate specific plausible matters extrinsic to the policy which support Plaintiffs' construction of the policy and/or claim that the policy is ambiguous. If declarations or affidavits cannot be obtained for these extrinsic matters, the Plaintiffs shall supplement its Rule 56.07 Affidavit to identify the discovery required to obtain these.

The foregoing procedure, in addition to implementing the Tennessee two-step contract construction process, will also inform any subsequent discovery disputes should summary judgment be denied. Articulating specific plausible matters extrinsic to the policy will inform discovery disputes on the scope of "calculated to lead to the discovery of admissible evidence." In keeping with the purpose of Tennessee Civil Procedure Rule

56 to eliminate or narrow claims, Rule 56.07's requirement of specification of legal theories and facts which cannot be obtained by an affidavit precludes "fishing expedition" discovery and targets precise discovery needed.

Lastly, as for the discovery disputes and asserted delays described in Plaintiffs' Reply In Support of Its Rule 56.07 Motion, resolution of those can be processed through Plaintiffs filing a motion to compel. Those asserted disputes and delays, however, do not provide a basis for denying the Defendant's Motion for Summary Judgment or holding it in abeyance until completion of discovery. Fulsome discovery is not needed for the Plaintiffs to supplement their Rule 56.07 Motion to provide factual averments and legal theories to articulate a plausible basis for their belief that discoverable facts, extrinsic to the contract, exist which demonstrate contract construction in their favor or that the contract is ambiguous; and to specify the discovery needed to obtain these extrinsic facts.



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ELLEN HOBBS LYLE  
CHANCELLOR  
TENNESSEE BUSINESS COURT  
PILOT PROJECT

cc: John N. Ellison  
Luke E. Debevec  
W. Brantley Phillips, Jr.  
Byron R. Trauger  
Paul W. Ambrosius  
Maureen Mulligan  
Catherine Scott

 **MAILED** *flaxed*  
2/9/17