

McCabe, Lois M. Hobbs, and Earl J. Savage (all collectively the “Indian River Defendants”) are entitled to a defense and/or indemnification under policy CPP 2054275 issued by Graphic Arts to Indian River with respect to an underlying lawsuit.

PARTIES

2. Plaintiff Graphic Arts a corporation organized under the laws of New York with its principal place of business at 180 Genesee Street, New Hartford, New York.

3. Defendant Indian River School District (“Indian River”) is a public school district in Sussex County, Delaware.

4. On information and belief, Defendant Indian River School Board (“School Board”) is a ten-member duly elected body that governs the Indian River school system.

5. On information and belief Defendants Harvey L. Walls, Mark A. Isaacs, John M. Evans, Richard H. Cohee, Gregory A. Hastings, Nina Lou Bunting, Charles M. Bireley, Donald G. Hattier, Reginald L. Helms and M. Elaine McCabe are members of the School Board, and are named Defendants in their capacity as such (hereinafter “School Board Members”). Each is a resident of the State of Delaware.

6. On information and belief, Defendant Lois M. Hobbs is the Superintendent of the District (“Superintendent”) and is a resident of the State of Delaware and is named Defendant in her capacity as such.

7. On information and belief Defendant Earl J. Savage is the Assistant Superintendent of the District (“Assistant Superintendent”) and is a resident of the State of Delaware and is named Defendant in his capacity as such.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332. The parties are of diverse citizenship, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. This Court has personal jurisdiction over the Defendant District because it is domiciled in the State of Delaware.

10. This Court has personal jurisdiction over the Defendant School Board because it is domiciled in the State of Delaware.

11. This Court has personal jurisdiction over Defendants Harvey L. Walls, Mark A. Isaacs, John M. Evans, Richard H. Cohee, Gregory A. Hastings, Nina Lou Bunting, Charles M. Bireley, Donald G. Hattier, Reginald L. Helms, M. Elaine McCabe, Lois M. Hobbs, and Earl J. Savage, because they are residents of the State of Delaware and have acted and are continuing to act in an official capacity on behalf of Indian River and/or the School Board in Sussex County Delaware.

12. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391 (a) because a material part of the acts or omissions at issue took place here.

THE INSURANCE CONTRACT

13. Graphic Arts issued insurance contract CPP 2054275 to Named Insured "Indian River School District", with an effective date from August 1, 2004 to August 1, 2005 (the "Insurance Contract") (Exhibit A).

14. Subject to all of its terms and conditions, the Insurance Contract provided certain School District and Educators Legal Liability Coverage (“SDELL coverage”) and Commercial General Liability Coverage (“GL coverage”).

15. In addition to the Named Insured, Indian River, the Insurance Contract extended insured status to each of the School Board Members, the Superintendent, and the Assistant Superintendent, but only to the extent acting in their respective capacities as such.

16. In part, the SDELL coverage “Insuring Agreement” provided that Graphic Arts “will pay for all ‘loss’ resulting from a ‘claim’ for a ‘wrongful act’ to which this insurance applies. We will have the right and duty to defend an ‘insured’ against any ‘suit’ seeking such ‘loss’”

17. However, the SDELL coverage expressly provided that Graphic Arts, “[a]t our discretion, . . . may investigate any allegation of a ‘wrongful act’ and settle any ‘claim’ or ‘suit’ that may result.”

18. Moreover, as a condition precedent to the possibility of any insurance under the SDELL coverage, Indian River “must see to it that we are notified as soon as practicable of any ‘wrongful act’ which may result in a ‘claim’” and if “a ‘claim’ is received by an insured, [Indian River] must . . . [n]otify us as soon as practicable.”

19. As a further condition precedent to the possibility of any SDELL coverage, Indian River “and any other involved insured must [c]ooperate with us in the investigation or settlement of the ‘claim’ or defense against any ‘suit’” and “[n]o insured will, except at that insured’s own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.”

20. The SDELL coverage also provided that “[l]oss’ shall not include . . . [f]ines or penalties imposed by law” or “[i]njunctive relief, including costs to comply with injunctive orders or judgments” or “[o]perating costs of your institution”

21. In part, the GL coverage A “Insuring Agreement” provided that Graphic Arts “will pay those sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ . . . to which this insurance applies. We will have the right and duty to defend any ‘suit’ seeking those damages.”

22. In part, the GL coverage B “Insuring Agreement” provided that Graphic Arts “will pay those sums that the insured becomes legally obligated to pay as damages because of ‘personal injury’ to which this insurance applies. We will have the right and duty to defend any ‘suit’ seeking those damages.”

23. However, the GL coverage expressly provided that Graphics Arts “may at our discretion investigate any ‘occurrence’ and settle any claim or ‘suit’ that may result” for purposes of coverage A and “may at our discretion investigate any ‘occurrence’ or offense and settle any claim or ‘suit’ that may result” for purposes of coverage B.

24. Moreover, as a condition precedent to the possibility of any GL coverage, Indian River also was required to “see to it that [Graphics Arts is] notified as soon as practicable of an ‘occurrence’ or an offense which may result in a claim” and when “a claim is made or ‘suit’ is brought” Indian River must “[n]otify us as soon as practicable.”

25. As a further condition precedent to the possibility of any GL coverage, Indian River and any other involved insured must “[c]ooperate with [Graphic Arts] in the investigation, settlement or defense of the claim or ‘suit’” and [n]o insured will, except at that insured’s

own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.”

THE DOBRICH LAWSUIT

26. On or about February 23, 2005, the Indian River Defendants were sued through an action styled *Dobrich v. Walls*, No. 05-120 (JJF) (D. Del., filed Feb. 23, 2005).

27. Graphic Arts provided a defense for the Indian River Defendants to the *Dobrich* lawsuit based on the terms and conditions of the Insurance Contract subject to a complete reservation of rights.

28. However, the Indian River Defendants have violated material terms and conditions of the Insurance Contract, including by violating their obligation to cooperate with Graphic Arts in relation to confidential settlement negotiations, by preventing Graphic Arts from using its contractual right to settle in its discretion, by voluntarily assuming additional obligations and incurring expenses without the consent of Graphic Arts that otherwise could and would be avoided, and by failing and refusing to communicate properly with Graphic Arts.

29. As a result of these material breaches of contract, Graphic Arts has no obligation to provide any defense and/or indemnification to the Indian River Defendants, and Graphic Arts is legally entitled to withdraw from any defense, payment, or other obligation with respect to the *Dobrich* lawsuit.

30. However, the Indian River Defendants dispute that Graphic Arts is entitled to withdraw from the defense of the *Dobrich* lawsuit, and claim that Graphic Arts still has a defense and indemnification obligation to the Indian River Defendants for the *Dobrich* lawsuit.

COUNT I: DECLARATORY JUDGMENT

31. Graphic Arts incorporates all the allegations set forth in Paragraphs 1-30 above as if fully set forth and restated here.

32. This is a claim for declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202. Graphic Arts seeks a judicial determination of the respective rights and obligations of Graphic Arts and the Indian River Defendants with respect to an actual controversy arising in relation to the terms of the Insurance Contract and the defense and indemnification of the *Dobrich* lawsuit.

33. Graphic Arts seeks a declaration that the Indian River Defendants have materially breached the terms and conditions of the Insurance Contract, including by violating their obligation to cooperate with Graphic Arts in relation to confidential settlement negotiations, by preventing Graphic Arts from using its contractual right to settle in its discretion, by voluntarily assuming additional obligations and incurring expenses without the consent of Graphic Arts that otherwise could and would be avoided, and by failing and refusing to communicate properly with Graphic Arts.

34. Graphic Arts therefore seeks a declaration that it has no obligation to defend or indemnify any of the Indian River Defendants with respect to the *Dobrich* lawsuit.

35. The issuance of declaratory relief by this Court will terminate this controversy between the parties.

36. The controversy is of sufficient immediacy to justify the issuance of declaratory relief by this Court.

COUNT II: RESTITUTION

37. Graphic Arts incorporates all the allegations set forth in Paragraphs 1-36 above as if fully set forth and restated here.

38. The Indian River Defendants demand that they continue to receive the benefit of a defense of the *Dobrich* lawsuit at the expense of Graphic Arts notwithstanding that the terms and conditions of the Insurance Contract have been breached.

39. The retention of such a benefit by the Indian River Defendants, notwithstanding their violation of the terms and conditions of the Insurance Contract, would unjustly benefit the Indian River Defendants to the loss and detriment of Graphic Arts in violation of fundamental principles of justice, equity, and good conscience.

40. Graphic Arts therefore is entitled to restitution for all such sums from the Indian River Defendants from the date of the breach of the Insurance Contract.

COUNT III: QUANTUM MERUIT

41. Graphic Arts incorporates all the allegations set forth in Paragraphs 1-40 above as if fully set forth and restated here.

42. The Indian River Defendants seek to continue to receive the benefit of a defense of the *Dobrich* lawsuit at the expense of Graphic Arts notwithstanding that the terms and conditions of the Insurance Contract have been breached.

43. The Indian River Defendants knew and know that the Insurance Contract imposes conditions precedent to any right to receive this valuable benefit, and that Graphic Arts understood and expected that these conditions would be honored as consideration for the payment of this benefit.

44. The retention of such a benefit by the Indian River Defendants, notwithstanding their violation of the terms and conditions of the Insurance Contract, would unjustly benefit the Indian River Defendants to the loss and detriment of Graphic Arts in violation of fundamental principles of justice, equity, and good conscience.

45. Graphic Arts therefore is entitled to a quantum meruit recovery for all such sums from the Indian River Defendants from the date of the breach of the Insurance Contract.

WHEREFORE, Graphic Arts requests that the Court enter a judgment:

A. Declaring that the Indian River Defendants have breached the terms and conditions of the Insurance Contract.

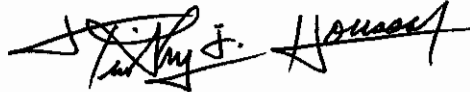
B. Declaring that Graphic Arts has no obligation to defend or indemnify the Indian River Defendants with respect to the *Dobrich* lawsuit.

C. Declaring that Graphic Arts is entitled to restitution, and awarding the monetary recovery in favor of Graphic Arts accordingly from the date of the breach of the Insurance Contract.

D. Declaring that Graphic Arts is entitled to a quantum meruit recovery, and awarding the monetary recovery in favor of Graphic Arts accordingly from the date of the breach of the Insurance Contract.

E. Awarding Graphic Arts such other and further relief the Court deems just and proper.

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