SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SUZANNE J. ADAMS** **PART** **39TR**

Justice

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INDEX NO. 652825/2023

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Co. of North America and as successor to Indemnity Insurance Company of North America et al

MOTION DATE N/A

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION + ORDER ON MOTION

The Archdiocese of New York et al

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is ordered that the motion of defendants Archdiocese of New York ("ADNY") and the additional defendants that are associated parishes, schools, and other associated entities ("Associated Policyholders")[1] is granted. The ADNY, established as a Roman Catholic diocese in 1808, was incorporated in 1981 under the New York Religious Corporations Law. The Associated Policyholders are Catholic parishes, schools, social service agencies, and childcare agencies that operate within the ADNY but are independent from it, and are incorporated separately pursuant to the applicable provisions of New York State law. For many decades the ADNY has coordinated purchasing insurance for itself and the Associated Policyholders through

[1] The Associated Policyholders are all defendants besides ADNY except: Our Lady of Mount Carmel Society of Middleton N.Y. Inc., Church of St. Ignatius Loyola, St. Francis Xavier Church, and Province of St. Mary of the Capuchin Order.

a consolidated insurance program. Plaintiff herein is comprised of Chubb-affiliated insurance companies ("Chubb Insurers") who issued over 30 primary and excess general liability policies to the ADNY and the Associated Policyholders between 1956 and 2003.

In early 2019, New York State enacted the Child Victims Act ("CVA") which allows individuals to bring civil actions arising out of alleged childhood sexual abuse until their 55th birthday. The statute also opened a "revival window" during which time claimants, regardless of age, could bring civil actions that would otherwise have been time-barred. The window period ran from August 14, 2019, through August 14, 2021. The ADNY and the Associated Policyholders are currently defending approximately 1,500 CVA actions alleging childhood sexual abuse, dating as far back as the 1930s, by various individuals including ADNY clergy and religious, clergy from religious orders and other dioceses, and lay people such as foster families, childcare staff, parish volunteers, and teachers and other school staff. (Moving affidavit of Frank Napolitano, ¶¶ 9-11) About 86% of these CVA actions implicate primary and excess policies purchased from the Chubb Insurers. (Napolitano Aff., ¶ 9) The ADNY tendered these actions to the Chubb Insurers; in response to an early CVA action, the Chubb Insurers denied coverage. (*See* Moving affirmation of James R. Murray, Esq., ¶ 13; Ex. 8) In June 2019, the ADNY brought action against the Chubb Insurers (and other insurers), alleging, *inter alia*, breach of contract and bad faith. The action was voluntarily discontinued in October 2019 by stipulation of all parties, and the Chubb Insurers agreed to defend the ADNY and the Associated Policyholders under a full reservation of rights "to deny coverage for any claim arising out of an injury that was not caused by an accident or occurrence or that was expected or intended." (Murray Aff., ¶¶ 6, 14; Ex. 1 [Complaint], ¶¶ 551-52; Ex. 9)

Thereafter, in June 2023, the Chubb Insurers commenced the instant action, setting forth three causes of action. The First Cause of Action seeks a declaratory judgment pursuant to CPLR 3001 that the Chubb Insurers have no indemnity obligation to the ADNY and/or the Associated Policyholders for the underlying CVA claims that have been tendered or may be tendered in the future; the Second Cause of Action seeks a declaratory judgment that the Chubb Insurers have no indemnity obligations in connection with any underlying claims that are settlement claims made through the ADNY's Independent Reconciliation and Compensation Program ("IRCP"); and the Third Cause of Action seeks a declaratory judgment that, to the extent the Chubb Insures have no indemnification obligations regarding the aforesaid claims, they also have no defense obligations. ADNY and the Associated Policyholders now move pursuant to CPLR 3211(a)(1), (2), and (7) to dismiss the action, or alternatively pursuant to CPLR § 2201, to stay the action. The Chubb Insurers oppose the motion. (The court notes that the movants state in their papers that they withdrew their tender of IRCP claims in September 2019, and the Chubb Insurers' opposing papers agree to the dismissal of the Second Cause of Action, without prejudice, to the extant the movants do not, and will not, seek coverage for IRCP claims.) The motion was orally argued before this court on November 27, 2023.

Although the movants have advanced more than one theory for dismissal of this action, as a threshold matter the failure to state a claim is dispositive. "On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see,* CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). Under CPLR 3211(a)(7), the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one. *Leon*, 84 N.Y.2d

at 88 (citing *Guggenheimer v. Ginzburg,* 43 N.Y.2d 268, 275 (1977)). Here, the Chubb Insurers simply do not have a cause of action. The plain language of the insurance policies at issue covers bodily injury and negligence as alleged in the underlying CVA actions against the movants, and the Complaint sets forth no facts that would support a declaratory judgment that the Chubb Insurers have no obligation to indemnify, and consequently no obligation to defend, "each of the 2,770 CVA-related lawsuits [they] are defending in which the ADNY has or may have liability." (Complaint, ¶¶ 558, 565)

The Chubb Insurers do not recite the specific policy language of any particular policy issued to the ADNY or the Associated Policyholders in the course of almost 50 years. However, the movants annex to the moving papers excerpts from a comprehensive general liability insurance policy issued to the ADNY by Insurance Company of North America for the policy period January 1, 1974, to May 15, 1975, which provides in pertinent part that:

> "The Company [*i.e.*, insurer] will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of A. bodily injury . . . to which this insurance applies, caused by an occurrence and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury . . ., even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient . . ."

(Murray Aff., Ex. 6) The Chubb Insurers do not dispute that this policy language is typical of the policies it has issued to the ADNY and Associated Policyholders.

The Chubb Insurers also do not set forth the allegations of any particular underlying CVA claim or lawsuit. The Complaint only makes the general allegations that the CVA lawsuits allege "bodily injury" (Complaint ¶ 538) and "different legal theories, including intentional torts, strict liability, and negligence" (Complaint ¶ 547). The movants describe the claims against them as

premised upon negligence, *i.e.*, general negligence and negligent hiring, supervision, and retention. (Napolitano Aff., ¶ 12) The movants also assert that other than the actions that have been discontinued, dismissed, or settled, the underlying CVA actions against them remain pending; approximately 99% of them are still in the discovery phase, none of them have resulted in a jury verdict, and there has been no determination in any of the pending cases as to the ADNY's knowledge of the sexual abuse alleged therein. (Napolitano Aff., ¶ 13) The Chubb Insurers do not dispute any of these assertions by the movants.

In view of the plain language of the insurance policies quoted above, it is obvious that these policies cover the underlying CVA claims, since such claims allege, *inter alia*, negligence against the ADNY and the Associated Policyholders. The Chubb Insurers' counsel stated at oral argument that it is not disputed that "sex abuse" is "bodily injury." At the very least, the Chubb Insurers are obligated to defend the ADNY and the Associated Policyholders in the CVA actions, pursuant to the policies issued, and indeed the Chubb Insurers have been defending these CVA claims under a reservation of rights. (Complaint, ¶ 550) Yet now, the Chubb Insurers are seeking a declaratory judgment that they have no obligation to indemnify, and thus defend, the CVA claims. The rationale the Chubb Insurers provide for seeking this relief is their contention that – notwithstanding the underlying lawsuits' allegations of "negligence" – the CVA claims arise out of circumstances that are not "accidents" but rather some type of known or intentional "occurrences" that place them outside the policies' coverage. However, the Complaint does not specify any underlying CVA lawsuits that allege acts by the ADNY and the Associated Policyholders that fall entirely outside the policies (*i.e*, are solely the result of acts other than negligence). Instead, the Complaint puts forth only non-specific, common knowledge-type allegations against the Catholic Church: news articles describing investigations of the Church by

various state attorneys general (Complaint, ¶ 543), internal ADNY communication acknowledging diocese mishandling of clergy sex abuse (Complaint, ¶ 544), and the allegation that ADNY officials knew of clergy sex abuse for decades, as "reflected in various sources that have recently become publicly available" (Complaint, ¶ 545). These are "conclusory allegations – bare legal conclusions with no factual specificity – [which] are insufficient to survive a motion to dismiss." *Godfrey v. Spano*, 13, N.Y.3d 358, 373 (2009). The Complaint does not allege facts sufficient to determine *prima facie* that the underlying CVA actions definitively fall outside of the policies' intended coverage. *See International Paper Co. v. Continental Cas. Co.*, 35 N.Y.2d 322, 325 (1974). The Chubb Insurers' reliance on *Consolidated Edison Co. of New York v. Allstate Insurance Co.*, 98 N.Y.2d 208 (2002), to shift the burden to the ADNY and the Associated Policyholders to show at the acts alleged in the CVA lawsuits are covered under the policies is misplaced. In *Consolidated Edison*, a jury had already determined that certain damage property damage occurred but that it was not due to an "accident" or "occurrence" and thus not covered under the policies at issue, although the policies did not contain an exclusion for intentional or expected harm. 98 N.Y.2d at 217-18. Thus, the question of burden of proof vis-à-vis coverage turned on the policies' language. *Id.* at 218. The policies at issue herein are clear with respect to coverage and exclusion.

Apart from its pleading deficiencies, the Complaint appears to operate outside of well-established principles of New York law that the duty to defend is greater than the duty to indemnify. The Court of Appeal's opinion in *International Paper* is particularly instructive on this topic, and worth quoting at length. The plaintiff therein sought to recover legal fees from its insurer, incurred in defending an underlying claim by an employee who alleged she sustained personal injuries by reason of the plaintiff's alleged negligence in, *inter alia*, employing an

individual who was known to be unstable and who molested her. *International Paper*, 35 N.Y.2d at 324. The defendant insurance company had issued a general liability policy to the plaintiff which covered personal injuries, and refused to defend the molestation action based on other policy provisions which excluded injuries to an employee covered under workers' compensation or similar laws. 35 N.Y.2d at 325. In reversing the First Department and reinstating the Civil Court's denial of the defendant's motion to dismiss and granting the plaintiff's cross-motion for summary judgment, the Court of Appeals reasoned as follows:

> It is manifestly clear that the negligence complaint did not allege facts sufficient to find, on its face, that it was subject to these policy exclusions; and, as later to be discussed, if the insurer is to be relieved of a duty to defend it is obligated to demonstrate that the allegations of the complaint cast that pleading solely and entirely within the policy exclusions, and, further, that the allegations, *in toto*, are subject to no other interpretation. As a consequence, even if the complaint fails to articulate adequately an action grounded solely in negligence, the insurer is required to defend. An insured's right to be accorded legal representation is a contractual right and consideration upon which his premium is in part predicated, and this right exists even if debatable theories are alleged in the pleading against the insured.
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> In plain and concise language, and without equivocation, the defendant obligated itself to defend any action brought against the plaintiff insured whenever the complaint alleged a cause of action in negligence covered by the policy, regardless of the ultimate factual determination of the occurrence. ... Even if it be possible, or even probable, from the allegations of the complaint that the employee would not succeed, such could not be determined until the outcome of the negligence action. While policy coverage such as the one here involved is often referred to as "liability insurance" it is clear that it is, in fact, "litigation insurance" as well.
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> An insurer's obligation to furnish its insured with a defense is heavy indeed, and, of course, broader than its duty to pay. The rule to be

> followed is clearly set out in *Goldberg v. Lumber Mut. Cas. Ins. Co. of N. Y.* (297 N. Y. 148, 154) wherein this court wrote: "Indeed, even in cases where the policies do not render the allegations by the injured party controlling, it has been said: 'The distinction between liability and coverage must be kept in mind. So far as concerns the obligation of the insured to defend the question is not whether the injured party can maintain a cause of action against the insured, but whether he can state facts which bring the injury within the coverage. If he states such facts the policy requires the insurer to defend irrespective of the insured's ultimate liability.' (See *Grand Union Co. v. General Accident, Fire & Life Assur. Corp.*, 254 App. Div. 274, 280, affd. 279 N. Y. 638; see, also, *Summer & Co. v. Phoenix Indemnity Co.*, 265 App. Div. 911, affg. 177 Misc. 887; *Floralbell Amusement Corp. v. Standard Surety & Casualty Co.*, 256 App. Div. 221, same case 170 Misc. 1003; 8 Appelman, Insurance Law and Practice [1942], p. 4.)" (See, also, *Lekas Corp. v. Travelers Ins. Co.*, 1 A D 2d 15, 22.) The insurer is cloaked with the burden of proving that the incident and claim thereunder came within the exclusions of the policy (*Prashker v. United States Guar. Co.*, 1 NY2d 584, 592; *Wagman v. American Fid. & Cas. Co.*, 304 N. Y. 490). This burden has not been met and plaintiff must prevail.

35 N.Y.2d at 325-27. This analysis is entirely applicable to the instant action.

Accordingly, it is hereby

ORDERED that that the motion of the ADNY and the Associated Policyholders is granted and the action is dismissed in its entirety as against them.

This constitutes the decision and order of the court.

SA

12/14/2023
DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE