Converting Legacy Insurance Policies to Cash

Issues, Challenges, and Opportunities in Insurance Archaeology

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This article focuses on the challenges for policyholders with long-tail claims who have encountered difficulties in identifying, locating, and proving their predecessor or historic legacy insurance policies, and the defenses that insurers may assert to these kinds of missing policy claims. A typical scenario involving environmental pollution and asbestos premises claims follows.

Background Facts

In 2006, an international motion picture and television conglomerate, Paradox Films Incorporated (PFI), enters into an asset purchase agreement with Bay & Eastern Company (B&E), thereby acquiring B&E's paper, printing, and manufacturing assets and liabilities. B&E is a 115-year-old company with numerous operating subsidiaries in a wide variety of industries, including the forest products/pulp and paper area. The purchase agreement provides that PFI is to acquire full ownership of these operations and subsidiaries, and is to succeed to B&E's rights under its various insurance policies.

B&E operated pulp and paper mills throughout the country on various waterways dating back to the 1890s. It grew to become a multibillion dollar enterprise through a series of corporate acquisitions dating back 60 years. These transactions involved site-specific asset purchases, stock transactions, and mergers, which in turn were reflected in various holding company structures. Not surprisingly, however, B&E's historical operations also exposed the company to a number of historical claims and liabilities.

In 2007, PFI receives a notice letter from the Rhode Island Department of Natural Resources (DNR), asserting that a pulp and paper mill operated by B&E for more than 70 years is leaching a variety of toxic solvents into the Sakonnet River and Mount Hope Bay. The plant—which B&E had shut down in 1981—had previously been owned by a B&E subsidiary, Prudence-Conanicut Bay Limited (PCBL), which operated it as a pulp and paper processing mill for approximately 50 years. During its life span, the facility processed a variety of lumber and paper products, and recycled carbon paper containing PCBs. The waste and runoff from the facility was captured in a black liquor pond and solvent pond on site. Cleaning and other solvents were captured in 55-gallon drums which, over the course of approximately 30 years from 1951 until 1981, leaked, spilled, drained, or were otherwise lost on site.

Phase I and II audits reveal a solvent plume running from the runoff pond into the Sakonnet River. The black liquor pond has likewise leached into the adjacent river. High concentrations of PCBs and other contaminants known to be the byproduct of pulp and paper production have been identified in Mount Hope Bay. The estimated cost of cleanup for the river is $75 million; the estimated cost for PCB removal and dredging of the entire bay is $750 million. PFI promptly tenders the DNR notice letter to its insurance carriers, and requests a defense and indemnification for these potential liabilities.

In 2008, while the insurance carriers are reviewing PFI's environmental claim, PFI receives its first lawsuit alleging asbestos premises exposure. The suit is filed by an employee of a former subcontractor at the PCBL plant, who claims that he routinely serviced the plant boiler. Over the course of the ensuing years, asbestos premises claims multiply dramatically. In 2013, PFI receives its first asbestos spousal claim. That same year, it receives its first lawsuit claiming "household exposure" to asbestos, filed by one of the children of the subcontractor's employee, who now suffers from mesothelioma, allegedly from exposure to asbestos fibers in his father's work clothing.

Negotiations take place between PFI and its insurance carriers as to coverage for these exposures. The negotiations fail. In early 2014, one of PFI's carriers, Resolved Insurance Company (Resolved) files a preemptive declaratory judgment action in Pennsylvania. The Resolved suit seeks a declaration of no coverage, citing the terms of the Resolved policies and a variety

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Coverage under legacy policies can be established by extrinsic evidence located by insurance archaeologists, possibly shifting the burden to the insurance company to prove that coverage does not exist.

of exclusions, and contends that certain missing policies alleged by PFI must be proven by "clear and convincing evidence."

The next day, PFI files a breach of contract and declaratory judgment action against Resolved and various other carriers in New Jersey. The suit seeks damages for Resolved's alleged breach of contract, and a declaration that coverage exists for PFI's environmental and asbestos premises claims under numerous policies—including those issued by Resolved. The suit asserts that proof of any missing policies should be by a "preponderance of the evidence."

Before any substantial discovery takes place, the parties file cross-motions to dismiss in the Pennsylvania and New Jersey actions. While those motions are pending, the parties agree to binding arbitration to resolve all coverage issues, including which state's laws would apply to the dispute. The parties then agree to stay both civil actions until such time as the arbitration panel resolves the coverage issues.

The Missing Policy Issue

B&E and its historic predecessor companies claim to have purchased commercial general liability (CGL) coverage (formerly known as "comprehensive" general liability coverage) from the early 1900s through the present. However, B&E admits that any CGL policies issued after 1986 include absolute asbestos and absolute pollution exclusions. Therefore, B&E admits, the only policies that are available to respond to asbestos or environmental claims are those issued prior to 1986.

As to these earlier (pre-1986) policies, B&E management states that it acquired many of the policies in the London market through its insurance broker, Swampp & Company. Swampp was an international insurance broker with substantial operations in the United States and London. Unfortunately, because of an aggressive record retention policy, B&E has automatically discarded or destroyed most insurance policies older than 20 years. B&E's record retention program was not revised until 1996, and thus, B&E claims, most policies before 1976 are unavailable. Nonetheless, PCBL's long-time risk manager, Karen Sheddoutbach, claims to have a vivid recollection of PCBL insurance policies dating back to the 1940s, when she first became risk manager at the plant.

Sheddoutbach also points B&E to some other potentially useful facts. Over the course of many decades, she says, PCBL has been involved in various nonenvironmental/asbestos tort litigation, which it reported to its CGL carriers. At the national level, Sheddoutbach says, B&E generally used one law firm, Dewey, Cheatham & Moore, as corporate and litigation counsel. In addition, Sheddoutbach notes, the United States Internal Revenue Service (IRS) conducted a top-to-bottom audit of B&E in 1986 in retaliation for B&E's significant financial support of the Democratic Party. Finally, Sheddoutbach notes, one of B&E's non-PCBL subsidiaries was an energy plant design-build company, which specialized in building alternative fuel production plants on contract from the U.S. government. B&E constructed these plants beginning in 1970 through 1984 when all construction was terminated due to repeated plant failures, explosions, pollution, and consumer lawsuits. Sheddoutbach believes that numerous certificates of insurance may have been provided to the U.S. government in accordance with the construction contracts.

Analysis

The first step an insured must take in a missing policy situation is to make a reasonable and diligent effort to locate the missing policies.[1] In addition, to comply with Federal Rule of Evidence 1004, Admissibility of Other Evidence of Content, the insured must show that the original policy was not lost or destroyed due to its own bad faith. These inquiries represent "[p]reliminary questions concerning . . . the admissibility of evidence," which are resolved by the court, not the trier of fact.[2] As with most evidentiary determinations, the court's rulings on these issues are reviewable only for abuse of discretion.[3]

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Even absent fault or bad faith, it remains the policyholder's burden to prove the existence of missing policies and the key terms of coverage.

If the court concludes that the insured has cleared these initial hurdles, the insured can then offer secondary evidence to prove the existence and the relevant terms of coverage of the missing policy. Once the policyholder has proven the policy's existence and relevant coverage terms, the burden then shifts to the insurer to show the existence and terms of any applicable exclusions.

Courts differ as to the standard of proof an insured will face in offering secondary evidence. The majority of states, including New Jersey, apply a "preponderance of the evidence" standard, under which the insured must show that the existence, terms, and conditions of the policy are "more likely than not" what the insured claims.[4] However, some jurisdictions, including Pennsylvania, apply a more stringent "clear and convincing evidence" standard, due in part to the possibility of false claims and fraud.[5] Given this division, choice of law may be crucial to the burden an insured—like B&E—will face on missing policy issues. The law of the forum state—either New Jersey or Pennsylvania—will apply to this threshold choice of law issue.[6]

To the extent that B&E's missing policies are located, or their terms can be adequately reconstructed by other means, the parties may need to address a number of further issues. In the context of the Rhode Island pollution claims, these issues may include:

1. Whether B&E gave timely notice of the circumstances leading to the claim;
2. Whether the environmental cleanup costs identified by the Rhode Island DNR constitute "damages," and whether the DNR notice is sufficient to trigger coverage under those policies;
3. Whether the pollution at the Rhode Island plant constitutes a covered "accident" or "occurrence" within the meaning of policies using these terms;
4. To the extent that the pollution is deemed to be a covered "accident" or "occurrence," how many such "accidents" or "occurrences" have taken place, and which policies are potentially triggered by these claims;
5. Whether coverage, if any, may be excluded under one or more clauses of the potentially triggered policies;
6. Whether the policies contained provisions barring assignment without consent, and, if so, whether these provisions prevent PFI from suing on the policies issued to B&E;
7. Whether self-insured retentions or deductibles apply;
8. Whether the limits of any multiyear policies can be annualized;
9. Whether defense costs erode the limits of these policies; and
10. How coverage should be allocated among B&E's various insurers, and whether any portion of this coverage should be allocated to B&E itself.

In the context of the B&E asbestos claims, similar issues will apply, although these claims may be further complicated by the question of whether the claimants' bodily injury (i.e., mesothelioma) arose within the policy period, and further whether B&E's covered claims, if any, are subject to aggregate limits. To the extent that there are excess carriers, whose policies attach upon exhaustion of the B&E policies' primary limits, these carriers may also have an interest in these issues and may wish to participate in these discussions.

Recent Cases

The fact pattern above is not unusual. Over the years, a number of courts have confronted "missing policy" issues in the context of long-tail claims like the ones above. Where older policies are at issue, these courts have generally been liberal in accepting policyholders' representations that the original policy is missing through no fault or bad faith on the policyholder's part.[7]

Even if a court does accept the policyholder's representation that the policies in question have been lost or destroyed through no fault or bad faith on the policyholder's part, it remains the policyholder's burden to prove—through admissible secondary evidence—the existence of the missing policies and the key terms of coverage.[8] Courts evaluate case by case whether the policyholder has met this burden, considering the specific evidence the policyholder has introduced, and whether that evidence has been sufficiently authenticated, against the standards of proof that apply in a particular jurisdiction.

Thus, for example, in *Neles-Jamesbury, Inc. v. Liberty Mutual Insurance Co.*, the Massachusetts Superior Court granted St. Paul Fire and Marine Insurance Company's motion for summary judgment in a lost policy case involving asbestos bodily injury claims.[9] At issue was whether the plaintiff had satisfied its burden of proof to show the existence and terms of four missing St. Paul policies. Applying the

preponderance of the evidence standard, the court noted that the existence and terms of a missing insurance policy may be reconstructed by secondary evidence, including: witness testimony, business records, underwriters' folios, billings from the insurance company, correspondence referring to the lost policy, financial statements, annual reports, meeting minutes, ledgers, certificates of insurance, placing slips, and contracts that refer to insurance. However, the court found that the secondary evidence introduced by the insured fell short of establishing the existence and terms of four missing policies in that case.

The finding in *Southern Union* is in tension with cases such as *Kleenit, Inc.*, which hold that more proof is required to show the terms of a missing policy than that the insurer used standard forms.

The plaintiff in *Neles-Jamesbury* tried to prove the existence and terms of these policies by pointing to a schedule of insurance, a loan agreement, insurance policies with other carriers, and a loss run sheet referring to various policy numbers. It also pointed to the absence of any default notice in its records, and offered several affidavits in conjunction with those documents. The court found that the schedule of insurance was hearsay, and was not properly authenticated so as to meet the "business record" or "ancient document" exceptions to the hearsay rule.[10] Specifically, the court found no evidence of who created the schedule, no evidence of reliance on the document by either party, and no evidence of where the schedule had been located and whether it was "in a place where, if authentic [it] would likely be."[11] As to the other policies issued to the plaintiff, the court noted the absence of any evidence about the plaintiff's insurance negotiating practice or standard terms, and found these other policies insufficient "without any evidence tying the terms of the policies to the terms of the policies St. Paul allegedly wrote."[12] As to the lack of default notice in the plaintiff's records, the court found that such an absence does not qualify within the hearsay exception for "absence of an entry."[13] Finally, the court reviewed the loss run report that identified three policy numbers. Although the court noted that evidence of claims paid under a policy could be evidence of the existence of a missing policy, it found no evidence that the policy numbers were policies actually issued to the plaintiff. For all of these reasons, the court found no genuine issue of material fact as to the existence or terms of the alleged missing policies, and granted summary judgment in favor of St. Paul.

By contrast, in *Southern Union Co. v. Liberty Mutual Insurance Co.*, another lost policy case applying Massachusetts law, the court—again applying a preponderance of the evidence standard—denied a carrier's motion for summary judgment, and held that the insured had met its burden of coming forward with evidence to support a trial on the existence and terms of the missing policies.[14] The plaintiff in *Southern Union* offered evidence of payments, including exhibits showing policy numbers, dates, vouchers bearing Liberty Mutual's insignia, cancelled checks, and invoice statements, along with affidavits, deposition testimony, correspondence, and sample forms to attempt to show the terms of the missing policies.[15] In accepting the sample forms as evidence, the court noted "Liberty Mutual's membership in an organization that promulgated standard CGL forms," a fact it found "particularly persuasive" on the question of whether the plaintiff's policies would have included standard language such as that on the sample forms.[16]

This finding is, at least arguably, in tension with earlier Massachusetts holdings, such as *Kleenit, Inc. v. Sentry Insurance Co.*, which hold that "more proof [is required to show the terms of a missing policy] than that the insurer used standard forms."[17] As the court noted in *Kleenit*, "insurance policies are often customized or manuscripted, [so] the use of a standard form in one policy is not by itself proof that it was included in a different policy."[18] At a minimum, these cases hold, a policyholder must generally produce testimony from an officer of the issuing insurance company, or some other qualified expert, that the terms of the missing policy would have been similar to those found in the standard policy.[19]

In yet another leading case, *Continental Casualty Co. v. Hempel*, the Tenth Circuit cited to specimen forms in upholding the grant of summary judgment to an insurer under New Mexico law.[20] The insured sought to prove that a missing primary policy, INA Policy No. GLP 090925, provided professional liability coverage. It based that argument on a "professional liability" addendum to an Insurance Company of North America (INA) excess insurance policy, which referred to the underlying primary policy—giving its policy number and bodily injury and property damage limits—and referred to the policy as providing "professional liability" coverage. The court acknowledged, but chose not

to credit, this secondary evidence. Instead, it credited the testimony of an insurance agent who testified that policies with "GLP" prefixes provided general liability, not professional liability, coverage; the agent said he could not recall a general liability policy ever providing professional liability coverage. The court noted, further, that INA's specimen GLP policies from the relevant time period did not provide professional liability coverage, and observed that the insured, in subsequent applications for professional coverage, did not list Policy No. GLP 090925 among his "prior professional liability policies."[21] In the end, the court held, the policyholder had "failed to offer sufficient evidence to rebut the evidence produced by [the insurer]," and granted summary judgment to the insurer on the question of coverage.[22]

Finally, in *Bianchi v. Florists Mutual Insurance Co.*, the Eastern District of New York applied the preponderance of the evidence standard to a dispute over missing policies issued to a commercial flower growing business.[23] The plaintiff, whose deceased parents were shareholders in the business from 1928–1988, brought an action against Florists Mutual to defend and indemnify him in connection with a claim by the New York State Department of Environmental Conservation (DEC) for the cleanup of a hazardous waste site. He asserted that Florists Mutual had issued policies "throughout" this entire 60-year period; however, the only evidence that the plaintiff offered to prove the existence of the alleged Florists Mutual policies from 1928–1986 was that he believed his parents' business was "always" insured by Florists Mutual and Florists Mutual's admission that it had insured the company at some unknown time.[24]

The court held that this was insufficient evidence to meet the applicable burden of proof, and stated that any determination of the scope and nature of those missing policies, based on this testimony, "would be pure speculation."[25] The court did find, however, with regard to the missing policies in effect from 1984–1986, that the plaintiff had met his burden and thus survived summary judgment. The key difference was the additional deposition testimony from a nonparty broker, who had placed insurance coverage for the business with a different company in 1986. The broker testified that he had "a very clear recollection" of reviewing the Florists Mutual policies for the 1984–1986 policy years, and that these policies were "occurrence" policies.[26] The court made clear that it was the broker's "testimony regarding policies written from 1984 through 1986, that pushes the evidence [of these policies' existence] beyond mere speculation," although it made no "findings as to the terms of those policies, and whether they obligate the defense and/or indemnification of Plaintiff with respect to the claim of the DEC."[27]

As a postscript, it is interesting to note that these missing policy issues can also come up in allocation cases, particularly those that involve pro rata allocation across an extended coverage block. For example, in *Boston Gas Co. v. Century Indemnity Co.*, the court upheld a jury's finding as to the limits of various missing policies in effect between 1951 and 1960; the jury concluded that these limits had been $500,000 for the 1952–1954 period, and $1 million all other years.[28] The court found no error, based on the evidence of record, which included a 1951 policy issued by the same carrier to a different company, a 1960 policy "renewing" the early 1951–1960 coverage, the testimony of a Century executive that "renewing" meant the renewal policy would have similar coverage and limits to the policies "renewed," and testimony from a different Century executive suggesting that Century's reinsurance practices signaled a likely policy value of $500,000 to $1 million in the disputed years.

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By contrast, in *Fulton Boiler Works, Inc. v. American Motorists Insurance Co.*, several insurers sought to allocate to the plaintiff a share of indemnity costs for asbestos claims prior to October 1976; this was based on New York law under which a policyholder "may be allocated a share of indemnity for any period of time it assumed the risk and elected not to purchase insurance or purchased insufficient insurance."[29] The plaintiff, resisting, pointed to evidence that workers compensation claims were paid out to Fulton employees prior to 1976, and offered testimony by its executives that the company had general liability coverage during this period because it was their practice and custom to purchase liability, auto, property, and workers' compensation coverage at the same time, from the same carrier. The court held that this "self-serving testimony," supported by no other evidence, was insufficient to prove the existence of coverage, even under a preponderance of

the evidence standard.[30] It granted the defendants summary judgment, and allocated to Fulton a pro rata share of asbestos exposures for the time period from 1949 until October 1976.

The Search for Missing Policy Information

From an insured's perspective, the cases above make clear the importance of locating as much historical material as possible to show the existence and terms of any missing policies on which it intends to rely, and of keeping evidentiary standards in mind when gathering this evidence.

It seems remarkable, in retrospect, that insurance policies worth hundreds of millions of dollars were tossed out like yesterday's trash. However, many companies have successfully located evidence of these decades-old policies by combining search results from both internal and external resources. The challenge in the above hypothetical is to reconstruct the coverage histories of B&E and its predecessor companies, without the benefit of having any policies before 1976. Insurance archaeology, which is a unique blend of science and art, focuses on searching corporate records, tracking down and interviewing former employees, and generally identifying and contacting a variety of sources that can be treasure troves of historic records. A professional insurance archaeologist can assist the company's efforts by conducting forensic research to locate the missing policies. A review of the 1976 policy would be a good place to start the search. The 1976 policy may contain a previous policy number, additional insureds, lessors, and names of key personnel—all potential sources to tap into for earlier records.

Even without the actual insurance policies, a wealth of information can be developed from corporate records relating to everyday business transactions, such as financial, legal, real estate, purchasing, engineering, and government contracts. Karen Sheddoutbach's recollections are a valuable asset that can be transformed into keywords and search terms, which may result in the location of boxes and files containing pieces of the missing policy information. B&E may also wish to memorialize the former risk manager's recollections in an affidavit and video recording to try to fill in gaps and document what cannot be found elsewhere.

All of the insurance carriers Sheddoutbach recalls dating back to the 1940s can be contacted for records. Along with Moody's and Dun & Bradstreet business reports, Sheddoutbach's memories will facilitate constructing the corporate histories, ensuring that all operating names are captured and utilized, demonstrating that thorough and

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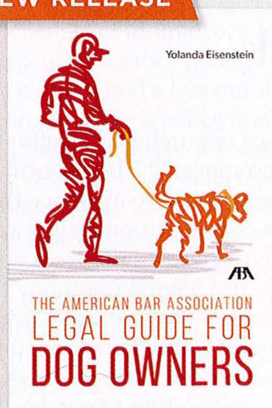

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comprehensive searches were conducted. These steps will help frame the parties' arguments under either the "preponderance" or "clear and convincing" evidence standards. Because there are multiple historic insurance programs potentially at play here, understanding the operations and relevant acquisition dates may help focus on the right companies in the right periods.

As internal sources of information are exhausted, the focus will then shift to outside sources, especially the former London brokers and law firms. London brokers typically maintain records much longer than their domestic counterparts, dating back to the 1930s in some instances. (Once London brokers figured out that old records could generate current revenue, they invested in finding and cataloging historic policies to sell back to policyholders.) Finding policies placed in the London market may be a double bonus, from a policyholder's perspective, because they document the excess coverage *and* may provide evidence of the underlying primary coverage. As for law firms, whether their records pertain to corporate transactions or defending claims, they may contain valuable insurance information, if not actual policies.

Finally, what were considered very unfortunate events at the time they occurred, such as IRS audits, plant failures, explosions, pollution, and consumer lawsuits, are all now potential sources for pursuing historic insurance information. B&E and its predecessors apparently left a very large "claim footprint," so tracking insurance information through Westlaw and LexisNexis searches and court records may enhance the historic coverage picture.

Conclusion

Insureds and insurers should carefully evaluate the choice of forum/choice of law issue when examining claims under historic insurance programs. The standard of proof under which the missing or lost policy claims will be decided can be critical. Likewise, counsel should be mindful of the particular evidence rules applicable and consider carefully whether each piece of archived or secondary information will be admissible and what weight it will be given by the trier of fact. Finally, insurance archaeologists can be a useful resource for claims under complex legacy insurance programs dating back many decades across multiple corporate entities and transactions. ■

Notes

1. Metlife Capital Corp. v. Westchester Fire Ins. Co., 224 F. Supp. 2d 374, 384 (D.P.R. 2002).

2. Burt Rigid Box, Inc. v. Travelers Prop. Cas. Corp., 302 F.3d 83, 92 (2d Cir. 2002) (alteration in original).

3. *Id.*

4. *See* Borough of Sayreville v. Bellefonte Ins. Co., 728 A.2d 225, 227–28 (N.J. Super. Ct. App. Div. 1998); *see also* Glew v. Cigna Grp. Ins., 590 F. Supp. 2d 395, 414 (E.D.N.Y. 2008); PSI Energy, Inc. v. Home Ins. Co., 801 N.E.2d 705, 717–21 (Ind. Ct. App. 2004).

5. *See, e.g.*, Coregis Ins. Co. v. City of Harrisburg, 401 F. Supp. 2d 398, 403–04 (M.D. Pa. 2005) (applying the clear and convincing evidence standard and finding in favor of insurer). A few states use variant approaches. Maryland, for example, provides that missing insurance policies must be shown by "clear and positive" evidence; it is not clear whether this standard approximates a "clear and convincing" standard, or a "preponderance" standard. *See* Klopman v. Zurich Am. Ins. Co. of Ill., 233 F. App'x 256, 258 (4th Cir. 2007) (citing *In re* Wallace & Gale Co., 275 B.R. 223, 230, *vacated on other grounds*, 284 B.R. 557 (D. Md. 2002), *aff'd*, 385 F.3d 820 (4th Cir. 2004)).

6. *See, e.g.*, Gold Fields Am. Corp. v. Aetna Cas. & Sur. Co., 661 N.Y.S.2d 948 (Sup. Ct. 1997).

7. *See, e.g.*, *Burt Rigid Box*, 302 F.3d at 83; Fulton Boiler Works, Inc. v. Am. Motorists Ins. Co., 828 F. Supp. 2d 481 (N.D.N.Y. 2011); Hinkle v. Crum & Forster Holding, Inc., 746 F. Supp. 2d 1047 (D. Alaska 2010).

8. *See, e.g.*, Harrow Prods., Inc. v. Liberty Mut. Ins. Co., 64 F.3d 1015 (6th Cir. 1995).

9. No. 02-0982A, 2013 WL 6436948 (Mass. Super. Ct. Oct. 30, 2013).

10. *Id.* at *5–6.

11. *Id.* at *6–7 (citing Mass. R. Evid. 901(b)(8)).

12. *Id.* at *8.

13. *Id.* at *7.

14. 581 F. Supp. 2d 120, 123 (D. Mass. 2008).

15. *Id.* at 127, 129.

16. *Id.* at 130.

17. 486 F. Supp. 2d 121, 133 (D. Mass. 2007) (citing 2 Barry R. Ostrager & Thomas R. Newman, Handbook on Insurance Coverage Disputes § 17.04, at 1151 (13th ed. 2006)).

18. *Id.* at 133–34 (quoting SCA Disposal Servs. of New England, Inc. v. Cent. Nat'l Ins. Co. of Omaha, No. 900393C, 1994 WL 879687 (Mass. Super. Ct. Apr. 12, 1994)).

19. *Id.*; *see* Century Indem. Co. v. Aero-Motive Co., 254 F. Supp. 2d 670 (W.D. Mich. 2003).

20. 4 F. App'x 703, 707 (10th Cir. 2001).

21. *Id.* at 723.

22. *Id.* at 723–24 (distinguishing Twp. of Haddon v. Royal Ins. Co. of Am., No. A 95-701, 1996 WL 549301, at *3 (D.N.J. Sept. 19, 1996); UTI Corp. v. Fireman's Fund Ins. Co., 896 F. Supp. 362, 381 (D.N.J. 1995); Bell Lumber & Pole Co. v. U.S. Fire Ins. Co., 847 F. Supp. 738, 743 (D. Minn. 1994)).

23. 660 F. Supp. 2d 434, 437 (E.D.N.Y. 2009).

24. *Id.* at 440.

25. *Id.*

26. *Id.* at 439, 441.

27. *Id.* at 441.

28. 529 F.3d 8 (1st Cir. 2008).

29. 828 F. Supp. 2d 481, 490 (N.D.N.Y. 2011) (internal quotation marks omitted).

30. *Id.* at 491.