



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

PROTECTION STRATEGIES, INC.,

Plaintiff,

-v-

STARR INDEMNITY AND LIABILITY CO.,

Defendant.

Civil Action No. 1:13-CV-00763

ORDER

Before the Court are the Defendant's partial motion to dismiss (Dkt. No. 9) and Plaintiff's motion for partial summary judgment (Dkt. No. 21). The Plaintiff opposed the Defendant's motion in its motion for partial summary judgment. The Defendant filed an opposition to the Plaintiff's motion (Dkt. No. 24/25), to which the Plaintiff replied (Dkt. No. 26). The Court heard argument on September 6, 2013, and now issues this order denying the Defendant's motion and granting the Plaintiff's motion.

The plaintiff, Protection Strategies, Incorporated ("PSI"), purchased a one-year "Resolute Portfolio for Private Companies" insurance policy from the defendant, Starr Indemnity & Liability Company ("Starr") to protect itself and its officers from various liabilities and claims. The policy was renewed in February 2012 and provided coverage for PSI until February 6, 2013. PSI brought this suit to recover what it argues are covered defense costs stemming from its response to two events: 1) a search and seizure warrant and subpoena from the NASA Office of the Inspector General ("OIG") that was executed on February 1, 2012, and 2) a June 2012 letter from the United States Attorney for the Eastern District of Virginia indicating that, along with the Department of Justice, it was investigating PSI for purposes of civil liability in connection with

PSI's participation in the Small Business Administration Section 8(a) program.¹

PSI retained the law firm Dickstein Shapiro to represent itself and to coordinate its overall response to the investigations, while the current and former PSI executives targeted by the investigation have each retained separate counsel. In response to PSI's invoices, Starr's claims handler LVL Claims Services ("LVL") refused to reimburse PSI for defense costs incurred by Dickstein Shapiro, stating "the NASA Subpoena [and] Search and Seizure Warrant . . . are not demands for relief or proceedings commenced by the service of a complaint or similar document," Letter to Loik Henderson, General Counsel, Protection Strategies, Incorporated, from Mike Stewart, Claims Director, LVL Claims Services, LLC (Mar. 30, 2012), and therefore "there is no coverage or reimbursement available for the invoices submitted by Dickstein Shapiro as there is no Claim against PSI," Letter to John Gibbons, Dickstein Shapiro, from Mike Stewart, Claims Director, LVL Claims Services, LLC (May 10, 2012). With this motion for partial summary judgment, PSI seeks a determination that Starr breached its duty to defend PSI and is obligated to pay costs incurred by PSI in defending the underlying matters.

The Court finds that the search and seizure warrant, subpoena, and letter constitute a Claim under either Part 1 *or* Part 2 of the definition of Claim in the policy, and that Starr has a duty to defend PSI and pay its defense costs in the underlying matter. In Virginia, language in an insurance policy is construed liberally in favor of the insured and strictly against the insurer. Where multiple interpretations are possible, "it is the court's duty to adopt that construction which will effectuate coverage." *Bornstein v. Nat'l Union Fire Ins. Co.*, 828 F.2d 242, 245 (4th Cir. 1987) (citing *Mollenauer v. Nationwide Mut. Ins. Co.*, 198 S.E.2d 591, 592 (Va. 1973)). The burden of making its contract clear thus falls squarely on the insurer, and courts have

¹ Although the parties dispute whether PSI followed the proper procedure when it notified Starr of its claims, that issue will go only to the *amount* of reimbursement due PSI, and not to Starr's duty to defend.

consistently declined to read exclusions into policies when faced with ambiguous language. *Resource Bankshares Corp. v. St. Paul Mercury Ins. Co.*, 407 F.3d 631, 636 (4th Cir. 2005); *Va. Farm Bureau Mut. Ins. Co. v. Williams*, 677 S.E.2d 299, 302 (Va. 2009). Moreover, the duty to defend in Virginia arises if the allegations reveal “*any potentiality*” that the policy will cover the claim. *Minn. Lawyers Mut. Ins. Co. v. Antonelli, Terry, Stout & Kraus, LLP*, No. 1:08-cv-1020, 2010 WL 4853300, at *6 (E.D. Va. Nov. 18, 2010) (emphasis added).

Starr’s policy uses a broad definition of Claim, which includes any “written demand for monetary, non-monetary, or injunctive relief made against an Insured” (Part 1) and any “judicial, administrative, or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an Insured . . . by (i) service of a complaint or similar pleading; (ii) return of an indictment, information, or similar document (in the case of a criminal proceeding); or (iii) receipt or filing of a notice of charges” (Part 2). The search warrant and subpoena fall within this broad definition as both written demands for non-monetary relief and as judicial proceedings commenced by service of a complaint or similar pleading.

The search warrant was a written order demanding non-monetary relief in the form of PSI’s obligation to turn over numerous files and records. Both the warrant and the subpoena were a result of legal proceedings that required a finding of probable cause, leaving no question that the government had identified PSI as a target for criminal and civil liability. The Court is persuaded by the reasoning of the many other courts to have recognized that subpoenas and search warrants are “claims” under similar policy language. *See, e.g., Syracuse Univ. v. Nat’l Union Fire Ins. Co.*, 2013 N.Y. Slip Op. 51041(U), at *2 (N.Y. Sup. Ct. Mar. 7, 2013) (finding coverage under multiple parts of a nearly identical definition of “Claim”).

In this case, the Court finds that PSI has a claim as that term is broadly defined in the

policy it purchased from Starr. Starr therefore has a duty to defend PSI in the underlying matter and to reimburse defense costs incurred by PSI's counsel Dickstein Shapiro.

For the reasons above, it is now **ORDERED** that the Defendant's partial motion to dismiss (Dkt. No. 9) is **DENIED**. Plaintiff's motion (Dkt. No. 21) for partial summary judgment is **GRANTED**.

September 10, 2013
Alexandria, Virginia

/s/ *WJ*

Liam O'Grady
United States District Judge