IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FRONTIER COMMUNICATIONS HOLDINGS, INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. N24C-01-131 SKR CCLD
INDIAN HARBOR INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S SYNDICATE 2623/623, LLOYD'S SYNDICATE 3624, AXIS INSURANCE COMPANY, and COLUMBIA CASUALTY COMPANY,	)	
Defendants.	)	

Submitted: June 10, 2025
Decided: August 14, 2025

MEMORANDUM OPINION AND ORDER

Upon Consideration of Excess Insurers' Motion for Partial Summary Judgment: **DENIED**

Upon Consideration of Defendants' Motion for Summary Judgment:

GRANTED-in-part and DENIED-in-part

Upon Consideration of Plaintiff's Motion for Summary Judgment:

GRANTED

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Rennie, J.

I. INTRODUCTION

This case stems from allegations of copyright infringement against Frontier by certain movie and record companies. Shortly after being accused of infringement, Frontier filed for bankruptcy. Frontier was litigating those infringement claims in the United States Bankruptcy Court for the Southern District of New York. Frontier filed suit in this Court seeking a declaratory judgment that the Insurers are obligated to provide defense and indemnity coverage pursuant to various insurance policies. Frontier has also asserted a claim for Bad Faith.

The Excess Insurers have moved for summary judgment, arguing that the infringement claims are not indemnifiable because the elements that would need to be shown for infringement to occur necessarily cause these claims to fall into an exception to coverage. It is not clear that the underlying infringement claims necessarily fall into coverage exclusions. Hence, the Excess Insurers' motion is **DENIED**.

All Insurers have moved for summary judgment, arguing that Frontier did not report any claim to Insurers during the 2019-2020 Policy Period, and that the infringement allegations that were reported during the 2020-2021 Policy Period are all related to infringement allegations first made before the 2020-2021 Policy Period. Additionally, the Insurers take the position that because no coverage is owed,

Frontier's Bad Faith claim fails. Even if coverage is owed, Insurers argue that they had a good faith basis to deny coverage.

Frontier moves for summary judgment on the Insurers' defense obligations, arguing that under the plain terms of the policies, the "Related Third Party Wrongful Acts" provision that the Insurers rely on only caps liability, and does not aggregate claims for notice purposes. According to Frontier, even if this provision works as Insurers claim, the infringement allegations are not related. Finally, Frontier argues that the insurance program is structured such that a claim brought during the 2019 Policy Period, but noticed during the 2020 Policy Period is covered, and so even if the "Related Third Party Wrongful Acts" provision operates as Insurers say, and all infringement claims are related, then they are still covered.

Frontier is not seeking coverage under the 2019-2020 Policy. The movie studio claims are not indemnifiable, but the record company claims are potentially indemnifiable. Frontier has not presented any evidence in support of its claim for bad faith. Accordingly, the Insurers' motion is **GRANTED-in-part and DENIED-in-part**. Because the Insurers may have indemnification obligations, their duty to defend is triggered. Hence, Frontier's motion is **GRANTED**.

II. BACKGROUND

A. The Parties

Plaintiff Frontier Communications Holdings, LLC ("Frontier") is a Delaware limited liability company with its principal place of business in Texas.[1] Frontier is a holding company that, through its subsidiaries, provides customers with access to the internet as an Internet Service Provider.[2]

Defendant Indian Harbor Insurance Company ("Indian Harbor") is a Delaware corporation with its principal place of business located in Connecticut.[3] Indian Harbor is the primary insurer in this dispute.[4]

Defendant Certain Underwriters at Lloyd's Syndicate 2623/623 ("Lloyd's 623") are a collection of corporate and individual members subscribing to risks issued from the Lloyd's of London insurance market.[5] Lloyd's 623 is the first excess insurer in this dispute.[6]

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[1] D.I. 1 ("Compl.") ¶ 3.

[2] D.I. 51 ("Pl. Br."), at 1.

[3] D.I. 23 ¶ 8.

[4] Pl. Br., at 6.

[5] D.I. 25 ¶ 9.

[6] Pl. Br., at 6.

Defendant Lloyd's Syndicate 3624's ("Hiscox") sole owner is Hiscox Dedicated Corporate Member Limited, a United Kingdom corporation.[7] Hiscox is the second excess insurer in this dispute.[8]

Defendant Axis Insurance Company ("Axis") is an Illinois corporation with its principal place of business located in Illinois.[9] Axis is a third excess insurer in this dispute.[10]

Defendant Columbia Casualty Company ("Columbia") is an Illinois corporation with its principal place of business in Illinois.[11] Columbia is also a third excess insurer in this dispute.[12]

The Court will refer to Columbia, Lloyd's 623, Hiscox, and Axis, as the "Excess Insurers." The Court will refer collectively to Indian Harbor, Lloyd's 623, Hiscox, Axis, and Columbia as the "Insurers."

[7] D.I. 24 ¶ 10.

[8] Pl. Br., at 6.

[9] D.I. 20 ¶ 11.

[10] Pl. Br., at 6.

[11] D.I. 22 ¶ 12.

[12] Pl. Br., at 6.

B. Procedural History

Frontier filed suit on January 18, 2024, seeking a declaratory judgment and asserting a claim for bad faith.[13] The Insurers answered on April 15, 2024.[14] Frontier filed its motion for summary judgment on November 7, 2024.[15] On November 25, 2024, the Insurers moved to stay this case,[16] which the Court denied.[17]

On February 7, 2025, the Insurers and the Excess Insurers filed their motions for summary judgment.[18] Frontier filed its opposition brief to these motions on March 7, 2024.[19] The Insurers filed their opposition to Frontier's motion on March 7, 2024.[20] The parties filed their respective reply briefs on March 28, 2025.[21] Discovery is still ongoing.

The Court heard oral argument on April 17, 2025. Subsequently, the underlying suit against Frontier settled and the parties submitted supplemental briefing.[22]

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[13] D.I. 1.

[14] D.I. 20, 22, 23, 24, and 25.

[15] D.I. 51.

[16] D.I. 57.

[17] D.I. 63.

[18] D.I. 78 (Ins. Br.) and 79 (Ex. Ins. Br.).

[19] D.I. 92 (Pl. Op. Br.) and D.I. 93 (Pl. Ex. Op. Br.).

[20] D.I. 97 (Ins. Op. Br.).

[21] D.I. 107, D.I. 108, D.I. 109.

[22] D.I. 128 ("Frontier Supp. Br."); D.I. 130 ("Ins. Supp. Br.").

C. Nature of the Case

The movie studio infringement allegations

On March 10, 2020, Culpepper IP, LLC sent a cease-and-desist letter (the "Culpepper Movie Letter") to Frontier.[23] The Culpepper Movie Letter states that Frontier customers have used Frontier's internet services to violate the movie studios' copyrights.[24] The Culpepper Movie Letter ascribes liability to Frontier and demanded that it pay damages for failing to take action, despite notices sent by the studios.[25]

Frontier files for bankruptcy

On April 14, 2020, Frontier filed for chapter 11 bankruptcy protection in the Southern District of New York. The movie studios filed proofs of claim in the bankruptcy.[26]

The record company infringement allegations

In January 2021, various record companies began filing proofs of claim for contributory and vicarious copyright infringement ("Oppenheim Music Claimants").[27] The Oppenheim Music Claimants made claims between January 22,

[23] Pl. Br., Ex. 11.

[24] *Id*.

[25] *Id*.

[26] *E.g.*, Pl. Br., Ex. 12.

[27] Pl. Br., Ex. 15

2021, and August 16, 2022.[28] These claims are similar to those of the movie studios—Frontier customers infringed the companies' copyrights, and Frontier failed to take action despite being provided notice.[29] Both sets of claims were being litigated in the bankruptcy court, with trial set to begin in May of 2025 (the "Bankruptcy Case").[30] The Bankruptcy Case has now settled.[31]

Frontier notifies the Insurers

In April of 2021, Frontier notified the Insurers about the Culpepper Movie Letter and the Oppenheim Music Claimants.[32] The Insurers denied coverage.[33]

The insurance policies

Frontier obtained two insurance policies—one that covers the time period from July 1, 2019 to July 1, 2020 (the "2019-2020 Policy") and one that covers the time period from July 1, 2020 to July 1, 2021 (the "2020-2021 Policy" and together with the 2019-2020 Policy, the "Policies").[34] The terms of the Policies are nearly identical.[35] The Policies are comprised of a primary policy sold by Indian Harbor,

[28] *Id*.

[29] *E.g.*, Pl. Br., Ex. 18.

[30] Ins. Br., Ex. 5.

[31] D.I. 124.

[32] Pl. Br., Ex. 20.

[33] Pl. Br., Ex. 21.

[34] Pl. Br., Ex. 1 and 2.

[35] *Id*.

and excess policies sold by the Excess Insurers.[36] The excess policies follow form with the primary policies.[37]

The Policies provide that the "Insurer has the right and duty to defend any claim under the insuring agreement I.A. Third Party Liability Coverages made against an Insured . . . ."[38]

Under Section I.A of the Policies, the Insurers:

> will pay on behalf of an Insured claim expenses and damages in excess of the applicable retention that the Insured is legally obligated to pay as the result of a claim first made against the Insured during the policy period or Extended Reporting Period (if applicable) alleging . . . [infringement of an intellectual property right] . . . committed by the Insured . . . or by a third party for whose third party wrongful act an Insured is legally responsible.[39]

The Insurers will provide coverage:

> if and only if the first third party wrongful act or related matter occurs . . . prior to the Policy expiration date . . . [and] the claim is reported in accordance with Section VI. Notice . . . .[40]

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[36] Pl. Br., at 5; Ins. Br., at 2-3.

[37] *Id*.

[38] Pl. Br., Ex. 2 § II.A.

[39] Pl. Br., Ex. 2 § I.A. The Extended Reporting Period refers to an automatic 90-day window after the policy is terminated or cancelled, or an optional longer extended period that can be purchased. *See* Pl. Br., Ex. 2 § VIII and Endorsement #013. This period is not relevant here.

[40] Pl. Br., Ex. 2 § I.D.1.

The Policies define "claim" as "a written demand for monetary damages, services or injunctive or other non-monetary relief" and "a civil proceeding for monetary damages, services, or injunctive or other non-monetary relief that is commenced by service of a complaint or similar pleading . . . ."[41]

The Policies' notice provision provides:

> As a condition precedent to the obligations of the Insurer under this Policy, the Insured must provide written notice to the Insurer as soon as reasonably practicable, but in no event, later than the end of the policy period or any applicable Extended Reporting Period of a claim first made against an Insured after an executive officer becomes aware of such claim . . . .[42]
>
> A claim will be deemed made . . . on the earliest date an executive officer receives the first written demand . . . [or] on the date of service . . . .[43]

The Policies contain a limitation of liability provision that provides:

> A claim resulting from a related matter will be treated as a single claim first made against the Insured at the time the first such related matter occurred, irrespective of whether such related matter occurred prior to or during the policy period, and irrespective of the number of related matters, and the identity or number of Insureds involved.[44]

[41] Pl. Br., Ex. 2 § IV.C

[42] Pl. Br., Ex. 2 § VI.B.

[43] Pl. Br., Ex. 2 § VI.D.

[44] Pl. Br., Ex. 2 § III.C.1

The Policies define "related matter" as "A third party wrongful act that is the same, similar or arises from a continuous nexus of facts, circumstances, acts, errors or omissions, whether or not such third party wrongful act is logically or causally related or connected."[45]

The Policies define "policy period" as "the period of time stated in Item 2. on the Declarations Page, beginning on the effective date and expiring on the date of termination, expiration or cancellation of this Policy, whichever is earliest."[46]

Finally, the Policies exclude coverage for "intentional or knowing wrongful . . . acts, errors, or omissions" or "willful violations of the law" by Frontier (the "Deliberate Acts Exclusion"), or "the gaining of any profit" to which Frontier is not entitled (the "Personal Profit Exclusion").[47]

III. STANDARD OF REVIEW

The standard of review on a motion for summary judgment is well-settled. The Court's principal function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of material fact exist, "but not to decide such issues."[48] Summary judgment will be granted if, after

[45] Pl. Br., Ex. 2 § IV.RR.

[46] Pl. Br., Ex. 2 § IV.HH.

[47] Pl. Br., Ex. 2 § V.A.

[48] *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99-100 (Del. 1992) (internal citations omitted); *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. 1973).

viewing the record in a light most favorable to a nonmoving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.[49] If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment will not be granted.[50] The moving party bears the initial burden of demonstrating that the undisputed facts support his claims or defenses.[51] If the motion is properly supported, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact for the resolution by the ultimate fact-finder.[52]

"These well-established standards and rules equally apply [to the extent] the parties have filed cross-motions for summary judgment."[53] Where cross-motions for summary judgment are filed and neither party argues the existence of a genuine issue of material fact, "the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the

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[49] *Id.*

[50] *See Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962); *see also Cook v. City of Harrington*, 1990 WL 35244, at *3 (Del. Super. Feb. 22, 1990) (citing *Ebersole*, 180 A.2d at 467) ("Summary judgment will not be granted under any circumstances when the record indicates . . . that it is desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.").

[51] *See Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1970) (citing *Ebersole*, 180 A.2d at 470).

[52] *See Brzoska v. Olsen*, 668 A.2d 1355, 1364 (Del. 1995).

[53] *IDT Corp.*, 2019 WL 413692, at *5 (citations omitted); *see Capano v. Lockwood*, 2013 WL 2724634, at *2 (Del. Super. May 31, 2013) (citing *Total Care Physicians, P.A. v. O'Hara*, 798 A.2d 1043, 1050 (Del. Super. 2001)).

motions."[54] But where cross-motions for summary judgment are filed and an issue of material fact exists, summary judgment is not appropriate.[55] To determine whether there is a genuine issue of material fact, the Court evaluates each motion independently.[56] The Court will deny summary judgment if the Court determines that it is prudent to make a more thorough inquiry into the facts.[57]

IV. ANALYSIS

A. The Excess Insurers' Motion

The Excess Insurers assert that the claims against Frontier in the Bankruptcy Case fall into the Deliberate Acts Exclusion and the Personal Profit Exclusion and therefore are not indemnifiable.[58] The Plaintiffs in the Bankruptcy Case are asserting claims for contributory infringement (which requires knowledge and material contribution) and vicarious copyright infringement (which requires a direct

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[54] Del. Super. Civ. R. 56(h).

[55] *Motors Liquidation Co. DIP Lenders Tr. v. Allianz Ins. Co.*, 2017 WL 2495417, at *5 (Del. Super. June 19, 2017*), aff'd sub nom., Motors Liquidation Co. DIP Lenders Tr. v. Allstate Ins. Co.*, 191 A.3d 1109 (Del. 2018); *Comet Sys., Inc. S'holders' Agent v. MIVA, Inc.*, 980 A.2d 1024, 1029 (Del. Ch. 2008); *see also Anolick v. Holy Trinity Greek Orthodox Church, Inc.*, 787 A.2d 732, 738 (Del. Ch. 2001) ("[T]he presence of cross-motions 'does not act per se as a concession that there is an absence of factual issues.'") (quoting *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997))).

[56] *Motors Liquidation*, 2017 WL 2495417, at *5; *see Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 160, 167 (Del. Ch. 2003).

[57] *Ebersole*, 180 A.2d at 470–72.

[58] Ex. Ins. Br., at 2. As the Excess Insurers admit, though, the Insurers' duty to pay claim expenses, including attorneys fees for defending against a claim, would still be triggered. *See* Ex. Ins. Br., at 2 n.1.

profit from the illegal activity).[59] Hence, the Excess Insurers argue that the elements of the claims necessarily place them within the exclusions of the policies.[60]

Frontier responds that the "knowledge" element of contributory infringement might be proved through a showing of mere recklessness, and not subjective knowledge of wrongdoing or intent to engage in wrongdoing.[61] Without the benefit of a final ruling against Frontier establishing liability based on the applicable standard of "knowledge," Frontier argues the Court cannot rule as a matter of law that the claim elements fall into an exclusion under the policy.[62] Frontier makes a similar argument for vicarious liability—proving a "financial interest" from an illegal activity can be shown by a low standard that does not fall within the exclusions and thus it is premature to determine if the exclusions apply.[63]

Thus, the Court must decide if the claim elements alleged in the Bankruptcy Case necessarily place those claims within a policy exclusion. If a person has knowledge of infringing activity, and either (1) induces, or (2) materially contributes to, the infringing conduct of another, he may be held liable as a contributory

[59] Ex. Ins. Br., at 8.

[60] Ex. Ins. Br., at 8-11.

[61] Pl. Ex. Op. Br., at 7-8.

[62] *Id*.

[63] Pl. Ex. Op. Br., at 11.

infringer.[64] The knowledge standard is objective.[65] At least one court has held that it may be established upon a showing of "reckless disregard" rather than actual knowledge.[66]

The Deliberate Act Exclusion provides that "knowing wrongful" acts are excluded. "Knowing" is undefined in the Policies. The Excess Insurers assume that the use of "knowing" in this provision is identical to the "knowledge" standard for contributory infringement. Frontier assumes the opposite. Neither side states what is required to show knowledge under the Deliberate Act Exclusion. Likewise, neither side asserts that the provision is ambiguous nor asks the Court to construe this provision.

Even if they had asked the Court to construe this language, exclusionary language is construed narrowly and strictly.[67] The Policies provide coverage for any "technology wrongful act" that is committed by a third party.[68] A "technology wrongful act" is described as an "infringement of an intellectual property right" other than patent infringement or trade secret misappropriation.[69] By their plain terms

[64] *In re Frontier Commc'ns Corp.*, 658 B.R. 277, 289 (Bankr. S.D.N.Y. 2024).

[65] *Id*.

[66] *U.S. Media v. Edde Entm't Corp.*, 1998 WL 401532, at *16 (S.D.N.Y. 1998).

[67] *Northrop Grumman Innovations Sys., Inc. Zurich Am. Ins. Co.*, 2021 WL 347015, at *9 (Del. Super. Feb. 2, 2021).

[68] Ex. 2 § I.A.1.

[69] Ex. 2 §§ IV.WW, IV.L, IV.M.

then, the Policies cover copyright infringement committed by a third party for which Frontier may be found liable.

The Excess Insurers argue that the only way an internet service provider like Frontier can be found liable for copyright infringement is through contributory infringement or vicarious infringement, and that these claims fall into the Deliberate Acts Exclusion. In essence, the Excess Insurers ask the Court to read in a copyright infringement exclusion in the Policies via the Deliberate Acts Exclusion. But the Policies do not explicitly exclude copyright infringement, even though the Insurers demonstrated that they knew how to exclude other intellectual property rights from coverage.[70] Accordingly, the Court declines to construe the Deliberate Act Exclusion in such a broad fashion. Hence, the Excess Insurers have not shown that, as a matter of law, the claims against Frontier in the Bankruptcy Case are excluded under the Policies.

Accordingly, the Excess Insurers' motion is **DENIED**.

B. Frontier's Motion and The Insurers' Motions

Frontier moves for partial summary judgment on the Insurers' defense obligations. The Insurers cross-move for summary judgment on the entirety of Counts I and II. The arguments in the parties' respective cross motions are

[70] Ex. 2 §§ IV.WW, IV.L, IV.M.

intertwined, and the outcomes for the motions are dependent on the same issues. Accordingly, the Court will address both motions simultaneously below.

1. Count I - Declaratory Judgment[71]

The Policies provide that "Insurer has the right and duty to defend any claim under insuring agreement I.A Third Party Liability Coverages made against an Insured . . . ."[72] Hence, for the Insurers' defense obligations to be triggered, Frontier must show that it may be entitled to indemnification under the Policies, and that they satisfied all conditions precedent to receiving coverage.

Section I.A Third Party Liability provides that the Insurers:

> will pay on behalf of an Insured claim expenses and damages in excess of the applicable retention that the Insured is legally obligated to pay as the result of a claim first made against the Insured during the policy period or Extended Reporting Period (if applicable) alleging . . . [infringement of an intellectual property right] . . . committed by the Insured . . . or by a third party for whose third party wrongful act an Insured is legally responsible.[73]

The Insurers will provide coverage:

> if and only if the first third party wrongful act or related matter occurs . . . prior to the Policy expiration

[71] This Count seeks a declaratory judgment that the Insurers are obligated to indemnify and defend Frontier. To be clear, Frontier's motion only asks for summary judgment on the Insurers' duty to defend. *See* January 13, 2025 Hr'g Tr. 7:18-20 ("[I]f they lose their motion to enforce and we win on summary judgment, it doesn't end the case because it's only limited to defense.").

[72] Pl. Br., Ex. 2 § II.A.

[73] Pl. Br., Ex. 2 § I.A.

> date . . . [and] the claim is reported in accordance with Section VI. Notice . . . .[74]

Thus, the Insurers' coverage obligations are triggered if (1) a claim is first made against Frontier during the policy period, and (2) Frontier provides written notice of the claim before the end of the policy period.

It is undisputed that Frontier notified the Insurers in April of 2021. The Insurers argue that they are entitled to summary judgment on the 2019-2020 Policies because this notice came after the expiration date of the policy on July 1, 2020. This is irrelevant. Frontier is only seeking coverage under the 2020-2021 Policy.[75]

With respect to the 2020-2021 Policy, the Insurers argue that the movie studio and record company claims "constitute a single claim under the Related Matters and Related Losses Provision" of the 2020-2021 Policy.[76] Insurers maintain that the Culpepper Movie Letter was a claim that was first made prior to the effective date of the 2020-2021 Policy, so Frontier does not have coverage for either set of related claims.[77]

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[74] Pl. Br., Ex. 2 § I.D.1.

[75] Pl. Op. Br., at 20 ("The Culpepper Movie Claim, although first made during the 2019-2020 Program, was properly noticed under the 2020-2021 Program."). Counsel for Frontier confirmed as much during oral argument.

[76] Ins. Br., at 13.

[77] *Id*., at 18-20

Frontier responds that the music claims were first made during the 2020-2021 Policy period and were properly noticed.[78] The 2020-2021 Policy provision that provides for aggregation comes from the limitation of liability section, not the notice section, so Frontier argues that the policy only aggregates related material for purposes of limiting liability.[79] Regardless, Frontier argues that the two sets of claims are not related.[80] Even if the Policies do aggregate claims for notice purposes, and the two sets of claims are related, it argues that notice was still sufficient because policy period is defined as "the period of time stated in Item 2. on the Declarations Page" with the use of plural "Declarations Page" rather than singular "Declaration Page" indicating that both Policies' declaration pages apply to the policy period.[81]

The movie claims were not first made against Frontier during the policy period for the 2020-2021 Policy and thus do not trigger coverage under that policy. The 2020-2021 Policy period is July 1, 2020 to July 1, 2021. Frontier received the Culpepper Movie Letter in April 2020. Frontier does not contest that the Culpepper Movie Letter constitutes a claim under the Policies, or that all movie claims are

[78] Pl. Op. Br., at 10-12.

[79] *Id*., at 12-17.

[80] *Id*., at 18-19.

[81] Pl. Op. Br., 20-21.

related matters.[82] Thus, these claims were not first made during the 2020-2021 Policy period.

Frontier's "Declarations Page"/"Declaration Page" argument is unpersuasive. The plain language indicates that it is a singular page, not multiple pages. Frontier relies on the California case of *Great American Ins. v. Brown Winfield Canzoneri Abram*[83] and the New York case of *Shaw v. Aetna Life and Cas.*[84] In *Great American*, the policy period was defined as "the period from the effective date and time of this policy to the policy expiration date and time as set forth in the Declarations. . . ."[85] The court reasoned that this definition was broad enough to include "more than one declaration page."[86] However, in the very next paragraph, the court undercuts Frontier's argument by referring to each individual page as a "declarations page."[87] Even if this Court found *Great American* persuasive, that court was interpreting different policy language and does not stand for the

[82] Pl. Op. Br., at 1 ("Frontier now faces ***two sets of claims*** falling squarely within this coverage – the "Culpepper Movie Claim," … and the "Oppenheim Music Claim[.]") (emphasis added).

[83] 2009 WL 1905318 (Cal. Super. June 12, 2009).

[84] 413 N.Y.S.2d 832, 833 (N.Y.Sup. Ct. 1979).

[85] *Great American,* 2009 WL 1905318.

[86] *Id*.

[87] *Id*.

proposition that Frontier contends. Further, the *Shaw* case does not address this issue at all.[88] Hence, the movie studio claims do not trigger coverage under the Policies.[89]

However, the record company claims may trigger coverage. The earliest record company claim was made in January 2021. Frontier provided notice in April of 2021. Thus, the claim was made and noticed within the 2020-2021 Policy period. Insurers maintain that these claims are related to the movie claims and cite to Section III.C which provides "A claim resulting from a related matter will be treated as a single claim first made against the Insured at the time the first such related matter occurred."[90] Insurers read this provision to say that if claims are related, then they are aggregated for notice purposes. Under this interpretation, the record company claims were first made when the Culpepper Movie Letter was sent, so it would be "first made" outside the policy period. Such an interpretation is untenable.

"Insurance contracts should be interpreted as providing broad coverage to align with an insured's reasonable expectation of insurance coverage."[91] The Court

[88] *Shaw*, 413 N.Y.S.2d at 833 (instead addressing a limitation of liability provision that was incorporated by reference).

[89] In its supplemental briefing, Frontier confirmed it is no longer seeking coverage for the movie claims based on the terms of the settlement. Frontier Supp. Br., at 5.

[90] Pl. Br., Ex. 2 § III.C.

[91] *Options Clearing Corp. v. U.S. Specialty Ins. Co.*, 2021 WL 5577251, at *9 (Del. Super. Nov. 30, 2021).

will not interpret an insurance policy such that it leads to an absurd result.[92] An ambiguous insurance contract will be construed most strongly against the insurer and in favor of the insured.[93]

The plain terms of the Policies show that the Insurers' interpretation is flawed. As discussed, the policies require that a "***claim*** first made against the Insured during the policy period" be noticed "in no event, later than the end of the policy period.".[94] Hence, it is when a "claim" is made that counts for purposes of timing and notice. Section VI.D states that a claim is made "on the earliest date an executive officer receives the first written demand."[95] If Section III.C applied to when a claim is deemed made, it would render Section VI.D meaningless.

Under the Insurers' reading, a claim would be "first made" when the first related wrongdoing occurred, not when Frontier received notice of a claim. In such a scenario, Frontier would be required to provide the Insurers with notice of third-party wrongdoing even if Frontier never received a takedown notice or resulting demand letter. Accordingly, Frontier would be required to provide notice of wrongdoing for which Frontier may not be aware of and could not be found liable.

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[92] *Sycamore Partners Mgmt., L.P. v. Endurance Am. Ins. Co.*, 2021 WL 4130631, at *23 (Del. Super. Sept. 10, 2021).

[93] *Northrop Grumman*, 2021 WL 347015, at *9.

[94] Ex. 2 §§ I.A, I.D (emphasis added).

[95] Ex. 2 § VI.D.

No insured could ever comply with such a policy, and it would be difficult to imagine any insured ever purchasing such a policy. The Insurers' construction leads to an absurd result, and the Court will not construe the Policies in this way.

The Policies' aggregation provision is couched in a section on limitation on liability, and the notice section makes no mention of the aggregation. This indicates that aggregation applies only for purposes of limiting the Insurers' liability.

The duty to defend arises when an allegation in the underlying complaint shows a potential for liability.[96] It is undisputed that Frontier could have been found liable in the Bankruptcy Case. And as discussed, the Insurers may be obligated to provide coverage for the record company claims. Hence, the Insurers' duty to defend under the Policies is triggered.

Accordingly, the Court **DENIES** the Insurers' motion with respect to Count I, and **GRANTS** Frontier's motion.

Count II - Bad Faith

Finally, the Insurers argue that Frontier's bad faith claim cannot survive because (1) there is no coverage available to Frontier, and (2) even if coverage is available, the Insurers had a meritorious defense.[97] Frontier does not respond to this

[96] *Laguelle v. Bell Helicopter Textron, Inc.*, 2014 WL 2699880, at *7 (Del. Super. June 11, 2014).

[97] Ins. Br., at 21.

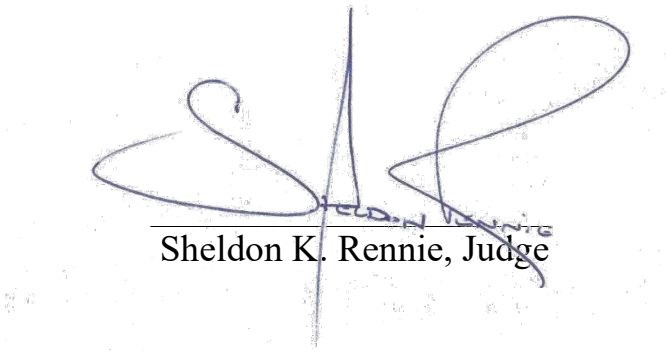
argument and thus concedes it.[98] As a result, Frontier has not provided any evidence in support of this claim, so summary judgment in the Insurers' favor is appropriate.[99]

Accordingly, the Insurers' motion is **GRANTED** with respect to Count II.

CONCLUSION

For these reasons, the Excess Insurers' motion is **DENIED**, the Insurers' motion is **GRANTED-in-part** and **DENIED-in-part**, and Frontier's motion is **GRANTED**.

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

[98] *Port Penn*, 2019 WL 2077600, at *7.

[99] *Cf. Ciabattoni v. Teamsters Local 326*, 2020 WL 4331344, at *5 (Del. Super. July 27, 2020) ("Plaintiff concedes he brings no independent IIED claim, nor does he respond as to how he survives dismissal without an expert to support this claim. . . . Absent evidence to establish a causal nexus to support this claim, summary judgment in favor of Defendants is appropriate.").