IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

TEXTRON INC. AND ARCTIC CAT INC.,	)	
	)	C.A. No. N24C-12-135 MAA CCLD
Plaintiffs,	)	
v.	)	
ENDURANCE AMERICAN INSURANCE COMPANY,	)	
Defendant.	)	

Submitted: June 13, 2025
Decided: September 26, 2025

Textron's Motion for Judgment on the Pleadings:
GRANTED.

OPINION

Jennifer C. Wasson, Esquire, Malisa C. Dang, Esquire, POTTER ANDERSON & CORROON LLP, Wilmington, DE; Anna P. Engh, Esquire (Argued), Megan M. Myers, Esquire, COVINGTON & BURLING LLP, Washington, DC. *Attorneys for Plaintiffs*.

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Adams, J.

I. INTRODUCTION

This is an insurance coverage dispute between Plaintiff Arctic Cat Inc. ("Arctic Cat"), Arctic Cat's indirect parent company, Plaintiff Textron Inc. (collectively with Arctic Cat, "Textron"), and Defendant Endurance American Insurance Company ("Endurance"). Textron purchased an excess general liability insurance policy from Endurance, which provided coverage from January 1, 2017, to January 1, 2018 (the "Endurance Policy" or the "Policy"). The parties' dispute stems from a 2018 lawsuit challenging, among other things, Arctic Cat's off-highway vehicle safety (the "*Grace* Action") (the "Settlement"). Textron primarily requests a declaration that Endurance cannot recover its previous indemnification of the Settlement. In response, Endurance raises several affirmative defenses to oppose Textron's request. Endurance also filed counterclaims and argues Endurance can recoup its portion of the Settlement.

Before the Court is Textron's Motion for Judgment on the Pleadings (the "Motion"). Textron generally asserts Endurance has neither a contractual, nor common law, right to recoup its voluntary indemnity payment for the Settlement. Endurance broadly argues it can recoup the previous payment, in part because Textron's alleged discovery abuses in the *Grace* Action exacerbated the Settlement. For the following reasons, the Court **GRANTS** Textron's Motion.

II. FACTUAL BACKGROUND

A. The Parties and the Endurance Policy

Plaintiff Textron is a Delaware corporation with its principal place of business in Providence, Rhode Island.[1] Textron owns companies in the "aviation, automotive, defense, and industrial" sectors.[2] Plaintiff Arctic Cat is a Minnesota corporation with its principal place of business in Thief River Falls, Minnesota.[3] Arctic Cat is an indirect subsidiary of Textron Inc. that "makes snowmobiles and off-highway vehicles."[4]

Defendant Endurance is a Delaware corporation with its principal place of business in Purchase, New York.[5] Endurance sold the Endurance Policy, Policy No. XSC10003852104, to Textron for policy year January 1, 2017 to January 1, 2018.[6] The Endurance Policy generally follows the terms of an underlying primary policy

[1] *See generally* Docket Item ["D.I."] 1 ["Compl."] ¶ 9.
[2] *Id.*
[3] *Id.* ¶ 10.
[4] *Id.*
[5] *Id.* ¶ 11; D.I. 16 ["Answer"] ¶ 11.
[6] *See generally* D.I. 19 ["Countercl. Answer"] Ex. B ["Endurance Policy"]. The Endurance Policy has no choice of law clause. *See generally id.* Textron argues "Delaware law, as the law of this forum, applies to this dispute." D.I. 22 ["MJP"] at 13-14. Endurance does not dispute that Delaware law controls the parties' dispute. D.I. 28 ["MJP Opp'n"] at 12-13.

issued to Textron by non-party National Union Fire Insurance Company of Pittsburgh, Pa. (the "Followed Policy").[7]

The Endurance Policy provides $25 million in general liability coverage in limits excess of $75 million in losses and a $7.5 million retention.[8] The Endurance Policy requires Endurance to "pay on behalf of [Textron] the amount of 'loss' covered by [the Endurance Policy] in excess of the 'underlying limits of insurance' and subject to the LIMITS OF INSURANCE Section."[9] Loss means "those sums actually paid in the settlement or satisfaction of a claim which [Textron is] legally obligated to pay as damages, including but not limited to 'bodily injury' and 'property damage,' after making proper deductions for all recoveries[.]"[10] While the Endurance Policy excludes certain Followed Policy provisions,[11] it follows Endorsement 9 – which provides coverage for "[p]unitive or exemplary damages that are awarded against an Insured in a judgment that also awards compensatory damages covered by this policy . . . where insurable under applicable law[.]"[12]

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[7] Endurance Policy § 1 ("This policy will follow form to the terms, conditions, definitions, and exclusions of the [Followed Policy] . . . except to the extent the terms, conditions, definitions, and exclusions of this policy differ from the [Followed Policy].").
[8] Compl. ¶ 16; Answer ¶ 16.
[9] *Id.* at EXL 0203 0813 ["Excess Liability Coverage Follow Form (Short Form)"].
[10] *Id.* Excess Liability Coverage Follow Form (Short Form) § V.A.
[11] *Id.* at EXL 1001 0606 ["Endorsement 1"].
[12] Followed Policy at Endorsement No. 9. *See also Whalen v. On-Deck, Inc.*, 514 A.2d 1072, 1074 (Del. 1986) (explaining punitive damages are insurable under Delaware law).

B. The *Grace* Action, Textron's Discovery Misdeeds, and the Settlement

In July 2018, Toby Grace sued Textron alleging he was injured when riding as a passenger in an Arctic Cat off-highway vehicle.[13] The *Grace* Action asserted the Arctic Cat vehicle's rollover protection structure failed, collapsed inward, and rendered Grace a quadriplegic.[14] Two days after Grace filed his complaint, Textron provided Endurance notice of the *Grace* Action.[15] In the initial notice, "Textron advised Endurance the [*Grace* Action] would not implicate the [Endurance Policy] and that Endurance could close its file."[16]

While defending the *Grace* Action, Textron alleged: (1) Grace replaced certain components on the Arctic Cat vehicle with after-market parts;[17] (2) Grace's injuries were caused by the driver, who drove at excessive speeds;[18] and (3) a different design would not have prevented Grace's injuries.[19] A mock jury initially credited these defenses.[20] Based on these defenses, "Textron advised its insurers, including Endurance, that the settlement value of the [*Grace* Action] was in the $15

[13] D.I. 16 ["Countercl."] ¶¶ 25-26.
[14] *Id.* ¶¶ 27-28.
[15] *Id.* ¶¶ 25, 49.
[16] *Id.* ¶ 50.
[17] *Id.* ¶ 30.
[18] *Id.* ¶ 51.
[19] *Id.*
[20] *Id.* ¶ 52.

to $20 million range" on January 7, 2023.[21] Textron's update, however, did not mention the discovery dispute then-percolating in the *Grace* Action.[22]

Numerous times throughout discovery, Grace requested documents related to the design and safety testing of Arctic Cat's vehicles.[23] Textron repeatedly represented it produced all relevant evidence.[24]

Four years into the *Grace* Action, Grace filed a motion requesting sanctions against Textron "for willful discovery abuses."[25] Grace asserted he learned that "almost two years prior to [his] injury, Textron designed, built and tested a stronger, reinforced roll cage . . . but chose not to put it on the [Arctic Cat] vehicle."[26] Grace never received any discovery related to the reinforced roll cage, despite Textron's assertions "that it had produced all testing and design documents."[27] Grace asked the court to "strike Textron's answer . . . so that Textron could not raise any defenses to liability at trial."[28] Textron opposed Grace's request but admitted its previous discovery productions were "in hindsight, incorrect."[29]

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[21] *Id.* ¶ 54. Grace initially "sought $50 to $60 million to settle" the dispute. *Id.* ¶ 53.
[22] *Id.* ¶ 55.
[23] *Id.* ¶¶ 31, 33, 36.
[24] *Id.* ¶¶ 32, 34, 37.
[25] *Id.* ¶ 39.
[26] *Id.* ¶ 40.
[27] *Id.* ¶¶ 39, 41.
[28] *Id.* ¶ 42.
[29] *Id.* ¶ 43.

On January 16, 2023, Textron informed Endurance of its discovery misconduct and Grace's motion for sanctions for the first time.[30] Textron admitted the discovery misconduct undermined its witnesses' credibility and hurt its *Grace* Action defense.[31] Textron quantified that impact a week after the initial hearing on Grace's motion for sanctions.[32] Textron told its insurers "there was a 95% chance it would be found liable for compensatory damages of $50 to $70 million and a 90% or more chance it would be liable for punitive damages of $100 million or more."[33] Textron also admitted there was "a greater than 50% chance its answer would be stricken[.]"[34]

After Grace requested "$300 million in compensatory damages and $3 billion in punitive damages," Textron asked its insurers to commit their full coverage limits to settling the *Grace* Action.[35] On February 21, 2023, Endurance replied to Textron's request (the "Coverage Letter").[36] Endurance's Coverage Letter stated

> coverage is not implicated under the [Endurance] Policy [because] [i]t is evident . . . that the [*Grace* Action] presents an exposure within and potentially in excess of the [Endurance] Policy limits because of Textron's misconduct in litigation, rather than the injuries sustained by the plaintiff.[37]

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[30] *Id.* ¶ 56.
[31] *Id.* ¶¶ 57-59.
[32] *Id.* ¶¶ 60-61.
[33] *Id*.
[34] *Id*.
[35] *Id.* ¶¶ 63. Textron sent that request on February 8, 2023. *Id.*
[36] *Id.* ¶ 68; *see generally* MJP Opp'n Ex. 2 ["Endurance Coverage Letter"].
[37] Endurance Coverage Letter.

Still, "Endurance . . . ma[d]e its $25M policy limit available to negotiation resolution with [Grace], so as to avoid a potentially significant punitive damage award against Textron subject to the reservation of rights herein[.]"[38] In the Coverage Letter, "Endurance expressly reserve[d] all rights under the [Endurance] Policy, including the right to assert additional defense to any claims for coverage and to seek declaratory relief."[39] Endurance also "propose[d] that the parties agree to engage in arbitration or mediation of their dispute over Endurance's coverage obligations[.]"[40]

Textron agreed to mediate the *Grace* Action[41] and settled the Action for $105 million.[42] Pursuant to the Settlement, Endurance paid Grace $24,768,227.25 on Textron's behalf.[43] Endurance "reviewed and approved the language of the Settlement Agreement before it was signed."[44] The Settlement Agreement

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[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *See* MJP Opp'n Ex. 3 ["Textron's Coverage Letter Response"] (showing "Textron [was] agreeable to [Endurance's] proposal that . . . the parties engage in non-binding mediation within 60 days of payment, before a mutually agreeable mediator.")
[42] Countercl. ¶ 70. The Settlement Agreement was negotiated by a lawyer jointly retained by Endurance and Textron's other insurers. Compl. ¶¶104-106. Endurance reviewed and approved the language of the settlement before it was signed. Answer ¶ 109. Notably, none of Endurance's own allegations regarding the terms of the Endurance Policy assert that the Policy provides a right to recoup. Countercl. ¶¶ 12-24. Endurance also does not deny the allegation in Textron's Complaint that "[t]here is no provision in the Endurance Policy providing Endurance the right to seek recoupment of payments of settlements made on behalf of the Textron Plaintiffs under the Endurance Policy." Compl. ¶ 31. Rather, Endurance "refers the Court to the Endurance Policy and the Followed Policy for their complete terms." Answer ¶¶ 31, 93. The Court has reviewed the Endurance Policy and the Followed Policy and confirms that no such right to recoupment exists in the Policies.
[43] Countercl. ¶ 71; *See generally* D.I. 39 ["Signed Settlement Agreement"].
[44] Compl. ¶ 109; Answer ¶ 109.

represented, "Releasor and Releasees agree that all sums set forth herein constitute damages on account of personal physical injuries or physical sickness[.]"[45] The Settlement Agreement provided a broad release to Endurance, protecting it from any direct liability to the underlying tort plaintiff in *Grace*,[46] and also insulated Endurance from claims by Textron and other insurers for failure to settle and liability for an above-limits verdict.[47] Following the Settlement, the parties unsuccessfully mediated their coverage dispute.[48]

C. Procedural History

Textron initiated this action in December 2024.[49] The Complaint alleges four causes of action: (1) Declaratory Relief – No Right to Recoupment;[50] (2) Declaratory Relief – Coverage Obligations;[51] (3) Breach of Contract;[52] and (4) Bad Faith and Breach of Covenant of Good Faith and Fair Dealing.[53]

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[45] Compl. ¶ 113; Answer ¶ 113. Endurance argues Section 3.3 "speaks for itself" and does not deny that Endurance agreed that its contribution to the *Grace* Settlement constituted damages for personal injury. Answer ¶ 113.

[46] Signed Settlement Agreement ("In consideration of the payments set forth in [the Settlement Agreement], [Grace] hereby completely releases, acquits, forever discharges, and holds harmless [Endurance] from any and all past, present, and future claims . . . of any nature whatsoever, which [Grace] now has, which have or could have been brought by individuals other than [Grace], or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are related to the subject [i]ncident[.]"

[47] Compl. ¶¶ 107-11; 116-118; Answer ¶¶ 107-110, 116.

[48] Countercl. ¶¶ 72-74.

[49] *See generally* Compl.

[50] *Id.* ¶¶ 120-25.

[51] *Id.* ¶¶ 126-31.

[52] *Id.* ¶¶ 132-38.

[53] *Id.* ¶¶ 139-64.

Endurance answered the Complaint in February 2025.[54] Along with its Answer, Endurance filed four Counterclaims: (1) Declaratory Relief;[55] (2) Breach of Contract;[56] (3) Recoupment of Costs Advanced by Endurance;[57] and (4) Restitution.[58] Textron answered the Counterclaims on March 27, 2025.[59]

The same day, Textron filed the Motion before the Court.[60] The Motion argues judgment on the pleadings is warranted on all of Endurance's Counterclaims and Textron's first cause of action.[61] If such relief is granted, the Motion asserts "Textron's Second Cause of Action . . . and Third Cause of Action . . . would become moot."[62] Endurance filed its opposition brief in April[63] and Textron its reply brief in May 2025.[64] The Court heard oral argument on June 13, 2025.[65]

III. STANDARD OF REVIEW

Judgment on the pleadings is appropriate "when no material issue of fact exists and the movant is entitled to judgment as a matter of law.[66] On a motion for

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[54] *See generally* Answer.
[55] Countercl. ¶¶ 75-78.
[56] Countercl. ¶¶ 79-82.
[57] Countercl. ¶¶ 83-88.
[58] Countercl. ¶¶ 89-91.
[59] *See generally* Countercl. Answer.
[60] *See generally* MJP.
[61] *Id.* at 1-4, 14-26.
[62] *Id.* at 3-4. Therefore, if the Court grants the Motion in its entirety "[t]he only claim that would remain in this case . . . would be Textron's Fourth Cause of Action[.]" *Id.* at 4.
[63] *See generally* MJP Opp'n.
[64] *See generally* D.I. 34 ["MJP Reply"].
[65] *See generally* D.I. 36 ["Judicial Action Form for 6-13-2025"].
[66] *Chicago Bridge & Iron Co. N.V. v. Westinghouse Elec. Co. LLC*, 166 A.3d 912, 925 (Del. 2017) (citation omitted).

judgment on the pleadings, the "Court's review is limited to the contents of the pleadings" and documents incorporated therein.[67] The court "view[s] the facts pleaded and the inferences to be drawn from such facts in [the] light most favorable to the non-moving party."[68] Judgment on the pleadings is often "a proper framework for enforcing unambiguous contracts because there is no need to resolve material disputes of fact."[69]

IV. ANALYSIS

Textron, in its Motion, requests two forms of relief: (1) a dismissal of Endurance's Counterclaims in their entirety; and (2) a declaration that Endurance has no right to recoupment.[70] Textron argues the Counterclaims all suffer from the same flaw – Endurance improperly claims it has a "right to recoupment of its voluntary payment for Textron's [S]ettlement."[71] As such, Textron asserts "[a] ruling that Endurance has no right to recoupment is dispositive of all the claims in this case

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[67] *W. Coast Opportunity Fund, LLC v. Credit Suisse Sec. (USA), LLC*, 12 A.3d 1128, 1132 (Del. 2010) (citation omitted).
[68] *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993) (citations omitted).
[69] *Chicago Bridge*, 166 A.3d at 925 (quoting *NBC Universal v. Paxson Commc'ns Corp.*, 2005 WL 1038997, at *5 (Del. Ch. Apr. 29, 2005)); *see Enrique v. State Farm Mut. Auto. Ins. Co.*, 142 A.3d 506, 511 (Del. 2016) ("[a]n insurance policy is a contract between the insurer and the insured.").
[70] MJP at 3.
[71] *Id.* at 1 ("a party cannot recover payments it voluntarily made with full knowledge of the relevant facts.") *Id*. at 2.

(except Textron's bad faith claim against Endurance)."[72] Before evaluating the parties' arguments, the Court will begin with the contractual language at issue.

A. The Endurance Policy Does Not Contain a Provision Providing for a Right to Recoupment.

The Court starts, as it must, with the insurance contract at issue.[73] The parties do not dispute that the Endurance Policy contains no express contractual right that permits Endurance from recouping the Settlement.[74] Despite this fact, Endurance argues it can recoup the Settlement because of a "reservation of right" contained in the Coverage Letter.[75] Endurance further argues the right to recoupment is implicit in the Endurance Policy because the Policy only indemnifies covered claims.[76]

The reservation of rights by Endurance does not provide a right to recoupment. The reservation of rights purportedly made by Endurance prior to tendering its policy limits to the Settlement merely "reserve[d] all of [Endurance's] rights under the [Endurance] Policy and at law, including the right to assert additional defense to any claims for coverage and to seek declaratory relief."[77] In

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[72] *Id.* at 2 (explaining "because Endurance has no right to recoupment, this Court does not need to reach the question of whether the Endurance policy covered the settlement.").
[73] *Origis USA LLC v. Great Am. Ins. Co.*, 2025 WL 2055767, at *12 (Del. 2025) ("With all insurance policies, the scope of an insurance policy's coverage is prescribed by the language of the policy.") (cleaned up).
[74] MJP at 10-11; *See generally* Countercl. By contrast, the Followed Policy expressly grants National Union, in situations where National Union advances funding for settlements of UM/UIM motorist cases, "a right to recover the advanced payment" from its insureds. MJP Ex. A ["Followed Policy"] at Endorsement 21.
[75] MJP Opp'n at 13.
[76] *Id.* 24-27.
[77] MJP Opp'n at Ex. 2.

its Answer and Counterclaims, Endurance does not identify what "rights" it has "under the Endurance Policy [or] at law" other than it reserved its right to be reimbursed for amounts not covered by the Endurance Policy.[78] Endurance, however, cannot reserve a right that does not otherwise exist.[79]

Because the Endurance Policy does not provide Endurance with a right for recoupment, the only way for Endurance to recoup the Settlement payment is if the Endurance Policy was amended by Endurance and Textron. Endurance, in its Answering Brief, argued that "Textron accepted Endurance's offer [regarding the reservation of rights] and acknowledged Endurance's right to seek recoupment of its contribution to a settlement."[80] This is not a correct statement of Textron's position in response to the Coverage Letter. Rather, Textron stated it "respectfully disagrees with the factual recitation and coverage analysis set forth. We submit that [Endurance] clearly has a contractual obligation to provide the limits of its coverage

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[78] *See* Answer ¶ 4 (Endurance reserved its "right to seek reimbursement from Textron of any amounts that are not covered by the Endurance Policy); Counterclaims ¶ 3 (Endurance "contributed [to the Settlement] under a reservation of rights to a settlement of the Underlying Lawsuit"); *Id.* ¶ 68 ("Endurance agreed to make its $25 million policy limits available for settlement negotiations in order to avoid a potentially significant punitive damage award against Textron, subject to a full reservation of all rights under the Excess Policy and the applicable law, including the right to be reimbursed by Textron for any amounts that were not covered under the Excess Policy.").

[79] *Peco Logistics, LLC v. Walnut Inv. P'rs, L.P.*, 2015 WL 9488249, at *8 (Del. Ch. Dec. 30, 2015) (explaining "a contract was not modified merely because defendants purported to 'reserve' pre-existing rights they purported to (but did not) have"); *Tex Ass'n of Counties Cnty. Gov't Risk Mgmt. Pool v. Matagorda Cnty.*, 52 S.W.3d 128, 131 (Tex. 2000) ("a unilateral reservation-of-rights letter cannot create rights not contained in the insurance policy").

[80] MJP Opp'n at 10 (citing Countercl. ¶ 69).

in this case pursuant to" the Endurance Policy.[81] Therefore, there was no meeting of the minds between Endurance and Textron regarding any amendment to the Endurance Policy.[82]

Endurance's own briefing expressly admit its reservation of rights did not amend the Endurance Policy, but rather "put Textron on notice that [Endurance's] payment was subject to the right of recoupment."[83] This is unsurprising, as the Endurance Policy also requires an endorsement for the Policy to be amended, and no party argues that such endorsement existed.[84] The Court, therefore, finds that the reservation of rights did not amend the Endurance Policy, and no right to recoupment was ever created by the Coverage Letter.

Endurance further argues that the right to recoupment is implicit in the Endurance Policy because the Policy only indemnifies covered claims.[85] Delaware courts disfavor "implying a contractual protection when the contract could easily have been drafted to expressly provide for [such a right]."[86] If desired, Endurance

[81] Opp. Ex. 3 at 2-3.
[82] Endurance expressly admits that Endurance's reservation of rights did not amend the Endurance Policy. MJP Opp'n at 27-28. The Policy's absence of explicit language reserving the right to recoup payments therefore represents the last meeting of the minds between the parties.
[83] MJP Opp'n at 27-28. As such, "no separate contract is required to enforce Endurance's right to seek recoupment of its contribution to the *Grace* Settlement." *Id.* at 28-29.
[84] Reply to Counterclaims Ex. B, Endurance Policy Conditions VI.A ("Changes"). "This policy can only be changed by a written endorsement signed by one of our authorized representatives that becomes a part of this policy."
[85] MJP Opp'n at 24-27.
[86] *Allied Cap. Corp. v. GC-Sun Hldgs., L.P.*, 910 A.2d 1020, 1035 (Del. Ch. 2006).

could have, but did not, include a right to recoupment in its Policy. Indeed, the Followed Policy contains an explicit "right to recover [an] advanced payment" in certain circumstances.[87] The parties could have included a similar provision in the Endurance Policy and the fact they did not suggests it was not part of the parties' bargain.[88]

Given that no contractual provision provides a right for recoupment, the Court will next turn to the application of the voluntary payment doctrine.

B. The Voluntary Payment Doctrine Prevents Endurance from Recouping the Settlement.

Pursuant to well-settled Delaware law, "payment voluntarily made with full knowledge of the facts cannot be recovered, in the absence of a contract to repay."[89] Thus, the voluntary payment doctrine "prevents a counterparty from claiming that a misapprehension of its legal rights and obligations caused it to make payments by mistake."[90] "Conceptually, the voluntary payment doctrine derives from the intellection that ignorance of the law is no excuse."[91] As such, "[a] contract party

[87] Followed Policy at Endorsement 21.
[88] *See In re Verizon Ins. Coverage Appeals*, 222 A.3d 566, 578 (Del. 2019).
[89] *W. Nat. Gas. Co. v. Cities Serv. Gas Co.*, 201 A.2d 164, 169 (Del. 1964).
[90] *Intermec IP Corp. v. TransCore, LP*, 2021 WL 3620435, at *15 (Del. Super. Aug. 16, 2021) (cleaned up).
[91] *Id.* (citing *Home Ins. Co. v. Honaker*, 480 A.2d 652, 653 (Del. 1984) ("money paid due to a mistake of law is not recoverable, while money paid under a mistake of fact may be recovered in equity under an unjust enrichment theory.").

who pays its counterparty even though it had no contractual (legal) duty to do so may be found to have waived an argument in favor of recovering those payments."[92]

Endurance makes several arguments resisting the application of the voluntary payment doctrine.[93] Endurance's primary argument is that the voluntary payment doctrine presents a factual issue that the Court cannot resolve at this stage. [94] Regarding the substance of the doctrine, Endurance argues Textron's discovery abuses prevented it from seeking a declaration of coverage.[95] Endurance also maintains Delaware law recognizes a general right for insurers to recoup uncovered costs previously advanced on behalf on an insured.[96]

The voluntary payment doctrine applies to Endurance's Settlement payment. The Court has already determined there is no contractual provision to repay in the Endurance Policy. Thus, the Court must determine whether Endurance had "full knowledge of the facts" when it made the Settlement payment. The Court concludes Endurance did.

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[92] *Intermec*, 2021 WL 3620435, at *15.
[93] MJP Opp'n at 22-24.
[94] *Id.* at 23-24 (citing *W. Nat. Gas. Co.*, 201 A.2d at 169 ("the question of whether the voluntary payment doctrine applies is basically one of fact.").
[95] *Id.* at 22-23.
[96] MJP Opp'n at 13-16 (citing *First Delaware Ins. Co. v. Tilcon Delaware, Inc.*, 1998 WL 278311, at *4 (Del. Super. Mar. 31, 1998); *Nationwide Mut. Ins. Co. v. Flagg*, 789 A.2d 586, 597 (Del. Super. 2001); *Zurich Am. Ins. Co. v. Syngenta Crop Prot. LLC*, 2022 WL 4091260, at *1-2, 6-8 (Del. Super. Aug. 24, 2022)). Endurance argues "most [non-Delaware] courts recognize an insurer's right to seek recovery of settlement costs advanced under a reservation of rights." *Id.* at 16-19 (collecting cases).

As to Endurance's primary argument regarding the stage of the proceedings, Endurance is incorrect that the Court cannot determine the applicability of the voluntary payment doctrine on a motion for judgment on the pleadings.[97] The Supreme Court of Delaware has not made such a broad pronouncement,[98] and Endurance glosses over the *Nieves v. All Star Title, Inc.* decision, where the Superior Court previously applied of the voluntary payment doctrine at the motion to dismiss phase.[99]

Endurance's remaining arguments are similarly flawed. In *Nieves*, the court held that a payment "made under a misapprehension of the legal rights and

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[97] MJP Opp'n at 23-24.

[98] The Supreme Court of Delaware in *W. Nat. Gas. Co.* explains that a finding of involuntariness by reason of duress is "basically one of fact," but Endurance omits the Court's clarification that "undisputed facts may justify summary judgment." *W. Nat. Gas. Co.*, 201 A.2d at 169. Endurance's argument also relies on *Intermec* to argue the voluntary payment doctrine looks to "the totality of the circumstances" and therefore "cannot be resolved on the limited record of [a] Rule 12(c) motion. MJP Opp'n at 23. *Intermec*, however, stated that courts look to "the totality of the circumstances" when "deciding whether the [mistake leading to a payment] is one of law or fact." *Intermec*, 2021 WL 3620435, at *15. Endurance fails to allege a mistake of either law or fact in this case, rendering *Intermec* inapplicable to this portion of their argument. MJP Opp'n at 23; *See generally* Countercl.

[99] *Nieves v. All Star Title, Inc.*, 2010 WL 2977966, at *6-7 (Del. Super. July 27, 2010) (holding a motion to dismiss was appropriate because the voluntary payment doctrine barred recovery for damages that consisted "solely of fees voluntarily paid to [Defendant] with full knowledge that [Defendant] was not providing" an attorney's services; *Silver Lake Off. Plaza, LLC v. Lanard & Axilbund, Inc.*, 2014 WL 595378, at *6 (Del. Super. Jan. 17, 2014) (citing *Blanco v. AMVAC Chem. Corp.*, 2012 WL 3194412, at *6 (Del. Super. Aug. 8, 2012)) (explaining "[t]he standard for a motion for judgment on the pleadings is 'almost identical' to the standard for a motion to dismiss."). In evaluating a "motion for judgment on the pleadings, the court accords the party opposing a motion for judgment on the pleadings the same benefits as a party defending a motion to dismiss. *Ryan v. Sea Recreational Ass'n, Inc*., 2025 WL 2100991, at *2 (Del. July 28, 2025) (citing *Baldwin v. New Woods Res., LLC.*, 283 A.3d 1099, 1121 (Del. 2022)).

obligations of the person paying" is not involuntary.[100] The only support Endurance has that a determination regarding the voluntary payment doctrine is not possible at this stage is that "Endurance has not yet discovered, among other things, the extent of Textron's knowledge about its intentional discovery misconduct and what it said internally and to others about the fraud it committed on a Georgia court."[101]

Endurance, however, does not argue it misapprehended *any* fact when it agreed to contribute to the Settlement.[102] Endurance does not tie its statement in its Opposition to any discovery that would be necessary to show that the payment was involuntary or that it would need to investigate facts not otherwise known to

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[100] *Nieves v. All Star Title, Inc.*, 2010 WL 2977966, at *6 (Del. Super. July 27, 2010) (internal quotes omitted) (dismissing a claim in part because of the voluntary payment doctrine); *see Intermec*, 2021 WL 3620435, at *15 (Del. Super. Aug. 16, 2021) ("[a] contract party who pays its counterparty even though it had no contractual (legal) duty to do so may be found to have waived an argument in favor of recovering those payments."). This logic "derives from the intellection that ignorance of the law is no excuse." *Intermec*, 2021 WL 3620435, at *15.

[101] To be clear, the Georgia court never made a finding of fraud. Countercl. Answer ¶¶ 39-48. Endurance does not explain why knowing more about Textron's alleged discovery abuses in the *Grace* Action would cause the Court to conclude Endurance's Settlement payment was involuntary. Nor does Endurance connect any possible discovery to its tenuous theory regarding Textron "hid[ing] its intentional discovery misconduct from Endurance." MJP Opp'n at 23. On a motion for judgment on the pleadings, the Court need only draw "*reasonable* inferences" in the non-movant's favor. *Schwan's Home Serv., Inc. v. Microwave Sci., JV, LLC*, 2013 WL 3350881, at *4 (Del. Super. June 24, 2013) (emphasis added). Endurance has not shown any allegation in the pleadings create a reasonable inference that discovery will alter the voluntary payment doctrine analysis.

[102] *See* MJP Opp'n at 22-24. While Endurance notes "Textron hid its intentional discovery misconduct from Endurance for years [and] sprung it on Endurance on the eve of a hearing to strike Textron's answer," Endurance does not assert it was ignorant of any relevant fact when it sent the Coverage Letter agreeing to commit its policy limit to the Settlement. *Id.* at 23. Endurance has also not provided what information it is now lacking that it did not already have at the time of the Settlement Agreement. In the Coverage Letter, Endurance agreed to "make its $25M policy limit available to negotiate" the Settlement, without arguing any fact remained in dispute or undisclosed. *Id.*

Endurance at the time it made the payment. Endurance also does not allege it paid out of a mistaken belief that the *Grace* Settlement was covered by its Policy. Rather, Endurance paid while taking the position that "coverage [was] not implicated under the [Endurance] Policy."[103] Given that our Supreme Court has held that payment "under protest is not necessarily involuntary, nor is it made so by unilaterally calling it involuntary at the time of payment,"[104] the Court finds that the Settlement made by Endurance was voluntary.

Although Endurance does not use the word "duress" in its Opposition, Endurance argues it had no other alternative other than to pay the Settlement because there was "no time to seek a declaration of no coverage."[105] Endurance again does not allege that seeking a coverage declaration was impossible.[106] Insurance companies (including Endurance) routinely deny coverage prompting lawsuits by insureds to recover indemnification, even in the context of a pending mediation.[107]

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[103] Endurance Coverage Letter. Notably, this is the same position Endurance advances in its Counterclaims. Counterclaims ¶ 68 (alleging "that coverage was not implicated under the Excess Policy because any increase in the value of the case from Textron's prior reports was due to Textron's willful discovery misconduct and not Grace's injuries").

[104] *W. Nat. Gas. Co.*, 201 A.2d at 169.

[105] MJP Opp'n at 23.

[106] In fact, Endurance emphasizes in the Endurance Coverage Letter that it "reserves all rights under the Endurance Policy, including the right to assert additional defenses to any claims for coverage and to seek declaratory relief." Endurance Coverage Letter.

[107] *E.g.*, *Sycamore P'rs Mgmt. L.P. v. Endurance Am. Ins. Co.*, 2021 WL 761639, at *3 (Del. Super. Feb. 26, 2021) ("[i]nsurers, however, refused coverage, thereby prompting this action."). *See also Varsity Brands Hldg. Co. LLC v. Arch Ins. Co.*, 2025 WL 552500, at *1 (Del. Super. Feb. 19, 2025) (alleging insurers breached the insurance policies at issue and refused to settle the underlying suits in bad faith).

Endurance does not explain why following that well-worn path was not possible here.

Here, Endurance had a remedy – filing a lawsuit to determine coverage *before* agreeing to pay the Settlement or refuse to pay and defend itself in a subsequent coverage action. Endurance's failure to exercise its rights does not mean it acted under duress such that the voluntary payment doctrine does not apply. Because Endurance neither misapprehended a relevant fact nor acted under duress when it agreed to contribute to the Settlement, the voluntary payment doctrine bars Endurance's right to recoupment.

In so holding, the Court disagrees with Endurance's argument that Delaware law provides insurers a general right to recoupment. The cases on which Endurance relies only consider an insurer's right to recover previously advanced defense costs, not indemnification payments.[108] Courts finding a right to recoup defense costs recognize "Delaware law imposes the duty to defend 'even when only one count or

[108] *See First Delaware*, 1998 WL 278311, at *4 (holding an insurer could seek reimbursement of previously advanced defense costs later apportioned to uncovered claims); *Flagg*, 789 A.2d at 597 ("Nationwide has as a duty to defend on all claims, but it may seek reimbursement from Flagg of those expenses, costs or fees incurred by providing his defense on those claims which may be proven later to fall outside the policy coverage."); *Zurich Am.*, 2022 WL 4091260, at *7 (holding uncovered "*defense costs* must be reimbursed by the insured." (emphasis added)). Endurance also cites *Catlin Specialty Ins. Co. v. CBL & Assoc. Prop., Inc.*, but that case applied Tennessee, not Delaware, law. 2018 WL 3805868, at *2 n.10 (Del. Super. Aug. 9, 2018) ("Tennessee's is the law to apply to this case" (internal quotes omitted)). While the *Catlin* court cited *Flagg*, it did so for the proposition that an insurer can seek reimbursement of previously advanced defense costs later attributed to uncovered claims. *Id.* at *3 n.24.

theory of the plaintiff's complaint lies within coverage of [an insurance] policy.'"[109] The cases Endurance cites explicitly differentiate between defense and indemnification costs, because "an insurer's duty to defend is broader than its duty to indemnify."[110] Thus, Endurance has not established that Delaware law provides a general right for insurers to recoup previous indemnity payments, and the Court finds no case supporting that proposition.[111] Moreover, unlike in the duty to defend

[109] *Flagg*, 789 A.2d at 596-97 (Del. Super. 2001) (quoting *Continental Cas. Co. v. Alexis I duPont School District*, 317 A.2d 101, 105 (Del. 1974)).

[110] *Zurich Am.*, 2022 WL 4091260, at *8 ("[d]oubt as to whether the risk is insured is resolved in favor of the insured. If even one count or theory alleged in the complaint is covered, the duty to defend arises."); *see ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 72 (Del. 2011) ("[t]he duty to defend may be broader than the duty to ultimately indemnify.").

[111] The Court also notes that Endurance advocates for the application of § 35 of the Restatement (Third) of Restitution and Unjust Enrichment ("RRUE") as further evidencing a general right to recoupment exists. *See* MJP Opp'n at 19-22 (citing RRUE § 35 (2011) ("[i]f one party to a contract demands from the other a performance that is not in fact due by the terms of their agreement, under circumstances making it reasonable to accede to the demand rather than to insist on an immediate test of the disputed obligation, the party on whom the demand is made may render such performance under protest or with reservation of rights, preserving a claim in restitution to recover the value of the benefit conferred in excess of the recipient's contractual entitlement."). While Delaware courts have cited the RRUE favorably, no Delaware authority has relied on § 35. *See*, *e.g.*, *B.E. Cap. Mgmt Fund LP v. Fund.com Inc.*, 2024 WL 3451459, at *19-20 (Del. Ch. July 18, 2024) (citing several sections of the RRUE favorably after stating "[s]ince the publication of the [RRUE] in 2011, the Delaware courts have relied on it consistently."). Textron counters Endurance's reliance on the RRUE with its own treatise, the Restatement of the Law of Liability Insurance ("RLLI"). *See* MJP Reply at 14. The RLLI provides, "the majority of state courts that have addresses the issue have not permitted recoupment in the absence of a provision in the insurance policy granting the insurer this right or an express agreement by the insured." RLLI § 25 cmt. c. (2019). As with the RRUE, Delaware courts have cited the RLLI favorably but not § 25. *See*, *e.g.*, *Akron, Inc. v. Fresenius Kabi AG*, 2018 WL 4719347, at *59 n.619 (Del. Ch. Oct. 1, 2018) (citing RLLI § 32 cmt. e). While not necessary to rule on the Motion, the Court finds the reasoning of the RLLI more convincing. The RRUE discusses restitution and unjust enrichment in general while the RLLI, which is also more recent, deals with insurance liability specifically. Section 35 of the RRUE suggest also an unjust enrichment claim can exist even when a contract governs the parties' relationship. *See U.S. Fidelity v. U.S. Sports Specialty*, 270 P.3d 464, 468 (Utah 2012) (declining to adopt § 35 of the RRUE, because "[u]nder our precedent, a claim for unjust enrichment cannot arise where there is an express contract governing the 'subject matter'

context, recoupment in the circumstance of a settlement payment would undermine the principle of settlement finality.[112] Accordingly, the Court holds the Endurance Policy does not give Endurance a right to recoup its Settlement payment.

C. The Endurance Policy Bars Endurance's Restitution Counterclaim on the Theory of Unjust Enrichment.

Endurance argues it "is entitled to restitution of the entire amount . . . paid on behalf of Textron to settle the [*Grace* Action]," arguing "Textron was unjustly enriched."[113] Textron argues Endurance cannot state a claim for unjust enrichment because the Endurance Policy governs the parties relationship.[114] Well-settled Delaware law provides, "[a] claim for unjust enrichment is not available if there is a contract that governs the relationship between the parties that gives rise to the unjust enrichment claim."[115] Accordingly, "[w]hen the complaint alleges an express, enforceable contract that controls the parties' relationship . . . a claim for unjust enrichment" is not cognizable.[116]

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of the dispute."). Pursuant to well-settled Delaware law, "[a] claim for unjust enrichment is not available if there is a contract that governs the relationship of the parties that gives rise to the unjust enrichment claim." *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 891 (Del. Ch. 2009). Therefore, the Court finds that the reasoning of the RLLI is more persuasive to the factual circumstances here.

[112] *Crescent/Mach I P'rs, L.P. v. Dr Pepper Bottling Co. of Texas*, 962 A.2d 205, 210 (Del. 2008).

[113] Countercl. ¶¶ 89-91.

[114] MJP at 22-23 ("Delaware law, however, precludes Endurance from asserting a restitution claim as a substitute for a contractual right of recoupment that Endurance failed to include in the Endurance Policy.").

[115] *Kuroda*, at 891.

[116] *Bakerman v. Sidney Frank Imp. Co.,* 2006 WL 3927242, at * 18 (Del. Ch. Oct. 10, 2006) (revised Oct. 16, 2006).

Endurance does not argue the Endurance Policy is unenforceable or does not govern Textron's entitlement to indemnification for the *Grace* Action.[117] Rather, Endurance insists the Endurance Policy does not bar its claim for restitution because "[i]f the Endurance Policy does not apply to the *Grace* Settlement, Endurance has a viable claim for unjust enrichment."[118] Endurance's argument, however, misconstrues Delaware law regarding unjust enrichment. Simply "because an enforceable contract may not provide the relief a litigant wants does not mean [the] case is 'not controlled by the contract.'"[119] The fact that Endurance does not have a right to recoupment under the Endurance Policy does not mean the parties' relationship is not governed thereby. Endurance's reliance on *Avantix* does not compel otherwise.[120] The *Avantix* court held "a quasi-contract claim may proceed where an express contract exists, so long as the rights and obligations that are the subject of that claim are not governed exclusively by the contract at issue."[121] Here, Endurance makes no argument that its Counterclaims are not governed exclusively

[117] *See* MJP Opp'n at 29-30. Indeed, the Counterclaim contains extensive allegations concerning how the Endurance Policy governs the parties' relationship. Countercl. ¶¶ 1, 12-24, 80 ("[t]he [Endurance] Policy constituted a binding and enforceable agreement between Endurance and Textron.").
[118] MJP Opp'n 30 (citing *Avantix Labs., Inc. v. Pharmion, LLC*, 2012 WL 2309981, at *9 (Del. Super. June 18, 2012)).
[119] *Intermec*, 2021 WL 3620435, at *17 (quoting *S'holder Rep. Servs. LLC v. RSI Holdco, LLC*, 2019 WL 2207452, at *6 (Del. Ch. May 22, 2019)).
[120] *See Avantix*, 2012 WL 2309981, at *9.
[121] *Id.*

by the Endurance Policy.[122] The Court, therefore, **GRANTS** Textron's Motion regarding Endurance's counterclaim for restitution.

D. Endurance's Breach of Contract Counterclaim Does Not State a Cognizable Claim.

To survive a motion for judgment on the pleadings for a breach of contract, a claimant must allege "(1) the existence of a contract; (2) that the contract was breached; and (3) damages suffered as a result of the breach."[123] The claimant "must establish an 'express contractual obligation that was breached' to proceed on a breach of contract claim."[124] Generalized allegations of breach are insufficient to survive a motion for judgment on the pleadings.[125]

Endurance's Counterclaim for breach of contract fails to allege specific contractual provisions or obligations Textron allegedly breached."[126] The entirety of the Counterclaim's allegations concerning breach reads as follows:

> Textron breached the [Endurance] Policy by engaging in intentional misconduct in the [*Grace* Action], thereby implicating the limits of the

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[122] *See generally* MJP Opp'n; *See also* Countercl. ¶ 1 ("[t]his action seeks to resolve issues related to *Endurance's rights and obligations under its insurance policy issued to Textron, Inc. and Arctic Cat, Inc.*" (emphasis added)).
[123] *Khushaim v. Tullow Inc.*, 2016 WL 3594752, at *3 (Del. Super. June 27, 2016) (citations omitted).
[124] *Talkdesk, Inc. v. DM Trans, LLC*, 2024 WL 2799307, at *4 (Del. Super. May 31, 2024) (quoting *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 901 A.2d 106, 116 (Del. 2006)).
[125] *Ryan v. Buckeye P'rs, L.P.*, 2022 WL 389827, at *6 (Del. Ch. Feb. 9, 2022) ("Plaintiff's Complaint fails to cite a single provision of the [agreement] that the [Defendants] allegedly breached. Not one. This failure is not a technical foot fault; it reflects, instead, a fundamental failure to give the [Defendants] fair notice of the claim asserted against them[.]").
[126] *Talkdesk*, 2024 WL 2799307, at *4.

> [Endurance] Policy when the [*Grace* Action] otherwise would have settled without reaching those limits.[127]

This "generalized grievance" regarding Textron's performance "fail[s] to put [Textron] on notice of how it breached the [Endurance Policy]."[128] Contrary to Endurance's argument, the Counterclaim's general allegations concerning the Endurance Policy's terms do not put Textron "on notice of the terms of the agreement it breached."[129] Those allegations discuss the Endurance Policy's terms and recount Textron's conduct, but do not "identify the particular contractual terms that were breached."[130] As such, the Counterclaim does not give Textron notice of the Endurance Policy terms Textron allegedly breached. The Court **GRANTS** Textron's Motion regarding Endurance's Counterclaim for breach of contract.[131]

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[127] Countercl. ¶ 81. Counterclaim II's other allegations do not implicate the breach element of Endurance's breach of contract claim. *See id.* ¶¶ 79 (incorporating by reference the Counterclaim's other allegations), 80 (alleging the Endurance Policy is an enforceable contract), 82 (alleging Textron's breach damaged Endurance).

[128] *Talkdesk*, 2024 WL 2799307, at *4. It is also not a reasonable inference that any impact to the Settlement caused by Textron's discovery misconduct breached the Endurance Policy. The Settlement expressly represents all sums set forth herein constitute damages on account of personal physical injuries or physical sickness[.]" Compl. ¶ 113; Answer ¶ 113. Endurance reviewed and approved this language. Compl. ¶ 109; Answer ¶ 109; *see* Endurance Policy §§ I, V.A. The Endurance Policy incorporates Endorsement 9 of the Primary Policy which covers "[p]unitive or exemplary damages that are awarded against an Insured in a judgment that also awards compensatory damages covered by this policy." Followed Policy at Endorsement 9.

[129] MJP Opp'n at 30-31 (citing Countercl. ¶¶ 12-24, 39-48).

[130] *Travelers Cas. and Sur. Co. Am. v. Blackbaud, Inc.*, 2024 WL 1298762, at *9 (Del. Super. Mar. 27, 2024) (internal quotes omitted).

[131] Per Textron, this conclusion, together with the Court's other rulings "moot" "Textron's Second Cause of Action . . . and Third Cause of Action." MJP at 3-4. Accordingly, Counts II and III of the Complaint are no longer before the Court.

V. CONCLUSION

For the foregoing reasons the Court **GRANTS** Textron's Motion for Judgment on the Pleadings. Judgment is entered in Textron's favor regarding all Counterclaims and Count I of the Complaint. As a result, Counts II and III of the Complaint are moot and no longer before the Court. Accordingly, only Textron's bad faith claim remains pending in the case.

IT IS SO ORDERED.

/s/ Meghan A. Adams

Meghan A. Adams, Judge

Original to Prothonotary
cc: All counsel via File & Serve