

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CONDUENT STATE HEALTHCARE, LLC, )  
f/k/a XEROX STATE HEALTHCARE, LLC, )  
f/k/a ACS STATE HEALTHCARE, LLC, )

Plaintiffs, )

v. )

AIG SPECIALTY INSURANCE )  
COMPANY f/k/a CHARTIS SPECIALTY )  
INSURANCE COMPANY, ACE AMERICAN )  
INSURANCE COMPANY, IRONSHORE )  
SPECIALTY INSURANCE COMPANY, )  
ASPEN SPECIALTY INSURANCE )  
COMPANY, INDIAN HARBOR INSURANCE )  
COMPANY, GENERAL SECURITY )  
INDEMNITY COMPANY OF ARIZONA, )  
NAVIGATORS SPECIALTY INSURANCE )  
COMPANY, STARSTONE SPECIALTY )  
INSURANCE COMPANY f/k/a TORUS )  
SPECIALTY INSURANCE COMPANY, )  
QBE SPECIALTY INSURANCE COMPANY, )  
and LEXINGTON INSURANCE COMPANY, )

C.A. No. N18C-12-074 EMD CCLD

Defendants. )

Submitted: November 3, 2025

Decided: February 18, 2026

*Upon Plaintiffs' Motion for Summary Judgment*

**DENIED**

Jennifer C. Wasson, Esquire, Carla M. Jones, Esquire, Potter Anderson & Corroon LLP, Robin L. Cohen, Esquire, Keith McKenna, Esquire, Orrie A. Levy, Esquire, Cohen Ziffer Frenchman & McKenna LLP, New York, New York. *Attorneys for Plaintiff.*

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**DAVIS, P.J.**

## I. INTRODUCTION

This is a civil matter assigned to the complex commercial litigation division (“CCLD”). The Court presided over a trial with Plaintiff Conduent State Healthcare, LLC, f/k/a Xerox State Healthcare, LLC, f/k/a ACS State Healthcare, LLC (“Conduent”) and Defendants AIG Insurance Company, et al. (“AIG” or “Insurer”) on February 14, 2022.<sup>1</sup> The dispute at trial related to Conduent’s claim that AIG breached its duty to provide insurance coverage after Texas sued Conduent.<sup>2</sup> At the trial’s conclusion, the jury returned a “confused” verdict that Conduent engaged in fraud and acted in bad faith when settling with Texas.<sup>3</sup> In its verdict, the jury also found that Conduent’s settlement with Texas was reasonable and there was no collusion between the two.<sup>4</sup>

After trial, the Court granted Conduent’s post-trial motions, vacated the jury’s verdict and granted a new trial to prevent “manifest injustice” due to evidentiary issues during the original trial.<sup>5</sup> Following the Court’s post-trial motions, AIG sought an interlocutory appeal on February 3, 2025, which the Supreme Court accepted.<sup>6</sup> AIG argued that in granting Conduent’s post-trial motions to vacate the jury verdict and grant a new trial the Court exceeded its discretion.<sup>7</sup> The Supreme Court rejected AIG’s arguments and affirmed the Court’s ruling.<sup>8</sup>

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<sup>1</sup> See Trial transcript taken on February 14, 2022, before the Honorable Mary Johnston (D.I. No. 760); see First Amended and Supplemented Complaint (D.I. No. 48).

<sup>2</sup> *AIG Specialty Ins. Co. v. Conduent State Healthcare, LLC*, 339 A.3d 680, 683 (Del. Feb. 3, 2025); see generally First Amended and Supplemented Complaint (D.I. No. 48).

<sup>3</sup> *Conduent State Healthcare, LLC v. AIG Specialty Ins. Co.*, 2023 WL 2256052, at \*14 (Del. Super. Feb. 14, 2023).

<sup>4</sup> *Id.* at \*2-3.

<sup>5</sup> *Id.* at \*14; *Conduent State Healthcare, LLC v. AIG Specialty Ins. Co.*, 2024 WL 55372 (Del. Super. Jan. 4, 2024) (Rule 59(d), Motion to Set Aside the Verdict, and Rule 59(a), Motion for a New Trial).

<sup>6</sup> See generally *AIG*, 339 A.3d 680.

<sup>7</sup> *Id.* at 693.

<sup>8</sup> *Id.*

Since the Supreme Court’s decision, the CCLD judge appointed to preside over the matter has retired. The Court subsequently reassigned the matter.

Before the Court now is Plaintiff’s Motion for Summary Judgment on Defendants’ Affirmative Defenses of Reasonableness, Fraud, Collusion, and Bad Faith (the “Motion”) filed on May 8, 2025.<sup>9</sup> AIG filed its Opposition to the Motion on June 11, 2025.<sup>10</sup> The Court heard arguments on the Motion on September 12, 2025, and November 3, 2025. After the hearings, the Court took the Motion under advisement.

For the reasons stated below, the Court **DENIES** the Motion.

## **II. FACTS**

### **A. THE SETTLEMENT OF THE STATE ACTION**

The State of Texas contracted with Conduent in the early 2000s to administer its Medicaid program.<sup>11</sup> In 2012, Texas began investigating Conduent for allegedly assisting orthodontics offices overbill for services.<sup>12</sup> In May 2014, Texas sued several orthodontic providers to recover payments.<sup>13</sup> Texas, through a letter, also terminated the state’s contract with Conduent.<sup>14</sup>

In its termination letter, Texas claimed Conduent materially breached the contract by failing to establish a prior authorization review process with qualified clinical staff.<sup>15</sup>

Later that same month, Texas sued Conduent under the Texas Medicaid Fraud Prevention

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<sup>9</sup> See generally Plaintiff’s Motion for Summary Judgment (hereinafter “MSJ”) (D.I. No. 829).

<sup>10</sup> See generally Defendant’s Motion in Opposition to Summary Judgment (hereinafter “MSJ Opp’n”) (D.I. No. 839).

<sup>11</sup> *AIG*, 339 A.3d at 683.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*; *Conduent State Healthcare, LLC v. AIG Specialty Ins. Co.*, 2021 WL 2660679, at \*2 (Del. Super. June 23, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> *AIG*, 339 A.3d at 683.

Act (“TMFPA”) for civil penalties and injunctive relief (“State Action”).<sup>16</sup> Conduent notified its insurer, AIG, of the State Action and sought coverage related to the suit.<sup>17</sup> AIG refused coverage for the State Action, basing its rejection on Texas’ fraud allegations against Conduent.<sup>18</sup> AIG contends such conduct is contractually excluded from coverage under the relevant policies.<sup>19</sup>

In December 2018, Conduent and Texas engaged in settlement negotiations.<sup>20</sup> During these negotiations, Conduent pushed Texas to amend its petition and include breach of contract and negligence claims.<sup>21</sup> Conduent and Texas traded drafts of amended settlements, some which suggested Texas would amend the State Action to add breach and negligence causes of action.<sup>22</sup>

On December 10, 2018, Conduent filed its Complaint here against AIG for denying coverage.<sup>23</sup> On December 15, 2018, Conduent notified AIG about its proposed settlement with Texas and the plan to amend the State Action to include breach and negligence claims.<sup>24</sup> While Conduent and Texas negotiated settlement amendments, AIG continued to deny requests for coverage related to the State Action.<sup>25</sup>

Texas filed its Third Amended Petition, which included the breach and negligence causes of action on February 15, 2019.<sup>26</sup> Three days later, on February 18, Texas and

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (noting that AIG provided defense coverage to Conduent for related suits by orthodontic providers suing Conduent).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Original Complaint (D.I. No. 1); *see also* MSJ Opp’n at 9.

<sup>24</sup> *AIG*, 339 A.3d at 684.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Conduent reached a final settlement on the State Action for \$236 million (the “Settlement Agreement”).<sup>27</sup> The Settlement Agreement allocated approximately \$212 million to breach of contract damages and \$23.5 million to attorneys’ fees and expenses.<sup>28</sup>

Conduent and Texas allocated no portion of the settlement to any fines, penalties, or other punitive assessments.<sup>29</sup>

Conduent did not seek AIG’s consent before entering into the Settlement Agreement.<sup>30</sup> After settling with Texas, Conduent provided AIG with the Third Amended Petition and Settlement Agreement.<sup>31</sup> Conduent then amended its Complaint here to plead AIG breached its duties to defend and indemnify for the settlement payment and attorney fees.<sup>32</sup>

## **B. FIRST TRIAL**

The first trial began on February 14, 2022.<sup>33</sup> Prior to trial, the Court made two rulings. First, the Court held that New York law governs this dispute.<sup>34</sup> The Court also ruled that AIG has a duty to defend Conduent for Medicaid-related claims and Conduent made a *prima facie* showing that AIG had a duty to indemnify.<sup>35</sup> On February 22, 2022, the jury returned a verdict finding Conduent engaged in fraud and did not settle the State

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<sup>27</sup> See *id.* (noting that the parties refer to the settlement amount as \$236 million, whereas the Supreme Court’s figure states \$235 million).

<sup>28</sup> *Id.* at 686.

<sup>29</sup> *Id.* at 684.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*; see also First Amended and Supplemented Complaint (D.I. No. 48); see also *Conduent*, 2021 WL 2660679, at \*8 (holding that AIG has a duty to defend and indemnify Medicaid-Related Claims).

<sup>33</sup> See Trial transcript taken on February 14, 2022, before the Honorable Mary Johnston (D.I. No. 760).

<sup>34</sup> *Conduent*, 2021 WL 2660679, at \*3-4, 8.

<sup>35</sup> *Id.* at \*8 (“The Court finds that Conduent has made a *prima facie* showing that [AIG] ha[s] a duty to indemnify Conduent... Therefore, the Court cannot grant summary judgment to either Conduent or [AIG] with respect to the issue of indemnification for the settlement.”); Verdict Form at 3 (verdicts 7 and 9 respectively) (D.I. No. 707).

Action in good faith.<sup>36</sup> The jury also found Conduent’s settlement with Texas was not unreasonable and Conduent did not collude with Texas.<sup>37</sup>

### **C. CONDUENT’S POST-TRIAL MOTIONS & EVIDENTIARY ISSUES AT FIRST TRIAL**

#### **1. *Conduent’s Post-Trial Motions***

After trial, Conduent filed three post-trial motions.<sup>38</sup> Conduent filed a renewed motion for judgment as a matter of law pursuant to Rule 50, to set aside the judgment pursuant to Rule 59(d), and for a new trial under Rule 59(a).<sup>39</sup> On February 14, 2023, the Court granted Conduent’s Rule 59(a) and (d) motions as those motions sought to set aside the jury verdict and grant a new trial.<sup>40</sup> The Court concluded that evidentiary issues at trial likely “confused the jury” and “tainted” the verdicts.<sup>41</sup> As a result, the Court set aside the jury’s verdict to “prevent manifest injustice.”<sup>42</sup>

#### **2. *Evidentiary Issues at First Trial***

The Court found several evidentiary issues that necessitated granting the motion to vacate the jury’s verdict and grant a new trial.<sup>43</sup>

##### **a. Winter Submission**

In a February 2023 opinion, the Court noted that the Office of the Texas Attorney General declined to provide any witness for deposition in this case.<sup>44</sup> After meeting and conferring, Conduent and AIG agreed to permit Raymond Winter, a representative of the

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<sup>36</sup> Verdict Form at 3 (verdicts 7 and 9 respectively) (D.I. No. 707).

<sup>37</sup> *Id.* at 3-4 (verdicts 10 and 8 respectively).

<sup>38</sup> Conduent’s Omnibus Brief in Support of its Renewed Motion for Judgment as a Matter of Law Pursuant to Rule 50, to Set Aside/Amend/Alter the Judgment Under Rule 59(d), and/or for a New Trial Under Rule 59(a) (hereinafter “Conduent’s Post-Trial Motions”) (D.I. No. 711).

<sup>39</sup> *Id.*

<sup>40</sup> *Conduent*, 2023 WL 2256052, at \*1, 14 (D.I. No. 771).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at \*3-14.

<sup>44</sup> *Id.* at \*3.

Texas Attorney General’s Office, to answer written questions (“Winter Submission”).<sup>45</sup>

At trial, the Winter Submission became a focal point of contention.<sup>46</sup>

### **b. Conduent’s Privilege Logs**

Prior to trial, the Court issued a letter explaining how the parties could use information in the parties’ privilege logs.<sup>47</sup> The Court warned counsel they could not ask the jury to draw inferences from the privilege logs or argue that insurance coverage was discussed at meeting where Conduent was present.<sup>48</sup> However, at trial, AIG’s counsel made several references to information in Conduent’s privilege logs.<sup>49</sup>

### **c. Texas Attorney General’s Press Release (Trial Exhibit No. 335)**

Before trial, the Court ruled the Press Release from the Texas Attorney General was inadmissible hearsay.<sup>50</sup> The Court ruled the exhibit was inadmissible because it had the potential to be unduly prejudicial.<sup>51</sup> However, AIG repeatedly referred to the Press Release in the presence of the jury at trial.<sup>52</sup>

### **d. The Court’s Granting of Conduent’s Post-Trial Motions**

In granting Conduent’s post-trial motions, the Court articulated four reasons compelling a new trial. First, the Court held the Winter Submission was “clearly” inadmissible double and triple hearsay.<sup>53</sup> Nonetheless, Mr. Winter’s credibility became a

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<sup>45</sup> *Id.* (noting that this is a generally accepted practice in Superior Court civil cases and that the Court will not interpose its own judgment against that of the parties’).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at \*4-5 (“[D]emonstrating, for example, that a meeting took place on a certain date, who attended the meeting, and the general topic of the meeting.”); J. Johnston’s Letter to Counsel (D.I. No. 685).

<sup>48</sup> *Conduent*, 2023 WL 2256052, at \*4-5 (“The privilege logs themselves are not subject to the attorney-client privilege. However, the content of any conversations with counsel listed in the logs is privileged.”).

<sup>49</sup> *See id.* at \*5-7; J. Johnston’s Letter to Counsel (D.I. No. 685)

<sup>50</sup> *Conduent*, 2023 WL 2256052, at \*8-12; J. Johnston’s Letter to Counsel (D.I. No. 685).

<sup>51</sup> *Conduent*, 2023 WL 2256052, at \*8.

<sup>52</sup> *Id.* at \*8-9 (“[T]he [Texas] Attorney General’s Office issued the following Press Release: AG Paxton Recovers Record \$236 Million for Texas in Medicaid Fraud Settlement....”).

<sup>53</sup> *Id.* at \*3.

focal point of the trial.<sup>54</sup> However, due to the inability to cross-examine Mr. Winter, the jury could not evaluate his credibility.<sup>55</sup> Moreover, Mr. Winter answered questions about the settlement negotiation meetings, even though he was not present for them, and his answers contradicted the terms of the Settlement Agreement.<sup>56</sup> As the trial progressed, the Winter Submission, and speculative evidence about Mr. Winter's credibility, became a central focus.<sup>57</sup> The Court held that the Winter Submission was "so replete" with evidentiary issues that it never should have been admitted into evidence for any reason.<sup>58</sup>

Second, the Court held AIG's repeated inferences to Conduent's privilege logs and that it had no coverage obligations to Conduent were "inaccurate" and "unduly prejudicial."<sup>59</sup> Despite repeated admonishments, the Court noted that AIG continually encouraged the jury to draw improper inferences from information set forth in privilege logs.<sup>60</sup>

Third, AIG's counsel repeatedly referred the jury to the Press Release after the Court deemed it inadmissible.<sup>61</sup> The Court held the Press Release was "unquestionably hearsay, had indicia of a lack of credibility and political motivation, there was no date of creation, no author was identified, no cross-examination was possible, and the language directly contradicted the stated terms of the Settlement Agreement."<sup>62</sup> As such, the Court ruled the Press Release had the potential to be unduly prejudicial.<sup>63</sup>

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<sup>54</sup> *Conduent*, 2023 WL 2256052, at \*3.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at \*3-4, 14.

<sup>57</sup> *Id.*; *Conduent*, 2024 WL 55372, at \*1; *see generally* D.I. Nos. 246-47.

<sup>58</sup> *Conduent*, 2023 WL 2256052, at \*14.

<sup>59</sup> *Id.* at \*7.

<sup>60</sup> *Id.* at \*5, 14.

<sup>61</sup> *Id.* at \*8-9, 14; J. Johnston's Letter to Counsel (D.I. No. 685).

<sup>62</sup> *Conduent*, 2023 WL 2256052, at \*8.

<sup>63</sup> *Id.*

Finally, AIG “inaccurately and improperly” argued at trial that it never had coverage obligations to Conduent.<sup>64</sup> According to the Court, AIG’s argument was directly in violation of the Court’s pretrial holding that AIG breached its contractual duty to pay defense costs.<sup>65</sup>

In its opinion on the post-trial motions, the Court also granted Conduent’s Rule 50 motion in part.<sup>66</sup> The Court found as a matter of law:

AIG’s initial denial of coverage, and continued repudiation of coverage obligations, relieved Conduent of any duty to cooperate or to seek consent with regard to settlement with the Texas Attorney General.<sup>67</sup>

The Court held that Conduent was relieved of its duties to cooperate and seek consent before settling with Texas.<sup>68</sup> Under New York law, an insured is excused from those duties if an insurer unjustifiably denies or repudiates defense coverage.<sup>69</sup> The Court found AIG had done both.<sup>70</sup>

#### **D. THE PARTIES’ CROSS-MOTIONS FOR SUMMARY JUDGMENT ON EXCLUSION 3(A)**

The Court addressed the parties’ cross-motions for summary judgment on Exclusion 3(a), the “fraud exclusion,” on January 4, 2024.<sup>71</sup> In moving for summary judgment, Conduent stated that AIG waived the 3(a) Exclusion as a defense.<sup>72</sup> AIG argued that it never waived the 3(a) Exclusion defense.<sup>73</sup> The Court agreed with AIG,

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<sup>64</sup> *Id.* at \*14.

<sup>65</sup> *Id.* at \*13-14 (“The Court previously ruled that AIG breached its contractual duty to pay defense costs under the relevant insurance policies.”); *Conduent*, 2024 WL 55372, at \*1.

<sup>66</sup> *Conduent*, 2023 WL 2256052, at \*1, 14; *Conduent*, 2024 WL 55372, at \*1.

<sup>67</sup> *Conduent*, 2023 WL 2256052, at \*14; *Conduent*, 2024 WL 55372, at \*1.

<sup>68</sup> *Conduent*, 2023 WL 2256052, at \*13-14.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*; *see also Conduent*, 2024 WL 55372, at \*1.

<sup>71</sup> *Conduent*, 2024 WL 55372, at \*1-2; *AIG*, 339 A.3d at 685-86.

<sup>72</sup> *Conduent*, 2024 WL 55372, at \*1-2.

<sup>73</sup> *Id.* at \*1-2.

but it also found that AIG failed to prove the defense applied as to defeat its coverage obligations.<sup>74</sup> According to the Court:

Upon retrial, a jury may find that the Settlement resulted from fraud or collusion. In that event, Defendants would be relieved of any indemnification obligation and the Exclusion 3(a) issue would be moot.<sup>75</sup>

#### **E. PROCEEDINGS IN THE SUPREME COURT**

After the Court's rulings regarding the 3(a) Exclusion, AIG sought and obtained an interlocutory appeal at the Supreme Court of Delaware.<sup>76</sup> On appeal, AIG argued the Court exceeded its discretion in granting Conduent's motion for a new trial and erred in its post-trial rulings.<sup>77</sup> On February 3, 2025, the Supreme Court rejected AIG's arguments and affirmed the Court's rulings vacating the jury verdict, granting a new trial, and finding that Exclusion 3(a) did not bar AIG's coverage obligations.<sup>78</sup>

The Supreme Court held that the Court's granting of a new trial did not exceed the "bounds of reason or ignore the law and custom to produce injustice."<sup>79</sup> According to the Supreme Court, common sense suggests that a "fraudulent, non-collusive, reasonable settlement arranged in bad faith is a *confused* verdict."<sup>80</sup>

The Supreme Court also held that the held that AIG's breach of the duty to defend excused Conduent's duties to cooperate and seek consent before settling with the State Action.<sup>81</sup> However, the Supreme Court also noted that AIG would have another opportunity to litigate its affirmative defenses that Conduent arranged the settlement

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<sup>74</sup> *Id.* at \*2, 4.

<sup>75</sup> *Id.* at \*4.

<sup>76</sup> *See generally* *AIG*, 339 A.3d 680.

<sup>77</sup> *Id.* at 683, 689.

<sup>78</sup> *Id.* at 683, 687, 693.

<sup>79</sup> *Id.* at 693.

<sup>80</sup> *Id.* (emphasis added).

<sup>81</sup> *Id.* at 688.

through fraud or collusion.<sup>82</sup> If AIG is successful at the new trial, it will have no duty to indemnify Conduent.<sup>83</sup>

### III. STANDARD OF REVIEW

#### A. MOTION FOR SUMMARY JUDGMENT

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.<sup>84</sup> The moving party bears the burden of establishing the non-existence of material issues of fact.<sup>85</sup> The Court must view the record in a light most favorable to the non-moving party.<sup>86</sup> Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.<sup>87</sup> 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, The Court will not grant summary judgment.<sup>88</sup>

#### B. INTERPRETATION OF INSURANCE CONTRACTS

The interpretation of contractual language, including in insurance policies, “is a question of law.”<sup>89</sup> The principles governing the interpretation of an insurance contract are well-settled. In attempting to resolve a dispute over the proper interpretation of an

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<sup>82</sup> *Id.* at 687 n.27.

<sup>83</sup> *Id.* at 687-88 n.27 (distinguishing the duty to indemnify with the duty to defend, which arise “only once liability has been conclusively established.”).

<sup>84</sup> Del. Super. Ct. Civ. R. 56(c).

<sup>85</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>86</sup> *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

<sup>87</sup> *Moore*, 405 A.2d at 681.

<sup>88</sup> *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.”).

<sup>89</sup> *CVR Ref., LP v. XL Specialty Ins. Co.*, 2021 WL 5492671, at \*8 (Del. Super. Nov. 21, 2023).

insurance policy, “a court should first seek to determine the parties’ intent from the language of the insurance contract itself.”<sup>90</sup>

In reviewing the terms of an insurance policy, the Court considers “the reasonable expectations of the insured at the time of entering into the contract to see if the policy terms are ambiguous or conflicting, contain a hidden trap or pitfall, or if the fine print takes away that which has been provided by the large print.”<sup>91</sup> Ambiguity exists when the disputed term “is fairly or reasonably susceptible to more than one meaning.”<sup>92</sup> Absent any ambiguity, contract terms should be accorded their plain, ordinary meaning.<sup>93</sup> If an insurance policy contains an ambiguous term, then the policy is to be construed in favor of the insured to further the contract’s purpose and against the insurer, as the insurer drafts the policy and controls coverage.<sup>94</sup>

When determining an insurer’s duty to defend a claim asserted against an insured, the Court will look to the allegations in the underlying complaint to decide whether the

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<sup>90</sup> *Alstrin v. St. Paul Mercury Ins. Co.*, 179 F. Supp. 2d 376, 388 (D. Del. 2002); *see also Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 745 (Del. 1997) (“The scope of an insurance policy’s coverage ... is prescribed by the language of the policy.”) (citing *Rhone–Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195-96 (Del. 1992)); *Playtex FP, Inc. v. Columbia Cas. Co.*, 622 A.2d 1074, 1076-77 (Del. Super. May 21, 1992) (citing *E.I. du Pont de Nemours & Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985)); *Kaiser Aluminum Corp. v. Matheson*, 681 A.2d 392, 395 (Del. 1996).

<sup>91</sup> *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 1996 WL 111205, at \*2 (Del. Super. Jan. 30, 1996) (citation omitted); *see Steigler v. Ins. Co. of N. Am.*, 384 A.2d 398, 401 (Del. 1978) (“[A]n insurance contract should be read to accord with the reasonable expectations of the purchaser so far as the language will permit.”) (quoting *State Farm Mut. Auto. Ins. Co. v. Johnson*, 320 A.2d 345, 345 (Del. 1974) (internal quotation marks omitted)).

<sup>92</sup> *Alta Berkeley VIC. V. v. Omneon, Inc.*, 41 A.3d 381, 385 (Del. 2012).

<sup>93</sup> *See id.*; *see also Goggin v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 2018 WL 6266195, at \*4 (Del. Super. Nov. 30, 2018); *IDT Corp. v. U.S. Specialty Ins. Co.*, 2019 WL 413694, at \*7 (Del. Super. Jan. 31, 2019).

<sup>94</sup> *See Alstrin*, 179 F. Supp. 2d at 390 (“Generally speaking, however, Delaware...courts continue to strictly construe ambiguities within insurance contracts against the insurer and in favor of the insured in situations where the insurer drafted the language that is being interpreted regardless of whether the insured is a large, sophisticated company.”) (citations omitted); *Nat’l Union Fire Ins. Co. v. Rhone–Poulenc Basic Chems. Co.*, 1992 WL 22690, at \*8 (Del. Super. Jan. 16, 1992) (“Application of the [*contra proferentem*] doctrine turns not on the size or sophistication of the insured, but rather on the fact that the policy language at issue is drafted by the insurer and is not negotiated.” (citation omitted)).

action against the policy holder states a claim covered by the policy.<sup>95</sup> Generally, an insurer's duty to defend is broader than its duty to indemnify an insured.<sup>96</sup> An insurer has a duty to defend where the factual allegations in the underlying complaint potentially support a covered claim.<sup>97</sup> The Court generally will look to two documents in its determination of the insurer's duty to defend: the insurance policy and the pleadings of the underlying lawsuit.<sup>98</sup> The duty to defend arises where the insured can show that the underlying complaint, read as a whole, alleges a risk potentially within the coverage of the policy.<sup>99</sup>

The insurer will have a duty to indemnify only when the facts in that claim are actually established.<sup>100</sup>

### C. LAW OF THE CASE DOCTRINE

The law of the case doctrine is a procedural rule of law, not substantive.<sup>101</sup> The doctrine "is designed to prevent the relitigation of prior determinations and inconsistent judgments."<sup>102</sup> The law of the case becomes applicable when the Court applies a legal principle to an issue based on facts that have stayed constant over the course of the litigation.<sup>103</sup> "[A] prior legal ruling based on a constant set of facts should be reconsidered

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<sup>95</sup> *Verizon Commc'ns Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa*, 2021 WL 710816, at \*6 (Del. Super. Feb. 23, 2021).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Myer v. Dyer*, 643 A.2d 1382, 1386 (Del. Super. Dec. 22, 1993) (citing *Mellow v. Board of Adjustment of New Castle County*, 567 A.2d 422 (Del. 1989) (ORDER)).

<sup>102</sup> *Fanean v. Rite Aid Corp. of Del.*, 984 A.2d 812, 818 (Del. Super. Dec. 3, 2009) (citing *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 711 A.2d 45, 55 (Del. Super. Aug. 23, 1995) (citing *Moses v. State Farm Fire & Cas. Ins. Co.*, 1992 WL 179488 (Del. Super. June 25, 1992)).

<sup>103</sup> *Id.* (citing *Kenton v. Kenton*, 571 A.2d 778, 784 (Del. 1990)).

only if it is ‘clearly wrong, produces an injustice or should be revisited because of changed circumstances.’”<sup>104</sup> Without such a showing, there can be no new consideration.<sup>105</sup>

#### IV. DISCUSSION

The Court can only revisit prior legal ruling based on constant facts if it produces an outcome that is clearly wrong, unjust, or there are changed circumstances.<sup>106</sup> Here, none of these justifications apply to AIG’s affirmative defenses. The Court will not revisit prior legal rulings made in this civil matter. As such, the Court will require AIG to prove the elements established for its affirmative defenses as instructed at the first trial.<sup>107</sup> Moreover, AIG cannot argue that it has no coverage obligations to Conduent for Medicaid-related claims, as the Court held in 2021.<sup>108</sup>

##### **A. THE COURT DENIES THE MOTION AS TO AIG’S FRAUD DEFENSE BECAUSE AIG PRESENTS GENUINE DISPUTES OF MATERIAL FACT.**

In the first trial, the Court held that to prove its fraud defense, AIG must show: (i) Conduent made a material misrepresentation or omission of fact which rendered a representation false; (ii) Conduent knew that the statement was false; and (iii) Conduent made the statement to try to cause [AIG] to rely upon it.<sup>109</sup>

The Court denies the Motion for two reasons. First, AIG presents disputed facts upon which a reasonable jury could find in its favor.<sup>110</sup> Even without the inadmissible Winter Submission, Privilege Log, or Press Release evidence, AIG argues that the

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<sup>104</sup> *Pivotal Payments Direct Corp. v. Planet Payment, Inc.*, 2020 WL 7028597, at \*6 (Del. Super. Nov. 30, 2020).

<sup>105</sup> *Fanean*, 984 A.2d at 818 (citing *Kenton*, 571 A.2d at 784).

<sup>106</sup> *Pivotal Payments Direct*, 2020 WL 7028597, at \*6.

<sup>107</sup> See Jury Instructions at 21-24; MSJ at 27; MSJ Reply Br. at 14-15.

<sup>108</sup> *Conduent*, 2021 WL 2660679, at \*4-5.

<sup>109</sup> Jury Instructions at 21 (D.I. No. 705).

<sup>110</sup> See MSJ Opp’n at 27-29.

following occurrences are sufficient for a reasonable jury to find in favor of its fraud defense:

- October 31, 2018, Conduent wrote AIG with a summary of its October 4 meeting and Texas’s subsequent settlement demand. Conduent reported “that the meeting was shorter than expected,” and Conduent “intentionally” omitted that it had used that meeting to “articulate to [Texas] that we request that they amend the public complaint and add contract and negligence claims.”<sup>111</sup>
- December 15, 2018, Conduent sent an e-mail insisting that AIG “change its coverage positions and agree to contribute to funding a settlement” because “[Texas] intends to prosecute its full array of claims, including for Conduent’s allegedly tortious conduct and its alleged breaches of obligations under contracts with the State of Texas and will further amend its complaint to reflect all of its claims.” Conduent “misrepresented” Texas’s intentions. Texas told Conduent over a month later that it still “much prefer[red] not to amend.”<sup>112</sup>
- January 4, 2019, Conduent “obfuscate[d]” on a call with AIG. Conduent’s counsel stated there was “[n]ot much more to report” regarding negotiations with Texas, and did not comply with AIG’s request for a copy of the settlement agreement draft.<sup>113</sup>
- February 18, 2019, Conduent delivered “a copy of the State of Texas’s Third Amended Petition” to AIG, without mentioning that the Third Amended Petition was requested and even coauthored by Conduent.<sup>114</sup>

Second, the law of the case doctrine requires the Court to adhere to the requirements of AIG’s fraud defense articulated in the original jury instructions.<sup>115</sup>

Contrary to Conduent’s position, AIG need not prove both reliance and damages as part

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<sup>111</sup> *Id.* at 28.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 29.

<sup>114</sup> *Id.*

<sup>115</sup> *See Fanean*, 984 A.2d at 818 (“Only upon a showing of the existence of newly discovered evidence, a change in the law, or a resulting manifest injustice should the Court reopen decisions that it has already adjudicated.”).

of its defense.<sup>116</sup> The four instances noted by AIG provide sufficient factual disputes for a reasonable factfinder to find Conduent engaged in fraud.<sup>117</sup>

Moreover, Conduent failed to carry its burden of demonstrating that there are no disputes of material fact and that it is entitled to judgment as a matter of law.<sup>118</sup> The Court agrees with the Supreme Court that AIG will have an opportunity to litigate its affirmative defenses at the new trial.<sup>119</sup>

**B. THE COURT DENIES THE MOTION AS TO AIG’S BAD FAITH DEFENSE BECAUSE AIG PRESENTS DISPUTES OF MATERIAL FACT.**

The jury instructions required AIG to prove that Conduent did not settle the State Action with Texas in good faith.<sup>120</sup> “Conduent acted in bad faith if it manufactured insurance coverage that would not have existed otherwise; or purposefully structured the settlement for the sole purpose of securing insurance coverage that would not have existed otherwise.”<sup>121</sup>

AIG contends that the facts demonstrate Texas spent years resisting Conduent’s requests to amend the State Action to include breach of contract and negligence claims.<sup>122</sup> According to AIG, Texas and Conduent exchanged multiple drafts of the Settlement Agreement, and Texas repeatedly erased and rejected language that tended to add the breach and negligence claims.<sup>123</sup> Even when Conduent offered a record \$236

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<sup>116</sup> MSJ Reply Br. at 16-18.

<sup>117</sup> Del. Super. Ct. Civ. R. 56(c).

<sup>118</sup> *Id.*

<sup>119</sup> *AIG*, 339 A.3d at 687 n.27.

<sup>120</sup> Jury Instructions at 23.

<sup>121</sup> *Id.*

<sup>122</sup> MSJ Opp’n at 22.

<sup>123</sup> *Id.* at 12-14, 22-23 (noting that in the Sixth Draft, Texas responded: “[W]e would much prefer not to amend the pleadings themselves to allege contract claims.”).

million payment, Texas rejected the inclusion of contractual claims until Conduent conditioned the settlement payment on Texas amending its claims.<sup>124</sup>

Accepting AIG's assertions as true, as the Court must, there are clear disputes of material fact.<sup>125</sup> Based on Conduent allegedly conditioning its settlement on Texas amending its petition to include the contractual claims, a reasonable factfinder could find Conduent acted in bad faith. AIG presents sufficient factual allegations to infer that Conduent manufactured insurance coverage or sought to structure the Settlement Agreement to manufacture coverage.<sup>126</sup>

**C. THE COURT DENIES THE MOTION AS TO AIG'S REASONABLENESS DEFENSE BECAUSE CONDUENT FAILED TO DEMONSTRATE IT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

At the first trial, the Court required AIG prove that Conduent's settlement with Texas was unreasonable.<sup>127</sup> The Settlement Agreement allocated \$212,347,800 to reimburse Texas for monetary losses it claimed to have resulted from Conduent's alleged failure to comply with its contractual obligations, \$23,594,200 for attorney's fees, costs, and legal expenses incurred by Texas, and allocated \$0 towards any other costs or penalties.<sup>128</sup>

The Settlement Agreement states the "Settlement Amount is allocated to reimburse...[Texas] for monetary losses [due to Conduent's] failures to comply with obligations...under the 2003 Contract and 2010 Contract."<sup>129</sup> "No portion of the

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<sup>124</sup> *Id.* (referring to Conduent requiring Texas to amend its claims in order to settle as an "Ultimatum").

<sup>125</sup> Del. Super. Ct. Civ. R. 56(c); *see also Moore*, 405 A.2d at 680.

<sup>126</sup> Del. Super. Ct. Civ. R. 56(c); *see also Moore*, 405 A.2d at 680.

<sup>127</sup> Jury Instructions at 24.

<sup>128</sup> *Id.*

<sup>129</sup> *Conduent*, 2023 WL 2256052, at \*4 (identifying the 2003 and 2010 contracts between Conduent and Texas to process Medicaid claims).

Settlement Amount shall be allocated or attributed to the payment of fines, penalties, or other punitive assessments, or to disgorgement of revenues.”<sup>130</sup>

The main contention between the parties’ positions is whether an “appropriate settlement” is distinguishable from one that is “reasonable.”<sup>131</sup> AIG insists the Settlement Agreement between Conduent and Texas was not reasonable.<sup>132</sup> To survive summary judgment, AIG argues it must only show that a reasonable factfinder could find allocating the entire settlement to the breach of contract claim was unreasonable.<sup>133</sup> Conversely, Conduent maintains the Settlement Agreement with Texas was reasonable because all amounts paid were “appropriately” allocated to covered risks.<sup>134</sup>

Neither party presents materially different facts about the allocation or amount of the Settlement Agreement. Moreover, the parties fail to present clear legal standards by which the Court can review the reasonableness of the Settlement Allocation. Granting all inferences in favor of AIG as the non-movant, as it must, the Court finds Conduent failed to meet its burden on summary judgment—that it is entitled to judgment as a matter of law.<sup>135</sup> A reasonable factfinder could find allocating the entire Settlement Agreement to the breach of contract claim and not the TMFPA or negligence claims is unreasonable.

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<sup>130</sup> *Id.*

<sup>131</sup> MSJ at 19-20; *see* MSJ Opp’n at 23.

<sup>132</sup> MSJ Opp’n at 20-23.

<sup>133</sup> *Id.*

<sup>134</sup> MSJ at 19 (stating the covered risks are losses allegedly resulting from Conduent’s breaches of its contracts with Texas and attorneys’ fees).

<sup>135</sup> *Ebersole*, 180 A.2d at 470 (“Under no circumstances, however, will summary judgment be granted when, from the evidence produced, there is a reasonable indication that a material fact is in dispute. Nor will summary judgment be granted if, upon an examination of all the facts, it seems desirable to inquire thoroughly into them in order to clarify the application of the law to the circumstances.”); *see also Cook*, 1990 WL 35244, at \*3; Del. Super. Ct. Civ. R. 56(c); *Moore*, 405 A.2d at 680.

Even assuming the Settlement Allocation was reasonable, as Conduent asserts, this does not dispose of AIG's other affirmative defenses.<sup>136</sup> AIG provides sufficient factual bases to dispute the Motion and have its defenses tried before a jury.

**D. THE COURT DENIES THE MOTION AS TO AIG'S COLLUSION DEFENSE BECAUSE AIG PRESENTS DISPUTES OF MATERIAL FACT.**

For its collusion defense, the Court required AIG to show that Conduent and Texas entered into a secret agreement and:

- (i) Conduent intended to manufacture insurance coverage that would not otherwise be available; (ii) Texas was at least aware of Conduent's intent to manufacture insurance coverage that would not otherwise be available; and (iii) [Texas] was willing to assist Conduent in manufacturing insurance coverage that would not otherwise be available.<sup>137</sup>

The jury instructions did not require AIG to prove that Texas intended to harm AIG.<sup>138</sup>

Under the law of the case, the Court requires AIG to prove the same here.

AIG submits eight factual bases that, it contends, demonstrates how Conduent and Texas colluded to manufacture insurance coverage that would not otherwise exist.<sup>139</sup>

These include:

- Conduent engaged in years of litigation with Texas; the litigation included disputes over whether Texas's suit could be characterized as a Medicaid fraud suit rather than a contract suit; and the Texas courts determined Texas was properly pursuing only statutory penalties for Medicaid fraud;<sup>140</sup>
- Conduent admits it told Texas it would settle only if Texas amended its Petition to add breach of contract and negligence claims, while at the same time Conduent was telling AIG that Texas was threatening to add such claims;<sup>141</sup>

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<sup>136</sup> MSJ at 18, 21-23.

<sup>137</sup> Jury Instructions at 22.

<sup>138</sup> *Id.*

<sup>139</sup> MSJ Opp'n at 35-38.

<sup>140</sup> *Id.* at 35.

<sup>141</sup> *Id.*

- Documents show that Texas repeatedly rejected Conduent’s request to amend and allocate settlement funds away from Medicaid fraud;<sup>142</sup>
- Conduent concedes it procured Texas’s amendment and allocation of the settlement to non-fraud claims as a “quid pro quo” after Conduent set an ultimatum: amend and re-allocate or lose the \$236 million;<sup>143</sup>
- Conduent admits to collaborating with Texas in drafting its pleading to be filed against Conduent;<sup>144</sup>
- Conduent insisted on Texas including a misleading recital in the Settlement Agreement stating that “[Texas] advised [Conduent] that it was prepared to amend the State Action to add causes of action for breach of contract”—even though it was Conduent, not Texas, who demanded the amendment;<sup>145</sup>
- The amendment was filed the same day the Settlement was finalized, confirming that Texas never intended to litigate the new causes of action but was willing to assist Conduent;<sup>146</sup> and
- There is no evidence Conduent inquired with Texas or took steps to address any business or reputational concerns.<sup>147</sup>

These separate disputes of material facts are sufficient for AIG’s collusion defense to survive summary judgment.<sup>148</sup> Based on AIG’s allegations, a reasonable factfinder could find Conduent structured the Settlement Agreement to receive insurance coverage, and through Texas’s awareness and assistance, Conduent received insurance coverage. As such, Conduent did not meet its burden of establishing there are no disputes of material fact.<sup>149</sup>

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<sup>142</sup> *Id.* at 35-36.

<sup>143</sup> *Id.* at 36.

<sup>144</sup> *Id.* at 36-37.

<sup>145</sup> *Id.* at 37.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 37-38.

<sup>148</sup> Del. Super. Ct. Civ. R. 56(c).

<sup>149</sup> *Id.*

## V. CONCLUSION

For the reasons stated above, the Court **DENIES** the Motion.

In addition, the parties will contact the Court to schedule a status conference to determining how to address any outstanding motions and to set a new trial date.

Dated: February 18, 2026  
Wilmington, Delaware

/s/ Eric M. Davis  
Eric M. Davis, President Judge

cc: File&ServeXpress