IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12972

D.C. Docket No. 8:16-cv-02111-CEH-MAP

MARK CHAPMAN, individually and as personal representative of the Estate of Gregory Chapman, deceased, and the Estate of Barbara Chapman, deceased, IRENE CHAPMAN,

Plaintiffs-Counter Defendants-Appellants,

KATHY RUFF, et al.,

Plaintiffs-Counter Defendants,

versus

ACE AMERICAN INSURANCE COMPANY, a foreign corporation f.k.a. Cigna Insurance Company,

Defendant - Counter Claimant - Appellee.

Appeal from the United States District Court for the Middle District of Florida

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(May 21, 2019)

OPINION

Before TJOFLAT, JORDAN, and EDMONDSON, Circuit Judges.

PER CURIAM:

In this insurance coverage dispute, Plaintiffs Mark Chapman – individually and as personal representative of the Estates of Barbara Chapman and of Gregory Chapman -- and Irene Chapman appeal the district court's grant of summary judgment in favor of ACE American Insurance Company ("ACE"). The district court concluded that ACE owed no duty to defend or to indemnify its insured, Robert Taylor, against Plaintiffs' claims in an underlying state court lawsuit (the "Underlying Suit"). No reversible error has been shown; we affirm.

Mark and Barbara Chapman's ten-year old son, Gregory, was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and had a history of behavioral problems, including stealing and a self-inflicted gunshot to the leg. After receiving a referral from the Department of Children and Family Services, the Chapmans engaged Taylor to provide mental health counseling services to Gregory. Taylor conducted counseling sessions with Gregory between January and May 1998. In May 1998, Gregory committed suicide.

In 1999, Taylor pleaded guilty in state court to four felony counts of organized fraud and twenty felony counts of grand theft. Taylor's offense conduct included, among other things, providing -- and collecting payment for – unlicensed counseling services to patients, including Gregory.

Shortly thereafter, Plaintiffs served Taylor with a Notice of Intent to Initiate Litigation. Plaintiffs alleged that "Taylor was not a licensed drug abuse or mental health counselor for minors such as Gregory Chapman." Plaintiffs also alleged that Gregory "suffered from mental problems which were aggravated by the treatment provided by Robert Taylor" and that Taylor's treatment "played a substantial part" in Gregory's death.

Plaintiffs later filed the Underlying Suit against Taylor and his business, Recovery Concepts.[1] Plaintiffs asserted claims for wrongful death, unjust enrichment, unfair and deceptive trade practices, and infliction of severe emotional distress. Briefly stated, Plaintiffs alleged that Taylor held himself out to the public as a licensed provider of mental health

[1] Kathy and William Ruff and their daughter, Melissa LaGotte, were also plaintiffs in the Underlying Suit. The Ruffs/LaGotte alleged injuries resulting from Taylor's provision of unlicensed counseling services to LaGotte. The Ruffs/LaGotte reached a settlement with ACE and are not parties to this appeal.

In deciding ACE's motion for summary judgment, the district court limited its analysis to the Chapmans' claims and said that allegations about LaGotte were not pertinent to whether coverage existed under the Policy for the Chapmans' claims. Plaintiffs raise no challenge to that ruling on appeal.

counseling and substance abuse services to minors, when he was neither licensed nor qualified by education and experience to provide such services. Plaintiffs contend that Taylor's "counseling" contributed to Gregory's death and caused Plaintiffs emotional and financial injury.

At all times pertinent to this appeal, Taylor was insured under an Allied Health Care Provider Professional and Supplemental Policy issued by ACE ("Policy"). ACE refused, however, to defend Taylor against the Underlying Suit. ACE first determined that no coverage existed under the Policy because Plaintiffs' alleged injuries did not arise from covered "professional services." ACE also determined that coverage was precluded by the Policy's exclusion provisions.

Following mediation, Plaintiffs and Taylor entered into an Agreement to Enter into a Consent Judgment, also known as a Coblentz[2] agreement ("Agreement"). Pursuant to the Agreement, the parties agreed to the entry of a consent judgment in excess of $5 million against Taylor and Recovery Concepts, to be collected from available insurance proceeds. Taylor also assigned to Plaintiffs his rights under the Policy. Plaintiffs then filed the instant lawsuit, seeking recovery from ACE.

The district court granted summary judgment in favor of ACE. The district court concluded that ACE

[2] Coblentz v. Am. Sur. Co. of N.Y., 416 F.2d 1059 (5th Cir. 1969).

owed no duty to defend against Plaintiffs' claims in the Underlying Suit because the acts or omissions alleged by Plaintiffs constituted no "professional services" under the Policy. The district court also determined that Plaintiffs' allegations fell within the Policy's exclusion provisions. Because ACE had no duty to defend, the district court determined that ACE owed no duty to indemnify.

We review de novo a district court's grant of summary judgment, applying the same legal standards as the district court. Whatley v. CNA Ins. Cos., 189 F.3d 1310, 1313 (11th Cir. 1999). Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, presents no genuine issue of material fact and compels judgment as a matter of law. Holloman v. Mail-Well Corp., 443 F.3d 832, 836-37 (11th Cir. 2006).

We are bound by the substantive law of Florida in deciding this diversity case. See Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938). To recover under a Coblentz agreement, "the injured party must bring an action against the insurer and prove coverage, wrongful refusal to defend, and that the settlement was reasonable and made in good faith." Chomat v. Northern Ins. Co., 919 So. 2d 535, 537 (Fla. Dist. Ct. App. 2006).

Under Florida law, an insurer owes a duty to defend its insured "when the complaint alleges facts that fairly and potentially bring the suit within policy coverage." Jones v. Fla. Ins. Guar. Ass'n, Inc., 908 So. 2d 435, 442-43 (Fla. 2005). "Any doubts regarding the

duty to defend must be resolved in favor of the insured." Id. at 443. If the alleged facts and legal theories asserted in the complaint fall outside a policy's coverage, no duty to defend arises. See Chicago Title Ins. Co. v. CV Reit, Inc., 588 So. 2d 1075, 1075-76 (Fla. Dist. Ct. App. 1991). Where there exists no duty to defend, an insurer has no duty to indemnify. Wellcare of Fla., Inc. v. Am. Int'l Specialty Lines Ins. Co., 16 So. 3d 904, 907 (Fla. Dist. Ct. App. 2009).

When an insurance policy's language is "clear and unambiguous," it is construed according to its plain language. Auto-Owners Ins. Co. v. Anderson, 756 So. 2d 29, 33 (Fla. 2000). In other words, "[i]f the language of an insurance policy is clear, it must be construed to mean what it says and nothing more." Gen. Sec. Ins. Co. v. Barrentine, 829 So. 2d 980, 981 (Fla. Dist. Ct. App. 2002). "Courts have no power to create insurance coverage, if it does not otherwise exist by the terms of the policy." Id.

Under the Policy, ACE agreed to "pay all amounts up to the limit of liability, which you become legally obligated to pay as a result of injury or damage to which this insurance applies." The Policy provides that Professional Liability Coverage is available only if the "injury or damage" was "caused by a medical incident arising out of professional services by you . . .." Likewise, Supplemental Liability Coverage is available only for "injury or damage" that "occur[red] in the course of providing your professional services."

The Policy defines the term "Medical Incident" as "any act, error or omission in the providing of or failure to provide professional services by you." The term "Professional Services" "means those services you are licensed, trained, or being trained to provide within the allied health field specified in your application and approved by us for coverage." The Policy identifies Taylor's Professional Occupation as "Drug & Alcohol Abuse Counselor." (emphasis added).

In the Underlying Suit, Plaintiffs made these factual allegations:

> 10. At all material times, Taylor held himself out to the public as properly licensed to provide mental health consulting to minors and adults, and family counseling, as required by Florida Statute 491.012(2), when in fact he was not licensed to provide said services.
>
> 19a. Mark and Barbara Chapman were having behavioral problems with their son, Gregory Chapman, which included stealing little items out of Barbara's purse. . . . The Chapmans were . . . told that Taylor could help with Gregory's behavioral problems and had ADHD training and could help treat Gregory's ADHD problems.
>
> 36. Defendant Taylor was not qualified by education, experience or any license issued by the State of Florida to provide mental health counseling to juveniles or adults.

In support of their wrongful death claim, Plaintiffs also made these allegations:

> 43. Taylor and Concepts breached their duties to the plaintiffs and are strictly liable for such breach, in that they concealed from Gregory Chapman and his parents that Taylor was not competent or licensed to provide mental health counseling to Gregory Chapman. In addition, at no time through the treatment course of Gregory Chapman did the Defendants refer Gregory Chapman to any qualified mental health provider or otherwise seek a qualified medical opinion as to Gregory Chapman's mental condition and appropriate treatment therefore.
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> 49. Defendants breached their duty to the Plaintiffs by failing to refer or suggest referral of Gregory Chapman to a qualified mental health provider.

The amended complaint contained no allegations that Gregory struggled with substance abuse, that Plaintiffs hired Taylor to provide substance abuse counseling services for Gregory, or that Taylor provided substance abuse counseling for Gregory.[3]

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[3] To the extent the amended complaint contained allegations about substance abuse counseling, we read those allegations as pertaining only to claims asserted by the Ruffs/LaGotte. We have looked at these words from paragraph 117 of the amended

Under Florida law, mental health counseling and substance abuse counseling are treated as distinct professions, governed by different statutes, and licensing and training requirements. Compare Fla. Stat. § 491.02, et seq. (mental health and family counselors) with § 397.401, et seq. (substance abuse counselors). In the light of Plaintiffs' allegations in the Underlying Suit, Taylor's complained-of conduct falls clearly outside the Policy's definition of "professional services." Under the plain language of the Policy, "professional services" means "Drug & Alcohol Abuse Counsel[ing]" services for which Taylor was "licensed, trained, or being trained to provide." Plaintiffs alleged

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complaint: ". . . Defendants provided Plaintiffs with mental health and substance abuse counseling . . .."

Read in context, paragraph 117 refers plainly only to Taylor's counseling of LaGotte and the Ruffs. Paragraph 117 fell under the heading "Count VII, Negligence, Plaintiffs Kathy Ruff, William Ruff and Melissa LaGotte." The first paragraph under Count VII (paragraph 89) says "Plaintiffs, Kathy Ruff, William Ruff and Melissa Lagotte sue Defendants and allege as follows."

Paragraphs 91 through 115 then set forth factual allegations specific to Taylor's conduct in relation to the Ruffs and to LaGotte. Paragraph 116 alleged that, as mental health and substance abuse counselors, Defendants owed Plaintiffs a duty of care and protection.

Paragraph 117 then reads: "Defendants failed to provide such care and protection to Plaintiffs during such time Defendants provided Plaintiffs with mental health and substance abuse counseling, and therefore, breached their duty of care." (emphasis added). Paragraphs 118 and 119 then alleged that, as a direct and proximate result of Defendants' actions, the Ruffs and LaGotte suffered damages. Given the surrounding language of the amended complaint, the term "Plaintiffs" in paragraph 117 refers only to the Ruffs and to LaGotte: not the Chapmans.

only that Taylor provided mental health counseling to Gregory: not substance abuse counseling. Moreover, Plaintiffs' allegations that Taylor lacked the required licensure, education, or experience to provide mental health counseling to Gregory compels a conclusion that Taylor's complained-of counseling services were no "professional services" under the Policy.

Viewing the record in the light most favorable to Plaintiffs, no genuine issue of material fact exists. Because Plaintiffs have failed to allege facts that "fairly and potentially bring the suit within policy coverage," the district court concluded correctly -- as a matter of Florida law -- that ACE owed no duty to defend or to indemnify Taylor against Plaintiffs' claims in the Underlying Suit.[4] See Jones, 908 So. 2d at 442-43; Wellcare of Fla., Inc., 16 So. 3d at 906.

AFFIRMED.[5]

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[4] We reject Plaintiffs' contention that the public policy, legislative intent, or language of Florida's statutes governing substance abuse services (Fla. Stat. § 397 et seq.) give rise to a statutorily mandated duty to defend in this case.

[5] Because we conclude that ACE owed no duty to defend or to indemnify Taylor, we do not reach the district court's alternative ruling that the Coblentz Agreement was unenforceable because it failed to allocate the damages attributed to the covered and non-covered claims.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No: 8:16-cv-2111-T-36MAP

MARK CHAPMAN *et al.*,

Plaintiffs,

v.

ACE AMERICAN INSURANCE COMPANY,

Defendant.

[Filed: June 21, 2018]

ORDER

This matter comes before the Court upon the Defendant's Motion for Summary Judgment (Doc. 31), Plaintiffs' response (Doc. 37), Defendant's reply (Doc. 43), and Plaintiffs' Motion for Partial Summary Judgment (Doc. 32), Defendant's response (Doc. 35), and Plaintiffs' reply (Doc. 44). The Court, having considered the motions, including oral argument, and being fully advised in the premises, will grant Defendant's Motion for Summary Judgment and deny Plaintiffs' Motion for Partial Summary Judgment.

I. STATEMENT OF FACTS[1]

Plaintiff Mark Chapman, individually and as Personal Representative of the Estate of Gregory Chapman, deceased, and Personal Representative of the Estate of Barbara Chapman, deceased ("Chapman"), filed this complaint against Defendant ACE American Insurance Company ("ACE") based on the following facts.[2]

In 1995, Robert Taylor began a fraudulent scheme to collect fees for services as a substance abuse counselor using the business name Recovery Concepts. *See* Doc. 31-2[3] at 23. In October 1999, in an open plea, Taylor pleaded guilty to four felony counts of organized fraud and twenty felony counts of grand theft arising from his activities as an unlicensed ostensible provider of substance abuse counseling services to Gregory Chapman and Melissa LaGotte, among others. *Id.* at 5-9. In stating the factual predicate for the open plea, the prosecutor informed the court that Taylor "treated numerous patients for substance abuse counseling and other types of

[1] The Court has determined the facts, which are undisputed unless otherwise noted, based on the parties' submissions, including stipulations, depositions, affidavits, and attachments thereto.

[2] Plaintiffs Kathy Ruff, William Ruff, and Melissa LaGotte settled their claims with Defendant. Doc. 42. Accordingly, the Court will focus on Chapman's claims in its analysis, unless otherwise indicated.

[3] Declaration of John Williams with exhibits.

counseling. He was not properly licensed to provide substance abuse counseling to anyone…." *Id.* at 19. Taylor was sentenced to prison.

a. The Policy

ACE issued Allied Health Care Provider Professional and Supplemental Policy No. 011922 (the "Policy"), to Robert D. Taylor ("Taylor") for the period covering February 1, 1997, to February 1, 1999. Doc. 32-11. The Policy provides limits of $1 million for professional liability per medical incident, $1 million for supplemental liability per occurrence, and $1 million personal injury coverage per claim or $3 million in the aggregate. The Policy defines Professional Occupation as "Drug & Alcohol Abuse Counselor." *Id.* at 2. The Policy also states the following:

> COVERAGE AGREEMENTS
>
> We will pay all amounts up to the limit of liability, which you become legally obligated to pay as a result of injury or damage to which this insurance applies. The injury or damage must be caused by a medical incident arising out of professional services by you or anyone for whose professional services you are legally responsible.
>
> The medical incident as described above must happen on or after the effective date and before the end of the policy term stated on the Declarations of this policy.

> We have the right to and will defend any claim. We will:
>
> A. do this even if any of the charges of the claim are groundless, false or fraudulent;
>
> B. investigate and settle any claim as we feel appropriate.

Id. at 5. The Policy also provides Supplemental Liability coverage and states:

> 1. COVERAGE AGREEMENTS
>
> A. We will pay all amounts up to the limits of liability which you become legally obligated to pay as a result of injury or damage. The injury or damage must occur in the course of providing your professional services.

Id. at 7. The Policy also contained personal injury coverage and states:

> In return for your payment of the premium, it is agreed that the definition of injury, as respects only your professional services shall also include:
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> A. Testimony given at or arising out of inquests;
> B. Malicious prosecution;
> C. False arrest, detention, imprisonment;
> D. Wrongful entry or eviction or other invasion of the right of private occupancy;

> E. Libel, slander or other disparaging materials;
> F. A violation of an individual's right to privacy;
> G. Assault, battery, mental anguish, mental shock or hallucination;
>
> All other provisions of this policy remain unchanged.

Id. at 9.

Under the Policy, "damage" means "physical injury to tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured." *Id*. at 4. And "injury" means "bodily injury, sickness or disease sustained by a person[,]" as well as death as a result of injury. *Id*. The Policy requires that the injury or damage occur "in the course of providing professional services" and "to the person or persons receiving [the] professional services." *Id*. at 7. The Policy also contains these definitions:

> "Medical Incident" means any act, error, or omission in the providing of or failure to provide professional services by you. This includes your responsibility for anyone acting under your direction or control.
>
> "Professional Services" means those services you are licensed, trained, or being trained to provide within the allied health field specified in your application and approved by us for coverage.

Id.

The Policy precludes coverage for: injury or damage resulting from a medical incident that is also a willful violation of a statute imposing criminal penalties (§ A7); injury or damage that was expected or intended from the Insured's point of view (§ A2); and actions or omissions as an unlicensed allied health professional who is not under the direct supervision of a physician, nurse, or other licensed allied health professional (§ I3). *Id.* at 8. Regarding representations to ACE, the Policy's General Conditions section states: "[b]y accepting this policy, you agree that: A. the statements in the Declarations are accurate and complete; B. those statements are based upon the representations you made to us; and C. we have issued this policy in reliance upon your representations." Doc. 31-1 at 18.

b. The DCF Lawsuit

Plaintiffs filed a lawsuit against the Department of Children and Families Services ("DCF"), *Chapman et al. v. Florida State Dep't. of Children & Families*, Case No. 01-CA-010405 (the "DCF Lawsuit"). In the DCF Lawsuit, Plaintiffs asserted that DCF's negligence in failing to investigate complaints about Taylor's treatment of minors caused their injuries. After a trial, the jury found for the Plaintiffs and awarded damages totaling $5,991,890 to the Chapmans. Doc. 32, Ex. 28. The Florida Court of Appeals overturned the verdict based on DCF's immunity. *See Dep't. of*

Children and Fam. Services v. Chapman, 9 So. 3d 676 (Fla. 2d DCA 2009), *cert. denied* 19 So. 3d 310 (2009).

c. The State Court Action

In December 1999, Plaintiffs' counsel served Taylor with Notices of Intent to Initiate Litigation (the "Notices") under Florida Statutes section 766.106(2). Doc. 31-1 at Exs. 4, 5.[4] The Notices alleged that "Robert Taylor was not a licensed drug abuse or mental health counselor for minors such as Gary Chapman" and that he "was neither qualified nor licensed to provide that treatment." *Id*. at Ex. 4 at 1, Ex. 5 at 1. Plaintiffs' medical consultant provided a verified statement which stated that "Mr. Taylor was later found to not hold a professional license…." *Id*. at Exs. 4, 5. Plaintiffs alleged that Taylor's treatment of Gregory Chapman "played a substantial part in Gregory Chapman's death on May 31, 1998." *Id*. at Ex. 4, Ex. 5. In January 2000, Taylor's insurance broker submitted the Notices to ACE. *Id*. at Ex. 3.

After receiving the Notices, ACE spoke to Plaintiffs' counsel who stated that Taylor had no license to counsel minors. Doc. 31-1, Ex. 6. But, after the conversation, Plaintiffs' counsel sent ACE copies of Taylor's purported Substance Abuse Provider licenses for the relevant period. The licenses[5] for the

[4] Declaration of Anthony Pizzonia.

[5] The Substance Abuse Services Licenses for adults only for non-residential programs; outpatient treatment was for the period covering 11/27/97- 4/2/98 and 4/3/98 – 4/2/99. Doc. 32-2 at 2, 3.

period that Taylor "counseled" Gregory Chapman specified "ADULTS ONLY." Doc. 32-2 at 2, 3. ACE declined coverage. Taylor received the declination letter. Doc. 31-1, Ex. 8. ACE has no record of any response from Taylor. *Id*. at Doc. 31-1 ¶ 10.

Plaintiffs sued Taylor and his company Recovery Concepts in state court in the case styled *Chapman, et al., v. Taylor, et al*., Case No. 99-06242 in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Chapman Suit"). *Id*. at ¶ 8. In the Chapman Suit, Plaintiffs alleged that Taylor held himself out as properly licensed to provide mental health counseling to minors and adults, "when in fact he was not licensed to provide such services." *Id*. In November 2009, Plaintiffs' counsel sent ACE a copy of the Amended Complaint. Taylor did not send the Amended Complaint to ACE. Doc. 31-1 at ¶ 11. ACE reviewed the allegations of the Chapman Suit to determine if it alleged any potentially covered claim. *See id*. at ¶ 8.

Like the Notices, the Amended Complaint explicitly alleged:

> At all material times, Taylor held himself out to the public as properly licensed to provide mental health consulting to minors and adults, and family counseling as required by Florida Statute [§] 491.012(2) when in fact he was not licensed to provide said services.
>
> [Taylor] delivered unlicensed services absent monitoring by the State of Florida Department

> of Children and Family...as required by Florida Statute [§] 397.409(2).
>
> In applying for a [substance abuse] license … Taylor made false and fraudulent representations to Children and Family Services, including *inter alia* that he had a Master[']s Degree when in fact he possessed no such degree, identified colleges and universities which he had assertedly [sic] attended when he in fact had not attended such schools; and concealed his extensive prior criminal record….
>
> [D]uring the relevant time period, complaints were directed to the Department detailing Defendant Taylor's unethical, fraudulent and illegal conduct, including, *inter alia*, his unlicensed treatment of minors….
>
> Defendant Taylor was not qualified by education, experience or any license issued by the States [sic] of Florida to provide mental health counselling to juveniles or adults.
>
> Taylor … concealed from Gregory Chapman and his parents that Taylor was not competent or licensed to provide mental health counseling to Gregory Chapman.

Doc. 31-1, Ex. 9 at ¶¶ 10, 11, 18, 22, 36.

The Chapman Suit also alleged that Taylor provided mental health counseling to ten-year old Gregory Chapman for behavioral problems and ADHD

from January 1998 to May 1998 and that he threatened Gregory Chapman with jail or boot camp. Gregory Chapman died by suicide. *Id*., Ex. 9 at ¶ 51. Chapman alleged causes of action for unjust enrichment, unfair and deceptive trade practices, infliction of severe emotional distress and wrongful death.

On March 11, 2010, ACE wrote to Taylor and declined any obligation to defend against the Chapman Suit. *Id*., Ex. 10. ACE also advised Plaintiffs' counsel of its coverage determination. *Id*., Ex. 11. ACE based its declination on several grounds. It stated that the alleged acts were not covered professional services. And it stated that Taylor had no license to treat minors, was fraudulently licensed to treat anyone for substance abuse, performed counseling without direct supervision, and made material misrepresentations in his policy applications. *Id*. It also concluded that the Policy's "criminal penalties" exclusion and the "expected or intended" injury exclusion barred coverage for Taylor's alleged intentional conduct. *Id*. ACE reserved the right to assert all coverage defenses *Id*. Taylor did not dispute ACE's coverage determination or otherwise respond to it. Doc. 31-1 at ¶ 10. ACE sent a second letter to Plaintiffs' counsel on February 28, 2011, reiterating its decision. Doc. 32, Ex 37.

In May 2012, Plaintiffs and Taylor attended a mediation conference and entered into the Agreement to Enter into a Consent Judgment, also known as a

Coblentz agreement[6] (the "Agreement"). Doc. 32-50. Pursuant to the Agreement, the parties submitted a consent final judgment, which the state court entered. Doc. 32-51 at 5-6. And Taylor assigned his rights under the Policy to the Plaintiffs to pursue ACE. Doc. 32-50.

On May 11, 2016, Plaintiffs filed their case against ACE in this Court alleging breach of contract based on ACE's denial of its duty to defend and indemnify Taylor. On March 27, 2017, ACE filed an answer (Doc. 25) which asserted several affirmative defenses, including that "defense of the Chapman Suit, and coverage for the Consent Judgment therein is barred by: the policy's expected or intended injury or damage exclusion, the policy's exclusion for acts or omissions of unlicensed allied health professions, the policy's exclusion for injury or damages resulting from a medical incident which is also a willful violation of a statute, ordinance or regulation imposing criminal penalties." Doc. 25 at ¶¶ 10-12. It also asserts that the claims alleged in the Chapman Suit did not meet the Policy's definition of "injury or damage caused by a

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[6] *Coblentz* agreements are named for the Fifth Circuit case *Coblentz v. Am. Sur. Co. of N.Y.*, 416 F.2d 1059 (5th Cir. 1969). *Coblentz* agreements permit an insured party to "enter into a reasonable settlement agreement with the [injured party] and consent to an adverse judgment for the policy limits that is collectable only against the insurer." *Garcia v. GEICO Gen. Ins. Co.*, 807 F.3d 1228, 1230 n. 1 (11th Cir. 2015) (quoting *Perera v. U.S. Fid. & Guar. Co.*, 35 So. 3d 893, 900 (Fla. 2010)). In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*); the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

'medical incident' in the course of providing 'professional services.' " *Id*. at ¶ 9.

ACE also filed a Counterclaim, seeking a declaration that ACE had no duty to defend or indemnify Taylor or Concepts in the Chapman Suit. *See id*. at 7. Based on the facts asserted in the Counterclaim, ACE alleges that "any injuries or damage allegedly suffered by the Plaintiffs did not arise out of 'professional services' and was not potentially or actually covered by the Policy." *Id*.

II. LEGAL STANDARD

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the initial burden of stating the basis for its motion and identifying those portions of the record demonstrating the absence of genuine issues of material fact. *Celotex*, 477 U.S. at 323; *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1259-60 (11th Cir. 2004). That burden can be discharged if the moving party can show the court that there is "an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325.

When the moving party has discharged its burden, the nonmoving party must then designate specific facts showing that there is a genuine issue of material

fact. *Id.* at 324. Issues of fact are "genuine only if a reasonable jury, considering the evidence present, could find for the nonmoving party," and a fact is "material" if it may affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). In determining whether a genuine issue of material fact exists, the court must consider all the evidence in the light most favorable to the nonmoving party. *Celotex*, 477 U.S. at 323. However, a party cannot defeat summary judgment by relying upon conclusory allegations. *See Hill v. Oil Dri Corp. of Ga.*, 198 Fed. App'x 852, 858 (11th Cir. 2006).

The standard of review for cross-motions for summary judgment does not differ from the standard applied when only one party files a motion, but simply requires a determination of whether either of the parties deserves judgment as a matter of law on the facts that are not disputed. *Am. Bankers Ins. Group v. United States*, 408 F.3d 1328, 1331 (11th Cir. 2005). The Court must consider each motion on its own merits, resolving all reasonable inferences against the party whose motion is under consideration. *Id.* The Eleventh Circuit has explained that "[c]ross-motions for summary judgment will not, in themselves, warrant the court in granting summary judgment unless one of the parties is entitled to judgment as a matter of law on facts that are not genuinely disputed." *United States v. Oakley*, 744 F.2d 1553, 1555 (11th Cir. 1984). Cross-motions may, however, be probative of the absence of a factual dispute where they reflect general agreement by the parties as to the controlling legal theories and material facts. *Id.* at 1555-56.

III. DISCUSSION

Generally, ACE argues that the allegations in the Chapman Suit did not trigger its duty to defend Taylor. Further, it argues, if there was no duty to defend, no duty to indemnify could exist. In the alternative, it argues that the allegations in the Chapman Suit fell squarely within several Policy exclusions. Lastly, it argues that because the Agreement does not allocate the Consent Judgment's awarded damages between covered and non-covered claims, Chapman cannot enforce the *Coblentz* Agreement.

Chapman contends that the Court should use an analytical framework similar to that of statutorily mandated insurance coverage cases in determining whether ACE had a duty to defend or indemnify Taylor. And he argues that the Chapman Suit's allegations, taken as a whole, created a possibility of coverage triggering ACE's duty to defend even if some of the claims fall within the Policy's exclusions. He also argues that the DCF Lawsuit established the facts which triggered ACE's duty to indemnify. Lastly, he argues that the case law does not require the *Coblentz* Agreement itself to allocate the damages among the covered and non-covered claims.

Under Florida law, a party seeking insurance coverage from a consent judgment in a *Coblentz* agreement must prove: (1) a wrongful refusal to defend; (2) a duty to indemnify; and (3) an objectively reasonable settlement made in good faith. *St. Paul*

Fire & Marine Ins. Co. v. Cypress Fairway Condo. Ass'n, Inc., 114 F. Supp. 3d 1231, 1236 (M.D. Fla. 2015). *See also Sinni v. Scottsdale Ins. Co.,* 676 F. Supp. 2d 1319, 1324 (M.D. Fla. 2009), *as amended* (Jan. 4, 2010).

Therefore, in an action to recover under a *Coblentz* agreement the facts alleged in the underlying complaint must state a claim covered by the policy, i.e., that the insurer had a duty to defend. And despite the allegations in the underlying complaint or stipulated facts in the consent judgment, the plaintiff's underlying claims must come within the coverage of the policy, i.e., on the merits, the insurer has a contractual duty to indemnify. *See, e.g., Spencer v. Assurance Co. of Am.,* Case No. 91–50255–RV, 1993 WL 761408 (N.D. Fla. June 8, 1993) (concluding that although insurer had a duty to defend based on the allegations in the underlying complaint, plaintiffs could not recover under *Coblentz* agreement because the actual facts were such that plaintiffs' claims did not come within the coverage of the policy), *aff'd,* 39 F.3d 1146 (11th Cir. 1994).

Once the plaintiff establishes coverage, he or she must then "assume the burden of initially going forward with the production of evidence sufficient to make a prima facie showing of reasonableness and lack of bad faith, even though the ultimate burden of proof will rest upon the carrier." *Sinni*, 676 F. Supp. 2d at 1324 n. 6 (quoting *Steil v. Fla. Physicians' Ins. Reciprocal*, 448 So. 2d 589, 592 (Fla. 2d DCA 1984)). This analysis is a fact-intensive inquiry. *St. Paul Fire & Marine Ins. Co.*, 114 F. Supp. 3d at 1238.

a. Duty to Defend

An insurer's duty to defend is based entirely "on the facts and legal theories alleged in the pleadings and claims against the insured." *James River Ins. Co. v. Ground Down Engineering, Inc.,* 540 F.3d 1270, 1275 (11th Cir. 2008). If the complaint contains multiple claims, some falling within and some falling outside the scope of coverage, the insurer must defend the entire suit. *Trizec Properties, Inc. v. Biltmore Const. Co., Inc.,* 767 F.2d 810 (11th Cir. 1985); *Tropical Park, Inc. v. U.S. Fidelity & Guaranty Co.,* 357 So. 2d 253 (Fla. 3d DCA 1978).

If the pleadings show the applicability of a clear and unambiguous policy exclusion, the insurer has no duty to defend. *Andrews v. Capacity Ins. Co.,* 687 So. 2d 366 (Fla. 4th DCA 1997). Further, "when the actual facts are inconsistent with the allegations in the complaint, the allegations in the complaint control in determining the insurer's duty to defend." *Jones v. Florida Ins. Guar. Ass'n, Inc.*, 908 So. 2d 435, 443 (Fla. 2005).

The Court resolves all doubts regarding the duty to defend in favor of the insured. As long as the complaint alleges facts which create potential coverage under the policy it triggers a duty to defend. *Trizec Properties, Inc.,* 767 F.2d at 811. But "a court cannot rewrite an insurance contract to extend coverage beyond what is clearly set forth in the contractual language." *Florida Residential Prop. &*

Cas. Joint Underwriting Ass'n v. Kron, 721 So. 2d 825, 826 (Fla. 3d DCA 1998).

i. Coverage

Because Florida law required Taylor to have an insurance policy to practice, Chapman argues that the Court should analogize this insurance dispute to insurance coverage disputes involving statutorily mandated or controlled coverage. Doc. 32 at 12 (citing *Flores v. Allstate Ins. Co.*, 819 So. 2d 740, 745 (Fla. 2002)). Unlike fire, life, and property insurance policies, Chapman argues, the Policy should not be susceptible to an insurer's attempt "to limit or negate protection afforded by law." *Id.* (quoting *Salas v. Liberty Mut. Fire Ins. Co.*, 272 So. 2d 1, 5 (Fla. 1972)). He argues, the Court should examine the coverage issue under a two-part test as set forth in *Nunez v. Geico Gen. Insu. Co.*, 117 So. 3d 388, 393 (Fla. 2013) which includes deciding whether the condition or exclusion unambiguously excludes or limits coverage; and whether enforcement of a specific provision would be contrary to the purpose of the statute. *Id.* at 13. Chapman bases this argument on the proposition that the Florida Legislature provides protections for substance abuse clients by requiring providers to secure insurance coverage before obtaining a license. *See* Doc. 32 at 13 (citing Fla. Stat. § 397.403(d)).

The Court rejects this argument, as no basis exists to apply this particular analytical framework in this case. The Court in *Nunez* recognized that "PIP insurance is markedly different from homeowner's/tenants insurance, property insurance,

life insurance, and fire insurance, which are not subject to statutory parameters and are simply a matter of contract not subject to statutory requirements." 117 So. 3d at 391–92. Instead, in a diversity action such as this one, federal courts must apply the substantive law of the forum state. *Florida. Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938); *Horowitch v. Diamond Aircraft Indus., Inc.*, 645 F.3d 1254, 1257 (11th Cir. 2011). Under Florida law, an insurance policy is treated like a contract; ordinary contract principles govern its interpretation and construction. *Graber v. Clarendon Nat'l Ins. Co.*, 819 So. 2d 840, 842 (Fla. 4th DCA 2002). As with all contracts, interpreting an insurance contract is a question of law that the Court will determine. *Travelers Indem. Co. of Illinois v. Hutson*, 847 So. 2d 1113 (Fla. 1st DCA 2003). Therefore, the Court will analyze this insurance dispute using ordinary contract principles.

Chapman also argues that the Policy clearly covered injuries arising out of Taylor's services as a substance abuse counselor, and that the underlying claim alleged that Taylor provided those services to Melissa LaGotte and Gregory Chapman.[7] Therefore, he argues, the Chapman Suit alleged an injury which arose out of a "medical incident;" arguing that the term "arising out of" is to be read broadly. *Id.* (citing

[7] Chapman emphasizes that it includes treatment for both illegal and legal drugs and alcohol. Doc. 32 at 13 n. 2. Chapman also argues that the Amended Complaint alleged that Taylor and Concepts breached their duties under Florida Statute section 397.501(3) and were liable under section 397.501(1), which triggered ACE's duty to defend. *Id.* at 15.

Eastpointe Condominium I Ass'n, Inc. v. Travelers Cas. & Sur. Co. of Amer., 379 Fed. Appx. 906, 908 (11th Cir. 2010)). This argument ignores the Amended Complaint's repeated allegations that Taylor was not licensed because he obtained the licenses fraudulently.

To reconcile the contradiction between his position in the Chapman Suit (that Taylor was not licensed to provide any counseling services) and his position in favor of coverage in this case (that Taylor was a licensed substance abuse provider), Chapman argues that Taylor's fraud in obtaining his licenses does not negate the fact that he actually received licenses from the State of Florida. He also notes that no entity investigated whether Taylor actually received any training. Chapman thus maintains that ACE cannot rely on Taylor's improper licensure or lack of training to deny defense coverage. ACE counters that although Plaintiffs' counsel provided ACE with a copy of the licenses, those licenses were outside the four corners of the Amended Complaint and contradicted it. ACE, therefore, argues that the allegations that Taylor had invalid and fraudulently obtained licenses controlled such that the Policy covered no injuries deriving from Taylor's services.

ACE's argument is correct. Chapman's attempt to reconcile his contradictory arguments fail. In determining whether ACE had a duty to defend Taylor in the underlying litigation, it is improper to consider discovery or other extrinsic evidence because "[t]he duty of an insurer to defend is determined solely by the allegations of the complaint against the insured,

not by the actual facts, nor the insured's version of the facts or the insured's defenses." *Reliance Insurance Company v. Royal Motorcar Corporation*, 534 So. 2d 922, 923 (Fla. 4th DCA 1988).

Chapman also attempts to establish coverage by arguing that Mellissa LaGotte turned 18 during her period of treatment and admitted to occasional drug use. *See* Doc. 32-18 at ¶¶ 19.b, 35, 91. Based on those allegations, Chapman argues that Taylor was treating an adult for substance abuse problems which fell squarely within his licensure and triggered a duty to defend. ACE argues that any allegations regarding Mellissa LaGotte turning 18 years of age during the coverage period or admitting to using drugs are irrelevant because the entire Chapman Suit was premised on Taylor providing unlicensed services and therefore did not trigger a duty to defend.

The Court agrees with ACE's argument. The Policy covered injury or damage resulting only from Taylor's "professional services" as a drug and substance abuse counselor for which he was "licensed, trained or being trained to provide." The Chapman Suit explicitly alleged that Taylor provided mental health counseling to ten-year old Gregory Chapman for behavioral problems and ADHD. *See* Doc. 32-18 ¶ 19.a. It also alleged that Taylor was never licensed to provide mental health counseling to anyone and was not otherwise competent or licensed to provide mental health or substance abuse counseling.[8] *Id*. at ¶ 36.

[8] Under Florida law, mental health counseling and substance abuse counseling are distinct and subject to different statutes,

Therefore, allegations regarding Melissa Lagotte's behavior are irrelevant to the coverage determination.

Based on the allegations within the four corners of the Amended Complaint in the Chapman Suit, ACE had no duty to defend because the alleged acts or omissions did not fall within the Policy's definition of "professional services."[9]

ii. Exclusions

The Chapman Suit raised allegations that fell squarely into several Policy exclusions. "When an insurer relies on an exclusion to deny coverage, it has the burden of demonstrating that the allegations of the complaint are cast solely within the policy exclusion and are subject to no other reasonable interpretation. Exclusionary clauses are generally disfavored." *Szczeklik v. Markel Intern. Ins. Co., Ltd.*, 942 F. Supp. 2d 1254, 1269 (M.D. Fla. 2013), *aff'd*, 546 Fed. Appx. 926 (11th Cir. 2013). The burden of proving the applicability of an exclusionary clause falls on the insurer. *See, e.g., Penzer v. Transp. Ins. Co.*, 545 F.3d 1303, 1309 (11th Cir. 2008).

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licensing and training requirements. *Compare* Fla. Stat. § 491.02 *et seq*. (mental health and family counselors) *to* § 397.401 *et seq*. (substance abuse counselors).

[9] Although ACE argues that the Chapman Suit did not allege that Plaintiffs retained Taylor or Concepts for substance abuse counseling, it did allege that they "provided Plaintiffs with mental health and *substance abuse counseling*." Doc. 32-18 ¶ 117 (emphasis added); *see also id*. at ¶¶79, 91, 92, 93, 94, 96, 101.

The Chapman Suit alleged that Taylor fraudulently obtained his licenses, which is a misdemeanor under Florida Statute § 397.4075 (1993). *See* Doc. 32-18 at ¶ 18. It also alleged that all of Taylor's acts were intentional or criminal or both. *See id.* at ¶¶ 1-38. The Policy excludes coverage resulting from an incident which is also a willful violation of a statute, ordinance, or regulation imposing criminal penalties. Doc. 31-1 at 19. And the Chapman Suit alleged that Taylor was not directly supervised as required by law and the Policy. *Id*. at ¶¶ 11, 17. The Policy excludes coverage from "[a]ny of [the insured's] acts or omissions as an allied health student or unlicensed allied health professional who is not under the direct supervision of a physician, nurse or other licensed allied health professional, or who is not employed at a hospital, nursing home, or other licensed health care provider." Doc. 31-1 at 19. The aforementioned allegations fall squarely within the exclusions of the Policy and justify ACE's refusal to defend Taylor against the Chapman Suit.

b. Duty to Indemnify

Because the duty to defend is broader than the duty to indemnify, and ACE had no duty to defend its insured against the Chapman Suit, it follows that it has no duty to indemnify. *Geovera Specialty Ins. Co. v. Hutchins*, 831 F. Supp. 2d 1306, 1313 (M.D. Fla. 2011), *aff'd*, 504 Fed. Appx. 851 (11th Cir. 2013) ("As Plaintiff has no duty to defend, Plaintiff cannot have a duty to indemnify."). Even if ACE had a duty to defend, the evidence cited by Chapman raises no

genuine issue of material fact that bears on ACE's duty to indemnify. And if some evidence suggests a duty to indemnify, the evidence presented by Chapman is a "mere scintilla," and creates no genuine issue of material fact. *See Anderson,* 477 U.S. at 252.

c. Reasonableness and Good Faith

An enforceable settlement pursuant to a *Coblentz* agreement must be reasonable in amount and untainted by bad faith. *Bradfield v. Mid-Continent Cas. Co.*, 15 F. Supp. 3d 1253, 1257 (M.D. Fla. 2014) (citing *Steil v. Florida Physicians' Ins. Reciprocal*, 448 So. 2d 589, 592 (Fla. 2d DCA 1984)). The party seeking to enforce the agreement bears the initial burden of producing evidence sufficient to show reasonableness and lack of bad faith. Once the initial showing is made the burden shifts to the insurer to prove the settlement was either unreasonable or made in bad faith. The ultimate burden of proof will rest on the insurance carrier. *Id.* If one of the two requirements has not been met, the *Coblentz* agreement is unenforceable. *Travelers Indem. Co. of Connecticut v. Attorney's Title Ins. Fund, Inc.*, 194 F. Supp. 3d 1224, 1237 (M.D. Fla. 2016).

Reasonableness is determined by "what a reasonably prudent person in the position of the defendant [insurer] would have settled for on the merits of plaintiff's claim." *Jimenez v. Gov't Emps. Ins. Co.*, 651 Fed. Appx. 850, 853–54 (11th Cir. 2016) (citation omitted). Chapman argues that the damages awarded in the Consent Judgment are reasonable because it derives from the jury's award of damages in

the DCF Lawsuit. Doc. 32 at ¶ 28. ACE neither disputes the jury verdict in the DCF Lawsuit nor its reasonableness. It stipulates that the judgment amounts set forth in the Consent Judgment are reasonable. Doc. 32-52 at ¶ 1.[10]

Good faith has no bright line test. But an insurer may prove a lack of good faith "by evidence of a false claim, or collusion in which the plaintiffs agree to share the recovery with the insured, or an absence of any effort to minimize liability." *Jimenez*, 651 Fed. Appx. at 853–54 (11th Cir. 2016) (citation omitted). "Courts have found bad faith where, for example, the amount of the settlement was not subject to good faith negotiations." *Id.* (citation omitted). To demonstrate the good faith element, Chapman filed the affidavits of Joseph D. Magri, the Plaintiffs' attorney, Mark Chapman, Irene Chapman, Kathy Ruff, William Ruff, and Melissa LaGotte. Docs. 32-44 – 32-49. All state that "[t]here has been no agreement with Robert Taylor or Recovery Concepts to share any proceeds of any amounts recovered from Ace American Insurance Company. There has been no fraud or collusion with

[10] Although ACE does not dispute the reasonableness of the Consent Judgment's damages, it noted the following in its argument: the jury in the DCF Lawsuit did not hear evidence of all of the claims at issue in the Chapman Suit, specifically unfair trade practices, unjust enrichment, or liability for intentional infliction of emotional distress, Doc. 35 at 21; the DCF Lawsuit was vacated and Taylor was neither a party nor a witness; no evidence suggests any effort on Taylor's part to minimize liability; and no counsel appeared at mediation or communicated on Taylor's behalf about the Consent Judgment. *See* Docs. 32-42, 32-43, 32-50.

Robert Taylor in entering into or obtaining the Consent Judgment." *Id*. ACE offers no argument in opposition.

Although the parties do not dispute the reasonableness of the Agreement and Consent Judgment or the parties' good faith in entering into the Agreement and Consent Judgment, ultimately the Agreement is unenforceable due to its lack of allocation between covered and noncovered claims.

Neither the Agreement nor the Consent Judgment allocate the damages between the claims; therefore the Court cannot discern the amount attributed between covered and non-covered claims.[11] *See* Doc. 32-51. Chapman provides no evidence showing that the parties or the Court can now apportion the damages awarded in the Consent Judgment. *See Duke v. Hoch*, 468 F.2d 973, 977 (5th Cir. 1972) (applying Florida law and holding that when an insurer establishes that part of a judgment is for non-covered damages, the insured must prove the "precise portion of the unallocated verdict."). *See also Bradfield v. Mid-Continent Cas. Co.*, 143 F. Supp. 3d 1215, 1246 (M.D. Fla. 2015); *Keller Indus., Inc. v. Employers Mut. Liab. Ins. Co. of Wis.*, 429 So. 2d 779, 780 (Fla. 3d DCA 1983) (holding that the party claiming coverage has the

[11] The non-covered claims include unjust enrichment and unfair trade practices. These are noncovered economic losses which are not "injury" or "damage" as defined in the Policy. *See Lazzara Oil Co. v. Columbia Cas. Co.*, 683 F. Supp. 777, 780 (M.D. Fla. 1988), *aff'd sub nom. Lazzara Oil v. Columbia Cas.*, 868 F.2d 1274 (11th Cir. 1989).

burden "to apportion damages and show that the settlement or portions thereof, represent costs that fell within the coverage provisions of the policy" and "an unjustified failure to defend does not require the insurer to pay a settlement where no coverage exists.").

Chapman's argument that there is no requirement that the consent judgement must apportion the damages among the claims is unavailing. Chapman cites *Highland Holdings, Inc. v. Mid-Continent Cas. Co.*, for the proposition that there is no requirement that the parties provide an allocation of the damages within the settlement agreement itself. 8:14-CV-1334-T-23TBM, 2016 WL 3447523, at *4 (M.D. Fla. June 23, 2016), *aff'd,* 687 Fed. Appx. 819 (11th Cir. 2017). But he does not point to anywhere in the record where the damages are apportioned between the claims. He merely directs the Court to the jury verdict, trial transcript, and evidence in the DCF Lawsuit as a basis for apportionment of the damages, Doc. 37 at 19 (without citation); and directs the Court to the Affidavit of Peter Sartes. Doc. 32-53.[12] The evidence and the Affidavit provide no proposed allocation between the covered and non-covered claims. This failure is ultimately fatal to enforcement of the *Coblentz* agreement.

[12] Sartes opines that "there is a [high] probability that Robert Taylor would have been found negligent in providing substance abuse services; Doc. 32-53 at ¶ 3; and "the amount of the Consent Judgment is reasonable for this type of case given the jury verdict and … testimony which suggests conduct which may go beyond mere negligence." *Id*. at ¶ 4.

IV. CONCLUSION

Although tragic, the events leading to Gregory Chapman's death are not covered under the ACE Policy. Neither the Amended Complaint nor the Consent Judgment triggered coverage for ACE's duty to defend or indemnify Taylor in the Chapman Suit. The facts alleged in the Amended Complaint place the case outside of coverage and squarely within several Policy exclusions. With no duty to defend, ACE had no duty to indemnify. Even if ACE had a duty to defend, the actual facts developed through the DCF Lawsuit, and stipulated to in the *Coblentz* agreement and Consent Judgment, triggered no duty to indemnify. And even if ACE had a duty to indemnify, and although the Agreement's reasonableness and good faith are not in dispute, Chapman's failure to adduce

evidence that would permit an appropriate allocation of the damages between covered and noncovered losses is fatal to his claim. As no genuine issues of material fact exist, ACE is entitled to judgment in its favor as a matter of law.

Accordingly, it is ORDERED AND ADJUDGED:

1. Defendant's Motion for Summary Judgment (Doc. 31) is **GRANTED**. Plaintiffs cannot recover from ACE on the underlying consent judgment because ACE had no duty to defend the Chapman Suit, *Chapman, et. al. v. Taylor, et. al.*, Case No. 99-

06242, in the Thirteenth Judicial Circuit in and for Hillsborough County, FL, as that lawsuit did not allege any claim that was covered by the ACE policy. Since there was no duty to defend, there was no duty to indemnify. Even if there was a duty to indemnify, the Consent Judgment does not appropriately allocate damages between covered and uncovered losses.

2. Plaintiffs' Motion for Partial Summary Judgment (Doc. 32) is **DENIED**.

3. All pending motions are denied as moot.

4. The Clerk is directed to enter judgment in favor of Ace American Insurance Company and against Mark Chapman, individually, as personal representative of the Estate of Gregory Chapman, and as personal representative of Estate of Barbara Chapman.

5. The Clerk is further directed to terminate all pending deadlines and close this case.

DONE AND ORDERED in Tampa, Florida on June 21, 2018.

/s/ Charlene Edwards Honeywell
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12972-DD

MARK CHAPMAN, individually and as personal representative of the Estate of Gregory Chapman, deceased, and the Estate of Barbara Chapman, deceased, IRENE CHAPMAN,

Plaintiffs-Counter Defendants-Appellants,

KATHY RUFF, et al.,

Plaintiffs-Counter Defendants,

versus

ACE AMERICAN INSURANCE COMPANY, a foreign corporation f.k.a. Cigna Insurance Company,

Defendant - Counter Claimant - Appellee.

Appeal from the United States District Court for the Middle District of Florida

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Before: TJOFLAT, JORDAN, and EDMONSON, Circuit Judges.

BY THE COURT:

"Appellant's Motion to Certify Questions of Law" is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12972-DD

MARK CHAPMAN, individually and as personal representative of the Estate of Gregory Chapman, deceased, and the Estate of Barbara Chapman, deceased, IRENE CHAPMAN,

Plaintiffs-Counter Defendants-Appellants,

KATHY RUFF, et al.,

Plaintiffs-Counter Defendants,

versus

ACE AMERICAN INSURANCE COMPANY, a foreign corporation f.k.a. Cigna Insurance Company,

Defendant - Counter Claimant - Appellee.

Appeal from the United States District Court for the Middle District of Florida

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[Filed: August 27, 2019]

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, JORDAN, and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ J.L. Edmonson
UNITED STATES CIRCUIT JUDGE