

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

-against-

MEMORANDUM & ORDER

01-CV-5127 (RJD)

TRATAROS CONSTRUCTION, INC.,
Defendant.

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RUTH CAMPOS, ELAINE MARTINEZ,
EDITH CENOSTIN,

Plaintiffs-Intervenors,

-against-

TRATAROS CONSTRUCTION, INC.,
Defendant.

-----X
TRATAROS CONSTRUCTION, INC.,
Third-Party Plaintiff,

-against-

ADMIRAL INSURANCE COMPANY,
Third-Party Defendant

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DEARIE, District Judge.

Admiral Insurance Company asks this Court to reconsider its decision on the cross motions for summary judgment by Admiral and third-party plaintiff Trataros Construction, Inc. pursuant to Local Rule 6.3. The request is denied. In its application, Admiral does little more than reargue the same points already considered and rejected by the Court. Having again considered the positions advanced, the Court adheres to its determination that the EEOC filing did not constitute a claim within the definition reflected in the subject policy.

Curiously, Admiral also seeks what it characterizes as clarification of the decision on the

cross motions. Anyone even casually familiar with this Court's ruling knows which issues were addressed and in what context the parties presented those issues for resolution. Simply stated, the Court determined that the intervenors' filings with the EEOC did not constitute claims as the term is defined in the subject policy. Accordingly, the Court concluded that the insured's notice to Admiral was timely. That was the sole issue presented to the Court, and right or wrong, that is what the Court determined within the context of the competing cross motions.

Despite the straightforward nature of the issue, Admiral seeks clarification from the Court, expressing its concern that the Court's ruling went beyond the boundaries of the issues presented and resolved all issues of coverage in favor of the insured. Admiral points to another possible affirmative defense which it referenced in a footnote in its memorandum in support of its motion for summary judgment. See Admiral's Memorandum in Support of Motion for Summary Judgment, at p. 22, fn.8. According to Admiral, it may deny coverage because the insured failed to reveal the EEOC complaints in its 2001 application for policy renewal. That issue was not briefed by the parties, was not even mentioned in Admiral's opposition to the insured's cross motion, and was not therefore addressed by the Court. If indeed Admiral intends to press this alleged lapse as a basis for denying coverage, it is surprising that the point was not aggressively pursued in opposition to the insured's motion for summary judgment on the broader issue of Admiral's duty to defend. Perhaps some "clarification" is in order after all.

In the end it may well be that the issue of the policy renewal application will not withstand scrutiny. It appears from the application itself that the fact of the EEOC filing was revealed by the insured though no particulars were provided. See Employment Practices Liability Insurance Declarations Page, attached to Trataros Memorandum of Law in Opposition

to Motion for Reconsideration. Nevertheless Admiral accepted the application, did not seek further information or explanation, issued the renewal policy, and made no mention of the lapse until it filed its answer in this case. See Admiral's Answer ¶ 19.

Admiral also requests certification pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure, or pursuant to 28 U.S.C. § 1292 (b). The request for certification is also denied. Admiral will suffer no great prejudice, and resolution of this limited coverage issue will not likely expedite the resolution of the case.

Rehearing denied.

SO ORDERED.

Dated: Brooklyn, New York
August 18, 2004



RAYMOND J. DEARIE
United States District Judge