

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WEST BRANCH MUTUAL INSURANCE COMPANY,	:	NO. 09 – 01,762
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
SALLY WIEGAND, 800 PARK PLACE, LLC and	:	
WILLIAM C. BROWN, Individually and d/b/a	:	
BROWN’S TREE FARM,	:	
Defendant	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is a Motion for Summary Judgment filed by Plaintiff on December 15, 2009. Argument on the motion was heard January 20, 2010, at which time counsel for Defendant Brown requested the opportunity to file a brief. That request was granted and the brief was filed January 29, 2010. The matter is now ripe for decision.

Plaintiff issued a farm owner’s insurance policy to Defendant William Brown d/b/a Brown’s Tree Farm (hereinafter “Brown”), and Brown called upon Plaintiff to provide a defense when he was sued by Defendant Wiegand (hereinafter “Wiegand”) for an injury she allegedly sustained on the property of Defendant 800 Park Place (hereinafter “Park Place”). In the instant suit, Plaintiff seeks a declaration that it does not have to provide such a defense, and in the instant motion Plaintiff contends there are no disputed issues of material fact as to the coverage issue. Brown contends that without a deposition of Wiegand, no determination can be made.

In the suit by Wiegand against Brown and Park Place, Wiegand claims that she was injured when she tripped and fell over a concrete wheel stop on the sidewalk on the Park Place property, and that either or both defendants were negligent in either pushing the wheel stop onto the sidewalk or allowing it to remain there. Brown is named as a defendant in his role as the entity which contracted with Park Place to remove snow and which provided such snow removal services on the Park Place property. Thus, Brown is being sued by Wiegand for negligent performance of a business service. The farm owner’s policy issued to him by

Plaintiff excludes from coverage, however, “damages for bodily injury ... resulting from liability assumed by an insured under a written contract ... in connection with business activities of an insured”, as well as “bodily injury ... which results directly or indirectly from ... activities related to the business of an insured, except as provided for by an Incidental Business Coverage” (which “Incidental Business Coverage” is not included in Brown’s policy).

Brown contends nevertheless that until Wiegand is deposed, the Court cannot make a determination of coverage as Wiegand may say in her deposition that she was injured in some other manner than what she says in her Complaint, and such may give rise to a claim against Brown that *is* covered by the policy. While the Court cannot conceive of any method of injury which would remove the claim from the “business activities” exclusion, in the unlikely event Wiegand does so drastically change her claim against Brown, the Court will allow Brown to file a motion to reconsider the instant order on that grounds.

ORDER

AND NOW, this 3rd day of February 2010, for the foregoing reasons, Plaintiff’s Motion for Summary Judgment is hereby GRANTED, with the proviso that Brown may file a motion for reconsideration in accordance with the foregoing opinion, provided such is filed within ten (10) days of Wiegand’s deposition.

BY THE COURT,

Dudley N. Anderson, Judge

cc: David Wilk, Esq., P.O. Box 68, Williamsport, PA 17703-0068
William Carlucci, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson