Entered 17-CI-005888 06/09/2026 David L. Nicholson, Jefferson Circuit Clerk

NO. 17-CI-005888

JEFFERSON CIRCUIT COURT
DIVISION SIX (6)
HON. JESSICA E. GREEN

RENEE HUNT, etc. PLAINTIFF

v.

MASONIC HOMES OF KENTUCKY, INC. DEFENDANT/
THIRD-PARTY PLAINTIFF

v. **ORDER**

ONEBEACON INSURANCE GROUP, LTD., et al. THIRD-PARTY DEFENDANTS

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This matter is before the Court on the Renewed Motion for Summary Judgment filed by Third-Party Defendants, TDC Specialty Underwriters, Inc. ("TDCSU"), and TDC Specialty Insurance Company ("TDCSIC"), which Motion was argued in open court by counsel for the respective parties on May 26, 2026.[1] Having reviewed the parties' memoranda, having considered the aforementioned arguments, having considered applicable case, statutory, and procedural law, and being otherwise sufficiently advised, the Court rules as follows:

Regarding summary judgment motions under CR 56, "[a] moving party bears the initial burden of showing that no genuine issue of material fact exists, and then the burden shifts to the party opposing summary judgment to present 'at least some affirmative evidence showing that there is a genuine issue of material fact for trial.'" *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 & n.6 (Ky. App. 2001) (quoting *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991)). A nonmovant "cannot rely on [his] own claims [or defenses] or arguments

[1] Arguments were made this same date in support of Motions for Summary Judgment filed by Third-Party Defendants, OneBeacon Insurance Group, Ltd. ("OneBeacon"), and Homeland Insurance Company of New York ("Homeland"). Disposition of these Motions will be handled in separate Orders of the Court.

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without *significant evidence* in order to prevent a summary judgment." *Hallahan v. The Courier-Journal,* 138 S.W.3d 699, 705 (Ky. App. 2004) (emphasis added) (quoting *Wymer v. JH Properties, Inc.,* 50 S.W.3d 195, 199 (K y. 2001)).

The Court focuses first on TDCSU, which, indisputably, did not have a contractual relationship with Masonic Homes as a direct insurer at any time relevant to this lawsuit. The point here is that, though it did have such a relationship with TDCSIC, Masonic Homes was not in privity with TDCSU, meaning a contractual claim cannot stand. *Presnell Construction Managers, Inc. v. EH Construction, LLC,* 134 S.W.3d 575, 579 (Ky. 2004) (privity required for breach of contract action).

On a related front – there being no contractual relationship in place with TDCSU in the realm of coverage – Masonic Homes' claim for bad faith is nonactionable, as a matter of law. *Davidson v. American Freightways, Inc.,* 25 S.W.3d 94, 100 (Ky. 2000) ("[a]bsent a contractual obligation [to pay], there simply is no bad faith cause of action, either at common law or by statute"); *Kentucky National Insurance Co. v. Shaffer*, 155 S.W.3d 738, 742 (Ky. App. 2004) ("in absence of a contractual obligation in an insurance policy for coverage, there can be no claim for bad faith"). Accordingly, each of Masonic Homes' claims against TDCSU must be dismissed.

As for the third-party contractual claims against TDCSIC, a coverage analysis is for the Court to conduct as a matter of law given what it deems here to be unambiguous policy terms and undisputed facts of record. *Stone v. Kentucky Farm Bureau Mutual Insurance Co.*, 34 S.W.3d 809, 810 (Ky. App. 2000). Turning to those key, undisputed facts, the decedent's daughter contacted Masonic Homes personnel on more than one occasion in December 2016 inquiring about the cause of decedent's severely broken hip; this was followed in February 2017 by a letter from estate counsel alluding to possible "substandard care" and suggesting Masonic Homes share the

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letter with its "liability insurance carrier and/or general counsel." Despite these separate, straightforward communications imploring action on its part, Masonic Homes failed to acknowledge a potential legal claim when it applied for a policy with TDCSI on March 6, 2017, and also failed to give notice of said claim until roughly seven months later in October 2017 – only then at a point *after* OneBeacon had declined coverage.

Based on the foregoing, the Court agrees with – and adopts as its own as a matter of law – three distinct propositions staked out in the instant Motion: (1) prior to applying for coverage with TDCSI, Masonic Homes knew or reasonably should have foreseen a claim in connection with the decedent's injury, and, as such, the Prior Knowledge Exclusion in the policy bars coverage; (2) the Application Exclusion also precludes coverage because Masonic Homes should have responded in the affirmative to an inquiry regarding facts or circumstances surrounding the decedent's injury; and (3) the Prior Notice Exclusion applies to defeat coverage given that Masonic Homes gave notice of the decedent's potential claim to OneBeacon months before providing notice of the same to TDCSI.[2]

Wherefore, IT IS HEREBY ORDERED AND ADJUDGED that the Renewed Motion for Summary Judgment of Third-Party Defendants, TDC Specialty Underwriters, Inc., and TDC Specialty Insurance Company, is **GRANTED**, and, as a result, all claims of Third-Party Plaintiff, Masonic Homes of Kentucky, Inc., directed at these Third-Party Defendants are **DISMISSED**, with prejudice to refiling.

This is an interlocutory, non-appealable Order.

[2] Furthermore, as already analyzed in the context of Masonic Homes' claims against TDCSU, there is no viable cause of action against TDCSI for bad faith given this Court's disposition herein regarding the absence of coverage under the TDSCI policy. *Davidson, supra*; *Shaffer, supra.*

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SO ORDERED this 9th day of June, 2026.

HON. JESSICA E. GREEN
Judge, Jefferson Circuit Court

cc: Counsel of Record

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