**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**MONROE DIVISION**

| | |
|---|---|
| **STEVIE BURNEY** | **CASE NO. 3:23-CV-1779** |
| **VERSUS** | **JUDGE TERRY A. DOUGHTY** |
| **MADISON PARISH HOSPITAL SERVICE DISTRICT ET AL** | **MAG. JUDGE KAYLA D. MCCLUSKY** |

**MEMORANDUM ORDER**

Before the Court is a Motion for Summary Judgment [Doc. No. 43] filed by Defendant, RSUI Indemnity Company ("RSUI"). Plaintiff, Stevie Burney ("Burney"), opposes the Motion [Doc. No. 45]. RSUI filed a reply [Doc. No. 46].

After carefully considering the parties' filings and applicable law, the Motion is **GRANTED IN PART** and **DENIED IN PART**.

## I. Background

In 2018, Burney began working as a Nurse Practitioner for Defendant, Madison Parish Hospital Service District d/b/a Madison Parish Hospital ("MPH").[1] During the time MPH employed Burney, Defendant, Dr. Donald Perry ("Dr. Perry"), served as MPH's Chief Executive Officer.[2] And during the same time-period, Defendant, Felicia Williams ("Williams"), served as MPH's Chief Legal Officer.[3] RSUI issued MPH's insurance policy, NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY No. PP699045 ("the Policy").[4]

[1] [Doc. No. 1, ¶¶ 2A, 5].
[2] [Id. at ¶ 2B].
[3] [Id. at ¶ 2C].
[4] [Id. at ¶ 2D]; [Doc. No. 43-4, pp. 1–2].

The Policy provided three distinct coverage sections—Directors and Officers Liability ("D&O"), Employment Practices Liability ("EPL"), and Fiduciary Liability.[5] Each coverage section has a $1,000,000 individual "Limit of Liability."[6] Defense expenses, defined as "reasonable and necessary legal fees and expenses incurred . . . by [MPH] in defense of a Claim,"[7] is also a part of each section's Limit of Liability.[8] And RSUI's "duty to defend [MPH] and pay [MPH's] Defense Expenses ends upon exhaustion of the Limit of Liability."[9]

In October 2022, Burney noticed and alerted MPH that another MPH Nurse Practitioner, Lataya Freeman-Ross ("Ross"), allegedly engaged in illegal conduct.[10] Burney also notified the Medicaid Fraud Unit of the Louisiana Department of Health, the Legislative Auditor's Office, the Office of Inspector General with the U.S. Department of Health & Human Services, and the Louisiana Board of Nursing about Ross' alleged illegal conduct.[11] Ross was terminated, but then reinstated after two members of MPH's Board were replaced.[12]

In December 2022, Burney notified MPH's "management-level employees" that she was experiencing "illegal harassment" and "retaliation" because she disclosed Ross' illegal activities to MPH and governmental authorities.[13] In January 2023, Burney also informed the state Office of Inspector General and the Attorney General

[5] [Doc. No. 43-4, p. 2].
[6] [Id. at pp. 3–5].
[7] [Id. at p. 21].
[8] [Id. at p. 8].
[9] [Id. at p. 10].
[10] [Doc. No. 1, ¶ 9].
[11] [Id.].
[12] [Id.].
[13] [Id. at ¶ 11].

about the same.[14] Burney alleges she then faced a "pattern of harassing and retaliatory actions" that culminated in her termination on January 12, 2023.[15] Burney alleges she was fired because she did not sign a "drug testing policy" consent form and failed to clock out on January 11, 2023, her last day of employment.[16]

Burney continued assisting governmental authorities on the alleged unlawful activities at MPH even after MPH fired her.[17] As a result of the ongoing investigation, Ross cannot work "anywhere that Medicaid/Medicare is accepted" and MPH cannot receive any reimbursements from Medicaid/Medicare.[18]

Burney filed suit against MPH, Dr. Perry, Williams, and RSUI (collectively, "Defendants"), alleging claims of unlawful retaliation under federal and state law.[19] She also alleges that Defendants conspired to violate her rights, and that they violated state law by breaching her employment contract.[20] The Court previously dismissed all but two of her claims—her § 1983 claim for First Amendment retaliation against Dr. Perry and Williams, and her anti-reprisal claim against MPH under § 23:967.[21] RSUI filed this Motion, seeking dismissal of all claims against them because, they claim, they have no duty to defend or indemnify MPH.[22]

The parties briefed all relevant issues, and the matter is ripe.

---

[14] [Id.].
[15] [Id. at ¶ 13].
[16] [Id.].
[17] [Id. at ¶ 14].
[18] [Id.].
[19] [Doc. No. 26, ¶¶ 16–20, 22].
[20] [Id. at ¶¶ 21, 23].
[21] *See* [Doc. No. 34 (adopting the Report and Recommendation of the Magistrate Judge [Doc. No. 29, pp. 21–23, 27–28])].
[22] [Doc. No. 43, p. 1].

## II. Law and Analysis

### A. Standard of Review

A court will grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). If the movant meets their initial burden of showing no genuine issue of material fact, "the burden shifts to the nonmoving party to produce evidence or designate specific facts showing the existence of a genuine issue for trial." *Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc.*, 738 F.3d 703, 706 (5th Cir. 2013) (citation modified). A fact is "material" when proof of its existence or nonexistence would affect the lawsuit's outcome under applicable law in the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words, "the mere existence of some alleged factual dispute will not defeat an otherwise properly supported motion for summary judgement." *Id.* at 247–48. And a dispute about a material fact is "genuine" only if the evidence is such that a reasonable fact finder could render a verdict for the nonmoving party. *Id.*

While courts will "resolve factual controversies in favor of the nonmoving party," an actual controversy exists only "when both parties have submitted evidence of contradictory facts." *Little v. Liquid Air. Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). But summary judgment is appropriate when the evidence is "merely colorable or is not significantly probative." *Anderson*, 477 U.S. at 249 (1986) (citation modified).

Moreover, "a party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence." *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (citation modified).

Courts "may not make credibility determinations or weigh the evidence" and "must resolve all ambiguities and draw all permissible inferences in favor of the non-moving party." *Total E & P USA Inc. v. Kerr–McGee Oil and Gas Corp.*, 719 F.3d 424, 434 (5th Cir. 2013) (citations omitted).

Finally—and importantly—there can be no genuine dispute as to a material fact when a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof of trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

**B. Policy Coverage**

Under Louisiana law, which applies in this diversity suit, interpreting insurance policies is a legal question. *See Bayou Steel Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 642 F.3d 506, 509–10 (5th Cir. 2011) (citations omitted). When construing insurance policies, Louisiana courts apply the Louisiana Civil Code's general rules for interpreting contracts. *Id.* (collecting cases). A policy's words and phrases are given their plain, ordinary, and generally prevailing meanings, unless they have acquired a technical meaning. *Id.* at 510 (citing LA. CIV. CODE ANN. art. 2047 (2025)). Only if a policy's words are ambiguous or lead to absurd consequences, may courts seek to determine the common intent of contracting parties. *Id.* (citing LA. CIV. CODE ANN. arts. 2045–46 (2025)). Finally, exclusionary provisions in a policy are "strictly construed against the insurer." *Id.* (quoting *Calogero v. Safeway Ins. Co. of La.*, 753 So. 2d 170 (La. 2000)).

RSUI's Motion can be broken up into two questions. First, whether Burney's claims only involve the Policy's EPL coverage section. And second, whether RSUI has exhausted its duties under the EPL. The Court analyzes each question in turn.

**1. Only Employment Practices Liability Coverage Applies**

Under the Policy, the EPL coverage section applies to any claim that arises from an Employment Practices Wrongful Act ("EPWA").[23] The Policy defines EPWA broadly. EPWA includes, among other things, (whether committed directly, indirectly, intentionally, or unintentionally) any actual or alleged:

- Employment-related retaliation,
- Violation of 42 U.S.C. § 1983, and
- Violation of an Insured Person's civil rights relating to any of the above.[24]

The Policy defines Insured Person to include all past, present, or future employees of MPH.[25] As an MPH employee, Burney is an Insured Person under the Policy.

Burney's first claim alleges Dr. Perry and Williams violated her civil rights by retaliating against her for engaging in First Amendment-protected activity (namely, refusal to participate in unlawful conduct and disclosing said conduct).[26] She seeks redress under 42 U.S.C. § 1983.[27] This claim falls under the EPWA as it involves "violations of" § 1983 and "violations of" Burney's "civil rights relating to" § 1983. And both violations are listed in the Policy as EPWAs.[28] So, Burney's first claim arises from an EPWA, and consequently, it falls under the EPL coverage section.

[23] [Doc. No. 43-4, p. 49].
[24] [Id. at p. 50 (citation modified)].
[25] [Id.].
[26] [Doc. No. 26, ¶ 16].
[27] [Id.].
[28] [Doc. No. 43-4, p. 50].

Burney's second claim alleges MPH's actions violated the Louisiana anti-reprisal law, LA. STAT. ANN. § 23:967.[29] This claim involves "employment-related retaliation" because the crux of § 23:967 prohibits employers from reprising against an employee who "in good faith, and after advising the employer of the violation of law[:]" (1) discloses or threatens to disclose illegal workplace conduct; (2) participates in an investigation into illegal workplace conduct; or (3) refuses to participate in illegal workplace conduct. LA. STAT. ANN. § 23:967(A). Such "employment-related retaliation" is also listed in the Policy as an EPWA.[30] As such, Burney's second claim also falls under the EPL coverage section.

Burney's sixth claim seeks an award of attorney's fees and costs for the § 1983 and § 23:967 claims.[31] These claims fall within the EPWA's definitions because they are effectively the same as the previous two claims but only seek additional monetary compensation. Thus, Burney's sixth claim also falls under the EPL coverage section.

Accordingly, the Court concludes all of Burney's claims are EPWAs under the Policy. Consequently, all of Burney's claims fall under the EPL. The Court now turns to whether any of the other coverage sections apply.

**a. Fiduciary Liability Coverage does not Apply**

The Fiduciary Liability coverage section applies to "claims against an Insured for a Fiduciary Wrongful Act," that is, made against any Insured during the Policy Period."[32] Fiduciary Wrongful Acts include:

[29] [Doc. No. 26, ¶ 20].
[30] [Doc. No. 43-4, p. 50].
[31] [Doc. No. 26, ¶ 24].
[32] [Doc. No. 43-4, pp. 55–56].

1. Breach of the duties, responsibilities or obligations imposed upon fiduciaries of any Plan by ERISA or the common law or statutory law of any jurisdiction governing such Plan;
2. Any negligent act, error or omission by an Insured in the Administration of Employee Benefits or any other matter claimed against an Insured solely by reason of their service as a fiduciary of any Plan;
3. Violation of any of the responsibilities, obligations or duties imposed upon fiduciaries of any Plan by the Health Insurance Portability and Accountability Act of 1996 and any rules or regulations promulgated thereunder ("HIPAA");
4. Other violation of HIPAA claimed against an Insured due solely to such Insured's service as a fiduciary of any Plan; or
5. Negligent violation of HIPAA by an Insured in the Administration of any Plan.[33]

Burney's complaint does not include factual allegations, in any remaining claims, which would suggest the claims relate to any of the above-cited Fiduciary Wrongful Acts. So, the Fiduciary Liability coverage does not apply to Burney's claims.

**b. Director & Officers Liability Coverage does not Apply**

Under the Policy, the D&O coverage section applies to claims "for a Wrongful Act" that is "made against any Insured Person during the Policy Period."[34] Under the D&O coverage section, "any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty, or Personal Injury Wrongful Act" made by the Insured Organization or an Insured Person acting on behalf of the Insured Organization is a Wrongful Act.[35]

[33] [Id. at pp. 56–57].
[34] [Id. at p. 39].
[35] [Id. at p. 41].

Burney argues her two remaining substantive claims—her § 1983 claim for First Amendment retaliation against Dr. Perry and Williams, and her anti-reprisal claim against MPH under § 23:967—qualify as Wrongful Acts. As to her § 1983 claim, Burney argues Dr. Perry and Williams were Insured Persons, under the D&O coverage section, who performed an act—speech-related retaliation—against Burney while acting in their official capacity on behalf of MPH.[36] Similarly, Burney argues that her state anti-reprisal claim against MPH, the Insured Organization, is based on its wrongful act of reprisal against her for advising MPH about legal violations.[37]

The Court initially agrees. Based on a plain reading of the D&O coverage section, Burney's claims appear to be covered. But the Policy has more.

The D&O coverage section includes multiple exclusions to which the Policy could otherwise apply, but are explicitly excluded.[38] Relevant here is the eleventh exclusion, which provides that RSUI is not required to pay for claims made against an Insured that are "[a]lleging, arising out of, based upon or attributable to, in whole or in part, any Employment Practices Wrongful Act."[39] RSUI argues the plain meaning of this exclusion precludes Burney's argument.[40] The Court agrees.

This Court is bound to give the Policy's words and phrases their plain, ordinary, and generally prevailing meanings. *Bayou Steel*, 642 F.3d at 510 (citing LA. CIV. CODE ANN. art. 2047 (2025)). The Court focuses on the phrase "arising out of."

[36] [Doc. No. 45, p. 4].
[37] [Id. at p. 3].
[38] [Doc. No. 43-4, pp. 41–42].
[39] [Id. at p. 42].
[40] [Doc. No. 43-1, p. 21].

The Louisiana Supreme Court noted that "the words 'arising out of' [are] general and comprehensive terms which should be construed liberally." *Bernard v. Ellis*, 111 So. 3d 995, 1005 (La. 2012). The Fifth Circuit, in a similar insurance case, noted that "'[a]rising out of'" is a phrase of "broad[] significance" that ordinarily is understood to mean 'originating from' 'having its origin in,' 'growing out of' or 'flowing from,' or in short, 'incident to, or having connection with[.]'" *EMCASCO Ins. Co. v. Am. Int'l Specialty Lines Ins. Co.*, 438 F.3d 519, 524–25 (5th Cir. 2006) (quoting *Red Ball Motor Freight v. Employers Mut. Liab. Ins. Co.*, 189 F.2d 374, 377–78 (5th Cir.1951)).

Here, the § 1983 claim and the § 23:967 claim clearly "arise out of" EPWAs because, the factual bases for those claims "originat[e] from," "flow from," or "hav[e] a connection with" EPWAs. *Id.* And, the Court previously concluded that these claims fall within the Policy's definition for EPWAs.[41] As such, the claims, which Burney alleges fall under the D&O coverage section, arise out of EPWAs and are, therefore, excluded from coverage by the D&O coverage section.

Burney counters that the Court should not reach the above conclusion because it contravenes another provision in the Policy—the "Separate Limit of Liability."[42] The Separate Limit of Liability provides that regardless of each coverage section's $1,000,000 individual Limit of Liability, "[w]here two or more Separate Limits of Liability are or could be applicable to one Claim," the "larger of the applicable Separate Limits of Liability shall apply, but in no event shall more than one Separate

[41] *See supra* Part II.B.1.
[42] [Doc. No. 45, p. 5].

Limit of Liability apply to any Claim."[43] Burney asserts that applying the eleventh exclusion to the D&O section "creates ambiguity rather than clarity" when read with the Separate Limits of Liability.[44] Basically, Burney argues why allow overlapping coverage if it can then be excluded. Consequently, Burney argues the Court should, pursuant to Louisiana law, construe said ambiguity in favor of applying coverage.[45]

Only if a policy's words are ambiguous or lead to absurd consequences, may courts depart from their plain meaning, which the parties bargained for. *See Bayou Steel*, 642 F.3d at 510 (citing LA. CIV. CODE ANN. arts. 2045–46 (2025)). Not so here. The eleventh exception clearly states that acts that qualify as EPWAs do not also qualify as Wrongful Acts under D&O coverage.[46] When read together with the Separate Limits of Liability, the Policy provides additional coverage when MPH conducts independent acts that trigger more than one Policy coverage section. This ensures claimants do not double-dip under the Policy because, as Burney's arguments show, the same Wrongful Act could otherwise trigger more than one Policy coverage section. Since the Policy's plain meaning shows that the eleventh exception unambiguously exempts Burney's claims and her countervailing arguments are unpersuasive, the Court concludes D&O coverage does not apply to Burney's claims, and only the EPL coverage section applies to Burney's claims.

[43] [Doc. No. 43-4, p. 23].
[44] [Doc. No. 45, p. 4].
[45] [Id. at p. 5 (citing *Doerr v. Mobil Oil Corp.*, 774 So. 2d 119, 125 (La. 2000))].
[46] [Doc. No. 43-4, p. 42].

**2. RSUI has not Shown EPL Coverage is Exhausted**

In *Topolewski v. Police Jury et al.*, No. 23-CV-258 (W.D. La.), another suit that arose under the same underlying facts, RSUI made payments to that plaintiff as part of a settlement.[47] In doing so, RSUI claims it "exhausted the $1,000,000" Limit of Liability under the EPL coverage section.[48] RSUI claims it notified Burney's counsel of said settlement discussion, but claims Burney's counsel did not timely respond.[49]

RSUI argues its actions comport with Louisiana law.[50] "In the absence of bad faith, a liability insurer is free to settle or to litigate at its own discretion, without liability to its insured for a judgment in excess of the policy limits." *New England Ins. Co. v. Barnett*, 465 F. App'x 302, 311 (5th Cir. 2012) (unpublished) (quoting *Smith v. Audubon Ins. Co.,* 679 So.2d 372, 376 (La.1996)). "Conversely, an insurer may be liable for an excess judgment against the insured if its refusal to settle within policy limits is found to be arbitrary or in bad faith." *Id.* (citing *Keith v. Comco Ins. Co.*, 574 So.2d 1270, 1277 (La. Ct. App. 1991)). RSUI asserts that since they timely notified Burney of the *Topolewski* settlement, they did not act arbitrarily or in bad faith.[51]

Burney counters that RSUI has not proven the absence of a genuine dispute of a material fact: whether RSUI exhausted the EPL coverage. RSUI's sole proffered evidence on this question is a Declaration by Jared Wright, RSUI's Chief Claims Specialist, that alleges RSUI exhausted its EPL limit in the *Topolewski* settlement.[52]

---

[47] [Doc. No. 43-6, ¶¶ 17, 21].
[48] [Id. at ¶ 21].
[49] [Doc. No. 43-1, pp. 25–26].
[50] [Id. at p. 25].
[51] [Id.].
[52] [Doc. No. 43-6, ¶¶ 6, 21].

Burney argues this is insufficient as it is a conclusory statement, which cannot be substantiated.[53] Burney argues that she disputes the EPL coverage is exhausted without further proof.[54] As such, she argues, RSUI has not overcome the genuine dispute of this material fact.[55] The Court agrees.

Whether the EPL coverage is exhausted or not is undoubtedly a factual question. True, the settlement is confidential, but as RSUI acknowledges, it may be disclosed in several circumstances.[56] And RSUI, as the moving party, bears the burden of proving the absence of a genuine dispute of material facts. FED. R. CIV. P. 56(a). The Declaration by Jared Wright is, as Burney highlights, conclusory and unsubstantiated. And at this stage, the Court cannot weigh the proffered evidence or make credibility determinations. *Total E & P USA*, 719 F.3d at 434. So, RSUI has not met its burden of proving that they exhausted the EPL coverage and is not entitled to summary judgment on this question.

To sum, the Court concludes that under the plain text of the Policy, only the EPL coverage section applies to Burney's claims in this case. So, RSUI is entitled to summary judgment on that question. RSUI has not, however, proven they have exhausted the limit of liability for the EPL coverage section. Consequently, RSUI is not entitled to summary judgment on that question.

## III. Conclusion

For all these reasons,

[53] [Doc. No. 45, p. 9].
[54] [Id.].
[55] [Id. at p. 7].
[56] [Doc. No. 43, p. 21 n.33].

**IT IS ORDERED** that RSUI's Motion for Summary Judgment [Doc. No. 43] is **GRANTED IN PART** and **DENIED IN PART**. The Motion is **GRANTED** to the extent RSUI argues only the EPL coverage section of the Policy applies. The Motion is **DENIED** to the extent RSUI claims it has exhausted its liability under the EPL coverage section.

MONROE, LOUISIANA, this 2nd day of March 2026.

TERRY A. DOUCHTY
UNITED STATES DISTRICT JUDGE