

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**GENERAL STAR NATIONAL
INSURANCE COMPANY,**

Plaintiff,

vs.

**STATE OF NORTH CAROLINA,
NORTH CAROLINA PUBLIC
OFFICERS AND EMPLOYEES
LIABILITY INSURANCE
COMMISSION, MARK A. ISLEY, BILL
LANE AND FLOYD LEE BROWN,**

Defendants.

Civil Action No.:

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff General Star National Insurance Company (“General Star”) brings this action for declaratory judgment against the State of North Carolina (“North Carolina”), the North Carolina Public Officers and Employees Liability Insurance Commission (the “Commission”), Mark A. Isley (“Isley”), Bill Lane (“Lane”) and Floyd Lee Brown (“Brown”). General Star seeks a determination that seven primary public officers and employees liability policies and excess liability policies issued by General Star to the Commission and North Carolina do not provide coverage for an underlying lawsuit by Brown against Isley and Lane. According to Brown, Isley and Lane wrongfully forced him to confess to a murder that he did not commit and then arrested him in July 1993. Because the wrongful conduct at issue commenced prior to the inception of

the General Star policies, there is no coverage under those policies. In support of this Complaint, General Star alleges as follows:

NATURE OF ACTION

1. This is an action by General Star for a declaratory judgment concerning its rights and obligations under seven public officers and employees liability policies and excess liability policies issued by General Star to the Commission and North Carolina.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

3. General Star seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. On information and belief, one or more individual defendants reside in this district. In addition, a substantial part of the events giving rise to the underlying claim at issue took place in this district.

THE PARTIES

5. Plaintiff General Star is a corporation engaged in the business of providing liability insurance. General Star is organized and exists under Ohio law with its principal place of business in Connecticut.

6. Defendant North Carolina is a state government that is an insured under the policies issued by General Star. In contracting with General Star with regard to seven primary public officers and employees liability policies and excess liability policies issued by General

Star, North Carolina has waived any potentially applicable sovereign immunity and otherwise has consented to suit, and thus properly is named as a party in this Complaint.

7. Defendant Commission is an agency, department or instrumentality of North Carolina and is an insured under the policies issued by General Star. In contracting with General Star with regard to seven primary public officers and employees liability policies and excess liability policies issued by General Star, the Commission has waived any potentially applicable sovereign immunity and otherwise has consented to suit, and thus properly is named as a party in this Complaint.

8. Defendant Isley is a citizen of North Carolina and, on information and belief, is or was a special agent of the North Carolina State Bureau of Investigation (“SBI”). On information and belief, Isley asserts that he is an Insured under the General Star policies.

9. Defendant Lane is a citizen of North Carolina and, on information and belief, is or was a special agent of the SBI. On information and belief, Lane asserts that he is an Insured under the General Star policies.

10. Defendant Brown is a citizen of North Carolina and has filed a lawsuit against Isley and Lane. Brown is named in this complaint solely in his capacity as the underlying claimant.

FACTUAL ALLEGATIONS

11. This coverage dispute arises out of alleged civil rights violations assertedly committed by Isley, Lane and others when they wrongfully investigated and arrested Brown and forced him to confess to a murder that he did not commit.

The Brown Action

12. On June 7, 2010, Floyd Lee Brown, through his guardian *ad litem*, Anthony Giordano, filed a complaint in a lawsuit captioned *Floyd Lee Brown v. Special Agent Mark A. Isley, et al.*, Case No. 10 CVS 12239 (Super. Ct. for Mecklenburg, North Carolina) (the “*Brown Action*”). The complaint filed named Isley and Lane as defendants. A copy of the complaint filed in the *Brown Action* is attached as Exhibit A the (“*Brown Complaint*”).

13. According to the *Brown Complaint*, in July 1993, Katherine Lynch (“Lynch”), who was 80 years old, was found murdered in her home. Isley and Lane, who were SBI special agents at the time allegedly focused their investigation on Brown.

14. The *Brown Complaint* further alleges that, on July 16, 1993, Brown was taken to the Anson County Sherriff’s department for interrogation, which interrogation was conducted by Isley and Lane. Brown assertedly gave a confession that was transcribed verbatim by Isley. In the confession, Brown allegedly admitted that he beat Lynch repeatedly with a large walking stick, causing her death. Brown was arrested and charged with first-degree murder and robbery with a dangerous weapon on July 16, 1993.

15. According to the *Brown Complaint*, following Brown’s arrest, a North Carolina state court ordered that Brown undergo testing to determine whether he was competent to stand trial. Because Brown ostensibly has severe mental disabilities, the court ordered that Brown be committed at a mental health facility to enable him to become competent to proceed to trial. After Brown later was found competent to stand trial, he was prosecuted for the Lynch murder. In 2007, a North Carolina state court dismissed the criminal charges against Brown and he was released from state custody.

16. Based upon these and other factual allegations, the *Brown* Complaint asserts 18 causes of action as follows: (1) false imprisonment and civil conspiracy (nine counts), (2) false imprisonment (one count), (3) civil conspiracy (one count), (4) intentional/reckless infliction of emotional distress (three counts), (5) malicious prosecution and conspiracy, (6) violations of Article I of the North Carolina Constitution (three counts). In the prayer for relief, Brown seeks unspecified compensatory damages in excess of \$10,000, punitive damages, pre-judgment and post-judgment interest, costs and attorneys' fees.

The General Star Policies

17. General Star issued a series of seven successive Public Officers and Employees Liability Policies to the "Public Officers and Employees Liability Insurance Commission and All [P]ersons [U]nder the North Carolina Defense of State Employees Act" for the policy periods July 1, 1996 to July 1, 2003. Specifically, General Star issued the following policies:

<u>Policy No.</u>	<u>Policy Period</u>
NYA 83972	July 1, 1996 to July 1, 1997
NYA 83972A	July 1, 1997 to July 1, 1998
NYA 83972B	July 1, 1998 to July 1, 1999
NYA 83972C	July 1, 1999 to July 1, 2000
NYA 83972D	July 1, 2000 to July 1, 2001
NYA 83972E	July 1, 2001 to May 31, 2002
NJA 679629	May 31, 2002 to July 1, 2003

Together, these policies will be referred to herein as the Policies.

18. General Star also issued a series of seven successive excess liability policies to the "Public Officers and Employees Liability Insurance Commission and All [P]ersons [U]nder the North Carolina Defense of State Employees Act" for the same July 1, 1996 to July 1, 2003 policy periods, as follows:

<u>Policy No.</u>	<u>Policy Period</u>
NXG-342053	July 1, 1996 to July 1, 1997
NXG-342053A	July 1, 1997 to July 1, 1998

NXG-342053B	July 1, 1998 to July 1, 1999
NXG-342053C	July 1, 1999 to July 1, 2000
NXG-342053D	July 1, 2000 to July 1, 2001
NXG-342053E	July 1, 2001 to May 31, 2002
NXG-383576	May 31, 2002 to July 1, 2003

Together, these policies will be referred to herein as the Excess Policies.

19. Copies of the Policies and the Excess Policies for each policy period are attached together as Exhibits B to H. Apart from the policy periods, the terms of each Policy and Excess Policy are substantially similar to each other.

20. The Policies each contain a limit of liability of \$1 million per employee and \$1 million per occurrence, subject to a \$3 million aggregate limit of liability. Under the Policies, “the total liability of [General Star] for all damages against all EMPLOYEES for any occurrence shall not exceed the limit of liability stated as ‘each occurrence’ in this policy.” *See* Policies, Limit of Liability, Item 2.

21. The Policies each are subject to a \$500,000 retention “to be borne by the INSURED each person.” Under the Policies, “[t]he retention amount, stated in the Declarations, is the amount to be paid by the INSURED to all claimants on account of injury and damage to any one person and prior to any payment by [General Star]. [General Star] shall be liable only for the difference between such retention amount and the amount of insurance otherwise applicable to each claim.” *See* Policies, Limit of Liability, Item 4.

22. Subject to all applicable terms and conditions, the Policies provide that General Star:

will indemnify the INSURED for all sums which the INSURED shall become legally obligated to pay as damages resulting from a WRONGFUL ACT(S) committed by an employee. The WRONGFUL ACT must occur during the POLICY PERIOD.

See Policies, Insurance Agreement at 2. The Policies also provide that General Star “will not pay for any investigative, adjustment or legal expenses in connection with any claim made against the INSURED, per the Defense of State Employees Act provisions.” *See* Policies, Defense, at 2.

23. The Policies define the term Insured to mean “the NAMED INSURED and all EMPLOYEES, volunteers and Board Members and personnel as shown on the renewal data and information as submitted on behalf of the INSURED in the renewal instructions dated May 1, 1995.” *See* Policies, Definitions, at 6.

24. The Policies define the term Employees to mean “all salaried full or part-time Employees of the departments, boards, colleges, universities or other agencies of the State of North Carolina as shown in the renewal data and information as submitted on behalf of the INSURED in the renewal instructions dated May 1, 1995.” *See* Policies, Definitions, at 6.

25. The Policies define the term Wrongful Act to mean “an occurrence which results in a claim against any person or employee of the State of North Carolina as provided in North Carolina General Statutes #143-300.2, 143-300.3, 143-300.4, 143-300.5 and 143-300.6.” *See* Policies, Definitions at 6.

26. The Policies define the term Occurrence to mean “an event, including continuous or repeated exposure to conditions, which results in damages, during the POLICY PERIOD, to any person or organization.” *See* Policies, Definitions, at 6.

27. The Policies provide that General Star has no obligation to make any payment in connection with any claim against an Insured “[f]or any claim, demand or cause of action arising out of WRONGFUL ACT(S) committed by an EMPLOYEE or former EMPLOYEE of the INSURED prior to the inception of this policy.” *See* Policies, Exclusion No. 10.

28. The Policies also provide that General Star has no obligation to make any payment in connection with any claim against an Insured “[f]or any claim, demand or cause of action arising out of WRONGFUL ACT(S) not covered by North Carolina General Statutes #143-200.2, 143-200.3, 143-200.4, 143-200.5 and 143-200.6.” *See* Policies, Exclusion No. 8.

29. The Excess Policies each contain a limit of liability of \$10 million per person and \$10 million per occurrence, subject to varying aggregate limits of liability. Subject to all of their terms and conditions, there is potential coverage under each Excess Policy for ultimate net loss in excess of the insurance afforded by the respective underlying Policies. *See* Excess Policies, Section I.

The Coverage Dispute

30. In August 2009, North Carolina received a copy of a draft complaint that named Isley, Lane and others as defendants (the “Brown Claim”). North Carolina provided notice of claim and sought coverage for the Brown Claim on behalf of Isley and Lane from General Star. After receiving notice, General Star reserved all of its rights under the Policies and Excess Policies generally and for the specific reasons set forth in its letter dated December 16, 2009. On April 26, 2010, North Carolina advised General Star that it contended that the Brown Claim triggered coverage under all of the Policies and demanded coverage under all of the Policies, subject to the Insureds’ satisfaction of a single \$500,000 retention. On May 7, 2010, General Star advised North Carolina, Isley and Lane that there is no coverage for the Brown Claim under any of the Policies and that, in the event that the Brown Claim triggered coverage under all of the Policies, the applicable Retentions totaled \$7 million, not the \$500,000 previously asserted by North Carolina.

31. Following the filing of the *Brown* Action, notice of the lawsuit was provided to General Star, and North Carolina sought coverage for the *Brown* Action on behalf of Isley and Lane from General Star. On June 11, 2010, General Star reiterated that it reserved all of its rights under the Policies and Excess Policies generally and for the specific reasons set forth in its letter dated December 16, 2009. General Star has informed the Insureds of its determination that there is no coverage for the *Brown* Action because the wrongful conduct at issue commenced prior to the inception of the Policies and Excess Policies. Furthermore, General Star has advised the Insureds that it has initiated the present declaratory judgment action to determine the rights and obligations of the parties. General Star also has advised the Insureds that it continues to reserve all of its rights under the Policies, the Excess Policies and applicable law.

Controversy & Ripeness

32. General Star has identified numerous reasons why coverage is precluded and/or limited under the Policies and the Excess Policies.

33. Upon information and belief, the Defendants take issue with General Star's coverage position.

34. These coverage issues directly govern General Star's obligations under the Policies and the Excess Policies. This matter is therefore ripe for adjudication.

Count I

For a Declaration that the *Brown* Action is Not Covered Under the Policies or the Excess Policies

35. General Star realleges and incorporates by reference the allegations in Paragraphs 1 through 34 of this Complaint.

36. As set forth above, the Policies extend specified coverage for a Wrongful Act that takes place during the July 1, 1996 to July 1, 2003 policy periods. Specifically, subject to all applicable terms, conditions and exclusion, the Policies provide that General Star:

will indemnify the INSURED for all sums which the INSURED shall become legally obligated to pay as damages resulting from a WRONGFUL ACT(S) committed by an employee. The WRONGFUL ACT must occur during the POLICY PERIOD.

See Policies, Insurance Agreement at 2.

37. The Policies define the term Wrongful Act in relevant part to mean “an occurrence which results in a claim against any person or employee of the State of North Carolina” and, in turn, define the term Occurrence in relevant part to mean “an event, including continuous or repeated exposure to conditions, which results in damages, during the POLICY PERIOD[.]” *See* Policies, Definitions, at 6.

38. In addition, the Policies each provide that General Star has no obligation to make any payment in connection with any claim against an Insured “[f]or any claim, demand or cause of action arising out of WRONGFUL ACT(S) committed by an EMPLOYEE or former EMPLOYEE of the INSURED prior to the inception of this policy.” *See* Policies, Exclusion No. 10.

39. There is no coverage under each of the Excess Policies unless coverage is triggered and exhausted under the respective underlying Policies.

40. Brown alleges that he was wrongfully forced by Isley and Lane to confess to the Lynch murder and arrested in July 1993, years before the Policies and the Excess Policies were in effect between July 1, 1996 and July 1, 2003.

41. By reason of the foregoing, General Star is entitled to a judgment declaring that, to the extent that Isley and Lane are Insureds for Wrongful Acts as defined by the Policies and

applicable North Carolina statutory law, the Policies and Excess Policies provide no coverage for Isley and Lane in connection with the *Brown* Action.

Count II

For a Declaration that, in the Alternative, if there is Coverage for the *Brown* Action under All the Policies, The Insureds Must Satisfy \$7 Million in Retentions under the Policies

42. General Star realleges and incorporates by reference the allegations in Paragraphs 1 through 41 of this Complaint.

43. As set forth above, the Policies each are subject to a \$500,000 retention “to be borne by the INSURED each person.” Under the Policies, “[t]he retention amount, stated in the Declarations, is the amount to be paid by the INSURED to all claimants on account of injury and damage to any one person and prior to any payment by the Company. The Company shall be liable only for the difference between such retention amount and the amount of insurance otherwise applicable to each claim.” *See* Policies, Limit of Liability, Item 4.

44. Defendants contend that Isley and Lane are Insureds under the Policies and that the *Brown* Action triggers coverage under each of the seven Policies.

45. Because the Policies expressly state that the Retention under each Policy is \$500,000 for “each person,” there is a \$1 million Retention under each Policy for a covered claim against Isley and Lane. Furthermore, because the Defendants contend that the *Brown* Action triggers coverage under each of the seven Policies, then the applicable Retentions total \$7 million in the event the *Brown* Action triggers coverage under all seven Policies.

46. By reason of the foregoing, General Star is entitled to a judgment declaring, to the extent that the *Brown* Action triggers coverage under each of the Policies, the Retentions under the Policies total \$7 million and must first be paid by the Insureds before General Star has any payment obligation under the Policies.

RESERVATION OF RIGHTS

47. The Policies and Excess Policies contain terms, conditions, and limitations on coverage that are relevant to the *Brown* Action but that are not implicated by this declaratory judgment action. Nothing in this complaint should be construed as a waiver by General Star of any coverage defenses under the Policies or the Excess Policies, and General Star reserves the right to raise all other terms and conditions of the Policies and Excess Policies as defenses to coverage for any claim made under the Policies and the Excess Policies, including the *Brown* Action, as appropriate.

WHEREFORE, General Star respectfully requests that the Court enter judgment in its favor and declare that there is no coverage under the Policies and Excess Policies for the *Brown* Action, and, more specifically:

- A. enter judgment declaring that, for the reasons set forth in Count I, the Policies and Excess Policies do not provide coverage for the *Brown* Action because there was no Wrongful Act while the Policies and Excess Policies were in effect between July 1, 1996 and July 1, 2003;
- B. enter judgment declaring in the alternative that, for the reasons set forth in Count II, if the *Brown* Action triggers coverage under the Policies, the applicable Retentions total \$7 million and must first be paid by the Insureds before General Star has any payment obligations under the Policies;
- C. award General Star its costs incurred in this action; and
- D. award General Star all other relief to which it may be entitled.

This the 11th day of June, 2010.

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