2017 IL App (1st) 161630-U
No. 1-16-1630

THIRD DIVISION
April 26, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

UNITED STATES AVIATION UNDERWRITERS, INC., UNITED STATES AIRCRAFT INSURANCE GROUP, ASSOCIATED AVIATION UNDERWRITERS, UNDERWRITING MEMBERS OF SYNDICATES TRADING AT LLOYD'S, LONDON, ALLIANZ GLOBAL CORPORATE AND SPECIALTY SE, FRENCH BRANCH, GENERALI FRANCE, AXA CORPORATE SOLUTIONS, FRANCE, XL SPECIALTY INSURANCE COMPANY, SWISS RE COMPANY, AND SWISS RE EUROPE S.A., NIEDERLASSUNG DEUTSCHLAND, each individually and as subrogees of United Air Lines, Inc.,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	No. 2013 CH 28072
v.	)	The Honorable Anna Helen Demacopoulos, Judge Presiding.
AMERICAN HOME ASSURANCE COMPANY,	)	
Defendant-Appellee.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting summary judgment in favor of the defendant, because the defendant did not owe a duty to defend or indemnify the plaintiffs' insured where the plaintiffs' insured did not qualify as an additional insured under the defendant's policy for the purposes of the underlying personal injury lawsuit. Because the defendant did not owe a duty to defend to the plaintiffs' insured, the estoppel doctrine was inapplicable.

¶ 2 The plaintiffs, United States Aviation Underwriters, Inc.; United States Aircraft Insurance Group; Associated Aviation Underwriters; underwriting members of syndicates trading at Lloyd's, London; Allianz Global Corporate and Specialty SE, French Branch; Generali France; AXA Corporate Solutions, France; XL Specialty Insurance Company; Swiss RE Company; and Swiss RE Europe S.A., Niederlassung Deutschland, each individually and as subrogees of United Air Lines, Inc. ("United"), brought this action seeking a declaration from the trial court that the defendant, American Home Assurance Company ("AHAC"), owed a duty to defend and indemnify United against a personal injury suit brought against United. Following cross-motions for summary judgment, the trial court granted judgment against the plaintiffs and in favor of AHAC. The plaintiffs appeal, arguing that (1) the trial court erred in concluding that United was not entitled to a defense and indemnification under AHAC's insurance policy, and (2) AHAC was estopped from raising any policy defenses to the plaintiffs' claims. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The underlying facts to this insurance coverage case are relatively undisputed. On September 19, 2003, United and Air Wisconsin Airlines Corporation ("Air Wisconsin") entered into a contract entitled United Express Agreement ("UEA"), under which Air Wisconsin would be permitted to provide air transportation services under United's "United Express" mark in cities where it was uneconomic for United to operate such services. As a part of the UEA, United was required to retain a provider for ground handling services in each city where Air

Wisconsin provided United Express services. Accordingly, also on September 19, 2003, United retained Air Wisconsin to provide those ground handling services for all flights operated by United and all United Express flights operated by outside carriers, including Air Wisconsin, at certain airports. Among the airports covered by the GHA was O'Hare Airport. Pursuant to the Ground Handling Agreement ("GHA") between United and Air Wisconsin, Air Wisconsin was to "operate gates, provide ground handling ramp services, and handle receipt and dispatch of flights" at O'Hare Airport. Both the UEA and GHA provided that together with other documents that are not relevant here, the UEA and GHA constituted the entire agreement between United and Air Wisconsin.

¶ 5 Both the UEA and GHA contained reciprocal indemnification provisions between United and Air Wisconsin. In the UEA, Air Wisconsin agreed to the following indemnification of United:

> "[Air Wisconsin] hereby assumes liability for and agrees to indemnify, release, defend, protect, save and hold United and its officers, directors, agents and employees harmless from and against any and all liabilities, damages, expenses, losses, claims, demands, suits, fines or judgments *** which may be suffered by, accrue against, be charged to or be recovered from United *** by reason of any injuries to or deaths of persons ***or the loss of, damage to or destruction of property *** arising out of, in connection with or in any way related to any act, error, omission, operation, performance or failure of performance of [Air Wisconsin] *** regardless of any contributory negligence either active, passive or otherwise, on the part of United ***, which is in any way related to the services of [Air Wisconsin] contemplated by or provided pursuant to this Agreement."

¶ 6 The GHA contained very similar reciprocal indemnification provisions. In the GHA, Air Wisconsin made the following promise to United:

> "[Air Wisconsin] hereby assumes liability for and agrees to indemnify, release, defend, protect, save and hold harmless United and its officers, directors, agents and employees from and against any and all liabilities, damages, expenses, losses, claims, demands, suits, fines or judgments *** which may be suffered by, accrue against, be charged to or be recovered from United *** by reason of any injuries to or deaths of persons *** or the loss of, damage to or destruction of property *** arising out of any reckless and willful misconduct or gross negligence of [Air Wisconsin] *** that is in any way related to the services of [Air Wisconsin] contemplated by or provided pursuant to this Agreement, regardless of any contributory negligence either active, passive or otherwise, on the part of United ***."

¶ 7 Finally, the UEA required Air Wisconsin to procure and maintain, among other types of insurance, comprehensive airline liability insurance. Such a policy was to be endorsed to contain the provisions set forth in Appendix H of the UEA. Appendix H provided, among other things, that Air Wisconsin's insurer agreed that United would be named as an additional insured to the extent of the liability assumed by Air Wisconsin in the UEA and that the policy would operate as if there were a separate policy issued to each insured. Although Appendix H provided spaces for the insurer's name, policy number, period of insurance, and representative's signature, none of this information was filled in, and Appendix H did not contain any signatures.

¶ 8 After execution of the UEA and GHA, Air Wisconsin obtained comprehensive airline insurance from AHAC under Policy Number AI 1853182-01 ("AHAC Policy") for the policy

period of December 29, 2003, through December 29, 2004. The AHAC Policy did not specifically identify United as a named or additional insured.

¶ 9 On April 26, 2005, as a part of United's bankruptcy proceedings, United and Air Wisconsin entered into a "Transition and Settlement Agreement," pursuant to which they executed a "Mutual General Release" ("Release"). Among other things, in the Release, United released Air Wisconsin from the following:

> "any and all claims, demands, liens, actions, agreements, suits, causes of action, obligations, controversies, debts, costs, attorneys' fees, expenses, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, by contract, in tort or pursuant to statute *** that have existed or may exist at any time from the beginning of time, or that do exist or that hereafter can, shall or may exist, based on any facts, events, matters or omissions occurring at any time prior to [April 26, 2005], including without limitation, all United Claims arising under the [UEA and GHA] ***."

¶ 10 On December 1, 2004, before the signing of the Release, pilot James Reiners slipped on a ramp and hurt his back while exiting a United Express flight that was operated by Air Wisconsin and had landed at O'Hare Airport. Reiners filed suit against United in 2006, alleging that United's negligence caused his injuries. In 2009, Reiners voluntarily dismissed his suit, but then refiled it in 2010. In his 2010 complaint, Reiners alleged that United was negligent in failing to provide a safe path of travel from the airplane to the indoor area, directing him to walk through an icy patch, failing to properly maintain and inspect the path of travel from the airplane to the indoor area, and failing to adequately check on those whose responsibility it was to keep the area safe for people to walk. United chose to tender its defense of the Reiners suit to AHAC, as opposed to its insurers, the plaintiffs. AHAC denied that it had a duty to defend or indemnify

United against the Reiners suit. At no point did AHAC agree to defend United under a reservation of rights or file a declaratory judgment action seeking a declaration that it did not owe a duty to defend or indemnify United. Following a jury trial in the Reiners suit, Reiners was awarded $1,253,232.00 in damages against United.

¶ 11 Thereafter, the plaintiffs instituted this declaratory judgment action against AHAC, seeking a declaration that United was an insured under the AHAC policy for purposes of the Reiners suit, AHAC breached its duty to defend United in the Reiners suit, and plaintiffs were entitled to reimbursement from AHAC for the defense and indemnification costs and expenses expended by them in defense and indemnification of United in the Reiners suit. The plaintiffs also sought a declaration that AHAC was estopped from asserting any policy defenses to coverage of United under the AHAC Policy, because AHAC had wrongfully refused to defend United in the Reiners suit.

¶ 12 The plaintiffs and AHAC filed cross motions for summary judgment. AHAC argued that United did not qualify as an insured under the AHAC Policy because neither the UEA nor the GHA qualified as an "approved contract" under the AHAC Policy. Accordingly, AHAC had no duty to defend or indemnify United against the Reiners suit. In addition, AHAC argued that the Release signed by United and Air Wisconsin prior to Reiners filing suit released Air Wisconsin from any duty to indemnify United under the UEA and GHA and, thus, United was not entitled to coverage under the AHAC Policy. The plaintiffs argued, however, that United was an additional insured under the AHAC Policy, because both the UEA and GHA qualified as approved contracts and because the Release did not go into effect until after Reiners was injured and did not release AHAC from its obligations to United under the AHAC Policy.

¶ 13 The trial court ultimately denied the plaintiffs' motion for summary judgment and granted AHAC's motion for summary judgment. The order to this effect states that the plaintiffs' motion was denied and AHAC's motion was granted "for the reasons stated in open court." The record on appeal, however, does not contain a transcript of those proceedings and, thus, we do not know the basis on which the trial court made its decision.

¶ 14 The plaintiffs then filed this timely appeal.

¶ 15 ANALYSIS

¶ 16 On appeal, the plaintiffs argue that the trial court erred in concluding that AHAC did not owe United a defense or indemnification of the Reiners suit under the AHAC Policy and in concluding that AHAC was not estopped from raising policy defenses to coverage. We hold that AHAC did not owe United a defense or indemnification of the Reiners suit and, thus, the estoppel doctrine was inapplicable.

¶ 17 Summary judgment is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016)). Although the filing of cross-motions for summary judgment does not necessarily establish the lack of an issue of material fact or obligate a court to render summary judgment, it does indicate that the parties agree that the case involves a question of law and that they invite the court to decide the issues based on the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. Our review of a trial court's summary judgment determination is *de novo*. *Id.* at ¶ 30. "[T]his court may affirm a trial court's grant of summary judgment on any basis apparent in the record, regardless of whether the trial court relied on that basis or whether the court's reasoning was correct." *Harlin v. Sears Roebuck & Co.*, 369 Ill. App. 3d 27, 31-32 (2006).

¶ 18 The central dispute in determining whether United was entitled to a defense and indemnification from AHAC revolves around the question of whether United qualified as an insured under the AHAC Policy. To determine this, we must interpret both the AHAC Policy and the indemnification provisions of the UEA and GHA. The interpretation of insurance policies and indemnification agreements are subject to the rules governing the construction of contracts. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010); *Virginia Surety Co., Inc. v. Northern Insurance Company of New York*, 224 Ill. 2d 550, 556 (2007). Accordingly, our principal goal is to give effect to the intention of the parties as expressed in the language of the policy and indemnification agreement. *Founders*, 237 Ill. 2d at 433; *Virginia Surety*, 224 Ill. 2d at 556. If the language is unambiguous, it will be given its plain and ordinary meaning and will be applied as written, unless it is against public policy. *Founders*, 237 Ill. 2d at 433; *Virginia Surety*, 224 Ill. 2d at 556.

¶ 19 In ascertaining the intention of the parties, we are to consider the contract or insurance policy as a whole and give every provision meaning and effect whenever possible, because we assume that the parties intended every provision to serve a purpose. *Founders*, 237 Ill. 2d at 433; *Martindell v. Lake Shore National Bank*, 15 Ill. 2d 272, 283 (1958). Thus, in determining whether an ambiguity exists, we should remember that "[t]he intention of the parties is not to be gathered from detached portions of a contract or from any clause or provision standing by itself, but each part of the instrument should be viewed in the light of the other parts." *Martindell*, 15 Ill. 2d at 283; see also *Founders*, 237 Ill. 2d at 433 ("Thus, an insurance policy must be considered as a whole; all of the provisions, rather than an isolated part, should be examined to determine whether an ambiguity exists."). With respect to insurance policies in particular, the

rule that provisions limiting an insurer's liability will be liberally construed in favor of coverage applies only where the provision is ambiguous. *Founders*, 237 Ill. 2d at 433.

¶ 20 United's Insured Status Depends on United's Assumption of Liability

¶ 21 In the AHAC Policy, AHAC agreed to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence which results from the air transportation business of the Named Insured, including aviation operations incidental thereto." According to the definitions section of the AHAC Policy, the term "insured" includes not only the named insured and those persons or organizations listed in the declarations, but also those who qualify as "persons insured" under the AHAC Policy. The term "persons insured" is defined in a number of ways in the AHAC Policy, but the only definition that the parties contend has any possible relevance here is the one that defines "persons insured" to include "any person, organization, trustee or estate to whom the Named Insured is obligated by virtue of an approved contract or incidental contract as defined in this Policy to provide insurance such as is afforded by this Policy, but only to the extent of such obligation."

¶ 22 In arguing their respective positions on whether United qualified as a "person insured" under this definition, the parties focus on whether Air Wisconsin was obligated to provide United with insurance and whether the UEA and GHA qualified as approved contracts. Under the AHAC Policy, the term "approved contract" is defined in relevant part as "any written contract entered into by the Named Insured, in which the Named Insured has agreed to assume the liability of another person or organization *** and which contract or agreement is reported to the Company in accordance with the provisions of CONDITION II ***."

¶ 23 We need not determine whether the UEA and GHA qualified as approved contracts, because even assuming that an approved contract obligated Air Wisconsin to provide United with insurance, the AHAC Policy provides that United would be considered a "person insured" only to the extent of Air Wisconsin's obligation to provide insurance. Section XII of the UEA states that Air Wisconsin agreed to procure and maintain comprehensive airline liability insurance and that the policy had to contain or be endorsed to contain the provisions found in Appendix H to the UEA. Appendix H, in turn, provides that "United, its affiliates, and their respective directors, officers, employees, agents and indemnitees are named as additional *insureds to the extent of the liability assumed by [Air Wisconsin] under the [UEA]*, subject to the policy terms, conditions, limitations and exclusions." (Emphasis added.) Accordingly, taken together, these provisions of the AHAC Policy and the UEA mean that United qualified as an insured under the AHAC Policy only for those claims for which Air Wisconsin assumed liability, making the determinative issue in this case whether Air Wisconsin assumed liability for the claims raised in the Reiners suit. We conclude that Air Wisconsin did not assume liability for those claims, because Air Wisconsin assumed liability only for claims arising out of its negligence, reckless and willful misconduct, and gross negligence, and the Reiners suit alleges only negligence on the part of United.

¶ 24 Air Wisconsin Assumed Only Its Own Liability

¶ 25 According to the plaintiffs, in the UEA, Air Wisconsin agreed to assume the liability of United, without limitation and regardless of whose negligence served as the basis for the liability. In support, the plaintiffs cherry pick certain words out of Air Wisconsin's indemnification promise to United, namely the language that reads, "[Air Wisconsin] hereby assumes liability for *** United," and ignores all intervening and subsequent language of the

provision. There are a number of obvious problems with this interpretation. First, it produces an absurd result in that it suggests that Air Wisconsin assumed any and all of United's liability for all time—regardless of whose actions gave rise to the liability, whether it related to the business between United and Air Wisconsin, and whether Air Wisconsin was involved in any fashion. We cannot believe that the parties intended such an absurd result in drafting this provision. *Suburban Auto Rebuilders, Inc. v. Associated Tile Dealers Warehouse, Inc.*, 388 Ill. App. 3d 81, 92 (2009) ("Courts will construe a contract reasonably to avoid absurd results.").

¶ 26 The other significant issue with the plaintiffs' interpretation is that it does not account for the very plain and very apparent limitations on Air Wisconsin's assumption of liability in the UEA. Under the indemnification provision in the UEA, Air Wisconsin agreed to do two things: (1) assume liability and (2) indemnify, release, defend, protect, save and hold harmless United. Within the same sentence, Air Wisconsin then limited the scope of its promises to those claims that (1) are brought against United, (2) are for personal injury, death, or property damage or loss, (3) arise out of or are related to "any act, error, omission, operation, performance or failure of performance" by Air Wisconsin, and (4) are related to Air Wisconsin's services under the UEA.

¶ 27 In light of the plaintiffs' failure to address these limitations in any way in its briefs, we can only surmise from the plaintiffs' interpretation that the plaintiffs view the limiting language in one of two ways: (1) the limiting language does not exist at all, or (2) the language applies only to limit Air Wisconsin's promise to indemnify United, not its promise to assume liability. With respect to the former, the limiting language clearly does exist and to act as if it does not would be to read it out of the indemnification provision entirely, a practice that is not permitted by the rules of contract interpretation. *In re Marriage of Hoffman*, 264 Ill. App. 3d 471, 475

(1994) ("The rules of contract interpretation require us to give effect to all of a contract's terms and to avoid rendering other terms meaningless.").

¶ 28 As to the latter, we can conceive of (and the plaintiffs do not offer) any construction under which the limiting language does not apply with equal force to both Air Wisconsin's promise to assume liability and its promise to indemnify United. There is nothing in the language, punctuation, or structure of the indemnification provision that would indicate that the limitations are applicable only to Air Wisconsin's promise to indemnify, and we will not read any such restriction into the plain language of the provision. *Carrillo v. Jam Productions, Ltd.*, 173 Ill. App. 3d 693, 698 (1988) ("Unless a contract is ambiguous, its meaning must be determined from the words used and courts will not read into the contract provisions that do not exist therein."). Accordingly, under the plain language of the indemnification provision, we conclude that Air Wisconsin's assumption of liability was limited, in relevant part, to those claims against United arising out of Air Wisconsin's own negligence.[1]

¶ 29 Although the language of the indemnification provision in the GHA[2] is not identical to that of the UEA, its structure and language is substantially the same, including that it imposes similar limitations on Air Wisconsin's assumption of liability and promise to indemnify. The only substantive difference between the UEA's provision and the GHA's is that the GHA limits Air Wisconsin's assumption of liability to those claims against United arising out of Air Wisconsin's reckless and willful misconduct or gross negligence.

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[1] We note that in arguing that the UEA and GHA did not qualify as "approved contracts," AHAC argues that because Air Wisconsin's assumption of liability was limited to claims arising out of Air Wisconsin's negligence and did not include claims arising out of United's negligence, it cannot be said to have assumed United's liability. This contention has no merit, because it incorrectly assumes that United could never be held liable for Air Wisconsin's negligence. Obviously, one can be held liable for another's negligence, as evidenced by the existence of the principle of *respondeat superior* and other principles of vicarious liability. Accordingly, it is entirely possible for Air Wisconsin to have assumed United's liability for claims arising out of Air Wisconsin's negligence.

[2] We assume for the sake of argument that, as the plaintiffs contend, the GHA is part of the total agreement between United and Air Wisconsin.

¶ 30 The Reiners Suit Does Not Allege Negligence by Air Wisconsin

¶ 31 Because, taking together the UEA and GHA, Air Wisconsin assumed liability for only those claims arising out of its own negligence, reckless and willful misconduct, and gross negligence, United qualified as an insured under the AHAC Policy only to the extent that the claims against United arose out of Air Wisconsin's negligence, reckless and willful misconduct, and gross negligence. Examining the allegations of Reiners' complaint, we conclude that they do not allege any negligence, reckless and willful misconduct, or gross negligence by Air Wisconsin; accordingly, United did not qualify as an insured under the AHAC Policy and AHAC did not have a duty to defend or indemnify United on the Reiners suit.

¶ 32 Under basic principles of insurance law, an insurer's duty to defend its insured is broader than its duty to indemnify that same insured. *General Agents Insurance Co. of America, Inc. v. Midwest Sporting Goods Co.*, 215 Ill. 2d 146, 154 (2005). An insurer may not refuse to defend its insured "unless it is clear from the face of the underlying complaint that the allegations set forth in that complaint fail to state facts that bring the case within or potentially within the insured's policy coverage." *Id.* Generally, in making this determination, the court compares the allegations in the underlying complaint to the language of the insurance policy. *Id.* at 154-55. Regardless of whether the allegations in the underlying complaint are groundless, false, or fraudulent, an insurer has a duty to defend its insured if the underlying complaint alleges facts within or potentially within policy coverage. *Id.* at 155.

¶ 33 In his refiled complaint, Reiners alleged that while piloting an Air Wisconsin aircraft, he landed the plane and parked it at Terminal 2, Gate F1B of O'Hare Airport. Reiners alleged that on that date, United personnel "managed, maintained and/or controlled the aforesaid location at said premises." Upon disembarking the plane, Reiners walked, as directed by United, "through

the designated passenger and crew walking area towards indoors at O'Hare Airport." According to the allegations in Reiners' complaint, there was ice on that walking area on which he slipped and fell, injuring himself. Reiners then alleged that United was negligent for failing to provide a safe path of travel from the plane to inside, directing the plaintiff to walk on an icy path, failing to properly maintain and inspect the path of travel between the plane and indoors, and failing to adequately check on those whose responsibility it was to keep the area safe for walking.

¶ 34 Other than mentioning that on the date of his injury, Reiners was piloting an airplane that belonged to Air Wisconsin, Reiners' complaint does not name or reference Air Wisconsin in any manner. Air Wisconsin is not named as a defendant, and Reiners made no allegations of direct negligence against Air Wisconsin. Rather, United was the only named defendant and Reiners alleged that only United was negligent. More specifically, Reiners alleged that United personnel managed, maintained, and/or controlled the area where he fell; United directed him to walk where he fell; United negligently failed to provide a safe path of travel, United negligently directed him to walk through ice, United negligently failed to maintain and inspect the path, and United negligently failed to check on those responsible for keeping the path safe. Not even under the most liberal of constructions can these allegations be viewed as allegations of negligence, reckless and willful misconduct, or gross negligence on the part of Air Wisconsin. See *American Country Insurance Co. v. James McHugh Construction Co.*, 344 Ill. App. 3d 960, 973 (2003) (concluding that the general contractor did not qualify as an additional insured under the subcontractor's insurance policy because the underlying complaint alleged negligence only on the part of the general contractor, and the insurance policy provided that the general contractor would be considered an additional insured only where the underlying claims arose out

of the subcontractor's negligence); *American Country Insurance Co. v. Cline*, 309 Ill. App. 3d 501, 513-14 (1999) (same).

¶ 35 The plaintiffs contend that the allegations in Reiners' complaint fall within the scope of the liability assumed by Air Wisconsin because, under the UEA and GHA, Air Wisconsin was responsible for maintaining the ramp where Reiners fell. Although it is true that under certain circumstances, a court may look outside the underlying complaint to determine whether an insurer owes a duty to defend (*Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 459 (2010)), in this case, the UEA and GHA do not alter the fact that there is no possibility that the trier of fact in the Reiners suit could hold United liable for Air Wisconsin's negligence.

¶ 36 The scope of AHAC's duty to defend United in this case depends on whether there is a basis on which United could be found liable for the actions (or lack thereof) of Air Wisconsin. This is similar to those cases in which the insurer of a subcontractor agrees to provide coverage for claims against the general contractor, but only if the claims arise out of the subcontractor's negligence. In those cases where courts have looked outside of the underlying complaint to determine if the general contractor could be held liable for the subcontractor's negligence, the courts have primarily looked to other pleadings in the underlying case—counterclaims, third-party complaints, and cross-claims—to determine if allegations had been made that would allow the trier of fact to hold the general contractor responsible for the subcontractor's negligence. See, *e.g.*, *Illinois Emcasco Insurance Co. v. Waukegan Steel Sales, Inc.*, 2013 IL App (1st) 120735, ¶16 (named insured brought in on third-party complaints); *Pekin Insurance Co. v. Pulte Home Corp.*, 404 Ill. App. 3d 336, 342 (2010) (named insured named as a defendant on underlying complaint and on counterclaim for contribution). Interestingly, in the present case, despite the plaintiffs' claim that Reiners sought to hold United responsible for Air Wisconsin's

negligence, the plaintiffs have failed to present evidence of any counterclaims, third-party complaints, or crossclaims in the Reiners suit alleging facts from which United could be found liable for Air Wisconsin's negligence.

¶ 37 In the cases where courts have gone further and looked outside of pleadings to consider contracts giving rise to the obligation to provide insurance, they have done so only to determine the intended scope of coverage and indemnification, not to determine whether the source of the plaintiff's claimed injury fell within the general contractor's or subcontractor's job description. See *Pekin Insurance Co. v. CSR Roofing Contractors, Inc.*, 2015 IL App (1st) 142473, ¶ 51; *Pulte Home Corp.*, 404 Ill. App. 3d at 343-44. Moreover, it is not apparent from the UEA and GHA that the maintenance of the walkway at issue in the Reiners suit fell within Air Wisconsin's obligations. The GHA provided that Air Wisconsin, as the ground handling services provider for O'Hare Airport, was to "operate gates, provide ground handling ramp services, and handle receipt and dispatch of flights." Nowhere in the UEA or GHA is "ground handling ramp services" clearly defined, much less defined to include the maintenance of walkways between the plane and airport.

¶ 38 In any case, in the cases where the court has found that the insurer owed the general contractor a duty to defend, despite the fact that the underlying complaint did not specifically allege vicarious liability against the general contractor based on the subcontractor's negligence, the courts have, at the very least, found there to be allegations in the various pleadings from which a finding of vicarious liability could be made. See, *e.g.*, *CSR Roofing*, 2015 IL App (1st) 142473, ¶ 50; *Waukegan Steel*, 2013 IL App (1st) 120735, ¶ 19; *Pulte Home Corp.*, 404 Ill. App. 3d at 342. Here, there are no facts alleged in the Reiners suit that would allow the trier of fact to hold United responsible for Air Wisconsin's negligence, if any. Reiners specifically alleges that

his injuries resulted from United's negligence, and there are no facts alleged that would support a conclusion that United's responsibility for Reiners' injuries sprung from acts or omissions by Air Wisconsin. In other words, if the trier of fact in the Reiners suit were to hold United responsible for Reiners' injuries (which the jury ultimately did), it would do so on the basis that it found United to have been negligent, not Air Wisconsin.

¶ 39 Because the Reiners suit does not allege any facts that would allow United to be found liable based on Air Wisconsin's negligence, reckless and willful misconduct, or gross negligence, Reiners' claims against United are not ones for which Air Wisconsin assumed liability. In turn, because United did not assume liability for claims such as Reiners', Air Wisconsin was not required to provide insurance coverage to United for such claims. As a result, United does not qualify as an insured for purposes of the Reiners suit. Because AHAC did not qualify as an insured for purposes of the Reiners suit and the AHAC Policy only covers damages on behalf of insureds, AHAC did not owe United a duty to defend United against or provide it coverage for the Reiners suit. See *Village of Hoffman Estates v. Cincinnati Insurance Co.*, 283 Ill. App. 3d 1011, 1013 (1996) ("[A]n insurer has no duty to defend if the alleged facts fail to bring the case within the policy's coverage.").

¶ 40 The Release is Immaterial

¶ 41 Because we conclude that United did not qualify as an insured under the AHAC Policy and, thus, was not entitled to a defense and indemnification from AHAC, we need not address the issue of whether the Release relieved Air Wisconsin of any obligation to United with respect to the Reiners suit.

¶ 42 Estoppel Does Not Apply

¶ 43 Finally, because AHAC had no duty to defend United in the Reiners suit, it cannot be said to have breached its duty to defend and the doctrine of estoppel does not apply. *Bartkowiak v. Underwriters at Lloyd's, London*, 2015 IL App (1st) 133549, ¶ 48 ("[E]stoppel does not apply where the insurer ultimately prevails in its argument that it has no duty to defend.").

¶ 44 In sum, because United did not qualify as an insured under the AHAC Policy, AHAC did not owe United a duty to defend it against the Reiners suit, and the doctrine of estoppel had no application. Accordingly, the trial court was correct in awarding summary judgment to AHAC.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 47 Affirmed.