SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1836-22

CMGK, LLC d/b/a MASSAGE ENVY,

Plaintiff-Appellant,

v.

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON SUBSCRIBING TO POLICY NUMBER ME10XXXX,

Defendant-Respondent.

Submitted March 13, 2024 – Decided June 13, 2024

Before Judges Accurso, Vernoia, and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. L-0076-21.

Lauletta Birnbaum, LLC, attorneys for appellant (Christopher M. Marrone, Philip B. Seaton and John C. Eastlack III, of counsel and on the briefs).

Arleo & Donohue, LLC, attorneys for respondent (Jo Ann K. Dobransky, on the brief).

PER CURIAM

In this insurance-coverage action, plaintiff CMGK, LLC, doing business as Massage Envy, appeals from an order granting the summary-judgment motion of defendant Certain Underwriters at Lloyd's, London Subscribing to Policy Number ME10XXXX,[1] and dismissing with prejudice plaintiff's claims. Plaintiff sought coverage under a Sexual Acts Liability Endorsement of a claims-made-and-reported policy issued by defendant to plaintiff. The court found plaintiff was not entitled to coverage and granted the motion. We agree and affirm.

I.

We take these material facts from the summary-judgment record, viewing the evidence in a light most favorable to plaintiff, the non-moving party, and drawing all reasonable inferences in its favor. See Crisitello v. St. Theresa Sch., 255 N.J. 200, 218 (2023).

CMGK operated a Massage Envy Spa franchise located in Mays Landing. Emad Gus Khalifa was the sole member of plaintiff and was familiar with its operations. In 2013, plaintiff hired April Pippin as a general manager to assist

[1] Insurance policy numbers are confidential personal identifiers pursuant to Rule 1:38-7(a). To preserve that confidentiality, we use "X" in place of some of the digits in the number of the insurance policy at issue.

Khalifa with the day-to-day management of the facility. Pippin and Khalifa performed management functions for plaintiff.

On March 15, 2018, Khalifa executed on behalf of plaintiff an application for the policy at issue. The signature page contained the following provisions above Khalifa's signature:

> THE APPLICANT DECLARES THAT THE STATEMENTS SET FORTH HEREIN ARE TRUE. THE APPLICANT AGREES THAT IF THE INFORMATION SUPPLIED ON THE APPLICATION BY THE APPLICANT CHANGES BETWEEN THE DATE OF THE APPLICATION AND THE EFFECTIVE DATE OF INSURANCE, APPLICANT WILL IMMEDIATELY NOTIFY THE COMPANY OF SUCH CHANGES AND THE COMPANY MAY WITHDRAW OR MODIFY ANY OUTSTANDING QUOTATIONS AND/OR AUTHORIZATION OR AGREEMENT TO BIND THE INSURANCE.
>
> . . . .
>
> No person or entity proposed for coverage is aware of any fact, circumstance, or situation which he or she has reason to suppose might give rise to any claim that would fall within the scope of the proposed Coverage.
>
> . . . .
>
> This Claims Made policy applies only to those claims arising from covered incidents which occur on or after the stated retroactive date. In addition, the claim must first be made and reported to the company during the policy period or applicable extended reporting period.

[(Emphasis in the original).]

Defendant issued Specified Medical Professions Professional Liability Insurance Policy, Certificate No. ME10XXXX, to plaintiff for the policy period March 9, 2018, to March 9, 2019, and subject to a Retroactive Date of March 9, 2014. The policy included a Sexual Acts Liability Endorsement. The declaration page of the policy did not list any previous policy number and described this policy as "NEW." According to Khalifa, Underwriters at Lloyd's, London issued to plaintiff "a series of claims made professional liability insurance policies since 2014," each "contain[ing] a sexual-acts-liability endorsement." But no other policy was included in the summary-judgment-motion record or the appellate record, and neither party contends another policy applies to the underlying claim.

The policy contained the following provisions:

> THIS IS A CLAIMS MADE AND REPORTED POLICY, PLEASE READ IT CAREFULLY.
>
> Coverage applies only to Claims first made against an Insured and reported during the Policy Period, or if applicable, during the Extended Reporting Period. Claim Expenses and Damages shall reduce and may exhaust the applicable Limit of Liability and shall be subject to the Deductible.
>
> . . . .

INSURING AGREEMENT

The Company shall pay on behalf of the Insured all sums in excess of the Deductible amount stated in Item 6. of the Declarations, which the Insured shall become legally obligated to pay as Damages as a result of Claims first made against the Insured during the Policy Period or during the Extended Reporting Period, if exercised, for Professional Personal Injury by reason of any act, error or omission in Professional Services rendered or that should have been rendered by the Insured or by any person for whose acts, errors or omissions the Insured is legally responsible, and arising out of the conduct of the Insured's Professional Services provided:

. . . .

B. prior to the effective date of this policy the Insured had no knowledge of such act, error or omission or any fact, circumstance, situation or incident which may result in a Claim under this policy; and

. . . .

DEFINITIONS

. . . .

B. Claim means a demand received by the Insured for Damages or services and shall include the service of suit or institution of arbitration proceedings against an Insured.

C. Claim Expenses means reasonable and necessary amounts incurred by the Company or by the

Insured with the prior written consent of the Company in the defense of that portion of any Claim for which coverage is afforded under this policy . . . .

D. Damages means the monetary portion of any judgment, award or settlement; provided, however, Damages shall not include: (1) punitive or exemplary damages or multiplied portions of damages in excess of actual damages, including treble damages; . . . .

E. Professional Personal Injury means:

1. any bodily injury, mental injury, sickness, disease, emotional distress or mental anguish, including death resulting therefrom of any patient, person or resident of a healthcare facility receiving Professional Services;

2. false arrest, detention or imprisonment, or malicious prosecution except when inflicted by, at the direction of, or with the consent or acquiescence of an Insured who has predetermined to commit such act, or allowed such act to have been committed, without legal justification; or

. . . .

F. Professional Services means those services described in Item 4. of the Declarations ["Massage Therapy & Esthetics Services"].

G. Policy Period means the period from the inception date of this policy to the policy expiration date as stated in Item 3. of the

Declarations, or its earlier cancellation or termination date.

. . . .

CLAIMS

. . . .

B. Discovery Clause: If during the Policy Period, an Insured first becomes aware of a specific act, error or omission in Professional Services which may result in a Claim within the scope of coverage of this policy, then the Insured may provide to the Company, through the representatives named in Item 13. of the Declarations, written notice containing the information listed below. If such written notice is received by the Company during the Policy Period, then any Claim subsequently made against the Insured arising out of such act, error or omission in Professional Services shall be deemed, for this insurance, to have been made on the date on which such written notice is received by the Company.

[(Emphasis in the original).]

The Sexual Acts Liability Endorsement included the following language:

1. Section "Insuring Agreement" is amended by the addition of the following:

Sexual Acts Liability: The Company shall pay on behalf of the Insured all sums in excess of the Deductible amount stated in this Endorsement, which the Insured shall become legally obligated to pay as Damages as a result of Claims first

made against the Insured during the Policy Period or during the Extended Reporting Period, if exercised, for Sexual Injury arising out of any Sexual Act perpetrated or alleged to have been perpetrated by the Insured or by any person for whose actions the Insured is legally responsible, or for allegations that the Insured was negligent in hiring, training or supervising any Insured person who perpetrated or is alleged to have perpetrated a Sexual Act resulting in Sexual Injury provided:

. . . .

C. prior to the effective date of this policy, the Insured had no knowledge of such Sexual Act or any fact, circumstance, situation or incident involving such Sexual Act which may result in a Claim under this policy; and

. . . .

2. Section "Definitions" is amended by the addition of the following:

Sexual Act means sexual abuse, sexual molestation or sexual exploitation arising out of the conduct of an Insured's Professional Services.

Sexual Injury means bodily injury, sickness, disease, unlawful detention, false imprisonment, humiliation, emotional distress, mental anguish, sexual dysfunction, invasion of right of privacy, assault or battery, solely when arising out of a Sexual Act.

[(Emphasis in the original).]

In 2016, plaintiff hired Steffon Davis as a massage therapist. According to plaintiff's client M.N., Davis sexually assaulted her during a massage he performed on her on September 23, 2017.[2] Two days later, M.N. reported the alleged assault to Pippin. Pippin completed an incident report, noting M.N. had "said she felt [Davis] touch her [v]agina and it felt like his finger scrap[]ed the inner part of [it]" and that he had provided "no draping on her breasts" and had "massage[d] her neck and shoulders and then over her breasts." Pippin also indicated in the incident report that another client previously had accused Davis of touching her inappropriately. After speaking with M.N., Pippin spoke to Davis, who denied touching M.N.'s genitals. She also spoke with Khalifa, telling him everything she knew about M.N.'s complaint. Khalifa indicated Davis had to complete some training but could "come back with a probation." On September 27, 2017, Pippin told Davis she had to take him off the schedule. Plaintiff suspended Davis; Davis abandoned his job and never returned to work.

On September 26, 2017, M.N. went to the Township of Hamilton police

[2] We use initials to identify M.N. so as not to disclose the name of a victim or alleged victim of a sexual offense. R. 1:38-3(c)(12) and (d)(10); see also S.H. v. K & H Transp., Inc., 465 N.J. Super. 201, 204 n. 1 (App. Div. 2020) (acknowledging Rule 1:38-3 applies to criminal and Family Part matters, the court explained it was using initials and fictitious names in that civil action because "the compelling interest in protecting [the victim's] identity is the same").

station and told a police officer about the incident. According to the officer, M.N. told her "[Davis had] placed his finger between her vagina lips and cupped her breast during a massage." On September 28, 2017, M.N. returned to the police station and participated in a taped interview. The next day, a police officer met with Pippin, who provided copies of her notes and paperwork signed by M.N. According to the police officer, Pippin told him about the prior complaint about Davis and stated she believed another massage therapist was trying to sabotage Davis.

On October 5, 2017, an officer conducted a taped interview of Davis at the police station. Davis denied inappropriately touching M.N. but admitted "her breasts were exposed for a very short period of time." In his report, the officer stated he had informed Davis he would not be charging him, but that M.N. would have the opportunity to charge him. He also stated he had advised M.N. he "would not be able to sign the complaints against Davis, but . . . could facilitate her signing a complaint" and she told him "she would think about it." According to the officer, he "contacted Pippin . . . and explained [his] findings." According to Pippin, the officer told her he could not press charges against Davis and that there had been no determination Davis inappropriately touched M.N. Pippin advised Khalifa about her conversation with the officer. Khalifa

understood the officer had stated "there was no determination Davis inappropriately touched M.N." and "the Department refused to press charges against Davis."

M.N. filed a lawsuit against plaintiff in the Middlesex Vicinage of the Superior Court, serving the complaint on September 4, 2018. According to Khalifa, M.N. had not contacted plaintiff since her September 25, 2017 discussion with Pippin and had not previously threatened to sue plaintiff or demanded compensation in connection with the alleged assault. On September 5, 2018, plaintiff tendered the Middlesex complaint to defendant for coverage.

In a letter dated October 23, 2018, defendant's counsel advised plaintiff defendant was disclaiming coverage for M.N.'s case in its entirety because plaintiff had knowledge of the sexual act at issue in M.N.'s case prior to the effective date of the policy. It also disclaimed coverage for certain causes of action under the policy exclusion for claims based on fraudulent or knowingly wrongful acts intentionally committed by or at the direction of the insured.

M.N.'s claims subsequently were dismissed in the Middlesex action, with a directive M.N. file a new complaint in the Atlantic Vicinage. On January 16, 2020, M.N. filed a complaint in the Atlantic Vicinage. In that complaint, M.N. pleaded several causes of action: vicarious liability; negligence; negligent

performance of undertaking to render services; negligence per se; negligent infliction of emotional distress; negligent misrepresentation; violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227; fraudulent concealment; and civil conspiracy. She sought actual, punitive, and treble damages plus attorneys' fees and costs.

On January 11, 2021, plaintiff filed a complaint against defendant, claiming defendant had breached the policy and seeking a judgment declaring M.N.'s claims fell "within the scope of the policy's insuring agreements" and "recover[y of] its fees and costs it incurred in defending against [her] claims." Defendant filed an answer and counterclaim, seeking a judgment declaring plaintiff was not entitled to coverage under the policy and defendant had no duty or obligation to defend or indemnify plaintiff in connection with M.N.'s claims.

After the close of discovery, defendant moved for summary judgment on October 7, 2022. Plaintiff opposed the motion, submitting Khalifa's certification in which Khalifa certified he

> honestly believed that [plaintiff] was secure from any claim against it that would arise from the [alleged September 23, 2017 assault] considering, among other reasons, a detective from the Hamilton Township Police Department specifically advised [plaintiff] that no inappropriate touching occurred and that it refused to charge Davis, M.N. never threatened [plaintiff] with a lawsuit, never demanded compensation from

> [plaintiff], and never communicated with [plaintiff] whatsoever after she called [plaintiff] two days after the [alleged assault].[3]

Khalifa also certified he "had no reason to suppose that M.N. would file a lawsuit against [plaintiff]."

After hearing argument, the court entered an order dated January 13, 2023, with an attached memorandum of decision, granting the motion and dismissing plaintiff's claims with prejudice in their entirety. The court held "coverage [wa]s not available for M.N.'s lawsuit against [p]laintiff." Finding the language of the prior-knowledge clause to be "clear and unambiguous," the court rejected plaintiff's "attempt to interpret it in a manner where an 'honest belief' in the futility of a claim negates actual knowledge of allegations of wrongdoing." The court found "the police decision not to file criminal charges . . . does not support a reasonable belief that M.N. would not file a civil lawsuit – particularly when police did not conclude that no sexual assault occurred" and concluded "no reasonable trier of fact could find based on these record facts that [p]laintiff 'had no reason to suppose that M.N. would file a lawsuit.'" (Emphasis in the

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[3] Pippin, who spoke with the police officer, testified and Khalifa, who did not speak with the officer, certified the officer had said "there was no determination Davis inappropriately touched M.N." Saying "there was no determination Davis inappropriately touched M.N." is different from saying the department had found "no inappropriate touching occurred."

original). The parties subsequently stipulated to the dismissal of the counterclaim.

On appeal, plaintiff argues the trial court erred in analyzing what plaintiff called the "prior-knowledge exclusion" under an objective standard, the policy language is ambiguous, and the existence of a genuine issue of material fact as to what plaintiff "honestly believed" should have defeated the summary-judgment motion.[4] We disagree and affirm.

II.

We review a grant or denial of summary judgment de novo, applying the same legal standard as the trial court. Crisitello, 255 N.J. at 218. That standard

[4] Plaintiff also argues defendant was not entitled to recission under an equitable-fraud theory. See generally Mass. Mut. Life Ins. Co. v. Manzo, 122 N.J. 104, 111 (1991) (finding "an insurer may rescind a policy [based on equitable fraud] if the insured knowingly misrepresented facts that would have affected the estimate of the risk and the premium charged"). Defendant may very well have had a basis for recission based on equitable fraud given plaintiff's knowledge in 2017 of M.N.'s sexual-assault allegations and Khalifa's representation on behalf of plaintiff in the 2018 policy application that: "No person or entity proposed for coverage is aware of any fact, circumstance, or situation which he or she has reason to suppose might give rise to any claim that would fall within the scope of the proposed Coverage." However, we do not address that argument because defendant did not plead equitable fraud in its counterclaim, the trial court did not grant summary-judgment based on a finding of equitable fraud, and defendant in its appellate brief stated it was "not seeking to void the entire [p]olicy on grounds of equitable fraud" but was "seek[ing] an affirmance of the decision below that the precise claim at issue here is not covered by the Policy . . . ."

requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (quoting R. 4:46-2(c)). "Summary judgment should be granted . . . 'against a party who 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 at trial.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). "We owe no deference to conclusions of law that flow from established facts." Crisitello, 255 N.J. at 218. "A trial court's interpretation of an insurance policy's terms is a legal determination, not a factual inquiry, and is accordingly reviewed de novo." AC Ocean Walk, LLC v. Am. Guar. & Liab. Ins. Co., 256 N.J. 294, 312 (2024).

"A dispute of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 22 (App. Div. 2021) (quoting Grande

v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017)). "Rule 4:46-2(c)'s 'genuine issue [of] material fact' standard mandates that the opposing party do more than 'point[] to any fact in dispute' in order to defeat summary judgment." Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)). Insubstantial arguments based on assumptions or speculation are not enough to overcome summary judgment. Brill, 142 N.J. at 529. "'[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome' a motion for summary judgment." Dickson v. Cmty. Bus Lines, Inc., 458 N.J. Super. 522, 533 (App. Div. 2019) (quoting Puder v. Buechel, 183 N.J. 428, 440-41 (2005)).

"In addition to our standard of review, we consider [the] parties' arguments in the context of well-settled principles governing insurance contract interpretation." Birmingham v. Travelers N.J. Ins. Co., 475 N.J. Super. 246, 256 (App. Div. 2023). "An insurance policy 'will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled,' with undefined terms construed in accordance with their 'plain and ordinary meaning.'" AC Ocean Walk, 256 N.J. at 312 (quoting Flomerfelt v. Cardiello, 202 N.J. 432, 441 (2010)). "If the language is clear, that is the end of the inquiry." Ibid. (quoting Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am.,

195 N.J. 231, 238 (2008)). Courts do not "'engage in a strained construction to support the imposition of liability' or write a better policy for the insured than the one purchased." Chubb, 195 N.J. at 238 (quoting Progressive Cas. Ins. Co. v. Hurley, 166 N.J. 260, 273 (2001)). "We have long recognized 'the basic notion that the premium paid by the insured does not buy coverage for all . . . damage but only for that type of damage provided for in the policy.'" AC Ocean Walk, 256 N.J. at 312 (quoting Weedo v. Stone-E-Brick, Inc., 81 N.J. 233, 237 (1979)).

"It is well-established that the coverage sections of an insurance policy are to be liberally construed in favor of the insured, exclusions are to be read narrowly, and ambiguities are to be construed against the insurer." DEB Assocs. v. Greater N.Y. Mut. Ins. Co., 407 N.J. Super. 287, 293 (App. Div. 2009); see also Mac Prop. Grp. LLC & The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 18 (App. Div. 2022), certif. denied sub nom., 252 N.J. 258 (2022), and certif. denied sub nom., 252 N.J. 261 (2022). "An ambiguity arises in an insurance contract when 'the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage.'" Birmingham, 475 N.J. Super. at 256 (quoting Weedo, 81 N.J. at 247).

The Sexual Liability Act Endorsement to the policy provides coverage for:

> Claims first made against the Insured during the Policy Period or during the Extended Reporting Period, if exercised, for Sexual Injury arising out of any Sexual Act perpetrated or alleged to have been perpetrated by the Insured or by any person for whose actions the Insured is legally responsible . . . provided:
>
> . . . .
>
> C. prior to the effective date of this policy, the Insured had no knowledge of such Sexual Act or any fact, circumstance, situation or incident involving such Sexual Act which may result in a Claim under this policy; . . . .
>
> [(Emphasis in the original).]

The prior-knowledge clause does not carve out an exclusion from coverage but instead defines what will be covered under the Endorsement. Whether liberally construed in favor of the insured as part of the Endorsement's coverage provisions or read narrowly as an exclusion, the language is clear and unambiguous and is open to only one reasonable interpretation under the undisputed facts of this case: plaintiff had knowledge about the incident between M.N. and Davis, an incident "which may," and in fact did, "result in a Claim under this policy." Because plaintiff had knowledge about the incident in September 2017 before the March 9, 2018 effective date of the policy, plaintiff was not entitled to coverage for this claim.

Plaintiff attempts to evade application of the prior-knowledge clause by arguing the court erred in applying an objective test when interpreting its language and by pointing to Khalifa's assertions in his certification that he "honestly believed that [plaintiff] was secure from any claim" that would arise from the alleged September 23, 2017 assault and that he had "no reason to suppose that M.N. would file a lawsuit against [plaintiff]." Plaintiff's argument fails because under any test applied, the result is the same.

In granting defendant's summary-judgment motion, the trial court analyzed the prior-knowledge clause based on a hybrid subjective-objective standard adopted by the Third Circuit in Colliers Lanard & Axilbund v. Lloyds of London, 458 F.3d 231 (3d Cir. 2006), a case involving a legal-malpractice claim. The Third Circuit considered policy language similar to the language at issue here. In Colliers, the policy provided coverage for claims made prior to the effective date of the policy and after the retroactive date "provided that the insured had no knowledge of any suit, or any act or error or omission, which might reasonably be expected to result in a claim or suit as of the date of signing the application for this insurance." Id. at 234. The court held that "plain language"

> mandate[d] a subjective test for the first part of the necessary inquiry – whether the insured had knowledge

> of a suit, act, error, or omission – and an objective test for the second part of the necessary inquiry – whether the suit, act, error, or omission might reasonably be expected to result in a claim or suit.
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> [(Id. at 233).]

Applying that hybrid test to the facts of this case, subjectively, plaintiff admittedly knew about the incident between M.N. and Davis in September 2017 and, objectively, that incident – in which plaintiff's employee allegedly engaged in a sexual act as defined by the Endorsement – "may [have] result[ed]" in a claim under the policy. Thus, plaintiff under the hybrid test is not entitled to coverage.

In Liberty Surplus Insurance Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 440 (2007), also involving a legal-malpractice claim, the policy provided coverage for an act that happened prior to the policy period if "the Insured had no reasonable basis to believe that the Insured had breached a professional duty or to foresee that a claim would be made against the Insured." The court concluded that language "appears to be objective." Id. at 446. In analyzing the language, the Court nevertheless applied a subjective standard because it was "more rigorous for [the insurer] to meet, and because both parties urge that a subjective standard governs." Ibid.

Applying that subjective standard, the Court held "subjective intent may not be controlling when the undisputed facts reveal otherwise." Id. at 447. In opposition to the insurer's summary-judgment motion, individual lawyers submitted affidavits in which they denied having "knowledge of, or a reasonable basis to believe that" any act by any attorney of the firm in connection with the firm's representation of the client at issue "could or would result in a professional liability claim" against the firm. Id. at 442. The Court held "those affidavits were insufficient to create a genuine issue of material fact" and "the trial court would have had to ignore reality to conclude [the insured] did not have knowledge that a claim might be filed against it . . . ." Id. at 450. Affirming the grant of summary judgment in favor of the insurer, the Court concluded the evidence was so one-sided, the insurer "must prevail as a matter of law." Ibid. (quoting Brill, 142 N.J. at 540).[5]

[5] In addition to Liberty, plaintiff also relies in Liebling v. Garden State Indemnity, 337 N.J. Super. 447 (App. Div. 2001), another case involving a legal-malpractice claim, to support its argument that the court should have applied a subjective standard when interpreting the prior-knowledge clause. Plaintiff's reliance is misplaced. In Liebling, we affirmed the grant of summary-judgment in favor of the insurer based on equitable-fraud grounds and, even considering the insured's certification that he was unaware of any potential malpractice claim when he applied for the insurance, concluded "not only would no reasonable attorney have felt secure from a claim but [the attorney] did not honestly believe that he was secure." Id. at 465.

We reach the same conclusion here. We believe, as the Court did construing similar language in Liberty, that the prior-knowledge clause "appears to be objective." Id. at 446. But even applying a subjective standard, we conclude Khalifa's certification was insufficient to create a genuine issue of material fact. As detailed in Pippin's report, two days after the incident, M.N. reported to Pippin that during a massage appointment Davis had touched her vagina in a way that felt like his finger had scraped the inner part of it and had exposed and touched her breasts. Those actions constitute Sexual Acts as defined by the policy. Three days after the incident, M.N. went to the police department and told a police officer about the event. Under those undisputed circumstances, the trial court would have had to ignore reality to conclude plaintiff had no knowledge that a claim based on those Sexual Acts might be filed against it. Khalifa's assumption or hope, purportedly based on the officer's decision not to file a criminal complaint or M.N.'s decision not to file a civil complaint sooner, that M.N. wouldn't file a claim isn't enough to defeat summary judgment.

Adopting plaintiff's interpretation of the policy language would have the effect of rendering meaningless the prior-knowledge clause. To avoid the application of the clause, an insured could simply assert it did not believe – in

the face of all evidence to the contrary – a claim might be filed. In interpreting an insurance policy, a court's "responsibility is to give effect to the whole policy, not just one part of it." Cypress Point Condo. Ass'n., Inc. v. Adria Towers, LLC, 226 N.J. 403, 429 (2016) (quoting Arrow Indus. Carriers, Inc. v. Cont'l Ins. Co. of N.J., 232 N.J. Super. 324, 334 (Law Div. 1989)).

And following in this case the Court's analysis in Liberty does not render coverage illusory[6] or otherwise raise any considerations of public policy. See Zuckerman v. Nat'l Union Fire Ins. Co., 100 N.J. 304, 321, 320 n.3 (1985) (finding "no considerations of public policy that would inhibit [the Court's]

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[6] Plaintiff seems to suggest that under the facts of this case defendant's interpretation of the policy language renders coverage is illusory. We disagree. Citing the policy definitions of "claim" and "demand," plaintiff contends a "mere accusation of wrongdoing," such as the accusation M.N. made on September 25, 2017, is not a "claim" because it did not include a demand for compensation. And when the "claim" was filed in this case with the service of the complaint on September 4, 2018, defendant denied coverage based on the prior-knowledge clause. In making that contention, plaintiff ignores Khalifa's assertion that Underwriters at Lloyd's, London issued to plaintiff "a series of claims made professional liability insurance policies since 2014" and the clear language of the Discovery Clause of the policy, which provides that if during the Policy Period the insured becomes aware of an act that may result in a Claim within the scope of coverage of the policy and the insured provides defendant with written notice of the act, "then any Claim subsequently made against the Insured arising out of such act . . . shall be deemed, for this insurance, to have been made on the date on which such written notice is received by the Company." (Emphasis in the original). The record is devoid of any evidence plaintiff provided written notice to defendant when it became aware of the alleged assault on September 25, 2017.

enforcement of the 'claims made' policy issued to [the insured]," the Court held "[t]he reasonableness of excluding claims based on prior conduct that the insured could reasonably have foreseen might serve as the basis for a future claim is apparent"). Accordingly, we affirm the order granting defendant's summary-judgment motion.

Affirmed.