

Westlaw

Not Reported in F.Supp.
 Not Reported in F.Supp., 1997 WL 529014 (S.D.N.Y.)
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United States District Court, S.D. New York.
 Jennifer LIPPOLD, Plaintiff,
 v.
 DUGGAL COLOR PROJECTS, INC., The Board of Education of the City of New York, and Stewart SCHECHTER, Defendants,
 Stewart SCHECHTER, Third-Party Plaintiff,
 v.
 UTICA NATIONAL INSURANCE GROUP and UTICA MUTUAL INSURANCE COMPANY, Third-Party Defendants.
 No. 96Civ.5869 (JSM).

Aug. 25, 1997.

Tracy Makow, Stewart, Occhipinti & Makow, New York, N.Y., Anton Piotroski, Hammill, O'Brien, Croutier & Dempsey, Mineola, N.Y., Bruce Menken, Menken & Dean, New York, N.Y., Linda Sammartano, New York, N.Y., Steven Friedman, Assistant Corporation Counsel, New York, N.Y., Andrea Sacco, Wade, Clark, Mulcahy, New York, N.Y.

MEMORANDUM ORDER AND OPINION

MARTIN, District Judge.

*1 Third-party plaintiff, Stewart Schechter, brings this action against third party defendants, Utica National Insurance Group and Utica Mutual Insurance Company, seeking a declaration that third-party defendants have a duty to defend Schechter in the underlying sexual discrimination action

brought by plaintiff, Jennifer Lippold.

On or about August 2, 1996, plaintiff brought this sexual harassment and sexual discrimination action against defendants, Duggal Color Projects, Inc., the Board of Education of the City of New York and Schechter. Lippold alleges that while a participant in the Board of Education's Substitute Vocational Assistant Program she was assigned to work at Duggal and was placed under the immediate supervision of Schechter. Lippold claims that Schechter used his supervisory position to sexually harass her. Plaintiff's complaint includes allegations that Schechter inappropriately touched plaintiff and made numerous comments about his desire and plaintiff's duty to have sexual relations with him. Plaintiff also alleges that when she reported these incidents to the management of Duggal, they failed to do anything about it.

Once the complaint was filed, third-party defendants provided a defense to Duggal, but on January 6, 1997 notified third-party plaintiff that they would not be providing 'coverage because the acts alleged against you are not within the scope of your employment.'

Currently before the Court is third-party plaintiff's motion for partial summary judgment and third-party defendants' cross motion on the duty of third-party defendants to defend Schechter in the underlying action.

DISCUSSION

The general liability policy that Duggal Color has with Utica National Insurance provides that the insurance company 'will pay those sums that the insured becomes

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party plaintiff's motion for partial summary judgment is denied and third-party defendants' motion to dismiss the third-party complaint is granted.

SO ORDERED.

S.D.N.Y., 1997.
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