

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL**

JOHN J. DOUGHERTY,	:	November Term 2021
	:	
Plaintiff,	:	
	:	
v.	:	No. 640
	:	
NATIONAL UNION FIRE INSURANCE	:	
COMPANY OF PITTSBURGH, PA.,	:	COMMERCE PROGRAM
	:	
Defendant.	:	
	:	Control Number 22023122


**ORDER**

**AND NOW**, this 17th day of March 2022, upon consideration of Plaintiff’s Petition for Special Injunction, Defendant’s Response in Opposition, Plaintiff’s Reply and Defendant’s Sur Reply, all matters of record and in accord with the attached Opinion, it is hereby **ORDERED** that the Petition for Special Injunction is **GRANTED**.

Defendant shall advance defense costs and expenses to Plaintiff in an amount up to the policy limit upon presentation by Plaintiff to Defendant of his attorneys’ invoices for fees and costs relating to the federal criminal trial currently scheduled to begin on May 5, 2022.

This Special Injunction shall be in force only upon Plaintiff’s deposit with the Office of Judicial Records legal tender of the United States in the amount of \$15,000 pursuant to Pa. R.C.P. 1531 (b)(2) upon the same condition as provided by an injunction bond under Pa. R.C.P. 1531 (b)(1).

**BY THE COURT**

  
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**RAMY I. DJERASSI, J.**

211100640-Dougherty Vs National Union Fire Insurance: Company



21110064000035

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COMPANY OF PITTSBURGH, PA.,	:	COMMERCE PROGRAM
	:	
Defendant.	:	
	:	Control Number 22023122

Djerassi, J.

March 17, 2022

**OPINION**

This is an insurance coverage dispute. Presently before the court is Plaintiff John J. Dougherty’s (“Plaintiff”) Petition for Special Injunction seeking an advance to cover his criminal defense costs and expenses under a policy issued by Defendant National Union Fire Insurance Company of Pittsburgh, PA (“Defendant”) to the International Brotherhood of Electrical Workers, Local 98 (“Local 98, IBEW”). Plaintiff is an Individual Insured under the policy’s “D&O and Not for Profit Organization” liability coverage section. Defendant has provided continuous D&O insurance coverage for Local 98, IBEW since 2003. For reasons discussed here, the Petition for Special Injunction is granted.

**BACKGROUND**

Plaintiff has served as the Business Manager of Local 98, IBEW.<sup>1</sup> Effective October 31, 2019, Defendant issued to Local 98, IBEW a Not-For-Profit Risk Protector insurance policy, number No. 03-979-23-74, which includes a Directors and Officer (“D&O”) component as a liability coverage section.<sup>2</sup> (“Insurance Policy”). On or about October 15, 2020, federal search

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<sup>1</sup> Complaint ¶ 9.

<sup>2</sup> Id. ¶ 19. This policy has an inception date of October 31, 2019 and an expiration date of October 31, 2020.

and seizure warrants were issued for the offices of Local 98, IBEW located on Spring Garden Street in Philadelphia, PA.<sup>3</sup> The warrants sought documents relating to the “work history, disciplinary records, complaints, and correspondence, including emails, pertaining to Local 98 member Greg Fiocca for the period June 2015 to the present.”<sup>4</sup> By email dated October 30, 2020, Local 98 served notice upon Defendant of the October 15<sup>th</sup> search warrants.<sup>5</sup> On November 6, 2020, Defendant acknowledged the October 30, 2020 email and assigned a number to the matter. Defendant’s return correspondence stated that in the event a Claim were to be asserted as defined within the policy, the insurance company would consider it.<sup>6</sup> On March 2, 2021, a federal indictment charging Plaintiff in a conspiracy with Greg Fiocca was presented.<sup>7</sup> This indictment relates to the search warrants executed on October 15, 2020.

Plaintiff is an Individual Insured under the Insurance Policy issued by Defendant.<sup>8</sup> He asserts that Defendant’s Insurance Policy does not have relevant and valid exclusions. He states Defendant is bound to advance his attorneys’ fees and costs for his criminal defense.<sup>9</sup>

### **Insurance Policy**

The D&O Limited Coverage Section of the 2019-2020 Insurance Policy states in pertinent part:

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<sup>3</sup> Complaint ¶ 20.

<sup>4</sup> Id. ¶ 20.

<sup>5</sup> Id. ¶ 21.

<sup>6</sup> Id. ¶ 22.

<sup>7</sup> Complaint ¶ 23.

<sup>8</sup> The D&O policy defines an “Insured” as the Organization and all individual Insureds. See Exhibit “D” attached to the Complaint pg. 2 of the D&O section of the policy.

<sup>9</sup> Complaint ¶¶ 24, 25, 26, 37 and 38.

“The Insurer does not assume any duty to defend; provided however, the Named Organization may at its sole option, and in accordance with Clause 5 of this Coverage Section, tender to the Insurer the defense of a Claim for which coverage is provided by this policy. Regardless of whether the defense is so tendered, the Insurer shall advance Defense Costs .... of such Claim prior to its disposition. ...” (emphasis added).<sup>10</sup>

Additionally, at Clause 5 of the D&O liability coverage section of the Insurance Policy, the following is stated in pertinent part:

When the Insurer has not assumed the defense of a Claim pursuant to this Clause 5, the Insurer shall advance nevertheless, excess of any applicable retention amount and at the written request of the Insured, Defense Costs prior to the final disposition of a claim. Such advance payments by the Insurer shall be repaid to the Insurer by every Insured or Organization, severally according to their respective interests, in the event and to the extent that each Insured or Organization shall not be entitled under the terms and conditions of this policy to payment of such Loss...<sup>11</sup> (emphasis added).

The Insurance Policy at Endorsement #14 contains a Mandatory Arbitration Endorsement which provides for a Dispute Resolution Process that includes the following:

#### DISPUTE RESOLUTION PROCESS

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of Loss, shall be subject to the dispute resolution process (“ADR”) set forth in this clause.

#### **The Dispute**

Defendant, The National Union Fire Insurance Company of Pittsburgh, PA, has denied Plaintiff John J. Dougherty’s request to advance his criminal defense costs and expenses. Trial in federal court is scheduled to begin on May 5, 2022.<sup>12</sup> Plaintiff alleges that absent the

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<sup>10</sup> 2019-2020 D&O Policy Clause 1 Insuring Agreement/Defense Provisions p. 1-2.

<sup>11</sup> 2019-2020 D&O Policy Clause 5 Defense Costs, Settlements, Judgments (Including the Advancement of Defense Costs) p. 5.

<sup>12</sup> At the time Plaintiff filed this Petition for Special Preliminary Injunction, the trial date was scheduled for March 2022. See Plaintiff’s Petition for Special Injunction. ¶ 6.

requested injunctive relief, he will be “without coverage for his defense costs at a critical juncture at his federal criminal proceeding,” and that he is “unable to retain trial consultants whose contributions to his defense would be meaningful to its success.”<sup>13</sup> Plaintiff avers that he owes money to his counsel and is uncertain how long counsel will continue to represent him without assurance of payment before counsel seeks court approval to withdraw his representation.<sup>14</sup>

Defendant has filed a response to the Petition. Plaintiff filed a Reply and Defendant a Sur Reply. The Petition for Special Injunction contains an Affidavit signed by Plaintiff and is ripe for decision without a hearing.<sup>15</sup>

## DISCUSSION

A petitioner seeking a preliminary injunction must establish every one of the following prerequisites:

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. Sixth, and finally, the party seeking

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<sup>13</sup> Plaintiff’s Petition for Special Preliminary Injunction ¶¶7 and 8.

<sup>14</sup> Id. at ¶ 9.

<sup>15</sup> Pa. R. Civ. P. 1531 (a) states in part, “In determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition and may consider affidavits of parties or third persons or any other proof which the court may require.”

an injunction must show that a preliminary injunction will not adversely affect the public interest.<sup>16</sup>

If a petitioner fails to establish any one of the foregoing prerequisites, a court need not address the other requirements and the petition is denied.<sup>17</sup>

Generally, preliminary injunctions are preventive in nature and are designed to maintain the *status quo* until the rights of the parties are finally determined.<sup>18</sup> Here however, Plaintiff seeks a mandatory injunction compelling the performance of a positive act, advancement of defense costs. The grant of a mandatory preliminary injunction requires the court to apply a heightened review when examining the merits of the controversy.<sup>19</sup>

Here, Plaintiff satisfies all the requirements necessary to establish reasonable grounds justifying a grant of Special Injunction.

**1. A Clear Right to Relief Exists.**

A main purpose of a preliminary injunction is to prevent imminent and irreparable harm that might occur before the merits of a case can be heard and determined.<sup>20</sup> In this case, there is a possibility that the merits of the declaratory controversy will ultimately be decided by mediation or binding arbitration--- but as we shall explain, determination of the legal merits in

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<sup>16</sup> *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Meeting this six prong test fulfills the “reasonable grounds standard” by which courts decide whether to grant injunctive relief. *See Giant Eagle Markets Co. v. United Food and Commercial Workers, Local 23*, 39 Pa. 411, 652 A.2d 1286, 1291-1292 (Pa. 1995).

<sup>17</sup> *Id.* at 828 A.2d at 1001; *Greenmoor, Inc. v. Burchick Const. Co., Inc.*, 908 A.2d 310, 313–14 (Pa. Super. 2006).

<sup>18</sup> *See Greenmoor, Inc. v. Burchick Const. Co., Inc.*, 908 A.2d 310, 312-13 (Pa. Super. 2006) citing *Mazzie v. Commonwealth*, 495 Pa. 128, 134, 432 A.2d 985, 988 (1981). *See also, Wallingford Const., LLC v. Perrotto Builders, Ltd.*, 2014 WL 11016363, at \*2 (Pa. Super. 2014).

<sup>19</sup> *See Greenmoor, Inc. v. Burchick Const. Co., Inc.*, 908 A.2d 310, 312-13 (Pa. Super. 2006) citing *Mazzie v. Commonwealth*, 495 Pa. 128, 134, 432 A.2d 985, 988 (1981). *See also, Wallingford Const., LLC v. Perrotto Builders, Ltd.*, 2014 WL 11016363, at \*2 (Pa. Super. 2014).

<sup>20</sup> *Ambrogi v. Reber*, 932 A.2d 969, 976 (Pa. Super. 2007).

that forum may be too late to prevent irreparable harm. For this reason, an injunction may properly be granted where substantial legal questions must be resolved to determine the rights of the respective parties irrespective of final determination of facts.<sup>21</sup>

Plaintiff's complaint seeks a declaration that Defendant must advance criminal defense costs relating to the March 2, 2021 indictment. Plaintiff alleges that Defendant has breached the terms of the 2019-2020 Insurance Policy by refusing to do so. This Insurance Policy states the following at Clause 1 of its D&O liability coverage section:

**"DEFENSE PROVISIONS**

The Insurer does not assume any duty to defend; provided, however, the Named Organization may at its sole option, and in accordance with Clause 5 of the Coverage Section, tender to the insurer the defense of a Claim for which coverage is provided by this policy. Regardless of whether the defense is so tendered, the Insurer shall advance Defense Costs (excess of the Retention amount) of such claim prior to its final disposition. Selection of counsel of such Claim shall be made in accordance with Clause 6 of this Coverage Section."<sup>22</sup>

Clause 5 of the Insurance Policy's D&O liability coverage section states the following in relevant part:

"When the Insurer has not assumed the defense of a Claim pursuant to this Clause 5, the Insurer shall advance nevertheless, excess of any available retention amount and at the written request of the Insured, Defense Costs prior the final disposition of a Claim. Such advanced payments by the Insurer shall be repaid to the Insurer by every Insured or Organization, severally according to their respective interests, in the event and to the extent that each Insured or Organization shall not be entitled under the terms and conditions of this policy to payment of such Loss."

Preliminarily, the word "shall" in these provisions imposes a duty on Defendant to advance defense costs to Plaintiff because his request falls within the policy's "Claim"

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<sup>21</sup> *SEIU Healthcare Pennsylvania, et al v. Commonwealth of Pennsylvania, et al*, 628 Pa. 573, 104 A.3d 495, 591 (2014); *Ambrogi v. Reber*, 932 A.2d at 976; *Fischer v. Department of Public Welfare*, 497 Pa. 267, 439 A.2d 1172 (1982).

<sup>22</sup>2019-2020 D&O Policy Clause 1 Insuring Agreement Coverage D---Defense Provisions, pp. 1-2.

definition.<sup>23</sup> While Defendant argues that Plaintiff failed to provide notice, there is sufficient evidence in the record that likely shows that notice requirements were met as specified under Section 7(1) (a) of the General Terms and Conditions of the Insurance Policy. This notice occurred within thirty (30) days of the expiration of the Insurance Policy after the October 15, 2020 search warrant.<sup>24</sup> Additionally, Defendant's argument that an exclusion applies because Plaintiff knew in advance that his conduct was wrongful is circular as this is something the Government needs to prove at trial and Plaintiff is presumed innocent.

More difficult, but ultimately a legal question to be resolved later and likely in favor of Plaintiff, is whether Plaintiff is obligated to use a Panel Attorney. Analysis involves an interplay between Clause 1 and Clause 5 of the D&O liability coverage section. We note that the Insurance Policy makes a distinction between the words "tendered" and "advance". A fair reading is that if Plaintiff has "tendered" his defense, the Defendant may "assume" his defense. If the insurance company assumes Plaintiff's defense, then Plaintiff is bound to use a Panel Attorney. However, if Plaintiff has not tendered his defense, then a fair reading of the Insurance Policy is that Defendant is obligated to "advance" Defense Costs "more than the Retention amount prior to final disposition".<sup>25</sup> This holds because Defendant here has not assumed Plaintiff's defense, as there has been no tender. Accordingly, Plaintiff is within his contractual rights to obtain an advance of his Defense Costs under Clause 5.

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<sup>23</sup> Claim is defined by the D&O policy to include a criminal proceeding which is commenced by return of an indictment. See 2019-2020 D&O Policy ¶2 (a) (2) (ii).

<sup>24</sup> See Complaint ¶ 21 and Exhibit "E" to the Complaint; See also Exhibit "5" to Plaintiff's Reply to Defendant insurance company's Response in Opposition to Plaintiff's Petition for Special Injunction.

<sup>25</sup> 2019-2020 D&O Policy Clause 5 Defense Costs, Settlements, Judgments (Including the Advancement of Defense Costs) p. 5.



We therefore find advance payments are obligatory upon Defendant without assignment to a Panel Attorney because the legal issues surrounding Plaintiff's entitlement are likely to be decided in favor of Plaintiff---whether decided by a court or arbitration panel.

The Mandatory Arbitration Endorsement of the Insurance Policy does not alter this court's finding that Plaintiff has a clear right to relief. This is because, as explained below, application of the Insurance Policy's mediation/arbitration procedures is likely to cause irreparable harm and defeats a purpose of injunctive relief.

**2. Plaintiff Will Suffer Irreparable Harm that Cannot be Compensated by Damages.**

The risk of irreparable harm in this case comes from the nature of the proceedings against Plaintiff. The damage presented by a potential criminal conviction with its threat to liberty is substantially different from civil liability. A conviction has consequences to personal freedom, reputation, and family life that cannot be measured nor adequately compensated by monetary damages.

To meet the burden of showing irreparable damages in the injunction context, Plaintiff must present "concrete evidence" of "actual proof of irreparable harm."<sup>26</sup> This "irreparable harm" cannot be based solely on speculation and hypothesis and must be irreversible before it will be deemed irreparable.<sup>27</sup> Here, Plaintiff avers that his "right to have Defendant advance the costs of expenses for my defense to charges against me in a federal indictment dated March 2, 2021 are being violated by Defendant and could compromise the quality of my defense in the upcoming

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<sup>26</sup> *Greenmoor, Inc. v. Burchick Const. Co., Inc.*, 908 A.2d 310, 314 (Pa. Super.2006) quoting *Kessler v. Broder*, 851 A.2d 944, 951 (Pa. Super. 2004).

<sup>27</sup> *Greenmoor, Inc. v. Burchick Const. Co., Inc.*, 908 A.2d 310, 314 (Pa. Super.2006) citing *Sovereign Bank v. Harper*, 674 A.2d 1085, 1093 (Pa. Super.1996).

federal trial in March 2022, thereby placing at risk the verdict ultimately rendered upon conclusion of the trial, as well as my freedom.”<sup>28</sup>

This court finds that the withholding of advance defense costs which have been purchased through an insurance policy constitutes irreparable harm.<sup>29</sup> The issue is not whether Plaintiff will, or will not, prevail in the underlying criminal trial; it is whether a court or an arbitration panel is likely to establish his right to attorney fees and costs in advance of final disposition.<sup>30</sup> As explained earlier, we find that a clear right of relief exists, and this result is likely. We are also mindful in any event that Plaintiff need only show that substantial legal questions remain to be decided, and he has done so convincingly.<sup>31</sup>

All this goes to the special relationship and trust between a client and his criminal defense attorney of choice, and the liberty stakes involved. It also goes to the due process value of a fair trial under the Sixth Amendment.<sup>32</sup> The harm of Defendant’s refusal to advance costs during an ongoing criminal proceeding, according to promised terms of a policy, is impossible to predict or

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<sup>28</sup>Plaintiff’s Affidavit attached to his Petition for Special Preliminary Injunction ¶ 2.

<sup>29</sup> This finding is rooted in the Sixth Amendment guarantee of counsel of choice to a criminal defendant. This is a substantive due process right guaranteed through procedural application of the Sixth Amendment’s right to counsel. *See U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 145 (2006) (“So, also with the Sixth Amendment’s right to counsel of choice. It commands not that a trial be fair, but that a particular guarantee of fairness be provided---to wit, that the accused be defended by the counsel he believes to be best”).

<sup>30</sup> *See Ridder v. Cityfed Financial Corp*, 47 F.3d 85, 87 (3d Cir. 1995).

<sup>31</sup> *Ambrogi v Reber*, 932 A.2d 969 (, 976 (Pa. Super. 2007).

<sup>32</sup> *See U.S. v. Stein*, 435 F.Supp.2d 330, 355, 373 (2006) (Payment of advance defense costs protects the ability of [the employee] “to mount...a defense...by safeguarding his ability to meet his expenses at the time they arise, and to secure counsel on the basis if such an assurance”). Also quoting *Gonzalez-Lopez*, 248 U.S. at 141, (“Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. Considering those myriad aspects of representation, the erroneous denial of counsel bears directly on the ‘framework within which the trial proceeds’---or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then quantify the impact of those different choices on the outcome of the proceedings.”).

quantify as recognized by the Supreme Court in *U.S. v Gonzalez-Lopez*, 548 U.S. 140. The damage may be irreparable.

Returning to the Mandatory Arbitration Endorsement, we find its enforcement at this time exposes Plaintiff to irreparable harm. The Endorsement calls for specific rules and procedures. Neither the American Arbitration Association's Commercial Rules nor the AAA's Mediation Rules appears to specify time parameters to assure that final and binding resolution of the Defense Cost issue is resolved in time for Plaintiff's defense preparation and his May 5, 2022 trial.<sup>33</sup> While public policy generally favors arbitration to settle disputes fast and fairly,<sup>34</sup> the Insurance Policy's mediation/arbitration process is simply not quick enough. As there is no assurance that the mediation/arbitration process will resolve the parties' dispute without compromising Plaintiff's trial defense, the constitutional interest is plain, and Plaintiff meets the irreparable harm test.

**3. Greater Injury Will Result from Refusing the Injunction than from Granting it, and an Injunction will not Substantially Harm Other Interested Parties.**

Plaintiff will suffer greater injury than Defendant if his Petition is denied. As explained, Plaintiff has a clear right to relief. Insurance policy language is likely to be interpreted in his favor, and at any rate, substantial legal issues are involved in this dispute. Balancing the potential harm to Plaintiff's constitutional interests, compared to withholding an advancement, weighs in favor of Plaintiff. While Defendant argues there is a potential that Plaintiff will be unable to refund advanced monies if his criminal defense is unsuccessful, we note the Insurance Policy states at Clause 5 of the D&O Coverage Section that the Insurer shall be repaid severally by the

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<sup>33</sup> See American Arbitration Association Commercial Rules and Mediation Procedures, amended and effective October 1, 2013 available online at [adr.org/commercial](http://adr.org/commercial).

<sup>34</sup> See *Smay v. E.R. Stuebner, Inc.*, 864 A.2d 1266, 1272 (Pa. Super. 2004).

Insured or the Organization according to respective interests in the event of a conviction. Determination of the Organization's respective interests as compared to Plaintiff's may be another substantial legal issue brought on by this situation.

#### **4. The Preliminary Injunction Protects the Status Quo.**

A preliminary injunction in this controversy upholds the status quo in two ways. First, Plaintiff is presumed innocent, and this presumption is his status today under this indictment. Second, the terms of the Insurance Policy are likely to yield a result that Defendant has current obligations to advance Plaintiff's defense costs. Defendant made a commitment to Local 98, IBEW and its officers that the company would advance defense costs when a claim is made as defined in the Insurance Policy. Defendant preserves the status quo by honoring its agreement to advance defense costs where irreparable harm may otherwise occur.

Generally speaking, a party seeking preliminary injunction must show that injunctive relief will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.<sup>35</sup> Granting of preliminary injunction in this case is the only available way that Plaintiff can maintain the status quo pending an opportunity to litigate or arbitrate the dispute on the merits.<sup>36</sup>

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<sup>35</sup> *Summit Towne Center, Inc. v. The Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 828 A.2d 995 (2003) citing *Valley Forge Historical Society v. Washington Memorial Chapel*, 493 Pa. 491, 426 A.2d 1123, 1128-29 (1981) (a factor in determining status quo is that the issuance of an injunction will not substantially harm other interested parties in the proceeding).

<sup>36</sup> *Merrill Lynch, Pierce, Fenner & Smith v. Roodveldt*, 31 Pa. D & C 3d 432, 437 (1983) ("While parties may have agreed to arbitrate their underlying dispute, they should not, by virtue of that agreement, necessarily be precluded from obtaining preliminary injunctive relief which is perhaps the only means of maintaining the status quo] pending an opportunity to arbitrate their dispute upon the merits.").

**5. The Injunction is Reasonably Suited to Abate the Offending Activity.**

Issuance of this preliminary injunction is reasonably suited to abate the offending activity. Defendant's failure to advance defense costs is an "offending activity" because it exposes Plaintiff to irreparable harm. An advance of defense costs is reasonably suited to guard Plaintiff's constitutional right to counsel of choice.

**6. Preliminary Injunction Will Not Adversely Affect the Public Interest.**

Public interest favors preliminary injunctive relief here because the advancement of defense costs protects constitutional liberty and the rule of law.<sup>37</sup> Organizations that purchase D&O insurance must be able to assure their officers and board members that personal and family assets are covered, or they may not be able to find officers and board members willing to serve--- and if there is a dispute, courts have a responsibility to protect the rights of the parties until the merits are decided by judge, jury or arbitrator.

**CONCLUSION**

For these reasons, reasonable grounds exist to grant this preliminary injunction. Defendant National Union Fire Insurance Company of Pittsburgh, PA shall advance defense costs to Plaintiff John J. Dougherty in an amount up to the policy limit of the D & O Liability coverage section, considering all applicable Retention/Deductibles. The advancement of defense costs shall take place forthwith upon presentation by Plaintiff of invoices from his

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<sup>37</sup> See *Neal v. Neumann Medical Center*, 667 A.2d 479 (Pa. Cmwlth. 1995) (Statutory provisions authorizing the advancement of defense costs "plainly reflect a legislative determination to avoid deterring qualified persons from accepting responsible positions with financial institutions for fear of incurring liabilities greatly in excess of their means, and to enhance the reliability of litigation-outcomes involving directors and officer of corporations by assuring a level playing field. It is not the province of judges to second-guess these policy determinations.") quoting *Ridder v. Cityfed Financial Corporation*, 47 F. 3d 85, 87 (3d Cir. 1995).

See also *Chester City School Authority v. Aberthaw Const. Co.*, 333 A.2d 758, 460 Pa. 343, 352 (Pa.1975) ("Fundamental in our law of contracts is the axiom that parties may write their own contracts, and that it is the function of the courts to interpret those contracts and to enforce them as made.").

criminal defense attorney for all fees and costs since the date of indictment on March 2, 2022 through final disposition.

This preliminary injunction takes effect upon compliance by Plaintiff with Pa. R.C.P. 1531(b)(2) by depositing with the Office of Judicial Records of the First Judicial District of Pennsylvania legal tender of the United States in the amount of \$15,000 upon the same condition as provided by injunction bond under Pa. R.C.P. 1531 (b)(1). This \$15,000 deposit represents reasonable attorney fees as damages if this injunction is dissolved because improvidently granted.

**BY THE COURT**



**RAMY I. JERASSI, J.**