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

ASTRA FOODS, INC.,	:	MARCH TERM, 2016
Plaintiff,	:	NO. 00943
v.	:	COMMERCE PROGRAM
AMERICAN GUARANTEE AND LIABILITY INS. CO.,	:	Control Nos.: 17121522, 17121955
Defendant.	:	

ORDER

AND NOW, this 28th day of March, 2018, upon consideration of the parties' cross-Motions for Summary Judgment, the responses thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** as follows:

1. Plaintiff's Motion is **GRANTED in part** and **JUDGMENT** is **ENTERED** in favor of plaintiff and against defendant on plaintiff's claim for breach of contract in the amount of Seven Hundred and Sixty-Three Thousand, Four Hundred and Thirteen Dollars ($763,413.00) with pre-judgment interest of six percent (6%) running from June 5, 2013;

2. Defendant's Motion is **GRANTED in part** and **JUDGMENT** is **ENTERED** in favor of defendant and against plaintiff on plaintiff's claim for Bad Faith; and

3. The remainders of both Motions are **DENIED**.

BY THE COURT:

PATRICIA A. MCINERNEY, J.

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OPINION

This is a declaratory judgment action regarding a workplace injury suffered by Jose Noe Castillo Ramos while employed by BK Packaging Services, Inc. ("BK") at a meat packing facility operated by plaintiff Astra Foods, Inc. ("Astra"). In 2009, Mr. Ramos suffered a severe injury to his hand while cleaning an exhaust fan at Astra's facility. As a result of his injuries, he filed a workers' compensation claim against both BK and Astra and a personal injury claim against Astra only.[1]

In January, 2012, a Workers' Compensation Judge rendered a decision on Mr. Ramos' claim. Her decision included a finding that Ramos was employed by BK and that Ramos was not an employee nor a "borrowed employee" of Astra at the time of the injury. In addition to Astra and BK, Westfield Insurance Company ("Westfield"), which had issued both a commercial general liability ("CGL") policy and a workers' compensation policy to Astra, was a party to the Workers' Compensation proceeding. No one appealed the Workers' Compensation Judge's

[1] Ramos v. Astra Foods, Inc., September Term, 2011, No. 01074 (Phila. Co.).

decision. As a result of her ruling, Mr. Ramos' injuries were not covered under the workers' compensation policy Westfield issued to Astra.

In June, 2013, a jury rendered a verdict for Mr. Ramos against Astra in the underlying personal injury action, and he was awarded $763,413. Westfield filed a declaratory judgment action with this court arguing that the CGL policy it issued to Astra did not cover the incident. This court found that the policy did not provide coverage due to an exclusion for "employees," the express policy definition of which included "leased workers," which was also an expressly defined term.[2] This court held that Mr. Ramos fit the CGL Policy's definition of a "leased worker," so there was no coverage for his injuries under the particular employee exclusion found in the CGL Policy.

The Superior Court affirmed this court's decision while recognizing the problems it created for Astra:

> Mr. Ramos was determined to be a non-employee [and not a borrowed employee] for purposes of workers' compensation insurance policy coverage, and on the other hand, Mr. Ramos was determined to be an employee (leased worker) for purposes of the CGL insurance policy exclusion. By virtue of the unchallenged outcome of [the] workers' compensation proceeding and the CGL policy exclusion, Astra is essentially left uninsured for Mr. Ramos' injuries.[3]

In this action, Astra seeks coverage from American Guarantee and Liability Insurance Company ("AGLIC"), which issued an Excess and Umbrella Policy to Astra. Astra claims breach of contract and bad faith against AGLIC for refusing to provide coverage for the judgment Mr. Ramos received against Astra in the underlying action. The parties agree that the

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[2] The CGL Policy defined "employee" to include a "leased worker", but not a "temporary worker," and it defined "leased worker" as "a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business." Westfield Ins. Co. v. Astra Foods, Inc., 2014 WL 4410359, *1 (Phila. Co.)

[3] Westfield Ins. Co. v. Astra Foods, Inc., 134 A.3d 1045, 1055 (Pa. Super. 2016) (Gantman, P.J., concurring).

excess portion of the policy (Coverage A) does not provide coverage because it follows the form of the underlying policies. However, the parties disagree as to whether the umbrella portion provides coverage.

The AGLIC Policy provides as follows with respect to coverage for injury to Astra's employees:

> SECTION I. COVERAGE
> A. Coverage A - Excess Follow Form Liability Insurance
> * * *
> B. Coverage B - Umbrella Liability Insurance
> Under coverage B, we will pay on behalf of the insured, sums as damages the insured becomes legally obligated to pay by reason of liability imposed by law, or assumed under an insured contract because of bodily injury, property damage or personal and advertising injury covered by this insurance but only if the injury, damage or offense arises out of your business, takes place during the policy period of this policy and is caused by an occurrence happening anywhere. We will pay such damages in excess of the Retained Limit specified in Item 5 of the Declarations or the amount payable by other insurance, whichever is greater Coverage B will not apply to any loss, claim or suit for which insurance is afforded under underlying insurance or would have been afforded except for the exhaustion of the limits of insurance of underlying insurance.[4]
> * * *
> SECTION IV. EXCLUSIONS
> * * *
> C. Under Coverage B this policy does not apply to:
> * * *
> EMPLOYEE INJURY
> 2. a. Any injury to an employee of the insured arising out of and in the course of employment by the insured; or
> b. Any injury to the spouse, child, parent, brother, or sister of that employee as a consequence of exclusion 2.a. above'
> This exclusion applies whether the insured may be liable as an employer or in any other capacity, or to any obligation to share damages with or repay someone else who must pay damages because of an injury.[5]

[4] AGLIC Policy, Page 1 of 15.

[5] *Id.*, Page 7 of 15.

Unlike the underlying Westfield CGL Policy, "employee" is not a defined term under the Umbrella Policy.[6] Therefore, the court must look to the general definition of that word. An "employee" is defined as "someone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance."[7] This general definition, unlike the special definition in the CGL Policy, does not expressly include "leased workers." Mr. Ramos did not have a contract of hire with Astra directly; instead he had one with BK. Therefore, he was BK's employee not Astra's, and he does not fall within the employee exclusion of the AGLIC CGL Policy.

Even if there was some doubt as to whether Mr. Ramos was Astra's employee under the generally understood meaning of the word, AGLIC is estopped from claiming he is an employee because the Workers Compensation Judge's finding that Mr. Ramos is not an employee is binding on Astra and its insurers.

> The doctrine of collateral estoppel operates to prevent a question of law or an issue of fact which has once been litigated in a court of competent jurisdiction from being re-litigated in a subsequent proceeding. There is no requirement that there be an identity of parties in the two actions in order to invoke the bar. Collateral estoppel may be used as either a sword or a shield by a stranger to the prior action if the party against whom the doctrine is invoked was a party or in privity with a party to the prior action. Collateral estoppel applies if five elements are present: 1) the issue decided in the prior case is identical to the one presented in the later case; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted was a party or in privity with a party to the prior case; 4) the party against whom the doctrine is asserted or his privy has had a full and fair opportunity to litigate the issue in the prior proceeding; and 5) the determination in the prior case was essential to the judgment therein.[8]

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[6] AGLIC Policy, Definitions, pages 8-12 of 15.

[7] Black's Law Dictionary (10th ed. 2014).

[8] Mellon Bank v. Rafsky, 369 Pa. Super. 585, 592–93, 535 A.2d 1090, 1093 (1987).

AGLIC was not a party to the Workers Compensation proceeding, but as the issuer of Astra's Umbrella Policy, AGLIC was in contractual privity with Astra. It was in both Astra's and AGLIC's interests, but not Westfield's, that Mr. Ramos' damages be limited to what could be obtained through Workers' Compensation, rather than what he ultimately obtained in his underlying tort action. Therefore, this Court finds that there is collateral estoppel as to the issue decided by the Worker's Compensation Judge that Mr. Ramos was not an employee of Astra's. That issue was actually litigated, material to the adjudication, and essential to the Worker's Compensation judgment, as it is in this matter.

Since Mr. Ramos does not qualify as an "employee," the employee exclusion in the AGLIC Umbrella Policy does not apply to Astra's claim, and AGLIC must provide coverage to Astra for the judgment entered in favor of Mr. Ramos.

Astra has not offered any evidence that AGLIC's decision to deny coverage in this legally close and procedurally confusing case lacked reasonable basis and was thereby motivated by bad faith. Therefore, Astra is not entitled to a hearing or any award of damages on its claim for bad faith.

CONCLUSION

For all the foregoing reasons, Astra's and AGLIC's cross-Motions for Summary Judgment are granted in part and denied in part.

BY THE COURT:

PATRICIA A. MCINERNEY, J.