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

COMMERCIAL BUILDING & RETROFIT, INC., ET AL.,	:	OCTOBER TERM, 2016
	:	NO. 4029
Plaintiff(s),	:	
vs.	:	COMMERCE PROGRAM
STAR INSURANCE COMPANY, ET AL.,	:	Superior Court Docket No:
Defendant(s).	:	677 EDA 2018

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OPINION

BY: Patricia A. McInerney, J. April 9, 2018

I. BACKGROUND

Plaintiffs Commercial Building & Retrofit, Inc. ("Commercial Building") and Best Lights, Inc. (collectively, "Commercial Building Parties" or "Plaintiffs") appeal from the order disposing of cross-motions for summary judgment filed in the above-captioned matter. Plaintiffs, Michigan corporations principally located in Michigan, sought a summary declaration that Defendant Star Insurance Company ("Star Insurance" or "Defendant") was required to provide Pennsylvania workers compensation benefits to Daniel Murphy of Havertown, PA related to injuries he allegedly sustained on May 11, 2013, while working for Commercial Building in Villanova, PA as a temporary laborer; a motion which this Court properly denied.

Commercial Building builds homes, apartments, pre-engineered metal buildings, and insulates metal buildings nationwide. Villanova University contracted Commercial Building to replace insulation in a gymnasium building on campus (sometimes, the "Villanova Project"). To complete that work, Commercial Building posted an advertisement on Craig's List on May 2,

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2013 for a temporary worker to assist for ten days with the installation of fiberglass insulation. Mr. Murphy responded to the ad by email. From Michigan, Commercial Building telephoned Mr. Murphy in Pennsylvania and after a brief conversation offered him the temporary job at the Villanova Project, which he accepted. Mr. Murphy filed a petition with the Pennsylvania Bureau of Workers Compensation on May 30, 2013, seeking an award of benefits under the Pennsylvania Workers Compensation Act and alleging that on May 11, 2013, he suffered an injury in the course of his employment with Commercial Building.

Star Insurance, a Michigan domiciled insurance carrier licensed and admitted in all fifty states, issued Commercial Building a Michigan assigned risk workers compensation and employers liability insurance policy (the "Policy"). The policy period was from April 28, 2013 to April 28, 2014 and Best Lights, Inc. was also named as an insured. The Policy principally covers claims for workers compensation benefits under Michigan's workers compensation law. The Policy also provides limited coverage for workers compensation benefits under the laws of other states when an employee hired in Michigan or principally employed in Michigan works out of state on a temporary basis. Because the claim for which Plaintiffs seek coverage is a claim for Pennsylvania workers compensation benefits by an employee who was neither hired nor principally employed in Michigan, Defendant sought in its motion to have Plaintiffs' claim for insurance coverage dismissed on summary judgment; a motion which this Court properly granted.

Plaintiffs, however, appealed and claim the Court erred by:

1. "finding there is no claim for insurance coverage under the … [P]olicy[;]"

2. "granting Star Insurance['s] … motion for summary judgment[;]"

3. "denying [P]laintiffs' motion for summary judgment[;]"

4. "finding the … [P]olicy was unambiguous[;]"

5. "finding [P]laintiffs were not entitled to insurance coverage for the alleged injuries sustained by [Mr.] Murphy while working in the course and scope of his employment with Commercial Building[;]" and

6. "finding the Michigan Law Endorsement did not entitle [P]laintiffs to coverage under the Star Insurance policy."

(Pls.' 1925(b) Statement ¶¶ 1-6). Therefore, the Court issues this opinion in support of its decision to deny Plaintiffs' motion for summary judgment, grant Defendant's motion for summary judgment and dismiss Plaintiffs' claim for insurance coverage under the Policy, by order dated January 29, 2018.

II. DISCUSSION

A. Standard of Review.

"Pennsylvania law provides that summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law." *Gutteridge v. A.P. Green Servs., Inc.*, 804 A.2d 643, 651 (Pa. Super. Ct. 2002). "In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party." *Id.* "Thus, summary judgment is proper only when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." *Id.* And it is "only when the facts are so clear that reasonable minds cannot differ," that a trial court may properly grant summary judgment. *Id.*

B. Legal Principles Applicable to Insurance Policy Interpretation.

To determine whether Mr. Murphy's claim for Pennsylvania workers compensation benefits was covered under the Policy, the Court relied on well-settled principles of insurance contract interpretation.

> The task of interpreting an insurance contract is generally performed by a court rather than by a jury. The goal of that task is, of course, to ascertain the intent of the parties as manifested by the language of the written instrument. Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement. Where, however, the language of the contract is clear and unambiguous, a court is required to give effect to that language.

Madison Const. Co. v. Harleysville Mut. Ins. Co., 735 A.2d 100, 106 (Pa. 1999) (quoting other cases; brackets omitted). The language of an insurance contract "is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." *Id.* (quotations omitted). "This is not a question to be resolved in a vacuum. Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts." *Id.* "When determining whether a contract is ambiguous, a court must view the contract as a whole and not in discrete units." *Halpin v. LaSalle Univ.*, 639 A.2d 37, 39 (Pa. Super. Ct. 1994). And the court will not "distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity." *Madison Const. Co.*, 735 A.2d at 106.

C. The Policy in Question.

The Policy provides three different coverages: Part One, Workers Compensation Insurance; Part Two, Employers Liability Insurance, and; Part Three, Other States Insurance. Plainly and unambiguously, none of the coverages apply to Mr. Murphy's claim for Pennsylvania workers compensation benefits. Accordingly, the Court properly denied Plaintiffs' motion for summary judgment, granted Defendant's motion for summary judgment and

dismissed Plaintiffs' claim for insurance coverage under the Policy, and there is no error as Plaintiffs suggest.

1. Part One - Workers Compensation Insurance.

Part One of the Policy addresses workers compensation insurance and provides Star Insurance will promptly pay "the benefits required of [the insured] by the workers compensation law." (Policy, p. 1, Part One, ¶ B). "Workers compensation law" is a defined term. It means:

> the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

(*Id.* at p.1, General Section, ¶ C). Item 3.A. of the Policy's Information Page states "Part One of the [P]olicy applies to the Workers Compensation Law of ... **MI**[.]" (*Id.* at Information Page, ¶ 3 (some font changes; emphasis added)). Thus, under Part One of the Policy, only claims for benefits under the workers compensation law of the state of Michigan are covered and claims for workers compensation benefits under the laws of any other state are not. And therefore, Part One of the Policy does not cover Mr. Murphy's claim for Pennsylvania workers compensation benefits.

2. Part Two - Employers Liability Insurance.

Part Two of the Policy addresses employers liability insurance. This insurance covers bodily injury to an employee that "arise[s] out of and in the course of the injured employee's employment by [the insured]." (*Id.* at p. 2, Part Two, ¶ A). For such injuries, the Policy provides Star Insurance "will pay all sums that [the insured] legally must pay as damages because of bodily injury to [its] employees, provided the bodily injury is covered by this Employers Liability Insurance." (*Id.* at p. 2, Part Two, ¶ B).

However, in order for this insurance to apply, the Policy provides the injured employee's "employment must be necessary or incidental to [the insured's] work in a state or territory listed in Item 3.A. of the Information Page." (*Id.* at p. 2, Part Two, ¶ A.2). As stated above, the only state or territory listed in Item 3.A of the Information Page is Michigan.

Mr. Murphy was hired by Commercial Building as a temporary worker to assist for ten days with the installation of fiberglass insulation in a gymnasium on the campus of Villanova University. The Villanova Project was a self-contained project that was neither necessary nor incidental to Commercial Building's work in Michigan. Therefore, the Employers Liability Insurance does not cover Mr. Murphy's claim.

Moreover, even if Mr. Murphy's work in Pennsylvania as a temporary laborer at the Villanova Project was somehow necessary or incidental to Commercial Building's work in Michigan, the Employers Liability Insurance would still not cover Mr. Murphy's claim because the Policy also specifically excludes coverage under this part for any obligation owed by an employer under a workers compensation law. (*Id.* at p. 3, Part Two, ¶ C.4). Specifically, Part Two, in relevant part, provides "[t]his insurance does not cover … [a]ny obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law[.]" (*Id.* at p. 3, Part Two, ¶ C).

In this case, benefits were sought under the Pennsylvania Workers Compensation Act because Mr. Murphy's injuries allegedly occurred in Pennsylvania while he was in the course and scope of his employment with Commercial Building. *See* 77 P.S. § 411. And Mr. Murphy's claim for Pennsylvania workers compensation benefits is necessarily not covered by the Employers Liability Coverage because it is an obligation imposed by a workers compensation law and specifically excluded from coverage under this part.

3. Part Three - Other States Insurance.

Part Three of the Policy provides "Other States Insurance." (*Id.* at p. 4, Part Three). In this case, Part Three of the Policy was replaced by a "residual market limited other states insurance endorsement," which provided:

> "Part Three - Other States Insurance" of the policy is replaced by the following:
>
> **PART THREE OTHER STATES INSURANCE**
>
> **A. How This Insurance Applies**
>
> 1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
>
>   a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of the injury, principally employed in a state listed in Item 3.A. of the Information Page; and
>
>   b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-Insured group plan; and
>
>   c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
>
> ***

(Policy, form WC 00 03 26 A (Ed. 2-97)). Thus, pursuant to the plain language of the Policy, in order for the Other States Insurance to apply, the claim must satisfy all three of the conditions set forth in the endorsement. Mr. Murphy's claim, however, does not satisfy the first condition and, therefore, is not covered by the Other States Insurance.

The first condition requires that Mr. Murphy either was hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of the injury, principally employed in a state listed in Item 3.A. of the Information Page. The only state listed in Item 3.A. is Michigan. Thus, in order to satisfy the first condition, Mr. Murphy must have either been principally employed in Michigan or hired under a contract made in Michigan. As discussed above, Mr. Murphy was a temporary laborer for the Villanova Project. He was only hired to work at a job in Pennsylvania and only worked for Commercial Building at that job in Pennsylvania. His claim, therefore, does not satisfy the condition that, at the time of injury, his principal employment was in Michigan.

Mr. Murphy's claim also fails to satisfy the alternative condition under paragraph l.a. of the endorsement—that he was hired under a contract of employment made in the state of Michigan. Mr. Murphy was hired as a temporary laborer for the Villanova Project when he responded to a help wanted ad Commercial Building posted on the internet. The job in question was a ten-day stint as a temporary laborer to assist with installation of fiberglass insulation in a gymnasium on the campus of Villanova University. Mr. Murphy was in Pennsylvania when he sent the email to Commercial Building in Michigan to apply for the job. Mr. Murphy was also in Pennsylvania when he spoke with Commercial Building over the phone about the position for the Villanova Project. Commercial Building offered the temporary laborer job to Mr. Murphy over the telephone and Mr. Murphy accepted while on the telephone in Pennsylvania.

A contract is formed at the place where the last act necessary to form the agreement takes place. "[T]he place where a contract is accepted is the place of contract formation…." *Pennsylvania Higher Ed. Assistance Agency v. Christon*, 400 A.2d 1329, 1330 (Pa. Commw. Ct. 1979). When the acceptance is conveyed by telephone, the acceptance is effective and the

contract is created at the place where the acceptor speaks. *Linn v. Employers Reinsurance Corp.*, 139 A.2d 638, 640 (Pa. 1958). Because the acceptance was conveyed by telephone in Pennsylvania, the contract was created in Pennsylvania and the Other States Insurance does not apply to Mr. Murphy's claim.

4. The Michigan Law Endorsement.

While they are not entitled to coverage under any of the parts of the Policy as discussed above, Plaintiffs nevertheless argue the Court erred in failing to find "the Michigan Law Endorsement … entitle[d] [P]laintiffs to coverage under the … [P]olicy." (Pls.' 1925(b) Statement ¶ 6). In this regard, Plaintiffs, quoting paragraph (e) of the endorsement, had more specifically argued that:

> [p]ursuant to the Michigan Law Endorsement, the … [P]olicy is "for all purposes to be held and deemed to cover all the businesses the said employer is engaged in at the time of issuance of this contract … and all employees the employer may employ in any of his businesses during the period covered by this policy." To the extent this language conflicts with any other policy provisions, the language in the Michigan Law Endorsement governs and the other policy provisions are made null and void. This unequivocally entitles Commercial Building to coverage for the project it was performing when Daniel Murphy was allegedly injured.

(Pls.' Mot. for Summ. J. (Mem.) p. 7 (citations omitted)). Alternatively, Plaintiffs suggested that the Michigan Law Endorsement, at worst, created an ambiguity, and that ambiguity should be resolved in favor of the insured and coverage. (*See id.* at pp. 4-7, 11-12).

This Court does not agree with either of Plaintiffs' premises. Rather, the Court agrees with Defendant that:

> [w]hen considering the endorsement as a whole, instead of choosing one paragraph out of context, it is apparent … the Policy will cover all of the employer's businesses and all of those businesses employees for the employer's liability to those employees under the Michigan workers compensation law. The [e]ndorsement says nothing about the law of other states and it is unreasonable to interpret it as applicable to benefits payable under other states' laws when every

other paragraph of the [e]ndorsement refers to benefits payable under Michigan law.

(Def.'s Resp. to Pls.' Mot for Summ. J. (Mem.) p. 16).

In full, the Michigan Law Endorsement provides:

This endorsement applies only to the insurance provided by the policy because Michigan is shown in Item 3.A. of the Information Page.

Michigan law requires that we attach this paragraph to your policy in the language specified by the statute. To help you understand the paragraph, the following definitions are added:

(1) We are "the insurer issuing this policy"

(2) You are "the insured employer"

(3) "Michigan workmen's compensation act" means the Workers' Disability Compensation Act of 1969

(4) "Workmen's compensation" means workers compensation

(5) "The bureau of workmen's compensation" means the Bureau of Workers' Disability Compensation

"Notwithstanding any language elsewhere contained in this contract or policy of Insurance, the accident fund or the insurer issuing this policy hereby contracts and agrees with the insured employer:

Compensation:

(a) "That it will pay to the persons that may become entitled thereto all workmen's compensation for which the insured employer may become liable **under the provisions of the Michigan workmen's compensation act** for all compensable injuries or compensable occupational diseases happening to his employees during the life of this contract or policy;

Medical services:

(b) "That it will furnish or cause to be furnished to all employees of the employer all reasonable medical, surgical, and hospital services and medicines when they are needed which the employer may be obligated to furnish or cause to be furnished to his employees **under the provisions of the Michigan workmen's compensation act** and that it will pay to the persons entitled thereto for all such services and medicines when they are needed for all

compensable injuries or compensable occupational diseases happening to his employees during the life of this contract or policy;

Rehabilitation services:

(c) "That it will furnish or cause to be furnished such rehabilitation services for which the insured employer may become liable to furnish or cause to be furnished **under the provisions of the Michigan workmen's compensation act** for all compensable injuries or compensable occupational diseases happening to his employees during the life of this contract or policy;

Funeral expenses:

(d) "That it will pay or cause to be paid the reasonable expense of the last sickness and burial of all employees whose deaths are caused by compensable injuries or compensable occupational diseases happening during the life of this contract or policy and arising out of and in the course of their employment with the employer, which the employer may be obligated to pay **under the provisions of the Michigan workmen's compensation act**;

Scope of contract:

(e) "That this insurance contract or policy shall for all purposes be held and deemed to cover all the businesses the said employer is engaged in at the time of the issuance of this contract or policy and all other businesses, if any, the employer may engage in during the life thereof, and all employees the employer may employ in any of his businesses during the period covered by this policy;

Obligations assumed:

(f) "That it hereby assumes all obligations imposed upon the employer **by his acceptance of the Michigan workmen's compensation act**, as far as the payment of compensation, death benefits, medical, surgical, hospital care or medicine and rehabilitation services is concerned;

Termination notice:

(g) "That it will file with the bureau of workmen's compensation at Lansing, Michigan, at least 20 days before the taking effect of any termination or cancelation of this contract or policy, a notice giving the date at which it is proposed to terminate or cancel this contract or policy; and that any termination of this policy shall not be effective as far as the employees of the insured employer are concerned until 20 days after notice of proposed termination or cancelation is received by the bureau of workmen's compensation;

Conflicting provisions:

(h) "That all the provisions of this contract, if any, which are not in harmony with this paragraph are to be construed as modified hereby, and all conditions and limitations in the policy, if any, conflicting herewith are hereby made null and void."

(Policy, form WC 21 03 04 (Ed. 4-84)(some emphasis added)).

In this case, Plaintiffs cherry-pick one paragraph of the endorsement, paragraph (e), to argue that the endorsement contradicts the rest of the Policy. Specifically, Plaintiffs claim that paragraph (e), which states that the policy must cover all businesses the employer is engaged in at the time the policy is issued and all employees of those businesses, eliminates all of the other provisions of the Policy that limit coverage. According to Plaintiffs' interpretation of the insurance contract, the endorsement means that any employee of any business insured under the Policy is covered for any workers compensation claim, made under any state's law, and without any limitations.

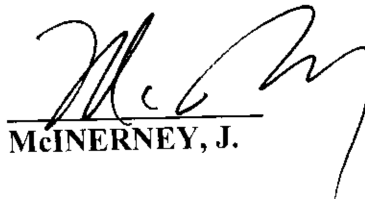
Plaintiffs, however, fail to cite or address the other paragraphs of the endorsement which make it clear the endorsement addresses benefits payable under the Michigan workers compensation law. As stated above, a court must view the contract as a whole and not in discrete units when determining whether an insurance contract is ambiguous. *Halpin*, 639 A.2d at 39 (Pa. Super. Ct. 1994). And the court will not "distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity." *Madison Const. Co.*, 735 A.2d at 106.

Here, paragraphs (a), (b), (c), (d), and (f) of the Michigan Law Endorsement all specifically mention the Michigan workmen's compensation act. When considering the endorsement as a whole, instead of choosing one paragraph out of context, it is apparent that paragraph (e) of the endorsement provides that the Policy will cover all of the employer's

businesses and all of those businesses' employees for any liability for which the insured employer may become liable under the provisions of the Michigan workmen's compensation act. The endorsement says nothing about the law of other states and it is unreasonable to interpret it as applicable to benefits payable under another state's law when every other paragraph of the endorsement refers to benefits payable under Michigan law. Therefore, the Court did not accept Plaintiffs' unreasonable construction of the Policy and find coverage or ambiguity where none exists.

WHEREFORE, for the above-mentioned reasons, this Court's order of January 29, 2018 denying Plaintiffs' motion for summary judgment, granting Defendant's motion for summary judgment and dismissing Plaintiffs' claim for insurance coverage under the Policy should be affirmed.[1]

BY THE COURT:



McINERNEY, J.

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[1] As it is not mentioned in their 1925(b) statement, Plaintiffs appear to have abandoned and waived the argument that the fact that Mr. Murphy's employment factored into the premium Commercial Building paid and Star Insurance received for the Policy somehow precludes Star Insurance from "being able to deny a claim [Mr. Murphy] submitted for alleged injuries he sustained while working for Commercial Building." (*See* Pls.' Sur-Reply p. 5). In the event that this argument has not been waived and/or abandoned, it has no merit. As argued by Defendant,

> [t]he fact that that coverage does not apply to the particular claim asserted by [Mr.] Murphy does not mean that Commercial Building received nothing in return for its premium. To the contrary, the premium paid by Commercial Building bought coverage for claims [Mr.] Murphy might have made under Michigan law. It also purchased coverage for claims [Mr.] Murphy might have made under the laws of other states, including Pennsylvania, if the conditions set forth in Part Three, Other States Insurance were met.

(Def.'s Reply p. 7). Thus, as argued by Defendant, Plaintiffs got something for their money—the coverage stated in the Policy—and Plaintiffs' argument has no merit.