IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ERIC J. RAUDINS, *et al.*	)	CASE NO. CV 12 789591
	)	
Plaintiffs,	)	JUDGE JOHN P. O'DONNELL
	)	
vs.	)	
	)	
WILLIAM HOBBS, *et al.*	)	JOURNAL ENTRY GRANTING AND DENYING THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, DENYING ERIE AND AMICA'S MOTIONS FOR SUMMARY JUDGMENT, AND GRANTING WESTFIELD'S MOTION FOR SUMMARY JUDGMENT
	)	
Defendant/third-party plaintiff,	)	
	)	
vs.	)	
	)	
RECREATION INSURANCE SPECIALISTS, LLC, *et al.*	)	
	)	
Third-party defendants.	)	

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ERIC J. RAUDINS, *et al.*	)	CASE NO. CV 14 819984
	)	
Plaintiffs,	)	JUDGE JOHN P. O'DONNELL
	)	
vs.	)	
	)	
WESTFIELD INSURANCE COMPANY	)	JOURNAL ENTRY GRANTING WESTFIELD'S MOTION FOR SUMMARY JUDGMENT
	)	
Defendant.	)	

John P. O'Donnell, J.:

These lawsuits arise from a one-car accident where defendant William Hobbs was driving with plaintiff Eric Raudins as his passenger. The plaintiffs, Eric and Dee Raudins,[1] assert that the damages resulting from the crash are covered by insurance policies through Erie Insurance Company,[2] Amica Mutual Insurance and Westfield Insurance Company. The three insurance companies allege there is no coverage and they have each filed a motion for summary judgment seeking a declaration to that effect. The plaintiffs have filed their own motion for partial summary judgment on the existence of coverage. The motions are fully briefed and this entry follows.

The accident and the three business entities

On January 13, 2011, Hobbs lost control of his Toyota Tundra, slid across Interstate 271 and slammed into a concrete wall. The crash injured Raudins, who had surgery on his neck about two months later.

At the time of the accident the men were involved in three business entities: RIS Holdings, LLC, Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC. RIS Holdings was a limited liability company of which Hobbs and Raudins, with others, were members. The operating agreement of RIS Holdings, LLC designated Hobbs as the president and Raudins as the vice president and chief operating officer. RIS Holdings, LLC was not – to use the term favored by Hobbs at his deposition – an operational entity. Instead, it owned the membership interests in the operational entities, i.e. the other two limited liability

[1] Dee Raudins, wife of Eric Raudins, has sued for loss of consortium. When reference is made in this entry to "Raudins," it means Eric Raudins.

[2] The complaint's third named defendant is "Erie Insurance Company." By its answer, Erie claims its correct name is Erie Insurance Exchange. Yet the policy attached to the answer names Erie Insurance Company on the declarations page as the insurer. Further confusing matters, Erie's motion for summary judgment is filed in the name of "Erie Insurance Company, improperly named and sued as CPP United Insurance. I'll stick with the policy and refer to the defendant here as Erie Insurance Company or Erie.

companies. The revenues of the two other companies flowed up to RIS Holdings, LLC for distribution to its members.

Recreation Insurance Specialists, LLC was an insurance agency in the business of underwriting insurance policies for recreational vehicles. Hobbs was the president of this limited liability company, Raudins was a vice president, and the two of them together comprised its board of directors. RIS Risk Management Services, LLC was in the business of administering claims made on RV insurance policies. Hobbs was its president and Raudins was not an officer. Each of the two companies had employees earning wages reported on W-2 forms, but Hobbs and Raudins were compensated for their work through regular guaranteed payments by Recreation Insurance Specialists, LLC which were reported on K-1 forms.

On the day of the accident Hobbs and Raudins were going to Mayfield Heights to make a presentation on trailer insurance to an insurance agent from California and his associates. Hobbs was to make the presentation and Raudins went out of "curiosity" – he had no role in the presentation or in the cultivation of the relationship with the insurance agent.

The insurance policies and the lawsuits

Insurance coverage for Raudins's damages is potentially available under four different policies: a personal auto policy issued to Hobbs by Erie Insurance Exchange; a personal auto policy issued to Raudins by Amica Mutual Insurance Company; a business liability policy issued to the two operational entities – Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC – by Westfield Insurance Company; and a Westfield umbrella policy issued to the two operational entities.

Eric Raudins is a plaintiff in case number 789591. Hobbs is a defendant in that case on a cause of action for negligence, Erie is a defendant on a declaratory judgment claim for liability

coverage, and Amica is a defendant on a declaratory judgment claim for uninsured/underinsured motorists coverage.

In 789591, Hobbs is a third-party plaintiff on a third-party complaint against Westfield alleging that Westfield "must defend and indemnify Hobbs"[3] under the business liability policy.

After Hobbs filed the third-party complaint against Westfield, Raudins filed the second case, number 819984, against Westfield. The complaint there includes a claim by Eric Raudins for a declaratory judgment that he is entitled to UM/UIM coverage under the business policy.

The Erie policy

Willliam Hobbs is the named insured and his Toyota Tundra is listed as a covered auto on the Erie family auto policy. The policy provides personal auto liability and UM/UIM coverage with a per person limit of $250,000.

The liability coverage is extended to "anyone we protect," a term defined in the contract to include 1) Hobbs while using the Toyota Tundra and 2) any "organization legally responsible for the use of" the Toyota Tundra with Hobbs's permission. The policy also extends coverage to Hobbs, and any organization legally responsible for his actions, while using a car he doesn't own.

Like most insurance policies, the contract contains a broad initial grant of coverage – to "pay all sums that [an insured] legally must pay as damages caused by an accident covered by this policy" – which is then restricted by a list of exclusions. The exclusion potentially applicable here, from numbered paragraph 7 on page 6 of the policy, is for "bodily injury to employees of 'anyone we protect' occurring in the course of employment." The word employees is not defined in the contract.

[3] Third-party complaint, page 5.

Erie's first argument is that the liability coverage does not apply because Raudins's damages are not amounts that Hobbs "legally must pay" because Hobbs is immune from legal liability under section 4123.741 of the Ohio Revised Code.

R.C. 4123.741 is known as the fellow employee immunity statute. It provides, in pertinent part, as follows:

> No employee of any employer . . . shall be liable to respond in damages at common law or by statute for any injury . . . [to] any other employee of such employer in the course of and arising out of the latter employee's employment . . . *on the condition that such injury . . . is found to be compensable* under [the workers' compensation statute]. (Emphasis in italics added.)

The record evidence demonstrates that Raudins filed a workers' compensation claim that was denied upon a determination that he was not an employee. In other words, to use the language of R.C. 4123.741, Raudins's injury was not found to be compensable under the workers' compensation statutes and the fellow employee immunity statute does not prevent Hobbs from being legally liable for Raudins's damages. It doesn't matter whether Raudins and Hobbs actually were fellow employees at the time of the accident. What matters for purposes of legal immunity is whether Raudins's injury "is found to be compensable" by workers' compensation. It was not compensable and Hobbs, if he was negligent, "legally must pay" damages caused to Raudins. Thus, before taking the policy's exclusions into account, it provides liability coverage to Hobbs for the injuries claimed by Raudins.

Assuming that Hobbs "legally must pay" Raudins's damages, Erie next contends that the accident happened when Raudins was an employee in the course of employment by Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC, and since those two entities were included in the policy's definition of "anyone we protect" then coverage is excluded under exclusion number 7 for injury to employees of "anyone we protect."

An insurer who claims that a policy exclusion prohibits insurance coverage must show that the exclusion specifically applies. *Neal-Pettit v. Lahman*, 125 Ohio St. 3d 327, 2010-Ohio-1829, ¶19. Exclusions of coverage must be clear and unambiguous to be enforceable. *Id.* In addressing Erie's argument here it is useful to consider the context of the policy's definition of "anyone we protect." First, it is placed at the beginning of the "liability protection" section of the policy, i.e. the broad grant of coverage. Second, it includes three subsets of individuals and organizations as follows:

> • **"Anyone we protect" means:**
>
> 1. **"you" or any "relative" using an "auto we insure;"**
> 2. **any person using, or any person or organization legally responsible for the use of, an "owned auto we insure." This use must be with "your" permission unless the use is by a "relative;" and**
> 3. **any person or organization legally responsible for the use, by "you" or a "relative," of any "nonowned auto." This protection applies only if the person or organization does not own or hire the vehicle being used.**

"You" is Hobbs as the named insured and the "auto we insure" includes the Toyota Tundra. So the first numbered item gives coverage to Hobbs whenever he is using his car and, because "auto we insure" includes a car he does not own, whenever he is using somebody else's car with permission. Before considering any exclusions, he cannot get any wider coverage than is given by that clause since he is covered in virtually all circumstances where he is driving. The second numbered item gives no more coverage to Hobbs than he already has under the first item.

But if Erie's argument is to be taken seriously, the second numbered item actually operates as an exclusion to coverage even though it is not part of the "exclusions" section. Under

Erie's interpretation, Hobbs isn't covered when he is driving another employee of his own employer in the course of his employment. To use terms that, in a non-legal context, are dated, coverage for the servant is taken away when the master is also not covered. But this doesn't make sense.

Instead of Erie's implicit suggestion that the three-part definition of "anyone we protect" is designed to give and limit coverage at the same time, the grant of coverage and the exclusion should be viewed together in context. In that regard, the grant of coverage, at sub-paragraph 2, gives protection to Hobbs's employer – an organization legally responsible, under the doctrine of *respondeat superior*, for his negligence – but then the exclusion takes coverage away when injury is incurred by employees of "anyone we protect." Looked at that way, exclusion 7 takes away coverage that Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC would otherwise have had, assuming that under the facts of this case they were organizations "legally responsible" for Hobbs's negligence.

Put simply, the exclusion is intended to take away coverage for an insured when one of its employees is injured, but it does not take away coverage for every insured when an insured's employee is injured. In other words, the exclusion is an "employee" exclusion, not a "co-worker" exclusion. Even if Raudins was an employee of Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC there is no evidence that he was an employee of Hobbs and the employee exclusion does not take away liability coverage for Hobbs.

Since Hobbs is insured for liability under the Erie policy there is no need to examine in detail whether Raudins would be entitled to Erie's UM/UIM coverage. But it is worth noting that, in the event that I am wrong in concluding that liability coverage is not excluded by the employee exclusion, the fellow employee immunity statute does not operate to keep Hobbs from

legal liability and Raudins would be entitled to UM/UIM coverage. In short, if Raudins cannot access the policy's liability limits then he can access its UM/UIM limits.

The Amica policy

Raudins and his wife are the named insureds on a personal auto policy issued by Amica. The insurance contract includes UM/UIM coverage with a $1,000,000 limit. I have already concluded that Hobbs has liability coverage under Erie's policy for the accident so the UM coverage is not implicated here. Coverage is provided under the UIM provision where the limit of a wrongdoer's liability policy is less than the limit of Amica's UIM coverage. That is the case here since the Erie policy provides $250,000 of liability insurance and the Amica policy has a $1,000,000 UIM limit. Of course Amica is not required to pay under the UIM coverage until Erie's liability limit is exhausted. Moreover, Amica's maximum liability is $750,000, i.e. the Amica UIM limit less Erie's liability limit. (See the Underinsured Motorists Coverage section of the Amica policy, Insuring Agreement subsection and the Limit of Liability subsection.)

The Westfield business policy

Westfield issued a business owners' policy with a $2,000,000 occurrence limit to Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC as named insureds. Hobbs argues – and Raudins and the other insurers concur – that he is entitled to liability coverage under the business owners' policy.

Generally, the liability coverage is set forth at Section II of the policy. Under Section II.C.1.c, where a limited liability company is the named insured, the company's members are also insureds "but only with respect to the conduct of your business." But Hobbs was not a member of either of the operational entities that were named insureds on the Westfield policy so he is not

an insured under the liability coverage in the body of the policy. Moreover, the body of the policy excludes coverage for the use of an automobile.

But the policy has a "non-owned auto liability" endorsement that adds some automobile liability coverage. The endorsement extends liability coverage so that it "applies" to bodily injury arising "out of the use of any 'non-owned auto' in [the named insured's] business by any person." In turn, a "non-owned auto" means any car that the named insured does not own but which is used in the company's business, including a car owned by the named insured's executive officers.

Under those initial provisions, and before considering the policy's terms narrowing the definition of "any person," Hobbs's negligence in this case falls within the liability coverage.

But the policy then proceeds to define who is an insured for the purposes of the non-owned auto liability coverage. That definition includes three subsets. The first subset is "you," meaning the named policyholders Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC and their managers. Hobbs does not fit within this definition. The second subset is for any person using a "hired auto" and is not applicable here. The fourth subset is for the vicarious liability of a person or organization for the conduct of an insured under one of the first three subsets. That part is also not applicable here.

The third subset, however provides coverage to the companies' executive officers while using an auto not owned by either company while on company business. Since, as noted above, the definition of non-owned auto includes a car owned by the executive officer, Hobbs would fall within this definition of an insured.

But having just defined Hobbs as an insured while driving his own car as an executive officer in the course of business, the succeeding provision – captioned "none of the following is

an insured" – eliminates him as an insured from coverage by paring from the definition of an insured an executive officer using an auto owned by him.

Trying to make sense of the endorsement can make a reader feel like a shirtless George Costanza peering dizzily at a stereogram in his girlfriend's mother's apartment bathroom:[4] its meaning comes clear only after sustained attention and focus. But the test of whether an insurance policy's provisions are enforceable isn't whether they are inscrutable: insurance policies go on for many pages precisely because addressing a nearly infinite number of contingencies necessitates some sacrifice of simplicity and economy of language. Instead, the test is whether they are ambiguous. If they are not ambiguous they will be enforced as written.

The net effect of the non-owned auto endorsement is unambiguous: a corporate officer is not covered for the use of his own car on company business but is covered for the use of somebody else's car (except one owned by the company). At the same time, another company employee is covered while using the officer's car on company business. This result makes perfect sense when the non-owned auto endorsement to the business policy is understood to ensure coverage for the occasional use of a car that should otherwise be covered by a separate personal or business auto policy.

Raudins and Amica argue that even if Hobbs is not covered under the non-owned auto endorsement, Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC's vicarious liability for Hobbs's negligence is covered. But neither lawsuit includes a claim for such coverage. The third-party complaint by Hobbs against Westfield in 789591 alleges only that "Westfield must defend and indemnify"[5] him. Since Hobbs is not an insured for the reasons already discussed, the third-party claim is resolved. The complaint by Raudins in 819984 seeks

[4] See https://www.youtube.com/watch?v=9copjcVRZ64, last accessed January 29, 2016.
[5] Third-party comp., p. 5.

only UM/UIM coverage under a policy that provides no such coverage, and that claim is resolved too.

The Westfield umbrella policy

The last policy potentially implicated by the accident of January 13, 2011, is an umbrella policy issued by Westfield to Recreation Insurance Specialists, LLC and RIS Risk Management Services, LLC.

Westfield argues at pages 14 through 17 of its motion for summary judgment that there is no coverage for the accident under this policy. But any consideration of the umbrella policy is superfluous because there is no affirmative claim in any pleading in either case for a declaration of the rights and obligations of the parties under the umbrella policy.

Summary declaratory judgment

On the record evidence I find no genuine issue of material fact on the lawsuits' claims for a declaration of the rights and obligations of the parties under the various insurance contracts. Accordingly, summary declaratory judgment is entered as follows:

1) Erie Insurance Company is required under the terms of insurance policy number Q05-7405925 to indemnify William Hobbs for compensatory damages proximately caused by Hobbs's negligence to Eric Raudins in the January 13, 2011, accident, up to the policy's $250,000 per person limit;
2) Erie is obligated to defend Hobbs against the negligence claim asserted in case number 789591 by Raudins and his wife;
3) Amica Mutual Insurance Company is obligated under the terms of insurance policy number 910834-1098 to provide underinsured motorists coverage to Raudins for his

damages in excess of $250,000 incurred because of Hobbs's negligence, to a limit of $750,000; and

4) Westfield Insurance Company is not obligated under the terms of insurance policy number BOP 3760387 to provide liability coverage to Hobbs or uninsured/underinsured motorists coverage to Raudins for any claims arising out of the January 13, 2011, accident.

Consistent with the foregoing, the plaintiffs' motion for summary declaratory judgment is granted against Erie and Amica and denied against Westfield. Erie's motion for summary declaratory judgment is denied. Amica's motion for summary declaratory judgment is granted insofar as Erie is obligated to provide liability coverage for Hobbs but is otherwise denied. Westfield's motion for summary declaratory judgment is granted on the business liability policy and no declaration is made on the applicability of Westfield's umbrella policy because no affirmative claims for a declaration of the rights and obligations of the parties under that contract have been asserted in either lawsuit.

This entry disposes entirely of case number 819984; the claims for negligence[6] and damages in number 789591 remain pending.

IT IS SO ORDERED:

Judge John P O'Donnell

January 29, 2016
Date

[6] Although Raudins's motion for summary judgment spends pages 5 and 6 supporting the claim that Hobbs is negligent, the motion itself does not seek a summary judgment on negligence. See pages 1 and 10 of the motion.

SERVICE

A copy of this journal entry was sent by email on January 29, 2016, to the following:

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