

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:98-CV-409-H

MARYLAND CASUALTY INSURANCE COMPANY

PLAINTIFF

V.

BEST WESTERN GOLD VAULT INN, INC., et al.

DEFENDANTS

MEMORANDUM OPINION

This opinion marks this Court's second review of the scope of coverage of a commercial insurance policy. In its order and opinion of September 20, 1999, this Court held that the insurance contract, policy number EPA30079330 ("the Policy"), between Maryland Casualty Insurance Company ("Maryland Casualty") and Best Western Gold Vault Inn, Inc. ("Gold Vault") did not require Maryland Casualty to defend or indemnify Gold Vault in a state court action arising from an assault on Ms. Trent, an employee of Gold Vault. The Court now considers whether Maryland Casualty must defend or indemnify Best Western International, Inc. ("Best Western") in the same state court action. The Policy includes the declarations, the "Commercial General Liability Coverage Form," and the "Hospitality Industry Additional Coverage Endorsement" all issued on October 26, 1996. In addition, Maryland Casualty, through its agent Van Meter Insurance, issued a certificate of insurance which Best Western says identifies it as an additional insured. This Court has previously recounted the salient facts in its prior memorandum and will not revisit them here.

In its motion for summary judgment Maryland Casualty says that the workers

compensation exclusion in the Policy bars coverage for Best Western. Maryland Casualty first argues that the clause excludes coverage for any claims that would arise under the workers compensation laws of Kentucky. Even if the clause does not exclude all claims that could potentially arise under the workers compensation laws, Maryland Casualty asserts, it certainly excludes those claims where Best Western owes a workers compensation obligation to Ms. Trent and as it does here. Best Western responds that the workers compensation clause is too ambiguous to prevent coverage and that, in any event, Best Western does not owe Ms. Trent a workers compensation obligation.

The resolution of the summary judgment motion turns, in large part, on the status of Best Western under the Policy. First, the Court must determine whether Best Western is an insured under the Policy. If the answer is yes, then the Court must determine the source of Best Western's rights. If Best Western's rights derive from those of Gold Vault, then under standard tools of contract interpretation Best Western can receive no greater coverage than Gold Vault. *See, e.g.*, E. Allan Farnsworth, FARNSWORTH ON CONTRACTS § 10.9 (2000) (stating the general rule that "the beneficiary's right under the contract rises no higher than the right of the promisee"). If, however, Best Western's rights are separate and independent right under the Policy, then the Court determines Best Western's rights and obligations independently of Gold Vault.

Under Kentucky law, this Court construes the policy "as persons with usual and ordinary understanding would construe [it]." *Washington National Insurance Co. v. Burke*, Ky., 258 S.W.2d 709, 710 (1953). If ambiguities arise, this Court must construe them in favor of the insured, but only if "both constructions of the policy language are reasonable." *National*

Insurance Underwriters v. Lexington Flying Club, Inc., Ky. Ct. App., 603 S.W.2d 490, 494 (1980).

The General Liability Coverage form of the Policy, “Section II - Who is an Insured” defines those covered under the Policy. Best Western fails to meet any of the criteria for coverage in that section. However, the hospitality endorsement amends Section II of the Policy “to include as in insured any person or organization with whom you agree, because of an ‘insured contract’, to provide insurance such as is afforded under this Coverage Part.” The coverage form defines “insured contract,” in relevant part, as “that part of any other contract . . . under which you assume the tort liability of another party to pay for the bodily injury or property damage to a third person or organization.” Gold Vault and Best Western entered into a Membership Application and Agreement dated September 6, 1994, which, among other things obligates Gold Vault to abide by Best Western’s bylaws. These bylaws require Gold Vault to maintain an insurance policy covering Best Western for its own active and passive negligence in connection with the property and which names Best Western “as an additional insured.” This Court finds that Best Western qualifies as “an insured” under the Policy because this agreement is an “insured contract” as defined in the Policy.

As an insured, Best Western receives the protections of the Policy unless the Policy excludes them. Nothing in the Policy limits coverage of an entity qualifying as an insured under the hospitality endorsement. The semantic distinction between “additional insured” and “additional named insured” offers little assistance. The Court finds no such distinction in the Policy. No language in the policy limits an insured’s coverage to that of the named insured. Had Maryland Casualty wanted such a limitation, it could have easily inserted it into the policy.

Because it is an insured under the express terms of the Policy, the Court finds Best Western's rights to be independent rather than derivative.

Maryland Casualty says that even if Best Western is an insured, the workers compensation exclusion bars coverage. The workers compensation exclusion states: "This insurance does not apply to: Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law." Again, the Court must first determine how people of usual and ordinary understanding would interpret this exclusion.

"The insured" could refer to the original named insured, Gold Vault. If so, Best Western would retain coverage in spite of this provision. The policy's frequent use of the term "any insured" bolsters this limiting interpretation of "the insured." The Policy, however, never explains the difference between "the insured" and "any insured," nor is it apparent why such a difference is important to a reasonable interpretation of the policy. The Court concludes that it is best not to create a distinction where none really exists. The Court finds that references to "the insured" encompasses any entity so qualifying under the Policy definitions. Thus, in this instance the term "the insured" would apply to the particular insured--Best Western--whose coverage is analyzed under the exclusion.

The term "[a]ny obligation . . . under a workers compensation law" could refer, as Maryland Casualty suggests, to any potential claim that would arise under Kentucky's workers compensation law. The Court does not find this sensible. If this were the case, then the exclusion would track the employee exclusion almost completely since employees must bring claims arising from injuries under the workers compensation system unless they opted out prior

to the injury. *See* KY. REV. STAT. ANN. § 342.395 (1998). The employee exclusion, unlike the workers compensation exclusion, does not apply to “liability assumed by the insured under an insured contract.” Under the reading urged by Maryland Casualty, the two exclusions would deny coverage in nearly identical situations, but only one exclusion would apply to an insured contract. Such an interpretation gives no effect to the insured contract exception since Maryland Casualty could always deny coverage based upon the workers compensation exclusion. The Court concludes that the more common sense interpretation is that the workers compensation exclusion refers to specific claims or request for payment under the workers compensation law and not to all potential claims of that type. Since Ms. Trent has no workers compensation claim against Best Western, the Court finds that the workers compensation exclusion does not bar coverage of Ms. Trent’s claim against Best Western.

Furthermore, Best Western does not owe Ms. Trent a workers compensation obligation given the facts at hand. Kentucky Revised Statutes section 342.610(2) obligates contractors to pay workers compensation to employees of subcontractors if the subcontractor performs work “of a kind which is a regular or recurrent part of the work” of the contractor. Best Western’s bylaws prohibit it from operating a hotel; Ms. Trent, a Gold Vault employee, was operating a hotel owned by Gold Vault. In other words, the “regular and recurrent” work of Best Western, the contractor, expressly does not include the work that Gold Vault, the alleged subcontractor, was performing.

The Court will enter an order consistent with this Memorandum Opinion.

JOHN G. HEYBURN II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record

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ORDER

Plaintiff Maryland Casualty Insurance Company moved for summary judgment concerning its obligation to defend and indemnify Best Western International.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Maryland Casualty's motion for summary judgment is DENIED and, therefore, as set forth in the accompanying Memorandum Opinion, Maryland Casualty shall defend and indemnify Best Western under the Policy.

IT IS FURTHER ORDERED that, independent of any motions to reconsider, the parties shall advise the Court of any additional issues necessary to resolve this case and whether this Court should declare this and all prior orders to be final and appealable.

This _____ day of September, 2000.

JOHN G. HEYBURN II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record