STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

PENN-STAR INSURANCE COMPANY,

Plaintiff,

V

SPECIALIZED SOLUTIONS, LLC,
a California limited liability company,
SPECIALIZED SOLUTIONS, LLC,
a Michigan limited liability company,
aka SPECIAL SOLUTIONS, LLC,
ANVAR AKHMEDOV, and
CALVIN HARRIS, JR.,

Defendants.
_____/

No. 18-490-CB

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in Lansing, Ingham County, Michigan, on August 15, 2019

PRESENT: Honorable Joyce Draganchuk
Circuit Judge

Plaintiff brought a motion for summary disposition under MCR 2.116(C)(10) and MCR 2.603 (default judgment as to Anvar Akhmedov) in this declaratory judgment action. Plaintiff requests a ruling that it owes no duty to indemnify or defend the Michigan entity that will be referred to as MI Specialized Solutions because it did not insure that entity. Plaintiff also requests a ruling that it owes no duty to indemnify or defend the California entity that will be referred to as CA Specialized Solutions because of certain policy exclusions. The Court took the matter under advisement following oral argument on August 7, 2019.

Akhmedov operates two separate and distinct legal entities, both named Specialized Solutions, LLC. One is incorporated in Michigan and one is incorporated in California. Akhmedov is the resident agent, sole member, and manager of both entities. Harris was an employee who is suing both entities and another entity known as Leading Transport Solutions and Akhmedov for a workplace injury. Akhmedov is alleged to be an agent of all three entities. Harris' injury was sustained in Dayton, Ohio when Akhmedov allegedly operated a forklift negligently and injured Harris.

MI Specialized Solutions maintained no workers compensation coverage. Ohio has a system different that Michigan's, where all employers pay into one pool. Harris receives workers compensation from this pool, but the amount is more limited than what a worker injured in Michigan would receive.

Harris has not even attempted to argue that MI Specialized Solutions is insured under Plaintiff's commercial general liability insurance policy. It is not. Plaintiff insured only a California LLC located at 15568 Slover Ave., Fontana, CA.

Instead, Harris' argument, although very difficult to discern, appears to be that he was an employee of MI Specialized Solutions *only* but because Akhmedov was acting as an agent of CA Specialized Solutions, Plaintiff's policy provides coverage. That brings into play certain exclusions in the policy, which Harris says should be voided as against public policy. It would appear that the public policy argument only potentially works if Harris is employed solely by MI Specialized Solutions because MI Specialized Solutions did not maintain workers compensation coverage. Harris has never clearly spelled that argument out.

In Harris' response to Plaintiff's motion, Harris maintains that all evidence shows he was an employee of MI Specialized Solutions. Harris submitted the following in support of that argument:

1. Harris provided an excerpt of one section of a statute without any additional information or context and cited MCL 418.161n. This is actually MCL 418.161(1)(n), a portion of the Michigan Workers Compensation Act. Although omitted by Harris, that section begins by providing a definition of "employee" under the act. It provides that an "employee" is every person performing service in the course of the trade, business, profession or occupation of an employer at the time of the injury. It is of little use to say that this part of the act shows Harris was an employee of MI Specialized Solutions. He was an employee of the company he was providing services for – so which company was that? What is helpful in this subsection of the act is the language "[a]n individual for whom an employer is required to withhold federal income tax is prima facie considered to perform service in employment under this act." Plaintiff submitted payroll records in support of its motion for summary disposition showing that CA Specialized Solutions paid Harris (Ex. L to Plaintiff's brief).
2. Harris says "Mr. Harris was always under the direction of MI Specialized Solutions" and "Mr. Harris received all directions and orders from MI Specialized Solutions" and "Mr. Harris never received work instruction from CA Specialized Solutions." Harris has offered no support for these propositions, other than to attach the entire deposition transcripts for Harris and Akhmedov. Without specific page references, the Court will not read the entire depositions in order to determine what evidence

in particular Harris is relying on. To the contrary of Harris' unsupported statements, Plaintiff submitted a letter in support of its motion where CA Specialized Solutions offered continued employment in an alternate position to Harris, with the same compensation (Ex. M to Plaintiff's brief).

3. Harris says that he performed most of his work duties in Michigan and was required to work in Ohio on one occasion. This is another unsupported assertion, but it is probably one that cannot be disputed.
4. Harris makes another unsupported statement, saying "there is no evidence that CA Specialized Solutions benefited from the work Mr. Harris performed." In fact, Plaintiff supported its motion for summary disposition with testimony from Akhmedov's deposition where he said that he [Akhmedov] operated one trucking business and Harris' work was an important aspect of Akhmedov's trucking business that had to be completed in order to operate (Ex. O to Plaintiff's brief). At the time of Harris' accident in February 2018, CA Specialized Solutions was the only entity of Akhmedov that was registered with the U.S. Department of Transportation with authority from the Federal Motor Carrier Safety Administration to operate as a carrier (Ex. Q to Plaintiff's brief).

Plaintiff's claims that CA Specialized Solutions had the ability to hire, fire, and discipline Harris and controlled his work duties are also not helpful. The testimony Plaintiff offers in support of those propositions was that *Akhmedov* had the ability to hire, fire, and discipline Harris and *Akhmedov* controlled his work duties. As Plaintiff states in footnote 2 of its reply brief: "There is no dispute that the same individuals controlled both Specialized Solutions entities, directed the work, and that both entities were engaged in

the same general business of trucking. Both Specialized Solutions entities also claim ownership interests in the Michigan trucking yard and the Dayton, Ohio yard. The Specialized Solutions entities used the same federal employer number, share a website and share the same phone number."

Since Akhmedov is the sole member and manager of both Specialized Solutions entities, the evidence discussed above leads to the following conclusions: (1) the evidence thoroughly contradicts Harris' contention that MI Specialized Solutions was the sole employer, (2) there is evidence to support CA Specialized Solutions as the sole employer, and (3) there is evidence to support MI Specialized Solutions and CA Specialized Solutions as dual employers of Harris.

What does it matter? This Court doesn't know. Repeatedly asking Harris at oral argument did not provide an answer either. In his brief, Harris makes the following *non sequitur* argument:

1. Akhmedov was acting on behalf of all three entities when he injured Mr. Harris.
2. Akhmedov was insured by Plaintiff because he was acting on behalf of CA Specialized Solutions.
3. Therefore, all entities share vicarious liability for Harris' injuries.
4. Therefore, policy exclusions in 2.2 should be void as against public policy.

(p. 7 of Harris' response brief)

While it is not the Court's job to find a basis for any party's position, Harris' argument can only be understood as this: Harris was employed by a Michigan employer who was required to have workers compensation coverage. MI Specialized Solutions did not have workers compensation insurance in place at the time of Mr. Harris' accident. CA

Specialized Solutions is liable and is covered by insurance. However, the employee exclusion clause of the policy should be declared void as against public policy because it excludes coverage for injuries to an employee even when the employee has no recourse to workers compensation.

As discussed above, the evidence does not support Harris' claim that his sole employer was MI Specialized Solutions. The evidence brought forward by Plaintiff supports either of two propositions: Mr. Harris was an employee of CA Specialized Solutions or Mr. Harris had dual employers, being both MI Specialized Solutions and CA Specialized Solutions. Assuming for the sake of argument that CA Specialized Solutions has potential liability (and thus a duty to indemnify and defend), either one of these scenarios brings into play Plaintiff's exclusions 2d and 2e.

Exclusion 2d provides no coverage for any obligation of the insured for worker's compensation, disability benefits, or unemployment compensation. Exclusion 2e provides no coverage for bodily injury to any employee.

Meridian Mut Ins Co v *Wypij*, 226 Mich App 276; 573 NW2d 320 (1997) provides solid grounds for rejecting Harris' request to invalidate the exclusions. *Meridian Mutual* is binding precedent and it is directly applicable to Defendant Harris' argument:

> Defendant Cox argues that even if he could be considered an employee, an employee exclusion clause should not be applied where, as here, the injured worker cannot make a claim under the WDCA. We disagree. Cox cites *Michigan Mut. Liability Co. v. Ohio Casualty Ins. Co.,* 123 Mich.App. 688, 333 N.W.2d 327 (1983), overruled in part in *Century Mut. Ins. Co. v. League General Ins. Co.,* 213 Mich.App. 114, 120–121, 541 N.W.2d 272 (1995), to support his position. The panel in *Michigan Mutual, supra* at 696–699, 333 N.W.2d 327, held that an employee exclusion clause similar to the one at issue here did not exclude coverage for an injury to an employee of the named insured. However, *Michigan Mutual* is factually distinguishable from the instant case. First, the injured employee was not seeking to sue his employer, who was the named insured. Instead, the employee sued a

> third party who was covered under the omnibus provisions of his employer's policy. *Id.* at 695–697, 333 N.W.2d 327. The panel in *Michigan Mutual* found that the "insured" for purposes of the employee exclusion clause was the party claiming coverage, rather than the named insured. The Court relied in part on the presence of a severability of interest clause in the insurance policy. *Id.* at 696–699, 333 N.W.2d 327. Our case is distinguishable regarding this point, because there is no question that Cox sued his employer, rather than a third party.
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> *Michigan Mutual* is also distinguishable on at least one other ground. The panel there relied on its interpretation of the purpose of the employee exclusion clause: "The obvious purpose of the employee exclusion is to make clear that the automobile liability policy does not provide coverage for claims arising under workers' compensation laws." *Id.* at 696–697, 333 N.W.2d 327. While this may have been the purpose of the employee exclusion clause in *Michigan Mutual,* we must conclude that the employee exclusion clause in this case had a broader purpose. In construing contracts, we must look at the policy as a whole and give meaning to all terms. *Auto–Owners Ins. Co. v. Harrington,* 455 Mich. 377, 381, 565 N.W.2d 839 (1997). Here, the policy contained a separate clause that made it clear that any claims covered under the worker's compensation laws are excluded from coverage. Thus, in order to give meaning to all terms in the contract, we must assume that the employee exclusion clause had some purpose beyond simply excluding worker's compensation claims. We conclude that the purpose of the employee exclusion clause in this case was, just as it states, to exclude coverage for any claim for bodily injury to an employee of the insured arising out of and in the course of employment by the insured. Thus, *Michigan Mutual* is distinguishable, and the trial court properly granted summary disposition for plaintiff.
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> *Id*, 282-283.

Exclusion 2d of Plaintiff's policy excludes obligations under workers compensation laws. Exclusion 2e of Plaintiff's policy excludes coverage for bodily injury to any person who is an employee regardless of whether the insured may be liable as an employer. As in *Meridian Mutual*, Plaintiff's policy has an exclusion specific to workers compensation and an exclusion for any employee claim for bodily injury. The employee exclusion clause has a purpose beyond simply excluding workers compensation claims. It serves no public

policy purpose to void a contracted-for exclusion for all employee claims on grounds that Mr. Harris could not receive workers compensation in Michigan.

For all of the foregoing reasons, Plaintiff's motion for summary disposition is granted and the Court declares the following:

Plaintiff owes no duty of defense or indemnity to the Michigan entity Specialized Solutions, LLC because Plaintiff did not insure that entity.

Plaintiff owes no duty of defense or indemnity to the California entity Specialized Solutions, LLC because the policy excludes coverage for the underlying suit.

Plaintiff is entitled to a default judgment as to Defendant Akhmedov because the policy excludes coverage for claims in the underlying suit against him and because he has failed to answer the complaint.

/S/

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Hon. Joyce Draganchuk (P39417)
Circuit Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the above Opinion and Order Granting Plaintiff's Motion for Summary Disposition upon the attorneys of record by placing said document in sealed envelopes addressed to each and depositing same for mailing with the United States Mail at Lansing, Michigan, on August 15, 2019.

/S/

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Michael Lewycky
Law Clerk/Court Officer