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Illinois Court Addresses CGL Policy Employee Exclusion

BY: James M. Eastham

In *Mt. Hawley Ins. Co. v. Stone Dev. Grp., Inc.*, 2026 IL App (1st) 250465, the Illinois 1st District Court of Appeals addressed whether an employee exclusion in a commercial general liability ("CGL") insurance policy precluded coverage its insured Stone Development Group ("SDG") for liability that SDG incurred as a result of a construction site accident resulting in the death of Ramiro Godinez.

During the pendency of the wrongful death case, Mt. Hawley filed the complaint for declaratory judgment seeking a finding that Mt. Hawley had no duty to defend or indemnify SDG. Mt. Hawley asserted that Godinez was an employee of SDG at the time of his accident, and therefore, the policy exclusion for liability for bodily injury to employees precluded coverage. Mt. Hawley cited the employee exclusion, which provides that the policy did not apply to "Employer's Liability:" "Bodily injury" to "an 'employee' of the insured arising out of and in the course of: (a) Employment by the insured; or (b) Performing duties related to the conduct of the insured's business." The term "employee" was defined in the policy and provided that "'Employee' includes a 'leased worker,'" but "does not include a 'temporary worker.'"

Mt. Hawley alleged that Godinez was an employee of SDG whose bodily injuries arose out of and in the course of his employment by SDG and thus, the policies provided no coverage to SDG for the wrongful death case. The matter proceeded to a bench trial wherein the circuit court accepted Mt. Hawley's proposed findings of fact and conclusions of law and incorporated them as the court's own findings of fact and conclusions of law. The court thereafter ruled that Mt. Hawley had no duty to indemnify SDG in the wrongful death case.

On appeal, SDG denied that Godinez was ever an employee of SDG. Rather, SDG asserted that per deposition testimony of SDG personal, at the time of the injury SDG was still investigating whether to hire Godinez. Specifically, there was testimony that Godinez was only "invited" to the job site so he could interview for a carpentry position. SDG personnel characterized Godinez as "a prospective employee" and that Godinez did not perform any work for SDG before the accident.

The Estate further argued that the definition of "employee" in the policy was vague, and that any ambiguity should be construed against Mt. Hawley. Specifically, the Estate took the position that "employee" is only defined such that it "includes a 'leased worker' and does not include a 'temporary worker.'" As such, the Estate argued that “employee” was limited to the policy definition and that it would be error to expand the definition by relying on the dictionary definition. Mt. Hawley responds that the term "employee" is not specifically defined in the policy and the circuit court properly used the dictionary definition of the term. In rebuttal, Mt. Hawley argued that the term "employee" was not specifically defined in the policy besides including "leased workers" and excluding "temporary workers." Correspondingly, since there was no specific definition, the term "employee" should be given its ordinary meaning.

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Agreeing with Mt. Hawley, the Court began by holding that where a term in an insurance policy is not defined, the term is given its plain, ordinary and popular meaning (i.e. its dictionary definition). The court then proceeded to hold that as defined the term “employee” was not ambiguous. According to the Court, the fact that the term "employee" is only partially defined in the policy to include "leased workers" and not include "temporary workers" does not make the term susceptible to more than one reasonable interpretation. In support of this conclusion, the Court noted that the policy's use of the word "includes" suggests that the policy only intends to provide examples of what does and does not qualify as an employee, rather than limit the definition to only those two categories. The Court thereafter adopted Mt. Hawley's proposed dictionary definition of the term 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." Black's Law Dictionary (11th ed. 2019).

Having resolved the issues surrounding the definition of “employee”, the court turned its attention to the available evidence and stated that to determine whether an individual is an “employee” the court examines several factors, such as the alleged employer's control over the individual, the employer's ability to discharge the individual, and whether the employer furnished materials, tools, or equipment. After reviewing the totality of the evidence, the Court of Appeals determined that it could not find that the circuit court's conclusion that Godinez was an SDG employee was unreasonable, arbitrary, or not based on the evidence presented. As the finding was not against the manifest weight of the evidence, the Court upheld the circuit court’s ruling in favor of Mt. Hawley.

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