SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1731-21

ALVERSE CANNON,

Plaintiff-Respondent,

v.

BRAVO PACK, INC.,

Defendant-Appellant,

and

BRAVO PACK, INC.,

Defendant-Third-Party
Plaintiff/Cross-Respondent,

v.

EMPLOYERS PREFERRED
INSURANCE,

Third-Party Defendant-
Respondent/Cross-Appellant.

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Argued September 18, 2023 – Decided October 31, 2023

Before Judges Gilson, DeAlmeida, and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-3393-19.

William J. Martin argued the cause for appellant/cross-respondent Bravo Pack, Inc. (Martin Gunn & Martin, PA, attorneys; William J. Martin and Michael A. Mascino, on the briefs).

William P. Krauss and Evan D. Haggerty argued the cause for respondent/cross-appellant Employers Preferred Insurance (Connell Foley LLP, attorneys; William P. Krauss and Evan D. Haggerty, of counsel and on the briefs).

PER CURIAM

This appeal concerns disputes over the coverage provided by a Workers' Compensation and Employers Liability Insurance Policy (the Insurance Policy). The Insurance Policy was issued by Employers Preferred Insurance Company (Preferred) to Bravo Pack, Inc. (Bravo). Bravo was sued by one of its former employees, Alverse Cannon, who alleged that Bravo was responsible for his employment-related injuries. In a separate opinion, we affirm an order granting summary judgment to Bravo and dismissing all claims against Bravo with prejudice. Alverse Cannon v. Bravo Pack, Inc., No. A-1702-21.

In this appeal, Bravo challenges the portion of an August 12, 2021 order granting partial summary judgment to Preferred on the grounds that an exclusion

in the Insurance Policy excused Preferred from having to defend and indemnify Bravo from the claim that Bravo committed an intentional wrong in injuring Cannon. Preferred cross-appeals from the portion of the August 12, 2021 order granting partial summary judgment to Bravo on the grounds that the Insurance Policy required Preferred to defend Bravo against Cannon's claims alleging that Bravo had negligently, grossly negligently, or recklessly caused his injuries.

Because the Insurance Policy is clear and unambiguous in excluding coverage for claims involving intentional wrongs by Bravo that cause injuries to its employees, we affirm the portion of the order granting partial summary judgment to Preferred. Following the entry of the August 12, 2021 order, Preferred and Bravo settled the portion of their dispute concerning the coverage for defense of Cannon's action to the extent that his claims were based on negligence, gross negligence, or reckless conduct. Accordingly, we dismiss Preferred's cross-appeal as moot. Given that we have affirmed the order granting summary judgment to Bravo on Cannon's claims, there is no further exposure to Preferred related to its cross-appeal.

I.

Bravo and Preferred do not dispute the material facts related to their cross-motions for summary judgment on the coverage provided by the Insurance

Policy. Instead, the central issue on this appeal is an interpretation of one of the exclusions in the Insurance Policy.

Bravo manufactures shipping supplies, including bubble wrap and bubble mailer envelopes. In March 2019, Cannon applied for a position with and was hired by Bravo. Cannon began work on March 18, 2019, as a machine operator. On his first day of work, Cannon was assigned to be trained by another employee who was operating a Kraft bubble mailer machine. Cannon was severely injured attempting to remove a jammed padded bag when a pneumatic blade in the machine caught Cannon's left hand and partially amputated three of his fingers.

Cannon received workers' compensation benefits under Part One of the Insurance Policy. In August 2019, Cannon sued Bravo, alleging that Bravo had caused his injuries by "negligently, recklessly, grossly negligently, and/or intentionally remov[ing] the safety guards from the bubble mailer machine and/or negligently, recklessly, grossly negligently, and/or intentionally fail[ing] to install the safety guards on the bubble mailer machine."

Bravo filed an amended answer and a third-party complaint against Preferred. Bravo alleged that Preferred had improperly denied coverage and thereby breached the Insurance Policy. Bravo sought a declaration that the Insurance Policy entitled Bravo to defense against and indemnification of the

claims asserted by Cannon. Preferred filed an answer to the third-party complaint denying its obligation to provide coverage and asserting an affirmative defense that coverage was excluded.

The Insurance Policy provides Bravo with two types of insurance: workers' compensation coverage in Part One and employer's liability coverage in Part Two. The workers' compensation insurance "applies to bodily injury by accident or bodily injury by disease." Preferred agreed to "pay promptly when due the benefits required of [Bravo] by the [W]orkers['] [C]ompensation [L]aw." Preferred also assumed "the right and duty to defend at [its] expense any claim, proceeding or suit against [Bravo] for benefits payable by this insurance." The Insurance Policy then states that Preferred has "no duty to defend a claim, proceeding or suit that is not covered by this insurance."

In Part Two, the employer's liability section, the Insurance Policy states:

> A. How This Insurance Applies
>
> This employer[']s liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.
>
> 1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
>
> 2. The employment must be necessary or incidental to your work in [New Jersey].

3. Bodily injury by accident must occur during the policy period.

4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;

2. For care and loss of services; and

3. For consequential bodily injury to a spouse, child, parent, brother[,] or sister of the injured employee; provided that these

damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

. . . .

4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;

5. Bodily injury intentionally caused or aggravated by [Bravo];

. . . .

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending

> after we have paid our applicable limit of liability under this insurance.

Part Two of the Insurance Policy was amended by the New Jersey Part Two Employers Liability Endorsement (the Endorsement). In pertinent part, the Endorsement states:

> With respect to Exclusion C5, this insurance does not cover any and all intentional wrongs within the exception allowed by N.J.S.A. 34:15-8 including but not limited to, bodily injury caused or aggravated by an intentional wrong committed by you or your employees, or bodily injury resulting from an act or omission by you or your employees, which is substantially certain to result in injury.

Preferred and Bravo cross-moved for summary judgment. Preferred contended that it had no duty to provide Bravo with defense or indemnification based on exclusions in the Insurance Policy. Bravo argued that it was entitled to defense and indemnification under the Insurance Policy because the C5 Exclusion is invalid, ambiguous, or contrary to Bravo's reasonable expectations.

After hearing argument, on August 12, 2021, the trial court granted in part and denied in part Preferred's motion for summary judgment, and it granted in part and denied in part Bravo's cross-motion for summary judgment. The trial court held that Bravo was not entitled to coverage for Cannon's claims that Bravo intentionally caused his injuries. The trial court also held that Bravo was

entitled to defense for Cannon's allegations that Bravo caused his injuries by negligence, gross negligence, or reckless conduct. Preferred filed a motion for reconsideration, but the trial court denied that motion in an order entered on October 15, 2021.

Bravo now appeals from the provision of the August 12, 2021 order granting partial summary judgment to Preferred based on the C5 Exclusion. Preferred cross-appeals from the provision of the trial court's August 12, 2021 order granting partial summary judgment to Bravo and requiring Preferred to pay the defense costs based on Cannon's claims that Bravo was negligent, grossly negligent, or reckless in causing his injuries.

II.

In its appeal, Bravo argues that the trial court erred in granting partial summary judgment to Preferred for two reasons. First, it contends that the trial court incorrectly found that the C5 Exclusion was unambiguous and barred coverage. Second, it asserts that the trial court erred because, even if the exclusion was unambiguous, it violates the public policy of the Workers' Compensation Act, which mandates that an employer must make sufficient provisions for payment of any obligations to an injured employee.

The controlling issue on Bravo's appeal is whether the Insurance Policy's C5 Exclusion applies. "The interpretation of an insurance policy, like any contract, is a question of law, which we review de novo." Sosa v. Mass. Bay Ins. Co., 458 N.J. Super. 639, 646 (App. Div. 2019) (citing Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med. & Physical Therapy, 210 N.J. 597, 605 (2012)). "In attempting to discern the meaning of a provision in an insurance contract, the plain language is ordinarily the most direct route." Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008) (citing Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001)). "We are guided by general principles: 'coverage provisions are to be read broadly, exclusions are to be read narrowly, potential ambiguities must be resolved in favor of the insured, and the policy is to be read in a manner that fulfills the insured's reasonable expectations.'" Sosa, 458 N.J. Super. at 646 (quoting Selective Ins. Co., 210 N.J. at 605).

"When the provision at issue is subject to more than one reasonable interpretation, it is ambiguous, and the 'court may look to extrinsic evidence as an aid to interpretation.'" Templo Fuente de Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 200 (2016) (quoting Chubb Custom Ins. Co., 195 N.J. at 238). By contrast, "[i]f the plain language of the policy is

unambiguous, we will 'not engage in a strained construction to support the imposition of liability or write a better policy for the insured than the one purchased.'" Ibid. (quoting Chubb Custom Ins. Co., 195 N.J. at 238). "[C]ourts will enforce exclusionary clauses if [they are] 'specific, plain, clear, prominent, and not contrary to public policy,' notwithstanding that exclusions generally 'must be narrowly construed,' and the insurer bears the burden to demonstrate they apply." Abboud v. Nat'l Union Fire Ins. Co. of Pittsburgh, 450 N.J. Super. 400, 407 (App. Div. 2017) (quoting Flomerfelt v. Cardiello, 202 N.J. 432, 441-42 (2010)).

There is no dispute that Cannon sought and received workers' compensation benefits. Accordingly, Preferred has provided workers' compensation benefits and Bravo has been provided with coverage under Part One of the Insurance Policy.

The issue is whether Bravo is entitled to coverage under Part Two of the Insurance Policy, which provides employers liability coverage. In Part Two, Preferred agreed to "pay all sums that [Bravo] legally must pay as damages because of bodily injury to [a Bravo] employee[], provided the bodily injury is covered by this Employers Liability Insurance." The Insurance Policy then lists twelve exclusions in subsection C. Exclusion C5 states that the Insurance Policy

does not cover "[b]odily injury intentionally caused or aggravated by [Bravo.]" The Endorsement to the Insurance Policy goes on to state:

> With respect to Exclusion C5, this insurance does not cover any and all intentional wrongs within the exception allowed by N.J.S.A. 34:15-8 including but not limited to, bodily injury caused or aggravated by an intentional wrong committed by [Bravo] or [Bravo's] employees, or bodily injury resulting from an act or omission by [Bravo] or [Bravo's] employees, which is substantially certain to result in injury.

The Endorsement clearly states that the Insurance Policy exclusion is co-extensive with bodily injury claims that satisfy the "intentional wrong" exception to the Workers' Compensation Act's exclusivity provision. By referencing both "intentional wrongs" and acts or omissions that are "substantially certain to result in injury," the C5 Exclusion clearly and unambiguously covers Cannon's intentional tort claims against Bravo. Consequently, we conclude that Preferred had no duty to defend Bravo in the suit brought by Cannon to the extent that Cannon was asserting that Bravo's conduct constituted an intentional wrong.

We reject Bravo's argument that the C5 Exclusion is ambiguous because the exclusion does not expressly address the duty to defend. The exclusion plainly states that the Insurance Policy "does not cover" "[b]odily injury intentionally caused or aggravated by" Bravo. Coverage under the Insurance

Policy includes both a duty to defend and a duty to indemnify. The exclusion clearly applies to both duties.

We also reject Bravo's argument that enforcing the C5 Exclusion violates public policy. In that regard, Bravo contends that restricting coverage would violate the statutory mandate that employers obtain compulsory insurance. Bravo points out that the Workers' Compensation Act requires an employer to "make sufficient provision for the complete payment" of any obligation of the employer to an injured employee. We reject this argument for two reasons. First, Bravo was granted summary judgment on the intentional tort claims brought by Cannon. Consequently, it incurred no indemnity obligation. In that regard, the compulsory insurance Bravo points to assures employees recovery against their employers. It does not address the employers' recoveries against their insurers. In short, we do not interpret the Workers' Compensation Act to be inconsistent with an employer's liability policy that excludes coverage for an intentional wrong.

Bravo is not seeking indemnification for a liability or obligation it has incurred to an injured employee. See N.J.S.A. 34:15-71. Instead, Bravo is seeking indemnification for its own defense costs. Those costs are neither within the ambit of the Workers' Compensation Act's mandate nor the public

policy that supported that mandate. Therefore, there is no public policy basis to set aside the Insurance Policy's exclusion of coverage for intentional tort claims brought by employees against Bravo.

Finally, we reject Bravo's contention that denying it a defense would frustrate its reasonable expectations under the Insurance Policy. We have previously explained that an insured's reasonable expectations will override the plain meaning of a policy only in "exceptional circumstances." Abboud, 450 N.J. Super. at 408 (quoting Doto v. Russo, 140 N.J. 544, 556 (1995)). "Courts may vindicate the insured's reasonable expectations over the policy's literal meaning 'if the text appears overly technical or contains hidden pitfalls, cannot be understood without employing subtle or legalistic distinctions, is obscured by fine print, or requires strenuous study to comprehend.'" Id. at 409 (quoting Zacarias, 168 N.J. at 601). Bravo has not demonstrated that Preferred's Insurance Policy is so obscured that its expectations should triumph over the policy's plain language.

III.

In its cross-appeal, Preferred challenges the portion of the August 12, 2021 order that required it to provide Bravo with defense costs to cover Cannon's claims of negligence, gross negligence, or reckless conduct by Bravo. On

December 30, 2021, Bravo and Preferred entered into a settlement agreement and release. The release covered all of Bravo's claims, including rights to attorney's fees and costs through December 22, 2021. The release does not apply to attorney's fees and costs that may be incurred by Bravo after December 23, 2021, but Bravo is not seeking such claims on this appeal. In contrast, the claims sought to be appealed by Preferred are settled and resolved by the settlement agreement. Accordingly, we dismiss Preferred's cross-appeal as moot. See Janicky v. Point Bay Fuel, Inc., 410 N.J. Super. 203, 208 (App. Div. 2009) (dismissing defendant's appeal as moot because the parties voluntarily entered into a settlement agreement resolving all of plaintiff's claims).

Affirmed.