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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001028-MR

CERTAIN UNDERWRITERS
AT LLOYD'S, LONDON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 14-CI-01080

JOSEPH N. POPE, JR., IN HIS
CAPACITY AS DEPUTY
REHABILITATOR OF KENTUCKY
SCHOOL BOARDS INSURANCE
TRUST WORKERS' COMPENSATION
SELF INSURANCE FUND AND OF
KENTUCKY SCHOOL BOARDS INSURANCE
TRUST PROPERTY AND LIABILITY
SELF INSURANCE FUND; KENTUCKY
SCHOOL BOARDS ASSOCIATION; AND
BOARD OF TRUSTEES OF THE
KENTUCKY SCHOOL BOARDS
INSURANCE TRUST

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

** ** * * * * *

BEFORE: ACREE, JOHNSON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Certain Underwriters at Lloyd's, London (Lloyd's) bring this appeal from an Opinion and Order of the Franklin Circuit Court adjudicating coverage under the terms of an insurance policy issued by Lloyd's. We affirm in part, reverse in part, and remand.

The underlying facts of this case are complex; therefore, we will recite only those facts essential to the disposition of this appeal. The record indicates that the Kentucky School Boards Association (KSBA) created the Kentucky School Boards Insurance Trust (KSBIT) to maintain certain self-insurance funds, including the Kentucky School Boards Insurance Trust Workers' Compensation Fund (Workers' Compensation Fund) and the Kentucky School Boards Insurance Trust Property and Liability Fund (Liability Fund).¹ Kentucky Revised Statutes (KRS) 304.48-030; KRS 304.48-140; KRS 304.50-010. The Board of Trustees of the KSBIT (KSBIT Trustees) was tasked with the routine operation of both Funds.² Subsequently in 2012, KSBA and KSBIT obtained a policy styled "Trustees Errors and Omissions and Directors and Officers Liability Insurance for Associations with Self Insurance Funds" (Insurance Policy) from Lloyd's. The Workers'

¹ Throughout this Opinion, we may collectively refer to the Kentucky School Boards Insurance Trust Workers' Compensation Fund and the Kentucky School Boards Insurance Trust Property and Liability Fund as the "Funds."

² In 2009, the management of the Funds were transferred by agreement to the Kentucky League of Cities and the Kentucky League of Cities Insurance Services Association.

Compensation Fund and the Liability Fund were named trusts insured under the Insurance Policy.

On November 7, 2013, the Commissioner of the Kentucky Department of Insurance (Commissioner) filed two separate Petitions for Rehabilitation in the Franklin Circuit Court against, *inter alios*, the Workers' Compensation Fund and Liability Fund. In the petitions, the Commissioner alleged that both Funds were in hazardous financial condition. The Commissioner claimed that the total net deficit of the Workers' Compensation Fund was \$37,089,129, and the total net deficit of the Liability Fund was \$8,829,532. The Commissioner sought to be appointed as Rehabilitator and also requested Joseph N. Pope, Jr., to be appointed as Special Deputy Rehabilitator of both Funds. KRS 304.33-150.

Thereafter, on August 26, 2014, and May 12, 2015, the Deputy Rehabilitator filed a complaint and amended complaint in the Franklin Circuit Court. The Deputy Rehabilitator named as defendants, *inter alios*, KSBA, KSBIT Trustees, and Lloyd's. The Deputy Rehabilitator alleged that KSBA was negligent in its management of KSBIT, the Workers' Compensation Fund, and the Liability Fund. Additionally, the Deputy Rehabilitator claimed that KSBA breached several statutory duties in relation to the Funds that resulted in negligence *per se*. It was further alleged that KSBA committed negligent misrepresentation and was unjustly enriched. The Deputy Rehabilitator also claimed that KSBIT Trustees were negligent in its administration of the Funds and breached numerous statutory duties

in relation thereto resulting in negligence *per se*. The Deputy Rehabilitator further maintained that KSBIT Trustees breached the fiduciary duties of loyalty and of due care and diligence. The Deputy Rehabilitator sought a declaration of rights that the Insurance Policy issued by Lloyd's provided coverage for the claims asserted against KSBA and KSBIT Trustees. KSBA then filed a cross-claim against Lloyd's seeking a declaration of rights that the Insurance Policy provided coverage for the Deputy Rehabilitator's claims against it.

Eventually, the parties filed motions for summary judgment upon the issue of whether the Insurance Policy issued by Lloyd's provided coverage for the claims asserted against KSBA and KSBIT Trustees. In its motion for summary judgment, Lloyd's maintained that various exclusions in the Insurance Policy precluded coverage; by contrast, the Deputy Rehabilitator and KSBA argued that none of the exclusions were applicable, thus coverage was provided by the Insurance Policy.

By Opinion and Order entered June 11, 2016, the circuit court determined that the Insurance Policy provided coverage for the claims asserted against KSBA and KSBIT Trustees and that the exclusions did not preclude coverage thereunder. This appeal follows.³

To begin, summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*,

³ The June 11, 2016, Opinion and Order included complete Kentucky Rules of Civil Procedure 54.02 language.

807 S.W.2d 476 (Ky. 1991). All facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Id.* And, the interpretation of an insurance contract presents a question of law, which requires our review to proceed de novo. *Kemper Nat'l Ins. Cos. v. Heaven Hill Distilleries Inc.*, 82 S.W.3d 869 (Ky. 2002). Our review proceeds accordingly.

Lloyd's contends that the circuit court committed clear error by rendering summary judgment against it. In particular, Lloyd's argues the circuit court erroneously interpreted the insurance policy as providing coverage and that four separate exclusions contained therein preclude coverage. These four exclusions are: (1) insured vs. insured exclusion, (2) assessment exclusion, (3) financial deficit exclusion, and (4) rehabilitation exclusion.

Before embarking upon an analysis of the above exclusions in the Insurance Policy, it is necessary to review the rules of interpretation and construction of an insurance contract. The Kentucky Supreme Court has held that "the words employed in insurance policies, if clear and unambiguous, should be given their plain and ordinary meaning." *Nationwide Mut. Ins. Co. v. Nolan*, 10 S.W.3d 129, 131 (Ky. 1999). If the terms are ambiguous, an insurance policy is to be liberally construed. *Deerfield Ins. Co. v. Warren Cty. Fiscal Court ex rel. City Cty. Planning Comm'n*, 88 S.W.3d 867, 873 (Ky. App. 2002). And, "Kentucky law remains clear that exclusions are to be narrowly interpreted and all questions resolved in favor of the insured." *St. Paul Fire & Marine Ins. Co. v. Powell-Walton-Milward, Inc.*, 870 S.W.2d 223, 227 (Ky. 1994). With these principles in

mind, we shall analyze the insured vs. insured exclusion, assessment exclusion, financial deficit exclusion, and rehabilitation exclusion *seriatim*.

We begin our analysis with the insured vs. insured exclusion in the policy which reads as follows:

The Company shall not be liable to make any payment for LOSS or CLAIMS EXPENSE for any CLAIM based upon, arising out of, directly or indirectly resulting from, or in any consequence of the following:

any CLAIM made by an ENTITY or TRUST insured under this POLICY against another ENTITY or TRUST insured under this Policy.

In its June 16, 2016, Opinion and Order, the circuit court determined that the insured vs. insured exclusion did not preclude coverage:

The Court finds that Deputy Rehabilitator is not an entity or trust insured under the Policy, and as such, the Insured Entity v. Insured Entity Endorsement (Endorsement 13) is not applicable to the Deputy Rehabilitator's claims. In its August 13, 2015[,] Motion to Dismiss, Lloyd's acknowledged that "[t]he Rehabilitator is not a party to the policy." While Lloyds is correct that pursuant to Kentucky's Insurer's Rehabilitation and Liquidation Law, codified at KRS Chapter 304.33, the Deputy Rehabilitator can bring actions that would normally belong to KSBIT, he is also empowered to bring actions that "protect and benefit insureds and creditors" through the rehabilitation process. *See Ky. Cent. Life Ins. Co. v. Park Broadcasting of Ky., Inc.*, 913 S.W.2d 330, 335 (Ky. Ct. App. 1996).

June 16, 2016, Opinion and Order at 14. The circuit court effectively concluded that the Deputy Rehabilitator asserted the claims raised in the complaints on behalf

of “insureds and creditors”; thus, the insured vs. insured exclusion was inapplicable. The circuit court erred in its conclusion on this issue.

A rehabilitator is generally charged with reforming and revitalizing a troubled insurance company. The statutory powers of a rehabilitator are set forth in KRS 304.33-160 and are, in relevant part, as follows:

(2) General power. The rehabilitator may take action as he or she deems necessary or appropriate to reform and revitalize the insurer. He or she shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He or she shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

.....

(4) Pursuit of insurer’s claims against insiders. If the rehabilitator finds that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, employee, or other person, he or she may pursue all appropriate legal remedies on behalf of the insurer.

KRS 304.33-160(2) and (4). Most importantly, a rehabilitator, similar to the commissioner of insurance, “is a creature of statute and has no authority except that which the statute confers.” *See Ky. Cent. Life Ins. Co. v. Stephens*, 897 S.W.2d 583, 587 (Ky. 1995).

As hereinbefore stated, the circuit court concluded that the Deputy Rehabilitator asserted claims against KSBA and KSBIT Trustees on behalf of insureds and creditors of the Liability Fund and the Workers’ Compensation Fund.

However, KRS 304.33-160 does not confer upon the rehabilitator the power to bring actions on behalf of insureds and creditors.⁴ Rather, KRS 304.33-160(4) expressly empowers the rehabilitator to pursue “on behalf of the insurer” tort claims and breach of contract claims against “any officer, manager, agent, employee, or other person[.]” Additionally, under KRS 304.33-160(2), the rehabilitator is specifically granted “all the powers of the directors, officers, and managers[.]” Accordingly, we conclude that the Deputy Rehabilitator “step[ped] into the shoes” of the Liability Fund and Workers’ Compensation Fund and asserted the various claims set forth in the complaints against KSBA and KSBIT Trustees. *Ky. Cent. Life Ins. Co. By and Through Stephens v. Park Broadcasting of Kentucky, Inc.*, 913 S.W.2d 330, 335 (Ky. App. 1996). As the Deputy Rehabilitator asserted the claims on behalf of the Funds, we must analyze the insured vs. insured exclusion to determine if coverage is precluded thereby.

Under the insured vs. insured exclusion, “any claim made by an ENTITY or TRUST insured under this Policy against another ENTITY or TRUST insured under this Policy” is specifically excluded from coverage. This exclusion utilizes that the terms “entity” and “trust” insured under the Insurance Policy. The Insurance Policy itself specifies those that may be considered an insured entity or an insured trust. Under the terms of the Insurance Policy and relevant to this appeal, the Insurance Policy defined entity as any “entity named in the

⁴ We note that if Kentucky School Boards’ Insurance Trust Property and Liability Self Insurance Fund and Board of Trustees of the Kentucky School Boards Insurance Trust were in liquidation proceedings, as opposed to rehabilitation, Kentucky Revised Statutes 304.33-240 grants the liquidator power to bring actions on behalf of creditors and insureds.

Declarations and any additional entities named in endorsements.” And, it defined trust as “the Self-Insured Trust, . . . named in the Declarations and any additional Self-Insured Trust . . . named in endorsements.” KSBA was named as an entity on the Declarations page; KSBIT was named as a trust on the Declarations page; the Workers’ Compensation Fund was named as a trust in Endorsement Number 10, and the Liability Fund was also named a trust in Endorsement Number 10.

The Deputy Rehabilitator instituted this action, on behalf of the Workers’ Compensation Fund and the Liability Fund, against KSBA and KSBIT Trustees. Under the plain terms of the Insurance Policy, the Workers’ Compensation Fund and the Liability Fund are considered trusts insured thereunder, and KSBA is considered an entity insured thereunder. Therefore, we hold that the insured vs. insured exclusion precludes coverage for any claims asserted against KSBA by the Deputy Rehabilitator. Accordingly, we reverse in part the circuit court’s summary judgment on this issue as concerns KSBA.

However, it is equally clear that KSBIT Trustees are neither an entity nor a trust as strictly defined by the Insurance Policy. We note that Page 1 of the Policy states that the policy provides insurance coverage for:

CLAIMS MADE AND REPORTED POLICY
TRUSTEES ERRORS AND OMISSIONS AND
DIRECTORS AND OFFICERS LIABILITY
INSURANCE FOR ASSOCIATIONS WITH SELF
INSURANCE FUNDS

By its own definition, the policy is intended to provide insurance coverage for trustee errors and omissions, which fits the allegations asserted in this action against the KSBIT Board of Trustees for negligence and breach of fiduciary duty.

In a related appeal from this very action, as concerns governmental immunity, the Kentucky Supreme Court recently discussed the KSBIT Trustees. *Board of Trustees of the Ky. School Board Ins. Trust v. Pope*, 528 S.W.3d 901 (Ky. 2017).

In that case, the Supreme Court noted:

The Board of Trustees of the Kentucky School Boards Insurance Trust manages the self-insurance funds established to provide workers' compensation insurance and property and liability insurance to local public school districts that are members of the Kentucky School Board Association (KSBA). Prior to the involvement of the Deputy Rehabilitator, KSBIT's responsibilities included the collection and management of the Trust's funds, which are comprised of member contributions, policy dividends, and rate refunds; investments and income thereon; and other money and property in the hands of the Trust in connection with its administration.

Id. at 903.

The Court further addressed the Board of Trustees as follows:

The KSBIT Board was established in 1978 upon the execution of the Agreement and Declaration of Trust (Trust Agreement). The founding parties identified in clause 1 of the Trust Agreement are: KSBA, seven named individuals to serve as Trustees, and the Trust itself. None of the individual public school boards or school districts that comprise the KSBA membership or participate in KSBIT's insurance programs are mentioned in the Trust Agreement.

Id. at 905 (footnote omitted).

It is evident to this Court that the underlying trust agreement created a board of trustees to manage KSBIT, said trustees being a party to this action and appeal, for whom this policy was written to cover their errors and omissions. The trustees are not specifically excluded in the endorsement. As such, we conclude the insured vs. insured exclusion does not operate to exclude coverage for claims asserted against KSBIT Trustees, and therefore affirm in part the summary judgment as pertains to coverage for the Board of Trustees.

However, our analysis does not end here – there are three remaining policy exclusions to be considered – rehabilitation exclusion, financial exclusion, and assessment exclusion, which we shall now address. These relevant policy exclusions read:

The Company shall not be liable to make any payment for LOSS of CLAIMS EXPENSE for any CLAIM based upon, arising out of, directly or indirectly resulting from, or in any consequence of the following:

.....

[1] [A]ny suspension of payment by any bank, banking firm, or broker or dealer in securities or commodities; or bankruptcy, insolvency, receivership or rehabilitation of the INSURED or the INSURED's estate;

.....

[2] Any financial deficit of any INSURED[; and]

.....

[3] Any assessment of, insufficient assessment of, or failure to assess the ENTITY's or TRUST's membership. However, the Company will pay CLAIMS EXPENSE up

to a Sub-Limit of Liability of \$500,000 each CLAIM, subject to a \$500,000 Policy Aggregate per Policy Period for all CLAIMS alleging that any INSURED assessed, insufficiently assessed or failed to assess the ENTITY'S or TRUST's membership. These CLAIMS are subject to all terms and conditions of the Policy, including but not limited to the DEDUCTIBLE provision. This Sub-Limit of Liability and Policy Aggregate are part of and not in addition to the Policy's Limits of Liability stated in Item 4. of the Declarations.

Insurance Policy at 3, 4; Endorsement No. 12; and Endorsement No. 20.

In its Opinion and Order, the circuit court concluded that the rehabilitation exclusion, financial deficit exclusion, and assessment exclusion did not preclude coverage under the Insurance Policy. In so doing, the circuit court reasoned that "there is an insufficient causal connection between Lloyd's cited exclusions and the Deputy Rehabilitator's claims." In particular, the circuit court examined and interpreted each exclusion separately as follows:

10. Turning first to the Bankruptcy, Insolvency, Receivership, or Rehabilitation Exclusion (Policy Exclusion 1), the Court finds, as a matter of law, that this exclusion does not bar coverage in this case. The exclusion bars coverage for claims, "based upon, arising out of, directly or indirectly resulting from, or in any consequence of . . . bankruptcy, insolvency, receivership or rehabilitation of the INSURED. . ." The Deputy Rehabilitator's claims are not based upon, arising out of, resulting from (either directly or indirectly), or the consequence of, the insolvency or rehabilitation of the KSBIT Funds. The mere fact that the claims were filed by the Deputy Rehabilitator does not mean that the substance of the negligence claims arise out of or result from the insolvency or rehabilitation. Instead, the insolvency of the KSBIT Funds was an effect -- not a cause -- of any negligence that may have been committed by KSBA or the KSBIT Board. Further, the claims

brought by the Deputy Rehabilitator could likewise have been brought by a member or creditor of KSBIT, and are not contingent upon the existence of an insolvency or rehabilitation. Merely being part of the universe of facts demonstrated in this litigation does not transform the insolvency of the KSBIT Funds into a cause of the Deputy Rehabilitator's claims for relief.

....

13. Nor does the Court believe that the Financial Deficit Endorsement (Endorsement 12) precludes coverage for the Deputy Rehabilitator's claims. The Financial Deficit Endorsement bars coverage for claims, "based upon, arising out of, directly or indirectly resulting from, or in any consequence of . . . any financial deficit of any INSURED." As with the above exclusion, the Financial Deficit endorsement only applies if there is a causal relationship between the subject of the endorsement and the claims at issue. Here, the alleged negligence claimed by the Deputy Rehabilitator was not caused by the financial deficit of the KSBIT Funds. Indeed, although the Deputy Rehabilitator mentions the deficit in his Complaint, the Deputy Rehabilitator's claims are not predicated on the existence of a financial debt. To the extent the Deputy Rehabilitator is ultimately able to prove negligence on the part of KSBA or the KSBIT Board, it is possible that the negligence contributed to or increased any financial deficit, but it does not logically follow that the financial deficit could have caused the negligence that is the basis of the Deputy Rehabilitator's claims.

....

16. The Court also cannot agree with Lloyd's that Assessment Exclusion Endorsement (Endorsement 20) precludes coverage for the Deputy Rehabilitator's claims. The Deputy Rehabilitator's negligence claims do not arise from, relate to, or result from any assessment of KSBIT members. There simply is not the causal connection between the exclusion and the Deputy Rehabilitator's claims that is required for the Court to

conclude that the exclusion bars coverage. The Court has previously ruled that all evidence of the assessment will be prohibited from introduction at trial. If the assessment of KSBIT members caused the Deputy Rehabilitator's claims, such assessment would be unavoidable at trial. It is clear to the Court that the Deputy Rehabilitator's claims did not result from any assessment of KSBIT members. Moreover, the Deputy Rehabilitator's claims would still exist even in the absence of any assessment of KSBIT members, and the damages sought by the Deputy Rehabilitator are not the recoupment of any member assessments.

June 16, 2016, Opinion and Order at 11-14.

Lloyd's argues that the circuit court erroneously interpreted the above three exclusions. Lloyd's specifically argues that the circuit court misinterpreted the broad "connecting language" utilized in each exclusion. It asserts that the connecting language "based upon, arising out of, directly or indirectly resulting from, or in any consequence of" was erroneously interpreted by the circuit court. Lloyd's maintains that the circuit court added "its own arbitrary causation test, limiting each of the exclusions to situations where an insured's alleged negligence is preceded and directly caused by the excluded risk." Lloyd's Brief at 14. We disagree.

We conclude the above-cited connecting language utilized in each exclusion is ambiguous and capable of differing interpretations. Therefore, these exclusions are to be narrowly interpreted in favor of providing coverage to KSBIT Trustees. *See St. Paul Fire & Marine Ins. Co.*, 870 S.W.2d 223. Considering the circuit court's interpretation of the Insurance Policy, we believe the circuit court

properly interpreted the above three exclusions. In particular, we agree with the circuit court's holding that a causal connection did not exist between each exclusion and the claims of the Deputy Rehabilitator against KSBIT Trustees. *See Hugenberg v. West American Ins. Co./Ohio Cas. Group*, 249 S.W.3d 174 (Ky. App. 2006). Accordingly, we are of the opinion that the rehabilitation exclusion, financial deficit exclusion, and the assessment exclusion does not preclude coverage for claims asserted against KSBIT Trustees.

Lloyd's also contends that the circuit court erred in awarding the Deputy Rehabilitator attorney's fees. For the reasons stated, we decline to address this issue on the basis that it has been prematurely raised in this appeal. A review of the June 16, 2016, Opinion and Order reveals that the circuit court awarded "costs and expenses" to the Deputy Rehabilitator per KRS 304.33-060. And, the circuit court specifically stated that the Deputy Rehabilitator shall submit an affidavit outlining expenses and costs incurred. However, the circuit court had not awarded by order a specific amount for costs and expenses as of the date the notice of appeal was filed in this case. Apparently, the circuit court did address this issue after the filing of the appeal in this case and we note that a separate appeal has now been filed in this Court regarding the attorney fees issue – 2016-CA-001708-MR, which has been held in abeyance pending the finality of the Supreme Court case referenced earlier in this Opinion. That appeal will address the fees and costs issue in its entirety.

In sum, we reverse the circuit court's summary judgment as to KSBA, and we hold that the insured vs. insured exclusion precluded coverage under the Insurance Policy. We affirm the circuit court's summary judgment concluding that coverage existed under the Insurance Policy for claims asserted against KSBIT Board of Trustees by the Deputy Rehabilitator.

For the foregoing reasons, the Opinion and Order of the Franklin Circuit Court is affirmed in part, reversed in part, and remanded for proceedings consistent with this Opinion.

ACREE, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE
OPINION.

JOHNSON, JUDGE DISSENTING: I concur with the majority opinion on all its holdings except for its holding on the issue of the Insured vs. Insured Exclusion. On that issue, I respectfully dissent.

I agree with the majority that the circuit court correctly applied *Hugenberg v. West American Insurance Co./Ohio Cas. Group*, 249 S.W.3d 174 (Ky. App. 2006) in holding that a causal connection did not exist between the exclusions and the claims of the Deputy Rehabilitator against KSBIT Trustees. The circuit court found that "there is an insufficient causal connection between Lloyd's cited exclusions and the Deputy Rehabilitator's claims." It then found that the insolvency of KSBIT was the effect and not the cause of their insolvency, reasoning that the claims asserted by the Deputy Rehabilitator against KSBIT did

not cause their financial deficit, but rather their financial deficit was caused by and arose out of the alleged negligent acts by KSBA and KSBIT Trustees.

I agree with the majority which applied the standard in *Hugenberg, id.*, to three of the exclusions in the policy by Lloyds; the Insolvency Exclusion, Financial Deficit Exclusion, and the Assessment Exclusion. However, the majority did not apply that standard to the Insured v. Insured Exclusion and it is with that determination that I disagree.

I believe that the majority has misconstrued the circuit court's ruling. While the circuit court at p. 14 incorrectly stated that the Deputy Rehabilitator can bring actions that "protect and benefit insureds and creditors[,] " that was not the actual basis of the circuit court's holding. The circuit court cited *Ky. Central Life Ins. Co. v. Stephens*, 897 S.W.2d 583 (Ky. 1995) as its authority for the statement, and I believe that the majority correctly pointed out that under Kentucky law only a liquidator has such authority, not a rehabilitator.

However, in its final analysis, the circuit court correctly determined that the Deputy Rehabilitator is not an entity or trust insured under the policy based upon its finding that while the policy covers negligent acts, there is an insufficient causal connection between Lloyd's cited exclusions and the Deputy Rehabilitator's claims. (See p. 11 of the circuit court's opinion). The actual finding by the circuit court is that "[t]he Deputy Rehabilitator's claims were caused by and arise out of alleged negligent acts by Defendants KSBA and KSBIT Board, not the matters governed by the exclusions cited by Lloyd's." The circuit court further reasoned

that Kentucky law requires a causal connection between a claim and an exclusion purporting to bar coverage for that claim. In fact, as the circuit court pointed out Lloyd's, as the policy's drafter, could have excluded coverage for any claim brought by a Rehabilitator or Liquidator, but that language is not present in the policy.

The majority accepted and correctly applied the analysis of *Hugenberg* to all of the exclusions except the Insured v. Insured exclusion. With that determination, I disagree and believe that the *Hugenberg* analysis requiring a causal connection is the correct ruling, and would therefore AFFIRM the circuit court's opinion.

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