

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

March 4, 2005

Michael A. Pedicone, Esq.  
Michael A. Pedicone, P.A.  
200 West Ninth St., Suite 700  
PO Box 1395  
Wilmington, DE 19899

Gregory A. Morris, Esq.  
Liguouri, Morris & Redding  
46 The Green  
Dover, DE 19901

Michael Silverman, Esq.  
Silverman & McDonald  
1010 N. Bancroft Parkway, Suite 22  
Wilmington, DE 19805

Stephen P. Casarino, Esq.  
Casarino, Christman & Shalk  
800 N. King St., Suite 200  
PO Box 1276  
Wilmington, DE 19899

Bruce C. Herron, Esq.  
Akin & Herron, P.A.  
1220 N. Market St., Suite 600  
PO Box 25047  
Wilmington, DE 19899

Kathleen Lloyd  
Candice A. Casey  
Kathaleen McCormick  
1966 Van Dyke Greensprings Rd.  
Smyrna, DE 19977

David A. Boswell, Esq.  
Schmittinger & Rodriguez, P.A.  
Wachovia Bank Building  
4602 Highway One, 2<sup>nd</sup> Floor  
Rehoboth Beach, DE 19971-9794

Nicholas E. Skiles  
919 Market Street  
Mellon Bank Center, Suite 1700  
PO Box 330  
Wilmington, DE 19899

RE: *Scottsdale Indemnity Company v. Kathleen Lloyd, et al.*  
C.A. No. 04C-04-024 (THG)

Date Submitted: January 21, 2005

Dear Counsel:

This is the Court's decision addressing Scottsdale Indemnity Company's Motion for Summary Judgment. For the reasons set forth herein, the motion is GRANTED.

Scottsdale Indemnity Company (hereinafter "SIC") issued an insurance policy to Lynn Lee Village Key Box 5 Operatives, Inc. (hereinafter "Key Box") guaranteeing the corporation coverage for general commercial liability from July 19, 2001 until July 19, 2002. The policy provided for \$1.0 million coverage for a single incident and a \$2.0 million cap in total damages subject to the terms, conditions and exclusions set forth in the agreement. One of the exclusions included denies coverage for any "bodily injury" or "property damage" arising out of the "ownership, maintenance, use or entrustment to others of an "auto" owned, operated by, or rented or loaned to any insured." An "insured" party under the agreement includes "an organization other than a partnership, joint venture or limited liability company." The policy also provides coverage for the "executive officers" and directors of the organization, as long as they are acting within their duties as officers or directors.

On December 5, 2001, William Lloyd loaned his personal automobile to Susan Whetstone (hereinafter "Whetstone"). Whetstone, an officer and employee of Key Box, was later involved in an automobile accident which caused her own death and the death and injuries of several passengers in another vehicle.

In August 2002, Abraham Sanchez-Caza (hereinafter "Sanchez-Caza"), by and through his father, Rogelio Sanchez, and the Estate of Luciano Salem (hereinafter "Salem"), both passengers in the second vehicle, filed suit in Superior Court for damages arising out of the automobile accident. One of Plaintiffs' allegations is that Whetstone drove in a reckless, negligent and careless manner to cause the death and injuries to passengers in the other vehicle. The complaint also alleges that William Lloyd was negligent and reckless in entrusting his

vehicle to Whetstone and that the officers and directors of Key Box are thereby liable through the doctrines of agency and respondeat superior.

Key Box, its owners, officers and employees sought assistance from SIC for defense and indemnification purposes. SIC agreed to defend Kathleen Lloyd, Candice Casey, Kathaleen McCormick and Key Box in connection with this accident, subject to a reservation of rights, but denied coverage to William Lloyd and the Estate of Susan Whetstone. Now, SIC has petitioned this Court to determine whether or not the insurance policy extends coverage to any of the Key Box defendants.

SIC moved for summary judgment based on the fact that their agreement with Key Box precluded coverage for any injury arising out of the use of an automobile. According to Superior Court Civil Rule 56(c), summary judgment should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."<sup>1</sup> The Court must view the record in a light most favorable to the non-moving party, and if it finds that there are no material issues of fact therein, it may grant a motion for summary judgment.<sup>2</sup> First, the burden is on the moving party to show that there are no material issues of fact. The burden then shifts to the non-moving party to demonstrate what material issues of fact exist.<sup>3</sup>

---

<sup>1</sup>See Sup. Ct. Civ. Rule 56(c).

<sup>2</sup>See *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>3</sup>See *id.*

Delaware law provides that the allegations contained in a Complaint govern the determination of whether an insurer has a duty to defend or indemnify the insured.<sup>4</sup> Therefore, the Court must look to the Complaint to determine whether an insurance policy covers the type of claim asserted. When those claims fall outside the policy's coverage, the insurer is not obligated to defend or indemnify the insured.<sup>5</sup>

The claims raised by Abraham Sanchez-Caza and the Estate of Luciano Salem against Key Box, its officers and employees are premised on the fact that Lloyd and Whetstone were acting as owners and employees of Key Box at the time of the accident. The Plaintiffs in the underlying action based their claim for damages against Key Box on the contention that William Lloyd negligently entrusted a vehicle to Susan Whetstone in connection with their employment duties to Key Box.

For Plaintiffs Sanchez-Caza and the Estate of Luciano Salem to prevail against Key Box and its representatives, they would have to show that Whetstone and William Lloyd were performing duties as officers or directors of Key Box at the time of the accident. Sanchez-Caza and Salem's only theory of liability as to Key Box and its officers and directors, other than Whetstone and William Lloyd, is based solely on respondeat superior. Key Box and its representatives acknowledge that if William Lloyd and Whetstone are "Insured" under the policy or, rather, if their conduct fell within the scope of employment at the time of the accident, then the exclusion clause results in no coverage.

---

<sup>4</sup>See *Bellanca v. Insurance Company of North America*, 1984 Del. LEXIS 278, \*2 (Del. 1984).

<sup>5</sup> *Id.* at \*2.

But Key Box and its officers contend that William Lloyd and Susan Whetstone are not “insured” under the policy because they may not have been acting within the scope of employment at the time of the accident. Key Box and its officers realize that the only way to get beyond the policy’s preclusion of coverage for damages arising out of the entrustment or operation of an automobile by or to an “Insured” is to claim that Lloyd and Whetstone do not qualify as “Insured” persons under the policy. Key Box and its officers request access to the insurance coverage based on the possibility that Lloyd and Whetstone did not act within the scope of their employment in loaning or operating the vehicle. But to grant this request, when the initial complaint and the ensuing action against Key Box is based entirely on its corporate involvement and enablement of Whetstone’s actions, would be illogical. If Lloyd and Whetstone’s conduct fell within the scope of employment, then the insurance exclusion is triggered. If their conduct was outside the scope of employment, then the policy’s coverage does not apply since it was a commercial liability policy.

Key Box and its officers acknowledge that if Whetstone and William Lloyd’s conduct is found to be on behalf of the corporation, that finding would trigger respondeat superior liability, which would preclude insurance coverage for automobile related incidents. Nevertheless, twisting logic on its head, Key Box and its officers want SIC to defend them because it has not been factually shown whether Whetstone and William Lloyd were acting for the benefit of the corporation or acting outside of any possible respondeat superior theory. I find that SIC has no obligation to defend Key Box or its representatives because the only theory of liability described in the complaint is specifically excluded from coverage in the policy. There is nothing ambiguous about the breadth of the exclusion.

Delaware courts have established that an automobile exclusion contained in a liability policy may validly preclude coverage for damages arising out of an automobile accident. In *Snow v. Home Insurance Company*, an insurance company objected to an insured's attempt to use its homeowner's insurance to cover a negligent entrustment claim arising out of an automobile accident.<sup>6</sup> The policy in that case contained a similar express exclusion of coverage for damages arising out of the use of a motor vehicle.<sup>7</sup> Finding that the language contained in the insurance policy was clear and unambiguous, the Court ruled that the insurance company was not required to defend the insurance claimant on a negligent entrustment claim.<sup>8</sup>

*Snow* relied heavily on *Insurance Company of North America v. Waterhouse, M.D.*, where a similar question was presented.<sup>9</sup> The case involved a homeowner's insurance policy containing a similar auto exclusion as found in this case.<sup>10</sup> The Superior Court engaged in a multi-jurisdictional review to arrive at its final decision.<sup>11</sup> The court determined that the policy could not be read broadly enough to provide coverage for a negligent entrustment claim.<sup>12</sup> The court found that "[w]hile it is laudable to attempt an expansive reading of the policy in an effort to provide the insured with maximum coverage, the clear language of the exclusion cannot be

---

<sup>6</sup>*Snow v. Home Ins. Co.*, 1982 Del. Super. LEXIS 977, \*1-2 (1982).

<sup>7</sup>*Id.* at 2.

<sup>8</sup>*Id.*

<sup>9</sup>424 A.2d 675 (Del. Super. 1980).

<sup>10</sup>*Id.* at 680.

<sup>11</sup>*Id.* at 680-82.

<sup>12</sup>*Id.* at 683.

tortured to achieve that result. . . .”<sup>13</sup> The clear language of the automobile exclusion in this case requires the same result.

SIC provided general liability insurance for Key Box, its officers and directors. The policy unambiguously excluded coverage for damages arising out of automobile accidents. Delaware has reviewed the inclusion of auto exclusion provisions in insurance agreements and found them enforceable.

Nothing in the facts before this Court indicate that SIC should be held responsible for defending or indemnifying Key Box, its owners, officers or employees. The policy cannot be extended to cover those damages. For the aforementioned reasons, SIC’s Motion for Summary Judgment is GRANTED.

Very truly yours,

T. Henley Graves

THG/jfg  
oc: Prothonotary

---

<sup>13</sup>*Id.* at 682.