

**81-LW-2346 (5th)**

---

JOHN BOOKMAN, Plaintiff,

v.

KENNETH W. ETZWILER, Defendant and Third-Party Plaintiff.

OHIO UNIFORMS LTD., INC., Defendant,

v.

GUARANTY NATIONAL INSURANCE COMPANY, Third-Party Defendant.

Case No. 1988.  
5th District Court of Appeals of Ohio, Richland County.  
Decided on September 29, 1981.

PHILIP ALAN B. MAYER, ATTORNEY FOR JOHN BOOKMAN, 12 Park Avenue West, Mansfield, OH 44902.

HARRY M. WELSH, ATTORNEY FOR OHIO UNIFORMS LTD., INC., 39 South Park Street, Mansfield, OH 44902.

DANIEL R. FREYTAG, ATTORNEY FOR GUARANTY NATIONAL INSURANCE CO., FROST, KING & FREYTAG, 370 South Fifth Street, Columbus, OH 43215.

WILLIAM D. VAN TILBURG, ATTORNEY FOR KENNETH W. ETZWILER, TROTH, VAN TILBURG & COGAN, 245 Sandusky Street, Ashland, OH 44805.

OPINION

Before Hon. Robert E. Henderson, P. J., Hon. Norman J. Putman, J., Hon. John R. Milligan, J.

PUTMAN, J.

The plaintiff-appellee, Bookman, brought suit against Kenneth W. Etwiler in his personal capacity and Ohio Uniforms Ltd., Inc., a corporation, alleging that Bookman had been an employee of Ohio Uniforms, and that Ohio Uniforms held public contracts to sell merchandise to the Ashland County Sheriff's Department. The Complaint alleged that Bookman had supported Etwiler's opponent in the Republican primary for sheriff of Ashland County, and because of that fact, Etwiler, who was at all relevant times in this controversy the incumbent sheriff, intentionally and maliciously, by actions including a telephone conversation, interfered with Bookman's employment by inducing Ohio Uniforms to fire Bookman. The allegation was that Etwiler's conduct violated Bookman's right "to be free from employer interference and attempted interference of of an employee's political action." Other aspects of the Complaint are not at issue here.

Guaranty National Insurance Company issued a policy of liability insurance to an insured it elected to characterize as "Ashland County Sheriff's Department, Ashland County Courthouse, Ashland, Ohio" which it further described on the face of the policy as a "Public Entity (County)."

That portion of the insurance contract labeled "Insuring Agreements," included coverage for "C. Libel, slander, defamation, violation of right of privacy OR DISCRIMINATION." (Capitals added.) The second sentence following paragraph C reads:

"Including civil actions, criminal actions or actions brought under the Federal Civil Rights Law all limited to the provisions of 1A, 1B, 1C and 1D above committed or alleged to have been committed by the Named Insured during the policy period."

Immediately upon receiving the Complaint, Etwiler tendered the defense of Bookman's suit to the insurance company, Guaranty National. The insurance company promptly refused the defense of Etwiler, who retained his own counsel thereafter and filed a third-party complaint against the insurance company.

The insurance company filed a motion for, and the trial court granted it a summary judgment against Etwiler.

Etzweiler appeals.

We reverse.

The issue presented is whether the trial court correctly determined that Guaranty National Insurance Company had no duty to provide a defense to Etwiler against the Complaint above described and in granting summary judgment to that insurance company.

In this matter we consider ourselves guided and bound by the opinion of the Ohio Supreme Court in the case of State Farm and Casualty Co., v. Pildner, 40 Ohio St. 2d 101 (1974). Of particular significance is the concurring opinion of then Chief Justice O'Neill. He points out the duty of the insurance company in certain situations to bear the expense of the defense but to neither select nor thereafter influence the lawyer for its insured because its claim of no duty to defend may spring from a related claim of no coverage. This might appear to tempt the insurance company to steer the defense in such a way as to ensnare its potential insured in liability as a consequence of its own efforts to escape liability.

Upon careful consideration of the record in this case, we adhere to the well-established rule which we repeated as recently as February 11, 1981 in the case of Aukerman v. Maxheimer (unreported, but arising out of this county in Case No. 1907) which is:

"It is well settled rule of construction of insurance policy contracts that he who selects ambiguous language is bound by that reasonable construction of the ambiguity most favorable to the insured. See Great American Mutual Indemnity Company v. Jones, 11 Ohio St. 84, and the plethora of authority in 30 O Jur.2d, Insurance, Section 215 at pages 225-226."

Viewing the record in that light, we observe that the designation of the insured as the "Ashland County Sheriff's Department" coupled with the description of it as a "Public Entity (County)", is manifestly calculated to implement the inferred "sales pitch" that the purchase of this insurance serves inter alia, to protect the sheriff and his personnel and their personal assets from that host of potential claims which are limited in nature and number only by the imagination of claimant's counsel.

Secondly, the allegations of the Complaint in this case reasonably fall within the bounds of the word "discrimination" as that term is used by the insurance company in its Insuring Agreement.

Where a more restrictive definition of the terms of an insurance agreement is intended by the insurance company, that definition may be included in the contract document.

The "Ashland County Sheriff's Department" is neither a legal entity nor sui juris nor a political subdivision nor a "taxing authority" with funds separate from the Board of County Commissioners with which to buy insurance.

In summary, there are two deliberately-selected ambiguities in this case-the designation of the named insured and the undefined terms of the insuring agreement.

In our judgment, the insurance company owes the obligation to its insured of paying for his defense and the separate obligation of avoiding not only the fact of control over its conduct, but the appearance of control over its conduct for the reasons stated by Chief Justice O'Neill in Pildner, supra, at 40 Ohio St. 2d, pp. 105 through 106.

We turn now to the separate question of whether the "no action/no impleader" clause in the insurance contract alters this case. It appears from page 5 of the trial court's judgment entry that the trial court was influenced in its judgment entering a summary judgment in favor of the insurance company, by that provision of the policy which provides in substance that no action shall lie against the insurance company until after a judgment has been entered