

FILED
11-10-2023
ONEIDA COUNTY
CLERK OF CIRCUIT
COURT
2021CV000073

STATE OF WISCONSIN CIRCUIT COURT ONIEDA COUNTY

GREGG WALKER,
LAKELAND PRINTING CO, INC.,

Plaintiffs,

vs.

Case No.: 2021CV000073

Honorable Leon D. Stenz

KIRK BANGSTAD,
MINOCQUA BREWERY COMPANY,

Defendants,

vs.

SOCIETY INSURANCE COMPANY, A MUTUAL COMPANY,
and
WEST BEND MUTUAL INSURANCE COMPANY,

Intervenors.

INTERVENOR COMPLAINT

NOW COMES West Bend Mutual Insurance Company and Society Insurance Company by their attorneys, Leavell & Borton, S.C., and state as follows:

1. Society Insurance, a Mutual Company (“Society”) is a Wisconsin mutual insurance company with the principal place of business located at 150 Camelot Drive, Fond du Lac WI 54936, and it issued a liability insurance policy to Minocqua Brewing Company, Inc. in effect from May 1, 2020, to May 1, 2021, and May 1, 2021, to May 1, 2022, and it is attached hereto as Exhibit 1.

2. West Bend Mutual Insurance Company (“West Bend”) is a Wisconsin mutual insurance company with the principal place of business located at 1900 S. 18th Ave., West Bend,

WI 53095, and it issued a liability insurance policy to Minocqua Brewing Company, LLC in effect from September 21, 2021 to September 21, 2022 and it is attached hereto as Exhibit 2.

3. The two liability insurers West Bend and Society have been paying for the defense of the defendants Minocqua Brewing Company and Kirk Bangstad in this action under a complete reservation of rights to dispute coverage.

4. The two insurers' policies required that any insured cooperate in the defense of the action with the following language:

c. You and **any** other involved **insured must:**

....

(3) **Cooperate with us in the** investigation or settlement of the claim or **defense against the "suit"**...

West Bend Policy Form CG 00 01 04 13, p. 11 of 16; Society Policy Form TBP6 (05-15), p 12 of 16 (bold added)

5. Further, the two insurers' policies have similar language defining an insured to encompass a named insured as well as employees acting within the scope of their employment and officers and executives operating within the scope of their function for the named insured business, in the following language:

WHO IS AN INSURED

1. If you are designated in the Declarations as:

....

An organization. . . Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

....

. . . your "employees" . . . but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. . .

West Bend Policy Form CG 00 01 04 13, p. 9-10 of 16; Society Policy Form TBP6 (05-15) p. 10-11 of 16.

6. Further, the two insurers' policies expressly exclude coverage for knowing defamation, and knowing that it would injure:

This insurance does not apply to:

a. Knowing Violation of Rights of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published with Knowledge of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

West Bend Policy Form CG 00 01 04 13, p. 6 of 16; Society Policy Form TBP6 (05-15), p. 7 of 16.

7. This action was tried to verdict the week of October 21, 2023, with the jury's verdict of October 27, 2023, finding Mr. Bangstad or Minocqua Brewery to have committed defamation, apparently during the Society policy period, causing damages, specifically in verdict answers to questions one through seven.

8. West Bend's policy is inapplicable to the conduct, damages, and liability found in verdict questions one through seven because that defamation happened before its policy period began.

9. Further, the jury's verdict of October 27, 2023, found Mr. Bangstad or Minocqua Brewery to have committed defamation in a post on August 8, 2022, during the West Bend policy period and that Mr. Bangstad made the post with express malice and warranting punitive damages, specifically in verdict answers to questions eight through eleven.

10. Society's policy is inapplicable to the conduct, damages, and liability found in the answer to the verdict questions eight through eleven because that defamation happened after its policy period ended.

11. During the trial Minocqua Brewing Company and Mr. Bangstad refused to cooperate in the defense of the lawsuit and to the prejudice of Society and West Bend.

12. Specifically, and for example, Mr. Bangstad who attended the trial purportedly in aid of his own defense as well as the defense of Minocqua Brewing Company committed acts of misconduct some of which were found to be contemptuous by the Court and resulted in a finding of contempt, and this misconduct and contemptuous conduct occurred in the presence of the jury and within juror's eye shot and earshot.

13. Further, Society and West Bend told Minocqua Brewing Company and Mr. Bangstad that their conduct was noncooperative and prejudicial to the insurers, and put their liability coverage in jeopardy. For example, see attached Exhibit 3 and 4.

14. Neither Society nor West Bend have a duty to indemnify Mr. Bangstad or Minocqua Brewery for the verdict findings and the eventual judgment that will be entered as a result of the prejudicial noncooperation, and therefore no direct action liability to the plaintiffs.

15. Additionally, Mr. Bangstad's defamatory statements and posts were outside the scope of his employment for Minocqua Brewing Company and outside the scope of his officer or executive position or function with Minocqua Brewing Company such that he was not an insured within the definition of the liability policies issued by Society and West Bend.

16. Consequently, and alternatively, Society and West Bend have no duty to indemnify Mr. Bangstad for the verdict findings and the eventual judgment that will be entered against him

because he was not an insured by definition of the policies at that time, and also therefore no direct action liability to the plaintiffs.

17. Alternatively, the two insurers' policies expressly exclude coverage for knowing defamation, in the following language, and consequently here coverage would be excluded:

This insurance does not apply to:

a. Knowing Violation of Rights of Another

“Personal and advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury”.

b. Material Published with Knowledge of Falsity

“Personal and advertising injury” arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

West Bend Policy Form CG 00 01 04 13, p. 6 of 16; Society Policy Form TBP6 (05-15), p. 7 of 16.

18. In light of the insurers not being obligated to indemnify Mr. Bangstad or Minocqua Brewing Company for the verdict and the ultimate judgment, they no longer have an obligation to defend Mr. Bangstad or Minocqua Brewing Company in this action.

19. The facts and circumstances herein constitute a justiciable controversy warranting a declaratory judgment under Wisconsin Stats. §806.04.

WHEREFORE, West Bend and Society hereby request judgment declaring they have no obligation to indemnify or defend the defendants Bangstad or Minocqua Brewing Company or Minocqua Brewery Company no direct action liability to the plaintiffs, and for taxable costs as allowed by statute.

Dated this 10th day of November, 2023.

LEAVELL & BORTON, S.C.

Electronically signed by Jeffrey Leavell

By: _____

Jeffrey Leavell

State Bar No.: 1004734

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