



## National Continental Insurance Co. v. AAA Freight, Inc. et al

2019 | Cited 0 times | N.D. Illinois | March 25, 2019

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION NATIONAL CONTINENTAL ) INSURANCE CO., ) Plaintiff, ) 17-cv-2607 v. )  
NIKOLA VUKOVIC, AAA FREIGHT ) INC., AND MILJAN RANCIC, ) Defendants. )

MEMORANDUM OPINION CHARLES P. KOCORAS, District Judge: Plaintiff National Continental Insurance brought this declaratory judgment action against Defendant the Defendants in a personal injury lawsuit in the Circuit Court of Cook County styled

Nikola Vukovic v. Miljan Rancic and AAA Freight, Inc., et al., Case No. 2016 L 009810 . -motions for summary judgment. For the following reasons, the Defendants motion is granted in part and denied in part

Background The following facts taken from the record are undisputed, except where otherwise noted. A. The Relevant Parties NCIC is the insurer for MBDP007 Transportation, Transportation , a trucking business engaged in the freight transportation industry. 1

is an independent contractor and owner of MBD Transportation. AAA is a federal motor carrier and trucking company that provides long- ) is the president of AAA. At all relevant times, Rancic worked for MBD Transportation as an independent contractor and provided services to AAA per the Agreement (the . Vukovic was a driver and held a temporary commercial driver s license.

B. The Relationship Between MBD Transportation and AAA MBD Transportation entered into the Agreement with AAA, agreeing to provide AAA with certain equipment and qualified drivers for truck-hauling services. In pertinent part, the Agreement stated:

1. The parties intend by this Lease or relationship of [AAA] and [MBD TRANSPORTATION] and not that of employer and employee. Neither the [MBD TRANSPORTATION] nor its agents are to be considered employees of the Lease at any time, for any purpose.

1 The pleadings indicate that multiple attempts to locate and serve Mario were made. However, upon information and belief, Mario appears to no longer be in the country.

2. [MBD TRANSPORTATION] shall operate equipment covered by the Agreement or furnish sufficient employees to operate said equipment. Any employees furnished by [MBD



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TRANSPORTATION] shall be his employees, shall be hired, directed, paid, and controlled solely by [MBD TRANSPORTATION]. [MBD TRANSPORTATION] represents that any employees furnished by him are competent, reliable, physically fit and are familiar with State and Federal motor carrier safety rules, laws, and regulations. 2 The Agreement further explained that [MBD TRANSPORTATION] was solely

C. Allegations Giving Rise to the Current Lawsuit In August of 2015, AAA and MBD Transportation agreed that MBD Transportation would perform a trip consisting of the following routes: (1) Chicago to Texas; (2) Texas to Colorado; (3) Colorado to Oregon; (4) Oregon to Washington; (5) Washington Subject T The Subject Trip was within the purview of the Agreement. Rancic was hired to be the driver on the Subject Trip with Vukovic scheduled to accompany Rancic as a trainee and passenger. On August 31, 2015, Rancic was driving in Idaho with Vukovic as his passenger. Vukovic alleges that on this day Rancic negligently lost control of the vehicle, causing it to turn over and fall down a hill. Vukovic suffered a brain injury and required multiple surgeries.

2 The Agreement unambiguously asserts MBD Transportation as the independent contractor and AAA as the Carrier.

On April 5, 2017, Vukovic filed the Underlying lawsuit against Rancic and AAA. In his two- the vehicle Rancic operated and had permission from both Rancic and AAA to

participate in the Subject Trip. The complaint seeks damages against both Rancic and AAA. The parties do not dispute that on the Subject Trip, Vukovic served as an independent contractor under the purview of the Agreement. However, the parties offer

not paid by NCIC nor had any expectation of getting paid. Rancic explains that MBD Transportation requested him to drive West because Vukovic had to accomplish towards Spokane, Washington, where Vukovic and Rancic coincidentally each

-drive failed to maintain a log book. Rancic testified that he had previously taken this route

and did not need Vukovic to complete the Subject Trip. ncic

nor Vukovic and that he was unable to terminate either Vukovic or Rancic because each were independent contractors. NCIC explains that although Rancic was training Vukovic, Vukovic operated as a team-driver to Rancic and performed various tasks that benefited AAA. NCIC alleges

that Vukovic drove for three hours on the Subject Trip and assisted Rancic as a NCIC also claims that Mario paid Vukovic for his assistance and provided Vukovic with food, cigarettes, and water. On April 24, 2018, the Defendants filed a summary judgment motion seeking a determination that NCIC has a duty to defend and indemnify the Defendants in the Underlying Lawsuit. NCIC brings this



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declaratory judgment against the Defendants, seeking a determination that it has no duty to defend or indemnify the Defendants in the Underlying Lawsuit. D. Relationship Between NCIC & AAA as Insurer/Insured On April 9, 2015, NCIC issued an insurance policy numbered CIL 000-5276- 678- I. The Policy The Policy provides the following liability coverage to AAA:

ly must pay as damages

The Policy contains the following definitions: by a person including death resulting from any of these.

o you by a labor leasing firm under an agreement between you and the labor leasing firm to short-term workload conditions.

II. Exclusion Policies exclusion provides, in relevant part, that the Policy excludes from coverage bodily injury to any f your

2) Performing

the duties related to the cond The Policy includes a federally mandated endorsement, MCS-90 Endorsement, automobile liability insurance and is amended to assure compliance by the insured,

within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Ad The MCS-90 Endorsement also explicitly is attached shall remain in full force and effect as binding between the insured and the

LEGAL STANDARD In considering a motion for summary judgment, the Court construes all facts and draws all reasonable inferences in favor of the non-movant. Anderson v. Liberty Lobby, Inc movant shows that there is no genuine dispute as to any material fact and the movant is entitled to . P. 56(a). A genuine issue of material fact arises where a reasonable jury could find, based on the evidence of record, in favor of the non-movant. Anderson, 477 U.S. at 248. In ruling on a motion for Morgan v. Harris Trust & Sav. Bank of Chi., 867 F.2d 1023, 1026 (7th Cir. 1989).

DISCUSSION A. Illinois Law Applies As an initial matter, there is a choice of law issue to resolve. In diversity cases, federal courts apply federal procedural law and state substantive law. Allen v. Cedar Real Estate Grp., LLP, 236 F.3d 374, 380 (7th Cir. 2001) (citing Erie R.R. v. Tompkins, - Natl. Am. Ins. Co. v. Artisan and Truckers Cas. Co., 796 F.3d 717, 723 (7th Cir. 2015).

Here, the parties agree that Illinois law applies in this case, and there is no reason for the Court to conclude otherwise.



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Wehrle v. Cin. Ins.

Co., 719 F.3d 840, 843 (7th Cir. 2013) (quoting U.S. Fire Ins. Co. v. Schnackenberg, be applied as wri Id. (quoting Rich v.

Principal Life Ins. Co., 875 N.E.2d 1082, 1090 (Ill. 2007)). I. Allegations of Bodily Injury Under the Policy defend or indemnify The Defendants argue that although Vukovic was an independent contractor on the

defined by the subject policy and

NCIC claims it has no duty to defend or indemnify the Underlying Lawsuit and presents two distinct argument as to why Vukovic is an employee under the Subject Policy. First, NCIC contends that Vukovic

that this broader definition is applicable to the instant cause because the Subject Policy fails to c

controls, the employee exclusions preclude its duty to defend because Vukovic

qualifies as a A.

R (including an independent contractor while in the course of operating a commercial

FMCSR.

NCIC reasons that, because it issued the Policy to a federal motor carrier to comply with the requirements of the FMCSR, the Policy should incorporate the broader -90 Endorsement as ntended to comply with the FMCSR. We disagree. The policy is clear and unambiguously the definition. The MCS-90 Endorsement also fails to mention or reference the employ limitations in the policy to which the endorsement is attached shall remain in full force

dingly, because the provisions are clear and unambiguous, we find

This conclusion accords with the balance of the persuasive authority on this issue, and we agree with the rationale adopted by National Continental Insurance Company v. Singh, 2018 WL 3861549, at \*1 (N.D. Ill. 2018). In Singh, the court evaluated an identical policy and declined to apply d by the Policy nor the MCS-

90 Endorsement. Id. at \*3. When reaching its conclusion, the Singh court first evaluated 607, 608-09 (6th Cir. 2014). In Gramercy , neither the policy nor the MCS-90 E definition. Gramercy, of the endorsement does not



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language of the endorsement suggests it operates to amend the more generous coverage

in the insurance contract down to the minimum Carrier Act. Singh, 2018 WL 3861549, at \*3 (citing Gramercy, 575

The Singh court next evaluated Great West Casualty Company v. National Casualty Company, 53 F. Supp. 3d 1154, 1185-87 (D.N.D. 2014), , 807 F.3d 952 (8th Cir. 2015). Like Gramercy, the Great West Case: 1:17-cv-02607 Document #: 64 Filed: 03/25/19 Page 10 of 15 PageID #:1553 See Singh, 2018 WL 3861549, at \*3 (quoting Great

W. Cas. Co., F. Supp. 3d at 1186). The court further noted that adopting the federal . Id. It further noted that the MCS-90

vince Id.

The Singh court also relied on Northland Insurance Company v. Rhodes, 2010 WL 5110107 (D. Colo. 2010). The Rhodes Id.

at \*7. The court further noted suggests that, regardless of the overarching purpose of the contract, the parties did not

Id.

Based on these three cases, the Singh court concluded:

Gramercy, Rhodes, and Great West declined to neither the policy itself nor the MCS-90 [E]ndorsement referenced

incorporation of the statutory definition. Gramercy and Rhodes definition would effectively reduce coverage, and upset the expectations of the contracting parties. The circumstances here are the

Singh, 2018 WL 3861549, at \*3. This Court agrees with the Singh court and declines to apply the language. Therefore ukovic qualifies as a

B. Vukovic And Rancic NCIC next articulates that Vukovic and Ran under the Policy. leasing firm under an agreement between you and the labor leasing firm to perform

duties r The Policy requires that a leased worker be someone leased t and this Court is unaware of any Illinois state court ruling interpreting it the Seventh Circuit in Telamon Corp. v. Charter Oak Fire Insurance Company placing its employees at client companies for varying lengths of time in exchange for a



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850 F.3d 866, 870 (7th Cir. 2017) (quoting *Ins. Co.*, 2007 WL 2900452 (M.D. Fla. 2007)); see also *Scottsdale Ins. Co. v. Torres*,

561 F.3d Case: 1:17-cv-02607 Document #: 64 Filed: 03/25/19 Page 12 of 15 PageID #:1555 *Telamon Corp.*, 850 F.3d at 870. Accordingly, this Court applies the definition set forth by the Seventh Circuit. MBD Transportation, as the moniker implies, is a trucking company; it is not an employment agency or staffing firm. There was no testimony to support assertion that MBD Transportation was in the business of leasing employees out to other

companies like a labor staffing company does. The Agreement itself also fails Transportation as a labor leasing firm. The Agreement unambiguously identifies MBD

, and expressly states that to be considered employees of

The parties also do not dispute that Rancic and Vukovic were independent repeatedly characterizes them as such, and Keljevic testified that Vukovic and Rancic were indep Accordingly, Vukovic and Rancic

as defined by the Policy. C. The Exclusions Do Not Apply As a Matter of Law As an independent basis to defeat the Underlying Action, NCIC relies on the liminates from coverage bodily injury arising

We find that the exclusions do not apply because neither Vukovic nor Rancic fit we find as workers. See *Wehrle*, 719 F.3d at 843. We also find that the Policy did not intend to

include independent contractors. Therefore, the exclusions NCIC relies upon do not preclude coverage. II. Duty to Indemnify The Defendants argue that NCIC has a duty to indemnify all allegations brought forth by Vukovic in the Underlying Action. *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 127 (1992). , 796 F.3d at 724. Case: 1:17-cv-02607 Document #: 64 Filed: 03/25/19 Page 14 of 15 PageID #:1557 actually fall *Outboard Marine Corp.*, 154 Ill. 2d at 128 (emphasis in original). ly *Weber v. St. Paul Fire & Marine Ins. Co.* is premature since the question to be determined is not ripe before adjudication in the

*Id.* At this juncture, we find this question premature because liability has not yet been decided in *Nikola Vukovic v. Miljan Racic and AAA Freight, Inc., et al.*, Case No. 2016 L 009810, which appears to still be in case management. Accordingly, the Court will not rule on the duty to indemnify at this point.

CONCLUSION For the aforementioned reasons, the It is so ordered.

----- Dated: 3/25/2019 Charles P. Kocoras United States District



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Judge

