IN THE SUPREME COURT OF THE STATE OF NEVADA

CERTAIN UNDERWRITERS AT LLOYDS OF LONDON,
Appellant,
vs.
ST. PAUL MERCURY INSURANCE COMPANY, A MINNESOTA CORPORATION; AND HOUSTON CASUALTY COMPANY, A TEXAS CORPORATION,
Respondents.

No. 49206

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in an insurance action. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

FACTS

The dispute in this case arises from three separate employment discrimination coverage policies held by Scolari's Warehouse Markets during three consecutive years. During this three-year period, Scolari's was first insured by appellant Certain Underwriters at Lloyds of London, then by respondent St. Paul Mercury Insurance Company, and finally by respondent Houston Casualty Company.

Events that occurred during the Lloyds' policy

Scolari's maintained employment practices insurance through Lloyds from February 19, 2002, to February 19, 2003. On October 5, 2002, a female employee of Scolari's, Jennifer Gould, allegedly overheard a male supervisor make sexually improper statements to other female employees. Scolari's conducted an investigation and determined that Gould had fabricated her allegations and terminated Gould for violating company

policy against making such false accusations. Gould appealed her termination to an independent appeals board and the board unanimously approved of her termination.

On October 18, 2002, Lloyds received notice from Scolari's of a potential claim by Gould arising from her termination.

On October 31, 2002, Gould filed a complaint with the EEOC, and shortly thereafter the EEOC issued a notice of charge of discrimination, which informed Scolari's of Gould's allegations of employment discrimination.

Events that occurred during the St. Paul policy

St. Paul was the insurance carrier for Scolari's employment practices insurance policy from February 19, 2003, to February 19, 2004. While the St. Paul policy was in effect, the EEOC sent Scolari's two letters regarding Gould's claim.

On August 5, 2003, the EEOC sent Scolari's a Letter of Determination stating that the EEOC had found reasonable cause to believe that Scolari's discriminated against Gould. This letter also indicated that the EEOC had found reasonable cause to believe that Scolari's had discriminated against female employees as a class.

Also on August 5, 2003, the EEOC sent Scolari's a letter requesting that Scolari's join in a collective effort toward a resolution of the charge. In this letter, Gould was identified as the charging party and indicated that three class members had been identified. The EEOC also, for the first time, indicated that it was seeking damages for Gould and the three class members.

Events that occurred during the Houston policy

Houston was the insurance carrier for Scolari's employment practices insurance from February 19, 2004, to February 19, 2005. During

Houston's coverage period, the EEOC filed a complaint against Scolari's in the United States District Court for the District of Nevada. The EEOC's complaint alleged unlawful employment practices on the basis of sex in relation to Gould (Gould's claim) and a class of unidentified similarly situated individuals (the class suit).

The EEOC subsequently filed a first amended complaint. In the first amended complaint, the EEOC added a claim that Scolari's engaged in a pattern and practice of discrimination under Section 707 of Title VII of the Civil Rights Act of 1964. 42 U.S.C.A. § 2000e-6.

In November 2004, the EEOC began serving discovery disclosures that identified the previously unidentified class members. Included in the class members were two persons who were involved in the incident that gave rise to Gould's claim.

Procedural posture

Lloyds filed an action for declaratory relief against Scolari's, contending that the Lloyds policy did not provide coverage for most of the claims asserted against Scolari's by the EEOC.

Scolari's answered Lloyds' complaint, filed a counterclaim against Lloyds, and asserted a third-party complaint against St. Paul and Houston. Scolari's third-party complaint sought declaratory relief and a determination that the St. Paul and Houston policies provided coverage for the three-year period relating to claims made by the EEOC.

All four parties involved in the litigation filed motions for summary judgment with the district court. The district court entered an order granting summary judgment to St. Paul and Houston in full, Scolari's in part, and denying Lloyds' motion for summary judgment. The district court found that there was coverage under the Lloyds policy, but no coverage under the St. Paul or Houston policies. Lloyds now appeals.

DISCUSSION

Lloyds argues that the district court erred in granting summary judgment to both St. Paul and Houston. We agree, because we conclude that the district court erred in relying on a logical approach[1] in its finding that the events which led to the class action suit were one event as a matter of law. We further conclude that the district court's error in relying on this logical approach led to it also erring in finding that no coverage existed under the St. Paul and Houston policies.

Standard of review

We review an order granting summary judgment de novo. Wood v. Safeway Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and other evidence on file demonstrate that 'no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Id. (quoting NRCP 56(c)) (alteration in original).

The district court erred in relying on a logical approach

Lloyds contends that the district court erred in finding that the claim made by Gould, the EEOC investigation, and the subsequent class action suit were a single related claim for insurance purposes and in finding that the claims that arose during the time period when the St. Paul and then Houston policies were in effect were a single occurrence. We agree because we conclude that the district court erred in relying on a

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[1]The logical approach states that events that lead to claims are related for purposes of insurance contracts if there is any logical connection between such events. See Gregory v. The Home Ins. Co., 876 F.2d 602, 606 (7th Cir. 1989).

logical approach to define the word "related" in the three insurance policies. We further conclude that the district court's use of the logical approached led to the erroneous finding that the three events that led to the EEOC class claim, including Gould's original claim, were one single event and, thus, there was no coverage under the St. Paul and Houston policies.

We read language in an insurance policy from the perspective of a person without legal training and will give words their plain and ordinary meaning. Farmers Ins. Exch. v. Neal, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003). However, we have continually held in the context of insurance policies that "an act is an 'occurrence' for purposes of liability if the act 'caused' the resulting injury." Insurance Corp. of America v. Rubin, 107 Nev. 610, 614, 818 P.2d 389, 391 (1991) (citing Appalachian Ins. Co. v. Liberty Mut. Ins. Co., 676 F.2d 56 (3d Cir. 1982)); see also Bish v. Guaranty Nat'l Ins., 109 Nev. 133, 135, 848 P.2d 1057, 1058 (1993). "In applying this 'cause theory,' courts ask if there is 'but one proximate, uninterrupted, and continuing cause which resulted in all of the injuries and damage.'" Insurance Corp. of America at 614, 818 P.2d at 391 (quoting Appalachian Ins. Co. at 61).

We conclude that the district court erred as a matter of law in relying on cases that have approved of the logical approach to defining the word "related" in insurance policies. We have continually held that the causal approach to defining the word "related" is preferred in this state. See Insurance Corp. of America v. Rubin, 107 Nev. 610, 614, 818 P.2d 389, 391 (1991) (citing Appalachian Ins. Co. v. Liberty Mut. Ins. Co., 676 F.2d 56 (3d Cir. 1982)); see also Bish v. Guaranty Nat'l Ins., 109 Nev. 133, 135, 848 P.2d 1057, 1058 (1993). Therefore, we conclude that the district court

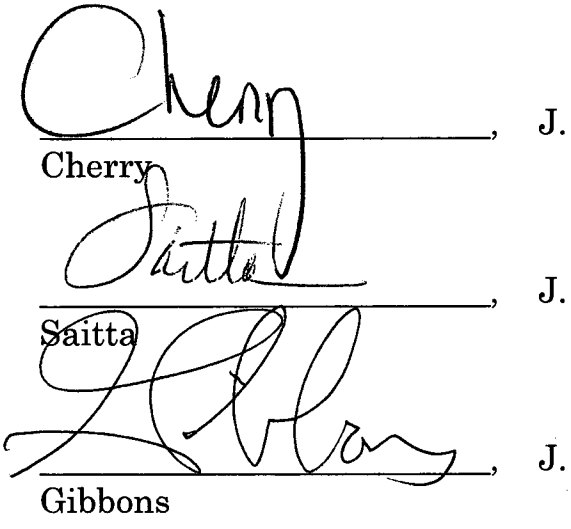
erred in applying the logical approach to define the word "related" in its order granting St. Paul's and Houston's motions for summary judgment.

We further conclude that the district court erred in relying on the logical approach to determine whether the claims were a single occurrence and ultimately finding that the events were a single occurrence for the purposes of the three insurance policies involved in this litigation. Specifically, we conclude that there was no causal connection between the original claim made by Gould and the subsequent claims that led to the EEOC investigation and claims. Thus, we conclude that the original claim by Gould and the EEOC investigation that led to the EEOC's attempt to settle any claims against Scolari's, which took place while the St. Paul policy was in effect, was not a single occurrence. Further, we conclude that the original claim by Gould and the subsequent filing of the EEOC claims, which were filed while the Houston policy was in effect, were not one occurrence.

As such, we must conclude that genuine issues of material fact remain regarding coverage related to the St. Paul and Houston policies. Thus, we conclude that the district court erred in granting summary judgment to St. Paul and Houston.

In light of the foregoing discussion, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.



_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
J. Thomas Susich, Settlement Judge
Marina E. Kolias
Lemons Grundy & Eisenberg
Robinson, Dilando & Liebhaeber/Los Angeles
Burton Bartlett & Glogovac, Ltd.
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