STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Bohnert International, Inc.,
Norvin Raque, and
David Graeser,
Plaintiffs below, Petitioners

v.) **No. 24-609** (ICA No. 23-ICA-194)

Motorists Mutual Insurance Company,
Defendant below, Respondent.

MEMORANDUM DECISION

Petitioners Bohnert International, Inc., Norvin Raque and David Graeser (collectively "Bohnert") appeal the memorandum decision of the Intermediate Court of Appeals ("ICA") affirming the Circuit Court of Greenbrier County's April 19, 2023, order granting Respondent Motorists Mutual Insurance Company's motion for summary judgment and denying Bohnert's cross-motion for summary judgment.[1] Bohnert argues that the ICA erred in determining that Kentucky law (rather than West Virginia law) applies to the interpretation of the occurrence-based commercial general liability ("CGL") insurance policy ("Policy") entered into between Bohnert and respondent and that, under Kentucky law, respondent had neither a duty to defend nor indemnify Bohnert in a lawsuit filed against it for faulty workmanship because the claims alleged against Bohnert did not qualify as an "occurrence" within the meaning of the Policy.

Upon our review, finding no substantial question of law and no prejudicial error, we find that a memorandum decision summarily affirming the ICA's decision is appropriate. *See* W. Va. R. App. P. 21(c).[2]

In 2017, Bohnert entered into a contract with WV Great Barrel Company, LLC, to design, fabricate, ship, and install new custom equipment in a state-of-the-art cooperage facility that would produce wooden bourbon barrels at the projected rate of ninety-seven barrels per hour. The facility was to be built in White Sulphur Springs, West Virginia. Ultimately, Great Barrel and WVGBC

[1] *See Bohnert Int'l, Inc. v. Motorists Mut. Ins. Co.*, No. 23-ICA-194, 2024 WL 4052823 (Ct. App. Sept. 4, 2024) (memorandum decision).

[2] Bohnert is represented by Kayla S. Reynolds, Esq., J. Zak Ritchie, Esq., and Isaac R. Forman, Esq. Respondent appears by counsel Lee Murray Hall, Esq., and Jason D. Bowles, Esq. Amici and their counsel are listed below in footnote 10.

Real Estate Holding Company, LLC[3] (collectively "Barrel") sued Bohnert and its independent contractor, Erik VanKleef,[4] alleging that they failed to properly design, produce, deliver, and install the manufacturing line so that barrel production could begin on the agreed-upon date of October 1, 2019. Barrel also alleged that the equipment Bohnert installed was defective and/or used (rather than newly manufactured, as promised) and not produced in a "good and workmanlike manner." Barrel asserted claims of negligence; breach of contract; breach of express warranty; breach of implied warranty of merchantability; breach of implied warranty: fitness for a particular purpose; breach of implied warranty: design-build; fraud; fraudulent transfers; individual liability (pierce the corporate veil); and fraudulent inducement to contract. As against VanKleef individually, who Barrel asserts was "the primary individual responsible for the technical aspects and execution of the design, engineering, installation, and construction of the . . . cooperage facility," Barrel alleged the claim of negligent design, engineering, installation, and construction.[5]

Prior to entering into the contract with Barrel, Bohnert International (formerly Bohnert Equipment Company), a Kentucky corporation with its principal place of business in Louisville, Kentucky, purchased a CGL policy from respondent.[6] The Policy was solicited through an insurance company in Lexington, Kentucky, and was purchased and issued by respondent in Kentucky. The Policy insures risks in Kentucky, including Bohnert's premises, equipment, and vehicles that are registered and located in Kentucky; it also includes endorsements identifying companies located in Kentucky and Minnesota as additional insureds and additional loss payees and including other companies located in Kentucky, Pennsylvania and Indiana also as additional loss payees. The Policy does not include West Virginia endorsements, structures, equipment, vehicles, or any other risk located in West Virginia. The Policy was renewed and effective from March 2018 to March 2019 and was thus in effect during the time Bohnert entered into the design-build contract with Barrel.

Bohnert tendered notice to respondent of Barrel's complaint. However, by letter dated September 10, 2020, respondent advised Bohnert that although it would provide for a defense, certain allegations in the complaint, "along with any damages emanating therefrom, would not be subject to coverage through the policy for such claims[,] [inter alia,] do not generate 'bodily injury' or 'property damage' caused by an 'occurrence[.]'"

The Policy provided, in relevant part, as follows:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY

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[3] According to the second amended complaint, WVGBC Real Estate Holding Company, LLC was organized to acquire, develop and own the real estate, manufacturing equipment and other real or personal property necessary" for the operation of the cooperage facility.

[4] VanKleef is not a party to the instant appeal.

[5] Barrel asserted that it has or will incur damages consisting of remediation costs, lost profits and increased costs from lost sales, additional labor and materials.

[6] Bohnert's principals, Messieurs Raque and Graeser, are Kentucky residents.

1. Insuring Agreement

    a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

    . . . .

    b. This insurance applies to "bodily injury" and "property damage" only if:

        (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory[.]"

The Policy defines "[o]ccurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

2. Exclusions

This insurance does not apply to:

. . . .

l. Damage to Your Work

"Property Damage" to "your work" arising out of it or any part of it included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

The Policy defines "products-completed operations hazard" as, inter alia, "'property damage' occurring away from premises you own or rent and arising out of 'your product' or 'your work.'"[7]

Bohnert filed a declaratory judgment action in the Circuit Court of Greenbrier County[8] seeking coverage under the policy.[9] Bohnert and respondent filed cross-motions for summary

[7] The Policy does not contain a choice of law provision.

[8] A copy of the declaratory judgment complaint was not made a part of the appendix record.

[9] Respondent filed a declaratory judgment action in federal court seeking a declaration that it has no duty to provide a defense or indemnify Bohnert for Barrel's claims. That case was

judgment.[10] Bohnert argued that both exceptions to the doctrine of *lex loci contractus* apply here, requiring the application of West Virginia law to the Policy: West Virginia has the more significant relationship to the Policy and the parties, and applying Kentucky law would violate West Virginia public policy.[11] Bohnert further argued that, even under Kentucky law, respondent has a duty to defend Bohnert in the underlying lawsuit because Barrel's claims of faulty workmanship qualified as an "occurrence" under the Policy as the claims arose from the fortuitous acts of Bohnert and its subcontractors and thus met the definition of "accident" within the meaning of the Policy.[12] Relatedly, Bohnert argued that it reasonably expected that it would be covered for any faulty work performed by its subcontractors based upon the exception to the "Damage to Your Work" exclusion in the Policy. Finally, Bohnert argued that although respondent's duty to defend has been triggered by the underlying lawsuit, respondent's duty to indemnify will not be determined until Barrel's claims against Bohnert are resolved. Therefore, any resolution regarding

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dismissed for lack of diversity jurisdiction. *See Motorists Mut. Ins. Co. v. Bohnert Int'l*, No. 5:22-cv-00028, 2022 WL 2657123 (S. D. W. Va. July 8, 2022).

[10] Due to Barrel's unique interest in the outcome of the coverage litigation, the circuit court granted it leave to file a brief in opposition to respondent's motion for summary judgment. Consistent with Bohnert's arguments, Barrel argued that the circuit court should apply West Virginia law to the interpretation of the Policy and declare that the Policy provides liability coverage for their underlying claims against Bohnert. Barrel now appears before this Court as amicus curiae and has submitted a brief in support of Bohnert. It appears by counsel Norman T. Daniels, Jr., Esq., Thomas S. Sweeney, Esq., Thomas E.G. Spears, Esq., and Robert P. Lorea, Esq. The West Virginia Insurance Federation ("WVIF"), as amicus curiae, has submitted a brief in support of respondent. It is represented by Jill Cranston Rice, Esq., and Melanie Norris, Esq. The Court has considered the briefs of both Barrel and the WVIF in conjunction with the parties' arguments.

[11] *See Syl.*, *Liberty Mut. Ins. Co. v. Triangle Indus.,* , 182 W. Va. 580, 390 S.E.2d 562 (1990) ("In a case involving the interpretation of an insurance policy, made in one state to be performed in another, the law of the state of the formation of the contract shall govern, unless another state has a more significant relationship to the transaction and the parties, or the law of the other state is contrary to the public policy of this state.").

[12] *See Martin/Elias Prop., LLC v. Acuity*, 544 S.W.3d 639, 643 (Ky. 2018) (explaining that Kentucky has developed a two-part fortuity analysis to determine "whether an event constitutes an *accident* so as to afford the insured CGL policy coverage . . . : 1) whether the insured intended the event to occur; and 2) whether the event was a '"chance event" beyond the control of the insured.'" (quoting *Cincinnati Ins. Co. v. Motorists Mut. Ins. Co.*, 306 S.W.3d 69, 76 (Ky. 2010)); *see also Cincinnati Ins.*, 306 S.W.3d at 76 (instructing that "an accident in the insurance law context is 'something that does not result from a plan, design, or . . . intent on the part of the insured.' . . . [A] court must [also] bear in mind that a fortuitous event is one that is 'beyond the power of any human being to bring . . . to pass, [or is] . . . within the control of third persons. . . .' It is abundantly clear, therefore, that the issue of control is encompassed in the fortuity doctrine." (Internal citations omitted)).

respondent's duty to indemnify is premature at this stage in the proceedings.

Conversely, respondent argued that Kentucky law governs the interpretation of the Policy as neither of the exceptions to the doctrine of *lex loci contractus* applies to require the application of West Virginia law. Respondent argued that under Kentucky law, Barrel's claims against Bohnert do not qualify as an "occurrence" within the meaning of the Policy given that "Bohnert performed the alleged faulty work and/or selected the person(s) responsible for performing the work. All claims that relate to or flow from workmanship were therefore within Bohnert's control and cannot be characterized as 'accidental' or 'fortuitous' so as to constitute an 'occurrence.'"[13] Respondent argued that because Barrel's claims arising from the faulty workmanship in this case do not come within the grant of coverage under the Policy, respondent has no duty to defend Bohnert in that action.

The circuit court agreed with respondent, and in a comprehensive order, granted respondent's motion for summary judgment and denied Bohnert's motion for summary judgment. The circuit court determined that Kentucky (rather than West Virginia) has the more significant relationship to the Policy and parties and further, that application of Kentucky law to the interpretation of the Policy would not violate West Virginia public policy. The circuit court also determined that Barrel's claims as asserted in the underlying lawsuit fall outside of the Policy because there was no "occurrence" triggering coverage as none of the eleven causes of action arose "from chance events 'beyond the power of any human being to bring to pass.'"[14]As to Bohnert's argument that, irrespective of whether there was an "occurrence" within the meaning of the Policy, the "subcontractor exception" to the "Damage to your Work" exclusion triggers coverage, the circuit court concluded that "a court need not consider the applicability of an exclusion if there is no initial grant of coverage under the policy."[15] Absent a finding of coverage, the circuit court found, respondent has no duty to either defend or indemnify Bohnert in the underlying lawsuit.

Bohnert appealed to the ICA, which affirmed the circuit court's order. Consistent with the circuit court's conclusions, the ICA determined that Kentucky law applies to the interpretation of the Policy because Kentucky has a more significant relationship to the Policy and the parties than West Virginia, and that application of Kentucky law would not violate West Virginia public policy. Applying the fortuity analysis as developed in Kentucky law, the ICA further concluded that "there is nothing in the Barrel complaint that constitutes an 'occurrence' to trigger coverage under the

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[13] *See Martin/Elias Prop.,* 544 S.W.3d at 642 (recognizing that "the faulty-workmanship claim brought by the homeowners was not covered by the builder's CGL policy because the builder was in control of the construction of the residence and that the builder fully intended to take the action that he took on the project such that finding liability under the CGL policy would be tantamount to converting the builder's CGL policy into a performance bond or unconditional guarantee." (citing *Cincinnati Ins. Co.*, 306 S.W.3d at 74)).

[14] *See Cincinnati Ins. Co.*, 306 S.W.3d at 76.

[15] *Id.* at 78 n.35.

Policy pursuant to the application of Kentucky law."[16] Finally, the ICA concluded that because there is no coverage for the underlying lawsuit under the Policy, respondent has no duty to defend or indemnify Bohnert; thus, the ICA found no merit to Bohnert's argument that the circuit court ruled prematurely that respondent had no duty to indemnify Bohnert while the underlying lawsuit between Barrel and Bohnert is still pending.[17]

Bohnert now appeals from the ICA's decision. In an appeal from an ICA decision, we apply a de novo standard of review to a circuit court's entry of summary judgment. *See* Syl. Pt. 1, *Moorhead v. W. Va. Army Nat'l Guard*, 251 W Va. 600, 915 S.E.2d 378 (2025). On appeal, Bohnert argues, first, that the ICA erred in its choice of law analysis by concluding that Kentucky law, rather than West Virginia law, applies to the interpretation of the policy. Second, it argues that the ICA erred in failing to find that Barrel's alleged damages were fortuitous and, therefore, qualified as an "occurrence" under Kentucky law and in further failing to find that the "subcontractor exception" to the "Damage to your Work" exclusion did not trigger coverage under the Policy. Third, Bohnert argues that the ICA erred in concluding that because the Policy provides no coverage for Barrel's claims against Bohnert in the underlying lawsuit, respondent has neither a duty to defend nor indemnify Bohnert in that action. Upon our review of the record and briefs, the arguments of the parties, and the applicable legal authority, we conclude there is no reversible error and thus summarily affirm the ICA's decision.

Affirmed.

ISSUED: November 12, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H.L. Kirkpatrick
Justice James W. Flanigan

[16] *Bohnert Int.'l*, 2024 WL 4052823 at *6.

[17] *Id.* at *7 ("'The insurer has a duty to defend only if there is an allegation which potentially, possibly, or might come within the coverage of the policy. Since no such possibility exists, even if [the] allegations are accepted as true, there is no duty of [the insurer] to defend or indemnify [the insured].'" (quoting *Thompson v. West Am. Ins. Co.*, 839 S.W.2d 579, 581 (Ky. Ct. App. 1992)).