

This case involves an insurance coverage dispute. Plaintiff L-A 1300 Chestnut is the sole general partner of L-A 1300 Chestnut Street Partners, L.P.² L-A 1300 Chestnut Street, Inc. is a Pennsylvania corporation with a principal place of business at 1411 Walnut Street, 3rd Floor, Philadelphia, Pennsylvania 19107. Plaintiff L-A 1300 Chestnut Street Partners, L.P. is a single purpose entity which owns 1300 Chestnut Street (the “Property”). Roosevelt’s Inc. t/a and d/b/a Philadelphia Management, Philadelphia Management Company, Philadelphia Management, Inc. and Philadelphia Management Corporation (“Roosevelts”), is a Pennsylvania Corporation which managed the Property pursuant to a contract with L-A 1300 Chestnut Street Partners, L.P.

On November, 8, 1999, Martin Hernandez (“Hernandez”), an employee of Roosevelts, was seriously injured at the Property. Following the accident, Hernandez instituted a worker’s compensation action against Roosevelts. Hernandez also filed a civil action in the Philadelphia Court of Common Pleas against, *inter alia*, Philadelphia Management and these plaintiffs (the “Underlying Action”). The plaintiffs in their Complaint in this case acknowledge that they were “named insureds, [which] had paid all premiums” under a commercial general liability policy with Zurich (the “Zurich Policy”). Compl. Exh. B.

The Zurich Policy includes an Employee Exclusion which states:

2. Exclusions. This insurance does not apply to...

e. **Employer’s Liability**

“Bodily injury” to:

- (1) An “employee” of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured’s business

This exclusion applies:

1 The Orders appealed from were entered on March 3, 2005 and March 5, 2005, respectively.

2 The facts set forth are summarized from plaintiffs’ Third Amended Complaint.

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages or repay someone else who must pay damages because of the injury.

This exclusion does not apply to any liability assumed by the insured under an insurance contract.

Id. (“Employee Exclusion”)

Zurich filed a Motion for Judgment on the Pleadings asserting that it owed no duty to defend or indemnify plaintiffs under the Zurich Policy because plaintiffs’ claim falls within the Employee Exclusion. Vigilant, the excess carrier joined in Zurich’s Motion on the same grounds.³

DISCUSSION

Entry of judgment on the pleadings is permitted under Pa. R. Civ. P. 1034 which provides for such judgment after the pleadings are closed, but within such time as not to delay trial. A motion for judgment on the pleadings will be granted where “the moving party’s right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise.” Conrad v. Bundy, 2001 Pa. Super. 142, 777 A.2d 108 (2001).

Here, the carriers asked the court to interpret the definition of “insured” in the Zurich Policy and to decide that plaintiffs’ claims were within the Employee Exclusion. Interpretation of an insurance contract is a matter of law and is a matter for the court. Hutchinson v. Sunbeam Coal Corp., 513 Pa. 192, 519 A.2d 385 (1986). When an insurer relies on a policy exclusion as

³ The Vigilant Policy provides excess liability coverage under Coverage A that follows the form to the Zurich Policy. Compl. Exh. C. The Vigilant Policy incorporates the same terms, conditions and exclusions as the Zurich Policy. Thus, Zurich’s and Vigilant’s arguments were considered together for purposes of their Motion.

the basis for its denial of coverage, it has asserted an affirmative defense and thus bears the burden of proving such a defense. White v. Keystone Ins. Co., 2001 Pa. Super. 124, 775 A.2d 812 (2001). To prevail, the insurer must prove that the language of the insurance contract is clear and unambiguous; otherwise, the provision will be construed in favor of the insured. Id. Contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts. Wagner v. Erie Ins. Co., 2002 Pa. Super. 166, 801 A.2d 1226, 1231 (2002).

At bar, this court finds that the language of the Employee Exclusion is clear and unambiguous and that plaintiffs' claims fall within the Exclusion. Therefore plaintiffs are not covered. The Pennsylvania Supreme Court addressed a virtually identical issue in Pennsylvania Mfrs' Assoc. Ins. Co. v. Aetna Casualty & Surety Ins. Co., 426 Pa. 453, 233 A.2d 548 (1967)("PMA"). PMA involved a claim by an employee of PMA's insured who was making a delivery to a company, Delaware, which was an insured under the same PMA policy. The employee sued Delaware, which sought coverage under the PMA policy. Delaware, through its principal, Aetna, argued that the employee exclusion provision in the PMA policy operated to exclude coverage for employees only when those employees are employed by the insured seeking coverage. In doing so, Aetna argued that the employee injury exclusion was ambiguous and, in the alternative, that public policy demanded that an exception be carved out under such circumstances. The trial court rejected both arguments and held that employees of the named insured fell within the employee exclusion. Our Supreme Court affirmed and found that the unambiguous language of the policy dictated that the word "insured" included the named insured

and that the employee of plaintiff's insured was excluded from coverage.⁴ Id. In doing so, the Court cited two prior cases directly on point as controlling, Great Am. Ins. Co. v. St. Farm Mut. Automobile Ins. Co., 412 Pa. 538, 194 A.2d 903 194 A.2d 903 (1961) and Patton v. Patton, 413 Pa. 566, 198 A. 2d 578 (1964).

The plaintiffs argue that this court should reject these Pennsylvania Supreme Court decisions and, instead, rely upon the Pennsylvania Superior Court decision of Luko v. Lloyd's of London, 393 Pa. Super. 165, 573 A.2d 1139 (1990). This court declines to do so. This court submits that the Supreme Court's decision in PMA is binding upon it. Moreover, like the Court in PMA, Patton, and Great American, this court finds that the variation in severability of interests clauses to be a distinction without a difference. The important thing is the unambiguous language of the policy, "the unqualified word 'insured' includes the named insured." PMA, *supra*.

CONCLUSION

For the reasons discussed, the Orders granting Judgment of the Pleadings should be affirmed.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.

⁴ Although not binding upon this court, the United States District Court for the Eastern District of Pennsylvania, applying Pennsylvania law, has interpreted such employee exclusions in a manner consistent with the Pennsylvania Supreme Court in PMA. *See e.g.* Brown & Root Braun, Inc. v. Bogan Inc., 2002 U.S. App. Lexis 27347 (3d Cir. 2002); North Wales Water Authority v. Aetna Life & Casualty, 1999 U.S. Dist. LEXIS 15997 (E.D.Pa. 1996), *aff'd* 133 F.3d 910 (3d Cir. 1997); Centinial Ins. Co. v. Home Insurance Co., 516 F.Supp. 301 (E.D.Pa. 1981); Transport Indem. Co., 398 F.Supp. 1026 (E.D.Pa. 1975).