



FILED
5th JUDICIAL DISTRICT COURT
Lea County
12/22/2021 10:19 AM
NELDA CUELLAR
CLERK OF THE COURT
Cory Hagedoorn

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
Serving Lea, Eddy and Chaves Counties

MICHAEL H. STONE
District Judge
Division VII

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December 22, 2021

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Re: Power of Grace Trucking, LLC. vs. Weatherby, et. al.
D-506-CV-2021-00040
Decision Letter

Counsel:

This matter came before me on October 20, 2021. The parties have submitted various dispositive motions regarding whether or not an umbrella policy issued by Hudson, insuring Power of Grace, was operative at the time of Mr. Lara's death. The parties stipulated that the issue is ripe for me to determine based on the pleadings. I have reviewed the significant pleadings and briefs and have considered the arguments of counsel. I also reviewed written communication from Mr. Stick filed October 28, 2021, based on my invitation to the parties to provide any other argument from my questions at the hearing as my time was limited.

In my view, the surplus lines umbrella policy provides umbrella coverage of \$5,000,000.00 in excess of the underlying Hudson commercial lines for commercial motor carriers. The Hudson policy has an excess side and an umbrella side. The excess side specifically excludes "autos," **by definition**. "Auto means a land vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment." The parties agree that the semitrailer (tractor-trailer), at issue herein, is excluded on the excess side.

The umbrella side of the policy applies only to exposures which are not covered by the excess side, thus, being applicable if not excluded. The umbrella side excludes "automobiles," but that term is not defined in the policy. The question at issue is whether or not a semitrailer is an automobile under the umbrella portion of the policy.

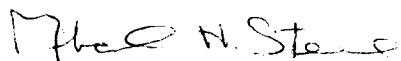
In New Mexico, exclusionary clauses in insurance policies must be narrowly construed with the reasonable expectations of the insured providing the basis for the Court's analysis. See *Knowles v. United Services Auto. Ass'n*, 113 N.M. 703, 705 (S. Ct., 1992). The term "automobile" is utilized three times in the policy. The utilization of the undefined term "automobile" is not useful to definitively define a semitrailer.

The test for reviewing an insurance policy is not what the insurer intended its words to mean, but what a reasonable person in the insured's position would have understood them to mean. See *United Nuclear Corp. v. Allstate Ins. Co.* 2012 NMSC 32. I find the Weatherby-Eisenrich, Inc. Insurance Quotation dated December 13, 2017 instructive. See Exhibit "1", attached hereto and incorporated herein. The quote cautions that one should "review it carefully". My review seems to indicate the quote includes the coverage for trucks connected with the oil and gas transportation business, maybe not "automobiles."

Finally, it is unnecessary to show that a construction against the insurer is more logical than a construction against the insured, so long as both constructions are reasonable. See *United Nuclear*. For reasons set forth above, I find the term "automobile" in the umbrella policy is not sufficiently clear to mean a "semitrailer."

Mr. Stick submitted a written argument that was not specifically addressed in our hearing. Given my decision herein, respectfully, I am not addressing the merits of his argument. Mr. Brantley, kindly provide me with an Order approved as to form by all counsel consistent with this Decision Letter.

Respectfully,

A handwritten signature in black ink that reads "Michael H. Stone". The signature is written in a cursive style with a large initial "M".

Michael H. Stone

INSURANCE QUOTATION

The terms and conditions of this quotation may not comply with the specifications submitted for consideration. please read this quote carefully and compare it against your specifications.

In accordance with the instructions of the below-mentioned insurer, which has acted in reliance upon the statements made in the retail broker's submission for the insured, the insurer has offered the following quotation.

This quotation is valid for 30 days, unless otherwise specified.

BROKER/MGA: Western Surplus Lines Agency, Inc.

INSURER: Hudson Specialty Insurance Company (A.M. BEST Rating A XV)

REFERENCE #:0144619A

DATE ISSUED: December 13, 2017

PRODUCER: Weatherby-Eisenrich Inc.

INSURED: Power of Grace Trucking, LLC
809 S Dal Paso St.
Hobbs, NM 88240

RISK INFORMATION

\$5,000,000 xsUmbrella

Subject to and follows:

- Hudson Specialty GL**, quote# 0144618, \$1M/\$2M limits
 - oil or gas lease site transport or delivery of fresh or salt water
 - oil or gas production wells vacuum or tank truck services at oil or gas lease sites, including transporting and disposal of waste water and other liquids to approved disposal sites
- Commercial Auto Liability - Excluded**
- Employers Liability - Excluded**

xsUmbrella matches the DEXCU & Pollution PD sublimits provided on underlying Hudson Specialty GL

Additional Insured and Waiver of Subrogation follow forms are included

NOTICE: Only the policies scheduled will have follow form coverage under this xsUmbrella policy. Follow form coverage for each underlying policy will cease on their respective expiration dates. Please send your underwriter any underlying policy changes as soon as possible so pricing indications can be sent and any necessary changes may be added to the policy and/or schedule of underlying insurance.

**** PLEASE NOTE THAT THIS QUOTE MAY NOT CONFORM TO THE COVERAGE(S), LIMIT(S), CLASSIFICATION(S), SCHEDULE(S) AND/OR POLICY EXTENSION(S) REQUESTED ON THE APPLICATION(S) PROVIDED. PLEASE REVIEW IT CAREFULLY ****

