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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VALLEY IMAGING PARTNERSHIP
MEDICAL GROUP LP, a California
limited partnership; DONALD D.
KAISERMAN, M.D.,

Plaintiffs - Appellants,

v.

RLI INSURANCE COMPANY, an Illinois
corporation,

Defendant - Appellee.

No. 06-55761

No. CV-05-04716-ABC

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Argued and Submitted February 7, 2008
Pasadena, California

Before: PREGERSON, ARCHER **, and WARDLAW, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Glenn L. Archer, Jr., Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

Valley Imaging Partnership Medical Group, L.P. (“VIP”) and Donald D. Kaiserman (“Kaiserman”) (collectively “the appellants”) appeal the district court’s grant of RLI Insurance Co. (“RLI”)’s summary judgment motion. VIP asserts that Maria Hernandez (“Hernandez”) was a VIP “employee” and, therefore, RLI should have defended Hernandez’s lawsuit against VIP and covered its liability arising out of that lawsuit.

In determining whether the duty to defend is triggered, one looks to the policy, the complaint, and all facts known to the insurer from any source. Montrose Chem. Corp. of Cal. v. Superior Court, 861 P.2d 1153, 1161 (Cal. 1993) (citing Gray v. Zurich Ins. Co., 419 P.2d 168, 176-77 (Cal. 1966)). Additionally, the mutual intention of the parties at the time the contract was formed governs the interpretation of an insurance contract. AIU Ins. Co. v. Superior Court, 799 P.2d 1253, 1264 (Cal. 1990).

Such intent is to be inferred, if possible, solely from the written provisions of the contract ([Cal.] Civ. Code § 1639). The “clear and explicit” meaning of these provisions, interpreted in their “ordinary and popular sense,” unless “used by the parties in a technical sense or a special meaning is given to them by usage” (id. § 1644), controls judicial interpretation. (Id., § 1638.) Thus, if the meaning a lay person would ascribe to contract language is not ambiguous, we apply that meaning.

Id.

“Employee” is defined in the insurance contract as “any person who receives wages or a salary from the Entity for work that is directed and controlled by the Entity, including part-time, seasonal and temporary workers. . . .” Thus, in order to be considered VIP’s “employee” for coverage purposes, Hernandez must receive wages or a salary from VIP. It is undisputed that Hernandez received her check from Queen of the Valley Hospital (“QOV”) each month. Thereafter, VIP would reimburse QOV for the amount of Hernandez’s salary, plus an additional 26% for benefits.

The district court properly held that Hernandez “receive[d] wages or a salary” from QOV, not VIP. That VIP reimbursed QOV does not change that fact that QOV was the entity paying Hernandez’s salary and that, therefore, Hernandez was not a VIP employee as defined by the insurance contract.¹

AFFIRMED.

¹We note that VIP has paid Hernandez bonuses during the Christmas holiday seasons. In their briefs, the appellants did not assert that a bonus constitutes a “wage or salary” under the insurance contract. In fact, when questioned on the subject at oral argument, counsel for VIP took the position that the bonuses VIP paid Hernandez were not “a wage or salary.”