Sublimit in Primary Policy Quashes Excess Insurer’s Obligation to Follow

You would think that a following form excess liability policy simply follows the primary liability policy’s terms and conditions. That may well be true, but excess policies may contain exclusions or provisions that limit the following requirements under certain conditions. Recently, the Eleventh Circuit addressed this issue concerning an assault or battery claim.

In Starstone National Insurance Co. v. Polynesian Inn, LLC, No. 19-13769 (11th Cir. Jun. 12, 2020) (unpublished), a hotel was sued by the victim of a terrible knife attack. The hotel had a primary general liability policy and an excess liability policy. The primary policy contained a limited assault and battery endorsement, which provided for an exclusion for coverage of bodily injury arising out of assault or battery, a separate coverage provision for bodily injury caused by an assault or battery offense, and limits of $25,000 or each assault or battery offense.

The excess policy was a following form excess liability policy. The excess insurer agreed to pay sums in excess of the primary policy’s “Total Limits.” The excess policy, however, provided that it did not provide coverage “with respect to or as a result of any of the following clauses or similar clauses in the Followed Policy . . . 3. Sublimit of liability, unless coverage for such sublimit is specifically endorsed to this Policy.”

The excess insurer denied coverage and commenced this declaratory judgment
action. The district court granted the insurer’s motion for summary judgment.

In affirming, the court focused on the ordinary meaning of sublimit and accepted the district court’s adoption of the definition of sublimit found in the International Risk Management Institute’s Glossary of Insurance and Risk Management Terms. The court found this definition consistent with the ordinary meaning of sublimit, as a limit on a subcategory. The court concluded that under the ordinary meaning of sublimit, the endorsement qualified as a sublimit because it capped the insurer’s exposure at an amount below the ordinary policy limit for a subcategory of loss. The endorsement capped the primary policy’s liability for assault and battery at $25,000.

The court also described the policyholder’s interpretation of the endorsement as convoluted and transcending the common understanding of the ordinary person (citations omitted). The court could not understand how an ordinary person would view the endorsement as something different than a sublimit. The court stated that in interpreting the policy as a whole, it viewed the object and purpose of the contract. Thus, said the court, the purpose and effect of the endorsement as a whole was to cap existing coverage for bodily injury resulting from assault or battery, not to provide additional coverage for that type of loss.

The court concluded that the endorsement was a sublimit of liability or a similar clause under the plain language of the contract and the everyday meaning of the words used (citations omitted). Accordingly, summary judgment for the insurer was affirmed.

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National Law Review, Volume X, Number 176

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