

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

RICHARD P. FINKEL, CHAPTER 11 :  
TRUSTEE OF KPM, INC. :  
 :  
v. : 3:00cv1194(AHN)  
 :  
ST. PAUL FIRE AND MARINE :  
INSURANCE COMPANY :

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This is a dispute over the coverage afforded by an Employee Dishonesty Protection Rider ("EDR") to a fidelity insurance policy that the defendant, St. Paul Fire and Marine Ins. Co. ("St. Paul") issued to KPM, Inc. ("KPM"), a now bankrupt payroll administration company.

Richard P. Finkel ("Finkel"), the Chapter 11 Bankruptcy Trustee for KPM, has brought suit under the policy to recover for losses sustained when KPM's director and principal shareholder, David Kast ("Kast"), misappropriated certain KPM customer funds that KPM held in trust for remittance to the IRS. Finkel seeks recovery on behalf of KPM's former customers who have submitted proofs of loss for their tax liabilities to the bankruptcy estate. St. Paul maintains that the EDR limits coverage to indemnification of KPM for its direct loss of property and does not insure against indirect loss such as any legal liability that KPM incurs as a result of an employee's dishonesty.

Currently pending is St. Paul's Motion for Summary Judgment (Doc. #23). For the following reasons, the defendant's motion is GRANTED.

## BACKGROUND

While it was operating, KPM was in the business of providing payroll services and payroll-tax related services to its customers. As part of those services, KPM would collect payroll tax trust funds from its customers and pay over those trust funds to the IRS and other tax authorities.

From 1990 through early August 1998, David Kast was employed by KPM as its president. Kast was also the sole shareholder of KPM.

From approximately 1992 through mid-1998, Kast misappropriated tens of millions of dollars in customers' trust funds. Rather than paying those funds to the IRS, the funds were used: to purchase "investments" for KPM; to pay interest and penalties on customers' taxes that KPM should have paid; to pay certain personal living expenses of Kast and his wife; and to pay certain gambling debts incurred by Kast.<sup>1</sup>

KPM became insolvent and filed a Chapter 11 bankruptcy petition on July 8, 1998. On August 3, 1998 the Bankruptcy Court barred Kast from running KPM and appointed Finkel as Chapter 11 Trustee. Within sixty days of Finkel's appointment, KPM ceased operations altogether.

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<sup>1</sup> Kast filed for personal bankruptcy in September 1998. Thereafter, Kast pleaded guilty to certain federal crimes and was sentenced, among other things, to a restitution judgment against him and in favor of KPM and KPM's former customers in an amount exceeding \$12 million.

In September 1998, Finkel notified St. Paul of a claim under a fidelity insurance policy that it had issued to KPM. Finkel sought to recover several millions of dollars under the policy to compensate for the losses that KPM's customers incurred as a result of Kast's fraudulent conduct. At St. Paul's request, Finkel submitted a proof of loss in December 1999. St. Paul ultimately denied the claim.

On June 2, 2000, Finkel brought suit, seeking recovery on behalf of KPM's former customers who submitted proofs of loss to the bankruptcy estate for their tax liabilities. Finkel maintains that "[a]ny recovery made by Trustee Finkel in this lawsuit will be distributed to KPM's former customers (and now creditors) in accordance with a liquidating plan of reorganization" that was recently approved by the bankruptcy court. See Pl.'s Memo. of Law in Opp. to Def.'s Mot. for Summary Judgment at 2.

On February 20, 2002, St. Paul moved for summary judgment. Among other things, St. Paul maintains that the EDR limits coverage to indemnification of KPM for direct loss of property and does not insure against indirect loss such as the legal liability of KPM caused by an employee's dishonesty. St. Paul argues that the EDR requires that KPM's loss must result directly from the embezzlement or other dishonest acts of a KPM employee committed with both the intent to cause KPM a loss and to obtain an improper financial benefit for the employee.

## STANDARD

Summary judgment is appropriate when the evidence demonstrates that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).

When ruling on a summary judgment motion, the court must construe the facts in the light most favorable to the non-moving party and must resolve all ambiguities and draw all reasonable inferences against the moving party. Anderson, 477 U.S. at 255; Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970); see also Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir.) (court is required to "resolve all ambiguities and draw all inferences in favor of the nonmoving party"), cert. denied, 506 U.S. 965 (1992). When a motion for summary judgment is properly supported by documentary and testimonial evidence, however, the nonmoving party may not rest upon the mere allegations or denials of his pleadings, but rather must present significant probative evidence to establish a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Colon v. Coughlin, 58 F.3d 865, 872 (2d Cir. 1995).

## DISCUSSION

St. Paul claims that coverage is triggered under the EDR only when KPM sustains a direct loss from employee dishonesty. St Paul argues that, because the plaintiff seeks recovery on behalf of KPM for claims made against the bankruptcy estate from former KPM customers for their tax liabilities, that loss is indirect and the EDR does not afford coverage. The court agrees.

The Blanket Employee Dishonesty Protection Rider ("EDR") to the policy provides, in pertinent part:

#### What This Agreement Covers

We'll pay for loss or damage to, money, securities and other property that results directly from employee dishonesty.<sup>2</sup>

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<sup>2</sup> Although not at issue for purposes of the Court's Ruling, the EDR defines "employee dishonesty" and "employee" as follows:

Employee Dishonesty means only dishonest acts committed by an employee whether identified or not while acting alone or with other persons, with the intent to:

- Cause you a loss; and
- Obtain personal financial benefit; or
- Obtain financial benefit for any person or organization intended by the employee to receive that benefit . . . .

Employee means any individual:

- in your service and for 30 days after termination of service;
- whom you compensate directly by salary, wages or commissions; and
- whom you have the right to direct and control while performing services for you; or
- employed by an employment contractor while that person is subject to your direction and control and performing services for you. But this won't include any such person while having care and custody of property outside the premises.

We won't consider any of the following to be an employee:

- Agent, broker, factor, commission merchant, cosignee, independent contractor or representative of the same general character; or
- Director or trustee, except while performing acts coming within the scope of the usual duties of an employee.

See EDR, Form 45010 at 1, attached to Def.'s Statement of Undisputed Facts as Exh. 7 (emphasis added). The exclusion section of the EDR further provides, in pertinent part:

Exclusions - Losses We Won't Cover . . . .

Indirect Loss. We won't cover loss that is an indirect result of any act or event covered by this agreement, including, but not limited to loss resulting from: . . .

- Payment of damages of any type for which you are legally liable. But this exclusion won't apply to compensatory damages arising directly from a loss covered under this agreement; . . . .

Id. at 2.

There appear to be no cases from a Connecticut appellate court interpreting the employee dishonesty provisions of a fidelity policy similar to the one at issue here. Under such circumstances, a federal court must predict how the highest state court would rule. See, e.g., Standard Structural Steel Co. v. Bethlehem Steel Corp., 597 F. Supp. 164, 190 (D. Conn. 1984).

Under Connecticut law, "the terms of an insurance policy are to be construed according to the general rules of contract construction." Buell Indus., Inc. v. Greater New York Mut. Ins. Co., 259 Conn. 527, 2002 WL 234779 at \*3 (Feb. 26, 2002). "If the words of an insurance policy are plain and unambiguous, the established rules for the construction of contracts apply; the language, from which the intention of the parties is to be

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See EDR, Form 45010 at 1, attached to Def.'s Statement of Undisputed Facts as Exh. 7.

deduced, must be accorded its natural and ordinary meaning; and courts cannot indulge in a forced construction, ignoring provisions or so distorting them as to accord a meaning other than that intended by the parties." Schultz v. Hartford Fire Ins. Co., 213 Conn. 696, 702-03 (1990). Thus, "[a] court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . ." Barnard v. Barnard, 214 Conn. 99, 110, 570 A.2d 690 (1990) (citations and quotations omitted). "The determinative question is the intent of the parties, that is, what coverage the . . . [plaintiff] expected to receive and what the defendant was to provide, as disclosed by the provisions of the policy." Buell, 2002 WL 234779 at \*3 (citing Heyman Assoc. No. 1 v. Ins. Co. of Pennsylvania, 231 Conn. 756, 769-70, 653 A.2d 122 (1995)); see also Marcolini v. Allstate Ins. Co., 160 Conn. 280, 283, 278 A.2d 796 (1971). "[E]ach and every sentence, clause, and word of a contract of insurance should be given operative effect. Since it must be assumed that each word contained in an insurance policy is intended to serve a purpose, every term will be given effect if that can be done by any reasonable construction . . . ." Buell, 2002 WL 234779 at \*4 (quoting Hansen v. Ohio Cas. Ins. Co., 239 Conn. 537, 548, 687 A.2d 1262 (1996), quoting 2 G. Couch, Insurance (3d ed. 1995) c. 22, § 22.43, pp. 22-90 through 22-92). The question is not what intention existed in the minds of the parties but what intention is expressed in the language used.

See, e.g., Bria v. St. Joseph's Hosp., 153 Conn. 626, 630-31 (1966).

Where the terms of a policy are of doubtful meaning, however, it is then that the construction most favorable to the insured must be adopted. See, e.g., Schultz, 213 Conn. at 702. As stated by the Connecticut Supreme Court:

"[w]hen the words of an insurance contract are, without violence, susceptible of two interpretations, that which will sustain the claim and cover the loss must, in preference, be adopted." Raffel v. Travelers Indemnity Co., 141 Conn. 389, 392, 106 A.2d 716 (1954); see also 4 Williston, Contracts (3d ed.) § 621.

"This rule - that the construction most favorable to the insured be adopted - rests upon the ground that the company's attorneys, officers or agents prepared the policy, and it is its language that must be interpreted." Roby v. Connecticut General Life Ins. Co., 166 Conn. 395, 402, 349 A.2d 838 (1974). The rule itself derives from the established principle of contract construction that, where the terms of a contract are equally susceptible to two different meanings, that favoring the party who did not draw up the contract will be applied. "The premise operating behind the rule would seem to be a psychological one. The party who actually does the writing of an instrument will presumably be guided by his own interests and goals in the transaction. He may choose shadings of expression, words more specific or more imprecise, according to the dictates of these interests." Ravitch v. Stollman Poultry Farms, Inc., 165 Conn. 135, 146 n.8, 328 A.2d 711 (1973). A further, related rationale for the rule is that "[s]ince one who speaks or writes, can by exactness of expression more easily prevent mistakes in meaning, than one with whom he is dealing, doubts arising from ambiguity are resolved in favor of the latter. 4 Williston, op. cit. § 621, p. 760." Simmes v. North American Co. for Life & Health Ins., 175 Conn. 77, 84-85, 394 A.2d 710 (1978). Courts follow that rule because the insurance company's attorneys, officers, or agents prepare the policy and it is their language that must be interpreted.

Griswold, 186 Conn. at 513.

Construing the terms of the policy at issue here according to the general rules of contract construction, the Court finds that the EDR unambiguously limits coverage to indemnification of the insured entity for a direct loss from employee dishonesty and does not insure against the legal liability of the insured to third parties caused by an employee's dishonesty.

As noted above, the EDR provides that St. Paul will "pay for loss or damage to, money, securities and other property that results directly from employee dishonesty." See EDR, Form 45010 at 1, attached to Def.'s Statement of Undisputed Facts as Exh. 7 (emphasis added). KPM, however, has not sustained a direct loss as required by the unambiguous terms of the EDR, but has only incurred potential legal liability to its former customers. Accordingly, no coverage is afforded for this claim.

Fidelity policies with language such as the EDR here "are a form of first party coverage, indemnifying the obligee for its loss and are not a form of third party coverage, indemnifying the insured for its liability to third persons." Three Garden Village Ltd. Partnership et al. v. United States Fidelity & Guaranty Co., 318 Md. 98, 567 A.2d 85, 93 (Md. App. 1989). The paradigmatic example of such a loss is an employee of the insured who embezzles money directly from the insured.

Several courts have held that a fidelity policy only indemnifies the insured for direct loss and does not provide coverage for the insured's liability to third parties. See,

e.g., In Re: Ben Kennedy and Assoc., Inc., 40 F.3d 318 (10th Cir. 1994); Drexel Burnham Lambert Group, Inc. v. Vigilant Ins. Co., 595 N.Y.S.2d 999 (Sup. Ct. 1993); 175 E. 74th Corp. v. Hartford Accident and Indemnity Co., 51 N.Y.2d 585, 593 (N.Y. App. 1980); Lynch Properties Inc. v. Potomac Ins. Co., 962 F. Supp. 956 (N.D. Tex. 1996), aff'd, 140 F.3d 622 (5th Cir. 1998). More importantly, the only Connecticut court to have addressed the issue has held that the fact

[t]hat the insured may be liable to a third party for a loss of money resulting from employee dishonesty does not transform a policy covering the insured against a direct loss into one indemnifying against liability.

ITT Hartford Life Ins. Co. v. Pawson Assoc., Inc., No. CV 940361910S, 1997 WL 345345 at \*5 (Conn. Super. Ct. June 16, 1997) (quoting Commercial Bank of Bluefield v. St. Paul Fire and Marine Ins. Co., 175 W. Va. 588, 336 S.E.2d 552, 556 (W. Va. 1985)).

In short, the policy's requirement that the "loss or damage to, money, securities and other property . . . result[] directly from employee dishonesty" unambiguously limits coverage to direct losses to the insured, KPM, and does not cover KPM's liability to its customers. See, e.g., Lynch Properties Inc. v. Potomac Ins. Co., 962 F. Supp. 956 (N.D. Tex. 1996), aff'd, 140 F.3d 622 (5th Cir. 1998). By expressly referring to loss resulting directly from employee dishonesty, the EDR does not insure against consequential or remote damages that might arise out of the employee's conduct.

The EDR further reinforces the intention that only the insured's direct loss will be covered by stating that

this insurance is for your benefit only. It provides no rights or benefits to any other person or organization.

See EDR, Form 45010 at 1, attached to Def.'s Statement of Undisputed Facts as Exh. 7. This language further supports the notion that the EDR unambiguously limits coverage to indemnification of KPM for its direct loss of property and does not provide coverage that will inure to the benefit of KPM's former customers.

The express language of the EDR also specifically excludes coverage for indirect losses such as the payment of damages for the insured's legal liability caused by an employee's dishonesty. As noted above, the EDR expressly provides:

Exclusions - Losses We Won't Cover . . . .

Indirect Loss. We won't cover loss that is an indirect result of any act or event covered by this agreement, including, but not limited to loss resulting from: . . .

- Payment of damages of any type for which you are legally liable. But this exclusion won't apply to compensatory damages arising directly from a loss covered under this agreement; . . . .

See EDR, Form 45010 at 2, attached to Def.'s Statement of Undisputed Facts as Exh. 7. Thus, the EDR further reinforces the intention that only the insured's direct loss will be covered by specifically excluding coverage for indirect losses such as the payment of damages for which the insured is legally liable.

In support of his claim, the plaintiff argues that, because

the EDR defines covered property to include "property for which [the insured is] legally liable," the policy provides coverage. The court, however, is not persuaded. The express language of both the coverage and exclusion terms in the EDR clearly provides that such indirect potential liability for customer losses is not the type of loss for which coverage is triggered. The "[m]ere insertion of the words 'legal liability' into an employee dishonesty policy does not transform the policy into a liability policy." Vons Companies, Inc. v. Federal Ins. Co., 212 F.3d 489, 492 (9th Cir. 2000) (quoting Lynch Properties, Inc. v. Potomac Ins. Co., 140 F.3d 622 (5th Cir. 1998)).

The court's conclusion is further supported by what appears to be the only Connecticut decision on point - namely, the decision of the Connecticut Superior Court in ITT Hartford Life Ins. Co. v. Pawson Assoc., Inc., No. CV 940361910S, 1997 WL 345345 (Conn. Super. Ct. June 16, 1997). Interpreting a fidelity policy with language nearly identical to the language at issue here, the court held that the fidelity policy was an indemnity policy that did not provide coverage to the insured for its liability to a third party due to its employee's dishonesty.

In ITT, Pawson, an insurance agency, had a sales agreement with ITT to sell certain annuity contracts. Pawson authorized one of its employees to sell the annuity contracts. The employee purported to sell five annuity contracts but retained the annuity premium payments. ITT reimbursed the buyers upon learning of the

actions of Pawson's employee, but Pawson refused to reimburse ITT for those payments.

After ITT brought suit, Pawson filed a third-party complaint against Aetna Casualty and Surety Company ("Aetna"). Among other things, Pawson alleged that the fidelity bond which it had purchased from Aetna was in force at the time of its employee's actions and that the bond covered losses from employee dishonesty, including the failure to remit premium payments to ITT. Pawson sought indemnification for any judgment that might be rendered against it in favor of ITT; reimbursement for sums Pawson paid as a result of its employee's actions; as well as costs, expenses and attorneys fees for defending against ITT's action.

Aetna filed a motion to strike the third-party complaint, claiming that it was legally insufficient. Aetna argued that there was no claim for relief under the policy because the employee's withholding of ITT's annuity payments caused no direct loss to Pawson. In opposition, Pawson argued that if ITT were to recover on its claims, Pawson would suffer a direct loss as a consequence of its employee's dishonest actions.

The court granted Aetna's motion to strike, holding that the losses caused by Pawson's employee were not covered by the policy. The court reasoned that:

The bond in question is designed to compensate employers for employee dishonesty that results in loss to the insured. The Employee Dishonesty Coverage Form states

that Aetna "will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss." Covered Property includes money, securities, and property other than money and securities. Covered Cause of Loss is defined as "Employee dishonesty." Employee dishonesty is in turn defined as "only dishonest acts committed by an 'employee,' ... with the manifest intent to: (1) cause you to sustain loss; and also (2) Obtain financial benefit ... for (a) The 'employee'" . . . .

This type of bond is a contract of indemnity against loss, as opposed to a contract against liability. First National Bank of Louisville v. Lustig, 975 F.2d 1165, 1167 (5<sup>th</sup> Cir. 1992)). The use of phrases such as "indemnity for loss" and "intent to cause the insured to sustain loss" indicate that the bond is a contract of indemnity. Id. "That the insured may be liable to a third party for a loss of money resulting from employee dishonesty does not transform a policy covering the insured against a direct loss into one indemnifying against liability." Commercial Bank of Bluefield v. St. Paul Fire and Marine Ins. Co., 175 W.Va. 588, 336 S.E.2d 552, 556 (W. Va. 1985).

ITT Hartford Life Ins. Co., 1997 WL 345345 at \*2.

Pawson claimed that if ITT prevailed in its claims, it would indeed suffer an ascertainable loss due directly to the dishonest acts of its employee. The court, however, rejected that claim, stating:

Pawson misconceives "direct loss" when it argues that it will suffer a covered loss if ITT recovers from Pawson. The conditional nature of this loss indicates that Pawson has not suffered any direct, covered loss from its employee's actions. Rather, it might suffer an indirect loss if ITT's claim prevails.

Id. The court held that, "[b]ecause Pawson has suffered no direct loss, Aetna is not required to indemnify it for any losses that might be suffered due to liability to a third party." Id.

Like the plaintiff here, Pawson further argued that other

sections of the policy supported the argument that its loss was covered. Pawson relied upon language in the policy providing that indirect losses were excluded from coverage, including "Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance." Id. at \*3. Likewise, Pawson argued that the ITT policy stated that "The property covered under this insurance is limited to property ... for which you are legally liable." Pawson argued that these sections created a duty for Aetna to reimburse Pawson if Pawson were found legally liable for losses incurred by ITT due to the misappropriation of the annuity premiums by its employee.

The court rejected Pawson's claims. The court held that, even assuming arguendo that the annuity premiums were property as defined by the policy,

there is still no coverage under the bond. To fall under the bond, the loss of property must be a direct loss to Pawson. The language of legal liability cannot alter the terms of the bond which clearly state that covered losses are those resulting from employee dishonesty intending to cause the insured to sustain a loss.

Id.

The court further held that, "[t]he use of the phrase 'for which you are legally liable' implies a loss to a third party, which is specifically excluded from coverage under the policy."

Id. The court also noted that "[t]he same section which discusses property for which the insured is legally liable also

states, 'However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization." Id. Moreover, the court stated,

the policy specifically excludes payment of damages "for which you are legally liable." Compensatory damages will only be paid if they derive directly from a loss covered by the policy, which does not include the loss suffered by Aetna.

Id. Accordingly, the court granted that portion of Aetna's motion to strike that argued that the losses caused by Pawson's employee were not covered by the policy.

The court finds the decision and rationale of the Connecticut Superior Court in the highly analogous case of ITT to be persuasive. There the court interpreted a fidelity policy with language almost identical to the language at issue in the EDR and held that the policy did not provide coverage to the insured for its liability to third parties due to its employee's dishonesty. The court is simply not persuaded by the case of Nelson v. ITT Hartford Fire Ins. Co., No. 99-6275, 2000 WL 763772 (10th Cir. 2000), an unpublished decision on which the plaintiff relies.<sup>3</sup> Nelson arguably undermines St. Paul's reliance on the

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<sup>3</sup> Rule 36.3 of the Circuit Rules for the 10th Circuit Court of Appeals provides, in pertinent part:

Rule 36.3. Citation of unpublished opinions/orders and judgments.

- (A) Not Precedent. Unpublished orders and judgments of this court are not binding precedents, except under the doctrines of law of the case, res judicata, and collateral estoppel.
- (B) Reference. Citation of an unpublished decision is disfavored. But an unpublished decision may be cited if:

10th Circuit's decision and rationale in In Re: Ben Kennedy and Assoc., Inc., 40 F.3d 318 (10th Cir. 1994); and the facts of Nelson certainly bear many similarities to the instant case - including the fact that Nelson arose in the context of a bankruptcy trustee seeking to recover under a fidelity policy for acts of employee dishonesty that had not yet resulted in actual loss to the estate, but for which the estate was potentially liable. This Court, however, finds the rationale of ITT Hartford, a trial court case from the controlling jurisdiction, to be well-reasoned, more persuasive, and more instructive on the question how the highest Connecticut state court would rule, than it does an unpublished decision by the 10th Circuit Court of Appeals that is of arguably questionable precedential authority.

Accordingly, for all of the foregoing reasons, the court holds that the EDR does not provide coverage for the claims presented by the plaintiff in this action. "Trustee Finkel, the court appointed bankruptcy trustee, has brought the present action against St. Paul to recover funds that will benefit the numerous creditors of KPM." See Pl.'s Memo. of Law in Opp. to

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- (1) it has persuasive value with respect to a material issue that has not been addressed in a published opinion; and
  - (2) it would assist the court in its disposition.

Def.'s Mot. for Summary Judgment at 25. The EDR, however, limits coverage to indemnification of KPM for its direct loss of property and does not insure against KPM's legal liability to its former customers (and now creditors) caused by an employee's dishonesty. Because the EDR clearly and unambiguously requires that KPM's loss must result directly from the dishonest acts of an employee; and because the policy unambiguously excludes coverage for indirect losses such as the payment of damages for KPM's legal liability caused by an employee's dishonesty, the EDR does not provide coverage for the plaintiff's claims. Simply put, the EDR is not a liability policy, but an indemnity policy. Accordingly, summary judgment is granted in favor of St. Paul.<sup>4</sup>

#### CONCLUSION

For the reasons set forth above, St. Paul's Motion for Summary Judgment (Doc. #23) is GRANTED and the clerk is instructed to close the file.

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<sup>4</sup> Because the Court holds that the plaintiff has not sustained a direct loss for which coverage is triggered under the policy, the Court need not address the parties' other arguments, including: (1) whether Kast was the "alter ego" of KPM; (2) whether Kast or his wife were "employees" as that term is defined by the policy; (3) whether any alleged loss was due to "employee dishonesty" as that term is defined by the policy; and (4) whether the conduct at issue is considered "one event" under the policy.

SO ORDERED this            day of June 2002, at Bridgeport,  
Connecticut.

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Alan H. Nevas  
United States District Judge