UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 534

September Term, 2002

CATONSVILLE BAKERY &
DELICATESSEN, INC., et al.

v.

HARTFORD INSURANCE GROUP, et al.

Salmon,
Eyler, James R.,
Krauser,

JJ.

Opinion by Eyler, James R., J.

Filed: March 5, 2003

#3C00006724

This appeal results from a suit by insureds against their agent, alleging that the agent negligently misrepresented the scope of coverage afforded by a multi peril policy obtained by the agent. After a jury verdict in favor of the insureds, the circuit court held that the evidence was legally insufficient to support the award, granted the agent's motion for judgment notwithstanding the verdict, and entered judgment in favor of the agent. We shall affirm.

Factual Background

In 1992, Mary Brady and Robert Brady, Sr., two of the appellants, purchased a bakery business and the real property on which it was located. The Bradys formed Catonsville Bakery & Delicatessen, Inc. (The Corporation), a Maryland corporation and the remaining appellant, to operate the business. The Bradys and their sons were stockholders, officers, and employees of the Corporation.

The Bradys purchased insurance coverage for the business through appellee, Bonnie Ronaghan, an agent then employed by Consolidated Insurance Center, Inc. The coverage, obtained from Hartford Insurance Group, was renewed through 1995. At some point, appellee ceased to be employed by Consolidated Insurance Center, Inc., but the Corporation remained with that agency. The agency placed coverage with United States Fidelity and Guaranty Company for the year 1996.

In 1996, appellee contacted Mary Brady, and appellants placed coverage through appellee for the year 1997. The policy, the one at issue in this case, was a "spectrum" policy issued by Hartford Fire Insurance Company (Hartford) to the Corporation, effective January 7, 1997 to January 7, 1998. When appellee contacted Mary Brady, prior to issuance of the spectrum policy, they discussed coverage for salaries paid to employees and officers of the Corporation, in the event of a covered loss. We will discuss the testimony relating to that issue when we address appellants' contentions.

On July 17, 1997, a fire occurred on the premises of the Corporation, the named insured. Appellants made claims under the policy and were paid approximately $370,000, which included $90,000 pursuant to the loss of business income and extra expense coverage. Appellants released Hartford from any further liability.

In the suit against appellee, appellants alleged that certain claims were denied by Hartford, and those claims formed the basis for the suit. Those claims were (1) payments made to the Bradys and their two sons who worked for the Corporation as officers and employees during the time the business was closed and (2) certain expenses incurred prior to the time the business reopened. The expenses included continuing gas and electric bills, telephone bills, tax bills, rent, repair contractor's

bills, and new equipment. Hartford denied those claims on the ground that they were not within the terms of the policy or had not been proved.

The Hartford policy included "business income and extra expense coverage" with limits of "12 months actual loss sustained." With respect to "business income," section k. of the "special property coverage form"'s "additional coverage" provided:

> We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises, including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from any Covered Cause of Loss.
>
> We will only pay for loss of Business Income that occurs within 12 consecutive months after the date of direct physical loss or damage. This Additional Coverage is not subject to the Limits of Insurance.
>
> Business Income means the:
>
> **(1)** Net Income (Net Profit of Loss before income taxes) that would have been earned or incurred; and
> **(2)** Continuing normal operating expenses incurred, including payroll.

With respect to "extra expense," section l. of the same form provided:

> We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at

the described premises, including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from a Covered Cause of Loss.

Extra Expenses means expense incurred:

(1) To avoid or minimize the suspension of business and to continue "operations":

(a) At the described premises; or
(b) At replacement premises or at temporary locations, including:

(i) Relocation expenses; and
(ii) Cost to equip and operate the replacement or temporary location.

(2) To minimize the suspension of business if you cannot continue "operations".

(3) **(a)** To repair or replace any property; or
(b) To research, replace or restore the lost information on damaged valuable papers and records;

to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage **d.**, Business Income.

We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage. This Additional Coverage is not subject to the Limits of Insurance.

On July 3, 2000, appellants filed a complaint against appellee, Hartford Insurance Group, Hartford Fire Insurance Company, Crossroads Insurance, Inc., and Bay Area Insurance Agency, Inc. All of the defendants, with the exception of appellee, were ultimately dismissed. The suit against appellee

alleged malpractice and negligent misrepresentation. In March, 2002, the claims were tried by a jury, and the jury found appellee liable to appellants for negligent misrepresentation. The jury awarded damages in the total amount of $80,000, with $20,000 for operating expenses and $60,000 for unpaid salaries of the Corporation's officers.

After judgment was entered, appellee filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. By order dated April 17, 2002, the circuit court granted the motion on the ground there was no legally sufficient evidence of negligent misrepresentation and entered judgment in favor of appellee. Appellants noted this appeal.

Question Presented

Did the circuit court err in granting appellee's motion for judgment notwithstanding the verdict?

Standard of Review

In a motion for judgement notwithstanding the verdict, we review the evidence in the light most favorable to the party prevailing below. See Md. Rule 2-519(b). We must reverse the trial court's grant of a judgment notwithstanding the verdict if the evidence is sufficient to send the issue to the jury. Washington Land Co. v. Potomac Ridge Dev. Corp., 137 Md. App. 33, 40 (2001), cert. denied 364 Md. 462 (2001). "On review, we do essentially what the trial court should have done, by seeking to

determine whether the evidence was sufficient to have created a jury question.' Id. (citing Garrison v. Shoppers Food Warehouse, 82 Md. App. 351, 353-57(1990); James v. General Motors Corp., 74 Md. App. 479, 484-85(1988); Pahanish v. Western Trails, Inc., 69 Md. App. 342, 353 (1986)).

The issue of negligence must be sent to the jury if there is any evidence, however slight, that is legally sufficient to prove negligence, leaving the weight and credibility of the evidence for the finder of fact. See e.g. Medina v. Meilhammer, 62 Md. App. 239, 246 (1985); Great S.W. Fire Ins. Co. v. Huss, 49 Md. App. 447, 461-62 (1981); Ralph Pritts & Sons v. Butler, 43 Md. App. 192, 199-200 (1979). The mere suggestion of negligence which rests on conjecture or speculation is not alone enough to send the issue of negligence to the jury. See Keene v. Arlan's Department Store of Baltimore, Inc., 35 Md. App. 250, 253-255 (1977). "Our task, then, is to determine whether appellants' case amounts to a mere hypothesis resting on surmise and conjecture or a skeleton fleshed out with sufficient - albeit meager - evidence requiring the issue to be submitted to the jury." Id. at 254 (citations omitted).

Discussion

The parties do not disagree with respect to the elements of negligent misrepresentation. They are :

> (1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false

> statement;
> (2) the defendant intends that his statement will be acted upon by the plaintiff;
> (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury;
> (4) the plaintiff, justifiably, takes action in reliance on the statement; and
> (5) the plaintiff suffers damage proximately caused by the defendant's negligence.

Walpert, Smullian & Blumenthal, P.A. v. Katz, 361 Md. 645, 657 (2000). The parties do disagree as to whether there was legally sufficient evidence of negligent misrepresentation to present a jury issue.

Appellants point to the following testimony in support of their position. When asked on direct examination about officer's salaries, Mary Brady stated:

> Q. Did you ask her [appellee] about the officer's salaries.
> A. Yes, I said does that mean us too, meaning the owners and officers, and she said "yes, you're covered too."
>
> Q. Did Mrs. Ronaghan tell you anything about what the policy covered insofar as expenses?
> A. Yes.
>
> Q. What did she say?
> A. She said on your business interruption that's highlighted on here it would take care of all expenses. As long as you were shut down everything would be covered.
>
> Q. Did Mrs. Ronaghan advise you to read the policy?
> A. At that moment she may have. As she was leaving she said "when you get a chance, skim through it, whatever." But she went over the

main things that she was covering.

On cross-examination, Mary Brady was questioned further about officer's salaries:

> Q. Now, you indicated in your prior testimony that Mrs. Ronaghan told you that everything would be covered, correct?
> A. That she had outlined in her book there.
>
> Q. And did you understand that to mean everything she asked for is going to be covered?
> A. No, sir.
>
> Q. You understood that to mean anything that was in the policy, that was covered in the policy?
> A. That she had outlined, yes.

Mary Brady then described what she believed was covered under the policy:

> Q. You understood the policy to contain a provision that would cover you for officer's wages and salaries, correct?
> A. Yes.
>
> Q. You heard Mr. Andes testify to that, you don't have any dispute, correct?
> A. That it was stated, no.
>
> Q. And you had asked Mrs. Ronaghan to make sure that policy had such a provision in it, did you not, when you first -
> A. When we first took the policy out?
> Q. Yes.
> A. That's when she said we would be covered.
>
> Q. And in fact you were covered in the policy?
> A. Policy, yes.
>
> Q. Okay. So Mrs. Ronaghan, with respect to

the lost wages and officer's salaries, did what you asked, correct. That is to say -
A. No, I didn't ask her. She told me this is what's in the policy.

Q. Mrs. Brady, you wanted to have a policy that covered you and your family against lost wages in the event there was a loss, correct?
A. Sir I never-

Q. That's a "yes" or "no" question?
A. Because I didn't ask her for it. She came and told me.

Q. I didn't ask you if you asked her for it. I asked you if you wanted to have a policy that would cover you and your family against losing your salaries and wages in the event of a loss, like a fire. You wanted to have that provision in any insurance policy that you purchased correct?

A. Is this a "yes" or "no" answer?
Q. I believe it is. The Court might disagree with me.

THE COURT: I'm not involved.

Q. Did you want such a provision in your policy or did you not care there was such a provision in your policy?
A. At first I did not care, and then she said this is in here.

Q. Then after you understood what was in there, were you pleased?
A. Yes.

Q. Once you understood it was in there, did you want it to be in there? You did want to leave it in there, you didn't want to take it out?
A. No.

Q. So you were pleased that the policy contained that provision- Mrs. Ronaghan apparently had made sure that the policy did contain that provision, correct?

A. Yes.

Appellants also refer to that portion of Mary Brady's cross-examination wherein she discussed appellee's knowledge of whether the officers received profit distributions or were on the payroll:

> Q. Did you ever inform Mrs. Ronaghan that the officers were not on the payroll, and that they were not receiving salaries, that they were receiving distributions of income from the company, corporation?
> A. I know at one point I said we're an S-Corporation and we'll take distributions, but every year we did, we were on the payroll except for '96.
>
> Q. You weren't on the payroll in '96 at all?
> A. No.
>
> Q. So in '96, when you say "you", do you mean you and your husband and your two sons?
> A. Yes.
>
> Q. You didn't take any payroll checks at all in '96, you took distributions?
> A. Right.
>
> Q. And were they in cash?
> A. I can't remember if we were using cash or check then, but whatever we were doing at that time it would have been either cash or it would have been check.
>
> Q. And in '97 was that also the case up until the fire in July - were you taking cash?
> A. Yes.
> Q. I'm sorry.
> A. Or check, whatever we were doing at the time.
>
> Q. You were taking cash or check distributions but no salary and not payroll?
> A. Right. When we took distribution, we never

took like $99. We would take what we got, what we cleared. Like I say it was around three hundred and some dollars. And one was around four hundred and some.

Appellants assert that appellee misrepresented facts by stating that "everything's covered" when shareholder's draws and all operating expenses were not covered. We disagree.

First, appellants' evidence does not reveal any misleading statements by appellee relied on by appellants. On cross-examination, Mary Brady was asked to clarify what she believed appellee's statements meant. She understood that appellee had outlined what would be covered under the policy and that the specific coverage was detailed in the policy. Mary Brady did not rely on the "everything's covered" statement, and she knew that only what was specifically stated in the policy was in fact covered. Mary Brady also testified that appellee probably told her at the end of their conversation to read the policy.

Second, the statement that "[a]s long as you were shut down everything would be covered" is too general to be actionable. See McGraw v. Loyola Ford, Inc., 124 Md. App. 560, 582 (1999) (citing Travel Committee, Inc. v. Pan American World Airways, Inc., 91 Md. App. 123, 179-80 (1992); Wolin v. Zenith Homes, Inc., 219 Md. 242, 246-47 (1959); Milkton v. French, 159 Md. 126, 129-30 (1930)). In McGraw v. Loyola Ford, Inc., we defined such statements as "indefinite generality." McGraw, 124 Md. App. at 582. In that case, a car dealer represented that the car being

sold was "the most outstanding value" because all the possible reductions and allowances had been taken to give it the lowest price. Id. We reasoned that such "representations were obvious examples of the kind of 'puffing' and 'sales talk' language" and could not be relied upon by the buyer". Id. Similarly, appellee's general statement that "everything's covered" was sales talk too general to be relied upon.

In Buschman v. Codd, 52 Md. 202, 207 (1879), the Court of Appeals explained why such general statements are not actionable. In that case, Buschman tried to get Codd to invest in Buschman's marble manufacturing business by telling Codd that the business had in existence a substantial number of contracts for work and that Buschman expected the enterprise to flourish. Id. at 206. Based on these representations, Codd purchased part of the business, which then failed. Id. at 207. The lower court determined the representations were false and actionable, and the Court of Appeals upheld that ruling because it stated that the one making the representation, in this case Buschman, had more knowledge than the buyer as to what was being represented, namely, the profitability of his own business. Id. at 208. This was unlike a situation in which a buyer has the ability to research the extent of what it is receiving. Id. at 207. The Court of Appeals explained:

> A representation which merely amounts to a statement of opinion, judgment or

> expectation, or is vague and indefinite in its nature and terms, or is merely a loose conjectural or exaggerated statement, is not sufficient to support an action. And for that reason, that such indefinite representations ought to put the person to whom they are made, upon the inquiry, and if he chooses to put faith in such statements, and abstained from inquiry, he has no reason to complain.

Id. (citations omitted).

In the case before us, the representation, "everything's covered," was so vague and indefinite that it invited investigation. Furthermore, an inquiry into the extent of the coverage would have been easy; appellants needed only to read the policy. In fact, Mary Brady testified that she did not believe everything imaginable was covered under the policy, only what she would find outlined in the policy, were she to read it.

The policy did, in fact, cover salaries and wages. Provision k. in the "additional coverage" section of the policy's "special property coverage form" stated that business income, including payroll, would be covered for 12 months. Thus, if appellee told Mary Brady that salaries and wages were covered, she was not misrepresenting the policy. Appellee did not misrepresent the extent of the coverage, and the extent of the coverage was discernible from the policy.

In addition, when appellants submitted their claim to Hartford for officer's salaries and expenses, they received a $90,000 payment. Mr. Andes, a Hartford employee, testified that,

while the money was not paid to the Bradys as individuals because they were not insureds, it was his understanding that the $90,000 would be used by the Corporation as salaries for officers. The circuit court concluded that "it's common knowledge that all agents fight for their insured whenever they can in order to stay in business, but it's up to the company to make the decision and in this case the company made the decision and I think it is pretty clear in the record that Catonsville didn't prove sufficiently all of the elements it claims it was entitled to under coverage k. and therefore they entered into a settlement." Consistent with that observation, the evidence indicated that Hartford had a difficult time evaluating the claim, not only because certain items claimed were not covered, but because appellants offered insufficient proof.

Similarly, with respect to section l., the circuit court noted that Mr. Leizure, the independent insurance adjuster employed by Hartford, testified that the reason that Hartford did not include more money for officer's salaries in its original $370,000 payment was because there was insufficient information relating to the Corporation's financial status. Mr. Leizure stated that, although he received a 1995 and a 1996 tax return, he wanted to view the returns of other years as well as "sales figures for the previous months, hopefully two years of them, to get an idea of the trend in the business." Mr. Leizure stated he

needed those records to develop an accurate picture of the expenses of the business for reimbursement under section 1. of the additional coverage section of the policy. When asked on direct, "And one of those expenses would be officer's salaries?" he replied, "Yes." Mr. Leizure then clarified:

> They weren't salaries as such, they were draws, and so that's not exactly an expense. That's a - in my understanding, it's a - it's taking- it's a- it's a withdrawal from the profit and loss, or profit if you're making a profit. And it's not exactly an exact expense.
>
> Q. Did you have difficulty ascertaining how much money was taken out in draws by the officers?
> A. Yes.
>
> Q. Now why did you experience that difficulty?
> A. Well-
>
> Q. What was the cause of the difficulty is a better way to phrase it, I guess.
> A. It's because the- I didn't have financial statements, strong records, to support all of that.

Thus, Mr. Leizure investigated expenses to be paid under section 1. of the policy and determined that there was not enough information to pay the officer's distributions as expenses. In making its ruling on the motion for judgment notwithstanding the verdict, the circuit court commented, "I guess there's some vague reference to the fact that the Brady family had to receive money to keep going, but I don't remember any evidence as to how much specifically was paid to each one. And I think probably no such

evidence exists and I think probably that's why Hartford [denied the claim for draws].'

The circuit court correctly concluded that there were no misrepresentations made by appellee. The circuit court held:

> There is no evidence on the plaintiff's side of the case that that policy did not relate to all customary ordinary categories of loss that might arise from a fire of a business premises. The premises were covered, it was replaced, the equipment was replaced, the business expenses were paid and ultimately settled. Some were paid some were settled in addition to the $90,000.
>
> All of the aspects of this very unfortunate situation for the Brady family were covered, it's just that Hartford opted not to accept some elements of their proof of loss because it didn't constitute compliance with the terms of the policy. That was a decision by Hartford, there was no misrepresentation before this fire loss by Mrs. Ronaghan to the contrary.

We agree. There is no evidence that appellee made a false statement or misrepresented the terms of the policy. The statement, "everything's covered," is too general to be actionable. See McGraw, 124 Md. App. at 582. Appellants' claim resulted from the failure of the proof of loss filed with Hartford. Consequently, we affirm the judgment of the circuit court.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.