Pennsylvania Appellate Courts Favored Finding Coverage in April

Within a single week in April, Pennsylvania's appellate courts issued two decisions with favorable rulings for insureds.

On April 22, 2020, in a 4-3 opinion, the Pennsylvania Supreme Court ruled that an insurer must defend its insured in connection with an intentional murder-suicide that also resulted in unintentional injuries.[1] Erie Insurance Exchange ("Erie") provided homeowners insurance and personal catastrophe insurance to Harold McCutcheon. On the evening of September 26, 2013, McCutcheon broke into the home of his ex-wife, intending to kill her and then to commit suicide. McCutcheon murdered his ex-wife, but her boyfriend, Richard Carly, arrived at the scene before McCutcheon could commit suicide. An altercation followed that resulted in Carly being shot in the face before McCutcheon committed suicide.

Carly sued McCutcheon's estate, alleging that he arrived at the scene and was "suddenly pulled inward by McCutcheon, who ... pulled him into the home." The complaint alleged that McCutcheon then "negligently, carelessly, and recklessly caused the weapon to be fired," which struck Carly in the face. McCutcheon's estate sought coverage from Erie, and Erie filed a declaratory judgment action to establish that it did not have a duty to defend the estate against Carly's lawsuit. Erie asserted there was no "occurrence" under the policies because injuries sustained in connection with a premeditated murder-suicide could not be fortuitous. Erie also argued that the policies' exclusions for bodily injury "expected or intended" by the insured applied.

The policies at issue defined an "occurrence" as an "accident," which Pennsylvania courts have interpreted as something that is unexpected or undesirable. Taking the allegations in the complaint as true, the Pennsylvania Supreme Court found that McCutcheon allegedly intended to kill his ex-wife and himself, but not that he intended to shoot Carly. The Court therefore affirmed that the allegations in the complaint set forth a covered "occurrence" and were not clearly excluded for purposes of establishing a duty to defend. This ruling will serve as a useful resource to policyholders whose intentional acts cause unintended consequences.

Two days later, on April 24, 2020, the Pennsylvania Superior Court ruled 2-1 that an insurer must "clearly communicate" its coverage position in a reservation of rights letter to an insured.[2] Selective Way Insurance Company ("Selective Way") provided liability coverage to MAK Services, Inc. ("MAK"), which is exclusively in the business of snow and ice removal. MAK was sued by a claimant who was

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[1] Erie Ins. Exch. v. Moore, No. 20 WAP 2018, 2020 WL 1932642 (Pa. Apr. 22, 2020).
[2] Selective Way Ins. Co. v. MAK Servs., Inc., 2020 PA Super 103 (Apr. 24, 2020).

allegedly injured by MAK's work. MAK sought coverage from Selective Way, unaware that the policy contained an exclusion for snow and ice removal. Selective Way sent a reservation of rights letter to MAK using boilerplate plate language which stated that Selective Way would conditionally defend MAK. Selective Way did so, despite knowing at the outset that the policy's "Exclusion - Snow and Ice Removal" would impair its obligation to defend or indemnify MAK. Selective Way then waited eighteen months before seeking a declaratory judgment that it owed no duty to defend MAK against the underlying suit because of the snow and ice removal exclusion.

The Pennsylvania Superior Court ruled that Selective Way should have informed MAK of the exclusion in the reservation of rights letter. The court reiterated that in order for a reservation of rights letter to be effective, it must fairly inform the insured of the insurer's position and must be timely. Where an insurer fails to clearly communicate a reservation of rights to its insured, prejudice may be fairly presumed. An insurer may be estopped from asserting a policy exclusion where "it has lulled the insured into a sense of security and detriment."

First, the court found that the reservation of rights letter, which Selective Way sent to MAK within three weeks of receipt of the claim, was timely. The court then turned to the content of the letter, which provided no notice whatsoever of the coverage issue raised by the policy's exclusion for snow and ice removal. The court held that Selective Way's reservation of rights letter failed to "clearly communicate" the rights being reserved, which resulted in presumptive prejudice to MAK. As a result, Selective Way was estopped from asserting the policy exclusion.

While Pennsylvania law does not require that an insurance company list every potential defense to coverage in its reservation of rights letter, this case follows the recent trend of Pennsylvania case law requiring some level of specificity. Accordingly, policyholders should not hesitate to push back on boilerplate reservation of rights letters that do not fairly identify the potential coverage issues.

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