



A New Hope - You Now May Have Coverage for Punitive Damages in Connecticut

On December 19, 2017, the Connecticut Supreme Court released its decision in Nationwide Mutual Ins. Co. v. Pasiak¹. The decision is significant for two reasons: 1) it clarifies the amount of proof an insurer needs to determine whether an exclusion to coverage applies; and 2) it found that where an insurance policy expressly provides coverage for an intentional act such as false imprisonment, common-law punitive damages are also covered.

Underlying action

The underlying action proves that real life is often stranger than fiction. Ms. S worked as an office help for a construction company owned by Mr. P, which operated out of his home. Ms. S was working alone in the home office, when an armed, masked intruder entered the office, tied her hands, gagged and blindfolded her and, pointing a gun to her head, threatened to kill her family if she did not give him the combination to a safe in the home. As this was happening, Mr. P entered the office, unmasked the intruder, and discovered it was his lifelong friend. After Ms. S was untied, she asked to leave, but Mr. P told her to stay. She was not allowed to leave for several hours as Mr. P made her accompany him to an errand.

Ms. S sued Mr. P for false imprisonment, among other things. The trial court awarded her compensatory and punitive damages. Insurance coverage for the underlying judgment is at the heart of the Pasiak case.

Declaratory judgment action

Mr. P had a homeowner's policy and an umbrella policy issued by Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company (collectively, "Nationwide"). Nationwide informed Mr. P that they would defend him in the underlying action, reserving the right to contest coverage, and then filed a declaratory judgment action. On a preliminary summary judgment motion, the trial court determined that Nationwide owed Mr. P a duty to defend, holding that the injury of false imprisonment was covered under the umbrella policy, and that the umbrella policy's "business pursuit" exclusion did not apply.

At the trial of the declaratory judgment action, the court concluded that the "business pursuit" exclusion did not apply and rendered judgment for Mr. P. The appellate court reversed the trial court's judgment, determining that the trial court erred in concluding that the business pursuit exclusion in the umbrella policy did not apply.

The Connecticut Supreme Court concluded that both the trial and the appellate court employed the wrong standard for determining whether Mr. P's tortious conduct was an occurrence arising out of his business pursuits. The Supreme Court remanded the case for a new trial, including appropriate discovery, to determine whether Nationwide has met its burden of proving that coverage for Mr. P's false imprisonment of Ms. S was barred by the business pursuit exclusion in the umbrella policy.

1. 327 Conn. 225 (2017).

Proof necessary to show that an exclusion applies

On appeal, Nationwide claimed that the trial court improperly deprived it of a full and independent hearing on issues relevant to coverage. Specifically, the trial court held that Nationwide was bound by the general verdict from the underlying case and limited to the evidence introduced there. The Supreme Court held that the only exclusion which might bar coverage was the business pursuit exclusion; however, it concluded that both the trial court and the appellate court got the standard for “arising out of a business pursuit” wrong. The Supreme Court laid out the proper procedure for determining whether the business pursuit exclusion applies: if the injury was sustained at Ms. S’s workplace and the false imprisonment was a function of, or facilitated by, the employer-employee relationship, the exclusion would apply.

The Supreme Court explained that crucial factual findings as to coverage were not made in the underlying case. Also, because Nationwide reserved its rights as to indemnity, there was no privity between Nationwide and Mr. P as to the issue of coverage because they did not share an interest in proving that Mr. P’s false imprisonment of Ms. S arose out of his business pursuits. The Supreme Court explained, it was neither litigated nor determined whether a causal connection existed between Mr. P’s business interests and his wrongful actions, because Ms. S’s claims were “in no way dependent on proving that [Mr. P’s] wrongful acts arose out of [his] business pursuits.”

The Supreme Court concluded that, on remand, Nationwide was entitled to appropriate discovery and a new trial to determine whether it could meet its burden of proving that the business pursuit exclusion barred coverage.

Coverage for common-law punitive damages

Another issue was whether the umbrella policy covered the punitive damages awarded to Ms. S. Nationwide argued that, absent an express grant of coverage for punitive damages, it would violate public policy to construe an insurance policy to indemnify a wrongdoer for punitive damages. In its argument, Nationwide relied on an earlier Connecticut Supreme Court case.² The Supreme Court disagreed with Nationwide on the basis that the umbrella policy expressly provided coverage for an intentional act, namely false imprisonment. Since Nationwide sold Mr. P a policy which expressly covered intentional acts, it should have foreseen that an award of punitive damages might follow. The Court reasoned, “It is not seemly for insurance companies to collect premiums for risks for which they actively advertise in competition with other companies, and then when a loss arises to say, ‘It is against public policy for us to pay this award.’”

Takeaways

What does the Pasiak decision mean to policyholders? Connecticut now joins a growing number of jurisdictions which find coverage for punitive damages in certain insurance policies. Although the factual scenarios where punitive damages will be found to be covered are likely limited, the Pasiak decision can be added to the arsenal of cases supporting the argument that punitive damages should be covered.

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2. Bodner v. United Services Automobile Assn., 222 Conn. 480 (1992).