PLUNKETT COONEY

Asbestos Coverage, Bad Faith Coverage Update

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Asbestos Coverage – Connecticut

R.T. Vanderbilt Co., Inc. v. Hartford Accident & Indem. Co.
--- A.3d ---, 2019 WL 4926802 (Conn. Oct. 8, 2019)

The Supreme Court of Connecticut addressed a number of insurance coverage issues stemming from underlying asbestos litigation. Vanderbilt Minerals LLC (Vanderbilt) had been sued in thousands of asbestos-related personal injury actions arising out of its sale of open-pit-mined industrial talc. Vanderbilt had policies with numerous insurers that were issued over the course of approximately 60 years. In 2007, Vanderbilt sued several of its insurers to determine the scope of their obligation to provide coverage under the policies for the underlying asbestos actions. After approximately 12 years of litigation, the case found its way to the Supreme Court of Connecticut.

In its opinion, the Supreme Court first recognized an "unavailability of insurance" exception to Connecticut's general rule that a policyholder is required to pay a pro-rated share of defense and indemnity costs for any time period during which the policyholder is deliberately uninsured or underinsured. Ultimately, the Supreme Court held that Vanderbilt was not required to contribute a pro-rata share of defense costs for years in which Vanderbilt was unable to purchase insurance for asbestos-related risks. The Supreme Court also held that occupational disease exclusions contained in some of the policies not only precluded coverage for claims by Vanderbilt's workers, but also precluded coverage for claims brought by workers from other companies in Vanderbilt's supply chain.

The Supreme Court further held that, under Connecticut law, the continuous-trigger theory applies to asbestos-related injuries. Therefore, every policy that was in effect from the time of first exposure though the time of manifestation of an asbestos-related illness was triggered for purposes of insurance coverage. Lastly, the Supreme Court held that the pollution exclusions in some of the policies only applied to claims arising from "traditional" environmental pollution such as dumping, "rather than to those arising from asbestos exposure in indoor working environments."

Bad Faith – Washington

Keodalah v. Allstate Ins. Co.
--- P.3d ---, 2019 WL 4877438 (Wash. Oct. 3, 2019)

The Washington Supreme Court held that a claims adjuster cannot be sued for bad faith in her individual capacity for her alleged mishandling of a claim. The underlying claim arose out of a 2007 motorcyclist accident between policyholder Moun Keodalah (Keodalah) and an uninsured motorcyclist. Keodalah requested that his insurer, Allstate Insurance Company (Allstate), pay his underinsured motorist (UIM) policy limit of $25,000. Allstate refused and instead offered to settle the claim for a fraction of the policy limit, asserting that Keodalah was 70% at fault. Keodalah ultimately sued Allstate for a coverage determination. During trial, Allstate's claims adjuster, Tracy Smith (Smith), testified that Keodalah had run a stop sign and was on his phone when the accident occurred. Allstate's investigation reports, however, proved that neither of Smith's statements were true. Smith eventually admitted that her testimony was false.

Keodalah then filed a second lawsuit asserting claims against Smith, individually, under RCW 48.01.030, a Washington statute that required "all persons" involved in insurance transactions "be actuated by good faith, abstain from deception, and practice honesty and equity." Keodalah argued that this broad language allowed a policyholder to sue an adjuster in his or her individual capacity for bad faith. The Supreme Court, however, rejected that argument and found that the statute did not explicitly or implicitly create a private cause of action for bad faith. The Supreme Court recognized that the insurance code contained several specific provisions for enforcement, such that the Legislature's omission of a private cause of action for violations of RCW 48.01.030 was intentional. The Supreme Court further examined the historical context of the statute and found that it was intended to be a "broad statement of public policy supporting specific provisions of the insurance code [and] not as an additional and separate cause of action." Though Keodalah also asserted a violation of the Consumer Protection Act, the Supreme Court also rejected that claim as it ruled instead that Smith did not owe a duty to Keodalah because the regulation only applied to unfair acts or practices of the insurer itself. Accordingly, the Supreme Court held that Smith could not be sued in her individual capacity for her mishandling of Keodalah's accident claim.

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