PLUNKETT COONEY

Duty to Defend, Actual Cash Value, Professional Liability Insurance Coverage Update

April 1, 2020
The e-POST

Duty to Defend – Texas

Richards v. State Farm Lloyds
--- S.W.3d ---, 2020 WL 1313782 (Tex. Mar. 20, 2020)

The Supreme Court of Texas held that an insurer was not required to defend its insureds in a lawsuit arising out of a fatal All-Terrain Vehicle (ATV) accident. In the underlying lawsuit, the mother of 10-year-old Jayden Meals sued Jayden's grandparents, Janet and Melvin Richards, after Jayden died from injuries sustained in an ATV accident while under the Richards' supervision. The Richards asked their homeowners' insurer, State Farm Lloyds (State Farm) to provide a defense to the lawsuit. State Farm originally agreed to provide a defense under a reservation of rights, but then filed an action against the Richards in the U.S. District Court for the Northern District of Texas, seeking a declaration that it had no duty to provide coverage (defense or indemnity) for the underlying lawsuit.

State Farm moved for summary judgment on the grounds that various policy exclusions applied to preclude coverage. In support of their position, State Farm submitted various pieces of extrinsic evidence, including the police vehicle crash report. The Richards argued that the submission of extrinsic evidence was improper pursuant to Texas' eight-corners rule. This rule provides that an insurer's duty to defend is determined only by the allegations of the complaint and the language of the insurance policy. The federal district court rejected the Richards' argument and applied the policy-language exception to the eight-corners rule. Under this exception, the eight-corners rule only applies to insurance policies that explicitly require the insurer to defend all actions against its insured regardless of whether the allegations are groundless, false or fraudulent. The Richards' policy did not contain a groundless-claims clause. Therefore, the district court granted summary judgment in favor of State Farm and the Richards appealed.

On appeal, the U.S. Court of Appeals for the Fifth Circuit certified the following question to the Supreme Court of Texas: Is the policy-language exception to the eight-corners rule articulated in B. Hall Contracting Inc. v. Evanston Ins. Co., 447 F. Supp. 2d 634 (N.D. Tex. 2006), a permissible exception under Texas law? Ultimately, the Supreme Court stated that "State Farm did not contract away the eight-corners rule altogether merely by omitting from its policy an express agreement to defend claims

that are 'groundless, false or fraudulent.'" Therefore, the Supreme Court opined that the policy-language exception to the eight-corners rule did not apply but, instead, the eight-corners analysis must be used to determine whether there is a duty to defend.

Actual Cash Value – Sixth Circuit (Ohio Law)

Perry v. Allstate Indem. Co.
--- F.3d ---, 2020 WL 1284960 (6th Cir. Mar. 18, 2020)

The issue before the U.S. Court of Appeals for the Sixth Circuit was whether labor costs could be depreciated in calculating the actual cash value amount (ACV) owed for water damage to the policyholder's home. Allstate Indemnity Company (Allstate) and the policyholder agreed that the estimated cost to repair the property damage was approximately $33,000. Allstate asserted that after deducting the cost of depreciation, which included labor costs in addition to wear-and-tear, the ACV amount was approximately $28,400. The policyholder disagreed, arguing that depreciation only encompasses physical wear-and-tear and not labor costs.

The appellate court began its analysis by noting that the Ohio Supreme Court has not addressed this issue. It further noted that the undefined term "depreciation" was ambiguous. Under Ohio law, an ambiguous term is interpreted against the insurer, so long as the policyholder's interpretation of the term is reasonable. The appellate court found that the policyholder's interpretation of depreciation "has been recognized as reasonable by numerous state and federal courts, including our own, because depreciation traditionally refers to value lost from physical wear and tear." Thus, the appellate court held that it was improper, as a matter of law, for Allstate to depreciate labor costs to arrive at the ACV amount.

Professional Liability Coverage – Fifth Circuit (Louisiana Law)

IberiaBank Corp. v. Ill. Union Ins. Co.
--- F.3d ---, 2020 WL 1284958 (5th Cir. Mar. 18, 2020)

The U.S. Court of Appeals for the Fifth Circuit ruled that Illinois Union Insurance Company (Illinois Union), a unit of Chubb Ltd., and Travelers Casualty and Surety Co. of America (Travelers) do not have to provide coverage for a professional liability claim by IberiaBank Corporation (IberiaBank).

IberiaBank asked Illinois Union and Travelers to cover an $11.7 million settlement agreed to by IberiaBank and federal regulators. The settlement arose after IberiaBank was accused of selling poorly underwritten mortgages and procuring Federal Housing Administration (FHA) insurance for borrowers after falsely certifying that it had met Department of Housing and Urban Development (HUD) guidelines.

In deciding whether the insurers were obligated to pay for the settlement, the trial court looked to the policy language, which stated that the policy only covered liability for wrongful acts brought by third-party clients. The trial court determined that HUD did not qualify as a client of IberiaBank. The appellate court agreed with the trial court's analysis and went further to note that in order to be a "client" of the bank, a party would have to pay for bank services. Given that HUD did not pay for any services, it could not be considered a "client." Thus, the settlement with HUD was not covered under the professional liability policy.

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