

Operator, Employee Coverage Update

February 1, 2024

'Operator' – Michigan

Parker v. Canal Ins. Co.

No. 364726, 2024 WL 134073 (Mich. Ct. App. Jan. 11, 2024)

The Michigan Court of Appeals reversed the trial court's grant of partial summary disposition in favor of Canal Insurance Company (Canal), and held that the plaintiff, Chancellor Parker (Parker), could recover Personal Property Insurance (PPI) benefits because he was not an "operator" of the involved vehicle.

This dispute arose following a fire, which destroyed a Peterbilt tractor (or truck) and its contents, as well as the barn in which it was being stored. At the time of incident, Parker was employed by LCJ Trucking, the owner of the subject Peterbilt tractor. The truck was insured under a Michigan No-Fault insurance policy issued by Canal. Parker was a named insured on a No-Fault insurance policy for his personal automobile. Shortly before the fire occurred, Parker drove the truck to his aunt's barn, where he parked it and turned off the engine. Parker planned to store the truck at the barn until the date the contents were scheduled for delivery. Parker then returned to his own home, roughly 10 miles away from the barn. Sometime thereafter, a fire ignited in the barn causing significant property damage. The fire department was unable to determine the cause of the fire.

Parker brought suit against Canal, alleging entitlement to PPI benefits pursuant to Michigan statute, MCL 500.3121(1). Canal moved for partial summary disposition, arguing that PPI benefits were excluded under MCL 500.3123(1)(b) because Parker was the "operator" of the Peterbilt tractor at the time of the fire.

MCL 500.3123(1)(b) excludes PPI benefits for: "Property owned by a person named in a property protection insurance policy, the person's spouse or a relative of either domiciled in the same household, if the person named, the person's spouse, or the relative was the owner, registrant, or operator of a vehicle involved in the motor vehicle accident out of which the property damage arose." Canal argued summary disposition was warranted as Parker: (1) maintained a No-Fault insurance policy on which he was the named insured and (2) was the operator of the involved truck. The trial court granted Canal's dispositive motion, which Parker then appealed.

On appeal, Parker contested the trial court's finding that he was the "operator" of the truck at the time of the fire. As the term is not defined in the pertinent statutes, Parker presented the court with definitions of operator from the dictionary and the Michigan Vehicle Code. The Merriam-Webster

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Dictionary defines operator as, “one that operates” or “to cause to function.” The Michigan Vehicle Code defines operator as a person who “operates a motor vehicle upon a highway or street.” *Merriam-Webster’s Collegiate Dictionary* (11th ed). The appellate court noted that these definitions both describe the operator as one who “operates.” MCL 257.36(a). The Michigan Vehicle Code defines operates as “being in actual physical control of a vehicle.” MCL 257.35(a)

Because Parker was several miles away from the truck, which was parked with the engine off at the time of the fire, the appellate court concluded that “no reasonable juror could conclude that [Parker] was ‘in actual physical control’” of the truck when the fire occurred. For this reason, the court concluded Parker was not an “operator” at the time of the fire, and thus, he was not excluded from recovering PPI benefits.

By: Chelsea Saferian

'Employee' – Fifth Circuit (Texas Law)

Gemini Ins. Co. v. Indemnity Ins. Co. of North America

No. 23-20026, 2024 WL 138596 (5th Cir. Jan. 12, 2024)

The U.S. Court of Appeals for the Fifth Circuit, applying Texas law, reversed the ruling of the U.S. District Court for the Southern District of Texas, finding that Indemnity Insurance Company of North America (IICNA) owed defense and indemnity coverage to its insured, Bechtel Oil, Gas and Chemicals, Inc. (Bechtel), for an underlying lawsuit that arose from the workplace death of Yesenia Espinoza (Espinoza), who was hired by one of Bechtel’s subcontractors, Echo Maintenance, LLC (Echo), because Espinoza was an employee within the meaning of the IICNA policy.

ExxonMobil Corporation (Exxon) retained Bechtel as a general contractor to build a new hydrocarbon processing facility in Beaumont, Texas. Bechtel, in turn, hired Echo as a subcontractor to perform mechanical, structural and piping work. As part of the contracts, both Bechtel and Echo were enrolled in an Owner Controlled Insurance Program (OCIP) which provided workers’ compensation and employers’ liability coverage to Bechtel and Echo. Under the OCIP, IICNA issued Bechtel and Echo workers’ compensation and employers’ liability insurance policies. Gemini separately issued to Echo a Commercial General Liability (CGL) policy that named Bechtel as an additional insured.

The issue in the coverage dispute was whether Espinoza was an employee within the meaning of the IICNA policy that provided coverage to Bechtel, thereby triggering IICNA’s duty to defend and indemnify Bechtel in an underlying action in which wrongful death and survival claims were alleged against Bechtel and Echo. Although IICNA defended Echo in the underlying action, it denied liability coverage to Bechtel on the basis that its policy required an actual employment relationship between Espinoza and Bechtel and there were no allegations of such a relationship in the underlying action.

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Gemini provided liability coverage to Bechtel for the underlying action under its CGL policy, pursuant to a reservation of rights.

Gemini filed suit against IICNA seeking a declaration that IICNA had a duty to defend and indemnify Bechtel in the underlying action. Gemini also asserted breach of contract, subrogation and reimbursement claims for its costs in defending Bechtel in the underlying action. The parties filed cross-motions for summary judgment with the primary dispute being whether Espinoza qualified as an “employee” of Bechtel within the meaning of the IICNA policy. The trial court granted IICNA’s motion and Gemini appealed.

The U.S. Court of Appeals for the Fifth Circuit reversed the trial court, finding that IICNA had a duty to defend and indemnify Bechtel in the underlying action. In its ruling, the appellate court noted that the IICNA policy contains the Voluntary Compensation and Employers’ Liability Coverage Endorsement, which defines a Bechtel employee as “employees of a contractor with whom (Bechtel) has executed a written contract to provide workers compensation insurance in connection with the designated premise.” Under this definition and based on the allegations in the underlying action, (i.e., that Espinoza was doing work for Bechtel at the designated premises and that Bechtel exercised and/or retained control over the operations, activities and construction at the designated premises at the time of Espinoza’s death), the appellate court determined that the allegations were sufficient to trigger IICNA’s duty to defend Bechtel.

As for indemnification, the appellate court noted that under Texas law it could consider facts outside those alleged in the underlying action. This included Bechtel’s subcontract with Echo which incorporated and mandated Echo to enroll in the OCIP. As such, Bechtel provided workers’ compensation insurance to Echo as part of the project contracts, which triggered IICNA’s duty to indemnify Bechtel.

The appellate court also remanded the case to the district court to consider Gemini’s claim that it is entitled to reimbursement from IICNA because Gemini is contractually or equitably subrogated to Bechtel’s rights.

By: Amy L. Diviney