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RECENT CASES IN PROPERTY DAMAGE CLAIMS

JULY, 2008

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Duty to Defend

Wilson v. Maryland Cas. Co., 377 Pa. 588, 105 A.2d 304 (Pa. 1954)

The obligation of the insurer to defend an action brought against the insured is determined solely by the allegations of the complaint in the action.

- Pa. Nat'l Mut. Cas. Ins. Co. v. Johnson, 82 Pa. D. & C.4th 23 (Pa. County Ct. 2007): Question of whether loss is covered by policy and whether an insurer has a duty to defend is a question of law to be decided by the court. It is the nature of the claim, not the details of the injury, that determine duty to defend. "The insurer is obligated to defend if the factual allegations of the complaint, on its face, comprehend an injury which is actually or potentially within the scope of the policy."

Terms of Policy

Northbrook Ins. Co. v. Kuljian Corp., 690 F.2d 368 (3rd Cir. Pa. 1982) - *positive treatment*

Decision of whether a contract is ambiguous is left to the court to decide. If a term is found to be ambiguous, the court may arrive at a construction that is reasonable based on the intention of the parties. Extrinsic evidence admissible to prove intention. If terms clear and unambiguous, they are giving their plain and ordinary meaning.

- Scottsdale Indem. Co. v. Hartford Cas. Ins. Co., 2008 U.S. Dist. LEXIS 2454 (E.D.Pa. 1/10/08): Two insurers dispute whether costs associated with the defense of insured should have been split. Defendant insurer argues that its contract with insured contains exclusions releasing defendant insurer from duty to indemnify. Plaintiff insurer argues exclusions do not apply. Court finds that, according to language of contract, the two exclusions apply.

Pacific Indem. Co. v. Linn, 766 F.2d 754, (3d Cir. Pa. 1985)

Insurer's duty to defend depends solely on allegations in complaint. If terms are unambiguous, Court should give them their plain and ordinary meaning. If the terms are ambiguous, court can use extrinsic evidence to discern intention of parties.

- Case recently cited by several 3d Cir. cases. Most recent: Estate of Neff v. Alterra Healthcare Corp., 2008 U.S. App. LEXIS 6705 (3d Cir. Pa. 3/28/08): Complaint alleged that decedent died as the result of injuries sustained while in the care of a healthcare provider's assisted living facility insured by the insurers, and sought a declaration of coverage. Policy at issue had certain exclusions, but administrator

argued that an ambiguity existed, which created an obligation on the insurers to provide coverage. The appellate court held that the plain and ordinary meaning of the exclusion was that there was ambiguity and exclusion was denied coverage.

Term “Occurrence”

Kvaerner Metas Div. of Kvaerner United States, Inc. v. Commercial Union Ins. Co., 598 Pa. 317 (2006) - *criticized by three cases*

Court held that the definition of "accident" required to establish an "occurrence" under the policies could not be satisfied by claims based upon faulty workmanship.

- ***This finding was criticized most recently in 2007 by a Florida and Texas decisions for holding***

Exclusions

Beckwith Machinery Co. v. Travelers Indem. Co., 638 F. Supp. 1179 (W.D. Pa. 1986) - *negative treatment in subsequent appellant history re: District Court’s decision to award attorneys’ fees*

Burden of proving exclusion on insurer and all ambiguities must be resolved in favor of coverage.

West Am. Ins. Co. v. Lindepuu, 128 F. Supp. 2d 220 (E.D. Pa. 2000)

Work exclusion - whether exclusion excludes coverage for replacement of actual work performed or also for work that suffered as a result of the inadequate performance. Lindepuu rejected argument that improper workmanship damaged the entire home.

- Wash. Energy Co., LLC v. Century Sur. Co., 407 F. Supp. 2d 680 (W.D. Pa. 2005) - cites Lindepuu as “minority view”: “When a product is withdrawn because of defective performance, a sistership provision excludes coverage for costs incurred when a related, "sister" product is also withdrawn because its relationship to the defective product renders its quality suspect. Sistership provisions are not intended to exclude from coverage damages arising from the withdrawal of the product that raised suspicions. A fortiori, they do not exclude coverage of damages arising from a defective product when no sister products are involved. Stated another way, the intent of this exclusion is to exclude from coverage the cost of preventative or curative action by withdrawal of a product in which a danger is to be apprehended because of a common defect in a sister product.”

First Party Property Damage

Greene v. United Servs. Auto. Ass'n, 2007 Pa Super 344 (Pa. Super. Ct. 2007)

Court interpreted language of contract to determine whether policy provided replacement of entire roof, as opposed to damaged shingles, for the purpose of “matching”. The court found compliance with the policy’s “like construction” language after insurer provided shingles similar to that of the damages shingles.

Gideon v. Nationwide Mut. Fire Ins. Co., 2008 U.S. Dist. LEXIS 26729 (W.D. Pa. 3/20/08) - action for bad faith can extend to insurer’s investigative practices (**not related to “matching” issue**)

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