



Supreme Court of Pennsylvania Revisits Employers Liability Exclusion

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The Supreme Court of Pennsylvania has revisited the well-known holding of what generations of insurance coverage practitioners know simply as "*PMA v. Aetna*" or the "*PMA*" decision. (*Pennsylvania Manufacturers' Association Insurance Co. v. Aetna Casualty & Surety Insurance Co.*, 426 Pa. 453, 233 A.2d 548 (1967)). In *PMA* the court held that an Employers Liability Exclusion, ("ELE") referring specifically to claims brought by an employee of "the insured," applied to bar coverage for claims brought against any insured, even where the "insured" against which the claim was brought was not the employer of the employee/plaintiff. The *PMA* decision has for years placed Pennsylvania outside of the majority of jurisdictions, in which the ELE is typically interpreted more narrowly, to apply only to claims brought by employees of the specific insured against which suit is brought.

A number of state and federal courts applying Pennsylvania law over the years have sought to distinguish the holding of *PMA*, but lower Pennsylvania courts, more often, have deemed themselves bound by the precedent of *PMA* in construing and applying the exclusion.

The *PMA* decision's forty-nine year run as an outlier has seemingly come to an end, with the recent decision of the Supreme Court of Pennsylvania in *Mutual Benefit Insurance Company v. Politsopoulos*. The facts of *Politsopoulos*, decided on May 26, 2015, present a typical ELE/ Additional Insured scenario. The Named Insured, a restaurant owner, maintained a commercial umbrella policy containing a standard ELE. The restaurant's lease required it to name its landlords as Additional Insureds on the policy. When an employee of the Named Insured brought suit against the landlord/Additional Insured, the insurer denied coverage, relying upon on the *PMA* decision for the proposition that a claim brought by an employee of any insured was excluded from coverage by the ELE.

The exclusion, by its terms, applies to exclude from coverage liability for injury to "[a]n "employee" of the insured arising out of and in the course of . . . [e]mployment by the insured." 2015 WL 3370247, *1 (emphasis added). The trial court, deeming itself bound by *PMA*, entered judgment in favor of the insurer. On appeal, the Superior Court of Pennsylvania reversed, in a 2013 decision in which it distinguished *PMA* on the basis that the "insureds" seeking coverage in the *PMA* case had not been "named insureds" whereas the restaurant's landlord in the instant case had been so named. The Superior Court, having deemed the landlords to be "named insureds," then looked to the "separation-of-insureds" clause in the policy to find coverage for the landlords. The "separation-of-insureds" clause provided, in pertinent in part, that "this insurance applies . . . as if each named insured were the only named insured."

The Supreme Court of Pennsylvania took the case and heard arguments on October 7, 2014. In its much anticipated decision, the court affirmed the order of the Superior Court, but on different grounds. After noting that nothing in the records support that the Superior Court's conclusion that the restaurant's landlords were "named insureds," the Supreme Court, although not expressly overruling *PMA*, held that:

At least where a commercial general liability policy makes varied use of the definite and indefinite articles, the latter, as a general rule, creates an ambiguity relative to the former, such

that "the insured" may be reasonably taken as signifying the particular insured against whom a claim is asserted.

2015 WL 3370247 at *8.

Consequently, the court held that the exclusion was ambiguous on the facts before it. Given that the landlords against whom the suit had been brought were not the employer of the plaintiff, the Employer's Liability Exclusion was not applied to defeat coverage.

For nearly 50 years, the *PMA* decision was the starting point for any Pennsylvania coverage analysis concerning the Employer's Liability Exclusion and Additional Insureds. Effective May 26 of this year, claims professionals and coverage practitioners will have to look to *Politsopoulos*.



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