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NEWSLETTER

Other Decisions of Note

June 2004

Connecticut Has Jurisdiction over Out-of-State Corporation

In an unreported decision, the United States District Court for the District of Connecticut has held that it has personal jurisdiction over a Pennsylvania corporation, sued by a Connecticut insurer for breach of contract, because the underwriting, receipt of premiums and claim-handling were performed in Connecticut.*Gulf Underwriters Ins. Co. v. The Hurd Ins. Agency, Inc.*, 2004 WL 1084718 (D. Conn. May 11, 2004). However, the court held that it lacked personal jurisdiction over the CEO of the corporation since the count against him was for tortious conduct based on misrepresentations in the application process and there was no evidence that he had committed the alleged tort in Connecticut. The court explained that even if the application contained false misrepresentations, the evidence reflected that (i) the application was first sent to the insurer's subsidiary in Florida and (ii) even if it had been sent to Connecticut, it was sent by the insurance broker, not the CEO.

Bankruptcy Removal Provision Trumps Securities Act Anti-Removal Provision

The United States Court of Appeals for the Second Circuit has held that state court securities actions that would be non-removable under the anti-removal provision of the Securities Act of 1933 may nonetheless be removed if they fall within the provision of the Bankruptcy Code that confers federal jurisdiction over all claims "related to" a bankruptcy case. *Cal. Pub. Employee's Retirement Sys. v. Worldcom, Inc.*, 2004 WL 1048203 (2d Cir. May 11, 2004). Various state and private pension funds brought securities fraud actions in state courts alleging violations of the Securities Act of 1933. Section 22(a) of the Securities Act of 1933 precludes removal of such cases. The defendants sought to remove the cases pursuant to 28 U.S.C. § 1452(a), which authorizes removal of actions "related to" a bankruptcy. The Second Circuit held that removal is proper, reasoning that allowing the anti-removal provision of the Securities Act to trump the removal provision of the Bankruptcy Code would "interfere with the operation of the Bankruptcy Code, particularly in large chapter 11 cases."

Insurer Breached Duty to Defend by Failing to Finalize Defense Counsel Arrangements

In an unreported decision, the United States Court of Appeals for the Third Circuit, applying Pennsylvania law, has held that an insurer breached its duty to defend under a policy it issued to a church by failing to provide a defense to the church for five months after the underlying complaint was filed because of disagreements over retaining defense counsel. *Rector, Wardens & Vestrymen of St. Peter's Church in the City of Phila.v. Am. Nat'l Fire Ins. Co.*, 2004 WL 1012496 (3d Cir. May 6, 2004). The insurer acknowledged its duty to defend less than a month after the underlying complaint was filed; however, the insurer, the policyholder and a series of proposed defense counsel failed to agree on terms for representation and thus no defense counsel was

retained for five months. Although the insurer proposed to engage five different firms during this period, four of them had conflicts or lacked the requisite experience, and the fifth refused to provide representation at the rate cap of $130 per hour for partners and $115 per hour for associates that the insurer demanded. The court reasoned that the duty to defend requires the insurer to retain counsel "able and willing" to defend the underlying litigation and that the failure to do so for five months was a material breach of that duty.

Under Alabama Law, Insured Must Be Joined in Lawsuit by Judgment Creditor

The Supreme Court of Alabama has held that when a judgment creditor brings a lawsuit against an insurance carrier, under Alabama Code § 27-23-2, to satisfy a judgment against a policyholder, the judgment creditor must join the policyholder.*Chicago Title Ins. Co. v. Am. Guar. & Liab. Ins. Co.*, 2004 WL 918053 (Ala. 2004). The judgment creditor had obtained a judgment against the policyholder title insurance company but had not joined the title insurance company in its lawsuit against the company's insurer to collect on the policy proceeds. When the title insurance company sought to intervene in the lawsuit, its insurer opposed the intervention on the grounds that the judgment creditor adequately represented the interests of the company. Although the insurer prevailed on its summary judgment motion, the court reversed and remanded the decision based on the failure to join the judgment creditor in the suit.

For more information, please contact us at 202.719.7130.