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NEWSLETTER

Other Decisions of Note

May 2004

State Insurance Guaranty Association Steps into Shoes of Insurer

In an unpublished opinion, a Delaware trial court has held that the Washington State Insurance Guaranty Association Act required the Washington Insurance Guaranty Association to make payments up to the applicable limits of liability of an insolvent insurer's policy, rejecting the association's argument that the applicable statute limited its liability to $299,900. *Reliance Ins. Co. v. Plum Creek Timber Co., L.P.*, 2004 WL 838634 (Del. Super. Ct. Apr. 15, 2004). After the insured company entered into a multi-million dollar settlement of a class action lawsuit, its insurer became insolvent and the association became obligated, under Washington law, to provide coverage in its place. The association argued that the underlying settlement constituted a single claim, which was therefore subject to the statutory cap of $299,900 per claim. In rejecting the argument, the trial court reasoned that the underlying lawsuit effectively settled 65,000 claims for purposes of the statute since there were 65,000 members of the class. The court explained that the "primary purpose of the Act is to place claimants in the same position they would have been had the liability insurer remained solvent."

No Coverage for Lawsuit that Was Threatened Prior to the Policy Period

A Pennsylvania federal district court has held that a claims-made legal malpractice policy did not afford coverage for a lawsuit filed during the policy period because the claim was first made prior to the inception of the policy when the underlying plaintiff sent a letter to the insured law firm threatening to file suit and directing the law firm to forward the letter to its malpractice carrier. *Westport Ins. Corp. v. Law Offices of Marvin Lundy*, 2004 WL 555415 (E.D. Pa. Mar. 19, 2004). The court reasoned that the letter to the law firm qualified as a "claim," which was defined in the policy as "a demand made upon any insured for loss."

Indiana Federal Court Allows Defense Costs to Be Paid from Interpleaded Funds

A federal magistrate in Indiana, applying Indiana law, has issued a report and recommendation finding that an insured title company is entitled to have its defense costs reimbursed from policy proceeds that its insurer had deposited into the court's registry in an interpleader action. *Chicago Ins. Co. v. Abstract & Title Guaranty Co.,* 2004 WL 692051 (S.D. Ind. Mar. 31, 2004). After the title company was sued, its professional liability insurer deposited the policy limits in the court's registry and filed an interpleader action because it believed the liability of the company would far exceed the policy limits, which would be depleted through the payment of defense expenses. In approving the payment of defense expenses, the court rejected the underlying plaintiffs' argument that they had an equal right to the funds, explaining that the insureds "should be able to

use the interpleaded funds, in accordance with policy provisions, regardless of whether [the insurer] shirked its duty to defend by depositing the policy limits in the Court's registry." The court did not address whether the insurer satisfied its duty to defend by filing the interpleader action and depositing the policy limits with the court.

Professional Liability Insurer Has Duty to Defend Unless Policy Excludes All Coverage

A federal district court in Louisiana, applying Louisiana law, has held that an insurer has a duty to defend a law firm insured under a lawyers' professional liability policy against a lawsuit by a former client even though most of the allegations were excluded by the policy because at least one count was not excluded.*Continental Cas. Co. v. Feingerts & Kelly, A.P.L.C.*, 2004 WL 737460 (E.D. La. Apr. 2, 2004). The court noted that the "majority" of the allegations by the former client concerned purportedly excessive fees for which coverage was barred by the policy's exclusion for "legal fees, costs and expenses paid or incurred or charged by the Insured." However, the court concluded that the insurer had a duty to defend since "at least one claim is not excluded under the terms of the policy" and "the duty to defend is triggered unless the petition unambiguously excludes all coverage."

No Duty to Defend Lawsuit Seeking Injunctive Relief

The Supreme Judicial Court of Maine has held that an insurer had no duty to defend a club it insured under a non-profit professional liability policy in a lawsuit seeking injunctive relief arising out of a contested board of directors election because the policy excluded claims "seeking relief, or redress, in any form other than money damages." *York Golf & Tennis Club v. Tudor Ins. Co.*, 2004 WL 757870 (Me. Apr. 9, 2004). The court held that it was required to look beyond the language of the complaint to determine if the underlying plaintiffs sought monetary damages because, under Maine law, "a court can grant relief to a plaintiff that is not requested in the complaint if the plaintiff is entitled to the relief and the judgment is not granted by default." Analyzing the specific facts on which the underlying plaintiffs' claims for injunctive relief were based, however, the court held that the complaint failed to allege facts that would entitle the plaintiffs to monetary damages. The court also noted that, although the underlying complaint did not contain such language, a catchall request in the complaint for "further relief as the court deems just and proper" would have been insufficient to trigger the insurer's duty to defend.

For more information, please contact us at 202.719.7130.