PULLMAN &COMLEY LLC
ATTORNEYS

CT Insurance Law UPDATE

Developments in Insurance Law

A publication of Pullman & Comley, LLC

March 2012

CT Supreme Court Answers Question Posed by the 2nd Circuit Court of Appeals on Insurance Coverage - And Makes New Law in the Process

On March 16 the Connecticut Supreme Court issued a decision in the case of *Arrowood Indemnity Co. v. King* that not only answered a few arcane insurance questions, but also resulted in a major shift in Connecticut insurance coverage law.

The original claim arose when a homeowner's son zoomed down a street in a private community on his dad's ATV, towing his friend on a skateboard. His friend fell off and suffered a head injury that resulted in his hospitalization for a coma. The child eventually recovered and the two families remained friendly over the next year, so the homeowner assumed no lawsuit would be filed. He did not put his insurer on notice of the accident. That was a mistake. A year after the accident, his friendly neighbors sued. The homeowner's insurance company then sued in Federal District Court to be excused from covering the accident because it did not occur upon the homeowner's property, and because of the delay in their being notified of a potential claim. The District Court granted judgment to the homeowner's insurer holding that it did not have to cover claims arising out of the son's off-site operation of dad's ATV. On appeal, the 2nd Circuit Court of Appeals asked the Connecticut Supreme Court to answer three previously undecided insurance coverage questions under Connecticut law:

- When a policy states it will cover negligent ***entrustment of a recreational vehicle owned by the insured and on an insured location*** ……did that mean coverage of the ATV was dependent upon (a)**where it was garaged** or (b)**where the accident happened** or (c)**where the entrustment took place?**
- If the insured home is part of a homeowner association, does all the property within the association become "insured property," even if not regularly used by the named insured?
- Does lack of notice that a lawsuit was imminent while the families socialized with one another justify a delay in the homeowner's notifying his insurance company of the incident when the policy states *you shall give notice as soon as practical*?

After reviewing the rules of construction of an insurance contract, the Connecticut Court concluded the policy provisions were unambiguous and that because the policy covers an "occurrence," and because an occurrence is an "accident," it must be the place of the accident that triggers coverage. Thus the ATV must be on the insured's premises for the accident to be covered. The Court noted that insurance policies cover accidents, not theories of liabilities upon which the insured may be held responsible. Thus where the entrustment took place was not material. That did not end the Court's inquiry, however. It still had to decide if the policy covered an accident down the street on the theory that the private road was part of the home of the insured.

Turning to whether the street in the homeowner association was insured premises, the Court noted the only definition of that in the policy was that an insured location was: *any premises used by you in connection with the residential premises.* First the Court noted that had the accident happened in front of the house it may have been covered, as the deed to the home conveyed title to the middle of the (private) road. But here the accident happened down the street. Next the Court noted that different states have reached different conclusions on this exact question but there is no need to look to out-of-state precedent if the policy as a whole provides the answer. Looking at the policy as a whole, the Court noted that other provisions (such as covering invitees) clearly showed it was intended to cover only the home of the insured, not the roads that may be used to access the home. Further, legal title to the road where the accident occurred was held either by the homeowner association, or abutting owners, and the insured's deeded right to pass over it did not confer ownership or control rights. Therefore, the road was not an insured location and the policy did not cover this accident.

Having concluded the policy did not cover the claim, the Court did not have to answer the third question posed by the Federal Court as to whether the homeowner's failure to timely notify the insurance company would destroy coverage. Nonetheless, the Connecticut Supreme Court wanted to take this opportunity to make some new law. First, the Court held that the accident was so severe that neither the lack of a formal claim or even that the families still socialized with one another would be an excuse for untimely notice. Any reasonable person would have expected a claim to arise from such a serious accident. The homeowner should have put his insurance company on alert to the possibility of a claim. Nonetheless, in Connecticut there still must be prejudice to the insurer due to the late notice before it is excused from coverage.

Having set the stage, the Court went on to make important new law in Connecticut by revisiting who has the burden of proof to show that an insurance company has been prejudiced by having received late notice of a claim. Since 1988, the law in Connecticut has been that the policy holder had to disprove prejudice… meaning prejudice was presumed. The Court said it was time for Connecticut to change the law and join the vast majority of its sister states. From now on, the insurance company will have the burden to prove by a preponderance of the evidence that it was prejudiced by any late notice of a claim.

Continued

This case has a lot of lessons to offer. Attorneys in coverage disputes need to be aware of this change in the law. Policy holders need to be reminded of the importance of notifying an insurance company of any facts that could give rise to a claim. Finally, homeowners need to be aware of what their policies cover when they live in a private community and when they purchase recreational vehicles.

Please feel free to contact any of our attorneys in this practice area for additional information.

Edward McCreery III
203.330.2216
emccreery@pullcom.com

Richard Robinson
860.541.3333
rrobinson@pullcom.com

Assaf Ben- Atar
203.330.2189
abenatar@pullcom.com

Cara Ceraso
203.330.2246
cceraso@pullcom.com

Tim Ronan
203.674.7933
tronan@pullcom.com