



Alerts

New York Court Finds Exclusion for Bodily Injury to an Insured Who Benefits From the Coverage to Be Ambiguous

June 21, 2011

Insurance Coverage Alert

In *Cragg v. Allstate Indemnity Corporation*, the New York Court of Appeals was called upon to interpret an exclusion stating that “we do not cover bodily injury to an insured person . . . whenever any benefit of this coverage would accrue directly or indirectly to an insured person.” Plaintiff was the father of the decedent child. The decedent and her mother lived with the named insureds, who were the decedent’s grandparents. As residents of the household, the decedent and her mother were insureds under the policy. The decedent drowned accidentally in the grandparent’s swimming pool. The father did not live in the same residence and was not an insured. He sued, as administrator of the decedent’s estate, for wrongful death and for conscious pain and suffering. At the outset, the Court noted that conscious pain and suffering is a claim that compensates the decedent, whereas a wrongful death claim compensates the survivors.

In a declaratory judgment action filed against the insurer, the trial court granted the carrier’s motion for summary judgment, ruling that the insurer had no obligation to defend or indemnify the mother or the grandparents for any of the father’s claims. In affirming, the appellate division relied on the general purpose of homeowner’s policies, namely to provide coverage arising from injuries to someone other than an insured person.

The Court of Appeals noted that the father was then presently only asserting a claim to wrongful death benefits, which belonged to him. He was no longer asserting a claim for pain and suffering, which belonged to the decedent.

The Court found the exclusion ambiguous because it was subject to two different interpretations. The interpretation suggested by the insurer was that where an insured person is injured, no insured under the policy is entitled to any benefit from the policy, including defense or indemnification for the lawsuit. The father pointed out that this interpretation only gave meaning to the first part of the exclusion: “we do not cover bodily injury to an insured person,” but not to the second clause: “whenever any benefit of this coverage would accrue directly or indirectly to an insured.” Because an insured would always be obtaining benefits (defense and indemnity) under the policy if there was coverage for bodily injury to an insured, the insurer’s interpretation rendered the second clause meaningless. Therefore, the Court interpreted the “benefit” that must

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inure directly or indirectly to the insured as something other than simply defense or indemnity under the policy. Rather the exclusion only applied when “an insured” was the one who received the actual payments provided by the policy. Because the father was not an insured and was seeking the policy proceeds on his own behalf under the wrongful death claim, his action was not excluded and the grandparents and the mother were entitled to defense and indemnity.

The Court noted that the then current version of the exclusion resulted from a 1990 court decision, when the exclusion simply applied to any bodily injury to an insured. In that earlier case, *Allstate Insurance Company v. Pestar*, 168 A.D. 2d 931, an insured child was injured when she dove into a state-owned lake. The child sued the state for injuries. The state, in turn, sued the parents for contribution. Notwithstanding the broadness of the exclusion, the court found coverage under the policy because the claim against the insured parents was brought by the state for equitable apportionment, and was not a claim directly by the insured injured child.

In an effort to avoid coverage for these types of claims, insurers added the phrase “whenever any benefit of this coverage would accrue directly or indirectly to an insured person.” The *Cragg* court stated that this attempt to broaden the exclusion did not work and that the insurer actually narrowed the exclusion to those situations where an insured would receive policy proceeds. While there are strong policy reasons to exclude claims that arise out of an injury to an insured person, namely that the insured defendants would not be inclined to cooperate with the insurer and will desire that the policy pay the benefits claimed, other courts interpreting this exclusion have come to the same conclusion as the Court of Appeals.

Practice note

When an insurer attempts to deal with a court ruling by way of amending an exclusion, it must do so in clear and unequivocal terms, in light of the principle that exclusions will always be interpreted narrowly. Additionally, while the courts might recognize that there is a public policy reason to exclude a particular loss, if the policy does not clearly do so, the courts cannot vindicate that policy.

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