PLUNKETT COONEY

Assignment of Claim, Pollution Exclusion Coverage Update

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Assignment of Claim – Oklahoma

Johnson v. CSAA General Ins. Co.
--- P.3d ---, 2020 OK 110 (Dec. 15, 2020)

The Oklahoma Supreme Court ruled that an insured homeowner could assign her right to sue her insurer to the construction company that performed storm damage repairs on her house. The case arose when CSAA General Insurance Company (CSAA) allegedly undervalued the insured's claim for storm damages to her home. The insured, in turn, assigned her right to pursue legal claims against CSAA to the construction company. The insured and the construction company then jointly sued CSAA for breach of contract, with the insured independently asserting an additional claim of bad faith. In response, CSAA argued, and the trial court agreed, that the assignment was impermissible because the insured was required to obtain CSAA's consent before assigning her rights under the policy to a third party.

The Oklahoma Supreme Court determined that the trial court's decision was erroneous. It explained that the insured had assigned her claim for damages, also called a "chose in action," rather than the policy itself, which was not prohibited under the policy or state law. Furthermore, the Supreme Court found that "a majority of courts" hold that "an insured's post-loss assignment of a property insurance claim is an assignment of a chose in action and not an assignment of the insured's policy." Accordingly, the case was reversed and remanded back to the trial court.

Pollution Exclusion – First Circuit (Massachusetts Law)

Performance Trans. Inc. v. General Star Indem. Co.
--- F.3d ---, 2020 WL 7414202 (1st Cir. Dec. 18, 2020)

The U.S. Court of Appeals for the First Circuit overturned the district court's holding that the insurer properly denied coverage based on a pollution exclusion in the policy. The appellate court found that the presence of a second applicable policy provision created an ambiguity in the policy, and that the insurer's denial of coverage was improper.

General Star Indemnity Company (General Star) issued an excess liability insurance policy to Performance Trans. Inc. (PTI) that was excess over a $1 million primary policy. The General Star policy contained a total pollution exclusion precluding coverage for "[t]he actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time," including clean-up costs. The General Star policy also contained a special hazards and fluids limitation endorsement that precluded coverage for certain accidents and spills, but that reinstated coverage for events "arising out of the unloading of drilling fluids from an auto covered by this policy and covered by the controlling underlying insurance for the total limits of the underlying insurance, if the unloading of drilling fluids resulted directly from ... [u]pset or overturn of such auto."

In February 2019, a PTI tanker truck drove off the road in North Salem, New York, and spilled 4,300 gallons of gasoline, diesel fuel and dyed diesel fuel onto the roadway and into a nearby reservoir. PTI incurred approximately $3 million in costs for cleaning up the spill, which exhausted its primary policy's limits. PTI sought coverage under the General Star policy, but General Star denied coverage based on the total pollution exclusion. The malpractice insurer for PTI's insurance broker issued provisional coverage to PTI in exchange for an assignment of PTI's right to recover that amount from General Star. PTI and the malpractice insurer, Utica Mutual Insurance Company (Utica), brought suit against General Star seeking a declaration that the General Star policy provided coverage. The district court granted General Star's motion for summary judgment, saying that the pollution exclusion applied to preclude coverage.

The appellate court reversed the district court's ruling, finding that the policy was ambiguous both in the language of the special hazards and fluids limitation endorsement itself, and because it could reasonably be read such that the pollution exclusion overrode the special hazards and fluids limitation endorsement, or that the special hazards and fluids limitation endorsement overrode the pollution exclusion. Because of that ambiguity, the appellate court concluded that it must use the interpretation most favorable to the insured. The appellate court reasoned that "[w]hen faced with competing plausible interpretations of the insurance policy 'doubts as to the intended meaning of the words must be resolved against the insurance company that employed them.' This is doubly so when construing a provision that limits available coverage."

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