Insured, Number of Occurrences, Waiver of Subrogation Coverage Update

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Insured – Tenth Circuit (Wyoming Law)

Am. Nat'l Property and Cas. Co. v. Burns
--- Fed. Appx. ---, 2019 WL 1805510 (10th Cir. Apr. 23, 2019)

The U.S. Court of Appeals for the Tenth Circuit ruled that the minor son of a homeowner was not "an insured" under his mother's policy, such that coverage was not precluded for his mother for liability arising out of the son's murder of another teenager. American National Property and Casualty Co. (American National) issued a homeowner's policy to Dora Sam that included residents of the household as insureds. However, the policy contained an exclusion for claims arising out of intentional or criminal acts committed by any insured.

On or about Oct. 5, 2014, Ms. Sam's son stole a semi-automatic pistol from the home owned by Ms. Sam's boyfriend in order to confront a group of teenagers in a nearby park. He ultimately shot and killed one of the teenagers. The victim's parents sued Ms. Sam and her boyfriend, alleging that they failed to secure the pistol. American National denied coverage and brought a declaratory judgment action in U.S. District Court for the District of Wyoming. The trial court granted summary judgment to American National on the basis that the son was a resident of the household, because under a shared custody agreement between his parents, Ms. Sam was the primary caregiver.

The appellate court disagreed with the trial court's ruling, noting that the policy did not define the term "resident." Because the term was susceptible to more than one meaning, as demonstrated by the arguments on appeal, the appellate court held that it must construe the term in the policyholder's favor. Because the son was staying at his father's house immediately before the shooting, and he listed his father's address as his residence when he was arrested, American National could not call him a resident of Ms. Sam's house for purposes of the criminal acts exclusion in its policy. Accordingly, because the son was not an insured, the criminal acts exclusion could not be applied to preclude coverage.

Number of Occurrences – Missouri

John Patty, D.O., LLC v. MO Prof'ls Mut. Physicians Prof'l Indem. Ass'n
--- S.W.3d ---, 2019 WL 1771507 (Mo. Ct. App. Apr. 23, 2019)

The Missouri Court of Appeals held that an insurer must pay the full $2 million settlement of a lawsuit alleging that the insured doctor performed a botched delivery that caused both the mother and baby to suffer permanent damage because the two injuries were separate occurrences under the medical malpractice insurance policy. The underlying lawsuit alleged, in part, that the doctor failed to timely order an emergency Cesarean section delivery, which caused the mother to become permanently disabled and the baby to suffer permanent brain damage. In relevant part, the policy provided coverage for all claims of medical malpractice subject to the liability limit of $1 million per "Medical Occurrence." "Medical Occurrence," in turn, was defined as "any act or omission ... in the furnishing of professional medical services by [doctor] ... together with all related acts or omissions in the furnishing of such services to any one person."

The appellate court ruled that an ordinary person of average intelligence would understand this language "to mean that medical treatment provided to different people constitutes separate 'Medical Occurrences,' which are subject to separate Liability Limits." The appellate court found that "the definition of 'Medical Occurrence' cannot reasonably be interpreted to include all acts or omissions in providing medical services to multiple individuals." Therefore, the appellate court ultimately ruled that because the underlying lawsuit alleged that the doctor was negligent in providing medical treatment to the baby after delivery when the baby was indisputably a separate person from the mother, it constituted a separate medical occurrence subject to a separate liability limit under the policy.

Waiver of Subrogation – Fifth Circuit (Louisiana Law)

Lloyd's Syndicate 457 v. FloaTEC, L.L.C.
--- F.3d ---, 2019 WL 1649667 (5th Cir. Apr. 17, 2019)

The U.S. Court of Appeals for the Fifth Circuit held that an insurer's claims against various contractors arising out of the failure of an oil rig were barred by a waiver of subrogation provision in its insured's insurance policy. Chevron Corporation (Chevron) sought insurance coverage from its insurer, Lloyd's of London Underwriters (Lloyd's) after a failed installation of the platform on the Big Foot oil rig. Lloyd's paid more than $500 million to Chevron and subsequently brought a subrogation action against FloaTEC LLC and other contractors (collectively FloaTEC) that performed work on the project. The U.S. District Court for the Southern District of Texas granted FloaTEC's motion to dismiss the case and Lloyd's appealed.

On appeal, the U.S. Court of Appeals for the Fifth Circuit affirmed the trial court's dismissal of Lloyd's subrogation action. Specifically, the appellate court noted that a provision in Lloyd's policy with Chevron barred subrogation actions against other assureds. The term "other assured" was defined to include companies with whom Chevron "entered into a written contract" for work on the Big Foot rig. The appellate court stated that "[i]t is uncontested that FloaTEC contracted with Chevron to provide engineering services for Big Foot. This makes FloaTEC an 'Other Assured' under the policy's text because it 'entered into [a] written contract[ ]' with Chevron 'in connection with the [Big Foot] project.'" Therefore, the appellate court concluded that the waiver of subrogation provision barred Lloyd's subrogation action against FloaTEC.

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