PLUNKETT COONEY

Occurrence, Choice of Law, Consent to Settlement Coverage Update

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Pennsylvania, Delaware, California Coverage Cases
The e-POST

Occurrence – Fourth Circuit (Pennsylvania Law)

Hollis v. Lexington Ins. Co.
--- F.3d ---, 2017 WL 1076706 (4th Cir. Mar. 22, 2017)

The U.S. Court of Appeals for the Fourth Circuit held that a fireworks explosion that injured a family is one occurrence under the commercial general liability policy that had a $1 million per occurrence limit and a $2 million aggregate limit. The injured parties, a mother and her two children, argued that the incident constituted 19 separate occurrences, one for each negligent act leading to the explosion. In affirming the district court's opinion, the appellate court found that Pennsylvania law is clear that the cause approach applies to determine the number of occurrences. Under this approach, according to the appellate court, there is a "single occurrence if there 'was but one proximate, uninterrupted, and continuing cause which resulted in all of the injuries and damage.'" In applying the cause approach to the facts, the appellate court ultimately ruled that "regardless of the number of alleged negligent acts or victims, the injuries have a single proximate cause – the misfired firework that exploded near" the injured family and "[b]ecause the injuries only have one cause, only one occurrence took place."

Choice of Law – Delaware

Certain Underwriters at Lloyds, London v. Chemtura Corp.
--- A.3d ---, 2017 WL 1090544 (Del. Mar. 23, 2017)

The Delaware Supreme Court reversed the trial court's determination that a comprehensive, nationwide insurance program was to be interpreted by the law of the state where the environmental claim arose. The Supreme Court held that "the proper inquiry under the Second Restatement should be to make a reasoned determination of what state has the most significant interest in applying its law to the interpretation of the insurance scheme and its terms as a whole in a consistent and durable manner that the parties can rely on." Under this "most significant relationship" analysis, the three components were: "i) determining if the parties made an effective choice of law through their contract; ii) if not, determining if there is an actual conflict between the laws of the different states each party urges

should apply; and iii) if so, analyzing which state has the most significant relationship." Based on this analysis, the Supreme Court held that "because New York was the principal place of business for [the insured's predecessors] at the beginning of the coverage and there were a number of contacts with New York over time after the beginning of the coverage … the most significant relationship among the parties for this insurance program and its contracts is New York, and so New York law should be applied to resolve this contract dispute."

Consent to Settlement – Ninth Circuit (California Law)

Teleflex Med. Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA
--- F.3d ---, 2017 WL 1055586 (9th Cir. Mar. 21, 2017)

The U.S. Court of Appeals for the Ninth Circuit held that an excess insurer was liable for the insured's settlement agreement despite the fact that the insured entered into the settlement agreement without the excess insurer's consent. The insured settled a lawsuit against a third party for $4.75 million and the primary insurer paid its policy limit. When approached by the insured to consent to the settlement, the excess insurer declined and did not offer to take on the defense of the lawsuit. The insured subsequently sued the excess insurer for its refusal to either contribute toward the settlement of the lawsuit or take over the defense. In holding the excess insurer liable for its portion of the settlement agreement, the appellate court ruled that, under California law, an "excess insurer must (1) approve the proposed settlement, (2) reject it and take over the defense, or (3) reject it, decline to take over the defense, and face a potential lawsuit by the insured seeking contribution toward the settlement." Further, "the insured is entitled to reimbursement if the excess insurer was given a reasonable opportunity to evaluate the proposed settlement, and the settlement was reasonable and not the product of collusion."

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