PLUNKETT COONEY

Trigger of Coverage, PIP Coverage Update

February 15, 2024

Trigger of Coverage - Fourth Circuit

Westfield Ins. Co. v. Sistersville Tank Works, Inc.
No. 20-2052, 2024 WL 445955 (4th Cir. Feb. 6, 2024)

The U.S. Court of Appeals for the Fourth Circuit affirmed a decision of the trial court that granted summary judgment to a policyholder after the West Virginia Supreme Court answered a certified question clarifying that the state's law would apply a continuous trigger approach to long-tail exposure claims.

Sistersville Tank Works, Inc. (STW) was founded in 1984 and deals in the chemical storage industry. From 1985 to 2010, it purchased commercial general liability insurance policies from Westfield Insurance Company (Westfield).

In 2016 and 2017, three former STW employees filed suit against STW alleging bodily injuries from exposure to liquids, fumes and vapors discharged from STW's tanks during their employment, resulting in cancer diagnoses. Westfield declined to defend STW in the disputes, and subsequently filed suit in the U.S. District Court for the Northern District of West Virginia in 2018, seeking an order declaring that it had no duty to provide coverage because the former employees had been diagnosed with cancer years after the policies expired.

The trial court found that Westfield's policies were ambiguous as to "when an injury 'occurs during the policy period,'" and ruled in favor of STW's position that the injuries occurred during the policy periods. Westfield appealed the decision.. The appellate court certified a question to the West Virginia Supreme Court, asking the West Virginia Supreme Court to determine what theory should be used to determine when the policy is triggered.

The Supreme Court responded that "'[a]fter careful review of the language used in the [insurance] policy," its "answer to the question is that a 'continuous trigger' theory applies to the policy.'" Based on the answer from the Supreme Court, the appellate court held that the former employees' suits fell within the coverage of STW's policies under the continuous trigger theory, thereby affirming the federal trial court's decision.

By: Shantinique Brooks

PIP Coverage for Vehicle Maintenance – Michigan

Bellmore v. Friendly Oil Change, Inc. et al.
No. 164534, --- N.W.3d ---, 2024 WL 478086 (Mich. Feb. 7, 2024)

The Michigan Supreme Court reversed a finding of the state's Court of Appeals and held that, under Michigan's No-Fault Act, a plaintiff was entitled to Personal Injury Protection (PIP) benefits for injuries sustained when she fell into a service pit while she was participating in the maintenance of her vehicle.

The plaintiff Karen Bellmore (Bellmore) took her motor vehicle to an oil change facility to have it serviced. When her vehicle was parked over the service pit that the facility used to perform the oil change, the service technician noticed a filter that needed to be replaced. The service technician directed Bellmore to approach the front of her vehicle to examine the filter and approve its replacement. As Bellmore approached her vehicle, she tripped or slipped and fell into the service pit underneath her vehicle.

Bellmore sued her No-Fault insurer, State Farm Mutual Automobile Insurance Company (State Farm), seeking PIP benefits under Michigan's No-Fault Act for the injuries she sustained when she fell into the pit. Bellmore claimed that she was entitled to PIP benefits under MCL 500.3105(1) because her injuries arose out of the maintenance of her motor vehicle as a motor vehicle. Bellmore also claimed, in the alternative, that she was entitled to PIP benefits under MCL 500.3106(1)(a) because her injuries arose out of the use of her parked vehicle as a motor vehicle and her vehicle was parked over the service pit in such a way as to cause unreasonable risk of the bodily injury that occurred.

The trial court found that Bellmore was entitled to PIP benefits under either statute. On appeal, the Michigan Court of Appeals reversed the trial court's rulings. Bellmore thereafter applied for leave to appeal to the Michigan Supreme Court. The Supreme Court reversed the appellate court's decision, finding that Bellmore was entitled to PIP benefits under MCL 500.3105(1), because given the facts, Bellmore's injuries arose out of the maintenance of her vehicle. The Supreme Court noted that the service pit was used for maintenance of Bellmore's vehicle at the time that Bellmore was injured. As such, this was a sufficient causal connection to satisfy the "more than incidental, fortuitous or but for" standard set forth in a 1986 Michigan Supreme Court decision *Thornton v. Allstate Ins. Co.*, 425 Mich. 643, 650-51, 659; 391 N.W.2d 320 (1986).

As for the availability of PIP benefits under MCL 500.3106, the Michigan Supreme Court noted that this statute does not provide an independent claim for No-Fault benefits, but instead operates as a general exclusion of coverage provided under MCL 500.3105 for parked vehicles unless one of the enumerated exceptions applies. However the Supreme Court declined to analyze MCL 500.3106(1)

because Bellmore was entitled to PIP benefits under MCL 500.3105.

By: Amy L. Diviney