SUPREME COURT OF PENNSYLVANIA

Mutual Ben. Ins. Co., Aplt v. Politsopoulos

631 Pa. 628 (Pa. 2015) (Pa. 2015) · No. No. 60 MAP 2014 · Decided May 26, 2015

SUMMARY

The Pennsylvania Supreme Court considered whether an employer's liability exclusion in a commercial umbrella insurance policy barred coverage for claims against additional insured property owners by an employee of the named insured. The Court held that, where the policy uses both "the insured" and "any insured," the employer's liability exclusion is ambiguous as to whether it applies to an employee of an insured other than the insured seeking coverage, and the separation-of-insureds clause reinforces the narrower interpretation. The Court declined to extend the broad construction of "the insured" adopted in Pennsylvania Manufacturers' Association Insurance Co. v. AETNA Casualty & Surety Insurance Co.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Saylor; Chief Justice Castille; Justice Eakin; Justice Baer; Justice Todd; Justice McCaffery; Justice Stevens
JURISDICTION	Pennsylvania
DECIDED	May 26, 2015
DOCKET	No. 60 MAP 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mutual Benefit Insurance Company brought a declaratory judgment action concerning coverage under an umbrella commercial liability policy. The Lancaster County Court of Common Pleas granted summary judgment for Mutual Benefit. The Superior Court reversed and remanded. The Supreme Court of Pennsylvania affirmed the Superior Court's order on different grounds.
STANDARD OF REVIEW	De novo review of the interpretation and construction of an insurance policy and the grant or denial of summary judgment.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Mutual Benefit Insurance Company v. Christos Politsopoulos, Dionysios Mihalopoulos, Marina Denovitz

TOPICS

insurance coverage · duty to defend · duty to indemnify · declaratory relief insurance · contract interpretation

PRACTICE AREAS

insurance law · contract law · declaratory judgment

QUESTIONS PRESENTED

1. Whether the employer's liability exclusion in the umbrella commercial liability policy barred coverage for a negligence claim brought by an employee of the named insured against additional insured property owners who did not employ the injured person.
2. Whether the policy's separation-of-insureds clause altered or reinforced the interpretation of the employer's liability exclusion.
3. Whether the Superior Court properly treated the property owners as named insureds under the policy.

HOLDINGS

1. The property owners were not named insureds because the policy did not identify them as named insureds on the declarations page or elsewhere; the Superior Court therefore erred in treating them as named insureds.
2. The employer's liability exclusion was ambiguous and applied only to claims asserted by an employee of the particular insured against whom the claim was directed. Because the property owners were not Denovitz's employers, the exclusion did not bar coverage for their claim.
3. A separation-of-insureds clause generally does not negate a clear exclusion, but in this policy it reinforced the interpretation that the ambiguous phrase 'the insured' referred to the particular insured against whom the claim was made.

KEY QUOTATIONS

> *"Rather, we are persuaded that, at least where a commercial general liability policy makes varied use of the definite and indefinite articles, this, as a general rule, creates an ambiguity relative to the former, such that "the insured" may be reasonably taken as signifying the particular insured against whom a claim is asserted."* (*642)

> *"In summary, we conclude that the employer's liability exclusion in the umbrella policy is ambiguous."* (*643)

> *"Since the Property Owners are not Ms. Denovitz's employers, the employer's liability exclusion is inapplicable."* (*643)

FACTUAL BACKGROUND

Leola Restaurant maintained an umbrella commercial liability policy issued by Mutual Benefit that contained an employer's liability exclusion and a separation-of-insureds clause. The restaurant leased its premises from Politsopoulos and Mihalopoulos, and the lease required them to be added as insured parties under the liability policy; the policy extended coverage to unidentified persons for whom Leola had agreed in writing to provide insurance. Marina Denovitz, a Leola employee, was injured when she fell from exterior stairs and sued the property owners for negligent maintenance. Mutual Benefit acknowledged that the property owners were insureds but denied coverage because Denovitz was an employee of Leola, the named insured.

PROCEDURAL HISTORY

An employee of Leola Restaurant was injured on stairs at property leased from Christos Politsopoulos and Dionysios Mihalopoulos and sued the property owners for negligence. The property owners sought defense and indemnification under Leola Restaurant's umbrella policy, but Mutual Benefit invoked the employer's liability exclusion. The Lancaster County Court of Common Pleas granted Mutual Benefit summary judgment based on Pennsylvania Manufacturers' Association Insurance Co. v. Aetna Casualty & Surety Insurance Co. The Superior Court reversed, and the Supreme Court affirmed, rejecting the Superior Court's treatment of the property owners as named insureds but reaching the same coverage result on the ground that the exclusion was ambiguous and did not apply to the property owners.

DISPOSITION

affirmed

CASES CITED

- Pennsylvania Manufacturers' Ass'n Insurance Co. v. Aetna Casualty & Surety Insurance Co., 426 Pa. 453, 233 A.2d 548 (1967)
- Mutual Benefit Insurance Co. v. Politsopoulos, 75 A.3d 528 (Pa. Super. 2013)
- Maravich v. Aetna Life & Cas. Co., 350 Pa. Super. 392, 504 A.2d 896 (1986)
- McAllister v. Millville Mut. Ins. Co., 433 Pa. Super. 330, 640 A.2d 1283 (1994)
- Brown & Root Braun, Inc. v. Bogan, Inc., 54 F. App'x 542, 546-49 (3d Cir. 2002)
- Arcelormittal Plate, LLC v. Joule Tech. Servs., Inc., 558 F. App'x 205, 211 & n.4 (3d Cir. 2014)
- Ramara, Inc. v. Westfield Ins. Co., 298 F.R.D. 219, 228-29 (E.D. Pa. 2014)
- Ohio Cas. Ins. Co. v. Holcim (US), Inc., 744 F. Supp. 2d 1251, 1271-72 (S.D. Ala. 2010)
- Abbeville Offshore Quarters Inc. v. Taylor Energy Co., 286 F. App'x 124, 128 (5th Cir. 2008)
- Postell v. American Family Mutual Insurance Co., 823 N.W.2d 35, 46 (Iowa 2012)
- Osbon v. National Union Fire Insurance Co., 632 So. 2d 1158, 1160 (La. 1994)
- Maryland Casualty Co. v. American Fidelity & Casualty Co., 217 F. Supp. 688, 691 (E.D. Tenn. 1963)
- Patton v. Patton, 413 Pa. 566, 198 A.2d 578 (1964)
- Great American Insurance Co. v. State Farm Mutual Automobile Insurance Co., 412 Pa. 538, 194 A.2d 903 (1963)
- Madison Construction Co. v. Harleysville Mutual Insurance Co., 557 Pa. 595, 735 A.2d 100 (1999)
- Gene & Harvey Builders v. Pennsylvania Manufacturers' Association, 512 Pa. 420, 517 A.2d 910 (1986)
- Eichelberger v. Warner, 290 Pa. Super. 269, 434 A.2d 747 (1981)

- Luko v. Lloyd's London, 393 Pa. Super. 165, 573 A.2d 1139 (1990)

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