CETRULO & CAPONE LLP

INSURANCE INDICATOR

VOLUME III, NO. 8 AUGUST 2009

RI – INSURER OWES NO DEFENSE TO CLUB IN SHOOTING LAWSUIT

In 2006, Victor Cortes was shot outside the Giza nightclub in Providence. He filed suit in state court, alleging that the club negligently failed to provide security, adequate parking, experienced employees, and control over the premises The club's insurer agreed to defend it under a reservation of rights, but later sought a declaratory judgment that it had no duty to defend the club due to an "assault and battery" exclusion in the club's insurance policy.

The club maintained that the insurer was obligated to provide a defense because Cortes may have suffered separate injuries while the arrival of the ambulance was delayed due to the allegedly inadequate parking lot design. The insurer countered that all of Cortes's injuries arose out of the shooting and the Court agreed. An insurer's duty to defend only lasts "until it has been shown that there is no potential for coverage." In insurance cases, the focus is on how the injury occurred and whether the injury and its cause were intended to be covered by the policy. Here, the "excluded conduct" (the assault) was a cause of the claimed injuries and thus "arose out of" the excluded act. The Court held that the insurer had no duty to defend its insured. Mount Vernon Fire Ins. Co. v. Stagebands, Inc., 2009 WL 2208120 (D.R.I. 2009).

NY – COURT ORDERS INSURER TO DEFEND AND INDEMNIFY INSURED

Ron LeClair was a project manager for Regal Construction Company. Regal had been hired by URS Corporation as the prime contractor for the Rikers Island Renovation Project. LeClair slipped on a joist that had recently been painted and filed suit against URS. URS sought a defense and indemnity from Regal's insurer because URS was listed as an additional insured on Regal's policy. Regal's insurer refused the tender and URS sought a declaratory judgment.

Regal's insurance policy provided additional insured coverage "only with respect to liability arising out of Regal's ongoing operations" performed for URS. The Court noted that the phrase "arising out of" in insurance policies means "originating from, incident to, or having connection with." Furthermore, the focus of the additional insured clause was not the cause of the accident, but rather "the general nature of the operation in the course of which the injury was sustained." Since it was Regal's responsibility to paint the joists, the Court reasoned that there was a causal connection between LeClair's injury and Regal's work, the risk for which coverage was provided. Regal's insurer was ordered to defend and indemnify URS. Regal Constr. Corp. v. Nat'l Union Fire Ins. Co., 2009 WL 2015419 (N.Y. App. Div. 2009).

Cetrulo & Capone LLP, an AV rated law firm, has lawyers admitted to practice across New England and in New York. We defend insureds and represent their insurers in areas of general liability, construction, toxic torts, environmental, employment, product liability, personal injury, professional liability, insurance coverage in state and federal trials and appeals, arbitration, mediation and ADR. The best solutions require the best representation.

BOSTON OFFICE

Two Seaport Lane
Boston, MA 02210
617.217.5500
617.217.5200 Fax

NEW YORK OFFICE

111 Broadway
New York, NY 10006
212.635.2230
212.635.2239 Fax

PROVIDENCE OFFICE

321 South Main Street
Providence, RI 02903
401.274.7850
401.274.9670 Fax

CONNECTICUT OFFICE

195 Church Street
New Haven, CT 06150
203.909.6498
203.909.6499 Fax

RI – SUPREME COURT AFFIRMS INSURER'S PRIMARY OBLIGATION

A company leased a Pawtucket building for its business from the owner/realtor. One of the company's employees was injured when he fell off an exterior ladder and filed a negligence suit against the owner. The owner's insurer defended its insured, but filed a separate declaratory judgment action alleging that the company's insurer was obligated to either assume the primary insurance coverage and provide a defense to the owner or share the defense costs. The trial justice entered summary judgment in favor of the company's insurer and ruled that it was in fact the excess, not the primary insurer, and therefore not obligated to provide a defense. The owner's insurer appealed to the Rhode Island Supreme Court.

At issue were the "other insurance" clauses of each insurer's policy. The owner's insurance policy provided that its insurance was primary unless any other insurance was primary. The company's policy provided that its coverage was excess unless the parties agreed in writing that the insurance would be primary. There was no evidence that the parties had come to such an agreement.

The Court noted that if the polices were in conflict each insurer would be obligated to provide pro rata coverage. However, these policies did not conflict and thus would be given their "plain, ordinary, and usual meaning" in keeping with the laws of contract interpretation. Thus, the primary insurer (the owner's) was obligated to continue defending the owner in the underlying tort suit. Irene Realty Corp. v. Travelers Prop. Cas. Co. of Am., 2009 WL 1576517 (R.I. 2009).

Cetrulo & Capone LLP

congratulates

James E. Carroll

on his selection as a Fellow of The Litigation Counsel of America, a trial lawyer honorary society whose membership is limited to less than one half of one percent of all American lawyers.

MA – EMPLOYEE NEED NOT ARBITRATE DISCRIMINATION CLAIMS

Plaintiff was employed as the chief of anesthesiology at Beth Israel Deaconess Medical Center from 2000 to 2007. During her tenure she claimed that she was continuously discriminated against on the basis of her gender by the other doctors and was finally terminated as a result of her complaints. She filed suit against the hospital and the doctors, alleging gender discrimination and retaliation.

The defendants maintained that plaintiff had agreed to arbitrate all claims arising out of her employment contract and moved to compel arbitration. The trial court denied the motion and the case was appealed to the Supreme Judicial Court.

Though the SJC noted that public policy strongly favors arbitration, it was swayed by a recent United States Supreme Court decision in which the Court held that agreements to arbitrate discrimination claims in a collective bargaining agreement were valid so long as the intent is "explicitly stated in the agreement." The SJC then stated that the Commonwealth's antidiscrimination laws are also to be construed liberally. Therefore, the SJC held that "parties seeking to provide for arbitration of statutory discrimination claims must, at a minimum, state clearly and specifically that such claims are covered by the contract's arbitration clause." The broad language in plaintiff's contract which required her to arbitrate "any claim, controversy or dispute," was not specific enough to compel her to submit her discrimination claims to arbitration. Warfield v. Beth Israel Deaconess Med. Ctr., Inc., 454 Mass. 390 (2009).

FOR FURTHER INFORMATION, PLEASE CONTACT
JAMES E. CARROLL, ESQ.
617.217.5203
OR
BERT J. CAPONE, ESQ.
617.217.5201

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