

INSURANCE INDICATOR

VOLUME III, No. 9 SEPTEMBER 2009

MA – INSURER SEEKS DECLARATORY RELIEF AGAINST PRING-WILSON

In 2003, while a student at Harvard University, Alexander Pring-Wilson fatally stabbed Michael Colono following an altercation in Cambridge. After his conviction for voluntary manslaughter was overturned by the SJC, Pring-Wilson pleaded guilty to involuntary manslaughter. In 2006, the executrix of Colono's estate filed a wrongful death suit against Pring-Wilson in state court. Pring-Wilson's parents' homeowner's insurer, Fire Insurance Exchange,

provided Pring-Wilson with a defense under a reservation of rights, but asked the federal court to issue a declaration as to its rights and responsibilities under the insurance policy.

The insurer claims that Pring-Wilson was not an "insured" under the homeowner's policy because he was living in Cambridge at the time of the incident. The policy only covers "permanent residents" who lived at Pring-Wilson's parents' home in Colorado during the policy period.

The insurer also claims that Pring-Wilson's stabbing of Colono was not accidental, was not a covered "occurrence" defined by the policy, and that Pring-Wilson's actions were intentional and therefore not covered according to the policy's "intentional acts" exclusion. The case has been assigned to Judge Saris. Fire Ins. Exch. v. Pring-Wilson et al., C.A. No. 1:09-cv-11420 (D. Mass. 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.

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NY – INSURER PRECLUDED FROM DISCLAIMING COVERAGE IN MALPRACTICE CASE

Plaintiffs' attorney, David E. Fretz, developed severe depression and as a result failed to pursue plaintiffs' insurance claim after their home was destroyed in a fire. Plaintiffs subsequently sued Fretz for malpractice and were awarded \$700,000. During the suit, plaintiffs' new attorney attempted to learn the identity of Fretz's malpractice insurer for three months by sending four certified letters to Fretz's office and one to his home.

All the letters (and numerous phone calls in between) went unanswered. As a result, the 60 day reporting period lapsed and the insurer disclaimed coverage and failed to indemnify the plaintiffs.

The Court held that New York's Insurance Law, § 3420, gave the injured plaintiffs rights independent of the policy to provide the insurer with timely notice of an occurrence. Injured parties need only give notice "as soon as reasonably

possible...since what is reasonably possible for the insured may not be reasonably practicable for the injured person." Therefore, the plaintiffs had exercised their due diligence by attempting to learn the identity of Fretz's insurer for three months and by filing for declaratory relief on same day that the insurer's name was finally revealed. McCabe v. St. Paul Fire & Marine Ins. Co., 2009 WL 2546860 (N.Y. Sup. Ct. 2009).

**Cetrulo & Capone
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congratulates
James E. Carroll
on his selection as a
**Fellow of The
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America, a trial
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RI – SUPREME COURT AFFIRMS INSURER’S PRIMARY OBLIGATION

In 2003, the oil company discovered that there had been an oil leak on its customer’s property. The leaked oil had also contaminated the groundwater. The customer had a homeowner’s policy that was issued by Vermont Mutual and the oil company had a commercial general liability policy that had been issued by American Home. The parties disputed whether American Home’s policy provided coverage for the damage and American Home thereafter moved for summary judgment.

The Court examined the policy at issue, which contained a

“pollution exclusion,” a “wrong receptacle endorsement,” and a “time element pollution endorsement.” The Court first noted that “in the case of inconsistency between endorsements and basic policy provisions, the endorsements will prevail.” In this case, neither endorsement applied. The “wrong receptacle endorsement” was not applicable because the problem was not the delivery to the wrong tank, but rather the failure to deliver the oil to the tank at all. Furthermore, the “time element pollution endorsement” was not applicable because no insured ever reported the pollution to

American Home within the relevant time period.

Therefore, the Court held that the “pollution exclusion” applied to bar coverage for “property damage arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of pollutants,” in this case the leaked oil. Summary judgment was entered for American Home. Vermont Mut. Ins. Co. v. Am. Home Assurance Co., C.A. No. WC08-0137 (R.I. Sup. Ct. 2009).

MA – INSURER ORDERED TO PAY UP ON EMPLOYEE DISHONESTY BONDS

In the late 1990’s, several employees stole \$9.4 million from the Massachusetts State Treasury (the largest loss of state money in Massachusetts history). Prior to the thefts, the Treasurer’s Office had purchased employee dishonesty bonds from Hanover Insurance that covered several of the convicted employees. Hanover however claimed that it was not required to make payment on the bonds because the State had misrepresented information on the bond applications and renewals, failed to cooperate with the insurer during discovery, and failed to file a timely proof of loss. The Superior Court ordered that Hanover

pay \$847,191.47, plus interest and costs to the State and Hanover appealed.

The Appeals Court held that the findings of the trial judge were not clearly erroneous. In particular, he found that the State substantially complied with the representations made on the bond applications and renewals regarding its independent reconciliation of bank accounts, internal audits, and voucher system. Furthermore, the State had appropriately cooperated with the insurer in producing 300 boxes of documents during discovery. Lastly, the State timely gave the insurer notice of the theft within 120

days as required by the bonds.

Therefore, the State had complied with all its responsibilities under the bonds and Hanover was obligated to make the payments. The judgment was affirmed, but the case was remanded in order to recalculate the damages in light of payments that had been received after the trial. Hanover Ins. Co. v. Treasurer and Receiver Gen., 910 N.E.2d 921 (Mass. App. Ct. 2009).

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