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RECENT AUTO AND COMMERCIAL CGL CASES EXPAND COVERAGES DUE TO POLICY AMBIGUITIES

Recent decisions by the Supreme Court of Virginia and the Eastern District of Virginia have continued the trend of Virginia courts extending the scope of coverage, and they are forcing insurers to carefully assess their policy language. In two very different situations, one dealing with an auto policy and the other with a business' CGL policy, ambiguous clauses and phrases within the policies resulted in unanticipated coverage and additional litigation costs.

First, the Virginia Supreme Court recent ruling on an automobile policy may change the long held rules of intrapolicy stacking. The High Court's ruling in Virginia Farm Bureau Mut. Ins. Co. v. Williams, 278 Va. 75 (2009) may prove to be a watershed decision in the Virginia courts' interpretation of policy language, consequently increasing the potential exposure to all insurers. Indeed, in Williams, the policy ambiguities turned into a \$600,000 mistake.

The facts in Williams are relatively routine. In Williams, Virginia Williams was a passenger in her father's car and was seriously injured when involved in an accident with another vehicle. The other vehicle was underinsured, so Ms. Williams

filed a UIM claim against her father's policy with Virginia Farm Bureau, the carrier that covered the vehicle in which she was riding. The Supreme Court ruled that the ambiguities in the Virginia Farm Bureau policy not only provided Williams the UIM coverage for the premium paid on the vehicle involved in the collision, but also for the premiums the father paid on two additional vehicles covered by the same policy. This ruling is based on the specific defects in the policy in question and does not directly overrule prior law. However, it serves as a solid reminder of the importance of ensuring that language in the policy follows the clear rules Virginia courts require.

According to the Court, the Virginia Farm Bureau policy failed to provide specific language prohibiting intrapolicy stacking. First, the policy in question failed to provide policy limits for each person and each accident in a designated schedule. Rather, the policy referred to an ambiguous Limits of Liability clause of the Declarations Page not included in the designated schedule. In the Limits of Liability clause, the policy provided a limit of \$300,000 per person; a limit of \$250,000 per person; and then an additional \$300,000 per person. Virginia Farm Bureau argued that Williams was only entitled to \$250,000.

According to the Court, the ambiguous language did not distinguish which policy limit applied, accordingly the entire policy was interpreted in favor of the insured. The Court simply added the 3 available policy limits and held that the Virginia Farm Bureau policy afforded \$850,000 in UIM coverage. Proper language prohibiting intrapolicy stacking, according to the Supreme Court's opinion, should include "unambiguous language . . . found entirely in the UM/UIM coverage

provision section" that also includes a schedule listing available coverage per person and per accident.

This recent ruling is a substantial change in UIM policy interpretation since the Court's 1981 ruling in Goodville Mutual Cas. Co. v. Borrer, 221 Va. 967 (1981), which allowed policies to prohibit stacking with unambiguous language. What was once considered unambiguous UIM language may now be open to interpretation. The ruling may also provide a window of opportunity for Plaintiff's attorneys to scour policy language in search for favorable ambiguities. Ultimately, a well-crafted policy will prevent a plaintiff from aggregating policy limits that the insurer never intended to stack.

In another policy interpretation issue, the Eastern District of Virginia has found that ambiguities in a commercial general liability policy required an insurer to defend a premises liability claim following the shooting death of an employee on company property. Admiral Ins. Co. v. G4S Youth Services, (Case 3:07-cv-00656). In its opinion, the Court's decision boiled down to its interpretation of the phrase "arising out of", ultimately deciding that underlying facts of the case did not fall under the policy's "Employer Liability" exclusion.

Shanique Harris worked as a security guard for G4S Youth Services and was fatally shot by her estranged boyfriend on the premises of G4S. According to G4S' general commercial liability policy with Admiral Insurance, the insurer was under no duty to defend G4S for employee bodily injury "arising out of and in the course" of employment. The Court's decision turned on the specific facts of the case. While Harris was on the premises of her employer, she had not



clocked in and had yet to enter her employer's building.

As in the first case discussed in this article, the court found that the policy ambiguities must be held against the insurer. Moreover, when an insurer rests its argument on the exclusionary language of its policy, it is the insurer's burden to prove the exclusion is applicable to the facts present. Again, the insurer contended that Harris was murdered while acting within the scope of her employment, consequently excluding all policy coverage. Admiral Insurance, however, provided no other facts supporting their argument that they did not owe a duty to defend. The Court disagreed with Admiral's stance and ruled that whether or not an act "arose out of" employment is open to interpretation. When policy language requires interpretation, courts will always be inclined to view it in favor of the insured. Through a lengthy dis-

cussion, the Court concluded that the death of Harris arose out of a personal dispute and did not arise out of the scope of her employment. Per the Court's language interpretation, it was irrelevant that Harris was on the property of her employer.

The Court, looked to Webster's Dictionary to define the word "arise" as originating from a source or come into being. The Court held that since the bodily injury did not arise out of the deceased's employment, Admiral was bound to defend G4S in the premises liability suit brought by Harris' estate. According to the estate, G4S had a duty to protect Harris from a boyfriend when G4S had actual notice of his propensity for violence. As the exclusionary clause was no longer applicable, Admiral Insurance had a duty to defend G4S under its general commercial liability policy's premises liability clause.

Both cases discussed in this article call attention to the neces-

sity to create insurance policies with crisp language to prevent an interpretation against the insurer. Public policy calls for courts at the State level and Federal level to be more inclined to interpret policy language in favor of the insured and find coverage when possible. In light of these cases continuing the trend of expanding coverage when possible, insurance companies will need to closely consider their policy language and ensure that full certified copies of policies are readily available for counsel's review as soon as coverage disputes arise.



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