FEDERAL DISTRICT COURT
Gallagher Sharp June 2019 Insurance Newsletter

Policy with underinsured policy limits of $12,000/$25,000 is not illusory if it provides "some benefit" to the insured.

Pinkerton purchased an automobile policy from GEICO. The policy provided for uninsured/underinsured ("UIM") coverage with limits of $12,000 per person and $25,000 per occurrence. Since Ohio law requires drivers to maintain minimum bodily injury liability coverage of $25,000 per person and $50,000 per occurrence, Pinkerton believed that the UIM coverage offered in her policy was a nullity. Pinkerton filed suit against GEICO alleging breach of contract, fraud and misrepresentation, conversion, breach of fiduciary duty, negligence, and unjust enrichment. She argued that she could never make a claim for UIM coverage under the policy and that GEICO concealed the fact that the UIM coverage in the policy was illusory.

The court granted GEICO's motion to dismiss. The court found the UIM coverage in the policy could provide "some benefit." The policy could provide UIM coverage when an accident involving multiple victims reduces the amount the insured received from a tortfeasor to an amount below the Ohio statutory limits. The court also found that the policy could provide UIM coverage if Pinkerton was involved in an accident with a party from a state with lower coverage limits than Ohio. Therefore, the policy was not illusory because there were some scenarios where coverage could be applied. *Pinkerton v. Govt. Employees Ins. Co., et al.*, N.D. Ohio No. 5:18 CV 1371, 2019 WL 1026227 (Mar. 4, 2019).

Insurer has no duty to defend and indemnify insured when insured's conduct did not lead to "bodily injury."

M.K., a student at the University of Findlay, accused Justin Browning and another student of sexually assaulting her. Allstate issued a homeowners insurance policy to Browning's parents for "bodily injury or property damage arising from an occurrence." Allstate sought a declaratory judgment that it had no duty to indemnify or defend Browning against M.K.'s allegations and filed for summary judgment.

The court granted Allstate's summary judgment motion because there was no evidence that M.K. suffered "bodily injury." M.K. argued that she developed a urinary tract infection and petechiae on the roof of her mouth after Browning sexually assaulted her. However, she provided no expert testimony linking the two conditions to M.K.'s sexual contact with Browning. The court found that M.K.'s claim that Browning caused these conditions "is not evidence; it is speculation." The court held that since there was no evidence that the assault led to a "bodily injury," Allstate had no duty to defend or indemnify Browning. *Browning v. Univ. of Findlay*, N.D. Ohio No. 3:15 CV 2687 (Feb. 21, 2019).

Umbrella insurers are not necessary and indispensable parties in declaratory judgment actions between the primary insurer and its insured.

National Fire Insurance of Hartford filed a complaint seeking declaratory judgment that they owed Defendant City of Willoughby ("City") no obligation to defend or indemnify the City in an underlying suit. The City moved to dismiss the complaint because certain umbrella insurers were not named in the declaratory judgment action. The City argued that these umbrella insurers were necessary and indispensable parties to the action. The court denied the City's motion and the City moved for reconsideration of the opinion and order.

The court denied the City's motion for reconsideration. The court held that the City did not meet any of the procedural requirements necessary to establish that the umbrella insurers were necessary and indispensable parties and did not establish that the parties would be disadvantaged by having the umbrella carriers absent. The court said that courts routinely find that umbrella insurers are not necessary and indispensable parties to a declaratory judgment action brought by a primary insurer against its insured. The court further held that umbrella insurers may have an interest in the proceeding, but they could assert them after the court rules on the current case. *Nat'l Fire Ins. of Hartford v. City of Willoughby*, N.D. Ohio Case No. 1:17 CV 1392, 2019 WL 696989 (Feb. 20, 2019).