OHIO STATE COURTS
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A policy exclusion for workplace injuries "intentionally caused or aggravated" by the employer excludes coverage for employer intentional tort claims where the statutory rebuttable presumption of intent to injure goes unrebutted.

H.P. Manufacturing Company, Inc. was insured by Westfield Insurance Company. HP was sued by an employee for workplace intentional tort. The employee alleged that HP had "knowingly and/or deliberately removed * * * one or more equipment safety guards, which * * * caused [his] injuries * * *." At trial, the jury found that "HP had failed to rebut the presumption that HP intended to injure" the employee by removing the safety guard. Westfield denied indemnity coverage but defended under a reservation of rights; HP filed suit seeking indemnity coverage.

The trial court entered summary judgment in favor of Westfield finding no coverage. The court of appeals agreed holding that: Exclusion C.5. of the policy "specifically states that '[t]his insurance does not cover * * * bodily injury intentionally caused or aggravated by [HP].'" The court further found that Westfield did not waive the indemnity coverage exclusion by providing HP a defense under a reservation of rights. *H.P. Mfg. Co., Inc. v. Westfield Ins. Co.*, 8th Dist. No. 106541, 2018-Ohio-2849.

Equitable contribution claims by settling insurers against non-settling insurers are controlled by considerations of equity rather than strict "pro rata" or "all sums" allocation.

Rust was a large construction and engineering firm. Over 71,000 asbestos claims have been filed against Rust since 1995. The claimants alleged they were exposed to asbestos at various work sites while Rust was conducting operations. Rust sued its insurers for coverage. All of its insurers, except National Union, settled and agreed to pay allocated shares of Rust's defense and indemnity relative to the asbestos claims. The settling insurers then pursued cross-claims for equitable contribution against National Union seeking to recover those amounts paid in excess of their "fair share of an obligation shared by other insurers."

The court of appeals found that the trial court did not abuse its discretion by making the equitable determinations that: (1) continuous trigger applies; (2) National Union's share could be determined by analogy to the shares allocated by the settling insurers in the settlement agreement; and (3) the shares determined in the settlement, were the most cost-effective allocation method which avoided a costly claim by claim analysis, were subject to arms-length negotiations, and were allocated in good faith. The court of appeals found that the trial court was not bound to apply pro rata allocation, but rather, had authority in equity to craft an allocation based on equitable principles. *Resco Holdings, L.L.C. v. AIU Ins. Co.*, 8th Dist. No. 106234, 2018-Ohio-2844.

Prevention of future environmental damage is not a covered "occurrence."

The North American Coal Company ("Coal") operated a coal mine and, under its operating permit, was responsible for acid mine drainage both during and after mine operations. After the mine was closed and sealed, acid mine drainage began seeping into nearby waterways. Coal's corporate successor Bellaire spend over $15 million containing and treating the seepage. Bellaire sought insurance coverage for that expense and filed suit against its insurers. The insurers sought summary judgment because: (1) "Bellaire's damages did not result from an 'occurrence' as defined by the policies because the treatment of acid mine drainage is a statutorily mandated, routine business expense that is prophylactic in nature;" (2) because the construction and operation of the water treatment plant is not "property damage" covered under the policies; and (3) "Bellaire failed to give timely notice of its claims."

The trial court granted summary judgment to the insurers finding "the Insurers' argument that Bellaire's damages were not the result of a covered 'occurrence' was dispositive." The court of appeals agreed holding that the cost of building and operating the treatment plan are "pursuant to an ongoing obligation under the Permit rather than to remediate past property damage claims." Further, the court reasoned that the treatment plant is "a preventive measure aimed at preventing future property damage claims and does not qualify as damages caused by an occurrence." *Bellaire Corp. v. Am. Empire Surplus Lines Ins. Co.*, 8th Dist. No. 106243, 2018-Ohio-2517.

One-year contractual statute of limitations period began to run on the date of the loss to the covered property, rather than the date on which the claim was denied, but period is not applicable to bad faith claim.

The Bolins had insurance policies on their residence, boat, and trailer through Allstate Property and Casualty Insurance Company, and an insurance policy on their recreational vehicle through Allstate Fire and Casualty Insurance Company. On June 4, 2015, the residence, boat, trailer, and recreational vehicle were damaged in a fire. On an unspecified date "shortly after the fire," the Bolins' submitted claims on each of the respective policies, which Allstate denied on June 15, 2016. The Bolins filed suit against Allstate on July 11, 2016, more than one year after the fire which caused the damage, seeking declaratory judgment and alleging breach of contract and bad faith. The trial court dismissed the Bolins' claims for declaratory judgment and breach of contract pursuant to the one-year limitations period specified in each of the three insurance policies. The relevant language in the policies reference that all action must be commenced within one year after the inception of "loss."

The appellate court affirmed the dismissal, reasoning that the term "loss" in the contractual limitations period refers to the occurrence of harm to persons or property as a matter of fact, not as to when a cause of action might accrue as a matter of law. Therefore, the limitation period began to run on the date of the fire, not on the date Allstate denied the Bolins' claims. The Bolins also argued that Allstate waived the right to enforce the policies' limitations provisions by taking over one year to deny coverage and continually requesting documents during the one-year period. However, since Allstate did not entice them to delay the filing of their lawsuit and retracted a settlement offer shortly after making it, Allstate did not waive this defense. In regards to their bad faith claim, the appellate court held that given that a cause of action for bad

faith sounds in tort, the limitations clauses in the policies did not apply. *Bolin v. Allstate Property and Cas. Ins. Co.*, 2nd Dist. No. 27764, 2018-Ohio-3396.

Insured entitled to discovery in bad faith case alleging delay in settlement.

Crane Service & Inspections ("CSI") was sued over a crane collapse and tendered the claim to its insurer, Cincinnati Insurance. Cincinnati issued a reservation of rights and provided a defense, then filed a motion to intervene seeking a declaratory judgment approximately two years later. After an unsuccessful mediation Cincinnati settled the case. CSI filed a separate bad faith action toward the end of the underlying litigation, which was stayed. After settlement Cincinnati filed for summary judgment in the bad faith action arguing it paid the claim, which was granted without providing CSI time for discovery.

On appeal CSI argued it should have been allowed discovery on its theory that the settlement was unreasonably delayed because Cincinnati failed to make a coverage determination for more than three years, at one point requested CSI to contribute to the settlement, and withdrew settlement authority on the eve of a mediation, all of which delayed a business deal and required CSI to spend money on personal counsel. The court of appeals reversed and remanded, finding that CSI's claim of "foot-dragging" had enough merit to justify discovery. *Crane Serv. & Inspections, LLC, v. Cincinnati Specialty Underwriters Ins. Co.*, 12th Dist. No. CA2018-01-003, 2018-Ohio-3622.

Allstate's motor vehicle exclusion in its House & Home policy barred coverage to insured for car accident caused by slipping drugs into car driver's beverage.

On April 22, 2015, Michelle Shuster caused an automobile accident causing serious injuries to one pedestrian and fatal injuries to another. In the ensuing litigation against Schuster, the plaintiffs alleged that Kevin Bowman, Allstate's insured under a homeowner's policy, slipped drugs into Schuster's beverage and supplied Schuster with marijuana prior to the automobile accident. In the ensuing declaratory judgment action, Allstate filed a motion for summary judgment asserting it did not have a duty to defend or indemnify because its House & Home Policy contains a provision which excludes coverage for losses arising out of the use of any motor vehicle. Allstate also argued that Bowman's conduct with respect to causing Schuster's impairment was an intentional act which was not an "occurrence" to trigger coverage under the intentional acts exclusion in the policy.

The trial court, focusing exclusively on the motor vehicle exclusion, granted Allstate's motion. The pertinent exclusion provides: "We do not cover bodily injury or property damage arising out of *the* ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer." The plaintiffs argued that "the" which appears before the list of terms in the exclusion refers to *the insured's* operation of the motor vehicle, and since Bowman had no connection to the motor vehicle involved in the accident, the exclusion should not apply to preclude coverage of their claims. The court of appeals disagreed and relied heavily on a Georgia state appellate case which held that the motor vehicle exclusion clearly and unambiguously barred coverage for third-party claims following a motor vehicle accident not involving the insured. In other words, "motor vehicle" in the policy refers to *any* motor vehicle,

whether in the control of the insured or not. *Allstate Ins. Co. v. Bowman, et al.*, 3rd Dist. No. 17-18-05, 2018-Ohio-4171.

Where the complaint alleges a potentially covered claim, an insurer's obligation to defend ends when discovery in the underlying action reveals "indisputable, reliable evidence" that the underlying suit is not covered.

Hyster-Yale, a forklift manufacturer, was sued by various end-users of its products for alleged asbestos exposure. Hyster-Yale was insured under various Fireman's Fund CGL Policies from 1957 through 1969. However, in fact, the asbestos exposure periods, as developed through discovery in the underlying actions, were all after 1969. Fireman's Fund had been defending the underlying asbestos suits but withdrew its defense when it was revealed in discovery in the underlying suits that the asbestos exposure allegedly occurred after its policy years. Fireman's Fund then filed a declaratory judgment action asserting that "there is no duty to defend where extrinsic evidence shows that alleged exposure occurred outside of the policy time periods."

The trial court held that, although the underlying complaints alleged exposure during the Fireman's Fund policy periods, Fireman's Fund's duty to defend ended when it was established through discovery in the underlying actions that "there is indisputable, reliable evidence that the date of an underlying asbestos injury clearly occurred outside of the effective policy term." The court of appeals agreed and affirmed. *Fireman's Fund Ins. Co. v. Hyster-Yale Group, Inc.*, 8th Dist. No. 106937, 2018-Ohio-5236.