

Insurance Coverage Litigation

I. COMMON TYPES OF INSURANCE COVERAGE DISPUTES

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You're at a cocktail party, or at church, or maybe at a cocktail party at church, and someone comes up to you:

SOMEONE: You're a lawyer, aren't you?

YOU: Yes.

SOMEONE: Can I ask you a question?

YOU: Sure, but the answer won't be any good unless you pay.

SOMEONE: Fair enough. There was this guy who got hit in the head by a box of papers that someone threw out a window. Is that covered by insurance?

YOU: Have him come see me, we'll find out.

That someone sent Hiram Tweedle to you. Hiram is a sanitation engineer for Garbage Us, the new private waste disposal company that has a contract with Saxon Heights, Arkansas for garbage disposal. He was at the home of O. Julius Bananaberry, the notorious mood ring baron, to pick up the garbage, when suddenly a box of papers fell on his head.

Hiram's medical bills were paid for by workers' compensation. He was off work for a month. He had a ruptured disk. The orthopedic surgeon selected by his employer's workers' compensation carrier repaired the disk by surgery. He had physical therapy intermittently for several months. He was hurt, but he got well. He returned to his job with Garbage Us. However, now he's on a less dangerous route in nearby Gotham City.

It occurs to you that a third party claim against Bananaberry might be appropriate. You investigate and you learn that

Bananaberry told the workers compensation adjustor that he looked out the window of his study, and dropped the box of papers to the ground. He denies having seen Hiram, either before or after the accident. He first realized something was amiss when he went down to throw the box into the garbage container and saw that the box was already missing.

Woford Ubiquitous, the driver of the trash truck, witnessed the accident. Hiram was going to pick up Bananaberry's trash when a box flew out the second story window. Ubiquitous helped Hiram to safety, then retrieved the box and kept it. He turned it over to an agent of Consolidated Federated Mutual Insurance Company of Sweet Haven, New Hampshire.

Consolidated was not the workers compensation carrier. It must be Bananaberry's carrier.

So you call Consolidated's local office, only to be told by adjustor Snidely Whiplash that Consolidated denies coverage. "Why?" You ask. "I can't tell you that," answers the adjustor.

Even if Bananaberry doesn't have coverage, he's a good defendant. He cornered the market on phlogiston, the substance that makes mood rings function. With his control of most of the phlogiston mining industry in the nation, it doesn't matter much whether he's insured. So you sue him. You take care to furnish a copy of the complaint to the insurance company.

Instead of one of the insurance defense lawyers you're used to, Bananaberry's personal lawyer, Jacqueline Hyde, of Runne, Laquelle, and Hyde signs the answer.

You ask in discovery, does Bananaberry have coverage? You learn that Bananaberry asserts that he has coverage under not one but two policies issued by Consolidated, but Consolidated asserts some kind of policy defense. You request a copy of the policies. On reviewing them, you can't figure out why in the world Consolidated isn't defending.

At every step of the litigation, you forward copies of the documentation to Consolidated. Periodically Consolidated drops

you a line that they owe no coverage in this case, but usually they just ignore you.

You get a judgment of \$85,000. It's not as much as you would have liked, but enough to make pursuing the case worth it to you and your client.

You send the insurer a copy of the judgment by certified mail, return receipt requested. You are again ignored.

You now have to decide whether to execute on phlogiston mines, garnish Bananaberry's lavish income, or pursue his insurance coverage.

Thirty one days after the certified letter you sent with the judgment was received, you sue Consolidated. Consolidated answers alleging it owed no duty to pay because of the criminal acts exclusion in its policy.

Then Bananaberry intervenes, asserting not only that Consolidated owes the coverage and owes him his defense costs back, but also alleging that the claim was denied in bad faith.

Throwing a box of documents out a second story window without looking may be stupid, but a quick survey of the statutes fails to turn up an offense of Defenestration of Documents.

In discovery, you learn that the documents in the box had to do with Bananaberry's cornering the market in phlogiston. Apparently some of the means he used to do that were in violation of the antitrust laws. Fortunately for Bananaberry, the statute of limitations ran on the last conceivable offense shortly before your trial.

Antitrust concerns must have been serious for Bananaberry. You learn in discovery that Bananaberry was upset when Whiplash told him that he would be well advised to drop the claim for coverage. Whiplash suggested that he would hate to see those papers turn up in the hands of the Feds.

Consolidated takes the position that destruction of the evidence of his illegal business practices constituted obstruction of justice, a crime. The policy contains this exclusion:

We do not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person. This exclusion applies even if:

- (a) such insured person lacks the mental capacity to govern his or her conduct;
* * * * *
- (c) such bodily injury or property damage is sustained by a different person than intended or reasonably expected; . . .

This exclusion applies regardless of whether or not such insured person is actually charged with, or convicted of a crime.

Bananaberry also has a homeowners' policy. That policy contains a business pursuits exclusion under which the insurer denies coverage. The "business pursuits" exclusion of the policy provides that the liability coverage does not apply "to bodily injury or property damage arising out of business pursuits except activities therein which are ordinarily incident to non-business pursuits."

A. Basic Principles Underlying All Coverage Disputes

Insurance Law Fundamentals

Insurance law defies logical explanation because it involves fitting the square peg of insurance into the round hole of contract law.