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Virginia Supreme Court Clarifies That Extrinsic Information May Be Considered When Determining An Insurer's Duty to Defend Under Contracts For Homeowner's And Umbrella Liability Insurance

In *Copp v. Nationwide Mut. Ins. Co.*, ___ S.E.2d ___, 2010 WL 1489735 (Va. April 15, 2010), the Virginia Supreme Court held that where an insurer disclaims a duty to defend on the ground that the complaint alleges only intentional conduct excluded from coverage, the "Eight Corners Rule" does not prohibit consideration of evidence outside the underlying complaint itself, demonstrating that an exception to the exclusion applies and that a defense is therefore owed.

The Duty to Defend Under Virginia Law

Virginia follows the "Eight Corners Rule" to determine whether a liability insurer has a duty to defend an insured against a lawsuit brought against that insured. This rule is a combination of the "Exclusive Pleading Rule" and the "Potentiality Rule." The "Exclusive Pleading Rule" requires that courts determine the insurance company's duty to defend "solely by the claims asserted in the pleadings," while the "Potentiality Rule" extends the "Exclusive Pleading Rule" and mandates that if there is any "potentiality" that the plaintiff's allegations may state a claim covered by the policy, then the insurer must defend its insured. Virginia

law has been unclear as to whether a court should consider information outside the allegations of the complaint in determining the duty to defend.

The Insurance Policies

Copp, who was a college student at the time of the incident, was an insured under his parents' contracts for homeowner's and umbrella insurance issued to his parents by Nationwide. The homeowner's policy provided coverage for an "occurrence," described as bodily injury or property damage "resulting from an accident." The policy excluded coverage for liability "caused intentionally by or at direction of an insured, including willful acts the result of which the insured knows or ought to know will follow from the insured's conduct." The umbrella policy provided coverage for personal injury and property damage arising from an "occurrence," meaning an "accident." The umbrella policy specifically excluded liability for "personal injury arising out of ... willful violation of a law by or with the consent of the insured" and liability for "bodily injury or property damage intended or expected by the insured." However, the latter exclusionary clause

specifically provided that it “does not apply to bodily injury or property damage caused by an insured trying to protect person or property.”

Factual Background

Copp, a college student, allegedly punched another party, Jacobson, in the face. Jacobson suffered severe facial fractures that required multiple surgeries. After recovering, Jacobson sued Copp. Count I of Jacobson’s complaint alleged assault and battery and sought compensatory damages. The count alleged that Copp “willfully and intentionally hit [Jacobson]” and that Copp’s “actions were unjustified [and] malicious.” Count II sought punitive damages for the alleged assault and battery. Count II alleged similar allegations of willful, intentional, unjustified and malicious conduct by Copp.

In his deposition, Copp testified that he was outnumbered and felt that his safety was in serious jeopardy. Copp further testified that, in the process of trying to get away, a punch may have struck Jacobson in the face.

Nationwide brought a declaratory judgment action seeking a declaration that it was under no duty to defend or indemnify Copp. The parties stipulated to the use of the underlying complaint, Copp’s testimony from both

his deposition and examination under oath, and the underlying plaintiff’s deposition for purposes of determining the duty to defend. The insurer contended that it had no coverage obligation because Jacobson’s complaint against Copp alleged only intentional conduct, which could not be considered an “accident” under the language of the insurance policy. Copp, on the other hand, did not contest coverage under the primary homeowner’s policy but, instead contended that the insurer owed a duty to defend him based on a self-defense exception to the exclusion for injury “expected or intended by the insured” under the umbrella policy. The lower court ruled that the insurer had no coverage obligation because the complaint allegations alleged only intentional conduct, which was excluded under the policy. Copp appealed.

On appeal, the insurer contended that the “Eight Corners Rule” was restricted to a review of the complaint allegations alone, and that matters raised by the insured in defense of the claim are not to be considered. And because the complaint allegations were all intentional in nature, there could be no coverage. Copp argued that the lower court committed two errors. First, it ignored the self-defense exception to the “expected or intended” exclusion

under the umbrella policy. Second, it failed to consider his testimony that he acted in self-defense, which he contended made a claim potentially covered by the insurance policy and triggered the insurer’s duty to defend.

The Virginia Supreme Court agreed with Copp and reversed. The court based its holding on the fact that the exception to the exclusion was found within the four corners of the umbrella insurance policy and, therefore, must be given effect. As such, it held that Copp’s claim that he acted in self-defense must be considered when evaluating whether a defense is due.

Implications

Copp reinforces the broad nature of an insurer’s duty to defend obligation under Virginia law. This ruling demonstrates that the “Eight Corners Rule” under Virginia law will not mechanically restrict consideration to the literal “four corners of the complaint” if the “four corners of the policy” necessitate consideration of facts or circumstance outside the complaint allegations. In such circumstances, an insured may rely on certain undisputed facts that are outside the allegations in the complaint to demonstrate that the allegations against it are potentially covered and that the duty to defend is accordingly triggered.

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