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District of Columbia High Court Addresses Availability of General Liability Insurance for Allegations of Marketing Alcohol to Minors

The District of Columbia Court of Appeals affirmed a trial court's ruling on November 26, 2008, that allegations of unfair business practices, negligence and corrupt activity that do not seek damages because of bodily injury or property damage would not be covered under an insured's general liability insurance contract. The court also held that to the extent that the allegations of providing beer to underage drinkers did allege bodily injury, these injuries were expected or intended and therefore not covered. *Adolf Coors Company v. Truck Insurance Exchange*, 2008 D.C. App. Lexis 446 (November 26, 2008).

Background

The Adolph Coors Company and Coors Brewing Company were named as defendants in multiple putative class-action lawsuits, each alleging unfair business practices, unjust enrichment, negligence, civil conspiracy and corrupt activity in connection with the intentional marketing of alcoholic beverages to underage consumers. Coors tendered the complaints to its general liability insurer, Truck Insurance Exchange ("TIE"). TIE declined to provide a defense on the ground that none of the complaints sought damages covered under the terms of the insurance contract with Coors.

Coors filed a coverage action against TIE. The trial court granted TIE's motion for summary judgment, finding that each of the class-action lawsuits did not seek damages stemming from bodily injury, and that the harm sustained was either expected or intended. Coors appealed.

The Court's Ruling

On appeal, the DC Court of Appeals considered two issues. First, the court addressed whether the complaints sought redress for bodily injuries or for purely economic injuries. Second, the court analyzed whether the class-action lawsuits sought damages caused by Coors' allegedly intentional and purposeful misconduct.

The DC Court of Appeals, applying Colorado law, found that an insurer must defend its insured where the underlying complaint includes allegations that, if sustained, would impose liability that is arguably covered by the policy. The court further noted that when determining whether the duty to defend exists, the insurance contract should be compared to the "face of the complaint." Under Colorado law, factual allegations described in the complaint are more significant than the particular causes of actions asserted.

Coors argued that each of the class-action lawsuits sought damages on account of bodily injury, pointing to the class plaintiffs' repeated references to illnesses and accidents associated with underage drinking. TIE argued that such allegations were only tangentially related to the stated causes of actions, which focused on alleged economic injuries resulting from the illegal trade of alcoholic beverages to underage consumers.

After reviewing each complaint, the court found that each complaint was susceptible to two interpretations. Under one interpretation, the allegations of bodily injuries simply supported the complaints' ultimate claims for purely economic injuries. Under that interpretation there would not be a duty to defend, since the complaint sought recovery for economic injuries, not bodily injury or property damage. Under the other interpretation, however, the allegations could be seen as seeking damages for thousands of alcohol-related injuries sustained by minors. Under this interpretation, a duty to defend could be triggered since the basis for damages derived from an actual bodily injury. The court noted that even if the second interpretation were subject to dismissal for lack of standing, such consideration was not appropriate when determining whether the duty to defend exists since the insurance contract provides for such a duty even when the allegations

are "groundless, fraudulent, or false." Since Colorado law mandates that a court construe the insurance contract in favor of the insured, the court found that each complaint stated sufficient allegations to constitute "bodily injury" under each respective insurance contract.

The court next examined whether the alleged injuries were expected or intended by Coors, noting that a general liability policy's defense obligation is not triggered if the alleged harm was expected or intended, regardless of whether the harm derived from bodily injury. Coors argued that the complaints contained a general negligence count that was enough to implicate the duty to defend. The court rejected this argument, stating "we do not believe it is even arguable that the class plaintiffs sought relief on account of injuries that from Coors' perspective were unexpected or unintended." In support of this conclusion, the court noted that each complaint unambiguously characterized Coors' conduct as purposefully harmful despite the general allegation of negligence. Further, as the court explained, the complaints "seek redress for *only* the deliberate and reckless targeting of underage consumers." (emphasis added).

The court also rejected Coors' argument that a duty to defend existed because it did not have the specific intent to cause harm. The court found that Colorado's

duty to defend jurisprudence does not distinguish between the desire to engage in activity that is harmful and the desire to actually cause harm.

While the court found that each complaint arguably sought redress for bodily injuries, the court concluded that these injuries resulted from Coors' intentional commission of harmful acts. As such, the complaint's allegations in each complaint did not trigger TIE's duty to defend.

Implications

When determining whether an insurer has a duty to defend, Colorado, like many other jurisdictions, compares the complaint's allegations to the terms of the insurance contract. In *Coors*, the DC Court of Appeals looked to the essence of the alleged misconduct, which was intentional, rather than at the simple fact that the complaints contained a negligence cause of action. This ruling underscores the importance of a complaint's actual factual allegations. The court interpreted Colorado law to hold that merely pleading a negligence cause of action is not sufficient to trigger the duty to defend when the gravamen of the factual allegations at issue plainly allege intentional acts. In addition, the court's finding demonstrates that purely economic injuries are not covered under liability policies that require bodily injury or property damage.