Fields Howell

Case Advisory July 2015

This month we report on two Georgia Supreme Court decisions on uninsured motorist coverage, as well as three insurance law decisions from the Georgia Court of Appeals, including a decision on the pollution exclusion.

## Georgia Supreme Court Rules in Uninsured Motorist Cases

The Georgia Supreme Court has issued two decisions on uninsured motorist coverage, one in favor and one against the insurer.

In *Travelers Home & Marine Ins. Co. v. Castellanos* (4 June 2015), an injured claimant in an automobile accident brought suit against the defendant tortfeasor, and obtained a judgment when the defendant did not show up for trial. The defendant's insurer denied coverage based on the defendant's failure to cooperate, and the claimant then submitted a claim for uninsured motorist benefits to collect the amount of the judgment. The uninsured motorist ("UM") carrier also denied coverage on grounds the liability insurer had not legally denied coverage. The claimant then sued the UM carrier. The Court held the claimant was not entitled to summary judgment against the UM carrier, because the claimant had the burden of producing evidence that the defendant's liability insurer had legally declined coverage. The Court held this evidence must include proof the liability insurer had requested the defendant's cooperation, proof that the defendant willfully and intentionally failed to cooperate, and proof that the failure to cooperate prejudiced the defense. The claimant failed to submit evidence on each of these issues.

In *FCCI Ins. Co. v. McLendon Enters. Inc.* (18 May 2015), the Court ruled in favor of the policyholder against the UM carrier. The claimant was injured in an accident with a school bus. The school district's liability by statute was limited to its $1 million insurance policy. The Court held the claimant was entitled to collect the excess of his damages, above the school district's policy limits, from the UM carrier.

The school district's immunity from liability above the amount of its insurance policy limits did not limit the liability of the UM carrier.

## Georgia Court of Appeals Rules Against Insurer on Pollution Exclusion

The Georgia Court of Appeals has ruled in a split panel decision that the pollution exclusion in a liability policy does not apply to lead paint claims. *Smith v. Georgia Farm Bureau Mut. Ins. Co.* (10 June 2015). In this case, a tenant in a residential rental house brought a lawsuit against her landlord, alleging that her daughter had incurred permanent disabilities as a result of ingesting lead paint chips and dust. The landlord's liability insurer declined coverage on the basis of the pollution exclusion. However, the Court of Appeals held the pollution exclusion did not apply in this case, because the wording of the exclusion did not specifically state that it applied to lead paint.

The reasoning of the court's decision is seemingly inconsistent with the Georgia Supreme Court's decision in *Reed v. Auto-Owners Ins. Co.*, 284 Ga. 286 (2008), in which the Court held the pollution exclusion under Georgia law is not limited to traditional environmental pollution, but also applies to pollutants within a home. One of the Court of Appeals judges concurred specifically in the result on this point, which, under Georgia appellate court rules, makes the decision non-binding precedent.

## Georgia Court of Appeals Rules in Favor of Stacking Policies

The Georgia Court of Appeals has held that three $1 million policies may be "stacked" to provide $3 million in coverage absent specific anti-stacking language in the policies. *Ayers v. Association of County Comm'rs* (16 June 2015). This case arose out of a police shooting. The deputy sheriff involved in the shooting was working for an inter-county drug task force when the shooting occurred. The Georgia Interlocal Risk Management Agency provided $1 million policies to each of three counties participating in the task force.

The court held the task force was acting to enforce the law on behalf of all three counties, so all three policies were applicable. The court further held that because the policies did not contain specific "anti-stacking" language, all three policy limits were applicable to the claim for damages. The court's ruling explained that a limit of liability provision is not sufficient

to eliminate stacking of coverages. Specific anti-stacking language is required. These policies did not include such wording.

**Georgia Court of Appeals Rules Against Insurer in Farm Motor Vehicle Accident**

In *Partin v. Georgia Farm Bureau Mut. Ins. Co.* (21 May 2015), the court held a farm liability policy did not exclude coverage for an accident involving the insured's all-terrain vehicle. The insured was a farmer who maintained a Polaris Ranger, a four-wheeled all-terrain vehicle, for use on his farm. Two teenagers went for a joy-ride in the Ranger, without permission, and were injured in an accident. The farm liability policy excluded coverage for injuries "arising out of the ownership, maintenance, use or entrustment to others of any . . . motor vehicle . . . ." The insurer denied coverage on that basis.

The Court of Appeals held, however, that the exclusion did not apply, because the policy exclusion contained exceptions for "mobile equipment" and a "farm implement while upon public roads." The court held these exceptions were ambiguous as to whether they applied to the Ranger, and therefore, ruled the motor vehicle exclusion did not apply.

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