

TEXAS INSURANCE LAW NEWSBRIEF

JUN 25, 2018

WESTERN DISTRICT OF TEXAS BROADLY INTERPRETS THE TERM "FUNCTION" IN A LIQUOR LIABILITY ENDORSEMENT AND NARROWLY INTERPRETS THE PHRASE "IN THE COURSE OF EMPLOYMENT" IN AN EMPLOYER'S LIABILITY EXCLUSION, TRIGGERING INSURER'S DUTY TO DEFEND

Last week, the Federal District Court for the Western District of Texas held that (1) the term "function" in a liquor liability endorsement encompasses a gathering of a few employees after work to socialize and consume alcohol, triggering the insurer's duty to defend and (2) the phrase "in the course of employment" in an employer's liability exclusion means "while the employee is performing work-related duties," triggering the insurer's duty to defend. In *Sentry Select Insurance v. Ruiz*, No. EP-16-CV-00376-DCG, 2018 WL 3046942 (W.D. Tex. [El Paso Division] June 20, 2018, mem. op.), three employees of Rudolph Mazda consumed beer on Rudolph Mazda's premises after work. After socializing and consuming beer, one of those employees was driving his vehicle and struck a fourth employee, Villegas, in the front sales/service area as Villegas was walking across the parking lot leaving the premises. Subsequently, Villegas sued Rudolph Mazda under the doctrine of vicarious liability. Rudolph Mazda was insured by Sentry Select Insurance Company ("Sentry"), and Sentry filed a declaratory judgment action seeking declaration that it had no duty to defend.

The first dispute was whether the employees' after-work beer consumption fell within the scope of the term "function" as used in the policy's liquor liability endorsement. The endorsement provided that Sentry would indemnify the insured for "damages because of bodily injury arising out of the giving or serving of alcoholic beverages at functions incidental to the insured's garage business"

Rudolph Mazda argued that "functions" included any social gathering, inclusive of its employees' after-work beer consumption. Sentry, on the other hand, argued that "functions" included only company functions such as Christmas parties, company picnics, etc., and not a gathering of a few employees after work to socialize. The court agreed with Rudolph Mazda and rejected Sentry's argument. That is, the court, noting that it was not aware of any Texas court decision interpreting or applying the term "functions" in the context of a liquor liability endorsement, found that gathering for the consumption of beer constituted a "function." Consequently, the court held that Sentry had a duty to defend. The court reasoned that nothing in the policy evinced a clear unambiguous intent to exclude a particular type of social gathering, such as an after-work gathering of a few employees for beer consumption.

The second dispute was whether Villegas' injury occurred while she was in the course of her employment. The policy excluded from coverage damages because of bodily injury to an employee of the insured arising out of and "in the course of employment by the insured." Sentry argued that the phrase "in the course of employment" should be construed by applying the "access doctrine," which is used in workers' compensation cases and is an exception to the general rule that compensation benefits do not extend to injuries incurred by employees going to and from work. However, the court declined to import the "access doctrine" in interpreting the phrase in question and, relying on the dictionary meaning and prior court decisions, concluded that the phrase "in the course of employment" meant "while the employee is performing work-related duties." Consequently, the court held that Villegas was not in the course of her employment when she was injured and, thus, Sentry had a duty to defend.

MDJW at ACE in Austin

On Monday, Tuesday and Wednesday this week at America's Claims Event at the JW Marriott in Austin, several of our lawyers will be in attendance and we hope our friends, clients and colleagues at the ACE program in Austin will stop by our booth in the Expo Center to say hello.