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News

FEDERAL COURT IN DALLAS SIDES WITH INSUREDS IN DISPUTE INVOLVING INSURER'S MOTION FOR SUMMARY JUDGMENT ON ITS DUTY TO DEFEND

Newsbrief
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Last week, a federal district court in Dallas denied an insurer's motion to summary judgment seeking a declaratory judgment that it had no duty to defend the insureds under its policy. *Covington Specialty Ins. Co. v. USAI LP, et al.*, No. 3:18-CV-3271-N, 2020 WL 7245073 (N.D. Tex.—Dallas, Dec. 9, 2020). Covington Specialty Insurance Company ("Covington") filed the motion in response to a lawsuit filed against its insureds involving claims of negligence, premises liability, and wrongful death. Such claims arose out of an incident in which the decedent was working as a private security guard at a property in Highland Park Texas when he and his vehicle were swept away by floodwaters.

The petition in the underlying suit alleged that floodwaters from a nearby creek swept the decedent away as he attempted to escape his vehicle. The Covington policy covered bodily injuries or property damage but *excluded* bodily injury or property damage "arising out of or resulting from the ownership, maintenance, use or entrustment to others of any aircraft, 'auto' or watercraft" and defined 'auto' as "[a] land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment; or . . . [a]ny other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged."

The Court applied the "eight-corners rule" and found that the insureds had established coverage under the policy; therefore, the insurer had the burden of proving that the "auto exclusion" under the policy applied.

When addressing whether an injury arises out of the use of a vehicle for the purposes of insurance coverage, the Court applied the factors set out in *Mid-Century Ins. Co. of Tex. v. Lindsey*, namely: (1) the accident must have arisen out of the inherent nature of the automobile, as such; (2) the accident must have arisen within the natural territorial limits of an automobile, and the actual use must not have terminated; and (3) the automobile must not merely contribute to cause the condition which produces the injury, but must itself produce the injury."

In this case, Covington argued that the relevant "accident" was the decedent's "sitting post" in his vehicle during a flash flood. Although the Court agreed that an accident might arise within the territorial limits of an automobile despite the injury occurring outside of it, it nevertheless stated that there was "no reason to suggest that 'sitting post during a flash flood' is the relevant injury-producing event as opposed to the more natural reasoning that the flash

flood itself produced the injury."

Covington also argued that the Court should apply the "but for" causation test and not the "producing cause" test when addressing the coverage issue. The Court quickly struck that argument down, emphasizing that the Texas Supreme Court has held that the "producing cause" test applies when, as here, the Court is tasked with interpreting *automobile* insurance coverage. Against this backdrop, the Court concluded that the connection between the vehicle and the decedent's death was tenuous at best. Consequently, the Court held that Covington failed to show that the vehicle was the producing cause of decedent's death and not the flash flood. Having shown that Covington failed to meet its burden of establishing that the "auto exclusion" applied, the Court granted summary judgment in favor of the insureds.