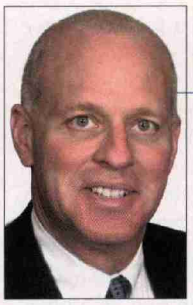
BEST'S REVIEW

Date: Thursday, January 01, 2015
Location: OLDWICK, NJ
Circulation (DMA): 62,553 (N/A)
Type (Frequency): Magazine (M)
Page: 56
Section: Main
Keyword: Rivkin Radler LLP

Regulatory/Law



By
Alan Rutkin

Coverage vs. Crime

Insight: Should a mother's home policy defend a suit brought by officers shot by her son?

A recurring theme in insurance coverage law is the point at which criminal activity precludes coverage. Every reasonable person would agree that carriers do not cover the direct results of criminal activity.

But as the policyholder-actor becomes more distant from the criminal activity, questions will arise. Recently, the Supreme Court of New Hampshire addressed this issue in *Amica Mutual Insurance Co. v. Mutrie*.

Pursuant to a warrant, the police chief of Greenland, New Hampshire and four police officers attempted to search the policyholder's home, which she'd rented to her son. The officers believed the son was distributing illegal drugs from the home. During the raid, the son shot and injured the four officers and killed the police chief. He then killed his girlfriend and himself.

The officers sued the policyholder, alleging she knew of her son's involvement in a criminal enterprise and recklessly supported and facilitated his criminal activity. The policyholder asked her homeowners' insurer to defend her against the police officers' suit. The insurer argued that it was not obligated to defend the case because the incident was not an "occurrence" under the policy.

The police officers argued that the policyholder's conduct constituted an "occurrence."

The policies defined an "occurrence" as "an accident…which results, during the policy period, in a bodily injury." The policies did not define the word "accident." The insurer filed a declaratory judgment action. The police officers intervened, arguing that the policyholder's conduct constituted an "occurrence."

Certainly, any reasonable person would agree that shooting the officers was not an "occurrence." The shooting was not an "accident," under any view of this word. But, the policyholder did not sell drugs or shoot the officers. The policyholder's wrongdoing was that she permitted her son to engage in illegal drug activity at this house. The question then is whether, in the context of permitting this activity, was the shooting a covered "accident"?

The court ruled that two tests should be considered to determine whether the cause of death was accidental. First, the court considered a subjective test: Did the insured actually intend the injury?

Second, the court considered an objective test: Was the conduct so inherently injurious that it cannot be performed without a certainty that some injury will result? That is, "the dispositive inquiry here is whether a reasonable person in [the mother's] position would know that permitting her son to engage in illegal drug activity on her property would result in some injury, although not necessarily the injury that, in fact, occurred." Under the inherently injurious test, the insured's intent is irrelevant.

Because the police officers did not allege that the shooter's mother intended to harm the officers, but rather that her reckless conduct contributed to their harm, the court applied the "inherently injurious" standard. The court found that since drug distribution is "intrinsically dangerous and harmful," a reasonable person would expect some injury. So, under the objective test, the incident did not arise from an "occurrence." The policies did not apply.

The New Hampshire Supreme Court's decision makes perfect sense, and insurers will welcome it. Criminal activity should not only preclude coverage for the criminal. It should bar coverage for a policyholder who permits that activity. BR

Best's Review *columnist Alan Rutkin is a partner at Rivkin Radler in Uniondale, N.Y. He can be reached at* alan.rutkin@rivkin.com