Insurance Coverage Update Pennsylvania

October 2007

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Pennsylvania Supreme Court Affirms Two-Year Statute Of Limitations For Statutory Bad Faith Claim

A unanimous decision of the Pennsylvania Supreme Court affirmed the Superior Court's decision that a statutory bad faith action is subject to the two-year statute of limitations. In Ash v. Continental Ins. Co., No. 35 WAP 2005, 2007 Pa. LEXIS 2139 (Pa. October 11, 2007), the Court began its analysis by noting that state and federal courts had previously applied various limitation periods—the two year tort limit, the four year contract limit and the six year catch-all limit.

The Court rejected the Plaintiffs' arguments that the catch-all limitation period should apply because the statute has both tort and contract aspects and because it should be read *in pari materia* with the Unfair Trade Practices and Consumer Protection Law (UTPCPL) which has a six-year limitation. In rejecting the *in pari materia* argument, the Court noted that the UTPCPL is a broad statute protecting consumers, but the bad faith statute is limited in scope and applies only to a narrow class of plaintiffs. Therefore, the statutes are not *in pari materia* and the Court is not required to apply the same statute of limitations to the bad faith statute.

The Court next addressed the proper characterization of the bad faith statute. It distinguished the statute from the implied contractual duty of good faith and fair dealing and stated that "the duty under § 8371 is one imposed by law as a matter of social policy, rather than one imposed by mutual consensus," thus it is a statutorily created tort properly governed by the two-year statute of limitations. ♦

PSMN's Win Regarding TCPA Claims Not Covered Under General Liability Policy Affirmed By Third Circuit

The Court of Appeals for the Third Circuit affirmed the decision of the United States District Court for the Eastern District of Pennsylvania that claims involving the sending of unsolicited fax advertisements in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, are not covered under either the "property damage" or "advertising injury" coverages contained within a comprehensive general liability insurance policy. Subclass 2 of the Master Class v. St. Paul Fire & Marine Ins. Co., No. 06-2755 (3d Cir. Sep. 25, 2007), aff'g, Melrose Hotel Co. v. St. Paul Fire & Marine Ins. Co., 432 F. Supp.2d 488 (E.D. Pa. 2006). (Pursuant to a settlement of the underlying action, the underlying plaintiffs were substituted as the plaintiff in the coverage action during the appeal.) The District Court's opinion detailed why the advertising injury coverage protects rights of secrecy, not seclusion, and why the transmission of fax advertisements is not an accident resulting in property damage. The Third Circuit affirmed "essentially for the reasons set forth by the District Court" and did not otherwise detail its decision. Based on its decision, the Court of Appeals was not persuaded by the substituted plaintiffs' arguments that property damage coverage should apply because the insured used a service to send the faxes or because liability under the TCPA can be found without a finding of intentional conduct. Likewise, the Court was not persuaded that the St. Paul policy's coverage for "making known to any person or organization covered material that violates a person's right to privacy" applied to TCPA claims. Charles E. Spevacek of Meagher & Geer, P.L.L.P. presented St. Paul's argument to the Third Circuit. ♦