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Alabama Insurance Law Decisions

2016 YEAR IN REVIEW

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Notice to Insurer's Apparent Agent

Southern Cleaning Service, Inc. v. Essex Insurance Company, 2016 WL 687048 (Ala.)

Here, the Supreme Court of Alabama addressed whether the insured provided late notice of a claim when such notice was provided to a purported agent of the insurer. Southern Cleaning Service, Inc. ("SCSI") entered into a contract with Winn-Dixie Montgomery, LLC to provide floor care and general janitorial services to multiple Winn-Dixie grocery stores in central Alabama. SCSI subcontracted with Phase II Maintenance Systems, LLC wherein Phase II became responsible for those services. Pursuant to the subcontract, Phase II obtained liability insurance with both SCSI and Winn-Dixie being listed as "additional insureds."

In obtaining the coverage, Phase II contacted an independent insurance agency, Alabama Auto Insurance Center. Alabama Auto contacted a managing general agency, Genesee, which ultimately issued the policy on behalf of Essex Insurance Company.

A claimant fell at one of the stores where Phase II was providing services. Evidence was submitted showing that Phase II's owner and president provided notice of the event to SCSI and Alabama Auto, and further requested that Alabama Auto notify Genesee. Months passed and when pre-suit settlement demands were made by the claimant, a representative of SCSI was ultimately told by both Genesee and Essex that neither had notice of the claim. Over fifteen months had passed before notice was provided and given the failure to provide notice "as soon as practicable," Essex denied coverage to Phase II, SCSI, and Winn-Dixie.

On appeal, the Court reversed summary judgment in favor of Essex finding that even though the agreement between Alabama Auto and Genesee specifically provided that Alabama Auto was an independent contractor and not the agent of Genesee or any insurer represented by Genesee, SCSI had presented substantial evidence that Alabama Auto was the apparent agent of Genesee and Essex.

This holding was based upon three elements. First, all communications from Genesee and Essex to the insureds were routed through Alabama Auto. In addition, the Essex policy identified Alabama Auto as the "agent" and listed Alabama Auto's address without providing other contact information or directions regarding how to provide notice of a claim. Finally, Genesee and Essex responded to notices of other claims forwarded by Alabama Auto without ever notifying Phase II, SCSI, or Winn-Dixie that it was inappropriate to provide such notice through Alabama Auto. This final element was accepted as evidence of apparent authority even though the other claim notices had been made subsequent to the subject event. The Court rationalized that had Genesee and Essex not accepted the subsequent notices, Phase II, SCSI, and Winn-Dixie would have learned of Alabama Auto's status and potentially could have provided notice at least earlier than was accomplished in this case.

Change in Life Insurance Beneficiary to One With No Insurable Interest

Ex Parte Liberty National Life Insurance Company, 2016 WL 1171505 (Ala.)

Alabama's common and statutory law have long provided that a life insurance policy issued to a person not having an insurable interest in the life of the insured is considered a "wager" on the life of another and is therefore void as against public policy. Thus, to be the valid beneficiary of the policy one must have an insurable interest as defined by *Ala. Code* § 27-14-3(a) (1975) which defines "insurable interest" as:

- an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of his or her death or disability or a substantial interest and gendered by love and affection in the case of individuals closely related by blood or by law.

At common law, the public policy rule making wager contracts void also prohibited an individual from assigning a policy to one who had no insurable interest in the insured's life. However, this rule was altered by *Ala. Code* § 27-14-21(b) (1975) which allows for "good faith" assignments "without regard to whether the assignee has an insurable interest in the life insured or not."

Here, Benjamin H. Miller, Sr. obtained coverage through Liberty National insuring the life of his son, Benjamin Jr. The named beneficiary was Benjamin Sr.'s mother though, later, Benjamin Sr. modified the policy to name himself as the beneficiary.

Later, Benjamin Sr. died. His then widow contacted Liberty National and had herself substituted as the named beneficiary of the policy insuring Benjamin Jr.'s life.

When Benjamin Jr. died, the widow of Benjamin Sr. made a claim which Liberty National paid. The administratrix of Benjamin Jr.'s estate sued Liberty National and the beneficiary asserting that the policy was void because Benjamin Sr.'s widow had no insurable interest in Benjamin Jr., her stepson, and Liberty National was negligent in allowing the beneficiary change which deprived Benjamin Jr.'s estate of the policy benefits.

On certiorari review, the Supreme Court of Alabama confirmed that the above statutory provisions, in concert, require only an insurable interest at the time the personal insurance become effective, though this requirement need not exist at the time the loss occurs. In doing so, the Court found no ambiguity requiring application of the above provisions.

Mysterious Disappearance Exclusion

St. Paul Fire & Marine Ins. Co. v. Britt, 2016 WL 360654 (Ala.)

Michael Britt purchased a sailboat which was insured with St. Paul. For some period, the sailboat served as Michael's residence in Florida. However, after accepting a job driving a commercial truck, Michael informed his father that he planned to sail the sailboat from West Palm Beach, Florida to Jacksonville, Florida to store the boat and rent a car to drive to his new job orientation.

Michael Britt never arrived. Cell phone records showed his last phone contact was with a debt-collection agency that had a lien on the sailboat. None of the parties to this appeal have seen Michael Britt or the sailboat since 2011, despite search efforts by his father and family, the United States Coast Guard, and Florida authorities.

Michael Britt's father was appointed the conservator of Michael's estate by the Chilton County Probate Court. He filed a claim for the lost sailboat. During the course of the litigation which followed St. Paul's denial, Britt's mother and father both testified that they could only speculate as to what happened to Michael Britt and the sailboat.

In denying the claim, St. Paul relied upon a "mysterious disappearance" exclusion. In doing so, St. Paul noted that it could not find any evidence of "accidental direct physical loss or damage" to the vessel which would be required to trigger coverage. In finding no coverage, the Supreme Court of Alabama found that the terms "mysterious disappearance" were unambiguous and excluded from coverage any disappearance or loss under unknown, puzzling, or baffling circumstances. The Court further rejected the plaintiff's argument that a separate policy provision requiring payment when the sailboat had been lost for more than 30 days does not conflict with the exclusion as not all losses or disappearances are mysterious.

Policy Reformation

Har-Mar Collisions, Inc. v. Scottsdale Insurance Company, 2016 WL 3136189 (Ala.)

Har-Mar Collisions, Inc. operated an auto shop under the trade name "Marshall Paint & Collision." Via an insurance counselor, the auto shop obtained coverage from Auto-Owners and Scottsdale. The Scottsdale policy listed the insured's name as "Harmar, Inc." though noted the corporate entity was doing business as "Marshall Paint & Collision." Apparently the name "Harmar, Inc." was found on the application completed by the agent.

Following a fire loss, Scottsdale repeatedly pointed to the discrepancy in the corporate names and requested information from the owner about any relationship between the two entities and what, if any, insurable interest "Harmar, Inc." had in the business.

Following pro tanto settlements involving an agent and Auto-Owners, the issues between the auto shop and Scottsdale were tried. Before the case was sent to the jury, the trial court found that there was a mutual mistake and reformed the contract so that the insured was "Har-Mar Collisions, Inc. d/b/a Marshall Paint & Collision."

The Supreme Court of Alabama held that the trial court could reform the policy in this fashion. In doing so, it noted that the undisputed evidence indicated that Scottsdale and Har-Mar Collisions intended for the Scottsdale policy to insure the auto shop, "regardless of under what name the auto shop is incorporated." Similarly, the Court rejected Scottsdale's argument that there was no mutual mistake asserting the only mistake resulting in "Harmar, Inc." being identified as the named insured was a mistake in the application provided by the agent. The Court specifically noted that even if there was a unilateral error with regard to the completion of the application, a mutual mistake still existed as both parties to the contact expected the auto shop to be covered.

Finally, the Court found that the trial court erred in setting off the pro tanto settlements against the jury verdict. The Court noted that there was no joint obligation between Auto-Owners and Scottsdale since Auto-Owners provided liability coverage while Scottsdale provided coverage for the property itself. Likewise, the agent did not undertake a joint obligation as its sole obligation was to procure insurance on behalf of the business.