

LANDLORD'S INSURANCE CARRIER HAS NO DUTY TO DEFEND TENANT IN SUIT BY A THIRD PARTY FOR TENANT'S NEGLIGENCE

Reversing the trial court's summary judgment rendered in favor of the tenant, the Illinois Appellate Court in *Hacker v. Shelter Insurance Company*, 2009 WL 325549 (5TH Dist. 2009) found that a general liability policy providing coverage for bodily injury or property damage caused by an occurrence did not provide additional insured coverage to a tenant who was sued in a third-party action.

In June 2001, Angelia Hacker rented an apartment in Carbondale from Truman Burk ("Burk") while she attended Southern Illinois University. During her tenancy, Shelter Insurance Company ("Shelter") insured Burk with an "Apartment Owners/Rental Dwelling Insurance Policy," (the "Policy"), which provided coverage for bodily injury or property damage "caused by an occurrence and arising out of the ownership, maintenance, or use of the insured premises and all necessary or incidental operations." The Policy defined the term "insured" as "the person(s) or organization named in the Declarations of the policy." It also covered the insured's spouse, any person acting as a real estate manager for the insured and any employee of the insured acting within the scope of his or her duties. Burk was the only person named as an insured in the Declarations of the Policy.

On May 10, 2002, while Angelia Hacker's parents were visiting, Hacker's mother fell on a stairway and was injured. Hacker's parents filed a complaint against Burk, seeking damages for injuries proximately caused by Burk's negligence in maintaining the stairway. Burk then filed a third-party complaint against Hacker, seeking indemnification or contribution based on her negligence that allegedly contributed to or caused her mother's injury.

Maintaining that she was a co-insured under Burk's Policy, Hacker tendered the defense of Burk's third-party complaint to Shelter. Shelter declined to defend Hacker in Burk's third-party action because she was not a named insured on the Policy issued to Burk. Hacker then filed a declaratory judgment, asserting that she was an additional insured under Burk's Policy, and that Burk's third party complaint alleged claims that were covered by the Burk Policy. The trial court held that the tenant was an additional insured, and that Shelter was obligated to defend Hacker in Burk's third-party action.

Reversing the trial court's decision, the appeals court stated that the policy covered only the "insured" from liability for bodily injury occurring on the premises. Finding that Burk was the only person named as an insured on the policy, and the tenant did not otherwise fit within the Policy's definition of an "insured," the *Hacker* Court held that there was no coverage for Hacker.

Further distinguishing a situation where a tenant gained the status of a coinsured

under the landlord's fire insurance policy covering the leased premises from the policy at issue, the *Hacker* Court stated:

“Liability insurance, however, covers losses resulting from an individual's liability to third parties. It is not common business practice for landlords to insure their tenants against liability to third parties arising out of the tenant's negligence. A tenant, therefore, cannot reasonably expect to be considered an insured under a landlord's liability insurance, particularly when there is no evidence of that intent in the parties' lease agreement or in the language of the insurance policy.

* * *

To hold that a tenant is an additional insured under her landlord's liability insurance as a matter of law would require owners of large multiunit leased structures to secure adequate liability insurance not only for themselves but for perhaps hundreds or thousands of tenants, depending on the size of the building. The premium for that liability insurance coverage would likely be cost-prohibitive considering the magnitude of the potential risk covered by the policy.”

Therefore, the *Hacker* Court held that Shelter was not obligated to defend Hacker in Burk's third-party action because the terms of the Policy did not require it to do so.

For further information on this case, please contact **Sumi Yang** at syang@mckenna-law.com or 312.558.8306.

PREJUDGMENT INTEREST UPDATE

Illinois Senate Bill 184 would require defendants to pay prejudgment interest to successful plaintiffs in almost all Illinois tort cases. As President of the Illinois Association of Defense Trial Counsel (IDC), Greg Cochran of our firm continues to lead the opposition of the Illinois defense bar to this very plaintiff-friendly initiative. The IDC is working closely with a coalition of organizations and companies representing the business, insurance and medical communities in Illinois. As of this writing, we are pleased to report that the bill is stalled in committee and it appears unlikely that it will move forward during this legislative session. We will keep you informed as we continue the fight against prejudgment interest in Illinois. Please feel free to contact **Greg Cochran** if you would like more information on our efforts to defeat SB184.

MEDICARE REPORTING REMINDER

As most people are aware, on July 1, 2009, the amendments to the Medicare, Medicaid and SCHIP Extension Act of 2007 take effect. It requires all “Responsible Reporting Entities” including insurance companies, to determine whether a claimant is entitled to Medicare benefits and to report electronically the settlement, award, judgment or other payment. This also applies to claims by pro se claimants. There are severe civil penalties for non-compliance including \$1,000 per day per claimant.



TRIALS AND CASE DISPOSITIONS

In 2006, **Bob Pisani** was successful in getting a statute of limitations summary judgment granted in a toxic tort case then pending in the Circuit Court of Cook County, IL. Plaintiff claimed to have contracted silicosis as a result of exposure to silica sand at his place of employment. McKenna Storer represented one of the silica sand suppliers. Plaintiff appealed this ruling to the Illinois Appellate Court. In 2008, in an unpublished order, the appellate court affirmed the grant of summary judgment. For strategic reasons, plaintiff sought the publication of the appellate court ruling. Bob opposed this effort, and successfully moved to block publication of the order. Plaintiff then sought Illinois Supreme Court review of the appellate order affirming summary judgment. The defendants opposed this as well. Recently, the Supreme Court denied plaintiff's Petition for Leave to Appeal. The net result was that the judgment for the defendants remained in place, and the case ended successfully for the defendants.

W. Mark Sickles previously obtained summary judgment in favor of his client in a declaratory judgment action and recently prevailed in the subsequent appeal of that

ruling. Mark represented a general contractor that was an additional insured on a roofing company's insurance policy. The insurance company filed the declaratory judgment action claiming no duty to defend or indemnify based on late notice because the construction was completed in 1996 but the insurance company was not notified of any complaints until a lawsuit was filed in 2004. The trial court found in favor of the insureds and the insurance company appealed. The Appellate Court upheld the judgment of the trial court. Although the construction companies had been called several times over a seven year period to make repairs to the work they had performed on the roof, it was not until the complaint was filed in 2004 that they were told the building owner was claiming damage to the interior of the building. The insurance policy excluded claims for repairing improperly performed work. The Appellate Court found that the only claim triggering the notice requirement was the lawsuit filed in 2004 so notice was timely.

McKENNA NEWS

Margaret Foster was again selected as an Illinois Super Lawyer. The 2009 Illinois Super Lawyers were announced in the February 2009 issue of *Illinois Super Lawyers* magazine. Illinois Super Lawyers identifies the top 5 percent of lawyers in the state, based upon research and surveys conducted by Law & Politics. The survey process involves more than 800,000 attorneys nationwide, and about 47,000 Illinois attorneys, who are asked to identify the best attorneys that they have personally observed.

In addition, Ms. Foster was a presenter at the Illinois Association of Defense Trial

Counsel Spring Seminar in March, addressing the topic of "Multi-Defendant Issues."

W. Mark Sickles recently gave a presentation to the CBA on Technology in the 21st Century.

Kristin Tauras wrote an article regarding the Amendments to the Americans With Disabilities Act, which will be published in the February Edition of the IDC Quarterly. The article provides a comprehensive discussion of the changes in the disability laws that took effect on January 1, 2009. If you would like a copy, please contact Kristin Tauras.

Congratulations to **Tom Hayes** on his recent admission to practice in the State of Missouri. Tom has been admitted in Illinois for 23 years and has been practicing with the McKenna toxic tort group for the past five years. In addition to his Illinois asbestos practice, Tom is now defending asbestos cases in St. Louis, Missouri.

Dan Connell was recently appointed Editor of the Quarterly Newsletter for the IDC's Young Lawyers Division.

As a member of the Young Lawyers Division of IDC, **Dan Connell** participated in "Read Across America Day" on March 6. Dan spent a morning with the First Grade Class at Belding Elementary School reading to them and explaining how important reading is in life. He also explained how important it is in his job to know how to read and write, but impressed upon them that reading can be for enjoyment too.

E-NEWSLETTERS ARE COMING!!!

To accommodate our clients, McKenna's newsletters - *Law Update and News*, *Employment Law*, *Toxic Tort* and *Insurance Law Update* - will soon be available via email. More specific information will be sent in the future, but for those persons who prefer a printed version, please contact me at dehrenberg@mckenna-law.com and we will be sure to note your preference.

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