

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

COPLEY ASSOCIATES, LTD.,	:	DECEMBER TERM, 2005
	:	
Plaintiff,	:	NO. 01332
	:	
v.	:	COMMERCE PROGRAM
	:	
ERIE INSURANCE EXCHANGE,	:	Control No. 011515
TAYLOR KLEIN, PATTY ANN KLEIN,	:	
And TAYLOR E. KLEIN,	:	
	:	
Defendant.	:	

**ORDER**

**AND NOW**, this 12<sup>th</sup> day of June, 2005, upon consideration of plaintiff Copley Associates, Ltd.'s ("Copley's") Motion for Reconsideration of the Court's December 29, 2006 Order, defendant Erie Insurance Exchange's response thereto, the briefs in support and opposition, and all other matters of record, and in accordance with the Opinion issued contemporaneously, it is hereby **ORDERED** that Erie's Motion for Judgment on the Pleadings is **GRANTED** and Copley's Cross-Motion for Judgment on the Pleadings is **DENIED**. It is further **ORDERED** as follows:

1. Erie's request for Declaratory Judgment is **GRANTED**;
2. Erie is not obligated to provide a defense and/or to indemnify Copley for the October 15, 2002 accident involving Taylor Klein, nor the litigation that resulted therefrom.
3. Copley's Complaint is **DISMISSED**.

**BY THE COURT:**

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**HOWLAND W. ABRAMSON, J.**

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**OPINION**

Plaintiff Copley Associates, Ltd. (“Copley”) filed this action against its insurer, Erie Insurance Exchange (“Erie”), demanding coverage for defense costs and settlement amounts that Copley paid to nominal defendants, Taylor Klein, Patty Ann Klein and Taylor E. Klein (the “Kleins”), in connection with a personal injury action that the Kleins brought against Copley and others (the “Underlying Litigation”).

Erie issued a Commercial Property General Liability Insurance Policy (the “Primary Policy”) to Copley covering the period April 17, 2002 to April 17, 2003, and covering certain property know as the Regency Apartments, which Copley owned. Erie also issued an excess Business Catastrophe Liability Policy to Copley for the same period (the “Umbrella Policy”). On September 30, 2002, Copley sold the Regency Apartments to SAS Regency. Effective October 1, 2002, Copley cancelled the Primary Policy and the Umbrella Policy.

On October 15, 2002, Taylor Klein, a minor, was severely injured while riding his bike at the Regency Apartments. The Kleins brought suit against SAS Regency and Copley, claiming that both the present owner and the prior owner were negligent in allowing a dangerous

condition to exist at the premises, which condition allegedly resulted in the Kleins' injuries. Erie refused to provide a defense for Copley in the Underlying Action and denied coverage to Copley under the Policies with respect to the Kleins' claims. Erie did provide a defense and indemnification for Copley's co-defendant, SAS Regency, under a separate policy of insurance issued by Erie to SAS Regency.

The Underlying Action ultimately settled with Erie paying \$500,000 on behalf of SAS Regency and Copley paying \$50,000 out of its own pocket. Copley now seeks to have Erie reimburse Copley for its portion of the settlement amount and its attorneys' fees. Erie argues that Copley is not entitled to coverage because Taylor Klein's accident and injuries occurred outside the period covered by the Primary Policy and the Umbrella Policy.

The Primary Policy is an "occurrence" policy, in that it provides coverage for "bodily injury or property damage that is caused by an 'occurrence' that takes place in the covered territory [if] the bodily injury or property damage occurs during the policy period."<sup>1</sup>

"Occurrence" is defined in the Primary Policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."<sup>2</sup>

An 'occurrence' policy protects the policyholder from liability for any act done while the policy is in effect. . . . [T]he determination of when an occurrence happens must be made by reference to the time when the injurious effects of the occurrence took place. . . . '[A]n occurrence during the policy period' takes place when both the accident and the resulting injury occur in the policy period . . . Thus, an 'occurrence' happens when injury is reasonably apparent, not at the time the cause of the injury occurs. The cause and the injury may happen at very distinct periods.<sup>3</sup>

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<sup>1</sup> Motion for Reconsideration, Ex. 2(A), Commercial General Liability Coverage Form, p. 1.

<sup>2</sup> *Id.* p. 11.

<sup>3</sup> *D'Auria v. Zurich Ins. Co.*, 352 Pa. Super. 231, 233, 507 A.2d 857, 858 (1986) (medical malpractice). *See also Keystone Automated Equipment Co., Inc. v. Reliance Ins. Co.*, 369 Pa. Super. 472, 478, 535 A.2d 648, 651 (1988) ("the determination of when the 'occurrence' had happened should be based on the time when the injurious effects first manifested themselves," not when the cause occurred).

In this case, the alleged cause occurred during the period covered by the Primary Policy, when Copley owned the Regency Apartments and allegedly allowed the dangerous condition to exist. However, the effect happened after the Primary Policy was terminated, when Taylor Klein was hurt. Because the Kleins' injuries occurred outside the Primary Policy period, their claims against Copley based on those injuries are not covered under the Primary Policy.

Copley argues that even if there is no coverage under the Primary Policy, there is coverage for the Kleins' claims under the Umbrella Policy. The Umbrella Policy provides:<sup>4</sup>

We will pay on behalf of anyone we protect for the ultimate net loss in excess of the retained limit which anyone we protect becomes legally obligated to pay as damages because of:

1. Bodily Injury Liability,
  2. Personal Injury Liability,
  3. Property Damage Liability, or
  4. Advertising Injury Liability
- which occurs or is committed during the policy period.<sup>5</sup>

Under the Umbrella Policy, Erie further promised to provide Copley with a defense to claims for damages where “the bodily injury, personal injury, property damage or advertising injury are not covered by your underlying insurance.”<sup>6</sup>

The use of the word “committed” in the Umbrella Policy is the basis for the parties' current dispute regarding coverage. Copley argues that it necessarily modifies “Bodily Injury Liability.”<sup>7</sup> Under Copley's reading, there is coverage for bodily injury claims where the act causing the bodily injury was committed within the Policy period, even if the bodily injury itself

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<sup>4</sup> “A court's first step in a declaratory judgment action concerning insurance coverage is to determine the scope of the policy's coverage.” General Accident Insurance Co of America v. Allen, 547 Pa. 693, 706, 692 A.2d 1089, 1095 (1997).

<sup>5</sup> Motion for Reconsideration, Ex. 2(B), Business Catastrophe Liability Policy, p. 7.

<sup>6</sup> *Id.*

<sup>7</sup> “Bodily Injury means physical harm, sickness or disease sustained by a person, including mental injury, mental anguish and humiliation.” *Id.*, p. 5. The Kleins alleged bodily injury in the Underlying Action.

did not occur within the Policy period. Erie argues that “committed” is intended to modify only “Personal Injury Liability” and “Advertising Injury Liability,” both of which result from intentional acts, such as publication, not from accidents.<sup>8</sup> Unlike bodily and property injury which may be felt long after their causal acts, both personal and advertising injury are felt at the same time that the act causing such injury is committed.

Erie is correct that “committed” refers only to offenses causing personal or advertising injury, whereas “occurred” applies only to accidental acts causing bodily injury or property damage. This distinction is made throughout the Umbrella Policy:

1. Immediately following the sentence containing the disputed “occurs or is committed” language, the Policy provides that: “The bodily injury or property damage must be caused by an **occurrence** which takes place in the covered territory. The personal injury or advertising injury must be caused by an **offense** which takes place in the covered territory.”<sup>9</sup>

2. Under the Definitions section, “occurrence means an accident . . . which results in bodily injury or property damage.”<sup>10</sup>

3. Under the Definitions section, the Policy states that it does not apply to, among other things:

bodily injury or property damage under Bodily Injury Liability and Property Damage Liability which **occurred** before you acquired or formed the organization.

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<sup>8</sup> “Advertising Injury” is defined as publication that constitutes libel, slander, trade disparagement, violation of privacy, misappropriation of ideas, and copyright infringement, none of which are at issue in this case. *See* Policy, p. 4. “Personal injury” means libel, slander, false arrest, malicious prosecution, discrimination, wrongful eviction, and invasion of privacy, which are also not at issue here. *See id* , p. 6.

<sup>9</sup> *Id.*, p. 7.

<sup>10</sup> *Id.*, p. 6.

personal injury or advertising injury under Personal Injury Liability or Advertising Injury Liability arising out of an offense **committed** before you acquired or formed the organization.<sup>11</sup>

When all of these provisions are read together, it is clear that the Policy distinguishes between the occurrence of accidental bodily injury or property damage and the commission of offenses which lead to personal or advertising injury.<sup>12</sup> However, even if the Policy did not make such a distinction, Copley's expansive interpretation of "committed" is incorrect. As the Superior Court has previously held, where a policy provides coverage for injury "caused by an offense committed during the policy period" such a policy is an occurrence policy; it "specifically focuses on the act causing injury as the coverage trigger and specifically requires this injury to occur during the applicable policy period."<sup>13</sup>

In this case, bodily injury, such as that alleged in the Complaint in the Underlying Action, is covered only if it occurred within the Policy period. As set forth above, Taylor Klein's injuries did not "occur" within the Policy period. Therefore, Erie is not required to defend or indemnify Copley under the Umbrella Policy with respect to the Underlying Litigation. Since there is no coverage under either the Primary Policy or the Umbrella Policy, Copley's claims for bad faith denial of coverage must be dismissed.<sup>14</sup>

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<sup>11</sup> Policy, p. 5 (emphasis supplied).

<sup>12</sup> "[A]n insurance policy, like every other written contract, must be read in its entirety and the intent of the policy is gathered from consideration of the entire instrument." Riccio v. American Republic Ins. Co., 550 Pa. 254, 264, 705 A.2d 422, 426 (1997).

<sup>13</sup> Consulting Engineers, Inc. v. Ins. Co. of N. A., 710 A.2d 82, 85 (Pa. Super. 1998), *aff'd w/o op.*, 560 Pa. 247, 743 A.2d 911 (2000).

<sup>14</sup> See T.A. v. Allen, 868 A.2d 594, 600 (Pa. Super. 2005); Cresswell v. Nat'l Mut. Cas. Ins. Co., 820 A.2d 172, 179 (Pa. Super. 2003).

**CONCLUSION**

For all the foregoing reasons, Erie's Motion for Judgment on the Pleadings is granted, and Copley's Cross-Motion for Judgment on the Pleadings is denied.

**BY THE COURT:**

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**HOWLAND W. ABRAMSON, J.**