

Insurer's Failure To Reference Specific Exclusion In Reservation Of Rights Rendered It Deficient, Says Pennsylvania Court

05.27.20



(Article from *Insurance Law Alert*, May 2020)

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Reversing a lower court, the Superior Court of Pennsylvania ruled that an insurer's reservation of rights ("ROR") was deficient because it failed to reference a specific exclusion that would have precluded coverage. *Selective Way Ins. Co. v. MAK Services, Inc.*, 2020 WL 1973964 (Pa. Super. Ct. Apr. 24, 2020).

Selective Way issued a liability policy to MAK Services, a snow removal company. When MAK was named as a defendant in a personal injury suit, Selective Way agreed to defend pursuant to an ROR. The ROR did not reference an exclusion that barred coverage for all injuries arising out of snow or ice removal. Approximately eighteen months after assuming MAK's defense, Selective Way sought a declaration that it owed no duty to defend or indemnify based on the snow and ice removal exclusion. A Pennsylvania trial court granted Selective Way's summary judgment motion, rejecting MAK's assertion that the insurer was estopped from raising the exclusion. The appellate court reversed.

The appellate court ruled that Selective Way's ROR had failed to preserve the snow and ice removal exclusion. The ROR stated that the underlying claims were "potentially covered" and that Selective Way generally reserved all rights under applicable law and all issues "that may become relevant as this matter continues to develop." Deeming this language insufficient to preclude estoppel, the court stated:

While the language in Selective Way's letter may have sufficiently apprised MAK Services that future exigencies might affect coverage, it provided no notice whatsoever of the existing coverage issue appearing on the face of the Policy, *i.e.*, the snow and ice removal exclusion. Any complete review of the Policy would have immediately revealed the existence of this exclusion. Such a revelation which would have vitiated any obligation that Selective Way had to defend or indemnify MAK Services with equal speed. Instead, the boilerplate language relied upon by Selective Way obfuscated this absolute defense to coverage, and caused MAK Services to reach the reasonable conclusion there was no pressing need to secure back-up counsel.

Based on the length of the delay, the court also concluded that prejudice to MAK could fairly be presumed. Importantly, the court noted that Pennsylvania law does not require an insurer to list every potential defense in an ROR, but that "some level of specificity is necessary."

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