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Illinois Fifth District Appellate Court Affirms Major Insurance Coverage Win for Agriculture

NOVEMBER 24, 2015

Louisville, IL (November 24, 2015) -- The Illinois Fifth District Appellate Court has issued an opinion on insurance coverage that has a significant impact on agriculture and policyholders in Illinois. In an opinion filed on November 20, 2015, the Fifth District affirmed the ruling of the Hon. Daniel E. Hartigan of the Clay County Circuit Court finding that Country Mutual Insurance Company wrongfully refused to defend its longtime insured, Bible Pork, Inc. in the nuisance case of *Pierson, et al. v. Bible Pork, Inc.*, (2008-MR-14), under two Country Mutual general liability policies. For more information on the Clay County Circuit Court ruling, please click here. This ruling is particularly important to liability insurance policyholders, including those in the agriculture industry, as it supports the notion that business owners should be able to rely upon their insurance carriers to provide a defense against lawsuits for or seeking damages as promised under the terms of their policies.

In affirming the Circuit Court, the Fifth District relied upon long-standing principles of Illinois insurance recovery law regarding the interpretation of liability insurance policies to rule that the underlying lawsuit was a suit "for damages" and "seeking damages" triggering Country Mutual's duty to defend. The Fifth District rejected Country Mutual's position that upholding the Circuit Court's ruling would dramatically expand the duty to defend, ruling that the underlying nuisance lawsuit on its face sought equitable relief in the form of a declaration of a nuisance and also "other relief deemed appropriate." The Fifth District found this conclusion consistent with both Illinois law and the underlying plaintiff's counsel's explanation that he styled the claims as declaratory judgment claims because plaintiffs would decide what remedies they preferred after the jury found in plaintiffs' favor. Alternatively, the Fifth District found that, even assuming the *Pierson* complaint did not fully apprise Country Mutual that the underlying lawsuit claims fell within policy coverage, the underlying plaintiffs' counsel's explanatory statements in the record were true but unpleaded facts of which Country Mutual had knowledge, which when taken together with the complaint's allegations, also triggered the duty to defend.

The Fifth District also ruled that the underlying lawsuit alleged an "occurrence," "bodily injury," and "property damage" under the Country Mutual policies and that the "expected or intended" exclusion did not bar coverage. The Court found the present case analogous to recent Illinois case, *Erie Insurance Exchange v. Imperial Marble Corp.*, wherein the First District Appellate Court found coverage under very similar facts. In both cases, the Appellate Courts noted that, under Illinois law, the determination of whether an occurrence is an accident turns on whether the insured expected or intended injury, not whether the insured intentionally performed the acts in question. The Court found that, similar to *Erie*, the complaints against Bible Pork alleged bodily injury and property damage due to an occurrence and theories of recovery that triggered Country Mutual's duty to defend.

Finally, the Fifth District found that the pollution exclusions in the Country Mutual policies, which were substantially similar to exclusions analyzed in the recent Fourth District Appellate Court case, *Country Mutual Ins. Co. v. Hilltop View, LLC., et al.*, were ambiguous and did not exclude coverage in this case. The Fifth District further agreed with the

Fourth District Appellate Court's holding that odors from agricultural facilities did not constitute "traditional environmental pollution."

Bible Pork was represented by Julie Lierly and Alex Bullock of Kilpatrick Townsend & Stockton LLP and Christopher Koester of The Taylor Law Offices.

For additional information, please contact Alex Bullock (abullock@kilpatricktownsend.com).

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Related People



Alexander M. Bullock

Washington, DC
t 202.824.1416
abullock@ktslaw.com



Julie A. Lierly

Atlanta, GA
t 404.815.6341
jlierly@ktslaw.com