



Insurance Coverage Analysis in Mississippi: An Overview of the Basics

Options when presented with claims that might fall outside of policy

Recall *Moeller v. American Guarantee and Liability Ins. Co.*, No. 92-CA-00829-SCT (1996).

1. Deny the claim(s) that fall outside coverage
2. Defense of all or some of the claims with Reservation of Rights (requires you to pay insured attorneys' fees and permit the insured its attorney of choice)
3. Defense and Indemnity without reservation

The duty to defend

- Under Mississippi law, the duty to defend is broader than the duty to indemnify
- That is, where there is the *potential* for coverage, the insurer must provide the insured with a defense.
- However, where no coverage exists, there is no duty to defend nor a duty to indemnify.

Allegations in the Complaint (conduct, not legal theories)

South Carolina Insurance Company v. Keymon,
No. 2006-CA-02051-SCT

Facts

- ▶ Waldon, a minor, and his buddies purchase beer at McKee's Convenience Store
- ▶ Waldon consumes beer at home of Donald Ray Hall whose daughter has party when Donald is out of town
- ▶ Waldon leaves party driving vehicle and collides with another vehicle, killing Dawson Keymon
- ▶ Keymons file suit

Allegations in the Complaint

- ***South Carolina Insurance Company v. Keymon***, No. 2006-CA-02051-SCT
- Procedure
 - ▶ Upon notification of suit, South Carolina Ins. Co. sends reservation of rights letter to McKee
 - Liquor liability Exclusion in policy (no coverage for selling alcohol to minors)
 - ▶ Waldon amends Complaint, seeking a declaratory judgment against South Carolina Ins. Co.
 - ▶ Waldon also alleges
 - Negligence, negligent supervision and negligent training by McKee's Convenience Store
 - Negligence and negligent supervision on the part of McKee individually

Allegations in the Complaint

- ***South Carolina Insurance Company v. Keymon, No. 2006-CA-02051-SCT***
- Holding
 - ▶ ***The policy clearly excludes injuries caused by the sale of alcohol to a minor, and it does not matter what cause of action the plaintiffs allege because the damages are the same, whether negligence, an intentional tort, or an illegal act.***

Allegations in the Complaint

The true facts exception

- ▶ In the Mavar Shrimp case, the Mississippi Supreme Court held that under the “true facts” exception, a duty to defend exists only if the insured learns of “true facts,” which, “if established, present potential liability of insured” and a cause of action based on those facts would be covered by the policy.

Exception to the Allegations of the Complaint rule

The true facts exception Mavar Shrimp

- Dock worker files two initial suits alleging back injuries suffered while working for Mavar Shrimp
- Insurance company and Mavar defend these suits with separate counsel
- In first suit, Mavar contends worker was not an employee of company.
- Nonetheless, Mavar (not insurance company) settles for nominal amount and attorneys's fees
- Mavar then files suit against insurance company in Mississippi seeking reimbursement.
- Insurer claims no coverage, citing exclusion for claims by employees for workers compensation
- The insurer was aware, however, of the insured's position, which it had successfully vindicated in similar cases, that the underlying plaintiff was not its employee.
- Court ruled there was a duty to defend as true facts showed worker was not an employee even though it was alleged in the Complaint that he was

Exception to the allegations of the Complaint rule

The true facts exception

An insured cannot trigger the duty to defend merely by denying the allegations in the complaint.

Maryland Cas. Co. v. Lab Discount Drug, Inc., 468 F. Supp.2d 862 (S.D. Miss. 2006)

Insurance Policy

Insurance Policy as a Contract

- ▶ Four Corners Rule
- ▶ Rules of Construction
 - Like other contracts, when an insurance contract is plain and unambiguous, it will be enforced as written.
 - Ambiguity is present when insurance policy language is susceptible of two or more reasonable interpretations.
 - In the case of insurance policy ambiguity, a court will apply the interpretation favoring the insured and coverage.
 - Where the policy is free from ambiguity, courts will not adopt a strained interpretation of the policy for the purpose of preventing hardship to the insured.

Insurance Policy

Rules of Construction

Policy Exclusions

Insurance policy clauses seeking to limit coverage must be written in clear and unmistakable language and are strictly construed. However, when stated without uncertainty or ambiguity, exclusionary language in an insurance policy is binding upon the insured.

Insurance Policy

Specific policy provisions where coverage is often an issue

Who is an insured

1. The named insured
 2. Residents of your household who are your relatives
 3. Any other person under age 21 and in the care of you or your relatives who live in your household
- ▶ The Mississippi and 5th Circuit Courts interpretation of the term resident and household - Can be ambiguous.
- *Nationwide Mut. Ins. Co. v. Yelverton*, 417 F.Supp.2d 817

Nationwide Mut. Ins. Co. v. Yelverton, 417 F.Supp.2d 817

- Nationwide issued homeowner's policy to Alice Yelverton
- Policy contains standard homeowner's exclusion for bodily injuries to an insured.
- Alice Yelverton's home is consumed by a fire, killing Justin Grant, a minor who had been living at her house with his mother and Yelverton's son.
- Rebecca Lafitte, Justin's mother, sues Yelverton, alleging negligence in failure to protect her son.
- Nationwide sought declaratory judgment, arguing Justin was an insured and, therefore, barred from recovery.

Nationwide Mut. Ins. Co. v. Yelverton, 417 F.Supp.2d 817

- Question was whether Justin Grant was a resident of Yelverton's household at time of the fire
- To determine this, the court considered whether the phrase "to live in the insured's household" was ambiguous.
- The court first noted that the term "household" was not defined by the policy.
- As such, the court turned to other judicial opinions that did define the term household



*Nationwide Mut. Ins. Co. v.
Yelverton, 417 F.Supp.2d 817*

Based on other case law, the court ruled that the term to live in the insured's household is defined as such:

A person who dwells-though not necessarily under a common roof-with other individuals who are named insureds in a manner and for a sufficient length of time so that they could be considered to be a family living together.

Nationwide Mut. Ins. Co. v. Yelverton, 417 F.Supp.2d 817

- What to remember from *Yelverton*
 - ▶ Even the most simple, straightforward terms of an insurance policy can be rendered ambiguous under a given set of facts
 - ▶ Courts will turn to outside sources, including previous opinions, to define terms that are undefined by the policy
 - ▶ Where there is ambiguity, the courts will construe the policy provisions in favor of coverage

Insurance Policy

Specific policy provisions where coverage is often an issue

What is an occurrence

1. Almost all policies require damage to be caused by an occurrence.

Occurrence is often defined in two ways:

(1) An accident

(2) An accident neither expected nor intended from the standpoint of the insured

What is an occurrence

Accident defined

No accident if the harm for which recovery is sought from the insured resulted from an insured's intentional or deliberate actions, even if the insured did not intend such harm.

Acceptance Ins. Co v. Powe Timber Co., Inc., 403 F. Supp 2d 552 (S. D. Miss. 2005)

Actions found not meet the definition of an occurrence

1. Selling wood chips *Acceptance Ins. Co v. Powe Timber Co., Inc.*, 403 F. Supp 2d 552 (S. D. Miss. 2005)
2. Filing a criminal complaint against someone else *Allstate Ins. Co. v. Moulton*, 464 So.2d 507, 510 (Miss.1985)
3. Hiring a subcontractor who in turn does negligent work *ACS Const. Co., Inc. of Mississippi v. CGU*, 332 F.3d 885, 890 (5th Cir.2003)

Actions found not to meet the definition of an occurrence

4. Shooting a person *Thomas v. State Farm Fire And Cas. Co.*, 856 So.2d 646 (Miss. 2003)
5. Beating a person *Nationwide v. Mitchell*, 911 F. Supp. 230 (S.D. Miss. 1995)
6. Leaking a confidential memorandum to the press *Allstate Ins. Co. v. Melton*, 482 F.Supp.2d 775 (S.D. Miss. 2007)

Actions found not to meet the definition of an occurrence

7. Sexual misconduct *Maryland Cas. Co. v. Lab Discount Drug, Inc.*, 468 F.Supp.2d 862 (S.D.Miss. Nov 15, 2006)
8. Writing malicious letters *Rogers v. Allstate Ins. Co.*, 938 So. 2d 871, 875 (Miss. Ct. App. 2006)
9. Refusal by ambulance company to provide medical care *Evanston Ins. Co. v. Neshoba County Fair Ass'n, Inc.*, 442 F.Supp.2d 344 (S.D.Miss. Jun 30, 2006)