

## **Recent Ruling Favors Businesses as Insureds Under General Liability Policy**

In a victory for businesses insured under a general liability insurance policy, the Pennsylvania Supreme Court reaffirmed the broad duty to defend that insurance companies owe their insureds. *American and Foreign Insurance Company, et al v. Jerry's Sports Center, Inc., et al, No. 88 MAP 2008: Decided: August 17, 2010.* The Court ruled that an insurer is not entitled to be reimbursed by its insured for the attorney's fees and costs incurred by insurer in providing a legal defense for its insured absent an express provision in the written insurance contract.

In this case, the insurer accepted its duty to defend the insured, who had been sued in a case that potentially was covered by the insurance contract, while at the same time notifying the insured of its reservation of rights not to defend in the event it is later determined that the claim is not covered by the insurance contract. While the insurer defended its insured in the underlying civil claim, the insurer also sued its insured seeking a declaratory judgment. The trial court ruled in favor of the insurer and against its insured by ruling the underlying claim against the insured is not covered by the insurance contract. The insurer then stopped defending its insured in the underlying civil claim and again sued its insured this time requesting reimbursement for the attorney's fees and costs it incurred in defending its insured in the underlying civil case.

The Pennsylvania Supreme Court ruled that the insurer cannot employ a reservation of rights letter to reserve a right it does not have pursuant to the insurance contract. The insurance contract in question did not provide the insurer with a right against the insured for reimbursement of legal costs incurred in the defense of a non-covered claim.

Business owners are well-advised to contact their own independent counsel whenever they receive notice of a legal claim being asserted against them and certainly whenever they receive a reservation of rights letter from their insurer. If you would like to discuss this matter further, or any business law related questions, please do not hesitate to contact me at 717-657-7770.

Marc A. Scaringi  
Attorney-At-Law  
Scaringi & Scaringi, PC  
[marc@scaringilaw.com](mailto:marc@scaringilaw.com)

© Scaringi & Scaringi, PC