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RE: ***McBride v. Allstate Insurance Company***
C.A. No. 01C-04-027

Date Submitted: March 8, 2002
Date Decided: June 21, 2002

Dear Counsel:

On April 25, 2001, Edward H. McBride, Jr. ("Plaintiff"), on behalf of his son, Christopher McBride ("Christopher"), filed a Petition for Declaratory Judgment against Allstate Insurance Company ("Allstate"). The Plaintiff requested a finding that Allstate indemnify the Plaintiff's son, Edward McBride, III ("Buddy"), for any liability he faces in connection with a third party complaint filed by Kyle Ten-Eyck ("Ten-Eyck"). In response, Allstate filed a Motion for Summary Judgment as to Plaintiff's petition. This is the Court's decision regarding Allstate's motion.

I.

On March 19, 2000, Allstate issued a Deluxe Homeowner's Insurance Policy ("policy") to Plaintiff and his wife, Kathy McBride for a one year period. The policy covered the named insureds, Plaintiff and Kathy McBride, as well as any dependent persons.[1] It is undisputed that Christopher and Buddy are the dependents of Plaintiff and Kathy McBride. On August 21, 2000, Christopher

[1]Under the policy terms, an insured person is defined as "you and, if a resident of your household: a) any relative; and b) any dependent person in your care."

and Buddy were playing with a friend, Kyle Ten-Eyck. While playing, Christopher was injured when a stick struck his eye. Plaintiff alleges that the stick was thrown by Ten-Eyck. At the time of the accident, the Plaintiff's homeowners policy was in effect.

On December 4, 2000, Plaintiff, on Christopher's behalf, filed a lawsuit against Ten-Eyck seeking payment for his past and future medical expenses, general damages, and costs. On January 25, 2001, Ten-Eyck filed a third party complaint against Buddy, maintaining that it was Buddy, not Ten-Eyck, who threw the stick that struck Christopher's eye. To the extent that he is found liable in Christopher's suit, Ten-Eyck is seeking indemnification or contribution from Buddy. Allstate has provided a legal defense to the third party claim, but denies that there is liability coverage for any damages that may be assessed against Buddy.

In support of its motion for summary judgment, Allstate asserts two reasons why the denial of liability coverage was proper. First, Allstate argues that because Christopher and Buddy are "insured persons" as defined by the policy, the "family exclusion" clause precludes coverage for any injuries sustained by them or claims asserted against them. Second, Allstate contends that established case law mandates application of the family exclusion to the particular facts of this case.

Plaintiff argues that the family exclusion is ambiguous and confusing to the average person. Plaintiff further asserts that the exclusion conflicts with the policy's promised indemnity coverage. For these reasons, Plaintiff claims, the family exclusion is contrary to public policy.

The pivotal issue in this case is whether the family exclusion clause contained within the policy bars coverage for indirect actions, such as third party contribution or indemnification claims, against an insured stemming from an insured's bodily injury claim. This is an issue of first impression in Delaware.

II.

A.

The policy excludes coverage for "bodily injury to an insured person or property damage to property owned by an insured person whenever any benefit of this coverage would accrue directly or indirectly to an insured person." This Court has previously stated that "there exists no public policy to compel an insurance carrier to include intrafamily tort coverage in a homeowner's policy." *Young v. Allstate Ins. Co.,* Del. Super., No. 87C-AU-84, Herlihy, J. (Feb. 26, 1990). *Young*, however, only dealt with a *direct* action for an insured person's bodily injury. The question of whether Delaware public policy allows a homeowners insurance policy to preclude *indirect* claims by a third party was not addressed.

The Wisconsin Supreme Court has confronted this precise issue. In *Whirlpool Corporation v. Ziebert*, 539 N.W.2d 883 (Wis. 1995), the Court held that a family exclusion clause, identical to the one in the instant case, barred coverage for contribution claims against an insured. In *Ziebert*, a child injured her hand in a meat grinder manufactured by Whirlpool. Her parents filed an action against Whirlpool to recover for the child's injuries. Whirlpool filed a contribution action against the mother and her homeowner's liability insurer, Allstate Insurance, alleging that her negligent supervision led to the child's injuries.

The Court held that family exclusion clauses can apply to indirect claims consistent with public policy. The Court noted that the rationale for applying family exclusion clauses to direct actions is to protect insurers from familial collusion. The exclusion, the Court explained, "protects insurers from situations where an insured might not completely cooperate and assist an insurance company's administration of the case", such as when the insured and the tortfeasor are relatives residing in the same household. *Id.* at 885, *quoting Shannon v. Shannon*, 442 N.W.2d 25, 35 (Wis.

1989). The Court reasoned that the potential for collusion is virtually identical in an indirect action. In an indirect action against an insured for another insured's injuries, the defending insured may not assist the insurer as zealously as he would if his own assets were in jeopardy, since the insurance company will pay the contribution or indemnification claim. Therefore, the Court held, family exclusion clauses may preclude coverage for indirect claims against an insured.

Almost every other jurisdiction that has examined the issue has reached the same conclusion. *See Groff v. State Farm Fire and Casualty Ins.*Co.,646 F.Supp. 973, 975 (Ed. Pa. 1986); *Neil v. Allstate Ins.Co.*, 549 A.2d 1304 (Pa. Super. 1988); *Knoblock v. Prudential Property and Casualty Ins.Co.*, 615 A.2d 644 (N.J. Super. Ct. App. Div. 1992); *Chrysler Credit Corp. v. United Services Auto Ass'n,* 625 So.2d 69, 73 (Fla.App. 1993); *Utley v. Allstate Ins.Co.*, 19 Cal. App.4th 815, 24 Cal.Rptr.2d 1, 4-5 (Cal. Ct. App. 1993); *Rabas v. Claim Management Services, Inc.*, 556 N.W.2d 410 (Wis. Ct. App. 1996); *Dartez v. Atlas Ins. Co.*, 721 So.2d 109 (La. Ct. App. 1998). This Court agrees.

This Court does not mean to imply that the McBrides are guilty of collusion. It should be emphasized that there has been no evidence presented to support such a conclusion. Nevertheless, there are instances where a court must look beyond the immediate facts surrounding a claim to the broader societal implications of its decision. Clearly, there is a substantial risk of collusion among related insured persons whose familial obligations naturally outweigh their contractual ones. The purpose of family exclusion clauses is to protect insurers from the risk of collusive claims. An insurance company has the right to protect its interests against dishonest activity and Allstate has done so by inserting the "indirect" language in its family exclusion clause. Because the language protects a legitimate interest, this Court holds that family exclusion clauses are not contrary to public policy and may apply to both direct and indirect actions.

B.

However, that does not end the analysis. The Delaware Supreme Court has held that:

> .....the Court will look at the reasonable expectations of the insured at the time when he entered into the contract if the terms thereof are ambiguous or conflicting, or if the policy contains a hidden trap or pitfall, or if the fine print takes away that which has been given in large print.

Hallowell v. State Farm Mutual Insurance Co., 443 A.2d 925, 927 (Del. 1982). The Court goes on to clarify that "the doctrine is not a rule granting substantive rights to an insured when there is no doubt as to the meaning of policy language." *Id.* In other words, a family exclusion clause, although consistent with public policy, may be declared invalid if it does not clearly communicate its effect to the insured.

Plaintiff contends that the family exclusion language is ambiguous and confusing to the average policy holder. When a dispute exists regarding the language of an insurance contract, the court must give effect to the plain language of the policy. *E.I. du Pont de Nemours & Co. v. Allstate Insurance Co.*, 686 A.2d 152, 156 (Del. 1996). Any ambiguity in the language must be interpreted against the insurer. *Chris Episcopo Construction Co. v. International Underwriters Ins. Co.*, Del. Super., C.A. No. 86C-AP-63, Barron, J. (Nov. 6, 1991) Mem. Op. At 3. Such an ambiguity exists if the language is susceptible to two or more reasonable interpretations. *Id.* At 3. It is not sufficient that more than one interpretation can be suggested, but rather, all interpretations of the policy language "must reflect a reasonable reading of the contractual language." *Kenner*, 570 A.2d at 1174.

This Court is unpersuaded by Plaintiff's argument. The language used in this particular exclusion clause is clear and unambiguous. The policy plainly excludes coverage for "bodily injury to an insured person...whenever any benefit of this coverage would accrue directly or indirectly to an insured person." The first part of the clause, "bodily injury to an insured person", is plainly

unambiguous. A close reading reveals that the key phrase is "whenever any benefit of this coverage would accrue *directly* or *indirectly* to an insured person." (emphasis added). A direct benefit would accrue to the McBrides by way of a direct claim against Allstate for Christopher's injuries. It is undisputed that such a claim would be precluded by the family exclusion clause. An indirect benefit would accrue to the McBrides if Ten-Eyck won his contribution claim and Allstate was forced to indemnify Buddy. Any funds Ten-Eyck receives will, in essence, be funneled back to the McBrides, giving them an indirect benefit. Such a result would enable the McBrides to indirectly achieve what they could not directly, despite the fact that Buddy's liability is the same in both scenarios. This would contradict conventional notions of justice and must not be allowed.

Therefore, this Court holds that family exclusion clauses, if clear and unambiguous, may exclude coverage for indirect actions by third parties against an insured stemming from an insured person's bodily injury claim. Such exclusions do not violate public policy because they protect an insurance company's legitimate interest in preventing collusive activity. Allstate's family exclusion clause is clear, unambiguous, and consistent with public policy. As such, Allstate's Motion for Summary Judgment is granted.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary