

Policy Dictates Insurers' Right To Restitution: Utah Court

By **Greg Ryan**

Law360, New York (January 27, 2012, 6:51 PM ET) -- The Utah Supreme Court ruled Tuesday that an insurer cannot seek restitution from a policyholder unless a policy expressly allows it, giving a boost to a sports organization battling U.S. Fidelity and Guaranty Co. over a settlement in an underlying personal injury suit.

The court tackled a question certified to it by a Utah federal court, where U.S. Fidelity is seeking reimbursement from the U.S. Sports Specialty Association for the portion of a \$4.8 million settlement that exceeds the USSSA's \$2 million policy limit. The question asked whether an insurer has a right to reimbursement or restitution against a policyholder.

"There can be no extracontractual right to restitution between the insurer and its insured, and only the express terms of a policy create an enforceable right to reimbursement," the Supreme Court said.

The underlying suit was brought against the USSSA by the parents of a child who was hit in the head with a baseball bat during a softball game sponsored by the association. U.S. Fidelity, which had issued a liability coverage policy to the USSSA with a limit of about \$2 million, assumed the USSSA's defense.

A jury returned a \$6.1 million verdict against the USSSA. U.S. Fidelity won a stay on collection of the judgment, on the condition that a bond was posted for the entire \$6.1 million.

The insurer initially posted a bond for the \$2 million limit, but following a standoff with the USSSA, it posted another \$4.1 million bond and launched a suit in the Utah federal court seeking a declaration that it did not have to pay more than \$2 million.

U.S. Fidelity ultimately settled the underlying suit for \$4.8 million, but the USSSA refused to agree to the settlement because the insurer insisted it could seek to recover from the association the \$2.8 million by which the settlement exceeded the policy limit.

U.S. Fidelity amended its federal court complaint to seek restitution for the amount above the policy limit, and the USSSA responded that it was off the hook because the insurer made the payment of its own accord.

The USSSA then moved for partial summary judgment, leading the district court to certify the question to the Supreme Court.

The high court favored the USSSA on the right of restitution, referred to by the court as an unjust enrichment claim. When there is an express contract governing the subject matter of a dispute, there can be no claim for unjust enrichment, and because the right to reimbursement affects the insurer-policyholder risk relationship, it can be based only in the express terms of the parties' contract, the court said.

“The Supreme Court of Utah has made it crystal-clear that an insurance company cannot ignore the terms of the policy it sells to its policyholders and cannot invent convenient, new extracontractual rights for itself to avoid its above-policy-limits exposure,” said William G. Passannante of Anderson Kill & Olick PC, an attorney representing advocacy group United Policyholders, who filed an amicus brief in the case.

The district court certified two other questions, but the Supreme Court determined that based on its response to the first question, it need not address the second and third.

Attorneys for U.S. Fidelity and the USSSA could not immediately be reached for comment Friday.

U.S. Fidelity is represented by L. Rich Humpherys, Karra J. Porter and Geoffrey C. Haslam of Christensen & Jensen PC.

The USSSA is represented by Alan C. Bradshaw of Manning Curtis Bradshaw & Bednar LLC and Tyson B. Snow of Mumford West & Snow LLC.

Nelson Chipman & Burt, a third-party defendant, is represented by John A. Snow of Van Cott Bagley Cornwall & McCarthy PC.

United Policyholders is represented by William G. Passannante of Anderson Kill & Olick PC, Jonathan O. Hafen and Bryan S. Johansen of Parr Brown Gee & Loveless and in-house counsel Amy Bach.

The case is U.S. Fidelity and Guarantee Co. v. U.S. Sports Specialty Association, case number 20090657, in the Utah Supreme Court.

The district court case is U.S. Fidelity and Guaranty Co. v. U.S. Sports Specialty Association, case number 2:07-cv-00996, in the U.S. District Court for the District of Utah.

--Editing by Lindsay Naylor.

All Content © 2003-2013, Portfolio Media, Inc.