

Declaratory Judgment – No Duty to Defend

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Jonathan P. Killeen

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Attorney Jonathan P. Killeen obtained two favorable summary judgment decisions on behalf of an insurer against three alleged insureds arising out of a premises liability claim.

The first alleged insured (the “daughter”) sought defense and indemnity from the insurer under a business owners policy (the “Policy”). The daughter owned property with two other alleged insureds (the “parents”). The daughter and the parents leased the property to the daughter’s company, through which the daughter operated her business. The Policy identified only the daughter’s company as a named insured.

The daughter sought coverage under the Policy in connection with a lawsuit her employee filed against the daughter in her individual capacity as an owner of the property. The employee specifically claimed that she slipped and fell at the property while working. The daughter asserted that the employee’s claims were made against her in her capacity as a member or manager of the company, which would qualify the daughter as an insured under the terms of the Policy.

The employee also sued the parents as owners of the property. The parents, in turn, also sought defense and indemnity under the same Policy arguing that they qualified as the company’s “real estate manager[s],” which would meet the definition of an insured under the Policy. Specifically, the parents argued that as property owners they necessarily had duties to maintain the property in a reasonably safe condition and, therefore, qualified as insureds under the Policy.

With respect to the daughter’s declaratory judgment action, Attorney Killeen successfully argued that even assuming the daughter met the definition of an insured under the Policy, her claim was barred by the Policy’s employer liability exclusion, which excluded claims asserted by an employee of the business arising out of the employee’s employment. Attorney Killeen further successfully argued that the insurer was not equitably estopped from asserting the Policy exclusion even though the insurer initially failed to specifically raise the exclusion as a reason for denying coverage.

Concerning the parents’ declaratory judgment, Attorney Killeen successfully argued that the phrase “real estate manager” was clear and unambiguous. The Court went on to agree with Attorney Killeen that there were no allegations in the employee’s complaint that the parents were acting as “real estate managers” for the company, as opposed to simply acting as lessors of the property, at the time of the accident. The Court reasoned that the insurer’s duty to

defend the parents was not triggered because the employee did not allege sufficient facts to bring her claims against the parents within the express terms of the Policy.