

Client Alert

May 2015

Fourth Circuit Rules Under Maryland Law that Insurer May Not Void Policy Based on Ambiguous Policy Application Questions

The Fourth Circuit recently held, applying Maryland law, that an insurer may not rescind its insurance policy based on responses to policy application questions that are subject to more than one reasonable interpretation. *Certain Underwriters at Lloyd's, London v. Cohen*, No. 14-1227, 2015 WL 2040764 (4th Cir. May 5, 2015).

Background

Dr. Max Cohen sought coverage from Certain Underwriters at Lloyd's (the "Underwriters") under his disability policies. While investigating Cohen's claim, the Underwriters determined that Cohen allegedly gave false answers to three questions in his policy application.

The first question asked whether Cohen was "actively at work?"; Cohen answered "yes." The second question asked whether Cohen was "aware of any fact that could change your occupation or financial stability?" To this, Cohen answered "no." Third, in response to the inquiry "are you a party to any legal proceeding at this time?," Cohen again answered "no." Cohen submitted his initial application to the Underwriters on April 1, 2011, and signed the final application on August 8, 2011. Both applications contained Cohen's three answers.

On April 11, 2011, Cohen entered into a Consent Order with the Maryland State Board of Physicians (the "Board") suspending Cohen's license to practice medicine for three months, commencing on August 2, 2011. Based on this order and the resulting suspension of Cohen's medical license, the Underwriters contended that Cohen's responses to the three questions above concerning his employment status were false.

The Underwriters attempted to rescind Cohen's disability policies and sued Cohen, seeking a declaration confirming the rescission. The district court granted summary judgment in favor of the Underwriters, finding that Cohen made material misrepresentations in his applications. Cohen appealed to the Fourth Circuit, which reversed the district court's decision.

The Decision on Appeal

The Fourth Circuit reversed after finding that Cohen's answers were potentially truthful under a reasonable interpretation of the three application questions. That is, because the questions were ambiguous, Cohen's answers were not necessarily false. Thus, the Underwriters could not establish a misrepresentation as a matter of law.

With respect to the first question — "are you actively at work?" — the Underwriters interpreted Cohen's affirmative response as a representation that he was "perform[ing] surgery on a daily basis when he was, in fact, prohibited from performing surgery." But Cohen contended that his affirmative response was true because, even during his suspension, "he continued to perform various duties related to his Maryland

practice, including administrative work, research, and professional development.” The court found that Cohen’s interpretation was plausible. Therefore, the court could not conclude that Cohen’s answer was necessarily false.

The court also found ambiguity in the second question — “are you aware of any fact that could change your occupation or financial stability?” The Underwriters claimed that because Cohen was suspended from performing surgery in Maryland, “he was no longer a ‘surgeon’ and lacked ‘active income.’” Cohen, on the other hand, contended that his occupation as a surgeon did not “change,” because his Maryland suspension was temporary and because he could still practice in the District of Columbia during the suspension. Cohen also argued that his financial stability did not “change” in light of evidence that his net worth actually increased during his suspension. The Fourth Circuit found Cohen’s interpretations of the second question reasonable and that Cohen’s response was therefore not necessarily false.

The third question — “are you a party to any legal proceeding at this time?” — was similarly susceptible to more than one reasonable interpretation. The Underwriters contended that Cohen was a party to a legal proceeding, noting that the Consent Order appeared to be a legal document and included Cohen’s recognition of the “legal authority and justification of the Board.” Cohen responded that he had agreed to the Consent Order to *avoid* a legal proceeding. Moreover, Cohen contended that by the time he submitted his final application, the Board proceeding was complete. Like the prior questions, the court concluded that this question was ambiguous and that Cohen’s response was not necessarily a misrepresentation.

Insurance Implications

Cohen is a reminder of the significant impact the insurance application process can have on the ultimate availability of coverage. Often, language contained in the insurance policy provides that information supplied by the policyholder in the insurance application becomes a part of the insurance contract once the policy is issued. Consequently, insurers will not hesitate to employ post-hoc scrutiny of information provided as part of the application process where doing so might relieve them of their coverage obligations.

Cohen also reminds policyholders and insurers alike of the importance of reading all policy documents, including policy applications, closely. While an initial reading of a policy provision or application question may lead to one result, a closer reading may very well lead to a contrary result. Policyholders should remain mindful of this principle before they accept their insurers’ coverage denials based on the insurers’ one-sided interpretation of policy documents.

* * * * *

Hunton & Williams LLP’s insurance recovery lawyers assist policyholders secure the full benefits to which they are entitled in the event of any type of loss, including amounts spent to defend or settle large-scale litigation. For more information, please contact the members of the firm’s Insurance Coverage Counseling and Litigation team.

Contacts

Walter J. Andrews
wandrews@hunton.com

Lon A. Berk
lberk@hunton.com

Lawrence J. Bracken, II
lbracken@hunton.com

Syed S. Ahmad
sahmad@hunton.com

Michael S. Levine
mlevine@hunton.com

Sergio F. Oehninger
soehninger@hunton.com

John C. Eichman
jeichman@hunton.com

Robert J. Morrow
rmorrow@hunton.com

William T. Um
wum@hunton.com

Patrick M. McDermott
mcdermottp@hunton.com