How VA Court Change Is Affecting Insurance Disputes

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Parties to insurance coverage disputes now have an opportunity for a more robust review of their coverage dispute. The enhancement comes by way of expanded jurisdiction of the Virginia Court of Appeals.

Traditionally, a court of limited jurisdiction, the Court of Appeals was confined to matters involving criminal, domestic relations, workers' compensation and state administrative agency cases. Effective in 2022, however, that jurisdiction expanded considerably and now includes direct review of circuit court decisions involving insurance coverage.

This expansion of appellate review of decisions involving insurance coverage stands to significantly expand the body of case law that will guide resolution of future coverage disputes. Whether this stands to benefit insurers or policyholders remains to be seen, but early indications are encouraging for the latter.

Bowman II v. State Farm Fire and Casualty Co.

Exercising its new jurisdiction in Bowman II v. State Farm Fire and Casualty Co., the Virginia Court of Appeals reversed a circuit court decision in November enforcing a two-year "Suits Against Us" provision to allow an insurer to escape coverage for repair and replacement costs incurred more than two years after the date of loss.[1]

The Circuit Court of the City of Roanoke found no justiciable controversy and dismissed the policyholder's complaint where repairs to the fire-damaged home continued more than two years after the date of the fire. The circuit court relied on a two-year limitation in the policy that governed the period within which the policyholder must bring suit against the insurer.

The appellate court disagreed. Central to the actual controversy determination was whether the policyholder complied with the terms of the policy — a determination that the appellate court found to require a full understanding of the policy. As the appellate court explained, the policy stated that the insurer would "pay the actual cash value of the damage … up to the policy limit, until actual repair or replacement is completed." But the policy did not contain a requirement that repairs be completed within a certain period of time.

After acknowledging the "well-established principal that conflicting provisions in insurance policies must be construed in favor of coverage," the appellate court found the policy wording ambiguous as to whether the policyholder must incur all repair and replacement costs within two years. Accordingly, the appellate court reversed and remanded for further proceedings, noting that the circuit court cannot resolve contractual ambiguity at the demurrer stage.

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Incidentally, the appellate court also rejected the insurer's argument that the Suits Against Us clause nevertheless barred suit since more than two years had passed since the date of loss. The appellate court found this argument premature since traditional contract doctrines such as waiver and estoppel and the defense of impossibility might apply, allowing the plaintiff's case to proceed despite the two-year limitation.

Policyholders Still Must Vigilantly Preserve All Error for Appeal

Until 2022, Virginia was the only state that did not allow an intermediate appeal as of right in all civil matters. This left the majority of civil cases, including virtually all insurance coverage disputes, subject to discretionary review by the Supreme Court of Virginia.

Now, however, nearly every civil case — including insurance coverage disputes — may be appealed to the Court of Appeals by right.[2]

Nevertheless, it is still critically important for policyholders to preserve all errors for appeal. While this was certainly the case when the only avenue of appeal was to the Supreme Court of Virginia — a renowned court of error — it still serves as an important basis for appellate review.

This lesson was reinforced on Dec. 12, 2023, when the Court of Appeals affirmed a dismissal in Jenkins v. Nationwide Mutual Fire Insurance Co. based on a failure to comply with an insurance policy's two-year contractual limitations period.[3] The appellate court was constrained to affirm because the policyholder failed to preserve the issue for appeal.

The case involved a property damage claim after the insured premises was damaged by water on Oct. 30, 2014. The policyholders brought a claim seeking coverage for the costs of the water damage, but the insurer refused to pay. The policyholders filed suit in Scott County Circuit Court on June 15, 2017.

The insurer answered and counterclaimed asserting a right "to rely upon any and all defenses." The insurer subsequently moved to dismiss, arguing that the suit was not brought within the policy's "two year contractual limitation[s] period." No response to the motion was filed.

After a hearing, the circuit court denied the motion finding the insurer's "responsive pleading did not specifically allege that the action was time barred." The insurer sought leave to amend. Again, no response was filed by the policyholder to either the motion or the amended answer and leave was granted with the circuit court accepting the insurer's amended answer including the properly asserted time bar defense.

The insurer filed its plea in bar, arguing that the claim should be dismissed as a matter of law for failure to comply with the two-year contractual limitations period. Finding the affirmative defense proper, the circuit court found the claim to be time-barred where suit was filed more than two years after the date of the water damage.

On appeal, the policyholders argued that the circuit court abused its discretion in allowing the amended answer "almost three years into the litigation" and after the court had already denied a plea of statute of limitations pursuant to Virginia Code Section 8.01-235.

However, the appellate court rejected the assigned error as procedurally defective based on the

policyholder's failure to object or otherwise respond to the insurer's amended answer. Objection to the answer thus was not properly preserved.

What This Means for Virginia Policyholders

Where litigants of insurance coverage disputes in Virginia historically were at the mercy of the Virginia Supreme Court when seeking review of adverse trial court rulings, policyholders now enjoy a guaranteed level of appellate scrutiny of adverse outcomes.

The appellate court's expanded jurisdiction also suggests that a greater number of insurance disputes in Virginia will result in merits-based decisions, which should help to shape the body of case law available to those litigating over coverage under Virginia law, lending to greater guidance and predictability.

For example, from the beginning of 2022 through January 2024, the Supreme Court of Virginia decided two decisions where the principal issues concerned insurance coverage. By comparison, while still a relatively small number, Virginia's appellate courts have decided more than twice as many insurance coverage matters during that same period.

The increase in insurance case law emerging from Virginia's appellate courts is consistent with the increase in civil matters that are under review. According to statistical data released by the Court of Appeals of Virginia, 1,971 appeals were filed in 2022.

Of those, 51.24%, or 1,010, involved criminal matters, whereas 46.17%, or 910, involved civil appeals. The remaining 2.59% were matters of original jurisdiction and actual innocence. Compare those numbers to 2019 where there were a total of 2,090 filings, of which some 74% involved criminal matters.

The data confirms, therefore, that the jurisdictional changes will, over time, lead to a more robust body of insurance coverage case law in the Old Dominion.

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