Larry Bache

Up In Flames

When it comes to insurance coverage, we cannot stress the importance of literal policy language enough. Caveats within your policy language can make or break your claim against your insurer after sustaining a loss. In this Success Story, Merlin Law Group attorney Larry Bache defended policyholders against an insurer attempting to bar coverage after a fire destroyed their Missouri home. His tenacity and attention to detail highlights the importance of research and due diligence in fighting to obtain justice for policyholders.

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The Respondents in this case initially won on summary judgement, but the insurer filed an appeal. Bache's work assisted in winning the appeal and upholding the ruling of the Court.

Our clients thought their home would be safe when they embarked on a family vacation. However, their home was burned down and the co-insured's 21-year-old son, who was alone at the property, was found liable for the fire. The son suffered multiple injuries and the house was deemed a total loss.

The insurer claimed that the trial court erred in making a summary judgement for the Respondents in that the Policy's language carved out exclusions for the intentional acts of "any insured" that bar coverage because the son was an insured under the Policy and admitted he set the fire. The facts remain that while the son was home at the time and did pile the furniture into the center of the room and douse it in gasoline, he never did actually set a fire. Instead, the furnace flame consumed the gasoline fumes and ignited the fire that ultimately burned the house down. Still, the son ended up pleading guilty to second-degree arson and was given a seven-year suspended execution of sentence.

A War Of Words

The most significant discrepancy in this case was establishing whether or not Missouri law had any protections for innocent co-insureds. That is to say – protections for named insureds when an unnamed insured intentionally causes damages to the property covered under the Policy. The insurer cited multiple cases to try and cement their point that Missouri law does not specifically outline an exception for innocent co-insureds.

When the Court granted summary judgement in favor of our clients, they found "Missouri authority does not permit an insurer to bar coverage based on the intentional acts of an unnamed insured absent misrepresentation, fraud or a pecuniary interest held by the unnamed insured." The Appellant disagreed with this finding and claimed that Missouri does not have any general exceptions for innocent co-insureds that nullify the intentional acts exclusion in the insured's Policy.

(The Policy's intentional acts exclusion excludes "[Intentional loss], which is either expected or intended by **any insured** or which is the result of any insured's intentional or criminal acts. **Any insured** is deemed to intend the natural and probable consequences of his or her actions.")

Bache argued that since Missouri has adopted the 1943 Standard Fire Insurance Policy of the State of New York as the standard fire policy for use in this state, all insurance policies must provide coverage "at least as favorable to the insured as the [Standard Fire Policy]." 20 C.S.R. 500-1.100. Furthermore, Bache pointed out that the use of **"any insured"** in the insured's Policy versus **"the insured"** as written in the Standard Fire Policy left the Respondents with less than favorable coverage.

The Appellant attempted to cite a case from the United States District Court for the Eastern District of Missouri to prove their point that the Policy provided coverage as adequate as the Standard Fire Policy coverage. This case involved a corporate-owned grocery store burning down. While this case was similar in that there was an undisputed source of the fire (in this case being the owner of the grocery store), there was a stark difference in that the owner who set the fire was the sole director of the corporation and had a 50% stake in the company. The corporation attempted to forward the same argument regarding the "any insured v. the insured" language dispute, specifically that it resulted in less than favorable coverage compared to the Standard Fire Policy, however the Court rejected that notion on the grounds that the corporation was responsible for negligence, misfeasance, and fraud.

It is a common tactic for insurers to dig up previous cases to bolster their appeal. However, Bache's expertise lent itself to refuting this particular citation. He argued this case as inappropriate to use as a lens for his clients' case because that case involved a corporation fraudulently engaging in arson versus the current case dealing with innocent co-insureds attempting to be reimbursed for the actions of an unnamed insured.

Bache reinforced his point by citing another case, *DePalma v. Bates Cty. Mut. Ins. Co., 923 S.W.2d 385 (Mo. App. W.D. 1996),* where an insurer denied a claim when the insured's spouse burned his house down and he tried to get the insurer to reimburse him for the loss. The Court granted the insurer's motion for summary judgement, denying the claimant any reimbursement. On appeal, the Western District of this Court reversed, finding that absent fraud or misrepresentation, a Missouri insurer may not bar coverage of a claim based on the intentional acts of an unnamed insured.

Pooling Resources To Our Advantage

An important point to make, one that Bache realized and addressed, was that Missouri courts had never directly addressed the issue of the "any insured" language of an insurance policy as it directly relates to the Standard Fire Policy. The aforementioned cases had similar elements but weren't the bar-none legal benchmark. As such, Bache tapped into other cases from other jurisdictions.

Bache put forth a case from Illinois that was almost identical to the Missouri house fire case. In this case, a son set fire to the named insured's home and the insurer failed to reimburse the insureds on the same argument that the insurer in our Missouri fire case made. The Court found that the coverage laid out in the Policy failed to conform to the standard coverage purview of the Illinois Standard Fire Policy.

The case also distinguished the point of "the insured" vs. "any insured" in a policy as limiting. The Court argued that having "any" as opposed to "the" limits the policy in that if there was an innocent insured party, coverage would be barred for all parties on the Policy. They continued by stating that if there is an innocent insured party, coverage should only be suspended as to the insured that caused the loss.

Bache highlighted another case within Merlin Law Group's federal circuit where the Nebraska Supreme Court found the intentional acts exclusion in this insureds' policy, which opted for the term "any", was inadequate in that failed to equate to the favorable coverage laid out in the New York Standard Fire Policy (which Nebraska has also adopted). Furthermore, the Court found that the intentional acts exclusion created an unjust binding agreement between co-insureds that would leave any innocent co-insureds high and dry in the wake of an insured intentionally causing a loss.

A Fighting Chance

At the end of the day, the Missouri Court found that any MO-based insurer cannot bar coverage of a claim stemming from the intentional acts of an unnamed insured when there is no fraud or misrepresentation present. Bache's work led the Court to acknowledge that the insured's Policy provided less than favorable coverage compared to the Standard Fire Policy. These two main arguments drove home the point that our clients were entitled to the judgement put forth by the Court as a matter of law. This case, albeit somewhat nuanced in disputing policy terminology, represents Merlin Law Group's tireless efforts in fighting for our clients. Our extensive resources and knowledge allow us to fight tooth and nail against large insurance companies and Larry Bache exemplifies that through this case. Insurance companies have ample financial resources to fight against your claim, so as a policyholder, you deserve a fighting chance in seeking justice and a full recovery.