



Doscher's has it in the bag: A Charleston grocery store prevails over Penn National Insurance

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A Charleston grocery store prevailed in a recent ruling involving a coverage dispute after a shooting in the store. In *Pennsylvania National Mutual Casualty Insurance Company v. DOSCHER'S SUPER MARKETS*, Dist. Court, D. South Carolina 2012, Anita Thorne, as Guardian ad Litem for Burton Thorne, brought suit in the Court of Common Pleas for Charleston County with respect to injuries her son sustained when he was shot by a coworker at Doscher's Super Market. As a result, Penn National Insurance Company, Doscher's insurer, subsequently filed suit against Doscher's in United States District Court regarding Penn National's duty to defend and indemnify Doscher's in the underlying state court action.

The facts of the underlying tort action alleged that Doscher's employed Burton Thorne as a grocery store bagger, and that Thorne was shot by a fellow employee in the break-room during one of Thorne's work shifts. The underlying complaint alleges that the employer failed to take adequate steps to make the workplace safe and to protect the defendant-employee, Burton Thorne, after learning of threats by the co-worker. Thorne and others testified that he was shot because of the shooter's jealousy over Thorne's friendship with a fellow female employee, not because of a work-related dispute, and that the shooting coincidentally happened to take place on the premises of Doscher's.

The CGL policy at issue excluded coverage for bodily injury to an "employee" of the insured arising out of and in the course of ... employment by the insured." The only dispute here was whether Thorne's injuries arose out of his employment. In considering the cross motions for summary judgment, the judge noted that South Carolina courts have interpreted the term "arising out of" when used in an insurance policy exclusion, to be narrowly construed to mean "caused by."

Viewing the evidence in the light most favorable to the insurer, Judge David Norton could not find that the alleged assault was "caused by" and "arose out of" the employment of Thorne. Rather, the evidence showed that the incident was caused by a personal dispute. Therefore, the employer's liability exclusion does not apply, and therefore Penn National was not relieved of its duty to defend and indemnify the employer.

Only time will tell how this case will affect other CGL policies as this is a fact-specific inquiry. To defend or not to defend in this matter? It appears we have an answer, unless the Fourth Circuit says otherwise.

About Bennett Crites

Bennett Crites is a shareholder with Collins & Lacy practicing in products liability, premises liability, automobile negligence, defamation, insurance bad faith and commercial trucking law. Bennett has experience in litigating cases from minor injury to wrongful death and catastrophic injury. Super Lawyers® has identified Bennett as a Rising Star®. Prior to joining Collins & Lacy, Bennett was an attorney with a law firm in Charleston, South Carolina. He also served as a judicial law clerk to the Honorable R. Markley Dennis, Jr. and has corporate experience in the financial sector. Bennett earned his law degree from the University of South Carolina School of Law and his undergraduate degree in Business Administration from the Citadel.

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