

# Byline

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## Pa. High Court Clarifies Employer Liability Exclusions

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In a unanimous opinion, the Supreme Court of Pennsylvania ruled that an employer's liability exclusion in a commercial liability insurance policy does not bar coverage for claims by an employee of one insured against another insured. See *Mutual Benefit Insurance Co. v. Politsopoulos*, case number 60 MAP 2014 (Pa. May 26, 2015).

Companies that are added as additional insureds under another's insurance policy in connection with a business relationship are therefore covered for claims by employees of the named insured. The decision confirms that each insured should be treated separately to evaluate coverage and the application vel non of exclusions.

### Background

Leola Restaurant bought an umbrella commercial liability policy from MBIC. The policy contained an employer's liability exclusion barring coverage for liability for injury to "an 'employee' of the insured arising out of and in the course of ... employment by the insured." The policy also contained a "separation of insureds" provision stating that, "[T]his insurance applies ... separately to each insured against whom claim is made or suit is brought."

Leola conducted its business on property leased from Christos Politsopoulos and Dionysios Mihalopoulos. The lease required Leola to name the property owners "as ... additional insured parties" on the policy, and in satisfaction of this requirement the policy extended coverage to unidentified persons for whom Leola had agreed in writing to provide insurance. It therefore provided for the property owners' treatment as additional insureds.

One of Leola's employees, Marina Denovitz, was injured in a fall and filed suit against the property owners. As insureds under the policy, the property owners sought coverage from MBIC. MBIC contended that the above employer's liability exclusion applied and denied any obligation to cover the property owners. According to MBIC, Denovitz was an employee of "the insured" for purposes of the exclusion, even though she was not an employee of the property owners (i.e., the insureds claiming coverage under the policy). The property owners rejected the insurer's contention and argued that the exclusion only applied to claims by an employee of the specific insured seeking coverage, not by an employee of any insured. As additional support for their argument, the property owners pointed to the "separation of insureds" clause, requiring each insured to be treated separately under the policy.

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**Trial and Appellate Courts' Decisions**

MBIC filed a declaratory judgment action seeking to resolve its disagreement with the property owners. The Pennsylvania trial court ruled in favor of the insurer, explaining that it was forced to reach that result by *Pennsylvania Manufacturers' Association Insurance Co. v. AETNA Casualty & Surety Insurance Co.*, 233 A.2d 548 (1967) ("PMA").

That decision had found the term "insured" in an employer's liability exclusion to include the named insured, regardless of whether coverage was sought by a different insured. See *Mutual Benefit Insurance Co. v. Politopoulos*, No. CI-10-02578, (C.P. Lancaster Feb. 2, 2012). On appeal, the appellate court reversed, finding that the employer's liability exclusion did not apply and that the property owners were entitled to coverage. See *Mutual Benefit Insurance Co. v. Politopoulos*, 75 A.3d 528 (Pa. Super. 2013).

**Supreme Court of Pennsylvania Ruling**

The Supreme Court of Pennsylvania affirmed the order of the appellate court in favor of the property owners. The Supreme Court of Pennsylvania focused on the terms of the employer's liability exclusion, which excluded coverage for injury to an employee of "the" insured, as opposed to "an" or "any" insured. As the Supreme Court of Pennsylvania noted, a majority of jurisdictions recognize the potential differences in meaning between the selective use of definite (i.e., "the") and indefinite (i.e., "an" or "any") articles in connection with the term "insured" as used in insurance policy exclusions. The Supreme Court of Pennsylvania therefore ruled that "the insured," as used in an employer's liability exclusion, may be reasonably interpreted to mean the particular insured against whom a claim is asserted.

The Supreme Court of Pennsylvania rejected MBIC's reliance on PMA in support of the insurer's contention that the employer's liability exclusion applied to deny coverage to the property owners. The Supreme Court of Pennsylvania disagreed with PMA's construction of the term "the insured" to mean "all insureds." According to the Supreme Court of Pennsylvania, the PMA opinion had relied on cases concerning a household exclusion in a motor vehicle liability policy and improperly transposed the usage of the term "the insured" in that context into the setting of an employer's liability exclusion. Citing a broad range of authorities, the Supreme Court of Pennsylvania declined to extend PMA's "expansive construction" of the term "the insured" to instances where a commercial liability policy makes use of the terms "the insured" and "any insured."

Accordingly, applying general principles of insurance policy construction, the Supreme Court of Pennsylvania found that the exclusion applies only to claims asserted by employees of "the insured" against whom the claim is directed. This conclusion, according to the Supreme Court of Pennsylvania, is further supported by the policy's separation of insureds clause.

As Denovitz was not the employee of the property owners, the Supreme Court of Pennsylvania found that the employer's liability exclusion was inapplicable and that the property owners were entitled to coverage.

**Implications**

Insurers often mistakenly argue that an "employer's liability exclusion" bars coverage to additional insureds for claims brought by the named insured's employees. The argument, if accepted, could seriously restrict coverage and undermine the transfer of financial risk in a variety of commercial settings including in the construction context.

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The Supreme Court of Pennsylvania's Politsopoulos ruling confirms that insurers taking such positions have misinterpreted their obligations. The opinion makes clear that companies that are added as additional insureds under another's insurance policy in connection with a business relationship are covered under that policy for claims by employees of the named insured. This is plainly consistent with the reasonable expectations of parties that design agreements and insurance programs to protect additional insureds for claims by another insured's employees. Finally, the Supreme Court of Pennsylvania's ruling reinforces Pennsylvania's requirements that exclusions in insurance policies be read narrowly and interpreted on terms most favorable to the insured, and that all policy provisions, including the separation of insureds clause, be given effect.