

FC&S LEGAL

The Insurance Coverage Law Information Center

FOURTH CIRCUIT RULES UNDER MARYLAND LAW THAT INSURER MAY NOT VOID POLICY BASED ON AMBIGUOUS POLICY APPLICATION QUESTIONS

Patrick M. McDermott and Michael S. Levine

June 15, 2015

In *Certain Underwriters at Lloyd's, London v. Cohen*,^[1] the U.S. Court of Appeals for 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.

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.

Endnote

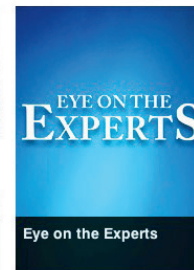
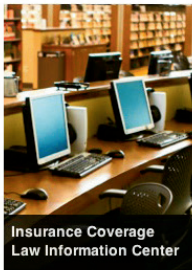
[1] No. 14-1227, 2015 WL 2040764 (4th Cir. May 5, 2015).

About The Authors

Patrick M. McDermott is an associate at **Hunton & Williams LLP**, focusing his practice on complex civil litigation matters, with an emphasis on insurance coverage disputes. He may be reached at pmcdermott@hunton.com.

Michael S. Levine is counsel at **Hunton & Williams LLP**, focusing his practice on complex business litigation, insurance coverage advice and related coverage litigation. He may be contacted at mlevine@hunton.com.

This article presents the views of the authors and do not necessarily reflect those of Hunton & Williams or its clients. The information presented is for general information and education purposes. No legal advice is intended to be conveyed; readers should consult with legal counsel with respect to any legal advice they require related to the subject matter of the article.



For more information, or to begin your free trial:

- Call: 1-800-543-0874
- Email: customerservice@nuco.com
- Online: www.fcandslegal.com

FC&S Legal guarantees you instant access to the most authoritative and comprehensive insurance coverage law information available today.

This powerful, up-to-the-minute online resource enables you to stay apprised of the latest developments through your desktop, laptop, tablet, or smart phone —whenever and wherever you need it.

NOTE: The content posted to this account from **FC&S Legal: The Insurance Coverage Law Information Center** is current to the date of its initial publication. There may have been further developments of the issues discussed since the original publication.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice is required, the services of a competent professional person should be sought.