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Adams-Arapahoe Joint School District v. Continental Insurance Co., 891 F.2d 772
Author: Judge Anderson

Defendant, Continental Insurance Company ("Continental"), appealed the district court's decision that it was liable under an insurance policy for expenses incurred after the partial collapse of the school's roof.

The Tenth Circuit held that losses from defective design or construction are risks of physical peril and are covered under all-risk policies if they are fortuitous and neither party expected them. The court would not consider Continental's reference to a latent defect exclusion on appeal because Continental did not raise the issue adequately in the district court or preserve it for appeal. Further, the court did consider the issue of whether the corrosion exclusion applied to only normal or natural corrosion. Consequently, the court held that corrosion, in an all-risk policy, refers to all corrosion, however it occurred. The court also considered, however, the exclusion clause in the policy and ruled that the corrosion exclusion applied only to naturally occurring corrosion, affirming the district court's decision that if the loss were fortuitous, it was covered. In addition, the court considered the jury instructions given by the district court. The court stated that the substance of jury instructions in a diversity case is a matter of state law, but the question of whether an error is harmless is one of federal law. The court held that the instruction stating that Continental had the burden of proving the affirmative defense that Adams-Arapahoe had previous knowledge of the defect was prejudicial error. Accordingly, the court reversed and remanded the case.

Kelley v. Sears, Roebuck & Co., 882 F.2d 453
Author: Judge Wright, sitting by designation

Plaintiff, Kelley, filed suit against Sears, Roebuck & Company ("Sears"), and Allstate Life Insurance Company ("Allstate"), for bad faith handling of his Worker's Compensation and long term disability claims. A jury awarded compensatory and punitive damages against the defendants. Kelley's claims were based on Colorado's common law of bad faith insurance practices.

The Tenth Circuit reversed the judgment against Allstate, holding that the Employee Retirement Income Security Act ("ERISA") preempted Kelley's cause of action. Colorado's common law of bad faith did not "regulate" insurance, and thereby save the claim from preemption pursuant to 29 U.S.C. sec.1144(b)(2)(A); because it neither spread policy-holder risk nor controlled substantive insurance contract terms.

Moreover, the bad faith law conflicts with ERISA's exclusive civil enforcement provisions.

The court affirmed the finding of liability against Sears, but granted a new trial on the issue of damages. Since the defendants engaged in separate acts of bad faith, the jury's failure to apportion compensatory damages required that Sears be granted a new trial on that issue. The court based its reversal of the punitive award against Sears on three factors: (1) insufficient evidence to support a finding, beyond a reasonable doubt, of Sears' evil intent or reckless disregard for Kelley's rights; (2) the uncertainty of the relationship between punitive damages and the undetermined actual damages; and (3) the dramatic size of the award, suggesting jury passion and prejudice. The court also reversed and remanded the award of prejudgment interest.

Oakley v. City of Longmont, 890 F.2d 1128
Author: Judge Moore

After termination by defendant City of Longmont ("City"), plaintiff Oakley elected to continue his group health insurance for eighteen months by maintaining the premium payments himself. The City, however, refused coverage because Oakley was covered under his wife's preexisting group plan. The district court, construing 42 U.S.C. § 300bb-2(2)(D)(i), granted the City's motion for summary judgment. Oakley appealed.

Reversing the district court ruling, the Tenth Circuit held that 42 U.S.C. § 300bb-2(2)(D)(i) did not apply. That provision states that continuation coverage ends on the date "the qualified beneficiary first becomes, after the date of election—(i) covered under any other group health plan (as an employee or otherwise) . . . ." The plain meaning of this subsection cannot be construed to include a spouse's preexisting group plan as a condition to terminate continuation coverage. This holding was premised on a contemporaneous congressional history and a reading of the statute as a whole.

Phico Insurance Co. v. Providers Insurance Co., 888 F.2d 663
Author: Judge Barrett

Plaintiff, Phico Insurance Company ("Phico"), and defendant, Providers Insurance Company ("Providers"), both provide professional liability insurance to the University of Kansas Medical Center ("Center"). A negligence suit was filed against the Center, and the Center subsequently filed a written claim with Phico and an oral claim with Providers. Phico and Providers both agreed to contribute $100,000 toward the claim. Both also agreed, however, that if one company was determined to have exclusive coverage, that company would reimburse the other. In this declaratory judgment action, the district court ruled that Phico had standing to bring an indemnity action against Providers. The district court also determined, however, that Phico's policy covered the claim and, therefore, summary judgment for Providers was warranted. The

district court reasoned that no written notice was received by Providers as required in its policy. The issue on appeal was which of the two insurance companies should be responsible for providing the primary coverage of $200,000 to the Center.

The Tenth Circuit held that Phico had standing to bring an indemnity action against Providers, even though Phico was not a party to the insurance contract between Providers and the Center. The court further held that the Center's failure to give written notice to Providers did not preclude coverage. The court reasoned that there was no express forfeiture clause, the Center gave adequate oral notice to Providers, and Providers acted on this notice by undertaking an investigation. Thus, the court concluded that Providers had a duty to show actual prejudice for denial of coverage and, therefore, reversed and remanded for further proceedings.

Rush v. Travelers Indemnity Co., 891 F.2d 267
Per Curiam

Plaintiffs, Ray and Shellie Rush, (the "Rushes"), Oklahoma residents, brought an action against defendant, Travelers Indemnity Company, ("Travelers"). The Rushes attempted to recover benefits under the uninsured motorist coverage included in their policy, after Shellie Rush was involved in an Arkansas car accident. The insurance policy was issued and executed in Oklahoma. The district court found that the terms of the policy required application of Arkansas' $25,000 minimum requirement for uninsured motorist coverage, rather than Oklahoma's $10,000 requirement. Travelers appealed, arguing that an endorsement in the policy replaced the original provision which required application of Arkansas' requirement. The district court also determined that the Rushes could not increase their recovery by "stacking" their coverage, as permitted by Oklahoma law. Consequently, the Rushes appealed, arguing that while Arkansas law governed the dollar amount to be assigned to their uninsured motorist coverage, Oklahoma law governed the interpretation of their policy as a whole. Therefore, the Rushes contended that stacking should be permitted.

The Tenth Circuit held that the district court was correct in interpreting the terms of the insurance policy to require application of Arkansas' higher minimum coverage for uninsured vehicles. The court reasoned that the endorsement did not replace the policy's original language and could be read cooperatively with it. The court held, however, that the district court erred when it determined that language in the policy required that it be interpreted as a whole under Arkansas law. The policy's language did not constitute a "specific manifestation" of the parties intent to be bound by the laws of a particular jurisdiction. The judgment of the district court was vacated and the case remanded.