

# PENNSYLVANIA SUPREME COURT RULES AGAINST INSURERS ON EMPLOYER LIABILITY EXCLUSIONS

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## Oil & Gas Alert

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The Pennsylvania Supreme Court recently ruled against insurers on an insurance coverage issue that frequently arises in the oil and gas sector. In *Mutual Benefit Insurance Company v. Politsopoulos*,<sup>[1]</sup> the Supreme Court held that an employer's liability exclusion, which precludes coverage for liability for bodily injury to an employee of "the insured," did not bar coverage for claims brought by an employee of the named insured (*i.e.*, the company that purchased the policy) against an additional insured. Before this ruling, insurers would often point to a decades-old Pennsylvania Supreme Court decision (*PMA v. AETNA*)<sup>[2]</sup> to deny coverage under these circumstances. The *Politsopoulos* decision is good news for any oil and gas company that relies on additional insured provisions as part of its risk management strategy.

Many oil and gas companies use master service agreements that include reciprocal indemnity provisions under which each party agrees to indemnify the other for liability arising out of bodily injury to their own employees. These indemnity provisions are often supported by insurance provisions that require each party to obtain liability insurance and name the other party as an additional insured under those policies. Together, these provisions allocate risk between the parties and provide insurance for that allocation of risk. If an employee of either party is injured on the job and sues the other party, his or her employer's insurance policy should provide coverage to the other party as an additional insured (provided the insurance policy at issue includes an appropriate additional insured endorsement).

In Pennsylvania, however, insurers often denied coverage under these circumstances by relying on the employer's liability exclusion found in most commercial general liability insurance policies. The employer's liability exclusion precludes coverage for liability for bodily injury to an employee of "the insured." This exclusion makes sense if it is interpreted to preclude coverage for claims made by employees against their employers, but insurers argued that it also applied to claims made by employees of the named insured against an additional insured (or vice versa).

In making this argument, insurers typically relied on a decades-old Pennsylvania Supreme Court decision that arguably applied under these circumstances. In *PMA*, the Pennsylvania Supreme Court held that an employer's liability exclusion barred coverage for a claim brought by an employee of the named insured against a company that was insured under an "omnibus" clause in the policy. The Supreme Court reached this decision despite the existence of a "Severability of Interests" provision that was similar (though not identical) to the "Separation of Insureds" provision found in many policies today, which generally provides that the policy should be applied

separately to each insured. At least two lower Pennsylvania court decisions distinguished *PMA*, but some federal courts continued to rely on *PMA* to rule in favor of insurers on this issue.

The Pennsylvania Supreme Court decided to revisit the issue when it agreed to hear *Politsopoulos*. In *Politsopoulos*, a restaurant employee filed a negligence action against two property owners who were additional insureds under the restaurant's liability policy. The property owners sought defense and indemnification from the restaurant's insurer, but the insurer denied coverage, citing the policy's employer's liability exclusion. The trial court judge reluctantly concluded that *PMA* controlled. The Superior Court reversed the trial court's decision and the Supreme Court agreed to hear the appeal. The Supreme Court concluded that the standard employer's liability exclusion was ambiguous and, applying the rule of contract interpretation that ambiguities are construed against the drafter, ruled against the insurer. In reaching this decision, the Supreme Court focused on the fact that the exclusion referred to liability for bodily injury to an employee of "the insured" as opposed to "any insured." In short, the Supreme Court ruled that "the insured" may be reasonably interpreted to mean the particular insured against whom the claim is asserted.

In reaching this decision, the Supreme Court brought Pennsylvania in line with most other jurisdictions that have interpreted the employer's liability exclusion in this context. The *Politsopoulos* decision should mean that insurers can no longer rely on *PMA* to deny coverage, but policyholders (and additional insureds) should carefully review the employer's liability exclusion in any future policies because insurers may try to draft new policy language to get around the decision.

**Notes:**

[1] No. 60 MAP 2014 (Pa. May 26, 2015).

[2] *Pa. Manufacturers' Assoc. Ins. Co. v. AETNA Cas. & Sur. Ins. Co.*, 426 Pa. 453, 233 A.2d 548 (1967).

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