Don Kramer's An Electronic Newsletter of "Nonprofit Law You Need to Know"
NONPROFIT ISSUES
www.nonprofitissues.com

Volume XXVIII No. 5

Donald W. Kramer
Editor and Publisher
Lisa T. Chatburn
Managing Editor

Nonprofit Issues ®
P.O. Box 482
Dresher, PA 19025-0482
Phone (215) 542-7547
1-888-NP-Issue
Fax (215) 542-7548
E-mail
info@nonprofitissues.com
www.nonprofitissues.com

Charity Bike Ride Uninsured When Participant Is Injured

Court says exclusions prevent coverage for rider's claims of charity's negligence in auto accident

A 501(c)(3) nonprofit running long-distance bicycle rides to raise money for affordable housing has found itself uninsured when sued for negligence by one of its participants who was seriously injured while on a cross-country ride. A federal District Court in Philadelphia has granted summary judgment to the organization's commercial liability and excess coverage insurers who sought a declaration that they had no obligation to protect the charity from the rider's claims.

Bike & Build organizes its cycling trips and recruits riders who commit to raise a certain amount of money, typically $4500, from others who sponsor their trips. It uses the funds to make grants to affordable housing groups selected by the riders and for its own overhead.

Bridget Anderson was injured and another rider was killed in an automobile accident in Oklahoma on July 30, 2015 while they were on a ride from Maine to Santa Barbara. The driver of the car who hit them was not affiliated in any way with Bike & Build and Bike & Build had no ownership interest in the car she was driving. Anderson sued Bike & Build for negligence and gross negligence in the planning, operation and execution of the bike ride, including the selection of the route, which she said exposed riders to an unreasonable risk of harm from passing vehicles.

Bike & Build tendered the complaint to its carriers. The carriers issued a reservation of rights and ultimately declined coverage and sought a declaratory judgment that they had no obligation to protect the charity. They argued that coverage was precluded by three specific exclusions in the policies—the auto exclusion in the commercial liability policy, a volunteer worker/employee exclusion in the commercial policy, and a participants exclusion in the excess policy.

The basic policy provided defense for bodily injury occurring in accidents in the United States, but was subject to certain exclusions. In the printed form, the exclusion applied to an accident arising out of the ownership, maintenance, use or entrustment to others of any auto "owned or operated by or rented or loaned to any insured." An endorsement added to the policy in a section of the same name changed the coverage to exclude bodily injury arising out of the use of any auto. It dropped the qualification that the auto had to be owned or

operated by an insured person. The company claimed that the injury arose from the operation of an automobile and was therefore not covered.

Bike & Build argued that the policy was ambiguous but the Court said that the new language was not reasonably susceptible of different constructions or capable of being understood in more than one sense. It said the change in language could not be reasonably interpreted to apply only to Bike & Build's own use or entrustment of an auto. It also said that the injuries arose out of the accident and cited several other cases reaching similar results.

Bike & Build also argued that the Court's conclusion would defeat its reasonable expectation of coverage, given that its greatest source of liability exposure was from injury to its riders. The Court recognized that Pennsylvania law provides that coverage issues must be determined with reference to the reasonable expectations of the insured, but said that the language of the policy provides the best indication of the parties' reasonable intentions. It said the "mere assertion" of the insured will not ordinarily defeat the unambiguous language of the policy excluding coverage.

The Court said that Pennsylvania has applied the reasonable expectation doctrine only in "very limited circumstances," and that absent an affirmative misrepresentation by the insurer or its agent, the plain and unambiguous terms of a policy demonstrate the parties' intent and control the obligations of the insurer. The deposition testimony showed that the insured and the agent had not talked specifically about these terms of the policy and there was no basis for a misrepresentation claim.

Because the claim was excluded by the language of the policy, the Court said, the commercial policy issuer had no duty to defend or pay damages, and the excess insurer, providing coverage only beyond the coverage in the basic policy, had no liability either.

Having reached this decision, the Court said it had no duty to review the other exclusions argued by the carriers, but would do so "for the sake of completeness."

It rejected the commercial insurer's argument that the claim was excluded under a provision stating that the policy did not apply to injury to employees, contractors, volunteers and other workers. It held that the rider was not a "worker" as defined in the policy.

The Court upheld, however, the argument of the excess carrier that its policy did not apply to "participants" in certain types of athletic, sports, or entertainment "events" managed by the insured. (*Nautilus Insurance Company v. Bike & Build*, E.D. PA. No. 16-4839, 10/18/18.)

YOU NEED TO KNOW

This is another example of the need to read insurance policies before the fact to try to be sure that they cover your actual exposures.

The insured in this case was not liable for large financial losses, however, because it settled the rider's claims prior to the decision in this case for $10 million, but only to the extent that it was covered by the insurance. It assigned its right to collect from the carriers to the plaintiff, who then prosecuted this case without success.