

February 25, 2019

Georgia District Court Finds Reservation of Rights to Named Insured Ineffective as to Individual Insureds

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In *Auto-Owners Ins. Co. v. Cribb*, 2019 WL 451555 (N.D. Ga. Feb. 5, 2019), the U.S. District Court for the Northern District of Georgia found that an insurer, Auto Owners, was estopped from denying coverage to two individual insureds under a commercial general liability policy issued to B.R. Mountain Homes, LLC. Specifically, the District Court held that a reservation of rights issued to the Named Insured was ineffective as to two individual defendant-insureds, who were not explicitly included in the original reservation of rights.

In the underlying action, B.R. Mountain Homes was sued by Jimmey Cribb for injuries suffered on a construction site. Cribb initially sued BR Mount Homes, but later amended his complaint to add claims against James Brian Thurman ("Thurman") and Richard Scott Davis ("Davis"), who were officers and employees of B.R. Mountain Homes. Auto-Owners agreed to defend BR Mountain Homes under a reservation of rights issued and addressed to BR Mountain Homes, and retained defense counsel to file an answer on behalf of the company. When the complaint was amended to add Thurman and Davis as parties, defense counsel filed an answer on their behalf and began defending the individuals. Auto-Owners, however, did not immediately issue any coverage position letter or reservation of rights to the individuals, who were identified as "Insureds" on the policy. Ultimately, Auto-Owners filed a declaratory judgment action seeking a coverage determination with respect to several policy exclusions and "late notice" of an occurrence under the policy.

In the coverage action, the insureds argued that Auto-Owners was estopped from denying coverage to Thurman and Davis due to its failure to effectively reserve rights before providing Thurman and Davis with a defense. The District Court agreed. According to the court, an insurer that defends an insured in the absence of an express and specific reservation of rights to deny coverage is estopped from later denying coverage.

The District Court noted that the policy was issued to "Insured: Brian Thurman & Richard Davis DBA BR Mountain Homes, LLC." Per the language of the policy, each insured is treated separately for purposes of coverage, by way of the "separation of insureds" provision in the policy. The first reservation of rights letter was addressed to "BR Mountain Homes, LLC, Attn: Mr. Brian Thurman." While Auto-Owners ultimately sent second and third reservation of rights letters to Thurman and Davis respectively, "c/o B.R. Mountain Homes, LLC," they were not sent until months after Auto-Owners began defending the individuals. In addition, the first reservation letter was not addressed to Thurman or Davis individually and was sent before Thurman and Davis were ever sued by Cribb. Thus, the District Court concluded that the first reservation of rights letter was insufficient for the insurer to reserve its rights as to Thurman and Davis, and therefore, ineffective as to the individual insureds. Under the circumstances, the District Court held that Auto-Owners' defense of Thurman and Davis in the absence of an effective reservation of rights served to estop Auto-Owners from denying coverage to the them, regardless of the merits of Auto-Owners' coverage defenses.