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Insurance Coverage Decisions: Issued Today - Impact Tomorrow



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Will Pennsylvania Supreme Court Address an Insurer's Right to Reimbursement of Defense Costs? You betcha.

Pennsylvania High Court Agrees to Hear *Jerry's Sport* Appeal

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Yesterday the Pennsylvania Supreme Court agreed to hear an appeal of the Superior Court's decision in *American Foreign and Insurance Co. v. Jerry's Sport Center, Inc.*

At issue -- an insurer's right to reimbursement of defense costs following a determination that no duty to defend was owed. The Pennsylvania Superior Court held in early May that no right of reimbursement existed under Pennsylvania law.

The Supreme Court phrased the issue on appeal as follows:

Whether an insurer is entitled to reimbursement of defense costs when a court has determined that the insurer had no duty to defend the insured and the insurer had reserved its right to reimbursement in a "reservation of rights" letter?

Below is a link to an article that Taryn Kindred and I wrote for the White & Williams *Executive Newsletter*, Summer 2008, that addresses the Superior Court's opinion:

http://www.whiteandwilliams.com/CM/PDF/WW_Summer2008Newsletter.pdf

By my count, 26 states nationally have addressed this issue (8 before 2000 and 18 since 2000). Insurers having the right to reimbursement of defense costs is sometimes referred to by courts as the majority view. However, I believe that the score is actually closer to a tie.

Please let me know if you have any questions.

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