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Pennsylvania Federal Court Holds Insurer Can't Use Insured's Admission to Withdraw Defense

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It has long been the rule, under Pennsylvania law, that an insurer's duty to defend is determined "solely" by the allegations in the "four corners" of the complaint against the insured. *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 896 (Pa. 2006). A corollary of that rule — equally well-established — is that courts "do not consider extrinsic evidence," such as other pleadings and evidence exchanged in discovery, in determining the duty to defend. *Sapa Extrusions, Inc. v. Liberty Mut. Ins. Co.*, 939 F.3d 243, 251-52 (3d Cir. 2019). Earlier this week, the U.S. District Court for the Middle District of Pennsylvania became the latest court to enforce those rules, when it rejected an insurer's attempt to use the insured's admission in a pleading to deny coverage and withdraw its defense of the insured in an underlying tort action. *MMG Ins. Co. v. Giuro, Inc.*, No. 1:19-cv-0754, 2020 U.S. Dist. LEXIS 1716, at *1-2 (M.D. Pa. Jan. 6, 2020).

In *Giuro*, the insured was sued in Pennsylvania state court by an individual for damages because of bodily injury allegedly sustained in a car accident. The plaintiff alleged that the insured's delivery driver caused the car accident and, at the time of the accident, was driving a "personal vehicle as a substitute for a vehicle covered" by the insured's commercial auto policy. The insurer in *Giuro* sued the insured for a declaration that it did not owe a duty to defend or indemnify the insured for the damages alleged in the underlying tort action. In its answer to the insurer's declaratory judgment complaint, the insured ***admitted*** that the insured's delivery driver "was not driving a vehicle covered by [the insured's] commercial automobile insurance policy at the time of the accident," and that the underlying plaintiff's allegation about the substitute vehicle was "false." In response, the insurer filed a motion for judgment on the pleadings, arguing that the insured's "admission in this concurrent federal action relieved [the insurer] of its obligation to defend or indemnify [the insured] under the terms of [the insured's] insurance policy." The federal district court rejected that argument, denied the insurer's motion, and denied the insurer's motion for reconsideration — the subject of the *Giuro* decision.

Citing *Kvaerner, Sapa*, and other Pennsylvania cases, the district court in *Giuro* observed that "[b]oth Pennsylvania courts and the Third Circuit have been abundantly clear that, under Pennsylvania law, '[w]e do not consider extrinsic evidence' when determining whether 'a claim against an insured is potentially covered' for purposes of determining whether an insurer has a duty to defend." The district court also observed a related rule, that "the duty to defend is not limited to meritorious actions; it even extends to actions that are 'groundless, false, or fraudulent' as long as there exists the possibility that the allegations implicate coverage." Thus, notwithstanding the insured's admission about the uncovered-vehicle driven at the time of the accident, the district court concluded: "we are constrained by the verbiage of the state-court victim-complainant's averments and cannot find — absent further fact-finding before the proper fact-finder — that [the insurer] has no duty to indemnify [the insured] and, therefore, no ongoing duty to defend."

Accordingly, the district court denied the insurer's motion for reconsideration, but offered one last "sympathetic" observation for the parties: "[W]e are tasked with either enforcing Pennsylvania's four-corners rule as we understand it or carving out an exception which would, in effect, gut the rule entirely. Absent further guidance, we refuse to do the latter. Such an exception, while perhaps logical and more equitable as applied to the case at bar, would also fly in the fact of the aforecited precedent. It is thus not for this Court to make that leap."

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