

## **WARNING: POLICIES MAY COVER MORE THAN JUST THE INSURED (PART 2 – THE OHIO COURTS)**

**It is sometimes the case that a foreign Court is asked to interpret the terms and conditions of an English policy. This, in certain circumstances, could result in an insurer's liability being extended to more than just the named insured. This was one of the issues that arose in the case of *CGU International Insurance PLC v Ashleigh Szabo* and others. (Re: theKey Jan 2002)**

In this case CGU insured the liabilities of Reed Elsevier Inc pursuant to a global liability policy. The Insured was defined as "*Reed International Plc, Elsevier NV and/or subsidiary and associated companies*". Mr Szabo was an employee of Reed Elsevier Inc. Mr Szabo's daughter, Ashleigh, was a passenger in a car being driven in Ohio by her cousin when the car left the road and overturned. Ashleigh was seriously injured. Ashleigh's cousin was under insured. The Szabo family sued CGU in Ohio arguing that CGU was liable to compensate Ashleigh for her injuries. The basis of the Ohio claim was that CGU provided liability insurance cover to Reed Elsevier Inc, that the company employed Mr Szabo, that he is the father of the victim of a road accident and that therefore as a matter of Ohio law, CGU is liable to compensate that victim. CGU sought declaratory relief in England. The Szabo family challenged the jurisdiction of the English Court. Toulson J. decided that English law was the proper law and that the English Court would be the natural forum for determining the policy's construction. However, the Szabo family also issued proceedings against CGU in Ohio.

### **The position under Ohio law**

Under Ohio law if an insurer fails to offer uninsured and underinsured motorist coverage then such cover is created by the operation of law. The Ohio case of **Scott Pontzer v Liberty Mutual Fire Insurance Company (1999)** extended this cover to include employees and close family members. In this case Mr Pontzer was an employee of Superior Dairy who were insured by Liberty Mutual. Mr Pontzer was killed in a car accident through no fault of his own. The other driver was underinsured. Mr Pontzer's wife sued Liberty Mutual for benefits under their policy. The named insured in the policy was Superior Dairy but the policy also contained an Ohio Motorist Coverage Form that defined the insured as '*you*'. The Supreme Court of Ohio held that it was reasonable to conclude that '*you*' while referring to Superior Dairy also included Superior Dairy's employees and because of the lack of clarity by the use of the word '*you*'. Mr Pontzer, as an employee, was therefore covered under the policy. The Supreme Court went on to hold that the cover also extended to Mr Pontzer's wife. The rationale of the decision was based on the ambiguity which was created by the use of the word '*you*'.

### **The Szabo Judgment**

In the Szabo case the Ohio Judge, Chief Justice Rice, distinguished Scott Pontzer on the basis that there was no ambiguity in the CGU policy. The CGU policy clearly defined the insured. The definition did not include Mr Szabo. Chief Justice Rice also pointed out that the CGU policy expressly contemplated when and how additional persons were to be added as insured's which made it clear that employees such as Mr Szabo were not contemplated in the first instance. Furthermore, there was nothing in the CGU policy which indicated that relatives of employees were covered.

In summary, Chief Judge Rice, found that, first, Mr Szabo was not named under the CGU policy, second, because he was not named for the purposes of liability coverage, underinsurance coverage could not extend by operation of law and third, even if Mr Szabo were named in the CGU policy for the purposes of liability coverage, his daughter Ashleigh Szabo was not named, and therefore was not covered by the policy. On this basis, Chief Justice Rice entered Judgment in CGU's favour.

### **Conclusion**

This case demonstrates that policies issued in England may be scrutinized by foreign courts, resulting in coverage being extended beyond that which the insurer had originally contemplated. In addition to the insertion of an exclusive English Law and Jurisdiction Clause into the policy, insurers should avoid any ambiguity and must ensure that the insured is clearly identified.

**Anthony Greenwood (Partner) and Darren Gatum (Solicitor)**