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INSURANCE RECOVERY GROUP NEWS

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A “Volunteer” Is Injured At Your Workplace – Are You Insured For That?

A recent Superior Court case in Connecticut reminds policyholders to carefully review the exclusions contained in their insurance policies before allowing the individuals to act as volunteers on their work premises. In Frederick v. Northfield Ins. Co., the Connecticut Superior Court found that an individual who had been injured in somewhat unusual circumstances, had been acting as a “volunteer” and therefore his injuries were not covered under the “employer’s” commercial general liability (CGL) policy.

In Frederick, the plaintiff had come to observe the work performed by a tree service company two days in a row in hopes of gaining employment. While at the site, the owner of the company asked the plaintiff to assist him in cutting down a tree. The plaintiff assisted the owner as instructed, but the tree fell on the plaintiff and he sustained severe bodily injuries. After obtaining a default judgment for \$5 million against the tree service company, the plaintiff sued the company’s CGL carrier for coverage of his injuries.

The CGL policy contained several exclusions for injuries sustained by individuals performing work for the tree service company: a workers’ compensation and employer’s liability exclusion, an independent contractor’s exclusion, a non-employee labor exclusion, and a contracted persons exclusion. The non-employee labor exclusion barred coverage for injuries sustained by an individual who was performing work for the insured and was “not employed, subcontracted or being compensated in any way by [the employer].” The policy defined the term “volunteer worker” as someone ‘who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed by you.’”

The plaintiff in Frederick argued that he did not fall under any policy exclusion and that he was not acting as a volunteer when he assisted in cutting down the tree. He pointed to another Superior Court case, Pupello v. Super Gym, Inc. et. al., to support his argument. In Pupello, the owner of the gym informed two brothers who were working out that he could not shut one of the doors at the gym. The two brothers offered to help the owner with the door but one of them was hurt when his hand got caught in the door. The gym’s policy stated that “an employee . . . [was] any person . . . volunteering their services to [the employer].” The court in that case interpreted that provision to only cover “a situation in which a person ‘stands in the shoes’ of an employee or serves as a regular ‘volunteer’ such as a hospital candy striper, an unpaid intern at a law firm . . . and the like” and found that the provision “implies a relationship that is more than something that occurs in passing.” The Pupello court denied the insurer’s motion for summary judgment in which the insurer claimed that the policy excluded coverage for volunteers because it found that the brothers had not acted as volunteers.

If you have any questions about the issues addressed here, or any other matters involving Insurance Recovery issues, please feel free to contact:

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The court in Frederick refused to follow Pupello, concluding that the plaintiff was a volunteer engaged in precisely the duty the employer directed him to perform. Thus, the insurer had no duty to defend or indemnify the tree service agency for the plaintiff's injuries sustained on the work site.

The Frederick case presents an unusual circumstance where a bystander, whose injuries would otherwise be covered by CGL policies, becomes a volunteer whose injuries are not covered. To avoid such ambiguous situations, employers should carefully craft and enforce specific workplace policies regarding the use of volunteers.

More importantly, employers should be aware of the particular exclusions and language included in CGL policies. If you use volunteers regularly, you should consider other coverage options. Coverage under the Connecticut workers' compensation statute is only mandated for certain volunteers such as volunteer firefighters. A standard employer's workers' compensation insurance policy likely will not provide coverage to a volunteer injured while performing services for the employer because the individual is not being compensated and is not considered an employee. Although not commonly done, employers can contact their workers' compensation insurance underwriter to see if the underwriter can add a provision to their workers' compensation insurance policy that would provide coverage for volunteers. They can also purchase accident and injury coverage for volunteers injured while performing services for the employer.

If you have any questions about the information contained in this Alert, please contact Colleen O'Neill at 860.240.6114/coneill@murthalaw.com, or Marilyn B. Fagelson at 203.772.7725/mfagelson@murthalaw.com or a member of our Insurance Recovery Group.