



Case Review

Coverage Losses that Span Two Coverage Periods

— by Ryan McLellan

*Robben & Sons Heating, Inc. v. Mid-Century Insurance
Company, __Or App__ (8/13/03)*

Plaintiff purchased multi-peril business insurance from Defendant for two policy periods: October 1, 1998 through September 30, 1999, and October 1, 1999 through September 30, 2000. Both policy periods had identical coverage regarding “Employee Dishonesty.”

From October 1998 through September 2000, Plaintiff’s employee stole Plaintiff’s checks and used them to pay herself and others from Plaintiff’s bank account. As a result, more than \$50,000 in withdrawals occurred from Plaintiff’s account during each policy term. Plaintiff submitted a timely proof of loss to Defendant seeking a total of \$100,000 under the employee dishonesty coverage in the policy. However, the insurer invoked the coverage limit in the policy of \$50,000 on the basis that the employee’s conduct during the two policy periods constituted a single occurrence. Consequently, the insurer paid Plaintiff \$50,000 and refused to pay any additional amount.

The court held that in the circumstances of this case, an “occurrence” was the series of related acts caused by the employee which took place during each specific policy period at issue. The court reasoned that when Plaintiff paid an additional premium for an additional policy period, the insurer’s coverage obligations and the limits on those coverages commenced anew.

Accordingly, under the terms of the policy, the employee’s actions in the subsequent policy period constituted a separate “occurrence” from the employee’s actions that took place during the first policy period. The court found that the insurer was required to pay separately for both the losses that occurred under the first policy period and the losses that occurred under the second policy period. The court held that the fact that the insurer paid the coverage limits for one policy period did not relieve it from paying under the coverage limits for the second policy period. ❖

— Full case available at: <http://www.publications.ojd.state.or.us/A117333.htm>

— For additional information, please visit our website at www.smithfreed.com.

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