

Recent Developments in the Law

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Insurance Coverage: In *Home Exterminating Co., Inc. v. Zurich-American Ins. Co.*, U.S.D.C. No. 95-3212. Filed April 10, 1996, the United States District Court for the District of Columbia decided that an insurer's denial of coverage for injuries and damages caused by a pesticide treatment, which also violated a state regulation predicated upon an asserted "violation of law" exception, was erroneous. The Court held that an insurer's "violation of law" policy exclusion does not obviate its duty to defend an insured when the insured's negligence in the application of a pesticide would, by necessity, also violate a State regulation.

Insurance Contracts: In *JMP Associates, Inc. v. The Saint Paul Fire and Marine Insurance Co.*, CSA No. 1253, Sept Term 1995. Filed April 5, 1996, the Court interpreted the scope of coverage provided by an insurance policy which precluded coverage for property damage while it is left in or on a vehicle unless the assured or the insured's employee or sales personnel are in or on the vehicle at the time of loss. The case involving a loss which occurred at a gas station while the assured's employee was not "in" the car when the loss occurred. The question the Court decided was whether, for the purpose of construing the policy, the employee can be regarded as having been on the vehicle at the time, and whether the property insurance contract should be liberally construed to extend coverage to situations not covered by the contract's plain language.

The Court aligned itself with the majority view and held that "on" mean on and not near, and determined that a property insurance contract that denies coverage for items stolen from a car when an insured is not "in or on" the vehicle will not be construed to cover losses when the employee is near.

Contracts/Third Party Breach: In *Liberty Mutual Insurance Co., et al v. Travelers indemnity Co.*, U.S. App. D.C. No. 95-7039, March 8, 1996, the United States Court of Appeals for the District of Columbia Circuit held that a property management company's breach of the management contract provision requiring the company to take out a certain level of insurance coverage was not a defense to a claim made by a third party beneficiary management company to the insurance contract which the insurance company could avail itself. The Court held that the third party beneficiary's breach of its management contract with the property owner was not a defense to the third party beneficiary's claim against the insurer in the instance where the third party beneficiary management company had been named as an additional insured on the insurance contract. The Court emphasized that the insurance company did not rely in any way on the insurance provisions of the property management contract or on a certificate of insurance when it issued its own insurance policy naming the property management company as a named insured and the Court looked solely to the contract between the promisor and the promisee to see what, if any, conditions were attached to the insurance contract. The Court held that a breach of another contract not between the same parties is not a defense to the insurance claim made.