Vital, Van Houten and Letourneau in NYLJ: Trial by Jury; An Overlooked Advantage for Policyholders

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PRACTICES Trials, Insurance Recovery, Litigation

Haynes Boone attorneys Victor Vital, Greg Van Houten and Reese Letourneau authored an article for *New York Law Journal* policyholders in insurance coverage disputes often pursue summary judgment and inadvertently cede jury rights, but recent New York cases suggest many coverage issues involve factual questions better suited for juries.

Read an excerpt below.

In insurance coverage litigation between a policyholder and an insurance company, the policyholder is extraordinarily likely to demand a trial by jury. The prevailing thought is that juries are more likely to align with the purchaser of insurance—the policyholder—than the corporate giant that issued the policy.

But, while most policyholders are likely to demand a trial by jury in their pleading, many of those same policyholders later engage in summary judgment motion practice where they explicitly or implicitly concede that their case can and should be decided by a judge at summary judgment.

Why? Why are policyholders that know their case is better off with a jury so quick to hand their case to a judge? And is it doctrinally correct for so many insurance coverage cases to be decided at summary judgment? Juries bring common sense, lived experience, and a healthy skepticism of institutional power into the courtroom—traits that often favor policyholders in coverage disputes.

Yet, all too often, policyholders give away a strategic asset by allowing summary judgment to substitute for trial. The law doesn't require this. Strategy shouldn't either.

Leveraging recent case law, policyholders have optionality they may not realize when it comes to summary judgment practice and how (and when) their case gets decided.

Though the trend within the insurance coverage bar is to seek summary judgment on key coverage issues, both the federal rules and New York corollaries provide policyholders with the ability to push for a trial by jury rather than a merits adjudication at the summary judgment phase. In fact, in many instances, it is doctrinally wrong for insurance coverage cases to be decided at summary judgment.

This is primarily because issues of coverage are often mixed questions of fact and law. And, unless certain boxes are checked, a court is not permitted to act as a factfinder. Thus, many coverage cases can and should be handed to a jury.

Summary judgment motions are ubiquitous in insurance coverage litigation. One or both parties will often contend that the court can and should resolve one or more issues, and perhaps the case at large, as a matter of law.

In the coverage context, there are certain issues parties often consider to be per se proper for summary judgment. For example, issues like whether a demand letter constitutes a "claim" under a

claims-made policy, whether the policyholder's loss is subject to a sub-limit, and whether an exclusion applies to limit or preclude the policyholder's loss often find themselves the subject of summary judgment briefing.

Parties rarely dispute that these topics are appropriate for summary judgment and instead dispute the merits of their respective positions. However, two recent decisions issued by New York federal courts suggest that issues that practitioners commonly think of as appropriate for summary judgment are in fact not and are better suited as (or must be) jury questions.

This begs the question—what constitutes a legal question for the court versus a factual question for the jury in the context of an insurance coverage dispute?

To read the full article from *New York Law Journal*, click here.