

PRACTICE FOCUS/INSURANCE

Omnibus Insureds and Their Entitlement to Attorney Fees Under Florida Law

Commentary by
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Let's face it, most lawsuits will require both significant time and money. To that end, at the outset of litigation lawyers often look to the availability of recovering attorney fees from the adverse party. In the United States under



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the American rule, litigants must pay their own attorney fees. However, a party can recover attorney fees from the other side if authorized by contract or statute.

Florida's Insurance Code is one example of a statutory right to attorney fees. Specifically, the code provides a right to attorney fees for certain classes



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of individuals, including named insureds and named beneficiaries. Additionally, a provision in the code allows a third party that qualifies as an omnibus insured to recover attorney fees as the prevailing party in a dispute against an insurer. Through this provision, a beneficiary that is not explicitly

named in an insurance policy but is nonetheless expressly covered by a provision in that policy may be able to recover attorney fees from the insurer.

Pursuant to Section 627.428(1), Florida Statutes, a third party that qualifies as an omnibus insured is entitled to recover reasonable attorney fees from the insurer if he prevails in an action

against the insurer. The language of the section provides a right to reasonable attorney fees to “any named or omnibus insured or the named beneficiary under a policy.” Thus, according to the plain language of the statute, named insureds, omnibus insureds and named beneficiaries are entitled to the benefits of the section.

Prior to 1982, Section 627.428 only allowed “an insured or named beneficiary” to recover attorney fees. Then in 1982, the Florida Legislature added the phrase omnibus insured to the statute to clarify and adopt a more expansive interpretation of insured that had developed in the lower courts. However, despite this addition, the Florida Legislature did not define the phrase omnibus insured.

Instead, case law has developed that attempts to define the meaning of this phrase. For example, the Fourth District Court of Appeal stated in *State Farm Fire & Casualty v. Kambara* in 1996 that omnibus insured is a phrase that is “frequently used to refer to an individual insured under an omnibus clause of an insurance policy.”

The Florida Supreme Court has provided guidance as to the

meaning of these various terms, noting in *Continental Casuatly v. Ryan* in 2008 that a named insured is a person who is “designated as an insured” under the policy, whereas an omnibus insured is a person “covered by a provision in the policy but not specifically named or designated.”

TENANT INJURY

To illustrate, in *Kambara*, a tenant suffered injuries in his apartment complex, which was insured by a premises liability policy issued by State Farm. After State Farm denied the tenant’s claim, the tenant sued State Farm for reimbursement of his medical expenses under a provision in the premises liability policy that stated the insurer would pay medical expenses for injury caused by an accident on the premises owned or rented by the insured during the relevant policy period.

The Fourth District Court of Appeal held that the tenant was entitled to attorney fees under Section 627.428 because he qualified as an omnibus insured under the premises liability policy. The insurer argued that the tenant was merely a third party beneficiary of the policy, was therefore outside the purview

of the section and was not entitled to fees. The Fourth DCA rejected the insurer’s argument, noting that the tenant’s rights derived directly from the policy making him an omnibus insured.

In juxtaposing the distinction between a third-party beneficiary and an omnibus insured, the Fourth DCA noted that to qualify as an omnibus insured, the individual must derive his rights directly from a clause of the insurance policy without regard to the issue of liability. A third-party beneficiary, on the other hand, derives his benefits only upon a finding of liability against the insured tortfeasor.

In short, a third party’s qualification as an omnibus insured under Section 627.428 depends on whether the third party derives rights directly under a specific clause in the insurance policy. If so and the claimant prevails against the insurer, the third party is considered an omnibus insured and entitled to recover fees.

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