11th Circ. Denies Coverage, Despite Insurer's Missing Comma

By **Elizabeth Daley**

Law360 (August 1, 2024, 8:53 PM EDT) -- In a unanimous published opinion bound to frustrate grammarians, an Eleventh Circuit panel affirmed Thursday that though an insurer's policy might be missing a comma, the lack of punctuation didn't change its clear and unambiguous meaning, thus preventing payment to a food company.

The contested clause was part of a professional services policy issued to accounting firm Constantin Associates LLP by Chubb Insurance Co. of New Jersey, the **opinion** said. The firm had coverage for claims arising from "services directed toward expertise in banking finance, accounting, risk and systems analysis, design and implementation, asset recovery and strategy planning for financial institutions," according to the grammatically questionable policy paragraph.

After Constantin was sued due to an audit of Schratter Foods Inc., the firm assigned its rights to the plaintiffs as part of a 2019 $4.2 million settlement agreement, according to court records. Those parties, led by Schratter's parent company, ECB USA Inc., sued Chubb in a case removed to Florida federal court seeking coverage for the settlement. The plaintiffs reasoned that without a comma before the phrase "for financial institutions," the firm had coverage for any accounting missteps, but in 2022, the ECB plaintiffs were denied, court records show.

The ECB parties argued that there was at least ambiguity, and under the applicable New Jersey law, any confusion is required to be resolved in favor of the insured.

The appeals court panel disagreed, siding with the lower court's grant of summary judgment. The Eleventh Circuit found that the insurer had intended to cover claims only related to financial institutions, eliminating coverage for anything related to a negligent audit of the food company.

"Certainly, the presence of a comma before 'for financial institutions' would establish with more certainty that it applies across every term in the list," the panel wrote. However, it denied ECB's reading, claiming it "does violence to the overall text." Without applying the term "for financial institutions" to accounting, "then it doesn't really limit anything at all," the panel wrote.

The judges said that if there were any actual ambiguity, they would resolve it in favor of the insured, but in this case, there was none. "We think Chubb has the better argument in all respects," they wrote. Chubb argued that the phrase "for financial institutions" applied to everything that preceded it, limiting coverage.

"This case comes down to grammar and canons of construction," the panel wrote, noting that canons most relevant in this case informed their opinion in Chubb's favor.

The court mentioned that when Constantin applied for its policy, it "stated that it wanted insurance for 'management consulting for the financial community.'" It was therefore not far-fetched to imagine the policy would be thus limited, the panel said.

"Because Constantin was offering its services and expertise to help its clients manage risk, it stands to reason that it was sophisticated enough to manage its own," the panel said, denying ECB any recovery under the policy.

Representatives of the parties did not immediately respond to requests for comments Thursday.

U.S. Circuit Judges Andrew L. Brasher, Nancy G. Abudu and Adalberto Jordan sat on the panel for the Eleventh Circuit.

ECB is represented by David Marko, Joel Magolnick and David Proietti of Marko & Magolnick PA.

Chubb is represented by Gary L. Sasso, Steven J. Brodie, Aaron S. Weiss, David A. Karp and Sylvia H. Walbolt of Carlton Fields PA.

The case is ECB USA Inc. et al. v. Chubb Insurance Co. of New Jersey et al., case number 22-10811, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Nick Petruncio.