Jim's Perspective…

Remembering 9-11

I was in Omaha on a Monday, September 10, 2001, in Douglas County District Court, for the first day of a trial involving the liability coverage of a homeowners policy and the application of the intentional act exclusion to that coverage. This case ultimately ended up before the Nebraska Supreme Court with an opinion issued April 4, 2003, styled, Farmers Mutual Insurance Company of Nebraska v. Kment, 658 N.W.2d 662, 265 Neb. 655 (2003).

John Kment owned a house in Omaha, and rented out the basement of the house to Brian Detlef. On January 28, 1995, Kment went down to Detlef's apartment with a 12 gauge Winchester shotgun and shot Detlef twice, which ultimately necessitated that Detlef's right hand be amputated. Kment was the named insured on a homeowners policy with $100,000 in liability coverage. Detlef submitted a claim for the $100,000 in liability coverage which claim was denied based upon the intentional act exclusion. Detlef sued Kment in Douglas County District Court for damages resulting from the shooting. The Court eventually entered judgment against Kment in the amount of $1,400,000. Detlef again demanded the $100,000 in liability coverage, but the claim was denied again. Farmers Mutual filed a Declaratory Judgment Action in Douglas County District Court which is how I ended up in a court room on September 10, 2001. That first day, a jury was impaneled, opening statements were made, and I think a couple of witnesses testified. The next day, on 9-11, all the attorneys were seated at counsel tables and the jury had entered the courtroom, and the judge was getting ready to reconvene the trial at about 9:30 when the bailiff suddenly entered the room and moved quickly to the front of the bench and talked quietly with the judge. The judge then asked all of the attorneys to go to his chambers. Once we were all there, he turned on a television. I still remember two tall towers smoking extensively in the middle of the downtown of a large metropolitan city. The judge explained to us that two commercial jet airliners had apparently intentionally crashed into the twin towers of the World Trade Center in New York City, and it looked like some type of terrorist attack. We were all stunned and didn't know what to do. We were one day into a jury trial. Do we stay in the court room and proceed with another day of testimony? We decided to adjourn for Tuesday and reconvene on Wednesday. That would at least give us a little time to make sure no more terrorist attacks were going to continue to occur immediately. The trial continued on Wednesday. I don't remember how many more days it took, but everyday there was some discussion amoungst the attorneys and court personnel about the tragedy that had unfolded. I will never forget 9-11 and where I was when the terrorist attack occurred.

Kment and Detlef were both named defendants in the coverage case in Omaha. Their main argument was that Kment was intoxicated and his intoxication may have destroyed the capacity to form the intent required to invoke a policy exclusion for acts "intended or expected" by the insured. Kment said that he went to the basement only to show Detlef the shotgun and to play a joke on Detlef by pulling the trigger of the unloaded shotgun to scare Detlef. Unfortunately, the shotgun was, in fact, loaded and the first shot hit Detlef in the chest. Detlef tried to grab the gun and a second shot hit him in the hand which resulted in loss of the hand. The case was eventually submitted to the jury which returned a 10 to 2 verdict in favor of Farmers Mutual. In a civil case, you do not need a unanimous verdict as you do in a criminal case, but there can be no more than two dissenting jurors which is what we had in our case. This verdict is a good illustration of how difficult civil jury trials can be. You would think that when someone shoots another person twice with a shotgun, everyone would agree it was intentional, but jury trials with competing facts and arguments are never easy. As I noted above, this trial court decision was appealed to the Nebraska Supreme Court and the Court affirmed the judgment of the trial court in favor of Farmers Mutual. Note too, that it can be a very risky proposition to deny coverage for a liability claim. In this case, the parties had a $1.4 million judgment against the policyholder, and had the jury, in the Farmers Mutual declaratory judgment case, returned a verdict for Kment and Detlef, these two would have brought a bad faith lawsuit against Farmers Mutual to collect the entire $1.4 million judgment from Farmers Mutual.

One other unusual thing about the Farmers Mutual trial. The attorney for Detlef was an elderly man. Once this case was scheduled for trial, another younger trial attorney appeared at the trial to try the case for Kment. So both of these attorneys were seated at the defendants' counsel table for the entire trial. As testimony was presented to the jury, occasionally the elderly attorney would lean towards the younger attorney and say things like, "that's not good for us." The elderly attorney was kind of deaf, so he thought he was whispering, but in fact he was talking out loud, and his words could be heard by the jury and by me and the Farmers Mutual trial attorney. I have sat at the counsel table in a number of trial court cases over the years, but never heard a steady stream of commentary from opposing counsel about the good, the bad and the ugly of the testimony of a witness.

The 9-ll attack was also very difficult for me to deal with not only because I was in the middle of a trial, but also because there were many insurance company employees in the twin towers of the World Trade Center. The one I remember the most was the company, Marsh McClennan. This company was primarily an insurance brokerage business. It included Guy Carpenter, a reinsurance intermediary, and Marsh USA. I knew some of the Guy Carpenter people who worked at the World Trade Center. I had become acquainted with a few of them through insurance trade associations, the CPCU Society, a global non-profit professional insurance association, and through American Bar Association professional sections such as the Tort, Trial, and Insurance Practice Section of the Bar. The Marsh McClennan Company had 295 employees in the north tower which was struck at 8:45 a.m. by an American Airlines 767, and none of them survived. They were located in the top floors of the north tower and could not access any stairwells or elevators to get out. There were many more insurance businesses in the World Trade Center including, Aon, Chubb, Metropolitan Life Insurance Company and Kemper Insurance Companies.

One more very unusual experience for me with 9-11

Our niece, Debbie, Janie's older sister's daughter, lived in New York City at the time of the 9-ll attack. Debbie was a flight attendant for American Airlines. The week before 9-ll, Debbie was on a flight from a city in Florida to New York City. During this flight, Debbie became very scared because there were some middle eastern men on the flight that seemed dangerous to her. She told the managing flight attendant about it and the pilots were informed of the tense situation in the passenger cabin. It turned out that the leader, or mastermind, of the 9-ll attack on the

World Trade Center was on Debbie's flight that day. It was a practice run before the actual 9-ll attack a week later. When the 9-ll attack occurred, no one knew where Debbie was. We only knew that she was on an American Airlines flight at the time of the attack. Finally, we learned she was on a flight to Chicago. She ended up in Chicago for a few weeks until commercial flights resumed. We visited Debbie in New York City three or four year's ago. She took us to the 9-ll memorial. She showed us the names of American Airlines flight attendants who were good friends of hers, but were innocent victims killed in the commercial planes hijacked by terrorists.

https://www.youtube.com/watch?v=DqiOBbRzEgI

James B Dobler

Jim Dobler, CPCU
PIA Legislative Coordinator
Questions or Comments? Please email jbdobler@outlook.com