

## ***Bogdan v. American Legion Post 153*: Superior Court allows appellate review of insurer intervention to determine indemnity**

Recently, the Pennsylvania Superior Court clarified the scope of an insurer's responsibility to indemnify when a lawsuit against an insured raises covered and non-covered claims in the underlying complaint. *Bogdan v. Am. Legion Post 153*, [2021 PA Super 127](#) (June 23, 2021).

In lawsuits featuring potentially covered and non-covered claims, a jury's response to a general, non-specific jury verdict slip (e.g., "was the defendant negligent?" or "please state the amount of damages") could force an insurer to indemnify an insured for damages arising from non-covered claims. Insurance carriers confronted with trials involving covered and uncovered claims frequently seek leave to intervene to submit special questions, also known as interrogatories, to the jury on key facts relevant to coverage questions and to mold the verdict slip to separate covered from non-covered claims. However, despite case law requiring insurers to act to prevent indemnification for potentially non-covered claims, Pennsylvania trial courts are generally reluctant to grant such petitions to intervene.

The plaintiffs in *Bogdan* sued on behalf of a man shot and killed in the parking lot of an American Legion post, following a bar fight. The man's estate alleged negligence against the Post, included a dram-shop claim, and sought punitive damages. The Post's liquor liability insurer funded its defense, subject to absolute firearms and punitive/exemplary damage exclusions in the policy. The insurer petitioned to intervene, to have the jury answer special interrogatories that would separate covered claims from those excluded from coverage under the two referenced exclusions. After the trial court denied the Petition, the insurer filed an interlocutory appeal.

The Superior Court reversed. Its decision is important for three reasons. First, although parties usually must wait until the end of a case to appeal, the Superior Court held that the order denying intervention was a collateral order, meaning that it was sufficiently important to permit an immediate appeal. Second, since the insurer only sought to modify the jury verdict slip, the Superior Court rejected the trial court's finding that the intervention petition was untimely, and agreed that the insurer had no reason to try to intervene earlier. Third, the trial court's concerns that special interrogatories might be "confusing" for the jury were irrelevant to the insurer's right to intervene; any confusion could be settled through the process of submitting proposed interrogatories.

The Superior Court's decision strengthens the ability of insurance carriers to seek clarification when some, but not all, claims in a lawsuit against an insured are covered.

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