IN THE

Supreme Court of Pennsylvania

No. 60 MAP 2014

MUTUAL BENEFIT INSURANCE COMPANY

v.

CHRISTOS POLITOPOULOS, DIONYSIOS MIHALOPOULOS, AND MARINA DENOVITZ

BRIEF OF *AMICI CURIAE* KOPPERS HOLDINGS INC.; MATTHEWS INTERNATIONAL CORPORATION; MINE SAFETY APPLIANCES COMPANY, LLC; DRAVO CORPORATION; E.W. BOWMAN, INC.; AND UNITED POLICYHOLDERS IN SUPPORT OF APPELLEES

Appeal by Allowance from the Order and Opinion of the Pennsylvania Superior Court dated September 6, 2013, at No. 421 MDA 2012, Reversing the February 2, 2012 Summary Judgment Entered in Favor of Appellant in the Court of Common Pleas of Lancaster County at No. CI-10-02578

George L. Stewart, II
(PA ID 56842)
Michael H. Sampson
(PA ID 92574)
REED SMITH LLP
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
412-288-3131

Attorneys for Amici Curiae Koppers Holdings Inc., et al.

Douglas E. Cameron
(PA ID 41644)
Douglas C. Allen
(PA ID 309918)
REED SMITH LLP
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
412-288-3131

Of Counsel

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

STATEMENT OF INTERESTS OF *AMICI CURIAE*

The corporate *amici* on this brief represent a wide variety of Pennsylvania companies from different business sectors who have purchased commercial general liability insurance policies to protect against the risk of third-party lawsuits. The corporate *amici* include:

Dravo Corporation, a Pennsylvania corporation that historically performed engineering and construction services in Pennsylvania;

E.W. Bowman, Inc., a privately owned company that specializes in making, annealing, and decorating lehrs – a type of kiln – for glass products. Founded in 1959, E.W. Bowman has a production plant in Uniontown, Pennsylvania. E.W. Bowman's lehrs operate in more than 56 countries on six continents;

Koppers Holdings Inc., an integrated global producer of carbon compounds, chemicals, and treated wood products for the aluminum, railroad, specialty chemical, utility, rubber, steel, residential lumber, and agriculture industries. Including its joint ventures, Koppers, headquartered in Pittsburgh, Pennsylvania, serves its customers through a comprehensive global manufacturing and distribution network, with facilities located in North America, South America, Australasia, China, and Europe.

Matthews International Corporation, a public company that designs, manufactures, and markets, principally, memorialization products and brand

solutions. Founded in 1850 and incorporated in Pennsylvania in 1902, Matthews currently employs more than 8,000 people in more than two dozen countries on four continents, and now generates approximately $1.4 billion in annual revenues; and

Mine Safety Appliances Company, LLC, a subsidiary of MSA Safety Incorporated. Headquartered in Cranberry Township, Pennsylvania, MSA companies have been the world's leading manufacturer of high-quality safety products since incorporation in 1914.

In addition, *amicus* **United Policyholders** is a not-for-profit corporation founded in 1991 as an educational resource for the public on insurance issues and insurance consumer rights. It operates nationwide and is funded by donations and grants from individuals, businesses, and foundations. United Policyholders contributes on an ongoing basis to the formulation of insurance-related public policy at both the national and state levels and is a general information clearinghouse on consumer issues related to commercial and personal lines insurance products.

The coverage afforded by their commercial general liability insurance policies is an integral part of the corporate *amici's* business operations. As a result, they have a strong and abiding interest in the interpretation of the "Employer's Liability" exclusion in such policies. Here, the Superior Court's

ruling under review directly impacts the rights conferred to the corporate *amici* under their policies; specifically, it impacts the scope of coverage available to them. *Amicus* United Policyholders also has a significant interest in the ruling under review, as it will greatly affect the rights of insurance policyholders, who are the focus of its educational mission.

Amici collectively file this brief to urge the Court to affirm the Superior Court's decision below and to hold that the Employer's Liability exclusion only applies to claims brought against an insured by its own employees, and not by employees of any other insured.

VIEW OF *AMICI CURIAE*

Employer's Liability exclusions, like the one in the Commercial Umbrella Liability Policy (the "Umbrella Policy") at issue here, are common to commercial general liability policies. Such exclusions typically provide that an insured is not entitled to insurance coverage when an employee of "*the insured*" brings a claim against the insured for "bodily injury … arising out of and in the course of: … [e]mployment by the insured; or … [p]erforming duties related to the conduct of the insured's business." (RR1-00158) (emphasis added).

When there is only one "insured" covered by a liability policy, the meaning of the phrase "the insured," as used in that exclusion and elsewhere in the policy, is beyond question: It refers to the sole entity that is insured under the policy. Frequently, however, more than one entity is insured under a given liability policy. In this "multiple-insureds" context, further analysis may be required to identify which entity the policy is referring to in provisions that are expressly applicable to "the insured."

This analysis is guided in large part by the "Separation of Insureds" provision, such as the one in the Umbrella Policy. By directing that the insurance provided by a commercial general liability policy is to be applied "[s]eparately to each insured against whom claim is made or suit is brought," such Separation of Insureds provisions mandate that a liability policy's insuring obligations,

conditions, and exclusions should be applied to each insured separately, as though each individual insured were the only entity insured under the policy. (RR1-00140). Relative to the policy language at issue here, the Separation of Insureds provision confirms that the Employer's Liability exclusion applies only when a bodily injury claim is asserted against an insured by its own employee.

Fueled by *Pennsylvania Manufacturers' Association Insurance Co. v. Aetna Casualty and Surety Insurance Co.*, 426 Pa. 453, 233 A.2d 548 (1967) ("*PMA*"), the insurance industry nevertheless has sought to capitalize on instances where more than one entity is insured under a given policy, claiming that Employer's Liability exclusions preclude coverage not just when an insured is sued by its own employee, but also when an insured is sued by an employee of any other entity that is covered by the same policy (*i.e.*, a "co-insured").

Such an expansive interpretation of Employer's Liability exclusions simply cannot be reconciled with the language comprising modern-day commercial general liability policies. Indeed, as their name alone suggests, Employer's Liability exclusions are concerned solely with – and should only be read to preclude coverage for – claims brought against an insured by its own employees. Further, and as the Superior Court correctly concluded, modern-day Separation of Insureds provisions "speak[] with greater precision" than their earlier counterparts, such as the "severability" clause at issue in *PMA*. *Mutual Benefit Ins. Co. v.*

Politopoulos, 2013 PA Super. 250, 75 A.3d 528, 535 (2013). Thus, those provisions compel – rather than call into question – the more narrow reading of the Employer's Liability exclusion adopted by the Superior Court.

While the language comprising the Employer's Liability exclusion and Separation of Insureds provision should be dispositive of the issue here, *Amici* submit that there is additional language within the Umbrella Policy which – when read, analyzed, and given effect – separately confirms the Superior Court's opinion and serves as an additional point of departure from *PMA*.

Specifically, in its insuring agreement, exclusions, conditions, and endorsements, the Umbrella Policy clearly and consistently uses the phrase "the insured" as a reference to "the insured against whom a claim is asserted or a suit is brought." In the multiple-insureds context, this means that each policy provision couched in terms of "the insured" must be understood to apply only to, and only from the standpoint of, the insured targeted by a claim or suit, or requiring indemnity respecting same.

Informed by this distinctive and pervasive use of the phrase "*the* insured" (especially in contrast to the Umbrella Policy's concurrent use of the phrases "*any* insured" or "*an* insured"), the proper interpretation of the Employer's Liability exclusion is further confirmed: It applies only where an insured has been sued by its own employees.

This reading of the Umbrella Policy and its Employer's Liability exclusion is in harmony with Pennsylvania law: (1) It construes the Umbrella Policy as a whole, giving effect to all of its provisions (*see, e.g.*, *Luko v. Lloyd's London*, 393 Pa. Super. 165, 171-72, 573 A.2d 1139, 1142 (1990)); and (2) it construes the exclusion narrowly but reasonably (*see, e.g.*, *Pecorara v. Erie Ins. Exch.*, 408 Pa. Super. 153, 156, 596 A.2d 237, 239 (1991)).

By contrast, the interpretation advanced by the insurance industry – *i.e.*, one that would apply the Employer's Liability exclusion to claims brought against an insured by an employee of *any* insured – cannot be squared with Pennsylvania law: (1) It does not and cannot account for all of the Umbrella Policy's language, especially its pervasive and distinctive use of the phrase "the insured;" and (2) it would allow the Employer's Liability exclusion to be applied in the broadest possible fashion.

For these reasons, as well as those discussed below, the Court should affirm the Superior Court's decision.

INTRODUCTION

Appellant Mutual Benefit Insurance Company ("MBIC") commenced its lawsuit seeking a declaratory judgment that, *inter alia*, it did not have to provide coverage under the Umbrella Policy to two insureds for a lawsuit brought against them by an employee of another insured under the same policy. MBIC bases its

position on the Umbrella Policy's Employer's Liability exclusion, which provides, in relevant part, as follows:

> The insurance does not apply to "bodily injury" … to
>
> 1. An "employee" of *the* insured arising out of and in the course of:
>
> a. Employment by *the* insured; or
> b. Performing duties related to the conduct of *the* insured's business;
>
> 2. A co-"employee" of *the* insured arising out and in the course of such employment when *the* insured is an "executive officer" of such employer; … .
>
> This exclusion applies:
>
> 1. Whether *the* insured may be liable as an employer or in any other capacity; … .

(RR1-00158) (emphasis added).

"[D]espite [its] belief that the Supreme Court's analysis in *PMA* is flawed and outdated," the Court of Common Pleas considered itself "bound by the *PMA* decision" and applied the exclusion, ruling in favor of MBIC. (RR4-00229). The Superior Court reversed the trial court's decision, focusing on the actual language of the Umbrella Policy, as well as the difference between that language and the

language in the policy at issue in *PMA*.[1] The Court should affirm the Superior Court's decision for the following additional reasons.

I. As Used throughout the Umbrella Policy, the Term "*the* Insured" Refers to the Insured Being Sued.

The Umbrella Policy plainly contemplates coverage of multiple insureds. Indeed, the preamble to Section I expressly acknowledges that there may be more than one insured thereunder: "The word insured means *any person or organization qualifying as such* under Section III – Who Is *An* Insured …." (RR1-00130) (emphasis added). Although seemingly unremarkable, the availability of coverage under the Umbrella Policy for more than one insured is the cornerstone to understanding what is meant by the Umbrella Policy's distinctive use of the phrase "the insured," as contrasted with its concurrent use of the phrases "an insured" and "any insured."

A. The Insuring Agreement and the "Defense" Provision.

The distinctive use of "the insured" first reveals itself in the Umbrella Policy's Insuring Agreement. Among other things, Coverage Agreement A

---

[1] Although *Amici* do not address at length herein the Separation of Insureds provision, they observe that the Superior Court's analysis was correct. *PMA* – which involved a Standard Automobile Insurance Policy and an "omnibus clause" not included in the Umbrella Policy – does not control the instant analysis due to the divergence in the wording between the severability clause at issue in *PMA* and the Separation of Insureds provision in the Umbrella Policy.

articulates the insurer's indemnity obligations and rights respecting bodily injury and property damage as follows:

> We will indemnify *the* insured for ultimate net loss in excess of the retained limit because of bodily injury or property damage to which this insurance applies. We will have the right to associate with the underlying insurer and *the* insured to defend any claim or suit seeking damages for bodily injury or property damage to which this insurance applies.

(*Id.*) (emphasis added).

Although self-evident, it bears noting that the insurer's indemnity obligation under the Umbrella Policy cannot arise unless and until "an" insured thereunder has had a claim or suit lodged against it, resulting in a judgment or settlement for which the insurer is obligated to indemnify its insured. Similarly, the insurer's right to associate with the insured in the defense of a claim or suit does not and cannot arise until "an" insured has had a claim or suit brought against it. In both instances, Coverage Agreement A uses the phrase "the insured" as a reference to "the insured" against whom a suit or claim has been brought, or "the insured" to whom it owes an obligation to indemnify.

The import and effect of the phrase "the insured" in the multiple-insureds context can be illustrated by a simple hypothetical. Assume that there are two insureds covered by the Umbrella Policy, Insured A and Insured B. In a lawsuit filed solely against Insured A seeking damages for bodily injury covered by the Umbrella Policy, the insurer would not have the right to associate in the defense of

Insured B in connection with that lawsuit. Indeed, any such thought is nonsensical, as Insured B is not a party to the lawsuit. In that scenario, Insured B is "*an*" insured under the Umbrella Policy, but it is not "*the*" insured in whose defense the insurer has a right to associate. Instead, the right to associate arises only with respect to "*the*" insured against whom the suit is filed, *i.e.*, Insured A.

So, too, with the obligation to indemnify. Returning to the multiple-insureds scenario, assume that the lawsuit filed against Insured A has resulted in a judgment for which the insurer must provide indemnification. The insurer has no existing indemnity obligation respecting Insured B arising out of the lawsuit against Insured A, because Insured B is a stranger to that suit. Instead, the indemnity obligation is owed to the insured (Insured A) that has been successfully sued.

The provisions comprising the Insuring Agreement thus use the definite article ("the") to refer to, qualify, and differentiate the specific insured as to whom the insurer has certain rights (*i.e.*, to associate in the defense) and as to whom its indemnity obligations are triggered, due, and owing. In the multiple-insureds context, that makes perfect sense: Until a suit seeking damages because of "bodily injury" or "property damage" is filed against *someone* covered under the Umbrella Policy, or until *someone* covered under the Umbrella Policy becomes legally obligated to pay damages because of "bodily injury" or "property damage," the

insurer has no existing coverage obligation respecting *anyone* covered under the Umbrella Policy, *i.e.*, any insured.

The same analysis applies to the Umbrella Policy's defense obligation. "Section II – Defense" provides that when the insurer has "the duty to defend, [it] will indemnify *the* insured for" certain amounts, including (i) "[a]ll reasonable expenses incurred by *the* insured at our request to assist us in the investigation of or defense of any claim or suit," (ii) "[a]ll costs taxed against *the* insured in any suit we defend[,]" and (iii) "[p]re-judgment interest awarded against *the* insured on that part of any judgment covered under this policy." (RR1-00135) (emphasis added).

Again, in a lawsuit filed solely against Insured A seeking damages for bodily injury covered by the Umbrella Policy, the insurer would not have to indemnify Insured B for any such amounts in connection with that lawsuit, since Insured B is not a party to it. Once again, in that scenario, Insured B is *an* insured under the Umbrella Policy, but it is not *the* insured to whom any obligations are owed on account of the bodily injury lawsuit. Instead, the duty to indemnify the insured for

these costs is owed only to the insured against whom the suit is filed, *i.e.*, Insured A.[2]

B. The Exclusions Applicable to "*the* Insured."

This distinctive use of the phrase "the insured" is further evident in the exclusions to the Insuring Agreement. For example, Exclusion "b" provides, in pertinent part, as follows: "This insurance does not apply to: ... Bodily injury ... expected or intended from the standpoint of *the* insured." (RR1-00130-31) (emphasis added). To determine the applicability of that exclusion, the only insured whose "standpoint" could possibly be relevant is *the* insured against whom suit is brought. Returning to the hypothetical, if suit is brought solely against Insured A, then Insured *B*'s standpoint is of no consequence in determining the applicability of exclusion "b." Only Insured A's standpoint is and could be relevant to that determination.

The same is true of Exclusion "c," which precludes coverage of bodily injury "for which *the* insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement." (RR1-00131) (emphasis

---

[2] A necessary corollary to this point is that Insured B, which is not named in the suit, could not file a breach of contract action against the insurer for failure to indemnify Insured B for certain defense-related costs related to a lawsuit in which it was not named as a defendant. The *only* insured that could do so is Insured A, *i.e.*, *the insured against whom suit was brought*.

added). Again, to determine the applicability of that exclusion in a suit brought against Insured A, the insurer would not look to see what liability Insured *B* may have assumed in a contract or agreement. *Only* the liability assumed by Insured A, *i.e.*, *the* insured against whom the suit was filed, would be relevant to that determination.

The same is also true of Exclusion "d," which states that the "insurance does not apply to … [l]iability imposed on *the* insured or *the* insured's insurer, under [*inter alia*] [a]ny workers [sic] compensation, unemployment compensation or disability benefits law or any similar law." (RR1-00130-31*)* (emphasis added). In determining the applicability of this exclusion to a lawsuit seeking to establish an obligation of Insured A under a workers' compensation law, the insurer would not look to Insured *B*'s workers' compensation obligations. Instead, it would determine the applicability of the exclusion by looking at the obligations of Insured A, *i.e.*, *the* insured against whom the suit was filed.

C. The Conditions Applicable to "*the* Insured."

In addition to the Separation of Insureds condition, other conditions in the Umbrella Policy use the term "the insured," further confirming that that term means "the insured against whom a claim is asserted or a suit is brought." For example, the first condition, "Appeals," provides, "In the event *the* insured or any underlying insurer elects not to appeal a judgment which exceeds the retained

limit, we may elect to do so." (RR1-00137) (emphasis added). Here again, if Insured A is the insured which is sued, it would be the only insured which could appeal a judgment. Insured *B*, an insured against whom no claim was asserted or suit was brought, would have no appellate rights.

The sixteenth condition, "Transfer Of Rights Of Recovery Against Others to Us," is also illustrative. That condition provides in relevant part:

> If *the* insured has rights to recover all or part of any indemnification we have made under this policy, those rights are transferred to us. *The* insured must do nothing after loss to impair them. At our request, *the* insured will bring suit or transfer those rights to us and help us enforce them.

(RR1-00140) (emphasis added). As in the other examples, only an insured against whom a suit or claim has been successfully asserted could transfer indemnification rights, be in a position to impair indemnification rights, or bring suit to recover all or part of any indemnification made under the Umbrella Policy. Conversely, an insured that has not been successfully sued would have no such extant rights or obligations.

Similarly, the eighteenth condition, "When Loss Payable," also demonstrates that "the insured" can only be read to mean the insured against whom a claim is asserted or suit is brought. In relevant part, that condition provides, "Such insured's obligation to pay any amount of ultimate net loss must have been finally determined either by judgment against *the* insured after actual trial or by written

agreement of *the* insured, the claimant or the claimant's legal representative and us." (RR1-00140-41) (emphasis added). Yet again, when only Insured A is sued, only Insured A could have a judgment entered against it or settle the claim. Having not been sued, Insured *B* could do neither.

D. Contrasting the Use of the Term "*any* Insured" in the Exclusions and Conditions.

Notably, when the Umbrella Policy intended policy exclusions or conditions to apply to *any* insured, it expressly said so. Indeed, the Umbrella Policy expressly provides that certain exclusions apply to "*any* insured", rather than "*the* insured":

- Exclusion "i" provides, in pertinent part, "This insurance does not apply to: ... Bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft or watercraft owned or operated by or chartered, rented, or loaned to *any* insured." (RR1-00130-32) (emphasis added).
- The "Care, Custody, or Control Exclusion" provides, "This insurance does not apply to property damage to: 1. Property rented or occupied by *any* insured; 2. Property loaned to *any* insured; or 3. Personal property in the care, custody or control of *any* insured." (RR1-00146) (emphasis added).
- The "Professional Liability Exclusion" provides, in relevant part, "This insurance does not apply to injury or damage arising out of the rendering of or failure to render the professional services described below by *any* insured or by any person for whose acts or omissions *any* insured is legally responsible." (RR1-00147) (emphasis added).

In fact, more than once, the insurer uses the phrases "the insured" and "any insured," or "an insured," in the same policy provision. For example, Exclusion

"h(1)" provides in part: "This insurance does not apply to: … Bodily injury or property damage arising out of the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of pollutants … [t]hat are, or that are contained in any property that is … [o]therwise in the course of transit by *the* insured." (RR1-130-31) (emphasis added).

That same exclusion also provides that "[t]his insurance does not apply to: … Bodily injury or property damage arising out of the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of pollutants …

> (b) At or from any premises, site or location which is or was at any time, owned or occupied by, or rented or loaned to, *any* insured;
>
> (c) At or from any premises, site or location which is or was at any time used by or for *any* insured or others for the handling, storage, disposal, processing or treatment of waste;
>
> (d) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for *any* insured or any person or organization for whom any insured may be legally responsible; or
>
> (e) At or from any premises, site or location on which *any* insured or any contractors or subcontractors working directly or indirectly on *any* insured's behalf are performing operations ….

(*Id.*) (emphasis added).

Similarly, the "Duties in the Event Of Occurrence, Claim or Suit" condition uses both terms. That condition requires that notice "of an occurrence or an

offense which may result in a claim[]" include "*[t]he* insured's name and address ...." (RR1-000138) (emphasis added). It then details what should occur "[i]f a claim is made or suit is brought against *any* insured[.]" (*Id.*) (emphasis added).[3]

II. Consistent with the Balance of the Umbrella Policy, the Employer's Liability Exclusion's Reference to "*the* Insured" Means the Insured being Sued.

Thus, as used in the Umbrella Policy's Insuring Agreement, Defense provision, exclusions, and other conditions, the term "the insured" does not and cannot refer to "any" (or "an") insured; rather, it consistently refers to "the insured" against whom a lawsuit is filed or a claim is made. By reference to "the insured," the Umbrella Policy accounts for the fact that there may be more than one entity that qualifies as an insured thereunder, and differentiates among those to whom the insurer has current, as opposed to potential, coverage obligations.[4]

---

[3] The deliberate use of the term "any insured" in some, but not all, of the provisions must be given due effect. "Courts in interpreting a contract do not assume that its language was chosen carelessly." *Katzeff v. Fazio*, 427 Pa. Super. 55, 64, 628 A.2d 425, 429 (1993). "In construing an insurance policy, [courts] are not permitted to treat words in the policy as mere surplusage and [courts] must construe the policy in a manner that gives effect to all the policy's language if at all possible." *Millers Capital Ins. Co. v. Gambone Bros. Dev. Co.*, 2007 PA Super. 403, ¶ 34, 941 A.2d 706, 715 (2008).

[4] *See General Accident Ins. Co. of Am. v. Allen*, 708 A.2d 828 (Pa. Super. 1998), where the court construed an intentional injury exclusion that was expressed in terms of "*the* insured," as opposed to "*any* insured." The *General Accident* court stated:

> [T]he cases here, and elsewhere, dealing with the usage of the term "the insured" have held that for coverage to be excluded under the "intentional act" or "intended or expected" exclusion the damage or injury *had to be intended by the insured in question, not another insured under the policy*. ...

Continued on next page...

A consistent reading of the term "the insured" in the context of the Employer's Liability exclusion yields a similar, reasonable result.[5] That exclusion provides, in pertinent part, as follows: "This insurance does not apply to 'bodily injury' … to: 1. An 'employee' of *the* insured arising out of and in the course of: a. Employment by *the* insured; or b. Performing duties related to the conduct of *the* insured's business; …." (RR1-00158) (emphasis added).

To determine the applicability of that exclusion in a suit brought against Insured A, the Umbrella Policy does not concern itself with whether Insured *B*, who was not sued, could be liable as the plaintiff's employer. Instead, the

---

Continued from previous page…

> Given the above discussion we conclude that coverage for [Insured A] is not defeated by the fact that the injury was expected or intended by [Insured B]. The exclusionary language in the policy is tied to the expectation of "the insured," which as to the suit against [Insured A], is [Insured A]. Since it was not alleged [in the underlying lawsuit] that [Insured A] intended to injure the minor children the exclusion in the policy does not apply.

Id. at 832-33 (emphasis added). Tellingly, the court observed that its conclusion was "further buttressed by the 'severability of insurance' clause in the policy which states '[t]his insurance applies separately to each insured'." *Id.* at 833 n.9.

[5] There is no justification in the policy language for looking to Insured *B* (*i.e.*, an insured under the policy that has *not* been sued) to determine the applicability of the Employer's Liability exclusion to Insured A (*i.e.*, an insured under the policy that has been sued), but not doing so in the context of applying the exclusions discussed above. The applicability of each of those exclusions is determined solely with reference to "*the* insured," not "*any* insured."

Umbrella Policy looks only to see whether Insured A, *i.e.*, *the* insured against whom the suit was filed, could be liable as the plaintiff's employer.[6]

Not only does the Umbrella Policy confirm the proper meaning of the term "the insured," it also confirms that any other definition is wrong. If the insurer, for example, had intended the Employer's Liability exclusion to preclude coverage for bodily injury claims asserted by employees of *the* insured against whom suit was brought, as well as to the employees of *any* other insured under the policy (including the employees of an insured against whom no suit is brought), it certainly knew how to say so.[7] But it did not do so.

Moreover, a reading of the exclusion which ignores the distinction between "the insured" and "any insured," or "an insured," would result in the exclusion applying to *any* bodily injury claim, brought against *any* insured by *any* employee of *any* insured. Such an expansive interpretation is impermissible under Pennsylvania law, which requires that exclusions or exceptions to coverage be construed narrowly. *See Pecorara,* 408 Pa. Super. at 156, 596 A.2d at 239.

---

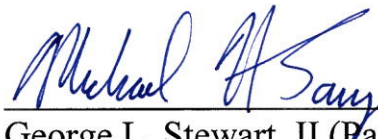
[6] As in *General Accident Insurance Company,* this conclusion is only buttressed by the Umbrella Policy's Separation of Insureds condition, which provides that the insurance applies "[s]eparately to each insured against whom claim is made or 'suit' is brought."

[7] Indeed, if the insurer had intended to preclude coverage under its policies for lawsuits or claims brought by the employee of "*any* insured," it needed only 14 words to do so: "This insurance does not apply to ... bodily injury to any employee of any insured."

CONCLUSION

Amici's reading of the Umbrella Policy is consistent with the policy language and Pennsylvania rules of insurance policy interpretation. When read in its entirety, the Umbrella Policy makes clear that "the insured" means "the insured against whom a claim is asserted or a suit is brought." As such, the Employer's Liability exclusion only applies to claims brought against an insured by its own employees, and not to claims brought against an insured by employees of a co-insured. Any contrary interpretation of the exclusion would violate the rules that a policy is to be read as a whole and that an exclusion is to be narrowly construed. *Amici* urge the Court to affirm the Superior Court's decision for the foregoing reasons.

Respectfully submitted,



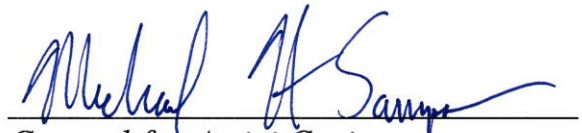
George L. Stewart, II (Pa. I.D. No. 56402)
Michael H. Sampson (Pa. I.D. No. 92574)
REED SMITH LLP (Firm I.D. No. 234)
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
(412) 288-3131
gstewart@reedsmith.com
msampson@reedsmith.com

Of counsel:

Douglas E. Cameron (Pa. I.D. No. 41644)
Douglas C. Allen (Pa. I.D. No. 309918)
REED SMITH LLP (Firm I.D. No. 234)
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
(412) 288-3131
dcameron@reedsmith.com
dallen@reedsmith.com

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief has a word count of 4,846 words based on the word count of Microsoft Word 2010, the word processing system used to prepare the brief. Thus, the brief complies with the word limit of Pennsylvania Rule of Appellate Procedure 2135.



Counsel for Amici Curiae
Koppers Holdings Inc., et al.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2014, I caused the two copies of the Brief of *Amici Curiae* Koppers Holdings Inc., *et al.*, in support of the Appellees to be served upon each of the following persons via United States first-class mail:

Robert W. Jozwik
Marshall Dennehey Warner
Coleman & Goggin
2000 Market Street, Suite 2300
Philadelphia, PA 19103

Christina L. Hausner
Russell, Krafft & Gruber, LLP
Hempfield Center, Suite 300
930 Red Rose Court
Lancaster, PA 17601

Neil E. Durkin
The Bauer Law Firm, P.C.
200 Four Falls Corporate Center
Suite 312
West Conshohocken, PA 19428

Counsel for Amici Curiae
Koppers Holdings Inc., et al.