Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

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Appellate Division Misapplied Rule as to Insured's Suicide

Green v. William Penn Life Ins. Co.
New York Court of Appeals
2009 NY Slip Op 03586
(May 5, 2009)

The New York Court of Appeals remanded a case pivoting on whether the named insured on a life insurance policy had committed suicide, which would thereby preclude his widow from collecting the policy's face amount, rather than the sum of premiums paid. In a non-jury trial, the Supreme Court held that Green had committed suicide; the Appellate Division reversed in the widow's favor, holding that "the evidence failed as a matter of law to overcome the presumption against suicide." On review, the New York Court of Appeals reiterated that the presumption in litigation involving life insurance policies is against suicide, based on strong policy considerations and natural probability. Nonetheless, the issue is one of fact and not of law; moreover, the presumption does not mandate that any case involving suspected suicide should be concluded against the possibility, so long as the fact-finder (often the jury, but here, the judge) could decide that suicide in the instant case was highly probable.

No Liability Coverage for Prevention of Future Damage to Adjoining Property

Castle Vill. Owners Corp. v. Gr. N.Y. Mut. Ins.
New York Appellate Division
2009 NY Slip Op 03625
(May 5, 2009)

Plaintiff in this declaratory judgment action was a cooperative corporation whose wall collapsed, causing debris to fall onto an adjacent sidewalk and roadway, blocking both the sidewalk and a portion of the Henry Hudson Parkway. The City of New York, pursuant to an emergency declaration, cleared the site and surrounding debris, and performed structural work. Thereafter, the City sought reimbursement from Plaintiff for the services performed. Additionally, the City advised that Plaintiff needed to repair the wall, so as to prevent the recurrence of similar incidents. Once its primary liability insurance coverage had been depleted, Plaintiff looked to its umbrella liability insurer to cover the remainder. The insurer responded that it would assume the defense of third-party claims for reimbursement but denied coverage for permanent wall restoration work, relying upon its policy exclusion of coverage for "property [Plaintiff] own[s], including any costs...incurred...for repair...of such property for any reason, including prevention of...damage to another's property." The Appellate Division found that the exclusion was applicable because an imminent, continuing danger to outside property no longer existed at the time the wall

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was being repaired, which would otherwise mandate the insurer to cover work on the insured's property despite the policy's language.

Equitable Estoppel Bars Defendants in a Legal Action from Invoking a Prior Arbitration Decision

Lopez v. Patel
New Jersey Appellate Division
Docket No. A-5262-07T3
(May 7, 2009)

Plaintiff, a passenger injured in an automobile accident who did not own a vehicle and did not have Personal Injury Protection (PIP) coverage, filed suit against both drivers in the accident and submitted an insurance claim to Clarendon, which insured the host vehicle. Clarendon denied Plaintiff's claim, alleging that that Plaintiff's injuries derived from a preexisting back condition. Plaintiff filed a demand for arbitration, in which the arbitrator ultimately found that the applicant failed to prove that the underlying accident proximately caused his medical condition. This decision arose on the initial trial date in the lawsuit; thereafter, trial dates were continuously adjourned nine times over nearly fourteen months. A few days before the final trial date, the defendants first mentioned the PIP arbitration decision, and moved to dismiss Plaintiff's complaint on the grounds of collateral estoppel.

The Appellate Division reversed the trial court's dismissal. Although precedent collaterally estops a plaintiff from re-litigating an issue previously determined by an arbitrator against said plaintiff, the defendants herein failed to timely raise the defense. In the interim, Plaintiff had taken additional discovery, deposing an expert witness and preparing four times for trial dates wherein he expected trial to actually take place, as well as traveling from his Georgia residence for trial and expending thousands of dollars in legal fees. Thus, Plaintiff's change of his own position in detrimental reliance on Defendants' implied waiver of collateral estoppel barred Defendants from subsequently raising the defense on the eve of actual trial.

Insurer Estopped from Enforcing Step-Down Clause after Claimant's Settlement with Tortfeasor

Boritz v. New Jersey Manufacturers Ins.
New Jersey Appellate Division
Docket No. A-4929-07T3
(April 27, 2009)

Plaintiff sustained injuries as a passenger in a vehicle insured by New Jersey Manufacturers ("NJM"). Geico, which insured the vehicle which rear-ended Plaintiff; indicated that NJM as the host vehicle's insurer was the primary carrier, but offered to settle Plaintiff's claim against its own insured for the underinsured motorist (UIM) policy limits, $15,000. Plaintiff through her attorney provided requisite *Longworth* notice to NJM of Geico's offer so as to obtain NJM's consent; said attorney had given prior notification that Plaintiff intended to look to NJM for additional compensation. After NJM consented and Plaintiff accordingly settled with the rear-ending driver, Plaintiff forwarded her policy declaration page, which indicated that her own policy limits were $25,000. NJM thereupon sought to limit its coverage to $25,000, pursuant to a step-down provision in its policy, which limits coverage for a party who is not a named insured on its policy but who is a named insured on a policy with similar, though lesser, coverage. Other than its consent to settle with Geico, NJM's prior communications with Plaintiff comprised document requests and a telephone confirmation of the amount of its coverage limits.

The Appellate Division held that Plaintiff could equitably estop Defendant from invoking the clause, otherwise enforceable, because Defendant had acknowledged its $100,000 policy limits without informing Plaintiff of its step-down clause. Plaintiff had justifiably relied upon Defendant's representation to her detriment in settling for the tortfeasor's UIM policy limits, thereby forfeiting her opportunity to settle for a greater amount. The injured party's *Longworth* notice provides an insurer the opportunity to weigh the options for its own recovery and to exercise its fiduciary obligation of good faith so as to advise the injured party of possible setoffs in its policy prior to the claimant's settlement with the tortfeasor.