Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

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Insurer Providing Liability Coverage to a Driver Who is Neither the Insured nor its Legal Representative Need Not Provide Him with Uninsured Motorist Coverage

Auto One Insurance Company v. American Millennium Insurance Company and Gurcan Ozcan
Superior Court of New Jersey, Appellate Division
Docket No. A-0496-07T1
(July 9, 2008)

Defendant Gurcan Ozcan sustained injuries while operating a Lincoln sedan as a taxi under a financial arrangement with Niak Kakar, the owner of the Lincoln and a non-party in this action. Ozcan filed suit for UM benefits against American Millennium, insurer for the Lincoln. After Ozcan's suit was dismissed with prejudice on summary judgment, he then sued for UM benefits against his own automobile insurer, Auto One. Auto One in turn sued both Ozcan and American Millennium, seeking to vacate dismissal of Ozcan's prior suit against American Millennium and to compel it to participate in Ozcan's UM arbitration on a pro rata basis.

Auto One's motion to vacate dismissal was denied and said insurer appealed under the rationale that because Ozcan was entitled to liability coverage under Kakar's American Millennium policy, Ozcan was also entitled to that policy's UM coverage. The Appellate Division affirmed the motion's denial; because Ozcan was not a "named driver" under American Millennium's liability policy, he was not insured under that policy. Moreover, N.J.S.A. 17:28-1.1a(2) specifically requires insurers who provide liability coverage as to auto-related personal injuries to additionally provide a minimum amount of UM coverage to "the insured or his legal representative." As Ozcan was not a named driver under the policy and therefore not an insured, he was not entitled to UM coverage under the terms of the American Millennium policy.

No Spoliation in Premises Liability Action Due to Time Delay and Absence of Notice

Fleming v. Macy's East Inc.
Superior Court of New Jersey, Appellate Division
Unpublished opinion
(July 30, 2008)

Plaintiff in a premises liability action appealed a summary judgment decision in Defendants' favor, arguing in part that Defendants were responsible for the spoliation of evidence in the form of surveillance tapes. The Appellate Division denied Plaintiff's motion, firstly holding that Plaintiff's proofs were insufficient. Moreover, the Court found that Defendants did not receive adequate notice that it should have preserved the tapes, rather than taping over them in accordance with their standard practice. The plaintiff did not make a request for such preservation of the tapes, and filed her claim nearly two years after the underlying incident. Thus, the Court upheld summary judgment.

No Recovery Under Insurance Law §3420 from an Insurance Company Which Insured Neither the Driver nor the Owner of the Adverse Vehicle

Perkins v. Allstate Ins. Co.
New York Appellate Division
2008 NY Slip Op 04332
(May 6, 2008)

Plaintiff, a New York resident, sustained injuries in an automobile accident in Maryland. The adverse vehicle was insured with Allstate pursuant to an insurance policy issued by the owner, a New York corporation, to non-party Lucy Carr, a Virginia resident. Plaintiff sued the operator and the corporate owner of the adverse vehicle and obtained a default judgment against both defendants upon their failure to appear. When the judgment remained unsatisfied for over 30 days, the plaintiff brought suit against Allstate, the insurance carrier, pursuant to Insurance Law §3420(a)(2), to recover the judgment. The lower court denied Allstate's motion for summary judgment but the Appellate Division reversed.

Allstate was not liable to Plaintiff for the following reasons: Lucy Carr was neither a defendant nor a judgment debtor in the previous action, and she did not operate the vehicle on the date of the accident. Moreover, the judgment determined that the owner and operator of the vehicle were not named insureds under the policy. Even though the policy did provide coverage for "non-owned automobiles," the only individuals covered under such terms were the named insureds, relatives who reside in the same household as the named insureds and "any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of [a named insured or residing relative]." In addition, Allstate's reputed failure to timely disclaim coverage did not bar the insurer from denying liability on the ground of absence of coverage. Finally, the Court indicated that Insurance Law 3420(d) does not apply to out-of-state accidents.

Employer is Fully Liable for Indemnification Where its Insurance Policies' Exclusions Apply

Pesta v. City of Johnstown
New York Appellate Division
2008 NY Slip Op 06328
(July 17, 2008)

Plaintiff, an employee of Peter Luizzi & Brothers Contracting, was working on a road-paving project which Luizzi had contracted to complete for the City of Johnstown. A dump truck owned by Luizzi and operated by a fellow employee struck the plaintiff, who sustained serious injuries. Plaintiff sued the City; the City in turn brought a third-party action against Luizzi for common-law indemnification and moved for summary judgment. Luizzi cross-moved for the reduction of indemnification to the amounts above the coverage available by Luizzi's various insurance policies. The lower court initially granted Luizzi's cross-motion but upon re-argument, granted the City's motion instead.

The Appellate Division affirmed the lower court's holding. As noted by the Appellate Court, Luizzi was insured by Harleysville Insurance Company under a commercial general liability policy, a commercial automobile policy, and a commercial liability umbrella policy. Pursuant to the contract with the City, Luizzi had also purchased from Harleysville an owners and contractors protective liability policy that named the City as the insured. The Court determined that although "an insurer has no right of subrogation against its own insured for a claim arising from the very risk for which the insured was covered," this "anti-subrogation rule" does not apply where a policy exclusion renders the policy inapplicable to the loss.

Here, the commercial general liability policy did not apply due to an exclusion therein as to "[b]odily injury...arising out of the ownership, maintenance [or] use...of any...'auto' owned or operated by...any insured." In response to Luizzi's assertion that the dump truck should fall under the covered term "mobile equipment," the court noted that such term as defined therein refers to "vehicles...maintained primarily to provide mobility to permanently mounted...[r]oad construction or resurfacing equipment such as graders, scrapers or rollers." By contrast, an "auto" as excluded from the policy was defined therein as a "land motor vehicle...designed for travel on public roads." As the dump truck was designed to travel on public roads and was not primarily intended to provide mobility to permanently mounted equipment, the truck was excluded from the policy.

The automobile policy was inapplicable because it contained an exclusion for injuries resulting from a co-employee's acts for which workers' compensation benefits were available. The Court also cited precedent in disregarding Luizzi's argument that the exclusion was void for violating public policy.

The remaining policies were also inapplicable. As both the liability and automobile policies were excluded, the umbrella policy did not apply either. Finally, the owners and contractors protective liability policy fell outside the anti-subrogation rule because the City, not Luizzi, was the insured under that policy. Because none of the other policies were effective in this case, the Court held that Luizzi was fully liable for indemnification.