URB INSIDER

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At The Supreme Court

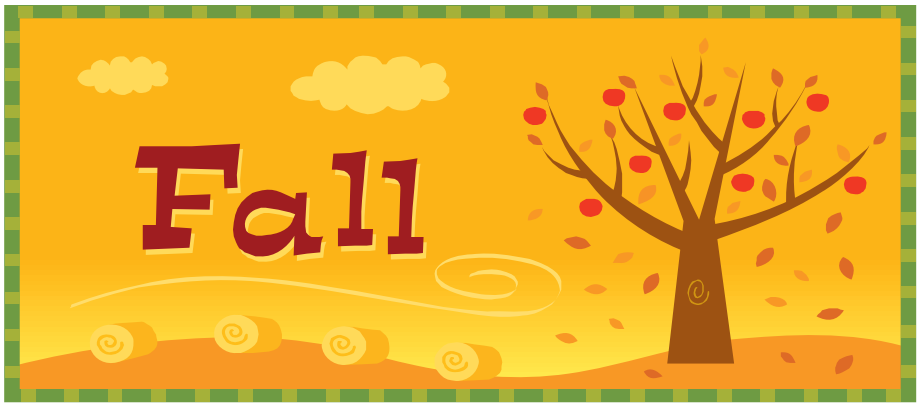
On October 5, 2009 the Supreme Court began its new term. Among the cases the Court is hearing during this term is one in which the Supreme Court is considering whether portions of a law making it a crime to provide material support or resources to designated terrorist groups are unconstitutional. This is an appeal from the Obama administration of an appeals court ruling that declared parts of the law unconstitutionally vague.

The Court calendar contains a case that could broaden Miranda rights. It will determine how far police can go in questioning suspects who police say understand Miranda rights but don't immediately invoke them. Van Chester Thompkins did not ask for a lawyer after being arrested for murder and being read his Miranda rights. He confessed and was convicted. But on appeal, he said his Miranda rights were violated. The 6th Circuit U.S. Court of Appeals in Cincinnati threw out his conviction saying that because he did not waive or assert his Miranda rights, the questioning should have stopped.

The High Court is deciding if strict local and state gun control laws violate the Second Amendment. The case under review is one that upheld a handgun ban in Chicago.

The Supreme Court is also hearing the appeal of former Enron Chief Executive Jeffrey Skilling.

The Court has declined to hear a case about the Florida Pledge of Allegiance Law, the death penalty in Louisiana, an oil royalties case, or a priest's appeal in a nun's killing, among others.♦



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Additional Insured Coverage Under Lease

The court was asked to determine whether a landlord is an additional insured under an insurance policy obtained by his tenant such that the insurer is obligated to defend and indemnify the landlord in an underlying personal injury lawsuit. Joseph Kassis (Kassis) leased property in Syracuse, New York to Kassis Superior Sign Co., Inc. (Superior Sign), and Superior Sign obtained a commercial general liability insurance policy on the property from The Ohio Casualty Insurance Company (Ohio Casualty). On February 25, 2004, Andrew Holden, a Superior Sign employee, slipped on an accumulation of snow and/or ice on the leased property and thereafter commenced the underlying action against Kassis. Ohio Casualty disclaimed on the ground that the policy, which names only Superior Sign, did not afford Kassis coverage. Kassis and Superior Sign commenced this action seeking a declaration that Ohio Casualty is obligated to defend and indemnify Kassis in the *Holden* action. Supreme Court granted plaintiffs' motion for summary judgment in part and declared that Ohio Casualty is obligated to provide a defense in the *Holden* action (2007 NY Slip Op 34414[U]). The Appellate Division reversed and found no obligation to defend or indemnify (51 AD3d 1366 [4th Dept 2008]). Plaintiffs have appealed as of right, pursuant to CPLR 5601(a). The Court of Appeals reversed the decision of the appellate court.

Under the lease, Superior Sign is obligated to pay for snow removal services and to "indemnify, defend, and hold harmless Landlord from any and all damages, costs, expenses, and liabilities for anything arising out of the occupancy of the Premises caused by Tenant or its agents and from any loss or damage arising out of the acts of Tenant or its agents or the failure of Tenant to comply with the terms and conditions" of the lease.

The lease further provides that Superior Sign, "at its sole cost and expense and for the mutual benefit of Landlord and Tenant, shall maintain a general liability policy . . . providing coverage against claims for bodily injury, personal injury and property damage" with specified aggregate and per occurrence coverage amounts.

Superior Sign obtained a commercial general liability insurance policy from Ohio Casualty. The policy provides bodily injury coverage where "the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement" and that contract or agreement falls within the definition of an "insured contract." The parties do not dispute that Superior Sign's lease is an "insured contract" as that term is defined in the insurance policy. Moreover, the policy's blanket additional insured provision extends coverage not simply to the named insured, i.e., Superior Sign, but also to "any person or organization whom [the named insured is] required to name as an additional insured on this policy under a written contract or agreement." " 'Additional insured' is a recognized term in insurance contracts," and "the well-understood meaning of the term is an entity enjoying the *same* protection as the named insured" (Pecker Iron Works of N.Y. v Traveler's Ins. Co., 99 NY2d 391, 393 [2003] [some internal quotation marks and citations omitted; emphasis added]). Notably, the insurance policy does not require Superior Sign to provide Ohio Casualty with notice of those persons or organizations Superior Sign is contractually required to name as an additional insured on the policy. Superior Sign is not required to complete and return to Ohio Casualty any notification forms listing those persons or organizations that it intended to name as additional insureds under the policy, nor does the policy require the submission of any additional insured certificates or the like.

Thus, in deciding the ultimate question—i.e., whether Kassis is an additional insured under the subject policy obligating Ohio Casualty to defend and indemnify him in connection with the underlying personal injury action—the court need only determine whether, under the lease, Superior Sign was required to ensure that Kassis received general liability insurance coverage equivalent to the coverage Superior Sign enjoyed.

Pursuant to the general liability insurance provision of the lease in question, Superior Sign was obligated to obtain coverage at specified monetary levels in the aggregate and per occurrence against "claims for bodily injury, personal injury and property damage" "at its sole cost and expense and for the mutual benefit of [Kassis] and [Superior Sign]." The natural and intended meaning of the term "mutual benefit" as used in this provision is that Kassis and Superior Sign are intended to enjoy the same level of coverage.

The intent and meaning of the term "mutual benefit" in the provision becomes clear when juxtaposed with the language of the other insurance provisions of the lease. The lease expressly contemplates that both Kassis and Superior Sign will enjoy fire insurance, and the lease further provides in an "Additional Insurance" provision that Superior Sign may obtain certain types of insurance coverage just for itself. With respect to fire insurance, Kassis, "at Tenant's sole cost and expense," is to "keep the Premises insured for the benefit of the parties against loss or damage by fire," and fire insurance "may be written either under separate policies in Landlord's name or combined with other coverages acquired by Tenant." As for the additional insurance provision, it specifies that Superior Sign, "at its sole cost and expense, may maintain insurance coverage for its benefit on Tenant's leasehold improvements and Tenant's personal property in such amounts as Tenant deems

Reviewed By New York's Court of Appeals

appropriate with Tenant assuming the risk of any co-insurance." The additional insurance provision also expressly permits Superior Sign to "effect for its own account any insurance not required by the provisions of this Lease, including business interruption insurance or insurance covering Tenant's equipment and personal property." Plainly, where a disparity in coverage as between insureds was contemplated—i.e., where the insurance to be procured was not for the insureds' "mutual benefit"—it was expressly noted.

It is therefore clear that Superior Sign was obligated under the lease to procure the same level of general liability insurance coverage for Kassis as it obtained for itself, and because of that, Kassis falls within the policy's additional insured provision. Because Kassis is considered an additional insured, Ohio Casualty is obligated to defend him in the underlying personal injury action and, if appropriate, indemnify him as an additional insured in accordance with the policy. The parties' remaining contentions are without merit. The Court of Appeals reversed the order of the Appellate Division, with costs, and reinstated the judgment of the Supreme Court.

This case, Kassis v Ohio Cas. Ins. Co., 2009 NY Slip Op 05207, was a unanimous decision by the Court of Appeals and the decision was written by Chief Judge Lippman. He looked at the other of the lease's insurance requirements to determine what the "for the mutual benefit" language in the policy means. There was such mutual benefit language in the lease that expressly contemplated that the same level of general liability insurance coverage was required for Kassis that Superior Sign obtained for itself. In making this decision The Court of Appeals agreed with Kassis mutual benefit argument. Kassis argued that the language of the lease satisfied the blanket additional insured provisions in the policy. These provisions required the insurance company to extend coverage to any person or organization that the named insured was required to name as an additional insured, when the requirement was contained in a written agreement. The blanket additional insured provisions contained in this policy are not found in all policies. ♦

Earlier Asbestos Settlement Carries No Impact

PA Case

The Pennsylvania Supreme Court issued a decision in a consolidated personal injury action to determine whether a prior recovery of damages for increased risk and fear of developing cancer due to asbestos exposure, awarded under the "one disease" rule, precludes a plaintiff from recovering, from a party he has not previously sued, damages for cancer that developed and was diagnosed after the separate disease rule, also referred to as the "two disease" rule, was adopted in Marinari v Asbestos Corp., Ltd., 612 A.2d 1021 (Pa. Super. 1992) (en banc).

The court concluded that such a prior recovery does not preclude a subsequent recovery, from a new defendant, of damages for the actual development of asbestos-related lung cancer. Accordingly, the court reversed the order of the en banc panel of the Superior Court affirming the trial court's grant of the motion for summary judgment filed by John Crane, Inc., and the court remanded the matter for further proceedings.

Kenneth Abrams was diagnosed with non-malignant asbestos related disease in April, 1984, and John Shaw was similarly diagnosed in January, 1985. Within two years, both filed complaints against various defendants seeking damages for increased risk or fear of cancer but Crane was not a named defendant. The claims for damages due to increased risk of cancer were ultimately settled in 1993.

In December, 2002 both Abrams and Shaw were diagnosed with cancer, after which separate lawsuits were filed against companies, including Crane, alleging that the cause of the cancer was occupational exposure to asbestos containing products. In 2005, Crane filed a motion for summary judgment raising the statute of limitations and contending they should have been included in the original suit.

This appeal is related to Crane's involvement. Crane argued that Abrams and Shaw through their estates should be prevented from seeking damages against Crane 20 years later. The Supreme Court rejected the argument.

The Supreme Court agreed with the "two-disease" rule for asbestos-related claims which meant the earlier settlement for the non-malignant lung disease did not create a statute of limitations on later claims for actually developing lung cancer. Abrams v Pneumo Abex Corp., 981 A.2d 198. ♦

School District Entitled To Coverage

Plaintiffs initiated this action seeking a declaration that defendant had a duty to defend and indemnify plaintiff Stillwater Central School District in an underlying action. The original action arose out of a spectator's fall from school district bleachers on a football field. Stillwater Battle, a youth football team which is a member of the Northeast Youth Football League (hereinafter NYFL), applied to use the school district's football field. The school district granted Battle's request contingent upon proof of insurance. Battle provided the school district with a certificate of insurance listing defendant as the insurer and the school district as an additional insured for one year. At a later date, Mechanicville Junior Red Raiders, another team in the NYFL, requested to use the field. The school district granted the Junior Red Raiders' request contingent upon proof of insurance. The Junior Red Raiders' coach responded that the school district should already have a certificate of insurance from defendant, and the school district agreed. The injured spectator attributed her fall at a Junior Red Raiders game to the negligence of the school district, and commenced a suit against it to recover for her injuries.

Relying on the certificate of insurance, the school district issued a letter, through its insurance carrier, demanding that defendant defend and indemnify the school district. Defendant's failure to defend or issue a written disclaimer or denial of coverage led the school district to implead the NYFL in the underlying action. Subsequently, the NYFL and the school district settled directly with the spectator. Thereafter, plaintiffs brought this action and moved for summary judgment on the ground that defendant was contractually obligated to defend and indemnify the school district in the underlying action. Defendant cross-moved for summary judgment seeking a declaration that it had no such duty. Supreme Court granted plaintiffs' motion and denied the cross motion. Defendant now appeals.

Defendant contends that Battle's application to the school district limits NYFL's insurance coverage to the individual team listed on the application. As "[t]he party claiming insurance coverage," the school district has the burden of proving entitlement to the coverage (National Abatement Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa., 33 AD 3d 570 [2006]; see Consolidated Edison Co. of N.Y. v Allstate Ins. Co., 98 NY2d 208, 218, 220 [2002]). The insurance policy issued by defendant names as insureds the "association and its member teams, [and] leagues." The NYFL is a league within a larger group known as the National Recreation and Park Association, which is the association referenced in the policy. The team playing that day was a member of the NYFL, as was the team listed on the original application. Neither the policy nor the certificate of insurance specifically lists or excludes any particular team. Any ambiguity as to which team or teams the certificate of insurance covers must be resolved in favor of the insured and against the insurer Ins. Natl. Guaranty v Assoc. Westview, 95 NY2d 334, 340 [2000]; Matter of Progressive Ins. Cos. [Nemitz], 39 AD 3d 1121, 1122 [2007]). Therefore, the ambiguity in coverage of NYFL teams is construed in favor of plaintiffs to include the teams playing on the day of the underlying incident.

An endorsement within the policy issued by defendant satisfies the school district's burden of proving its entitlement to coverage. The endorsement modifies the policy "to include as an additional insured any person or organization . . . [who is or are] 1. Owners and/or lessors of the premises leased, rented, or loaned to [the NYFL]," subject to certain exclusions. The school district owns the football field and bleachers that were loaned to a youth football team that was a member of the NYFL. Therefore, according to this endorsement, the school district is an additional insured under the NYFL policy.

An exclusion within the aforementioned endorsement states that "[t]his insurance does not apply to any design defect or structural maintenance of the premises by or on behalf of the owner and/or lessor." The next sentence states that "this insurance does not apply to the sole negligence of such 'Additional Insured.'" The injured spectator alleged that her injuries were attributable solely to the school district's negligent design defects and structural maintenance. These allegations trigger the above exclusions, but do not preclude the school district from coverage under the circumstances. Because the school district is an additional insured, in order for the design defect or sole negligence exclusions to preclude coverage the insurer was required to send written notice to plaintiffs, within a reasonable time, disclaiming coverage due to those exceptions (*see* Insurance Law § 3420 [d]; Markevics v Liberty Mut. Ins. Co., 97 NY2d 646, 649 [2001]; Matter of Worcester Ins. Co. v Bettenhauser, 95 NY2d 185, 190 [2000]). Defendant orally disclaimed coverage by phone to plaintiffs' counsel, without specifically mentioning the grounds. Without a written disclaimer referencing the specific reasons for the denial, defendant waived any reliance on the policy exclusions it now raises.

Likewise, by failing to send a disclaimer citing the timeliness of plaintiffs' notices, defendant waived its right to a defense based on the allegedly late notices (*see* Insurance Law § 3420 [d]; One Beacon Ins. v Travelers Prop. Cas. Co. of Am., 51 AD3d 1198, 1200 [2008]; Hermitage Ins. Co. v Arm-ing, Inc., 46 AD 3d 620, 621 [2007]). Defendant's remaining arguments were reviewed and found to be unavailing. Stillwater Cent. School Dist. v Great Am E & S Ins. Co., 2009 NY Slip Op 07707. ♦

Bronx Supreme Enforces Exclusions

The plaintiff, 720-730 Fort Washington Avenue Owners Corp. seeks an order and judgment declaring that defendant Utica First and Rauman must indemnify Fort Washington and defend it in a companion action. Defendant Utica First Insurance Company moves for dismissal of the plaintiff's complaint and all cross-claims brought against it, and a declaration that it has no duty to either defend or indemnify the plaintiff in the underlying personal injury action. In the related tort action, the parties are the plaintiff, Marcos Giovanny Castello who is an employee of Rauman Construction Company, the defendant and third party plaintiff, Fort Washington and the third party defendant, Rauman Construction Company, the subcontractor and plaintiff Castellon's employer.

On May 15, 2006 Fort Washington entered into a contract with DNA Contracting to perform renovation work at its premises and DNA had a subcontract with Rauman to perform masonry and roof work. The contract between DNA and Rauman required that Rauman purchase general commercial liability coverage and name DNA and Fort Washington as additional named insureds. Rauman purchased insurance from Utica which named those entities as additional insureds, but the policy contained three exclusions that are at issue in this case. The exclusions are the "employee" exclusion, an exclusion for roofing work and an exclusion for liabilities assumed under contract or agreement.

The "employee exclusion" reads as follows: This insurance does not apply to: (i) bodily injury to any employee of any insured, to any contractor hired or retained by or for any insured *or to any employee of such contractor*, if such claim for bodily injury arises out of and in the course of his/her employment or retention of such contractor by or for any insured, for which any insured may, *liable in any capacity; (ii) any obligation of any insured to indemnify or contribute with another because of damage arising out of the bodily injury; or (iii) bodily injury sustained by the spouse, child, parent, brother or sister of an employee of any insured, or of a contractor, or of an employee of a contractor of any insured as a consequence of the bodily injury to such employee, contractor or employee of such contractor, arising out of and in the course of such employment or retention by or for any insured.

The "roofing work" exclusion reads as follows: It is hereby understood and agreed that such insurance as is afforded by coverage L-bodily injury, property damage coverage and coverage N-products/completed work coverage does not apply to bodily injury, property damage, products or completed work *arising out of any roofing operations, which involve any replacement roof or recovering of the existing roof.*

The exclusion for liabilities assumed under contract or agreement reads as follows: 1. "We" do not pay for "bodily injury", "property damage", "personal injury", or "advertising injury" liability which *is assumed by the "insured" under a contract or an agreement.* This exclusion does not apply to: a. Liability that an "insured" would have had in the absence of the contract or agreement; or b. "Bodily injury or property damage" covered under the contractual liability coverage, provided that the "bodily injury" or "property damage" occurs after the effective date of the contract or agreement.

On March 30, 2007 Castellon commenced a lawsuit against Fort Washington alleging violations of Sections 200, 240 and 241 of the Labor Law and common law negligence.

Utica First received notice of the plaintiff's accident on April 24, 2007 and on June 1, 2007 received a tender of defense and request for indemnity from Fort Washington's counsel. Utica First declined the tender based on the three exclusions.

Fort Washington does not argue the inapplicability of the exclusions but instead argues, among other things, that the insurance policy is illusory and should be held to be against public policy since it does not provide any of the insureds with the usual construction site coverage required under its agreement with DNA and Rauman. In relevant part, Fort Washington argues that Utica must defend under the policy even if it need not indemnify.

The court discusses the duty to defend and the duty to indemnify and the public policy reasons for labor law violations and then turns to addressing the public policy of insurance and contract law. In its discussion, the court notes that no claim has been made by Fort Washington that the three exclusions at issue were vague, ambiguous or inapplicable and the sole issue submitted is whether those three exclusions are violative of public policy, and whether, despite the language of those exclusions, Fort Washington might still be entitled to provide* a defense. The court further goes on to say in pertinent part, "However, the issuance by Utica First of this inadequate insurance policy violated no regulation or statutorily declared public policy regarding the contents of an insurance policy...". Although seen as indirectly an impediment to the achievement of the remedial reforms enacted, the court did not see the issuance of the policy as directly violative of the core objective and declared public policy of the Labor Law to protect construction workers by providing them with additional responsible entities and persons.

The court points out it is constrained by the decision in Slayko v Security Mutual Ins. Co., 98 NY2d 289 (2002) and found no obligation for Utica First to honor any defense or indemnity obligation. 720-730 Fort Wash. Ave. Owners Corp. v Utica First Ins. Co., 2009 NY Slip Op 29443. ♦

*Editor's Note- Wording used as presented in the case.

From The Department

Failure To Comply Not Enough

The Office of General Counsel issued opinion 09-09-02 on September 10, 2009 regarding the question of whether an insured's failure to comply with an insurer's recommendations, in of itself, is a valid basis for canceling a new or renewed commercial lines insurance policy under N.Y. Ins. Law § 3426(c)(1)(D) (McKinney 2007). The answer is No, according to the opinion, which is reprinted in part below.

An inquirer reported that several insurers have canceled their insureds' commercial lines insurance policies due to non-compliance with recommendations, which they claim is a proper basis for cancellation under Insurance Law § 3426(c)(1)(D). The inquirer disagrees with these assertions, contending that a renewed commercial lines insurance policy may not be canceled on such basis, because "[f]rom a practical standpoint, loss control visit[s] must be secured before [the] renewal date and if recommendations are not properly addressed, appropriate non-renewal notice must be tendered." The inquirer also questioned whether a new commercial lines insurance policy may be canceled based on non-compliance with an insurer's recommendations under Insurance Law § 3426(c)(1)(D).

Insurance Law § 3426, which applies to most property/casualty commercial lines insurance, is relevant to the inquiry. That statute sets forth, among other things, the minimum cancellation provisions applicable to such policies.

Pursuant to Insurance Law § 3426(b), an insurer may cancel a new commercial lines insurance policy during the first sixty days the policy is in effect for any reason not prohibited by law. Insurance Law § 3426(b) reads as follows: (b) During the first sixty days a covered policy is initially in effect, except for the bases for cancellation set forth in paragraph one, two or three of subsection (c) of this section, no cancellation shall become effective until twenty days after written notice is mailed or delivered to the first-named insured at the mailing address shown in the policy and to such insured's authorized agent or broker. Insurance Law § 3426(b) provides a "free look" period of sixty days, during which time an insurer may complete its review of the risk, and determine whether the risk meets its underwriting standards. The Insurance Department explained the rationale behind this "free look" period in its November, 1989 issue of "The Bulletin," as follows: Regarding mid-term cancellation, while [Insurance Law] § 3426 clearly gives insurers the authority to cancel policies, the circumstances under which they may do so are limited. And, in order to provide for the legitimate underwriting needs of the insurers, the statute introduced to commercial lines insurance cancellation rules a concept that had been used in personal lines cancellation for many years – the sixty-day "free look."

Property/casualty insurance is not purchased with the same time and deliberation that might be attendant to the obtaining of, say, a mortgage. Whereas a bank might have weeks or months to thoroughly investigate the mortgage applicant, inspect the property, verify assets, etc., an insurance policy might need to be procured in days or hours. Accordingly, insurers usually have to base their underwriting decisions upon whatever information is available at the time of application, no matter how incomplete or unverified.

The absence of the opportunity to conduct such a review would have serious repercussions regarding the ready availability of commercial property/casualty insurance products. Without the knowledge that they have an appropriate time period to reflect on their underwriting decisions, and correct any major errors which may have been made, insurers would be much less willing to quickly offer coverage unless complete and verified information was in their possession before coverage took effect.

Accordingly, an insurer initially has sixty days in which to review a new risk that it has accepted, and to cancel coverage if the risk is incompatible with its underwriting standards. After the sixty-day "free look" period has expired, however, an insurer may not cancel coverage during the policy term or any renewal thereof unless cancellation is based on one of the criteria specified in Insurance Law § 3426(c). The specific criteria that are relevant to this inquiry are set forth in Insurance Law § 3426(c)(1)(D), which reads as follows: By enacting [Insurance Law] § 3426(c) the Legislature sought to encourage insurers to thoroughly evaluate the risk and underwrite carefully with the understanding that after the first sixty days they would be on the risk for the remainder of the policy period unless one of the statutorily enumerated reasons for cancellation applied. This section is intended to guarantee reasonable protection against unwarranted cancellation while at the same time permitting insurers the flexibility to operate responsibly.

The [Insurance Law] § 3426(c)(1)(D) requirement that the act substantially and materially increase the hazard insured against embodies the legislative purpose that an insurer be permitted to cancel a policy only when there has been a major change in the scale of the risk subsequent to policy issuance. The conjunctive substantially and materially was used to underscore the stringent criteria that must be met before the subparagraph may be invoked.

The inquirer reported that several insurers have canceled their insureds' commercial lines insurance policies due to non-compliance with recommendations, which the inquirer states they claim is a proper basis for cancellation under Insurance Law § 3426(c)(1)(D).

However, Insurance Law § 3426(c)(1)(D) only applies when there is a substantial and material increase in the risk after the policy has been issued, but that is not the situation when the policy is nonetheless renewed and the insured fails to comply with the insurer's recommendations. In the latter instance, the insurer has inspected, and knows the condition of, the risk when it makes its recommendations prior to the renewal date; the risk itself has not been altered after policy issuance. Failure to comply with an insurer's recommendations thus is not a permissible basis for canceling a policy under Insurance Law § 3426(c)(1)(D).

For further information you may contact Associate Attorney Sally Geisel at the New York City Office. ♦

NY State Legislature Passes Anti Subrogation Bill

The New York State Assembly and the New York State Senate have passed a six-part bill on November 10, 2009 that contains provisions in Part F being referred to as New York's new Anti-Subrogation Law.

As described in the text of the bill, it is:

AN ACT to amend the insurance law, in relation to municipal cooperative health benefit plans, a study of community rating and the provision of claims experience to a municipality (Part A); to amend the general municipal law and the highway law, in relation to mutual aid (Part B); to amend the public health law, in relation to the composition of county and part-county boards of health (Part C); to amend the general municipal law, in relation to purchasing requirements (Part D); to amend the public authorities law and the local finance law, in relation to authorizing certain bonds to be issued or purchased by the municipal bond bank agency (Part E); and to amend the civil practice law and rules, in relation to treating public and private defendants equally when considering the impact of collateral source payments in tort claims for personal injury, property damage or wrongful death; to amend the general obligations law, in relation to protecting parties to the settlement of a tort claim from certain unwarranted lien, reimbursement and subrogation claims; and to repeal certain provisions of the civil practice law and rules relating to collateral source payments (Part F).

The entire text of the bill is available at this website address:

http://
assembly.state.ny.us/leg/?bn=S66002&sh=t

Part F will affect how tort claims are handled going forward. The Governor signed the bill on November 12, 2009. This bill is relevant to the property casualty industry. Part F has a total of nine sections.

- § 1. Subdivisions (a) and (b) of Section 4545 of the Civil Practice Law and Rules are repealed.
- § 2. Subdivision (c) of Section 4545 of the Civil Practice Law and Rules are amended and relettered to be subdivision (a) of CPLR § 4545.
- § 3. Subdivision (d) of Section 4545 of the Civil Practice Law and rules is relettered subdivision (b).
- § 4. Subdivision (e) of rule 4111 of the Civil Practice Law and Rules is repealed.
- § 5. Subdivision (f) of rule 4111 of the Civil Practice Law and rules, as amended by chapter 100 of the laws of 1994, is amended and relettered to be subdivision (e).
- § 6. Subdivision (b) of section 4213 of the Civil Practice Law and rules, as separately amended by chapters 485 and 682 of the laws of 1986 is amended.
- § 7. Section 5-101 of the General Obligations Law is amended by adding new subdivision 4.
- § 8. The general obligations law is amended by adding a new section 5-335.
- § 9. This section provides information about the effective date of the amendments and of the new statutes.

Part F includes changes to the collateral source rule and will bar claims unless they are authorized by statute. It will preclude a benefit provider from seeking reimbursement or subrogation against a defendant who is settling for those benefits paid to plaintiff, unless that right to reimbursement or subrogation is statutory. The term "benefit provider" is broadly defined. In areas relevant to property casualty insurers, examples include that Workers' Compensation and No Fault authorize a Workers' Compensation or No Fault insurer to recover benefits paid when the plaintiff later obtains payment from a defendant in a tort action. APIP is exempted from the anti-subrogation rule set forth in the legislation.

The implications of this legislation will not be completely known until it is tested. ♦

URB Update

- The UMB-62 Ed. 10/09 Additional Umbrella Exclusion was approved for use and has been released. This form is for use with the umbrella program. The endorsement will exclude from the umbrella what is excluded in the underlying policy or policies.
- The UMB-80 Ed. 8/09 Additional Insured Endorsement was approved for use and has been released. The form is for use with the umbrella program. The endorsement will add an additional insured on to the umbrella policy.

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Other States Case Briefs

Louisiana

- A district court judge in New Orleans recently awarded seven plaintiffs $720,000 after he ruled that the Army Corps of Engineers failed to properly maintain a navigation channel which led to massive flooding from Hurricane Katrina. This ruling could have further implications relative to flooding from Katrina.

Delaware

- Recently a Delaware Superior Court ruled that a severely injured motorcyclist was entitled to $15,000 in uninsured/underinsured motors coverage as a result of a suit he brought against Progressive Insurance Co. The policyholder argued he was led to believe that his UM coverage would pay up to $100,000 in the event of an accident. His bills were over $100,000 and he had exhausted the other driver's limits. The judge upheld parts of both parties motions and found that although the policyholder rejected the $100,000 coverage, Progressive's policy documents would mislead a reasonable person into believing the policy included a statutory minimum amount of UM coverage of $15,000 per person.

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