Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

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CONTENTS

No Business Policy Coverage for Driver Transporting Purchased Goods from Business Without Hire

Richmond Farms Dairy v. Nat'l Grange Mut.
New York Appellate Division
2009 NY Slip Op 02186
(March 20, 2009)

Issues as to three insurers' liability of coverage emerged from a collision between a motorcycle carrying two persons and a vehicle towing a hay wagon owned by a third party. Lorraine Richardson had purchased hay from Richmond Farms, owner of the wagon, and was returning the empty wagon to same at the time of the accident. Richmond Farms had a business automobile insurance policy with National Grange Mutual Insurance Company, and a farm umbrella policy with Cherry Valley Cooperative Insurance Company. John Richmond, owner of Richmond Farms, had a personal automobile insurance policy with National Grange.

National Grange's business policy provided coverage for "nonowned autos," therein defined as vehicles that the company does "not own, lease, hire, rent or borrow that are used in connection with [the company's] business." The provision for covered "autos" also included "[m]obile equipment while being carried or towed by a covered auto." The Appellate Division on review read these clauses in tandem, determining that the hay wagon would thus be covered only in the event that it was being towed by a covered "auto." Here, Richardson's vehicle was not covered as she was transporting purchased goods home without any benefit to the Richmonds; the Richmonds sold but did not transport hay as part of their business, and did not charge Richardson a fee for using the wagon. Lastly, the personal automobile insurance policy does not apply because the wagon belonged to Richmond Farms, and not to the policyholder, John Richmond. By extension, the umbrella policy is inapplicable because Richardson had no coverage under any of the underlying policies.

The "Reckless Disregard" Standard of VTL §1103 Does Not Apply to Operation of Equipment Between Work Sites

Hofmann v. Town of Ashford
New York Appellate Division
2009 NY Slip Op 02442
(March 27, 2009)

Plaintiff and her insurer brought suit for injuries sustained when the Town's employee collided the snowplow he was operating with Plaintiff's vehicle. The Appellate Division determined on motion for summary judgment that the ordinary standard of negligence applied here, rather than the "reckless disregard" standard of Vehicle and Traffic Laws §1103. Said statute requires "persons, teams, motor vehicles, and

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other equipment while actually engaged in work on a highway...to proceed at all times during all phases of such work with due regard for the safety of all persons." Moreover, "the foregoing provisions [do not] protect such persons or teams or such operators of motor vehicles or other equipment from the consequences of their reckless disregard for the safety of others." At the time of the collision, the operator of the snowplow was traveling from one part of his route to another by way of a road that he was not responsible for plowing. Thus, the ordinary negligence standard of care applies here, with a lesser burden of proof for Plaintiffs.

No Cause of Action Against Employer for Allegedly Overworking Drunk Driver

Riley v. Keenan
New Jersey Appellate Division
Docket No. A-6054-06T3
(April 2, 2009)

Plaintiffs filed suit against John Keenan, a driver who injured them in an automobile collision while he was intoxicated. Additionally, Plaintiffs sued Keenan's employer on the theory that Keenan suffered sleep deprivation as a result of his work schedule, thereby causing the accident. Keenan, a truck driver for ten hours a day optionally performed mechanical work in violation of federal daily off-duty requirements. Within the month before the accident, he worked approximately 120 to 130 hours a week, although within the week of said accident, he was only driving, and did so within the maximum range of ten hours a day. The Appellate Division reaffirmed that no New Jersey precedent recognizes the cause of action against the employer under such a theory, and cited out-of-state case law requiring the presence of factors absent herein: employee's appearance of incapacitation prior to leaving the company's premises; prior complaints and/or automobile accidents due to sleep-deprived employees' late work shifts; whether the deprivation was a direct result of the employment or of activity wholly within the employee's control; and time lengths between work shifts.

Claimant's Injury Does Not Fall Under Automobile Insurance Coverage Where the Breach of Duty is Unrelated to the Maintenance of a Motor Vehicle

Penn National Ins. v. Costa
New Jersey Supreme Court
Docket No. A-36-08
(March 25, 2009)

This decision by the New Jersey Supreme Court revisits the matter previously decided by the Appellate Division (400 N.J. Super. 147 (2008)), as digested in our May, 2008 issue (Vol. 6, No. 10, pp. 1-2). As stated in the previous issue, Frank Costa was replacing a flat tire on his pickup truck parked in his residential driveway, located next door to his truck repair business. Ernest Arians, a mechanic employed by that business, offered Costa assistance, which Costa declined. Arians then slipped on ice and fell forward, hitting his head on the top of the post of the bumper jack positioned behind the truck, and sustained serious injuries. At the time of the incident, Costa had both a commercial automobile policy and a homeowner's policy.

In contradiction to the Appellate Division's findings, the Supreme Court held that the homeowner's insurance company, rather than the automobile insurer, should provide coverage under these circumstances. Here, the policies were mutually exclusive, in that the automobile policy provided coverage for any "loss resulting from...bodily injury...sustained by any person arising out of the...maintenance...of a motor vehicle," whereas the homeowner's policy specifically excluded same from its coverage. As the eventual injury on a bumper jack actually arose out of Costa's negligent failure to clear the driveway of snow and ice, it did not bear the requisite "substantial nexus" with Costa's maintenance of his truck. In so holding, the Court cited Wakefern Food Corp. v. Gen. Accident Group (188 N.J. Super. 77, 87 (App.Div. 1983)), allegedly misapplied by the lower court, which indicates that when "an accident...is occasioned by negligent maintenance of the premises and the only connection to that event is the fact that the motor vehicle…[is] present...no realistic social or public policy is served by straining to shift coverage."