New York Insurance Coverage Law Update

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Top Court Rules In Favor Of Insurer On Calculation Of Attorneys' Fees And Interest In No-Fault Case

After an insurer denied no-fault insurance benefit claims assigned to two medical providers that had treated various automobile accident victims, the providers sued the insurer, alleging that it had failed to pay or deny multiple bills within the requisite 30 days. The trial court granted summary judgment to the provider, and awarded attorneys' fees and interest. It calculated the attorneys' fees on each bill submitted for each insured, rather than on a per insured basis as provided by an Insurance Department regulation. Moreover, the trial court awarded interest at the statutory rate of 2% per month without applying the Insurance Department's regulation providing for the suspension of interest 30 days after denial of payment until plaintiffs commence an action seeking payment.

The New York Court of Appeals reversed. It first ordered the trial court to calculate attorneys' fees based upon the aggregate of all bills for each insured. It then found that interest on claims was tolled regardless of whether a particular denial was timely, as an Insurance Department regulation provides. [*LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 2009 NY Slip Op. 02481 (Ct. App. Apr. 2, 2009).]

CGL Policy Found To Be Void Based Upon Misrepresentations In Insurance Application

When the insured applied for a commercial general liability insurance policy, it listed the nature of its business as "PAINTING-100%-100% INTERIOR." The Declarations page of the policy described the insured's business as a painting contractor, and the Extension of Declarations included the description, "PAINTING INTERIOR BUILDINGS-NO TANKS." Thereafter, the insured made a claim under the policy for injuries that allegedly occurred during the construction of a three family building, where it was the general contractor for work involving excavation and paving. The insurer disclaimed coverage.

The Appellate Division, First Department found that the insurer had demonstrated that it did not write policies for such construction work or for general contractors, and ruled that it was entitled to judgment declaring the policy *void ab initio* based upon material misrepresentations in the insurance application. It added that the insured was entitled to a refund of its premium payments. [*Kiss Constr. NY, Inc. v. Rutgers Cas. Ins. Co.*, 2009 NY Slip Op. 02540 (1st Dep't Apr. 2, 2009).]

Son's Vehicle Was Not A "Covered Vehicle" Where He Was A Licensed Operator On Policy

When Matthew Graber was involved in a motor vehicle accident, his vehicle was insured under a policy issued by United Services Automobile Association, and he also was listed as a "licensed operator" on a policy issued to his mother and step-father by Prudential Financial, Inc. The Declarations page of the Prudential policy listed two covered vehicles for which premiums had been paid, but did not list Graber's vehicle. The Appellate Division, Fourth Department, found that Graber's vehicle was "not a covered vehicle under the clear and unambiguous terms of the Prudential policy." The appellate court also determined that the appearance of Graber's name on the Prudential policy did not provide Graber with coverage for this accident, concluding that such an interpretation of the policy would create "an added source of indemnification [that] had never been contracted for and for which no premium had ever been paid." [*Lm Prop. & Cas. Co., Inc. v. Evans*, 2009 NY Slip Op 03311 (4th Dep't Apr. 24, 2009).]

Insured's 9-Month Delay In Notice To Insurer Dooms SUM Claim; Appellate Court Finds That Insurer Did Not Have To Demonstrate Prejudice

The insured allegedly was injured on December 23, 2005, when she was forced to jump out of the way of a car. The insured apparently made no attempt to contact either her insurance carrier or the driver's insurance carrier before she contacted an attorney in September 2006. On October 3, 2006, the insured gave her insurer notice of a potential supplemental underinsured/uninsured motorist claim. The insurer subsequently disclaimed coverage on the ground that the insured had failed to give notice of her claim "as soon as practicable."

The insured then served the insurer with a request for arbitration, and the insurer filed an action to stay. The Orange County Supreme Court rejected the insurer's request for a stay, and the insurer appealed.

The Appellate Division, Second Department, reversed, finding that the insured had failed to establish that she had exercised any diligence in attempting to ascertain the insurance status of the driver's vehicle from the date of the accident until she contacted an attorney. The appellate court ruled that the insured's notice was untimely and the arbitration should have been permanently stayed. The appellate court specifically observed that her insurer "was not required to demonstrate prejudice" under the circumstances of this case. [*Matter of Travelers Ins. Co. v. Cohen*, 2009 NY Slip Op. 03005 (2d Dep't Apr. 14, 2009).]

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This publication is purely informational and not intended to serve as legal advice. Your feedback is welcomed.

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Naturally, the particular facts and circumstances of each claim will determine the impact of the cases discussed in this Update.