Alert

May 30, 2024

COZEN O'CONNOR

Claims Notes: May 2024

ILLINOIS

Construction Defect: "Increased Potential" for Resultant Damages are Economic Damages Not Covered by CGL Policy

The steel contractor named the general contractor an additional insured on its CGL policy. The steel contractor's welds were defective. The general contractor retrofitted the named insured's defective columns before they could damage other parts of the system (i.e. before any resultant damages occurred). The subcontractor's CGL insurers refused to defend or indemnify the general contractor, and it sued for coverage. The Seventh Circuit Court of Appeals ruled that the steel contractor's CGL insurers had no duty to defend or indemnify the general contractor. Preventive measures such as removing, replacing, or retrofitting the named insured's work are economic losses not recoverable under a CGL policy. Decision.

TEXAS

CGL Policy's Motorized Vehicle Exclusion Precluded Coverage for Drag Race Crash

The insured purchased CGL coverage for an amateur drag race. The policy included an "Absolute Exclusion – Motorized Vehicles" (MV Endorsement) that excluded coverage for bodily injury arising out of the operation or use of motorized vehicles. A racer careened off the raceway, causing bodily injury to spectators. The trial court concluded the policy was ambiguous and found a duty to defend because several endorsements stated: "All other terms and conditions of the policy remain unchanged." On appeal, the Fifth Circuit Court of Appeals ruled that the insurer had no duty to defend based on the MV Endorsement. It reasoned that by reading the policy as a whole and giving effect to all its terms, the CGL policy did not cover bodily injury from motor vehicles. Cozen O'Connor obtained this favorable decision for its client. Decision.

WYOMING

First-Party Property: Insurer Beats Bad Faith Claim Where Photos Clearly Support Insurer's Denial

The building's roof sank after heavy snow. The property insurer retained an engineer who concluded that the damage resulted from inadequate design or construction. If any part of the building remained standing, it was not a collapse as defined by the policy. The insurer disclaimed coverage based on an exclusion for damage caused by hidden or latent defects or "any quality in property that causes it to damage or destroy itself." After the insurer denied coverage, the insured sued for breach of contract and bad faith. While the insured contended that the building collapsed, photos showed the building still standing. Because the insurer correctly relied on its expert's opinions to deny coverage, it did not act in bad faith. Decision.

NEW JERSEY

Operators of Low-Speed Electric Scooters Not Entitled to PIP Benefits

New Jersey Supreme Court affirms that PIP does not cover operators of low-speed electric scooters (LSES). The court determined that an LSES rider does not fall within the definition of pedestrian for purposes of New Jersey's No-Fault Act. It further noted that the legislature could amend the law if intended otherwise and cautioned against increasing auto insurance premiums in New Jersey. Decision.

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Related Practice Areas

- Bad Faith
- Casualty & Specialty Lines Coverage
- Insurance Coverage
- Property Insurance

Industry Sectors

- Insurance

NEW YORK

Assignee of Life Insurance Policy Had No Standing to Sue Insurer Where Assignment Invalid

The life insurance policy stated, "assignment will be effective upon Notice" in writing to the insurer. The assignor and assignee never notified the insurer of the assignment. The assignee sued the life insurer. The Second Circuit Court of Appeals certified the following question to the New York Court of Appeals: “Where a life insurance policy provides that 'assignment will be effective upon Notice' in writing to the insurer, does the failure to provide such written notice deprive the purported assignee of contractual standing to bring a claim under the policy against the insurer.” The New York Court of Appeals answered, "Yes." As such, the assignment was invalid, and the purported assignee had no standing to sue. Decision.