Alert

June 27, 2024

COZEN O'CONNOR

Claims Notes: June 2024

FLORIDA

PIP Provision Allowing Insurer to Pay 80% of Provider Charge Enforced

The Florida Supreme Court ruled that PIP (Personal Injury Protection) insurers may pay 80% of a charge submitted by a provider, even when that reimbursement amount is less than the amount that would be reimbursable under the limitations of the statutory schedule of maximum charges. The court concluded that "nothing in [Florida's] statutory scheme stands in the way of that policy provision." Cozen O'Connor obtained this favorable decision for its client. Decision.

NEW JERSEY

Premises Liability: All Commercial Property Owners Are Responsible for Maintaining Abutting Sidewalks

The plaintiff fell on a sidewalk abutting the defendants' premises. The plaintiff sued the defendants for negligence, claiming that their failure to maintain the abutting sidewalk caused her fall. The trial court granted summary judgment to the defendants, finding no duty of care. The intermediate appellate court affirmed. The New Jersey Supreme Court reversed, adopting a bright-line rule that all commercial landowners "have a duty to maintain the public sidewalks abutting their property in reasonably good condition and are liable to pedestrians injured…" The court premised its decision on fairness. Decision.

NEW YORK

First-Party Property Policy Rescinded Where Application Stated 2-Family Dwelling But Actually Had 23 Occupants

On his insurance application, the insured represented that the property is a two-family dwelling. He renewed the policy, reaffirming his answers on the prior applications. Fire damaged the property. The authorities discovered the owner had illegally converted the property into a seven-family dwelling with 23 occupants. The insured submitted the claim to his property insurer, who disclaimed and rescinded his policy based on material misrepresentations. The appellate court affirmed the trial court's grant of summary judgment to the insurer, confirming the rescission. Decision.

MAINE

Landscaper's CGL Policy Did Not Cover Drunken Wrestling Match with Client

CGL (Commercial General Liability) policy covered a landscaper who quoted seeding the potential client's lawn. Many hours and drinks later, the potential client initiated a wrestling match with the insured. In a tragic accident, the potential client died after being placed in a chokehold. The policy's insuring grant limited coverage to the insured's business conduct. The CGL insurer disclaimed coverage because the wrestling match was not business conduct. The estate challenged the denial, contending the policy is ambiguous and that the insurer could have excluded recreational activities but did not. The Supreme Judicial Court of Maine found the policy to be unambiguous, and the policy did not cover the claim. Decision.

GEORGIA

No Coverage in Sight for Car Totaled While Fleeing Police

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Related Practice Areas

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

Industry Sectors

- Insurance

Berry purchased a car from a dealership using financing. He crashed the car while fleeing police, and the car was a total loss. Berry failed to pay the loan, causing the lender to reject the note. The dealership made a claim under Berry's insurance policy, which excluded physical damage coverage when fleeing police.

The dealership submitted the claim to its insurance policy, which covered vehicles sold but not fully paid where the purchaser's insurance is invalid. The policy did not define invalid. Applying everyday speech, the Georgia Court of Appeals concluded that Berry's policy was not invalid or void. Berry's policy covered third-party bodily injury or property damage while fleeing police but excluded physical damage coverage under such circumstances. Although Berry's policy did not cover the loss, it was valid and in force. As such, the dealership's insurer did not owe coverage. Decision.