New York Insurance Coverage Law Update

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Volunteer Firefighter Allegedly Injured Outside Truck While Directing Traffic At Accident Site Not Entitled to SUM Coverage

A volunteer firefighter sought supplementary uninsured motorist ("SUM") coverage for injuries he allegedly suffered when he was directing traffic away from the scene of a motor vehicle accident. The court first found that the firefighter was not entitled to coverage as the named insured ("you") because the fire company was the named insured. It then ruled that the firefighter was not entitled to SUM coverage on the ground that he had been "occupying" the fire truck, concluding that his conduct in directing traffic was unrelated to the fire truck and not incidental to his exiting it. [*Gallaher v. Republic Franklin Ins. Co.*, 2010 N.Y. Slip Op. 01143 (4th Dep't Feb. 11, 2010).]

Court Orders Insurer To Reimburse Additional Insured's Legal Fees After Finding Additional Insured's Own Coverage Was Excess

After the Village of Brewster contracted with a construction company for new water distribution and wastewater collection systems, the company obtained a comprehensive general liability ("CGL") insurance policy from Virginia Surety Company that named the village as an additional insured; the village also had a CGL insurance policy from New York Municipal Insurance Reciprocal ("NYMIR"). During the course of the contractor's work, a water main broke. Thereafter, two residents sued the village and the company for property damage. With respect to the priority of coverage, the court explained that each policy generally provided primary coverage. However, NYMIR's "other insurance" clause provided that its coverage was excess where NYMIR was added as an additional insured on another policy. Accordingly, the court found NYMIR's coverage was excess to Virginia Surety's coverage, and Virginia Surety had to reimburse NYMIR for the legal fees and costs it had incurred in defending the village in the underlying actions. [*Village of Brewster v. Virginia Sur. Co., Inc.*, 2010 N.Y. Slip Op. 01411 (3d Dep't Feb. 18, 2010).]

No Coverage From Car Dealer's Insurer For Accident Involving Loaner Car To Customer

Jason Webb's son was involved in an accident while driving a loaner vehicle Jason had obtained from a car dealer. A lawsuit was filed and the Webbs sought coverage under a garage liability policy issued to the dealer by Harco National Insurance Company. The Harco policy provided coverage to a customer of the dealer if the customer had "other available insurance" less than the minimal required limits. After determining that the Webbs' insurer was the primary insurer, the court ruled that the Webbs were excluded from coverage under the Harco policy because the liability limits in their policy exceeded the minimum statutory requirements. [*Progressive Cas. Ins. Co. v. Harco Natl. Ins. Co.,* 2010 N.Y. Slip Op. 01282 (4th Dep't Feb. 11, 2010).]

Court Finds Coverage Under Group Accidental Death And Dismemberment Insurance Policy For Woman Who Died After Elective Surgery

During elective orthopedic surgery, a catheter was apparently inserted improperly into the insured's chest, puncturing a vein and leading to her death. After the insured's husband submitted a claim under a group accidental death and dismemberment insurance policy, the insurer contended that the policy was "an accident only policy" and did "not cover sickness or disease." The insured's husband brought suit, and the court ruled that he was entitled to benefits under the policy "for the accidental death of his wife." In the court's view, the insured's death was not caused by any sickness or disease but rather because a catheter had been improperly placed into her chest, rupturing a vein and causing internal bleeding and the entry of fluids into her chest cavity. The court concluded that "this was an unintentional, unexpected, unusual, and unforeseen event – an accident." [*Barnes v. American Int'l Life Assur. Co. of N.Y.*, 2010 U.S. Dist. LEXIS 9503 (S.D.N.Y. Feb. 4, 2010).]

Accident That Occurred While Employee Was Driving His Own Truck While Working Is Not Covered By Employer's Policy

Brian Blakely was driving his pickup truck in the course of his work for Blakely Pumping, Inc., when he was involved in an accident. After a lawsuit was filed, Blakely Pumping requested a defense under its insurance policy for "Businessowners Liability Coverage," relying upon an endorsement that extended coverage to bodily injury arising from the use of a "Hired Auto" or a "Non-Owned Auto" by the company or one of its employees. The U.S. Court of Appeals for the Second Circuit rejected that argument, finding that those terms were defined in such a way that an employee's or officer's vehicle, such as Blakely's pickup truck, could never be covered. Moreover, the court concluded, because there was no coverage, the timely disclaimer requirement of §3420(d) of the New York Insurance Law did not apply. [*NGM Ins. Co. v. Blakely Pumping, Inc.,* 2010 U.S. App. LEXIS 2093 (2d Cir. Feb. 1, 2010).]

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