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# Kate Dempster Secures Summary Judgment Win for Insurer in Coverage Dispute over Fatal Ambulance Accident

Related Attorneys:

On Friday, June 28, 2019, Traub Lieberman Straus & Shrewsberry LLP Partner Kate Dempster secured summary judgment on behalf of a commercial auto carrier in a declaratory judgment action in the Northern District of Indiana. The underlying loss occurred when an ambulance allegedly ran a red light and struck another vehicle. The driver of that vehicle was severely injured and succumbed to his injuries several months later. His estate filed a wrongful death suit against the ambulance driver and the company that owned the ambulance in Lake County, Indiana, which was then tendered to the company's commercial auto insurer.

The insurer, in turn, determined that the ambulance involved in the crash was not scheduled on the policy on the date of loss, as was required for coverage. The ambulance company then produced an email that it claimed to have sent to its insurance broker during the policy period (but pre-loss), requesting to add the ambulance onto the policy and remove another scheduled auto. Although the broker did not respond to the email, the ambulance company believed the ambulance in question was thereafter insured.

The commercial auto carrier accepted the defense of the driver and ambulance company under a reservation of rights and filed a declaratory judgment action in federal court. The ambulance company then filed a third party complaint against the broker for negligent procurement, alleging that the broker was serving as an agent of the insurance company when it should have received and acted on the request for coverage. The decedent's uninsured motorist carrier also intervened in the coverage action.

After discovery closed, Ms. Dempster filed a motion for summary judgment on behalf of the insurer on the basis that the ambulance in question was not insured on the face of the policy, arguing that no equitable remedy otherwise applied to create coverage for the loss. Both the claimant and the insured filed their own cross-motions for summary judgment, characterizing the policy's provision regarding material misrepresentations in the application process as a "savings clause" capable of creating coverage for the inadvertently unscheduled ambulance. The defendants also argued, alternately, that the insured's transmission of the email asking to add the ambulance to the policy should be deemed adequate notice to the insurer to bind coverage. Finally, the defendants argued that equity compelled coverage insofar as the ambulance was uninsured by no fault of the insured. The broker simultaneously moved for summary judgment on the third party complaint, citing a lack of evidence that it ever received the email request. After extensive briefing, the Court agreed with Ms. Dempster and the insurance company, ruling that the carrier had no duty to defend or indemnify the ambulance company or driver, and denied all other pending motions. In the thirty-page decision, the Court focused on the plain language of the policy to conclude that (i) the policy unambiguously covered only scheduled autos; (ii) the policy unambiguously provided that coverage could not be amended without the insurer's consent and issuance of a written endorsement; (iii) the insurer never consented to insure the ambulance in question or issued a corresponding endorsement; and (iv) no equitable remedy could create coverage that otherwise did not exist.