PLUNKETT COONEY

Named Peril, Motor Vehicle Insurance Coverage Update

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Named Peril – New Jersey

Robert Cusamano v. New Jersey Ins. Underwriting Ass'n
No. A-1704-18T2, 2020 WL 1026748 (N.J. Super. Ct. App. Div. Mar. 3, 2020)

A New Jersey Superior Court, Appellate Division held that the New Jersey Insurance Underwriting Association (Underwriting Association) did not owe coverage for water damage caused by a leaking pipe under a named perils insurance policy. The insureds made a claim under their policy after discovering that a "rotted connection" in a drain line was causing water to leak in the kitchen of their duplex. The Underwriting Association declined coverage on the basis that water damage from a leaking pipe was not one of the named perils under the insureds' policy. In response, the insureds brought an action against the Underwriting Association, alleging breach of contract and bad faith.

The insureds argued that the policy was ambiguous because the water damage exclusion did not specifically identify "water damage from leaking pipes." According to the insureds, when a policy "carve [s] out narrowly defined definitions of excluded losses, it blurs the boundaries of where coverage begin or ends."

The appellate court disagreed, reasoning that "the covered perils defined the outer bounds of coverage;" exclusions apply to covered perils, only. The specific perils covered under the insureds' policy included "fire or lightning; internal explosion; windstorm or hail; explosion; riot or civil commotion; aircraft; vehicles; smoke; volcanic eruption; vandalism or malicious mischief." It did not include water damage caused by a leaking pipe. Because the insureds' loss was not a covered peril, the appellate court ruled that there was no need to consider the water damage exclusion. As a result, the Underwriting Association did not have a coverage obligation for this loss.

Motor Vehicle – Kentucky

Davis v. Progressive Direct Ins. Co.
--- S.W.3d ---, 2020 WL 962360 (Ky. Ct. App. Feb. 28, 2020)

The Kentucky Court of Appeals ruled that a horse-drawn buggy is not a "motor vehicle" for purposes of uninsured motorist coverage. The policyholder was operating a motorcycle on a rural road in Barren County, Kentucky, where she encountered a horse-drawn buggy traveling in the opposite direction. As she got closer, the horse jumped into the oncoming lane, causing her injuries and damage to the motorcycle. The policyholder sought uninsured motorist benefits through an automobile policy issued by Progressive Direct Insurance Company (Progressive). Progressive denied benefits on the basis that the horse-drawn buggy is not a "motor vehicle."

On appeal, the policyholder advocated that the horse-drawn buggy is a "motor vehicle" pursuant to Kentucky's Motor Vehicle Reparations Act (Act). She argued that under the Act, the "primary litmus test for qualification as a motor vehicle ... is that the vehicle in question regularly transports persons or property on public highways." While true, the appellate court found the policyholder missed an essential part of the Act's definition – the "motor vehicle" must be "propelled by other than muscular power." According to the appellate court, this phrase plainly required a "motor vehicle" to be self-propelled by an internal engine, which the horse-drawn buggy clearly lacked.

For her second argument, the policyholder asserted that the horse-drawn buggy qualifies as a trailer and, thus, constitutes an "uninsured motor vehicle," which was defined under the policy as a "land motor vehicle or trailer of any type." Again, the appellate court disagreed, relying on a prior decision, *Rosenbaum v. Safeco Ins. Co. of America*, 432 S.W.2d 45 (Ky. 1968), which held that a policyholder reasonably expects that uninsured motorist coverage will provide protection for collisions with another automobile, not with a horse-drawn wagon. Relying on *Rosebaum*, the appellate court reasoned that a horse-drawn buggy cannot qualify as a "motor vehicle" because a "person of 'ordinary and usual understanding' would dismiss the notion due to the absence of a motor." Thus, the appellate court ruled that Progressive did not owe uninsured motorist benefits.

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