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Central Jersey Claims Association Legal Update

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Verizon, New Jersey vs. Atlantic City Electric ('ACE')

(Property damage)

Verizon contended ACE's transformer blew up and damaged Verizon's wire attached to the same pole requiring repair. Through discovery, it was determined that a transformer did not blow up, and instead a nearby tree limb that was outside of the power line right-of-way, had fallen on the power line during a storm, pulling down one hot leg secondary power line which fell down onto Verizon's lines, resulting in arcing and Verizon's line burning up. Verizon sought reimbursement for its repair cost on a negligence theory.

Verizon and ACE share space on utility poles and have a contract related to such use. That contract establishes the reciprocal legal duties of the parties applicable (in proving a negligence case, the elements of the cause of action are: duty, breach, causation and damages). ACE argued it was not negligent and/or responsible for any damages to Verizon as the event was storm-related and as such, a force majeure event, for which ACE could not be held liable. Verizon argued ACE had a duty to trim the tree limbs near its power lines and because a tree limb fell on the power line the Court should assume ACE failed to properly trim the trees near the power line, and therefore, ACE should be held responsible for the damages to Verizon. Verizon, however, had no evidence of the location of the tree limb prior to the event to establish whether or not that tree limb should have been trimmed or that ACE failed to uphold its duties to trim the trees. The Court found that while the Joint Use Agreement did impose a limited duty to trim trees that encroached upon ACE's primary power line, there was no evidence that ACE failed to meet its duty. In addition, the Court found the New Jersey Administrative Code, which has a section requiring vegetation management near power lines, did not impose a private right of action for any failure to comply with such obligations, and instead, the purpose of the provisions were to provide for reliability of power service, not to establish a duty in a negligence case brought by a private party. Accordingly, ACE prevailed at trial with a defense verdict.

*Cosentino v. DPL***(Property damage)**

Delaware – The plaintiff sought to recover for damage to his boat which was incurred when he and his nephew were towing his boat down the road and the boat came into contact with a low-hanging overhead power line, pulling down the power line. Plaintiff argued he was entitled to damages because DPL failed to properly maintain its power line and allowed the power line to sag below the required height limits when crossing a roadway. Plaintiff was able to present enough evidence at trial to establish that the power line was in fact sagging lower than the required height limits; however, Plaintiff was not able to establish that DPL had reasonable notice of the low hanging power line prior to the incident at issue and despite having received such notice failed to act to correct the condition. The Court found that without proving that DPL knew or should have known about the condition, it could not have been negligent under the circumstances. Accordingly, at trial, the Court rendered a defense verdict in DPL’s favor.

*State Farm Mutual Auto Ins. Co. v. Kelty, (DE Supreme Court decision, No. 315, 2014, Oct. 20, 2015)***[Personal Injury Protection (“PIP”)]**

Delaware -This case involves the proper application of Personal Injury Protection (“PIP”) coverage. In this case, Kelty was assisting his father-in-law, Mr. Lovegrove, to trim trees and the two were using Mr. Lovegrove’s vehicle to do it. Kelty was standing on a branch in the tree and he would put a rope around the branch he was cutting which was tied to the Lovegrove’s vehicle. As he cut the branch, Lovegrove would accelerate and pull the cut branch to keep it from coming into contact with nearby powerlines as it fell. Lovegrove accelerated too fast one time and caused Kelty to fall out of the tree and sustain injuries. The Lovegrove vehicle was insured by State Farm. In addition to suing Lovegrove for bodily injuries sustained, Kelty sought Personal Injury Protection (no fault) benefits from State Farm under Lovegrove’s auto policy.

In a prior decision from 2013, the Delaware Supreme Court found Kelty was entitled to PIP benefits under the circumstances; however, on remand to the Superior Court the parties fought over how much coverage Kelty could recover. The Lovegrove’s had opted to pay for increased PIP coverage (\$100,000) which the plain language of the insurance policy stated applied to the insureds and their relatives who lived with them. Kelty was their son-in-law; however, he did not live with the Lovegroves; accordingly, State Farm argued Kelty was only entitled to the \$15,000 statutory minimum limits, instead of the \$100,000.

The Superior Court found the language in the policy limiting the extra coverage to only the insureds and their family that resided with them was “void against public policy”; however, the Delaware Supreme Court disagreed and reversed the Superior Court’s decision finding “Because the plain language of the statute, 21 *Del. C.* §2118, requires PIP policies to provide only \$15,000 of coverage, the Superior Court erred by imposing a higher minimum here simply because the Lovegroves chose to pay for additional coverage for themselves and their relatives.” The specific policy language at issue said: “There is no coverage in excess of the minimum limits required by law for any pedestrian. *This does not apply to you, your spouse or any relative.*” The policy went on to define “relative” as “a person related to you or your

spouse by blood, marriage or adoption who lives primarily with you.” Kelty argued he was a relative of the Lovegroves; however, because he did not reside with them, the Court found he did not meet the definition of relative in the policy.