Horne and David Obtain Insurer Victory on Novel Chapter 93A/176D Issue Before the Massachusetts Appeals Court

Partners

Allen N. David

Related Practices

Business Litigation

Insurance Coverage and Bad Faith Litigation

By Peabody & Arnold on June 22, 2017

On April 21, 2017, the Massachusetts Appeals Court ruled, in a 20-page published opinion, that the Insurer did not commit an unfair settlement practice under Massachusetts General Laws Chapters 176D, § 3(9)(f) or 93A, § 2 when it conditioned the payment of its primary insurance policy limit on a release of all claims against its insureds, notwithstanding the availability of excess insurance.

The claimant/appellant, injured in a car accident, brought a lawsuit against the driver of the vehicle and the driver's employer. The Insurer had issued a primary policy to the employer (a commercial automobile insurance policy) with bodily injury limits of $1 million. The employer was also insured under two excess policies. The primary Insurer undertook the defense of the driver and his employer. In the nine months after the lawsuit was filed, the claimant and the insurer exchanged 13 letters regarding the settlement of his claims. The claimant consistently requested the primary policy limits without a release, and the Insurer consistently responded that it could properly condition the payment of its policy limit on receipt of a release of its insureds. The claimant asserted, among other things, that the Insurer's alleged inequitable condition on its settlement offer (the general release of its insureds) violated Chapters 176D and 93A. The Insurer tendered its remaining policy limit to one of the excess insurers, and the excess insurer settled with claimant. The claimant then commenced an action against the primary Insurer. In the trial court, the Insurer moved for summary judgment, and successfully argued that the claimant could not satisfy his burden under Chapter 176D where the Insurer had offered its policy limit on multiple occasions, conditioned only on the claimant's release of his claims against the Insureds. The trial judge noted that there was no evidence suggesting an absence of good faith or the presence of extortionate tactics by the Insurer; and that the Insurer had responded to the claimant's various demands in a timely manner and did not drag out settlement discussions.

The trial judge found the Insurer's reliance on Lazaris v. Metropolitan Property & Cas. Ins. Co., 428 Mass. 502 (1998) to be appropriate, which held that an insurer could properly condition the payment of its policy limit on the receipt of a release of its insured. In their appeal, Horne and David argued that nothing in Lazaris or its progeny turned on the existence or non-existence of excess insurance. This was the correct position. On this point, Justice Lemire, who authored the opinion, noted:

> An insurer need not forsake its demand for a release in order to enable a claimant to collect additional damages, either from the insureds themselves or from an excess insurance policy. If the court in Lazaris had wanted to carve out an exception to its ruling for cases where excess insurance is available, it could have done so . . . [The Insurer] responded in a timely manner by conditioning the payment of the available policy limit on the release of all claims against its

insureds. During their ensuing negotiations over several months, neither party wavered from its essential demand. In our view, [the Insurer's] settlement position was reasonably and correctly based on its interpretation of Lazaris . . . The availability of excess insurance did not change the applicability of Lazaris to the facts in the present case, and was not material to [the Insurer's] legally sound settlement position.

The three judge panel also included Justices Grainger and Sullivan.

The decision was featured in an article by the Law360 legal news publication on April 21, 2017.

