1. INSURANCE CASELAW ROUNDUP (1/17/09)

Saturday, January 17, 2009 at 09:50PM

The following is a summary of recent insurance-related opinions issued in California.

Fiancee Designated as Additional Insured under Liability Portion of Policy Was Not Insured under Uninsured Motorist Coverage of the Policy: Mercury Insurance Company v. Pearson, __ Cal. App. 4th __ (1st App. Dist., Div. 1, 12/04/08): Fiancee and named insured, with whom fiancee resided, were struck by uninsured motorist while crossing sidewalk. Named insured made claim under UM coverage and was paid $100,000 benefits. Fiancee also made claim under UM coverage, but was denied. Though fiancee was designated as additional insured under liability portion of the policy, "insured" under UM portion specifically only included named insured, spouse and relative living in the same household, or any person injured while in or upon or entering into or alighting from an insured motor vehicle. Designated persons endorsement also advised insured that fiancee was not covered under UM portion of policy, unless he was injured while in or upon or entering into or alighting from an insured motor vehicle. (Opinion here.)

Court Clarifies the Reach of the CGL "Professional Services" Exclusion: Food Pro Int'l, Inc. v. Farmers Ins. Exchange, __ Cal. App. 4th __ (6th App. Dist., 12/20/08): The Court, relying on a prior case law applying the "Professional Services" exclusion (i.e. Tradewinds Escrow, Inc. v. Truck Ins. Exchange, 97 Cal.App.4th 704 (2002)), interpreted the reach of the professional services exclusion as follows: "the act that precipitated the injury need not have been one of professional malpractice, as long as the plaintiff was injured in the performance of a professional service." The Court ruled that the exclusion was inapplicable to exclude coverage for claims of ordinary negligence against an engineer that were unrelated to the rendering or failure to render professional services. The injuries arose from a condition on the worksite that the engineer did not oversee or supervise. (Opinion here.)

Disputes Regarding Cumis Counsel Fees Must Be Arbitrated Even in Context of Bad Faith Cases: Compulink Management Center, Inc. v. St. Paul Fire & Marine Ins. Co., __ Cal. App. 4th __ (2nd Dist., Div. 7, 12/17/08): The Court ruled that California Civil Code § 2860(c) (providing for arbitration of disputes over Cumis counsel fees) requires arbitration of Cumis counsel fees even if there are other claims against the insurer of breach of contact or bad faith. The Court determined that section 2860's provisions are mandatory and that issues regarding Cumis counsel fees "must be resolved by an arbitrator, not by any other trier of fact." (Opinion here.)

Doctors Cannot "Balance Bill" Emergency Care Patients Covered by HMO's: Prospect Medical Group, Inc., et al. v. Northrdige Emergency Medical Group, __ Cal. 4th __ (1/08/09): The Supreme Court ruled that the Knox-Keene Act, Health & Safety Code § 1340 et seq., prohibits doctors from "balance billing" patients for emergency

care services, when the patients' HMO does not fully reimburse the doctor for emergency services rendered. Thus, the only source of recovery for doctors who do not receive full reimbursement from the HMO for emergency services rendered is the HMO, not the patient. (Opinion here.)

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