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New Jersey Alert

New Jersey Federal Courts Estop Insurance Companies From Denying Coverage



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Key points:

Federal courts in NJ find that when a policyholder has good reason to believe it has coverage, based on the insurance company's conduct, the insurance company is estopped from coverage denial.

In *Magi v. Rich*, a policyholder arranged for coverage months before an accident, but suffered an accident days before the policy's effective date.

In *Hinsinger v. Conifer Insurance Company*, Conifer proffered coverage for a vehicle it had not insured.

Two recent decisions by the federal courts of New Jersey illustrate that courts will prevent insurance companies from disclaiming coverage on the basis of estoppel. An estoppel occurs when an insurance company by its actions leads a policyholder to believe that it has coverage, only to later attempt to deny it. Particularly if the policyholder will be prejudiced, courts can estop an insurance company from disclaiming, even when coverage does not lie under the policy.

Magi v. Rich

On January 31, 2023, a New Jersey federal court ruled that a policyholder may seek to prevent an insurance company from denying coverage for a loss that occurred before the alleged effective policy date. In *Magi v. Rich*, the District Court for the District of New Jersey allowed a policyholder to assert an estoppel claim against the insurance company and broker where the broker represented to the policyholder that coverage would commence at the submission of the insurance application.

Magi arose out of a boat accident involving two recreational boaters. According to the Court's opinion, on November 3, 2019, Magi was fishing off



the New Jersey coast when Rich's boat collided with Magi. Magi sued Rich for damages sustained as a result of the collision. In August 2019, a few months before the accident, Rich applied for yacht insurance through Sea Insurance Agency ("SIA"). SIA then (untimely) obtained a policy from Markel American Insurance Company ("Markel"). Rich brought third-party claims against Markel and SIA to recover under the Markel yacht policy. SIA moved to dismiss Rich's claims.

Among the seven counts that Rich asserted against Markel and SIA was a claim for equitable estoppel. Specifically, Rich sought to prevent the insurance company from denying that he was insured on the day of the accident. According to Markel, Rich had no claims

against it as the policy did not go into effect until after the collision. While Rich admitted that the policy went into effect on November 7, four days after the accident, Rich argued that he was nonetheless insured at the time of the accident under the equitable doctrine of estoppel. Specifically, Rich averred that he “timely provided all of [SIA’s] requested information and performed all conditions precedent required by SIA to bind insurance through Markel.” Rich also claimed that SIA represented to him that his application would be complete, and coverage effective after he provided the engine serial numbers of the boats to be covered. Accordingly, Rich argued that the insurance company should be estopped from denying coverage on the basis that there was no valid policy when the loss occurred.

The Court found that Rich’s estoppel allegations were sufficient to survive a motion to dismiss. The Court stated that equitable estoppel consists of two elements: (1) a misrepresentation as to the fact or extent of coverage by the insurance company or its agent, and (2) the policyholder’s reasonable reliance on those misrepresentations to the policyholder’s detriment. In ruling for the policyholder, the Court found that while Rich had not pled sufficient facts to show that SIA was an employee of Markel, his pleading was sufficient to support a finding that SIA was acting as an agent of Markel.

Of note, the Court declined to dismiss the estoppel claim despite evidence outside the complaint that weighed against estoppel. The Court recognized that both language in the policy application and a police report of the accident contradicted Rich’s averments of “reasonable reliance.” As to the policy application, Markel pointed

to a sentence stating that submission of a full application and payment of the premium were required for coverage to take effect. While the Court agreed with Markel that such language tends to undermine both elements of estoppel, it did not find it sufficient to dismiss the claim. As to the police report, the Court found that under the four-corner rule it could not rely on Rich’s statements to the police officer that he was not insured to dismiss the estoppel claim.

Finally, the Court rejected Markel’s contention that the equitable estoppel claim should be subject to the heightened pleading standard for fraud claims because estoppel entails allegations of misrepresentation. The Court noted that equitable estoppel is based on negligence and not fraud, and, therefore, the pleading standard for fraud was not applicable.

Should Rich prevail on his estoppel claim, the insurance company would be prevented from denying the existence of a binding insurance policy and be liable based on the insurance broker’s representations to the policyholder.

Hinsinger v. Conifer

Hinsinger v. Conifer Insurance Company, also decided in the District Court in the District of New Jersey (in December 2022), concerned an auto accident. As recounted in the decision, on November 18, 2016, an individual was struck by Frank J. Rodriguez, who backed his HINO 238 Flatbed into her in a parking lot in Ocean County, NJ. On December 21, 2016, she filed suit in New Jersey Superior Court against Rodriguez and his employer, NJ Recovery. A loss notice for the accident incorrectly identified the vehicle involved as a 2016 Dodge Wrecker 5500 Truck Tractor Trailer. On April 3, 2017, Conifer sent a reserva-

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tion of rights letter to NJ Recovery and agreed to provide a defense.

Around October 2018, the plaintiff sought supplementary discovery from defendant. Body cam footage revealed that it was the HINO and not the Dodge involved. The HINO was not covered under the Conifer policy. On March 11, 2019, Conifer sent a second letter to NJ Recovery and disclaimed any obligation to indemnify the underlying action. Conifer tendered defense and indemnity of NJ Recovery to Progressive, which insured the HINO. On August 14, 2019, Progressive accepted. On March 31, 2020, a settlement was entered in the amount of \$750,000, which included an assignment of the claim to the plaintiff.

On November 20, 2020, the plaintiff in the underlying suit, acting as an assignee for NJ Recovery and Rodriguez, filed an amended complaint seeking a declaratory judgment that Conifer was estopped from disclaiming coverage and damages for breach of the implied covenant of good faith and fair dealing. Conifer filed a motion to dismiss, asserting that it could not be liable when it did not insure the vehicle involved in the accident.

The court disagreed. It held that where an insurance company defends an Insured with knowledge of a defense, and does not reserve its rights, it is estopped from denying coverage at a later date. The Court held that the Amended Complaint plausibly alleges that Conifer knew or should have known the wrong vehicle was identified well before it issued its denial — “at least as early as when it received the police body camera footage from the incident scene showing the damaged HINO.”

Conifer argued that the plaintiff could not establish prejudice, which is an element of estoppel. Some courts have held that prejudice is presumed when an insurance company mistakenly defends, because the insured has lost the right to defend itself. Regardless, the Court found the insurance company’s argument to be at odds with the Amended Complaint, which specifically pleaded that the insured did suffer prejudice based on its reliance on Conifer, including, failure to bring a third party claim against NJ Recovery’s insurance broker. Accepting these as true, the Court rejected the challenge based on lack of prejudice.

Conclusion

Policyholders often receive coverage denials from their insurance companies that look impressive and that [they] do not challenge. In fact, the law is heavily weighted in favor of coverage as an expression of public policy. Estoppel is one way that courts will find coverage, even where it might not have existed if not for wrongful conduct by the insurance company. Policyholders should analyze every coverage denial and challenge them where possible. ▲

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