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Allstate Ins. Co. v Tupin
2006 NY Slip Op 50628(U)
Decided on February 14, 2006
Supreme Court, Queens County
Rios, J.
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Decided on February 14, 2006

Supreme Court, Queens County

Allstate Insurance Company, Petitioner,

against

Gregory Tupin and SARINA BROWN, Respondents, and EAGLE INS. COMPANY, RHODE ISLAND AUTOMOBILE INS. PLAN SVC CONNECTICUT, AJALA FATAI and BASHIRU AYINDE, Additional Respondents.

17908/03 Jaime A. Rios, J.

Issue

In this CPLR 7503[b] proceeding the petitioner Allstate Insurance Company (Allstate) seeks to stay an arbitration for uninsured motorist (UM) benefits demanded by respondents Gregory Tupin and Sabrina Brown on the ground that additional respondent Quincy Mutual Fire Insurance Company should provide coverage for the subject accident. The court must determine whether Quincy's disclaimer of coverage 6

months after it received notice of the subject loss is valid.

Background

On October 23, 2002, there was an alleged accident between a vehicle owned by Eutetra Gbelia and operated by respondent Sabrina Brown, and a vehicle owned by Ajala Fatai, operated by Ayinde Bashiru, and insured by Quincy. The respondent Gregory Tupin was a passenger in the Brown vehicle, which was insured by Allstate. [*2]

It is undisputed that at the time of the accident, the Fatai vehicle was licensed by and registered in Rhode Island and that Fatai resided in Rhode Island. The accident occurred in New York and Bashiru, the driver of the Fatai vehicle, resided in New York at the time of the accident.

The Quincy policy for the Fatai vehicle became effective on September 7, 2002 and included bodily injury and physical damage coverage. The Quincy policy was in effect on the date of the accident. On May 18, 2004, almost 2 years after the subject accident, Quincy received notice of its insured's loss. On July 6, 2004, Quincy sent the respondents a reservation of rights letter. By letters dated November 5, 2004, Quincy notified the respondents, the insured, Ajala Fatai, and the operator of the vehicle, Ayinde Bashiru, of its disclaimer of coverage for the subject accident based on late notice.

The respondents demanded arbitration of their UM claims with Eutetra Gbelia's insurer, Allstate. Allstate commenced this proceeding to stay the arbitration, contending that the adverse vehicle was insured by either Rhode Island Automobile Insurance Plan SVC Connecticut (RI Insurance Plan) or Eagle Insurance Company (Eagle).

By order dated September 9, 2003, this Court (Hart, J.) granted Allstate leave to add RI Insurance Plan and Eagle as additional respondents, and set the matter down for a hearing on the issue of whether coverage was available through RI Insurance

Plan and/or Eagle, and all other issues raised in the petition and answering papers.

Thereafter, Allstate discovered that neither RI Insurance Plan nor Eagle were insurance carriers for the adverse vehicle on the date of the accident and that Quincy had an insurance policy in effect for Fatai on the date of the accident. Allstate also discovered that the operator of the adverse vehicle, Bashiru, may have been insured by Travelers Indemnity Company (Travelers) on the date of the accident. By stipulation filed on June 6, 2004 the parties agreed to discontinue this action as against Eagle.

As a result, Allstate requested by order to show cause dated April 22, 2004 that Quincy and Travelers be added as additional respondents, contending that Quincy insured the owner and Travelers insured the operator of the vehicle. By order dated May 14, 2004, this Court (Rios, J.) granted Allstate leave to add Quincy and Travelers as additional respondents, and set the matter down for a hearing.

Contentions

Allstate contends that Quincy should provide coverage for the subject accident because its disclaimer of coverage was untimely under New York law.

Quincy contends that it lawfully disclaimed coverage pursuant to Rhode Island law because Quincy was prejudiced by its insured's late notice of the subject accident.

Decision

Where the case presents a potential choice of law issue, the court must first determine whether there is an actual conflict between the laws of the jurisdictions involved (*see Matter of Allstate Ins. Co. v Stolarz*, 81 NY2d 219, 222 [1993]).

Under New York law, an insurer's failure to provide notice of its disclaimer of coverage as soon as is reasonably possible precludes effective disclaimer (*see*

Hartford Insurance Company v County of Nassau, 46 NY2d 1028, 1029 [1979]. In *First Financial Insurance Company v Jetco Contracting Corp.* (1 NY3d 64, 70 [2003]), the Court of Appeals of New York held that an insurer's unexcusable 48 day delay in issuing a disclaimer of coverage was unreasonable as a matter of law.

Under Rhode Island law, a disclaimer must be issued within a reasonable time after the carrier received notice of the insured's claim, but there is no set period in which a disclaimer must be issued. Nevertheless, in *Liberty Mutual Insurance Company v Tavarez* (797 A2d 480, 487 [2002]), the Supreme Court of Rhode Island held that an insurer's failure to investigate and respond to a UM claim within a reasonable period of time from the date of its submission shall be deemed, at a minimum, a breach of contract. Additionally, the Court held that if there was a complete absence of a justiciable issue of law or fact raised by the insurer in denying the UM claim or failing to respond to it within a reasonable period of time, then the court may award attorney 's fees to the prevailing insured in any civil action arising from the insurer's breach of contract (*see id*. at 487).

Thus, the laws of New York and Rhode Island conflict with respect to whether an insurer's disclaimer of coverage 6 months after it received notice of the UM claim is timely. Generally, the "center of gravity" or "grouping of contacts" doctrine is applied by the court in conflicts cases involving contracts or torts with multi-State contacts (*see Zurich Ins. Co. v Shearson [*3]Lehman Hutton, Inc.*, 84 NY2d 309, 317-18 [1994]; *Kaszak v Liberty Mut. Ins. Co.*, 192 Misc 2d 168, 169 [2002]). Under this doctrine, the court considers significant contacts such as the place of contracting, the place of negotiation and performance, the location of the subject matter of the contract, and the domicile or place of business of the contracting parties (*see Integon Ins. Co. v Garcia*, 281 AD2d 480, 481-82 [2001]).

Based on the facts that Quincy issued its policy to Fatai in Rhode Island, the policy was written in Rhode Island, Fatai was a Rhode Island resident at the time of the accident, and the Fatai vehicle was licensed by and registered in Rhode Island, Rhode Island law applies (*see GEICO v Nichols*, 8 AD3d 564, 565 [2004]. The only

connection between the Quincy policy and New York is that the Fatai vehicle was being driven in New York at the time of the accident.

Quincy claims that its disclaimer of coverage was based on its insured's late notice to Quincy of the subject accident. Quincy has failed to provide the court with any documentation or case law to support its claim that its 6 month delay in disclaiming coverage was reasonable as a matter of law. As a result, Quincy's disclaimer of coverage is invalid. Moreover, under Rhode Island law any doubts about coverage are to be resolved in favor of the insured and against the insurer (*see Aetna Casualty and Surety Co.*, 1989 R.I. Super. LEXIS 136,at *14 [1989]). Therefore, Quincy's lack of evidence in support of its 6 month delay in disclaiming coverage must be viewed in favor of its insured and Quincy's disclaimer of coverage is invalid.

Conclusion

Accordingly, the petition is granted and Quincy Mutual Fire Insurance Company is obligated to defend and indemnify to the extent of limits of the Fatai insurance policy for the October 23, 2002 accident.

Settle judgment.

Dated: February 14, 2006_____

J.S.C.