

Insurance Coverage Victory – KD Lawyers Obtain Two Summary Judgments

Koons v. XL Insurance America, Inc., Greenwich Insurance Co., 2012 WL 1946825 (E.D. Pa. May 30, 2012) (granting XL and Greenwich summary judgment), *recons. den.*, 2012 WL 2921011 (Jul. 17, 2012); 2013 WL 5298581 (E.D. Pa. Sept. 19, 2013) (granting Greenwich summary judgment)

This declaratory judgment and bad faith action arose out of the tragic death of Jeremy P. Andre, an employee of Ches-Mont Disposal, LLC, while operating a garbage disposal truck. Stephen P. Koons was the record owner of the truck at the time of the accident, who leased the truck to a company that ultimately became Ches-Mont Disposal, LLC. Following his death, Andre's estate brought an action in state court against Stephen P. Koons, for negligence, wrongful death and survival.

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 Anne R. Myers

At the time of the accident, Ches-Mont Disposal, LLC was a named insured under a commercial auto policy issued by XL and a commercial excess and umbrella policy issued by Greenwich. Koons filed suit against XL Insurance America, Inc. and Greenwich Insurance Company, seeking a declaratory judgment as to both companies' duty to defend and indemnify Koons in the Andre Estate Action, as well as claims for breach of contract and statutory insurance bad faith.

Anne Myers and Chris Tellner represented XL and Greenwich in the lawsuit brought by Koons. Ms. Myers and Mr. Tellner moved for summary judgment on behalf of XL and Greenwich; Koons cross-moved for summary judgment as well. The United States District Court for the Eastern District of Pennsylvania granted summary judgment in favor of XL and Greenwich and denied Koons' cross-motion, dismissing all of Koons' claims. The trial court determined that the employee exclusion in the XL policy operated to exclude coverage for bodily injury to an employee of the named insured. With respect to Greenwich's follow-form excess coverage, the court found coverage to be precluded for the same reasoning under the XL policy. With respect to Greenwich's umbrella coverage, the court concluded that Koons was not an insured because he was not sued in the estate action in his role as owner or officer of the company.

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 Christopher J.
 Tellner

Koons appealed the grant of summary judgment in favor of Greenwich, and the United States Court of Appeals for the Third Circuit overturned the trial court's decision, finding that genuine issues of material fact existed. Upon remand, Koons moved for summary judgment, arguing that he is an insured under Greenwich's umbrella coverage. On behalf of Greenwich, Ms. Myers and Mr. Tellner moved for summary judgment, seeking a disclaimer to coverage under the policy's Workers' Compensation Exclusion, whereby the policy does not extend coverage to any claim covered under Pennsylvania's Worker's Compensation Act.

The trial court, again, denied Koons' motion for summary judgment and granted summary judgment in favor of Greenwich. In granting summary judgment in favor of Greenwich, the court held that Koons was an executive co-employee of Koons, and, therefore, Koons would not be liable for any negligent conduct as a co-employee of Andre be covered under the Worker's Compensation Act. Therefore, any coverage for Koons would be barred under the Greenwich policy Worker's Compensation Exclusion.