
Week of August 8

Additional Insured Coverage. DECISION OF INTEREST. Property Adjustment - Insurer Liability, DECISION OF INTEREST, Insurance Law Sec. 3420(d) - Umbrella Coverage, First-Party No-Fault, Contractual Indemnification/General Obligations Law Sec. 5-321, Contractual Indemnification.

Additional Insured Coverage. DECISION OF INTEREST. Court grants summary judgment to primary insurer on claim against another primary insurer for coinsurance. Court rules that under Court of Appeals' decision in BP Air Conditioning, duty to defend under additional insured coverage is not contingent on proof of the named insured's negligence. Court also finds that policy's notice provision applies only to the named insured, and that additional insured may rely on the notice given by the named insured. Based on this, court finds defendant insurer failed to issue a timely disclaimer. *Wausau Underwriters Ins. Co. v. QBE Ins. Corp.*, 2007 WL 2193965 (S.D.N.Y. July 27, 2007). Property Adjustment - Insurer Liability. DECISION OF INTEREST. In an action by homeowners against homeowners insurer and contractors for alleged bodily injury and property damage arising from remediation of their home following a fire loss, court denies insurer's motion for summary judgment and rejects insurer's argument that it cannot be held liable for damages caused by the negligent services of independent contractors. Where evidence was submitted indicating that insurer directed contractor to bring in ozone generators, suggested a second cleaning crew, and instructed contractor to remove attic insulation and contents, issue of fact existed regarding whether insurer exercised a degree of control over the contractors that warranted the imposition of liability. Issue of fact also existed as to whether remediation work was of an inherently dangerous nature that would give rise to another exception to the general rule that employers are not liable for negligence of independent contractors. Court also denies motion to dismiss plaintiffs' action for breach of the insurance policy. *O'Brien v. Citizens Ins. Co. of America*, 2007 WL 2257947 (Sup. Ct. Suffolk Co. August 6, 2007). Insurance Law § 3420(d) - Umbrella Coverage. Court grants summary judgment in favor of insured seeking umbrella coverage for that portion of underlying settlement not covered by exhausted primary policy. Court finds umbrella insurer's failure to disclaim for over a year is untimely as a matter of law. *Granite Avenue Utilities Corp. v. Markel American Ins. Co.*, 2007 WL 2241495 (Sup. Ct. Richmond Co. August 2, 2007). First-Party No-Fault. Court finds provider's corporate officer's affidavit lacks personal knowledge of practices and procedures sufficient to admit provider's documentation of claim under business records exception to hearsay rule. *Union Physician Health Care, P.C. v. American Manufacturers Mut. Ins. Co.*, 2007 WL 2253820 (Sup. Ct. App. Term July 24, 2007) (affirming denial of summary judgment in favor of provider); *Mega Supply & Billing, Inc. v. Allstate Indem. Co.*, 2007 WL 2254325 (Sup. Ct. App. Term) (reversing summary judgment in favor of provider). Contractual Indemnification/General Obligations Law § 5-321. After Court of Appeals determined that summary judgment for premises owners and managers was not appropriate where such defendants failed to establish that they lacked constructive notice of defective flooring, First Department affirms on remand trial court's order granting defendants' motion for conditional contractual indemnification against co-defendant municipality for any liability not resulting from owners' and managers' negligence. Appellate Division finds that trial court's ruling is in accord with General Obligations Law § 5-321 which prohibits indemnification of a party for his or her active negligence. *Lennard v. Mendik Realty Corp.*, 2007 WL 2264538 (1st Dept. August 9, 2007). Contractual Indemnification. In an action to recover for personal injuries, Second Department affirms order granting electrical subcontractor's motion to dismiss contractor's third-party claim for contractual indemnification where subcontractor made a prima facie showing that the plain language of the indemnification agreement did not provide that subcontractor must indemnify contractor for contractor's loss, costs, and expenses and contractor failed to raise a triable issue of fact. *Sullivan v. G & L Bldg. Corp.*, 2007 WL 2246778 (2d Dept. August 7, 2007). Contractual Indemnification. In an action by a draftsman injured after a fall into a hole on a construction site, First Department reverses motion court's dismissal of construction manager's claim for indemnification and contribution against electrical subcontractor pursuant to an indemnification clause requiring subcontractor to indemnify construction manager for injuries arising from subcontractor's work. The majority holds that testimony regarding the party responsible for digging the hole into which the draftsman fell gave rise to triable fact issues. A lengthy dissent argues that the dismissal was appropriate where the draftsman's detailed description of the subject hole and its location gave rise to no reasonable inference that the electrical subcontractor was responsible for the hole since it was undisputed that the subcontractor's holes were not in the vicinity of the accident and were smaller and more shallow than those plaintiff described. *Carboy v. Caldwell-Wingate Co., Inc.*, 2007 WL 2199112 (1st Dept. August 2, 2007).