Appeals Court Decision

SERVICES

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In a recent decision, the Massachusetts Appeals Court held in *Big Wheel Truck Sales, Inc. v. Safety Insurance Company* that the mere presence of a disabled vehicle on a roadway or other property does not constitute "property damage" sufficient to trigger coverage under an automobile liability policy for the costs of removing the vehicle.

The decision in Big Wheel concerned a 2009 event in which an individual under a Safety Personal Auto Policy was involved in a one-car accident, swerving off the road and crashing into a guardrail. Big Wheel Truck Sales, Inc., was called to the scene to recover the vehicle and prepare it to be towed, and subsequently submitted its invoice to Safety Insurance Company for payment. Since the insured had not purchased optional Towing coverage, Safety refused to pay Big Wheel's invoice. Arguing that its invoice was for services required to remediate property damage—i.e., the loss of use to the Commonwealth's property caused by the presence of a disabled vehicle on the premises—Big Wheel instead sought payment under Part 4 of the Auto Policy (covering damage to the property of others). Upon being again denied by Safety on the grounds that there was no evidence of any damage to the Commonwealth's property, Big Wheel sued for breach of contract and violations of G.L. c. 93A (governing unfair and deceptive business practices).

While Big Wheel was initially successful at the District Court level, obtaining a judgment that Safety had wrongfully refused to pay its invoice, Boyle | Shaughnessy Law attorneys Peter L. Bosse and Tanya T. Austin prevailed at the Appellate Division, wherein the Court held that the plain language of the policy precluded any recovery by Big Wheel. Big Wheel, in turn, appealed the decision to the Appeals Court, arguing that the Appellate Division's decision was contrary to the language of G.L. c. 90, §34O (governing compulsory automobile liability insurance). The Automobile Insurers' Bureau submitted an amicus brief on Safety's behalf, both parties arguing that in the absence of any damage to the Commonwealth's property there could be no coverage for "property damage" under the policy.

The Appeals Court ultimately concurred with Boyle | Shaughnessy Law's arguments, holding that without evidence of actual, physical damage to the Commonwealth's property, the presence of a disabled vehicle was insufficient to trigger coverage for "property damage" as contemplated by the Massachusetts Personal Auto Policy and G.L. c. 90, §34O. The Court specifically noted that were it to find otherwise, "every damaged or disabled vehicle on the Commonwealth's roadways would be entitled to towing at the expense of an auto insurer under the compulsory coverage of part 4," which was contrary to the purpose of compulsory

liability coverage. Based on such holding, the Court concluded that Safety had correctly refused to pay Big Wheel's invoice and was not liable for such.