

Appellate Decision

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Boyle | Shaughnessy Law attorneys successfully appealed a Fall River District Court ruling regarding the availability of coverage under the Massachusetts Personal Auto Policy in *Big Wheel Truck Sales, Inc. v. David Raposa*, 2015 WL 5098500 (2015), a decision which could have far-reaching consequences in auto accident cases. The Appellate Division (Southern Division) held as a matter of first impression that a crane recovery company could not recover for its services at the scene of an accident where the Massachusetts Personal Auto policy restricted payment to persons whose property had been injured.

At the trial court level, the Fall River District Court considered cross-motions for summary judgment and held that where the insured's vehicle was involved in a single-car accident, Big Wheel's crane recovery invoice was covered under the "Damage to Someone Else's Property" section of the insured's Personal Auto Policy. Finding that the mere presence of the vehicle constituted "property damage" to the land on which it rested, despite the lack of any leaking fluids or other physical damage to the land from the vehicle, the court ruled that the insurer was obligated to pay the invoice for recovery of the vehicle, and that its failure to do so was a breach of the insurance contract. The court further ruled as a matter of law that the insurer's failure to pay was a breach of G.L. c. 93A, §11, governing business-to-business trade practices, and that such breach was willful and knowing, triggering the maximum allowable award of treble damages and attorneys' fees in excess of \$47,000.00. Summary judgment was entered in favor of Big Wheel Truck Sales, Inc. on all counts.

On appeal, the insurer argued that the trial court had erred in finding that a vehicle's presence on property constituted "property damage," and further that because the state-approved policy language required payment only to "[persons] whose auto or other property is damaged in an accident," Big Wheel was not entitled to payment because it had itself suffered no property damage. The Appellate Division concurred, finding that the clear language of the policy precluded payment to the recovery company for its services, and reversing the District Court's entry of summary judgment. The Appellate Division not only reversed summary judgment for Big Wheel, but entered summary judgment in favor of the insurer on all counts, finding that as the insurer had correctly disclaimed coverage there was no basis for any breach of contract or of G.L. c. 93A, §11, willful or otherwise.