Summary Judgment – Claims Handling

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Matthew H. Greene

Matthew H. Greene, a shareholder of the firm, recently obtained summary judgment on behalf of his client, Plymouth Rock Assurance Corporation, in a lawsuit filed in Norfolk Superior Court. The plaintiff, a consortium plaintiff in an underlying motor vehicle vs. pedestrian case, alleged that PRAC, the insurer of the motor vehicle driver, failed to make a reasonable offer of settlement on her claims that she could accept independently of her husband, the injured pedestrian. The only settlement offer was made contingent upon both plaintiffs to the underlying case executing a release of all claims against PRAC's insured. The plaintiff sought to inflate the holding of *Klairmont v. Gainsboro Restaurant, Inc.* to establish that the trial of a Consumer Protection Act claim is appropriate even following a defense verdict exculpating the insured from civil liability in the underlying personal injury action. 465 Mass. 165 (2013).

In the underlying case, the matter was tried before a jury which returned a defense verdict on behalf of PRAC's insured. The plaintiff nevertheless claimed that, since a loss of consortium claim is independent of the damages claim of an injured spouse and therefore is not reduced by the proportion of negligence attributable to the plaintiff's spouse, that PRAC owed a duty to make an offer that she could accept individually as opposed to a global offer of settlement covering the claims of the plaintiff and her spouse. Matthew relied on the recent decision of the Massachusetts Appeals Court in the case of *Caira v. Zurich American Insurance Co.*, Case No. 6-P-927, for the proposition that an insurer may permissibly condition its tender of its policy limits on receipt of a full release of all claims against its insureds, notwithstanding the availability of excess insurance. The Court ultimately awarded summary judgment to the defendant, finding that, although the plaintiff's consortium claim was independent of her husband's claim, it nevertheless required proof that her husband's damages were caused by PRAC's insured. Given that the evidence in the underlying case was, at worst, disputed on this point and that the jury, in fact, returned a verdict finding no negligence on the part of PRAC's insured, no duty arose to make any settlement offer that the plaintiff could accept independently of her husband's claims.

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