Volume 3, Issue 1

February, 2013

Lambdin & Chaney, LLP Claims Gazette

Excellence In All That We Do

Inside this issue:

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Did you know?

Colorado Division of Insurance Regulation 5-1-15 requires an insurer to notify any additional insured by endorsement on a general liability policy, whose interests are affected by a claim, of the results of the claim investigation and its status within a reasonable time. This requirement does not apply if a lawsuit has been filed on the claim.

Adjuster's Statements About Coverage Can Support a Negligent Misrepresentation Claim

In ***Colo. Pool Sys. v. Scottsdale Ins. Co.***, 2012 WL 5265981 (Colo. App. Oct. 25, 2012), a swimming pool builder and its owner sued the CGL insurer Scottsdale Insurance and the claims adjuster after Scottsdale refused to reimburse the builder for losses associated with demolishing and replacing an improperly constructed pool.

After inspecting the pool, the claims adjuster indicated that Scottsdale would cover the losses to replace the pool. After the pool's concrete shell was demolished, Scottsdale denied coverage. While the Court of Appeals ruled that the policy did not cover damage incurred in demolishing and replacing the pool itself, the adjuster's statements that there was coverage could support a negligent misrepresentation claim as those statements were not mere opinions of the law. While the Court also noted that "rip and tear" damages could be covered as consequential damages, it did not consider the business risk exclusions but instead remanded the case back to the trial court for consideration.

Mental Health Facility Not Liable For Failure to Warn

On November 8, 2012, the Colorado Court of Appeals held that the statutory immunity provided to mental health care facilities from a civil action for failure to warn or protect any person against a mental health patient's violent behavior applied in a premises liability action.

In ***Marcellot v. Exempla, Inc.***, 2012 WL 5450545, a psychiatric nursing educator visited Exempla West Pines ...

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with three of her students.

Before entering the Psychiatric Intensive Care Unit of the hospital, she asked nursing staff whether there were any patients who presented a special risk to her safety or that of her students. She received assurance that there were none.

However, shortly after entering the unit, a patient assaulted her. Exempla knew that the patient presented a special risk.

The trial court granted Exempla's motion to dismiss the general negligence claim based on the premises liability act providing the exclusive remedy.

Exempla then moved to dismiss the premises liability claim based on the immunity provided in C.R.S. 13-21-117, which was also granted.

Colorado Supreme Court Abolishes Sudden Emergency Defense

In an opinion announced on January 22, 2013, ***Bedor v. Johnson***, 2013 WL 226912 (Colo. Jan. 22, 2013), the Colorado Supreme Court held that the trial court abused its discretion when it gave a sudden emergency instruction.

Johnson lost control of his vehicle when he hit an icy patch of snow and collided with Bedor.

The Colorado Supreme Court ruled that trial courts should no longer give the sudden emergency instruction in negligence cases because its minimal utility in Colorado's comparative negligence scheme is greatly outweighed by the instruction's danger of misleading the jury. The Court then abolished the sudden emergency doctrine.

Contractor has a Duty to Warn Motorists

In ***Collard v. Vista Paving Corp.***, 2012 WL 5871446 (Colo. App. Nov. 21, 2012), the Colorado Court of Appeals ruled as a matter of first impression that a contractor had a duty to motorists to warn of a dangerous condition even if the City had accepted the contractor's work.

In 2007, Grand Junction started a large sidewalk improvement construction project. Vista was hired to construct two road medians in the center of the road approximately 8 inches high and 11 feet wide. During construction, Vista was contractually responsible for traffic control.

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Recovery Under Both Dog Bite and Premises Liability Statutes

On October 25, 2012, the Colorado Court of Appeals in ***Legro v. Robinson***, 2012 WL 5266059, decided as a matter of first impression that the Premises Liability Act does not abrogate the Dog Bite Statute. Both statutes can be given effect to provide recovery.

A plaintiff lawfully on public or private property may seek economic damages from the dog owner under the Dog Bite Statute, CRS 13-21-124, on a theory of strict liability, which may be avoided if one of the statutory exclusions apply.

If the defendant qualifies as a landowner, the plaintiff may also seek damages beyond economic damages under the Premises Liability Act, CRS 13-21-111.5, which may be avoided if the defendant can prove he or she met the duties imposed under the Act.

Policy May Exclude UIM Coverage if Liability Coverage is Provided for the Accident

In two separate cases announced on October 11, 2012, ***Rivera v. Am. Family Ins. Group***, 2012 WL 4829605, and ***Jacox v. Am. Family Ins. Co.***, 2012 WL 4829547, the Colorado Court of Appeals held that a policy may exclude UIM benefits if that policy provides liability coverage for the accident. In both cases, passengers in single vehicle accidents sued the negligent driver. After collecting the liability policy limits, the passengers in each of these cases sought UIM benefits from American Family under the same policy that paid the liability limits.

The Court of Appeals specifically held that the 2008 amendments to the UM/UIM statute, CRS 10-4-609, did not invalidate the prior holding in ***Terranova v. State Farm***, 800 P.2d 55 (Colo. 1990), which permitted such exclusions.

Contractor has a Duty to Warn to Motorists, *continued from page 2*

After Vista completed its work, the City inspected it and authorized Vista to leave the site. Vista then requested and received permission from the City to remove its traffic control devices. The yellow dividing line in the center continued straight into the newly constructed medians. The City did not put up any new traffic control devices and did not repaint the yellow dividing line. At 5:30 a.m., Collard collided with the medians, totaling her car and suffering injuries. The Court held that Vista had a duty for a reasonable time to either eliminate the hazardous condition or to warn foreseeable users of the road even if its work had been completed and accepted by the City. However, the Court also held this duty would not be imposed if Vista had a reasonable good faith belief that another authorized party (here the City) would do so.

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