October, Covered Events 2006 VOLUME 1 ISSUE 12

Return to Cover Page

In This Issue

NEW JERSEY – Consumer Fraud Act Not Applicable to Insurance Brokers

In *Plemmons v. Blue Chip Ins. Servs., Inc.*, 2006 WL 2388672 (N.J. Super. Ct. App. Div. Aug. 21, 2006), the New Jersey Appellate Division found that an insurance broker is excluded from liability under the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -20. This ruling is significant as violations of the CFA afford treble damages.

In *Plemmons*, plaintiff entered into a contract to purchase a residential property. Before the initial closing date, plaintiff contacted an insurance broker to obtain coverage for the property, paid a premium for the coverage, and obtained a declaration sheet for a homeowner's policy. The initial closing date was delayed and the policy was voided. Before the second closing date, the broker learned that plaintiff planned to convert the property from residential to commercial uses. The broker recommended a business operations policy (BOP). However, plaintiff failed to pay a BOP premium and neither a BOP nor a homeowner's policy was issued. The property was then uninsured when it was damaged by a storm and negligent construction. Plaintiff brought suit against the broker for breach of contract, negligence, and violations of the CFA.

The primary issue addressed by the Court was whether an insurance broker may be subject to liability under the CFA. The CFA is intended to protect consumers by eliminating sharp practices and dealings in the marketing of merchandise and real estate. Merchandise is defined as any objects, wares, goods, commodities, services or anything offered to the public for sale. Prior New Jersey decisions have found that the CFA does not apply to semi-professionals (real estate brokers) and professionals (physicians, dentists, accountants or engineers) because the thrust of the CFA is pointed to products and services sold to consumers in the popular sense.

The *Plemmons* decision compared insurance brokers to real estate brokers to conclude that they are semi-professional. Insurance brokers are subject to testing, licensing and regulation comparable to real estate brokers, and are therefore exempt from liability under the CFA.

John P. Campbell
Schenk, Price, Smith & King LLP
Morristown, New Jersey
Mail to jpc@spsk.com
For a copy of this case:
http://www.judiciary.state.nj.us/opinions/a0414-04.pdf#search=%22new%20jersey%20appellate%20division%20plemmons%22

NEW JERSEY -- *Business Risk Exclusions/Product Recall*

Losses that various soft drink companies suffered when they had to recall carbonated beverages after products supplied to them by the insured were found to

be contaminated with ammonia have been found to fall outside the scope of the insured's CGL coverage since the loss was entirely restricted to damage to the insured's own product. Rejecting the insured's argument that it was providing a service to its customers during the course of which it had damaged products belonging to the customers, the Appellate Court ruled in *Atlantic Mut. Ins. Co. v. Hillside Bottling Co.*, A-2169-04T1 (App. Div. August 9, 2006)(unpublished) that Hillside Bottling had created its own product using certain component materials (*e.g.*, flavorings) supplied to it by the soft drink companies and that coverage was therefore barred in light of the New Jersey Supreme Court's *Weedo* analysis. The Appellate Court held that the motion judge had improperly analyzed the claim as if Hillside had damaged its customers and as if the customers had made third-party claims against it without recognizing that it was Hillside's own product and its work that caused the product recall. The Appellate Division further found that coverage would have been limited by Exclusion N but that the insured was nonetheless entitled to $25,000 for the cost of the recall pursuant to a separate product recall endorsement that it had purchased from Atlantic Mutual.

Michael F. Aylward
Morrison Mahoney LLP
Boston, Massachusetts
Mail to: maylward@morrisonmahoney.com
HILLSIDE%20BOTTLING%22%20%22ATLANTIC%20MUTUAL%22%22
[PRINTER FRIENDLY VERSION]