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LITIGATION ALERT

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Insureds Who Prevail in Coverage Disputes Not Entitled to Recover Attorney Fees

In a decision released on May 29, 2007, the Connecticut Supreme Court unanimously declined to adopt a common-law exception to the American rule which allows an award of attorney fees to a policyholder who prevails against its insurance company in a declaratory judgment action. ACMAT v. Greater New York Mutual, 282 Conn. 576 (2007) arose out of the refusal of Greater New York Mutual Insurance Company (“Greater New York”) to participate in the defense of asbestos lawsuits filed against ACMAT. In light of Greater New York’s refusal, ACMAT filed a declaratory judgment action seeking to establish that Greater New York had issued an insurance policy to ACMAT’s predecessor which provided comprehensive general liability and products liability coverage with liability limits of \$500,000 per person and \$1 million per accident, and that the policy was in full force and effect during the period from January 1, 1964 to January 1, 1968. Greater New York denied the policy’s existence.

Following a two day bench trial, the court issued a memorandum of decision declaring that Greater New York had issued the policy in question and found in favor of the insured. Greater New York appealed that decision, and the Connecticut Appellate Court affirmed the judgment of the trial court. Thereafter, ACMAT filed a motion with the trial court seeking attorney fees and was awarded \$126,153.50.

On appeal to the Connecticut Supreme Court, Greater New York argued that the trial court’s award of attorney fees violated the well established American rule “that attorney’s fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contract or statutory exception...[or] bad faith conduct of the other party or the other party’s attorney.”

The Supreme Court agreed with Greater New York’s position and reversed the attorney fee award. “The propriety of the trial court’s award of attorney’s fees turns, therefore, on whether we should follow the lead of those of our sister states that recognize a common-law exception to the American Rule allowing for the award of attorney’s fees when the insured party prevails in a declaratory judgment action against its insurer.”

The Court specifically declined to follow the lead of seven other states which permit an award of attorney fees to successful policy holders in coverage actions.¹ The court added that its decision reflects a respect for the legislative prerogative of choosing the special circumstances under which attorney's fees may be awarded, declaring that "when the General Assembly want[s] to authorize the award of attorney's fees it kn[ows] how to do it." Id.

In summary, the Supreme Court held that attorney fees cannot be awarded to an insured who prevails in a declaratory judgment action brought by or against an insurance company, absent the existence of bad faith conduct by the insurer.

If you would like a copy of this decision, or if you have any questions regarding this case, please feel free to contact Charles A. Deluca at cdeluca@rrjd-law.com or Joseph J. Arcata, III, at jjarcata@rrjd-law.com.

¹The court recognized that Connecticut and 9 other states already recognize an exception to the American rule if the policyholder can prove that the insurer acted in bad faith prior to or during the course of the litigation.