

## Kenneth Portner Receives Favorable Ruling in Insurance Case

Our client, a national insurance company, insured a gas station in Delaware that also rented trailers. A customer attached the trailer to his vehicle and left the station. While driving down the highway, the trailer became detached from his vehicle, crossed the centerline of the road and collided head-on with another vehicle. The driver he collided with sustained serious injuries.

Shortly after the accident, and before the station had notified the insurance company of the accident and claim, the trailer company contacted the service station and offered to defend and indemnify it against claims brought by the defendant arising out of the accident if the station agreed and signed a written defense and indemnity agreement drafted by the trailer company. The agreement provided that the trailer company would defend and indemnify the gas station against claims arising out of the accident unless the trailer company learned of evidence or information indicating that the two companies' interests were no longer aligned.

When insurance company learned of the accident and the agreement for defense and indemnity, it acquiesced in the arrangement, but warned the gas station owners that they were not to settle the claims without the insurance company's consent. The defendant filed suit against the gas station, the trailer company and the driver. The driver of the trailer asserted a cross-claim against the station alleging that it had acted negligently in failing to show him how to hook the trailer to his vehicle and/or in failing to ensure that the connection was proper. Despite the fact that the cross-claim created a conflict between the parties, the trailer company continued to control the gas station's defense.

At mediation, without the insurance company's participation, the parties agreed to settle with the defendant for \$1.4 million. The agreement called for the gas station and trailer company to each contribute \$350,000 with the driver of the vehicle hauling the trailer paying \$700,000. After this agreement was reached, the trailer company contacted the insurance company and demanded that it pay \$350,000 to settle the claim. The insurance company declined to meet the demand.

The trailer company refused to relinquish control of the gas station's defense and settle the case. The settlement allocated \$650,000 of the \$700,000 to be paid by the trailer company and the gas station to the gas station, with only \$50,000 of that sum allocated to the trailer company. The trailer company then obtained an assignment of rights against the insurance company from the gas station and sued the insurance company for the \$650,000 paid to settle the claims against the gas station and for bad faith.

In defending the insurance company, we argued that the trailer company had taken control of the gas station's defense with the intention of negotiating a settlement favorable to the trailer company, but that would stick the insurance company with the bill. We also argued that the joint settlement of the claims was without the insurance company's permission, and since the insurance company had never denied coverage for the station it meant the station was not entitled to indemnity for the settlement.

Judge Andrews of the District Court for the District of Delaware concluded that the gas station's settlement over the insurance company's objection violated the policy, that the insurance company was prejudiced by the settlement and that it had no duty to indemnify the gas station for the settlement.