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Weber 
Gallagher

Weber Gallagher Attorneys Win Insurance Case Before the Appellate Division on the Question of Whether Policy Was in Effect

Weber Gallagher attorneys successfully defended a claim before the Appellate Division on a question of insurance coverage and whether the policy was in effect at the time of injury.

The policy at issue was provided to a subcontractor hired by Evergreen Energy LLC, our insured. The claim was initially filed in Pennsylvania where the injured worker lived and his employer, Lenape Solar, was located. Based on Pennsylvania law, it appeared that the carrier cancelled the workers' compensation insurance coverage for non-payment. The injured worker then chose to pursue his claim in New Jersey where Evergreen is located and the injury occurred. He also received medical treatment in New Jersey totaling over \$1.3 million for an extended hospital stay due to his severe burns.

The subcontractor's insurance carrier alleged it should not be responsible for any aspect of the claim, as the insurance carrier was not licensed to operate or write policies in New Jersey. However, the policy at issue did not specifically exclude New Jersey from coverage. We argued that absent proper proof of cancellation of the policy in New Jersey, Evergreen Energy had no legal responsibility for any aspect of the current claim and all responsibility should be placed on the subcontractor's insurance carrier as previously determined by the Workers' Compensation Judge (WCJ).

The employee filed a Motion for Medical and Temporary Disability Benefits against both Evergreen and Lenape Solar seeking plastic surgery consultation and ongoing pain management. The injured worker also sought temporary disability benefits from the date of injury. The WCJ entered an order requiring Lenape and its insurance carrier to provide medical treatment as requested by the injured worker and pay temporary disability benefits. The order was entered without prejudice.

A Motion for Reconsideration by the insurance carrier was denied by the WCJ. Thereafter an appeal was filed. The insurance carrier filed a Notice of Motion for Appeal as if the order was final. They also filed a Motion for Leave to Appeal on an interlocutory order arguing the order was not final.

The insurance carrier for Lenape attempted to argue that there was no coverage in place in New Jersey at the time of the accident as the insurance carrier did not operate nor write policies in New Jersey. The insurance carrier claimed cancellation of the Pennsylvania policy was transferable to New Jersey and therefore there was no need to show proper cancellation in New Jersey. However, the insurance carrier did not deny that New Jersey was not excluded under the policy.

The insurance carrier for Lenape tried to also argue the WCJ should have found Pennsylvania law applied, not New Jersey and under Pennsylvania law the policy was properly cancelled. Weber Gallagher attorneys persisted in the argument that New Jersey had enough significant contacts to apply New Jersey law and a finding that the insurance carrier did not properly cancel under New Jersey law.

After briefs were submitted, and without oral argument, the Appellate Division denied the Motion for Leave to Appeal and dismissed the Notice of Motion for Appeal.

Comment: This success saved the Weber Gallagher client medical benefits, temporary disability benefits and the outstanding \$1.3 million medical bill.

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