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http://www.leagle.com/decision/In%20INCO%2020170310248/ESTATE%20OF%20CURTIS%20v.%20GEICO%20GENERAL%20INSURANCE%20COMPANY

Fist Fights are not Covered by Auto Insurance

Two drivers had a minor collision in a store parking lot which resulted in some harsh words and fists being thrown. After the physical altercation, one of the drivers died allegedly as a result of the altercation. Auto insurer paid for extant driver's legal defense in decedent driver's wrongful death suit but reserved the right to later deny coverage. Upon summary judgment from insurer, the trial court held that the coverage only applied to incidents directly from the "use" of his vehicle, of which a fist fight after a minor collision was not. Extant driver appealed that decision, but the appellate court affirmed, noting that extant driver's vehicle had no integral role in the fight.

b. Other Significant Decisions

Goodwin v. Yeakle's Sports Bar & Grill, Inc., No. 27S02-1510-CT-627 (2016)
http://www.in.gov/judiciary/opinions/pdf/10261601rdr.pdf

Foreseeability in Negligence

Appellants were injured at a neighborhood bar after a shooting. Appellants sued the bar for negligence. The trial court granted summary judgment in favor of the bar, and the court of appeals reversed and remanded. The Supreme Court of Indiana affirmed the trial court's judgment. The Court stated that foreseeability is not only a component of the proximate cause element of negligence, but foreseeability is also a component of the duty element of negligence as well. For the purposes of determining whether an act is foreseeable in the context of duty, the court determines whether or not there is some probability or likelihood of harm that is serious enough to induce a reasonable person to take precautions to avoid the harm. There should be no consideration of the actual facts involved, only a broad type of analysis of the type of victim and the harm involved. The Court concluded that a shooting inside a neighborhood bar is not foreseeable as a matter of law.

Sedam v. 2JR Pizza Enterprises, LLC, Nos. 39S05-1703-CT-171 (Oct. 31, 2017)
http://www.in.gov/judiciary/opinions/pdf/10311701mm.pdf

Negligent Hiring and Respondeat Superior

A pizza delivery driver collided with a scooter, resulting in the death of the scooter operator. The estate of the scooter operator brought suit against the delivery driver's employer, claiming negligence under respondeat superior and negligent hiring. The employer filed for summary judgment on both claims. The Supreme Court of Indiana granted partial summary judgment to the employer, allowing only the negligence claim by the estate under the doctrine of respondeat superior because the employer admitted the employee was acting within the course and scope of her employment at the time of the accident. The Court granted summary judgment on the claim of negligent hiring claim because the claim is based on the employee's negligence, and the estate could not recover twice for the same damage.

2. Appellate Court Decisions

a. Insurance Coverage Decisions

Bokori v. Martinoski, No. 45A03-1603-SC-519 (2017)
https://www.in.gov/judiciary/opinions/pdf/02151701lmb.pdf

Fair Market Value of Leased Vehicle Includes Remaining Balance of Lease

Two drivers had a motor vehicle collision which resulted in non-fault driver's vehicle being totaled. After a small claims court lawsuit, in which non-fault driver prevailed, the magistrate awarded the fair market value of non-fault driver's vehicle, which included the remaining value of her lease, as damages to her. Fault-driver appealed this determination, but the appeals court affirmed that the remaining value of the lease is included in the fair market value of the vehicle.

Walsh Construction Co. v. Zurich American Insurance Co. et al., No. 45A04-1606-PL-1284
http://caselaw.findlaw.com/in-court-of-appeals/1854703.html

Self-Insured Retention Endorsements Must be Satisfied Prior to Commercial Policy Enforcement

General contractor hired a subcontractor for road work. The contract required subcontractor to indemnify contractor for failures and negligence in its work. Subcontractor's commercial general liability insurance policy named general contractor as an additional insured on a primary and non-contributory basis. A motorist was later injured while travelling through the work zone's traffic pattern, causing him to file a negligence action against general contractor, who then filed a third-party complaint against subcontractor for failing to indemnify general contractor. The trial court found on summary judgment that insurer had no contractual obligation to cover general contractor as an additional insured, and thus insurer need not pay out on behalf of subcontractor. The appellate court affirmed the decision, noting that the plain language of the retention endorsement does not require that insurer defend or indemnify general contractor until subcontractor satisfies its self-insured retention.

Patchett v. Lee, No. 29S04-1610-CT-549
http://www.in.gov/judiciary/opinions/pdf/10211601ggs.pdf

Collateral Source Doctrine and Government Payors

Defendant's negligence causing a motor vehicle collision, injures plaintiff. Negligence was conceded, but issue arose as to whether the plaintiff's Health Indiana Plan healthcare reductions are prohibited by the collateral source rule. The trial court held that these rate reductions in medical bills were prohibited by the collateral source rule, and the court of appeals affirmed. The Supreme Court of Indiana reversed this decision. The Court reasoned that payments were probative of reasonable value of medical expenses and were admissible under *Stanley v. Walker*, stating that the trial court abused its discretion in excluding payments as evidence.

b. Employment Decisions

Vinup v. Joe's Construction, LLC., No. 58A04–1602–CT–502 (2016)
http://www.in.gov/judiciary/opinions/pdf/11301603jsk.pdf

Employee vs. Independent Contractor Decision

A laborer, who was injured on the job while working for a limited liability construction company, filed a lawsuit against the company seeking damage for his personal injuries. The construction company's commercial general liability insurer and the construction company itself filed declaratory actions denoting the laborer as an employee and not an independent contractor, thus eliminating insurance coverage for laborer's injury via a specific policy provision. The trial court agreed with the construction company and insurer on summary judgment. Laborer appealed the decision, but the appellate court affirmed the summary judgment.

Ryan v. TCI Architects/Engineers/Contractors, Inc., No. 49S02-1704-CT-253 (Apr. 26, 2017)
http://www.in.gov/judiciary/opinions/pdf/04261701shd.pdf

Exception to the Duty of Care Owed by a General Contractor to a Subcontractor's Employees

A subcontractor's employee brings a negligence action against a general contractor for a retail construction project, alleging that the general contractor had a duty to provide him with a safe workplace and that duty was breached when the employee fell off of a ladder that was too short for removing ductwork. The Supreme Court of Indiana rules that a general contractor assumes a non-delegable duty of care related to worksite safety for all subcontractor employees when the general contractor enters into a contract assigning such a duty to itself. Typically, in Indiana, a general contractor owes no duty of care to employees of an independent contractor. However, one exception to this rule is when a general contractor enters into an agreement that imposes a specific duty of care to all workers on the worksite.

Walsh Construction Company v. Zurich American Insurance Company, No. 45A04-1606-PL-1284 (Mar. 28, 2017)
http://www.in.gov/judiciary/opinions/pdf/03281701en.pdf

Duty to Defend and Indemnify Pursuant to a Self-Insured Retention Endorsement

A general contractor brings an action against a subcontractor's commercial general liability insurer for declaratory judgment that insured owes a duty to defend and indemnify the general contractor as an additional insured under a policy with a self-insured retention endorsement. The court of appeals holds that the insurer had no obligation to defend or indemnify the general contractor as an additional insured until the subcontractor satisfied the $500,000.00 self-insured retention amount contracted for in the policy.

c. Other Significant Decisions

Watts Water Technologies, Inc. v. State Farm Fire & Casualty Co., No. 45A04–1604–CT–831 (2016)
https://www.in.gov/judiciary/opinions/pdf/12271602ebb.pdf

Compelling Arbitration in Product Liability Actions

Property insurer brought a subrogation action against water heater manufacturer for an allegedly defective connector which caused water damage to insured's home. Manufacturer moved to compel arbitration of the issue, but the trial court disagreed that arbitration was compulsory citing the insurance policy's non-requirement of arbitration regarding products liability issues. The appellate court affirmed the trial court's decision.

Dermatology Associates, P.C., v. White, No. 49A02-1512-PL-2189
https://www.in.gov/judiciary/opinions/pdf/01191701mgr.pdf

180-Day Extension Requirements on Statute of Limitations in Medical Malpractice Actions

Patient received laser hair removal from dermatologist on her face which reacted to makeup she was wearing, causing a discoloration of her face at the location of that makeup and resulting in her filing a medical negligence action of less than $15,000.00 in damages at the department of insurance. After learning that the discoloration was permanent, patient voluntarily dismissed the action at the department in order to increase her damages sought in litigation. Dermatologist moved to permanently dismiss the action for missing the statute of limitations, but the trial court denied that motion. At appeal over that motion, the court held that the action did induce the 180-day extension and thus reversed the trial court and granted dermatologist's motion to dismiss, noting that learning the discoloration was permanent did not fulfil the requirement of learning new knowledge of bodily harm which would cause greater damages than $15,000.00.

Smith v. Dunn Hospitality Group Manager, Inc., No. 82A05-1509-CT-1635
http://www.in.gov/judiciary/opinions/pdf/10121601par.pdf

Premises Liability: Hotel Liability for Third Party Theft

Hotel guests brought negligence action against a hotel for allowing third-parties to access their room and remove their personal belongings. The lower court entered summary judgment in favor of the hotel, and the guests appealed. The Court of Appeals affirmed the decision, holding that the statutory liability of the hotel for loss or damage to any person property brought into the hotel by guests was capped at $200.00, pursuant to the innkeeper's statute (IC 32-33-7-3). There was nothing in the record to indicate that the hotel conspired with the third-parties to commit the theft in the hotel room.

Polet v. ESG Security, Inc., No. 49A02-1510-CT-1631
http://www.in.gov/judiciary/opinions/pdf/12271601ebb.pdf

Premises Liability: Contractual Duties

After a stage collapse at a state fair, injured patrons and the estates of deceased patrons brought suit against the security company hired by the state fair. The lower court entered summary judgment in favor of the security company. Plaintiffs appealed and the court of appeals affirmed this decision. The Court reasoned that the security company did not have a duty relating to the stage collapse due to high winds at the time of the collapse. The security company was merely hired to provide security personnel at various times and locations. The agreement between the security company and the state fair did not include any provision which could place protecting patrons from a stage collapse cause by wind within the company's scope of work.

Rogers v. Martin, No. 02S05-1603-CT-114
http://www.in.gov/judiciary/opinions/pdf/10261601lhr.pdf

Foreseeability in Negligence

The estate of the deceased brought a negligence action against appellee after a fist fight between the deceased and appellee's co-host led to the death of the deceased in the appellee's home. The Court stated that when foreseeability is a part of the duty analysis in a negligence action, such as in landowner-invitee cases, it is evaluated in a different manner than foreseeability in the context of proximate cause. When courts use this analysis, a duty will be found where, in general, reasonable persons would recognize the harm and agree that it exists. No consideration is given to the specific facts of the case. Applying this analysis, the court inquired as to whether a duty should be imposed on appellee, as a homeowner, to take precautions to prevent a co-host from fighting with and injuring a houseguest. The Court held that it is not reasonably foreseeable for a homeowner to take precautions to avoid this unpredictable situation, and appellee had no duty to take reasonable precautions to protect the houseguest from a co-host's conduct.

3. Federal Court Decisions

a. Insurance Coverage Decisions

Frye v. Auto-Owners Insurance Co., No. 16-1677
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D01-03/C:16-1677:J:Flaum:aut:T:fnOp:N:1888735:S:0

Capping UIM Liability Under Umbrella Policy

Insured filed suit against his employer's insurer to recover UIM benefits under his employer's commercial automobile and commercial umbrella policies. The U. S. District Court for the Northern District of Indiana entered summary judgment in favor of the insurer, and insured appealed. The Court of Appeals held that, according to IC 27-7-5-2, a statutory provision allowing insurers to omit UIM coverage from commercial umbrella policies did not exempt insurers from a statutory provision requiring UIM liability limit equal to policy's general per-incident limit if UIM coverage was included. Thus, commercial umbrella policy could not cap insurer's UIM liability at $1 million when the policy's general per-incident limit was $5 million.

Atlantic Casualty Insurance Company v. Garcia, No. 2:15-CV-66-JEM (Jan. 5, 2017)
https://www.leagle.com/decision/infdco20170109709

Claims-in-Process Exclusion

An insurer brings an action against an insured commercial property owner seeking a declaratory judgment that the insured's commercial general liability policy does not provide coverage for investigation and remediation of environmental contamination that predated the purchase of the property. The Northern District Court holds that the policy's claims-in-process exclusion barred coverage. This exclusion applies to both known and unknown property damage. Therefore, even though the insureds did not become aware of the pollution until after the policy's inception, the exclusion applies. Appeal pending in the 7th Circuit Court of Appeals.

b. Other Decision

Couvillion v. Speedway LLC, No. 16-1202
https://www.gpo.gov/fdsys/pkg/USCOURTS-ca7-16-01202/pdf/USCOURTS-ca7-16-01202-0.pdf

Premises Liability: Reasonable Anticipation of Harm

Gas station patron brought suit against a gas station after she fell over a pallet of salt bags on the gas station premises. The U. S. District Court for the Southern District of Indiana granted summary judgment in favor of the gas station, and the patron appealed. The Court of Appeals affirmed the decision of the lower court. The Court reasoned that the gas station owner could not have reasonably anticipated that a patron would fall over the salt bags when the salt bags are easy to see, with nothing obstructing the view of the salt bags.

These cases were pending at the time this summary was printed. To confirm whether the Supreme Court has issued a decision in any of these cases, we invite you to visit our website at http://www.smithrolfes.com.