

Denver Law Review

Volume 68
Issue 4 *Tenth Circuit Surveys*

Article 29

February 2021

Insurance

Denver University Law Review

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Denver University Law Review, Insurance, 68 Denv. U. L. Rev. 699 (1991).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

INSURANCE

Allstate Ins. Co. v. Brown, 920 F.2d 664

Per Curiam

Defendant Brown's minor son William was involved in a car accident with the Niroumands while driving his brother's car. The car involved in the accident, however, was not specifically covered under Alfred's policy with plaintiff, Allstate Insurance Company ("Allstate"). Allstate sought a declaration that it had no duty to defend, indemnify, or pay the claims of any defendant. The district court granted Allstate's motion for summary judgment and rejected the Niroumands' motion to certify certain questions of law. The Niroumands and the Browns appealed. Specifically, they asserted that: (1) the district court erred in not staying the declaratory judgment action pending the outcome of the state court trial; (2) summary judgment was inappropriate because a material question of fact existed as to whether William had his brother's implied permission to use the car; (3) it was not necessary for Alfred to be driving the vehicle in order to have coverage; and (4) the policy required Allstate to defend Alfred.

The Tenth Circuit affirmed the judgment of the district court. The court first ruled that the decision to not certify was within the district court's discretion. First, the court ruled that the district court was not required to stay the declaratory judgment action pending the outcome of the state court trial. The court reasoned that the Niroumands and Browns never filed a motion to stay. Second, the court concluded that summary judgment was appropriate on the issue of William's implied permission to use the car. The court explained that there was a lack of credible evidence to the contrary. Further, the court denied Brown's contention that Alfred need not have been actually driving the car for Alfred to qualify as a "user." The court explained that it was not shown that William's use of the car furthered a purpose connected to Alfred. Also, the court similarly denied Brown's argument that Allstate must provide coverage for Alfred. The court explained that the policy only protects insured people and their insured vehicles.

Mitchell v. State Farm Fire & Casualty Co., 902 F.2d 790

Per Curiam

Mitchell, an Arkansas resident, owned Colorado property that was destroyed by fire. He brought suit against State Farm Fire & Casualty Company ("State Farm"), an Illinois corporation, to recover under a fire insurance policy. The policy did not indicate what state law governed. The district court granted partial summary judgment to Mitchell on the ground that Arkansas law, rather than Colorado law, governed determination of amounts due under the policy. State Farm subsequently appealed.

In determining which state law applied, the Tenth Circuit utilized the "most significant relationship" test. Under this test, the court stated that the most significant factor to be considered is the location of an insured property. Accordingly, the court ruled that Colorado had the most significant relationship to issues arising out of the policy since it was the state in which the property was located. Moreover, absent contrary evidence, the parties expected Colorado law to be applicable. Finally, the fact that Mitchell was an Arkansas resident and paid premiums and acted on the policy from that base, was not sufficient to overcome Colorado's interest in applying its law.

Penny v. Giuffrida, 897 F.2d 1543

Author: Judge Ebel

Defendant, Giuffrida, Director of the Federal Emergency Management Agency ("FEMA"), appealed the district court's judgment in favor of plaintiff, Penny. The dispute involved FEMA's denial of Penny's claim under a flood insurance policy, issued pursuant to the National Flood Insurance Program ("NFIP"). FEMA denied the claim on grounds that Penny's home was not located in a community participating in the NFIP. FEMA argued that the district court incorrectly held that it was estopped from denying liability, erred in awarding Penny recovery on inconsistent theories, and improperly awarded interest. FEMA argued that interest awards against the United States are not authorized under NFIP. Penny, on the other hand, argued that the district court erred in denying attorney's fees.

The Tenth Circuit disagreed with the district court's finding that FEMA engaged in affirmative misconduct so as to warrant a finding of equitable estoppel. The court noted that the Supreme Court has not yet decided whether equitable estoppel applies against the government. Moreover, the court found that the facts did not satisfy the criteria for applying equitable estoppel, even if the claim were viable against the government. Second, FEMA acted pursuant to its statutory authority in denying liability to Penny. Further, it would have acted beyond its authority if it extended insurance to Penny. Third, the court found no error in the district court's denial of attorney's fees to Penny because FEMA's position was substantially justified. The court declined to address the remaining issues on appeal.

Royal College Shop, Inc. v. Northern Ins. Co., 895 F.2d 670

Author: Judge Barrett

Plaintiffs, Royal College Shop, Incorporated ("Royal College"), and its owner, Black, appealed an order of the district court. This order denied their motion for assessment of prejudgment interest on insurance proceeds awarded pursuant to a fire insurance policy. Defendant, Northern Insurance Company ("Northern"), cross-appealed from the district court's order which denied its motions for remittitur, a new trial, or judgment notwithstanding the verdict ("JNOV").

The Tenth Circuit held that the district court erred in failing to award prejudgment interest on two liquidated claims where the amount due was clear and ascertainable. The district court did not err, however, in denying prejudgment interest on two other unliquidated claims which were in dispute. Further, the court held that Northern failed to demonstrate an abuse of discretion in the district court's failure to grant a new trial or a remittitur. Also, the court ruled that Northern failed to demonstrate any error affecting substantial rights in the submission of consequential damages to the jury, in the jury instructions, or in any rulings during and after trial. Thus, Northern was not entitled to a JNOV.

