Weekly Law Resume

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WEEKLY LAW RESUME™
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Insurance Coverage - Equitable Subrogation and Contribution

James Dobbas, et al. v. Fred Vitas, et al.
Court of Appeal, Third District (January 7, 2011)

When an insurer seeks to recover monies it has paid in settlement, it may do so by either a claim for equitable subrogation - seeking to stand in the shoes of its insured to the extent of its payment, or by a claim for equitable contribution, an apportionment of costs among insurers that share the same level of liability on the same risk. This case considered the rights of an insurer for equitable subrogation or contribution against an insurance agent who had allegedly failed to procure an insurance policy.

James Dobbas operated a ranch in Sierra County. On May 27, 2002, a bull escaped from his property, and collided with two vehicles, resulting in the deaths of two occupants of the vehicles and injuries to four others. Dobbas was sued by the victims.

Prior to the incident, Dobbas' insurance broker, Fred Vitas, had obtained a primarily liability policy for him from Cal Farm with $1,000,000 limits. Vitas had also procured a $3,000,000 excess policy from Cal Farm, but Vitas had allegedly either cancelled the excess policy or failed to renew it, so that it was not in effect at the time of the accident. The lawsuit was ultimately settled for the $1,000,000 Cal Farm limits, with a stipulation to binding arbitration to determine Dobbas' liability and to apportion the damages between the plaintiffs. Dobbas also assigned any claims he might have against his agent for failing to secure his excess policy in exchange for an agreement not to execute on any judgment against Dobbas. The arbitration resulted in a $5,000,000 total judgment, which was entered against Dobbas.

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Subsequently, the plaintiffs learned of two additional policies that had insured James Dobbas Inc. which might also have provided coverage to James Dobbas' ranching activities. These included a $1,000,000 primary liability policy through Steadfast and a $7,000,000 policy issued by American Guarantee. Both carriers filed suit for declaratory relief that their policies did not provide any coverage, and both filed motions for summary judgment. Steadfast's motion was granted, but the Court found that Dobbas' ranching activities were covered by the American Guarantee excess policy.

American Guarantee thereafter entered into a settlement with the plaintiffs, paying them $2.8 million, and obtaining from them an assignment of the claims Dobbas had assigned to them against Vitas for failing to procure the excess policy through Cal Farm. American Guarantee then sought to intervene in a lawsuit Dobbas had previously filed against Vitas for failure to procure the excess policy. American Guarantee filed a motion to intervene as an "interested party" under Code of Civil Procedure Section 387. The trial court denied the motion to intervene, holding that American Guarantee was not entitled to equitable subrogation because Mr. Vitas had not caused the accident. American Guarantee appealed. The Court of Appeal affirmed the denial of the motion to intervene, holding that because Vitas was not the person who had caused the accident, but was instead simply a party who had promised to procure insurance, American Guarantee was not entitled to total reimbursement under an equitable subrogation theory. The Court held that as against a party simply promising to procure insurance, an insurer who paid a settlement is not in a superior equitable situation such that equitable subrogation is appropriate.

The Court also distinguished Vitas' promise to procure insurance from other cases where the defendant had promised to indemnify a particular party or promised to return or maintain particular goods. The Court claimed that situations such as that gave an independent basis for the defendant to be responsible and that a carrier paying a settlement on behalf of its insured was in a superior equitable position in such situations. In contrast, Vitas had not only not caused the injury, he had not promised to indemnify Dobbas. The Court held that this was similar to a line of cases where one insurer accepted the claim and another insuring carrier did not. In those cases, unless the non-settling carrier somehow caused the loss itself, there was no superiority of equities in the settling carrier and no right to equitable subrogation.

Because both American Guarantee and Vitas had obligated themselves to provide insurance for Dobbas, this was parallel to two equally-situated insurers when one fails to pay the claim. In that situation, resolution would come

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not by way of equitable subrogation, but by equitable contribution. American Guarantee could recover if it showed it had paid more than its fair share. Here, the total judgment against Dobbas was $5,000,000. After the Cal Farm limits were paid, this left a judgment of $4,000,000. American Guarantee's policy was for $7,000,000 and the policy Vitas was to procure had been for $3,000,000. American Guarantee would thus have been responsible for payment of 70% of the remaining judgment or $2.8 million, which was the amount it had paid. It was thus not entitled to contribution. Without a showing of superior equities in its favor, American Guarantee was not entitled to equitable subrogation, and as it paid no more than it would have been paid had Vitas procured the $3,000,000 excess policy, American Guarantee had no basis for equitable contribution. As such, the Court held that the denial of American Guarantee's motion to intervene in the lawsuit against Vitas was appropriate, and it affirmed the trial court's ruling.

COMMENT

This case holds that where a party has committed to providing insurance, but has not bound itself to otherwise indemnify or make a party whole, and was not personally responsible for the event that caused the insured's loss, a settling carrier will not be entitled to equitable subrogation. Under such situations, a settling carrier's only remedy remains a claim for equitable contribution if it has paid more than its fair share of any settlement.

For a copy of the complete decision see:

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