Nesmith v. Allstate

Year: 2013
Court: New York Supreme Court, Appellate Division, Fourth Department
Case Number: 2010-10533

UP argued in its brief that Allstate's denial of a claim was improper because it relied on an ambiguous policy definition of an the ambiguity of "occurrence". Allstate denied a claim for coverage for injuries stemming from lead poisoning citing an exclusion for multiple claims from a single "occurrence" (i.e. an implied continuing loss exclusion). Allstate argued that the terms "occurrence" and "same general conditions" were not ambiguous and would put a reasonable policyholder on notice of the exclusion. UP argued that under New York law, the term "occurrence" is not sufficiently unambiguous as to support Allstate's reasoning because it is susceptible to more than one reasonable interpretation. UP further argued that "implied continuing loss exclusions" may lead to absurd results and should be limited by law in the same manner as "pollution exclusions." In this case, the original "occurrence" involved an unrelated family, at a different time, in a different apartment unit, and during a different policy period. UP urged the Supreme Court to apply objective rules regarding contract terms and interpretation and protect policyholders from an insurer's pernicious and unfair interpretation of their own language.

UP's brief was drafted pro bono by John G. Nevius, Esq., P.E. and Nicholas R. Maxwell, Esq. of Anderson Kill, P.C. and Amy Bach, Esq.

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