Sloane and Walsh Wins Appeal in Four Million Dollar Subrogation Case!

February 10, 2021 - Sloane and Walsh, LLP (www.sloanewalsh.com), a leading national law firm with a focus on litigation and insurance law, is very pleased to announce that John Donovan (right) and Myles McDonough recently prevailed in the Massachusetts Appeals Court in a multimillion-dollar subrogation case. A fire occurred at a home in Belmont, Massachusetts in 2012. It was determined that spontaneous combustion of oil-soaked rags caused the house fire. On behalf of the homeowner insurer, Sloane and Walsh commenced a lawsuit (in the name of the insured) against several contractors and an architect. The contractors settled out and the case proceeded to trial against the architect and his firm on the theory that the architect assumed a duty to supervise the contractors involved in the construction project.

At the beginning of the trial, over objection, the trial judge informed the jury that the homeowner insurer (and not the insured) was the real party in interest. During the trial, the judge also allowed the defendant to introduce evidence relating to the homeowner insurance. At the conclusion of the trial, the judge refused to instruct the jury about the theory that the defendant voluntarily assumed a duty to supervise. The jury returned a verdict for the defendant and against the homeowner insurer.

On appeal, the Massachusetts Appeals Court reversed the judgment for the defendant and found in favor of the insurer.

The Appeals Court held that the trial judge had abused his discretion by allowing matters of insurance to permeate the trial. The Court noted that a subrogating insurance company is permitted under Rule 17 of the Massachusetts Rules of Civil Procedure to sue in the name of its insured. The Court also re-affirmed the general rule concerning the inadmissibility of insurance. According to the Court, "the rules regarding the inadmissible of insurance exist so that juries will not be swayed by the fact that a deep-pocket insurance company has paid or will pay for the loss."

The Appeals Court also concluded that the trial judge erred by failing to instruct the jury on the theory that the defendants voluntarily assumed the duty of supervising other contractors. The judge's instructions implied that there had to be a contractual meeting of the minds for the jury to find a duty to supervise but such a meeting of the minds was not necessary to find a voluntary assumption of the duty.

The case was remanded for a new trial on the merits.

Sloane and Walsh, LLP is a national law firm with a focus on litigation and insurance law including large loss subrogation, insurance coverage, extra contractual and bad faith law, appraisal law, personal injury, property damage, construction law, complex litigation, professional liability, class action law, privacy, cyber law, medical malpractice law, employment law and legal malpractice law - in addition to providing claims counsel services.

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