State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711 or gspencer@nycourts.gov.

To be argued Thursday, September 7, 2017 (arguments begin at noon)

No. 96 American Economy Insurance Company v State of New York

American Economy Insurance Company and other insurers that provide workers' compensation coverage filed this suit to challenge the constitutionality of a 2013 amendment, Workers' Compensation Law § 25-a(1-a), which phases out a special fund that pays benefits to injured workers whose cases were closed and later reopened. The amendment ended the transfer of liability for newly reopend cases to the fund as of January 1, 2014, nine months after it was enacted. The special fund had been financed since 1948 by annual assessments on workers' compensation carriers, who were allowed to pass the cost on to the employers they insured. In proposing the amendment, the Governor said the fund was unnecessary "because the premiums [insurers] have charged already cover this liability," and closing it would save employers about $300 million per year. The insurers, arguing that premiums for policies issued before October 1, 2013 did not address liability for reopened cases, claim the amendment impermissibly imposes retroactive liability on them for those policies in violation of the Contract, Due Process, and Takings Clauses of the U.S. Constitution and the state Takings Clause.

Supreme Court dismissed the suit, ruling the amendment did not have a retroactive effect. The new law, "closing the Fund to reopened ... claims filed up to nine months after its enactment, cannot be said to apply retroactively.... On the contrary, the nine-month postponement in closing the Fund furnishes clear evidence that the Legislature intended the amendment to have a prospective application.... The fact that the benefits may relate to an injury that occurred prior to the enactment of § 25-a(1-a) does not render it retroactive.... A statute is not retroactive when made to apply to future transactions merely because such transactions relate to or are founded upon antecedent events...." Finding no Contract Clause violation, it said "plaintiffs fail to allege the existence of any contracts which entitle them to continue shifting ... liability to the Fund.... At best, the amendment merely renders plaintiffs' policies with their insureds less profitable." It ruled there was no taking because the amendment "neither increases the amount of compensation owed to claimants; not does it appropriate the carriers' assets for the use of the State."

The Appellate Division, First Department reversed and declared the law unconstitutional as applied to policies issued before October 1, 2013. "It is essentially undisputed that the premiums charged for policies prior to October 1, 2013 took into account the transfer to the Fund of reopened claims under the former [statute], and thus, did not account for potential future liability relating to such claims...," it said. The amendment "actually 'altered the carrier's preexisting liability'..., imposing on plaintiffs substantial new retroactive liability that has not and cannot be offset by premium increases." It said retroactive application of the amendment "violates the Contract Clause ... because it retroactively impairs an existing contractual obligation ... '[w]here ... the insurer does not have the right to terminate the policy or change the premium rate'.... Defendants failed to show that the impairment is 'reasonable and necessary to serve a significant and legitimate public purpose....' Indeed, the legislation's stated purpose of preventing a windfall to insurance carriers was based upon the erroneous premise that premiums already cover this new liability. Retroactive application would also constitute a regulatory taking...."

For appellants State et al: Deputy Attorney General Steven C. Wu (212) 416-6312
For respondents American Economy et al: Seth P. Waxman, Washington, DC (202) 663-6000

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711 or gspencer@nycourts.gov.

To be argued Thursday, September 7, 2017 (arguments begin at noon)

No. 97 People v Peter Austin

Peter Austin was found guilty of breaking into two Bronx businesses in 2009, based largely on DNA evidence from blood found at the crime scene. In October 2012, after the prosecution was ordered to turn over the blood samples to the defense and as the trial was set to begin, Hurricane Sandy flooded the police warehouse where the samples were stored with contaminated water. The federal Occupational Safety and Health Administration closed the warehouse as a health hazard and the blood evidence could not be retrieved.

Supreme Court denied Austin's request for an adverse inference charge allowing the jury to infer that the missing DNA evidence would not have supported the prosecution's case. It said the instruction would be "inappropriate ... in this case where the flooding is unprecedented.... Blame the police department for not having foreseen the unprecedented and therefore move materials?... I'm not giving that charge." The court also cut off defense counsel when he sought to address the missing evidence during summation. Austin was convicted of two counts of third-degree burglary and sentenced to 7 to 14 years in prison.

The Appellate Division, First Department affirmed on a 3-1 vote, saying Austin was not entitled to an adverse inference charge. "[A]ssuming the materiality of the physical blood evidence and that defendant had requested it with reasonable diligence, the evidence ... was not lost or destroyed by agents of the State within the meaning of [People v Handy (20 NY3d 663)]. Rather, the evidence was destroyed or rendered inaccessible as the result of a meteorological event beyond human control.... [T]he Handy adverse inference charge is a penalty for destruction of evidence, not for mere tardiness on producing it.... While we do not condone the People's slowness in fulfilling their disclosure obligations..., the evidence in question was not lost as a foreseeable result of the passage of time, but as a consequence of a natural catastrophe that happened to occur just before this case went to trial." It also questioned the relevance of the blood samples, since they "would not have told [jurors] anything about the accuracy of the DNA match" and Austin "never expressed any interest in conducting an independent DNA analysis."

The dissenter said, "[T]he decision regarding the weight afforded to the DNA evidence destroyed while in the People's custody..., including the reasons it is no longer available, belongs to the jury, not the judge. This is because the People were ordered to, but did not, produce this evidence before its destruction. The judge, in refusing to give the requested permissive jury instruction that the jurors could, if they wanted, draw an unfavorable inference from the missing evidence, improperly usurped for herself the juror's role in evaluating the excuse given for the unavailability of blood samples collected by law enforcement.... This error was compounded when the judge sustained her own objection to defense counsel commenting on the missing evidence during summation." She said the blood samples, the "only evidence connecting defendant to the crimes," were clearly material. And she argued "the majority is reading the phrase 'agent of the State' ... far too narrowly" in Handy, which "makes it abundantly clear that the instruction should be given even where destruction of evidence is not deliberate or done in bad faith...."

For appellant Austin: Mark W. Zeno, Manhattan (212) 577-2523 ext. 505
For respondent: Bronx Assistant District Attorney Matthew White (718) 838-6100

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711 or gspencer@nycourts.gov.

To be argued Thursday, September 7, 2017 (arguments begin at noon)

No. 98 Excess Line Association of New York (ELANY) v Waldorf & Associates

Excess Line Association of New York (ELANY) is a nonprofit association of excess line insurance brokers created in 1988 by Insurance Law § 2130 "to facilitate and encourage compliance by its members with the laws of this state and the rules and regulations of the superintendent [of insurance] relative to excess line insurance." Excess line policies are issued by insurers that are not authorized to do business in New York to cover risks that authorized carriers will not insure. Such policies must be procured by licensed excess line brokers, all of whom are deemed by the statute to be members of ELANY. The statute's declared purposes include "protecting persons seeking insurance" and "protecting revenues of this state;" and it requires brokers to submit information about each excess line policy to ELANY and pay a stamping fee, which is ELANY's sole source of funding.

In 2011, ELANY brought this action against Waldorf & Associates and related excess line brokers, alleging they mischaracterized policies issued by Lloyd's of London as non-excess line policies in order to avoid their obligations under the Insurance Law to pay state taxes on the premiums, pay stamping fees to ELANY, and submit documentation for the policies to ELANY, among other things. It asserted causes of action for fraud, negligence, and violations of General Business Law §§ 340 and 349.

Supreme Court dismissed the suit, ruling that ELANY lacked capacity to sue, that section 2130 did not give it a private right of action, and that it failed to state a cause of action.

The Appellate Division, Second Department affirmed, saying, "[N]one of the provisions of the statute confers upon [ELANY] by necessary implication the capacity to sue to enforce the provisions of the Insurance Law. Rather, the broad enforcement powers of the Superintendent, the lack of enforcement powers granted to ELANY, and the requirement that ELANY function under the supervision of the Superintendent 'negate[] any inference of a legislative intent to confer that power'.... Relatedly, ELANY has no private right of action under the Insurance Law, since it is not one of the class for whose particular benefit the statute was enacted, and, further, because creation of such a right would be inconsistent with the legislative scheme, which places enforcement in the Superintendent...." It also ruled ELANY failed to state a cause of action.

ELANY argues that, while it "may not have the capacity to sue in order to penalize or discipline" licensed brokers who are subject to the authority of the Superintendent, it has the implied capacity and standing to sue "to fulfill its 'functional responsibility' to encourage compliance with the excess line law" and collect the stamping fees that fund its operations. "It is ELANY that has 'functional responsibility' to impose and collect the stamping fee from its members and it is ELANY that has 'functional responsibility' to review excess line policies, assess the stability of unauthorized insurers and to oversee compliance with the excess line law and its Plan of Operation. In order to fulfill this 'functional responsibility,' ELANY, by 'necessary implication,' has to have the capacity to enforce the obligations imposed on its members."

For appellant ELANY: David B. Hamm, Manhattan (212) 471-8500
For respondents Waldorf et al: Michael D. Brown, Garden City (516) 873-6334