Recent Developments Regarding Insurer Estoppel

New Jersey law has long held that an insurer's control of the defense of litigation against a policyholder is incompatible with a denial of liability for indemnification of any judgment or settlement unless the insurer has reserved the issue of liability with the policyholder and informed the policyholder that it may accept or reject the defense subject to the reservation. If the insurer does not do so, and if the policyholder is thereby prejudiced by the insurer's control of the defense, the insurer may be estopped from denying coverage. Merchants Indem. Co. of N.Y. v. Eggleston, 37 N.J. 114 (1962). Courts applying New Jersey law have continued to explore the circumstances of insurer estoppel. Two recent decisions have provided further guidance in the area.

In the recent decision of in Northfield Ins. Co. v. Mt. Hawley Ins. Co., No. A-1771-16T4 (App. Div. Mar. 28, 2018), the court addressed the question of whether a party other than the policyholder can have standing to impose and enforce an estoppel on an insurer where the policyholder had not consented to the insurer's control of the defense pursuant to a reservation of rights. In Northfield, the policyholder was hired by a property owner to perform roof installation work. The property owner and its first-party insurer asserted a claim against the policyholder, which by that time was defunct. The policyholder's insurer disclaimed any indemnification, but it nevertheless stated that it was "willing" to provide a "courtesy defense" through insurer-appointed counsel. Six months later, the insurer instituted a coverage action seeking a declaration that it had no obligation to defend or indemnify the policyholder. The property owner and its first-party insurer were joined as interested parties. The property owner and the first-party insurer obtained summary judgment that the policyholder's insurer was estopped from denying coverage because the policyholder's consent to the insurer-controlled defense had not properly been sought. The Appellate Division reversed, concluding that a factfinder could conclude that the insurer's disclaimer of an indemnity obligation, combined with its statement that it was "willing" to provide a "courtesy defense", meant that the policyholder had acquiesced to the insurer-controlled defense. The Appellate Division also emphasized that prejudice to the policyholder from any failure to seek consent to an insurer-controlled defense could not be presumed, and that factual issues existed as to whether the defunct policyholder had changed its position to its detriment as the result of the insurer-controlled defense. The court expressed doubt that claimant entities such as the property owner and the first-party insurer can have standing to pursue relief against an insurer based on acts specific to the insurer-policyholder relationship absent a valid assignment of the policyholder's rights. However, the court left the question to be developed further upon remand.

In Hartford Cas. Ins. Co. v. Peerless Ins. Co., No. 10-6235 (D.N.J. Sept. 30, 2016), two insurers provided coverage to a policyholder in connection with a products liability claim. One insurer, after defending the litigation and participating in the policyholder's settlement, sought contribution from another insurer it alleged to have the primary obligation. The other insurer asserted that the contribution claim was estopped because the first insurer did not reserve its right to pursue an insurer contribution claim when it agreed to defend the policyholder. The court concluded that an insurer participating in a policyholder's defense had no obligation to inform its policyholder that it was reserving its right to seek contribution from another insurer if appropriate. The court reasoned that an insurer participating in a policyholder's defense should be permitted to pursue other insurers when it was equitable to do so, even if the other insurer had been released by the policyholder. The other insurer further asserted that the settlement for which contribution was sought was unreasonable as a matter of law, because the first insurer had mishandled the policyholder's defense. The court concluded that issues of fact concerning the case and the settlement precluded summary judgment.

The Hartford v. Peerless and Northfield v. Mt. Hawley decisions reflect that courts applying New Jersey law generally will evaluate allegations of insurer estoppel based on the equities of the individual case, rather than through rote application of generic legal standards.