

SUPREME COURT OF NEW JERSEY

Thomas DeMarco and Cynthia DeMarco v. Sean Robert Stoddard,
D.P.M., Individually and t/a Center for Advanced Foot & Ankle Care,
Inc., and Medical Malpractice Joint Underwriting Association of
Rhode Island

Thomas DeMarco and Cynthia DeMarco v. Sean Robert Stoddard, D.P.M., 223 N.J. 363 (2015) · No. A-104-13;
073949 · Decided December 1, 2015

SUMMARY

The Supreme Court of New Jersey held that the Rhode Island Medical Malpractice Joint Underwriting Association owed neither a duty to defend nor a duty to indemnify a podiatrist after rescinding his malpractice policy based on material misrepresentations about the location of his practice. The Court rejected applying the compulsory automobile insurance model to protect innocent third parties and concluded that rescission principles governing professional liability insurance controlled. The Court reversed the Appellate Division’s judgment requiring coverage up to New Jersey’s mandatory minimum amount.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Judge Cuff, temporarily assigned; Chief Justice Rabner; Justice LaVecchia; Justice Albin; Justice Patterson; Justice Fernandez-Vina; Justice Solomon
JURISDICTION	New Jersey
DECIDED	December 1, 2015
DOCKET	A-104-13; 073949
DISPOSITION	reversed
PROCEDURAL POSTURE	The Medical Malpractice Joint Underwriting Association of Rhode Island appealed from a New Jersey trial court order granting the DeMarcos summary judgment and requiring the insurer to defend and indemnify the podiatrist, and from the Appellate Division's published affirmance. The Supreme Court of New Jersey granted leave to appeal.
STANDARD OF REVIEW	Review of summary judgment and the legal consequences of rescission of an insurance policy; legal issues were reviewed de novo.

PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of New Jersey
PARTIES	Medical Malpractice Joint Underwriting Association of Rhode Island v. Thomas DeMarco, Cynthia DeMarco

TOPICS

insurance coverage duty to defend duty to indemnify medical malpractice rescission

PRACTICE AREAS

insurance law medical malpractice conflict of laws declaratory judgment professional liability

QUESTIONS PRESENTED

1. Whether New Jersey or Rhode Island law governed the coverage dispute.
2. Whether rescission ab initio of a professional medical malpractice insurance policy obtained through a material misrepresentation eliminated the insurer's duty to defend and indemnify the insured for a claim that arose before rescission.
3. Whether the compulsory automobile insurance model required reformation of the rescinded medical malpractice policy to provide coverage for an innocent third party.
4. Whether the rescinded policy could be reformed to provide the statutory minimum amount of medical malpractice coverage.

HOLDINGS

1. New Jersey law governs the coverage dispute.
2. When a professional liability insurance policy is rescinded ab initio because the insured made a material misrepresentation in the application, the insurer owes neither a duty to defend nor a duty to indemnify the insured for claims that arose before rescission.
3. The compulsory automobile insurance model does not govern the remedial consequences of rescission of a fraudulently obtained professional liability policy.
4. A rescinded medical malpractice liability policy may not be reformed to provide the statutory minimum amount of coverage for an innocent third party.

KEY QUOTATIONS

“In summary, it is well established in this State that a professional who has made a misrepresentation of material fact in an application for professional liability insurance can expect that the policy may be rescinded on application of the insurer.” (at 383-84)

“Having obtained a judgment rescinding the medical malpractice liability policy, the RIJUA owed no duty to defend Dr. Stoddard or to indemnify him in the medical malpractice action pending against Dr. Stoddard in this State.” (at 384)

FACTUAL BACKGROUND

Dr. Sean Robert Stoddard, a podiatrist practicing in New Jersey, applied for and renewed medical malpractice insurance through the Rhode Island Medical Malpractice Joint Underwriting Association. His applications falsely represented that at least fifty-one percent of his practice was generated in Rhode Island, a fact material to his eligibility for RIJUA coverage. After Dr. Stoddard performed surgery on Thomas DeMarco in New Jersey, the DeMarcos sued for medical malpractice, and RIJUA obtained a Rhode Island judgment rescinding the policy. The New Jersey courts initially required RIJUA to defend and indemnify Dr. Stoddard up to the mandatory New Jersey coverage amount.

PROCEDURAL HISTORY

RIJUA obtained a Rhode Island declaratory judgment rescinding Dr. Stoddard's 2010-2011 medical malpractice policy and declaring that it had no duty to defend or indemnify him, but the judgment was entered without personal jurisdiction over the DeMarcos. In the New Jersey malpractice action, the trial court applied New Jersey law, declined to enforce the Rhode Island judgment against the DeMarcos, and granted their summary-judgment motion. The Appellate Division affirmed, concluding that innocent third parties were entitled to coverage up to the mandatory minimum amount. The Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- First American Title Insurance Co. v. Lawson, 177 N.J. 125, 827 A.2d 230 (2003)
- Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 916 A.2d 440 (2007)
- Jarrell v. Kaul, 223 N.J. 294, 123 A.3d 1022 (2015)
- Citizens United Reciprocal Exchange v. Perez, 223 N.J. 143, 121 A.3d 374 (2015)
- Palisades Safety & Ins. Ass'n v. Bastien, 175 N.J. 144, 814 A.2d 619 (2003)
- Evora v. Henry, 559 A.2d 1038 (R.I. 1989)
- The Guardian Life Ins. Co. of Am. v. Tillinghast, 512 A.2d 855 (R.I. 1986)
- Commonwealth Land Title Ins. Co. v. IDC Props., Inc., 547 F.3d 15 (1st Cir. 2008)
- Commercial Union Ins. Co. v. Pesante, 459 F.3d 34 (1st Cir. 2006)
- Peloquin v. Haven Health Ctr. of Greenville, L.L.C., 61 A.3d 419 (R.I. 2013)
- Cornett v. Johnson & Johnson, 211 N.J. 362, 48 A.3d 1041 (2012)
- P.V. ex rel. T.V. v. Camp Jaycee, 197 N.J. 132, 962 A.2d 453 (2008)