

## **Trash truck fatality triggers coverage dispute**

*The Township of West Amwell, New Jersey, entered into an agreement with Raritan Valley Disposal to furnish a garbage truck at the municipal transfer station. Every Saturday, Raritan Valley would bring the truck to the transfer station and park it in a spot designated by a West Amwell employee so that West Amwell's residents could deposit their trash. Raritan Valley was also responsible for removing the truck and disposing of the trash. The driver, however, was never responsible for assisting residents when they deposited their trash into the truck.*

*The contract between West Amwell and Raritan Valley required Raritan Valley to obtain insurance coverage and name West Amwell as an "additional named insured." To satisfy this obligation, Raritan Valley named West Amwell as an additional insured under its Illinois National Insurance Company business automobile policy. West Amwell also had its own general liability policy issued by the Public Alliance Insurance Coverage Fund.*

*On May 12, 2001, Greta Schmidt was depositing trash into the garbage truck when Edward Hawley backed his pickup truck into her, pinning her between the pickup truck and the garbage truck. Schmidt was fatally injured. Her 5-year-old daughter, Emily Marshall, who was in Schmidt's car, observed the accident. Schmidt's estate filed a survivorship and wrongful death action, including an emotional distress claim on behalf of Schmidt's daughter, against Hawley, West Amwell, Raritan Valley, and the manufacturer of Hawley's pickup truck, Ford Motor Company. West Amwell's general liability insurer, Public Alliance, defended West Amwell in the action.*

*After several years, while the Schmidt lawsuit was still pending, West Amwell filed a third-party complaint against Illinois National seeking coverage under the policy Illinois National had issued to Raritan Valley. In the meantime, Public Alliance settled on behalf of West Amwell for \$1,850,000. (Hawley's insurer and Ford Motor Company also settled, for \$500,000 and \$15,000, respectively.)*

*The Schmidt case went to trial, and the jury decided in favor of Raritan Valley. West Amwell continued to pursue its claim against Illinois National. Illinois National raised several issues in its defense, including an argument that West Amwell lacked legal standing to pursue coverage under its policy.*

*The trial court found that West Amwell was entitled to coverage under the Illinois National policy and entered judgment for \$1 million, the maximum amount of coverage, plus costs. Because the court did not specifically address Illinois National's argument with respect to standing, Illinois National filed a motion for reconsideration. The insurer reasserted its argument that West Amwell lacked legal standing to pursue coverage. It also argued that because Public Alliance had paid all defense and settlement costs, West Amwell had no financial interest in the coverage action. The court denied the motion; Illinois National appealed.*

*On appeal, the Superior Court of New Jersey agreed with Illinois National and found that West Amwell lacked standing to pursue a coverage action against Illinois National. The court found that once Public Alliance settled the claim on West Amwell's behalf and paid all costs, West Amwell was not entitled to "double indemnification" of these costs. In other words, "West Amwell no longer had the financial stake required to pursue a coverage action against Illinois National." Public Alliance, on the other hand, still had a claim against Illinois National because it paid all the costs of defense and settlement of the Schmidt estate's claim.*

The Superior Court reversed the decision of the trial court, noting that the court erred when it allowed the coverage action against Illinois National to be brought in the name of West Amwell. The Superior Court also found that the trial court should have required proof of an “essential element” of the claim: that Illinois National provided primary or co-primary coverage for the Schmidt litigation.

The case was remanded to the trial court. Public Alliance was allowed to substitute for West Amwell as a third-party plaintiff; however, the court noted that if Public Alliance decided not to pursue the third-party complaint in its own name, the case would be dismissed.

Marshall vs. Raritan Valley Disposal-Superior Court of New Jersey, Appellate Division-February 14, 2008-940 *Atlantic Reporter* 2d 315. \*