

NJ Justices Clarify Insurance Brokers' Duty To Inform

By **Ryan Harroff**

Law360 (December 13, 2022, 3:18 PM EST) -- An insurance broker has to tell members of a limited liability corporation if they are not covered for workers' compensation, but isn't liable for damages unless his failure to inform arose from "willful, wanton, or grossly negligent" misconduct, the New Jersey Supreme Court ruled Tuesday.

Broker Daniel Purdy should have informed the late Christopher Friedauer and his brother Michael that because they bought in at their father Robert Friedauer's garden center as LLC members and were no longer employees, they could no longer get workers' comp under the company's current policy, the justices' **opinion** affirmed.

The court held that, under New Jersey workers' compensation law, an insurance broker working for an LLC "has a non-waivable duty to provide notice that such coverage is available to LLC members who actively perform services on behalf of the LLC — but that such coverage is available only if the LLC elects the coverage when the policy is purchased or renewed."

Purdy's failure to tell the brothers that they were eligible for workers' comp coverage but did not actually have it was a breach of his duty, according to the state's high court, but he cannot be held liable for it unless a jury determines on remand that the proximate cause of the damages arising from Christopher Friedauer's death not being covered was Purdy's intentional or negligent misconduct.

The parties agree that Purdy did not tell the three LLC members they would need to vote on buying workers' comp coverage for themselves when they discussed renewing their policy in 2012, just after Christopher and Michael Friedauer bought into the family business, Holmdel Nurseries, as members.

The issue is whether they knew that the brothers could not get workers' comp under the company's current policy and whether they would have elected to get that coverage if Purdy had told them.

According to the opinion, Robert Friedauer claimed he had "no reason to believe" that his sons were not covered," but Purdy contended that "all three LLC members knew that they were excluded" and were fine with that "because they were saving premium dollars."

Christopher Friedauer died at work in 2015 when he had a bad fall and hit his head while preparing trucks for snowplowing, according to the opinion. His wife Nancy Holm sued Purdy after she and her children received no workers' compensation for his death, arguing he and the other LLC members would have gotten him that coverage had they known he stopped being covered when he bought a share of the business.

The trial court ruled in Purdy's favor, then the Appellate Division reversed that ruling as to his duty to inform but agreed there was no evidence the LLC members would have purchased coverage for themselves had he properly informed them, according to the opinion.

The justices said the Appellate Division was wrong to stand by the trial court on the proximate cause issue, even if Holmdel Nurseries had historically refused to purchase that kind of coverage before the brothers bought in as members.

"A rational juror could conclude that all three LLC members — all part of the same family — wanted to maximize insurance coverage for Christopher Friedauer, a parent of young children whose work for Holmdel Nurseries was sometimes dangerous," the justices wrote.

The justices affirmed the appellate court's decision with the modification that the trial court must reconsider if Purdy's breach of his duty to inform the members about their eligibility for workers compensation coverage was intentional misconduct or gross negligence.

Counsel and representatives for the parties did not immediately reply to requests for comment.

Christopher Friedauer's estate is represented by Michael J. Dunn.

Daniel Purdy is represented by Ryan Milun.

The case is Nancy L. Holm v. Daniel M. Purdy, case number A-39-21, in the Supreme Court of the State of New Jersey.

--Editing by Brian Baresch.