LEGAL NEWS IN BRIEF

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NO DUTY TO SUPERVISE

McKinney v. Mathew
New Jersey Appellate Division
A-5108-13T1
(June 29, 2016)

The New Jersey Appellate Division affirmed dismissal of a lawsuit for injuries sustained by a seventeen-year-old student who ran across the middle of a block en route to the front entrance of the public school he attended, thirty minutes before first period. N.J.S.A. 59:2-2 excepts from governmental immunity any actions or omissions made by a public employee acting within the scope of his authority. No crossing guards were present on the block, since there are none employed by the school; it is entirely in the municipal Police Department's discretion to employ a crossing guard. The school instructs its students repeatedly to cross at the crosswalks. Prior case law held that school officials have a general duty of care towards children entrusted to them, extended up to and through the dismissal process, but cautioned that such a duty "has temporal and physical limits." The court distinguished that case, noting that the injured child here was seventeen rather than nine, and that he was one of hundreds of students who come by different modes of travel to the school before they are entrusted to the school's care. A crossing guard at the block would have been futile, as the child ran from the middle of the block rather than using the crosswalk. ■

MODIFICATION OF AWARD

CURE v. Northern NJ Orthopedic Specialists
New Jersey Appellate Division
__ N.J. Super. ___(May 6, 2016)
A-0945-14T2

N.J.S.A. 2A:23A-13(a) provides: "A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award modified…." Here, CURE applied to the arbitrator to clarify and/or modify an adverse award, but the arbitrator denied the application. Forty-five days after the denial, CURE filed an Order to Show Cause in Law Division to vacate the award. The statute does not address how much time the applicant has after its request for award modification is denied within which to commence the summary application in Superior Court. Since the statute overall emphasizes the need for expedition, and since the applicant has by the time of denial received sufficient notice of the award, the Court construed the statute to allow 30 days instead of 45 days for CURE to file the summary application in Superior Court. ■

CHANGE OF BENEFICIARY

Degelman v. Lincoln National Life Ins. Co.
U.S. District Court, D.N.J.
16-286 (JLL) (SCM)
(June 21, 2016)

In 2007, Defendant issued a life insurance policy on the life of Edivaldo Coutinho, whose wife, Veronica Degelman, was named as the primary beneficiary. Shortly thereafter, the couple asked Andrade, an employee of Lincoln, to rename Degelman's relative Barrese as contingent beneficiary. A year later, the couple divorced; since their divorce, Degelman continued paying all the policy premiums as agreed

upon with her former husband. At various times since 2011, Degelman advised Beane, the Lincoln agent servicing the policy, that she had divorced and remarried, and asked Beane whether the policy should be changed to reflect her remarried name. Beane only told Degelman that the name change on the policy was unnecessary, even though N.J.S.A. 3B:3-14 revokes any disposition by a divorced individual to his former spouse (or that former spouse's relative), unless contracted otherwise between the divorcing parties.

After Coutinho's death, Degelman filed a claim, only to be informed that she was no longer a beneficiary as a result of the divorce. Additionally, Lincoln advised that in response to the couple's request to Andrade in 2008, the original contingent beneficiary had been removed without Barrese being named. The Court denied Lincoln and Beane's motion to dismiss Degelman's lawsuit for negligence and reformation of the policy, since Degelman at this preliminary stage could potentially show the existence of a contract with her ex-husband to remain as primary beneficiary in exchange for her continued payments of the premiums. Alternatively, Beane may have erroneously misadvised Degelman, which allows her negligence claim to proceed. The Court, however, dismissed Degelman's claims against Andrade, since the divorce mooted any negligent act Andrade might have committed in not properly changing the contingent beneficiary. Barrese's own claims were also moot, since Degelman would either recover as the primary beneficiary, or the divorce would effectively revoke the disposition to both of them, as per N.J.S.A. 3B:3-14. ■

GAP IN COVERAGE

Gotkin v. Allstate Ins. Co.
New York Appellate Division
2016 NY Slip Op 5359 (2nd Dept.)
(July 6, 2016)

NY Insurance Law §3425 requires an insurer to notify a policyholder, at least 45 days before the end of the coverage period, of its intention to condition renewal "upon changes of limits or elimination of any coverages" and to provide a specific reason for so conditioning renewal. The Appellate Division applied this notice requirement to an excess liability policy. Although Allstate's umbrella policy limits remained the same, Allstate increased the requirements of the underlying limits of primary insurance, when Plaintiff switched his primary coverage from Allstate to Nationwide at the same limits. Allstate's increase created a gap in coverage which it failed to properly notice to Plaintiff and which required reformation of the policy inasmuch as excess coverage would be triggered at the amount of the primary limits which Plaintiff had originally with Allstate, and now with Nationwide. ■

REIMBURSEMENT OF INSURER

Aetna Health Plans v. Hanover Ins. Co.
New York Court of Appeals
2016 NY Slip Op 4658
(June 14, 2016)

Aetna, a health insurance company, sought unsuccessfully to recover amounts it paid its insured's medical providers for medical treatment which should have been covered under her no-fault automobile insurer. The Court of Appeals found that Aetna was not entitled to reimbursement. Per regulation, the insured could only assign no-fault benefits to a "health care provider," not a health insurer. Additionally, the insured had already assigned her rights to the providers whom Aetna paid and therefore could not re-assign those rights. Concurring, Judge Stein said Aetna could seek reimbursement from the providers, who could then submit a PIP claim. Judge Fahey dissented on the grounds that Aetna had a potential claim for equitable subrogation. ■

STEP-DOWN PROVISION

Granata v. Rasizer
New Jersey Appellate Division
A-1855-14T2
(May 19, 2016)

Plaintiff settled with the adverse driver for Defendant's policy limits, only to then learn that NJM, insurer for her mother's vehicle which she was operating at the time of the accident, was denying her UIM benefits. NJM had amended the policy the previous year to include a step-down provision, which reduced UM/UIM coverage for non-resident relatives to $15,000, the amount of which Plaintiff had already received in her settlement with Defendant. The Appellate Division held in Plaintiff's favor that NJM's notice was insufficient due to its lack of specificity. NJM stated in its "summary of important changes" to Plaintiff's mother that it had amended coverage for non-resident relatives but only referenced the maximum limits of such coverage as "the minimum limits required by New Jersey law for liability coverage set forth in N.J.S.A. 39:6A-3." Such notice, absent a specific amount was insufficient to properly inform the lay policyholder. ■