LEGAL NEWS IN BRIEF

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LOJM LAUNCHES INFORMATIVE LIQUOR LIABILITY WEB PAGES

Liquor liability (dram shop and social host liability) can be very complex, involving the interaction of a state's common law and statutes. Understanding the standards for liquor liability relevant to a particular accident is essential in order to focus investigative resources on the relevant facts and to successfully litigate a claim. With that in mind, LOJM recently launched informative websites discussing the basics (and more) of liquor liability in NY and NJ. You can find those web pages at www.janmeyerlaw.com/nyliquorliability and www.janmeyerlaw.com/njliquorliability, respectively. ■

RES JUDICATA

Stracar Med. Serv. v. Nationwide
New York Appellate Term
49 Misc. 3d 152(A)
(December 1, 2015)

Plaintiff's assignor sustained injuries in an automobile accident. Defendant as automobile insurer for Plaintiff's assignor, filed a declaratory action in Virginia against the assignor to void her policy ab initio due to the assignor's material misrepresentations as to where her vehicle would be kept. The parties to the action agreed to an order which voided the policy. Plaintiff subsequently filed suit against Defendant to recover first-party no-fault benefits. The Appellate Term reversed summary judgment that had been entered in Defendant's favor on the grounds that Plaintiff did not have a full and fair opportunity to defend its interests in the prior action. As Plaintiff's assignment preceded the Virginia action, Defendant failed to show that Plaintiff was in privity with the assignor at the time of said action. ■

DUTY TO INDEMNIFY

Demarco v. Stoddard
New Jersey Supreme Court
223 N.J. 363
(December 1, 2015)

A podiatrist, defendant in a medical malpractice suit, unsuccessfully sought indemnification and defense from his liability insurer, the Rhode Island Medical Malpractice Joint Underwriting Association (RIJUA). RIJUA filed suit in Rhode Island for a declaratory judgment rescinding the policy on the grounds of Defendant's misrepresentation that 51% of his practice was generated in Rhode Island; RIJUA obtained default judgment against its insured. Claimants against Defendant sought RIJUA's liability coverage on the premise that they were "innocent third parties." The Supreme Court denied such coverage, holding that the rule protecting innocent third parties in no-fault automobile insurance, codified in N.J.S.A. 39:6-48(a), does not apply to professional liability insurance policies which are voided due to misrepresentation by the insured. ■

PRIMARY COVERAGE

Mantzouranis v. Pratolongo
New Jersey Appellate Division
A-2498-13T2
(September 10, 2015)

This decision addressed the respective coverage of two policies

implicated in a BI action where a restaurant's valet struck Plaintiff with another customer's leased vehicle, which was insured by Liberty Mutual. Travelers, which insured the restaurant for commercial general liability, provided for excess coverage only. Liberty's policy with the lessee of the vehicle provided only excess coverage for vehicles not owned by the policyholder. The trial judge accordingly found the policies to be both excess and thus rendered them as "co-primary." On appeal, the Court held that Liberty's policy was in fact not excess as the policy's endorsement stated that "[a]ny 'leased auto'…will be considered a covered 'auto'" owned by the policyholder. Thus, Liberty provides primary coverage and must defend and indemnify the restaurant and its valet in suit, as the insured's permissive users.

Liberty argued that it need only provide the statutory minimum coverage as the defendants could have had no reasonable expectation of being covered in the accident, given their attenuated relationship with the policyholder, and because its policy excluded coverage for the parking or storing of vehicles not being conducted by the policyholder's business. The Court held that it is Liberty's expectations which apply here; prior case law had already invalidated such an exclusion nearly twenty years earlier, so Liberty should have known that the exclusion was invalid. ■

PRIOR ACCIDENTS

Gonzalez-Caceres v. Murray
New Jersey Appellate Division
Docket No. A-5893-13T4
(December 8, 2015)

Plaintiff appealed from an adverse trial verdict in her BI action after Defendant admitted evidence that Plaintiff's driver had been involved in three prior automobile accidents. NJ Rules of Evidence 404 prohibits evidence of a person's character to prove that that person acted in conformity therewith on a particular occasion. Prior case law additionally holds that "general evidence of careless driving is inadmissible to show how someone drove on a particular occasion." NJRE 406 does allow evidence pertaining to a habit that is so uniform it amounts to a nearly automatic response to a specified situation, which here, could only suggest that the driver had a specific, routine practice of carelessly cutting in front of tractor-trailer trucks, which was not demonstrated. Ultimately, the Court found that admission of the evidence likely prejudiced Plaintiff and remanded the matter for a new trial. ■

INFORMATION SUBPOENA

B& M Kingstone v. Mega International Commercial Bank
New York Appellate Division
131 A.D.3d 259
(August 11, 2015)

Petitioner, a judgment creditor served an information subpoena on Respondent bank's New York branch, in order to enforce a money judgment obtained against judgment debtors and domesticated in NY. Respondent only complied with demands for accounts and records at its branch in NY, and refused to provide similar information regarding its branches outside the State, claiming lack of personal jurisdiction. In particular, the bank invoked the separate entity rule, which states that "each branch of a bank is a separate entity, in no way concerned with accounts maintained by depositors in other [branches] or at the home office." Case law, however, limits the rule to restraining notices and turnover orders affecting assets located in foreign branch accounts, and does not exempt the bank from providing information regarding those foreign accounts that is available through electronic searches performed by the NY branch. ■

"DANGEROUS CONDITION"

Bunero v. City of Jersey City
New Jersey Appellate Division
A-4438-13T1
(December 3, 2015)

A motorcyclist sought damages from the City for injuries sustained when his leg struck the nozzle cap of a fire hydrant upon his being rear-ended by another vehicle. Specifically, Plaintiff alleged that the City had created or allowed a dangerous condition to exist on its property, namely, the hydrant which has existed on the sidewalk since at least 1939, and which nozzle cap is closer to the curb line than was recommended by American Water Works Association in 1938 and in 1970. A structure that is not inherently dangerous may still, as located, create a dangerous condition to motorists, and that condition may create a reasonably foreseeable risk of the kind of injury which was incurred. However, a negligence suit against a public entity must show that its actions were palpably unreasonable; here, no prior incident in over seventy years occurred as a result of hydrant's proximity to the curb. ■

We wish all our clients and friends a Happy New Year!