LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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UM OR UIM

Varvar v. Allstate Ins. Co.
New Jersey Superior Court
BER-L-8481-14
(August 4, 2016)

Plaintiff filed suit for UM/UIM against Geico, her personal insurance carrier, regarding damages sustained in an automobile accident with a stolen vehicle. The owner of the stolen vehicle had left his keys in the vehicle, which resulted in the vehicle's theft and the subsequent collision. Geico learned at the arbitration hearing that Plaintiff had settled with Travelers, insurer for the stolen vehicle, for $25,000.00; Geico thereupon demanded information as to Traveler's policy limits and the release, which Plaintiff refused. The Court denied Geico's motion seeking a declaration as to Plaintiff's entitlement to UM/UIM benefits. Geico argued that Travelers' limits were relevant to the issue of whether they were equal to or greater than Geico's own limits, in which case Plaintiff would not be entitled to UIM benefits. Plaintiff, however, prevailed on her argument that her claim was for UM rather than UIM, given that the operator of the stolen vehicle was unknown (and therefore uninsured), and that the vehicle owner and the operator committed separate and distinct, and unrelated torts. ■

PIP SOL

Thompson v. CURE
New Jersey Appellate Division
A-0656-14T4
(July 29, 2016)

Plaintiff filed suit against both her carrier CURE and the adverse vehicle owner, Penske, for automobile-related injuries. CURE's amended answer, filed over four years after Plaintiff's notification to CURE, asserted cross-claims against "Co-Defendant(s), if any" for contribution, indemnification and subrogation of the PIP and collision benefits paid to Plaintiff. Penske moved to dismiss CURE's cross-claims for failure to state a claim, asserting that CURE should have brought its PIP reimbursement claim against Penske's carrier rather than Penske, pursuant to N.J.S.A. 39:6A-9.1. Additionally, CURE's cross-claim was time-barred. The Appellate Division found in favor of Penske on appeal. Penske had asserted as a defense to Plaintiff's Complaint that "claimant(s)' claims" were SOL-barred, without reiterating the defense in the general denial of CURE's cross-claim. The Court nonetheless held that CURE was thereby on sufficient notice of Penske's SOL defense. ■

PUBLIC ENTITY LIABILITY POLICY

Inc. Vill. of Old Westbury v. Am. Alternative Ins. Corp.
U.S. Dist. Ct., E.D.N.Y.
15-CV-07278 (JMA)(SIL)
(January 19, 2017)

A motorist served Plaintiff with a Notice of Claim and a subsequent action for emotional distress incurred as a result of his false arrest and detainment. The claimant alleged that the Village Justice Court failed to report to the DMV that he had timely paid a fine for a traffic infraction, which led to his wrongful arrest for driving with a suspended license. Plaintiff duly notified AAIC of the Notice of Claim for defense and indemnification under its Public Entity Liability Policy, which provides coverage for "bodily injury" arising out of "any actual or

alleged error…which performing a 'law enforcement activity.'" Although AAIC initially notified Plaintiff that it would assign counsel, it subsequently advised the Village that it would not continue to defend, as the motorist's claim was not based on a bodily injury. The Court found in favor of AAIC in this declaratory action, as coverage applies to "mental anguish [or]…injury resulting from bodily injury" whereas the claimant only sought financial, mental, psychological and emotional damages. Moreover, the Justice Court was not acting in an executive capacity of a law enforcement agency. Finally, Plaintiff incurred no prejudice from Defendant's six-month delay in disclaiming coverage, as the case was not yet on the trial calendar at the time of disclaimer, and Defendant had not taken any significant steps in the litigation which inalterably precluded or limited Plaintiff's defenses. ■

SNOW REMOVAL

Negron v. Warriner's Construction Co.
New Jersey Superior Court
CUM-L-144-15
(January 23, 2017)

The New Jersey Superior Court, Cumberland County, granted summary judgment in favor of Defendants, owners and possessors of a bank parking lot, as well as their snow and ice removal contractor, for injuries sustained by Plaintiff in a slip and fall in the lot. Earlier that day, it had snowed heavily, accumulating about five to seven inches on the ground. Defendants plowed and salted the parking lot, and it did not snow again until 8:30 p.m. that night, after closing time. Plaintiff was effectively a trespasser when he used the lot as a shortcut to walk to and from another store; he was not injured by an artificial condition on the premises, and Defendants had no reasonable opportunity to address the additional snowfall or its impact on any existing ice below it. ■

SUBROGATION WAIVER

Allstate N.J. Ins. Co. v. Avalon Bay Cmtys., Inc.
U.S. Dist. Ct., D.N.J.
16-CV-5441 (WHW-CLW)
(January 18, 2017)

Defendant, a landlord of an apartment complex, sought unsuccessfully to dismiss a subrogation action for damages arising out of improper maintenance which caused a fire in the complex. Allstate indemnified its insureds, tenants in the complex, for real and personal property damages resulting from the fire. Defendant argued that each insured had signed a waiver of subrogation rights in his or her lease agreement, which would be imputed to Allstate. The Court refused to enforce the subrogation waivers, construing the standardized printed forms as "adhesion contracts," which do not present an opportunity for the signing party to negotiate the contractual terms. Here, the landlord and tenant's respective bargaining positions are unequal where an unsophisticated tenant may not comprehend the boilerplate language in the waiver, buried deep in a long paragraph about insurance options and obligations. Moreover, the clause was solely for the landlord's economic benefit; no mutual benefit was provided to shield a tenant from subrogation arising out of damages he or she causes; and public policy militates against shifting costs to the tenants' insurance companies which could have longstanding repercussions for the insurance industry and decrease of landlords' standards of care. ■

PRE-SUIT NOTICE

Hartford Underwriters Ins. Co. v. Salimente
New Jersey Appellate Division
A-3687-14T2
(February 6, 2017)

Hartford filed suit for subrogation of worker's compensation benefits on the last day of the limitations period. Defendant moved for summary judgment on the grounds that Hartford failed to provide proof of its ten-day notice to its insured of its intent to sue or settle with the tortfeasor in the absence of the insured's filing his own suit, as required by N.J.S.A. 34:15-40(f). The Appellate Division reversed judgment, finding that it was prematurely entered at the pleadings stage. Discovery should instead proceed to determine whether the insured employee had waived his right to the ten-day notice, and/or whether the notice had in fact been served, as suggested by Hartford's subsequent discovery in its file of letters it had sent its insured. ■

OFFICE UPDATE

Our office welcomes **Christopher L. McEvilley** to our office. Mr. McEvilley has previously worked in private practice, handling personal injury matters, real estate transactions, and trusts and estates cases.

Congratulations to **Stacy Maza** on her engagement to Glenn Finkel, an attorney practicing in Millburn, New Jersey. ■