LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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LOJM VICTORY ON MOTION FOR SUMMARY JUDGMENT: SUCCESSOR LIABILITY

County Distributors v. K&L Ranch, et al.
New Jersey Superior Court
PAS-L-4332-14
(September 22, 2016)

Our office prevailed on its motion for summary judgment, two days before the scheduled trial date, against two corporate entities, on the premise that one company was a successor in liability to the other company for a very significant amount of outstanding invoices owed to our client. The original company was a meat processing company which purportedly ceased business in April, 2012, six days after the successor company was formed. The first company never formally dissolved, filed bankruptcy or entered into receivership. The sole owner of the outgoing company asserted significant control over the successor company with 50% ownership, as well as ownership of the premises where both companies have conducted business. Moreover, at least a dozen personnel at the first company continued working at the successor company, which continued similar business. The leading case Woodrick v. Jack J. Burke Real Estate, Inc. (306 N.J. Super. 61 (App. Div., 1997) holds that a new company is liable for a prior company's debts where there exists a continuity of management, personnel, physical location, assets and general business operations; cessation of ordinary business and dissolution of the predecessor as soon as practically and legally possible; uninterrupted continuation of the predecessor's business; and/or continuity of ownership. The Hon. Thomas F. Brogan, P.J.Cv., reaffirmed in his decision that not all such factors need be shown to warrant summary judgment in Plaintiff's favor. ■

NJ SUPREME COURT AFFIRMS PIP STATUTE AMENDMENT IS PROSPECTIVE

Johnson v. Roselle EZ Quick
New Jersey Appellate Division
226 N.J. 370 (2016)

The New Jersey Supreme Court affirmed the lower court's decision, addressed in our Oct. 2014 issue (Vol. 14, Issue 3), which upheld summary judgment for Geico, entitling Geico to reimbursement from its insured's settlement for the tortfeasor's coverage limits. Prior to the 2011 amendment of N.J.S.A. 39:6A-9.1, New Jersey courts construed the statute to allow for the PIP carrier's reimbursement even if the tortfeasor's insurance policy limits were insufficient to make the insured whole. The amendment requires that the insured be made whole first. None of the factors which warrant retroactive application of the amendment – legislative intent; whether the amendment is merely "curative"; and/or the parties' reasonable expectations – appear in this instance. ■

PERMISSIVE USE

Drive New Jersey Ins. Co. v. Estate of Rivera
New Jersey Appellate Division
A-1501-14T4
(August 3, 2016)

John Micklewright's employee brought a company van to All Sheen's car wash, surrendering the vehicle to an All Sheen employee who was unlicensed and fatally

struck another person with the van. Micklewright's commercial auto policy carrier sought a declaratory judgment that the policy did not provide liability coverage to All Sheen or its employee for the accident. The Appellate Division reversed the declaratory judgment on the grounds of the "initial permission rule," whereby "if a person is given permission to use a motor vehicle in the first instance, any subsequent use short of theft or the like while it remains in his possession, though not within the contemplation of the parties, is a permissive use" which is covered in a standard automobile liability policy. There need not be reasonable belief by the permitted driver that he is entitled to operate the vehicle. Moreover, even if the driver deviates from the expected scope of the use (unless he engages in "theft or the like") or uses the vehicle on a subsequent occasion in contravention to the owner's intentions or plans, coverage will apply. ■

"ADDITIONAL INSURED"

American Fire and Casualty Co. v. State National Ins. Co.
New Jersey Appellate Division
A-0406-14T2
(August 15, 2016)

The Appellate Division upheld a declaratory judgment, requiring State National to reimburse American Fire as an "additional insured" under State National's policy. American Fire's insured Vision had leased premises to State National's insured Annata, a restaurant. Annata's patron sustained injuries when stepping into a hole in a passageway leading from Annata to the parking lot, which was not part of the leased premises. American Fire sought reimbursement from State National after settling the BI suit. Vision's lease required Annata to obtain liability insurance on behalf of both landlord and tenant for the rental space and for Annata to indemnify Vision for any occurrence arising out of the tenant's operations on site under the lease. Annata thereby procured coverage through State National, naming Vision as an additional insured, for "liability arising out of the ownership, maintenance or use of that part of the premises leased to" Annata. Although the tripping hazard was not on the leased premises, the patron's walking through the alley was a use arising out of the use of the premises, which is sufficient to attach coverage for the landlord. ■

ALTERNATIVE SERVICE

Mutual Benefits Offshore Fund v. Zeltser
New York Appellate Division
140 A.D.3d. 444 (1st Dept., 2016)

NY CPLR §311(b) permits alternative means of service of process upon a corporation, as the court may direct upon motion without notice, where service in accordance with pre-existing NY law is impracticable within the 120 days of the filing of the Summons and Complaint. The First Department in this matter followed the other appellate departments in holding that service of process by mail "directly to persons abroad" is authorized by article 10(a) of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters so long as the destination state does not object to such service. Corporations from Switzerland, which has objected to such service, can only be served through the central authority which their home country has established pursuant to the Convention. The Court did not grant any alternative means per CPLR 311(b) because the claimants did not demonstrate that service through Switzerland's central authority is too costly or otherwise "impracticable." ■

SIDEWALK LIABILITY

Sangaray v. West River Associates
New York Court of Appeals
26 N.Y.3d 793
(February 11, 2016)

New York City Administrative Code §7-210 imposes a duty on a real property owner to maintain the sidewalk abutting its property in a reasonably safe condition. Plaintiff traversed a sidewalk flag that ran from the front of West River's property to the neighboring premises owned by the Mercados. West River moved for summary judgment on the grounds that Plaintiff tripped on an expansion joint which solely abutted the Mercados' property. The Court of Appeals held that West River still has a duty to properly maintain its own abutting sidewalk, which Plaintiff claimed sank lower than the expansion joint over which she had tripped. Moreover, West River can be liable for injuries proximately caused by its failure to properly maintain its abutting sidewalk. ■

OFFICE UPDATE

Our office welcomes Malcolm K. Thorpe, a recent graduate of Rutgers School of Law – Newark. Mr. Thorpe previously worked as a judicial intern for the Hon. Susan D. Wigenton, U.S. District Judge for the District Court of New Jersey, and later at the U.S. District Attorney's Office. ■