LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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ARBITRATION AWARD

New South Ins. Co. v. Endurance Ins. Org.
NY Supreme Court (NY County)
2017 NY Misc. LEXIS 3296
(September 1, 2017)

Petitioner filed arbitration for damages sustained when Respondent's insured's employee backed a payloader – a heavy, wheeled vehicle with a large movable blade or scoop in front – into the dump truck operated by Petitioner's insured. Respondent moved to vacate the award rendered upon its non-appearance, claiming that it was not a signatory to Arbitration Forums, and did not consent to be governed by AF. The Court vacated the award on several grounds: Respondent only issued to its insured a commercial general liability policy, which did not provide no-fault coverage for the type of accident which occurred here, and did not insure any motor vehicles. Moreover, the payloader would not even fit the definition of a motor vehicle (per Vehicle and Traffic Law §125), as it was not operated on a public highway but was instead a "self-propelled caterpillar or crawler-type equipment." Also, Respondent was not an "insurer" per Insurance Law Article 51, as it did not provide its insured with the required financial security. In any event, non-application of NY's no-fault law does not absolve Respondent from liability for damages in a legal action. ■

INSURANCE FRAUD

21st Century Ins. Co. v. Santana
U.S. Dist. Ct., N.J.
Civil Action No. 15-7075
(September 22, 2017)

Passengers of a company van from Maryland who were injured in NJ sued the van's carrier for PIP benefits. The court established that the van's company owner had fraudulently obtained a personal insurance policy in the name of the owner's ex-wife, an Ohio resident; accordingly, the court declared the policy to be void ab initio. Nonetheless, the passengers claimed to be innocent third-party victims entitled to the minimum coverage requirements under the NJ deemer statute. The deemer statute requires certain insurers who are authorized to transact business in NJ to include in their policies to non-resident insureds coverage sufficient to satisfy NJ's minimum coverage whenever the non-resident insured's vehicle is operated in NJ. Because the company operated the van as a public or livery conveyance, and was customarily used in the driver's occupation, it did not qualify as an "automobile" as defined in the statute, and the claimants could not recover benefits. ■

APPEARANCE

American Home Mtge. Servicing v. Arklis
NY Appellate Division (2nd Dept.)
150 A.D.3d 1180
(May 31, 2017)

Plaintiff obtained a default judgment in a foreclosure action. Subsequently, Defendant's attorney appeared at a foreclosure settlement conference and executed a form notice of appearance. When Plaintiff thereafter sought to enter a judgment of foreclosure and sale, Defendant cross-moved to vacate the judgment already entered. The Court held that Defendant in filing a notice of appearance had thereby waived any

claim that the Court lacked jurisdiction over her, since she failed to object to jurisdiction by motion or in her answer at the time of her appearance. ■

HEARSAY

Rice v. Town Tavern
NJ Appellate Division
2017 N.J. Super. Unpub. LEXIS 97
(January 17, 2017)

Plaintiff sued for damages sustained while on duty as an officer attempting to remove an intoxicated patron from a tavern. The tavern owner testified that, contrary to Plaintiff's allegations, the patron never touched Plaintiff in the struggle. Plaintiff objected to the owner's testimony on the grounds that the owner made his observations from a non-preserved live video stream from security cameras located at the tavern, and that his testimony was therefore inadmissible hearsay. However, the owner testified based upon recollection of his real-time observations, rather than a pre-recorded video. Accordingly, the Appellate Division upheld the adverse jury verdict. ■

NOTICE OF CLAIM

Bowers v. City of New York
NY Appellate Division (2nd Dept.)
147 A.D.3d 894
(February 15, 2017)

Plaintiff in a slip-and-fall action against the NYC Transit Authority stated in her bill of particulars that the accident occurred on March 2, 2012, at approximately 12:00 a.m. Transit Authority moved to dismiss the complaint on the grounds that the notice of claim was not timely served on June 1, 2012, as the 90-day period from March 2, 2012 in which to so serve would have expired on May 31, 2012. Plaintiff cross-moved to amend the notice of claim and her pleadings to reflect that the correct date of the accident was March 3, 2012, submitting police and hospital reports that reflected that the accident occurred on March 3. The Appellate Division upheld the leave granted to Plaintiff, as there was no indication that Plaintiff set forth the accident date on the notice of claim as March 2 in bad faith, and there was no demonstration by Transit Authority of any actual prejudice as a result of the discrepancy. ■

TORT CLAIMS ACT

Jones v. Morey's Pier, Inc.
NJ Supreme Court
230 N.J. 142
(July 27, 2017)

Upon being sued in a wrongful death action for a fatality occurring at an amusement park, the owners and operators of the park impleaded the Association, a public entity which organized and chaperoned the field trip, for indemnification and contribution. The Association filed for summary judgment on the grounds that Defendants did not file a notice of claim. (Plaintiff also failed to serve a notice of claim on the Association.)

The trial court denied the Association's motion to dismiss Defendants' third-party complaint, holding that N.J.S.A. 59:8-8 only barred claims by a plaintiff who failed to serve the notice. In reversing that decision, the Appellate Division found that the Legislature did not distinguish between a plaintiff's claim and a defendant's cross-claim or third-party claim against a public entity, in keeping with the public policy averred in the Tort Claims Act of limiting public entities' liability within the Act's parameters. Notwithstanding the dismissal of Defendants' third-party claim, Defendants could still have Plaintiff's judgment against themselves reduced by the percentage of fault allocated by the jury to the Association. ■

RESIDENCY

Thomas v. Bobadilla
NJ Appellate Division
2017 N.J. Super. Unpub. LEXIS 1999
(August 9, 2017)

Plaintiff moved from Florida to New Jersey seven months prior to sustaining injuries in an automobile accident in NJ. The vehicle she was operating was still registered in Florida, and remained insured under a Florida policy in which she declined UM coverage, even though the vehicle had been with her in NJ since her transfer. Under NJ law, Plaintiff was barred from recovering damages sustained while operating an uninsured automobile which was "principally garaged" in NJ. Since "principally garaged" means "the physical location where an automobile is primarily or chiefly kept or where it is kept most of the time," and prior case law held four months to be a sufficient time period, Plaintiff could not recover for her injuries. ■

OFFICE UPDATE

Our office welcomes paralegals **Alejandro Benjamin** and **Deborah Soh** to our office. Mr. Benjamin, a graduate student at Montclair State University, has previously worked on behalf of the Public Defender at Hackensack Municipal Court. Ms. Soh received her paralegal certification at Baruch. ■

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