LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

VOLUME 18, ISSUE 3

Jan Meyer *◇

Richard A. Hazzard *◇
Noah Gradofsky *◇
Stacy P. Maza *◇
Richard L. Elem *◇
Elissa Breanne Wolf *◇
Elliot E. Braun *◇℘
Joshua R. Edwards *
Jonathan L. Leitman *◇
Douglas Michael Allen *

Senior Of Counsel:
Steven G. Kraus, LL.M., CSRP*◇℧℘
Of Counsel:
Joshua Annenberg *◇
Michael J. Feigin *◇®

Admitted to Practice In:
*** New Jersey ◇ New York**
℘ Pennsylvania ℧ U.S. Supreme Court
® US Patent & Trademark Office

Law Offices of JAN MEYER and Associates, PC

Main Office:
1029 Teaneck Road
Second Floor
Teaneck, New Jersey 07666
(201) 862-9500
Fax: (201) 862-9400
office@janmeyerlaw.com
www.janmeyerlaw.com

Maintains a
New York Office:
424 Madison Avenue,
16th Floor
New York, New York 10017

LEGAL NEWS IN BRIEF IS PREPARED AND PUBLISHED BY
LAW OFFICES OF JAN MEYER AND ASSOCIATES, P.C.

JURISDICTION OVER AN OUT-OF-STATE INSURER

Repwest Ins. Co. v. Country-Wide Ins. Co.
NY Appellate Division (1st Dept.)
2018 NYSlip Op 6505
(October 2, 2018)

Countrywide's NY insured rented a U-Haul; U-Haul was insured by Repwest, an Arizona company. U-Haul paid BI settlements to two parties, who were residents of Maryland, for injuries sustained from an accident in North Carolina. Thereafter, U-Haul sued Countrywide in NC, and entered judgment against same upon Countrywide's default. U-Haul then attempted to domesticate that judgment in New York. The Appellate Division held that NC lacked jurisdiction over Countrywide and therefore the judgment could not be domesticated. The mere fact that Countrywide agreed to provide insurance for accidents occurring in NC and the fact that the accident occurred in NC were not enough. However, the court indicated that there might be jurisdiction in the event that some of the parties had a stronger connection to NC.

Two issues arise here: (1) Will the accident state assert jurisdiction against the carrier; and (2) Even if the accident state asserts jurisdiction, will the insurer's home state enforce the judgment?

Although NY and NJ do not have particularly strong case law on the above issues, there are some NY cases that tend to indicate that the foreign state do not have jurisdiction to adjudicate a denial of coverage issue. There may be a stronger argument for jurisdiction in NJ. ■

PERSONAL JURISDICTION

Metropolitan Group Property and Casualty Ins. Co. v. Electrolux Home Products, Inc.
U.S. Dist. Ct., D.N.J.
17-cv-11865 (PGS) (DEA)
(May 29, 2018)

Metlife filed a subrogation action for product liability against Electrolux, a Delaware corporation with its principal place of business in North Carolina, based on a fire in New York, purportedly caused by a dryer Electrolux manufactured. Electrolux is registered to do business in New Jersey, as well as 27 other states. Of its 56,000 employees, only 8 are located in NJ, none of whom make strategic corporate-level decisions. Moreover, Electrolux has no manufacturing facilities, offices, or warehouses in NJ. The Court found that contrary to Plaintiff's assertion, there was insufficient general jurisdiction over Electrolux. Defendant was not incorporated in NJ, nor was its principal place of business in NJ. Although an exceptional case may allow for such jurisdiction where "a corporation's operations in [another] forum may be so substantial and of such a nature as to render the corporation at home in that State," Defendant's advertisements and commercials did not rise to such a level in NJ. Nor does registration in a state create such general jurisdiction. Finally, because Plaintiff asked in the alternative for the matter to be transferred without specifying an alternative forum, the

Court determined that dismissal was warranted. ■

"PRODUCT SELLER"

Allstate New Jersey Ins. Co. a/s/o Cancel v. Amazon.com, Inc.
U.S. Dist. Ct., D.N.J.
17-2738 (FLW) (LHG)
(July 24, 2018)

The District Court of New Jersey held that for purchases of products from third-party sellers, Amazon does not meet the definition of a "product seller" who would be subject to liability under the New Jersey Products Liability Act. Plaintiff's insured purchased an allegedly defective laptop battery from a third-party seller through Amazon. The battery purportedly caused a fire, for which Plaintiff filed a subrogation action in federal court, under diversity of citizenship. In this situation, Amazon fulfills the sale of a product from a vendor to a consumer by holding the product in its inventory and shipping it to the consumer. The Court found the determining factor in state precedent to be a party's control of the product, namely, the ability to exercise dominance over the product, such as how the product is sold. Here, Amazon was a facilitator of the sale; per its agreement with the vendor, the vendor decides what to sell, sources the product from the manufacturer or upstream distributor, and ensures that the product is properly packaged and complies with all applicable laws. Amazon by contrast merely locates, boxes and ships an already-packaged and assembled product. Nor would imposing liability on Amazon achieve the goal of enhanced product safety in proportion with the greater burden on Amazon. ■

FULL FAITH AND CREDIT

Allstate v. Global Liberty Ins. Co.
NJ Appellate Division
Docket No. A-4956-16T2
(July 11, 2018)

Allstate filed suit in NJ for recovery of PIP benefits paid for injuries sustained in an accident in NJ. The court ordered binding arbitration which resulted in an award in Allstate's favor. Rather than filing a summary action in NJ to vacate the award, Global filed a petition in NY for such relief, which was granted. Allstate thereafter filed a NJ action to enforce the arbitration award, which was dismissed on the basis of giving full faith and credit to the NY decision. The NJ Appellate Division reversed on the grounds that NJ was the proper forum state, as the locus of the underlying accident, and where the original proceedings were properly commenced, so that NJ and not NY should review whether the award should be confirmed or vacated. ■

SOL

Contact Chiropractic, P.C. v. New York City Transit Authority
NY Court of Appeals
31 N.Y.3d 187
(May 1, 2018)

A health care provider filed suit against NYCTA for recovery of first-party benefits assigned by a party injured in an automobile accident with Defendant's bus. Defendant moved to dismiss on the grounds that Plaintiff failed to commence the action within the three-year SOL under CPLR 214(2), which applies to actions to recover upon a liability created or imposed by statute (except as provided in CPLR 213). Plaintiff contended that the six-year SOL of CPLR 213(2) for actions based upon a contractual obligation or indemnity, applies instead. The Court of Appeals acknowledged that the Appellate Division has applied a six-year SOL to no-fault claims against insurers liable for no-fault benefits due to the issuance of an insurance policy; however, the Court distinguished this case where the responsible party was self-insured. Since the only requirement that Defendant provide remuneration to an assignee of first-party benefits, in the absence of a contract, derives from Vehicle and Traffic Law and Insurance Law, such a wholly statutory claim is subject to the three-year SOL of CPLR 214(2). Judge Garcia dissented, reasoning that Defendant as a self-insured is the functional equivalent of an insurer for the purposes of administering no-fault coverage, and therefore the SOL of CPLR 214 should apply instead. ■

OFFICE UPDATE

Stacy P. Maza served as a Presenter during a Panel Discussion in a seminar titled "Professionalism in Daily Practice," sponsored by the Bergen County Bar Association on October 16, 2018. Ms. Maza presented various hypotheticals for discussion of ethical issues that arise in professional practice.

Welcome to our incoming attorney **Douglas Michael Allen**. Mr. Allen received his J.D. from Seton Hall University School of Law in 2015 and previously served as an associate attorney in the Tax Department of Skoloff & Wolfe, P.C., and as a law clerk to the Hon. Patrick DeAlmeida, Presiding Judge of the Tax Court of New Jersey. ■