LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

VOLUME 19, ISSUE 5

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WHAT ABOUT UBER AND LYFT?

The no-fault schemes in New York and New Jersey both treat taxis differently from other vehicles. What about rideshare vehicles on services such as Uber and Lyft? Are they taxis? Does it matter whether the driver is connected to the rideshare network or whether the driver has a "fare"? LOJM's New York and New Jersey PIP web pages now have extensive discussion of some of the unique aspects of rideshare vehicles in both states. Find links to these discussions at www.janmeyerlaw.com/nypip/rideshare.html and www.janmeyerlaw.com/njpip/rideshare.html. ■

IMPORTANT OVERHAUL TO NJ PIP SCHEME: LIMITED SUBROGATION IMPACT ANTICIPATED

NJ law allows insureds to choose PIP limits between $15,000 and $250,000. Until recently, it was unclear whether a person with less than $250,000 PIP coverage could sue another PIP insured for medical bills between the lesser coverage and $250,000. After a NJ Supreme Court case answered this question in the negative, the legislature passed a law answering the question in the affirmative. The legislature also added a provision that where PIP applies at all, the PIP fee schedule applies even above the injured party's PIP limit, so that providers may not charge injured parties, nor sue at-fault parties, for medical fees above the fee schedule. For more analysis of this new legislation, see http://www.janmeyerlaw.com/njpip/wise.html.

VICARIOUS LIABILITY

Neher v. Hopkins
NJ Appellate Division
A-4518-17T4; 2019 N.J. Super. Unpub. LEXIS 1804
(August 22, 2019)

The Appellate Division affirmed summary judgment in favor of a newspaper publisher, whom Plaintiffs alleged was vicariously liable for damages resulting from a collision between a deliveryman named Hopkins and Plaintiffs. Plaintiffs contended that Hopkins was the paper's employee because the paper retained control over his work, by requiring him to deliver the newspaper "in a certain order" and "by a certain time" specified by the paper, and subjected him to fines if he did not appear for work on a particular day. Hopkins could "not be terminated without cause," and would be given one month's pay if the paper wanted to terminate their contract. The Appellate Division construed the paper's control as only a "general power to supervise [Hopkins's] work," i.e. "to ensure the newspapers were delivered in a timely manner." Because the supervision related only to the results and not to the method of doing the work, the paper was not vicariously liable for Plaintiff's damages. Additionally, Defendants' contract expressed their intent to create "an independent contractor relationship." The paper did not pay Hopkins for any vehicle-related expenses and paid him on a 1099. Finally, Hopkins was obligated to provide a commercial bond or security deposit to secure his performance and to indemnify and hold harmless the

paper for claims arising from his performance. ■

INTENTIONAL ACT

ACH Chiropractic P.C. v. Geico
NY Civil Court, Kings County
2019 NY Slip Op 51439(U)
2019 N.Y. Misc. LEXIS 4859
(September 4, 2019)

The trial court upheld dismissal on behalf of Geico in a suit for assigned first-party no-fault benefits, where Geico contended that its insured caused the underlying injuries by an intentional assault, using his vehicle as a weapon to deliberately strike the injured party. Geico proved intent via a police accident report, a criminal complaint, an arrest report, and an affidavit from its Special Investigation Unit. The court determines intent from the perspective of the insured, rather than that of the injured, to determine whether the injury was "unexpected, unusual and unforeseen." ■

NO PIP REIMBURSEMENT ABOVE APPLICABLE LIMITS

Moreno v. Montoya
NJ Appellate Division
A-5281-17T2; 2019 N.J. Super. Unpub. LEXIS 1714
(July 31, 2019)

Nationwide unsuccessfully appealed summary judgment of its PIP reimbursement action. Its insured Centeno had represented when procuring his policy that he and his live-in girlfriend Montoya were married to each other, resided in North Carolina, and garaged all his vehicles in NC. In fact, Centeno lived with Montoya in NJ, and brought his vehicles to NJ without registering them in NJ. Montoya and her passenger Moreno sustained injuries in an automobile accident in NJ. The trial court, acknowledging the insured's failure to register the vehicle in NJ and fraud in procuring the policy, applied the Deemer Statute (N.J.S.A. 17:28-1.4) to the out-of-state policy, requiring the minimal PIP coverage of $15,000 per person, per accident to be provided by the policy. Although Nationwide had paid $250,000 PIP each for Montoya and her passenger Moreno, equal to the maximum amount possible of PIP benefits, the injured parties were only entitled to $15,000 each. Thus, Nationwide could not recover any amount greater than $30,000 from the adverse vehicle owner. ■

RESIDENCY

Allstate NJ Prop. & Cas. Ins. Co. v. Estate of McBride
NJ Appellate Division
A-2139-17T2; A-2146-17T2; 2019 N.J. Super. Unpub. LEXIS 1836
(August 29, 2019)

After a divorce, McBride had left Pennsylvania in 2010 to reside in NJ with his mother and stepfather. In 2013, he relocated to his stepfather's rental property, and thereafter to his girlfriend's residence, which was listed on the market for sale. McBride's stepfather obtained a policy covering McBride as a resident of his household (and included McBride's vehicle in the policy) even though McBride had by then moved to the rental property. The stepfather later removed the vehicle from the policy, and claimed to have also requested McBride himself be removed from the policy, but Allstate had no record of such request, and McBride remained on the policy. The Court reversed summary judgment for the carrier, finding that McBride was in a state of transition, and even his occupancy at the house listed for sale was thereby temporary; both his mother and stepfather acknowledged that they would have permitted him to return to their residence when that house sold. It was also objectively reasonable for a policyholder to expect from the declarations page that McBride was covered at the time of the accident. ■

FEDERAL TORT CLAIM

Young v. U.S.
U.S. Dist. Ct., D.N.J.
Civil Action No. 18-2338(CCC)
(July 31, 2019)

Plaintiff allegedly sustained injuries at a U.S. Post Office on May 16, 2016. She submitted a Notice of Claim on August 3, 2016, which was received by the U.S. six days later. The U.S. denied her claim on February 2, 2017. Plaintiff filed her Complaint on February 20, 2018. The Court granted the U.S.'s motion for judgment on the pleadings as Plaintiff failed to file suit within 6 months of the denial. None of the instances which might warrant equitable tolling apply here; the U.S. did not mislead Plaintiff as to her claim by responding more than six months after her claim submission. Plaintiff did not timely assert her rights mistakenly in the wrong forum, nor was she prohibited "in some extraordinary way" from exercising her rights. ■

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