

LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

VOLUME 11, ISSUE 4

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LEGAL NEWS IN BRIEF IS PREPARED AND PUBLISHED BY
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OUR OFFICE SCORES VICTORY IN APPELLATE DIVISION

Drive New Jersey Ins. Co. v. Gisis, et al.

New Jersey Appellate Division
Docket No. A-0951-10T1
(June 29, 2011)

Our office achieved a rousing success when the New Jersey Appellate Division confirmed that the plain meaning of N.J.S.A. 39:6A-9.1 applies and that any tortfeasor not required to carry PIP is subject to PIP recovery, *even if that tortfeasor voluntarily carries PIP*. The published opinion sets precedent that applies to any accident occurring in New Jersey.

Plaintiff's insureds were injured in an accident with a school bus. Plaintiff paid PIP benefits and sought to recover those benefits from the school bus's insurer, per N.J.S.A. 39:6A-9.1, which permits recovery from any tortfeasor "not...required to maintain [PIP]." It is clear that New Jersey's statutes do not require school

buses to carry PIP. The school bus's insurer argued that it was exempt from PIP recovery because its insured voluntarily carried PIP coverage on the school bus. The Appellate Division disagreed, finding that the plain meaning of the statute permitted recovery.

The Appellate Division distinguished the present case from Coach U.S.A., Inc. v. Allstate N.J. Ins. Col., 354 N.J. Super. 277 (App.Div.), cert. denied, 175 N.J. 170 (2002). In Coach U.S.A., the Appellate Division had found certain buses to be exempt from PIP recovery. However, these buses met the definition of "motor bus" and were required to carry bus-PIP under the New Jersey statutes, whereas the school bus was not required to carry bus-PIP.

The Appellate Division also rejected the school bus insurer's argument that "the statute was never intended to permit PIP carriers to pursue reimbursement of PIP payments from other PIP carriers," saying that this was contrary to the plain meaning of the statute, which

authorized recovery from any tortfeasor not required to carry PIP.

At the time of this writing, Defendants' counsel has filed a petition for certification by the New Jersey Supreme Court to review the decision. We will report any further developments. ■

FLEET OF VEHICLES

GEICO v. Hudson County New Jersey Appellate Division Docket No. A-5904-09T1 (June 29, 2011)

In another opinion released on the same day as Drive New Jersey Ins. Co. v. Gisis, the Appellate Division found that a policy providing PIP coverage on certain vehicles in a fleet did not protect the tortfeasor from recovery of PIP when a non-PIP-covered vehicle is involved in an accident. The tortfeasor, a commercial entity, owned a fleet of vehicles. Those "automobiles" in the fleet, which required PIP, did carry PIP, while

those vehicles not requiring PIP, did not carry PIP. The tortfeasor's vehicle involved in the accident did not carry PIP. However, the tortfeasor's insurer argued that it was not subject to PIP recovery, since as a whole, their insured was not a tortfeasor "not . . . required to maintain [PIP]," because certain vehicles owned by the insured did, in fact, require PIP. The Appellate Division disagreed with this argument, and affirmed the Law Division's conclusion, holding that the protection from PIP recovery found in N.J.S.A. 39:6A-9.1 applies only when the particular vehicle involved in the accident requires PIP.

In sum, the Drive New Jersey and GEICO v. Community Options cases demonstrate that a vehicle involved in an accident will only be exempt from PIP recovery if that particular vehicle is required to carry PIP. Of course, if a vehicle required to carry PIP fails to do so, it will be subject to PIP recovery as well.

PREJUDICE

Jackson v. New Jersey Indemnity Ins. Co.

New Jersey Appellate Division
Docket No. A-5296-09T3
(July 20, 2011)

The Appellate Division held that Defendant, sued by Plaintiff for omitting to defend its insured in Plaintiff's suit for personal injuries, failed to show prejudice, as required for avoidance of an insurance contract. Defendant procedurally omitted to raise the issue prior to the appeal. Moreover, letters sent by Defendant's claims adjuster to its insured and the police report's identification of its insured as the driver, demonstrated Defendant's awareness of the accident. Lastly,

Defendant had also turned down Plaintiff's offer to vacate default against its insured, claiming that it still did not know whether the insured had complied with her policy requirements. ■

AUTO THEFT

Duddy v. GEICO New Jersey Appellate Division Docket No. A-4293-09T4 (July 1, 2011)

The Court found that Defendant must provide automobile insurance coverage due to theft where George Gibson gave Plaintiff a fraudulent check in purchasing her vehicle; Plaintiff had previously informed her insurer to drop the vehicle from her policy as of the date Gibson was to pick it up. Defendant invoked a policy provision excluding a loss resulting from sale of an owned automobile. The Court found that the sale was not a true contract; there was no meeting of the minds and the transaction was not consummated, as Plaintiff did not receive her bargained-for consideration. ■

"ACCIDENT"

State Farm Ins. Co. v. Langan New York Court of Appeals 2011 NY Slip Op 2437 (March 29, 2011)

The Court of Appeals awarded UM benefits to an insured decedent who was struck by a vehicle operator intentionally driving into pedestrians. Although the insurer contested that the occurrence was not an "accident arising out of such uninsured motor vehicle's ownership, maintenance or use" as required by the UM policy, the Court construed

"accident" to mean "an event typically involving violence or the application of external force" which was "unexpected, unusual and unforeseen" from the insured's perspective. ■

EMOTIONAL DISTRESS

Abouzaid v. Mansard Gardens Associates New Jersey Supreme Court Docket No. A-5, Sept. Term 2010 (June 21, 2011)

The Supreme Court determined that insurers providing defense for bodily injury must defend certain types of emotional distress actions called Portee claims, which require a showing of at least severe mental and emotional harm upon observing a loved one's serious physical injury or death. Insurers must defend these claims, regardless of whether any physical manifestations of such distress are alleged in the complaint, until such physical manifestation is disproved or otherwise dropped out of the case.

OFFICE UPDATE

We are pleased to have recently hired **Kevin F. Liang** to our office. After graduating from New York Law School in 2010, Mr. Liang worked in the Consumer Credit Project at New York County Civil Court. ■

PIP GUIDE UPDATE

We are also pleased to report that our New York and New Jersey PIP guides, accessible on our office website, are receiving about 500-1,000 hits a week. Please feel free to visit our guides. ■