

# LEGAL NEWS IN BRIEF

## News in a Flash for Subrogation and Insurance Professionals

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### LOJM LAUNCHES NEW JERSEY PIP RECOVERY WEB PAGE & QUICK GUIDES TO NEW YORK AND NEW JERSEY PIP RECOVERY

Is PIP recoverable? What's the Statute of Limitations? Can we sue? Must we arbitrate? These are among the many questions that subrogation specialists encounter as they consider their ability to recover PIP. At Law Offices of Jan Meyer and Associates, P.C., we are always available to help you navigate these muddy waters and to answer your case-specific questions. In order to help you along the way, LOJM recently launched its online "Guide to Recovery of PIP in New Jersey." The website, [janmeyerlaw.com/njpip](http://janmeyerlaw.com/njpip) includes the text of the key New Jersey statutes regarding PIP recovery, together with an outline of those statutes, hyperlinks to definitions of key terms, discussions of key provisions of each statute, and relevant case law as well.

Also included on the web page are discussions of important legal issues that often come up in

subrogation, such as selected New Jersey Statutes of Limitation, New Jersey's comparative negligence laws, New Jersey's verbal threshold, the impact of New Jersey's Collateral Source rule on subrogation, and the impact of federal ERISA law on New Jersey's collateral source rule.

LOJM has maintained a website covering New York PIP recovery and subrogation law at [www.janmeyerlaw.com/nypip](http://www.janmeyerlaw.com/nypip) for several years and we are very excited to have expanded our website to cover New Jersey law as well.

As an added feature, people visiting our NY and NJ PIP recovery pages can follow a link to our "Quick Guide to Recovery of PIP" for each state. These printable guides (2 pages, designed to be printed onto one sheet of paper) allow convenient quick reference to the basics of PIP recovery for each state, together with references to the relevant statutes and case law

People with questions about New York and New Jersey PIP recovery and subrogation are encouraged to call LOJM or to e-mail [njpip@janmeyerlaw.com](mailto:njpip@janmeyerlaw.com) and

[njpip@janmeyerlaw.com](mailto:njpip@janmeyerlaw.com),  
respectively. ■

### "COVERED PERSONS"

#### Hunter v. OOIDA Risk Retention Group, Inc. New York Appellate Division 2010 NY Slip Op 7144 (October 5, 2010)

Plaintiff, driving a truck registered in New York and insured by OOIDA, sustained personal injuries in Connecticut in a motor vehicle accident with a vehicle registered in Connecticut. After Plaintiff obtained first-party benefits (PIP) from OOIDA and settled its bodily injury claim with the adverse vehicle's insurer (USAA), OOIDA sought to recover its PIP claims from the settlement proceeds, subrogation of the benefits it paid Plaintiff, and/or loss transfer from USAA. The Appellate Division upheld summary judgment for Plaintiff in its declaratory action against OOIDA upon the issue of OOIDA's entitlement to bring the adverse

insurer to arbitration. First, the Court determined that USAA's insureds were "covered persons," which Insurance Law §5105(a) would permit OOIDA to recover from USAA. This determination derived from interpretation of "covered persons" to include those persons with liability coverage in excess of minimum coverage required by Vehicle and Traffic Law § 311(4)(a), and whose vehicle, registered out-of-state, is insured by a company authorized to issue policies in New York. Nonetheless, OOIDA cannot compel arbitration because such right of recovery exists "to the extent that such other covered person[s] would have been liable, but for the provisions of [the No-Fault Law]." Insurance Law §5104(a) limits right of recovery "for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state [i.e. New York]." Because the accident occurred in Connecticut, 5104(a) did not prohibit recovery, and thus 5105(a) did not apply. Thus, OOIDA could not bring USAA to arbitration. Moreover, OOIDA waived its right to subrogation by failing to presently appeal that issue. ■

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## PRODUCT LIABILITY

**Dean v. Barrett Homes, Inc.**  
**New Jersey Supreme Court**  
**Docket No. A-15**  
**(November 15, 2010)**

The New Jersey Supreme Court determined that homeowners had a remedy against the designer and manufacturer of an Exterior Insulation and Finish System, which, attached to the exterior of the house and functioning as a combined insulation and wall finish, allegedly caused the house to develop toxic

mold. Generally, the economic loss doctrine bars recovery of damages to the system, absent any damages to other property or personal injuries. Although it recognized the house as a product, the Court deemed the system to be "not so fully integrated into the structure of the house" as to render the house the product itself, because the system was so affixed to the exterior walls as "to create a moisture barrier." Thus, Plaintiffs had a viable action for damages to the structure and/or its immediate environs. In so doing, the Court rejected the federal courts' integrated products doctrine, which applies when a defective product is incorporated into another product which the defective product then damages; the Court cited other state courts' recognition of asbestos and windows as examples of non-integration into the house as a unitary product. Justice Rivera-Soto, dissenting in part, argued that the exterior finish's permanent application to the house, which only demolition work could remove, rendered the house part of the product. ■

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## POLICY PERIOD

**Selective Way Ins. Co. v. Arthur J. Ogren, Inc.**  
**New Jersey Appellate Division**  
**Docket No. A-3491-09T1**  
**(December 13, 2010)**

Plaintiff Selective Way Insurance Company appealed denial of its summary judgment motion in its declaratory action. Selective issued a commercial general liability policy for the policy period of August 17, 1997 to August 17, 1998; the Policy was renewed each year through August, 2001. The insured sought indemnification and defense when sued for property damage

allegedly caused by the insured's defective work, completed in August, 1995. Selective's insured contested that water leakage continued into the policy period. The Court determined the crucial issue to be "the time when damage is manifested." As manifestation had predated the period, Selective did not have to indemnify or defend its insured. ■

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## WELCOME TO NEW PERSONNEL

We are pleased to have recently welcomed **Shlomo Y. Singer** to our office. He is a graduate of Seton Hall Law School, served as a law clerk for two New Jersey Superior Court judges, and then served as an Assistant Prosecutor at the Essex County Prosecutor's Office before entering our law firm. He will be joining our litigation team and maintaining both a civil and criminal caseload.

Additionally, we have recently welcomed two attorneys, who will serve Of Counsel in our office. **Michael J. Feigin**, a Seton Hall Law School alumnus, has his own practice in patent law, and will assist our office with patent applications and IP litigation. **Lianne Forman** is an attorney with sixteen years' extensive experience in general commercial, corporate and transactional law, and will provide services in these areas. ■



Form left to right. **Back row** Solomon Rubin, Rachael Banks, Joshua Annenberg, Stacy Maza, Jan Meyer, Noah Gradofsky, Richard Elem, Janice Forman. **Front row** Allison Fried, Shlomo Singer, Lianne Forman, Michael Feigin.