Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

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VOLUNTEER DOCTRINE

NYP Holdings, Inc. v. McClier Corp.
New York Appellate Division
2009 NY Slip Op 4963
(June 16, 2009)

The volunteer doctrine mandates that payment voluntarily made with full knowledge of the related facts and in the absence of fraud or mistake of material fact or law is not recoverable. Here, an architectural firm settled claims for malpractice and professional errors with regards to a project it had designed but as to which the firm had subcontracted the actual construction. The subcontractors moved for summary judgment as to the firm's insurer's subrogation claim against them, asserting that the insurer had acted as a volunteer, because the related policy only covered professional liability and not construction work. The Appellate Division upheld denial of the motion because the insured firm had a cognizable claim for indemnification against the subcontractors and thus the prevailing issue entailed apportionment of the firm and subcontractors' respective liabilities.

SUM

In re Cent. Mut. Ins. v. Bemiss
New York Court of Appeals
2009 NY Slip Op 5206
(June 25, 2009)

Plaintiff complied with her insurance policy when she informed her insurer for supplementary uninsured/ underinsured motorist (SUM) benefits that she was settling with one of two adversaries for injuries arising out of an automobile accident for that adversary's insurance policy limits. Subsequently, however, Plaintiff also settled with the other party for less than the party's insurance policy limits, without notifying her own insurer of the settlement; upon receiving this information at a later date, Plaintiff's insurer disclaimed coverage because Plaintiff failed to protect the insurer's subrogation rights, give prior written notice of her intent to settle, or obtain the insurer's written consent before said settlement. The Court of Appeals upheld the insurer's disclaimer. The policy conditions, mirroring the provisions in the standard SUM endorsement prescribed by the Insurance Department's regulations, require the insured to provide written notice to any settlement with a liable party.

QUANTUM MERUIT

Pagnani-Braga-Kimmel v. Chappell
New Jersey Superior Court, Law Division
407 N.J. Super. 21
(November 10, 2008)

The Special Civil Part of the New Jersey Superior Court, Law Division, dismissed a complaint filed by a physician who did not inform the defendant that he was an independent contractor who would not accept her insurance. Here, the in-network hospital was unjustly enriched by Plaintiff's services and better prepared to bear the loss than Defendant, because the legislatively-created Hospital Rate-Setting Commission can set rates high enough to compensate for cases in which a New Jersey hospital never receives payment. Moreover, the contract between the parties lacked manifestation of mutual assent such

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that a reasonable person in Defendant's position would have understood her obligations to include a separate bill from an out-of-network physician.

UIM

Bardis v. First Trenton Ins. Co.
New Jersey Supreme Court
Docket No. A-110-07
(June 10, 2009)

The New Jersey Supreme Court held that the trial court had properly precluded Plaintiff from identifying his underinsured motorist (UIM) carrier as the defendant at trial. Plaintiff had sustained injuries in an automobile accident, receiving PIP coverage from his insurer and settling with the adverse driver for the full amount of the driver's insurance policy, thereafter litigating against his own insurer for non-economic damages through UIM coverage. The trial court acted within its discretion in disallowing identification of the UIM carrier as the defendant so as to avoid distracting the jury from the immediate issue of the adverse driver's liability for the contested injuries, which would only then incur the carrier's obligation to pay UIM coverage. Nonetheless, the trial court erred in permitting evidence that the insurer authorized payment of PIP benefits, as such benefits necessitate prompt payment on a "no-fault" basis, without relevance to the issue of causation of injuries. Because the admitted evidence led to the defendant's counsel disavowing knowledge of the PIP representative or her reasons for electing to make the PIP payments, the Supreme Court reversed the trial verdict previously held in the defendant's favor.

STEP-DOWN CLAUSES

Hand v. Philadelphia Ins. Co.
New Jersey Appellate Division
Docket No. A-1957-07T1
(July 1, 2009)

Plaintiff sued her employer's insurance company to compel arbitration as to UM/UIM coverage, after Plaintiff sustained injuries while riding in her employer's vehicle. Defendant attempted to enforce a step-down clause, which provided that if, as here, the insured was not the individual named insured under the policy and had similar coverage under her own policy, then Defendant's liability would be limited to the amount of liability such other policy had, were it lower than Defendant's limit. Although prior case law had upheld such step-down clauses, the New Jersey Governor signed into law, one month after Defendant filed its answer, a statute which mandated that a corporate policy would be deemed to provide the maximum coverage available under the policy to an individual employee, regardless of any policy that employee may have. Although the Appellate Division found that the statute applied retroactively based on its language, it found manifest injustice prejudiced the defendant, because Defendant had relied on law now changed due to the law's retroactive application.

"OTHER INSURANCE" CLAUSES

W9/PHC R.E. v. Farm Fam. Cas. Ins.
New Jersey Appellate Division
Docket No. A-1618-07T3
(May 20, 2009)

The Appellate Division addressed a relatively novel issue of conflicting "other insurance" clauses in business liability insurance policies. In the immediate action, Plaintiffs sought reimbursement from the company which they had hired to remove snow from their property, after settling a lawsuit brought by someone who slipped and fell on the plaintiffs' property. Plaintiffs' insurer provided coverage whereby it would contribute along with the other insurer to the total amount of their limits in pro rata shares. The adverse insurer provided excess insurance only. A majority of jurisdictions maintains the rule, which the Appellate Division adopted and applied herein, that the policy containing the pro rata provision will be primary, exhausting its own policy limits prior to enforcement of the excess clause insurance. This rule is in contradistinction to that of a minority of jurisdictions which cancel out the policies as against each other and apportion the loss in accordance with each policy's limits.