LEGAL NEWS IN BRIEF

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UNLICENSED DRIVER

Monroy v. Allstate Ins. Co.
New Jersey Appellate Division
Docket No. A-3921-09T4
(May 2, 2011)

The Appellate Division affirmed Allstate's denial of Uninsured Motorist benefits to an unlicensed driver. Plaintiff argued that he was a permissive user and that the related policy did not require that such permission be lawful. However, the Court determined that the policyholder cannot authorize a driver to act beyond the holder's own driving and insurance restrictions as imposed by the State. ■

POLICY EXCLUSIONS

Makris v. Darus-Salaam Masjid
New York Supreme Court,
Queens County
Index No. 33790/09
(May 13, 2011)

Plaintiffs sought coverage from their homeowner's insurance carrier for damages arising from alleged negligent construction on adjacent property. Defendant cited its exclusion from coverage for property loss caused by "faulty, inadequate or defective… workmanship, repair, construction… of part or all of any property whether on or off the residence premises." Generally, the Court will construe an insurance policy's ambiguous language against the insurer as drafter of the policy. Here, precedent determined that such "exclusion does not refer to external forces generated by the activities of third parties that cause damage to the insured premises." Thus, the exclusion applies only to negligent work by or on behalf of the insured. ■

TIME-BARRED DEBTS

Huertas v. Galaxy Asset Management LLC
U.S. Court of Appeals 3rd District
Docket No. 10-2532
(April 11, 2011)

A credit card debtor unsuccessfully sued under the Fair Debt Collection Practices Act against collectors' attempts to recover for debts that were beyond the Statute of Limitations. Expiration of the SOL does make a debt unenforceable but will not extinguish the debt itself. A debt collector may continue to seek voluntary repayment of the debt so long as it does not initiate or threaten legal action upon the debt. ■

PRIMARY COVERAGE

Fieldston Prop. Owners Assn. v. Hermitage Ins. Co.
New York Court of Appeals
16 N.Y.3d 257
(February 24, 2011)

The Court of Appeals mandated that Hermitage, a commercial general liability (CGL) insurer, must provide primary coverage, and therefore defense, for its insured, Fieldston, in a fraud lawsuit, and cannot recover defense costs from Federal, Fieldston's directors and officers liability (D&O) insurer. Hermitage's policy indicated that it would be primary unless "any of the other insurance is also primary"; Federal's related clause

stated that its policy would apply "only to the extent that the amount of such Loss is in excess of the amount of such other insurance whether such other insurance is stated to be primary…or otherwise…." The Court held that Hermitage's coverage is primary based on the above language. Although some of the underlying facts of the action being defended occurred during the D&O policy period and not the CGL period, Hermitage as the primary insurer must defend the entire action since at least one of the claims in that action falls within the policy's parameters. ■

EMERGENCY VEHICLES

Kabir v. Cty. of Monroe
New York Court of Appeals
2011 NY Slip Op 1069
(February 17, 2011)

The Court of Appeals determined that an operator of an emergency vehicle can be held liable for negligent actions which are not described in any of the listed categories in Vehicle and Traffic Law §1104(b). Subdivision (e) of the statute sets forth, "The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others." The Court construed subdivision (e) to apply the "reckless disregard" standard to only those actions listed in subdivision (b). Judge Graffeo dissented, arguing that subdivision (b) only sets forth conduct in which emergency vehicles have a qualified privilege to engage in and does not address the standard of care which emergency operators should use in all of their actions. ■

CHOICE OF LAW

Matter of Erie Ins. Co. v. Boss, CA
New York Appellate Division
2011 NY Slip Op 3758
(May 6, 2011)

Respondent sought SUM coverage from his father's NY automobile insurance policy after he settled with a Massachusetts resident for personal injuries sustained in an automobile accident in Massachusetts. The insurance company successfully obtained a determination, affirmed by the Appellate Division, that Massachusetts' modified comparative negligence rule, which permits a claimant to recover only if his own liability is not greater than 50%, will apply in arbitration rather than New York's pure comparative rule, which permits the claimant to recover his equitable portion of damages regardless of the percentage of his own fault. SUM aims to compensate a party for damages for which the tortfeasor would be liable but is not fully insured to pay. Since the accident occurred in Massachusetts, the tortfeasor's liability is based on Massachusetts law.

FORUM NON CONVENIENS

Yousef v. General Dynamics Corp.
New Jersey Supreme Court
A-88 September Term 2009
(April 11, 2011)

The Supreme Court upheld the trial court's decision not to transfer a personal injury action to the venue of the underlying accident, South Africa. Plaintiffs, NJ residents, sustained bodily injuries in an automobile accident with a vehicle owned by a company doing business in New Jersey, its driver being a Florida resident. All known eyewitnesses to the accident resided in the U.S. The Court deferred to the trial court's decision and indicated that a plaintiff's choice of forum is presumptively proper, although not dispositive. Here, the private-interest and public-interest factors set forth in *Gulf Oil Corp. v. Gilbert* (330 U.S. 501, 508-09 (1947)) weigh in favor of New Jersey as the convenient forum. Although the accident occurred in South Africa, the actual intersection was since reconfigured; photographs and diagrams of the intersection during the relevant time period are available through discovery. Most medical treatment took place in New Jersey. The Court also suggested that besides the parties and eyewitnesses, all domiciled in New Jersey, any South Africans with knowledge of the intersection may be subject to de bene esse depositions, i.e. depositions taken with the assumption that such witnesses testifying will be unavailable for trial. ■

LATE NOTICE

Waldron v. New York Cent. Mut. Fire. Ins. Co.
New York Appellate Division
2011 NY Slip Op 3704
(May 5, 2011)

When an insured does not give timely notice of a SUM claim, his insurer must still demonstrate resulting prejudice, even when the insured first informs the insurance agent of the accident about 30 days after the policy notice period – at which time his injured daughter is still hospitalized – but the insured directs the agent not to file a claim. ■