LEGAL NEWS IN BRIEF

News in a flash for Subrogation and Defense Adjusters

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WIN FOR LAW OFFICES OF JAN MEYER PROFILED IN "VERDICTSEARCH"

Progressive N. Ins. Co. v. Peng
Bergen County Superior Court
Docket No. BER-L-6187-07
(July 29, 2009)

Our office obtained an award of $32,480.26 for Progressive Northern Insurance Company as subrogee and indemnitor of its insured, Mark Lubell, at a bench trial against Liang Peng, who struck Mr. Lubell's motor-home vehicle while changing lanes in an attempt to avoid the slowing traffic. Progressive sought to recover the total amount of Mr. Lubell's property damage claim from Peng, who was operating a minimally-insured vehicle. As reported, Plaintiff remarkably prevailed notwithstanding the insured's non-appearance at trial; New Jersey Rules of Evidence 804 allows the court to rely on deposition testimony where the deponent is unavailable and the court is satisfied that the party proffering said testimony has done nothing to prevent the deponent from appearing. Mr. Lubell's transcribed assertion that Peng caused the collision by cutting in front of him, compounded with police officers' observations at the scene, decisively undermined Peng's contention that he had never strayed from his lane of travel. (VerdictSearch, Vol. 8, Issue 1, Jan. 2010)

FEDERAL TORTS CLAIMS ACT

White-Squire v. United States Postal Service
U.S. Court of Appeals, 3rd Cir.
No. 09-1577
(January 27, 2010)

The United States Court of Appeals held that a claimant under the Federal Torts Claims Act (FTCA) must submit a claim containing a "sum certain" for damages to obtain jurisdiction, even if her damages continue to accrue due to ongoing medical treatment. Plaintiff sustained serious personal injury when struck by a USPS vehicle; her attorney sent a letter to the agency as notice without including a sum certain, explaining subsequently to USPS' responses that he would provide a sum once his client was discharged from her doctors' care. The Court dismissed Plaintiff's claim on the grounds that FTCA operates as a limited waiver of the United States's sovereign immunity and the statutory requirement of a sum certain is referenced within the provision of the FTCA setting forth its limited jurisdiction. Here, Plaintiff could have provided estimates of her additional medical procedures and subsequently amended the sum after incurring the actual costs.

POLICY EXCLUSIONS

Homesite Ins. Co. v. Hindman
New Jersey Appellate Division
Docket No. A-5103-08T1
(April 23, 2010)

A teacher's aide took in her work colleague and her newborn son as boarders in her single-family home. During said boarders' occupancy, the aide's dog bit the child. In the ensuing litigation, the aide sought a declaration that her homeowner's insurance carrier was obligated to defend her. The carrier invoked two exclusions in the policy, claiming that by renting the

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premises, the aide was engaged in a business. Construing the business exclusion as inapplicable, the Court reasoned that the homeowner was a teacher's aide and did not rent the premises as a primary vocation. The Court noted that because the rental exclusion was more specific than the business exclusion, it was the controlling provision. Whereas the rental provision excepts coverage for bodily injury "arising out of the rental…of any part of any premises," it itself contains an exception where the "single family unit…is [not] intended for use by the occupying family to lodge more than two roomers or boarders." At the time of the underlying incident, all other boarders in the house ceased to live there. Moreover, the aide had not rented to more than two boarders for at least nine months before purchasing the policy and at least fourteen months before the accident. Because the insurer bears the unmet burden of proving the aide's objective intent, the Court found that neither exclusion applied.

HOUSEHOLD RESIDENT

Mtr. of State Farm Mut. Auto. v. Bonifacio
New York Appellate Division
2010 NY Slip Op 00523
(January 19, 2010)

Petitioner successfully sought a stay of arbitration of a claim for uninsured motorist benefits on the grounds that the claimant was no longer a resident of her parents' household and was thus not covered by the applicable policy. Living most of her life at her parents' residence, the claimant rented an apartment shortly after graduating from college and over two years prior to the underlying accident. Because a person's status as a "resident" requires "something more than a temporary or physical presence and…at least some degree of permanence and intention to remain," the claimant's monthly visits to her parents' house after her emancipation, compounded with her filing of her own tax returns and her signing of a new lease of her apartment, rendered her ineligible for UM benefits.

NEGLIGENCE

Ohlhausen v. City of New York
New York Appellate Division
2010 NY Slip Op 02729
(April 1, 2010)

A motorcycle operator sued New York City Transit Authority (NYCTA) for damages sustained in an automobile accident. NYCTA's bus driver waved at a patrol car with lights and siren on to enter the intersection, even though NYCTA had the green light. The operating officer proceeded, but stopped in front of the bus for 15 to 20 seconds, with lights and siren off, hoping to find the perpetrator he was pursing; after no success, the officer then continued forward, only to then collide with Plaintiff, who was proceeding from the bus operator's right and could not see the patrol car. Although Plaintiff was unaware of the bus operator's wave, the operator by gesturing had thereby assumed a duty of care towards Plaintiff. Moreover, the officer's reliance on the NYCTA operator's gesture sufficed to constitute proximate cause. Nonetheless, the court dismissed Plaintiff's claim against NYCTA, because the officer no longer relied on the gesture when continuing down the remainder of the intersection, and could not reasonably presume that it was then safe to proceed down the bus driver's adjacent lane.

SOL EXTENSION

Dail v. Merchants Mut. Ins. Co.
New York Appellate Division
2010 NY Slip Op 03563
(April 30, 2010)

Defendant issued a homeowner's policy to the insured in February, 2005. In December, a fire destroyed the insured's premises. On October 31, 2006, defendant denied the insured's claim for policy benefits; nine months later, the insured died. Plaintiff as executor filed suit. The two-year Statute of Limitations within which to bring an action had presumably expired, but CPLR 210(a) provides for a one-year extension in the event a claimant dies before the SOL expires. Although Insurance Law §3404(e) provides for the requisite limitations period, the cause derives from common law of breach of contract, and the statutory SOL therefore cannot constitute a condition precedent.