

LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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WIN FOR LOJM IN NJ APPELLATE DIVISION

Meisels. v. Fox Rothschild
New Jersey Appellate Division
Docket No. A-1102-13T3
(February 19, 2015)

In a case in which LOJM represents an investor in a suit against the high profile law firm Fox Rothschild, LLP, the Appellate Division reversed a Trial Court's decision dismissing the case for lack of standing.

Plaintiff Moshe Meisels and related British entities filed suit against Fox Rothschild and its former partner, Anthony Argiropoulos, (collectively "FR"), as a result of a fraud perpetrated by their client, Eliyahu Weinstein. The Complaint alleged that FR was aware that Weinstein was perpetrating a fraud and that FR allowed their representation of Weinstein to be used to advance the fraud. The Trial Court dismissed the Complaint claiming that since the approximately \$2.5 million at issue came from an entity named Rightmatch, Ltd., rather than Plaintiffs, Plaintiffs had no standing

to assert this claim. The Complaint, however, had stated that Plaintiffs routed their funds through Rightmatch because Rightmatch had an account that could exchange funds from Pounds to Dollars.

The Appellate Division ruled that "[t]he fundamental flaw" in the Trial Court's "reasoning is that at this stage of the litigation, a plaintiff is not required to prove the allegations in the complaint; it is sufficient that the complaint's allegations of fact demonstrate a cause of action." As such, the Appellate Division reversed the Trial Court's ruling.

More information about the case is available in an article in the New Jersey Law Journal dated February 23, 2015, titled "Legal Mal Suit Against Fox Rothschild Revived by NJ Court." ■

NJ SUPREME COURT CITES PRIOR LOJM VICTORY

The NJ Supreme Court cited Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344 (2011), a victorious decision for LOJM, in its decision Townsend v. Pierre (docket

number A-2-13, decided 3/12/15). Townsend applied the net opinion rule, as delineated in Pomerantz. This rule is a standard for determining a purported expert's finding to be a "bare opinion that has no support in factual evidence or similar data." Pomerantz, at 372. The Court reiterated that "we apply [a] deferential approach to a trial court's decision to admit expert testimony, reviewing it against an abuse of discretion standard," (Townsend at 17-18, quoting Pomerantz, at 371-72). In Townsend, the Court found that an engineer's opinion as to shrubbery obstructing a driver's view of oncoming traffic, which did not apply his related expertise, and in fact contradicted the evidence, was inadmissible. ■

PIP ISSUES ARISING FROM UBER CAR SERVICE

The New Jersey Law Journal's Automobile Injury supplement recently commented on the implications of the "Uber" phenomenon on NJ PIP law ("The Uber Threshold," Michael B. Fusco, 219 N.J.L.J. 475, S12; S15). The

applicability of NJ PIP, which also affects whether a tortfeasor is subject to claims for PIP reimbursement or is entitled to a verbal threshold defense, pivots on whether the vehicle is an “automobile,” which for a private passenger vehicle means that the vehicle is not “used as a public or livery conveyance.” Fusco argues that an Uber vehicle ceases to be an “automobile” at some point, perhaps when the vehicle is listed as available on Uber or when a passenger is picked up. Though this is possible, LOJM suggests that under Bello v. Hurley Limousines, 249 N.J. Super. 31 (App. Div. 1991) the NJ courts *may* prefer a “bright line” rule that once a vehicle is used for Uber enough it ceases to be an “automobile” even when it is used privately. The NJLJ article also notes significant information regarding Uber liability coverage, including “contingent” 50/100 coverage while a vehicle is in “available” mode and \$1M coverage (which is primary over the driver’s personal policy) once a passenger is picked up. ■

NEW NY RULE ON REDACTING CONFIDENTIAL IDENTIFIERS

Effective 3/01/15, NY courts require redaction of certain personal identifiers in all documents filed in court. The Office of Court Administration, having requested that the Legislature authorize mandatory e-filing in state courts, anticipates that personal information on court-filed documentation might become susceptible to identity theft.

Litigants in State Supreme and County Courts must redact taxpayer information (such as SSN or EIN) and financial account numbers (such as credit card, bank or insurance account), excepting the last four

digits. Additionally, one may identify a known minor by his or her initials only. The month and day of a person’s date of birth also requires redaction.

The present parallel New Jersey rule has been in place since September 1, 2009. R. 1:38-7 generally requires redaction of a SSN, driver’s license number, vehicle plate number, insurance policy number, financial account number and active credit card number. ■

JUSTICIABILITY OF PIP PRO-RATA CLAIM

State Farm Indemnity Co. v. National Liability & Fire Ins. Co.
New Jersey Appellate Division
Docket No. A-5972-13T1
(March 4, 2015)

N.J.S.A. 39:6A-11 allows a PIP carrier paying PIP to seek pro-rata reimbursement from other applicable PIP policies. The statute requires arbitration of disputes. Defendant claimed the claimant did not reside with its insured and that this “coverage issue” should be litigated. The Appellate Division broadly construed the arbitration requirements in N.J.S.A. 39:6A-11 to favor submission of all issues to arbitration rather than bifurcating them between the courts and arbitration. ■

MATERIAL MISREPRESENTATION

Morales v. Castlepoint Ins. Co.
New York Appellate Division
2015 NY Slip Op 1618
(February 25, 2015)

A homeowner’s insurer successfully appealed denial of its summary judgment motion in

Plaintiff’s suit for policy coverage. Plaintiff obtained a dwelling policy for certain premises which were falsely claimed on the application to be occupied by Plaintiff and to be his “primary residence.” The Appellate Division found this information on Plaintiff’s application to constitute a material misrepresentation, which would void the policy *ab initio*. Plaintiff claimed to no avail that the application had been submitted without his actual or apparent authority. By accepting the policy and permitting it to be renewed for years on the same terms, Plaintiff effectively ratified the application. ■

TRIAL DE NOVO

Vanderslice v. Stewart
New Jersey Supreme Court
Docket No. A-58-13
(January 29, 2015)

Defendants submitted a demand for trial de novo the day after receiving an unfavorable arbitration award. The demand enclosed a payment voucher, which gave the recipient the right to draw upon Defendant’s account with the State Treasury. The Arbitration Administrator signed the voucher and sent it to the State Treasurer for payment, and the Treasurer issued a check exactly thirty days after the arbitration award was filed. Because the Arbitration Administrator received the check two days thereafter, technically thirty days after the award, the clerk did not file the demand or deposit the check. Defendants only learned that the trial de novo was ineffective when Plaintiff moved to confirm the award. The trial court permitted the filing. Plaintiff appealed after an unfavorable verdict, but the NJ Supreme Court held that the filing had not been untimely. ■