LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

VOLUME 21, ISSUE 3

Jan Meyer *◊ ʊ

Richard A. Hazzard *◊
Noah Gradofsky *◊℘
Stacy P. Maza *◊
Richard L. Elem *◊
Elissa Breanne Wolf *◊
Joshua R. Edwards *◊
Jonathan L. Leitman *◊
Elizabeth Kimmel *◊®
Amy Sue Goldenberg *◊
Keron E. Hoetzel *

Senior Of Counsel:
Steven G. Kraus, LL.M., CSRP*◊ʊ℘
Of Counsel:
Joshua Annenberg *◊
Michael J. Feigin *◊®
Isaac Szpilzinger ◊

Admitted to Practice In:
*** New Jersey ◊ New York**
℘ Pennsylvania η New Hampshire
ʊ U.S. Supreme Court
® US Patent & Trademark Office

Law Offices of JAN MEYER and Associates, PC

Main Office:
1029 Teaneck Road
Second Floor
Teaneck, New Jersey 07666
(201) 862-9500
Fax: (201) 862-9400
office@janmeyerlaw.com
www.janmeyerlaw.com

Maintains a
New York Office:
424 Madison Avenue,
16th Floor
New York, New York 10017

LEGAL NEWS IN BRIEF IS PREPARED AND PUBLISHED BY
LAW OFFICES OF JAN MEYER AND ASSOCIATES, P.C.

NO RIGHT OF PIP RECOVERY FOR PAYMENTS ERRONEOUSLY MADE

Palisades Ins. Co. v. Horizon Blue Cross Blue Shield of N.J.
NJ Appellate Division
469 N.J. Super. 30
(July 27, 2021)

Defendant, a health insurer, won summary judgment in a PIP carrier's reimbursement action. Plaintiff's insureds opted to designate their health insurance to provide medical coverage on a primary basis for injuries resulting from motor vehicle accidents. When the insureds sought payment of their medical expenses from Plaintiff, Plaintiff sent letters notifying Defendant that its subscribers had submitted expenses for automobile-related injuries, and that under the terms of their policies, Defendant was the primary provider of medical benefits. After Defendant failed to confirm that it would process the claims, Plaintiff voluntarily paid the claims.

The Appellate Division upheld the summary judgment appealed by Plaintiff. A health insurer's duty to process a claim does not arise until it has received a request for payment directly from the insured or a healthcare provider. If the health insurer disputes coverage, the insured must pursue the internal appeals process under the plan. Thus, Defendant had no obligation to respond to Plaintiff's correspondence.

As for a different claim where Defendant was similarly designated as primary, Plaintiff commenced payment upon receipt of the claim before realizing the designation, and subsequently sought confirmation from Defendant that it would provide primary coverage; Defendant responded that it only provided secondary coverage for PIP-eligible expenses. Here, the Appellate Division determined that Plaintiff was obligated to provide primary coverage despite the insured's designation, and its recourse is to instead recover premium reductions the insured saved by electing health as primary on his or her policy. Plaintiff has to seek reimbursement from the healthcare providers it paid, or obtain an assignment of its insured's rights against the health insurer. Finally, a voluntary payment made on a demand not enforceable against the payor is not subrogable. ■

DUTY TO DEFEND

Axis Constr. Corp. v. Travelers Indem. Co. of Am.
U.S. Dist. Ct., E.D.N.Y.
2021 U.S. Dist. LEXIS 166083
(September 1, 2021)

Axis, a general contractor, sued Travelers for a declaration that Travelers had a duty to defend Axis in a BI action brought by an employee of Axis' subcontractor AWI. AWI had obtained general liability insurance from Travelers, with an endorsement that made Axis an additional insured "to the extent that…injury or damage is caused by acts or omissions of [AWI] in the performance of [AWI's] work." The employee did not name AWI as a defendant in his BI action, being barred by NY Worker's Compensation Law. Travelers had denied Axis coverage, asserting that no evidence demonstrated that the loss arose out of AWI's work and that there was no finding of negligence against AWI.

The Court granted summary judgment for Axis, ruling that Travelers must defend Axis. Axis had impleaded AWI in the BI action on the basis that AWI created the condition proximately causing the underlying injuries. AWI thereby faced possible liability for its negligence towards its employee. The duty to defend arises regardless of the strength of Axis' theory of negligence against the employer. ■

INSURANCE FRAUD

GEICO v. Sall Meyers Associates, P.A.
U.S. Dist. Ct., D.N.J.
2:21-cv-19841

GEICO and its subsidiaries filed suit as of November 9, 2021 to recover over $4.75 million paid for purportedly fraudulent services claimed by medical providers for auto-related injuries continuously since 2016. Plaintiffs claim that the services were not medically necessary; were misrepresented and/or exaggerated as to severity of injuries, time length of examinations, extent of medical decision-making; and/or entailed falsified examination results and diagnoses. GEICO seeks damages, inter alia, for violation of the NJ Insurance Fraud Prevention Act (N.J.S.A. 17:33A-1 et seq.); violation of RICO (18 U.S.C. §1962(c)); common law fraud; and unjust enrichment. ■

SUBROGATION NOTICE

American Tr. Ins. Co. v. Smiley
NY Appellate Division, 1st Dept.
198 A.D.3d 557
(October 26, 2021)

Defendants lost on appeal of their motion to dismiss a PIP subrogation action. The trial court had denied the motion on the grounds that Plaintiff mailed its subrogation notice to Defendants' insurer three days before Plaintiff's insured executed a BI release. The Court deemed Defendants to have actual and/or constructive notice of Plaintiff's subrogation right at the time of the BI release's execution, since their insurer as agent had knowledge of that right, and that knowledge is imputed to them as principals of the insurer, regardless of whether the information is actually communicated to them. Additionally, Defendants had notice inasmuch as the insured had stated in her bill of particulars that she had pending PIP coverage with Plaintiff. ■

STEP-DOWN CLAUSE

Ricciardi v. Allstate Ins. Co.
NJ Appellate Division
2021 N.J. Super. Unpub. LEXIS 2555
(October 27, 2021)

Plaintiff sustained injuries in a collision with an underinsured motorist while operating a vehicle belonging to his brother and insured by Allstate. For the three months immediately preceding the accident, in which the brothers were moving from NJ to Florida, Plaintiff was living with his brother in their parents' NJ house. Prior to that, Plaintiff resided in NY, and had a NY driver's license. Plaintiff also had a NY policy with GEICO for his personal vehicle.

The Allstate policy listed Plaintiff's brother as the only named insured. Plaintiff sought UIM coverage from Allstate, and later filed suit against same, on the premise that he was a "resident relative" of his brother's household. Allstate denied coverage prior to suit, asserting that Plaintiff was a non-resident operator of his insured brother's vehicle, and thus the policy's UIM limits would "step down" to the mandatory minimum amount of BI coverage for NJ, i.e. $15,000. The trial court determined that as the step-down limit of $15,000 did not exceed the underinsured tortfeasor's own BI policy limit of $50,000, Allstate's UIM provision is not even triggered, and thereby granted summary judgment for Allstate. The Appellate Division upheld the decision, noting that even if Plaintiff had qualified as a resident relative under the Allstate policy, the policy also "stepped down" for parties who were a named insured on another policy, and Plaintiff was named insured on his own Geico policy. ■

RELATION-BACK DOCTRINE

Park v. GEICO
NJ Appellate Division
2021 N.J. Super. Unpub. LEXIS 1303
(June 29, 2021)

GEICO successfully moved for dismissal of its insured's suit for UM/UIM coverage, after Plaintiff failed to file her amended complaint naming the tortfeasor within two years after the underlying accident. Plaintiff's omission extinguished GEICO's right of subrogation against the tortfeasor, and Plaintiff thereby forfeited coverage. Although Plaintiff attempted to invoke the relation back doctrine, on the basis of the new claim arising from the same transaction and occurrence as the original complaint, the Appellate Division in upholding the dismissal ruled that the doctrine was inapplicable. Although the insured's UM claim arose from the same accident, she pleaded a completely new cause of action against the tortfeasor. ■