Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

Jan Meyer, Esq.

Richard A. Hazzard
Noah Gradofsky
Stacy P. Maza
Daniel T. Gluck
Richard L. Elem
Elissa Breanne Wolf
Solomon Rubin

Joshua Annenberg

New Jersey Office:
1029 Teaneck Road
2nd Floor
Teaneck, NJ 07666
Tel. 201.862.9500
Fax 201.862.9400
www.janmeyerlaw.com

New York Office:
50 East 42nd Street
Suite 1809
New York, NY 10017

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Health Insurer Named as Primary Insurer Pursuant to New Jersey "PIP" Statute Need Not Participate in Arbitration Mandated by a Separate Provision

New Jersey Manufacturers Ins. Co. v. Horizon Blue Cross Blue Shield of New Jersey
New Jersey Appellate Division
Docket No. A-0712-07T3
(November 3, 2008)

This action culminated in the landmark ruling that even when the insured names his health insurer as his primary carrier, that carrier need not participate in arbitration.

N.J.S.A. 39:6A-4 requires that automobile insurance policies include Personal Injury Protection (PIP) coverage, therein defining said coverage as "[p]ayment of medical expense benefits in accordance with a benefit plan provided in the policy." Automobile insurers must offer their insureds the option of designating their health insurance as their primary coverage for injuries that would otherwise be covered by the PIP portion of their automobile insurance policies. Under such circumstances, PIP coverage would become secondary insurance, and the PIP insurer would need to coordinate benefits with the health insurer. Moreover, the PIP insurer would be liable for reasonable medical expenses not covered by the health insurance coverage or benefits up to the limit of the medical expense benefits coverage.

Here, Joseph Kutschman was injured in an automobile accident in 2005; he had designated Horizon Blue Cross Blue Shield of New Jersey (Horizon), his health insurer, as his primary insurance for treatment of related injuries. PIP coverage provided by New Jersey Manufacturers (NJM) therefore became secondary. Kutschman received medical treatment from Dr. Anthony Cifelli during two separate time periods, from July to October, 2005, and then from May to October, 2006. NJM paid for the 2005 treatments, but refused to pay for the 2006 treatments, having alleged after reviewing an independent medical examination that such treatment would not be beneficial. Cifelli, to whom Kutschman had assigned his right to PIP benefits, filed a demand for arbitration pursuant to N.J.S.A. 39:6A-5.1 against NJM and Horizon.

The Appellate Division ultimately upheld the arbitration decision, which found that N.J.S.A. 39:6A-5.1 did not require Horizon to participate in arbitration because that section only required arbitration of "[a]ny dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage... arising out of the operation, ownership, maintenance or use of an automobile." As no further evidence indicated that Horizon

contractually agreed to arbitration of disputes over its coverage, the arbitrator had rightly dismissed the claim against Horizon. The arbitrator had then determined that the 2006 treatments were medically necessary, and that NJM could not require Cifelli to proffer Horizon's Explanations of Benefits once NJM had notified the doctor that it would not pay any further claims it deemed medically unnecessary. The Court thus upheld the arbitrator's decision.

Data of Insurance Policies Distributed by Zip Code are Disclosable under Freedom of Information Law

Matter of Markowitz v. Serio
New York Court of Appeals
2008 NY Slip Op 05775
(June 26, 2008)

Brooklyn Borough President Marty Markowitz successfully filed requests per the Freedom of Information Law (FOIL) for information "for each Kings County zip code, including by carrier, the number of voluntary [automobile] policies issued, renewed, cancelled...or nonrenewed" from 2000 to 2003. Markowitz was concerned with possible "redlining," where an insurer refuses to issue or renew a policy, or otherwise cancels the policy solely based on the policy's geographic location, in violation of Insurance Law § 3429. The Court of Appeals upheld the lower court decision annulling the determination by the Superintendent of the Insurance Department that such documentation was exempt from FOIL. Here, the Court found that zip code data was insufficient evidence for the Department to allege that disclosure of same would enable competitors to use that data to assess the strengths and weaknesses of the insurers' agents, detect the insurers' strategies and target their market areas.

Social Guest Who Appeared on the Deck on One Prior Occasion Has Viable Claim for Personal Injuries Sustained at That Location

Dabrowski v. Mohammed
New Jersey Appellate Division
Docket No. A-0007-07T3
(November 20, 2008)

Plaintiff appeared at Defendant's residence to help clean the premises. Later on that same dark and misty evening, Plaintiff left the premises through the back door to the deck area, as allegedly instructed by Defendant. As Plaintiff stepped onto the stairs leading down, she fell on the debris-littered ground from the right side of the deck, which had no handrail. Although Plaintiff had visited the house several times, she had only approached the deck area on one prior occasion, when Defendant had called Plaintiff there to help confirm whether Defendant's uncle, lying on the deck, had died or was merely sleeping.

The trial court granted summary judgment in favor of Defendant, finding that she had no duty to warn Plaintiff of the stairs' dangerous condition. Upon reviewing the case de novo and reversing the trial court's decision, the Appellate Division reiterated the common law distinctions of injured persons as a trespasser, licensee (social guest), or business invitee. The current trend in New Jersey continues to limit a host's duty to warn a social guest as to dangerous conditions of which the host is actually aware or which the host should reasonably perceive. As Plaintiff was a social guest, the court found that an issue remained for the jury as to whether she had full knowledge or appreciation of the deck area, having appeared there before on a single anomalous occasion.

Additionally, the Appellate Division employed an emergent, more flexible analysis of landowner duty, which hitherto had not been applied to instances of social guests. This approach comprises four factors: the relationship of the parties; the nature of the attendant risk; the opportunity and ability to exercise care; and the public interest in the proposed solution. Here, the Appellate Division noted Plaintiff's status as a social guest present on the premises for Defendant's benefit as she helped cleaning the premises. Remaining issues for the jury to assess were whether Defendant warned Plaintiff of the dangers of the deck area, whether said area had sufficient lighting, and the deck area's non-compliance with industry standards.

Welcome to attorney Rachel E. Banks, She is admitted to practice law in New York and New Jersey.

TO OUR CLIENTS AND FRIENDS. WE EXTEND OUR SINCEREST BEST WISHES FOR A HAPPY HOLIDAY SEASON