LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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LOJM's LATEST VICTORY: SUCCESSFUL APPEAL OF DECISION ON LAND USE/ZONING APPLICATION

Mount Holiness Temple of Pentecostal Faith, Inc. v. Hackensack Board of Adjustment
New Jersey Appellate Division
Docket No. A-2629-12T2
(May 5, 2014)

Jan Meyer successfully argued the appeal and the Appellate Division reversed the decisions of both the trial court and the Hackensack Zoning Board of Adjustment. Appellant had sought to construct a parking lot, so as to convenience its congregants' access to the church. Although Appellant challenged the Board's decision in the Law Division, the trial court upheld the denial.

The Appellate Division reversed the lower court decision on several grounds. Preliminarily, the Court did affirm the standard applied by the Board as to churches and other houses of worship, which the City's ordinance designates as conditional uses. Specifically, the appellant must show that the site continues to be appropriate for the church's conditional use despite its proposed deviations, without substantial detriment to the public good or substantial impairment of the zone plan and ordinance's intent and purpose. Nonetheless, the Board erred in apparently consulting the new zoning ordinance, rather than its pre-amended version; although the City Council had adopted the amendment several years earlier, the ordinance was not effective until filed with the county planning board, which postdated Appellant's application. Moreover, the Board improperly considered testimony by its engineer and planner, whose claims that present street-parking conditions were adequate, unsupported by any traffic study or even a visit to the site during services, amounted to only a net opinion. By contrast, the Board arbitrarily discounted Appellant's own expert's testimony, even though her traffic study was correctly conducted on a Sunday, the peak time of the church's activity. Accordingly, the Appellate Division remanded the matter to the Board for further proceedings. ■

RESTORATION OF ACTION

Velarde v. Carmichael
New Jersey Appellate Division
Docket No. A-3886-12T1
(April 29, 2014)

The Appellate Division reversed the trial court's denial of Plaintiff's motion to reinstate his complaint, which was dismissed due to lack of prosecution. Plaintiff successfully showed good cause in his signing a stipulation to extend time for Defendants to file a late answer, only to learn months later that Defendants' answer had not been filed in time to prevent dismissal of the inactive suit. Contrary to the lower court's reading of exceptional circumstances being required in multi-defendant actions, as per R. 1:13-7(a), such circumstances are necessary only when suit against another defendant is ongoing, to prevent delay of that proceeding. Here, Plaintiff had dismissed the remaining defendant from the suit ten months before his motion to reinstate was denied, and therefore he did not need to show exceptional circumstances to restore the matter against the remaining defendants. ■

PIP ARBITRATION

Allstate New Jersey Ins. Co. v. Old Republic Ins. Co.
New Jersey Appellate Division
Docket No. A-5158-12T1
(April 22, 2014)

Allstate unsuccessfully appealed dismissal of its complaint which sought to compel Old Republic to arbitrate a PIP reimbursement matter. In January, 2009, about ten months after the underlying automobile accident, Allstate served on Defendant a demand to arbitrate through Arbitration Forums. Old Republic was not a signatory of Arbitration Forums and did not consent to arbitration in that forum; Allstate thereupon withdrew its demand. In January, 2010, Allstate's insured filed a bodily injury lawsuit against Old Republic's insured, and settled two years later. Upon learning of the settlement, Allstate filed suit to compel arbitration, having done nothing further since withdrawing its prior demand to protect its rights of reimbursement other than telephoning or calling Defendant, who ignored the messages. The Appellate Division upheld dismissal of the suit, because Allstate did not renew its demand for arbitration within the 2-year SOL. ■

CONTRACTUAL SOL

Executive Plaza, LLC v. Peerless Ins. Co.
New York Court of Appeals
22 N.Y.3d 511
(February 13, 2014)

The NY Court of Appeals struck down a clause in a fire insurance policy which limited the time in which the insured could bring suit under the policy. Defendant's policy's limitations period was two years, running from the date of the fire. However, the policy also provided that the insured could recover the cost of replacing destroyed property, but only after the property had already been replaced. The Court held that such a provision is unreasonable and unenforceable under the circumstances, because it bars a claim before it even exists, when the process of such property replacement takes more than two years. Thus, the insured would have had no reasonable opportunity to commence its action within the contractual SOL. ■

POLICY COVERAGE

Ferrer v. State Farm Ins. Cos.
New Jersey Appellate Division
Docket No. A-3514-12T4
(May 2, 2014)

Plaintiff unsuccessfully sought UM coverage from her husband Nathan's mother's policy, after Nathan was killed in an automobile accident. Although neither Plaintiff nor her husband had coverage themselves, State Farm had included Nathan as a "driver(s) in household" on every auto-renewal page issued for his mother's policy, after he was involved in an accident in 2002 while operating his mother's vehicle. The declarations page of the policy, however, never mentioned Nathan, and he did not live with his mother; moreover, the auto-renewal pages clearly stated that the contents thereof did not expand coverage. Nathan's mother did not sign anything to add him to the policy and never spoke to an agent about adding him. The Court held that the declarations page, unambiguously worded, defined the extent of coverage, and affirmed dismissal of the declaratory action. ■

CONFLICT OF LAW

Singh v. Pilot Gas Station
New Jersey Appellate Division
Docket No. A-4634-12T1
(April 22, 2014)

The Appellate Division upheld dismissal of a NJ lawsuit by a NJ resident against a Tennessee corporation for a slip-and-fall which occurred in Tennessee. Plaintiff filed his action twenty-two months after the incident; thus, an issue arose as to whether Tennessee's 1-year SOL or NJ's 2-year SOL controlled. New Jersey's approach is to defer to the law of the place where the injury occurred, "unless another state has a more significant relationship to the parties and issues." Here, the place where the conduct causing the injury, the place where the parties' relationship was centered and the respective parties' domiciles weighed in favor of applying Tennessee SOL. Additionally, Tennessee has a superior interest to NJ in seeing the tort victim justly compensated. ■

OFFICE UPDATE

Our office welcomes Associates Attorneys **Yonatan M. Bernstein** and **Amanda Beth Tosk**. Mr. Bernstein (St. John's Law School, 2013) previously interned at Gerstman, Schwartz & Wink. Ms. Tosk (Benjamin N. Cardozo School of Law, 2011) most recently practiced civil rights litigation at Cohen & Fitch.

Our office also welcomes Jessica Halloran as a paralegal in our office. Jessica is a graduate of the Paralegal Studies Program at Fairleigh Dickinson University. ■