LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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BUSINESS AS USUAL.

Our offices are fully operational and had no interruptions since the start of the pandemic. In order to follow the recommendations of the various government agencies, all LOJM employees are working remotely, and all office phone extensions have been forwarded to each individual employee. Mail is also being delivered to our Teaneck, New Jersey office and processed daily.

Any questions or concerns please feel free to email the office or call. We will respond in the normal course of business as usual.
Stay safe and healthy.

POLICY EXCLUSION

Deras v. Hamwi
NJ Appellate Division
A-4167-18T3; 2020 N.J. Super. Unpub. LEXIS 292
(January 23, 2020)

Plaintiff sought UIM coverage from Allstate after sustaining injuries as a guest passenger in a vehicle (insured by Geico) involved in a collision with another vehicle (insured by Plymouth Rock). Although Plaintiff's deceased husband had a policy with Allstate, under which Plaintiff claimed coverage as a resident relative, Allstate invoked an exclusion denying coverage "to any resident relatives who are not occupants of the insured auto…and who are insured under another auto policy." Plaintiff settled with both Geico and Plymouth Rock, and Allstate reiterated its denial. The court determined that there is no UIM coverage as a result of Plaintiff's being deemed an insured under Geico's policy. Because Plaintiff was so insured under Geico's policy, the exclusion applied and she was not entitled to benefits from Allstate. ■

GOLF CART

McKeown v. Am. Golf Corp.
NJ Appellate Division
A-3408-18T1;
2020 N.J. Super. LEXIS 15;
____ N.J. Super. ____
(February 7, 2020)

The Appellate Division reversed summary judgment for Defendant, whom Plaintiff sued for negligently entrusting an unlicensed third-party with a golf cart, causing injuries to Plaintiff. Defendant and his father-in-law were playing golf at a country club when Defendant signed a rental agreement for the cart, agreeing to "assume all risk" associated with the cart's use, and promising he would not permit the cart to be operated by "anyone unfamiliar with the operation and proper use of the cart." Defendant's father-in-law operated the cart and injured Plaintiff. Defendant's father-in-law stated that a rangefinder, which was unsecured on a shelf near the steering wheel, fell and became lodged under the brake pedal, preventing him from stopping the cart. The Court determined that the rental agreement aside, Defendant had a common law duty to refrain from entrusting the cart to an incompetent operator. Even assuming, which the Court did not, that the agreement was an

adhesion contract, the issue remains whether said contract is enforceable; moreover, the country club's self-interest in the agreement does not preclude its intention to also ensure its patrons' safety. Lastly, it was for the jury to determine whether the rangefinder's falling under the brake was foreseeable, and its placement on the shelf could have been an additional act of negligence by Defendant and/or the operator. ■

EXPANDED DEFINITION OF DWI

State v. Thompson
NJ Appellate Division
A-2011-18T4;
2020 N.J. Super. LEXIS 16
____ N.J. Super. ____
(February 10. 2020)

The Appellate Division upheld Defendant's DWI conviction for sleeping behind the wheel of his parked vehicle while intoxicated. N.J.S.A. 39:4-50(a) actually prohibits operation of a vehicle, a broader term than the driving of same that implicates "the possibility of motion." Specifically, "operation" can encompass sitting or sleeping in a stationary vehicle if the engine is running. "Operation" is also apparent not only in circumstances indicating that the defendant had been driving while intoxicated, but also when he is looking for his vehicle while in an intoxicated state.

According to *The Legal Intelligencer* (2/20/20, p.3), NJ defense attorneys have criticized the decision as inconsistent with precedent which rules that turning on the engine before sleeping in a running car was not proof of intent. ■

DEEMER STATUTE

Felix v. Richards
NJ Appellate Division
A-27-18; 2020 N.J. LEXIS 293;
___ N.J. ____
(February 26, 2020)

NJ generally requires 15/30/5 coverage (i.e. $15,000 per injured person; $30,000 per accident; and $5,000 in PD). There are, however, options for lesser coverage, such as the "basic" policy, which provides 0/0/5 coverage (i.e. only the $5,000 PD). N.J.S.A. 17:28-1.4, better known as the "Deemer Statute," requires insurers who write policies in NJ with out-of-state vehicles involved in NJ accidents to confirm to NJ insurance minimums for that accident. Here, the NJ Supreme Court addressed whether those NJ minimums to which the out-of-state policies must conform is the 15/30/5 policy or the 0/0/5 policy. The Court held that the 15/30/5 policy applies, in accordance with the legislative intent. Notably, the Supreme Court favorably cited *New Jersey Mfrs. Ins. Co. v. Varjabedian*, 391 N.J. Super. 253, 256 (App. Div.), *certif. denied* 192 N.J. 295 (2007). That case held that if an insurer denied and/or rescinds coverage, it must provide 15/30/5 coverage to innocent third parties even though the legislature in theory endorsed the possibility that an innocent third party could only resort to a 0/0/5 policy. ■

SOL

The Plastic Surgery Center, P.A. v. Malouf Chevrolet-Cadillac, Inc.
NJ Supreme Court
A-78/79/80-18
2020 N.J. LEXIS 116;
____ N.J. _____
(February 3, 2020)

The NJ Supreme Court upheld the Appellate Division's decision in this matter (457 N.J. Super. 565 (Jan. 17, 2019)) substantially for the reasons expressed in that decision. At issue was the applicable SOL for claims brought by medical providers against workers' compensation carriers for payment of services rendered to injured employees. The 2012 amendment to N.J.S.A. 34:15-15 mandated exclusive jurisdiction for such claims in the Division of Workers' Compensation. However, the amendment was silent as to the time frame in which such claims must be commenced. The Division applied the two-year time bar of N.J.S.A. 34:15-51, which explicitly applies to petitions for compensation. Per the Appellate Division's reasoning, precedent had already determined a 6-year SOL for medical providers' claims. The amendment did not explicitly address the SOL even though the Legislature could have done so. To assume N.J.S.A. 34:15-51 applies to medical providers would impractically expand and redefine the terms "claimant" and "compensation" as addressed in the statute. Also, a medical provider could treat an employee for longer or later than two years following the accident. ■

OFFICE UPDATE

Our office welcomes two new attorneys. **Sung Eun Lim** has practiced in patent law and is licensed in Connecticut in addition to NY and NJ. **Joshua Beil**, a graduate of the Jacob D. Fuchsberg Touro Law Center in 2012, previously practiced as a Staff Attorney in the Litigation Department of Paul Weiss Rifkind Wharton & Garrison. ■