LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

VOLUME 20, ISSUE 6

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"REGULAR USE"

Siemietkoski v. Velasquez-Flores
NJ Appellate Division
2020 N.J. Super. Unpub.
LEXIS 1438
(July 17, 2020)

Plaintiff unsuccessfully appealed summary judgment against his UM/UIM claim for injuries sustained while operating a County-owned truck during the course of his employment. Geico denied the claim and moved for judgment on the basis of the "regular use" exclusion in the policy which restricts UIM coverage where an insured has sustained bodily injury while occupying a vehicle furnished for the regular use of the insured. Plaintiff contended that he was not using a vehicle for which he had personal or regular unrestricted use because he could not use it outside the scope of his employment, it remained on County property at all times, and his ability to use the vehicle was not unrestricted. He also did not have the same vehicle every day and had to use it on County property. Case law determined that the actual issue was whether the given vehicle was furnished for Plaintiff's regular use, not the frequency with which he used it nor whether it was for personal use. Here, Plaintiff had a general right to use the County vehicle daily, among others, during the scope of his employment. ■

MOTION TO AMEND

Yohe v Curley
NJ Appellate Division
2020 N.J. Super. Unpub.
LEXIS 1308
(July 2, 2020)

Plaintiff successfully appealed the trial court's denial of his motion to amend the complaint so as to rename a fictitious defendant "Jane Doe," the driver of the vehicle that rear-ended him, after the vehicle owner identified her in responses to interrogatories. At the time of the accident, Plaintiff and the driver exchanged their respective insurance information (but not each other's names) instead of notifying the police. Plaintiff duly reported the accident to the driver's insurance carrier Allstate, then timely filed suit against the named vehicle owner and the driver, named as "Jane Doe."

Even though Allstate received process by substituted service, it only filed an answer after vacating default against the vehicle owner and filing an answer on the owner's behalf. Allstate subsequently signed responses to interrogatories without identifying the driver as a person with relevant knowledge of the accident. Three months later, Defendant provided amended responses, also signed by Allstate, which identified the driver but did not provide her address. At the end of the discovery period, and over four years after the accident, Plaintiff moved to amend his complaint.

The Appellate Division acknowledged that R. 4:26-4 authorizes Plaintiff to amend the complaint to identify the true defendant, even after the SOL's expiration, inasmuch as he has exercised due diligence in ascertaining the correct identify and in amending the complaint. Although neither party was diligent in pursuing its discovery obligations, the Court determined that Plaintiff's efforts in the face of his adversary's delaying tactics merited the amendment. ■

ARBITRATION AWARD

Geico v. Plaza Ins. Co.
NJ Appellate Division
2020 N.J. Super. Unpub. LEXIS 1532
(July 30, 2020)

Geico sought to confirm an arbitration award for PIP reimbursement against Plaza, which was erroneously entered while Geico's insureds' BI suits were still pending. Although Plaza had requested an initial deferment, its claims handler left in the interim and the deferment renewal deadline was overlooked. Plaza filed a post-decision inquiry with Arbitration Forums, but the arbitrator declined to overturn or change the decision. One month later, the parties to the bodily injury suits had resolved their claims through mediation. Geico subsequently filed an Order to Show Cause seeking entry of judgment against Plaza after it failed to pay the award. Plaza in turn sought an order vacating the award, over four months after the date of the award. N.J.S.A. 2A:23B-23(b) requires a summary action to vacate the award to "be filed within 120 days after…receiv[ing] notice of the award…or within 120 days after…receiv[ing] notice of a modified or corrected award."

The Appellate Division, recognizing the ambiguity where Plaza more recently received a denial of modification of the award, determined that the 120-day period would begin from the date of that receipt of the denial of modification. Thus determining that Plaza's filing of its summary action was timely, the Appellate Division affirmed denial of Geico's OSC to confirm the award, as the award violated N.J.S.A. 39:6A-9.1(b)'s requirement that "[a]ny recovery by an insurer…be subject to any claim against the insured tortfeasor's insurer by the injured party and shall be paid only after satisfaction of that claim" and the amount of the award, totaled with the settled amount in the BI suits to be paid by Plaza, exceed Plaza's policy limits. The Court remanded for a determination of whether there remains a balance in the Plaza policy, and if so, whether Geico is entitled to such balance. ■

TIMELY NOTICE OF CLAIM

Estate of Rene Melendez v. NJ Tpk. Auth.
NJ Appellate Division
2020 N.J. Super. Unpub. LEXIS 1289
(June 30. 2020)

Decedent sustained fatal injuries colliding into a guardrail on September 2, 2018. On October 10, 2018, an investigator hired by decedent's widow's counsel reported that a state trooper advised that the State Police was investigating whether, after a prior accident in the same location, the guardrail had been damaged and not repaired. Counsel served a notice of tort claim on the New Jersey Turnpike Authority and Department of Transportation through the NJ Attorney General's Office on November 6, 2018; on December 4, the Treasury informed counsel by letter that the NJTA was a separate entity. On December 12, 2018, Plaintiff's counsel sent a second notice of claim, directly to NJTA and NJDOT. NJTA contended that the notice, received on December 13, was outside of the ninety days and therefore untimely.

The Appellate Division upheld the lower court's finding that the notice was timely. Although generally, the date that the claim accrues is the date of the incident on which the negligent act or omission took place, an exception arises where the victim either is unaware that s/he has been injured or, although aware of an injury, does not know that a third party is responsible. Thus, the Court reasoned that the accrual date was tolled until Plaintiff discovered the injury, with reasonable diligence, on October 10, 2018. Thus, Plaintiff had timely filed its notice of claim within 90 days of the claim's accrual. ■

UIM LIMITS

Falk v. Donovan
NJ Appellate Division
2020 N.J. Super. Unpub. LEXIS 979
(May 22, 2020)

USAA won on appeal as to the issue of whether Plaintiff could recover UIM for damages sustained in an automobile accident. Plaintiff was struck by a vehicle insured by Plymouth with a $100K liability policy. Additionally, Plaintiff was named insured on an Allstate policy with $100K UIM and was operating a vehicle insured by USAA with $500K UIM coverage. USAA's UM policy (which generally applied to UIM coverage as well) defined a "covered person" as "[a]ny other person occupying your covered auto but only if that person is not covered for UM under another auto policy." However, the UIM policy defined an "underinsured motor vehicle" in a manner that implied coverage for an individual who was a named insured on another policy. The Appellate Division determined that the two provisions rendered the definition of "covered person" ambiguous, and therefore found Plaintiff to be covered under USAA's policy. ■