LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

VOLUME 20, ISSUE 2

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TCA NOTICE

Martinez v. City of Hoboken
NJ Appellate Division
A-3692-18T4; 2019 N.J. Super. Unpub. LEXIS 2580
(December 16, 2019)

Plaintiff fell into a pothole on a street maintained by City on March 20, 2018, injuring her foot. The same day, Plaintiff messaged the City's 311 online reporting system, identifying herself by her username, "Eileen623," and notified City of the time, location, cause, nature and extent of her injury, and uploaded a photograph. Although Plaintiff did not include her full name and address in her 311 online submission or sign her message, she received an email from City two days later, acknowledging her submission and assigning a tracking number. Six months later, having not heard further from City, Plaintiff retained counsel, who notified the City and asked whether City considered the March 20 notice deficient or non-compliant with the Tort Claims Act. City forwarded its official notice of claim form to Plaintiff's counsel, without advising as to whether prior notice was deficient. Plaintiff submitted the completed notice of claim form to City, and thereafter filed a motion to deem her initial notice sufficient and/or for leave to file a late notice of claim.

The Appellate Division held that Plaintiff had substantially complied with the TCA's notice requirements. Plaintiff had provided specific details of the injury on the date of the underlying incident, and followed up when not receiving a response beyond the initial email reply. City failed to show prejudice, and did not alert Plaintiff as to any deficiencies in her initial notice. ■

BICYCLE SHARING

Gaydos v. NYC Bike Share, Inc.
NY County Supreme Court
2019 NY Slip Op 33481(U)
2019 N.Y. Misc. LEXIS 6329
(November 25, 2019)

Plaintiff filed suit for injuries sustained from a malfunctioning Citi Bike. Defendant, which operates the Citi Bike bicycle-sharing program, moved unsuccessfully to dismiss the Complaint. Although Plaintiff signed a waiver, he argued that it was subject to GOL §5-326, which deems such a clause, "entered into between the owner or operator of any…place of…recreation,…void as against public policy and wholly enforceable." Defendant argued that the statute does not apply because Citi Bike is not a place or a recreational facility and it is not in "substantial control" over the use of its bicycles. Nonetheless, the agreement contained a provision which stated that the waiver "may be otherwise limited by" GOL §5-326. The Court held that questions of fact arise regarding the parties' intent, the level of Defendant's control over the bicycles, and whether Defendant had a duty to inspect, repair or maintain the bicycles and to respond to maintenance requests so as to "safeguard against the type of latent defect alleged in the complaint." ■

APPORTIONMENT OF LIABILITY

Maison v. NJ Transit Corp.
NJ Appellate Division
A-3737-17T2; 2019 N.J. Super. Unpub. LEXIS 114
(July 17, 2019)

Plaintiff prevailed on appeal of a $1.8 million verdict in her favor against NJ Transit and one of its bus

drivers, for injuries incurred when she was verbally and physically assaulted by other passengers, at the end of which incident one of the passengers threw a bottle in her face. The Appellate Division found no reversible error in the jury's determination that the bus driver's failure to take any actions, upon witnessing the entire encounter between the passengers over the course of approximately eight minutes, constituted a substantial factor in causing Plaintiff's injuries. Conversely, the Appellate Division did agree with Defendants that the trial court improperly omitted the bottle thrower on the verdict sheet for the purpose of apportioning percentage of liability, regardless of whether the assailant was ever added as a party to the suit, or even identified. Additionally, N.J.S.A. 59:9-3.1 requires a public entity or public employee to be liable for no more than the percentage share of the damages which is equal to the percentage of the negligence attributable to that entity or employee, regardless of whether that public defendant is a joint tortfeasor with the assailant, or whether the assailant's actions constituted negligence as opposed to an intentional tort. Accordingly, the Appellate Division remanded this matter for a new jury to determine allocation of liability between NJ Transit and the assailant, to be calculated based upon the amount of damages already established at trial, and whether the injury was so foreseeable to the bus driver as a "supervising defendant" that his failure to act warrants imposition of the entire liability upon him. As of December 10, 2019, the NJ Supreme Court granted certification to hear this matter on appeal, with argument and decision presently pending. ■

STOP SIGN

Miley v. Friel
NJ Appellate Division
A-3388-18T1; 2020 N.J. Super. Unpub. LEXIS 57
(January 9, 2020)

The Appellate Division reversed summary judgment on appeal by Plaintiff, on the basis that genuine issues of material fact existed in this matter arising out an automobile collision. Although Plaintiff had a stop sign, she contended that Defendant had sped and collided with her after she stopped at the sign then proceeded. The Court found that summary judgment was improper where, as here, there was a dispute as to whether Defendant was speeding, regardless of his having the right of way. Nonetheless, Plaintiff's additional argument that the stop sign was illegal as it had not been administratively approved, and was therefore of no legal effect, was unavailing. The stop sign's status does not negate a driver's responsibility to follow the rules of the road. "Motorists may reasonably expect that a stop sign will be respected[;] otherwise it will become a trap to innocent persons who rely upon it." ■

SUIT BY UNINSURED

Raymond v. Fernandez
NJ Appellate Division
A-1933-18T1; 2019 N.J. Super. Unpub. LEXIS 2555
(December 16, 2019)

The Appellate Division upheld summary judgment for Defendant in a personal injury action, as Plaintiff's insurer retroactively rescinded Plaintiff's automobile insurance policy, due to misrepresentations and omissions she made in her initial application and subsequent renewal applications as to her residence. Per N.J.S.A. 39:6A-4.5, any person who, at the time of the underlying automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefit coverage, shall have no cause of action for recovery of economic or non-economic loss sustained as a result of an accident while operating an uninsured automobile. Plaintiff appealed on the grounds that she was not "culpably uninsured," because she had paid her policy premiums in good faith until the policy was voided. The culpable state of mind does not exist in the statute but in case law, merely to identify individuals who are deemed uninsured within the meaning of the statute, which does not actually require a specific mental state. Thus, the statute does not exempt motorists who have a good faith belief that they have medical expense benefits coverage. ■

INDEMNIFICATION

Ace Am. Ins. Co. v. Old Republic General Ins. Corp.
NJ Appellate Division
A-2939-18T1; 2020 N.J. Super.Unpub. LEXIS 11
(January 3, 2020)

ACE lost its appeal on a summary judgment ruling that its suit for indemnification was time-barred, as ACE filed suit more than six years after the date it reported to the court that it had reached settlement in the underlying BI action. A formal written settlement agreement, which ACE entered into subsequently, is unnecessary to render the indemnitee responsible to pay the claim and start the clock running on an indemnification action. ■

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