

# LEGAL NEWS IN BRIEF

## News in a Flash for Subrogation and Insurance Professionals

VOLUME 14, ISSUE 1

Jan Meyer, Esq. \*◇

Richard A. Hazzard, Esq. \*◇

Noah Gradofsky, Esq. \*◇

Stacy P. Maza, Esq. \*◇

Richard L. Elem, Esq. \*◇

Elissa Breanne Wolf, Esq. \*◇

Solomon Rubin, Esq. \*◇

Benjamin O. Stewart, Esq. \*◇

Zaara Bajwa, Esq. \*◇

Of Counsel:

Joshua Annenberg, Esq. \*◇

Michael J. Feigin, Esq. \*◇@

Lianne Forman, Esq. \*

Admitted to Practice In:

\* New Jersey ◇ New York

@ US Patent & Trademark Office



**Main Office:**  
1029 Teaneck Road  
Second Floor  
Teaneck, New Jersey 07666  
(201) 862-9500  
**Fax:** (201) 862-9400  
office@janmeyerlaw.com  
www.janmeyerlaw.com

**Maintains a  
New York Office:**  
424 Madison Avenue,  
16<sup>th</sup> Floor  
New York, New York 10017

*LEGAL NEWS IN BRIEF IS PREPARED AND PUBLISHED BY*  
**LAW OFFICES OF JAN MEYER AND ASSOCIATES, P.C.**

### PROHIBITION OF STEP-DOWN CLAUSE APPLIES ONLY TO ACCIDENTS AFTER STATUTORY AMENDMENT

#### James v. NJM

New Jersey Supreme Court  
Docket No. A-26-12  
(February 3, 2014)

The NJ Supreme Court declined to apply retroactivity to N.J.S.A. 17:28-1.1(f), which prohibits the use of step-down provisions in an employer's commercial motor vehicle liability policy to provide less uninsured or underinsured motorist (UM/UIM) coverage for employees than that which is provided to the "named insureds" on the policy. Said statute became effective upon enactment into law on September 10, 2007. About two months earlier, on July 5, 2007, Plaintiff was operating his employer's vehicle when he sustained personal injuries from an automobile collision. After settling with the owners of the adverse vehicle for \$100,000.00, Plaintiff

sought UIM coverage for the remainder of his medical costs from his employer's insurer, NJM, which had issued a policy in March, 2007 for UIM coverage limit of \$500,000. NJM denied Plaintiff's claim on the basis of the policy's step-down provision, which capped such coverage at \$50,000.

The Court found no express or implied legislative intent that the statute be applied retroactively. There was also no indication that the statute was intended to remedy a perceived flaw or misapplication in a pre-existing statute. Although the bill was pending at the time of the accident, Plaintiff could not reasonably expect that its provisions would apply before the bill definitely became law. The Court did find that the statute, while applying prospectively, intended to reform all pre-existing policies as of that date, so that any accidents occurring thereafter would be subject to the prohibition of step-down provisions, but only such provisions as used to reduce UIM coverage as against a certain class of insureds, namely,

employees. As Plaintiff's accident occurred prior to the statute's enactment, NJM prevailed on its appeal. ■

### MODIFICATION OF GEOGRAPHICAL LIMIT APPLIED ONLY TO PIP COVERAGE

#### Weaver v. National General Ins. Co.

New Jersey Appellate Division  
Docket No. A-4534-12T4  
(January 16, 2014)

Plaintiff sought UM coverage from her automobile insurer after sustaining personal injuries from an automobile in Italy. The policy in question comprised six separate sections, Part C in particular addressing UM coverage. Part F set forth the territory covered by the policy, namely, "the United States of America, its territories or possessions; Puerto Rico; or Canada." The policy also included UM and PIP endorsements. The UM endorsement modified some of the

policy's terms, but did not address the territorial restrictions. By contrast, the PIP endorsement provided: "With respect to coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement." The endorsement modified Part F by providing PIP coverage "anywhere in the world."

Holding that the policy's language was unambiguous, the Appellate Division found no UM coverage for Plaintiff under the policy. The PIP endorsement's plain language restricted the modifications listed therein to the coverage provided in that endorsement, i.e. PIP coverage only. Plaintiff thus had no reasonable expectation of the policy's providing UM coverage for an accident occurring in Italy. ■

---

### **EXPERT UNABLE TO SUPPORT INFERENCE OF NEGLIGENCE**

**Fireman's Fund Ins. v. Vogel**  
**New York Supreme Court,**  
**New York County**  
**2014 NY Slip Op 30252(U)**  
**(January 22, 2014)**

Plaintiff unsuccessfully sought subrogation of property damage payments from a fire allegedly caused by a tenant. Vogel's own expert stated in an affidavit that he had examined the surge protector and found no evidence that it had been misused or mishandled. Moreover, Vogel testified that she had had no problem with the surge protector before the fire, and that she detected no signs or smell of burning when she left the apartment the morning of the incident.

The burden thus shifted to Plaintiff to establish an issue of material fact as to whether the fire was caused by Vogel's negligence.

Although Plaintiffs' experts claimed the power cord had been damaged by being stepped on or covered by objects, Plaintiff could not show that Vogel had engaged in any such conduct that would have resulted in the cord's damage, and which would allow for an inference of negligence. Accordingly, the trial court granted summary judgment for Vogel. ■

---

### **MOTOR CARRIER ACT DOES NOT APPLY TO PERSONAL USE OF VEHICLE**

**Allstate New Jersey Ins Co. v. Penske Truck Leasing**  
**New Jersey Appellate Division**  
**Docket No. A-5900-11T3**  
**(December 2, 2013)**

Meir Dorfman, a NY resident, rented a truck in NJ from Penske for one day. He obtained limited liability coverage through Old Republic for \$15,000 per injury and \$30,000 per occurrence. Dorfman collided with a vehicle insured by Allstate, the three occupants of which settled with Dorfman, Penske and Old Republic for \$30,000. Allstate thereafter sought PIP reimbursement from Defendants, even though the policy limits were already exhausted, arguing that the Motor Carrier Act (49 U.S.C.A. §31139(b)) required Penske, an interstate motor carrier, to have a minimum of \$750,000 in liability coverage. The Appellate Division construed the statute to explicitly apply to "the transportation of property," i.e. interstate commerce. Applying a trip-specific approach, the Court found that Dorfman was not employed by Penske, did not transport any property, and in fact used the vehicle on a single day entirely intrastate for his own personal purposes. Accordingly, the

Court affirmed summary judgment in favor of Defendants. ■

---

### **ARBITRATION AGREEMENT DOES NOT BIND NON-SIGNATORIES**

**Westfield Ins. Co. v. Interline Brands**  
**U.S. Dist. Ct., D.N.J.**  
**Civil No. 12-6775**  
**(December 20, 2013)**

Plaintiff filed a subrogation suit against several companies, only two of which were, like Plaintiff, signatories to Arbitration Forums. One signatory-defendant moved to compel arbitration. For purposes of the motion, the Court permitted the parties to depose the Rules Manager at Arbitration Forums. Upon review of the deposition transcript, the Court found that the arbitration agreement which the parties signed did not require the claimant to arbitrate claims against a non-signatory, even if said non-signatory consented to arbitration. Although generally, estoppel can bind non-signing parties to an arbitration contract, here, such parties did not benefit from the agreement; they did not sign it or consent to the arbitration forum. Additionally, interrelatedness of claims is insufficient absent an agency relationship with either signatory-defendant. ■

---

### **OFFICE UPDATE**

Congratulations to our administrative assistant **Deborah Friedman** on her recent marriage to Avi Schranz in December, 2013.

Our office welcomes **Zaara Bajwa** as **Associate Attorney**. Ms. Bajwa is a graduate of Rutgers School of Law-Newark, and previously served as law clerk to the Hon. Phillip L. Paley, J.S.C. ■

© 2014 Law Offices of Jan Meyer and Associates, P.C.

Law Offices of

**JAN MEYER**  
and Associates, PC

All case summaries are solely the product of this office. Material gathered from public sources, published and unpublished cases, NJ Law Journal, NY Law Journal, and NY State Law Digest. The reviews herein do not constitute legal advice. For legal advice kindly contact our office.