LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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LOJM LANDS LARGE RECOVERY IN DOMESTICATED JUDGMENT

Our office recently settled a judgment, originally entered in Delaware Superior Court, in the approximate amount of $250,000.00. Plaintiffs initially filed action for injuries sustained in Delaware, as a result of the actions of several New York companies. Defendants failed to properly appear in the action, thereby incurring default judgment, and our office duly moved to enter summary judgment in lieu of complaint in New York so as to enforce same. LOJM successfully rebutted Defendants' counter-arguments as to jurisdiction, establishing that Defendants' actions had subjected them to suit in Delaware, and that they had received proper notice in accordance with Delaware service procedure. ■

NJLJ OVERVIEW OF RECENT INSURANCE LAW

The New Jersey Law Journal (223 N.J.L.J. 1669, 05/29/17) reviewed and summarized insurance law issued over the past year. Andalora v. R.D. Mech Corp. (N.J.A.D., A-3724-14T4, 01/1017) concerned the right of a general contractor (ICS) to indemnification for subcontractors R.D. and Swift's actions in a construction project. In Swift's employee's BI action against ICS and R.D., both Swift and R.D.'s insurers settled. ICS' insurer fronted one-third of Swift's insurer's settlement amount, then sued Swift for subrogation of that payment. The Court held that ICS' insurer could properly subrogate against Swift under ICS' indemnification rights.

In Friedland v. First Specialty Ins. Corp. (N.J.A.D., 2016 N.J. Super. Unpub. LEXIS 1841, 08/03/16), the Superior Court reconsidered its prior decision in interpreting an "additional insured" endorsement in an excess policy. The policy's named insured, IPC, provided security services for a mall, the additional insured on the endorsement. Both IPC and the Mall were defendants in a wrongful death action. The Court held in the end that the endorsement would apply to either and/or both IPC and the Mall's independent negligent actions, and not just to such actions of IPC that would impute vicarious liability to the Mall.

Finally, Foerster v. Meckel Enters. LLC (N.J.A.D., A-1649-14T1, 10/12/16) addressed the issue of two competing "other insurance" clauses in policies issued by two primary insurers. There, the Court adopted the majority rule that where one policy has an excess other-insurance clause and another policy on the same risk does not, the former policy will not come into effect until the limits of the latter policy are exhausted. ■

UPDATE ON JUDICIAL SPLIT RE INJURED BI PLAINTIFF WITH MINIMAL PIP COVERAGE

Haines v. Taft; Little v. Nishimura
NJ Appellate Division
A-5503-14T4; A-0727-15T2
(June 1, 2017)

N.J.S.A. 39:6A-12 states: "[E]vidence of the amounts collectible or paid under a standard automobile insurance policy…is inadmissible in a civil action for recovery of damages for bodily injury by such injured person." Prior decisions conflicted as to whether the statute thereby precluded recovery of medical expenses above

those collectible or paid under an insured's PIP provision in a standard automobile insurance policy, including medical expenses exceeding any elected PIP option allowed in a standard policy. Here, the Appellate Division held that the statute only references litigation of minor medical expenses, such as copayments and deductibles, rather than all medical expenses. The Court reasoned that a claimant who opted for lesser PIP coverage prior to the accident is not obtaining an undeserved windfall; rather than his insurer paying a large portion of his medical bills, he incurs the risks and uncertainties of recovery in litigation, and such recovered amounts would anyhow be owed to their medical providers. ■

BANKRUPTCY

Bryant v. Goven
NJ Appellate Division
A-4567-14T4
(May 2, 2017)

Plaintiff notified and sued her mother's PIP/UM carriers for coverage nearly two years after the underlying automobile accident. Prior to suit, she had filed a Chapter 7 bankruptcy petition, failing to list any accident-related claim in her disclosure of personal property, later alleging that she did not realize she needed to disclose the accident in her petition. Plaintiff also claimed that she gave late notice to Defendants because she initially thought her mother did not have coverage, due to her mother's illness and non-use of her own vehicle. Defendants obtained summary judgment on the grounds that Plaintiff was judicially estopped from suit due to her bankruptcy. The Appellate Division reversed on the grounds that the trial court should have allowed the Trustee the opportunity to review and possibly pursue the claim. Plaintiff still has standing to bring suit because of her financial interest in the suit inasmuch as the Bankruptcy Code allows for a partial exemption of money obtained on account of personal bodily injury, and for retention of any property that the trustee abandons or declines to administer. ■

COURSE OF EMPLOYMENT

Andress v. Buckman
NJ Appellate Division
A-0334-15T3
(February 28, 2017)

Plaintiff sustained injuries while struck by a fellow employee on a driveway which led to their employer's leased premises. The Worker's Compensation Act bars suit against another employee if the claimant has already arrived at the employer's place of business at the time of the injury. The Appellate Division reversed summary judgment, given an issue of fact as to whether the employer exercised exclusive control over the situs of the accident, regardless of whether it owned that property. ■

PERMISSIVE USE

State Farm Fire & Cas. Co. v. Sajewski
NY Appellate Division, 2nd Dept.
2017 NY Slip Op 04310
(May 31, 2017)

Defendant in a subrogation action arising from his son's driving his vehicle into Plaintiff's insured's property, unsuccessfully argued that he had not permitted his son to operate the vehicle at time of loss. Per Vehicle and Traffic Law §388, a presumption will arise that the operator of a vehicle is so acting with the owner's permission; Defendant must rebut the presumption with substantial evidence of non-consent. Here, Defendant had permitted his son to operate his other vehicles on prior occasions, his son had access to Defendant's residence, and the key to the vehicle at issue was kept in a "central location" in the kitchen of the residence. ■

GEORGIA DECISION ON DEFAULT UM LIMITS

Geico's insureds successfully obtained the default amount of UM/UIM limits in a Georgia state action (*GEICO v. Morgan*, Ga. Court of Appeals, Case No. A17A0020, 05/16/17). The insureds purchased the policy in 1986, and after disclaiming UM coverage for eleven years, added the coverage back into the policy. Georgia law requires insurers to provide UM coverage in at least the amount equal to the insured's BI liability coverage, unless the insured affirmatively elects the coverage in a lesser amount. The insureds contended that Geico never provided them with the opportunity to choose the amount of UM limits. Nor can the declarations page reflecting minimal coverage support an inference of such a choice. ■

OFFICE UPDATE

Our office welcomes **Elliot E. Braun** to our office. Mr. Braun, a 2014 graduate of Rutgers School of Law, Camden, has previously worked at a patent law firm, and has volunteered as an attorney on behalf of the Office of the NJ Attorney General at the N.J. District Court in Trenton. ■