LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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WORKER'S COMPENSATION SUBROGATION IN NJ MVAS

N.J. Transit Corp. v. Sanchez
NJ Supreme Court
2020 N.J. LEXIS 520
(May 12, 2020)

A highly anticipated decision by the NJ Supreme Court clarified the law regarding worker's compensation (WC) subrogation related to motor vehicle accidents, albeit with a 3-3 decision.

WC subrogation will generally not be limited by any provisions of NJ's no-fault (PIP) laws, including the verbal threshold, even if the injured worker could in theory have been eligible for PIP. However, LOJM concludes that if the employee's claim is barred by verbal threshold, the WC carrier will likely only be able to recover based on the employee's actual damages, whereas if the employee's claim proceeds, the carrier will have a lien for the full amount of WC benefits it paid, even if those benefits exceeded the workers' actual losses.

Full analysis case can be found at www.janmeyerlaw.com/njpip/pipandwc.html. ■

TIMELY FILING OF MOTION

Munier v. Salamis Auto Ctr.
NY Civil Court, Kings Cty.
66 Misc. 3d 1224(A)
(February 18, 2020)

The trial court granted Defendants' summary judgment motion, served on August 16, 2019. Plaintiff commenced his BI suit in Kings County Supreme Court on January 13, 2012 for damages arising out of an accident occurring on October 1, 2008. Defendants duly answered and a note of issue was subsequently filed on September 16, 2014. On December 22, 2015, the Court transferred the matter to Civil Court, where trial was adjourned several times before being marked off the trial calendar, as at least one party was not yet ready for trial. A new notice of trial (the Civil Court equivalent of a note of issue) was filed on June 12, 2019. Plaintiff argued that the motion was untimely filed, as CPLR 3212(a) requires a summary judgment motion to be filed no later than 120 days after the filing of a note of issue (or notice of trial). The Court held that vacatur of the original note of issue allowed Defendants to timely seek summary judgment, which they did within 120 days of the subsequently filed notice of trial. Moreover, a defendant may properly raise SOL as a defense in its answer, and then move on that ground in a summary judgment motion or wait until trial to have it determined. ■

BICYCLISTS

Bailey v. Hennessey
NJ Appellate Division
2020 N.J. Super. Unpub. LEXIS 629
(April 8, 2020)

Defendant successfully appealed for a new trial in an action for injuries sustained by Plaintiff when colliding with Defendant's vehicle while operating a bicycle. The trial judge had provided the jury with a modified Model Jury Charge 5.32C, which applies to a driver's duty to stop and wait for a pedestrian to cross a roadway, by substituting "bicyclist" for "pedestrian." Case law has interpreted "pedestrian" to mean "a person afoot," which does not apply to a bicyclist. The judge also erred in modifying Model Jury

Charge 5.30H by only instructing the jury that a bicyclist has a duty to stop at a stop sign, without additionally requiring that bicyclist to make reasonable observations and yield right of way to vehicular traffic. Such error was not harmless, as it would have affected the jury's determination of negligence, and a new trial was thus required. ■

MEDICAL CONDITION AS EVIDENCE

Wegner v. Derrico
NJ Appellate Division
2020 N.J. Super. Unpub. LEXIS 425
(February 28. 2020)

The Appellate Division reversed a trial court's finding of liability in an automobile accident case, at which trial, evidence had been submitted as to Plaintiff's medical condition. Plaintiff revealed in discovery that she had periodically had stress-induced seizure-like episodes, restricting her ability to see side to side, and impairing her concentration and speech; she nonetheless testified at deposition that her last episode had been about three years before the accident, and she had never had such a seizure while operating a vehicle. Defendant addressed this medical condition at trial, as well as the issue of whether Plaintiff was using proper dosage of her medication as of the date of the accident. The Appellate Division held that without an expert opinion as to whether Plaintiff was experiencing a seizure at the time of the accident or that such a seizure would have incapacitated her from perceiving the correct traffic signal or impelled her to run a red light, such a position was merely speculative, and the evidence should not have been submitted. Thus, the Court remanded the matter for a new trial. ■

EQUITABLE TOLLING OF SOL

Doctors v. NJM
NJ Appellate Division
A-2898-18T3
(April 3, 2020)

Plaintiffs lost on appeal of their SOL-barred UIM claim against their carrier NJM. Initially, Plaintiffs had sent NJM a "Longworth" letter for permission to settle the claim against the tortfeasor, and additionally advised that they would proceed with arbitration in the event that they were unable to settle the UIM claim with NJM. The Court held that not only had Plaintiffs omitted to file suit within the SOL, but they also failed to make a formal demand for arbitration. NJM had approved the settlement with the tortfeasor, but did not receive further requested documents or information, and was thus unable to evaluate the claim to determine whether to settle in advance of arbitration. Plaintiffs could not have relied upon NJM's actions in forfeiting filing of suit to protect their claim; thus, no equitable tolling SOL was warranted. ■

CONFLICTING EXCLUSIONS

Tolotti v. United Servs. Auto Ass'n
NJ Appellate Division
2020 N.J. Super. Unpub. LEXIS 371
(February 21, 2020)

Defendant USAA won on appeal of a declaratory action concerning liability coverage for damages sustained due to operation of a golf cart. Plaintiff's policy with USAA insured Plaintiff's pick-up truck, named therein as the covered vehicle. The policy contained Exclusions, of which the first at issue stated: "We do not provide Liability Coverage for the ownership, maintenance, or use of…[a]ny vehicle, other than your covered auto, unless that vehicle is…[a] miscellaneous vehicle having at least four wheel[s]." Another exclusion stated that the policy did not provide the aforesaid liability coverage for "ownership, maintenance, or use of…[a]ny vehicle, other than your covered auto, that is owned by you, or furnished or available for your regular use." Plaintiff argued that the two apparently conflicting clauses as juxtaposed created an ambiguity, and as such should be interpreted in his favor, against the insurer as drafter of the policy. The Appellate Division, however, construed each exclusion as being unambiguous independently of the other. As the second clause unambiguously excludes coverage for any vehicle other than a covered auto, no coverage applied for the underlying claim. ■

"FORTUITOUS"

Chartis Prop. Cas. Co. v. Inganamort
U.S Court of Appeals, 3rd Cir.
No. 19-1903
(March 24, 2020)

The U.S. Court of Appeals affirmed summary judgment against insureds in their declaratory action for the loss of their yacht, which partly submerged due to its general state of disrepair. An "all-risk" policy such as theirs does not, by definition, cover for "all loss," but only as against "fortuitous losses," which are losses that are unexplainable or "dependent on chance." ■