Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

Jan Meyer, Esq.

Stacy P. Maza, Esq.
Richard A. Hazzard, Esq.
Noah Gradofsky, Esq.
Richard L. Elem, Esq.
Elissa Breanne Wolf, Esq.
Solomon Rubin, Esq.
Rachael E. Banks, Esq.

Joshua Annenberg, Esq.

New Jersey Office:
1029 Teaneck Road
2nd Floor
Teaneck, NJ 07666
Tel. 201.862.9500
Fax 201.862.9400
www.janmeyerlaw.com

New York Office:
50 East 42nd Street
Suite 1809
New York, NY 10017

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DRIVER WITHOUT NJ AUTOMOBILE POLICY CANNOT PLEAD VERBAL TORT THRESHOLD DEFENSE

Zabilowicz v. Kelsey
New Jersey Supreme Court
No. A-87-08
(December 17, 2009)

The New Jersey Supreme Court permitted an exception to the verbal tort threshold, whereby a claimant not covered by the threshold may nonetheless sue for non-economic damages against a tortfeasor who is not a participant in New Jersey's no-fault system and who is thus uninsured for PIP benefits. Generally, those covered by the threshold may sue a tortfeasor for non-economic damages only if they suffer a serious or permanent bodily injury, as defined by N.J.S.A. 39:6A-8(a). Here, the parties were both insured Pennsylvania residents involved in an automobile accident in the State of New Jersey; unlike the purported tortfeasor, however, Plaintiff's automobile insurer was authorized to do business in New Jersey. Because Defendant's carrier did not provide her with the State's PIP benefits, she is subject to suit for non-economic damages without restriction under N.J.S.A. 39:6A-8(a). Plaintiff, by contrast, as a party covered by an authorized insurer, and sustaining injuries in New Jersey, is statutorily deemed a New Jersey policyholder inasmuch as he is subject to PIP coverage, as well as the threshold requirement. Although the "Deemer Statute" (N.J.S.A. 17:28-1.4) would generally require Plaintiff to meet the threshold criteria of N.J.S.A. 39:6A-8(a), thereby barring the action herein, the non-participation of Defendant's insurer in a system that mandates the prompt payment of medical expenses resulting from automobile accidents prohibits Defendant from invoking the threshold.

NOTICE OF DISCLAIMER

In Re N.Y. Cent. Mut. Fire Ins. v. Steiert
New York Appellate Division
2009 NY Slip Op 09665
(December 22, 2009)

Petitioner, the claimant's automobile insurer, sought to permanently stay arbitration of a claim for supplemental uninsured motorist (SUM) coverage, invoking the policy's requirement that claimant first exhaust the limits of liability for all other policies applicable to the underlying accident. The insurer for the adverse driver's grandfather, with whom the driver resided, had successfully disclaimed coverage in a prior action, after learning at examinations under oath that the driver had received his vehicle from his father, who resided elsewhere. Because the claimant's insurer was not a party to the prior action, the Appellate Division did not apply collateral estoppel against same. The Court further held that the adverse insurer had not given proper notice of disclaimer, required by Insurance Law § 3420(d)(2) to be given "as soon as is reasonably possible." As the time to give such notice commences when the insurer first learns of the grounds for disclaimer, it was unreasonable for the tortfeasor's carrier to provide notice 56 days after the examinations of both grandfather and grandson.

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REMITTITUR

He v. Miller
New Jersey Appellate Division
Docket No. A-5685-07T3
(December 15, 2009)

The Appellate Division reversed a trial court's reduction of damages, even after the Supreme Court directed reconsideration of the lower court's "complete and searching analysis…of how the award is different or similar to others to which it is compared." Plaintiff had sustained four herniated discs in the aftermath of the underlying automobile accident, and suffered chronic, permanent pain after at least three years of unsuccessful treatment. Here, the trial judge inappositely compared the case at hand with two other verdicts over which he had presided, involving different injuries sustained by persons of different ages with different lifestyles; moreover, the judge's cursory citation of other purportedly related cases revealed little about their actual similarity to the present case. Moreover, the judge inconsistently reduced the amounts of pain and suffering damages and *per quod* damages without correspondingly reducing that of future lost wages, which is "inextricably linked to the nature of injuries." Notwithstanding the judge's observations of the plaintiff during trial as being presumably without visible pain or discomfort, and the purported pre-existence of a degenerative disc disease, the jury had a similar opportunity to make the same observations and to consider the expert's rejection of such a disease causing the plaintiff's present condition.

LICENSE SUSPENSION

Patel v. New Jersey Motor Vehicle Commission
New Jersey Supreme Court
Docket No. A-86-08
(November 10, 2009)

Appellant, a repeat violator of the unsafe driving statute, N.J.S.A. 39:4-97.2, contested the Motor Vehicle Commission's assessment of motor vehicle penalty points for her fourth driving offense. Her first offense occurred on March 12, 2002, to which she pled guilty on May 3, 2002. Subsequent offenses took place on August 7, 2002; April 4, 2006; and finally, on September 5, 2007. She entered a guilty plea for the fourth offense on November 19, 2007, upon receiving citations for speeding and failing to have her license timely inspected. Appellant argued that because her fourth conviction had occurred more than five years after both her first and second offenses, the most recent conviction should be treated as a second offense, which statutorily would not incur any penalty points. The statute says that "[a]n offense committed more than five years after the prior offense shall not be considered a subsequent offense for the purpose of assessing motor vehicle penalty points." The Supreme Court upheld the Commission's construal of this language of "the prior offense" as referring to the offense immediately preceding the current violation, and not requiring all previous violations to have occurred within a five-year period.

LANDLORD-TENANT

Kassis v. Ohio Cas. Ins.
New York Court of Appeals
12 N.Y.3d 595
(June 25, 2009)

The New York Court of Appeals determined that a landlord is an additional insured under a commercial general liability insurance policy obtained by his tenant, such that the insurer is obligated to defend and indemnify the landlord in an underlying action for personal injuries sustained by the tenant's employee. In this case, the tenant's insurance contract extended coverage not only to the tenant as the named insured, but also "any person or organization whom [the named insured is] required to name as an additional insured on this policy under a written contract or agreement." The tenant's lease obligated the tenant to indemnify the landlord for "any...damages...for anything arising out of the occupancy of the [p]remises caused by Tenant...." and further required the tenant to maintain a liability policy "for the mutual benefit for Landlord and Tenant." Here, the insurer did not require notice from the tenant of the landlord's being an additional insured party.