N E W S

Legal News in Brief

News in a flash for Subrogation and Defense adjusters

Vol. 5 No. 1 **Prepared & Published by The Law Offices of Jan Meyer**
October/November 2005

PIP STATUTE OF LIMITATIONS RUNS FROM DATE OF "DEPOSIT"

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Please call me to discuss any legal issues or for a clarification of current law.

STATUTE OF LIMITATIONS ON PIP SUBROGATION

Bryant v. Ohio Casualty Ins. Co.
N.J. Appellate Division
378 N.J.Super. 603, 876 A.2d 844
Decided June 30, 2005

The PIP statute of limitations runs from the date that the last payment was sent to the plaintiff. A plaintiff has 2 years under NJSA 39:6A-13 to sue for personal injury or Personal Injury Protection claims. The period starts either at the time of injury, upon the last payment, whichever is later.

Normally the period starts when a check is delivered personally or mailed to the plaintiff or its attorney. But what about when the last payment is delayed by the plaintiff's own laxity? In this case, Ohio Casualty issued a settlement check to cover past medical bills and escrowed it with its own attorney, to be exchanged for a release from plaintiff. Yet 6 months elapsed and the plaintiff's attorney never provided the release. (He later blamed the delay on a fire.) Tired of waiting, Ohio moved to enforce the settlement, prompting plaintiff's attorney to finally send the release. Ohio then sent the check.

Nearly two more years had elapsed when the plaintiff sued Ohio for missing PIP payments that weren't covered by the settlement. The appellate court ruled that, even though the 6 month delay was plaintiff's fault, it delayed accordingly the starting date for the statute of limitations. Thus the action was timely.

The opinion states the lesson explicitly: an insurer eager to start the statute of limitations running must move to enforce the settlement and deposit the monies in court. Such deposit will start the period.

MAIL BOX RULE FOR INSURANCE PREMIUMS

Lepore v First Trenton Indemnity
N.J. Appellate Division
23-2-1407
unpublished opinion
decided September 1, 2005

The old and faithful "Mail Box Rule" is still good law in New Jersey, at least for insureds. The appellate panel indicated the validity of the rule and allowed the insured to contend that payment for the policy was made when mailed. In the underlying matter the Jury agreed with insured and returned an unanimous verdict for him on this issue.

DOMESTICATING INTERNATIONAL JUDGMENTS

Enron (Thrace) Exploration & Production BV v. Clapp
N.J. Appellate Division
378 N.J.Super. 8, 874 A.2d 561
decided May 31, 2005

International court judgments may be entered in N.J. without special court authorization, just as are judgments from other U.S. states. The appellate division upheld N.J.'s Foreign Country Money-Judgment Recognition Act (FCMJRA). This saves the creditor the need for a special proceeding to domesticate a foreign judgment.

Opponents of the law warn that many countries lack the due process our constitution guarantees. The burden is then on the judgment-debtor to move to vacate the domesticated judgment. However, this case arose from a default judgment entered

in England, which, the opinion notes, hardly runs a "kangaroo court."

SANCTIONS FOR REFUSAL TO TESTIFY

Gonzalez v.
Safe and Sound Security Corp.
N.J. Appellate Division
368 N.J.Super. 203, 845 A.2d 700
decided September 19, 2005

A plaintiff who refuses to testify when called by defense shall have his case dismissed. Where a plaintiff's testimony was crucial to both his claims of injury and to the defense claims of insufficient notice, his refusal to testify should be punished by dismissal with prejudice, pursuant to R. 1:2-4 (a) and R. 4:37-2(a).

A shooting victim sued the manager and security staff of the public housing complex where he was shot. Plaintiff had been in an argument in the courtyard with a resident. It escalated into a fist-fight, with a crowd watching. The resident was given a gun, pursued and shot plaintiff. The security guard did not even call the police to intervene. Plaintiff's testimony would establish whether the security guard had enough time to respond to the disturbance. Furthermore, plaintiff was the best witness to his own injuries for which he sought compensation.

The trial court ordered the plaintiff to testify, but when he refused, the judge merely informed the jury that it could make a negative inference from the plaintiff's refusal to take the stand. In overturning the trial court's decision, the appellate court considered plaintiff's refusal an affront to the court and an attack on the defendant's right to its day in court. The jury award of $3.5m was vacated and the matter set for a new trial.

EXPERT TESTIMONY

Bucholz v. Trump 767 Fifth Avenue
NY. Court of Appeals
5 N.Y.3d 1, 798 N.Y.S.2d 715
decided June 9, 2005

An expert in building safety must cite a code, article, or other evidence that demonstrates accepted engineering practices. When a man crashed through a 13th floor window to his death, his widow argued that the building was negligent in providing safety measures.

Her expert shared his view of the proper window thickness and the lack of a "protective bar". He cited only one code, which the Court rejected as inapplicable. Thus the expert's entire remaining testimony was rejected as "conclusory." In plain language it was simply his opinion and so inadmissable as expert testimony.

COLLECTIONS

Columbia Presbyterian Anesthesiology v. Brock
N.J. Appellate Division
379 N.J.Super. 11, 876 A.2d 853
Decided July 5, 2005

The Appellate Division reversed the Trial Court, which had refused to enter judgment upon a breached settlement agreement.

After a doctor's bill went unpaid, the doctor settled with the patient for a lump sum plus a series of payments at just $10/month. When these payments stopped, the doctor sued on the agreement. However, the trial court thrice denied judgment for highly technical reasons, until rebuked by the appeals court.

"Settlement of litigation ranks high in our public policy," quoth the appellate court. Unless they are enforceable, they won will not be used. Here, where the defendant freely admitted the underlying debt, the plaintiff's right to a judgment, and the fairness of the agreement, a court should not stand on ceremony.

Material gathered from public sources, published and unpublished cases, NJ Law Journal, and NY Law Journal

REMINDER: Hope to see you at the NASP Conference in Austin, Texas!

OUR STAFF EXPANDS

Our head paralegal and **Jan Meyer's** personal assistant, **Taryn Otto**, has been getting some much-needed assistance from **Adina Glass** since earlier this year and we are very happy that she has joined us in our Teaneck location.

OUR NEWEST LAWYER

We have also recently hired **Gregory Guido**, a new "attorney-to-be". He graduated earlier this year from St. John's Law School in New York City and sat for the New Jersey and New York bar exams this summer. We should have the results of his examinations around Thanksgiving.

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