

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

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

VOLUME 7 • ISSUE 10

PIP CARRIER'S RIGHT TO REIMBURSEMENT OF PAID BENEFITS HAS PRIORITY OVER THE INSURED'S RIGHT TO BE MADE WHOLE WHEN TORTFEASOR'S INSURER DOES NOT FULLY COVER THE INSURED'S PERSONAL INJURY DAMAGES

Fernandez v. Nationwide Mutual
Fire Ins. Co.

New Jersey Supreme Court
199 N.J. 591
(July 16, 2009)

The New Jersey Supreme Court substantially affirmed the lower court's decision in a declaratory judgment action, holding that the cost of providing Personal Injury Protection (PIP) benefits to the victim should be borne by the insurer of the responsible party, that is, the tortfeasor. The action arose out of an automobile accident in which Plaintiff was injured by a commercial vehicle. After receiving PIP benefits from his carrier, Plaintiff filed a personal injury action against the tortfeasor. Plaintiff's PIP carrier thereafter filed for inter-company arbitration against

the adverse insurer so as to recover the PIP benefits paid to Plaintiff, and was awarded the amount of same. After settling with Plaintiff for damages which included medical expenses in excess of Plaintiff's PIP policy limits, the adverse insurer deposited out of its \$1 million policy limits an amount equal to the arbitration award in court, pending resolution of Plaintiff's claim to said funds. Plaintiff thereupon brought the present declaratory judgment action, seeking priority over its insurer to the deposited funds.

Judge Gilroy of the Appellate Division had distinguished prior case law that held that New Jersey's No-Fault Law (N.J.S.A. 39:61-9.1) does not require the tortfeasor's carrier to reimburse the insured's PIP carrier after the tortfeasor has already deposited and exhausted its liability policy limits in the insured's personal injury action. By contrast, further case law indicates that the PIP carrier does not have an obligation to ensure that sufficient funds remain available to provide a complete recovery to the insured before seeking PIP reimbursement; furthermore, the Court deemed equitable a PIP carrier's priority over

its insured because said carrier must pay prompt benefits to its insured due to an automobile accident regardless of fault or the eventual determination of liability. The insured may still seek recovery under the tortfeasor's underinsured motorist coverage or excess liability, if such exists, and has a full cause of action against the tortfeasor himself. Additional case law asserts that the no-fault statute's legislative intent was to remove the burden of PIP costs from the insured's carrier to the tortfeasor. In so doing, the Appellate Division distinguished the requirements of the statute from that of common-law subrogation.

The Supreme Court added only that the no-fault statute need not warrant reinterpretation, because devolving the cost of PIP benefits on the tortfeasor's insurer rather than the victim's insurer promotes stability in the insurance marketplace.

Justice Long dissented on the premise that the legislative goal of reparation, notwithstanding the addition of other stated objectives, remains in place and should mandate the insured's priority to

LEGAL NEWS IN BRIEF

News in a flash for Subrogation and Defense Adjustors

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

reimbursement over its carrier's claim.

SERVICE OF PROCESS

Kalamadeen v. Singh

New York Appellate Division
2009 NY Slip Op 5296
(June 23, 2009)

The Appellate Division upheld default judgment, estopping the defendant from claiming that he no longer resided at the address where he was purportedly served. A police report as to the underlying accident listed two addresses for defendant: one from his driving license and another from his vehicle registration. The Department of Motor Vehicles (DMV) had a third address on record for the defendant. Plaintiff's process server attempted on four occasions to personally deliver the summons and complaint on Defendant at the third address; on the final occasion, the owner of the premises informed the server that Defendant had moved out several months earlier. Nonetheless, the server affixed the initiatory papers to the door at that address and mailed process to the same address, pursuant to section 308(4) of the New York Civil Practice Law and Rules (CPLR). Although the address was not Defendant's "actual place of business, dwelling place or usual place of abode," as required for affixing the documents, the defendant's failure to notify the Commissioner of the Department of Motor Vehicles as to his change of address estopped him from

attempting to vacate default. Moreover, Defendant's failure to provide his third address at the time of the police's investigation of the accident gave rise to an inference that Defendant deliberately attempted to avoid service.

JUDGMENT INTEREST

Grobman v. Chernoff

New York Appellate Division
2009 NY Slip Op 4861
(June 9, 2009)

Plaintiff brought suit for personal injuries sustained in an automobile accident, as to which the jury at trial found the defendants 100% liable. After the jury's subsequent finding of damages, a judgment was entered upon the verdict; however, the Appellate Division reversed the judgment, holding the jury's failure to award anything for future pain and suffering inconsistent with its finding that Plaintiff had sustained a "permanent consequential limitation of use of a body organ or member," as required by Insurance Law 5102(d) to constitute a "serious injury." Although the matter was remitted for a new trial, the parties agreed to submit the issue of damages to an arbitrator; the eventual award of \$125,000 did not mention interest. Upon Plaintiff's motion to confirm the arbitration award, the parties disputed whether she was entitled to interest. The Appellate Division reiterated the rule that in a bifurcated personal injury action, interest runs on the damages

awarded from the date liability is determined. Moreover, the interest runs until the date of payment, rather than the date of final judgment; here, the Appellate Division had not yet resolved the underlying issues at the time Defendants tendered the principal amount.

LIMITATIONS

Cruz-Diaz v. Hendricks

New Jersey Appellate Division
Docket No. A-4608-07T2
(August 10, 2009)

The Appellate Division upheld summary judgment against Plaintiff's PIP claim because the claim was time-barred. Liberty Mutual Insurance Company provided coverage for Plaintiff's injuries but refused to pay for his neck surgery, contending that it was unrelated to the accident. Plaintiff argued that his suit against Liberty Mutual was timely, as it occurred within two years of the insurer's last payment of benefits, namely, expenses to transport Plaintiff to an independent medical examination to determine whether the neck fracture was causally related to the accident. The Court did not recognize transportation expenses as a "benefit," because the insurer is statutorily required to bear the cost associated with such an examination. Moreover, the insurer did not reduce Plaintiff's PIP coverage or deductible. Nor is Liberty Mutual estopped, because its denial was timely and it never termed the expense as a benefit.