Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

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Legal News in Brief is Prepared and Published by The Law Offices of Jan Meyer and Associates, P.C.

Volume 7 • Issue 1

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To Be Entitled to Supplementary Underinsured Motorist Coverage Per Policy, Insured Must Settle with at Least One Tortfeasor for Full Policy Limits and Provide Her Insurer with Notice Thereof

Matter of Central Mut. Ins. Co. v. Bemiss
New York Appellate Division
2008 NY Slip Op 06618
(Aug. 14, 2008)

The Appellate Division upheld a stay of an arbitration proceeding brought by the insured against her insurer for recovery of supplementary uninsured/underinsured motorist (SUM) coverage. Respondent had negotiated a settlement with one of the defendants involved in the underlying automobile accident for the full amount of that tortfeasor's liability insurance policy, thereafter giving written notice of her intent to enter into this settlement to her insurance company which had insured her with SUM coverage. The respondent later settled with the other defendant for less than the latter's policy limits without first giving notice to, or obtaining written consent from, her insurer. She thereafter signed releases for both defendants which omitted any provision preserving the insurer's subrogation rights.

The Appellate Division cited the policy's general provision that the insured could not prejudice the insurer's subrogation rights except as permitted in Paragraph 10 of the policy. This paragraph permitted settlement and execution of a release with a tortfeasor for such party's available policy limits after 30 days' actual written notice to the insurer, unless the insurer agreed to advance the settlement amount within that time. Here, Respondent complied with the exception with her first settlement, whereby she gave notice, but not with her second settlement. Contrary to Respondent's belief, settlement with the first tortfeasor and compliance with Paragraph 10 did not waive her requirement to so comply thereto when settling with the second tortfeasor, notwithstanding Paragraph 9's requirement that Plaintiff settle with at least one tortfeasor for the tortfeasor's full policy limits so as to be eligible for SUM coverage.

The Appellate Division decided thus notwithstanding the dissent's concerns that such a policy inequitably encumbers an insured's recovery of SUM coverage where none of the multiple tortfeasors is entirely liable for the underlying accident and discourages the insured from settling with any subsequent tortfeasors for less than the full policy limits at the risk of forfeiting SUM coverage. Notwithstanding the dissent, the Appellate Division decided in the insurance company's favor.

No-Fault Insurers Need Not Pay Claims for Medical Services Rendered by Unlicensed Persons or Corporations

One Beacon Ins. Gr. v. Midland Med. Care, P.C.
New York Appellate Division
2008 NY Slip Op 06813
(Sept. 9, 2008)

In this action, insurers of no-fault coverage sued medical service

corporations and licensed healthcare professionals for repayment of no-fault claims already paid to same and a declaration that the insurers were not obligated to pay any further related claims. The plaintiffs alleged that the healthcare providers were actually owned, operated and controlled by unlicensed persons and their management companies in violation of applicable New York law. In affirming the trial court's denial of Defendants' summary judgment motion, the Appellate Division conceded that said defendants had made a prima facie showing of their entitlement to judgment by submitting evidence that a licensed physician was the sole shareholder of the related corporation, performed or supervised all medical services provided by that corporation, and was the sole signatory on the corporate bank account. Nonetheless, the plaintiffs countered such evidence with evidence of their own, implying that the corporation was actually controlled by a management company owned by unlicensed individuals in violation of New York Business Corporation Law.

Res Judicata Precludes Insured from Suing its Insurer for Coverage on a Different Theory from Previous Suit

Green v. State Farm Ins. Co.
Superior Court of New Jersey, Appellate Division
Docket No. A-1667-07T1
(Sept. 19, 2008)

This action arose out of an automobile accident in which Plaintiff rode as a passenger in Kent Link's vehicle. Link braked suddenly when Plaintiff bent down to retrieve items whereupon she sustained personal injuries. The plaintiff brought suit against Link and Melissa Mays, who owned a vehicle with the license plate that Link claimed belonged to the otherwise unidentified vehicle that Link alleged cut him off. State Farm, Plaintiff's insurer for uninsured motorist (UM) coverage, successfully moved to intervene in this action, as Link was uninsured and the driver of the phantom vehicle might not be identified. The trial court then granted Link's motion for a directed verdict on the grounds that Plaintiff did not prove that Link had operated his vehicle negligently. State Farm also moved for a directed verdict on those remaining claims implicating its interests, arguing that there was insufficient evidence of the existence of an unidentified, "phantom vehicle" causing the accident with Link's vehicle which might require State Farm to pay in accordance with Plaintiff's UM policy. As the only evidence of such a vehicle was Link's own word, the court granted State Farm's motion. The jury determined that Mays was not liable for the accident. Thereafter, Plaintiff filed a new suit against State Farm, seeking to compel the insurer to participate in UM arbitration, under the theory that a phantom vehicle caused the accident, rather than specifying Mays as the cause.

The Appellate Division upheld dismissal of the second suit, invoking the doctrine of res judicata, also known as claim preclusion, which generally prohibits the re-litigation of claims that were or could potentially have been brought by the same party against another in the original suit. Moreover, the entire controversy doctrine mandates that litigants bring all related claims against one another in the initial proceeding, absent a specific order by the court to reserve and sever any claim(s). Here, even though Plaintiff did not include such an allegation in her first complaint and the jury did not determine the issue of whether a phantom vehicle existed, the plaintiff had a full and fair opportunity in her first lawsuit to litigate the facts and circumstances of the underlying accident; to her own detriment, she omitted in that suit to plead in the alternative that a phantom vehicle other than Mays's was at fault for the accident. A final decision, made by either judge or jury, decisively resolves the related matter and bars further litigation of same.

Personal Injury Protection (PIP) Statute Gives Carrier Priority over Insured for Reimbursement by Tortfeasor

Fernandez v. Nationwide Mutual Fire Ins.
Superior Court of New Jersey, Appellate Division
Docket No. A-4849-06T1
(Aug. 12, 2008)

The Appellate Division held that a PIP carrier is not obligated to ensure that sufficient funds remain available from a tortfeasor's policy to provide a complete recovery to the insured before seeking PIP reimbursement. The related no-fault statute (N.J.S.A. 39:6A-9.1), as its designation implies, requires a PIP carrier to pay the injured motorist's medical expenses promptly regardless of whether said motorist was at fault for the accident so as to provide him or her with immediate relief; a PIP carrier's right of reimbursement of such expenses is therefore equitable. Moreover, the insured can still collect from the underinsured motorist coverage of the tortfeasor's policy, or the tortfeasor's excess liability insurer, if such coverage exists. The court noted, however, that the insured does have priority over an insurer for recovery in the context of non-statutory reimbursement, that is, subrogation.

Hope to see you at NASP, November 2nd
We are at Booth 214