

# LEGAL NEWS IN BRIEF

## News in a Flash for Subrogation and Insurance Professionals

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### ARBITRATION RULES MAY LIMIT RES JUDICATA

**Geico General Ins. Co. v.  
Class 1 Transport**  
New York Appellate Term  
47 Misc.3d 143  
(May 1, 2015)

Geico unsuccessfully sought from Daily Underwriters of America (DUOA) reimbursement of PIP benefits, paid for personal injuries arising from an automobile accident involving their respective insureds. Arbitration Forums (AF) held at mandatory loss-transfer arbitration that Geico had not proved negligence on the part of DUOA's insureds. Geico subsequently filed suit against DUOA's insureds for subrogation of property damage amounts paid for the same accident. Defendants moved for summary judgment on the grounds that AF's prior decision precluded litigation of a previously-resolved issue or claim. The Appellate Term held that an arbitrator may properly restrict the application of its decisions. AF's PIP rules provided that "[a] decision...has no legal effect on any other claim or suit arising out of the

same accident or occurrence between different parties." ■

### SERVICE OF PROCESS VALID AT DRIVER'S ADDRESS ON LICENSE

**State Farm Mut. Automobile  
Ins. Co. v. Ramirez**  
New York Appellate Term  
46 Misc.3d 148(A)  
(February 24, 2015)

Plaintiff successfully appealed the trial court's decision granting Defendant's motion to vacate default judgment in a subrogation action arising out of an automobile accident. Defendant claimed that she had moved and never received a copy of the pleadings. Vehicle and Traffic Law §505(5) requires drivers licensed by the State of New York to advise the DMV of a change of address within 10 days after such change and to make a notation of such change of residence on their licenses. As Plaintiff served Defendant at the address set forth in the police accident report, Defendant was estopped from challenging personal jurisdiction based on improper service, and was not

entitled to vacatur of default judgment on the ground of excusable default. ■

### INSURER MUST DEFEND DRIVER WITH PERMISSIVE USE

**CURE v. Brown**  
New Jersey Appellate Division  
Docket No. A-2769-13T3  
(May 22, 2015)

CURE filed a declaratory judgment action seeking a judgment confirming its decisions to deny coverage. CURE's policyholder Yolanda Roberts had permitted BeQua Brown, to operate Roberts' vehicle, not knowing at the time that Brown's license had been suspended. Brown then became involved in an accident in which several parties were injured. The injured parties, insured by Geico and NJM, filed third-party claims against Roberts and Brown. CURE invoked its liability coverage exception where any insured "[uses] a vehicle without a reasonable belief that this 'insured' is entitled to do so." The Appellate Division invoked the "initial permission rule," whereby the

insurer is obliged to provide liability coverage for the protection of victims who suffer injury arising out of use of the vehicle, so long as the vehicle owner initially permitted another to use his insured vehicle. ■

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### **COUNSEL FEES AWARDED FOR PROVING COVERAGE**

**Occhifinto v. Olivo Const. Co.**  
**New Jersey Supreme Court**  
**Docket No. A-77-13**  
**(May 7, 2015)**

The NJ Supreme Court held that Plaintiff was entitled to counsel fees, despite ultimately losing his lawsuit. NJ Court Rule 4:42-9(a)(6) permits counsel fees "[i]n an action upon a liability or indemnity policy of insurance, in favor of a successful claimant." Plaintiff sued a general contractor after a floor on site collapsed. Defendant held a general liability policy issued by Mercer, which claimed that it had no duty to defend or indemnify Defendant, and filed a declaratory action. Plaintiff partially prevailed on its summary judgment motion, the trial judge finding coverage under the policy and reserving the claim for counsel fees until the conclusion of the liability action. The jury ultimately found Defendant not liable; Plaintiff moved to recover counsel fees incurred in defending the declaratory action. "Fee shifting," the Supreme Court held, deters insurers "from attempting to avoid their contractual obligations and force their insureds to expend counsel fees to establish the coverage for which they have already contracted." A successful claimant under R. 4:42-9(a)(6) need only prevail "on any significant issue in litigation which achieves some benefit the parties sought in bringing suit." ■

### **NO RECOVERY OF LIFE INSURANCE BENEFITS FOR DECEDENT'S SPOUSE**

**Fox v. Lincoln Financial Group**  
**New Jersey Appellate Division**  
**439 N.J. Super. 380**  
**(February 24, 2015)**

The Appellate Division upheld denial of decedent's life insurance policy benefits to his widow. Decedent had married plaintiff 104 days before his death in an automobile accident. He purchased the policy in 1992, then designating his former wife as beneficiary, and his brother as a contingent beneficiary. Thereafter, he divorced, and then named his sister as the beneficiary, who remained the beneficiary at the time of his death. Plaintiff argued that decedent's marriage created a presumptive right to his life insurance benefits, thereby revoking any contrary premarital beneficiary designation made by the deceased spouse. The Appellate Division declined to entertain her public policy argument, deferring to the Legislature to make any such change to present law. In any event, Plaintiff failed to demonstrate her husband's clear intent to change his beneficiary under the policy. ■

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### **SINGLE ISOLATED USE DOES NOT RENDER VEHICLE "FOR HIRE"**

**In re New York Central Mut. Fire. Ins. Co. v. Byfield**  
**New York Appellate Division**  
**126 A.D.3d 704**  
**(March 4, 2015)**

Geico unsuccessfully sought to disclaim liability coverage for an automobile accident under its policy exclusion for "any vehicle used to carry passengers or goods for hire [except a] vehicle used in the

ordinary carpool on a ride sharing or cost sharing basis." Here, the trial court determined that the use of the vehicle insured by Geico as a livery vehicle entailed a single isolated use, which, in accordance with case law, would not render the vehicle as a public or livery conveyance. ■

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### **WAGES EXEMPTED FROM BANK LEVY**

**Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment**  
**New Jersey Appellate Division**  
**Docket No. A-2287-13T3**  
**(May 8, 2015)**

The Appellate Division upheld denial of a judgment creditor's motion for turnover of funds from a levied bank account belonging to the debtor. N.J.S.A. 34:11-31 exempts two months' wages of the debtor's employees from levy, even if the debtor had to pay the wages out of a different account, due to the original account being frozen. ■

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### **OFFICE UPDATE**

Our office welcomes Associate Attorney **Michael Anthony Puppelo**. Mr. Puppelo (Benjamin N. Cardozo Law School, 2014) previously acted as Supervising Attorney/Instructor at Cardozo's Access to Justice Project. ■

Congratulations to our paralegal Jessica Halloran, who is participating in NJ Sharing Network's 5<sup>th</sup> Annual 5K Celebration of Life. NJ Sharing Network is a non-profit organ procurement organization which helps recover organs and tissue for the nearly 5,000 NJ residents currently awaiting transplantation. The 5K Celebration helps promote awareness of the cause. ■