

# LEGAL NEWS IN BRIEF

## News in a Flash for Subrogation and Insurance Professionals

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### AMENDMENTS TO NY NOTICE OF CLAIM ACT

New York's Notice of Claim Act (General Municipal Law §50-e), effective June 15, 2013, provides a uniform limitations period of one year and 90 days for real or personal property damage actions, and personal injury actions against public corporations which are required to receive a notice of claim as a condition precedent. The Act also authorizes service of a notice of claim on the Secretary of State as agent of any public corporation. Upon receiving such notice, the Secretary must forward a copy to the public corporation by certified mail, email, or by some other "verifiable" procedure, within 10 days. ■

### ARBITRATION

**Kimba Medical Supply v. Allstate**  
New Jersey Appellate Division  
Docket Nos. A-1443-11T2 and  
A-1902-11T2  
(July 5, 2013)

In accordance with the Alternative Procedure for Dispute

Resolution Act (APDRA)'s provision for a limited right of review of an arbitrator's rulings, the Superior Court addressed two separate cases regarding disputed PIP coverage, vacating the award in one case and upholding an arbitration panel's internal vacating of the other award. APDRA, however, is silent regarding a trial judge's jurisdictional authority either to remand unresolved issues back to the arbitrator, or retain jurisdiction over the dispute. The Appellate Division construed the statute to implicitly authorize such remand by a trial court, in furtherance of the statute's overall goal of providing an efficient and inexpensive means of resolution for matters of PIP coverage, and ensure the arbitrator's responsibility for its decisions. ■

**EQUITABLE TOLLING OF SOL**  
**Raviv v. Farmer's Ins. Group**  
New Jersey Appellate Division  
Docket No. A-5074-11T2  
(July 15, 2013)

Claimant, who did not carry her own automobile insurance policy,

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sustained bodily injury while operating a friend's vehicle, which was insured by GEICO. She submitted a claim for benefits to GEICO a few days after the accident. During the course of examinations under oath, it emerged that her husband lived in Texas, with a policy that did not cover his wife; additionally, her sister had previously lived with her prior to the claimant's marriage, and resumed living there after the husband moved out. The claimant's sister had an automobile insurance policy with 21<sup>st</sup> Century.

Within the two-year SOL for PIP, claimant submitted a claim to 21<sup>st</sup> Century with proofs. 21<sup>st</sup> Century asked for and received an affidavit of no other insurance. Eleven days after the SOL had run, 21<sup>st</sup> Century disclaimed coverage, claiming that the loss "was reported in an untimely manner" and that claimant should continue submitting her claims to GEICO.

The Appellate Division upheld the trial court's finding that 21<sup>st</sup> Century's actions contributed to lulling claimant into believing that

she would receive its coverage, by negotiating with claimant's counsel, and demanding completion of various forms until the SOL had passed, and 21<sup>st</sup> Century had obtained a disclaimer of coverage from GEICO, which had until then paid the claims. Additionally, GEICO had forwarded its claim investigation file and would not seek subrogation of its payments, which forestalled any prejudice to 21<sup>st</sup> Century. The Appellate Division thus affirmed the judgment compelling 21<sup>st</sup> Century to extend PIP coverage to the claimant. ■

## DEFAULT JUDGMENT

**Manhattan Telecomms. Corp. v.  
H&A Locksmith, Inc.**  
**New York Court of Appeals  
2013 NY Slip Op 03867  
(May 30, 2013)**

Defendant sought to vacate a default judgment entered against him on the grounds that Plaintiff had failed to file "proof of the facts constituting the claim," as required by CPLR §3215(f). The Court of Appeals reversed the Appellate Division's vacating of the judgment. Although the default judgment was defective due to the absent proof, this omission was not a jurisdictional defect that rendered the judgment a nullity. ■

## CONFLICT OF INTEREST

**CURE v. Kurtz**  
**New Jersey Appellate Division  
Docket No. A-4330-11T1  
(July 22, 2013)**

CURE unsuccessfully appealed the trial court's denial of its application to disqualify its former in-house counsel and her current employer, a law firm, from representing any party with interests

adverse to CURE in all PIP matters. The court had found that CURE failed to identify specific confidential information shared with the former counsel that could be used against CURE in specific PIP matters. General knowledge allegedly obtained by the individual attorney, relating to business practices, litigation strategies and staff personalities, was "too imprecise and general" to demonstrate that future PIP matters were "substantially related" to prior matters in which the attorney had represented CURE. As the court found no grounds for disqualifying the attorney from representing clients in PIP matters against CURE, it was unnecessary to determine whether to disqualify the entire firm. ■

household, who would not be covered by the policy. ■

## DUTY OF CARE

**N.J. Intergovernmental Ins. Fund  
v. Almassy**  
**New Jersey Appellate Division  
Docket No. A-4353-11T4  
(July 16, 2013)**

The Appellate Division upheld summary judgment in favor of Defendant in a police officer's lawsuit for damages allegedly sustained in the course of his search for Defendant. Defendant, a passenger in a limousine, momentarily stepped out of the vehicle and failed to return, whereupon the driver called the police. The Court held that even if it were foreseeable that the driver would call the police to search for Defendant, it was not foreseeable that Plaintiff would sustain an injury during said search. A duty of care did not exist in this matter, as there was no relationship between the parties; no indication of Plaintiff's undertaking the search under particularly dangerous conditions; and Defendant neither owned the premises where the injury occurred, nor had knowledge of any dangerous conditions on the premises. ■

## UIM

**Brusco v. State Farm Indem. Co.**  
**New Jersey Appellate Division  
Docket No. A-5350-09T2  
(April 2, 2013)**

Plaintiff unsuccessfully sued for Underinsured Motorist (UIM) coverage after sustaining bodily injury while operating his parents' vehicle. Because Plaintiff was not a member of the insured's household, as per the policy, the Appellate Division upheld judgment for State Farm. The UIM statute's goal is to protect the insured up to the UIM limits purchased and not to make an injured person whole again." As UIM is optional, "an insurance company has the right to impose whatever conditions it desires prior to assuming its obligations." Although "the insured is still entitled to coverage in accordance with his 'reasonable expectations,'" there was no ambiguity as to the policy's language or the claimant's status as a non-member of the insured's

## OFFICE UPDATE

Congratulations to our associate **Benjamin Stewart**, on his recent marriage in July, 2013. Additional congratulations to our associate **Noah Gradosky**, who has announced his engagement and plans to marry in October, 2013.

Our office welcomes **Deborah Friedman** as an administrative assistant. Ms. Friedman is a graduate of the Rutgers School of Communication and Information with a degree in Library Science. ■

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