LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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SOL ISSUES IN E-FILING

Grskovic v. Holmes
New York Appellate Division
972 N.Y.S.2d 650
(October 9, 2013)

Plaintiff's attorney opened an e-filing user account, then electronically filed a Summons and Complaint 26 days before the SOL expiration date. Although said attorney received an email message confirming the filing, he did not receive an index number for the action. His calls to the Westchester County Clerk's office resulted in their informing him that the documents "did not get to their office yet." Only after further investigation, which occurred after the SOL expired, did it transpire that the initiatory documents were e-filed within the "practice/training" system, and not in its "live" system, and that therefore, the documents were never effectively filed. The Appellate Division found that the Court could properly grant Plaintiff a correction of the mistake, pursuant to CPLR 2001, and allow suit to proceed as though timely filed, because the filing had been conducted in a mistaken manner and method. The statute does not require the additional showing of a lack of prejudice to the adverse party. ■

JUSTICIABILITY

Allstate New Jersey Ins. Co. v. IFA Ins. Co.
New Jersey Appellate Division
Docket No. A-2731-12T3
(November 12, 2013)

Allstate filed an Order to Show Cause to compel arbitration of a PIP dispute with IFA. IFA cross-moved for summary judgment, on the grounds that Allstate had not made a timely demand for arbitration. Upon the Law Division's finding in Allstate's favor, IFA appealed on the grounds that timeliness is a threshold legal question to be decided by the court before compelling IFA to arbitrate. The Appellate Division stressed the need to minimize judicial intervention in a PIP matter, in accordance with legislative intent behind the no-fault law. Accordingly, the Court found that a seasoned PIP arbitrator would be in a better position than the court to determine the threshold issue of whether Allstate's delay before formally demanding arbitration was reasonable. ■

VANDALISM COVERAGE

Georgitsi Realty v. Penn-Star Ins. Co.
New York Court of Appeals
2013 NY Slip Op 6731
(October 17, 2013)

A building owner sued for coverage after the owner of the building next door conducted excavation, which caused cracks in the walls and foundations of Plaintiff's building. Plaintiff's insurer provided coverage for damages caused by "vandalism," defining same in the policy as "willful and malicious damage to, or destruction of, the described property." The Court of Appeals held that vandalism need not imply a specific intent to accomplish any particular result, or entail direct contact with the covered property, so

long as the damage was a natural and foreseeable result of the vandalizing act. To define "malice," the Court referenced the standard for awarding punitive damages in property damage suits: "a conscious and deliberate disregard of the interests of others that [it] may be called willful or wanton." Judge Abdus-Salaam dissented, arguing that the "malice" standard must include an intent to damage property. ■

"MADE WHOLE" DOCTRINE

Erlich v. American Intl. Group
New York Supreme Court, New York County
2013 NY Slip Op 51827(U)
(November 7, 2013)

Plaintiffs sustained damages to their property after their water cooler malfunctioned, resulting in a fire. Their homeowners policy provided for a depreciation deduction in the event the insured makes a claim for the actual cash value of the damaged property, and not for repair costs. Accordingly, the insurer paid for Plaintiffs' reported claim, "holding back" a segment of the proceeds to cover the deductible and the depreciation. Plaintiffs signed Subrogation Receipts upon receiving their money, thus allowing their insurer to subrogate as against the water cooler manufacturer. After the manufacturer settled with the insurer for less than the total claim amount, the insurer forwarded Plaintiffs their pro rata share of the deductible. Plaintiffs unsuccessfully sued for the remainder of the "held back" amount as well as for further losses not originally claimed. The Court held that Plaintiffs could not recover anything further, having complied with the policy provisions and failed to make a timely notification as to any further losses. ■

LABOR LAW

Soto v. J. Crew
New York Court of Appeals
2013 NY Slip Op 6603
(October 10, 2013)

Plaintiff unsuccessfully sued for damages pursuant to NY Labor Law 240(1), which imposes a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices for workers subject to specified elevation-related risks. Having fallen from a four-foot-tall ladder while dusting a six-foot-high display shelf, Plaintiff argued that he was thereby engaged in "cleaning," an activity covered by the statute. Outside of the covered field of commercial window washing, a plaintiff must successfully overcome several factors regarding the task at hand, namely, whether said task is "routine"; requires neither specialized equipment or expertise; generally involves insignificant elevation risks comparable to typical household cleaning; and is unrelated to any ongoing construction, renovation, painting, alteration or repair project. Here, Plaintiff failed to disprove these factors' applicability to his own case. ■

POLICY EXCLUSION

First Mercury Ins. Co. v. Cholish Salvage
New Jersey Appellate Division
Docket No. A-1028-12T4; A-1163-12T4
(November 12, 2013)

First Mercury, a commercial general liability insurer for Cholish, a salvage and recycling company, unsuccessfully appealed summary judgment on the issue of coverage for a damaged "car crusher" owned by Cholish but operated by a third party. The car crusher was not independently mobile, could only be transported by another vehicle, and was not intended to transport persons or cargo. First Mercury's policy exclusion for autos entrusted to anyone other than the insured expressly omitted "mobile equipment," defined, *inter alia*, as "[v]ehicles, whether self-propelled or not." The Court found the car crusher to be properly insurable by First Mercury, fitting its definition of "mobile equipment" rather than that of a "motor vehicle," which is self-propelled by motors. ■

DUTY OF CARE

Angland v. Mountain Creek Resort
New Jersey Supreme Court
213 N.J. 573
(June 6, 2013)

Decedent's estate sought damages resulting from his fatal collision with another skier at a ski resort. Defendant successfully claimed that he was subject to a common law standard of recklessness as applies to participants in recreational activities, rather than a standard of mere negligence, which is set forth in the NJ Ski Act. The Supreme Court construed legislative intent in determining that the Act only applies to ski resort operators, but does provide useful guidelines as to skiers' acceptable conduct. ■

OFFICE UPDATE

Congratulations to our Senior Associate and team leader **Noah Gradofsky**, **Esq**. on his recent marriage to Melissa in October, 2013. Additional congratulations to administrative assistant **Deborah Friedman**, who has previously announced her engagement and plans to marry later this month. ■