LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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NJ WORKER'S COMPENSATION SUBROGATION IS NOT LIMITED BY NO-FAULT/ VERBAL THRESHOLD SYSTEM

NJ Transit v. Sanchez
NJ Appellate Division
A-0761-17T3, __ N.J. Super. __
(December 4, 2018)

The Appellate Division clarified that a WC carrier's subrogation rights are not affected by NJ's no-fault and verbal threshold statutes, thereby resolving an apparent conflict between a number of Appellate Division precedents, where, as here, an individual entitled to PIP benefits is working at the time of the accident. As WC benefits are primary over PIP, the question then becomes whether WC subrogation is subject to the same restrictions on reimbursements as a PIP carrier would be.

NJT sought to subrogate its WC benefits despite the fact that its employee did not meet the verbal threshold. The Appellate Division referenced Continental Ins. Co. v. McClelland, 288 N.J. Super. 185 (1996), which held that a WC carrier cannot recover any benefits it paid that would have been paid under PIP had WC not applied; however, NJT recognized that subsequent published opinions have not adopted McClelland's reasoning.

NJT instead agreed with the observation by Lambert v. Travelers Indem. Co. of Am., 447 N.J. Super. 61 (App. Div. 2016) that the no-fault statute, AICRA, having postdated the Worker's Compensation Act by 87 years, did not indicate that the legislature intended to affect a worker's compensation carrier's subrogation rights under Section 40 of the WCA. NJT apparently favors reduction of WC costs over that of automobile insurance costs.

For further analysis and a link to the NJT case see http://www.janmeyerlaw.com/njpip/pipandwc.html. There, LOJM attorney Noah Gradofsky argues that N.J.S.A. 39:6A-9.1 suggests that WC carriers's subrogation rights should not be controlled by the PIP scheme, since that statute affords certain recovery rights to insurers, HMOs, and governmental organizations, but not employers. Mr. Gradofsky also notes that even if the no-fault statute overrides WC subrogation rights, that would still not affect recovery of WC subrogation rights where the injured worker was occupying a vehicle which is not subject to PIP.■

BUSINESS VEHICLE

Ruffa v. Ruffa
NJ Appellate Division
A-0830-17T1
(October 30, 2018)

The mother of an infant sued as his guardian ad litem after her son sustained injuries when he operated a hydraulic lift gate on his father's vehicle which was used for business purposes. Plaintiff sought coverage through the father's Businessowner's Policy with Farmers. The Farmers policy did not cover losses involving an automobile except for injuries involving the operation of cherry pickers or the use of mobile equipment, "used solely at your premises." The Appellate Division

upheld summary judgment for Farmers. Here, the gate is not similar to a cherry picker, as it is not used to "raise/lower workers," and the warnings affixed to the gate specifically direct against such use. Moreover, the truck is not mobile equipment as the father used it to deliver food and personnel, and bought automobile insurance for the truck. ■

ALL-TERRAIN VEHICLES

Starner v. Haemmerle
NJ Appellate Division
A-0153-17T2
(October 24, 2018)

A 14-year-old operator sought PIP coverage under her parents' automobile policy with Geico, in a lawsuit for damages sustained when she lost control of a non-owned all-terrain vehicle (ATV). Geico argued that the ATV was not covered under its PIP policy. The Appellate Division referred to Wilno v. New Jersey Manufacturers Ins. Co., 89 N.J. 252 (1982), in which the NJ Supreme Court held that a dune buggy is not a private passenger automobile entitled to PIP coverage since it is "intended and used solely or principally for off-road recreational purposes" and is a "high-risk vehicle." Moreover, N.J.S.A. 39:3C-1 defines an ATV as a "motor vehicle, designed and manufactured for off-road use only." N.J.S.A. 39:3C-17(b) also prohibits operation of an ATV on a limited access highway, and restricts operation of an ATV on any public street except when crossing the road to get to an ATV off-road site. Thus, the Appellate Division held in favor of Geico, which disclaimed coverage. ■

ALTERNATIVE SERVICE

Alzaabi v. Jaskon
NY Supreme Ct., Queens County
713360/18
(October 29, 2018)

The NY Supreme Court, Queens County, permitted alternative service via Whatsapp, by means of providing thereon to Defendant a web address of the summons with notice or attaching an image of the summons, in addition to a one-time publication in a local Queens newspaper. Plaintiff had connected with Defendant on a website called "Chrono 24," where buyers are matched with sellers of luxury watches. They proceeded with negotiations which continued through Whatsapp, a free international messaging service, whereby they agreed on a final sale price and a 30-day period for Plaintiff to inspect the watch. Plaintiff sued, alleging that the watch was a fake, and that he was unable to return it at the address provided by Defendant; Plaintiff was additionally unable to serve process there, as the address did not exist. The Court granted Plaintiff's motion for alternative means per CPLR 308(5), as traditional means of service was impracticable, and courts have lately permitted service via electronic communication. ■

COLLECTION CALLS

Wilson v. Quest Diagnostics, Inc.
U.S. Dist. Ct., D.N.J.
Civ. No. 2:18-11960
(December 17, 2018)

The District Court of New Jersey held that Plaintiff may proceed on a class action against Quest for violating the Telephone Consumer Protection Act of 1991 ("TCPA") by placing non-emergency calls to Plaintiff's cell phone using an automatic telephone dialing system without having her prior express consent. Plaintiff inferred that Defendant's use of the system when contacting her, as she would hear a momentary pause before someone started speaking to her, indicating that Defendant was using a predictive dialer. The court denied Defendant's motion to dismiss at this preliminary stage, finding that the allegations were sufficient, and that discovery will determine whether Plaintiff can prove her claims. ■

OFFICE UPDATE

Noah Gradofsky published an article titled "Arbitration Forums' Decisions of Law Can Be Appealed to Courts! Let Arbitrators Decide Facts and Judges Decide Law" in the Fall/Winter 2018 Issue of Subrogator Magazine, page 62. Text of the article can be accessed from http://www.janmeyerlaw.com/appeal_arbitration.html.

Congratulations to LOJM attorney **Douglas Michael Allen** on his admission to the New Hampshire Bar.

It was great seeing everyone at NASP in November! Happy New Year to all.

Left to Right: Jan Meyer, Stacy Maza, Steven Kraus, and Noah Gradofsky ■