LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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LOJM VICTORY: COURT VACATES ARBITRATOR'S MISTAKE OF NEW JERSEY LAW

GEICO v. Erie Ins. Co.
New Jersey Law Division: Bergen County
Docket No. BER-L-9751-14
(January 5, 2015)

Plaintiff filed in Arbitration Forums (AF) for PIP recovery within the SOL. AF dismissed the claim, as it was above Defendant's policy limits. Plaintiff re-filed in AF, accepting limits. AF then dismissed, saying that Plaintiff was SOL.

Noah Gradofsky of LOJM asked the NJ trial court to vacate the AF ruling, arguing that (a) the original filing between signatory parties satisfied the NJ PIP SOL, even if eventually the case could not be hear by AF; and (b) since the AF rules require that decisions be "based on local jurisdictional law," AF's errors of law constitute the arbitrator's exceeding the arbitrator's authority, thus requiring the court to vacate the decision. The court agreed.

A copy of this case can be downloaded from the LOJM NJ PIP website's "recent developments" section. The decision is subject to appeal to the New Jersey Appellate Division.

DOG-BITE STATUTE

Sanders v. Johnson
New Jersey Appellate Division
Docket No. A-3928-12T1
(November 10, 2014)

A veterinary assistant sued for injuries sustained from a dog bite which occurred in the parking lot of the animal hospital where she was employed. Defendant was carrying his dog towards the front door of the hospital; about halfway to the door, Defendant began losing his grip. Plaintiff reached out for the dog's collar to prevent it from falling, but before she could reach the dog or its collar, the dog bit her.

The Appellate Division upheld summary judgment in Plaintiff's favor, over Defendant's claim that Plaintiff was subject to the independent contractor exception to the New Jersey dog-bite statute. Generally, case law has excepted liability for dog bites sustained by veterinarians and their assistants in the course of medical treatment, as they assume the risk of such bites as occupational hazards while undertaking their employment. Significantly, however, such case law has only addressed circumstances where the bite occurred after the owner had relinquished control of the dog for care and treatment. Here, Defendant maintained exclusive control of the dog in transporting it to the hospital, which precipitated the bite, not yet transferring care, custody or control of same to Plaintiff; moreover, Plaintiff had not yet rendered any care or treatment when she sustained her injury. ■

ARBITRATION CLAUSES

Atalese v. U.S. Legal Services Group, LP
New Jersey Supreme Court
219 N.J. 430
(September 23, 2014)

The New Jersey Supreme Court struck down an arbitration clause which did not explicitly include a waiver of Plaintiff's right to seek

relief in court. Although the service contract between the parties had provided that "[in] the event of any…dispute…the…dispute shall be submitted to binding arbitration upon the request of either party upon the service of that request on the other party," there is no unambiguous language in the contract, "clear and understandable to the average consumer," which indicates that arbitration is to be the exclusive remedy. The absence of mutual assent on the arbitration clause renders it unenforceable. ■

WORKER'S COMPENSATION

Isabella v. Hallock
New York Court of Appeals
22 N.Y.3d 788, 10 N.E.3d 673
(March 27, 2014)

Plaintiff sustained injuries in an automobile accident while riding in a vehicle operated by his co-employee and owned by the operator's husband (Michael Koubek), on their return from a business meeting. In accordance with Worker's Compensation Law §29(6), Plaintiff received WC benefits through his employer, and was thereby precluded from bringing suit against his coworker. Plaintiff did file a federal diversity suit against the owner and operator of the vehicle with which his coworker had collided; in turn, that owner and operator (Defendants) sought to implead Koubek for contribution and indemnification.

The Second Circuit Court of Appeals, upon being presented with the novel state statutory issue of the interplay between WC and vicarious liability under Vehicle and Traffic Law §388, certified the matter to the New York Court of Appeals. Holding that Defendants could not pursue a third-party contribution claim against Koubek, the Court of Appeals cited precedent which disallowed suit against the owner of a vehicle operated by a co-employee since the WC statute intended to make WC benefits the passenger's sole remedy against co-employees and the sole remedy rule was found to extend to the vehicle owner. The court also looked to precedent barring suit against the owner of a vehicle operated by a co-employee where a WC statute similar to WC Law §29(6) was involved. Finally, the Court of Appeals questioned Defendants' appeal to equity in its being liable for 100% of damages, as Koubek would otherwise be saddled with 90% liability for no personal fault of his own, and would have no redress against the driver of his vehicle due to her statutory immunity. ■

CHANGE OF VENUE

Oettinger v. Arraial
New Jersey Superior Court
(Bergen County)
Docket No. BER-L-8072-13
(November 4, 2014)

Three defendants, a prosecutor, a judge, and the Township of Franklin, New Jersey, filed a motion to transfer venue from Bergen to Somerset County. Plaintiff had filed suit for alleged damages arising out of a search warrant executed at Plaintiff's residence in Bergen County, and the alleged failure of Somerset County officials to return property belonging to Plaintiff, in accordance with a court order signed by the defendant-judge. Although courts generally defer to Plaintiff's choice of venue, the convenience of parties and witnesses in the interest of justice (R. 4:3-3(a)(3)) may trump that choice. Here, three municipal entities named as defendants are situated in Somerset County, and six public officials employed by those entities are also defendants. Most potential witnesses from or associated with said entities will also be located in Somerset. Accordingly, the trial court granted Defendants' motion. ■

"PHYSICAL LOSS"

Gregory Packaging v. Travelers
New Jersey District Court
Civ. No. 2:12-cv-04418
(November 25, 2014)

Plaintiff obtained partial summary judgment in its declaratory action for coverage pursuant to a property insurance policy with Travelers. Travelers contended that the release of ammonia into Plaintiff's facility did not constitute covered "direct physical loss of or damage to" Plaintiff's property, stating that no physical change or alteration to the property occurred which would require its repair or replacement. The District Court held on Plaintiff's motion regarding this issue that Plaintiff did in fact sustain such loss. Here, the refrigeration system released an unsafe amount of ammonia, which required evacuation and ultimate remediation after the ammonia remained on the premises for some time afterward. The Court cited New Jersey precedent which establishes that property can sustain physical loss or damage without experiencing permanent or structural alteration. ■

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