LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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OUR OFFICE MAINTAINS VICTORY IN NJ SUPREME COURT

Drive New Jersey Ins. Co. v. Gisis, et al.
New Jersey Supreme Court
C-336 Supreme Court 2011 68730
(November 18, 2011)

On November 18, 2011, the New Jersey Supreme Court denied Defendants' petition for certification (i.e. appeal) of the judgment in Drive New Jersey Ins. Co. v. Gisis, et al. To reiterate, the New Jersey Appellate Division confirmed last June, as argued by our office, that the plain meaning of N.J.S.A. 39:6A-9.1 applies and that any tortfeasor not required to carry PIP is subject to PIP recovery, even if that tortfeasor voluntarily carries PIP. The Appellate Division's published opinion, 420 N.J. Super. 245 (App. Div. 2011), sets precedent that applies to any accident occurring in New Jersey, and is not subject to further appeal. ■

WRONGFUL DEATH

Aronberg v. Tolbert
New Jersey Supreme Court
No. A-9
September Term 2010 66414
(August 29, 2011)

The New Jersey Supreme Court held that an uninsured motorist's heirs cannot bring a wrongful death claim against the alleged tortfeasors. N.J.S.A. 39:6A-4.5(a) provides that any person who does not maintain medical expense benefits coverage for an automobile s/he was operating at the time of an automobile accident cannot recover for economic or non-economic loss sustained as a result of that accident. The Wrongful Death Act (N.J.S.A. 2A:31-1) provides for a wrongful death cause of action "[w]hen the death of a person is caused by a wrongful act…such as would, if death had not ensued, have entitled the person injured to maintain an action for damages resulting from the injury…." It is anomalous, the Court reasoned, to allow a decedent's heir to bring suit for a claim which the decedent could not bring himself. Thus, "N.J.S.A. 39:6A-4.5(a) furthers the Legislature's purpose of coercing compliance with…[New Jersey's] automobile insurance laws." ■

SNOW REMOVAL

Urban v. City of Albany
New York Appellate Division
2011 NY Slip Op 8710
(December 1, 2011)

Plaintiff sued the City for damages sustained in a slip-fall on an icy sidewalk. Although Plaintiff conceded that there was no prior written notice of the icy condition, he did successfully invoke the exception to the notice requirement whereby the locality "created the…hazard through an affirmative act of negligence." Although the exception generally requires conduct immediately resulting in the existence of a dangerous condition, recent case law found that the piling of removed snow – which leads to the risk of its melting then freezing into black ice

when temperatures fluctuate – can be actionable. ■

POLICY EXCLUSION

Cragg v. Allstate Indem. Corp.
New York Court of Appeals
17 N.Y.3d 118
(June 9, 2011)

Plaintiff filed a wrongful death action against his former wife for their daughter's accidental drowning in the swimming pool of the wife's parents, with whom she and her daughter resided. The plaintiff's in-laws had a homeowner's insurance policy with Allstate, which invoked a policy exclusion stating "[w]e do not cover bodily injury to an insured person…whenever any benefit of this coverage would accrue directly or indirectly to an insured person." The Court determined the term "benefit" to be ambiguous and interpreted it as referring to the proceeds under the policy; in other words, the policy was ineffective if the insured mother were to collect the proceeds herself. Allstate's ambiguous wording of "benefit" precluded Allstate from withholding the wife's entitlement to indemnification and defense as a policy insured, so as to cut off her husband's indirect claims. ■

EMERGENCY DOCTRINE

Lifson v. City of Syracuse
New York Court of Appeals
2011 NY Slip Op 7145
(October 13, 2011)

Plaintiff successfully appealed a trial verdict on the grounds that the court had made an improper emergency doctrine instruction to the jury. Defendant was leaving his office parking lot at the end of the workday, taking an unfamiliar route; when turning left toward the setting sun, he was blinded by the glare and struck a pedestrian. The common-law emergency doctrine acknowledges that when confronted with "a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct," he cannot be held to the same "accuracy of judgment or conduct as one who has full opportunity to reflect, even though it later appears that the actor made the wrong decision." Here, the Court of Appeals decided that as Defendant was familiar with the general area and was about to turn west toward the sunset, he could not allege the glare to be a sudden and unexpected circumstance. ■

CHARITABLE IMMUNITY

Hehre v. DeMarco
New Jersey Appellate Division
421 N.J. Super. 501
(August 18, 2011)

The Appellate Division upheld summary judgment for a track coach, high school and the Catholic diocese of Camden, defendants in a personal injury suit, on the grounds of charitable immunity. Plaintiff, along with all participating students, gathered with the coach at the high school in preparation for a school-sponsored track meet. One of the participating schoolmates then drove Plaintiff to the meet, and a collision occurred, injuring Plaintiff. Defendants invoked N.J.S.A. 2A:53A-7(a), which provides immunity for both nonprofit corporations "organized exclusively for religious, charitable or educational purposes" and for its employees from liability to any person who is a "beneficiary, to whatever degree, of the works of such nonprofit corporation…." Although N.J.S.A. 2A:53A-7(c) does provide that "Nothing in this section shall be deemed to grant immunity to…any…employee [or] agent… causing damage as a result of the negligent operation of a motor vehicle," the coach was not himself operating a vehicle and is not subject to the immunity exception. ■

OFFICE UPDATE

We are pleased to have recently hired **Benjamin O. Stewart** to our office. After graduating from Rutgers University School of Law – Newark in 2010, Mr. Stewart clerked for the Honorable Michael Ravin J.S.C at Essex County Superior Court. ■

PIP WEBINAR

We are also pleased to announce that Jan Meyer and Noah Gradofsky will be presenting a webinar titled "NY & NJ PIP Laws and Updates" through the National Association of Subrogation Providers (NASP). The program will include an overview of both states' statutes identifying the particular instances in which PIP is recoverable as well as some of the key distinctions between New York and New Jersey. The webinar is scheduled for **January 17, 2012, at 2 p.m.** For more information on how register for the webinar, access **www.janmeyerlaw.com/naspwebinar.pdf** or contact Cherish Diviney @ NASP at 800 574-9961.

Happy New Year to all ! ■