LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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IS DETERMINATION OF "TORTFEASOR" JUSTICIABLE?

Liberty Mutual Ins. Co. v. Penske Truck Leasing, Co.
NJ Appellate Division
A-5624-17T3; __ N.J. Super. __
(May 23, 2019)

Liberty Mutual appealed from a trial court decision which denied its motion to compel a self-insured trucking company to arbitrate a PIP benefit reimbursement claim. Defendant had successfully argued that the court had to first determine whether its insured was a "tortfeasor" per N.J.S.A. 39:6A-9.1 before Defendant could be compelled to proceed with arbitration. The Appellate Division found the language of 39:6A-9.1(b) to be clear when it states that the "determination as to whether an insurer…is legally entitled to recover the amount of payments and the amount of the recovery" shall be by agreement, or "upon failing to agree, by arbitration." The plain meaning of the words "legally entitled to recover," the determination of which would be subject to arbitration, includes disputes about whether the non-PIP insurer's insured was a tortfeasor. Moreover, the phrase "the amount of payment" is a separate and additional concept from "legally entitled to recover," which further clarifies that the first phrase refers to disputes over whether an insured is a tortfeasor. Finally, such an interpretation as proposed by Defendant would undermine the statutory purpose of reducing excessive litigation of issues of accidents and insurance in the court system. Thus, the Appellate Division reversed the trial court decision, in favor of Liberty Mutual. ■

RECOVERY BY INJURED PARTY WHO ELECTED LOWER PIP LIMITS

Haines v. Taft
NJ Supreme Court
237 N.J. 271
(March 26, 2019)

The NJ Supreme Court held that an injured party with less than $250,000 in PIP coverage cannot sue a tortfeasor for medical bills which exceed his own PIP coverage but which would otherwise fall within a $250,000 PIP policy. Although "standard" NJ PIP coverage, provided for in N.J.S.A. 39:6A-4, generally covers $250,000 for medical bills, N.J.S.A. 39:6A-4.3(e) allows insurers to offer coverage options that limit PIP to $150,000, $75,000, $50,000 or $15,000.

Finding the PIP statute to be ambiguous, the majority in Haines determined that since the legislature intended to reduce litigation related to automobile accidents, the statute should be interpreted to prohibit suits to recover any amounts that would be covered under a $250,000 PIP policy. The Court also noted that if the injured party could recover for medical bills from the at-fault party, that at-fault party would be subject to a claim for medical bills that were not subject to the PIP fee schedule or other cost-containment procedures related to PIP claims.

Finally, the Court's opinion does suggest that its ruling does not apply

where the injured party meets the verbal threshold or is otherwise not subject to a verbal threshold. ■

NY CIRCULAR LETTER REGARDING TNC VEHICLES

The NY Department of Financial Services issued a circular letter to provide guidance to all no-fault insurers and WC providers regarding transportation network companies ("TNC") vehicles and the application of the NY no-fault statute to such vehicles. "TNC vehicles," as defined by VTL §1691, specifically excludes a taxicab, livery vehicle, black car, limousine, luxury limousine, and a for-hire vehicle. VTL §1692(1) further states that neither a TNC nor a TNC driver shall be deemed to provide taxicab or for-hire vehicle service while operating as a TNC or TNC driver. Additionally, Part AAA of Chapter 59 of the Law of 2017, which added a new VTL Article 44-B to govern the operations of TNC vehicles, exempted TNC vehicles from many of the laws that generally apply to for-hire vehicles and subjected TNC vehicles to new requirements under new VTL Article 44-B and amendments to the Insurance Law and other laws. The Department thus inferred that, with limited exceptions, a no-fault insurer or compensation carrier should not invoke the intercompany loss transfer provisions under Insurance Law §5105 solely based on one of the vehicles being a TNC vehicle, because a TNC vehicle is not a "for-hire" vehicle under VTL §§1691 and 1692, and therefore is not "a vehicle used principally for the transportation of persons for hire" within the meaning of Insurance Law §5105. ■

SUBROGATION WAIVER

Ace Am. Ins. Co. v. Amer. Med. Plumbing, Inc.
NJ Appellate Division
A-5395-16T4; ___ N.J. Super. ___ 2019 N.J. Super. LEXIS 45
(April 4, 2019)

ACE American Insurance Company unsuccessfully appealed summary judgment which dismissed its subrogation action against a plumbing subcontractor for damages caused by flooding in a health club as a result of a failed water main. Plaintiff's insured Equinox Holdings had contracted for the construction of the "core and shell" of the health club. The construction had already been completed at the time the water main failed. Plaintiff provided Equinox with blanket all-risk insurance for "property, while in the course of construction and/or during erection, assembly and/or installation." The Court applied the construction contract's subrogation waiver, whereby Equinox and the contractor were to obtain separate insurance and waive all rights against each other for covered damage. This waiver applied regardless of most of the damages being unrelated to the contracted-for work, and past the time of the constructed-for work's completion. ■

LAW OFFICE REQUIREMENT

Arrowhead Capital Fin., Ltd. v. Cheyne Specialty Fin. Fund LP
NY Court of Appeals
32 N.Y.3d 645
(February 14, 2019)

Non-resident attorneys admitted in NY must maintain a physical office in the State in order to practice law in NY. The Court of Appeals determined that where a non-resident attorney failed to comply with this requirement at the time he filed a complaint, that complaint is not rendered a nullity. This rule applied and extended precedent which stated that the disbarment of an attorney who improperly acted as trial counsel will not create any nullities requiring retrial. ■

TORT CLAIMS ACT

Estate of Siler v. County of Ocean
NJ Appellate Division
A-5316-17T2
(May 21, 2019)

The Appellate Division upheld denial of a claimant's motion for leave to file a late notice of tort claim. Decedent's mother was in possession of a video of him in an inebriated state at a time when police may have been present and at that time failed to address his critical condition. The Court determined that as the video was accessible and thus discoverable, claimant had not conducted a "reasonably prompt and thorough investigation" that would warrant such "extraordinary circumstances" as to allow the late filing. ■

OFFICE UPDATE

Congratulations to associate **Douglas Michael Allen**, whose co-authored article "When a Stranger Calls: Third-Party Property Tax Appeals," originally published in the April 2017 issue of New Jersey Lawyer Magazine, has been cited in the pocket part of the statute book in regards to N.J.S.A. 54:4-3.6 ("Tax exempt property").