LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

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LOJM VICTORY: PIP RECOVERY SOL RUNS TWO YEARS FROM RECEIPT OF THE FORMAL PIP APPLICATION

Drive N.J. Ins. Co. v. Sofield
New Jersey Appellate Division
A-1989-14T4
(March 4, 2016)

Our office, as attorney for Plaintiff, successfully appealed the Law Division's dismissal of a suit to compel PIP arbitration after Defendant claimed that Plaintiff's receipt of an Attending Provider Treatment Plan (APTP) from its insured's physician triggered the SOL and was therefore time-barred. N.J.S.A. 39:6A-9.1 permits recovery of PIP "within two years of the filing of the claim." New Jersey Manufacturers Ins. v. Holger Trucker Corp., 417 N.J. Super. 393 (App. Div. 2011) held that the "filing of the claim" means the receipt, by the insurer, of the formal PIP application/claim form, even where the insurer had previously opened a file, assigned it a claim number, received medical bills and treatment plans and had approved a treatment plan.

Defendant moved to dismiss the action, relying on language in Holger to the effect that "the submission of the claim form or application requested by the insurer" triggers the SOL. Here, the only document Plaintiff requested was the APTP, and the Law Division dismissed the suit on those grounds. On appeal, Noah Gradofsky successfully argued that the focus on the words "requested by the insurer" was misplaced and that the true focus of Holger was on having a single, clearly identifiable document that triggers the SOL, namely, the PIP application, which in this case was received subsequent to the APTP form and which predated the filing of the action by less than two years.

An even more recent case (Abdulai v. Casabona, 2016 N.J. Super. Unpub. LEXIS 757; App. Div., Apr. 6, 2016) also re-visited and clarified Holger, finding that "the filing of the claim" took effect when the PIP carrier received its completed PIP claim forms, even though it had previously received a generic single-page PIP application. The latter forms provided more detailed and varied information, including a HIPAA authorization. ■

CHAIN OF CAUSATION

Dunham v. Ketco
New York Appellate Division
135 A.D.3d 1032
(January 7, 2016)

The Appellate Division reversed summary judgment entered in favor of a construction company that was working on a portion of the highway where the accident occurred. Plaintiff was a passenger in the vehicle operated by his father. While he descended a ramp from the paved street to a gravel portion, the vehicle became airborne and deployed its airbags upon landing on the ground. Several depositions and the police report indicated that Plaintiff's father's excessive speed caused the accident. Plaintiff, however, countered with two firefighters' affidavits as to their observations on the day of the accident, namely, that the gravel portion had descended to about three feet below the paved portion, that several vehicles driving significantly below the speed limit came down roughly on the gravel, and that the road conditions that day were unsafe. This evidence should have sufficiently defeated Defendant's

motion. Although the driver may have been speeding at the time of the accident, Defendant had not proven that such conduct was so unforeseeable as to break the chain of Defendant's causation of Plaintiff's injuries. ■

ASSUMPTION OF RISK

Valverde v. Great Expectations, LLC
New York Appellate Division
131 A.D.3d 425
(August 18, 2015)

Plaintiff sued an underage driver of an electric golf cart for injuries she sustained while riding in the cart. The Appellate Division held that summary judgment should be entered for defendant, since "[a] plaintiff who voluntarily participates in a sporting or recreational event" occurring in a designated venue is "generally…held to have consented to those commonly-appreciated risks that are inherent in, and arise out of, participation in the sport." A golfer should anticipate risk of injury from an improperly used cart, regardless of what aspect of the sporting activity she was engaged in at that time. Additionally, Plaintiff was aware the driver was a minor but did not attempt to first determine whether he was licensed or competent to drive. ■

SIDEWALK LIABILITY

Rockhill v. Grace Orthodox Presbyterian Church
New Jersey Appellate Division
A-1697-14T3
(March 30, 2016)

The Appellate Division upheld summary judgment in favor of a church which was sued for injuries sustained on a sidewalk abutting its property. Generally, only commercial property owners are liable for injuries which are caused by their failure to maintain sidewalks in reasonably good condition. Here, the Court determined Defendant to be a nonprofit religious organization which used its property at the time of injury for exclusively religious purposes at the time of the incident. The Court declined to address whether change in use of the property after an accident could affect a determination of sidewalk liability. ■

RENTAL VEHICLE

Lynch v. Baker
New York Appellate Division
2016 N.Y. App. Div. LEXIS 2502
(April 6, 2016)

Hertz lost on its summary judgment motion in a police officer's lawsuit for injuries he sustained when engaged in a high-speed pursuit of a driver, Robert Baker, who was operating Hertz' Chevrolet with a suspended license. Two weeks prior to the accident, Baker's grandfather rented a Ford from Hertz for two days while awaiting repairs on his own vehicle. Baker accompanied his grandfather to Hertz at the time of the Ford rental. Thereafter, one day before the accident, Baker came back to Hertz to pick up another rental vehicle because his grandfather's vehicle had not yet been fully repaired. Hertz' rental agent gave Baker the Chevrolet without first asking for Baker's driving license, thereby failing to comply with Hertz' procedure of confirming that Baker was the person present at the time of the rental. Hertz unsuccessfully invoked the Graves Amendment (49 USC §30106), which shields the lessor from vicarious liability when its only relation to the accident is that it owned the vehicle involved. The statute, however, expressly requires the existence of a lessor-lessee relationship, which Hertz denied existed in this case. Additionally, Hertz could be held liable for its own negligence. ■

EMERGENCY DOCTRINE

Kandel v. FN Taxi
New York Appellate Division
2016 N.Y. App. Div. LEXIS 1803
(March 16, 2016)

A taxi driver successfully obtained summary judgment in a lawsuit for injuries sustained in a multi-vehicle accident. Defendant drove around a curve and came upon three vehicles stopped in two lanes of a three-lane highway due to two initial accidents; he braked but slid on a sheet of ice on the highway. The Court applied the emergency doctrine, which exempts an actor from negligence when taking reasonable and prudent actions in response to a sudden and unexpected circumstance which leaves little or no time for deliberation. ■

It was great seeing everyone at the NASP Conference in Fort Lauderdale in April! Below is a souvenir of our trip. (Above, L-R: Michael Puppelo, Robert Gammel; Below: Jan Meyer.)

Artist: http://jeffrey-d-harris.com/
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