LEGAL NEWS IN BRIEF

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IMPORTANT NJ SUPREME COURT DECISION RE COVERAGE FOR "INNOCENT THIRD PARTIES"

CURE v. Rodriguez
New Jersey Supreme Court
Docket No. A-67-13
(August 13, 2015)

NJ courts have long held that where a tortfeasor's policy has been rescinded, the insurer must provide state minimum coverages to third parties who were innocent of any wrongdoing, vis-à-vis the policy. Classically, NJ's state minimum liability coverages have been 15/30/5. More recently, the legislature enacted options for certain lesser coverages including an option for 0/0/5 coverage available to the general public and a 0/0/0 policy available to certain low-income individuals. Here, the NJ Supreme Court confirmed that rescinded policies must generally provide 15/30/5 coverage to innocent third parties, but stated that policies providing for lesser coverage, when rescinded, must only offer their original policy limits to innocent third parties. ■

PHANTOM VEHICLE

Massaro v. Trovato
New Jersey Appellate Division
Docket No. A-5971-13T4
(August 13, 2015)

Plaintiff alleged that the driver of an unidentified "phantom" vehicle, in an act of road rage, tailgated him, flashing its lights, and then passed Plaintiff's vehicle and came to a complete stop. In reaction to the vehicle's maneuvers, Plaintiff slammed on his brakes, and was struck in the rear by the vehicle behind him, operated by Mary Yates. Plaintiff filed suit against Yates, and also sued his own automobile insurer NJM for UM benefits. Yates died without having been deposed or ever answering interrogatories.

The trial court granted summary judgment for NJM, on the grounds that Yates was solely at fault for the accident because she had been following it too closely. Reversing the decision, the Appellate Division held that, viewing the record in the most favorable light to Plaintiff, a reasonable factfinder could find that Yates was not solely at fault for causing the accident, and that the phantom vehicle was at least a contributing cause of the collision, by setting into effect a series of events which led to the rear-end collision. ■

SUM FOR POLICE OFFICER

State Farm Mut. Auto. Ins. Co. v. Fitzgerald
New York Court of Appeals
2015 NY Slip Op 5626
(July 1, 2015)

The NY Court of Appeals denied SUM coverage for an officer who sustained injuries while riding in a police vehicle operated by a colleague, thereby extending precedent (State Farm Mut. Auto. Ins. Co. v. Amato, 72 N.Y.2d 288 (1988)), which had barred UM coverage under similar circumstances. Ins. Law 3420(f)(1) and (f)(2), which provide for mandatory UM coverage and optional SUM coverage, respectively, do not define "motor vehicle." The preceding provision,

Ins. Law §3420(e), which requires automobile insurance policies to insure against civil liability for death or injury sustained as a result of negligence in the operation or use of a ”motor vehicle,” does refer to ”a motor vehicle or a vehicle as defined in [VTL 388(2)].” Vehicle and Traffic Law §388(2) states that a ”vehicle” means a ”’motor vehicle’...except fire and police vehicles.”

Amato had previously reasoned that it would be illogical to require the City to provide UM coverage whereas there is no legal obligation to insure police vehicles for death or bodily injury. The Court of Appeals stated that SUM is ”just a variant” of UM under subsection (f)(1) of the same statute. Judge Pigott in his dissent noted that Amato recognized that officers may make a claim against their own UM policy, and the officer here is seeking coverage from the driver’s personal policy, not the City. ■

“DANGER INVITES RESCUE”

Encompass Indemnity Co. v. Rich
New York Appellate Division
2015 NY Slip Op 6432
(August 5, 2015)

A firefighter successfully obtained SUM coverage for injuries sustained while rescuing a driver who was trapped inside a vehicle after colliding with a utility pole. The driver's automobile insurer paid the firefighter its policy limits, and the firefighter sought SUM from his own automobile insurer. SUM endorsements provide coverage only when the injuries are caused by an accident arising out of the underinsured motor vehicle's ownership, maintenance or use. Negligence in the use of the vehicle must be a proximate cause of the injury to warrant the coverage. Here, the driver had placed himself in a perilous situation which invited rescue by the injured party. ■

COLLISION WITH HORSE

Fiduciary Ins. Co. v. American Bankers Ins. Co. of Fla.
New York Appellate Division
2015 NY Slip Op 6343
(July 29, 2015)

Petitioner, insurer for a taxi which collided with a horse that bolted into traffic, filed a demand for mandatory arbitration for reimbursement of payments made to the rider. Respondent provided no-fault coverage under a commercial liability policy to the owners of the stables where the horse was boarded; the policy only covered accidents arising out of the use of "mobile equipment," defined as various types of machinery not generally used for travel on public roads, which would not include an animal which was not even owned by the inured stables.

The arbitrator held that the petitioner could not obtain reimbursement from Respondent because it failed to prove that Respondent was a motor vehicle insurer that could be held liable under Insurance Law 5105, and that the appropriate remedy, now time-barred, would have been litigation. Upon Petitioner's application to vacate the decision, the court held, as affirmed by the Appellate Division, that the arbitrator had authority to determine this threshold issue, regardless of Respondent's non-appearance at arbitration. Although the arbitrator's authority extends only to issues actually presented by the parties, lack of coverage is not an affirmative defense. Here, Respondent neither consented to arbitration nor was an insurer subject to the statutory requirement to submit to mandatory arbitration. ■

MODE-OF-OPERATION RULE

Prioleau v. KFC, Inc.
New Jersey Supreme Court
Docket No. A-99-13
(September 28, 2015)

The NJ Supreme Court affirmed the vacating of the judgment obtained by Plaintiff for personal injuries she sustained at a KFC restaurant, having slipped on a greasy and wet floor en route to the restroom on a rainy day. The trial judge had instructed the jury with a charge based on the mode-of-operation rule, which relieves a business invitee of the obligation to prove that the business owner had notice of the dangerous condition that caused the accident. Such a rule, however, applies only to injuries sustained where the defendant conducts a self-service operation, an instance not present in the circumstances at bar. Because the erroneous charge may have determined the jury’s verdict, the Supreme Court held the error to be reversible, allowing defendant a new trial. ■

OFFICE UPDATE

Our office welcomes Associate Attorney **Robert P. Gammel**. Mr. Gammel (Fordham Law School, 2011) most recently served as an Associate at the Law Offices of Steven E. Savage. ■

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