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Legal News in Brief

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POLICYHOLDER WHO INTENTIONALLY OMITS A CHILD ON HIS OR HER INSURANCE POLICY WILL NOT BAR THE CHILD'S EQUITABLE ENTITLEMENT TO BENEFITS

NEW JERSEY
✓ POLICYHOLDER WHO INTENTIONALLY OMITS A CHILD FROM HIS OR HER INSURANCE POLICY WILL NOT BAR THE CHILD'S EQUITABLE ENTITLEMENT TO BENEFITS
✓ INAPPLICABILITY OF THE NO-FAULT STATUTE WILL NOT PRECLUDE COMMON LAW RIGHT OF SUBROGATION
NEW YORK
✓ THE POSTING OF AN APPEAL BOND BY A JUDGMENT DEBTOR DOES NOT CONSTITUTE AFFIRMATIVE INTERFERENCE WITH A MARSHAL'S COLLECTION PROCESS

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NEW JERSEY

POLICYHOLDER WHO INTENTIONALLY OMITS A CHILD FROM HIS OR HER INSURANCE POLICY WILL NOT BAR THE CHILD'S EQUITABLE ENTITLEMENT TO BENEFITS

Rutgers Casualty Insurance Company v. LaCroix
Supreme Court of New Jersey
A-128 (May 14, 2008)

The New Jersey Supreme Court ruled that where an eighteen-year-old child is injured while driving her parent's automobile, she will not be barred from recovery of PIP benefits, even though her father materially misrepresented that he had no further household residents in his insurance application. Although the material misrepresentation entitled the insurance company to rescind its insurance policy with the father, equity necessitated payment of the benefits to the child as an innocent party.

While purchasing an insurance policy from Plaintiff Rutgers Casualty Insurance Company (hereinafter "Rutgers"), Defendant Robert LaCroix intentionally failed to disclose that his youngest daughter Chrissy lived in his household, so as to secure lower premium payments. Rutgers learned the truth after Chrissy LaCroix, also a defendant, sustained injuries in an automobile collision and a PIP claim was filed on her behalf. Plaintiff sued for a declaration that the policy was void *ab initio* and that the insurance company was therefore not obligated to pay any benefits to Chrissy under that policy. The Superior Court declared at the end of trial that the policy was void and that Chrissy was not entitled to any related benefits. The Appellate Division reversed in part, finding Chrissy to be "an innocent party entitled to...compulsory PIP coverage" under the void policy.

The Supreme Court affirmed the Appellate Division's decision, remanding the matter to determine the amount of compulsory PIP coverage which Chrissy was entitled to pursuant to options set forth in N.J.S.A. 39:6A-4.3. The Court indicated the general statutory rule which classifies PIP coverage for the named insured and family members residing in the household, in addition to other persons sustaining bodily injury while using the vehicle of the named insured with said insured's permission. The latter group is usually afforded PIP payment even in the event of lawful rescission of the underlying policy for material misrepresentations made by the policyholder. Notably, this equitable remedy is unavailable to a spouse, as he or she is presumed to be a "responsible adult" in a "unique position" to know of his or her spouse's insurance-related matters. By contrast, a young, dependent child living with her parents, of recent driving age, and having recently received her license, trusts her parents to properly insure her when she operates their vehicle; the trial record here indicated that Chrissy was largely ignorant as to her father's automobile insurance. Thus, the Court upheld Chrissy's entitlement to benefits.

INAPPLICABILITY OF THE NO-FAULT STATUTE WILL NOT PRECLUDE COMMON LAW RIGHT OF SUBROGATION

Pena v. Drive Master Co., Inc.
Superior Court of New Jersey, Law Division
Unpublished Opinion: Docket Nos. ESX-L-4529-05; ESX-L-5877-06
Decided May 7, 2008; revised May 13, 2008

The Superior Court, Law Division in Essex County held last month that although an insurance company cannot directly recover Personal Injury Protection (PIP) benefits from an out-of-state corporation that allegedly manufactured a defective product, the insurer can still recover same under a common law right of subrogation.

Plaintiffs in this action are New Jersey residents who suffered severe injuries when their vehicle suddenly caught fire during

their travel in Florida in August, 2004. They brought this action under the premise that Defendants manufactured or installed a defective wheelchair lift and doors in the vehicle, causing a puncture in the gas tank that resulted in their injuries, including one fatality. Pursuant to their insurance policy, Travelers of New Jersey (hereinafter "Travelers") sued the manufacturers in a consolidated action so as to recover PIP benefits which it had paid its insureds. Judge Francine Scott, J.S.C. denied Drive Master, Inc.'s motion to dismiss, determining that N.J.S.A. 39:6A-9.1 (more commonly known as the "no-fault statute") did not bar a right of subrogation against said defendants. Drive Master moved for reconsideration, thereafter joined in its motion to dismiss by all other defendant-manufacturers who were subsequently sued in this action.

The no-fault statute provides, in pertinent part, that "[a]n insurer...paying...personal injury protection benefits...as a result of an accident occurring within this State, shall, within two years of the filing of the claim, have the right to recover the amount of payments from any tortfeasor who was not, at the time of the accident, required to maintain personal injury protection...under the laws of this State...." As the accident occurred in Florida, all parties agreed that the no-fault statute does not apply. Judge Goldman, J.S.C., determined in accordance with case law that the statute does not limit an insurance carrier to such remedies therein. Policy dictates that where said carrier be unable to bring a subrogation action at the least, "tortfeasors not required to maintain PIP coverage would be able to benefit from their own negligence and shift the cost of PIP eligible expenses to the PIP insurer of the party harmed."

The court further decided whether Travelers' claim was barred by the evidentiary rule of N.J.S.A. 39:6A-12, which prohibits the introduction of evidence of the amounts the insurer paid its insureds. Said rule, which targets double recovery by the insured, provides that "[e]xcept as may be required in an action [brought pursuant to the no-fault statute], evidence of the amounts collectible or paid...is inadmissible in a civil action for recovery of damages for bodily injury by such injured person." This statute had been amended in response to prior case law which inequitably found that this statute, applicable to the insured, applied equally to the insurer, as the insurer could enjoy no greater rights to recovery than could its insured. In response to this ruling, the Legislature had enacted N.J.S.A. 39:6A-9.1 so as to enable recovery of PIP benefits arising out of New Jersey accidents, presuming that the common law right of subrogation would enable recovery from accidents occurring outside the State. Thus, the insurance carrier would ordinarily be permitted to submit evidence of payments in this subrogation action. Because the actions brought herein by the insureds and the insurer are consolidated, the court recommended circumventing the rule by several options: stipulating the paid amounts to avoid submitting them into evidence; trying the insureds' and the insurer's actions separately; or instructing the jury as to the extent that such expenses could be considered in their verdict.

NEW YORK

THE POSTING OF AN APPEAL BOND BY A JUDGMENT DEBTOR DOES NOT CONSTITUTE AFFIRMATIVE INTERFERENCE WITH A MARSHAL'S COLLECTION PROCESS

Solow Mgt. Corp. v. Tanger
New York Court of Appeals
2008 NY Slip Op 03516 (Apr. 24, 2008)

The Court of Appeals held that the posting of an appeal bond by a judgment debtor after a marshal has executed a levy upon the judgment debtor's assets does not constitute affirmative interference with the marshal's collection process and thus does not entitle the marshal to poundage fees.

The underlying judgment was for rent arrears against tenants. Pursuant to the judgment awarding attorney's fees, the landlord-plaintiff attempted to enforce the judgment by serving a restraining order upon assets held by Merrill Lynch on behalf of the tenant-defendants. One day after the marshal served execution upon Merrill Lynch pursuant to Plaintiff's request, the defendants filed an appeal bond with the Supreme Court, thus staying all enforcement proceedings. Ten months later, the Appellate Division reversed the Supreme Court's award of attorney's fees. After the restraint upon Merrill Lynch was removed, the marshal released the assets except for the amount of poundage fees that he claimed.

The Court of Appeals affirmed the Appellate Division's decision, finding that the marshal was not entitled to poundage fees. New York CPLR 8012(b)(1) provides that "[a] sheriff is entitled, for collecting money by virtue of an execution,...to poundage...." The marshal did not collect any monies pursuant to the levy; thus, recovery of same is possible only in one of two possible statutory exceptions, either when "a settlement is made after a levy by virtue of an execution" or in the event that the "execution is vacated or set aside." As neither instance applied to the facts in this case, the marshal turned to a third exception, rooted in case law: "when there has been affirmative interference with the collection process, thus preventing a marshal from actually collecting the levied assets through some affirmative action." Despite the marshal's reliance on this exception, the Court found that it did not apply either. An appeal bond only mandates a temporary hold on all enforcement actions until the merits of the appeal are determined. Had the defendants lost their appeal, the marshal's levy would have remained unaltered. Indeed, the Court reasoned, litigants would be deterred from applying for judicial review by the prospect of incurring poundage fees. Thus, the Court upheld the denial of poundage fees.

MATERIAL ISSUES OF FACT EXIST IN AUTO ACCIDENT

Torbor v. Bradnock
Superior Court of New Jersey, Appellate Division
Unpublished opinion (Decided May 12, 2008)

Defendant in an automobile collision case moved for summary judgment, claiming that Plaintiff caused the accident by failing to stop at a stop sign before proceeding into the intersection, thereby causing the collision. The defendant also claimed that he did not see Plaintiff's vehicle until it was about ten feet away. Plaintiff claimed that she had stopped at the sign and looked for about 15-20 seconds before proceeding into the intersection. On Plaintiff's appeal, the Appellate Division reversed, finding material issues of fact existed as to whether Defendant himself had taken proper precautions prior to the accident and whether he had taken reasonable measures to avoid it as it occurred. The Appellate Division emphasized that "[t]he duty of reasonable care by the operators of motor vehicles on our roadways is mutual and reciprocal and it 'includes making reasonable observations for traffic traveling on an intersection street." The case was thus reversed and remanded for trial.

Brief Latin:

***Ab initio*:** Latin from "from the beginning," usually applied retroactively to negate legal status or documentation as if its legality never existed.

- Black's Law Dictionary