Legal News in Brief

News in a flash for Subrogation and Defense Adjusters

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Toll on Accrual of Statutory Interest on Overdue No-Fault Claims Applies to Claims Submitted by Either Policyholders or Their Medical Providers

East Acupuncture v. Allstate Ins. Co.
New York Appellate Division
2009 NY Slip Op 01191
(February 17, 2009)

Plaintiff, a health care provider treating several individuals injured in automobile accidents, submitted claims for no-fault benefits to Allstate, after receiving assignments of the individuals' no-fault benefits. During suit, the parties entered into a stipulation of settlement, whereby Plaintiff was to receive, in part, 100% of interest "*beginning either from [30] days after insurer received the claim or the date [Plaintiff's] complaint was filed to be* DETERMINED BY THE COURT." Regulation 11 NYCRR 65-3.9(c) provides: "[i]f an applicant does not...institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits, interest shall not accumulate on the disputed claim...until such action is taken." Here, the Appellate Division determined that the toll applies to both policyholders themselves and their medical providers, notwithstanding Plaintiff's assertion that the abovementioned statute uses the terms "applicant" and "assignee" elsewhere, which presumably would indicate an exclusion of "assignee" in the immediate provision. The Court found that "applicant" is a generic reference to both providers and injured persons and that no-fault regulations do not employ the term consistently to refer only to those injured persons themselves. Moreover, a finding otherwise would encourage the provider to intentionally delay action so as to accrue greater interest on the no-fault claim rather than promptly resolving it.

Commercial Liability Policy Applies to Negligent Storage of Work Materials

Nova Cas. Co. v. Cent. Mut. Ins.
New York Appellate Division
2009 NY Slip Op 00617
(February 5, 2009)

Plaintiff filed suit for a declaration that its policy exclusions exempted Plaintiff from indemnifying a painting business owner for a fire occurring on homeowners' premises. As contracted, the business had applied a protective sealant to the cedar wood siding of the exterior of the house; thereafter, the workers placed on the homeowner's porch the drop cloths which caught drips of the sealant. The chemicals on the cloths spontaneously combusted, thereby damaging the house. The Appellate Division reviewed the two exclusions within the business' commercial liability policy; the first exempted coverage for any "bodily injury and property damage arising out of spray painting operations." As the business had applied a sealant known as Cabot Clear Solution, rather than paint, this exclusion did not apply; that the workers had both

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sprayed the sealant and applied it with a brush did not clearly distinguish the latter usage of sealant as "painting" under the policy exclusion. The second exclusion exempted coverage for any damage "to that specific part of real property on which work is being performed...if the 'property damage' arises out of such work." Here, the fire did not arise out of improper performance of the contracted-for services; rather, the workers had negligently stored their materials and equipment elsewhere after said services were conducted. Thus, the policy applied to the incident, entitling the business to coverage.

No PIP or UM Coverage for Passenger Who Did Not Know Vehicle was Stolen

Hardy v. Abdul-Matin
New Jersey Supreme Court
Docket No. A-112-07
(March 5, 2009)

The claimant, a fourteen-year-old, was injured when riding a vehicle with two other friends, one of whom subsequently pled guilty to receiving the vehicle as stolen property. Upon the claimant's grandmother's suit for a declaratory judgment of entitlement to Personal Injury Protection (PIP) and Uninsured Motorist (UM) benefits, Liberty Mutual Insurance Company successfully moved for summary judgment. The Supreme Court ultimately upheld the trial court's decision. N.J.S.A. 39:6A-7(b)(2) provides that an insurer may "exclude from...[PIP] benefits...any person having incurred injuries or death, who, at the time of the accident...was occupying or operating an automobile without the permission of the owner or other named insured." Liberty consistently forbade coverage for similar persons in its express policy. The policy also excluded UM coverage when the insured has a "reasonable belief" that the insured's presence in the vehicle was not with the owner's permission. Initially, the Appellate Division had recognized an additional, unwritten, scienter requirement in the above-cited statutory provision, so that the claimant must also know that the vehicle he is riding in is stolen to disqualify for PIP benefits. However, the Supreme Court indicated that the preceding provision, 39:6A-7(a), already sets forth two ways in which a person is excluded from benefits, both of which involve a knowing wrongdoing by the insured; thus, no scienter requirement need exist. Thus, Plaintiff was not entitled to any benefits for his personal injuries.

No UM Benefits for Victim of a Drive-By Shooting Who Was Not Operating Her Own Vehicle

Livsey v. Mercury Insurance Group
New Jersey Supreme Court
Docket No. A-96-07
(February 19, 2009)

Plaintiff was returning to her vehicle after a purchase at a grocery store when she was shot in the back. Witnesses observed a vehicle fleeing the scene, though the origin of Plaintiff's injury was never confirmed. Plaintiff brought a declaratory judgment action against her automobile insurance carrier, which denied UM coverage. In finding for the defendant, the Supreme Court determined that a drive-by shooting is not an "accident" arising out of the "ownership, maintenance, operation or use" of a motor vehicle, as required by N.J.S.A. 17:28-1.1(a). The Court distinguished its ruling from prior case law which applied PIP to drive-by shootings, as the applicable statute provides for such coverage for injuries "caused by...an object propelled by or from an automobile." By contrast, the UM statute cited above requires a substantial nexus between the injury and the use of the vehicle to enable such coverage; case law indicates that a passenger's intentional use of a gun from a moving vehicle is not a natural and probable incident or consequence of the automobile's use. Whereas PIP aims at ensuring "the broadest coverage possible" for automobile-related accidents, UM coverage intends to protect insured motorists from uninsured financially irresponsible drivers. As such, UM coverage cannot apply to the incident here.

Brief Latin:
***Scienter*:** Latin for "knowingly," usually indicating a defendant's previous knowledge of the underlying facts giving rise to the cause of action or of which the defendant had a duty to guard against.
- Black's Law Dictionary