

Legal News in Brief

News in a flash for
Subrogation and Defense
adjusters

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DELIVERY MEN, WATCH YOUR STEP: N.J. APPELLATE DIVISION FINDS VISIBLY POOR SERVICE RAMPS TO BE IN ACCORDANCE WITH DUTY OF REASONABLE CARE.

NEW JERSEY

- ✓ DUTY OF REASONABLE CARE
- ✓ PIP LIABILITY FOR INSURANCE CARRIERS
- ✓ NEGLIGENCE - PREMISES LIABILITY
- ✓ VERBAL THRESHOLD
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Law Offices of Jan Meyer & Associates, P.C.

New Jersey Office:
1029 Teaneck Road
Second Floor
Teaneck, NJ 07666
☎ (201) 862 9500
Fax (201) 862 9400

jmeyer@janmeyerlaw.com

New York Office:
50 East 42nd Street
Suite 1809
New York, NY 10017

Jan Meyer

Richard A. Hazzard
Noah Gradofsky
Stacy P. Maza
Terri DeVito
Gregory J. Guido
Charles McBain

Of Counsel:
Joshua Annenberg

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Jan Meyer, Esq.
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Please call me to discuss
any legal issues or for a
clarification of current law.

NEW JERSEY

DUTY OF REASONABLE CARE

Derkacs v. Pathmark Stores

(Unpublished Opinion)

N.J. Appellate Division

July 12, 2006

A delivery man bringing baked goods to Pathmark sued the store after sustaining injuries on its delivery ramp, claiming that the defendant had breached the Duty of Reasonable Care it owed him as a business invitee. However, this delivery man was dismissed by way of a summary judgment in the defendant's favor. The ruling was brought on the grounds that the condition of the ramp had been clearly visible and identifiable to the plaintiff, and defendant did not breach any duty owed to him.

PIP LIABILITY FOR INSURANCE CARRIERS

Liberty Mutual Ins. Co. v. Thomson

N.J. Appellate Court

May 3, 2006

The plaintiff in this case sought to recover PIP payments it made to its insured, following an automobile accident involving the vehicle of the insured and that of Hertz Rental Corporation.

The Hertz vehicle was self insured, as permitted by law, and registered in New York, where it was to be returned by an Australian resident who had rented the car in North Carolina. As per contractual acknowledgment, Hertz recognized its legal responsibility, as a self insured, to provide the minimum level of insurance coverage determined by the jurisdiction in which any accident might

take place. Insurance carriers doing business in New Jersey, where the accident occurred, are required to provide PIP coverage to cars registered in New York. Therefore, Hertz is obligated to provide PIP coverage to all renters driving in New Jersey.

New Jersey law however, would only allow for an insurance carrier to recover PIP payments from the tortfeasor in a situation where the latter had either no obligation to carry PIP coverage, or did have said obligation, but failed to comply.

The plaintiff's motion to compel arbitration was therefore appropriately denied. Hertz, while self insured, acts as any other insurance carrier, and is not liable to reimburse another carrier for PIP payments.

NEGLIGENCE - PREMISES LIABILITY

Darby v. Presbyterian Church of

Absecon

(Unpublished Opinion)

N.J. Appellate Division

April 27, 2006

Defendant was sued for injuries the plaintiff suffered after falling on grass growing out of the sidewalk bordering a cemetery owned by the defendant. Argument was made that the grass growing from the sidewalk was caused by the defendant's construction on the sidewalk. However, the judge found plaintiff's claim--that the work on the sidewalk may have acted as a catalyst in the growth of the grass--unsustainable.

VERBAL THRESHOLD

Davis v. Mariani
(Unpublished Opinion)
N.J. Appellate Division
April 28, 2006

_____New Jersey's appellate court overturns the initial trial judgement, and finds that a tear of the thumb's ulna collateral ligament does in fact constitute a permanent injury, satisfying the verbal threshold.

PROPERTY DAMAGE

In re Complaint of Weeks Marine, Inc.
(Unpublished Opinion)
U.S. District Court
June 30, 2006

During Weeks Marine's construction on Camden's USS N.J. Memorial Pier, an underwater landslide broke out and led to the collapse of two of the pier's berths. The plaintiff recovered \$7 million in damages from its insurance company, as well as the company's rights to subrogation.

Plaintiff then sought to recover damages from the defendant--who was supervising the pier's construction--utilizing the subrogation rights it had acquired from its insurance carrier. Further, plaintiff claimed that said subrogation rights notwithstanding, it retained an independent right to sue for the losses not covered.

**NEGLIGENCE -
LANDLORD/TENANT**

Pirrello v. Moore
(Unpublished Opinion)
N.J. Appellate Division
July 26, 2006

After falling in a hole on the property rented to him by Defendant, Plaintiff sought compensation for medical expenses, pain, suffering and loss of enjoyment of life. The eleven day trial ended with a jury verdict awarding the Plaintiff for medical expenses only. The appellate court dismissed this verdict for being inconsistent, and called for a new trial.

Defendant's motion for summary judgment was granted, as the judge found plaintiff to have been fully compensated and had no right to double recovery.

**PROFESSIONAL LIABILITY
INSURANCE:
POLICY RESCISSION**
American Guarantee & Liability Ins.
Co. v. Mongelli
(Unpublished Opinion)
U.S. District Court
June 29, 2006

Plaintiff sought to rescind three professional liability policies insuring the defendant, who, in his policy application, failed to disclose information pertinent to his eligibility as a policy candidate. Prior subjection to disciplinary proceedings, and circumstances from which a foreseeable claim could arise against the defendant for breach of professional duty--both mitigating factors to insurance policy criteria--were concealed from the plaintiff.

Plaintiff's first motion for rescission was granted. But its second, seeking exoneration from defending and indemnifying defendant in certain actions, was dismissed. The latter judgment was brought on grounds that plaintiff had never specifically pleaded the claims in its complaint. Plaintiff can, however, amend its complaint to include such claims.

All case summaries are solely the product of this office. Material gathered from public sources, published and unpublished cases, NJ Law Journal, NY Law Journal, and NY State Law Digest. The reviews herein do not constitute legal advice. For legal advice kindly contact our office.

STAFF ADDITIONS

We are pleased to have recently hired **Charles McBain**, who is a graduate of Pace School of Law in White Plains, New York. Charles has been admitted to practice in New Jersey and awaiting the New York final swearing in ceremony.

**NEGLIGENCE - PREMISES
LIABILITY**
Bierylo v. Santos
(Unpublished Opinion)
N.J. Appellate Division
July 25, 2006

Plaintiff fell on a slab of public sidewalk which had been raised one inch by roots spreading from a town-planted tree. Suit was brought against the residential landowners, whose property bordered the sidewalk, to recover personal injury damages. Judge found the defendants to have no liability for Plaintiff's injuries.

PIP COVERAGE
Loyd v. Lee
(Unpublished Opinion)
N.J. Appellate Division
July 25, 2006

The estranged wife of the Plaintiff sought PIP benefits under her husband's Rutgers Casualty Insurance Company policy. The trial judge ruled that RCIC was required to pay these benefits since the insurance application failed to define the term "separated," and the Plaintiff was still a "transient" resident of the household. The appellate court upheld this ruling and ordered RCIC to pay \$5,256 in counsel fees as well.

Brief Latin:
BREVIA AMICABILIA
"Friendly Writs"
Writs brought by agreement or consent of the parties.
- Black's Law Dictionary

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(201) 862 9500
jmeyer@janmeyerlaw.com

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