

# Legal News in Brief

News in a flash for  
Subrogation and Defense  
adjusters

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The Law Offices of Jan Meyer & Associates, P.C.

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

**NEW JERSEY**

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### 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**(Unpublished Opinion)**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, his claim 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.

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**VERBAL THRESHOLD**

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**(Unpublished Opinion)**  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

New Jersey's appellate court overturns the initial trial judgment, 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.

**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. Also a new addition to our firm is **Saima Malik** a graduate of London's Guildhall*

**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.

*University and she is a Solicitor (what we Americans call lawyer) admitted to practice before the Supreme Court of England and Wales.*

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

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