

# CALENDAR CALL

Volume 2, Issue 3

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## BG&S - KEEPING THE RECORD STRAIGHT

A recent decision of the Appellate Division, First Department, in a case where our office represented the carrier, expands an insurer's right to severance when a plaintiff tries to bundle numerous different no-fault claims in a single lawsuit.

In Radiology Resource Network, P.C. v. Fireman's Fund Insurance Company, 2004 N.Y. App. Div. LEXIS 13164, the First Department found that the lower court had properly exer-

cised its discretion under CPLR section 603 in granting Fireman's Fund's motion to sever 68 different no-fault claims constituting this particular lawsuit. The 68 claims had all been assigned by 68 different assignors to one plaintiff, a vendor of medical services. The Appellate Division noted that the no-fault claims at issue arose from 68 different accidents. The Court found that even if all of the insurance policies were identical, each claim

would raise unique legal and factual issues relating to such matters as the validity of the assignments, the necessity and reasonableness of plaintiff's services in light of each assignor's medical condition, defendant's receipt of bills from plaintiff, and the sufficiency of the no-fault forms that were submitted. The validity of such defenses, in the Court's view, would depend on the particular facts relating to a particular claim.

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## HOW THE MIGHTY HAVE FALLEN

A former Fairfield County Pennsylvania Municipal Court Judge was found guilty of a scheme to defraud an insurance company, and was sentenced to more than 17 years in prison.

Judge Don McAuliffe was accused of conspiring to burn down

his home and collecting \$235,000 from his insurance carrier.

Although Judge McAuliffe still maintained his innocence at sentencing, the trial judge directed he pay restitution of the \$235,000 and a fine of \$150,000 in addition to the prison sentence.

One of the investigating officers stated "It's a shame when a citizen of the country does something like this, but when a judge does a crime like this it's an outrage."

This is just another example of why a claims examiner must remain ever vigilant.

## REASONABLE MAY NOT BE ENOUGH

In a reported case, an insurance carrier disclaimed coverage on the grounds of the owner's noncooperation. The injured party in the other car sought benefits under the uninsured provisions of the vehicle he was in. That carrier moved to stay arbitration and the trial court denied the stay.

The Appellate Division reversed the finding of the trial court

which had conducted a framed issue hearing and made a finding that the insured's "failure to cooperate was willful".

However, the appellate court held that the numerous letters sent by regular and certified mail, including one that was signed for, and a personal (unsuccessful) visit to the residence was insufficient to establish that the attitude of the insured was willful.

The appellate court held that the insurer "should have ascertained, by on-site visits, whether and when the insured lived in the various locations it had on file, and whether forwarding addresses were available..."

There are just some occasions when it appears nothing satisfies the court. This is why it is so important to do everything that is reasonable and more.

## DENIAL OF CLAIM ~ PRECISE ~TIMELY ~ACCURATE~

The courts are consistently finding that any failure to comply with every requirement of the regulations as found by the courts, regardless of how minor it is, will result in the granting of summary judgment to the claimant.

Thus the failure

to timely ask for proof of documented costs of medical supplies negates a denial by the insurer.

Insured's failure to appear for EUO was not grounds to deny the claim or even to toll the 30 days to pay.

Failure to properly and fully supply all

data on denial of claim form renders the denial ineffective and it cannot be corrected.

A carriers failure to precisely comply with the follow-up provisions of the verification requests after a formal claim is filed will result in any denial being held ineffective

## STUPID HUMAN TRICKS

A New Jersey jury took 15 minutes to find a couple guilty of faking the husband's drowning to collect a million dollar life insurance policy.

A women reported her husband had vanished after going in for a swim off a Long Branch beach.

While Police, Coast Guard, and hundreds of volunteers searched for the lost man without success, the husband was taking a train to California.

Investigators soon discovered that they had just taken out a large policy. Apparently not real-

izing that cell phones can be intercepted, she spoke to her "dead" husband several times while making a claim from his life insurance policy.

At trial he claimed to have suffered amnesia although he apparently still remembered his wife's cell number.

## KEEPING THINGS STRAIGHT

*Continued from page 1*

Just because the claims were for services provided by the same no-fault vendor, and were being asserted against the same insurance company, did not change the fact that individual issues were likely to predominate in the resolution of each claim, and that the claims were likely to raise few, if any, common issues of law or fact.

The Radiology Resource Court found that trying all 68 no-fault claims together would be unwieldy and would create a substantial risk of confusing the trier of fact. In the Court's view, the interests of convenience and avoidance of prejudice was best served by severing the claims.

The First Department analyzed the two leading cases on severance of no-fault claims,

Hempstead General Hospital v. Liberty Mutual Insurance, 134 A.D.2d 569, 521 N.Y.S.2d 469 (2<sup>nd</sup> Dept. 1987) and Mt. Sinai Hospital v. Motor Vehicle Accident Indemnity Corp., 291 A.D.2d 536, 738 N.Y.S.2d 247 (2<sup>nd</sup> Dept. 2002). The Hempstead case held that, under the particular circumstances presented, the lower court acted within its discretion in denying a motion to sever 29 assigned no-fault claims. In the view of the Radiology Resource court, the decision in Hempstead does not stand for the proposition that the granting of a severance motion in a case involving more than twice as many assigned claims is an abuse of judicial discretion warranting reversal on appeal. The First Department found that Hempstead must be read in light of

the Mt. Sinai decision. In Mt. Sinai, the Second Department found that the lower court also acted within its discretion in granting a motion to sever five assigned no-fault claims, when those claims arose from five different accidents on five different dates and had no relation or similarity to each other, other than the fact that the claims were for no-fault benefits.

Radiology Resource will undoubtedly be cited by counsel for other insurance carriers rightly seeking to separate bundled no-fault lawsuits brought by medical service providers seeking to limit their court costs. Increased court fees in this respect could have somewhat of a chilling effect on the filing of no-fault lawsuits. Time will tell.

## JURY KEPT EYE ON THE BALL

In a matter recently tried in the District Court for the County of Suffolk, a jury was asked to determine whether a cervical MRI provided to a no-fault patient was medically necessary. Allison Goldstein of BG&S represented the defendant.

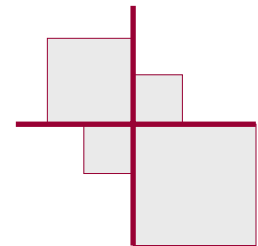
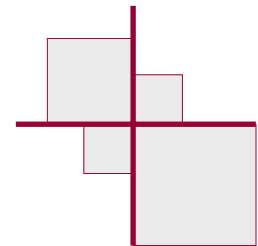
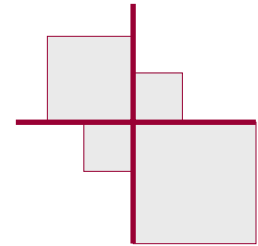
The only witness to testify was the chiro-

practor who performed a peer review and opined that the MRI was not necessary. Upon cross-examination he acknowledged that the only medical documentation he reviewed was a one page letter from the assignor's treating physician.

During closing arguments Ms. Goldstein

stressed that the plaintiff had been given ample opportunity to submit additional information to support its position. Yet, in response, only the one page letter was submitted.

The Jury agreed with our expert and entered a verdict for the defendant.



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**~HAPPY HOLIDAYS~**

We here at BG&S wish you and yours a happy holiday and a joyous and prosperous New Year.

In keeping with the holiday spirit we once again wish to highlight those who give selflessly of their time to help people in need throughout the year.

Our own Cheryl Anne Basile and Jennifer Taylor walked in an American Cancer Society Walkathon to raise funds to work towards a cure for cancer.

As a firm,

BG&S was successful in collecting over 220 lbs. of food which was donated to Long Island Cares. Long Island Cares distributes food to the homeless and the less fortunate. BG&S has collected more than 1200 lbs of food in the last six years of being involved with that organization.

In addition our staff started a toy drive and collected more than one hundred toys which we ultimately forwarded to the United States Marines Toys for Tots drive. It is hoped that in

our own small way, there will be a happier holiday season for some children who may not otherwise have had one at all.

Furthermore, BG&S successfully bid on a Fender guitar signed by Bruce Springsteen in order to make a donation to the "Hungerthon", a very worthy cause.

It has been long held that it is better to give than to receive. We here at Bruno Gerbino & Soriano, LLP could not agree more.