

CALENDAR CALL

Volume 3, Issue 2

BRUNO GERBINO & SORIANO, LLP

ALICE ~ WELCOME TO WONDERLAND

In a decision that rivals both the logic and fairness of the Queen of Hearts, a Judge in King's County Supreme Court held that a plaintiff is not required to prove that he suffered a "serious injury" in order to recover Supplementary Underinsurance Motorist Benefits (SUM), once a case had been settled for the policy limits.

The Court reasoned that inasmuch as the insurance carrier is the defendant, this is

not an action by one "covered person" against another "covered person" and therefore the threshold requirement does not apply.

The Court further supported its position by carefully analyzing section 3420 of the Insurance Law. That section deals with uninsured and underinsured coverage. The Court argued that this section only mentioned "serious injury" when dealing with uninsured

coverage, and therefore it was not a condition precedent to recovery under the underinsurance coverage endorsement.

This Judge also held, that as a matter of law, the underlying action...would not have settled for the policy limits if not for the existence of a "serious injury".

A first year law student would know enough not to make that argument.

THERE IS ALWAYS SOME HOPE ON APPEAL

In rejecting a trial Judge's prejudice against the insurance industry, an appellate court reversed his decision and sent the case back for a new hearing before a different judge.

The trial court heard the testimony of the claimant and stated "What more do I have to hear."

He found that the claimant had been the victim of a hit and run accident and had given the police the registration of a large SUV which was not insured, by error, when he was actually driving a small two door compact car which was insured. In order to reach this conclusion, the judge found

that the police officer, who was on the scene, did not notice the difference between a Nissan Pathfinder and an Acura Integra.

The appellate court simply rejected those findings as not being either fair or unbiased.

KEEP YOUR EYES OPEN

Defendant's counsel in a personal injury action noted that the plaintiff failed to comply with the filing requirements for commencing a lawsuit.

Although defendant's motion to dismiss was denied by the trial court, the Appellate Division reversed and dismissed the action. The appellate court found that because plaintiff

failed to pay the filing fee, the action was never properly commenced and must be dismissed.

In another example, defendant's counsel noted that the records of plaintiff's chiropractor were unsworn and therefore should not be considered. Additionally, the magnetic resonance imaging (MRI) reports were unsworn as well.

The trial court

held that it could consider those reports as sufficient evidence to deny the motion to dismiss.

The Appellate Division did not agree, and reversed the lower court and dismissed the case.

It is vitally important to always examine all papers for errors, omissions, or false statements.

INAPPROPRIATE ADVANCES NOT COVERED

A New York psychologist was sued by a job applicant who claimed that he made sexual advances toward her. The psychologist demanded that his insurer defend and indem-

nify, a request which the carrier declined.

The doctor brought a Declaratory Judgment action, and the case eventually came before the U.S. District

Court. That court found that the public policy of N.Y. precluded indemnification.

Accordingly, the psychologist was on his own on all counts.

STUPID HUMAN TRICKS

Do any of you want to earn extra credit?

Tramesha Fox, a high school teacher in Houston Texas, was arrested and charged with arson and insurance fraud after she reported her car stolen and it was found burned.

Ms. Fox allegedly enlisted the aid of two of her students, Roger Luna and Darwin

Arias, who were failing her class. She offered them passing grades in exchange for "torching" her car.

Investigators became suspicious after they discovered that Ms. Fox had purchased a new 2005 Toyota Corolla one week before she lost her 2003 Chevy Malibu on which she owed 20,000 dollars.

After checking

her cell phone records, the scheme started to unravel. Ms. Fox eventually confessed and named the two students. They were both charged with arson, which is punishable by up to 20 years in prison.

The lesson to be learned, is that it is better to burn the midnight oil studying for exams, then to burn your teacher's car in exchange for grades.

TIMING IS EVERYTHING

In just one, of all to many such decisions, the Appellate Division reversed the Order of the Supreme Court which had granted defendants motion to vacate its default. The primary reason for the reversal was because the insurance company failed to meet the strict time requirements of the no-fault regulations.

In the underlying case, a medical provider filed a claim for unpaid no-fault treatments which was granted on default against the carrier. The carrier's motion to vacate its default was granted and the plaintiff/medical provider filed an appeal.

The appellate court found that the carrier failed to comply with the exact timing protocols set forth in the no-fault regulations (see NYCRR 65.15 generally). That section requires the insurer to either pay or deny within 30 days. The section also provides for extensions, but only if the insurer stays within the strict guidelines of the regulation.

Inasmuch as the defendant in this case failed to either pay or deny the claim within 30 days, the appellate court held that the defendant could not establish a meritorious defense. Therefore, the court reversed the lower court and reinstated the default judgment in favor of the plaintiff.

In a case dealing with the alleged failure of an insurance company to disclaim coverage in a reasonable time, the Appellate Division held that a five month delay in disclaiming coverage is unreasonable as a matter of law.

In this Declaratory Judgment action the court held that the five month period from when the carrier first received notice from its insured that it wanted to be indemnified until the commencement of the action was deemed unreasonable as a matter of law. It should be noted that the carrier had sent a "Reservation of Rights" letter within one month of being notified. However, the court found that such a

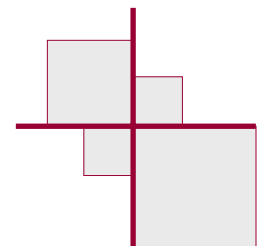
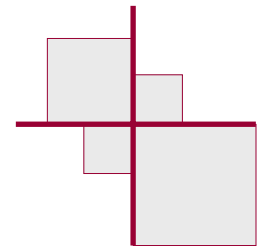
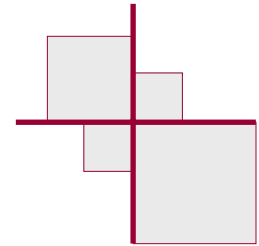
letter did not constitute an effective disclaimer for purposes of stopping the clock.

The court stated that an insurer should issue a prompt disclaimer and then seek a declaratory judgment concerning its duty to defend or indemnify.

Timeliness can certainly run against a claimant as well.

Under the insurance law, an injured party has the independent right to provide prompt notification to the carrier.

In a case involving the Public Administrator of Queens County, the Appellate Division reversed the trial court and found that the carrier was not obligated to defend or indemnify because the Public Administrator's office had waited more than five months, after being appointed, before even ascertaining the identity of the insurance company. The Court stated that the Public Administrator's office failed to show that it had acted diligently and expeditiously.



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BG&S SUES FOR RETURN OF MED PAYMENTS

BG&S commenced a lawsuit on behalf of several insurance carriers seeking reimbursement from a number of medical clinics that had been fraudulently billing the companies for years.

A careful and exhaustive investigation was undertaken in order to untangle the intentionally convoluted and misleading corporate structure of these particular medical clinics. Those investigators found that although the medical

clinic was allegedly owned by a reputable medical doctor, it was learned that the clinics were actually owned by another “doctor” whose medical license had been revoked.

Inasmuch as the ownership documents that were filed with the state apparently contained false and misleading information, the clinics themselves constituted a fraud.

These clinics were eventually shut down and the very

corporate entity was dissolved by the State of New York. Unfortunately, many carriers were directed to pay many hundreds of thousands of dollars to these clinics before the state closed their doors.

If this lawsuit, which is pending in Suffolk County, is successful in obtaining reimbursement of improperly paid medical expenses, then it could change the whole dynamic of medical no-fault fraud.