

\*\*\* HOT SHEET \*\*\*

**SOME RECENT CASES OF INTEREST BEFORE THE COURTS ON  
INSURANCE ISSUES**

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**Recent Decisions by the New Jersey Supreme Court**

Cumberland Mutual Fire Insurance Company v. Murphy, A-46-04 (decided May 23, 2005) *Lexis cite: 2005 N.J.LEXIS 582*

An equally-divided Court held that the "occurrence" in this case, the insured's 14-year-old son blinding a woman with a BB gun shot at her passing car, was an "accident" within the meaning of the homeowner's policy. The Court noted that reckless acts are not automatically excluded from coverage where there are questions surrounding intent when an injury occurs.

Robinson v. Coia, A-28-04 (decided March 29, 2005) *Reported at: 183 N.J. 25*

The Court considered the respective obligations of an insurer on a personal automobile insurance policy and a self-insured car rental company for injuries sustained by a third-party in an accident involving a rented vehicle. Since both the rental agreement and personal automobile policies had "other insurance" clauses, the Court held the two carriers to be co-primary and share liability equally.

Price v. New Jersey Manufacturers Insurance Company, A-26-04 (decided March 10, 2005) *Reported at: 182 N.J. 519*

The Court held that under the circumstances presented, the insurer was barred from raising the statute of limitations defense to the insured's claim for uninsured motorists benefits because the insurer failed to provide written notice that its investigation did not toll the running of the limitations period.

**Pending Cases Before the New Jersey Supreme Court**

Skeete v. Dorvius, No. 56,291 (awaiting decision) *See: 368 N.J.Super. 311*

The issue argued on January 4, 2005, is whether an automobile insurer is required to include in its declarations page notice of reductions in uninsured and underinsured coverage for certain passengers before such changes are effective.

DiProspero v. Penn, No. 55,983 (*unpublished opinion below/awaiting decision*)

The issue argued on November 29, 2004, is whether in order to satisfy the verbal threshold of the Automobile Insurance Cost Reduction Act of 1998, a plaintiff is required to demonstrate that the permanent injury suffered had a "serious impact" on his or her life.

Serrano v. Serrano, No. 56,164 (*awaiting decision*) **See: 367 N.J.Super. 450**

The issue argued on November 29, 2004, with DiProspero v. Penn, is whether the proofs presented by the plaintiff, who seeks damages arising from an alleged permanent soft-tissue injury, in opposition to the defendant's motion for summary judgment satisfy the verbal threshold standard of the Automobile Insurance Cost Reduction Act of 1998.

The Proformance Insurance Company v. Jones, No. 57,245 (*certification granted March 10, 2005/ awaiting argument*)

The Court will consider whether the business pursuits exclusion in the automobile insurance policy at issue is enforceable where the insured's initial permission was for business use, and the initial permittee allowed an unlicensed, second permittee to use the vehicle for business purposes.

Liberty Mutual Insurance Company v. Land (*no docket number available*)

The Court will review the question of the appropriate burden of proof under the New Jersey Insurance Fraud Prevention Act. The insurer contends the trial judge erred in instructing the jury that the burden of proof was clear and convincing evidence, rather than a preponderance of the evidence. The Appellate Division held that the proper burden of proof was clear and convincing evidence.

Ranallo v. Allstate Insurance Company, No. 57,799 (*petition for certification pending*)

The plaintiff seeks review from the Court of the Appellate Division's decision rejecting her request for reformation of her private passenger automobile insurance policy to include the no-limitation on lawsuit option, based on her allegation that the insurer's Buyer's Guide failed to adequately advise her of the consequences of her selection of the limitation on lawsuit option. The plaintiff also seeks to consolidate an action pending unheard in the Appellate Division with this matter, entitled Relli v. Liberty Mutual Fire Insurance Company, finding in favor of the insured on the same issue.

## Recent Appellate Division Decisions

### Firer v. Great American Insurance Companies (*unpublished/decided May 20, 2005*)

Based on Pinto v. New Jersey Manufacturers, 180 N.J. 151 (2004), upholding the validity of step-down clauses and rejecting the argument that the failure to list an individual as a named insured in a business policy creates an ambiguity or makes the coverage illusory, the court affirmed the denial of the plaintiff's motion for a declaration that the step-down provision in the plaintiff's employer's commercial automobile insurance policy was inapplicable to plaintiffs.

### Walcott v. Allstate New Jersey Insurance Company, Docket No. A-5569-03T1 (*decided April 13, 2005*) **Reported at: 376 N.J.Super. 384**

The issue the court considered is whether New Jersey's no fault insurance law bars an insured motorist who was intoxicated at the time of the accident from collecting personal injury protection benefits for injuries she sustained. The insurer refused to pay the plaintiff's claim pursuant to N.J.S.A. 39:6A-4.5(b), because she was convicted of DWI. The court rejected the insurer's claim, finding no statutory basis to bar the recovery of PIP benefits.

### McClellan v. Feit, Docket No. A-3501-03T1 (*decided April 11, 2005*) **Reported at: 376 N.J.Super. 305**

The court held that under the policy at issue, the insurer had no duty to defend or indemnify the insureds in a civil action brought against them seeking the recovery of remediation costs allegedly caused by their intentional misrepresentation that there were no underground oil storage tanks on residential property they had sold some five years earlier. The court remanded the case to the trial court, however, to consider whether a negligent misrepresentation claim may be covered under a prior policy.

### Taylor v. New Jersey Department of Banking and Insurance, Docket No. A-175-03T1 (*unreported/decided March 2, 2005*)

The court reversed and remanded a decision by the New Jersey Department of Banking and Insurance upholding an insurer's nonrenewal of a homeowner's policy based on "loss history," where the Department did not provide sufficient detail for its finding of a proper nonrenewal and did not address N.J.S.A. 17:36-5.20(a), which limits the use of weather and theft-related losses as a basis for nonrenewal, in its decision.