Law Offices
**METHFESSEL & WERBEL**
----------A Professional Corporation----------

# CASE UPDATE

January 2003

First we took Manhattan . . .

## METHFESSEL & WERBEL EXPANDS ITS NEW YORK OFFICE

We would like to begin 2003 with a word of thanks to our business partners, whose continued confidence in the quality and cost-effectiveness of our work has prompted significant growth over the past year. Our New York office in particular has expanded rapidly, culminating in our relocation to 450 Seventh Avenue, Suite 1400, New York, New York 10123.

Our new offices at 450 Seventh Avenue, Suite 1400, New York, New York 10123 provide more than twice the physical space of our prior facilities at 11 Penn Plaza. Even more importantly, the newly-enhanced technological infrastructure will allow our New York attorneys and staff to interface with our home office in New Jersey on a much more effective level. These technological advances promise to increase productivity at all levels of our organization.

Over the coming months we look forward to implementing further technological innovations that will enable our business partners to retrieve information and navigate the history and current status of their claims nearly instantaneously. We pride ourselves on the pursuit of technological improvements for the benefit of our clients and look forward to sharing a host of exciting developments with you in 2003. Happy New Year!

## TOXIC MOLD LITIGATION

At the heart of the national hysteria over toxic mold claims lies the June 2001 jury verdict in Ballard v. Fire Insurance Exchange, a highly publicized Texas case in which two homeowners were awarded $32 million in

### TABLE OF CONTENTS



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damages based on their insurer's negligent adjustment of a large claim for water and mold damage. On December 19th the Texas Court of Appeals in Austin effectively reduced the net verdict to approximately $4 million. The Court applied Texas law to hold that while there was sufficient evidence presented to demonstrate a breach of the duty of good faith and fair dealing, the plaintiffs failed to present sufficient evidence of fraud on the part of FIE to support an award of punitive damages. The appeals court also affirmed the trial judge's refusal to permit testimony from plaintiffs' proposed medical experts due to lack of scientific reliability.

While the Ballard appellate decision has no direct bearing on claims and litigation outside of Texas, it does return a degree of sanity to the national debate over mold by advancing the legal, medical and scientific arguments we articulate on behalf of our clients in all disputed cases involving mold. Any inquiries regarding Ballard or mold claims in general should be directed to any member of our complex litigation team.

## AUTO INSURANCE/VERBAL THRESHOLD

As reported in our Case Alert of November 11, the Appellate Division recently published two significant decisions which effectively strengthen the "new" verbal threshold under the Automobile Insurance Cost Reduction Act of 1998 (AICRA).

Rios v. Szivos and James v. Torres affirm the continued vitality of both the summary judgment model and the "serious impact" requirement imposed by the landmark pre-AICRA case of Oswin v. Shaw. The Rios Court held that submission of a physician certification alone will not satisfy the threshold, while the Torres Court articulated the continued duty of plaintiffs to demonstrate that injuries caused by the accident have had a serious impact on their lives.

In Konopka v. Foster the Appellate Division held that the filing of a report by a treating physician did not constitute substantial compliance with the certification requirement of AICRA. AICRA requires that within 60 days of the filing of the defendant's Answer, the plaintiff must provide the defendant with a physician's certification that the injuries meet the threshold statutory requirements. The statute permits one 60-day extension for good cause. Failure to provide a valid certification can result in a dismissal. Such a dismissal, however, is without prejudice. Therefore if the statute of limitations has not run the plaintiff may file another suit.

The interplay between the 60/120 day certification requirement and the statute of limitations could play a role in defense counsel's determination of when to raise this defense. Since dismissals for failure to provide a timely certification are without prejudice and plaintiffs' lawyers invariably find a doctor to sign a certification, defense counsel may want to delay requesting a dismissal in order to place the plaintiff closer to the termination of the limitations period.

## AUTOMOBILE INSURANCE/ SPLIT LIMIT COVERAGE/ WRONGFUL DEATH CLAIMS

In Vassiliu v. Daimler Chrysler Corporation an appellate panel led by Judge Conley resolved a split among trial courts to hold that wrongful death and survival claims are separate and distinct for purposes of split limit coverage. Under the Wrongful Death and Survivor statutes, a wrongful death claim belongs to the decedent's heirs, while a survivor claim belongs to the estate. Thus the liability and UM per person limits in split limit policies should apply separately to wrongful death and survivor claims.

## AUTOMOBILE INSURANCE/ SANCTIONS FOR LACK OF INSURANCE

In 1997 the New Jersey legislature amended N.J.S.A. 39:6A-4.5 to provide that claimants who owned operable autos which they failed to insure were no longer simply barred from PIP coverage – henceforth they would be precluded from pursuing any cause of action for economic or non-economic damages. In Caviglia v. Royal Tours of America the Appellate Division struck down the amended statute as unconstitutional on both equal protection and due process grounds.

We anticipate that the legislature will now amend the statute to apply the verbal threshold to claims asserted by culpably uninsured claimants. Hopefully the additional burden on the industry imposed by the Caviglia Court will be alleviated by the benefits of the stronger threshold under Rios and Torres.

## AUTOMOBILE INSURANCE/ MANDATORY UNINSURED MOTORIST BENEFITS

In Rider v. First Trenton the Appellate Division held that N.J.S.A. 17:28-1.1, which requires that all motor vehicle insurance policies except basic policies carry UM coverage, precluded a carrier from withholding UM benefits from a resident relative who qualified as a named insured under his own policy. The plaintiff was living with his mother when he was struck by an uninsured vehicle while operating a motorcycle. He owned two vehicles and was entitled to UM coverage as a named insured on the policies covering those vehicles.

The plaintiff's mother also had coverage with First Trenton, whose UM endorsement stated that First Trenton "does not cover bodily injury suffered or property damage incurred by any insured other than you while occupying any vehicle insured by another motor vehicle policy in which that insured was a named insured or relative." The Court found that the exclusion violated the No Fault law's mandate of UM coverage for all insureds, resident relatives and occupants, holding that the plaintiff was entitled to pro-rated benefits from both his own policies as a named insured and his mother's First Trenton policy as a resident relative.

Note that Rider applies only to **uninsured** motorist benefits, which are statutorily mandated. Unlike UM coverage, **underinsured** motorist insurance is purely a creature of contract and therefore arguably not subject to the same proscriptions that apply to UM coverage. Thus in a UIM context it is possible that the First Trenton exclusion addressed in Rider would be sustained. In any event, adjusters confronting UIM claims are reminded to apply the excess-escape clause to insulate carriers who insure vehicles other than the vehicle involved in the accident.

## AUTOMOBILE INSURANCE/PIP SUBROGATION

In Coach USA, Inc. v. Allstate the Appellate Division held that Allstate was not entitled to reimbursement from the carriers of commercial busses which obtained statutorily-mandated first party medical expense benefit coverage pursuant to N.J.S.A. 17:28-16 (the "bus-PIP" statute). The Court noted that N.J.S.A. 39:6A-9.1 allows a PIP carrier to recover PIP benefits "from any tortfeasor who was not, at the time of the accident, required to maintain personal injury protection or medical expense benefit coverage...." While the PIP reimbursement statute does not explicitly refer to the bus-PIP statute, reasoned the Court, the mandatory nature of bus PIP precludes a PIP carrier from seeking recovery of PIP benefits from a bus company that maintained mandatory PIP coverage.

## PREMISES LIABILITY/SIDEWALKS

The Appellate Division reiterated in Nielsen v. Lee that the existence of a shade tree commission does not automatically relieve the abutting commercial occupier of responsibility for maintenance of sidewalks. The plaintiff was injured when he tripped over a sidewalk panel raised by a shade tree. A trial court dismissed his suit against the abutting commercial landowner, relying on a line of appellate cases from which other appellate courts had diverged.

The appellate panel reinstated plaintiff's suit against the abutting commercial owner. The defendants noted that N.J.S.A. 59:4-10(b), the law providing that the existence of a shade tree commission will not immunize an otherwise liable party, pre-dated the plaintiff's fall, was enacted after the plaintiff's fall. Nevertheless, the Court concluded that the statute was intended to resolve a conflict among prior courts, triggering retroactive rather than prospective application of the new law. Thus the statute was applied retroactively to reinstate the plaintiff's claims against the commercial property owner.

## TORTS/STATUTE OF LIMITATIONS

In a very pro-plaintiff decision, the Appellate Division held in White v. Karlsson that a defendant otherwise entitled to a statute of limitations defense may waive that defense by failing to assert it until the conclusion of discovery.

In White the plaintiffs were injured in a motor vehicle accident but did not file suit until two years and 29 days after the accident. Although the defendant's Answer pled the statute of limitations as an affirmative defense, by conducting discovery, participating in arbitration, answering interrogatories in which the statute of limitations was not listed as a defense and engaging in discovery "with the knowledge that the plaintiffs' attorney would be incurring substantial expenses in preparation for trial," the defendant's

attorney effectively abandoned his client's right to assert the limitations defense.

**EMPLOYMENT LAW/HANDICAP DISCRIMINATION**

In Domurat v. Ciba Specialty Chemicals the Appellate Division ruled that even a conclusive diagnosis does not establish the presence of a handicap as a matter of law.

The plaintiff claimed that his employer discharged him for discriminatory reasons – specifically ADD, addiction to narcotics and alcoholism. Following a lengthy trial, a jury determined that he was neither handicapped nor performing the essential functions of his job at the time of his discharge. The plaintiff appealed, noting that all of the experts who testified agreed that he suffered from ADD, thereby compelling a judicial conclusion that he was handicapped.

The Appellate Division ruled that sufficient evidence in the record such as plaintiff's academic achievements and previously good work performance supported the jury's finding that he was not handicapped. Such an issue should go to a jury, concluded the panel, unless the evidence is so one-sided as to require judgment as a matter of law.

**EMPLOYMENT LAW/**
**CONSCIENTIOUS EMPLOYEE PROTECTION ACT**

In Gerard v. Camden County Health Services Center the Appellate Division held that a plaintiff pursuing a CEPA claim need not prove that the employer's conduct of which he complained was illegal. Rather, to survive summary judgment under CEPA the employee must show only that he had a reasonable belief that the employer's act or omission was unlawful.

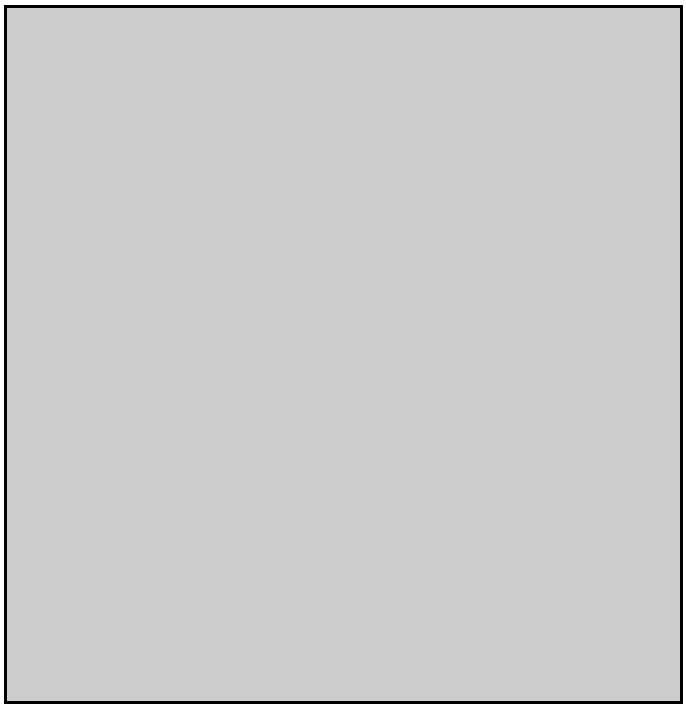
In Wright v. L-3 Communications Corp., U.S. District Judge Orlofsky addressed an unresolved question under the Law Against Discrimination – what is the fourth element of a prima facie case of age discrimination under the NJLAD? Must a plaintiff prove that he was replaced by someone "sufficiently younger," or should he simply be required to demonstrate that he was replaced?

Based on a review of recent state law Judge Orlofsky opted for the latter option, disagreeing with Judge Wolin's analysis in Swider v. Ha-Lo Industries. Thus in Judge Orlofsky's view, in order to satisfy the fourth element of an age discrimination claim, an LAD plaintiff need show only that his employer sought others to perform the same work after he was terminated.

**EMPLOYMENT LAW/**
**LAW AGAINST DISCRIMINATION/**
**STATUTE OF LIMITATIONS**

The Appellate Division has further refined the statute of limitations analysis applicable to "continuing torts" under the LAD. In Caggiano v. Fontoura an Essex County sheriff's officer filed suit for sexual harassment based on incidents which occurred over several years on the job. The majority of the incidents occurred more than two years before she filed the Complaint.

Reversing the trial court's dismissal of the claims relating to incidents more than two years old, the Appellate Division adopted the U.S. Supreme Court's approach to Title VII cases in the 2002 decision of National Railroad Passenger Corp. v. Morgan: So long as all acts which constitute the claim are part of the same unlawful employment practice and at least one act falls within the limitations period, none of the acts will be time-barred.



Only one week later, the New Jersey Supreme Court followed Morgan to reverse in part the Appellate Division's 2001 ruling in Shepherd v. Hunterdon Developmental Center. The Court plaintiff's hostile work environment claims as encompassing a "continuing tort," thereby saving from dismissal causes of action which arose from events occurring more than two years before the plaintiff filed suit.

Tucked away in the Shepherd opinion was a helpful holding that the plaintiff's lateral transfer did not constitute an adverse employment action sufficient to sustain its own cause of action for discrimination. Employers and counsel would be well-advised to cite Shepherd when defending suits against disgruntled transferees.

## OFFER OF JUDGEMENT RULE

The Offer of Judgment rule, R. 4:58-1, allows any party to file an Offer of Judgment with the court. If the plaintiff files offer and the verdict exceeds the offer by 120 percent, the plaintiff is entitled to counsel fees and costs from the date of the filing of the offer. Similarly, a defendant is entitled to fees and costs if the verdict is 80% or less than the offer.

In Wiese v. Dedhia two plaintiffs made a combined offer of judgment which the individual verdicts in favor of each plaintiff did not exceed. However, the combined verdicts exceeded the combined offer by more than 120 percent; thus the Appellate Division held that the plaintiffs were entitled to attorneys fees and costs.

## TORT CLAIMS ACT/ALLOCATION OF FAULT

Frugis v. Bracigliano involved allegations of sexual abuse by two students against their principal. Despite the absence of physical injury, the Appellate Division found sufficient aggravating circumstances to overcome the Title 59 injury threshold with evidence of permanent and substantial psychological injury.

The Appellate Division held that the jury should be required to apportion liability between the principal and the Board – even though the principal's acts were intentional and the acts and omissions of the Board constituted only negligence. Additionally, on reconsideration of a prior opinion, the panel held that N.J.S.A. 59:9-3.1 insulates the Board from joint and several liability and renders the Board responsible only for the percentage of liability apportioned to it.

## TORT CLAIMS ACT/INJURY THRESHOLD

In Henan v. Greene the Appellate Division held that a herniated disc with radiculitis which did not cause a "substantial loss of a bodily function" failed to overcome the Title 59 tort threshold.

In Henan, the plaintiff, a special education teacher, sustained injuries in a car accident. She lost no time from work, although she was required to transfer to the resource room because she was unable to physically restrain students. However, plaintiff lost no pay, benefits or opportunities for advancement. She was physically active before the accident playing competitive indoor soccer several times a week as well as participating in her first 5K run. She remained physically active after the accident, although she testified she needed frequent breaks. The plaintiff also claimed she could not perform her household tasks in an uninterrupted fashion.

The Appellate Division held that those injuries, while permanent, did not rise to the level of a "substantial loss of a bodily function." Thus the Court upheld dismissal of her claims for non-economic damages against the public entity defendants involved in the accident – specifically, a volunteer first aid squad entitled to Title 59 immunity pursuant to Pallister v. Spotswood First Aid Squad.

## PRODUCTS LIABILITY-FEDERAL PREEMPTION

In Beadling v. William Bowman Associates the plaintiffs were injured and killed when an acetylene torch ignited a 55 gallon drum that once contained methanol. The plaintiffs essentially misused the drum as a workbench for the cutting of sheet metal.

The defendant drum manufacturer had placed warning labels on the drum which met Federal Hazardous Substances Act and OSHA Hazard Communications standards. Nevertheless, plaintiffs' experts opined that the labels were inappropriately placed on the top of the drum, which obscured them, instead of on the side, in violation of American National Standards Institute (ANSI) requirements.

Since the federal requirements did not address the location of the warnings, the Appellate Division held that federal law did not preempt a personal injury action based on allegedly inappropriate placement of warnings.

## NEW YORK UPDATE

## NO FAULT REGULATIONS

The Appellate Division (First Department) recently dealt a severe blow to the plaintiff's bar in the case of In re Application of Medical Society of the State of New York v. Serio, in which a unanimous Appellate Division upheld the new insurance regulations which, among other things, shorten the filing deadlines by motorists and doctors. In an effort to root out fraud, the new regulations updated Regulation 68 to provide that claimants now have only 30 days within which to file insurance claims, while doctors have 45 days to submit claims for compensation. The previous limitation periods were 90 days for patients and 180 days for doctors, which by all accounts invited overtreatment and fraud without an opportunity for a carrier's independent scrutiny.

Perhaps of equal or greater significance is the new regulation providing that no counsel fees shall be paid to a health care provider who submits claims in excess of the applicable fee schedules. The new regulations also change the nature of interest for late payments from compound to straight, while authorizing arbitrators to address any issue relevant to the claim submitted and consistent with the Insurance Law and regulations.

The plaintiffs' bar has already indicated that it will appeal the Appellate Division's decision and lobby the State legislature in hopes of relaxation of the new rules. Until a reversal or a relaxation, however, the new regulations govern all No Fault claims submitted in the State of New York. We will keep you apprised of any further developments.

## DISCOVERY/SURVEILLANCE TAPES

We previously reported that a split existed among the Departments in New York in their interpretation of CPLR 3101(i) with regard to a defendant's duty to produce surveillance tapes of the plaintiff prior to the plaintiff's deposition. The First Department recently joined the Third and Fourth Departments in holding that a party is generally free to choose both the discovery devices it wishes to use and the order in which to use them. The Appellate Division found that requiring the defendants to turn over the tapes prior to the plaintiff's deposition need not result in any undue prejudice, such as altered testimony by a plaintiff, since a defendant may seek a protective order pursuant to CPLR 3103(a).

Given that three of the four departments now require defendants to provide plaintiffs with surveillance tapes prior to their deposition, prudence dictates that in cases of suspected fraud the defense should move for a protective order prior to plaintiff's deposition.

## AGENCY/APPARENT AUTHORITY

In Parlato v. The Equitable Life Assurance Society of the United States the Appellate Division held that an insurance company has a duty to inform customers when the carrier terminates the customer's agent. In 1990 Equitable had hired an agent who solicited business from plaintiffs Virginia Parlato and Rosemarie Perry. While the agent opened an Equitable account for Ms. Parlato, he never opened an account for Ms. Perry at Equitable, ultimately converting all their money for personal use.

In July 1992 Equitable terminated the agent's employment but failed to advise its insureds. It was not until August 1996 that the plaintiffs first learned of the agent's termination. In the interim, the agent continued to represent himself as an Equitable agent, soliciting funds for other investments in purported Equitable products.

Plaintiffs brought suit against Equitable, alleging fraud on the basis that each plaintiff entrusted monies to the agent in reliance on the appearance of authority to act on behalf of Equitable.

The Appellate Division affirmed the lower court's dismissal of all claims by Ms. Perry, since the rogue agent had never opened an Equitable account on her behalf and Equitable therefore had no knowledge of her solicitation. As to Ms. Parlato, however, the opening of an Equitable account placed Equitable on notice of her solicitation by the terminated agent, triggering a duty to notify her of the agent's dismissal. The Court held that Ms. Parlato was entitled to rely on the agent's authority until notified of its revocation by the principal – in this case, Equitable.

## FIRM NOTES

Over the past few months, Jared Stolz, Matt Werbel and Selika Josiah of our property team have lectured extensively on the issues of fraud in the procurement of insurance, how to resolve claim difficulties at the underwriting stage and underwriting and claim fraud. Jared, Matt and Selika have also given seminars on the new Ombudsman Statute and its practical ramifications for Property and Casualty insurers.

Similarly, Ed Thornton, Eric Harrison, John Grossi, Bill Bloom and Allison Koenke have met with several of our business partners and members of the insurance industry to discuss recent developments in auto insurance law, toxic mold litigation and claim adjustment under New Jersey and New York law. Parties interested in arranging a seminar to address any issues relevant to your business are welcome to contact us for further information.

Ric Gallin, managing Partner of M&W's New York office, recently spoke at an ICLE seminar covering "Emerging First Party Insurance Issues." Ric discussed the relationship between the plaintiff as an insured, plaintiff's counsel and defendants. This relationship is frequently complicated by liens and rights of subrogation vested in the plaintiff's own carrier, which can affect potential claims belonging to the plaintiff/insured.

Ric's presentation focused on three of his most recent precedent-setting cases: Perreira v. Rediger, the Supreme Court decision which extinguishes most health insurance liens against third parties, and Ward v. Merrimack Mutual I and II, the two Appellate Division cases which established both a carrier's right to a jury trial when monetary damages are demanded and the standard to be applied to an insured's claim for a replacement cost holdback in the absence of repair or replacement of the damaged building.

Stephen Katzman recently concluded the successful prosecution of an insurance fraud action on behalf of First Trenton Insurance Company against Dr. Samuel Davit and his now-defunct facility known as Global Diagnostics, to whom FTIC had paid in excess of $150,000 over three years for diagnostic tests which it later discovered were never performed. Dr. Davit ended up reimbursing FTIC the sum of $175,000 and surrendering his medical license.

The suit alleged that Davit submitted fraudulent reports pertaining to fictitious EMG/NCV testing of 57 patients. Our expert opined that it was statistically impossible for 57 patients to have the identical abnormality in the same muscle after EMG testing and to have identical nerve velocity numbers after NCV testing.

## TRIAL RESULTS

Don Crowley obtained a no cause verdict in a dog "knock-down" trial. Plaintiff and defendant were abutting rear yard landowners. Each of them owned a dog. The plaintiff was out in his back yard at 11:00 PM when, he alleged, our client's dog somehow escaped from the house and jumped the back yard fence to knock him to the ground.

Plaintiff initially underwent only arthroscopic surgery on his knee. However, he developed back problems which he related to the incident and ultimately underwent no fewer than three complex back surgeries. At the time of trial, the 47 year old plaintiff had not worked in his dry cleaning business for two years, incurred over $100,000 in unpaid medical bills and was wheelchair-bound.

Following a pretrial demand of $400,000, the parties stipulated that plaintiff's damages were worth $225,000 and agreed to try the case on liability only. Don raised several serious credibility issues involving the actual date of the accident, plaintiff's failure to report it to the authorities, lack of lighting and the identification of the insured's dog versus other neighborhood dogs. The case ultimately settled for $85,000 prior to submission to the jury.

Don also tried a products liability case in which the plaintiff, a framing and sheathing contractor, fell from scaffolding which was supported by bracketing manufactured by the insured. The plaintiff claimed improper design, as the small size of a foot pad allowed the bottom of the bracket to penetrate the sheathing, ultimately causing a collapse. We contended that the plaintiff and his fellow contractors failed to follow the manufacturer's instructions, which would have prevented the collapse.

The scaffolding collapsed with plaintiff aboard. He fell 20 feet and sustained multiple fractures which rendered him unable to continue his work as a framing

contractor. The medical bills and lost wages totaled $280,000 and plaintiff demanded $500,000.

On cross-examination Don elicited an admission from the plaintiff that he failed to follow the manufacturer's instructions and that if he had done so the scaffold probably would not have collapsed. Shortly thereafter the case settled for $200,000 – $80,000 less than the past economic damages alone.

Ed Thornton obtained a defense verdict in a Hudson County trial involving serious injuries sustained by a postal worker when a "cluster box" in the insured apartment building crushed his dominant hand, rupturing the flexor tendon ring finger. The jury found that the insured was negligent in its maintenance of the area but that such negligence did not proximately cause the plaintiff's injuries.

Martin McGowan obtained a no cause verdict in a damages only trial in Middlesex County. The insured rejected a UM arbitration award of $57,000 and demanded a jury trial, demanding no less than the policy limit of $300,000 to settle her UM claim.

The insured was a passenger in her own vehicle, which she claimed was cut off by a phantom vehicle. She claimed to have sustained a concussion with loss of consciousness, a cervical strain and a questionable thoracic compression fracture. She was hospitalized for four days immediately after the accident and missed four months of work. After about one year she underwent both a carpal tunnel release and rotator cuff repair. Additionally, her treating orthopedic surgeon testified that she also suffered a herniated cervical disc that would likely require surgery in the future.

Our examining orthopedic surgeon felt that the disc was merely a bulge and that both the bulge and the carpal tunnel and rotator cuff surgeries were necessitated by degenerative changes which predated the accident. The jury agreed, returning a no cause verdict as to both non-economic and economic damages.

Lori Brown Sternback obtained a no cause verdict in a premises liability trial before Judge Ferenz in Essex County.

A 12 year old boy traversing a sidewalk tripped and fell against the trunnion bar of a garbage dumpster. The boy sued the theater which owned the dumpster, claiming that it protruded about three feet into the right of way. His friend and only witness to the accident placed the dumpster in the abutting alley, though adjacent to several boxes.

The court instructed the jury that if they believed the dumpster was on the sidewalk, the plaintiff qualified as a business invitee and deserved the insured's affirmative protection. If the jury believed the dumpster was in the alley, however, the plaintiff would be an infant trespasser entitled only to the removal of latent defects likely to cause serious injury or death.

The jury unanimously found that the insured theater was negligent but that its negligence did not proximately cause the plaintiff's injuries.

Colin Bonus obtained a defense verdict in a first party suit involving the collapse of the insured's building. The carrier voluntarily paid the undisputed amount of the claim, leaving more than $140,000 in claimed damages. At trial in Morris County Colin presented expert testimony from an engineer to refute the claims of the insureds. Ultimately Colin convinced the jury that the insureds' damages did not flow from a "collapse" caused by a covered peril.

Dominick Minervini

Dominick Minervini, the latest addition to our Bergen team, obtained summary judgment in a verbal threshold case involving application of the two-part Oswin test as enunciated in James v. Torres. Plaintiff was rear-ended and claimed injuries to her back, though she did not see a doctor until about ten days later. She continued to work full time as a nurse in the surgical department at Valley Hospital. About a month after the accident, however, she took a month off from work to recuperate from the accident.

The Court found that plaintiff did in fact sustain a sufficiently serious injury to satisfy the objective prong of Oswin. However, applying the rationale of James v. Torres, the Court found that plaintiff did not establish a "serious impact" on her life and granted summary judgment.

Dominick also obtained a plaintiff's verdict in an auto accident subrogation case. The defendant suddenly opened his door and struck the insured vehicle, causing extensive damage. Dominick convinced the court that the defendant was 80% liable for the accident, obtaining an award for property damage.

**ALERT ALERT ALERT ! ! !**

***It is in our future plans to publish the Case Update in electronic format only. If either you or any members of your company do not currently receive our quarterly Case Update via e-mail and have the capability of doing so, please e-mail your name and e-mail address to pagano@methwerb.com.***

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