C A S E A L E R T

APPELLATE DIVISION ISSUES IMPORTANT DECISION ON WORKERS COMPENSATION AUTO SUBROGATION

Last week in New Jersey Transit a/s/o Mercogliano v. Sanchez the Appellate Division reiterated the right of a workers compensation carrier to subrogate against a tortfeasor to recover economic damage payments made to an employee injured in an auto accident.

Following an auto accident during the course of his employment the injured employee could not recover pain and suffering damages for his minor injuries because he was bound by the verbal threshold. However, because he was injured in the course of his employment he filed a Worker's Compensation claim and received economic damages in the form of medical bill payments and temporary disability benefits. He also received a permanency award.

Notably, the compensation carrier did not seek to recover the permanency award from the tortfeasor, as the rights of a subrogee can rise no higher than those of the subrogor, and the employee's election of the verbal threshold would bar recovery of any payment on account of non-economic damages. In this respect the employee received an extra benefit of pain and suffering damages that he would not have received if the accident had occurred outside the scope of his employment.

Citing Section 40 of the Workers Compensation Act, N.J.S.A. 34:15-40(f), the Appellate Division held that NJT, as the injured employee's self-insured Worker's Compensation carrier, may subrogate against the tortfeasor for the "med and temp" payments.

The take-away of the Appellate Division's ruling is that workers compensation carriers are to bear the burden of work-related auto accidents and that in exchange, they may step into the shoes of the injured worker and pursue recovery of economic loss based on the fault of a tortfeasor.

If you have any questions about the impact of this decision on your claims do not hesitate to contact us.