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CASE ALERT

Ongoing Storms, Insurance Fraud, Litigation Funding, and Broker Malpractice in the Garden State

The New Jersey Supreme Court and Appellate Division issued several important decisions in July 2026

Spreading Salt During An Ongoing Storm Will Not Void The Protections of The "Ongoing Storm" Rule

In Gallardo v. Walmart, an uncharacteristically divided Supreme Court struck a blow for sanity by overturning a $1.2 million jury verdict on the basis that a snow removal contractor's spreading of salt on a minimal accumulation of snow did not give rise to "unusual circumstances" warranting the imposition of a duty on a commercial landowner during an ongoing storm. Upholding the "ongoing storm rule" adopted by the Supreme Court five years ago at the urging of M&W partner Bill Bloom in Pareja v. Princeton International Properties, a four-justice majority reversed and remanded for entry of summary judgment.

From our perspective, a contrary ruling would have counter-intuitively discouraged commercial property owners from taking any reasonable action to address hazardous conditions during an ongoing storm. So long as the ongoing storm rule remains viable, property owners should not be penalized from taking action to maximize safety during an ongoing storm, since taking no action clearly would have immunized the property owner from liability under Pareja.

Medical Providers Accused of Auto Insurance Fraud Cannot Avoid Fraud Claims by Seeking PIP Arbitration

In Allstate v. Carteret Comprehensive Medical Care the Plaintiff auto insurer sued several medical care providers under the Insurance Fraud Prevention Act and the New Jersey Racketeer Influenced and Corruption Organization Act (RICO) for conspiring to obtain over $1.7 million in unearned PIP benefits. The medical providers convinced a trial judge to dismiss the IFPA and RICO claims and to force their claims into mandatory PIP arbitration – a "divide and conquer" approach which threatened to undermine the IFPA and RICO claims and to deprive Allstate of the jury trial to which it was entitled under the IFPA.

Thankfully the Appellate Division agreed that forcing into arbitration thousands of individual PIP claims alleged to be fraudulent would frustrate the purpose of the IFPA. However, the medical providers petitioned for certification on the basis of a Third Circuit opinion that interpreted New Jersey law in their favor.

SPECIAL REPORT

The stakes were high, as acceptance of the Third Circuit's interpretation would have defanged the IFPA in the context of the "death by a thousand cuts" potentially inflicted by high volume, low margin PIP fraud. Following a great deal of industry involvement - including submission of an amicus briefs on behalf of the Insurance Council of New Jersey and the American Property Casualty Insurance Association - a unanimous Supreme Court upheld the Appellate Division and reinstated the statutory fraud claims for trial.

The Risks of Litigation Funding

Litigation funding—where outside investors finance lawsuits in exchange for a cut of the payout—has exploded into a multi-billion-dollar global industry. Critics argue that it promotes frivolous claims, hides foreign or corporate influence, and drives up settlements, while proponents say that it expands access to justice for underfunded plaintiffs. In Viglianti v. Blue, the Appellate Division enforced the terms of a litigation funding contract by requiring a personal injury plaintiff to reimburse the funding company his entire share of a $250,000 settlement based on a $90,000 advance. Only his attorney and the funding company made money on his claim; he ultimately received nothing.

Michael Viglianti was injured in an automobile accident and exhausted his limited Personal Injury Protection (PIP) benefits but required additional medical treatment. After consulting with his attorney Karim Arzadi, Viglianti entered into a Funding Agreement with Legal Bay. Under the agreement, Legal Bay agreed to advance $90,000 for medical treatment. In return, Legal Bay would be repaid, with interest, from any recovery Viglianti obtained in his anticipated lawsuit. Repayment to Legal Bay was contingent upon Viglianti recovering damages.

Viglianti ultimately settled his claim against Blue for $250,000. From that sum, $83,617.70 was paid to his attorney, and the remaining $166,382.30 was deposited into court. Legal Bay moved to withdraw the remaining funds pursuant to the Funding Agreement.

Viglianti opposed the motion, arguing that the agreement was unenforceable because it allowed a medical provider to recover more than what is permitted under the PIP fee schedule in N.J.S.A. 39:6A-4.6. He also argued that Legal Bay was attempting to enforce what was essentially a physician's medical lien, which is limited to twenty-five percent of a plaintiff's recovery under N.J.S.A. 2A:44-39.

The trial court rejected both arguments. It reasoned that Legal Bay was not a medical provider and, therefore, was not subject to the limitations imposed by N.J.S.A. 39:6A-12 or N.J.S.A. 39:6A-4.6. The court also concluded that Legal Bay was not a physician within the meaning of N.J.S.A. 2A:44-39, so the statutory cap on physicians' liens did not apply. As a result, the court enforced the Funding Agreement. The Appellate Division agreed and affirmed the Order awarding Legal Bay the full amount of the net settlement proceeds.

Insurance Brokers Are Subject to the Consumer Fraud Act

Reversing the Appellate Division, the Supreme Court published an important decision in Lowe v. Audet denying insurance brokers the protection of "learned professional" or "learned semi-professional" exemptions under the Consumer Fraud Act.

Dr. James Lowe purchased disability insurance through the defendant insurance brokers. When he became disabled and applied for benefits he received only partial benefits because of income derived from other business interests.

He alleged that the brokers misrepresented the coverage of the policies and negligently failed to inform him that his unrelated business interests could affect his disability benefits.

Lowe filed a complaint alleging that defendants violated the Consumer Fraud Act (CFA) by negligently failing to obtain sufficient disability insurance. The trial court dismissed the claim, relying on previous case law that insurance brokers are considered "semi-professionals" and are exempt from the CFA.

The Appellate Division affirmed the decision. On appeal, the Supreme Court held that insurance brokers are not exempt from the CFA under either the "learned professional" or "semi-professional" exceptions. The Court explained that "learned" professionals are "physicians, attorneys, and theologians." Although insurance brokers are *licensed* professionals, the Court explained, their educational requirements are "minimal." As such, they do not qualify as "learned professionals" or "learned semi-professionals" and they can be sued under the CFA.

Friends and clients with questions about any of these important decisions are welcome to contact any of our attorney managers – Gina Stanziale, Bill Bloom, Paul Endler, Eric Harrison or Matt Werbel.

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