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## UPDATE ON THE LAW

### **T**ort Claims and Charitable Immunity.

#### Romanowski v. Township of Washington

Plaintiff, a soccer coach, fell on wet grass while attending a license certification course. The grass was scheduled to be watered from 2:00 a.m. to 8:00 a.m. For the purposes of the summary judgment motion, it was agreed that the sprinklers went off at 8:00 a.m. The course was held at a municipal park and sponsored by a non-profit corporation devoted to promoting youth soccer. The trial court dismissed the entire complaint based on the New Jersey Tort Claims Act and Charitable Immunity Doctrine.

As to the municipality, the plaintiff had not established that the wet grass was a dangerous condition, that the municipality had notice of the change in watering time, or that the municipality acted in a palpably unreasonable manner in how the soccer field was watered. The court noted that soccer was the type of activity which is played in all weather conditions, although a "dangerous condition" under the Tort Claims Act, refers to the property and not the activities conducted thereon.

The non-profit corporation that sponsored the class was entitled to immunity under the Charitable Immunities Doctrine because it was a charitable

organization and the plaintiff was a beneficiary of its educational program by attending the class.

### **D**runk Drivers Entitled to PIP.

New Jersey's Appellate Division ruled that an insured is entitled to Personal Injury Protection (PIP) benefits despite being found guilty of driving while intoxicated or failing to submit to a Breathalyzer reading. The insurer had successfully disclaimed PIP coverage at the trial level, arguing that PIP benefits were barred by: 1) Insurance policy language which excluded PIP benefits to anyone convicted of operating a motor vehicle under the influence of intoxicating liquor with a blood alcohol concentration above the legal limit; and, 2) N.J.S.A. 39:6A-4.5(b) which bars claims for economic and non-economic damages by drivers convicted of driving while intoxicated.

The Appellate Division, in Walcott v. Allstate (April 13, 2005, cite pending) overruled the Trial Court and held: 1) The insurer could not limit the mandatory statutory PIP coverage through its policy language and 2) N.J.S.A. 39:6A-4.5(b) (driving while intoxicated) only applies to third party, UM and UIM claims. The insurer did not attempt to argue that the claims were barred by N.J.S.A.

DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, PC Legal News

The information contained in this newsletter is intended solely for informative purposes.

39:6A-7(a)(1), (A person whose intentional conduct contributes to their injuries is PIP ineligible).



**Insurance - Unlicensed Providers.**

Liberty Mutual Insurance Company successfully sued to recover payments made for PIP benefits to four MRI facilities. The Law Division, Morris County, has declared that Edgewater Diagnostic Imaging, P.A.; Meadowlands Diagnostic Imaging, P.A.; Monmouth Diagnostic Imaging, P.A.; and Wayne MRI, P.A. were operated without licenses. Healthcare Integrated Services, Inc. was ordered to repay \$594,468, plus investigation expenses, costs of suit and attorneys' fees. The decision held that Liberty Mutual Insurance Company was not obligated to provide PIP coverage for any MRI services rendered at these unlicensed facilities.



**Charitable Immunity Applies to Violent Death.**

Fairleigh Dickinson University was shielded by the Charitable Immunity Act from responsibility in the tragic death of a co-ed. N.J.S.A. 2A:53A-7.

A freshman student was strangled by her boyfriend. The boyfriend was not a student, but was staying in the deceased's dorm room the night of the incident. The deceased's parents sued, alleging the University was careless and negligent in its security responsibilities. The Trial Court ruled, and the Appellate Division affirmed, that plaintiff's suit was barred by the Charitable Immunity Act. Plaintiff's attempts to amend the complaint to allege actions which, if true, would be exceptions to the Charitable Immunity defenses was denied.

Plaintiff sought to amend the complaint to allege that the University committed acts gross of negligence, willful and wanton misconduct, and intentional conduct. While prohibiting plaintiff's attempt to amend the complaint, the Appellate Division held that the trial judge properly found that gross negligence was excluded by the Act, and the

evidence could not support a finding of willful or wanton misconduct or an intentional tort.



**Timely Prosecution.**

Fields v. Werner Manufacturing

In August, 1998, plaintiff's husband was injured as a result of a fall from a ladder. Nearly three years after the incident, plaintiff obtained an expert report. The case was dismissed for lack of prosecution when plaintiff's husband became too ill to cooperate in the prosecution of the case. Plaintiff's husband died shortly before his deposition was scheduled to take place.

When the case was reinstated, plaintiff had retained new counsel. The case was then scheduled for trial. At that point, plaintiff's new counsel determined that the expert report was insufficient and would not withstand a defense motion for a directed verdict at the end of plaintiff's case. Plaintiff's counsel requested an adjournment of the trial date in order to obtain a new report. The request was denied and plaintiff voluntarily dismissed the complaint.

After obtaining a favorable expert report, plaintiff filed a motion to reinstate the complaint, which was granted. Defendant then filed a motion to dismiss based on the expiration of the statute of limitations. Due to the length of time that had passed since the initial complaint had been filed as well as the prejudice to the defendant, the trial court dismissed the complaint.



**DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C.,**

is a full service law firm which provides a broad range of legal representation. A significant portion of our practice is devoted to the representation of clients in personal matters, including estate planning and administration, real estate and family law matters. For additional information regarding our firm, please contact Steven A. Kunzman, Esq. at the address given above, by e-mail at: [skunzman@newjerseylaw.net](mailto:skunzman@newjerseylaw.net) -or by telephone at: 908-757-7800.