



August 30, 2016

New Jersey Appeals Court Reverses Trial Judge That Found Medical Benefits Not Recoverable by Comp Carrier

This appeal dealt with the interplay of the New Jersey statutory workers compensation right to subrogation and New Jersey's Automobile Insurance Cost Reduction Act ("AICRA") related to recovery of medical payments made under PIP. An injured worker received workers compensation benefits, then structured her settlement with the tortfeasor to defeat the comp carrier's statutory right to reimbursement for its payment of medical benefits (reimbursement of the indemnity benefits was not an issue). The injured worker relied upon an unpublished decision interpreting AICRA, which held that medical expenses that were recoverable under PIP could not be recovered from a tortfeasor. Although the worker did not seek PIP benefits, the trial court agreed with her analysis, and essentially extinguished the medical benefits portion of the workers comp lien. Travelers filed an appeal.

In *Lambert v. Travelers Indemnity Co. of America*, (docket A-1073-14T3, August 24, 2016) the Superior Court of New Jersey, Appellate Division, overturned the trial court. This appeal included 2 other cases consolidated with Lambert, each involving the same argument. The court discussed the history of the Workers Compensation Act, and the legislative intent behind AICRA. It determined that the legislative history and the case law required that the injured worker reimburse the comp carrier for its medical payments. The court ruled:

"[W]hen a worker is injured in the course of his or her employment in a motor vehicle accident and workers compensation benefits have been paid or are payable on behalf of the worker, the right of the injured worker to pursue claims against the tortfeasor and the right of the workers compensation carrier to be reimbursed are governed by the WCA [Workers Compensation Act] and not AICRA."

The court noted that NASP submitted an amicus brief in support of the workers compensation carrier, and the New Jersey Association for Justice also filed an amicus brief (supporting the injured employee). Christopher Steffe of Yost & Baill, Milwaukee, WI drafted the brief, and Rachael Banks of Gibson & Sharps, Jersey City, NJ signed the brief on behalf of NASP. NASP and the Amicus Committee thank Christopher and Rachael for the superb brief.

NOTE: the same issue was raised in the appeal of *Asbury Park Press v. Lomurro, et al*, docket A-394-15T2, where the trial court ruled in favor of the comp carrier. NASP filed an amicus brief in that case as well, also authored by Christopher Steffe and signed by Rachael Banks.

This is a summary of the court decision and not meant to serve as legal advice.