

CYNTHIA G. BEAM
KELLY A. COSTELLO
CAROL ANTOFF
SEAN A. DOLAN
MIRANDA D. CLIFTON
ROBERT DEARY

LAW OFFICE OF
CYNTHIA G. BEAM
Employees of Nationwide Mutual Insurance Company®
Not a Partnership

131 CONTINENTAL DRIVE
SUITE 407 - CHRISTIANA EXECUTIVE CAMPUS
NEWARK, DELAWARE 19713-4301
(302) 292-6660
FAX (302) 292-6668

MEMORANDUM

To: Delaware Claims Association
From: Sean A. Dolan, Esquire
Date: September 1, 2009
Re: Case Law Update

SUPREME COURT AFFIRMS DEFENSE MOTION FOR ADDITUR **Reid v. Hindt, Del. Supr., No. 408, 2008 (July 9, 2009)**

In this case the Plaintiff filed suit as a result of damages she claimed from an auto accident. The case went to trial twice, and in both instances, the jury awarded no damages. After the second verdict, the Defendant filed a Motion for Additur. The Superior Court granted the Motion and awarded \$2,500.00. The Plaintiff appealed to the Supreme Court, arguing that her constitutional right to a jury trial was violated by the Court's ruling. The Supreme Court disagreed and upheld the Superior Court's decision.

**SUPERIOR COURT DISCUSSES
REFORMATION OF MOTORCYCLE
UM POLICY**

Banizack v. Progressive, Del. Super.,
C.A. No. 08C-03-022 (August 17, 2009)

This case deals with an attempt to reform a motorcycle insurance policy for purposes of UM/UIM. It was also decided within the framework of an on-line application for insurance. The Plaintiff had purchased liability insurance with limits of \$100,000/\$300,000.00 but the Plaintiff did not purchase UM/UIM. The Court reviewed the separate requirements under Delaware's statute for purposes of a meaningful offer of both UM and UIM coverage. Here the Court determined that the Plaintiff waived his option to purchase additional UIM coverage, but also determined that Progressive's offer for UM was inadequate. As such, it reformed the policy, but only to the extent of Delaware's statutory minimum, \$15,000/\$30,000.00.

**SUPERIOR COURT DISCUSSES
PIP DEDUCTIBLE FOR MOTORCYCLE
POLICY**

Hodgson v. Foremost Insurance Group, Del. Super., C.A. No. 09C-03-046 (July 22, 2009)

The Plaintiff in this case was injured while he was riding his brother's motorcycle. The motorcycle was insured with Foremost, and had a \$10,000.00 PIP deductible. The insurance company refused to pay PIP benefits and the Plaintiff sued.

The Court determined that the PIP deductible did not apply to the Plaintiff, since he was not the owner of the motorcycle and he was not a member of the policy owner's household. Because he was a permissive user he would be considered an insured under the policy. Nevertheless, according to the Court, the deductible would not apply.

**SUPREME COURT DISCUSSES
STATUTE OF LIMITATIONS IN
DELAWARE VS. MARYLAND**

**Clinton v. Enterprise Rent A Car,
et al., Del. Supr., No. 208, 2009 (July
29, 2009).**

This case arose out of a motor vehicle accident on March 2, 2005. On February 15, 2005, Enterprise rented a pick up truck to a customer of a body shop. When the truck was returned later in the day, Enterprise told the body shop to leave the vehicle outside of a fenced parking lot so that it could be picked up after hours by an Enterprise employee. It was later stolen and was involved in a motor vehicle accident. The other driver was killed.

Suit was filed in Delaware on January 29, 2008, and named Enterprise and the driver of the stolen pick up truck as defendants. The Superior Court dismissed the lawsuit on the grounds that it was barred by the two year statute of limitations under Delaware law. The Plaintiff argued that the conduct against Enterprise (instructing someone to leave the vehicle outside of the fenced in yard) occurred in Maryland, and that therefore Maryland's three year statute of limitations should apply. The Supreme Court disagreed, determining that since this action arose out of the March 2, motor vehicle accident, Delaware's statute of limitations would apply. The Supreme Court determined that Delaware law would govern by virtue of its most significant relationship to the accident.