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INSURANCE COMPANY'S DECISION TO PAY INSURED'S MEDICAL BILLS CANNOT BE USED AS EVIDENCE THAT ACCIDENT CAUSED THE INSURED'S MEDICAL CONDITION

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Please call me to discuss any legal issues or for a clarification of current law.

NEW YORK

SERIOUS INJURY IS REQUIRED TO RECOVER UNDER AN INSURANCE POLICY'S UNDERINSURED MOTORIST PROVISION

Raffellini v. State Farm Mutual Automobile Insurance Company,
N.Y. Court of Appeals
9 N.Y.3d 196,
November 15, 2007

This case stands for the rule of law that an insured can only recover from his or her insurance company under an underinsured motorist provision, where the insured suffered serious injury. Thus, the requirements to recover under underinsured motorist coverage the same way as the requirements to recover uninsured motorist coverage. This is by no means an obvious conclusion. A literal reading of the Statute governing underinsured motorist coverage seems to indicate otherwise. However, the Court of Appeals looked to the history of the statute prior to recodification to reach its conclusion as to legislative intent.

In *Raffellini*, Plaintiff was injured by a vehicle that ran through a red light. Plaintiff recovered $25,000 from his insurer in no fault payments. Plaintiff then sued for an additional $75,000.00 under his optional underinsured motorist coverage. The insurance company argued that a serious injury must be shown. The trial court ruled that this is not the case, as the statute governing underinsured motorist coverage, *Insurance Law §* 3420(f)(2) has no serious injury requirement. Thus, it differed from *Insurance Law §* 3420(f)(1), the provision relating to uninsured motorist coverage, which has a serious injury requirement.

The New York Court of Appeals reversed. The Court ruled that the statute could not have meant to put someone with underinsured motorist coverage in a better position than a motorist injured by a Defendant who had sufficient coverage.

The Court then looked at the history of the statute and noted that the original provision that governed uninsured motorists, *Insurance Law §* 3420(f)(1), and the provision that governed underinsured motorists, *Insurance Law §* 3420(f)(2), were once one provision. When they were one provision it was clear that the serious injury requirement applied to underinsured motorists. It was only in 1984, when the statute was recodified, that the uninsured motorist rule and underinsured motorist rules were put into separate subsections. The Court looked to the legislative history of the recodification and concluded that the legislature did not intend to make any substantive changes in the law by splitting the paragraph into two. Thus, based on the legislative intent, the Court read a serious injury requirement into *Insurance Law §* 3420(f)(2), even though it was not there.

NEW JERSEY

INSURANCE COMPANY'S DECISION TO PAY INSURED'S MEDICAL BILLS CANNOT BE USED AS EVIDENCE THAT ACCIDENT CAUSED THE INSURED'S MEDICAL CONDITION

Bardis v. First Trenton Insurance Co.
N.J. Appellate Division
A-1470-06T1
December 20, 2007

This case stands for the rule of law that an insurance company's decision to make payments under Personal Injury Protection (PIP) coverage cannot be used at trial as evidence that the accident caused the injuries for which the insured was compensated.

Plaintiff, John Bardis, was rather unlucky. Plaintiff was involved in a collision in 1991, for which he received medical treatment at the time. On February 13, 1997, Plaintiff was involved in another collision. On September 11, 1997, the Plaintiff was involved in a third automobile accident caused by a head-on collision. In 1999, he was involved with a fourth collision, this time with a police vehicle.

Plaintiff sued his insurance company for personal injuries sustained as a result of the

February 13, 1997 collision, as the Defendant's policy provided first-party underinsured-motorist (UIM) coverage. It was undisputed that the driver of the other vehicle was completely at fault. The issue at trial was whether certain injuries to the Plaintiff were caused by the February 13, 1997 collision, or whether they were caused by one of the other collisions.

The Plaintiff deposed the claims representative employed by the Defendant insurance company, who was responsible for paying the Plaintiff's PIP payments. She acknowledged that the Defendant made certain payments for a herniated disc as a result of the February 13, 1997 accident.

She further testified that if the medical bill submitted for payment was not causally related to the February 13, 1997 collision, the insurance company would not pay the bill. This deposition testimony posed a problem for the Defendant, who was taking the position that the Plaintiff's herniated disc was not caused by the February 13, 1997 collision.

The Defendant moved to exclude the testimony of its claims representative. However, the trial court allowed it. After the trial court allowed the evidence, the parties entered into a stipulation that "medical bills were all paid by ... a representative of the defendant, after her determination that they were causally related to the February 13, 1997 motor vehicle accident." In spite of the stipulation, the jury still returned a unanimous verdict that Plaintiff's injuries were not caused by the February 13, 1997 accident. Plaintiff moved for a judgment not withstanding the verdict and a new trial, but Plaintiff was denied.

Plaintiff appealed the Trial Court's ruling, saying that the Defendant's decision to pay medical costs is essentially an admission by the insurance company that the Plaintiff's injuries were caused by the February 13, 1997 accident.

The Appellate Division upheld the jury verdict, stating that the Trial Court should not have allowed the Plaintiff to offer the PIP payments as evidence in the first place. The Court gave three reasons for not allowing the PIP payments as evidence.

Firstly, underinsured-motorist (UIM) coverage, is essentially a contractual agreement that the insurance company will pay any tort damage of the underinsured to the extent of the policy limit. Thus, the insurance company stands in the shoes of the underinsured motorist. Since these payments would not be admissible against the underinsured motorist, they are not admissible against the insurance company.

Secondly, the Court reasoned that the representative with the Defendant insurance company that made the decision to pay the PIP benefits was not competent to testify about the matter. Her decision was made based on her interpretation of doctors' reports. Thus, she is a lay witness offering a medical opinion, which is not allowed.

Finally, the Appellate Court offered a pragmatic policy reason to exclude PIP payments as evidence. The legislative policy in enacting no fault legislation was to assure prompt and complete payment to persons injured in automobile accidents. Binding an insurer as to the issue of causation, would complicate an insurer's decision to pay those benefits. An insurer might be more hesitant to make even small PIP payments if those payments could be used as evidence. Thus, the Court ruled that PIP payments cannot be used as an admission of causation.

PHOTOS OF VEHICLE DAMAGE CAN BE USED AS EVIDENCE TO PROVE A COLLISION COULD NOT HAVE CAUSED AN INJURY, WITHOUT EXPERT TESTIMONY

Brenman v. Demello 191 N.J. 18 (2007)
N.J. Supreme Court
May 30, 2007

In this case, the issue was whether photos of a vehicle that was involved in a collision can be entered into evidence where the issue is whether an injury was caused by a collision. The Supreme Court of New Jersey concluded that they can, because it is within the common knowledge of ordinary individuals that there is a relationship between how badly a vehicle is damaged and badly someone is hurt.

The case arose out of an collision in stop and go traffic. The Plaintiff was struck from behind. There was only minimal damage to the Plaintiff's vehicle. Ten months after the accident, a three-level cervical fusion was performed on the Plaintiff, which involved the removal of three discs and their replacement with "spacers."

Plaintiff then filed a suit, claiming that her need for this surgery was the result of the car accident. The Defendant offered the photos of the Plaintiff's vehicle as evidence that the accident was relatively minor. As such, the Defendant claimed that the accident could not have been the cause of the injury that required the Plaintiff to undergo serious surgery.

The Plaintiff objected at trial, saying that Defendant should be barred from offering the photos into evidence without expert testimony from someone who has the training and experience to advise jurors on the relationship between damage to a vehicle and injury to said vehicle's occupants. The Trial Court allowed the photos at trial. The jury found for the Defendant on the issue of causation.

The Plaintiff appealed and the Appellate Division reversed, and adopted a per se rule that expert testimony would always be required to prove a causal relationship between the extent of damage to an automobile and the extent of injuries arising from that accident. There was no New Jersey precedent on this issue, so the Court relied heavily on the Supreme Court of Delaware, which adopted that rule in *Davis v. Maute*, 770 A.2d 36 (2001).

The Supreme Court of New Jersey reversed the Appellate Division. It stated that no expert witness would be required where photos are being offered to address the relationship between the damage to a vehicle and the extent of the injury. The Court ruled that expert testimony must concern a subject matter beyond the ken of an average juror. The Supreme Court concluded that it is common knowledge that there is a relationship between vehicle damage and the extent of injury. The Court said that usually accidents that result in major vehicle damage result in serious injuries, and accidents with vehicles that sustained minor damage cause only minor injuries. There are exceptions, but juries are allowed to infer that which is every day knowledge. Thus, the Supreme Court did not require expert testimony.

STAFF ADDITIONS

We are pleased to announce that **Solomon Rubin** joined our firm as a senior associate. A graduate of Brooklyn Law School, Mr. Rubin is an attorney admitted to practice in the States of New York and New Jersey, as well as the United States District Court of New Jersey and the United States District Courts for the Southern, Eastern and Northern Districts of New York.

Brief Latin: ***"in limine"***

from Latin for "at the threshold," referring to a motion before a trial begins. A motion to suppress illegally obtained evidence is such a motion.

- Black's Law Dictionary