

CALENDAR CALL

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“ABSURDITY” AND “INJUSTICE” : WHO CARES

On June 12, 2007 the Appellate Division, Second Department affirmed the holding of the majority of the Appellate Term in the case of Fair Price Medical Supply Corp. v Travelers Indemnity Company and specifically rejected the minority opinion that this holding would create an “absurdity” and an “injustice”.

The facts of the underlying no-fault case are fairly straightforward. The plaintiff-medical provider submitted a claim to the insurance carrier for first party no-fault benefits for a variety of medical supplies provided to the eligible injured insured. The carrier responded with a timely verification request for a letter of medical necessity which was promptly provided by the plaintiff. The defendant thereafter sent an untimely denial of claim form approximately 18

months later. The denial of claim was based upon correspondence from the eligible injured insured which indicated that he never received any medical supplies whatsoever.

The majority of the Appellate Term held that the insurance carrier’s failure to timely deny the claim precluded them from raising the fact that the medical equipment that they were being billed for was never provided. The majority based their holding on the Court of Appeal cases of Presbyterian Hosp. v Maryland Cas. Co. and Central Gen. Hosp. v Chubb Group of Ins. Cos.

The Presbyterian case stands for the proposition that an insurance carrier is precluded from raising a defense as to a policy exclusion if they fail to do so within the time limits. Chubb provides that a carrier can never be precluded from

raising a defense that the incident itself was not covered by the policy, such as a “staged” accident.

The dissenting judge pointed to an earlier Court of Appeals case Zappone v Home Ins. Co. upon which Chubb was based. In that case the Court of Appeals asserted that a law should never be interpreted to “produce inequality, injustice or absurdity”. The dissenting judge argued that for any court to knowingly order anyone to pay for items that were never provided would produce an “injustice” and would be “absurd”.

The Appellate Division agreed with the majority and found that absent proof of a “staged” accident all other schemes to defraud are precluded if not raised within the 30 day “pay or deny” time period.

NO CAUSATION ~ NO COMPENSATION

The Appellate Division of the Second Department recently affirmed the Nassau County Supreme Court's denial of Montefiore Medical Center's motion for summary judgment for first party no-fault benefits.

Although the court found that the Medical Center made out a *prima facie* case, the insurance carrier submitted hospital records and other documentary proof that the injuries that were being treated were unrelated to her motor vehicle accident.

Both the lower court and the appellate court found that there was a triable issue of fact that mandated a denial of the motion for summary judgment.

In another recent case, the Supreme Court of Erie County was affirmed by the Appellate Division, Fourth Department in its decision to grant summary judgment to two defendants in an automobile personal injury case.

The plaintiff was a passenger in an automobile which was able to

safely stop without striking the defendant's truck that was backing out of the other corporate defendants driveway.

Despite the ability of the plaintiff's driver to stop safely, another defendant's car ran into the plaintiff's car and caused the injuries complained of.

Both courts concluded that since the plaintiff's driver was able to stop without hitting the truck, then neither the truck driver nor the corporate defendant could be liable.

STUPID HUMAN TRICKS

I was driving under the influence for my own mental health.

When Benoit Derosiers was stopped by the police in Sudbury, Ontario for driving under the influence, he was so drunk that he was unable to stand and was barely able to speak.

Nevertheless, he was acquitted of all charges when his case came before the judge of the Provincial Court. Having regained both his voice and his wits, he convinced the judge that there was a "legal neces-

sity" for his driving while intoxicated.

He testified that immediately prior to being stopped by the police, he had attempted to commit suicide and was forced to rush himself to the nearest hospital for psychiatric treatment in order to head off another attempt.

If you ever decide to break the law, Sudbury, Ontario seems like the place to go.

All these giant auto malls look the same to me.

Jazrahel King was arrested at the Wholesalers of America car dealership in Norwalk, Connecticut when he attempted to trade in his Jeep for a larger sport utility vehicle.

It turns out that not only was the Jeep a stolen vehicle, but that Mr. King had allegedly stolen it from that very same dealership several weeks earlier. In addition the jeep still had the same temporary plate that the dealership had put on the car.

~TELL IT TO THE JUDGE~

Billing fraud

An attorney, David Wood, and a chiropractor, Robert Ekin, were both arrested in Indianapolis, Indiana in connection with a scheme to defraud insurance companies.

The police charged that Dr. Ekin, or someone in his office, would contact any person who had just been in a car accident and offer a free consultation. Dr. Ekin would then bill the insurance company for tests and procedures that were never done.

The attorney would then contact the carrier and claim that he was representing the patient and demand that the company pay Dr. Ekin.

Both Dr. Ekin and attorney Wood are being held in jail on a variety of felony charges.

Commission fraud

Tanya Dampier and her husband Charles, of Rancho Cucamonga, California were arrested and charged with conspiring to defraud 13 insurance companies out of more than \$750,000 in sale commissions.

The charges stem from a scheme to take advantage of the industry practice of insurance companies paying commissions upon placement. The Dampiers would place

fraudulent policies and bind them with worthless checks that were drawn on closed bank accounts or with insufficient funds. They would then collect their commission and when the checks were dishonored they would not return the commissions to the carrier.

Tanya Dampier has been released on bail while her husband is still being held in custody.

Attorney fraud

Bruce Corrigan, a prominent personal injury attorney from Southport, Connecticut was sentenced to eight months in jail and was suspended from the practice of law for his part in a scheme to defraud an insurance company.

Mr. Corrigan had encouraged his client to obtain a false statement as to lost wages from a friend who owned a landscaping business. Unfortunately for Mr. Corrigan the "client" was actually an undercover FBI agent who was investigating insurance fraud. It was also unfortunate for Dr. Richard Fogel, the chiropractor in this case, and two of his colleagues who pleaded guilty to falsifying medical records.

Police officer fraud

Police Sgt. Shannon Tietsworth of Hegins, Pennsylvania resigned from the department after

being charged with filing a false insurance claim. The officer claimed that he fractured his right hand when his son accidentally closed the van door on it.

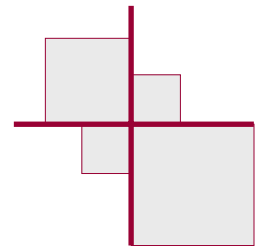
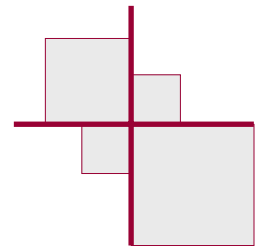
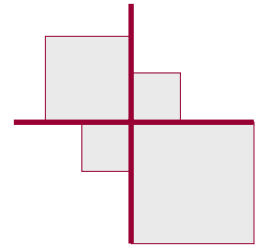
Upon investigating the claim his carrier learned that he told medical personnel that his hand was injured playing basketball. However, as the result of an interview with his estranged wife it was learned that he actually injured his hand when he punched a refrigerator during a domestic dispute.

Idiot fraud

Laurel Harbaugh and her friend Timothy Howard of St. George, Utah reported their vehicle stolen. The police searched for the vehicle and eventually found it trashed and completely wrecked. They also found some witnesses who saw two cars go down the road but only one return.

When the officers went to inform the owners that the car was found, they saw the other vehicle in the driveway. In addition, when Ms. Harbaugh came out to talk with the police she neglected to leave her pipe with marijuana in the house.

Both individuals were arrested and charged with filing a false report, insurance fraud and possession of marijuana.



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IN MEMORIAM

It is with heartfelt sadness that all of us at BG&S mourn the passing of Wayne Wright of the SIU department at Allstate. He was a tireless worker and a good friend. He will be greatly missed.

Our best wishes go to his wife Donna and son Casey.

COURT LIMITS 'MALELLA' PAYMENT RECOVERY

In a recent decision, Judge Dollard sitting in the Supreme Court of Queens County held that, pursuant to the ruling in "Malella", the plaintiff insurance carrier could not recover any payments made to a fraudulently incorporated medical provider prior to April 4, 2002. That was the date that the regulation denying payments to fraudulently incorporated providers became effective.

It should be

noted that time restriction applies only to actual payments made before April 4, 2002. Therefore if a claim was made before that date but payment was made after that date or no payment was made at all, then the time restriction does not apply.

Of equal, or even greater, importance is the fact that the Court allowed this claim by the insurance company as against 17 individual medical providers to stand at

all.

Judge Dollard found in his detailed and well reasoned analysis that a declaratory action such as this can only be prosecuted in the Supreme Court. He further found that a determination here will make the need for future litigation as to claims for unpaid medical services unnecessary. Indeed, this action will resolve more than 800 pending cases as well as an untold number of claims for reimbursement.