

Recent Developments in the Law

Vol. No.XI

November 19, 1996

Insurance Law: In *State Farm Mutual Automobile Insurance Co. v. Hoang*, September 5, 1996, the D.C. Court of Appeals reversed the trial judge's ruling regarding the proper analysis of proof to assess an individual's right to Personal Injury Protection (PIP) benefits under the District of Columbia's No-Fault statute, D.C. code § 35-2105(b)(1) (1993). The Court of Appeals held that the proper analysis should mirror the traditional summary judgment and directed verdict standards. Therefore, a case that presents issues of material fact on which reasonable minds could disagree, should properly be left to the jury rather than be reserved for the trial judge's determination.

In the case, the Plaintiff, Hoang, was involved in an automobile accident with an uninsured motorist. Hoang's insurance company, State Farm Insurance Co., paid Hoang substantial Personal Injury Protection (PIP) benefits for the injuries that he suffered in the accident. After an examination by a physician named by the insurance company, State Farm ceased paying the benefits. The Plaintiff sued State Farm for breach of contract.

State Farm filed a motion for directed verdict, and after hearing testimony from State Farm's physician, the trial judge ruled that the issue of whether the Plaintiff's injuries met § 35-2105(b)'s threshold of "medically demonstrable impairment" was one solely for court resolution as a means "to filter out undeserving cases." The judge then concluded that Hoang had presented sufficient evidence to meet the requirements under D.C.'s statute, and left only the issue of compensatory damages to the jury.

On a final note, the Court of Appeals further determined that Hoang had presented enough evidence to allow the issue of whether his injuries met the § 35-2105(b)'s "medically demonstrable impairment" standard to be presented and resolved by a jury, and the Court of Appeals agreed that the trial judge's dismissal of the Plaintiff's claim for punitive damages was proper.

Negligence Contribution: In *Paul v. Bier*, September 13, 1996, the D.C. Superior Court reviewed an issue arising out of a medical malpractice case where the plaintiff alleged that separate acts of negligence by two doctors who were employees of the George Washington University Medical Center (GWU) proximately caused her injuries. Prior to the conclusion of trial, the plaintiff settled with one of the doctors and GWU for \$2,000,000. The trial continued, and the jury found in favor of the plaintiff and awarded her \$2,000,000 in damages. The issue under review was whether the \$2,000,000 settlement amount that the defendant/doctor who remained in the trial is entitled to a credit for, should be applied *pro rata* based on the proportionate shares of liability, or *pro tanto*, based on the actual settlement amount, dollar-for-dollar. The D.C. Superior Court, basing its decision primarily on the recent case of *Berg, et al v. Footer*, 673 A.2d 1244 (D.C. 1996), held that a *pro tanto* credit against the judgment was appropriate.

In *Berg*, where there were two settling defendants and one non-settling defendant, the court held that the non-settling defendant was entitled to *apro rata*, or proportionate credit share, for the settlement amount paid by the defendant who was determined by stipulation to be a joint tortfeasor, while in contrast, he was entitled to a *pro tanto*, dollar-for-dollar, credit for the settlement amount paid by the defendant who was

not a joint tortfeasor.

The liability of the doctor defendants and GWU as joint tortfeasors was not determined in the case, and therefore, based on the Berg precedent, the D.C. Superior Court held that the non-settling doctor was entitled to a *pro tanto* credit against the verdict. Because the settlement amount happened to equal the verdict, the court ultimately held that the defendant doctor who remained in the trial was obligated to pay nothing.

