

Recent Developments in the Law

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In order to keep you abreast of the recent developments in the law, we are reporting the substance of several current decisions of major import in the jurisdictions of Maryland, the District of Columbia, and Virginia

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PIP and Tort Claims in the District of Columbia

The District of Columbia's no-fault automobile insurance compensates automobile accident victims for their losses without regard to tort liability. Under the traditional liability insurance system, automobile accident victims first must establish fault and degree of injury before compensation can be awarded. In contrast, the 'no-fault solution' provides that accident victims receive compensation from their insurance companies for out-of-pocket losses, regardless of fault. However, along with the certainty of no-fault benefits comes the requirement that the victim surrender any claim based on the fault of another that may have arisen from the accident, unless certain exceptions are met.

The D.C. Code § 31-2405(b) states that "a victim who elects to receive personal injury protection benefits may maintain a civil action based on liability of another person only if:

- (1) The injury directly results in substantial permanent scarring or disfigurement, substantial and medically demonstrable permanent impairment which has significantly affected the ability of the victim to perform his or her professional activities or usual and customary daily activities, or a medically demonstrable impairment that prevents the victim from performing all or substantially all of the material acts and duties that constitute his or her usual and customary daily activities for more than 180 continuous days; or
- (2) The medical and rehabilitation expenses of a victim or work loss of a victim exceeds the amount of personal injury protection benefits available."

§ 31-2405(c) states that “nothing in section (b) of this section shall prevent the survivors of a victim whose death arises out of the maintenance or use of a motor vehicle from maintaining a civil action based on the liability of another person for the loss and noneconomic loss resulting from the victim's death regardless of whether the victim had previous to his or her death elected to receive personal injury protection benefits.”

Musa v. Continental Insurance Company, 644 A.2d 999 (D.C. 1994), interpreted and applied the language within this statute. The Musa Court noted that there are certain exceptions that allow the most seriously injured accident victims to bring tort actions even after having received PIP benefits. In Musa, the Plaintiff relied upon one of these exceptions, as set forth in the previous no-fault statute, section 35-2105(b)(1), which required a showing that the injury has resulted in a "*substantial and medically demonstrable permanent impairment which has significantly affected* the ability of the victim to perform his or her professional activities or usual and customary daily activities" Id. (emphasis added).

The Musa Court held that the facts established that the Plaintiff's injuries did not "significantly affect" his activities. See Id. The Court based its decision primarily on the fact that the Plaintiff remained enrolled as a full-time student at UDC in the semesters immediately following the accident, during which he earned between eighteen and twenty credit hours per semester. Thus, since the accident did not interfere with his studies, the Court found that there was no factual showing upon which to conclude that his usual and customary daily activities were disrupted as a result of the injuries.

Moreover, the Plaintiff was also able to continue working at his part-time job as a security guard until more than five months after the accident. The Musa Court found that these two factors substantially outweigh the allegation that after the accident he was unable to return to work at his second part-time job with the cleaning service. The Court found that it appeared from the record that despite the accident the Plaintiff was able to resume the activities that had previously occupied most of his waking hours: going to school and working as a security guard. Id.

In Smith v. Washington Metropolitan Area Transit Authority, 631 A.2d 387, 390 (D.C.1993), the District of Columbia Court of Appeals similarly concluded that the Plaintiff's evidentiary showing was insufficient to maintain a cause of action under the statutory provisions of the No-Fault Act and WMATA was entitled to summary judgment as a matter of law. In order to try to meet the *substantial permanent* impairment exception of the No-Fault Act's restrictions against tort actions for noneconomic losses, the Plaintiff was examined by a doctor almost five years after the accident. Though the report described the Plaintiff's condition as of that date as "permanent" on the ground that "she will continue to have [back] problems from time to time," the described injuries were minor and relieved by aspirin. See Id.

Thus, in order to defeat the motion, the Plaintiff had to meet her burden of demonstrating that she met the substantial permanent impairment exception to the statute's restrictions against tort actions solely on her answers to interrogatories. In the answers the Court found that the Plaintiff continued to work full time as a legal secretary where she was "required to perform computer work, filing, and ... administrative duties that require [her] to move around the office a lot" for which she has been paid between \$24,500 to \$28,090 per year which belied her claim of substantial permanent injuries.

In addition, the Smith Court found that the Plaintiff's answers to interrogatories were insufficient to show that her injuries from the accident prohibited her from performing *all* or *substantially all* of her duties for 180 continuous days. The Smith Court considered that "substantially all" means what it says, *i.e.*, to "a great extent." Id. In her answers, the Plaintiff stated that she curtailed her normal activities, stayed at home in bed a lot, and was able to work only part-time. Without sworn medical

affidavits as to the extent of her impairment for 180 continuous days, however, the Court found these merely conclusory answers were inadequate to meet the requisite "substantially all" exception to the No-Fault statute. Therefore, the Smith Court found that the Plaintiff had not provided, through her answers to interrogatories, sufficient evidence to demonstrate that her cause of action remained viable under the exceptions to the No-Fault Act's restrictions against tort actions for noneconomic losses. The Court found that she failed to make a prima facie showing that she suffered substantial permanent impairment or was virtually incapacitated for 180 continuous days after the accident.

As was seen in Musa and Smith, this D.C. statute has the potential to eliminate one of the major problems in a no-fault insurance jurisdiction – double recovery – which arises in jurisdictions with no-fault insurance that allow motorists to recover in tort as well as receive no-fault benefits.

