

Practice tips

Ten-Minute Course - Avoiding Legal Malpractice Claims in Canadian P.I. Cases

by Greg Samuels

The Fact Pattern

John Smith is a Washington resident, insured by GEICO, who was catastrophically injured as a passenger in a motor vehicle accident in Vancouver, B.C. when riding in his friend Jane Doe's car. The defendant, Jane Doe, also a Washington resident and determined to be 100% responsible for the accident, is insured by Farmers' with a minimum \$25,000 third party liability policy. Mr. Smith has PIP coverage of \$10,000 and UIM of \$100,000 with GEICO. His future medical expenses alone will exceed \$2 million. You have determined that Ms. Doe is insolvent, and you are now in a position to settle Mr. Smith's case with the various insurance companies. How much do you settle for? Disregarding exchange rates, if you said \$135,000, do yourself a favor and buy more malpractice insurance.

The Proper Analysis

The Insurance Corporation of British

Columbia ("ICBC") provides minimum third party liability coverage to every B.C. driver of \$200,000. ICBC also grants \$150,000 in no-fault medical and rehabilitation benefits ("Part 7 Benefits"), as well as \$1 million in UIM or "UMP" coverage, subject to certain deductions. Owing to a certain Power of Attorney and Undertaking ("PAU") that Farmers' filed with the Canadian Council of Insurance Regulators ("CCIR") on September 26, 2002, Farmers' is obligated to increase the minimum limits offered to its policyholders for all classes and kinds of coverage, whenever one of its policyholders is involved in an accident in British Columbia. These classes and kinds of coverage include tort, PIP and UIM.

In other words, you can disregard Mr. Smith's and Ms. Doe's limits of coverage and look instead to ICBC's minimum limits. You should settle Mr. Smith's tort claim with Farmers' for \$200,000 plus an additional \$150,000 for PIP or "Part 7 benefits." You

should then settle Mr. Smith's UIM claim with Farmers' (and possibly GEICO) for \$650,000 (\$1 million less amounts received in tort and Part 7, as well as any other applicable deductions).

But Farmers' is Ms. Doe's insurer, you say. How can Farmers' be held liable to top up Mr. Smith's UIM coverage? In B.C., Mr. Smith is also considered a Farmers' insured for UMP purposes, since he was a passenger in the vehicle. Moreover, an "owner's certificate" like that held by Ms. Doe is considered primary coverage for purposes of sorting out UMP priority issues. Farmers' may nevertheless have a subrogation claim against GEICO, Mr. Smith's own UIM carrier.

There's a beautiful arrow in the plaintiff attorney's quiver known as *Mulcahy v. Farmers' Insurance*, 152 Wash.2d 92, 95 P.3d 313 (2004), which allows such a coverage case to be tried in Washington. Proof of British Columbia law would be established

in such a case through affidavit of a B.C. attorney qualified on the topic. B.C. counsel should also be consulted for conduct of the UIM arbitration, should damages disputes arise, since such a case must proceed pursuant to statute by way of arbitration through the BC International Commercial Arbitration Centre "BCICAC."

To check whether your client's or defendant's insurer has filed a PAU in B.C., that subjects them to B.C.'s limits, you should consult the CCIR website, www.ccir-ccira.org/en/pau/.

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TRIAL NEWS

WASHINGTON STATE ASSOCIATION
for JUSTICE

June 2010 Volume 45, Number 10

WSAJ

WSAJ Law Day reception honors judiciary

The annual WSAJ Law Day celebration has evolved throughout the years from a dinner to a reception, but it will always be an opportunity for the members of WSAJ to honor judges that dedicate their careers to enforcing the rule of law.

This year's Law Day reception, held at the Rainier Club in downtown Seattle, honored seven federal judges from the U.S. District Court in Seattle for their 20 years of service on the bench. Judges honored included Chief Judge Robert Lasnik, Judge Carolyn Dimmick, Judge Ricardo Martinez, Judge Walter Thomas McGovern, Judge Marsha Pechman, Judge Barbara Rothstein and Judge Thomas Zilly. Judge Lasnik also delivered the evening's keynote address. More than 40 judges from around the state were in attendance, including all the Seattle United States District Court Judges, several members of the Washington State Supreme



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