



## TO PAY OR NOT TO PAY? SUBROGATION LIENS ARISING OUT OF A BC MVA

The next time you assist an American citizen involved in a motor vehicle accident that occurred in British Columbia, you should note that PIP liens are not recoverable in British Columbia.

Say you manage to settle a client's BC mva claim for \$25,000 all inclusive, with a subrogation lien of \$5,000 by your client's PIP insurer; the insurer is not entitled to recover the PIP benefits they paid to your client.

In British Columbia, the deemed release provisions contained in s. 83 of the *Insurance (Vehicle) Act* state that an out-of province insurer may not recover through the courts in British Columbia accident benefits it has paid.

Out-of-province insurers can have no greater rights than the person who obtained those benefits, and the insured is deemed to have released the claim to the extent of those benefits.

See *Schaffer v. McPherson* (1997), 1 C.C.L.I (3d) 88 (B.C.S.C.), and *Matilda v. MacLeod* (1997), 1.C.C.L.I (3d) 94 (B.C.S.C.), both affirmed on appeal 2000 BCCA 1.

A deemed release applies whenever the accident benefits paid by the out-of-province insurer are provided under a contract or plan of automobile insurance and are similar to the benefits paid under the appropriate Regulation in British Columbia. See *Gurniak (Guardian ad litem of) v. Nordquist*, 2003 SCC 59.

So the next time you settle a claim that happened in British Columbia, you can save your client from surrendering thousands of dollars of their own money and protect yourself from a potential malpractice claim.

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