Haulers Insurance Company v. Davenport – Affirmed by Georgia Court of Appeals

In the recent decision of *Haulers Insurance Company v. Davenport*, the Georgia Court of Appeals examined insurance policy exclusions for "public or livery conveyance." Haulers Insurance Company filed for summary judgment on the grounds its uninsured motorist policy excluded coverage for Davenport's personal injuries because he was operating his vehicle for hire at the time of an accident. Davenport's passenger was a neighbor he occasionally drove into town, who paid him approximately $7 each trip. Although this neighbor expected to pay for this particular ride, there was no evidence in the record she actually did so. The trial court denied the Motion for Summary Judgment and a certificate of immediate review was granted.

Davenport's policy did not define "public or livery conveyance." In affirming the trial court's decision, the Court of Appeals was persuaded by dicta in the 1983 Georgia Supreme Court case *Anderson v. Southeastern Fidelity Ins.* Co., which interpreted the phrase "public livery conveyance" as a taxicab and several cases from other jurisdictions that considered similar policy exclusions and defined "public or livery conveyance" as a vehicle held out to the general public for hire and which is used indiscriminately in that manner. The Court of Appeals found no evidence demonstrating Davenport held himself out indiscriminately to the public, or operated a business for hire. The evidence merely showed he occasionally offered a specific neighbor a ride for a fee, and on the date of the accident he did so gratuitously.

This is a favorable case for Insureds. A policy exclusion will not be triggered absent evidence an insured used the vehicle indiscriminately to transport members of the general public for hire, or regularly rented out the vehicle for hire.

ML Healthcare Services, LLC and Robin Houston v. Publix Super Markets, Inc. – Affirmed by Eleventh Circuit Court of Appeals

In the recent decision of *ML Healthcare Services, LLC and Robin Houston v. Publix Super Markets, Inc.*, the Eleventh Circuit Court of Appeals examined the discoverability and admissibility of evidence at trial of a "litigation investment" company. Houston and third-party ML Healthcare appealed a defense verdict entered in the U.S. District Court for the Northern District of Georgia in connection with Houston's slip and fall at a Publix Supermarket. Before trial, the district court denied ML Healthcare's motion to quash subpoenas, and denied Houston's motion *in limine*, ruling Publix could present evidence of ML Healthcare for two limited purposes: (1) to attack the credibility of the causation opinions proffered by Houston's physicians and (2) to challenge the reasonableness of Houston's claimed medical expenses. On appeal, Houston and ML Healthcare argued the district court erred by requiring ML Healthcare to produce evidence of collateral source payments made on Houston's behalf, and in admitting such evidence at trial to demonstrate a potential bias by Houston's treating physicians.

ML Healthcare's contract permits recovery of the difference between the discounted bills it pays treating physicians and what those physicians say is the full value of those medical services; either from the plaintiffs themselves, or from any tort recovery they receive. Publix contended this contractual arrangement creates the risk of bias by physicians who receive referrals from ML Healthcare to provide a favorable causation analysis to increase the likelihood of recovery in the underlying action and continue the income stream generated by referrals from ML Healthcare. The Eleventh Circuit found no abuse of discretion by the district court in crediting this argument, and admitting evidence of ML Healthcare's payment arrangement for the limited purpose of showing bias on the part of Houston's testifying physicians. Publix did not need to prove a premeditated plan of deceit, but only needed to show the payment arrangement had "any tendency" to make bias more probable. Under Georgia law, evidence of collateral source benefits can be admissible in a personal injury tort case if it serves a valid evidentiary purpose, and the Eleventh Circuit found this evidence relevant, and could be used for impeachment.

Wellstar Kennestone Hospital v. Roman

The Georgia Court of Appeals in *Wellstar Kennestone Hosp. v. Roman*, No. A17A1497, 2018 Ga. App. LEXIS 34 (Ct. App. Jan. 30, 2018), recently ruled that a defendant may discover the varying rates a medical provider charges for services to different categories of patients. In *Roman*, plaintiff sued defendant for injuries arising out of an automobile accident and sought recovery for a $15,919.00 emergency room bill. Defendant sent the emergency room hospital a Notice of Deposition for testimony regarding the rates the hospital charged for the following categories of patients: uninsured patients; insured patients; patients under workers' compensation plans; patients under Medicare/Medicaid plan; litigants; and non-litigants.

The non-party hospital filed a motion to modify the subpoena, arguing that the amount of money the hospital wrote off a patient's bill was a collateral source and was therefore inadmissible to mitigate damages. Defendant argued that the information sought about different rates supported his contention that the $15,919.00 emergency room bill was not a reasonable charge for the services rendered.

The Georgia Court of Appeals agreed with Defendant, holding the collateral source rule does not preclude "the discovery of the medical rates and charges of third parties that are not involved in this case." The Court recognized that defendant could not present evidence of the hospital's write-off of plaintiff's treatment. The *Roman* decision reinforced Georgia law prohibiting information about health insurance, but left the door open to the presentation of evidence at trial regarding varying medical charges for the purpose of showing whether charges were reasonable.

If you wish to further discuss any of these cases, please contact a Swift, Currie, McGhee & Hiers' attorney at 404.874.8800 or via our website, swiftcurrie.com.