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PERSONAL INJURY PROTECTION (PIP) AND UNINSURED MOTORIST BENEFITS (UIM) CAN BE DENIED TO A PASSENGER RIDING IN A STOLEN VEHICLE ONLY IF THE PASSENGER KNEW OR HAD REASON TO KNOW THAT THE VEHICLE WAS STOLEN

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Please call me to discuss any legal issues or for a clarification of current law.

NEW YORK

CLUB NOT LIABLE TO TEENAGER HIT BY CAR WHILE CHASING A FOUL BALL

Haymon v. Pettit
N.Y. Court of Appeals
9 N.Y.3d 324
November 20, 2007

In this case, the issue was whether a baseball park operator owes a duty to warn or protect non-patron spectators who are injured while chasing foul balls that are hit outside of the stadium. The Court of Appeals concluded that no duty existed.

Plaintiff's 14 year old son, Leonard, was struck by an car driven by defendant, Donald Pettit, when Leonard attempted to retrieve a foul ball. Leonard neither saw nor heard the approaching car because he had not looked both ways before crossing the street, and was wearing headphones. The plaintiff sued the Ball Club for negligence, claiming that it had a duty to warn or protect non-patrons outside of the baseball stadium because the club offered free tickets to people who retrieved foul balls and returned them to the ticket counter. The Court of Appeals held that no duty existed to the Plaintiff's son.

The plaintiff's argument was that the foreseeability of children chasing balls into the street, and the incentive given to children to do so, required the Ball Club to provide some measure of protection or warning from dangers. The foreseeability of this danger would require the Ball Club to exercise reasonable care in protecting children from the hazards of chasing balls into the street. The Court rejected this argument because the plaintiff presupposed that the Ball Club had a duty to protect non-patrons outside of the stadium. Exercise of reasonable care by the defendant would first require that a duty existed to protect the plaintiff's son. The Court determined that a duty did not exist. It relied on the general rule that an owner or occupier of land generally owes no duty to warn or protect others from a dangerous condition on adjacent property unless the owner created or contributed to such a condition. The dangers of crossing a street, and an individual's decision to cross it to retrieve foul balls existed independent of the Ball Club's promotion. The Court mentioned that the Ball Club rewarded the *retrieval* of foul balls, and assumed that children and adults would be prudent to not chase after them on a busy street.

The Court went further to determine that even if the Ball Club's promotion created or contributed to a dangerous condition, the finding of a duty would be inappropriate. The Court reasoned that because foul balls could land almost anywhere around the stadium, requiring the Ball Club to warn or protect under such circumstances would be neither fair nor practical. Additionally, it would be unreasonable to hold the Ball Club liable for conduct outside its control such as an injury occurring as a result of the actions of a third party. Thus, summary judgment was granted to the defendant Ball Club.

NEW JERSEY

A DUTY TO INTERVENE EXISTS WHERE GREAT BODILY INJURY OR DEATH CAN BE AVOIDED WITH LITTLE INCONVENIENCE

Podias v. Mairs
N.J. Appellate Division
394 N.J. Super. 338
June 26, 2007

In this case, the issue was whether passengers of a vehicle that caused injury have a duty to assist someone injured. The Appellate Division ruled that they had a duty. However, this is one case where the behavior of the passengers was so unconscionable that the Court probably was influenced by the awful behavior of the Defendants to limit the common law rule that there is no duty to rescue someone in harm's way, absent a special relationship between the parties. It remains to be seen whether the Court would rule the same way with more sympathetic

passengers.

The Defendant, eighteen year old Michael Mairs, was drinking alcohol with his friends, the Defendants, Andrew K. Swanson, Jr. and Kyle Charles Newell. Mairs then drove back to college, and gave a ride to the Defendants, Swanson and Newell. Mairs was intoxicated at the time. Mairs lost control of his vehicle and struck a motorist. The Defendants briefly stopped, but decided to drive on, leaving the injured motorcyclist in the middle of the road, without calling for medical help. This was even though all three had cellular phones.

Subsequently, a motor vehicle ran over the motorcyclist, resulting in said motorcyclist's death. The Estate of the motorcyclist filed wrongful death suits against Mairs, Swanson and Newell.

Swanson and Newell filed motions for summary judgment, because as a matter of law, individuals have no duty to intervene to rescue an endangered person. The Defendant, Mairs, did have a duty to intervene, because since he was the driver, he was the cause of the danger. Under traditional common law, Swanson and Newell would not be liable, because the they had no duty to act. For this reason, the Trial Court granted summary judgment in favor of the Defendants, Swanson and Newell.

The Appellate Division reversed the Trial Court's ruling. In abrogating the common law, the Court found that where there is knowledge of risk or likelihood of great bodily harm or death to another, that might be avoided at little inconvenience, there is a duty to intervene.

Note that although the Court did not acknowledge this to be the case, the Court's ruling very much contradicted the long common law rule that there is no duty to intervene. From some of its language seems to have rightly found the behavior of these Defendants to be unconscionable. These Defendants had cellular phones and there was nothing to stop them from calling for help. Instead they left the scene of the accident with their intoxicated friend, leaving the injured victim in middle of a major highway in the dark. Judges can have the same emotions that other people have. They could not have been unaffected by the behavior of the Defendants. It remains to be seen if they would find a duty to intervene on the part of passengers in a case where the passengers' non-intervention was less shocking, although little effort would be required on the part of the passengers to summon help.

PERSONAL INJURY PROTECTION (PIP) AND UNINSURED MOTORIST BENEFITS (UIM) CAN BE DENIED TO A PASSENGER RIDING IN A STOLEN VEHICLE ONLY IF THE PASSENGER KNEW OR HAD REASON TO KNOW THAT THE VEHICLE WAS STOLEN.

Hardy v. Abdul-Matin
N.J. Appellate Division
N.J. Super. LEXIS 1
January 2, 2008

In this case, the issue was whether an insured plaintiff would be allowed to receive Personal Injury Protection (PIP) coverage from an accident when the insurance policy denied coverage in situations where the insured was occupying a car without the permission of the owner. The Appellate Division held that although the language in the contract did not specify a knowledge requirement, knowledge or a reasonable belief by the insured that the owner did not consent to the use of the car was required to deny coverage.

The plaintiff, Tyrell Hardy, was a 14-year old passenger in a stolen vehicle operated by Hamza Abdul-Matin. He claimed that he did not know Abdul-Matin very well, and that he did not know the vehicle was stolen. The vehicle collided with a truck, and Hardy was hospitalized for multiple injuries. He sought PIP and UIM benefits from Liberty Mutual, his insurance company. Liberty Mutual denied coverage for PIP and UIM, claiming that traveling in a stolen vehicle would deny coverage under the policies, regardless of Hardy's knowledge of whether the car was stolen. The trial court granted summary judgment in favor of Liberty Mutual because the language of the PIP policy unambiguously stated that insurance would be denied to "any insured operating or occupying an auto without the permission of the owner of the auto." The UIM policy stated that Liberty Mutual would pay compensatory damages "which an insured is legally entitled to recover from the owner or operator of the uninsured motor vehicle." The court concluded that Hardy was not legally entitled to recover damages from the owner of the vehicle, and barred UIM coverage. The case was appealed to the Appellate Division.

The Appellate Division held that the denial of PIP insurance coverage required proof that the plaintiff knew or should have known that the car was being driven without the owner's consent. The court stated that in many circumstances, a person may reasonably assume that a car in which he is riding is being operated with the consent of the owner. A passenger cannot be expected to inquire about the status of the car and driver, unless existing facts place the passenger on notice that use of the car is questionable. The court also stated that an interpretation of the insurance policy that would exclude an unknowing person from coverage, if injured, would unjustifiably narrow the coverage reasonably expected by an insured. In regard to the unambiguous language of the insurance contract, the court recognized that reasonable expectations may govern even in the absence of ambiguity, in recognition of the generally one-sided nature of insurance contracts.

The Appellate Division determined that since Hardy was legally entitled to recover from the operator of the vehicle, Abdul-Matin, the UIM coverage would apply. The court also recognized that the UIM policy included a provision excluding damages that were incurred while "using a vehicle without a reasonable belief that the insured is entitled to do so." The court concluded that "using" included being a passenger in a vehicle, and that Hardy's "reasonable belief" that the car was not stolen needed to be determined.

The Appellate Division reversed summary judgment in favor of the defendant on Hardy's PIP and UIM claims, and remanded the case back to the trial court. Hardy's approval for PIP and UIM coverage from Liberty Mutual will hinge on the determination of whether Hardy knew or had reason to know that the vehicle he was riding in at the time of the accident was stolen.

STAFF ADDITIONS

We are pleased to announce that **Michael Kim** joined our firm as a law student intern. Michael Kim is in his last year at Seton Hall School of Law, and plans to practice in the New York / New Jersey area upon graduation.

Brief Latin: *"ex parte"*

From Latin for "for one party," referring to motions, hearings, and orders applied for or granted to one party. Application made to the court without notice to the adverse party.

- Ballentine's Law Dictionary