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Delaware Claims Association

Legal Update

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Of

Tybout, Redfearn & Pell

Martin v. Delaware Home & Hospital, No. 232, 2013 (Del. Supr.) (ORDER).

The Supreme Court affirmed two Superior Court decisions regarding Claimant's discovery violation and eligibility for total disability benefits.

Claimant was sustained a compensable knee injury that necessitated a surgery in 2008. Claimant was released to return to work, with restrictions, during 2008. Claimant did not return to the workforce. In 2011, Claimant required a second surgery. Employer agreed that the surgery was compensable; however, contended that Claimant was ineligible for total disability benefits because she had not been employed prior to the 2011 surgery and therefore had no wage loss associated with the surgery.

During the discovery phase of the litigation, Employer issued requests for production to Claimant's counsel asking for documentation of any job search that Claimant alleged she completed. No such information was produced. At the hearing, Claimant testified (over Employer's objection) about her job search activities. The Board found that Claimant had not voluntarily removed herself from the workforce and therefore was entitled to total disability benefits. On appeal to the Superior Court, that Court concluded that the Board erred in allowing Claimant to testify regarding her job search, when that information was not disclosed prior to the hearing (and pursuant to Employer's requests for production).

On remand, the Board precluded Claimant from testifying regarding her job search efforts because she had, once again, failed to produce any documentation of the same (Claimant did produce a handwritten note of employers she allegedly contacted 48 hours prior to the hearing – the Board found this late production unacceptable). The Board concluded that the Claimant could, therefore, not demonstrate that she intended to remain in the labor market prior to the 2011 surgery. Consequently Claimant was not awarded total disability benefits. The Superior Court affirmed the Board's decision on remand.

The Supreme Court affirmed both Superior Court decisions.

These three decisions stand for the proposition that claimants must be candid in discovery and that failing to do so may operate to exclude portions of their testimony. Further, these opinions decisions bolster a string of other precedent that requires a claimant to demonstrate that they are eligible for total disability benefits, if they have been unemployed, out of the labor market, and not receiving total disability benefits in advance of a medically-disabling event. Notably the Supreme Court did not explicitly rule on this last issue.

Claimant's midday motor vehicle accident was not within the course and scope of employment in a case where it was unclear if Claimant was being paid at the time.

Claimant worked as an hourly employee for Dentsply Caulk. Every day Claimant received a thirty minute unpaid lunch break. Claimant also received two fifteen minute paid breaks. Claimant did not have to "clock out" for lunch. The Employer's time-keeping program automatically deducts thirty minutes from each day worked, in order to obviate the need for an employee to clock out on the unpaid lunch break. Employees are allowed to combine the unpaid lunch break and the paid breaks, but this practice is not encouraged.

On the date in question, Claimant was on his way back to work from his lunch break. Claimant was involved in a motor vehicle accident. Claimant alleged that his accident was compensable on the grounds that he was being paid during the time when the accident occurred (clearly trying to fit within one of the Going and Coming Rule exceptions). Employer contested on the grounds that the Claimant's injury was sustained outside the course and scope of employment.

The Board concluded that the injury was outside the course and scope of Claimant's employment. The Board determined that the injury occurred off-premises and at a location that was not under the control or direction of the Employer. The Board held that even if the paid break time and unpaid lunch time was combined, that it would be impossible to determine when the accident occurred with respect to those two categories of time. The Board did not find that factor determinative, explaining that regardless of whether the accident occurred when the Claimant was "paid" the accident still fell outside the scope of employment insofar that the Claimant's trip was personal in nature and did not contain a sufficient nexus to his employment.

Barlow v. Finegan, 2013 WL 5469981 (Del. Oct. 1, 2013)

The Delaware Supreme Court Determines That All Settlements Of Tort Claims Involving Minors Must Be Approved By The Court Exercising Independent Judicial Determination Regarding The Fairness Of The Settlement.

In the *Barlow* case, one of the minor Plaintiffs appealed the Superior Court's Order enforcing the parties' settlement agreement wherein two minor plaintiffs would split \$15,000.00 (\$7,500.00 each). The lower court issued an order enforcing the settlement agreement but did not conduct a minor settlement hearing. The Delaware Supreme Court initially vacated the Superior Court's order enforcing the settlement based on the fact that a minor settlement hearing was not conducted. The Supreme Court opined that pursuant to 12 *Del. C.* § 3926 and Superior Court Civil Rule 133(c), a hearing on the proposed minor settlement and court approval are mandatory before a minor tort settlement can become final. The court stated that parties cannot rely on the authority of guardians of minors in settling tort claims and must seek approval from the court.

On remand, the Superior Court held a minor settlement hearing and determined that the \$7,500.00 settlement amount for each minor was reasonable. In approving the minor settlement, however, the Superior Court stated that absent the settlement agreement and viewing the damages of each minor plaintiff, the court would have awarded \$5,000 to one minor and \$10,000 to the other. Nevertheless, the Superior Court approved the settlement agreement as proposed, with both minors each receiving \$7,500.00.

The minor tort settlement, as approved by the Superior Court, was again appealed to the Delaware Supreme Court. The Supreme Court further elaborated on its earlier ruling and stated that pursuant to 12 *Del. C.* § 3929 and Superior Court Rule 133, the Court is required to exercise independent judgment in determining the appropriateness of settlements involving minors and shall not rely on the guardian's authority to settle tort claims.

Therefore, the Delaware Supreme Court has made it clear that tort settlements involving minor plaintiffs do not become final or binding unless and until court approval is sought and obtained. Furthermore, the court is required to exercise independent judicial determination regarding whether the tort settlement agreement for the minor should be approved. According to the Delaware Supreme Court, the trial court should focus on medical or other evidence satisfactory to the court in approving such minor settlements.

State Farm Mut. Auto. Ins. Co. v. Davis, C.A. No. S10C-09-005 (Del. Nov. 1, 2013)

Delaware Supreme Court calls legislature's attention to possible clarification in PIP statutory scheme for payment and allocation of PIP benefits for lost wages and medical expenses.

This case involved an automobile accident which resulted in the Plaintiff sustaining serious injuries placing him the hospital for six week following the accident. While in a coma, Plaintiff's mother executed a revocable assignment of insurance benefits in favor of Christiana Care, which authorized the health care facility to seek payment directly from State Farm, Plaintiff's insurer. Given the costs of Plaintiff's medical expenses exceeded his PIP limits of \$15,000, Plaintiff's PIP policy was exhausted in the beginning of January 2010, after State Farm paid the limits of the policy to Christiana Care. In February of 2010, Plaintiff's counsel wrote to State Farm asking to reserve the Plaintiff's PIP benefits for lost earnings; however the counsel learned that the PIP policy had previously been exhausted. When this matter proceeded to litigation, the Superior Court, *sua sponte*, found that the assignment of benefits by Plaintiff's mother was invalid and that State Farm had improperly paid the limits of the PIP policy to Christiana Care. The Superior Court's decision appeared to suggest that the Plaintiff/insured had a right to elect/reserve his PIP benefits that have otherwise not been properly paid for lost wages instead of payments to health care providers.

However, on appeal, the Supreme Court reversed the Superior Court's ruling with regard to the assignment of benefits finding the issue was moot. Specifically the Supreme Court found that because the available PIP limits were paid out prior to Plaintiff's counsel attempt to reserve the benefits for lost earnings, State Farm had fully performed under the policy and therefore Plaintiff's claim that State Farm improperly failed to reserve PIP benefits as requested was moot.

Although the Supreme Court did not reach the issue of statutory construction which would have required they determine if and how PIP benefits should be allocated, the Court directed its audience's attention to the practices of other states with regarding to allocating and reserving PIP benefits.