

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

JACQUELINE EXLINE-HASSLER, :

Plaintiff, :

v. : Case No.: 10-C-12-000410 CN

PENN NATIONAL INSURANCE, et al., :

Defendants. :

DEFENDANTS KIRSTEN SAPP'S MOTION IN LIMINE

COMES NOW the Defendant Kirsten Sapp, by and through counsel, Walter E. Gillcrist, Jr., Anne K. Howard, and Budow and Noble, P.C., and hereby moves *In Limine* to preclude the Plaintiff from presenting testimony or evidence that Kirsten Sapp was under-insured at the time of loss, prevent any mention of Penn National Insurance as a Defendant to this matter, and to otherwise bar any reference to insurance or insurance providers, and for reasons states as follows:

I. Nature of the Case

This matter stems from a motor vehicle accident that occurred on June 26, 2009, on I-70, at or near the intersection of Quinn Road, in Frederick County, Maryland. The incident involved two motor vehicles, each operated by parties to this pending litigation. The first vehicle was a 2005 Honda Civic, driven by Defendant Kirsten Sapp (hereinafter "Ms. Sapp"),¹ and owned by Deja Vu, Inc., a company owned and operated by Kirsten's mother, Joanne Sapp. The second vehicle, a 2004 Honda Civic, was driven

¹ For the purpose of clarity, any reference to "Ms. Sapp" in this motion is in reference to Kirsten Sapp, not to her mother and co-Defendant Joanne Sapp.

by the Plaintiff, Jacqueline Exline-Hassler. Both Plaintiff and Ms. Sapp were traveling westbound on I-70 in rainy foggy weather. Upon seeing brake lights, Ms. Sapp hit her brakes, at which point her car hydroplaned and impacted the Plaintiff's, which was traveling in front of her on the highway. Ms. Sapp denies she was negligent in the operation of her motor vehicle and refutes the Plaintiff's alleged damages in all respects.

II. Defendants Sapp Moves to Preclude the Plaintiff from Using the Phrase "Under-Insured" Motorist Benefits and/or Introducing Penn National Insurance as a Defendant to the Jury

In Maryland, the mention of insurance to a jury is typically prohibited. Specifically, "[o]ur cases generally prohibits the slightest reference to insurance in front of the jury primarily because such reference is irrelevant and has no bearing on the issue of damages. See, *Allstate Insurance Co. v. Atwood*, 319 Md. at 258, 572 A.2d 154; *Allstate Insurance Company v. Miller*, 315 Md. 191-192, 553 A.2d 1268; *Jones v. Federal Paper Bd. Co.*, 252 Md. 494-495, 250 A.2d 653; *Takoma Park Bank v. Abbott*, 179 Md. at 67 263, 19 A.2d 169." *Morris v. Weddington*, 320 Md. 674, 681, 579, A.2d 762, 765 (1990). The Court in *Atwood* further opined that in addition to being irrelevant, reference to insurance is highly prejudicial. *Atwood*, 318 Md. at 258.

Here, the Plaintiff has alleged that Ms. Sapp's liability insurance policy limits are insufficient to properly compensate the Plaintiff for her injuries. At the conclusion of the evidence, the Plaintiff will ask the jury to render a monetary award in her favor. As a result, it is a simple undertaking for the jury to decide the amount of damages. And, if the jury awards more than Ms. Sapp's available limits, then the Plaintiff's Penn National

Insurance's under-insured coverage would come into play. Ms. Sapp's liability coverage through State Farm is \$100,000. The Plaintiff has potential additional under-insured motorist coverage through Penn National of \$250,000. At trial, whether or not the Plaintiff recovers under-insured motorist benefits from Penn National is dependent solely on the amount of the damages verdict against Ms. Sapp. And, uninsured-motorist coverage will only come into play should this amount be over \$100,000.

Therefore, there is no actual determination that Ms. Sapp is under-insured at this point. The issue will not be determined until the jury renders its verdict. Ms. Sapp moves *In Limine* to preclude the mention of under-insured motorist benefits from Penn National, and any reference to insurance or insurance providers, from the jury's consideration because the mere mention that Ms. Sapp was "under-insured," or that Penn National is a Defendant would so contaminate the jury that it would be impossible to receive a fair and impartial verdict. Not only would the subject of insurance be before the jury, the jury could also easily infer that Ms. Sapp did not comply with Maryland insurance law or that she purposely carried minimum insurance. In short, there will absolutely be prejudice to Ms. Sapp should any mention of her being under-insured or that there is additional coverage available to the Plaintiff through Penn National.

On this issue, *Weddington* Court reasoned that:

The Rule against admitting evidence regarding insurance is for the protection of both parties. If the amount of insurance coverage is high, reference to it may prejudice the Defendant because the jury may consider the fact that the Defendant will not be personally liable for any damages, and therefore, be overly generous in an award to the Plaintiff. Conversely, if the limits of coverage are low, or if the coverage is non-existent, the award may be smaller than justified because the jury may limit the award to what it believes the Defendant can personally afford, regardless of

the actual damages proved. McCormick, Evidence (3d ed. 1984) § 201. The latter possibility is what Petitioner alleges occurred in the instant case. The better practice, then, is to prevent the issue of insurance, or the lack of insurance, from being introduced at trial.

Id.

Ms. Sapp would be severely prejudiced should the jury be allowed to consider her potential under-insured motorist coverage, or be allowed to speculate as to why Penn National is a Defendant in this action. These issues are not for the jury's consideration. Unless this issue is precluded from the jury, it would undoubtedly speculate that Ms. Sapp was either uninsured or that she did not carry adequate insurance, when, in fact, the only factor in whether Plaintiff recovers damages against Penn National is the amount of the damages awarded by the jury against Ms. Sapp. Therefore, there is no necessity that these issues to be mentioned to or in the presence of the jury.

Ms. Sapp is aware that in certain circumstances an insurance carrier can be named as a party when it is sued for uninsured/under-insured motorist benefits. See *King v. State Farm Mut. Auto. Ins. Co.*, 157 Md. App. 287, 850 A.2d 428 (2004). However, the present matter is distinguishable from *King*. In *King*, the tortfeasor, Ms. Farley, admitted liability, and her carrier had paid her policy limits to the Plaintiff. With removing the issue of liability (and having paid her policy limits), her presence was not required at trial, as there would be no evidence concerning the facts of loss. Therefore, she did not attend trial, and the only issue to be considered by the jury was the amount of damages, if any, to be awarded to the Plaintiff King.

Here, Ms. Sapp is still party to the action and liability is very much in dispute. Ms.

Sapp absolutely stands to be prejudiced by any references to the alleged "under-insured" status and potential availability of coverage through Penn National. These are critical factors in considering whether references to insurance and insurance carriers. In *King*, if the name of the insurance carrier was withheld, then no Defendant would be named and the jury would be kept in the dark as to whom the case was proceeding against. In the instant action, there is a live party, Ms. Sapp, against whom the matter is proceeding and whom will be prejudiced by reference to insurance providers and under-insured coverage.

Finally, as these issues are not for the jury's consideration, they should be deemed irrelevant. "Evidence that this is not relevant is not admissible." Md. Rule 5-402. Yet, at the same time, even if the issue is deemed to be relevant for any reason it should be excluded because it is prejudicial. "Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Md. Rule 5-403.

III. Conclusion

There is no basis for the jury to be allowed to consider Ms. Sapp as under-insured or to speculate as to why Penn National Insurance is a named Defendant in this action. Thus, the mention of "under-insured" motorist benefits, "Penn National Insurance," or the existence of any insurance provider or coverage should be precluded from the jury's consideration.

Wherefore, the Defendant Kirsten Sapp, by and through her counsel Walter E. Gillcrist, Jr., Anne K. Howard, and through Budow and Nobel, P.C., hereby pray:

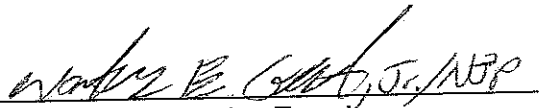
- a. That this Honorable Court enter an Order precluding the mention of

"under-insured motorist benefits" and "Penn National Insurance" from the jury or the existence of any insurance provider or coverage;

- b. and for such other and further relief as this Honorable Court deems necessary and proper.

Respectfully submitted,

BUDOW AND NOBLE, P.C.



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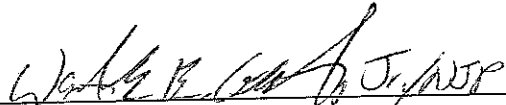
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Defendant Kirsten Sapp's**

Motion in Limine was mailed, postage prepaid this 29th day of November, 2012 to:

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