Graham v State Farm: A Trap for the Unwary No-Fault Lawyer

By: Thomas G. Sinas
tomsinas@sinasdramis.com
Sinas, Dramis, Brake, Boughton & McIntyre, PC
15 Ionia Ave. SW, Suite 300
Grand Rapids, MI 49503
616-301-3333

Our auto no-fault system is complex. Whether it is priority of insurers, the one-year back rule, or coordination of coverage, nearly every case has some issue that keeps the practitioner up at night. Unfortunately, the Michigan Court of Appeals issued a recent decision that adds to the complexity. Although unpublished, *Graham v. State Farm*[1] has potential implications for the settlement of first-party no-fault (PIP) cases.

Graham concerned whether the doctrine of res judicata barred a claim for uninsured motorist benefits that was brought after a case for PIP benefits had been dismissed with prejudice. Graham was injured in a car accident involving an uninsured motorist. Graham sued his own no-fault insurer, State Farm, for unpaid PIP benefits. Graham settled the PIP case and dismissed the claims with prejudice. One year later, Graham sued State Farm again, this time for uninsured motorist benefits involving the same accident. State Farm moved for summary disposition, arguing that res judicata barred Graham's uninsured motorist claim.

The Court of Appeals upheld the trial court's granting of summary disposition in favor of State Farm. Citing *Estes v. Titus*[2], the court noted that res judicata applies when three circumstances are met: (1) a prior action was decided on the merits; (2) two actions have the same parties; and (3) the matter in the second case was, or could have been, resolved in the first. As to the first element, the court found that a dismissal with prejudice was an adjudication on the merits. There was no dispute that both cases involved the same parties. Regarding the third element, the court found that the uninsured motorist claim could have been brought with the PIP claim because the claims met the so-called "transactional test" of similarity in "time, space, origin, or motivation." Accordingly, res judicata barred Graham from pursuing the uninsured motorist claim.

Despite the troublesome holding, there is some good news.

First, *Graham* does not mean that claims for PIP and uninsured motorist benefits must be brought in the same complaint. The holding centered on the fact that the plaintiff's initial case against State Farm was dismissed with prejudice *before* the uninsured motorist case was brought.

Second, any practitioner familiar with *Graham* can avoid its implications by adding a slight modification to the stipulated order that closes the case. One suggestion is to have the order be without prejudice. Another suggestion is to have the order be with prejudice as to only the PIP claims. Finally, the order could reference the settlement release, which should state that it does not release uninsured (or underinsured) motorist claims.

In sum, the problem presented in *Graham* is like planning a road trip. Not thinking about where you are going will likely get you lost. But a little knowledge and some extra preparation goes a long way to keeping you on course.

[1] Unpublished opinion *per curiam* of the Court of Appeals, issued February 14, 2014 (Docket No. 313214).

[2] 481 Mich 573 (2008).