JANUARY 2012 CASENOTES

Price v. Leibfried, --- A.3d --- (Pa. Super. Ct. Dec. 22, 2011) (Pennsylvania Superior Court Holds That Plaintiff Can Be Vicariously Liable For Own Injuries When Injured In Single Car Accident).

Price sustained serious injuries in an alcohol related accident. Price was the passenger in the vehicle being operated by Leibfried. Leibfried was an unlicensed driver and also intoxicated when the accident occurred. Importantly, Price was the owner of the vehicle being operated by Leibfried.

A joint lawsuit was filed by Price against Leibfried and the bar which served Leibfried alcohol. Leibfried filed a Motion for Summary Judgment arguing that he could not be liable, as a matter of law, because Price was vicariously responsible for her own injuries by allowing an unlicensed driver, who she knew was not licensed, operate her motor vehicle.

The trial court held that Price could not recover from Leibfried because she was vicariously liable for her own injuries for knowingly permitting an unauthorized/unlicensed person to drive her vehicle under Section 1574 of the Pennsylvania Motor Vehicle Code. Price appealed to the Pennsylvania Superior Court.

The Superior Court holds that Summary Judgment was proper by the trial court because there was a "complete absence of evidence suggesting that Price did not give Leibfried permission to drive her car. Consequently, as a matter of law, Price violated section 1574(a) of the Vehicle Code, and, therefore, she is vicariously liable for Leibfried's negligence." If the owner of the car, in this case Price, knows that the driver of the car is not licensed and gives that person permission to drive the car, then the court will find the owner vicariously liable for any injuries, even their own. However, Price can still recover from the bar for any violations of the Dram Shop Act.

Jones v. Nationwide, --- A.3d. --- (Pa. Dec. 21, 2011) (Pennsylvania Supreme Court Holds That "Made Whole" Doctrine Does Not Apply To Collision Coverage Deductible).

Brenda Jones ("Jones") was involved in a car accident with another vehicle. She sought collision coverage, subject to a $500 deductible, from her insurance company Nationwide. The policy provided the insurance company with the standard right to subrogation.

Nationwide paid Jones for all of the damages to her vehicle, reduced by the $500 deductible. In the subrogation claim, Nationwide recovered 90% of the amount paid to Jones under the collision policy. Pursuant to the insurance policy and the Pennsylvania Code, 31 Pa. Code Section 146.8(c), the company deducted the repayment of the deductible by pro rata share and reimbursed Jones $450.

This case worked through the appellate courts and the Pennsylvania Supreme Court granted review to determine the validity of whether the pro rata reimbursement is valid or a violation of the "made whole" doctrine. The Court reviews the made whole doctrine in general and finds that to apply it to deductibles would run counter to principles of equity. It also concluded that to invalidate the practice would require an insurer to pay for a risk it never agreed to protect against.

The Court concludes that the made whole doctrine does not apply to the collision coverage and the pro rata reimbursement is allowable.

Bieber v. Nace, 2011 WL 6180719 (M.D.Pa. Dec. 13, 2011) (Federal Court For The Middle District Holds Sections 1720 And 1722 Cannot Operate To Reduce Or Bar The Plaintiff's Recovery Of Medical Expenses Paid By An ERISA Plan).

After the Plaintiffs filed a suit arising out of a car accident and their injuries and losses, the Defendants filed affirmative defenses which included claims that the Plaintiffs' recovery was reduced or barred by the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL). The case proceeded through discovery and the Plaintiffs produced proof that their medical bills were paid by a self-funded ERISA plan which was asserting a claim for subrogation/reimbursement. The Plaintiffs sought to plead, prove and recover those payments as part of their case.

In order to proceed the Plaintiffs filed a Motion in Limine to have the affirmative defenses stricken. They argued that the defenses should be stricken since the medical bills were paid by a self funded ERISA plan which was making a claim for reimbursement.

Judge Connor reviews the pertinent statutes and case law and finds that the MVFRL cannot reduce or bar the plaintiff's recovery of medical expenses paid for by ERISA plan. In this case, he finds that Section 1720 and 1722 are pre-empted by the federal laws since the medical bills were paid by the federal self funded ERISA Plan. He grants the Motion in Limine and strikes the defenses.

Arcq v. Fields et al, No. 2008-2430 (Herman J. Franklin Co. Dec. 7, 2011) (Trial Court Denies Defense Motion To Obtain Social Media Discovery).

As part of an ongoing lawsuit arising out of a car accident and injuries, the Defendants attempted to obtain Arcq's social network profile and information. Arcq objected to Fields' interrogatories seeking social network information by arguing that the materials are not relevant and the Arcq has a reasonable expectation of privacy to such information. Fields argued that under other trial court cases, and one from the same court, the information is discoverable.

The trial court reviews the other cases and the facts of the case at hand and finds that there is one glaring difference the present case has from the others, and that is that the request of the Defendants in Arcq is not the result of viewing the public portion of the Plaintiff's profile. In Arcq's case the Defendant is seeking the information as part of general discovery and not as the result of reviewing a public profile on facebook which will then possibly impeach Arcq.

In the other cases the Defendants viewed the Plaintiff's public portion of the profile and then had reason to request the private portions of the social website. In Arcq the Defendants made no such showing. Thus, the trial court denies the Defendants' Motion.

See also Martin v. Allstate Fire and Casualty Insurance Company, Docket NO. 110402438 (Phila. Co. Dec. 13, 2011) involving a Defendant's Motion to Compel Facebook Information of the Plaintiff. The trial court denies the Motion.

It would appear from reviewing the various cases that there is an important involving when and the reason why the facebook information is being sought. First, it does not appear that the trial courts are inclined to allow general fishing expeditions for facebook information. However, if it is being sought to impeach claim of a party then it may be allowed.

Good v. Whitt, 104 Berks Co. L. J. 62 (2011) (Trial Court Grants Summary Judgment To Defendant Who Was Allegedly Negligent For Entrusting Her Vehicle To Her Son).

Good filed a lawsuit against Whitt for negligence arising out of a car accident. It was believed that the Defendant was driving the vehicle while using a cell phone and the Plaintiff also filed a negligence entrustment claim against the vehicle's owner, the driver's mother. As

part of the discovery their were depositions taken regarding the mother's knowledge of her son's cell phone use and propensity to talk on the cell phone while driving. Eventually, a Motion for Summary Judgment was filed on the negligent entrustment claim.

The evidence during discovery revealed that prior to accident defendant son had attended driver education, had driven a year with a learner's permit, and had never been involved in an accident nor received any traffic citations. Also, their was no proof that his mother learned that her son was an incompetent or unsafe driver nor observe or be otherwise aware that her son was inattentive while driving due to use of cell phone or that she aware that he used a cell phone while driving.

The trial court grants the motion and dismisses the mother from the case. The trial court finds that the plaintiff failed to produce evidence that defendant mother knew or should have known that defendant son was incompetent or unfit to drive. The defendant son's young age and inexperience and comfort level operating that particular vehicle does not establish unfitness. Furthermore, mere possession by driver of a cell phone is not a basis for presuming in advance that the cell phone would be used concurrently with the operation of the motor vehicle without a history to support that defendant son would violate traffic laws or disobey instructions from his mother to refrain from using the cell phone while the car was in motion.