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Clients&Friends Alert

Important Court Decision For No-Fault Insurers
New York Court Grants Summary Judgment To Insurers On *Mallela* Issue

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We are very pleased to inform you that on January 28, 2011 our firm, together with our co-counsel Bob Stern of Stern & Montana, obtained a very favorable and significant decision for no-fault insurers from the Commercial Division of the New York County Supreme Court. Specifically, Supreme Court (Honorable Eileen Bransten) found that four radiology providers were ineligible to receive no-fault benefits because they had engaged in illegal fee-splitting with non-professionals and were unlawfully controlled and/or beneficially owned by a non-professional. In addition to dismissing all of the providers' counterclaims against the insurers, the Court granted partial summary judgment in favor of the insurers, and against the providers, the radiologist and the real beneficial owner, on the insurers' claims for fraud and unjust enrichment. The decision, a copy of which is attached, is significant not only for the ultimate result, but also because it represents the first time that a New York court has granted such extensive relief under *State Farm v. Mallela* by summary judgment.

In *Allstate Insurance Co. v. Belt Parkway Imaging, P.C.*, Allstate and GEICO sued four radiological providers (Belt Parkway Imaging, P.C., Metroscan Imaging, P.C., Parkway MRI, P.C., and Diagnostic Imaging, P.C.), along with Dr. Herber Rabiner (the owner of the PCs on paper), and Jay Katz (the true beneficial owner). As part of the lawsuit, the insurers alleged that the PCs were not entitled to obtain no-fault benefits because the PCs were improperly owned/controlled by Katz and were engaging in unlawful fee-splitting practices. The insurers, alleging fraud and unjust enrichment theories, sought to recover all funds paid to the PCs after April 4, 2002 (pursuant to *Mallela*) and sought to impose personal liability upon both Katz and Rabiner. The PCs, in turn, filed substantial counterclaims seeking to recover unpaid or pending no-fault claims from the insurers.

Following lengthy discovery proceedings, and the development by counsel of an extensive factual record, the insurers moved for summary judgment on their affirmative claims relating to *Mallela* and sought dismissal of the PCs' counterclaims. In the attached decision, Justice Bransten granted all the relief sought by the insurers and dismissed the PCs' counterclaims.

In particular, the Court concluded, as a matter of undisputed fact, that (1) "Katz and the [Management Companies] completely controlled the PC Defendants and misused the corporate

form to further their own ends, in derogation of controlling law", (2) "Rabiner permitted the nonphysicians to control and dominate the PCs to the exclusion of Rabiner or any other licensed physician", (3) "Katz, not Rabiner, controlled and dominated the business", (4) the insurers' assertions regarding the unlawful fee-splitting arrangements "are not controverted in any meaningful manner", (5) Katz and Rabiner, as well as the PCs, are liable for fraud, (6) "it would be against equity and good conscience to allow Defendants to keep the fruits of their endeavors", and (7) the insurers have no obligation to pay any pending, previously-denied, or future no-fault claims submitted by any of the PCs.

This decision represents a significant victory that re-affirms the ability and validity of insurers' anti-fraud efforts in New York State, including the independent ability of insurers to bring affirmative recovery actions and assert affirmative defenses relating to the fraudulent activities of providers and the individuals participating in such fraudulent activities.

If you have any questions concerning the decision, or require assistance in no-fault issues generally, please do not hesitate to contact an attorney from the Health Care and Not-for-Profit Group at Cadwalader.

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