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no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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THE TRIER OF FACT MAY DETERMINE WHETHER A MEDICAL CONDITION THAT DEVELOPED TEN YEARS AFTER THE MOTOR VEHICLE ACCIDENT "AROSE OUT OF" THE USE OF THE MOTOR VEHICLE

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In the recently published decision of Phyllis Scott v State Farm Mutual Automobile Insurance Co, ___ Mich App ___ (2008), (Docket No. 276544), the Michigan Court of Appeals upheld the Trial Court's denial of summary disposition on the issue of whether Plaintiff's ward's hyperlipidemia arose out of the use of a motor vehicle for the purpose of requiring State Farm to pay for medication to treat that condition as a benefit payable under MCL 500.3105(1).

Plaintiff's ward was involved in an automobile accident in 1981. She first became aware that she had a high cholesterol problem 10 years later in 1991. She started a diet and was able to control her high cholesterol without medication until 1997.

The Court of Appeals recognized that it and the Michigan Supreme Court had previously held that, "the term 'arising out of' does not require a showing of proximate causation, but rather something more than a showing that the causal connection between the injury and the use of the motor vehicle was merely incidental, fortuitous, or 'but for.'" The Court of Appeals also noted that other of its opinions stated that, "the use of the motor vehicle need only be one of the causes of the injury; there may be other independent causes," and that, "[a]lmost any causal connection will do."

The Court of Appeals concluded that the Plaintiffs presented sufficient "arising out of" evidence to submit the causation issue to the trier of fact when Plaintiffs presented testimony indicating that the accident caused brain and skeletal injuries, which make it difficult for plaintiff to exercise, and which

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This decision by the Court of Appeals does not provide assistance or guidance in determining an insurer's liability for payment of subsequent medical expenses allegedly incurred as a result of the motor vehicle accident. The Court of Appeals acknowledges that a showing of proximate causation is not required. Rather there must be a showing of causal connection between of the injury and the use of the motor vehicle which is more than incidental, fortuitous or "but for". The standard jury instructions provide that "a party has the burden of proving a proposition by clear and convincing evidence….to be clear and convincing, the evidence must satisfy jurors that the proposition has been established with a high degree of probability." In the case at bar, the Court held that the trier of fact must decide whether the insured's high cholesterol arises out of the accident, despite the fact that there is no objective scientific evidence to establish same. It is hoped that the Michigan Supreme Court will grant leave to appeal in this matter and establish that proximate causation is necessary or at least provide a more definitive test for making these determinations. In the interim, insurers must continue to insist that claimant's medical testimony in support of causation be generally accepted in the scientific community in accordance with Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

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contribute to poor judgment regarding diet, and that this difficulty in exercising and poor diet contribute to hyperlipidemia. The Court reached this conclusion because "[a]lmost any causal connection will do."

Despite the fact that the Court found that there was evidence presented indicating that there is no objective test that can distinguish between a case of hyperlipidemia caused genetically, and one caused by independent factors, the Court held that the trier of fact must decide whether the high cholesterol problem is one "arising out of" of the accident.

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