

WASHINGTON CASE UPDATE

Evidence of Insurance May Be Admissible in Friendly Lawsuits

From the desk of Kyle D. Riley: Can a trial court instruct a jury that a party has insurance, to explain why a domestic partner is suing another domestic partner in a personal injury case? Read on to see how the Washington Court of Appeals ruled on this issue.

Claims Pointer: Washington's ER 411 forbids evidence that a person is insured "upon the issue of whether the person acted negligently." However, the rule allows evidence of insurance "when offered for another purpose." In this case, the trial court instructed the jury about insurance because the jury appeared confused during jury selection as to why a person would sue their domestic partner concerning a motor vehicle accident. The Court of Appeals affirmed the trial court's jury instruction because the evidence of insurance was not offered for the purpose of showing negligence.

Terrell v. Hamilton, No. 71955-6-I, Washington Court of Appeal, Division 1 (unpublished).

Paula Terrell was injured when Gordon Hamilton (her boyfriend at the time) slipped on ice, left the roadway, and hit a tree. Terrell filed suit against Hamilton. Later, Terrell and Hamilton were married. The case proceeded to trial. Terrell filed a Motion in Limine to exclude a statement she made to Hamilton's insurance agent. Hamilton opposed the motion, knowing that use of statement would lead the jury to understand that Hamilton was insured. During jury selection, several jurors brought up insurance without being asked about it. Hamilton followed up by asking whether "they'd like to know if there's insurance or not?" Several jurors were confused about why a person would sue their spouse for harm caused by the spouse. The missing piece of information that the jury was not aware of was that Hamilton's accident was covered by his insurance.

The trial court decided to instruct the jury that "there is a third party payor in this situation [the insurance company] and that [Terrell] is having to sue this individual [Hamilton] to recover damages from that third party." The court allowed the parties to draft instructions on the issue and gave the following instruction, in part, before the presentation of evidence:

"Because your sole focus will be the factual issues that this court gives to you for consideration, I wish to advise you at this time that Mr. Hamilton is insured and the only way Ms. Terrell can access insurance is through this case. The fact that there is insurance shall not be considered in any way in the way that you view the facts and shall not be considered in any award of damages if any are awarded."

Prior to deliberations, the court only instructed the jury that "[w]hether or not a party has insurance, or any other source of recovery available, has no bearing on any issue that you must decide." After deliberating, the jury rendered a verdict in favor of

Terrell for nearly \$1.5 million. Hamilton appealed.

Hamilton raised several issues on appeal, including that the court's instruction regarding insurance was inappropriate because it raised "the specter of insurance" from the beginning of the trial. The Washington Court of Appeals first emphasized that ER 411 prohibits evidence of insurance only when it is used to prove negligence. Other uses, including the reference at trial in this case, are permissible. Although ER 411 lists permissible uses of insurance evidence ("...proof of agency, ownership, or control, or bias or prejudice of a witness"), the fact that the use at trial was not one of those enumerated in the rule did not mean that the use was impermissible. In fact, the Court specifically instructed the jury that it could not use the evidence of insurance as proof of negligence.

The Court also concluded that even if the instruction about insurance had been wrong, Hamilton failed to demonstrate that it prejudiced him. Hamilton argued that the trial court "injected" the issue of insurance and tainted the jury with its instruction. The Court pointed out that it was Hamilton who raised the issue of insurance by opposing Terrell's Motion in Limine that would have excluded statements by Terrell to Hamilton's insurance adjuster. Moreover, Hamilton did not object to a number of other references to insurance throughout the trial. The Court explained that jurors are presumed to follow a court's instructions. Because Hamilton failed to show how the jury did not follow the jury instructions or that the instruction tainted the jury's deliberations, he could not show that he was prejudiced by mention of his insurance.

Note: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

case in point...



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