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to overturn the trial court's decision. The dissenting judge stated that the party seeking reversal bears the burden of presenting a record sufficient to demonstrate that error occurred. Consequently, when that party fails to sustain its burden, the court lacks discretion to reverse the lower court. The dissent claimed that Sterling failed to meet its burden and therefore, the trial court's opinion should be affirmed. ♦

— *Thomas Melody*

### Health Care Contracts May Not Unfairly Limit Uninsured Motorist Compensation

In *Brown v. Snohomish County Physicians Corp.*, 845 F.2d 334 (Wash. 1993), the Supreme Court of Washington invalidated provisions in health care service contracts that excluded medical coverage to the extent benefits were available through uninsured or underinsured motorist coverage. The court found that the provisions violated public policy favoring full compensation for innocent automobile accident victims. Accordingly, the restrictive contract provisions were held to be enforceable only after accident victims were compensated for general and non-duplicative special damages.

#### *Contract Provisions Unjustly Restricted Medical Coverage*

In two related cases, a health care service contractor denied automobile accident victims complete reimbursement for medical expenses. In refusing coverage, the contractor relied on contract provisions that provided compensation only to the extent that the claims

surpassed the benefits from uninsured or underinsured motorists ("UIM") policies. In each case, the victims, who both maintained UIM coverage, received significantly less compensation for injuries than otherwise available absent the contract provision.

In the first case, Ray Brown ("Brown") suffered serious injuries after an automobile struck him. Medical expenses for his injuries, as well as damages for lost wages and pain and suffering, totaled in excess of \$160,000. Public Employees Mutual Insurance Company ("PEMCO"), the insurer of both the driver and victim, paid the limits of their respective policies: the driver's liability insurance of \$25,000, no-fault medical coverage of \$10,000, and Brown's UIM coverage of \$50,000 and personal injury protection of \$10,000.

Through his employer, Brown also maintained a health care service contract with Snohomish County Physicians' Corporation ("SCPC"). SCPC, however, limited Brown's recovery to medical expenses above \$70,000, stating that the contract contained a provision which limited recovery if the patient had access to UIM coverage, automobile "no-fault," or other similar medical coverage. According to SCPC, the provision applied to Brown's \$50,000 of UIM coverage, his \$10,000 of personal injury protection coverage, and the driver's \$10,000 of no-fault medical coverage, totaling the \$70,000 for which SCPC maintained no responsibility.

Absent such provisions, Brown could retain his \$50,000 of UIM coverage. Theoretically, the UIM coverage would have compensated Brown for general and special damages beyond ordinary medical expenses. However, the provision effectively precluded the UIM coverage as an avenue of recovery for lost wages or pain and suffering damages.

Brown sought a judgment invalidating the policy provision. The trial court, however, rejected Brown's argument that the provision was unen-

forceable as against public policy. Brown appealed this decision.

In the companion case, Ross Hogsett ("Hogsett") died from injuries sustained in an automobile accident with an uninsured driver. Hogsett's personal injury protection coverage paid the first \$10,000 of medical expenses. However, a dispute arose as to whether SCPC or UIM coverage would compensate Hogsett for the remaining \$24,277.13 in medical bills. SCPC claimed that a health care service contract provision, similar to the one in Brown's case, precluded compensation from SCPC because Hogsett had adequate UIM protection.

Hogsett's widow sought judgment against SCPC declaring the restrictive provision invalid, as well as injunctive relief and damages under the Consumer Protection Act. The trial court, however, denied Hogsett's motion. Hogsett filed a timely appeal of this decision.

The appellate courts affirmed the judgments in both of the cases. The Supreme Court of Washington, however, granted discretionary review of both cases.

#### *Principles of Insurance Law Apply*

The Supreme Court of Washington first noted that in resolving the public policy issue, the general rules governing insurance policies applied to the health care service contracts. The court stated that insurance companies may limit liability if the restrictions are consistent with public policy. However, the court also warned that violations of public policy may warrant judicial intervention to invalidate the unacceptable provision.

In evaluating the validity of the provisions, the court relied on prior Washington Supreme Court precedent and extended the rule that an insurer may recover only the excess that remains after the insured is fully compensated for a loss caused by another's negligence. The court advocated the rule as illustrative of a socially desirable policy that promotes the adequate

indemnification of innocent automobile accident victims. Further, the court reasoned that in the absence of a specifically applicable statute, equity demands that an injured party be compensated to the extent of the injury. However, the court noted that similar to insurance companies, health care contractors may limit their liability to prevent a victim from receiving duplicate compensation for medical expenses.

#### ***The Provisions Were Contrary to UIM Purposes***

The court noted that essentially, the SCPC contracts containing the UIM limitations deprived the insured of liability proceeds that would have been available if the negligent motorist maintained insurance. The court reasoned that this effect was contrary to the dual purpose of UIM statutes: (1) to allow injured parties to recover damages expected but for the culpable party's lack of liability insurance; and (2) to provide the insured with an additional, protective layer of coverage that "floats on the top of recovery from other sources." Thus, the court concluded that to fulfill the purpose of the UIM an innocent injured party must first be compensated for general and special damages.

The court rejected SCPC's argument that a policy in favor of low cost health care coverage outweighed the interest in invalidating the limiting provisions. It acknowledged that while low cost health care is clearly desirable, SCPC failed to identify specific cost increases. Furthermore, the court noted that SCPC conceded that treatment of automobile accident patients is a relatively minor portion of the total cost of medical care provided under its health care contracts.

Thus, the court found the provisions in the health contracts of both Hogsett and Brown invalid and reversed the judgments of the lower courts. ♦

— *Jean Prendergast*

## **Consumer Failed to Cancel Home Improvement Contract Within a Reasonable Time**

In *Crystal v. West & Callahan, Inc.*, 614 A.2d 560 (Maryland 1992), the Maryland Court of Appeals held that under the Maryland Door-To-Door Sales Act, a consumer's right to cancel a contract continues for a reasonable amount of time when a seller fails to disclose this privilege. However, the court held that a delay of more than one-and-a-half years exceeded the reasonable time standard and required the consumer to pay both the cost of the contract and its prejudgment interest.

#### ***Lower Court Finds Sales Act Inapplicable***

Joyce Crystal ("Crystal") owned a waterfront home in Caroline County, Maryland. She orally agreed that a contractor, Charles Callahan ("Callahan"), would extend and enclose her screen porch. Crystal stated that she was given a \$10,000 estimate. However, Callahan said he never gave Crystal an estimate of the total cost of the work.

In January 1989, Callahan submitted a bill for \$13,448, and in April 1989, he gave Crystal a second bill for \$10,321. Crystal paid \$2,000 and refused to pay the balance because the total cost of the construction was more than Callahan's alleged estimate, and she was dissatisfied with the work. Crystal eventually canceled the oral performance contract, one-and-a-half years after Callahan had completed the work.

Callahan's employer, West & Callahan, sued in the Circuit Court for Caroline County for the balance of the money owed under the contract. Crystal counterclaimed, alleging that Callahan had violated the Maryland Door-To-Door Sales Act ("Act"). This Act states that a buyer has an absolute right to cancel a contract for perfor-

mance within three business days. Accordingly, the seller must make disclosures concerning this right. Crystal said that Callahan had never informed her of her right to cancel the contract, thus violating the Act.

The lower court held that the Act did not apply to this type of contract and awarded West & Callahan \$21,169, the balance due under the contract. The court also awarded prejudgment interest to West & Callahan. Crystal appealed the decision to the Maryland Court of Special Appeals.

#### ***Reasonable Time Allowed To Cancel Contract***

On appeal, Crystal asserted several arguments. First, she contended that the Act applied to her home improvement contract. The appellate court agreed, holding that the home improvement transaction did not fit any of the Act's specific exceptions. Since this contract for consumer goods and services met all of the Act's requirements, the court overturned the lower court and held the state statute applied.

Next, Crystal argued that since Callahan continuously failed to inform her of her right to cancel the contract, her right never expired. Crystal said that her cancellation one-and-a-half years after completion of the work was viable. The appellate court, however, rejected this argument. The court noted that the state's General Assembly had considered and rejected language establishing a continuing right to cancel door-to-door contracts. Furthermore, while other state statutes allowed the right to cancel to run until the seller complied with the law, Maryland's Door-To-Door Sales Act did not utilize this language. Accordingly, the court held that the right to cancel a contract did not continue until proper disclosures were made by the seller.

Instead, the court found that when the seller fails to give proper notice, the right to cancel continues for "a reasonable time." The court would determine a reasonable time period by evaluating all the circumstances surrounding the