

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Nicole Christine Newton,
Plaintiff,

vs.

Case No: 98-004883-NF

Citizens Insurance Company,
Defendant.

OPINION AND ORDER

This matter is before this Court on the Parties' Cross-Motions for Declaratory Relief. Oral arguments were heard on June 2, 1999. The facts are as follows: Plaintiff was involved in an auto accident on March 28, 1997. Sometime thereafter, Plaintiff states that she began to experience neck pain and stiffness, and restricted movement. As a result, she sought treatment from Dr. Larry Miller, a chiropractor in November, 1997. Dr. Miller determined that chiropractic adjustments were necessary. On November 24, 1997, immediately after Plaintiff underwent another adjustment, she became dizzy, nauseated, had ringing in her head, numbness and slurred speech. She was transported to Pontiac Osteopathic Hospital by EMS. Diagnostic testing confirmed that Plaintiff had a cerebral, vertebral artery dissection.

Plaintiff has allegedly incurred extensive economic losses subsequent to the chiropractic treatment. Plaintiff submitted an application for no-fault benefits for all medical care subsequent to the artery dissection. Defendant has denied the same. Defendant avers that coverage is not afforded since Plaintiff's injuries arise out of an alleged malpractice event.

The issue that confronts this Court is whether economic losses are covered under the No-Fault Act when they arise subsequent to an alleged medical malpractice event where the malpractice occurred during the treatment sought for injuries suffered from a prior auto accident.

The applicable statute at issue is MCL 500.3105(1), which provides that an insurer is required to pay benefits where accidental bodily injury arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. As stated in Thornton v Allstate Ins. Co., 425 Mich. 643 (1986),

In drafting M.C.L. § 500.3105(1)..., the Legislature limited no-fault PIP benefits to injuries arising out of the "use of a motor vehicle as a motor vehicle." In our view, this language shows that the Legislature was aware of the causation dispute and chose to provide coverage only where the causal connection between the injury and the use of a motor vehicle as a motor vehicle is more than incidental, fortuitous, or "but for." The involvement of the car in the injury should be "directly related to its character as a motor vehicle." Therefore, the first consideration under M.C.L. § 500.3105(1)..., must be the relationship between the injury and the vehicular use of a motor vehicle. Without a relation that is more than "but for," incidental, or fortuitous, there can be no recovery of PIP benefits. (Citations omitted)

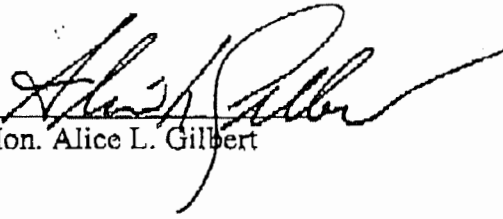
This Court agrees that it may be foreseeable for a person to see a chiropractor for neck discomfort that occurred as a result of an auto accident. Notwithstanding, the mere foreseeability of an injury as an incident to a given use of a motor vehicle is not enough to provide no-fault coverage where the injury itself does not result from the use of the motor vehicle as a motor vehicle.

In this case, the connection between the automobile accident and the vertebral dissection suffered by the Plaintiff seven months thereafter is no more than incidental, fortuitous, or "but for." The motor vehicle was not the instrumentality of Plaintiff's injuries. The inherent nature of the use of a motor vehicle did not cause Plaintiff's injuries. Rather, the dissection which was precipitated by a high-velocity manipulation caused an independent disabling injury.

The unfortunate and debilitating injury suffered by Plaintiff had only a "but for," incidental, and fortuitous relation with her use of a motor vehicle as a motor vehicle. Since the injury did not arise out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle, it is not within the type of injuries intended to be covered by M.C.L. § 500.3105(1).

As a result of the foregoing the Defendant's and Plaintiff's Motions are granted and denied, respectively. It is hereby **Ordered**.

Dated: 6-9-99


Hon. Alice L. Gilbert