

Court Rules PIP, UM Claims Must be Joined to Avoid Dismissal on Res Judicata

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Mitchell McIntyre
(313) 983-4933
mmcintyre@plunkettcooney.com

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The Michigan Court of Appeals recently held, in the case *Graham v State Farm*, Docket No. 313214 (Feb. 18, 2014), that an action for uninsured motorist benefits (UM) was barred by *res judicata* as a result of a previous action for PIP benefits arising from the same accident where the first-party PIP action had already been dismissed with prejudice.

The doctrine of *res judicata* bars a second subsequent action when the prior action was decided on the merits, both actions involve the same parties or their privies, and the matter in the second case was, or could have been, resolved in the first. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417 (2007)

UM coverage is unique because it involves a claim or suit against the insurer based upon traditional tort concepts involving the “uninsured” at-fault party. Inevitably, UM raises the question of whether *res judicata* bars a suit for UM coverage where a prior PIP action against the insurer was decided on the merits.

In *Graham*, the plaintiff, Jerome Graham, brought a prior suit for first-party no-fault benefits against State Farm along with a third-party claim against the alleged at-fault driver in 2010. Graham ultimately settled his first-party suit, and an order of dismissal with prejudice was entered by the trial court. After, learning that the at-fault driver was uninsured, Graham also dismissed his third-party claims. In 2011, he attempted to bring a UM suit against State Farm which was dismissed by the trial court based upon *res judicata* for failure to join the UM claim with the original action. Graham appealed.

On appeal, he argued that UM coverage involves entirely different elements, standards and burdens of proof. The Michigan Court of Appeals clarified that the appropriate test to determine the second prong of *res judicata* was “the broader transactional test” as set forth by the Michigan Supreme Court in *Adair v Michigan*, 470 Mich 105, 123-25 (2004). This broader test provides that the assertion of different kinds or theories of relief still constitute a single cause of action if a single group of operative facts give rise to the assertion of relief. *Id.*

COURT RULES PIP, UM CLAIMS MUST BE JOINED TO AVOID DISMISSAL ON RES JUDICATA Cont.

The appellate court looked to *Begin v Mich Bell Tel Co*, 284 Mich App 581 (2009), which held that a plaintiff, who formerly entered into a consent judgement with a self-insured employer for a modified transportation van agreement, was barred by *res judicata* when the plaintiff brought a subsequent lawsuit based on tort allegations of the defendants' improper handling of the plaintiff's no-fault and workers' compensation claims, including breach of contract and intentional infliction of emotional distress.

Ultimately, the appellate court in *Graham* affirmed the trial court's decision, holding that the subsequent UM claim was barred by *res judicata*. The court noted that whether the same evidence would support the two claims was not dispositive, reasoning that a PIP and UM claim arising from the same collision and involving the same insurer and insured are more related in time, space, origin, and motivation than the claims at issue in *Begin*, which involved a no-fault claim and subsequent tort claims for improper handling.

Although an unpublished decision, *Graham* makes it unmistakably clear that PIP and UM claims must be joined to avoid dismissal based on *res judicata*. This holding's impact may be particularly significant in those situations in which a plaintiff has brought first-party and third-party actions and decides to settle the first-party action before it becomes clear that the third-party defendant is "uninsured," as defined by the UM policy.

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