

LEGAL UPDATE

PENNSYLVANIA SUPERIOR COURT DETERMINES THAT THERE IS NO JOINT AND SEVERAL LIABILITY BETWEEN AN UNDERINSURED MOTORIST CARRIER AND THE UNDERLYING TORTFEASOR, HENCE VENUE AS TO THE INSURER DOES NOT CONFER VENUE AS TO THE TORTFEASOR

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On July 25, 2011 in a reported decision, Sehl v. Neff and State Farm Mut Ins. Co., 2011 WL 2990902 (Pa. Super. 2011), the Pennsylvania Superior Court affirmed the trial court's determination that Ms. Neff could not be sued in the Philadelphia County Court of Common Pleas as Ms. Neff and State Farm were not joint tortfeasors. By way of background, on May 19, 2009, Elizabeth Sehl and Elizabeth Neff were involved in a motor vehicle accident in Montgomery County, Pennsylvania. Ms. Neff resided in Montgomery County.

Ms. Sehl filed suit in the Philadelphia County Court of Common Pleas asserting a negligence claim against Ms. Neff and a breach of contract claim regarding her underinsured motorist claim arising from the accident against State Farm. Ms. Neff filed preliminary objections to the complaint contending that she was not subject to suit in Philadelphia County. State Farm did not take a position regarding the preliminary objections as Ms. Sehl's State Farm policy required her to file suit against the tortfeasor and State Farm in a court of competent jurisdiction and venue was proper against State Farm in Philadelphia County as it did business there.

Judge Jacqueline Allen of the Philadelphia County Court of Common Pleas granted Ms. Neff's preliminary objections and transferred the entire matter to the Montgomery County Court of Common Pleas where venue was proper as to all defendants. Ms. Sehl appealed. Her issue on appeal was: "Did the trial court err by sustaining Appellee, Elizabeth Neff's preliminary objection to venue in Philadelphia County where Appellant filed a Complaint for bodily injuries suffered in a motor vehicle accident against a tortfeasor and in contract against an underinsured motorist carrier?"

In reaching its decision, the Superior Court noted that its review of Judge Allen's decision would be based upon an abuse of discretion standard. Therefore unless Judge Allen overrode or misapplied the

law, exercised her judgment in a manifestly unreasonable manner or rendered a decision based on partiality, prejudice, bias or ill will, her decision on venue would stand.

The Court began its analysis of Ms. Sehl's appellate question by noting that Pennsylvania's venue rules provide:

(c)(1) Except as otherwise provided by paragraph (2), an action to enforce a joint or joint and several liability against two or more defendants, except actions in which the Commonwealth is a party defendant, may be brought against all defendants in any county in which the venue may be laid against any one of the defendants under the general rules of subdivisions (a) or (b).

(emphasis added). The Court then turned to Black's Law Dictionary for the following definitions:

Joint liability is defined as liability shared by two or more parties. . . . Joint and several liability is defined as liability that may be apportioned either among two or more parties or to only one or a few select members of the group, at the adversary's discretion.

In concluding that Ms. Neff and State Farm were not jointly or jointly and severally liable, the court stated:

[Ms. Sehl] did not plead joint or joint and several liability in her complaint. Each count in the complaint is against only one of the defendants individually. [Ms. Neff] would not be liable for the amount, if any, owed to [Ms. Sehl] by State Farm. Likewise, State Farm would not be liable for the amount, if any, owed to [Ms. Sehl] by [Ms. Neff]. We agree with the trial court that the claims [Ms. Sehl] brought suit for are separate and distinct liabilities and that the provisions of Pa. R.C.P. 1006(c) are inapplicable and venue as to Ms. Neff is improper in Philadelphia County.

Justices Olson and Freedberg and retired Senior Judge Colville participated in this decision.

The Superior Court in Sehl was not presented with and did not decide (1) whether it is proper to bring a claim against a tortfeasor and a claim against an underinsured motorist carrier in the same action or (2) whether it would have been proper for the lower court to have transferred only the claim against the tortfeasor to Montgomery County.

Should you have any questions about the above, please do not hesitate to contact Michael Saltzburg at (215) 665-3340, saltzburg@bbs-law.com.

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