

SUPREME COURT OF WASHINGTON

Harris v. Drake

152 Wn. 2d 480 (2004) · Decided October 14, 2004

SUMMARY

The Washington Supreme Court held that a medical examination report prepared under personal injury protection coverage may be protected work product in later litigation with the tortfeasor. The court concluded that the protection did not terminate when the PIP dispute ended and that the insurer properly asserted the protection under the circumstances. The court also affirmed the denial of a continuance and the directed verdict on causation.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Ireland, J.; Johnson, J.; Madsen, J.; Sanders, J.; Bridge, J.; Chambers, J.; Owens, J.; Fairhurst, J.
JURISDICTION	Washington
DECIDED	October 14, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Drake appealed from a personal-injury tort judgment after the trial court excluded the testimony and reports of Harris's PIP medical examiner, denied Drake's request for a continuance, directed a verdict for Harris on causation and special damages, and submitted general damages to the jury. The Washington Supreme Court affirmed the Court of Appeals.
STANDARD OF REVIEW	Continuance decisions are reviewed for abuse of discretion and are upheld unless manifestly unreasonable, based on untenable grounds, or arbitrary. A directed verdict is proper when, as a matter of law, no competent evidence or reasonable inference supports a verdict for the nonmoving party. Work-product protection and the exclusion of evidence were reviewed under the applicable discovery and evidentiary principles.
PRECEDENTIAL VALUE	binding
PARTIES	Doris Drake v. Bradley Harris

TOPICS

discovery dispute expert testimony insurance evidence civil procedure

PRACTICE AREAS

civil procedure insurance torts evidence

QUESTIONS PRESENTED

1. Whether a medical examination and resulting reports obtained under a PIP insurance policy may qualify as work product in later litigation against the tortfeasor.
2. Whether work-product protection continues after resolution of the PIP dispute for which the materials were prepared.
3. Whether USAA properly asserted work-product protection through its representative in the tort litigation.
4. Whether the trial court abused its discretion by excluding Dr. Bede's testimony and denying Drake's request for a continuance.
5. Whether the trial court properly directed a verdict for Harris on causation.

HOLDINGS

1. A PIP insurer's independent medical examination and resulting report may be protected work product when obtained in anticipation of PIP litigation or arbitration, even though the later action is a tort suit against the tortfeasor.
2. Work-product protection does not terminate merely because the PIP litigation or arbitration for which the materials were prepared has ended.
3. USAA properly asserted work-product protection through its subrogation representative under the facts of the case.
4. The trial court did not abuse its discretion by excluding Dr. Bede's testimony on work-product grounds or by denying Drake's request for a continuance.
5. The directed verdict for Harris on causation was proper because Drake presented no competent evidence or reasonable inference sufficient to make causation reasonably debatable.

KEY QUOTATIONS

"We hold that the report may be entitled to the qualified immunity of the work product doctrine." (at 480)

"Therefore, we hold that the PIP insurer's IME may properly be considered work product protected." (at 489)

"We hold that the work product protection in this case did not terminate upon resolution of the PIP dispute between Harris and USAA." (at 491)

"Therefore, we hold that USAA properly claimed the protection of the work product doctrine under the facts of this case." (at 492)

FACTUAL BACKGROUND

Doris Drake rear-ended Bradley Harris in April 1996, injuring Harris's back and shoulder. Harris submitted a personal injury protection claim to USAA, which required him to undergo an independent medical examination by Dr. Brandt Bede; Bede's reports reached conflicting conclusions about whether Harris's shoulder condition was caused by the accident. After Harris sued Drake, Drake sought to use Bede as a defense expert, but Harris asserted work-product protection on behalf of USAA, which had authorized Harris to pursue USAA's subrogation interests and refused to allow Bede to testify against its insured. The trial court excluded Bede, denied Drake a continuance, directed a verdict for Harris on causation and special damages, and the jury awarded \$120,000 in general damages.

PROCEDURAL HISTORY

After Drake rear-ended Harris, Harris sued Drake for injuries. Before trial, the trial court excluded Dr. Bede's testimony and reports as protected work product, denied Drake's request for a continuance, directed a verdict for Harris on causation and special damages, and entered judgment on a \$120,000 general-damages verdict plus costs. The Court of Appeals affirmed, and the Washington Supreme Court affirmed that decision.

DISPOSITION

affirmed

CASES CITED

- Heidebrink v. Moriwaki, 104 Wn.2d 392, 706 P.2d 212 (1985)
- Pappas v. Holloway, 114 Wn.2d 198, 787 P.2d 30 (1990)
- Detwiler v. Gall, Landau & Young Constr. Co., 42 Wn. App. 567, 712 P.2d 316 (1986)
- Crenna v. Ford Motor Co., 12 Wn. App. 824, 532 P.2d 290 (1975)
- Harris v. Drake, 116 Wn. App. 261, 65 P.3d 350 (2003)
- Tran v. State Farm Fire & Cas. Co., 136 Wn.2d 214, 961 P.2d 358 (1998)
- Ellwein v. Hartford Accident & Indem. Co., 142 Wn.2d 766, 15 P.3d 640 (2001)
- Hendren v. Allstate Ins. Co., 100 N.M. 506, 672 P.2d 1137 (Ct. App. 1983)
- Fisher v. Allstate Ins. Co., 136 Wn.2d 240, 249, 961 P.2d 350 (1998)
- Smith v. Safeco Ins. Co., 150 Wn.2d 478, 78 P.3d 1274 (2003)
- Limstrom v. Ladenburg, 136 Wn.2d 595, 963 P.2d 869 (1998)
- Dawson v. Daly, 120 Wn.2d 782, 845 P.2d 995 (1993)
- Johnson v. McCay, 77 Wn. App. 603, 893 P.2d 641 (1995)
- Grinnell Corp. v. Hackett, 70 F.R.D. 326 (D.R.I. 1976)
- Dever v. Fowler, 63 Wn. App. 35, 816 P.2d 1237, 824 P.2d 1237 (1991)
- In re Det. of G.V., 124 Wn.2d 288, 295, 877 P.2d 680 (1994)
- Weyerhaeuser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654, 683, 15 P.3d 115 (2000)
- Moe v. Wise, 97 Wn. App. 950, 956-957, 989 P.2d 1148 (1999)

- *Bender v. City of Seattle*, 99 Wn.2d 582, 587, 664 P.2d 492 (1983)
- *Bennett v. Messick*, 76 Wn.2d 474, 457 P.2d 609 (1969)

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