

Syllabus – Personal Injury Practice – Spring, 2012

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Texts: Automobile Liability Insurance Update 2012 (MCLE) – **REALLY RECOMMENDED, Not Required**
2012 Massachusetts Personal Injury Law Sourcebook & Citator (MCLE)
– **Recommended, Not Required**
Workers' Compensation (MCLE) – **Recommended - Not Required**

Grading Policy:

1. Demand Package – 25%
2. Final Exam – 75%

Course Outline

I. Automobile Accident Claims:

January 17, 2012 - **Auto Accident Intake, Initial Claim Evaluation & Insurers**

- Client Interview
- 1st Party Coverage v. 3rd Party Coverage
- File Set-Up.
- Reserves & Disclosure of Policy Limits
- Documentation of Calls
- 3rd Party Requests for Statements & IME

January 19, 2012 - **Ethical Considerations in Undertaking Representation**

- M.G.L. c.221, §§43 & 44 Prohibition against employing runners; Disqualification for violation of §43.
- M.G.L. c.266, §111C – Fraudulently obtaining benefits under insurance contract; runners; punishment.
- *Comm. v. Lonardo*, 74 Mass. App. Ct. 566 (2009)

January 24, 2012 - **Massachusetts Automobile Insurance Policy, 8th Edition**

a. Compulsory Insurance–M.G.L. c.90, §34A

- ***Bodily Injury to Others* (/discussion/case review):**
 - o **Vehicles Covered** - *Hanover Ins. Co. v. Locke*, 35 Mass. App. Ct. 679, 624 N.E. 2nd 615 (1993)(BI coverage/consent of the owner);
 - o **Persons Covered** - M.G.L. c.90, §34M; *Skinner v. Royal Ins. Co.* 36 Mass. App. Ct. 532, 633 N.E.2nd 432

- (1994)(guest occupants right of recovery from uninsured provision) and
- **Limits of Coverage** – *Santos v. Lumbermans Mut. Cas. Co.*, 408 Mass. 70, 556 N.E.2nd 983 (1990)(application of per person limit to loss of consortium claims).
 - **Mass. Tort Threshold** – M.G.L. c.231, §6D, (But see, *Chipman v. Massachusetts Bay Transp. Auth.*, 366 Mass. 253, 316 N.E.2nd 725 (1974)(Persons exempt from recovering PIP benefits under Mass. “No-Fault” law, i.e. motorcyclists, etc., not subject to tort threshold.)

January 26, 2012 - **Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Personal Injury Protection (P.I.P.)–M.G.L. c.90,§34A & 34M**
 - **Benefits Provided-** *Scalia v. Liberty Mutual Ins. Co.*, 1995 Mass. App. Div. 69. (evidence of reasonable necessary medical treatment); *Gomes v. Metropolitan Property & Casualty Ins. Co.*, 45 Mass. App. Ct. 27, 695 N.E. 2nd 673 *review denied* 428 Mass 1101, 700 N.E. 2nd 544 (1998); *DiGiacomo v. Metropolitan Property & Cas. Ins. Co.*, 66 Mass.App.Ct. 343, 847 N.E.2d 1107 (2006). (calculation of average weekly wage);

January 31, 2012- **Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Personal Injury Protection (P.I.P.)–M.G.L. c.90,§34A & 34M**
 - **Presentation of Claims** – *Brito v. Liberty Mutual Ins. Co.*, 44 Mass. App. Ct. 34, 687 N.E.2nd 1270 (1997) *review denied* 426 Mass, 1109, 691 N.E. 2nd 581 (1998)(IME affecting “due & payable provision);
 - **Persons Entitled to Benefits** – *Rosebrooks v. National Gen. Ins. Co.*, 13 Mass. App. Ct. 1049, 434 N.E. 2nd 675 (1982)(occupancy of a vehicle requirement).

February 02, 2012- **Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Personal Injury Protection (P.I.P.)–M.G.L. c.90,§34A & 34M**
 - **Coordination of Health Insurance & PIP -** *Dominguez v. Liberty Mutual Ins. Co.*, 706 N.E.2nd 647 (1999) (coordination of benefits between HMO and PIP).
 - **Exclusions from Benefits** – *Flaherty v. Travelers Ins. Co.*, 369 Mass. 482, 340 N.E.2nd 888 (1976)

(applicability of PIP provisions to work related injuries).

- **1st Party Examinations Under Oath & Recorded Statements** – *Iaconi-Young v. Arbella Mut. Ins. Co.*, 1998 Mass. App. Div. 63 (recorded statements); *Suarez v. Safety Insurance Co.*, 2000 WL 33159178 (examinations under oath).
- **Lost Wages** – *Gomes v. Metropolitan Prop. & Cas. Ins. Co.*, 45 Mass. App. Ct. 27, 695 N.E.2nd 673 (1998) (75% of What?)

February 07, 2012- Massachusetts Automobile Insurance Policy, 8th Edition (cont.)

- **Bodily Injury Caused by Uninsured Auto-M.G.L.c175, §113L**
 - **Notice** – MAIP 7th, p.32; *Goodman v. American Casualty Co.*, 419 Mass. 138, 643 N.E. 2nd 432 (1994)(prompt notice of uninsured claims);
 - **Persons Covered – Review of UM Roadmap; Review of Definitions, i.e. “Household Member,” “You,” “Your Auto.”** *Vaiarella v. Hanover Insurance Co.*, 409 Mass. 523, 526, 567 N.E.2nd 916, 919 (1991)(scope of the term “Household Member”); *Thattil v. Dominican Sisters of Charity, Inc.*, 415 Mass. 381, 613 N.E.2nd (1993)(applicability of UM coverage where corporation is named insured).

February 09, 2012- Massachusetts Automobile Insurance Policy, 8th Edition (cont.)

- **Bodily Injury Caused by Uninsured Auto-M.G.L.c175, §113L**
 - **Amounts Recoverable** – MAIP 8th, p. 9
 - **Arbitration** - MAIP 8th, p. 9
 - **Permission to Settle** - MAIP 8th, p. 10

February 14, 2012- Massachusetts Automobile Insurance Policy, 8th Edn (cont.)

b. Optional Insurance:

- **Optional Bodily Injury to Others (/discussion/case review)**
 - **Persons Covered** – *Hanover Ins. Co. v. Locke*, 35 Mass. App. Ct. 679, 624 N.E.2nd 615 (1993) (requirement of owner’s consent to operate vehicle);
 - **Types of Uses Excluded** – Regular Use Exclusion – *RLI Ins. Co. v. Hanover Ins. Co.*, 42 Mass. App. Ct. 913, 675 N.E.2nd 1167 *review denied*, 424 Mass. 1108, 678 N.E. 2nd 1334 (1997)(enforcement of regular use exclusion); (cont.)

- **Accidents Occurring Outside of Massachusetts –** *Heinrich-Grundy v. Allstate Ins. Co.*, 402 Mass. 801, 525 N.E.2nd 651 (1988)(concerning accidents occurring in other parts of the world).

February 16, 2012- **Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- ***Optional Bodily Injury to Others (discussion/case review)***

- **Calculating OBI Coverage –** *Hanover Ins. Co. v. Mota*, 34 Mass. App. Ct. 928, 929, 612 N.E.2nd 272, 273 (1993) *aff'd*, 416 Mass. 1101, 624 N.E.2nd 967 (1994)(OBI coverage expanding BI coverage);

February 21, 2012- ***Medical Payments Coverage (/discussion/case review)***

- **Stacking of Med Pay Policies;**
- **Coordination of Med Pay & PIP Coverages –** *Massachusetts Division of Insurance Bulletin B-90-2 (February 21, 1990) & Massachusetts Division of Insurance Letter to Andrew Aloisi, Esq. dated February 25, 2003. Note: These documents can be found within MCLE's Mass Motor Vehicle Torts, Volume I, chapter 2, exhibits 2D & 2G. This volume is on reserve in the library!*
- *Mejia v. American Casualty Co.*, 55 Mass. App. Ct. 461, 466 (2002). (Coordination of Med Pay, PIP & Health Insurance)
- *Thevenin v. Liberty Mutual Insurance Co.*, 2001 Mass. App. Div. 165 (2001). (Coordination of Med Pay & PIP Coverages / Med. Pay Trigger).
- *Metropolitan Property and Casualty Insurance Co. v. Blue Cross and Blue Shield of Massachusetts, Inc.*, 451 Mass. 389, 885 N.E. 2nd 825 (2008) (Coordination of Med Pay, PIP & Health Insurance);
- “2008-12 Clarification of Coordination of Benefits under M.G.L. c.90, §34A and the Interrelationship by and among PIP, Health Insurance and Medical Payments.” <http://www.mass.gov> The Circle is Complete!

February 23, 2012- **Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- ***Underinsured Motorist Cov. (discussion/case review)***

- **The Deduction “Trigger” –** *Hanover Ins. Co. v. Pascas*, 421 Mass. 442, 658 N.E.2nd 142 (1995) – (BI coverage as an offset against UM coverage limits).
- **Insurer’s Consent to Settle 3rd Party Claim -** *MacInnis v. Aetna Life & Cas. Co.*, 403 Mass. 220,

222-23, 526 N.E.2nd 1255, 1257-58 (1988)(insurer's consent to settle may not be unreasonably withheld).

- **Arbitration Before Tort Case** – *Gilbert v. Hanover Ins. Co.*, 35 Mass. App. Ct. 683, 686-87, 624 N.E.2nd 621, 623-24 (1993)(addresses when an arbitration proceeding can commence).

February 28, 2012- **Case Evaluation, Demand & Settlement**

- ***Valuing a Case***

- **Special Damages** – Medical Expenses, Wage Loss & Replacement Services.
- **General Damages** – Pain & Suffering, Permanency & Disfigurement, Quality of Life, Future Medical Problems, Vocational Rehabilitation/Counseling, Liability, Social Security Life Tables.

March 01, 2012- **Case Evaluation, Demand & Settlement (cont.)**

- ***Demand Preparation***

- **Use of Experts**
- **Preparation of Demand Letter**
- **M.G.L. c.93A & 176D**

NOTE: DEMAND PACKAGE MATERIALS PRESENTED!

SPRING BREAK! MARCH 11, 2012 THROUGH MARCH 18, 2012

March 06, 2012 - **Case Evaluation, Demand & Settlement (cont.)**

- ***Settlement & Release***

- **Release Document**
- **Settlements Involving Minors M.G.L.c231, §140C1/2.**
- **Liens – Workers Comp, Hospital, Medical Providers and compromise of liens; *Meyers v. Bay State Health Care, Inc.* 414 Mass. 727, 610 N.E.2nd 303 (1993)(Proceeds received from Underinsurance coverage not subject to HMO's statutory lien.) M.G.L. c.111, §§70A & 70B.**
- **Petition for Approval of 3rd Party Approval, i.e. Workers Comp/Auto Claims. M.G.L. c.152, §15**

- March 08, 2012- **Litigation & Alternative Dispute Resolution (cont.)**
- ***Litigation***
- **Complaint** – Superior v. District Court
 - **Discovery** – Interrogatories, Document Requests, Requests for Admissions, & Deposition
 - **Medical Certification** - M.G.L. c.233, §79G

- March 20, 2012- **Litigation & Alternative Dispute Resolution (cont.)**
- ***Alternative Dispute Resolution***
- **Binding High/Low Arbitration**
 - **Mediation**

II. Workers' Compensation Claims:

- March 22, 2012 - **Overview of Massachusetts Workers' Compensation**
- Intake Interview
 - Benefits Scheme: M.G.L. c.152, §§ 30, 34, 34A, 35& 36.
 - Amount of Weekly Benefit

- March 27, 2012- **Uninsured Employers**
- *O'Malley's Case*, 361 Mass. 504, 281 N.E. 2nd 277 (1972); (Independent Contractor Designation to avoid Procurement of Workers' Compensation Insurance)
 - Uninsured Subcontractors – M.G.L. c.152, §18
 - Massachusetts Workers' Compensation Trust Fund: M.G.L. c.152, §§ 65 & 66.

- **NOTE: DEMAND PACKAGE DUE!!**

- March 29, 2012- **Workers' Compensation - Injury**
- Demand for Employee's Statement -M.G.L. c. 152, §7B
 - Nature of Injury – Aggravation of Preexisting Conditions: M.G.L. c.152, §1(7A): *Hammond v. Merit Rating Board.*, 9 Mass. Workers' Comp Rep. 708 (1995).
 - Nature of Injury – Emotional/Mental Injuries: *Cirignano v. Globe Nickel Plating*, 11 Mass. Workers' Comp. Rep. 17 (1997);

- April 03, 2012 - **Injury (cont.)**
- Nature of Injury – Wear and Tear: *Zerofski's Case*, 385 Mass. 590, 433 N.E. 2nd 869 (1982).
 - Nature of Injury – Recreational Injury: *Bengston v. Johnson & Peterson, Inc.*, 5 Mass. Workers' Comp.

Rep. (1991) *aff'd* 34 Mass. App. Ct. 239, 609 N.E. 2nd 1229 (1993).

- Site of Injury – *Lavoie's Case*, 334 Mass. 403, 135 N.E. 2nd 750 (1956).

April 05, 2012 -

Injury (cont.)

- Site of Injury/Choice of Law – *Migues' Case*, 281 Mass. 373, 183 N.E. 847 (1933).
- Off Premises of Employer – The Coming and Going Rule: *Gwaltney's Case*, 355 Mass. 333, 244 N.E. 2nd 314 (1969); & *Rogers Case*, 318 Mass. 308, 61 N.E.2nd 341 (1945). (CONT.)
- Employer's Quasi-Criminal Conduct – M.G.L. c.152, §28; *McCarthy's Case*, 314 Mass. 610, 51 N.E.2nd 113 (1943).

April 10, 2012 -

Workers' Compensation Claims Procedure

- 452 C.M.R. 1.01 thru 1.08

April 12, 2012 -

Workers' Compensation Claims Procedure (cont.)

- 452 C.M.R. 1.10 (Conferences)

April 17, 2012 -

Workers' Compensation Claims Procedure (cont.)

- 452 C.M.R. 1.11 (Hearings)

April 19, 2012 -

Workers' Compensation Claims Procedure (cont.)

- 452 C.M.R. 1.12 (Discovery and Depositions)

April 24, 2012 -

Workers' Compensation Claims Procedure (cont.)

- Lump Sum Settlements and Fee Petitions pursuant to M.G.L. c.152, §15.

April 26, 2012 -

Review for Final Exam (Auto & Workers' Compensation or Make-up Class)

May 01, 2012 through May 06, 2012 - Study Week

May 7, 2012 through May 18, 2012 - Final Exams

***NOTE: ALL FINAL EXAMINATION SCHEDULING
CONFLICTS MUST BE BROUGHT TO MY
ATTENTION WHEN THE TENTATIVE FINAL
EXAMINATION SCHEDULE IS RELEASED.
STUDENTS WHO FAIL TO SERVE NOTICE OF A
CONFLICT WILL NOT BE ACCOMODATED!***

**The instructor reserves the right to modify and/or
amend the content of this syllabus.**