

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

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IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND
EXLINE-HASSLER
Plaintiff
v. Civil Docket
No. 10-C-12-000410
PENN NATIONAL INSURANCE, ET AL.,
Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL - DAY ONE)

Frederick, Maryland
January 22, 2013

BEFORE:

THE HONORABLE JULIE S. SOLT, JUDGE

APPEARANCES:

For the Plaintiff:
LAURA C. ZOIS, ESQUIRE
JOHN B. BRATT, ESQUIRE

For the Defendant:
WALTER E. GILLCRIST, JR., ESQUIRE
ANNE K. HOWARD, ESQUIRE

For Penn National Insurance, et al.:
GUIDO PORCARELLI, ESQUIRE

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T A B L E O F C O N T E N T S

P A G E

PRELIMINARY MATTERS					4
COURT'S RULING ON PRELIMINAY MATTERS					36
VOIR DIRE					52
MOTION IN LIMINE					
By Mr. Gillcrist					164
Response by Mr. Bratt					166
Court's Ruling on Motion					169
OPENING STATEMENTS					
By Ms. Zois					180
By Mr. Gillcrist					205
MOTION FOR MISTRIAL					
By Mr. Porcarelli					185
WITNESSES:	DIRECT:	CROSS:	REDIRECT:	RECROSS:	
For the Plaintiff:					
Kirsten Sapp	232	248	259	--	
EXHIBITS:	IDENTIFICATION:	EVIDENCE:			
For the Defendant:					
Exhibit No. 1		253	254		
(Passenger side of Honda)					
Exhibit No. 2		253	254		
(Front side of Honda)					

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(Whereupon, at 10:16 o'clock, a.m., January 22, 2013 before The Honorable Julie S. Solt, Judge, in Circuit Courtroom Number Four, the following commenced:)

P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: And good morning again, everyone. Please be seated. Now calling for the record the case of Exline-Hassler v. Penn National Insurance, et al., it's civil number 12-0410. And if Counsel would identify themselves for the record.

MS. ZOIS: Good morning, Your Honor, Laura Zois on behalf of the Plaintiff, Jaqueline Exline-Hassler.

MR. BRATT: And John Bratt as well, Your Honor, on behalf of the Plaintiff.

MR. GILLCRIST: And, Your Honor, Walter Gillcrist for the Defendant, Kirsten Sapp.

MS. HOWARD: And good morning, Your Honor, Anne Howard also for Defendant, Kirsten Sapp.

MR. PORCARELLI: And good morning, Your Honor, Guido Porcarelli on behalf of Penn National Insurance Company.

THE COURT: And good morning, everyone.

MS. ZOIS: And, Your Honor, seated to my right is Samantha Harveson (phonetic), a paralegal at our office, and seated to her right is the Plaintiff, Jacqueline Exline-Hassler.

1 THE COURT: Okay.

2 MS. ZOIS: Thank you, Your Honor.

3 THE COURT: And, um, are we ready to proceed or are
4 there any preliminary matters?

5 MR. BRATT: I believe there are some preliminary
6 matters, Your Honor.

7 THE COURT: Okay. And will the preliminary matter
8 affect jury selection?

9 MR. BRATT: One of them will.

10 THE COURT: Okay. Let's take that one up, 'cause the
11 other I can -- let's, we can pick the jury and deal with at
12 an appropriate time.

13 MR. BRATT: Your Honor, here we have two Co-Defendants a
14 tort fee (sic), an alleged tortfeasor and an uninsured
15 motorist carrier. Uh, and it is the Plaintiff's position
16 that they should share a single set of strikes rather than be
17 granted separate strikes. Um, one -- there are several
18 factors for the Court to consider in making that decision.

19 I've gone ahead, Your Honor, and for the Court's
20 benefit, prepared a bench memorandum containing those factors
21 in the law if I may approach?

22 THE COURT: Sure.

23 MR. BRATT: And I just, I'm just getting my copies for
24 --

25 THE COURT: Mm-hmm.

1 MR. BRATT: -- everybody else.

2 MR. GILLCRIST: Your Honor, I don't mean to interrupt,
3 but, um, one preliminary matter that is not in the nature of
4 a motion that would require argument is the parties have
5 agreed to dismiss, there's two parties that are listed in the
6 complaint, um, Joanne Sapp, the mother and her company DeJa
7 Vu.

8 THE COURT: Mm-hmm.

9 MR. GILLCRIST: We just wanna' make sure that that
10 dismissal is reflected on the record.

11 MR. BRATT: They were granted summary judgment.

12 THE COURT: Yes it is they were granted summary
13 judgment.

14 MR. GILLCRIST: Oh, I'm sorry. I apologize. I
15 overlooked it.

16 THE COURT: They're, yeah, they're out of the case.

17 MR. GILLCRIST: Okay. I apologize.

18 THE COURT: So.

19 MR. GILLCRIST: Thank you.

20 MR. BRATT: May I approach, Your Honor?

21 THE COURT: Sure.

22 MR. BRATT: Thank you. Essentially, Your Honor, the
23 factors that the Court looks at in making this kind of
24 determination on whether the Defendants should share strikes
25 or not, um, is first, uh, the two Defendants must be adverse

1 and hostile, and second, after the Court makes a finding that
2 between the two Defendants there's an adverse or hostile
3 interest, the Court must make a secondary finding that the
4 nature or extent to that adversity or hostile interest
5 justifies the granting of separate peremptory challenges to
6 each Defendant.

7 Um, there, I will point out to the Court initially
8 that there is a cross claim between the two Defendants,
9 however, that cross claim is in the nature of a claim for
10 indemnification or contribution, essentially the UM carrier
11 or UIM carrier is saying that if we're obligated to pay
12 damages to the Plaintiff on that, as a consequence of what
13 the tortfeasor has done, then we'd like to get our money back
14 from the tortfeasor. So, there is a technical adversity
15 between the, between the two Co-Defendants due to the claim
16 filed against each other. However, that kind of a claim with
17 respect to our side of the courtroom and with respect to the
18 Plaintiff they're not adverse. The two Defendants in this
19 case have an identical interest in this matter with respect
20 to the Plaintiff, which is to defend this case on both
21 liability and damages. Their interests as Defendants, Co-
22 Defendants are absolutely aligned, other than to the extent
23 that depending upon the verdict the jury enters it will
24 affect who pays what. But in terms of the conduct of this
25 trial there is no affirmative claim made, made between the

1 Co-Defendants that would have them, uh, that, that would have
2 them doing this any different way, you know, particularly
3 with respect to damages, because the damage claim is the
4 damages claim.

5 Um, and second, the Court would have to find that
6 the nature of that interest justifies the separate strikes,
7 which, in a case like this where the Defendants are equally
8 aligned against the plan in the same position on the same
9 issues, wouldn't rise to that level, because it would give
10 the, the two Co-Defendants an extremely disproportionate
11 amount of control over the, the makeup of our jury panel, as
12 opposed to the Plaintiff, when really their position with
13 respect to Ms. Exline-Hassler is, is more or less identical,
14 Your Honor. Thank you.

15 THE COURT: Thank you.

16 MR. GILLCRIST: Your Honor, uh, on behalf of Ms. Sapp we
17 very much oppose this request. We do have, uh, a cross claim
18 that Penn National has filed against my client, it's a cross
19 claim that would subject to my client, subject my client to
20 personal exposure, uh, above her automobile liability limits.
21 Uh, so, we very much have a situation here where the parties
22 are adverse, uh, the Defendants are adverse.

23 If this verdict comes in below \$100,000 there's no
24 problem. If the verdict comes in above \$100,000, above
25 \$100,000 then there's a huge problem. And Penn Nat --

1 THE COURT: How is that going to change your defense --

2 MR. GILLCRIST: Well, it may not change --

3 THE COURT: -- in this case?

4 MR. GILLCRIST: Whether it, I mean, in terms of my pres
5 (sic) --

6 THE COURT: I mean for practical purposes.

7 MR. GILLCRIST: For practical purposes --

8 THE COURT: You're defending the damages claim --

9 MR. GILLCRIST: Sure.

10 THE COURT: -- against this Plaintiff no matter what.

11 MR. GILLCRIST: We are, but -- and I can't speak to what
12 Penn National's Counsels theories or strategies will be
13 during the course of the trial, but having been in his shoes
14 countless times, my strategy on that side is going to be
15 different than my strategy here, in this, to the extent of
16 the nature of the damages. If I'm Penn National in this case
17 my argument to the jury is, listen, there was a, a, a fairly
18 decent injury here, but, you know, the injury is, is not what
19 it's being portrayed to be, you should give this amount of
20 medical bills and this amount of lost wages and this amount
21 of pain and suffering. Penn National could get up in closing
22 arguments and ask the jury to award a fair verdict of
23 \$75,000. Well, I would never do that in this case. Um, and
24 so the extent of the damages that Penn National focuses on is
25 very much at odds theor (sic), in theory at least, because,

1 again, I can't speak to how they'll present the case then
2 what we will present. So, yes, we are aligned in, in, in
3 many issues in this case, but when it ultimately comes to the
4 nature and extend of the damages we may very much be at odds
5 with each other.

6 I also understand that this may be the subject of a
7 motion in a few minutes, but Counsel is intending to bring
8 up, uh, an insurance representative from Penn National on
9 issues have to do with the, the, uh, investigation of prior
10 claims, uh, and that certainly puts my client in an adverse
11 position to Penn National.

12 So, the mere fact that we are both fighting
13 damages, and we're both fighting liability doesn't remove the
14 fact that we may have different theories about the case, we
15 may ask the jury to do different things in the case. Um, his
16 ideal juror may be the jury that decides to give \$75,000 in
17 this case. Obviously, we can't predict that, but his ideal
18 juror may be very different than my ideal juror, which would
19 be somebody who would be not inclined to give damages. Um,
20 obviously, we, we, we can't know, but, so, I think it is
21 important that the, uh, the parties do have separate strikes.
22 They have chosen to sue both parties. Um, this is not a
23 case, I don't think, maybe Counsel will correct me if I'm
24 wrong, where Penn National intervened. Um, the Plaintiff put
25 Penn National on notice of the UIM claim. That would trigger

1 their coverage. They purposely have sued Penn National and
2 they should be expected to be subjected to separate strikes.
3 Thank you.

4 THE COURT: Thank you.

5 MR. PORCARELLI: Your Honor, if I may be heard briefly?

6 THE COURT: Certainly.

7 MR. PORCARELLI: Um, one of the points that I'd like to
8 bring the Court's attention, uh, requires me to ask that any
9 witnesses in the courtroom, if they could be asked to step
10 outside, if they could do that?

11 THE COURT: If there's anyone in the courtroom right now
12 that is expected to be a witness in this case I'm going to
13 ask you to step outside please.

14 MR. PORCARELLI: With the exception of my client
15 representative here --

16 THE COURT: So.

17 MR. PORCARELLI: -- if he could stay?

18 MS. ZOIS: Your Honor, Plaintiff would join in the, uh,
19 rule on witnesses throughout the course of the trial, would
20 join Mr. Porcarelli in that.

21 THE COURT: Okay. I'll note the rule's been invoked for
22 all purposes now, not just for this argument.

23 MR. PORCARELLI: Thank you, Your Honor.

24 MS. ZOIS: Thank you, Your Honor.

25 MR. PORCARELLI: So, um, we would oppose the motion to

1 have us share strikes, and you obviously know that there's a
2 cross claim and we're, we're very serious about pursuing the
3 cross claim. And Mr. Gillcrist's arguments are right on
4 point and I would adopt them in terms of we may be looking
5 for different jurors, and I may get up at the end of this
6 case and I may ask for an amount of money, because I think
7 that's in my client's better interest where, obviously, it's
8 not necessarily in his client's interest, given the amount of
9 coverage that his client has in this case. Um, and I may
10 need to do that to protect my client's interest, and those
11 are adverse and different interests that we have.

12 But the second thing is, and the reason I asked the
13 witnesses to step outside was, because in the, in the last
14 few weeks as we've been approaching trial there's been some
15 ambiguity and uncertainty regarding one of the liability
16 related issues, and that is whether or whether not someone is
17 actually gonna' take the stand and say that somehow a phantom
18 vehicle was involved in this accident.

19 And as you know, um, if we go to a phantom argument
20 that changes who's in first position on the, uh, on the
21 exposure. So, uh, unless there's a stipulation that everyone
22 agrees that there will be no assertion that a phantom played
23 any role, uh, I can't take that chance and I need to have my
24 separate strikes, and we ask that, uh, we, we get those.

25 THE COURT: Anything else?

1 MR. BRATT: Yes, Your Honor, um, first, with respect to
2 what Mr. Porcarelli just raised in terms of this phantom
3 vehicle argument, this is an issue that we've been attempting
4 to ferret out whether that argument will be made throughout
5 this litigation, because there have been conflicting
6 responses from the tortfeasor on that issue. Um, at her
7 deposition she said that she wasn't contending that anybody
8 else did anything wrong to contribute to the accident. In
9 her initial set of ins (sic), answers to interrogatories she
10 said that there wasn't anybody she was contending contributed
11 to the accident. Then we later got a second set of
12 interrogatories that said well, not so fast we may be
13 contending that there's a phantom vehicle. We'd like to
14 know, because if there is a, such a contention, well, then I
15 argue the rest of this motion a different way than I do if
16 there isn't. So, whatever I say next depends on whether that
17 contention will be made. I don't know if the Court would
18 assist me in determ (sic), getting them to tell us, um, but,
19 you know, if that contention's going to be made in terms of a
20 family vehicle, you know, first, you know, whether, whether,
21 whether there is, there certain is some degree of adversity
22 there, uh, I grant that, I know. But the question then
23 becomes whether that adversity rises to the level of such
24 that it would justify separate strikes when on, as Mr.
25 Gillcrist indicated, on many of the issues these Defendants

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
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1 are in identical alignment, and there's a case that I cite in
2 the bench memorandum, Your Honor, it's on page five, it's
3 Garlock v. Gallagher, that was an asbestos case. And this
4 issue arose in the context of two manufacturer Co-Defendants,
5 who had a cross claim against one another, um, and what the
6 Court determined was is that even though there was some
7 adverse or hostile interest there, because of that cross
8 claim. And, moreover, because it was possible for those two
9 asbestos manufacturers to say it wasn't my asbestos product
10 it was theirs, you know, just like analogous to this phantom
11 vehicle argument . . . I didn't do it, I was the phantom
12 vehicle. And, and what the Court determined in that case,
13 and it's, it's quoted on page six was that . . . "Although
14 the Cross-Defendants had different interests, the Court
15 didn't consider those interests specifically adverse or
16 hostile enough to allow the additional strikes." . . . Um,
17 and it was there that, although they distributed, they
18 manufactured and distributed the same type of product, all
19 (sic), although different ones. That wasn't part of the
20 quote, just so you know, Your Honor. You know, and they
21 shared the common purpose of persuading the jury that those
22 products did not admit respirable asbestos fibers. And the,
23 the analogy to this case is even if we assume that this found
24 vehicle will be made and that there's some merit to it,
25 nonetheless, the Defendants still share the common purpose of

1 defending this case on damages, and defending it on
2 liability, whichever manner they chose, whether it for one to
3 say to well, there was a phantom vehicle there, and, you
4 know, that's (unclear - one word), that is a responsible
5 party for this, for this occurrence. Um, but those few
6 differences between two Defendants certainly don't rise to
7 the level, as in Garlock, where it would justify granting
8 them, well, I can't do math, but they, they, they get 10,
9 they --

10 THE COURT: They get four extra strikes.

11 MR. BRATT: Would it be four --

12 THE COURT: Four.

13 MR. BRATT: -- or would it be four and then plus one for
14 an alternate.

15 THE COURT: Plus one for an alternate.

16 MR. BRATT: Right. So they'd, they'd have, they'd have
17 10 strikes, we'd have five. So, it gives them lots more
18 control over our, the makeup of our potential jury. And does
19 this, these few differences between these two Defendants
20 justify giving them twice as much control over the makeup of
21 the panel as the Plaintiff is no. And, in the alternative,
22 Your Honor, if, if the Court's able to ferret it out whether
23 this phantom vehicle argument will be made at all, if it's
24 not my argument's even easier, because then there is no
25 phantom vehicle that distinguishes Mr. Porcarelli's client

1 from Mr. Gillcrist's client. And then their interests are
2 identically aligned in defending in liability and damages,
3 and there's no possibility that they get separate strikes.

4 THE COURT: What about the argument that they may, um,
5 the insurance company may stand up and say award damages, but
6 up to \$75,000, doesn't that create a conflict between the two
7 Defendants?

8 MR. BRATT: Well, it doesn't really, Your Honor, because
9 --

10 THE COURT: One's conceding damage, one is not.

11 MR. BRATT: Well, they're, they're, they're all
12 conceding some degree of damages, Your Honor, according to
13 the testimony. Um --

14 THE COURT: I don't know I haven't heard it.

15 MR. BRATT: I do.

16 THE COURT: So.

17 MR. BRATT: But that's what I believe to be the case.

18 THE COURT: Mm-hmm.

19 MR. BRATT: But I think the answer, Your Honor, is is
20 that that's nonetheless a damages defense, um, and going to
21 Mr. Gillcrist's point, you know, one of the things that he
22 said was is that if the verdict's over 100,000 it potentially
23 exposes his client to, uh, to personal responsibility. If
24 Mr. Porcarelli were to stand up and argue for 75 certainly
25 Mr. Gillcrist shouldn't have a problem with that, because his

1 duty to his client is to protect her within limits of the
2 State Farm policy. And if Mr. Porcarelli argues for 75
3 that's under a hundred, and it actually helps Mr. Gillcrist's
4 client, it doesn't hurt her, because then I removes the
5 potentiality of her personal liability. So, it, the answer's
6 the same, Your Honor.

7 THE COURT: Thank you. I'm actually taking a second
8 since this was not raised in a pre-trial conference, which is
9 --

10 MR. BRATT: Well, we had a --

11 THE COURT: So.

12 MR. BRATT: -- question about that --

13 THE COURT: Mm-hmm.

14 MR. BRATT: -- because it's not really a motion in
15 limine.

16 THE COURT: No, but it's something that -- pre-trial
17 conferences are trying to do things so that when you get a
18 trial date and it's 10 o'clock that you can bring the jury up
19 and start the trial, rather than spend two hours arguing
20 motions.

21 MR. BRATT: Understood, Your Honor.

22 THE COURT: Like this.

23 MR. BRATT: Thank you. May I be seated?

24 THE COURT: You certainly may.

25 MR. BRATT: Thank you.

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(Brief pause.)

THE COURT: Mr. Gillcrist, um, is, are you anticipating that there will be testimony as to a phantom vehicle?

MR. GILLCRIST: Your Honor, there will be no testimony, uh, from my client or our witnesses that attempts to shift the blame to a phantom vehicle. That's really a dispute between the Plaintiff and Penn National. My client will acknowledge that she hit the Plaintiff, uh, we don't know of anybody else who hit the Plaintiff. There was evidence that a tractor-trailer driver came by, uh, the accident, pulled off the road, came back, and suggested to the Plaintiff, you know, did I hit you or something along those lines. Um, but that's not our proof. Um, so it's really, now, you know, these, this is a, a case with a, cars going everywhere on I-70, so I can't affirmatively say that it would be in the jury's mind, well, did this person or that person hit the Plaintiff? But we're not making that contention. Our argument is, number one, that our client was not negligent. And number two, she did not proximately cause damages to the Plaintiff. Number three, Plaintiff was contributorily negligent. That's, that's our case (unclear - one word) so.

MR. BRATT: Well, Your Honor, I think that probably resolves the issue, because the Plaintiff is not contending that there was a phantom vehicle involved in this, in this current (unclear - one word). We look at this as a straight

1 up UIM on her insured claim. And, based on my discussions
2 with Mr. Porcarelli, I feel confident that he also is not
3 contending that there was a phantom vehicle involved in the
4 occurrence. So, I think that's the answer, Your Honor. Then
5 now what we have are two Defendants that are identically
6 aligned that don't get separate strikes.

7 THE COURT: I, uh, certainly agree that the Defendants
8 are not identically aligned, um, but I don't see a
9 significant enough, uh, difference in what the potential
10 defense would be since we're not talking about the potential
11 of shifting liabilities, so, um, I'm not going to award two
12 sets of strikes to Defense. They, uh, Defendants will share
13 strikes.

14 MR. PORCARELLI: And just so that we're clear, Your
15 Honor, since we have to share based on your ruling may we,
16 uh, consult each other on the (unclear - one word)?

17 THE COURT: Ab (sic), you absolutely may, you absolutely
18 may. And I will tell you up here in civil cases we, um --
19 I'll take a second and tell you how I do jury selection,
20 because that might make all of you a little bit more
21 comfortable with everything that goes on. What I do is we
22 bring everybody up here, because of course you're not
23 supposed to use their name any more. Then I'll ask the
24 questions from up at the bench and have folks stand up and
25 say Juror Number 1, and yes, I might know a witness. They

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 don't answer anything else from out there. Then I, 15 at a
2 time I put 'em in the jury box I have them come up here, and
3 we will do all follow up up here at the bench. All Counsel
4 will have a chance to get the information from the jurors to
5 ask follow up questions, um, and to do, um, get all that
6 information that they need, and I do that with all -- and I
7 think we're gonna' have about 40 jurors. Um, and, um, after
8 that we can do challenges for cause so you all will know
9 who's available. And then we have you all pick from the
10 list. So, you just send up who of the available jurors and
11 I'll tell you, and I go over everything about five times, um,
12 and, uh, who the available jurors are and pick from the list
13 and then you have plenty of time to confer as to who you want
14 to strike and how you want to do the strike. They all go in
15 the box at the end after we have all the strikes done. So,
16 like I said, so you will have a chance to talk to, and all of
17 the jurors. And, again, I find that that makes it, what I
18 hear from Counsel is it makes it much more helpful in using
19 those, those challenges. So, I was, everybody does it a
20 little differently, and so I like to tell you how I like to
21 do it to let you know that you will get a chance to, um, have
22 some meaningful contact with the potential jurors. So.

23 MS. ZOIS: May I ask a question, Your Honor?

24 THE COURT: You may.

25 MS. ZOIS: How many alternates, uh, does Your Honor

1 seat?

2 THE COURT: Um, I thought we'd seat, um, at least two.

3 MS. ZOIS: Perfect, Your Honor. Thank you.

4 THE COURT: Yeah. And I know, I heard a rumor through
5 the grapevine that you think we might well run through Friday
6 so I'll clear through Friday.

7 MS. ZOIS: Perfect, Your Honor. Thank you.

8 MR. PORCARELLI: Your Honor, may I?

9 THE COURT: Certainly.

10 MR. PORCARELLI: I have not been in front of Your Honor
11 before. Um, do you take from the top of the list or bottom
12 of the list?

13 THE COURT: We go right from the top.

14 MR. PORCARELLI: And the foreperson is selected . . .

15 THE COURT: I usually ask to see if somebody from the
16 first three or four wants to serve as foreperson.

17 MR. PORCARELLI: Okay.

18 THE COURT: And if not then I pick someone.

19 MR. PORCARELLI: Right. Thank you.

20 MR. GILLCRIST: Your Honor, and in terms of any other
21 issues that would be appropriate to discuss before jury
22 selection there, there is one. We did file a motion in
23 limine having to do with, dealing with, uh, Penn National
24 before the jury. Um, our motion requests that Penn National
25 not be identified to the jury, and that the jury not be told

1 anything about the fact that this is an un (sic),
2 underinsured motorist claim. Um, certainly if it was an
3 uninsured phantom vehicle claim then Penn National has to,
4 um, disclosed. It being an underinsured motorist claim, uh,
5 we contend that, uh, any reference to either the existence of
6 Penn National or coverage or, uh, the fact that it's an
7 underinsured motorist came (sic), claim, um, seriously
8 prejudices my client who is an individual person. Your Honor
9 is well familiar with the law and the rule dealing with, uh,
10 issues of insurance should not be injected in a tort case,
11 um, it has a tendency to suggest to the jury that there is a
12 collateral source for the recovery and it could have a
13 significant impact on the recovery, uh, to the Plaintiff.

14 Your Honor is probably aware of the King v. State
15 Farm case, which I know Plaintiff's are going to rely upon,
16 um, which, um, said, uh, that the, in that case the uninsured
17 motorist or underinsured motorist carrier should be
18 disclosed, and what we've done in our motion is we've
19 distinguished the King case, uh, and I can say from personal
20 experience that the issue is now in the Court of Special
21 Appeals . . . this is anecdotal I real (sic), I realize, but
22 I had a trial in Prince George's County, last year where
23 Judge Northrop ruled in our favor, I was representing the
24 under insurance carrier, State Farm, he ruled that they
25 should be, um, disclosed at all to the jury, in any fashion.

1 Uh, there was a finding of liability against, um, the
2 Plaintiff, the Plaintiff did not prevail in liability. The
3 sole issue in the Court of Special Appeals now, we have an
4 argument in February, is whether under that case, that
5 scenario, um, State Farm should have been disclosed to the
6 jury. Counsel in that case very effectively argued that, uh,
7 King is not distinguishable, we argue that King is
8 distinguishable, and that leads me to this point, which is
9 King is distinguishable, and King, there was no tortfeasor
10 involved in the case it was strictly Plaintiff v. State Farm
11 and, actually, our firm represented State Farm in that
12 matter. Um, and, uh, in that particular case the, uh,
13 insurance carrier, State Farm, had waived subrogation against
14 the underlying tortfeasor, so the tortfeasor was not a party
15 at all. The case had to be presented to the jury in some
16 fashion, and it made sense for it to be presented as
17 Plaintiff v. State Farm.

18 The King case discusses why the carrier should be
19 disclosed in that situation, but our point, Your Honor, is
20 that it's quite a distinguishable situation where you have an
21 individual tortfeasor such as Ms. Sapp who does have personal
22 exposure in this case potentially, um, to be thrust into a
23 trial where there's litigation over, um, or even referenced
24 to matters of insurance. It should not be in this case. If
25 King involved the same scenario that we have here we wouldn't

1 be arguing it, but King was distinguishable, because it did
2 not involve a tortfeasor who stood to be prejudiced by, um,
3 uh, by all of that reference, those references.

4 What we did in that other case and what I propose
5 that we do here is simply identify Mr. Porcarelli as an
6 additional attorney representing either another int (sic),
7 uh, interest or a defense interest or additional defense
8 counsel. There are innocuous ways that his carrier can be
9 insulated from, uh, consideration, uh, by the jury. So we'd
10 ask that, uh, and, and it does have a bearing, I would
11 subsume on the jury selection. We'd ask that Penn National
12 not be disclosed to the jury, that Mr. Porcalelli (sic) be
13 referred to as either additional defense counsel or
14 additional defense counsel representing another interest, um,
15 and that the case be proceeded as it should, which is a
16 straightforward tort case. Thank you.

17 MR. PORCARELLI: Thank you, Your Honor.

18 THE COURT: Mm-hmm.

19 MR. PORCARELLI: We would join in, uh, Ms. Sapp's motion
20 in that regard. It seems to me that it would be unfairly
21 prejudicial to allow Plaintiffs to get in front of the jury
22 and to give an explanation that is detailed enough to include
23 the word underinsured in any capacity in the course of
24 explaining why I'm here or my client, more specifically. To
25 do so would prejudice the tortfeasor in the eyes of some of

1 the jurors who may view her as someone who was not
2 responsible enough to purchase either any insurance or
3 anything beyond a minimal policy of insurance. Both of which
4 are neither the facts in this case. And we would be
5 concerned with any prejudice that may be taken out on Ms.
6 Sapp in that regard, if you will, because, as we just got
7 done arguing, and as you just found, we have a lot of similar
8 interests, and now we're somewhat tied at the hip on our
9 strikes, and that would affect my client. Um, and I agree,
10 and I was going to suggest, had Mr. Gillcrist not suggested
11 it, that customarily there are other judges around the state
12 who handle this issue by saying this is Mr. Porcarelli, he
13 represents another interested party, and just leave it at
14 that. Um, and I would suggest that if, uh, if I need to be
15 named by name that my client at least not be named in the
16 courtroom, and that the, uh, that the phraseology is a I
17 just, just mentioned.

18 There's another issue I wish to bring to the
19 Court's attention now. Although we didn't file a specific in
20 limine motion on it, it's somewhat related, um, and that is
21 this, there's been a subpoena issued, uh, to my client for,
22 um, the testimony regarding claims processing. Um, and it's
23 our concern that if we start venturing into that area over,
24 uh, how do you do index searches on personally injury
25 plaintiffs? What did you find in this case? What did you

1 do, uh, in this litigation to check to see whether there
2 really was in fact a prior car accident? We're gonna' start
3 getting so far afield of insurance issues and processing and
4 claims, which I don't think have a place in this courtroom
5 first of all, but it's gonna' have an adverse impact on the
6 Defense generally, because they're gonna' figure there's
7 insurance, oh, we can give them anything that they want,
8 because the insurance company's gonna' take care of it. But
9 then back to the cross claim, because not necessarily so, and
10 that's gonna' be on Ms. Sapp if the verdict's over the hun
11 (sic), if the verdict's over the hundred.

12 So, we would ask that the motion be granted, that I
13 can be introduced, but not my client. And, second of all, I
14 would ask consideration be given to limiting this attempt to
15 try to get in all these other collateral, uh, pieces of
16 testimony on insurance practices and claims investigation and
17 those types of things.

18 MR. BRATT: Thank you, Your Honor. Initially, Mr.
19 Porcarelli has raised a couple things about the potential
20 witness that isn't really part of the motion we're talking
21 about right now, which is the identification of the UIM
22 carrier. What I'd ask the Court to do is, and I'm prepared
23 to do this is I'll offer the Court argument on the issue of
24 the identification of the Defendant. Ms. Zois will handle
25 the issues ca (sic), pertaining to the witness, because she