

## COA Opinion: Directed verdict was not appropriate in claim against a no-fault insurance carrier because there was a genuine dispute as to whether a plaintiff's injuries continue to be impairments

3. August 2011 By Kristina Araya

In *Chouman v Home-Owners Ins Co*, No. 295491 the Court of Appeals considered three issues on appeal and ultimately vacated in part, reversed in part, and remanded plaintiffs' claim against their no-fault insurance carrier for underinsured motorist benefits. First, the Court of Appeals considered whether evidentiary rules barred the admission of testimonial evidence that the defendant initially paid no fault benefits to plaintiffs, but eventually discontinued those payments. The court found that MRE 408 and MRE 409 did not bar admission of the fact that plaintiff received benefits and that plaintiff was entitled to fully explain why she discontinued some of her medical treatment. However, the identity of the defendant as the source of those payments was irrelevant and highly prejudicial and therefore inadmissible.

Second, the Court of Appeals considered whether evidence of the defendant's consent to plaintiffs' settlement with the driver of the other vehicle in the accident was barred by MRE 408, which prohibits evidence of compromise "to prove liability for or invalidity of the claim or its amount." The Court found that the defendant's consent to compromise was not barred by MRE 408 because it was not a compromise of a dispute between the defendant and any party or non-party. Nevertheless, the evidence of the defendant's consent to the compromise was inadmissible under MRE 403 because its probative value was "substantially outweighed by the danger of unfair prejudice, confusion, redundancy, or other related concerns. The Court reasoned that the underlying policy concerns of 408 still applied because the consent may have been the result of a "wide range" of motivations. Accordingly, the Court of Appeals concluded that on remand the fact of the defendant's consent to the settlement between the plaintiffs and the driver of the other vehicle shall not be admissible.

Lastly, the Court of Appeals concluded that a directed verdict in favor of plaintiffs was inappropriate because there was a genuine question of fact as to the nature and extent of plaintiff's injuries. The Court reasoned that on directed verdict, the evidence must be considered "in the light most favorable to the nonmoving party, making all reasonable inferences in the nonmoving party's favor." In this case, defendant's expert presented evidence that, when considered in a light most favorable to defendant, raised a genuine issue of material fact such that reasonable minds could differ on the extent of the plaintiff's injuries to her spine, and whether her injuries truly restricted plaintiff in her daily activities. Therefore, directed verdict was inappropriate in this case.