So … In the last two weeks I have been emailed a few times about why a company would deny a liability claim when the driver was clearly at fault and no apparent exclusion seemed to apply.

I know when I first got into insurance I learned … or thought that I learned… that “one should be in control of their car at all times.” And, if you are driving and hit something … pretty much … you’re “at fault.”

One of the many things that I have enjoyed about my career in insurance is that it keeps me on my toes. There is always something to learn, to unlearn and to relearn!

**Question …**

One of my insureds was in a collision incident with another party insured by Company X. This vehicle ran a red light and hit our insured. Our insured did not carry rental reimbursement on their policy so they are submitting a rental bill to Company X to be reimbursed by the other party’s property damage coverage. Company X has advised our insured that this is still under investigation and it may be a medical emergency. If so, Company X would not reimburse our insured for his rental bill, which is something we had never seen before. Is this accurate information?

**The MAP and Legal Responsibility**

Under Parts 4 and 5 in the MAP we find that coverage will respond when you or a family member is legally responsible:

**Part 4:**

Under this part, we will pay damages to someone else whose auto or other property is damaged in an accident. The damages we will pay are the amounts that person is legally entitled to collect for property damage through a court judgment or settlement. **We will pay only if you or a household member is legally responsible for the accident.**

We will also pay if someone else using your auto with your consent is legally responsible for the accident. Damages include any applicable sales tax and the costs resulting from the loss of use of the damaged property.
Part 5: We will pay damages to people injured or killed in accidents if you or a household member is legally responsible for the accident. We will also pay damages if someone else using your auto with your consent is legally responsible for the accident. The damages we will pay are the amounts the injured person is entitled to collect for bodily injury through a court judgment or settlement.

In the last couple of weeks a few agents were puzzled with these words. Their insureds’ vehicles or other possessions were hit by someone else’s vehicle, and the insurance company of the owner of that other vehicle denied the claim. HOW CAN THEY DO THIS???

**Sudden Medical Emergency Doctrine**

Based on the information that the agents provided, it appears that various auto carriers have invoked the “sudden medical emergency doctrine” when denying certain third party auto accident claims. This doctrine states that the driver is not negligent for the damage/injury resulting from an accident if a medical condition caused them to lose control of the vehicle.

It’s interesting that most, if not all, of the cases in Massachusetts appear to involve and absolve a deceased driver of his/her negligence.

In order for this doctrine to hold and exonerate the driver’s guilt, the following conditions seem to be required:

1. To prove this affirmative defense, it is the defendant’s burden to show that he was in fact impaired by an unforeseeable illness or medical emergency prior to the occurrence of the accident.
2. The driver was otherwise previously operating in a prudent and reasonable manner prior to the onset of the medical issue;

There are a few motor vehicle court cases in MA that released the deceased defendant of negligence due to this “sudden medical emergency doctrine:”


There is a motor boat court case invoking the “sudden medical emergency doctrine:” 352 Mass. 34 Ellingsgard & another v. Silver (2/9/67)

These cases state that there was NO negligent operation of the vehicle immediately prior to the medical emergency. The cases all discuss a “sudden and unforeseeable” medical issue and that such an event cannot be considered “negligence”. One court described negligence as:

“Negligence, without qualification and in its ordinary sense, is the failure of a responsible person, either by omission or by action, to exercise that degree of care, vigilance and forethought which, in the discharge of the duty then resting on him, the person of ordinary caution and prudence ought to exercise under the particular circumstances.”

There was a similar discussion in the cases stating that the person had been operating the vehicle in a prudent manner and was not responsible for the injury caused by the medical seizure/attack, etc. So, unlucky for you, your property or person was injured by someone suffering a major medical
malfunction while driving. In all the Massachusetts cases that I found, the defendant was even more unlucky, as these cases involved a “deceased” defendant!

Medical Emergency Defense is NOT Always Allowed ...

In Roa v. Roberts, 2007 Mass. App. Div. 114 (2007), Roberts tried the sudden emergency doctrine but was disallowed by the MA appellate court. Roberts couldn’t prove that he suffered a sudden medical emergency at any time. His medical records did not prove that he suffered a seizure immediately prior to hitting Roa’s automobile. There were no witnesses who saw Roberts before the initial collision with Roa’s vehicle. Therefore, no one could swear that they saw him slump in the driver’s seat or otherwise appear to be suffering a medical emergency prior to the impact with Roa’s vehicle. Roa observed Roberts lying back in his seat after the collision, but this was most probably caused BY the impact and not the REASON for the impact.

Just because the company insuring the driver of the vehicle causing the impact claims “sudden medical emergency doctrine” does NOT mean that it truly was such a situation. In order for the doctrine to be a valid defense, the driver CANNOT have prior medical knowledge of an issue that makes him/her unsafe behind the wheel. The medical reports of the perpetrator/driver must show some kind of debilitating physical issue immediately before the impact.

Denying a claim MUST be substantiated by actual proof … not just a desire to not pay. 😞

Unavoidable Accident/Emergency Doctrine

There are a few cases in Massachusetts that try to pin the rap on someone else by raising the “unavoidable accident/emergency doctrine.” The gist of this argument is that due to the actions of another vehicle there was no possible way that the defendant could avoid an accident. Instead of the “devil made me do it,” it was “that car made me do it.”

In these cases the vehicle hitting someone else blames either the vehicle in front of him for stopping short, or someone else up ahead for acting so negligently that his/her “reaction to the crisis measured up to that of a … [person] of ordinary competence acting under similar circumstances.” (It wasn’t that I was playing with the radio, lighting a cigarette, looking at some “hot” guy/gal, fighting with my spouse, yelling at the kids. It was YOUR fault that I couldn’t control my car!)

25 Mass. App Ct 928 Orfirer V. Biswanger & another (12/24/87)
341 Mass 452 Keenan, administratrix, v. Thibodeau (and three companion cases) (11/22/60)
345 Mass. 73 Stamas v. Fanning (and three companion cases) 11/2/62

Interestingly enough these cases fell “flat”. The judge/jury would have none of it. In the first the judge stated:

For example, there would have been a triable issue if the plaintiff had produced evidence that Seraphin had made a sudden stop for no reason, or because of his inattention, unreasonable speed, or tailgating. On the facts presented, a conclusion that Seraphin was negligent can be based on no more than a guess. Had only those facts been presented at trial, he would have been entitled to a directed verdict.

In the second:
We think that a jury would not be warranted in finding that, in the circumstances, he failed to exercise the care of the reasonably prudent man.
In the third it was stated:

The judge, relying on the case of Conrey v. Abramson, 294 Mass. 431, was of opinion that, even though it could have been found that the defendant was negligent, his conduct was not the proximate cause of the accident since the Stamas automobile “as the fourth car in a line of traffic was too remote from the defendant's conduct.”

Denying the Claim is One Thing …
Having all the facts that there truly WAS a medical emergency or a sudden unavoidable emergency is not the same thing. A carrier can deny a claim to a third party but that doesn't always mean that the actual fact pattern justifies the denial.

What Can Your Uncompensated Client Do?
Well, if it is a bodily injury claim, as much as I hate to say it, I would suggest that they seek legal counsel. If the lawyer thinks there is a chance based on the facts your client presents, then they might as well retain the lawyer.

Could the uncompensated client present an Uninsured Motorist Claim? It depends.

Part 3 states:

We will pay only if the injured person is **legally entitled to recover** from the owner or operator of the uninsured or hit-and-run auto. We will pay for hit-and-run accidents only if the owner or operator causing the accident cannot be identified. Sometimes the company insuring the auto responsible for an accident will deny coverage or become insolvent. We consider such an auto to be uninsured for purposes of this Part.

If it is a TRUE “sudden medical emergency” claim, then the perpetrator is not legally liable and, therefore, the victim will probably not be considered “legally entitled to recover.”

If it is a property damage claim that involves a motor vehicle in the state of Massachusetts, I would suggest “small claims court.”

Filing a Small Claim for a Motor Vehicle Related Loss
MGL 218 s.21 discusses the procedure for filing a small claim in Massachusetts. The following is the website that discusses the mechanics of doing so:


There is NO $ maximum amount for property damage attributable to a motor vehicle claim Per MGL 218 s. 21.

An action may be commenced under this section if the initial amount of damages claimed is two thousand dollars or less or is an action for property damage caused by a motor vehicle regardless of the amount of the claims notwithstanding that the court may award double or treble damages in accordance with the provisions of any general or special law.

If your insured doesn't have collision on his vehicle or doesn't want to report a property claim into his/her building insurance carrier, then filing a small claim might help determine if there really IS a
valid third party claims denial. One doesn't have to take the insurance carrier’s “no”. Let the judge decide if there is a bona fide “medical or sudden emergency” absolving the defendant of negligence or whether whatever the reason that the third party carrier gave for denying the claim is valid.

It is relatively cheap to file a small claim. The filing fee for small claims $500 and under is $30. The filing fee for claims over $500 is $40.

Thanks to the duty to defend provision the court date shouldn’t be ignored by the insurance carrier. If the party who your client thought was guilty gets sued, his motor vehicle carrier must provide a defense per the MAP Duty to Defend Provision:

We also have a duty to defend any such lawsuit, even if it is without merit, but our duty to defend ends when we tender, or pay to any claimant or to a court of competent jurisdiction, with the court’s permission, the maximum limits of coverage under this policy.

The BAP also has a duty to defend provision as long as the insurance COULD apply.

Good luck … if one doesn’t fight a claim … then one will NEVER know … who was right …

What if the “At Fault” Vehicle was Really a Stolen Car?
One agent wondered why the other carrier was denying Part 4 property damage liability to the collision claim to his client’s parked car. Unfortunately, the vehicle that did the hitting was a stolen vehicle. The general rule of thumb in a stolen vehicle claim -- if someone steals my car, then I am NOT legally responsible for the actions of my vehicle. And, in addition to me not being legally responsible for the actions of my stolen vehicle, Part 4 of the MAP has the following exclusion which doubly allows a carrier to deny a claim:

7. When the property damage is caused by anyone using an auto without the consent of the owner.

Part 5 does NOT have such an exclusion. However, if the vehicle owner can prove that the vehicle was taken without his/her consent, then the owner will generally not be found legally responsible for the mayhem created by the thief.

As usual, if I can be of service to you, please call me, Irene Morrill, Vice President of Technical Affairs at 800.870.7091 or … BETTER YET … email me at imorrill@massagent.com. This article has been developed expressly for the members of MAIA. Reprint by other than members without the express permission of the author is not permitted.