

In an effort to bring you up-to-date information that affects your every day claims handling, the defense team at Conroy Simberg is pleased to bring you electronic alerts regarding the latest court rulings, verdicts, legal implications, firm announcements and practice tips. In addition to this electronic update, the attorneys at Conroy Simberg are ready to answer any questions you may have regarding the contents contained herein, as well as discuss the relationship to existing claims. Please feel free to contact any of our attorneys, at any of our ten office locations throughout the State of Florida. You can also visit our website at [www.conroysimberg.com](http://www.conroysimberg.com).

## Recent Firm Accomplishments

### PIP Defense Verdict for State Farm

**Edward Winitz**, Partner and **Scott Wachholder**, Associate in our Hollywood office, obtained a defense verdict from a jury trial in a personal injury protection (PIP) case. The issue was the medical necessity of a cervical spine MRI performed by the Plaintiff, MRI facility. The claimant first sought treatment from a chiropractor 98 days post accident. The chiropractor treated the claimant for 31 office visits before ordering the MRI, and 15 office visits after the MRI, despite the medical records indicating that the claimant was improving and stopped complaining of neck pain.

Plaintiff had previously received a partial Summary Judgment on reasonableness and relatedness. However, in anticipation of Plaintiff arguing that the MRI was paid in accordance with the fee schedule, and that Plaintiff would argue that State Farm, therefore, determined that the MRI was medically necessary, we filed and argued a Motion in Limine to prevent the jury from hearing any testimony regarding any payment by State Farm. The motion was granted the day before the trial commenced.

Mr. Winitz was successful at impeaching the treating/referring chiropractor at trial by projecting his records on a screen in front of the jury, and showing that on only the 1<sup>st</sup> date of service was there a complaint of numbness in the claimant's left arm.

The jury deliberated for just under 30 minutes and found that the MRI was not medically necessary, rendering the verdict in favor of State Farm. Before trial, the Plaintiff rejected a \$100.00 proposal for settlement and the Defendant's motion to tax attorneys' fees and costs is currently pending.

### Arbitrator Awards \$0 In Property Damage Claim

**Ed Herndon**, Partner, and **Riley Landy**, Associate, in our Tallahassee office obtained an Arbitration Award in favor of Simmons Moving and Storage, Inc. on August 27, 2014 before Arbitrator Thomas Bateman in Tallahassee, Florida. The Plaintiffs, Mr. and Mrs. Smith, contracted to store some of their personal belongings and furniture with Simmons in 1993. In 2012, the Smiths requested that their belongings be removed from storage and transported by a third-party moving company to their residence in Missouri. Upon arrival of the items at the Smiths' home in Missouri, the Smiths discovered substantial damage to most items of furniture and other property. The Smiths filed a lawsuit in Leon County, Florida, but agreed to attend Arbitration pursuant to the contract for storage.

At the Arbitration proceeding, the Plaintiffs claimed that Simmons damaged all of the items that had been stored for the past 19 years, and requested a refund of all payments made for the storage of their items, all monies paid towards insurance on the stored items, and \$40,000 for the property itself, for damages totaling \$63,948.73. Simmons admitted that it was responsible for damage to a few of the pieces of furniture, but argued that it was not responsible for any further damage and pointed out that the measure of damages for property damage in this instance was the value of the property at the time the damage was discovered.

The Arbitrator agreed with the Defense that the Smiths were not entitled to the return of their payments for storage or insurance, and failed to provide any evidence as to the value of the damaged property. Accordingly, the Arbitrator made an award in favor of Simmons Moving and Storage, Inc., awarding the Plaintiffs \$0.

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