

579 So.2d 213, 16 Fla. L. Weekly 1132  
(Cite as: 579 So.2d 213)

District Court of Appeal of Florida,  
Second District.

ATLANTA CASUALTY COMPANY, a Georgia  
corporation, Appellant,

v.

Marybeth YADEVIA, Appellee.  
No. 90-02965.

April 24, 1991.

Rehearing Denied May 22, 1991.

An insured injured in an automobile accident filed an action against her insurer to recover personal injury protection benefits for medical expenses. The Circuit Court, Pinellas County, Fred L. Bryson, J., entered summary judgment for employee, and insurer appealed. The District Court of Appeal, [Lehan, J.](#), held that insured was not entitled to recover further benefits from personal injury protection insurer for medical expenses where insurer had already paid insured the amount for which the insured settled workers' compensation lien against the amount of her settlement with the tort-feasor.

Reversed and remanded.

West Headnotes

**[1] Insurance 217 2807**

[217 Insurance](#)

[217XXII](#) Coverage--Automobile Insurance

[217XXII\(D\)](#) Uninsured or Underinsured Motorist Coverage

[217k2804](#) Credits, Deductions, and Offsets

[217k2807](#) k. Workers' Compensation.

[Most Cited Cases](#)

(Formerly 217k532.5(3))

An employee injured in an automobile accident by a third party tort-feasor was entitled to personal injury protection benefits for medical expenses from her insurer only to the extent that her satisfaction of the worker's compensation lien on the proceeds of her settlement with the tort-feasor depleted the amount of her settlement with the tort-feasor.

**[2] Insurance 217 2807**

[217 Insurance](#)

[217XXII](#) Coverage--Automobile Insurance

[217XXII\(D\)](#) Uninsured or Underinsured Motorist Coverage

[217k2804](#) Credits, Deductions, and Offsets

[217k2807](#) k. Workers' Compensation.

[Most Cited Cases](#)

(Formerly 217k532.5(3))

An insured injured in an automobile accident by a third party tort-feasor was entitled to personal injury protection benefits only to the extent that the insured would not thereby receive double payment from both workers' compensation and personal injury protection. \*214 Bryan W. Reynolds of Fox & Grove, Chartered, St. Petersburg, for appellant.

[Daniel C. Kasaris](#) of Yanchuck, Thompson, Young & Berman, P.A., St. Petersburg, for appellee.

[Clifford M. Miller](#) of Miller & Miller, Vero Beach, amicus curiae by Academy of Florida Trial Lawyers.

[LEHAN](#), Judge.

Defendant Atlanta Casualty Company, the PIP insurer for plaintiff Marybeth Yadevia who was injured in an automobile accident by a third party tortfeasor, appeals from the summary judgment determining that Yadevia is entitled to PIP benefits for medical expenses notwithstanding the payment of those expenses by Yadevia's employer's worker's compensation carrier.

[1][2] On the authority of *Fortune Ins. Co. v. McGhee*, 571 So.2d 546 (Fla. 2d DCA 1990), we reverse. Under the circumstances of this case which are similar to those in *McGhee*, plaintiff is entitled to PIP benefits only to the extent that her "satisfaction of the [worker's] compensation lien [on the proceeds of plaintiff's settlement with the tortfeasor] depleted the amount of ... [her] ... settlement" with the tortfeasor, i.e., to the extent plaintiff paid the worker's compensation carrier for the satisfaction of the worker's compensation lien, "plus the amount of attorney's fees and costs permitted by [section 440.39\(3\)\(a\), Florida Statutes \[1985\]](#)." *Id.*

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at 548. In other words, plaintiff is entitled to those benefits only to the extent that she would not thereby receive double payment from both worker's compensation and PIP. *See also* [South Carolina Ins. Co. v. Arnold](#), 467 So.2d 324 (Fla. 2d DCA 1985).

Since in this case the PIP insurer had already paid plaintiff the amount for which plaintiff settled the worker's compensation lien and no claim for the foregoing attorney's fees and costs was made below, plaintiff was entitled to no further recovery from that insurer in this suit.

Reversed and remanded for proceedings consistent herewith.

[SCHOONOVER](#), C.J., and [DANAHY](#), J., concur.

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