

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

An MACP-assigned insurer may not take time beyond the statutory 30 days to conduct its own priority investigation

By: Mark C. Vanneste

March 17, 2016

SECRET WARDLE NOTES

Courts have routinely ruled that it is not reasonable to refuse to pay PIP benefits solely based on a priority dispute. *Kalin v DAIIE*, 112 Mich App 497 (1982); *Darnell v Auto-Owners*, 142 Mich App 1 (1985). In *Bronson Methodist Hospital v Titan Insurance Company*, __ Mich App __ (2016), published on March 15, 2016, the Court of Appeals ruled that an insurer assigned a claim by the Michigan Assigned Claims Plan (MACP) may not delay paying benefits while conducting its own investigation into whether there is a higher priority insurer.

Not only did the *Bronson* Court rule that such a delay would result in penalty interest pursuant to MCL 500.3142(2), the Court also held that, once suit is filed, an investigation into MACP eligibility is not a reasonable excuse for not paying within 30 days and is a frivolous defense. Therefore, pursuant to MCL 600.2591(1), the plaintiff is also entitled to attorney fees and costs.

* * * *

On March 15, 2016, the Court of Appeals issued its opinion in *Bronson Methodist Hospital v Titan Insurance Company*, __ Mich App __ (2016). The lawsuit dealt with a May 9, 2013, accident where a claimant was a passenger in a vehicle driven by another person. The claimant suffered multiple injuries and received treatment at Bronson Methodist Hospital, for which Bronson charged \$51,596.13.

In the months thereafter, Bronson submitted an application to the Michigan Automobile Insurance Placement Facility for benefits under the Michigan Assigned Claims Plan (MACP). The application was denied by the MACP because it lacked information regarding whether the owner of the vehicle (neither the claimant nor the driver owned the vehicle) had automobile insurance for the vehicle.

In September 2013, Bronson submitted an additional application indicating that neither the claimant, the driver, nor the owner of the vehicle had automobile insurance. With that information, the MACP assigned Bronson's claim to Titan Insurance. On September 24, 2013, Titan received the applications, itemized statements regarding Bronson's charges, medical records, and a police report regarding the accident. Titan did not issue payment within 30 days.

In January 2014, after not being paid, Bronson filed a complaint against Titan seeking No-Fault medical benefits, penalty interest, and attorney fees. As part of that litigation, in July 2014, the claimant was deposed and testified that, at the time of the accident, she was not living with any relatives, did not own or use a vehicle, and was not married. Within 30 days of the deposition, Titan sent a letter to Bronson indicating that it would pay the total amount of the charges but refused to pay penalty interest or attorney fees.

Shortly thereafter, Bronson filed a motion for penalty interest under MCL 500.3142 and for attorney fees and costs under MCL 600.2591. Titan responded by arguing that the multiple applications submitted to the MACP by Bronson contained contradictory information that created questions regarding the claimant's eligibility to obtain No-Fault benefits from the MACP. Titan further argued that, once the claimant was deposed, its investigation was complete and benefits were paid within 30 days of the deposition. The trial court embraced Titan's reasoning and denied Bronson's motion for interest and attorney fees.

On appeal, the Court of Appeals pointed out that MCL 500.3142(1) provides that "personal protection insurance benefits are payable as loss accrues," and MCL 500.3142(2) goes on to provide that "personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and that amount of loss sustained." To that effect, the Court of Appeals ruled that Michigan courts have repeatedly construed MCL 500.3142(2) in accordance with its plain language and have not allowed an assigned insurer additional time beyond the statutory 30 days to conduct its own investigation regarding the eligibility of the claimant to receive benefits.

In other words, the Court of Appeals found that the trial court was wrong. Titan's position that the claimant *might* be ineligible for assigned claimed benefits did not justify the failure to pay within 30 days while it conducted discovery to satisfy itself that the claimant was, indeed, eligible for benefits.

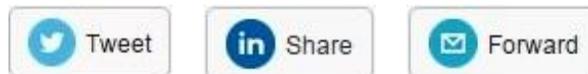
Specific to the *Bronson* case, the Court of Appeals found that the documents Titan received on September 24, 2013, constituted reasonable proof that the claimant was in an accident, injured, incurred medical bills, and that neither the claimant, the driver, nor the vehicle owner had insurance. According to the Court of Appeals, the trial court improperly read an additional requirement into the statute allowing a claimant to receive penalty interest: that benefits are not overdue until an assigned carrier confirms for itself and on its own timeline the claimant's eligibility for benefits.

In regard to the attorney fee and costs, Bronson argued that it was entitled to these sanctions pursuant to MCL 600.2591. This statute indicates that the plaintiff, as the prevailing party, is entitled to costs and fees when a defense is deemed frivolous. The Court of Appeals ruled that Titan's argument that it was able to delay benefits while conducting its own investigation after receiving the application materials from the MACP was frivolous and, therefore, Bronson was entitled to attorney fees and costs.

PLEASE CLICK HERE TO SIGN UP FOR SECREST WARDLE NEWSLETTERS PERTINENT TO OTHER AREAS OF THE LAW



We welcome your questions -
Please contact Mark C. Vanneste at
mvanneste@secrestwardle.com
or 248-539-2852





Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secretwardle.com

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs

Mark C. Vanneste

Alison M. Quinn

Editor

Linda Willemsen

This newsletter is for the purpose of providing information and does not constitute legal advice and should not be construed as such. This newsletter or any portion of the newsletter is not to be distributed or copied without the express written consent of Secret Wardle.

Copyright © 2016 Secret Wardle. All rights reserved.