

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

The Less You Know: PIP claimants do not have to identify the specific injury for which they later seek coverage to provide proper notice under MCL 500.3145(1).

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May 5, 2016

SECRET WARDLE NOTES

The plain language of MCL 500.3145(1) requires only notice of the fact that the plaintiff suffered physical injuries in a motor vehicle accident. Where a plaintiff gives notice of injury within one year, MCL 500.3145(1) allows recovery of PIP benefits for any loss incurred within one year of the commencement of the action. There is nothing in the statute that requires notice of a *specific* injury to satisfy the notice requirement in MCL 500.3145(1).

In *Dillon v State Farm Mut Auto Ins Co*, the Court held that, because the plaintiff gave notice of *general* injury within one year of the motor vehicle accident, she could recover PIP benefits for any loss incurred within one year of the commencement of the action even where she did not provide notice of the *specific* injury for which she sought payment.

“If the Legislature intended for the ‘notice of injury’ to identify a very specific injury, such as an injury to the left hip, rather than the mere fact that an accident resulted in some injury, it would have provided that ‘notice of *the* injury’ must be given.” *Dillon v State Farm Mut Ins Co*, _____ Mich App _____ (2016).

* * * *

On May 3, 2016, the Court of Appeals released for publication its unanimous decision in *Dillon v State Farm Mut Auto Ins Co*, __ Mich App __ (2016) (Docket No. 324902). The question presented in this first-party no-fault case was simple: how specific must a notice of injury be under MCL 500.3145(1)? The Court held that the notice of injury does not need to identify the *specific* injury for which an insured later seeks coverage.

In *Dillon*, the plaintiff was injured in 2008 when she was struck by a motor vehicle while she crossed the street. The only injuries she initially reported to State Farm were to her lower back, left shoulder, and various abrasions. State Farm made payments related to those injuries. She never mentioned injury to her left hip.

Nearly three years after the accident, the plaintiff sought treatment for hip pain, for which she continued to treat throughout the next year. The plaintiff sought PIP benefits from State Farm for the treatment related to her hip pain, but State Farm denied the claim on the basis that it had not received notice of a hip injury within one year of the accident.

The plaintiff sued State Farm for those benefits, and State Farm filed a Motion for Summary Disposition on the issue. The trial court denied the Motion, from which State Farm appealed. The Court of Appeals affirmed the decision of the trial court, and held that the plain language of MCL 500.3145(1) required only notice of the fact that the plaintiff suffered physical injuries in a motor vehicle accident.

Because the plaintiff gave notice of injury within one year, MCL 500.3145(1) allows recovery of PIP benefits for any loss incurred within one year of the commencement of the action. There is nothing in the statute that requires notice of a *specific* injury to satisfy the notice requirement in MCL 500.3145(1).

To reach that conclusion, the Court of Appeals first examined some unpublished decisions cited by the defendant. The Court found the unpublished decisions unpersuasive and, in fact, noted that two of the cases cited by State Farm would seem to “stand for the proposition that the notice of loss does not need to identify the specific injury.” *Dillon, supra*.

After dismissing the defendant’s reliance on unpublished decisions to support its position, the Court parsed the words of MCL 500.3145(1) to determine its meaning and intent.

MCL 500.3145(1) states:

An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor’s loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

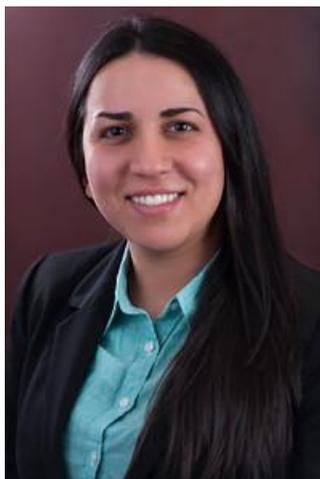
Specifically, the Court zeroed in on the word “the” as used (and, subsequently, not used) before the word “injury” in the first sentence of the statute. The Court determined that the omission of the word “the” before the word “injury” in “notice of injury” indicated that the Legislature was not referring to a definite or particular injury. In other words, “if the Legislature intended for the ‘notice of injury’ to identify a very specific injury, such as an injury to the left hip, rather than the mere fact that an accident resulted in some

injury, it would have provided that ‘notice of *the* injury’ must be given.” *Dillon, supra*. (emphasis in original).

The Court then turned to the last sentence of §3145(1), which instructs that the notice must provide the “nature of his injury” to comply with the statute. The Court determined that this, too, was a “reference to the general, not the specific.” *Dillon, supra*.

The Court used this analysis to rule that the fact that State Farm “received notice that (the plaintiff) suffered physical injuries in a motor vehicle accident was sufficient to satisfy the statute.” *Dillon, supra*. The Court concluded that, because the plaintiff gave notice of general injury within one year of the accident, she could recover PIP benefits for any loss incurred within one year of the commencement of the action, even where she never provided notice of the *specific* injury for which she sought those benefits.

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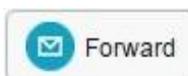
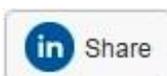


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