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no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Combatting Fraud under MCL 500.3114: *Bahri* Only Applies to Policyholders and Insureds

By Javon R. David **February 15, 2017**

In *Shelton v. Auto Owners*, ___ Mich. App. ___ (2017) (Docket No. 328473), Plaintiff was injured while a passenger in a motor vehicle owned and operated by Timothy Williams. Plaintiff did not own a vehicle nor did she reside with a relative who owned a vehicle. Accordingly, driver Williams's insurer was highest in the order of priority for payment of first-party benefits to Plaintiff pursuant to MCL 500.3114(4)(a). Following the accident, Plaintiff sought payment for medical expenses and household services from Defendant and filed suit following denial of same.

Throughout the course of litigation, Defendant obtained surveillance of Plaintiff, which depicted Plaintiff performing activities inconsistent with her alleged limitations. Defendant utilized surveillance reports and photographs of the Plaintiff in support of its dispositive motion, filed pursuant to *Bahri v. IDS Prop. Cas. Ins. Co.*, 308 Mich. App. 120 (2014). Defendant further relied upon an exclusionary clause under its policy, which provided as follows:

> We will not cover any person seeking coverage under this policy who has made fraudulent statements or engaged in fraudulent conduct with respect to the procurement of this policy or to any occurrence for which coverage is sought.

Defendant argued that the policy exclusion applies to Plaintiff despite the fact that she was not a policyholder. Again, Defendant relied upon *Bahri*, which held that a fraud provision in an insurance contract may bar a claim for first-party benefits when the policyholder filed a claim for replacement services for a date prior to the subject accident. *Id.*

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In combatting fraudulent first-party claims, insurers often rely upon *Bahri v. IDS Prop. Cas. Ins. Co.*, 308 Mich. App. 120 (2014), which held that a fraud provision in an insurance contract may bar a claim for first-party benefits when the policyholder misrepresents a material fact pertinent to the claim. In a recent published decision, *Shelton v. Auto Owners*, the Michigan Court of Appeals held that the exclusionary provisions of a No-Fault policy do not apply to Plaintiffs seeking benefits pursuant to the priority provisions of the No-Fault Act, or MCL 500.3114. In other words, the *Bahri* line of cases may only bar claims of policyholders, or insureds. However, the Appellate Court specifically stated that its ruling does not preclude No-Fault insurers from denying fraudulent claims. Indeed, it has been long held that insurers are afforded an opportunity to review claims for lack of coverage, excessiveness, and fraud.

The Appellate Court disagreed with Defendant's contention that *Bahri* was legally and factually similar to the subject action. Relying on *Rohlman v. Hawkeye Security*, 442 Mich. 520 (1993), the Court determined that the exclusionary provision in Defendant's No-Fault Policy does not apply to Plaintiff and cannot operate to bar Plaintiff's claim. Unlike *Bahri*, the subject case involves a Plaintiff that was not a party to, nor an insured under, Defendant's policy. Instead, Defendant was required to afford first-party benefits to Plaintiff pursuant to statute, specifically MCL 500.3114(4), which provides as follows:

> Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the vehicle occupied;
> (b) The insurer of the operator of the vehicle occupied.

The Appellate Court specifically noted that subsection (4) does not state that the owner or operator's insurance policy "applies" to the passenger's claim for benefits, and its text, unlike that of Subsection (1), omits any mention of a personal protection insurance policy. Instead, the statute provides that the injured person shall claim first party benefits from insurers of the owner or registrant of the vehicle occupied. Therefore, pursuant to the plain language of the statute, Defendant's policy does not "apply" to Plaintiff.

Significantly, the Appellate Court held that its ruling does not preclude No-Fault insurers from denying fraudulent claims. Indeed, it has been long held that insurers are afforded an opportunity to review claims for lack of coverage, excessiveness, and fraud. *Advocacy Org. for Patients and Providers v. Auto Club Ins. Ass'n.*, 257 Mich. App. 365 (2003). As such, the Court then looked to whether the Plaintiff defrauded Defendant in claiming entitlement to medical benefits. Defendant argued that the investigative reports and photographs established beyond a question of fact that Plaintiff committed fraud despite the testimony, medical reports, and affidavits that support Plaintiff's claim of injury and need for medical treatment. The Court disagreed, finding that the surveillance materials were flawed in numerous respects. Specifically, many of the photographs were blurred and seemingly depicted an individual other than the Plaintiff. Accordingly, the decision of the trial court was affirmed.

We welcome your questions -

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