SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

An auto insurer only needs to send notice of non-renewal to "principal named insured."

By: Drew W. Broaddus **August 21, 2015**

SECREST WARDLE NOTES

Johnson illustrates that generally, an insurer only needs to send notice of non-renewal to the "principal named insured" or "if the policy terminology is different, to the insured in whose name the policy was issued." *Johnson*, unpub op at 4.

However, the *Johnson* panel's reasoning leaves open the possibility that different policy language *could* give rise to a duty to notify others. *Johnson*, unpub op at 3-4.

A non-renewal *is not a cancellation* and therefore, the notice requirements of MCL 500.3020 and 500.3224 do not apply, so long as the insurer complies with MCL 500.3204(2)'s requirement that notice of the non-renewal be sent to the insured by first class mail 20 days prior to the termination date of the policy.

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In *Johnson & McLaren Oakland v Metlife*, unpublished opinion per curiam of the Court of Appeals, issued August 11, 2015 (Docket No.s 321649 & 321774), the panel considered whether a no-fault carrier, Metlife, could be held responsible for "staggering medical bills" under a policy that "had been non-renewed effective 14 days before the accident." *Johnson*, unpub op at 2. Metlife had issued a policy to Eddie Johnson, which covered Eddie, her son Taevin, and their two vehicles. On August 5, 2012, Metlife used first class mail to send a notice of termination to Eddie at the address she had provided to the insurer. Metlife informed Eddie that it would not renew the policy at its expiration because Taevin had accumulated six points for moving violations. The policy expired on September 8, 2012. Eddie claimed that she did not receive this notice, even though she resided at the address listed on her policy until the end of August 2012. Eddie was aware that her insurance premium was not deducted from her biweekly pay check on September 9, 2012, but did not contact Metlife at that time. On September 22, 2012, Taevin was involved in a serious motor vehicle accident. He fell into a coma and was hospitalized at McLaren Oakland for an extended period.

Eddie notified Metlife immediately after the accident, but the insurer denied coverage based on the non-renewal letter. Taevin then filed suit for first-party no-fault benefits and McLaren intervened. Taevin and McLaren contended that Metlife was required to send a separate notice of termination to Taevin and that its

failure to do so voided the non-renewal. Metlife argued that under the plain language of the policy, it was required to send notice of non-renewal only to the named insured, Eddie, at her last known address by first-class mail. Metlife had complied with these requirements, and therefore, according to Metlife, no coverage existed at the time of the accident. The circuit court agreed with Metlife and summarily dismissed Taevin's and McLaren's claims. The Court of Appeals affirmed.

In affirming, the panel first looked to the policy language and found that the "Metlife policy provide[d] that if the insurer decide[d] not to renew a policy, it [would] mail notice to you at the last known address shown on our records with at least 20 days' notice." *Johnson,* unpub op at 3. The policy defined "you" as "the person(s) named in the Declarations of this policy as named insured and the spouse of such person or persons if a resident of the same household." *Id.* Eddie was the only person listed in the policy declarations as the "named insured"; Taevin was designated as "child." *Id.* The panel found that Metlife was therefore "required under the policy to mail notice *only* to Eddie." *Id.* (emphasis added). Although Eddie claimed that she did not receive the nonrenewal letter, this did not "invalidate the termination." *Id.* at 4. The policy specifically provided that "[p]roof of mailing of any notice shall be sufficient proof of notice." *Id.* "Accordingly, under the plain language of the Metlife policy, the policy was validly non-renewed and coverage did not exist at the time of Taevin's accident." *Id.*

The panel found further support for this conclusion in *Auto Club Ins Ass'n v Hawkins* (After Remand), 435 Mich 328 (1990). In that case, the Supreme Court interpreted a statute that required notice of policy cancellation to "the insured," and held that "where notice of cancellation is properly provided to the 'principal named insured' or (if the policy terminology is different) to the insured in whose name the policy was issued, that is sufficient notice to any other insured person who is a family member and who lives in the same household." *Johnson,* unpub op at 4, quoting *Hawkins,* 435 Mich at 337. Although *Johnson* involved non-renewal, rather than cancellation, the panel found the reasoning of *Hawkins* to be analogous.

The panel went on to reject Taevin's argument that Metlife had a duty to change the policy declarations to list him as a named insured because he was the registered owner of a vehicle specifically covered by the policy. The panel found no legal authority for this, and nothing in the policy language that would create such a duty. *Johnson,* unpub op at 4. The panel further found that even if Metlife had been required to change Taevin's status, under the *Hawkins* case "the failure to provide separate notice to Taevin would not void the non-renewal." *Johnson,* unpub op at 4. Finally, the panel rejected Taevin and McLaren's arguments that Metlife had failed to comply with MCL 500.3020 and 500.3224. The panel found that these provisions were irrelevant because they dealt with cancellation as opposed to non-renewal, and per MCL 500.3204(2) "[r]efusal to renew any policy of automobile liability insurance shall not constitute a cancellation unless the insurer fails to mail, 20 days prior to the termination date of the policy, by first class mail, a notice to the insured that the policy will not be renewed." Here it was undisputed that Metlife used first class mail to send notice to "the insured," Eddie Johnson, 33 days before the termination date of the policy. *Johnson,* unpub op at 5.

The fact that the Metlife policy was not in effect at the time of the accident was fatal not only to Eddie and Taevin Johnson's claims, but to the claims of McLaren as well. Although not explained in the *Johnson* opinion, this is because the intervening providers "stood in the shoes of the named insured," and if

plaintiff/insured "cannot recover benefits, nor can [the] intervening [providers]." *Bahri, et al. v IDS Property and Casualty Ins Co*, 308 Mich App 420, 424 (2014). "[T]here is an identity between" an injured person's no-fault claims "and those of the providers." *Moody v Home Owners Ins Co*, 304 Mich App 415, 441 (2014) "While the providers may bring an independent cause of action against a no-fault insurer, the providers' claims … are completely derivative of and dependent on [the injured person] having a valid claim of no-fault benefits…." *Id.* at 440-441.

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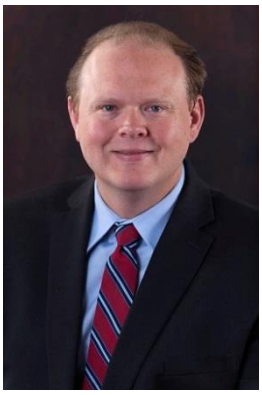

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