SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Written notice under MCL 500.3145(1) must express an intent to make a "claim" for PIP benefits; providers cannot simply send the insurer a bill.

By: Drew W. Broaddus **September 14, 2015**

SECREST WARDLE NOTES

MCL 500.3145(1) "draws a strict line, which must be followed" even if the result seems harsh. *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 229 (2009).

MCL 500.3145(1) "must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of" the Supreme Court or Court of Appeals. *Perkovic*, ___ Mich App at ___; slip op at 5.

MCL 500.3145(1)'s requirement that the notice be made by "a person claiming to be entitled to benefits therefor, or by someone in his behalf" means that the information must convey the intent to make a claim for PIP benefits.

* * * *

On September 10, 2015, the Court of Appeals released for publication its unanimous decision in *Perkovic v Zurich American Ins Co*, __ Mich App __ (2015) (Docket No. 321531). The question presented in this first-party no-fault case was whether the plaintiff had either filed suit against, or given written notice to, Zurich within one year of his February 28, 2009, motor vehicle accident, as required by MCL 500.3145(1). Zurich argued that plaintiff's claim was untimely because the plaintiff did not file suit against it until March 25, 2010, approximately 13 months after the accident, and because the plaintiff did not provide Zurich with "written notice of injury … within 1 year after the accident." Plaintiff pointed to the fact that one of his medical care providers, The Nebraska Medical Center, sent a bill and medical records to Zurich about two months after accident. This, according to the plaintiff, represented "written notice of injury … within 1 year after the accident" and rendered his suit against Zurich timely. The trial court and the Court of Appeals both held that the suit against Zurich was time barred because the documents sent by The Nebraska Medical Center did not provide the information needed to satisfy the statutory notice requirement.

MCL 500.3145(1) states that "[a]n action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced … unless written notice of injury … 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." This subpart actually "contains two limitations on the time for filing suit and one limitation on the period for which benefits may be recovered." *Joseph v Auto Club Ins Ass'n,* 491 Mich 200, 203 (2012). "(1) An action for personal protection insurance [PIP] benefits must be commenced not later than one year after the date of accident, unless the insured gives written notice of injury or the insurer previously paid [PIP] benefits for the injury." *Id.* at 207. "(2) If notice has been given or payment has been made, the action may be commenced at any time within one year after the most recent loss was incurred." *Id.* "(3) Recovery is limited to losses incurred during the one year preceding commencement of the action." *Id.*

Put another way, § 3145(1), does two things. First, it provides that an action to collect PIP benefits must be commenced within one year after the date of the accident. The period is tolled if a proper notice is given to the insurer within one year. Second, it provides that a claimant may not recover benefits for losses incurred more than one year before the date the action was commenced. This appeal dealt with the former, i.e. whether the suit was timely commenced. In answering this question in the negative, the *Perkovic* panel explained:

> In this case, … no letter or written notice form was sent that would alert defendant to the possible pendency of a no-fault claim. … Rather, the medical bill and medical records were sent to defendant without any indication of a possible claim. In fact, according to White [custodian of records for The Nebraska Medical Center], the bill and records were sent for the purpose of obtaining payment. This notice of injury, which was unrelated to a possible claim for no-fault benefits, did not trigger defendant's investigative procedures or advise defendant of the need to appropriate funds for settlement. …[T]he medical bill and medical records, although sufficient in content, did not fulfill the purposes of the statute. Accordingly, plaintiff did not provide sufficient notice pursuant to MCL 500.3145(1) and the trial court properly granted summary disposition in favor of defendant. *Perkovic,* ___ Mich App at ___; slip op at 8.

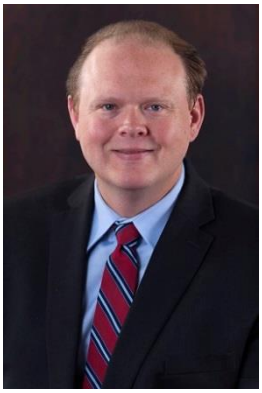
Critical to the panel's analysis was the following language from MCL 50.3145(1): "The notice of injury required by this subsection may be given to the insurer or any of its authorized agents *by a person claiming to be entitled to benefits therefor, or by someone in his behalf.*" (Emphasis added.) The documents sent to Zurich by The Nebraska Medical Center did not "indicate any intention to file a claim on Plaintiff's behalf. Moreover, there is no evidence that Plaintiff even had any knowledge that The Nebraska Medical Center billed Zurich for the services it rendered." *Perkovic,* ___ Mich App at ___; slip op at 3 (quoting the trial court).

As the trial court explained, in language that was quoted favorably by the Court of Appeals:

> …[A] medical care provider sending bills and corresponding medical records to obtain payment for the services it rendered to the injured individual does not satisfy the requirements of MCL 500.3145. The purpose of sending the notice is to file a claim, not to obtain payment. Allowing unexplained bills and medical records, without more, to serve the notice requirements of MCL 500.3145 would defeat the purpose of the statute, as

medical providers would have an incentive to bill every possible insurance company to increase their chance of getting paid for the services they render to an injured person. This, in turn, would place an undue burden on insurance companies to investigate every bill sent to them by a medical provider when there is no existing claim or injury report for the injured individual named on the bill. Accordingly … [t]here has to be some evidence that Plaintiff, or someone on his behalf, is intending to file a claim for personal protection insurance benefits for the notice requirement to be satisfied. *Perkovic*, ___ Mich App at ___; slip op at 4-5.

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



We welcome your questions -

Please contact Drew W. Broaddus at

dbroaddus@secrestwardle.com

or 616- 272-7966

Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secrestwardle.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 Secrest Wardle.

Copyright © 2015 Secrest Wardle. All rights reserved.