SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Court of Appeals Allows Provider to Sue for Previously Settled Bill

By: Mark C. Vanneste **October 23, 2015**

SECREST WARDLE NOTES

When litigating a PIP claim, it appears that the insurer has an argument that any provider bills submitted in writing may no longer be claimed by the insured. Instead, according to this new published opinion, the rights to pursue those bills belong to the provider as soon as the provider notifies the insurer in writing that it is seeking payment.

After the Covenant opinion, when medical bills, claims for attendant care, and/or replacement services are part of a lawsuit but have also been submitted to the insurer in writing by the provider directly, it would be good practice to have an insured produce a waiver from the provider indicating that payment may be made directly to the insured. Otherwise, those benefits should be excluded from the lawsuit completely or an order from the court will be necessary apportioning the funds to the insured and the various providers.

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Insureds in PIP cases may have lost their ability to pursue benefits for bills from providers who have already submitted those same bills in writing to the insurer. At a minimum, no-fault carriers will be well-advised to file a Motion for Apportionment with the Circuit Court before settling with an insured based on this new published Court of Appeals opinion. On October 22, 2015, the Court of Appeals issued its opinion in Covenant Medical Center v State Farm Mutual Automobile Insurance Company (Docket No. 322108).

In 2011, a State Farm insured was injured in a motor vehicle accident. In 2012, the insured treated at Covenant Medical Center for accident-related injuries. Covenant then sent its $43,484.80 bill to State Farm for reimbursement. Later in 2012, State Farm responded to Covenant in writing and in early 2013 State Farm settled the entire PIP claim with its insured for a total of $59,000. The insured signed an agreement releasing State Farm from all liability "regarding all past and present claims incurred through January 10, 2013" as related to the 2011 accident.

After the insured had signed the release, Covenant filed suit against State Farm seeking the full amount of its bill. State Farm asked the court to dismiss Covenant's lawsuit relying on the release that the insured had signed earlier that year. The trial court agreed with State Farm that the insured's release barred the insured's providers from being reimbursed for benefits incurred prior to the release.

On appeal, Covenant argued that it had its own right to pursue its bill because it had provided written notice to State Farm and that it should not be barred from recovery by its patient's release. The Court of Appeals looked to MCL § 500.3112. The statute provides that:

Personal protection insurance benefits are payable to or for the benefit of an injured person or, in the case of his death, to or for the benefit of his dependents. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. If there is doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled thereto, the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order. The court may designate the payees and make an equitable apportionment, taking into account the relationship of the payees to the injured person and other factors as the court considers appropriate. [emphasis added.]

The Court of Appeals ruled that, when a no-fault insurer does not have written notice of a provider's bill, a settlement and release with the insured will discharge liability for that bill. Significantly, however, the Court also found that when a no-fault insurer does have written notice of a provider's bill, a settlement and release with the insured does not discharge liability for that particular bill.

In the latter situation, although the language of the statute uses the term "may," the Covenant Court opined that MCL § 500.3112 requires that the no-fault insurer apply to the circuit court for an order directing how the no-fault benefits should be allocated. Since State Farm had not done so in this case, the Court of Appeals ruled that it had not discharged its liability to Covenant when it settled with its insured even though, presumably, that bill was included as part of the settlement negotiations with the insured.

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We welcome your questions -

Please contact Mark C. Vanneste at

mvanneste@secrestwardle.com

or 248-539-2852

SECREST WARDLE

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

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