

Selection Integrity: Insurer Pulled Into PIP Suit Despite Limited Policy

By Drew W. Broaddus

October 4, 2023

In *Bronson*, ___ Mich App at ___; slip op at 1, the Court of Appeals interpreted MCL 500.3107c and MCL 500.3107e – which, as of June 11, 2019, allow insurers to sell and applicants to buy less-than-unlimited PIP coverage “provided certain statutory requirements are satisfied.” The insured in this case, Brandi Russell, was injured in a motor vehicle accident and was treated by Bronson. Shortly before the accident, Esurance issued a policy to Russell with a \$250,000 limit for PIP coverage. Bronson’s treatment of Russell exceeded that limit. Bronson sued; Esurance prevailed on a Motion for Summary Disposition based on Russell’s selection. Bronson appealed; “[a]t issue in this appeal is whether Russell validly selected less-than-unlimited PIP coverage in accordance with the new statutory mandates....” *Bronson*, ___ Mich App at ___; slip op at 1.

To effectuate her \$250,000 limit for PIP coverage, Russell had to mark her selection of coverage on a PIP selection form and sign the form. MCL 500.3107c(1). Esurance argued that Russell electronically signed her PIP selection form, which is permitted by MLC 500.3107e(2)(c), so long as doing so complies with the Uniform Electronic Transactions Act (“UETA”), MCL 450.831 et seq. “In support of its assertion that Russell electronically signed her PIP selection form,” Esurance proffered “a PIP selection form with Russell’s name typed at the bottom.” *Bronson*, ___ Mich App at ___; slip op at 1. The panel unanimously held, in a published opinion, that “a document with a name typed on it does not, by itself, establish that a person electronically signed the document in accordance with” the statute. *Id.*

Russell’s Esurance policy came into being as follows: Russell called Esurance on October 22, 2020, to purchase an automobile insurance policy. Esurance’s agent, Exodus Anderson, answered. During the course of their call, Russell agreed to purchase a policy with a \$250,000 limit for PIP coverage. At the end of their call, Anderson emphasized that Russell needed to access her online account to confirm her coverage selections and sign certain

SECRET WARDLE NOTES

On June 11, 2019, the Legislature amended the No-Fault Act and fundamentally changed the no-fault system by eliminating the requirement that all owners and/or registrants of vehicles maintain lifetime, unlimited PIP coverage.

Now, MCL 500.3107c allows an insured to select one of the following coverage levels for the payment of PIP benefits under MCL 500.3107(1)(a): \$50,000, \$250,000, \$500,000, or unlimited coverage. Insureds can also opt-out of PIP medical coverage entirely if certain criteria are met.

But, as the Court of Appeals recently explained in *Bronson Healthcare Group v Esurance Prop & Cas Ins*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 363486), specific criteria must be met in order for such selections to be valid. Otherwise, the insurer may still be responsible for unlimited lifetime benefits per MCL 500.3107d(4).

documents for her policy to be effective. One of those documents was later identified as a PIP selection form. On October 26, 2020 – four days after purchasing her policy from Esurance —Russell was seriously injured in a single-motor-vehicle crash. Following this accident, Bronson provided Russell medical care and treatment totaling over \$350,000. Esurance paid some of Russell’s medical expenses, but – according to Bronson – still owed Plaintiff over \$300,000 that it was refusing to pay. Bronson therefore filed suit.

Esurance moved for summary disposition, arguing that “Russell’s policy had a \$250,000 limit for PIP coverage, and that this policy limit had been exhausted....” *Bronson*, ___ Mich App at ___; slip op at 2. Esurance further argued that “Russell had confirmed her selection of a \$250,000 limit for PIP coverage on a PIP selection form in accordance with MCL 500.3107c(1) and (2), and that she electronically signed that form in accordance with MCL 500.3107e(2)(c).” *Bronson*, ___ Mich App at ___; slip op at 2. Esurance concluded that “(1) because Russell selected her less-than-unlimited PIP coverage in accordance with the statutory mandates, her selection of a \$250,000 limit for PIP coverage was effective, and (2) because Russell had exhausted her policy’s \$250,000 limit for PIP coverage,” Bronson’s claim must be dismissed. *Id.* Bronson, in turn, argued that Esurance had “failed to present any evidence that Russell actually electronically signed the PIP selection form that defendant relied upon in support of its claim; the form merely had Russell’s name electronically printed under where a signature was required.” *Id.* According to Bronson, “if Russell signed the form electronically as [Esurance] alleged, then [Esurance] had to establish that she did so in accordance with the UETA, which defendant had failed to do.” *Id.*

The trial court rejected this argument and granted Esurance’s motion. Bronson appealed by right. The Court of Appeals agreed with Bronson, *mostly*, finding that UETA – and in turn, § 3107e(2)(c) – was not satisfied *solely* because Russell’s name was printed on the selection form. *Bronson*, ___ Mich App at ___; slip op at 7-8. However, the panel found that Esurance could otherwise establish that Russell had electronically signed the form. *Id.* at ___; slip op at 9. In the trial court, Esurance produced “IT metadata showing IP addresses,” and represented that this “metadata” established that Russell electronically signed form. *Id.* But “neither party hired an expert to make sense of this” metadata, so it was unclear to the panel “what the evidence establishe[d], if anything.” *Id.* Since it was “possible” that the “IT metadata” could show “that Russell signed the PIP selection form electronically or otherwise accepted her name as it appeared on the form in a way that satisfie[d]” the UETA, the panel remanded for further discovery. *Id.*

The panel also identified a second way that Esurance could prevail on remand. “When Russell purchased her policy ... she made a premium payment.” *Id.* at ___; slip op at 2. Under MCL 500.3107c(3), Esurance could “establish a rebuttable presumption that Russell’s policy had a \$250,000 limit for PIP” by showing “that the premium Russell paid corresponded to” that coverage limit. *Id.* To establish this rebuttable presumption, Esurance “provided an affidavit from one of its employees in which the employee averred that the premium Russell paid corresponded with a \$250,000 limit for PIP coverage.” *Id.* However, Esurance “did not include this employee on its witness list, and did not submit the employee’s affidavit until two days before the trial court was to consider the parties’ competing motions for summary disposition.” *Id.* “Given this, and because the employee’s affidavit is the only evidence establishing that the premium Russell paid corresponded to a \$250,000 limit for PIP coverage,” the panel remanded for “discovery on this issue as well.” *Id.*

Please click below to sign up for Secret Wardle newsletters
pertinent to other areas of the law

SIGN UP

We welcome your questions – please contact:

Motor Vehicle Litigation Practice Group Chairs

[Anthony A. Randazzo](#) | arandazzo@secrestwardle.com or 248-539-2812

[Renee T. Townsend](#) | rtownsend@secrestwardle.com or 248-539-2859

For questions pertaining to this article

[Drew W. Broaddus](#) | dbroaddus@secrestwardle.com or 616-272-7966



Website



LinkedIn



Twitter



YouTube



Email

S E C R E S T
SW
W A R D L E

Troy | 248-851-9500

Grand Rapids | 616-285-0143

www.secrestwardle.com

Contributors

Motor Vehicle Litigation Practice Group

Chairs

Anthony A. Randazzo

Renee T. Townsend

Editors

Sandie Vertel

Sue Willcock

Brenna Scyzoryk

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 Secret Wardle.

Copyright © 2023 Secret Wardle. All rights reserved.

8614135_1.docx