SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Michigan Supreme Court: Language Indicating a Possible Claim for Benefits Not Necessary as Part of Written Notice Provision

By: Mark C. Vanneste **April 17, 2017**

In *Dragen Perkovic v Zurich American Insurance Company*, ___ Mich ___ (April 14, 2017), the Michigan Supreme Court considered whether a non-party medical provider's provision of medical records and associated bills to an injured person's no-fault insurer within one year of the accident causing injury constituted proper written notice under MCL 500.3145(1), commonly referred to as the one-year-back rule.

On February 28, 2009, Perkovic was involved in an accident while operating a semi-truck in Nebraska. The Nebraska Medical Center, where Perkovic was treated after the accident, sent its medical records and a bill to Zurich. The records contained Perkovic's name and address, a brief summary of the accident, and a brief description of Perkovic's injuries. The documents were sent to Zurich to obtain payment but did not explicitly indicate that Perkovic would make a claim. On May 19, 2009, Zurich denied payment indicating that there was no injury report on file for Perkovic.

On August 11, 2009, less than one year after the accident, Perkovic filed suit against his personal no-fault insurance company, Citizens, and later amended the complaint to add Hudson, the Bobtail insurer. After more than a year had passed since the accident, on March 25, 2010,

SECREST WARDLE NOTES

The Michigan Supreme Court just made it easier for a claimant to satisfy the notice requirement of MCL 500.3145(1). Prior to this ruling, written notice had to include an intention to make a claim for no-fault benefits on the claimant's behalf. This was required along with the claimant's name and address as well as the "time, place and nature of his injury."

In *Perkovic v Zurich*, the trial court explained, and the Court of Appeals agreed, that the purpose of the notice requirement was to put the insurance carrier on notice of a possible claim. Otherwise, according to the trial court, "medical providers would have an incentive to bill every possible insurance company to increase their chance of getting paid…" Therefore, the trial court inferred a requirement that the notice include some evidence that the claimant, or someone in the claimant's behalf, was intending to file a claim for no-fault benefits.

The Supreme Court disagreed and ruled that there is no such requirement. In doing so, evidence that a claim may be made at some point is no longer required as part of the written notice. Instead, basic medical records and a bill will be enough to satisfy the notice statute as long as the records include the claimant's name, address, and a few facts about the accident and the claimant's injuries.

Perkovic added Zurich as a defendant and after a priority dispute the Michigan Court of Appeals determined that Zurich was the highest priority insurer.[1]

Ultimately, Zurich moved to have the case dismissed claiming that Perkovic's claims were barred by the one-year statute of limitations and MCL 500.3145(1) because it had not received written notice of the claim or paid any benefits before the limitations period ended. In response, Perkovic argued that the records sent to Zurich by the Nebraska Medical Center satisfied the notice requirements. Ultimately, the trial court granted Zurich's motion for summary disposition and, thereafter, the Michigan Court of Appeals affirmed the trial court's ruling in a published opinion.[2]

On appeal to the Michigan Supreme Court, Perkovic argued that both the trial court and Court of Appeals misapplied the notice provision of the one-year-back rule.

The Supreme Court took a look at MCL 500.3145(1) which requires that a claim for no-fault benefits be filed within one year after the accident unless the insurer was properly notified of the injury or the insurer had previously paid PIP benefits for the same injury. Zurich had not paid any benefits at all and, therefore, the only question was whether Zurich was notified of the injury by the Nebraska Medical Center's records.

The trial court and the Court of Appeals had concluded that the records sent to Zurich were not enough because they did not reveal Perkovic's intent to make a claim for no-fault benefits. The Court of Appeals ruled that, while the records did include all of the information specifically required by the final sentence of MCL 500.3145(1), they did not serve the purpose of the notice provision which is to "provide time to investigate and appropriate funds for settlement purposes." In other words, nothing about the medical records or bills would have alerted Zurich to the possible pendency of a no-fault claim.

The Supreme Court disagreed with the Court of Appeals' reliance on the purpose of the notice requirement. While the Supreme Court agreed that the statute requires that notice is "given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone on his behalf," nothing in the statute suggested that the notice provision's purpose is "to provide time to investigate and to appropriate funds for settlement purposes."

The plain language of the statute simply indicates that "the notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury." Nowhere in the provision is there a requirement that the notice include a possible claim for benefits. Also, the statute contains no temporal requirement that the insured claim benefits at the time the notice of injury is transmitted to the insurer.

Lastly, the fact that Perkovic may have been unaware that the Nebraska Medical Center sent records to Zurich was not relevant. The statute allows notice to be given "by a person claiming to be entitled to benefits therefor, or by someone in his behalf." Since the Legislature used the words "in his behalf," notice sent by a medical provider is sufficient.

---

[1] *Perkovic v Hudson Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2012 (Docket No. 302868).

[2] *Perkovic v Zurich American Ins Co*, 312 Mich App 244; 876 NW2d 839 (2015).

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

We welcome your questions -

Please contact Mark C. Vanneste at

mvanneste@secrestwardle.com

or 248-539-2852

Tweet Share

Secrest Wardle Email YouTube LinkedIn Twitter

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

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chair
Mark C. Vanneste

Editors
Linda Willemsen
Sandie Vertel

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.