SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Court of Appeals holds that health care providers may sue no-fault carriers for PIP benefits, even where the injured person has refused to appear for EUOs

By: Drew Broaddus **October 30, 2015**

SECREST WARDLE NOTES

Although the insurer was not entitled to summary disposition, the *Chiropractors Rehabilitation* opinion leaves open the possibility that the injured person's noncooperation would be a defense for the no-fault carrier to raise against providers at trial. *Chiropractors Rehabilitation,* __ Mich App __; slip op at 15.

If there had been a *judicial determination* that one or both of the injured persons were ineligible for benefits under the Act, it would be a very different case because this should trigger claim preclusion (*res judicata*), regardless of whether the providers participated in the injured person's suit. See *TBCI, PC v State Farm Mut Auto Ins Co,* 289 Mich App 39 (2010). The recent *Chiropractors Rehabilitation* opinion seems to reaffirm this. *Chiropractors Rehabilitation,* __ Mich App __; slip op at 7-8.

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Under the No-Fault Act, health care providers have the right to bring their own lawsuits against no-fault carriers, when the treatment relates to a motor vehicle accident. *Wyoming Chiropractic Health Clinic, PC v Auto-Owners Ins Co,* 308 Mich App 389 (2014). Although these so-called "provider suits" have been described as independent causes of action, *Chiropractors Rehab Group v State Farm Mut Auto Ins Co,* __ Mich App __ (Docket No.s 320288 & 322317), slip op at 6 n 8, the Court of Appeals has also held that "a healthcare provider's eligibility to recover medical expenses is dependent upon the injured party's eligibility for no-fault benefits under the insurance policy." *Id.* at 6. The duality of these causes of action has been the subject of several Court of Appeals decisions in recent months.[1]

In *Chiropractors Rehab,* released for publication on October 29, 2015, the Court of Appeals considered two consolidated cases where State Farm had moved for summary disposition of provider suits on the grounds that the injured persons had failed to cooperate in State Farm's investigation of their claims.[2] In

[1] See *No-Fault Newsline*, October 23, 2015, "Court of Appeals Allows Provider to Sue for Previously Settled Bill," by Mark Vanneste.

[2] In one of the two cases, State Farm also argued that "healthcare providers do not have standing under the no-fault act to bring an action against an insurer" for "no-fault PIP benefits." *Chiropractors Rehabilitation,* __ Mich App __; slip op at 4. However, this argument had already been put to rest by *Wyoming Chiropractic,* 308 Mich App at 390.

one of these claims, Jackson allegedly sustained injuries while a passenger in a motor vehicle owned and operated by Abdullah. Abdullah's vehicle was insured by State Farm. Because of incomplete and conflicting police reports and medical records, there were questions about whether Jackson was injured in the accident. Therefore, when Jackson sought benefits, State Farm requested that Jackson submit to an independent medical examination ("IME") and an examination under oath ("EUO"). Jackson failed to appear for two IMEs and later failed to attend an EUO. After Jackson failed to appear for the EUO, State Farm advised him that it was suspending benefits because of his failure to cooperate with its investigation. Sometime after the accident, Jackson sought treatment from plaintiff, Chiropractors Rehabilitation Group, P.C. When State Farm refused to reimburse that entity for the charges associated with its treatment of Jackson, the provider filed suit. State Farm moved for summary disposition, arguing that it was not responsible for charges associated with Jackson's treatment, in light of his non-cooperation. State Farm reasoned that because Jackson failed to cooperate in its investigation, he was not eligible for coverage under the policy; and because he was not eligible for coverage under the policy, any healthcare provider seeking coverage on Jackson's behalf was likewise ineligible. The trial court denied State Farm's motion, finding that questions of fact existed regarding Jackson's eligibility.

In the other claim, Johnson was purportedly a passenger in a vehicle involved in an accident, but the traffic report identified only "Qutrel Monteque" as a passenger (Johnson seemingly gave the police a false name at the time of the accident). About two months later, Johnson sought treatment from Elite Health Centers, Inc. Johnson complained of neck and back pain that he attributed to injuries sustained in the accident. Johnson also underwent three MRIs at Horizon Imaging, L.L.C. About three months after the accident, Johnson sought PIP benefits from State Farm (which insured the owner of the vehicle that Johnson was allegedly riding in). Johnson subsequently failed to appear for three EUOs. Elite and Horizon filed suits. State Farm argued that the providers' suits were "barred because Johnson had failed to cooperate with State Farm's investigation of the claim," that "Johnson's ineligibility for PIP benefits precluded plaintiffs from seeking such benefits," and that "the policy language … required Johnson to submit to an EUO as a condition precedent to the recovery of benefits." *Chiropractors Rehabilitation,* __ Mich App __; slip op at 3. The trial court denied State Farm's motion for summary disposition in this case as well, finding that questions of fact existed regarding Johnson's eligibility.[3]

The Court of Appeals affirmed the denial of State Farm's motion for summary disposition in both cases. While acknowledging that "a healthcare provider's eligibility to recover medical expenses is dependent upon the injured party's eligibility for no-fault benefits under the insurance policy," *Id.* at 7, the panel determined that Jackson and Johnson's *ineligibility* for benefits under the Act *had not* been established as a matter of law. The panel rejected State Farm's argument that "the failure to submit to an EUO is alone sufficient to render the insured ineligible for PIP benefits," finding that this would be contrary to *Cruz v State Farm Mut Auto Ins Co,* 466 Mich 588 (2002). While the injured party's failure to attend an IME may justify the "suspension of benefits," *Roberts v Farmers Ins Exch,* 275 Mich App 58, 69 (2007), it does not support an "irrevocable denial" of benefits (as would be needed to bar the provider claim); "the eligibility for PIP benefits is simply suspended until compliance with the [IME]." *Chiropractors Rehabilitation,* __

See *No-Fault Newsline,* December 12, 2014, "Court of Appeals clarifies that health care providers do have standing to sue no-fault carriers directly for PIP benefits," by Drew Broaddus.

[3] There was also an issue with the sufficiency of State Farm's affirmative defenses in that suit; the lower court denied State Farm's motion for leave to amend its affirmative defenses to assert Johnson's non-cooperation as a defense to the provider suits. *Chiropractors Rehabilitation,* __ Mich App __; Slip Op at 3. The Court of Appeals held that leave to amend should have been granted, *Id.* at 14-15, although the panel went on to reject all of State Farm's arguments on their merits.

Mich App __; slip op at 11. Although "reasonable proof of the fact and of the amount of loss sustained" must be received by the insurer, *Id.*, the panel found that "[v]iewing the evidence in the light most favorable to the parties opposing the motions for summary disposition, … the medical records proffered by" the providers "established that there were genuine issues of material fact regarding whether the injured parties' claims were causally connected to … injuries arising out of an automobile accident" and "whether plaintiffs had proffered reasonable proof of the fact and of the amount of loss sustained, such that State Farm was required to pay PIP benefits…." *Id.* at 12-13.

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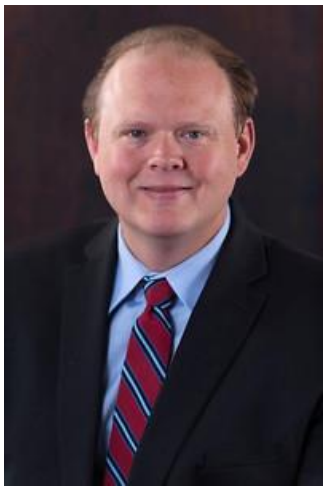

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