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no-fault newsline

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07.26.13

Supreme Court Wades Into The Waters Of "Non-Coordinating" No-Fault Benefits, Finds Motorcyclist Could Not "Double Dip"

By Drew W. Broaddus

Under the No-Fault Act, an individual may purchase a no-fault insurance policy that offers either "non-coordinating" or "coordinating" benefits. This is permitted by MCL 500.3109a, which states that "[a]n insurer providing personal protection insurance benefits under this chapter may offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured."

If a person purchases a non-coordinating policy, the no-fault carrier is obligated to pay no-fault benefits even though similar benefits may be payable, for the same loss, under another health insurance policy (in other words, the insured may "double dip"). See *Smith v Physicians Health Plan, Inc*, 444 Mich 743, 747 (1994); *Shanafelt v Allstate Ins Co*, 217 Mich App 625 (1996). On the other hand, if the insured has purchased a coordinating policy, the no-fault carrier is only obligated to pay those expenses and benefits that are not paid by other applicable health or accident insurance coverage. Put another way, a coordinating no-fault policy is secondary to traditional health insurance plans such as Blue Cross. Because the premium charged for a coordinating no-fault policy is less than the premium for a non-coordinating policy, most Michigan drivers have coordinating coverage.

SECREST WARDLE NOTES:

When a no-fault claimant seeks a "double dip" recovery, they must establish their entitlement under both the language of the no-fault policy and the language of the health insurance policy.

The Court's reasoning in *Harris* focused upon the fact he was not entitled to the benefit of Auto-Club non-coordinating benefits language. However, under the Court's reasoning, it is possible that the Blue Cross policy's "Care and Services That Are Not Payable" clause would have barred a double recovery *even if* the claimant had purchased non-coordinating no-fault coverage. That would present a more difficult question which the Court has not yet answered.

In *Harris v Auto-Club*, __ Mich __ (2013) (Docket No. 144579), the Michigan Supreme Court considered the double dip claim of a motorcyclist, who was injured in a collision with a motor vehicle and who was seeking no-fault benefits under MCL 500.3114(5)(a). Harris' situation was different from other cases where double dip recoveries were sought because under the No-Fault Act, motorcyclists do not look to their own insurance but rather, to the insurer of the motor vehicle that is "involved" in the accident (regardless of fault). In this case, the motor vehicle was insured by Auto-Club, and Auto-Club's policy was non-coordinating. Although Harris had not purchased the non-coordinating Auto-Club policy, he sought a double recovery pursuant to the Auto-Club policy language, arguing that § 3114(5)(a) made him an insured under that policy.

Harris had health insurance through Blue Cross. Harris' Blue Cross policy stated, under the heading "Care and Services That Are Not Payable," that "[w]e do not pay for the following care and services: Those for which you legally do not have to pay or for which you would not have been charged if you did not have coverage under this certificate." In light of this language, the question then became: did Harris "legally … have to pay" the medical bills he incurred as a result of the accident, where those bills were otherwise covered by § 3114(5)(a)?

The trial court said no, Harris did not have to pay the medical bills – rather, Auto-Club did per § 3114(5)(a) – and therefore, Blue Cross had no responsibility. The Court of Appeals disagreed, and found that Harris had incurred expenses when he sought treatment for injuries

that arose from the motor vehicle accident. Once he became liable for those expenses, Blue Cross was in turn liable to cover those expenses. The panel noted "that a party receiving services has a legal obligation to pay for them when rendered and incurs the expense even if the expense is paid by an insurer…." *Harris v Auto Club*, unpublished opinion per curiam of the Court of Appeals, issued December 27, 2011 (Docket No. 300256).

However, on July 29, 2013, the Supreme Court reversed, and reinstated the trial court's finding that Blue Cross had no responsibility. The majority explained its decision as follows:

> The Court of Appeals majority erred when it concluded that Harris was covered by the uncoordinated [or non-coordinating] no-fault insurance policy held by the motor vehicle driver involved in the accident. Harris is entitled to PIP coverage because [§] 3114(5)(a) designates [Auto-Club] as the responsible insurer. …[A]n insured must pay a premium to obtain insurance policies that provide for double recovery. Harris has simply not shown that he paid the necessary premiums to receive a double recovery.
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> Under [§] 3114(5)(a), Harris was not obligated to pay his medical expenses because, as a matter of law, [Auto-Club] was liable for Harris's PIP expenses. … …[Auto-Club] was liable regardless of when Harris first received treatment, when Harris filed a complaint against [Blue Cross] or when Harris submitted his demand to [Blue Cross]. Consequently, the provision of the [Blue Cross] certificate titled "Care and Services That Are Not Payable," is directly applicable when Harris claimed PIP benefits under [§] 3114(5)(a). Regardless of when Harris sought treatment for his injuries, those services are "[t]hose for which [Harris] legally [did] not have to pay…." Accordingly, Harris is not entitled to a double recovery….

The Court found that Harris was not entitled to the benefit of the Auto-Club policy's non-coordinating benefits language because Harris was "not claiming benefits under a no-fault insurance policy that he or anyone else procured." Harris was "neither a third-party beneficiary nor a subrogee of the no-fault policy issued to the person that struck him and thus he is not eligible to receive benefits under that policy. Rather, Harris's right to PIP benefits arises solely by statute [§ 3114(5)(a)]."

The decision was 6-1; Justice Cavanagh dissented, stating that he agreed with the Court of Appeals majority.

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