

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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No-Fault Insurer's Timely Reimbursement To Health Insurer Precludes Plaintiff's Claim For "Overdue" Medical Expenses

By Kimberly Carmack

On July 26, 2011, the Michigan Court of Appeals released *Karmol v Encompass Prop & Cas. Co.*, for publication and reversed a ruling by the Lenawee County Circuit Court which entered a default judgment in favor of the Plaintiff and further awarded Plaintiff no-fault penalty interest and attorneys fees. The Court found it "perplexing" that Plaintiff claimed to be entitled to these sanctions when the Plaintiff never paid any medical bills and was never threatened with a lien against third-party recovery or served with a reimbursement action.

Justin Durand, a minor, was injured in a motor vehicle accident. He had health insurance administered through an ERISA health benefit plan which timely paid all of his medical expense benefits for exactly one year before the health insurance carrier filed a federal lawsuit for reimbursement against his no-fault insurance carrier, Encompass. On the same date, Jason Durand filed suit in circuit court through his next friend, Kristine Karmol, against his health insurance carrier and Encompass. Encompass and the health insurance carrier ultimately settled their dispute. Encompass reimbursed the health insurance carrier and assumed responsibility for paying Justin's medical expense benefits. Additionally, the health insurance carrier never sought penalty interest or attorney fees from Encompass, nor could it have pursuant to *Allstate Ins. Co. v. Citizens Ins. Co. of America*, 118 Mich App 594, 607 (1982).

Thereafter, Encompass moved for summary disposition against Plaintiff in the circuit court action claiming that that the action lacked a factual basis for the reason that Plaintiff never incurred any costs or expenses since all medical expenses were timely paid by the health insurance carrier which Encompass had reimbursed. The circuit court denied Encompass' motion for summary disposition and motion for reconsideration and the case "took on a life of its own."

The Michigan Court of Appeals held that pursuant to MCL §500.3110(4), PIP benefits "accrue not when the injury occurs but as the allowable expense...is incurred." Plaintiff preemptively filed suit based upon the fear that she would be billed directly for Justin's medical expenses; however, she was not. Encompass resolved its dispute with the health

SECRET WARDLE NOTES:

If a plaintiff does not incur medical expenses or is not exposed to personal liability for medical expenses because they are timely paid pursuant to a health benefit plan; and ultimately the health insurer is reimbursed by the no-fault insurer; the benefits are not considered "overdue." Therefore, plaintiff is not entitled to no-fault penalty interest or attorney fees.

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insurance carrier, issued reimbursement and assumed responsibility for payment of Justin's medical bills. No bills remained unpaid and Plaintiff was never exposed to personal liability for any of Justin's medical expenses. For these reasons summary disposition should have been granted in favor of Encompass. Further, Plaintiff was not entitled to seek penalty interest and attorney fees as it was undisputed that she never paid ("incurred") any medical expenses.

The *Karmol* Court, appears to focus on two key issues: that Plaintiff did not incur any medical expenses and that Plaintiff was never exposed to personal liability for any unpaid medical expenses. In this action, the no-fault carrier responded quickly to resolve its dispute with the health insurance carrier and assumed responsibility for all the medical expense benefits that could have potentially been at issue. In doing so, the no-fault insurer properly avoided potential exposure to no-fault sanctions.

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