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no-fault newsline

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No Free Rides: Court Of Appeals Addresses No-Fault Transportation Expenses

By Drew Broaddus

Under the No-Fault Act, an insurance company is "required to provide first-party insurance benefits … for certain expenses and losses." *Johnson v Recca,* 492 Mich 169 (2012). Specifically, an insurer must pay personal protection benefits "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle…." MCL 500.3105(1). Those benefits include "[a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation…." MCL 500.3107(1)(a). No-fault claimants may also recover "replacement services," defined as "[e]xpenses not exceeding $20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent." MCL 500.3107(1)(b).

SECREST WARDLE NOTES:

Is it well established that the services provided by ZCD Transportation, like any other allowable expense under the No-Fault Act, must actually be "incurred" in order to be compensable. *Burris v Allstate Ins Co*, 480 Mich 1081 (2008). Although this requirement is often assumed, it should not be overlooked, as reflected by the fact that the *ZCD Transportation* panel rejected plaintiff's "minimum trip" charges on this basis.

The panel's finding that certain expenses were "replacement services," rather than "allowable expenses," was significant because § 3107(b) caps "replacement services" at $20.00 per day – much less than what plaintiff sought. As the panel noted, "[a]llowable expenses and replacement expenses are two separate and distinct categories...." *ZCD Transportation*, *supra* at *3.

It has long been recognized that the cost of transportation and mileage to and from medical appointments are allowable expenses. *Davis v Citizens Ins Co of America,* 195 Mich App 323, 328 (1992). However, allowable expenses must be "causally connected to the accidental bodily injury arising out of an automobile accident." *Griffith v State Farm*, 472 Mich 521 (2005). Therefore, the product, service, or accommodation claimed as an allowable expense must be related to the insured's injuries. *Id.* An expense is an "allowable expense" if (1) the expense is for an injured person's care, recovery, or rehabilitation, (2) the expense is reasonably necessary, (3) the expense is incurred, and (4) the charge is reasonable. *Douglas v Allstate Ins Co*, 492 Mich 241, 259 (2012). The Court of Appeals recently considered the limitations of "allowable expenses," in the context of alleged "medical" transportation, in *ZCD Transportation, Inc. v State Farm*, unpublished per curiam opinion of the Court of Appeals, rel'd 11/27/12 (No. 304719).

In *ZCD Transportation,* Plaintiff provided transportation services to State Farm's insured, Arnold Grinblatt, after Grinblatt was injured in an automobile accident in 2001. Before the accident, Grinblatt was unable to walk and got around using an Amigo personal mobility vehicle. He was able to drive using a van fitted with a lift and hand controls. After the accident, Grinblatt was too weak to move himself between the Amigo scooter and the driver's seat of the van. He therefore hired Plaintiff to provide transportation services, both for medical appointments and for personal trips unrelated to medical treatment. Plaintiff's fee for the service consisted of three components: (1) a pick-up fee of $35, (2) a wait-fee of $30 an hour, billed in 15 minute

increments, and (3) mileage. Plaintiff charged $3 a mile, but every client was charged a minimum of 10 miles for a one-way trip and 20 miles for a round trip, regardless of the number of miles actually driven. Plaintiff acknowledged that most of Grinblatt's trips involved distances less than the mileage minimum.

State Farm objected to paying for medical transportation costs – at least to the extent that ZCD Transportation sought compensation for times when Grinblatt was not actually in the vehicle being transported – and to paying for personal trips. The trial court granted State Farm's motion for summary disposition. ZCD Transportation appealed; the Court of Appeals affirmed in part and reversed in part.

The Court of Appeals accepted State Farm's argument "that transportation expenses unrelated to medical treatment are not recoverable even if prescribed by a doctor as being necessary for the patient's care, recovery, and rehabilitation." *ZCD Transportation, supra* at *3. The panel found that "those transportation services, which were not directly related to Grinblatt's medical treatment but were solely to maintain his pre-injury quality of life, constituted replacement services, not allowable expenses, because Grinblatt did his own pleasure driving before the accident and, but for the injuries sustained in the accident, would have continued to do so. Further, Plaintiff admitted that it provided the service to Grinblatt as a courtesy and did not expect him to pay for it." *Id.* at *4.

However, the panel found that transportation and mileage expenses were "incurred to some extent because plaintiff provided the service to Grinblatt and apparently would have turned to him for payment if defendant were not liable." *Id.* at *3-4. Some, but not all, of these expenses appeared to be recoverable, but this needed to be addressed by a fact-finder, as the panel explained: "[P]laintiff's charges clearly included a fee for medical transportation even when Grinblatt was not in the vehicle and being transported. For example, … plaintiff billed for picking Grinblatt up from his home in order to transport him to a doctor's office and for either waiting for him to obtain his treatment or coming back to get him after his treatment so it could take him home. It stands to reason that plaintiff would have to charge for such services even though Grinblatt is not in the vehicle because it cannot transport him to and from medical appointments unless it first picks him up at home and then waits for him or comes back to get him to take him back home again. Because the pick-up and wait-time aspect of the service was actually rendered and the fees were incurred, the issue is whether those charges were reasonable." *Id.* at *4. Because neither side addressed that issue, it remained "a question of fact to be determined." *Id.*

The panel did hold that, to the extent that Plaintiff "charged for more miles than [Grinblatt] actually traveled" – i.e, the minimum charges of 10 miles for a one-way trip and 20 miles for a round trip – these were "transportation services not actually rendered" and summary disposition was properly granted as to those charges.

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