SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Court of Appeals clarifies that health care providers do have standing to sue no-fault carriers directly for PIP benefits.

By Drew Broaddus

In *Wyoming Chiropractic v Auto-Owners,* __ Mich App __ (released December 9, 2014) (No. 317876, for publication), the Court of Appeals clarified a controversial issue in first-party No-Fault litigation: does the Act authorize health care, or attendant care, providers to file direct causes of action against no-fault carriers? The consensus has long been that *Lakeland Neurocare v State Farm,* 250 Mich App 35 (2002) answered this question in the affirmative. But a close look at the *Lakeland Neurocare* opinion reveals that issue was not squarely presented at that time. The carrier in that case challenged whether the provider could obtain penalty interest or attorneys' fees under the Act, but did not challenge whether the provider could sue in the first place. So this critical threshold question was not thoroughly considered.

SECREST WARDLE NOTES:

Wyoming Chiropractic is a published decision and therefore conclusively answers the question of provider standing, MCR 7.215(C)(2) and (J)(1), unless and until the Michigan Supreme Court reviews the issue.

Ultimately, the issue turns upon whether the plain language of MCL 500.3112 authorizes these suits; whether allowing such suits is good or bad policy is only marginally relevant to the question of statutory interpretation, *Elezovic v Ford Motor Co,* 472 Mich 408, 421 (2005), although the policy considerations could be a factor in whether the Supreme Court grants leave.

Nonetheless, *Lakeland Neurocare* was widely interpreted as a "thumbs up" to these type of suits, and the years that followed saw an "explosion of first-party actions filed by health insurance providers…."[1] The apparent recognition of independent provider suits "basically split the [no-fault] cause of action. So for every accident, you'd have an injured person and any number of providers that would be eligible to sue."[2] Eventually, "the so-called provider suits" came to "far outnumber the claimant suits."[3] This explosion of litigation led to confusion with respect to the application of claim and issue preclusion,[4] and has also made the settlement of suits more complicated.[5]

Meanwhile, the statutory basis for allowing such claims remained somewhat fuzzy in the eyes of many observers. Such suits have historically been justified under MCL 500.3112, which states that "[p]ersonal protection insurance benefits are payable to or for the benefit of an injured person…." Clearly this gives no-fault carriers the option of paying providers directly ("to or for the benefit of"). But does it follow that carriers can be compelled through litigation to do so? Given the seemingly unforeseen explosion of litigation that followed *Lakeland Neurocare,* coupled with the ambiguous statutory foundation for such suits, Auto-Owners urged the Court of Appeals[6] to give the issue a closer (or perhaps first) look.

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[1] Brian Frasier, "No-fault dominated by threshold instability," 25 Mich LW 880 (June 27, 2011).
[2] Id.
[3] Id.
[4] See Guardian Angel Healthcare v Progressive, unpublished per curiam opinion of the Court of Appeals, rel'd 3/14/13 (No. 307825); Anree Healthcare v Farm Bureau Ins, unpublished per curiam opinion of the Court of Appeals, rel'd 11/09/10 (No. 294081).
[5] Susan Leigh Brown, "No Fault Report," 28 Michigan Defense Quarterly 32, 33 (July 2011).
[6] The Michigan Supreme Court denied a bypass application, 493 Mich 930 (2013), as well as an interlocutory application, 495 Mich 866 (2013), in this case before Auto-Owners was able to present the issue to the Court of Appeals in an appeal by right.

The Court of Appeals accepted Auto-Owners' invitation and addressed the question of provider standing in a published opinion, although the panel did not reach the answer Auto-Owners had hoped for. The panel held that such suits were authorized by MCL 500.3112 as well as *Lakeland Neurocare* and further, that they advance the public policy goals of the No-Fault Act.

The *Wyoming Chiropractic* panel explained:

> Auto-Owners argues that this Court did not discuss the issue of whether a healthcare provider is entitled to sue an insurer for PIP benefits in *Lakeland Neurocare* because the issue was uncontested on appeal. Auto-Owners also asserts that this Court's statement in *Lakeland Neurocare* that "it is common practice for insurers to directly reimburse health care providers for services rendered to their insureds" was dicta. However, this Court's reasoning in *Lakeland Neurocare* applies to a healthcare provider's claim for PIP benefits. This Court reasoned that a healthcare provider is entitled to enforce the penalty provision of the no-fault act because a healthcare provider is entitled to payment of the PIP benefits. Therefore, the fact that a healthcare provider is entitled to payment, as well as the fact that a healthcare provider can sue to enforce the penalty provision of the no-fault act, indicates that a healthcare provider may bring a cause of action to recover the PIP benefits under the no-fault act. This interpretation is consistent with this Court's interpretation of *Lakeland Neurocare.* In addition, this Court's holding that MCL 500.3112 entitles a healthcare provider to payment was based on this Court's interpretation of the statute, rather than … industry practice…. *Wyoming Chiropractic,* Slip Op at 8-9.

The panel proceeded to distinguish a number of cases cited by Auto-Owners for the contrary position (i.e., that a cause of action for PIP benefits belongs solely to the injured person), then addressed the public policy implications as follows:

> …[T]he public policy goals of the no-fault act support allowing a healthcare provider to have standing to sue an insurer for PIP benefits. … Allowing a healthcare provider to bring a cause of action expedites the payment process to the healthcare provider when payment is in dispute. Thus, provider standing meets the goal of prompt reparation for economic losses. Healthcare provider standing also offers a healthcare provider a remedy when an insured individual does not sue an insurer for unpaid PIP benefits, thus preventing inequitable payment structures and promoting prompt reparation….

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We welcome your questions and comments.

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