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Court Interprets Recovery of Allowable Expenses "Without Limit" but Within Reason

By David R. Kinzer **October 9, 2024**

Five years after the Michigan Legislature passed sweeping reforms to the state's No-Fault Act, many litigants still struggle to understand how the new system is intended to function. Thankfully, the Court of Appeals in *Joseph Canty v Michael Chester Mason*, ___ Mich App ___; ___ NW2d ___ (October 4, 2024) (Docket No. 365327) sheds new light on one particularly murky area of the new law: its treatment of third-party claims. Most importantly, *Canty* answers what it means that certain claimants may seek allowable expenses under § 3135 "without limit," a phrase which, if interpreted as expansively as possible, would have catastrophic effect on alleged tortfeasors and their insurers.

Plaintiff Canty's third-party tort claim arose out of a February 2021 auto accident in which Defendant Mason negligently rear-ended Plaintiff's vehicle. Prior to the accident, Plaintiff had taken advantage of MCL 500.107(d)(1), electing not to maintain coverage for personal injury protection (PIP) benefits, a cost-cutting option available only to persons with "qualified health coverage," such as Medicare. After the accident, Plaintiff opted not to bill Medicare for his treatment. Instead, he sued Defendant under MCL 500.3135(3)(c), which allows injured persons to hold at-fault drivers liable for:

> [d]amages for **allowable expenses**, work loss, and survivor's loss as defined in sections 3107 to 3110, including all future allowable expenses and work loss, in excess of any applicable limit under section 3107c3 or the daily, monthly, and 3-year limitations contained in those sections, **or without limit for allowable expenses if an election to not maintain that**

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The No-Fault Act was reformed in 2019 to allow insurers to cap available PIP benefits or even exclude PIP benefits altogether for insureds with qualified health plans like Medicare. Post reform, MCL 500.3135(3)(c) allows injured parties to bring third-party claims against tortfeasors for allowable expenses "in excess" of the claimant's policy limits, unless the claimant opted out of PIP benefits entirely, in which case allowable expenses are "without limit." In *Joseph Canty v Michael Chester Mason*, ___ Mich App ___; ___ NW2d ___ (October 04, 2024) (Docket No. 365327), the Court of Appeals explained that the phrase "without limit" must be understood in context, declining Plaintiff's invitation to ignore all imaginable legal restrictions and instead holding that third-party claims are subject to the post-reform fee schedule, MCL 500.3157, and the common law duty to mitigate damages.

> **coverage was made** under section 3107d or if an exclusion under section 3109a(2) applies. (Emphasis added.)

At particular issue in the case were the phrases "allowable expenses" and "without limit" in § 3135(3)(c). Since Plaintiff opted not to maintain coverage, he was allowed to seek damages for "allowable expenses, work loss, and survivor's loss…without limit for allowable expenses." The question ultimately was which phrase the Court would emphasize, "allowable expenses," as defined in MCL 500.3107(1)(a) and subject to multiple qualifications and restrictions, or the phrase "without limit," to the extent that all the No-Fault Act's restraints on accident benefits could be ignored.

To begin, the Court held that the phrase "without limit" cannot be taken out of context to mean "that there are no parameters whatsoever on the amount of recovery." *Canty*, slip op at 5. Instead, MCL 500.3135(3)(c) compares two groups of drivers, those like Plaintiff with qualified health plans who opted out of PIP benefits, and those who did not opt-out. The latter could only seek allowable expenses "in excess of any applicable limit under section 3107c," which is to say beyond what their insurance was obligated to pay. For instance, a claimant who was only insured up to $250,000 but incurred $300,000 in allowable expenses could seek just $50,000 from an alleged tortfeasor, since that was the amount "in excess" of their plan's limit. Unlike those claimants, Plaintiff could "recover *dollar one* in allowable expenses from the tortfeasor." *Id.* (emphasis in original). Furthermore, the phrase "allowable expenses" in MCL 500.3135(c) was still limited by its definition in MCL 500.3107(1)(a) to "reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."

The Court also held that Plaintiff had a duty to mitigate damages, which is the legal principle that a plaintiff is not entitled to recover for any item of damage that could have been avoided. See *Morris v Clawson Tank Co*, 459 Mich 256 (1998). Earlier decisions already held that the No-Fault Act does not specifically void or abrogate this common law principle. See *Lee v Detroit Med Ctr*, 285 Mich App 51 (2009); *Bak v Citizens Ins Co of America*, 199 Mich App 730 (1993). In this case, Plaintiff failed to mitigate his damages when he chose not to bill Medicare for his treatment, which also meant he was charged more than the Medicare rates. The Court found that, by neglecting to bill Medicare, Plaintiff circumvented the legislative goal of the opt-out provision, which was for persons who "opt-out" of PIP benefits to have their medical insurance pay for medical treatment, not to leave them without any medical coverage.

The most controversial question before the Court was whether the post-reform fee schedules in MCL 500.3157 apply to third-party tort claims under MCL 500.3135(3)(c). While the latter section makes no explicit mention of MCL 500.3157, it specifically incorporates MCL 500.3107, which states that allowable expenses are "[s]ubject to the exceptions and limitations in this chapter." That chapter includes MCL 500.3157. The Court found that MCL 500.3135, by explicitly incorporating MCL 500.3107, incorporated MCL 500.3157 along with every other exception and limitation in the No-Fault Act.

Judge Philip Mariani dissented only on this fee-schedule issue, pointing out that MCL 500.3135(3)(c) names "a narrow and specific range of statutory provisions" to define the scope of available tort damages, sections 3107 to 3110, which the majority's broad reading of 3107 effectively expands to include the entire chapter. He instead found that the phrase "[s]ubject to the exceptions and limitations in this chapter" only referred to PIP benefits and was therefore irrelevant for the subject at hand: tort benefits.

On each of the issues before the Court, the majority adopted the position that would limit costs to defendants, narrowly defining terms like "without limit" and applying defenses available from common law and from elsewhere in the No-Fault Act to curb recoverable benefits. In other words, the Court took seriously what the Supreme Court called a "key goal of the 2019 no-fault reforms," which was "to drive down premiums for all operators of automobiles in Michigan and to curb what had been portrayed as exploitative billing by medical providers." *Andary v USAA Cas. Ins. Co.*, 512 Mich 207 (2023). The resulting opinion installs a series of common-sense guardrails on the benefits third-party claimants can demand from alleged tortfeasors.

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