DECEMBER 17, 2015

CASE LAW UPDATE

Minnesota Supreme Court allows insureds to double dip and recover medical expenses under the No-Fault Act after recovering the same expenses in a prior negligence actions.

The Minnesota Supreme Court held this week in *State Farm Mut. Auto. Ins. Co. v. Lennartson* that the Minnesota No-Fault Act does not bar an insured from double dipping and recovering basic economic loss benefits already recovered in a prior negligence action. The court also held that collateral estoppel did not bar the double recovery.

The consolidated appeal involved individuals who initially received no-fault medical-expense benefits following separate car accidents but had their benefits discontinued by their no-fault insurer. Instead of further pursuing benefits under the No-Fault Act, the individuals sued the drivers of the other vehicles and recovered damages, including their past medical expenses. The individuals then initiated arbitration proceedings and recovered no-fault benefits from their no-fault insurer for the same medical expenses. The no-fault insurer successfully vacated one of the arbitration awards, and the two cases were appealed. The Court of Appeals reversed the decision in favor of the no-fault insurer, concluding that neither the No-Fault Act nor collateral estoppel barred the double recoveries.

The key issue before the Minnesota Supreme Court on appeal was whether the No-Fault Act bars an insured from recovering benefits for a "loss" already recovered in a negligence action. A unanimous court said no.

The court first held that because an insured's medical-expense "loss" under the No-Fault Act accrues as the expense is "incurred," i.e., billed, the insured's recovery of past medical expenses in a negligence action does not "modify or eliminate the loss." The court thus rejected the no-fault insurer's argument that a tort recovery prevents the insured from meeting the Act's threshold requirement of "economic detriment." Stretching its decision in *Schroeder v. W. Nat'l Mut. Ins. Co.*, 865 N.W.2d 66, 68-69 (Minn. 2015), the court reasoned that an insured need not independently prove "economic detriment" so long as the insured's suffered "loss" falls within one of the six statutory categories, including medical expense.

The court then held that no provision in the Act reduces or eliminates an insurer's obligation to pay no-fault benefits based on a prior negligence recovery. The court determined that Minn. Stat. § 65B.51, subd. 1 is a one-way street that prevents a tortfeasor, or a tortfeasor's insurer, from paying damages for no-fault benefits "paid or payable," but not a no-fault insurer. The court further rejected the no-fault insurer's reliance on the Legislature's statement in Minn. Stat. § 65B.42(5) that a purpose of the Act is to "avoid duplicate recovery," stating that Section 65B.51, subd. 1 and other provisions of the Act provide offsets to accomplish this.

Finally, the court observed that the Legislature could have included an additional offset provision to reduce or eliminate a no-fault insurer's obligation to pay previously recovered no-fault benefits.

Two Justices concurred in the result but wrote separately to highlight the "serious complications and pitfalls that necessarily follow." The concurring Justices warn that the court's ruling will incentivize injured parties to litigate their cases in tort prior to pursuing no-fault benefits because of the potential for a double recovery. This impairs the Act's objectives of "provid[ing] prompt payment" of basic economic loss benefits, "speed[ing] the administration of justice," and "eas[ing] the burden of litigation on the courts," and does nothing to "relieve the severe economic distress of uncompensated victims." *See* Minn. Stat. § 65B.42(1), (4). They also warn that the ruling opens the door for abuse of the no-fault system that will lead to increased insurance premiums.

In sum, the supreme court unanimously agreed that the double recovery caused by an apparent loophole in the No-Fault Act presents a policy issue best left to the Legislature. The question becomes, however, whether it is the statutory framework or the application of the framework already in place that needs fixing. As the majority acknowledges without elaboration, Section 65B.51, subd. 1 of the Act already provides for a reduction of any negligence recovery by the "value of basic or optional economic loss benefits paid or ***payable***." If properly applied, the statute currently in place should provide an offset to a tortfeasor, or a tortfeasor's insurer, in the negligence action for no-fault benefits payable to but not yet recovered by an insured (whether by arbitration after a benefits termination, or otherwise) so that when the insured pursues the unpaid no-fault benefits subsequent to the negligence action, there will be no double recovery.

In the end, while it may have been too late in *Lennartson* for the court to prevent the insureds from obtaining a double recovery, the court's ruling should provide defense counsel with added ammunition in future tort actions to preemptively ward off any chance of a double recovery by obtaining a deduction for not only the value of no-fault benefits paid, but also the value of any no-fault benefits still available to the insured in a subsequent no-fault arbitration.

If you have any questions regarding the recent Minnesota Supreme Court decision or any other automobile or liability related issues, please contact a member of our Automobile or Liability Practice Groups at (952) 831-6544. This letter and other court opinion updates are available in .pdf form on the News and Resources page of our Firm's website: www.olwklaw.com.

THE O'MEARA, LEER, WAGNER & KOHL, P.A. LIABILITY PRACTICE GROUP

Timothy J. Leer	Michael M. Skram	Shamus P. O'Meara	Morgan A. Godfrey
Dale O. Thornsjo	Mark R. Azman	Brian M. McSherry	Lance D. Meyer
Chris G. Angell			

O'MEARA, LEER, WAGNER & KOHL, P.A.

Relationships ▪ Reliability ▪ Results

7401 Metro Boulevard | Suite 600 | Minneapolis | Minnesota | 55439-3034
OLKWLaw.com | 952-831-6544