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APPELLATE OPINION ON NO-FAULT ARBITRATION AND COLLATERAL SOURCES

In *American Family Insurance Group v. Kiess*, File A03-1764, June 1, 2004, the Minnesota Court of Appeals considered several issues regarding No-Fault arbitration. Mark Kiess was injured in a car accident in February 1996. American Family cut off No-Fault benefits after a July 1996 independent medical examination. Kiess had cervical fusion surgery in June 1997. His medical bills were paid by his health insurer, Blue Cross/Blue Shield. In September 2001, he settled a claim with the at-fault driver. In November 2001, Kiess filed for No-Fault arbitration.

Kiess incurred nearly $13,000 in bills, but pursuant to arbitration rules, claimed only $10,000. He later amended his arbitration filing to include $7,125 in interest, dating back to July 1997. American Family objected at arbitration because the claimed amount exceeded the $10,000 limit. The arbitrator awarded the full amount, $17,185, stating the amount over the $10,000 was appropriate as it represented the filing fee and a penalty for failing to pay No-Fault benefits.

After the arbitrator denied a motion to reduce the award, American Family moved in district court to vacate the award. American Family claimed the arbitrator made the following errors: (1) extending jurisdiction when the claim was for more than $10,000; (2) awarding interest; (3) concluding the insurer was not entitled to collateral source deductions; and (4) holding Kiess had standing to claim No-Fault benefits when the entire claim was paid previously by the health insurer. The district court denied the motion, and American Family appealed to the Court of Appeals.

On appeal, the Court of Appeals held as follows:

(1) The court upheld the arbitrator's jurisdiction and the inclusion of the interest in the award, because the "claim" was for only $10,000 in medical bills. The interest portion of the award was necessary to promote the No-Fault Act's compensatory and penal purposes. Otherwise, claimants would be forced to include the interest in the claim or waive the right to receive it. Further, limiting penalties would not promote good faith handling of claims by the insurers.

(2) However, the calculation of interest was improper. Interest is not calculated thirty days after the bills are incurred as Kiess claimed. The No-Fault Act clearly provides "penalty interest is incurred 30 days after the insurer receives reasonable proof of the fact and amount of loss realized by the insured." §65B.54, Subd. 1. The insurer did not receive actual notice until November 2001, the time of the filing for arbitration. This portion of the decision was remanded to the trial court to properly calculate the interest from November 2001.

(3) The court upheld the decision regarding collateral sources. The records indicated Blue Cross/Blue Shield, paid over $10,000 of the claimant's medical bills claimed in the No-Fault arbitration hearing. American Family wanted the award reduced by the amount paid by the health insurer, in order to avoid a double recovery, pursuant to the Minnesota Collateral-Source Statute, Minn. Stat. §548.36. The court did not agree. It applied the reasoning stated by the Minnesota Supreme Court in *Stout v. AMCO Insurance Company*, 645 N.W.2d 108, 114 (Minn. 2002). In *Stout,* the court held a No-Fault insurer may not "attempt to reduce its obligation to provide basic economic loss benefits on the ground that another source has stepped in and decreased the amount of the injured person's medical bills..." The insurer's duty is to compensate the insured for the actual expense incurred, and not the amount billed. The court noted, "medical expense incurred by the claimant is the full amount reflected on his medical bills, and not the amount that was paid in satisfaction of those bills as the result of collateral transactions involving the claimant's health insurer." The court concluded, "If there is to be a windfall either to an insurer or to an insured, the windfall should go to the insured."

(4) The court held American Family's standing argument failed for the same reasons the collateral source argument failed. It held, "a claimant may assert a claim against a No-Fault carrier for the full amount of medical expenses incurred by the claimant, regardless of whether that amount was subsequently reduced as a result of collateral transactions involving claimant's health insurer." Where the health insurer, or other collateral source, has waived its subrogation right and the insurer did not settle or offer to pay any portion of the claimant's medical expenses arising out of the accident, the claimant has standing to bring a claim for No-Fault benefits.

We will follow this decision in the event it is appealed to the Minnesota Supreme Court. We will also continue to monitor other cases which impact No-Fault, uninsured and underinsured claims. Feel free to contact us regarding this case or any other legal issues.

Sincerely,

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