

Appellate Court Reverses Attorney's Fees Award, Ruling Defendant's Denial of Benefits was Overdue but not Unreasonable

November 18, 2014

LegalTrend Newsletter - Fall/Winter 2014

The Michigan Court of Appeals reversed a trial court's awarding of no-fault attorney fees to the plaintiff, finding that the insurer did not act unreasonably as to benefits found to be overdue by a jury when an Independent Medical Exam (IME) was scheduled months after suspending benefits.

In *O'Leary v State Farm Mutual Automobile Insurance Company*, an unpublished opinion, the plaintiff was involved in a car accident on June 19, 2009. He was transported to the hospital by EMS and released that night. On the recommendation of a doctor, the plaintiff underwent several surgeries, including a neck/cervical surgery in October 2009 and two lumbar surgeries in November 2009 and February 2012.

The defendant-insurer initially paid no-fault benefits, but noticed inconsistencies in the plaintiff's medical records. Benefits were then suspended in October 2009 to further investigate, and an Independent Medical Examination (IME) was later scheduled.

Four months later, a spinal disorder specialist conducted an IME in February 2010 and concluded that the two surgeries done to date were not related to the accident, but that the spinal conditions were degenerative. Based on the IME report, the defendant-insurer issued a letter in March 2010, denying the plaintiff's claim for the prior surgeries.

The plaintiff filed suit, and a jury returned a verdict in the plaintiff's favor, finding that he sustained accidental bodily injury from the accident and that expenses were incurred, benefits owed, and payment was overdue. The jury awarded him \$70,450 in interest after the trial. The plaintiff then moved to recover attorney's fees under the No-Fault Act and case evaluations sanctions, and the trial court awarded an additional \$263,528. The defendant-insurer appealed.

With respect to attorney fees, the Michigan No-Fault Act states:

An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer

APPELLATE COURT REVERSES ATTORNEY'S FEES AWARD, RULING DEFENDANT'S DENIAL OF BENEFITS WAS OVERDUE BUT NOT UNREASONABLE Cont.

unreasonably refused to pay the claim or unreasonably delayed in making proper payment. (MCL 500.3148(1))

The appellate court explained that in order for attorney fees to be awarded, two requirements must be met. First, the benefits must be overdue, meaning, "not paid within 30 days after [the] insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2). Second, in post-judgment proceedings, the trial court must find that the insurer "unreasonably refused to pay the claim or unreasonably delayed in making proper payment." MCL 500.3148(1)

On appeal, the defendant-insurer argued that the trial court erred in awarding attorney's fees under the No-Fault Act when it reasonably denied the benefits with the information it had at the time. The appellate court agreed, reasoning that "[a]n insurer is not required to reconcile competing or conflicting medical opinions. An insurer can justify its refusal or delay in paying a claim 'by showing that the refusal or delay is the product of a legitimate question of statutory construction, constitutional law, or factual uncertainty.'" The trial court, instead of considering whether the decision to deny benefits was reasonable, relied on the amount of time that had lapsed from the date of the first surgery until the benefits were denied. The appellate court noted that the No-Fault Act does not stipulate the time period in which an examination must be scheduled to establish the reasonable proof of loss. The court emphasized that there was no testimony or evidence indicating that the defendant-insurer had prior knowledge of the surgery and unreasonably delayed setting up the IME. There was also no evidence to suggest that the four-month timeframe to schedule and perform the IME was unreasonable.

Accordingly, the appellate court concluded that because the denial of benefits was overdue but not unreasonable, the trial court erred in awarding the plaintiff attorney's fees under the No-Fault Act.

The Legal Trend Newsletter is distributed by the firm of Plunkett Cooney. Any questions or comments concerning the matters reported may be addressed to Michael K. Sheehy, Mary Catherine Rentz or any other members of the practice group. The brevity of this newsletter prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. Copyright © 2014. All rights reserved PLUNKETT COONEY, P.C.