McCOLLUM CROWLEY

CASE LAW UPDATE

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DOUBLE RECOVERY UPHELD IN MINNESOTA NO-FAULT INSURANCE CLAIMS

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State Farm Mut. Auto. Ins. Co. v. Lennartson, et al., — N.W.2d — (Minn. 2015) — In a windfall for no-fault insurance claimants, the Minnesota Supreme Court recently determined two important issues:

1) Under the Minnesota No-Fault Act, an insured **can** recover no-fault benefits for medical expenses even if the insured already recovered those benefits as part of a negligence action.

2) An insured is **not** barred by the doctrine of collateral estoppel from seeking medical-expense or income-loss benefits in no-fault arbitration after having recovered for those same losses in a prior negligence action.

These decisions come at a time when Minnesota's no-fault scheme — and the insureds and medical providers benefiting under it — are coming under increased scrutiny.

DOUBLING DOWN ON "PLAIN LANGUAGE"

The court acknowledged that its decision "might seem to unfairly reward no-fault claimants who strategically pursue a negligence action before no-fault arbitration," but declared that in the face of the plain statutory language of the No-Fault Act, its hands were tied. "[S]uch a concern is a public policy issue for the Legislature, not the judicial branch of government."

The court stated that under the plain language of the No-Fault Act, medical-expense benefits are payable once medical-expense loss is accrued. A loss accrues when it is incurred by the claimant — that is, once a claimant receives a medical bill. Once that loss accrues, however, a negligence suit cannot modify or eliminate the loss, and nothing in the Act limits a claimant's right to obtain medical-expense benefits through no-fault arbitration despite a previous recovery through civil suit. Following its decision in this year's other big no-fault case, *Schroeder v. W. Nat'l Mut. Ins. Co.*, 865 N.W.2d 66 (Minn. 2015), the court reminded that "loss" does not require actual "economic detriment," and therefore it is immaterial whether a claimant is truly out any money for medical expenses after recovering in a negligence action.

Yet strangely, the reverse situation does not hold true. When a no-fault claimant is paid or awarded benefits *prior* to recovering in a negligence action, the No Fault Act expressly provides for a deduction in any subsequent civil recovery. Thus, a tortfeasor's liability insurer will not be required to provide for a claimant's double recovery, but a victim's no-fault insurer will be.

TWO BITES AT THE APPLE

After determining that nothing in the No-Fault Act bars double recovery, the supreme court went on to consider whether a claimant can be

collaterally estopped from asking during no-fault arbitration for benefits the claimant litigated as damages in a prior negligence action. The court determined that collateral estoppel does not apply, and that a claimant is essentially free to "re-litigate" for the benefits during a subsequent arbitration.

Collateral estoppel applies when:

(1) the issue to be addressed is identical to an issue in a prior adjudication;

(2) there was a final judgment on the merits in the prior adjudication;

(3) the estopped party was a party to the prior adjudication; and

(4) the estopped party received a full and fair opportunity to be heard on the adjudicated issue.

All of these should apply when considering a no-fault arbitration and a negligence action involve the same incident, right? Wrong. The court made clear that the issues adjudicated in negligence actions and no-fault arbitrations are *not* the same. Indeed, the term "no-fault" correctly indicates that *fault* is not the underlying issue in a no-fault proceeding. On the other hand, fault is *exactly* what a negligence action determines. Thus, the underlying issues determined in the two proceedings are technically different, and a claimant is free during no-fault arbitration to take a "second bite" at losses already litigated at trial.

WHAT DIFFERENCE DOES IT MAKE?

Although it is too early to tell exactly how things will unfold by allowing this double recovery, several outcomes seem inevitable:

- No-fault claims will stall as claimants seek civil recoveries before proceeding to no-fault arbitration;
- Automobile-related bodily-injury litigation will increase as claimants are now guaranteed a double recovery;
- No-fault policy limits will be exhausted more easily, causing across-the-board insurance premium hikes;
- Early no-fault closeout releases will likely become a thing of the past as claimants realize that keeping the claim alive will allow a greater recovery.

Such outcomes seem even more likely to occur among wealthier claimants — who likely have higher policy limits — because they will be able to afford putting off the relatively quick cash flow that no-fault insurance benefits are meant to offer. Unfortunately, this will disproportionately come at the expense of both the less well-off (as insurance premiums rise) and no-fault insurers (as they make ever increasing payouts). ■

If you have any questions regarding this decision or its effects, please contact a McCollum Crowley attorney at 952.831.4980 or visit our website at www.mccollumlaw.com.