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IF AN ATTENDANT CARE PROVIDER DOES NOT EXPECT TO BE PAID FOR THE SERVICES PROVIDED TO THEIR FRIEND OR FAMILY MEMBER, THE NO FAULT INSURER IS NOT LIABLE FOR PAYMENT

Emily Partridge¹ – Contributor

On March 7, 2008, in *Burris v Allstate Ins Co*, ___ Mich ___ (2008), the Michigan Supreme Court, in lieu of granting leave to appeal, summarily ruled that the Plaintiff, Randy Burris, failed to present sufficient evidence that he “incurred” attendant care expenses because he failed to show that his attendant care providers expected compensation for their services. The Supreme Court reversed the Court of Appeals and reinstated the Trial Court’s Order granting a Judgment Notwithstanding the Verdict in favor of Allstate.

Justice Corrigan agreed with the majority’s ruling, but wrote a separate and comprehensive concurring opinion so as to provide a “complete picture” of the arguments presented by the parties.

In 1978, Mr. Burris, who was six years old at the time, sustained severe orthopedic and internal injuries in a motor vehicle accident. After the accident, Mr. Burris was in a coma for several months and then suffered a stroke, which left him with significant and permanent weakness in his

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left arm and leg. Despite the severe injuries Mr. Burris sustained as a child, he went on to attend college, obtain employment, marry, father a child and perform routine activities, including driving.

In 2000, Mr. Burris underwent an unsuccessful surgery to repair a herniated cervical disc. After the surgery, one of Mr. Burris' treating physicians prescribed 24-hour attendant care. Mr. Burris' then-wife furnished the attendant care for only one month after the surgery, which Allstate paid.

In November 2001, Mr. Burris and his then-wife separated and Mr. Burris moved back in with his parents. Three people cared for Mr. Burris while he was living at his parents' home: his father, his brother and his best friend. The primary issue during the jury trial was whether Allstate was obligated to pay for the attendant care services provided by these individuals.

During the trial, all three individuals acknowledged that they had no record of the dates and times they allegedly cared for Mr. Burris. Further, all three testified that they never asked Mr. Burris for payment for their services and Mr. Burris never promised them payment. Mr. Burris' brother and best friend specifically testified that they did not expect to be paid for their services. The brother testified, "This is my brother, it's not about money". The best friend testified, "[It's] not a job, he's my friend".

Justice Corrigan, in her concurring opinion, explained that pursuant to *Proudfoot v State Farm*, 469 Mich 476 (2003), a case that this firm successfully argued before the Michigan Supreme Court, it was well established that no fault PIP benefits are payable only for expenses which have been "incurred". The *Proudfoot* Court further defined "incurred" to mean that one must have a legal or equitable obligation to pay. As such, although case law has held that family members are not required to submit formal invoices or bills to an injured person in order to be paid attendant care benefits, the injured person must still have an obligation to pay the attendant care service provider.

In the instant case, Mr. Burris had no such obligation to pay as his family and friends specifically testified that they provided the attendant care with no expectation of payment for their services. Therefore, the Michigan Supreme Court held that Mr. Burris had not "incurred" an allowable expense for which a no fault insurer, such as Allstate, would be liable.

In conclusion, a valuable inquiry for a no fault insurer when claims are submitted for a family member or friend providing attendant care is whether this family member or friend expected payment for the same.

GRAND RAPIDS BREAKFAST SEMINAR

The Firm is pleased to present its Annual Spring Breakfast Seminar on April 24, 2008 at the Frederik Meijer Gardens and Sculpture Park, located at 1000 East Beltline, NE in Grand Rapids [(616) 957-1580]. Comprehensive written materials will be distributed to all program attendees. After the seminar, feel free to enjoy all of the open indoor garden areas as our guest. The agenda for this event is as follows:

- 8:00 - 8:25 a.m. Registration and Continental Breakfast
- 8:25 - 8:30 a.m. Welcome and Introduction
Speaker: David N. Campos
- 8:30 - 9:00 a.m. Northern Michigan Recreational Accidents: An Overview of Civil Liability
* General Liability Principles for Landowners & Participants; Governmental Immunity; Relationship with MVA Laws * Skiing * Off Road Vehicles * Snowmobiling * Hunting * Fishing * Equine Activities * Bicycling
Speaker: Peter B. Worden
- 9:00 - 9:20 a.m. Employment Law in Michigan
*Litigation: Claims, Statutes, The Legal Process * Litigation Prevention: Handbooks, Policies & Record Keeping * Employee Wellness Programs
Speaker: Aaron L. Belville
- 9:20 - 9:40 a.m. Impact of Medicare, Medicaid & SCHIP Extension Act of 2007 on PIP Claims
*Medicare Set-Aside Trusts: What Are They & When Are They Used? *MSAs for Workers Comp, General Liability and No Fault Claims
Speaker: Tara L. Velting
- 9:40 - 10:15 a.m. Michigan Third Party Automobile Liability Update
*Non-Party At Fault Rule * Threshold Requirements * *Kreiner* and Its Progeny * Proposed Legislative Changes * Uninsured Motorist/Underinsured Motorist Coverage
Speaker: Christopher P. Jelinek
- 10:15 - 10:30 a.m. Break
- 10:30 - 11:15 a.m. Michigan Auto No Fault First Party Update
* "Constructive Ownership" & Responsibility to Insure (or not) a Motor Vehicle .3101 * Equitable Estoppel of One Year Statute of Limitations .3145 * No Fault Insurer's Right to IME .3151 & .3159 * Equitable Estoppel with Denial of Coverage Relative to Failure to Disclose .3163 * Tort Liability Exposure above PPI \$1 million .3121 * Business Use Exclusions Enforceable with Auto, B.I. policy, *Bristol West v Butzbach*
Speaker: David N. Campos

11:15 - 11:45 a.m. Demonstration of an Orthopedic Exam
Speaker: Clifford M. Buchman, D.O.

11:45 a.m. - Noon Question and Answer Session

If you are able to attend this complimentary annual event, please register via email to: lbeatty@garanlucow.com or phone Lynn Beatty at (616) 742-5500 or (800) 494-6312 for reservations.

BASIC NO FAULT COURSE AT LTU

The Basic No Fault course will commence on Tuesday, May 13, 2008 and run through July 29, 2008. The classes will be at the Southfield campus of Lawrence Tech University. Please call Tim Meloche at (248) 204-4055 for additional information or to register for the course.

FALL BREAKFAST SEMINAR

The Firm's annual Fall Breakfast Seminar will be offered on Thursday, September 18, 2008 at the Troy Marriott. Please mark your calendar and, if you wish to do so, preregister with Beth Bezenah at bbezenah@garanlucow.com. This seminar will also be available by Webcast.