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www.garanlucow.com

Garan Lucow Miller, P.C. 1111 West Long Lake Road, Suite 300 Troy, Michigan 48098 248.641.7600

From the Co-Editors
James L. Borin & Simeon R. Orłowski

**SO YOU'VE PAID PIP BENEFITS ON A
WORK-RELATED INJURY CLAIM.
CAN YOU GET YOUR MONEY BACK?**

Dennis P. Partridge and Todd D. Barry¹ – Co-Contributors

Under Michigan law, the receipt of No-Fault (PIP) benefits has no effect on an individual's right to workers' compensation benefits. However, the receipt of workers' compensation benefits does have an effect on the right to No-Fault benefits. MCL 500.3109 provides that No-Fault benefits are to be reduced when the Claimant also receives "benefits provided or required to be provided under the laws of any state or the federal government." In short, workers' compensation benefits are primary.

For any claim where No-Fault benefits have been paid or continue to be paid, the circumstances of the accident need to be investigated to determine whether it arose out of or occurred during the course and scope of employment. In situations where No-Fault benefits have been paid on a work-related injury claim, not only is the No-Fault insurer entitled to be reimbursed, but it actually has the right to formally intervene in a workers' compensation action to seek that reimbursement. *Russell v Welcor, Inc.*, 157 Mich App 351 (1987). Even in situations where the Claimant fails to file a workers' compensation claim, the No-Fault insurer may initiate proceedings before the Workers' Compensation Agency by filing an Application for Mediation or Hearing - Form C. *Netherlands Insurance Co. v Bringman*, 153 Mich App 234 (1986). In fact,

¹Dennis is a Partner in the Firm's Detroit office and can be reached at (313) 446-5510.
Michael DePolo is a Partner in the Firm's Grand Blanc office and can be reached at (810) 695-3700.
Todd Barry is an Associate in the Firm's Detroit office and can be reached at (313) 446-5563.

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in *Camburn v Northwest School District*, 459 Mich 471 (1999), a No-Fault carrier paid benefits, intervened in the workers' compensation proceeding and appealed the decision of the Appellate Commission to the Court of Appeals and then the Supreme Court, continuing the case even after the Plaintiff had redeemed his claim.

So what happens if the Claimant has already redeemed his or her workers' compensation claim? In *Gregory v Transamerica*, 425 Mich 625 (1986), the Michigan Supreme Court held that the No-Fault carrier gets credit for "the amount of the full workers' disability benefits for the full period of disability, as if there had been no redemption." In short, it results in a set-off against past and future No-Fault benefits that are considered like-kind benefits.

Do the Cost Containment Provisions of the Health Care Service Rules apply therefore limiting a No-Fault carrier's right to reimbursement for medical expenses? The answer is no. Under the Michigan Workers' Disability Compensation Act, if a Claimant pays medical bills directly, he or she is entitled to full reimbursement from the workers' compensation carrier without regard to the Cost Containment rules. The No-Fault carrier effectively stands in the shoes of the worker and is therefore entitled to full reimbursement just as the worker would be. *Auto-Owners Insurance Co. v Amoco Production Co.*, 468 Mich 53 (2003).

Ultimately, it is recommended that any questions as to course and scope of employment and employer/employee relationship be reviewed by counsel. The employer/employee relationship poses a particular pitfall where an employer may insist that the employee was actually an independent contractor and point to a written agreement and 1099 showing that no taxes were withheld. However, the economic reality test which had previously governed employee/independent contractor definitions is no longer valid. It has been superseded by statutory changes. *Hoste v Shanty Creek Management, Inc.*, 459 Mich 561 (1999); *Reed v Yackell*, 473 Mich 520 (2005).

Section 161(1)(n) of the Workers' Disability Compensation Act defines employees as:

Every person performing service in the course of the trade, business, profession or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to the Act.

What the parties consider the relationship to be, how the Claimant is paid, whether taxes are withheld, who provides the equipment, controls the worksite or the manner in which the work activity is carried out are no longer determining factors as to whether a Claimant is considered an employee or independent contractor for purposes of the Workers' Compensation Act.

The Workers' Compensation Department at Garan Luow Miller, P.C. is prepared to answer your questions and assist you in navigating No-Fault reimbursement claims through the Workers' Compensation Agency.

GATEWAY SEMINARS

Garan Lucow Miller is pleased to present its 3rd Annual Gateway Breakfast Seminar being held on December 2, 2008, in Overland Park, Kansas, at the Sheraton Overland Park Hotel and Conference Center (6100 College Blvd. – 913-234-2100).

AGENDA

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| 8:30 - 9:00 a.m. | Continental Breakfast |
| 9:00 - 9:10 a.m. | Welcome and Introduction Speaker: David A. Couch, Esq. |
| 9:10 - 10:15 a.m. | Michigan First Party No Fault Background and 2008 Updates <ul style="list-style-type: none">• Catastrophic claims/room and board• Duty of the Michigan Catastrophic Claims Association to reimburse insurers for payment of catastrophic claims• Statute of limitations/tolling/notice• Injury must arise out of the use of a motor vehicle• Proof of claim under Section 3107• Definition of "owner" under MCLA 500.3101 and MCLA 500.3113• Compensability of claims for PTSD• Medical providers' right to seek payment of No-Fault benefits out of the usual order of priority• Exception to limit on Property Protection Insurance benefits• Attorney fees and penalty interest• Material misrepresentation on policy application• Medical bill auditing• New proposed legislation in Michigan |
| 10:15 - 10:30 a.m. | Break |
| 10:30 - 11:30 a.m. | Michigan Third Party No Fault Background and 2008 Updates <ul style="list-style-type: none">• Statutory and case law historical review• <i>Kreiner v Fischer</i> and its progeny• Michigan Court of Appeals' treatment of threshold since <i>Kreiner</i>• Proposed legislative and ballot initiative responses to <i>Kreiner</i>• Uninsured and Underinsured Motorist claims |

- Michigan Insurance Commissioner's Order of Prohibition regarding statute of limitations
- Tort reform elimination of joint and several liability
- The "nonparty fault" rule

11:30 - 11:45 a.m.

Michigan Premises Liability Law and 2008 Updates

- The abolition of most claims - *Lugo v Ameritech*
- The future of premises liability law in Michigan

11:45 a.m. - 12:00

Question and Answer Session

The day will begin with a continental breakfast followed by a half day seminar. Comprehensive written materials on all topics will be distributed to program attendees. To register, contact Kristi Cummings at kcummings@garanlucow.com. Please include your name, company, title, address, phone, fax and email address (if registering a colleague). Don't miss this opportunity! Register today!