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COURT ORDERS MCCA TO REIMBURSE MEMBER INSURERS FOR ALL PERSONAL INJURY PROTECTION BENEFITS PAID

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In a significant case that Michigan auto insurers have been watching closely, the Michigan Court of Appeals, in a Feb. 6 published opinion, held that the Michigan Catastrophic Claims Association (MCCA) is required by statute to reimburse 100 percent of the amounts actually paid by its member insurers as Personal Protection Insurance (PIP) benefits in excess of the statutory threshold. The issue was presented to the court in two consolidated appeals, *USF&G v MCCA* and *Hartford Insurance Company of the Midwest v MCCA*.

In *USF&G*, USF&G had entered into a consent judgment with an insured who was catastrophically injured in an automobile accident in 1981. The consent judgment was executed in early 1990, and provided that USF&G would pay its insured $17.50 per hour for nursing care services for up to 24 hours per day, with yearly increases of 8.5 percent compounded annually. By 2003, based on the rate of increase agreed to by the parties, USF&G had paid over $7 million in benefits on behalf of its insured, and the hourly rate was up to $54.84.

In *Hartford*, Hartford's insured was involved in an automobile accident on Nov. 6, 2001 that left him severely and permanently injured. In June 2003, Hartford's insured retained an attorney and demanded that Hartford pay $37 per hour for attendant care. Hartford and its insured eventually reached a settlement in which Hartford agreed to pay $30 per hour.

By statute, specifically MCL 500.3104, the MCCA is required to reimburse its member insurers for amounts paid in PIP benefits once those amounts exceed a statutory threshold. The threshold amount in effect in both the USF&G and the Hartford cases was $250,000. Thus, both USF&G and Hartford contended that the MCCA is required to reimburse them for amounts actually expended by them in excess of $250,000.

The MCCA maintained that the statute only requires it to reimburse its insurers for PIP benefits in excess of the threshold amounts to the extent those benefits are "reasonable." According to the MCCA, because the statutory provision that defines PIP benefits states that benefits consist only of reasonable charges, to the extent insurers pay amounts to their insureds that are not "reasonable," those amounts do not constitute reimbursable PIP benefits. With respect to both the USF&G and Hartford matters, the MCCA reimbursed only a portion of the amounts expended by the insurers to their insureds, specifically only that amount that the MCCA believed to represent reasonable charges by the insureds.

Based on their respective disagreements with the MCCA, both USF&G and Hartford brought suit against the MCCA in Oakland Circuit Court, seeking to recover the difference between the above-threshold amounts actually expended by the insurers and the amounts reimbursed by the MCCA.

In the USF&G matter, the circuit court granted summary disposition in favor of USF&G, finding that the statutory provisions at issue do not allow the MCCA to conduct its own "reasonableness" assessment, but, rather, require the MCCA to reimburse 100 percent of the actual amounts that a member insurer pays to its insured in excess of the statutory threshold.

In the Hartford case, the circuit court denied Hartford's motion for summary disposition, agreeing with the MCCA that the MCCA must reimburse only those amounts that represent reasonable charges, regardless of whether Hartford, by virtue of its settlement, is required to pay higher amounts.

The MCCA appealed the decision in the USF&G case and Hartford appealed the decision in theirs. The Michigan Court of Appeals consolidated the appeals for purposes of argument, which was held on Dec. 6, 2006.

In its published opinion, the Michigan Court of Appeals agreed with the arguments advanced by USF&G and Hartford. All three appellate judges agreed that the MCCA is required to reimburse 100 percent of the actual amounts expended by its member insurers in excess of the statutory threshold amount, regardless of reasonableness. In the majority opinion, the court concluded that the language of the statute requires this result. The court rejected the MCCA's policy-based arguments, which were centered on the contention that the court's ruling would lead to an increase in costs in connection with the Michigan no-fault system that would ultimately be passed on to Michigan drivers. The majority determined that this policy-based argument could not overcome the language of the statute.

The majority also pointed out that the MCCA's interpretation would increase the risk of insolvency for Michigan insurers in plain contravention of the purpose of the statute. The majority further noted that the statute includes a provision by which the MCCA can monitor the claim-handling practices of member insurers who have demonstrated a propensity for overpaying on claims. It is that statutory mechanism, rather than a unilateral right on the part of the MCCA to make its own assessment of reasonableness, that provides the MCCA with the protection it seeks in connection with a concern about insurers potentially overpaying on claims brought against them by their insureds.

In a concurring opinion, Judge Helene N. White agreed with the majority with respect to its main conclusion. Judge White also pointed out that even if the settlements entered into by USF&G and Hartford were excessive in retrospect, there was no indication or allegation that the settlements had been entered into in bad faith. Judge White also noted that the statute does not contemplate that the MCCA will become a party to its members' insurance contacts, or possible litigation between the insured and the insurer, with a voice regarding whether a lesser or greater sum is reasonable. Judge White continued, "Nor does it contemplate the MCCA will act as a de facto regulatory body, determining what amounts are reasonable for which services."

The appellate court's opinion is significant because it provides reassurance for no-fault insurers in Michigan. Insurers can now rely on the MCCA's obligation to reimburse them for amounts paid in excess of the statutory threshold without second guessing the insurers' initial decisions to pay those benefits. The opinion should provide protection to insurers who wish to enter into long-term settlement agreements with insureds who have sustained catastrophic injuries.

Plunkett and Cooney represented USF&G, Gregory Gromek in the trial court proceedings and Jeffrey C. Gerish in the appellate proceedings. Several amicus briefs were filed in the USF&G case, both in favor of and against the MCCA's position.

For a complete copy of the Michigan Court of Appeals opinion in *USF&G v MCCA* and *Hartford Insurance Company of the Midwest v MCCA*, click here.

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