NO. 22712

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

VICTOR LLANES, Plaintiff-Appellant

and

JEFFREY P. DASO, D.C., Plaintiff,

vs.

AIG HAWAII INSURANCE COMPANY, INC., a Hawaiʻi corporation, Defendant-Appellee

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APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CIV. NO. 98-220)

MEMORANDUM OPINION
(By: Moon, C.J., Levinson, Nakayama, and Ramil, JJ. with Acoba, J., concurring separately)

Plaintiff-appellant Victor Llanes (Llanes) appeals from the judgment of the district court of the third circuit ruling against Llanes and in favor of defendant-appellee AIG Hawaii Insurance Company (AIG) in a no-fault insurance case. On appeal, Llanes argues that the district court erred in 1) ruling against him based on Wilson v. AIG Hawaii Ins. Co., 89 Hawaiʻi 45, 968 P.2d 647 (1998), wherein this court held that an insured under a no-fault insurance policy is not a "real party in interest" with respect to a claim for no-fault benefits to satisfy the medical provider's unpaid bill for services rendered; and 2) awarding AIG attorney's fees and costs associated with defending Llanes's claim. We hold that the district court correctly relied on Wilson with respect to claims for no-fault benefits to pay for services previously rendered by Llanes's provider, but erroneously neglected to recognize Llanes's interest in

challenging AIG's denial of further chiropractic treatment or services. We thus vacate the judgment of the district court against Llanes, reverse its award of attorney's fees to AIG, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

On June 28, 1997, Llanes, insured under a AIG no-fault insurance policy, was involved in a motor vehicle accident. Shortly thereafter, Llanes began chiropractic treatment with Jeffery Daso, D.C. (Dr. Daso) for bodily injuries suffered during the accident, including headaches and pain in his neck, lower back, and arm.

On August 15, 1997, Dr. Daso submitted a treatment plan for Llanes recommending treatment from August 16, 1997 to October 11, 1997. On October 2, 1997, Dr. Daso submitted another treatment plan requesting treatment from October 12, 1997 through December 6, 1997. All of the recommended treatments were provided to Llanes.

AIG challenged the treatment plans, requesting peer review pursuant to Hawai‘i Revised Statutes (HRS) § 431:10C-308.6(d) (1993) (repealed 1998).[1] Jeff Mallory, D.C., prepared

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[1] HRS § 431:10C-308.6(d) stated in relevant part:

> The insurer shall respond to a [request for treatment] within five working days of mailing of the request, giving authorization or stating in writing the reasons for refusal to the provider and the insured. Any such refusal shall be filed concurrently for submission to the peer review organization.

Effective January 1, 1998, the legislature enacted wide-ranging amendments to the no-fault law that included the repeal of the peer review provisions. See 1997 Haw. Sess. L. Act 251. The amendments do not apply to Llanes's claims.

the peer review organization (PRO) report, concluding that the treatment proposed in the treatment plans were inappropriate and unreasonable and that "[n]o further chiropractic care is recommended." Based on the PRO report, on October 7, 1997, AIG issued a denial of no-fault benefits for: "1) Chiropractic treatments as outlined in [Dr. Daso]'s treatment plan dated 8/15/97; 2) [Dr. Daso]'s treatment plan dated 10/2/97; 3) further chiropractic treatment after 10/11/97; and 4) [] any related expenses."

On April 3, 1998, Llanes filed a complaint in the district court alleging that AIG breached its duties under contract and statute to provide no-fault benefits. On October 28, 1998, this court issued its opinion in Wilson, holding that the insured under a no-fault insurance policy is not a "real party in interest" with respect to a claim for no-fault benefits to satisfy the medical provider's unpaid bill for services rendered. In response to the opinion, on April 6, 1999, Llanes filed his first amended complaint, adding Dr. Daso as a plaintiff seeking benefits for services already rendered. Llanes remained a plaintiff in the amended complaint seeking benefits due for future services.

Trial was conducted on May 4, 1999. In written closing arguments submitted after the trial, AIG argued for the first time that Wilson required the dismissal of Llanes as plaintiff because Dr. Daso was the only real party in interest.

On June 1, 1999, the district court issued its judgment, which stated in relevant part:

> . . . [Dr. Daso] is entitled to Judgment against [AIG] in the amount of $8,269.02 for chiropractic services provided to [Llanes], $1,992.17 in attorney's fees, $259.25 in costs, and $16.75 in sheriff's fees.
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> [AIG] is entitled to Judgment against [Llanes]. Wilson v. AIG Hawaii Ins. Co., [supra]. Gamata v. Allstate Insurance Co., 90 Hawai'i 213, 978 P.2d 179 (App. 1999). [AIG] is awarded reasonable attorney's fees and costs for its defense of the claim filed by [Llanes]. [AIG] shall file an affidavit of fees and costs.

Llanes filed a motion for reconsideration on June 10, 1999, which the district court denied. The present appeal followed.

II. DISCUSSION

Llanes argues that the district court erred in ruling against him based on this court's opinion in Wilson. In that case, the provider submitted a treatment plan to the insurer, requesting approval for a surgical procedure. The provider performed the surgery, but the insurer challenged it as inappropriate and unreasonable and denied payment of no-fault benefits. The insured filed suit in district court, the insurer moved for summary judgment, and the court granted the motion. On appeal, this court affirmed, holding that, under District Court Rules of Civil Procedure (DCRCP) Rule 17(a),[2] the insured was not a "real party in interest" with respect to the claim for no-fault

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[2] DCRCP Rule 17(a) states in relevant part:

> Real party in interest. Every action shall be prosecuted in the name of the real party in interest; except that (1) . . . a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in such party's own name without joining with such party the party for whose benefit the action is brought . . . .

benefits. We explained that HRS § 431:10C-304(1)(B) (1993)[3] required the insurer to pay directly to the provider any medical expenses incurred and that HRS § 431:10C-308.5(e) (1993)[4] precludes the provider from billing or otherwise attempting to collect payment from the insured. See Wilson, 89 Hawai'i at 49-50, 968 P.2d at 651-52. Thus, insofar as the "no-fault laws completely insulate an insured from the billing/payment process," the insured is not a real party in interest to a "claim against [the insurer] for no-fault benefits to satisfy [his or] her provider's unpaid bill." Id. at 50, 968 P.2d at 652.

Llanes maintains that he has legal rights as a party to his no-fault contract and as an "insured" under the no-fault statute, see HRS § 431:10C-303(a) (1993),[5] and thus qualifies as a real party in interest as contemplated by DCRCP Rule 17(a). His arguments simply resuscitate the same issues already

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[3] HRS § 431:10C-304(1)(B) stated in relevant part:

> In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to a provider of services on behalf of the [insured], charges for services . . . .

[4] HRS § 431:10C-308.5(e) provided:

> The provider of services . . . shall not bill the insured directly for those services but shall bill the insurer for a determination of the amount payable. The provider shall not bill or otherwise attempt to collect from the insured the difference between the provider's full charge and the amount paid by the insurer.

[5] HRS § 10C-303(a) stated in relevant part:

> If the accident causing accidental harm occurs in this State, every person insured under this article . . . suffering loss from accidental harm arising out of the operation, maintenance, or use of a motor vehicle, has a right to no-fault benefits.

considered by this court in Wilson. As we explained therein, while insureds certainly have a general right to benefits under contract and statute to benefits, once medical services are rendered, insureds are insulated by statute from any payment obligation, and any dispute as to the payment of no-fault benefits to pay for the services rendered lies solely between the insurers and providers. This reasoning is rooted in the express terms of the statutory scheme, and none of Llanes's arguments persuade us to the contrary. We thus affirm the district court to the extent that it ruled that, under Wilson, Llanes was not a real party in interest with respect to claims for no-fault benefits for services rendered by Dr. Daso.

In this case, however, even beyond the treatment specified in the treatment plans submitted by Dr. Daso, AIG issued a denial of "further chiropractic treatment after 10/11/97." AIG based its denial on the PRO report, which concluded that Llanes "has received the maximum benefit therapeutic benefit from the chiropractic care provided" and, thus, recommended that "continued chiropractic care is no longer reasonable or appropriate." At trial, AIG's representative confirmed that AIG had in fact "denied future chiropractic care."

The record therefore indicates that AIG denied not only the specific treatment plans submitted, but also any further treatment of chiropractic nature. In other words, AIG issued a blanket prospective denial of continuing chiropractic services or treatment. See generally Government Employees Ins. Co. v. Dang, 89 Hawai'i 8, 967 P.2d 1066 (1998) (confirming that the no-fault

statute allows the insurer to issue blanket denials of continuing services or treatment). To the extent that it did so, our holding in Wilson does not apply. Wilson merely holds that insureds are not real parties in interest with respect to disputes regarding payment for services already rendered; it does not deny insureds status as real parties in interest with respect to disputes regarding the continuation of treatment. Cf. Government Employees Ins. Co. v. Hyman, 90 Hawai'i 1, 7, 975 P.2d 211, 217 (1999) ("[T]he insured has a right to receive treatment of injuries, and the provider has a right to receive payment for treatment rendered." (citations omitted)). Accordingly, we hold that Llanes was a real party in interest entitled to challenge AIG's prospective denial of no-fault benefits and that the district court erred in ruling against Llanes based on Wilson.

The district court awarded Dr. Daso $8,269.02 for chiropractic services provided, evidently finding that those services were reasonable and appropriate. However, in ruling against Llanes based on Wilson, the court did not address the question whether further chiropractic treatment was reasonable and appropriate. We thus vacate the district court's judgment and remand for further proceedings consistent with this opinion.

Llanes also argues that the district court erred by awarding AIG fees and costs. HRS § 431:10C-211(d) (1993) provides in relevant part:

> An insurer or self-insurer may be allowed an award of a reasonable sum as attorney's fees based upon actual time expended, and all reasonable costs of suit for its defense against a person making claim against the insurer or self-insurer, within the discretion of the court upon judicial proceeding . . . where the claim is determined to be

fraudulent or frivolous.

We have held that the district court erred in ruling against Llanes on the grounds stated. This necessarily forecloses an award of attorney's fees to AIG under HRS § 431-10C-211(d) based on a finding that Llanes' claim was fraudulent or frivolous. We thus reverse the district court's award of fees and costs to AIG.

III. CONCLUSION

Based on the foregoing, we vacate the judgment of the district court and remand for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, September 19, 2000.

On the briefs:

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