# STATE OF MICHIGAN

# COURT OF APPEALS

RONALD JOHNSON,

Plaintiff,

v

STATE FARM MUT AUTO INS COMPANY,

Defendant/Cross-Plaintiff/Appellee,

and

NATIONAL INDEMNITY COMPANY,

Defendant/Cross-Defendant/Appellant,

and

TOTAL INS SERVICES INC and ASSOCIATED CLAIMS & INVESTIGATION SERVICES INC,

Defendants/Cross-Defendants.

UNPUBLISHED
April 8, 2008

No. 275994
Wayne Circuit Court
LC No. 05-527954-NF

Before: Zahra, P.J., and Whitbeck and Beckering, JJ.

PER CURIAM.

In this dispute between two automobile insurers, defendant/cross-defendant National Insurance Company (National) appeals an order dismissing the case with prejudice. On appeal, National challenges an order requiring it to reimburse defendant/cross-plaintiff State Farm Mutual Auto Insurance Company (State Farm) "$77,328.54 for benefits paid to, or on behalf of, [plaintiff Ronald Johnson (Johnson)]; $5548.17 for claims handling expenses incurred in handling the claim of [Johnson]; as well as $12,050.6 in legal expenses. . . ." We affirm in part and reverse in part.

Johnson was injured on October 31, 2004, when, while riding a moped, he was struck by a tow truck. The tow truck apparently fled the scene. Johnson filed a complaint against State Farm, Total Insurance Services (Total) and Associated Claims & Investigation Services Inc. (Associated). The complaint indicated that Johnson initially believed that Total insured the tow

truck and he requested Total provide him PIP benefits. The complaint alternatively alleged that because Total's insurance investigator, Associated, failed to determine the priority of insurers in regard to the accident, Johnson applied to the Assigned Claims Facility (ACF), who designated State Farm as his insurer.

Later, Johnson filed an amended complaint alleging that he believed National insured the tow truck at the time of the accident. State Farm filed a cross-complaint against National requesting that National be declared liable for the payment of Johnson's personal injury protection (PIP) benefits and that National indemnify State Farm for the amount of PIP benefits State Farm had paid to Johnson $44,169.89. National filed a general denial.

State Farm filed a motion for summary disposition asserting that it was no longer obligated to pay Johnson's PIP benefits because National insured the tow truck at the time of the accident. In response, National admitted that it insured the tow truck at the time of the accident, but maintained that because there was conflicting evidence in regard to where Johnson resided at the time of accident, priority of insurers was unknown and summary disposition would be premature. Johnson filed a motion in support of National's response, and argued that because the ACF had designated State Farm as Johnson's insurer, State Farm must continue to pay PIP benefits and that its only remedy is to seek indemnity from National.

Following a hearing, the trial court entered an order granting State Farm's motion summary disposition. The order indicated that National has priority over State Farm in regard to Johnson's past and present PIP benefits. The trial court also ordered that, as of June 5, 2006, State Farm is not liable for Johnson's PIP benefits, and that National is liable to State Farm for past PIP payments.

On November 1, 2006, State Farm filed a motion for reimbursement against National. In the motion, State Farm sought $77,328.54 for PIP benefits paid, $5548.17 in handling costs and $12,050.6 in attorneys fees, totaling $94,927.37. National responded arguing that State Farm should not have paid $94,927.37 to administer Johnson's claim, presenting evidence of four health professionals who opined that Johnson's alleged injuries were not related to the accident. The trial court granted State Farm's motion and ordered National to completely reimburse State Farm.

## II. Analysis

### A. Standard of Review

We review de novo questions of law involving statutory interpretation. *Michigan Muni Liability & Prop Pool v Muskegon Co Rd Comm'rs*, 235 Mich App 183, 189; 597 NW2d 187 (1999). Our primary task in construing the language of a statute is to discern and give effect to the intent of the Legislature. *Sun Valley Foods Company v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). "If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted." *Id*.

### B. Jury Trial on Damages

National first argues that it is entitled to a jury trial on damages. However, we need not reach this question as we conclude that the trial court improperly ordered National to pay Johnson's PIP benefits. Even though there is no dispute that National is a higher priority insurer than State Farm, the ACF designated State Farm as the insurer, and no statutory authority allows the trial court to annul the ACF's designation or itself designate National as the insurer.

MCL 500.3172(1) describes situations in which a person may receive assigned-claim benefits:

> A person entitled to a claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In such case unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and the insurer to which the claim is assigned, or the assigned claims facility if the claim is assigned to it, is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

Here, Johnson fell within the situation that "no [PIP] applicable to the injury can be identified." Thus, Johnson could apply for PIP benefits through the ACF under MCL 500.3174, which provides:

> A person claiming through an assigned claims plan shall notify the facility of his claim within the time that would have been allowed for filing an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect. The facility shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned, or of the facility if the claim is assigned to it. An action by the claimant shall not be commenced more than 30 days after receipt of notice of the assignment or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later.

Johnson applied to the ACF, who assigned the claim to State Farm. Later, National was identified as the insurer of tow truck. There is no dispute that National would have been responsible for the PIP benefits had Johnson requested National provide PIP benefits before he filed his claim through the ACF.

In *Spencer v Citizens Ins Co*, 239 Mich App 291, 306; 608 NW2d 113 (2000), this Court in addressing MCL 500.3172,[1] held,

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[1] MCL 500.3172 provides, in part:

> (1) A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In such case unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and the insurer to which the claim is assigned, or the assigned claims facility if the claim is assigned to it, is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.
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> * * *
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> (3) If the obligation to provide personal protection insurance benefits cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, and if a method of voluntary payment of benefits cannot be agreed upon among or between the disputing insurers, all of the following shall apply:
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> (a) The insurers who are parties to the dispute shall, or the claimant may, immediately notify the assigned claims facility of their inability to determine their statutory obligations.
>
> (b) The claim shall be assigned by the assigned claims facility to an insurer which shall immediately provide personal protection insurance benefits to the claimant or claimants entitled to benefits.
>
> (c) An action shall be immediately commenced on behalf of the assigned claims facility by the insurer to whom the claim is assigned in circuit court for the purpose of declaring the rights and duties of any interested party.
>
> (d) The insurer to whom the claim is assigned shall join as parties defendant each insurer disputing either the obligation to provide personal protection insurance benefits or the equitable distribution of the loss among the insurers.

(continued…)

> that an assigned-claim insurer that subsequently ascertains a higher priority insurer cannot thereafter simply refuse to pay the assigned-claim insured party further benefits. *[A]bsolutely no language in the assigned-claims provisions of the no-fault act specifically relieves an insurer to whom the Assigned Claims Facility has assigned a claim of its obligation to pay benefits on the basis that the assigned insurer later discovers another applicable insurer*. Absent the Legislature's authorization of this particular relief, we will not simply infer its availability as a matter of logic. *In re SR*, 229 Mich App 310, 314, 581 NW2d 291 (1998) ("[N]othing will be read into a statute that is not within the manifest intent of the Legislature as gathered from the act itself."). [Emphasis added.]

We agree with *Spencer* that the no-fault act (particularly the specific statutes addressing the ACF, MCL 500.3171 to MCL 500.3177) does not address a circumstance in which an insurer obligated to pay PIP benefits is discovered after the insured has filed a claim for PIP benefits through the ACF. We also agree with *Spencer* that the only remedy mentioned under MCL 500.3172 and MCL 500.3175 is an independent right of reimbursement. The right of reimbursement is echoed in Administrative Rule 11.105, promulgated pursuant to MCL 500.3171, entitled, "[i]nsurer liability for failure to pay," which provides:

> The assigned claims facility or the servicing insurer to which the claim is assigned is entitled to reimbursement for the personal protection insurance benefits which are provided and appropriate loss adjustment costs which are incurred from an insurer who is obligated to provide the personal protection insurance benefits under a policy of insurance, but who fails to pay such benefits.

Following *Spencer*, *supra*, we conclude the trial court erred in ordering National to pay Johnson's PIP benefits.

National next claims it need only reimburse State Farm for PIP benefits that a trier of fact finds to be "reasonable and necessary," under MCL 500.3107(1)(a).

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(…continued)

> (e) The circuit court shall declare the rights and duties of any interested party whether or not other relief is sought or could be granted.
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> (f) After hearing the action, the circuit court shall determine the insurer or insurers, if any, obligated to provide the applicable personal protection insurance benefits and the equitable distribution, if any, among the insurers obligated therefor, and shall order reimbursement to the assigned claims facility from the insurer or insurers to the extent of the responsibility as determined by the court. The reimbursement ordered under this subdivision shall include all benefits and costs paid or incurred by the assigned claims facility and all benefits and costs paid or incurred by insurers determined not to be obligated to provide applicable personal protection insurance benefits, including reasonable attorney fees and interest at the rate prescribed in section 3175 as of December 31 of the year preceding the determination of the circuit court.

However, MCL 500.3172 simply indicates that the assigned-claim insurer "is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility." MCL 500.3175 likewise provides that "[t]he insurer to whom claims have been assigned shall preserve and enforce rights to indemnity or reimbursement against third parties." Last, Administrative Rule 11.105 plainly indicates that the "servicing insurer to which the claim is assigned is entitled to reimbursement for the personal protection insurance benefits which are provided and appropriate loss adjustment costs. . . ." The three provisions indicate that the assigned-claim insurer is entitled to reimbursement. Reimbursement commonly means, "to make repayment to for the expense or loss incurred," or "pat back; refund; repay." Random House Webster's College Dictionary, 2 ed. Based on the plain and ordinary meaning of the word, "reimbursement," we conclude that the assigned-claim insurer is entitled to complete reimbursement from the defaulting insurer, not reimbursement for reasonable and necessary PIP benefits.

Accordingly, we reverse the trial court's order granting State Farm's motion summary disposition to the extent that National is responsible for Johnson's PIP past and present benefits, but affirm the trial court's decision ordering National to fully reimburse State Farm.

C. Costs, Attorney Fees and Interest

We conclude that the trial court improperly permitted State Farm to collect costs, attorney fees, and interest.

This Court, *Spectrum Health v Grahl*, 270 Mich App 248; 715 NW2d 357 (2006), addressed the availability of costs, attorney fees, and interest when seeking PIP benefits through the ACF under MCL 500.3172. The Court noted that "MCL 500.3172(1) concludes with a reimbursement provision, it does not specify whether the right to reimbursement includes a right to recover costs, attorney fees, and interest." Id. at 252. The Court also noted that, in contrast, MCL 500.3172(3)(f) specifically includes a right to recover costs, attorney fees, and interest. The Court concluded that "[b]ecause MCL 500.3172(1) does not specifically state that the assigned claims insurer can recover costs, attorney fees, and interest from a higher-priority insurer as part of its general right to reimbursement, . . . the right to reimbursement granted by this section does not include a right to recover those expenses from a higher-priority insurer." *Id*. at 253. Thus, when seeking PIP benefits through the ACF under MCL 500.3172, costs, attorney fees, and interest are only available under MCL 500.3172(3)(f).

*Spectrum* then addressed when MCL 500.3172(3)(f) is applicable. The Court held MCL 500.3172(3)(f) was not applicable when "the [ACF] assigned the insured's claim to [an insurer] because the insured claimed that no personal protection insurance applied to her injury and not because of a dispute between two or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss." *Id*. at 249.

Here, as in *Spectrum*, "at the time of the assignment [to the ACF], both [Johnson] and the [ACF] were unable to identify any other source of [PIP] applicable to cover [Johnson's] medical expenses." Further, "[o]nly when [State Farm] began investigating the claim did it discover that [Johnson] had [PIP] . . . with [National.]" *Id*. at 252. Thus, as in *Spectrum*, MCL 500.3172(3)(f) is inapplicable and State Farm cannot collect costs, attorney fees, and interest.

Accordingly, we reverse the trial court's order granting State Farm's motion summary disposition to the extent that it indicated National is responsible for Johnson's PIP past and present benefits, but affirm the trial court's decision ordering National to fully reimburse State Farm. We also reverse the trial court's award of costs, attorney fees, and interest. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ William C. Whitbeck
/s/ Jane M. Beckering