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This opinion is uncorrected and subject to revision before publication in the New York Reports.

No. 31
LMK Psychological Services, P.C.
et al.,
Respondents,
v.
State Farm Mutual Automobile
Insurance Company,
Appellant.

Evan H. Krinick, for appellant.
Craig Meyerson, for respondents.
Peter Karanjia, for *amicus curiae* Eric R. Dinallo.
Government Employees Insurance Company et al.; New York Central Mutual Fire Insurance Company, et al., *amici curiae*.

PIGOTT, J.:

Plaintiffs, two medical providers that treated various automobile accident victims insured by defendant State Farm Automobile Insurance Company, commenced this action against State Farm after it denied no-fault insurance benefit claims assigned to plaintiffs by the insureds. Plaintiffs asserted one cause of

action for each insured treated, alleging that State Farm failed to pay or deny multiple bills within the requisite 30 days.

Plaintiffs were granted summary judgment awarding them, among other things, attorneys' fees and interest. As relevant to this appeal, attorneys' fees were awarded "on each claim within each cause of action"; in other words, attorneys' fees were calculated on each bill submitted for each insured. This amount differed substantially from that proposed by State Farm, which sought a calculation of attorneys' fees on a per insured basis.

In addition, Supreme Court awarded plaintiffs interest at the statutory rate of 2% per month, without applying the tolling provision set forth in the Insurance Law regulations, which provide for the suspension of interest 30 days after denial of payment until plaintiffs commence an action seeking payment.

On appeal, the Appellate Division rejected State Farm's contention that Supreme Court failed to properly apply the tolling provision in awarding interest to plaintiffs. The court held that because State Farm did not issue a proper and timely denial to plaintiffs' no-fault claims, it was not entitled to the benefit of the tolling provision.

As it pertained to attorneys' fees, the court held that Supreme Court properly awarded fees on a per bill basis rather than a per insured basis. The court expressly rejected an opinion letter of the Superintendent of Insurance, finding it in conflict with the express language of Insurance Law § 5106, as

well as case law. This Court granted defendant leave to appeal and we now reverse.

"New York's no-fault automobile insurance system is designed 'to ensure prompt compensation for losses incurred by accident victims without regard to fault or negligence, to reduce the burden on the courts and to provide substantial premium savings to New York motorists'" (Hosp. for Joint Diseases v Travelers Prop. Cas. Ins. Co., 9 NY3d 312 [2007] [citations omitted]). We recently reiterated that the no-fault scheme's core objective is "to provide a tightly timed process of claim, disputation and payment" (id. at 319 citing Presbyterian Hosp. in City of N.Y. v Md. Cas. Co., 90 NY2d 274 [2007]). In furtherance of this objective, an insurer's failure to pay or deny a claim within the requisite time period carries significant consequences, including the payment of attorneys' fees and interest.

Insurance Law § 5106 (a) provides that "[if] a valid claim or portion was overdue, the claimant shall . . . be entitled to recover his attorney's reasonable fee, for services necessarily performed in connection with securing payment of the overdue claim . . ." Pursuant to the authority delegated to him by § 5106 (a), the Superintendent of Insurance promulgated regulation 11 NYCRR 65-4.6 establishing a minimum attorneys' fee and further providing that the "attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits,

plus interest thereon, awarded by the . . . court, subject to a maximum of $850" (11 NYCRR 65-4.6 [e]).

On October 8, 2003, the Superintendent issued an opinion letter interpreting that regulation and stating that the minimum amount of attorneys' fees awarded to an assignee health care provider pursuant to Insurance Law § 5106 is "based upon the aggregate amount of payment required to be reimbursed based upon the amount awarded for each bill which had been submitted and denied. The minimum attorney fee . . . is not due and owing for each bill submitted as part of the total amount of the disputed claim sought in the court action" (Ops Gen Counsel NY Ins Dept No. 03-10-04 [Oct. 2003]). In referring to the regulations, specifically 11 NYCRR 65-6.4 (e), the Superintendent stated

> "[that provision] makes it clear that the amount of attorneys' fees awarded will be based upon 20% of the total amount of first party benefits awarded. That total amount is derived from the total amount of individual bills disputed in either a court action or arbitration, regardless of whether one bill or multiple bills are presented as part of a total claim for benefits, based upon the health services rendered by a provider to the same eligible insured."

We have long held that the Superintendent's "interpretation, if not irrational or unreasonable, will be upheld in deference to his special competence and expertise with respect to the insurance industry, unless it runs counter to the clear wording of a statutory provision" (<u>Matter of New York Pub. Interest Research Group v. New York State Dept. of Ins.</u>, 66 NY2d

444, 448 [1985]). The responsibility for administering the Insurance Law and, in particular, fair claims settlement under the No-Fault law rests with the Superintendent(see Insurance Law §§ 301; 5106 [e]). For purposes of calculating attorneys' fees, the Superintendent has interpreted a claim to be the total medical expenses claimed in a cause of action pertaining to a single insured, and not -- as the courts below held -- each separate medical bill submitted by the provider. Because this interpretation is neither irrational, unreasonable, nor runs counter to the clear wording of the statute, it is entitled to deference. Thus, this Court accepts the Insurance Department's interpretation of its own regulation and, upon remittitur, directs Supreme Court to calculate attorneys' fees based on the aggregate of all bills for each insured.

State Farm next contends that the Appellate Division erred in finding that an insurance company that fails to issue a proper and timely denial is not entitled to the benefit of the tolling provision. We agree.

Pursuant to Insurance Law § 5106 (a), interest accrues on overdue no-fault insurance claims at a rate of 2% per month. A claim is overdue when it is not paid within 30 days after a proper demand is made for its payment (Insurance Law § 5106 [a]; 11 NYCRR 65.15 [g]). The Superintendent's regulation tolls the accumulation of interest if the claimant "does not request arbitration or institute a lawsuit within 30 days after receipt

of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations" (11 NYCRR 65-3.9 [c]).

The Superintendent has interpreted this provision to mandate that the accrual of interest is tolled, regardless of whether the particular denial at issue was timely. That interpretation is similarly entitled to deference given that it is "not irrational or unreasonable" (Matter of Council of City of NY v Public Service Comm, 99 NY2d 64, 74 [2002]). Indeed, it is consistent with § 5106 entitled "Fair claims settlement", the purpose of which is to encourage claimants to swiftly seek to resolve any dispute concerning their entitlement to no-fault benefits. Once a denial is issued, even if an untimely one, a claimant should still be encouraged to act to resolve the dispute quickly. Supreme Court is therefore directed to calculate appropriate interest on each claim, taking into consideration the tolling provision of § 5106 (a) as interpreted by the Superintendent of Insurance.

Accordingly, the order of the Appellate Division, insofar as appealed from, should be reversed, with costs, and the matter remitted to Supreme Court for further proceedings in accordance with this opinion.

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Order, insofar as appealed from, reversed, with costs, and case remitted to Supreme Court, Greene County, for further proceedings in accordance with the opinion herein. Opinion by Judge Pigott. Judges Ciparick, Graffeo, Read, Smith and Jones concur. Chief Judge Lippman took no part.

Decided April 2, 2009