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C A S E A L E R T

APPELLATE DIVISION RENDERS EXCESS PIP "BOARDABLE," SHIFTING UNINSURED MEDICAL EXPOSURE TO INSURED TORTFEASORS

On June 1, 2017, the Appellate Division issued a significant decision permitting recovery from a tortfeasor of medical bills which exceed the Personal Injury Protection ("PIP") limits chosen in a standard automobile policy. The Appellate Division issued a single opinion in the consolidated matters of Haines v. Taft and Little v. Nishimura, as both automobile negligence actions shared a common legal question: whether N.J.S.A. 39:6A-12 precluded the recovery of medical expenses above those collectible or paid under PIP in a standard automobile insurance policy, including medical expenses exceeding any elected PIP option allowed in a standard policy pursuant to N.J.S.A. 39:6A-4.3(e).

Prior to this decision the plaintiff and defense bar cited conflicting trial court opinions from the Kim and Wise cases in an effort to pursue or avoid exposure to bills exceeding the limits applicable to the plaintiff. Similarly, in Haines each plaintiff sought to recover medical expenses that exceeded the $15,000.00 PIP limits they had selected. The trial court in both cases had found that any medical bills beyond the chosen PIP limit, up to the statutory limit of $250,000, were inadmissible and therefore, not recoverable. However, the Appellate Division disagreed and reversed the decisions holding that as a matter of statutory construction, while plaintiffs are barred from admitting evidence of medical expenses up to the PIP limit they each chose, evidence of their medical expenses between $15,000 and the $250,000 statutory limit is both admissible and recoverable against the tortfeasors.

Despite Defendants and *amicus curiae* arguing in opposition, the Court reasoned that the statute could not refer solely to the maximum PIP coverage of $250,000 that is potentially available in a standard policy because the statutory language expressly allows varying levels of PIP benefits paid or collectible under a standard policy, namely four options - $15,000, $50,000, $75,000, or $150,000; if no option is chosen, by default the insured will be deemed to have chosen $250,000 in PIP benefits. The Appellate Division also noted that the definition of "economic loss" under N.J.S.A. 39:6A-2(k) expressly includes uncompensated medical expenses.

This decision carries great significance to auto insurance carriers, as it will shift to liability insurers the exposure to extensive medical expenses beyond modest PIP policy limits. Insurers defending against large medical bills on the liability side will not have recourse to the same controls that they have when addressing bills on the PIP side,

where fee schedules, mandatory decision point reviews, IMEs and precertification provide greater cost control.

When the Auto Insurance Cost Reduction Act was enacted nearly 20 years ago the availability of lower PIP limits was heralded as a strong cost-saving opportunity. With excess expenses now likely to be shifted to the same insurers in exchange for the lower premiums generally paid for liability coverage, there exists a strong possibility that premiums will increase for all policyholders. While the ultimate financial impact will not be known for several years, it is possible that the Legislature will step in to abrogate this decision. Alternately we are hopeful that the Department of Banking and Insurance will work collaboratively with auto insurers to counterbalance a new rule of law which threatens to undermine the cost containment mechanisms enacted two decades ago through AICRA.

In the meantime, liability carriers faced with such claims are encouraged to analyze the bills for reasonableness and to refuse to pay bills which exceed reasonable, customary and medically necessary amounts. Defending against such claims will require carriers to become proactive and aggressive in addressing medical bills, essentially encouraging the deployment of first party cost control measures to the defense of these third party claims.

In the wake of Haines, we encourage our clients who write auto insurance to contact us to discuss your approach to excess auto-related medical claims.