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C A S E A L E R T

SPECIAL REPORT

M&W PARTNER BILL BLOOM CALLED TO TESTIFY BEFORE THE SENATE COMMERCE COMMITTEE ON SENATE BILL 2432

Bill Bloom, a partner and practice manager of Methfessel & Werbel's South Jersey liability team, testified last week on behalf of the insurance industry in opposition to Senate Bill 2432. The proposed bill would erode New Jersey's system of "no fault" auto insurance by allowing plaintiffs who selected PIP limits below $250,000 to recover form Tortfeasors any medical bills exceeding their chosen PIP limits.

The proposed law confronts the issue on which different panels of the Appellate Division have issued conflicting opinions. The Supreme Court has granted certification on a lead case and we expect that oral argument will be heard this fall. Regardless of potential retroactivity of any change in the law, the implications for the adjustment of future claims could be significant.

N.J.S.A. 39:6A-12 currently excludes evidence of medical bills that are paid or payable "under a standard automobile insurance policy." Practitioners and judges have disagreed over whether exhaustion of an injured party's reduced PIP limits ($15,000, $50,000, etc.) renders the remaining bills "paid or payable…under a standard automobile insurance policy," and thus are inadmissible at trial. The defense bar has argued that the statue defines a "standard automobile insurance policy" to contain a $250,000 PIP limit; thus bills exceeding a reduced policy limit are inadmissible until the $250,000 threshold is reached. Plaintiffs have countered that the statutory definition of a standard policy provides that the PIP limit is not to *exceed* $250,000, and that because N.J.S.A. 39:6A-4.3 requires auto insurers to provide the option of lower limits, the selection of a lower limit would not remove the policy from the definition of a "standard automobile insurance policy."

To date, the latter argument has carried the day the courts, with the Appellate Division so ruling in June of 2017 in Haines v. Taft, 450 N.J.Super. 295 (App. Div. 2017), but the Supreme Court will be hearing the case shortly.

Against that backdrop, Senate Bill 2432 has been proposed and was the subject of testimony on June 11, 2018. The bill basically seeks to codify the Appellate Division's rules in Haines.

The thrust of opposition to the bill is that it runs directly afoul of the purpose of the No Fault Law, which had successfully

reduced auto insurance rates by removing the costs of litigating the issues of medical bills and by providing controls on medical billing by virtue of a fee schedule. Under this new bill, plaintiffs would be able to demand reimbursement of medical bills that exceed the lower PIP limit threshold, without regulatory checks against excessive billing applicable to the processing of PIP claims. Defendants could be required to present experts on reasonable and customary billing in any case involving substantial bills in excess of the reduced PIP limits.

Testifying on behalf of the insurance industry, Bill outlined the detrimental impact of the proposed bill, and in general the detrimental impact of having to litigate claims for un-fee scheduled medical bills. First, he noted the increased litigation costs, to both sides, insofar as the parties now often will need to retain experts to opine regarding the reasonableness of the bills. Second, he noted that this new form of available damages will impede resolution of the claim by adding one or more additional parties (medical care providers) to the negotiation, insofar as the plaintiff now must not only negotiate with the defendant, but also with one or more medical care providers in order to compromise bills to make a settlement possible. Bill pointed out that it is not uncommon for a plaintiff and defendant t be forced to try a case that both sides wish to settle because a third-party medical care provider will not compromise bills sufficiently. Thus, a plaintiff may be forced to try, and lose, a case which he otherwise could have settled at a reasonable amount.

In short, Bill noted that the only group benefited by this amendment would be medical care providers, who would be freed from the billing controls of the fee schedule historically applicable to the treatment of auto accident victims. The doctors are given a windfall in the form of an opportunity to collect an excessively billed amount, as opposed to lesser fee scheduled amounts, when they otherwise would have no reasonable expectation of ever doing so, based on the fortuity of the plaintiff having saved money by purchasing a $15,000 PIP limit.

In closing, Bill emphasized that whatever the outcome of this debate, the committee should strongly consider language which limits the doctors to the fee scheduled amounts, regardless of whether payment will come from the patient's policy or the liability policy of the tortfeasor.

Following Bill's comments, State Senator Cardinale gave a very impassioned rebuke of the bill and some other recent bills that could negatively affect the insurance industry.

Unfortunately, the bill was moved out of committee and soon will be put to a full vote of the State Senate.

We will keep you closely apprise of any further developments. In the meantime, should you have any questions regarding the recoverability of any pending or future claims likely to exceed the patient's chosen PIP limits, contact Bill Bloom directly at 732-650-6513 or bloom@methwerb.com.

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