HEWSON & VAN HELLEMONT, P.C.

Newsletter
August 2015

Recent Successful Decisions

Garden City Rehab, LLC. v State Farm Insurance Company

State of Michigan Court of Appeals, Docket No. 320543

Inside This Issue

Plaintiff, Garden City Rehab, filed suit in district court against State Farm, the insurer of Ali Elchami, for recovery of no-fault PIP benefits for physical therapy services provided to Elchami. The subject services were provided from February 2012 through April 2012 and were allegedly necessitated by injuries Elchami sustained in a 2009 motor vehicle accident. Elchami had previously filed a lawsuit against State Farm for first-party PIP benefits, and it was determined after a bench trial that Elchami had recovered from his injuries and was not entitled to any benefits arising after October of 2010. Based on this decision, State Farm moved for partial summary disposition in its suit with Garden City Rehab, arguing that Garden City Rehab's claim was barred by collateral estoppel or res judicata. The district court denied State Farm's motion and the matter was appealed to the circuit court, which affirmed the district court's ruling. The Michigan Court of Appeals subsequently granted State Farm's application for leave to appeal and reversed the decision of the lower courts.

Regarding the collateral estoppel claim, the appellate court noted that collateral estoppel precludes relitigation of an issue in a subsequent, different case between the same parties or their privies if the prior action resulted in a valid final judgment and the issue was actually and necessarily determined in the prior matter. The earlier suit filed by Elchami resulted in that court finding that Elchami's condition had improved to the point that no further medical services were reasonably necessary after October 2010. Thus, it had already been determined that physical therapy services rendered by Garden City Rehab in 2012 were not reasonably necessary as treatment related to the subject motor vehicle accident. Further, because Garden City Rehab and Elchami shared a substantial identity and functional relationship to the subject accident, the appellate court held that the lower courts erred in ruling that collateral estoppel did not apply and thereby preclude Garden City Rehab's claim.

Regarding State Farm's res judicata argument, the appellate court noted that Garden City Rehab and Elchami each sought out the same thing in their lawsuits: no-fault benefits to cover medical services related to Elchami's motor vehicle accident. Garden City Rehab was required to "stand in the shoes" of Elchami in order to recover no-fault benefits from State Farm. Because the court in the Elchami's suit definitively ruled that Elchami did not require medical treatment after October of 2010, Garden City Rehab could not bring a claim that was dependent upon proving that Elchami required medical treatment after October of 2010. As such, the appellate court held that the lower court's erred in ruling that res judicata did not apply to bar Garden City Rehab's action.

The matter was reversed and remanded for entry of an order of partial summary disposition in favor of State Farm with regard to Garden City Rehab's claim for services provided to Elchami.

Credit: Stacey Heinonen, Elaine Sawyer, and Jeff Coleman

Tara's Walk/Run

October is National Domestic Violence Awareness month. The Hewson & Van Hellemont Committee is forming a team to walk and run in Tara's Walk/Run on October 3, 2015 as part of our Raising the Bar Initiative. The event, which is organized by the family of Tara Grant, helps to raise awareness about domestic violence and prevent other families from experiencing the tragedy and loss of a loved one from domestic violence. All registrations go to the Tara Liberation Fund which provides emergency cash assistance to domestic violence survivors. The event will also feature family activities, including face and pumpkin painting as well as a picnic lunch. The event will take place at 10:00AM at 14900 Metropolitan Parkway, Sterling Heights, MI 48312.

Welcome to Our New Attorneys

Andy VanBronkhorst

Andy VanBronkhorst received a Bachelor's Degree in Economics from Grand Valley State University. He then attended Pepperdine University School of Law, graduated cum laude and received his Juris Doctor. While in law school, he was a member of the Pepperdine University Law Review.

Mr. VanBronkhorst is a litigator who specializes in insurance subrogation. He manages the firm's subrogation practice group, handling both large-loss, small-loss property and auto claims across Michigan, from the initial investigation through trial or arbitration. Mr. VanBronkhorst diligently provides timely and responsive communication with every client, which results in shorter turnaround on every claim. His industry involvement was recently recognized by Michigan's chapter of the National Association of Subrogation Professionals, who appointed him the 2015 committee co-chairperson.

Kelly Casper

Kelly Casper graduated *cum laude* from Wayne State University with a B.A. in 2000. While attending law school, she worked full-time as a law clerk/paralegal at Grotefeld & Denenberg LLC, where she gained extensive insurance subrogation experience. She was the primary point person for a major residential property insurer and also worked on commercial subrogation cases. Once getting admitted to the State Bar of Michigan, she became an associate attorney at the firm.

Ms. Casper accepted a position as an Assistant Prosecuting Attorney in the Arson Unit of the Wayne County Prosecutor's Office at the end of 2011. While in the Arson Unit, Ms. Casper prosecuted arson for profit, retaliatory arson, and homicide cases and participated in training relative to fire and fraud. She is also a member of the Michigan Arson Prevention Committee. During her tenure in the Arson Unit, Ms. Casper assisted in changing Michigan's arson laws by testifying as to the necessity of the changes before committee in Lansing. Once the legislation was enacted into law, Ms. Casper worked with her office to correct any parts of the legislation that needed amendment. Ms. Casper was also assigned to the Community Prosecution Unit, where she vertically prosecuted non-fatal shootings within the City of Detroit. She also assisted the Public Integrity Unit on an overflow basis. Ms Casper continues to support law enforcement, particularly the Detroit Police Department, by volunteering for various events and fundraisers, including the annual DPOA golf outing and fundraisers for officers that need assistance.

With ten years of experience, Ms. Casper joins Hewson & Van Hellemont, P.C. with an aggressive approach to litigating property insurance matters and the experience of handling complex cases.

Recent Opinions

Taevin Travon Johnson, et al. v Metlife Home & Auto

Michigan Court of Appeals

Unpublished Opinion - Docket No. 321649

August 11, 2015

Injured party was not entitled to PIP benefits because the insurance policy had expired and the insurer provided sufficient notice of non-renewal of the insured's policy more than 20 days before the subject motor vehicle accident occurred.

Plaintiff was involved in a motor vehicle accident in September of 2012 and sustained costly medical bills at McLaren Oakland Hospital. His no-fault insurer, Metlife, denied coverage on the basis that it had notified the policy holder, Plaintiff's mother, that the policy was not being renewed more than 14 days before the accident. Plaintiff filed suit, challenging the sufficiency of Metlife's non-renewal notice, and McLaren Hospital intervened. The trial court dismissed the suit after holding that the non-renewal notice was valid and the policy therefore had expired prior to Plaintiff's motor vehicle accident.

On appeal, Plaintiff argued that Metlife failed to provide proper notice of its decision to not renew the policy. Metlife used first-class mail to send notice of termination of the policy to Plaintiff's mother on August 5, 2012. The message indicated that Metlife would not renew the policy at its expiration because Plaintiff, listed as a child of the insured, had accumulated six points for moving violations. The policy expired on September 8, 2012. The policy specifically stated that the insurer would mail notice to the insured at their listed address at least 20 days before the policy expired. Plaintiff's mother was the only person listed as a named insured on the policy, therefore Metlife mailed the notice to her home address, 33 days before the policy expired. Plaintiff's mother claimed she never received the notice on non-renewal, however the policy explicitly stated that proof of mailing any notice shall be sufficient proof of notice. Therefore, the court held that Metlife provided sufficient notice in accordance with the plain language of the policy and therefore the ruling of the trial court was affirmed.

Farm Bureau Insurance v Yvonne J. Hare, et al.

Michigan Court of Appeals

Unpublished Opinion - Docket No. 320710

August 20, 2015

Farm Bureau's UIM responsibility was completely setoff by UIM payments made by tortfeasor's insurer, despite the fact that the UIM limit for the tortfeasor's insurer was reached after settling with just two of the six injured vehicle occupants.

On September 1, 2012, a vehicle driven by Andrea Diamond struck a vehicle owned and operated by defendant Duane Paul Alexander. Carl Alexander, Patricia Alexander, Yvonne Hare, Olivia Hara, and Jack Hare were all occupants of Mr. Alexander's vehicle. Patricia was killed in the accident and all of the other occupants sustained serious injuries.

Mr. Alexander was the named insured on a no-faulty policy issued by Farm Bureau. The policy had a underinsured motorist (UIM) policy that provided coverage limits of $100,000 per person and $300,000 per occurrence. Diamond, the tortfeasor, had an insurance policy with GEICO that provided for limits of $250,000 per person and $500,000 per occurrence.

Defendants sought UIM coverage from Farm Bureau, which denied their claims and sought a declaratory judgment that it did not owe UIM benefits to Defendants. Meanwhile, GEICO tendered the limits of the tortfeasor's policy to defendants. The Hares requested permission from Farm Bureau to settle Yvonne's claim against GEICO and the tortfeasor. Farm Bureau refused to consent to the settlement; however, Yvonne ignored this and proceeded to settle her claim against GEICO and its insured for $250,000. In similar fashion, the estate of Patricia Alexander settled its claim against GEICO and its insured for $250,000. These two settlements exhausted the $500,000 UIM limit on the GEICO policy.

Farm Bureau moved for summary disposition, arguing that it did not owe UIM benefits to the defendants because the GEICO policy belonging to the tortfeasor included policy limits which were greater than the Farm Bureau policy limits. Farm Bureau relied on language in its insurance policy provision that stated that UIM coverage would be reduced by any amount paid or payable for the same bodily injury. According to Farm Bureau, since the GEICO policy provided for greater limits

than the limits of the Farm Bureau policy, and since GEICO exhausted the policy limits by settling with two of the Defendants, any UIM coverage Farm Bureau was responsible for had been full set off. Further, Farm Bureau argued that when the Defendants settled with GEICO without their consent, the UIM provisions of the policy became void. The trial court granted Farm Bureau's motion for summary disposition on the basis of both arguments.

On appeal by Defendants, the Michigan Court of Appeals held that the Farm Bureau policy's plain language provided for a setoff of UIM coverage. Defendants argued that GEICO exhausted its policy limit by only settling with two of the vehicle occupants, thereby leaving nothing available to set off the UIM benefits Farm Bureau owed to the other occupants of the vehicle. The appellate court, however, held that GEICO agreed to tender the entire policy limits amongst *all* of the occupants of the vehicle. It was the occupants of the vehicle, their families, and their attorneys, that structured a settlement with GEICO that allocated all of the policy limits to just two of the vehicle occupants. The fact that the settlements only reached two of the occupants did not change the fact that GEICO's policy's UIM coverage limits were payable to all of the vehicle occupants. Further, because the amount payable under the GEICO policy was greater that the policy limits of the Farm Bureau UIM coverage, a complete setoff occurred in this instance.

Additionally, the court held that the trial court correctly determined that the Farm Bureau policy UIM provision was voided after two of the vehicle occupants settled with GEICO without Farm Bureau's consent. As such, the trial court's order granting summary disposition in favor of Farm Bureau was affirmed.

Craig M. Hanson v Fremont Insurance, et al.

Michigan Court of Appeals

Unpublished Opinion - Docket No. 320607

July 2, 2015

Homeowner's insurance company legally rescinded policy issued to Plaintiffs after it discovered they lied about their criminal history on their insurance application.

Plaintiff and his wife sought out a homeowners' insurance policy for their home in Holton, Michigan. The two of them spoke with Lisa Riechle, a licensed insurance agent employed by White Agency, an independent insurance agency. Riechle verbally asked Plaintiff and his wife questions and completed their insurance application based on their answers. Riechle entered an answer of "no" regarding a question on the application that asked if any of the applicants had been indicted or convicted of a crime of fraud in the last 5 years. However, both Plaintiff and his wife had been convicted of false pretense with intent to defraud an amount over $200 but less than $1,000. Plaintiff and his wife claim Riechle never asked them about their criminal history, but Plaintiff's wife nevertheless signed the application without correcting the answer regarding their criminal history. Fremont Insurance subsequently issued them a policy insuring the home in Holton.

The Plaintiff's home in Holton sustained damage during a fire approximately one year after the policy was issued. A claim for coverage was submitted to Fremont, however Fremont came to discover Plaintiff's misrepresentation on the application and therefore denied the claim and rescinded the policy. Plaintiff filed a breach of contract claim against Fremont and later added White Agency and Riechle as defendants, alleging negligence and breach of duty by incorrectly completing the insurance application.

Plaintiff agreed to the dismissal of Fremont but continued to pursue the negligence claim against White Agency and Riechle. The trial court subsequently granted the defendant's motions for summary disposition.

The appellate court affirmed the decision of the trial court, holding that the defendants presented unrebutted evidence that Fremont would not have issued the insurance policy had it known of the convictions. There was no evidence that but for Riechle's alleged failure to inquire about criminal history, Plaintiff and his wife would have been able to obtain a homeowners' policy. Fremont would not have issued the policy and Plaintiffs were unable to provide evidence that any other insurer would have issued a policy with knowledge of their past convictions. Therefore the decision of the trial court was upheld.

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