

October 10, 2006

**NO-FAULT BENEFIT CLAIMS FOR \$10,000 OR LESS ARE SUBJECT TO MANDATORY
ARBITRATION REGARDLESS OF WHETHER THE INSURER DENIED BENEFITS**

In a recent reported decision, In re Claims for No-Fault Benefits against Progressive Insurance Company, dated Sept. 12, 2006 (File Nos. A05-2020, A06-58, A06-59), the Minnesota Court of Appeals held a claimant may file for No-Fault Arbitration when the amount in controversy is \$10,000 or less regardless of whether the insurer denied benefits. In the case, ten individuals sought No-Fault benefits from Progressive. In nine cases, Progressive did not specifically deny benefits, but instead issued a letter noting that the claim required further information (all claims involved Progressive's investigation into allegedly fraudulent practices by a local medical provider). For fear of divulging details about its fraud investigation, Progressive did not specify what further information was needed, but instead, checked a box marked "other" on a form letter. Below the box, the language "pending further investigation" appeared. All claimants instituted arbitration proceedings pursuant to the No-Fault Act, Minn. Stat. § 65B.525, subd. 2, which provides that claims for benefits that are \$10,000 or less are subject to mandatory arbitration. The arbitrators found in favor of the individual claimants in each case, in Awards dated between November 20, 2003 and July 13, 2005.

Progressive appealed to the District Court, arguing the Awards were based on fraud, or in the alternative, the cases should be stayed, pending the outcome of the civil fraud suit brought in Federal Court. Also, in nine of the claims, Progressive argued the arbitrators lacked jurisdiction because no denial was issued to the insureds. The District Court held in all cases that the arbitrators did not exceed their powers, and there no basis existed to stay the cases pending the federal case. In addition, the District Court ordered Progressive pay a \$15,000 penalty (\$1,500/claim). Progressive appealed the decisions, which were consolidated at the Court of Appeals.

Under Minnesota's statutory scheme for No-Fault Automobile Insurance, claims totaling \$10,000 or less are subject to mandatory arbitration. See, Minn. Stat. § 65B.525, subd. 2. Progressive argued the arbitrators only obtain subject-matter jurisdiction after a claim is denied pursuant to Minnesota No-Fault Arbitration Rule 5 (a) which states, "At such time as the [insurer] denies a claim, the [insurer] shall advise the claimant of claimant's right to demand arbitration." The Minnesota Court of Appeals disagreed. The Legislature indicated any claim of \$10,000 or less is subject to mandatory arbitration. See, Minn. Stat. § 65B.525. The Court also relied on the Minnesota Supreme Court decision, Ill. Farmers Ins. Co. v. Glass Serv. Co., which defines "claim" as, "[t]he aggregate of operative facts giving rise to a right enforceable by a court." Under this statutory framework and analysis the Minnesota Court of Appeals ruled that a No-Fault claim is subject to mandatory arbitration when the claim is for benefits of \$10,000 or less, regardless of whether the insurer denied benefits. Essentially, this amounts to a "constructive denial" of benefits.

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In addition, the Court of Appeals upheld the District Court's ruling that the federal action has no effect on the "innocent insureds," and held staying the decisions ran contrary to the purposes of the No-Fault Act. Moreover, the No-Fault Act provides for the recovery of payments issued to a provider on the basis of a material misrepresentation. See, Minn. Stat. § 65B.54, Subd.4. If the civil fraud case is successful, Progressive should recover from the provider, not the insureds. The Court of Appeals, however, vacated the penalties issued against Progressive, indicating the record did not support them.

This case indicates that Claimants can file for arbitration, even if no official denial letter has been issued by the insurance company. It also highlights the difficulty insurers have in providing quality service to insureds, while at the same time investigating potentially fraudulent activity of third-party providers. The decision reinforces the importance of maintaining proper documentation of the claim investigation and the importance of thinking creatively in dealing with a Claimant's attorney or an Arbitrator.

We will provide further updates, should this case be appealed to the Minnesota Supreme Court. If you have any questions about this decision, or any other Minnesota automobile litigation issues, please contact any of the members of Johnson & Condon's Motor Vehicle Practice Group at (952) 831-6544, or through our website, www.johnson-condon.com. A copy of this letter is also available on the News and Resources page at www.johnson-condon.com/news-resources.htm.

THE JOHNSON & CONDON, P.A., MOTOR VEHICLE PRACTICE GROUP

Mark J. Condon
Timothy J. Leer
B. Jon Lilleberg

Paul S. Hopewell
Matthew M. Johnson
Jake M. Tomczik

Lee A. Hutton, III
Stacey A. Nilsen
Michael M. Skram