

UNCOORDINATED MEDICAL COVERAGE IS A MUST FOR NO FAULT AUTO INSURANCE

How many of you are at risk of having to pay your own medical bills arising out of an automobile accident even though you may have both health and automobile insurance? Under recent Michigan law, there are more people faced with this problem than one might think. Many people who have recovered money arising out of a lawsuit against an at-fault driver are left with little or no compensation at all, because they were required to reimburse their medical insurance provider for the medical bills that were incurred.

In Dunn v DAIIE, NO. 230793 (December 2002), the Michigan Court of Appeals recently issued a nonsensical opinion which drastically changed Michigan law. In Dunn, the Court held that a person injured in an auto collision, who had a health plan governed under ERISA, and who did not have uncoordinated automobile coverage, was responsible to reimburse his ERISA health carrier for the payment of medical bills out of his third party recovery.

Michigan Court of Appeals Judges Bandstra and Gage, JJ. (Fitzerald, P.J. dissented) declined to follow the holding in Yerkovich v AAA, 231 Mich App 54 *rev'd on other grounds* 461 Mich 732 (2000) finding that Yerkovich was not precedentially binding.

The plaintiff in Yerkovich incurred medical bills arising from an automobile accident and she had a health insurance plan which was governed under ERISA. The ERISA plan contained subrogation language which subjected the plaintiff to reimburse the plan for her medical bills out of her recovery against the at-fault driver. This is significant because plaintiffs can only sue at-fault drivers for pain and suffering, not medical bills.

The Michigan Court of Appeals in Yerkovich held that plaintiff's no-fault insurer was required to reimburse the plaintiff/insured for sums paid by the insured to the ERISA insurance provider out of the third party recovery. The Michigan Supreme Court in Yerkovich reversed the Court of Appeals, holding the ERISA plan was void for lack of consideration. The Supreme Court in Yerkovich never addressed the issue regarding who (the no-fault carrier or the individual) is responsible to reimburse the ERISA health care provider where the contract has valid subrogation language.

The Dunn decision is ludicrous because it essentially requires certain victims injured in automobile accidents to have to pay their own medical bills even though they had both health and automobile insurance. The Court's rationale in Dunn is that the plaintiff purportedly received a windfall by saving money and choosing not to purchase uncoordinated medical coverage in his auto policy. The difference between uncoordinated and coordinated coverage is that if the policy is uncoordinated, the automobile insurance carrier typically has to pay medical bills regardless of whether there is available health insurance.

WHO IS AT RISK? Everyone! Most large companies (i.e. automotive companies and hospitals) have health insurance plans which are governed under ERISA. Several smaller companies are now switching to policies governed under ERISA.

HOW DO YOU PROTECT YOURSELF? Purchase uncoordinated auto insurance coverage.

HOW DO YOU PROTECT YOUR CLIENTS? Make sure you get a copy of every client's health insurance plan and determine if it is a self-funded ERISA plan with valid subrogation language. Also get a copy of your client's declaration sheet to determine if he has uncoordinated or coordinated coverage (sometimes it isn't easy to tell, so you may want to get something in writing from your client's PIP adjuster). If it is a valid, self-funded ERISA plan, make sure you notify the plan of a potential third-party recovery. Explain to your client at the onset of his lawsuit that he will have to reimburse his health care provider for his medical bills out of any potential recovery.

Application for Leave to Appeal Dunn has been filed so keep your eyes open for further developments regarding lien issues in automobile negligence cases.