

From Jules Zacher, Attorney at Law

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Meetings

Please contact my office regarding setting up a meeting in your office to discuss any questions you may have. There will be no charge for the initial meeting.

Referrals

I would like to take this opportunity to express my thanks to all providers who have referred their patients who have been injured in motor vehicle, work-related, or premises liability accidents to me. There can be no higher praise than a referral from a fellow professional, and I pledge that I shall fight for them as hard as I fight for you.

Disclaimer:

This newsletter does not constitute legal advice. No reader of this newsletter can rely on any information contained herein until a written agreement is entered into between the reader and Jules Zacher, Esquire.

Dear Dr. Zacher,

No PIP Coverage Was Provided Because Insured Must Have Policy Covering All Vehicles Registered In Order To Receive First-Party Benefits

Ortiz v. Progressive Ins. Co., No. 2259, 2007 Phila. Ct. Com. Pl. LEXIS 63 (C.P. Philadelphia Mar. 2, 2007).

In a somewhat bizarre case, a Philadelphia Common Pleas Court ruled that the owner of a fifth uninsured car could not recover PIP benefits (medical benefits and wage loss) even though he was injured in another insured car owned by the same person. The Court ruled this way by citing the Motor Vehicle Financial Responsibility Law as follows: "...the only way a vehicle owner can be absolved of the responsibility to insure a vehicle registered in that person's name, whether or not the vehicle remains operable or even in that person's possession, is to have the registration of the vehicle properly terminated or transferred." Ortiz did not register the fifth car. In addition, the Court stated "in order to be eligible to receive first party benefits a person must have the required insurance on any and every vehicle currently registered in that person's name in Pennsylvania at the time of the accident in question." The Court therefore reasoned that since Ortiz did not register all five of his automobiles, he was not entitled to insurance coverage the fourth car that was insured that he occupied at the time of the accident.

Federal Jurisdiction in PIP Case

Hinderliter v. State Farms Ins., Civil No. 07-272 2007 U.S. Dist. LEXIS 91011 (W.D. Pa. Dec. 11, 2007).

Many of you may wonder why PIP cases are not brought in federal court when diversity of the parties exist, i.e. the plaintiff is a Pennsylvania provider and the defendant insurance carrier is located in another state. In the Hinderliter case, the case was removed from state court to federal court by State Farm because of diversity of the parties. The federal court ruled that the second element necessary in removal to federal court, i.e. the amount in controversy was in excess of \$75,000.00, was present in the case because the combination of attorneys' fees and the amount in controversy could be in excess of \$75,000.00. Therefore, the case stayed in federal court despite plaintiff's attempt to remand the case back to state court.

Interest Can Be Collected by Provider for Late Payment By Carrier

Schappell v. Motorists Mutual Ins. Co., 934 A.2d 1184 (Pa. 2007).

The Supreme Court has ruled that a provider, in this case a chiropractor, can collect statutory interest in the amount of 12% per year under Section 1716 of the Motor Vehicle Financial Responsibility Law. The Supreme Court reached this decision despite the lack of specific language in the statute providing such relief. The Supreme Court found this way in part because that Dr. Schappell was part of a group for which the statutory interest benefit was intended. The Court also found that paying interest to the provider for overdue benefits assisted in the prompt and adequate payment of basic loss benefits for motor vehicle accident victims."

The Peer Review Process

Section 1797 of the Motor Vehicle Financial Responsibility Law (MVFRL) introduced a new concept regarding paying medical providers for care rendered to motor vehicle accident victims in 1990. The new law established what a provider can accept as payment for services rendered. It also provided for a peer review to be used by insurance companies if they did not agree with the "reasonableness and necessity" of the treatment provided. Section 1797(a) established what fee could be charged by the provider, namely "110% of the prevailing charge at the 75th percentile; 110% of the applicable fee schedule, the recommended fee or the inflation index chart; or 110% of the diagnostic-related groups (DRG) payment;... determined to be applicable in the Commonwealth under the Medicare program for comparable services at the time the services were rendered or the

provider's usual and customary charge, whichever is less." §1797(b) requires insurance carriers to contract jointly or separately with a peer review organization (PRO). The PRO in turn contacts a peer reviewer to review documents provided by the provider to the PRO.

PRO's are regulated by 31 Pa. Code §69.53 in relevant part as follows:

- (a) a PRO is to reimburse providers for copying records at the current rate RCFA reimburses its contracted PRO;
- (b) written notice of determinations are to be mailed to the insurer within three working days of the conclusion of the peer review;
- (c) a PRO shall apply national or when appropriate, regional norms in conducting determinations and when national or regional norms do not exist, the PRO shall establish written criteria to be used in conducting its reviews based upon typical patterns of practice of PRO's geographic area of operation; and

Peer reviews apply to Pennsylvania as well as out of state providers.

Website

Please visit my website at www.juleszacher.com. On the left-hand side under on "Areas of Practice" click on "Medical Providers" for more information regarding "Act 6."

For information regarding Legionnaires' Disease, please visit my other website at www.legionnairelawyer.com.

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