STATE OF MICHIGAN

COURT OF APPEALS

TITAN INSURANCE COMPANY, Plaintiff-Appellee, v AMERICAN COUNTRY INSURANCE COMPANY, Defendant-Appellant.	UNPUBLISHED March 26, 2013 No. 308401 Wayne Circuit Court LC No. 11-003671-NF

Before: MURPHY, C.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

This action involves a reimbursement dispute between two no-fault insurance carriers under the assigned claims statutes, MCL 500.3171 *et seq*. Defendant appeals by right the trial court's order granting summary disposition to plaintiff. Defendant also appeals the accompanying money judgment, which required defendant to reimburse plaintiff for the settlement of an assigned claim, plus loss adjustment costs. We affirm, on the ground that defendant relinquished its opportunity to adjust the claim.

I. FACTS AND PROCEDURAL HISTORY

The insurance carriers' dispute arose out of the assignment of two claims for personal protection insurance benefits (PIP benefits). The claimant in both claims was Alexandria Turner, who was involved in two separate car accidents. The first accident occurred in January 2009, when Turner collided with a pole while driving an uninsured car. The second accident occurred the following month, when Turner was a passenger in a car insured by defendant.[1] Turner applied to the Michigan Assigned Claims Facility (ACF) for PIP benefits on the first accident.[2]

[1] The record is unclear regarding the date that Turner realized defendant was potentially obligated to provide PIP benefits for the second accident. According to the parties' briefs on appeal, Turner filed suit directly against defendant in July 2010, and the trial court dismissed that suit as time-barred.

[2] In 2012, our Legislature changed the agency that administers assigned claims. 2012 PA 204. Assigned claims are now administered by a nongovernmental agency, the Michigan Automobile Insurance Placement Facility. See MCL 500.3171(2) (2012); see generally MCL 500.3301 *et*

The ACF assigned her claim to plaintiff. Turner also applied to the ACF for PIP benefits on the second accident. The ACF assigned that claim to plaintiff as well.

In November 2009, Turner sued plaintiff seeking additional PIP benefits for both accidents. Plaintiff in turn filed a third-party complaint against defendant, among others. The trial court dismissed defendant from Turner's lawsuit on August 24, 2010.[3] In September 2010, plaintiff and Turner signed two settlement agreements: (1) a $10,000 payment to Turner for release of Turner's claims arising from the first accident, for benefits incurred through February 16, 2009; and (2) a $25,000 payment to Turner for release of Turner's claims arising from the second accident, for benefits incurred through August 24, 2010.

Plaintiff then filed this case against defendant pursuant to MCL 500.3172, seeking reimbursement of the $25,000 settlement that plaintiff paid to Turner for release of her claims on the second accident. Defendant acknowledged that it insured the car involved in the second accident. Defendant contended, however, that Turner sustained no injuries in the second accident and that accordingly defendant had no liability to plaintiff for the settlement. The parties filed cross-motions for summary disposition under MCR 2.116(C)(10). After a hearing, the trial court granted plaintiff's motion, stating on the record:

> [Defendant] can't just sit back and let them go ahead and settle the second part of the case . . . . You needed to do something . . . . You could have done things instead of letting them pick out what they're going to settle the case for. You could have intervened as the first priority insurer, which you were, and you knew you were the first priority insurer . . . .

II. ASSIGNED CLAIMS PROCEDURES

We review de novo the trial court's summary disposition decision. *Spencer v Citizens Ins Co*, 239 Mich App 291, 299; 608 NW2d 113 (2000). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We consider the record in the light most favorable to the nonmoving party to determine whether any factual issues warrant a trial. *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 7; 792 NW2d 372 (2010).

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seq. and http://www.michacp.org/. At the times relevant to this lawsuit, assigned claims were administered by the Michigan Assigned Claims Facility, which was part of the Michigan Secretary of State.

[3] At oral argument, plaintiff's counsel informed this Court that plaintiff reached a settlement with Turner prior to dismissing defendant from Turner's lawsuit. Further, plaintiff's counsel informed the Court that on the day plaintiff reached the settlement with Turner, plaintiff also attempted to settle its claims with defendant in a court-ordered settlement conference. According to plaintiff's counsel, the court-ordered settlement conference yielded no agreement between plaintiff and defendant, so plaintiff dismissed defendant from the suit and reported the Turner settlement to the trial court. The transcript of the summary disposition hearing includes passing references to the settlement conference.

Our review requires application of the assigned claims statutes, MCL 500.3171 *et seq*., and the accompanying regulations. At the time Turner's claims arose, the assigned claim procedures allowed an individual to apply to the ACF for benefits if no PIP coverage could be identified, if no solvent PIP insurer was liable for coverage, or if the potentially liable insurers were disputing their coverage obligations. MCL 500.3172(1) (2011). Unless the individual was obviously ineligible for benefits, the ACF would assign the claim to a servicing insurer. MCL 500.3173a (2011); Mich Admin Code, R 11.108. The servicing insurer was required to pay assigned benefits promptly, or face assessment of interest penalties. MCL 500.3175(1) (2011); Mich Admin Code, R 11.109. The servicing insurer was entitled to reimbursement from a higher priority insurer to the extent of the priority insurer's financial responsibility. MCL 500.3172(1) (2011); see also Mich Admin Code, R 11.105.

In this case, plaintiff was the servicing insurer on both of Turner's claims. Defendant argues that MCL 500.3172(1) precludes plaintiff from recovering the $25,000 settlement paid to Turner, unless plaintiff can demonstrate that defendant was financially responsible for Turner's claim for PIP benefits on the second accident. The applicable version of MCL 500.3172(1) states, in pertinent part: "the insurer to which the claim is assigned, or the assigned claims facility if the claim is assigned to it, is entitled to reimbursement from the defaulting insurers *to the extent of their financial responsibility*." MCL 500.3172(1) (2011) (emphasis added). Defendant contends that Turner was not injured in the second accident, and that as such defendant has no financial responsibility for Turner's claim or for the accompanying settlement.

Defendant's argument is misplaced for at least two reasons. First, the assigned claim statutes obligated plaintiff, as the servicing insurer, to adjust the assigned claim benefits for Turner regarding the second accident. MCL 500.3175(1) (2011); *Spencer*, 239 Mich App at 304-305. This obligation continued even after plaintiff determined that defendant was the PIP carrier on the car involved in the second accident. *Spencer*, 239 Mich App at 304-305. Given that plaintiff was statutorily obligated to adjust Turner's claim, defendant cannot now avoid liability by asserting that plaintiff should have denied the claim for lack of proof of injury.

Second, defendant failed to avail itself of the opportunity to adjust, settle, or dispute Turner's claim. Defendant had notice of its potential liability to Turner as of the date that plaintiff named defendant as a third-party defendant in Turner's lawsuit. Apparently, defendant declined to take over the adjustment of Turner's claim and instead relied on its position that Turner had no injuries from the second accident. Had defendant assumed the adjustment responsibility for Turner's claim, defendant could have pursued its defense regarding Turner's lack of injuries. We find no statutory authority for defendant's apparent position that plaintiff was required to litigate defendant's challenge to Turner's allegation of injuries. Absent some justification for defendant's failure to assume responsibility for handling Turner's claim, we find nothing in the applicable facts or the controlling statutes that relieves defendant of its obligation to reimburse plaintiff for the settlement on Turner's claim.

Each party in this case insinuated that the other engaged in gamesmanship to avoid or reduce potential liability for PIP benefits. Gamesmanship would be contrary to design of the assigned claim procedures and would be subject to ethical challenge. Our Legislature designed the no-fault act to ensure that injured individuals receive prompt PIP coverage from responsible insurers. MCL 500.3101 *et seq.*; *Spencer*, 239 Mich App at 301, 308. As part of the no-fault act,

the assigned claim procedures require servicing insurers to provide prompt payment of PIP benefits. MCL 500.3175(1). To comply with these requirements, potentially liable insurers and servicing insurers must take the initiative to defend, adjust, cover, or resolve PIP claims.

III. LOSS ADJUSTMENT COSTS

The trial court's judgment indicates that the court added $1,285.28 in loss adjustment costs to the $25,000 settlement costs, for a total judgment of $26,285.28. Defendant contends that loss adjustment costs are not appropriate in this case, citing *Spectrum Health v Grahl*, 270 Mich App 248, 253; 715 NW2d 357 (2006). The *Spectrum* decision, however, did not consider Michigan Administrative Rule 11.105. The rule provides that for claims assigned by the ACF:

> The assigned claims facility or the servicing insurer to which the claim is assigned *is entitled to reimbursement for* the personal protection insurance benefits which are provided and *appropriate loss adjustment costs which are incurred from an insurer who is obligated to provide the personal protection insurance benefits under a policy of insurance, but who fails to pay such benefits*. [Mich Admin Code, R 11.105 (emphasis added).]

The rule authorizes the award of loss adjustment costs in this case.

Defendant maintains that even if Rule 11.105 generally authorized reimbursement of loss adjustment costs, defendant cannot be held liable for those costs. In support, defendant reasserts its contention that Turner had no injuries in the second accident, and that defendant had no obligation to provide PIP benefits. According to defendant, it is not liable for loss adjustment costs because it had no liability for PIP benefits.

We reject defendant's argument. In this case, we have determined that defendant failed to take the opportunity to establish whether it was liable for PIP benefits for the second accident. Having missed that opportunity, defendant cannot now challenge the underlying ground for the loss adjustment costs.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering