

STATE OF MICHIGAN
COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee-Cross Appellant,

v

GREAT LAKES CASUALTY INSURANCE
COMPANY,

Defendant-Appellant-Cross
Appellee.

UNPUBLISHED

May 6, 2010

No. 285883

Oakland Circuit Court

LC No. 2007-084256-NF

Before: SAAD, C.J., and O'CONNELL, and ZAHRA, JJ.

PER CURIAM.

In this action for reimbursement under the assigned claims statutes, MCL 500.3171 *et seq.*, defendant Great Lakes Casualty Insurance Company (Great Lakes) appeals by right the trial court's order granting partial summary disposition to Allstate Insurance Company (Allstate), which required that Great Lakes reimburse Allstate for personal protection insurance benefits that Allstate had paid on the assigned claim. Allstate cross-appeals the trial court's decision rejecting its request for loss adjustment costs and attorney fees. We affirm in part and reverse in part.

I. BASIC FACTS AND PROCEEDINGS

This dispute arose out of the assignment of Hassan Sareini's claim for personal protection insurance benefits (PPI benefits). Sareini was injured in an accident while he was a passenger in his father's car. Sareini's father was not in the car at the time. Before the accident, Sareini's father attempted to secure insurance for the car through Great Lakes, but his check for the initial payment was denied for insufficient funds. Great Lakes voided the policy. Sareini sought benefits from the Michigan Assigned Claims Facility (ACF), and the ACF assigned his claim to Allstate. Allstate paid approximately \$800,000 in PPI benefits to Sareini, and incurred loss adjustment costs. Allstate filed this declaratory action pursuant to MCL 500.3175(2) seeking reimbursement of Sareini's PPI benefits alleging Great Lakes had a higher priority. The trial court found that Great Lakes was required to reimburse Allstate for benefits paid, but not for loss adjustment costs or for attorney fees.

II. REIMBURSEMENT OF PPI BENEFITS

Great Lakes argues that the trial court erred in finding Allstate entitled to reimbursement. We disagree.

This case requires this Court to apply the assigned claims provisions of the no-fault act, MCL 500.3171-3177. The no-fault act allows individuals who are injured in automobile accidents to obtain PPI benefits without regard to fault. MCL 500.3105. If insurance benefits are not available through an insurer of someone involved in the accident, the injured individual may apply to the ACF for benefits. MCL 500.3172. To trigger eligibility for assigned claim benefits, the injured individual must meet at least one of four statutory conditions: (1) no PPI insurance is applicable to the individual's injury; (2) no PPI insurance can be identified; (3) two or more insurers are disputing their obligations to provide coverage; or (4) the insurer responsible for the loss is insolvent. MCL 500.3172(1). The applicable statute reads, in pertinent part, as follows:

A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In such case unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and 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. [*Id.*]

Once an individual has applied for benefits under the assigned claims plan, the ACF makes an initial determination of eligibility. MCL 500.3173a. By statute, the ACF “shall deny an obviously ineligible claim.” *Id.* Unless the claimant is obviously ineligible, the ACF assigns the claim to a servicing insurer.¹ *Id.* The controlling statute states that the servicing insurer “shall make prompt payment of loss in accordance with [the no-fault act] and is thereupon

¹ Servicing insurers are drawn from a pool of insurance companies that provide no-fault insurance in Michigan. MCL 500.3171, 3175. 1989 AACS, R 11.108. The ACF assigns claims to servicing insurance companies based upon the volume of insurance the company writes in Michigan, the resources of the company relative to the claim, and the convenience of the claimant. MCL 500.3171, 500.3175; 1989 AACS, R 11.108.

entitled to reimbursement by the assigned claims facility for the payments and the established loss adjustment cost.” *Id.* The statute requires the servicing insurer to “preserve and enforce rights to indemnity or reimbursement against third parties and account to [the ACF] therefore” MCL 500.3175(2). The term “third parties” includes insurers that may be responsible for paying the PPI benefits. *Auto-Owners Ins Co v Michigan Mut Ins Co*, 223 Mich App 205, 210; 565 NW2d 907 (1997) (1998). If the value of the reimbursement right exceeds \$1,000, the servicing insurer must reduce the right to judgment. 1989 AACS, R 11.110.

As mentioned, an individual’s eligibility for assigned benefits is triggered by one of four statutory conditions. MCL 500.3172(1). Unless the individual is “obviously ineligible” for benefits, the ACF assigns the claim to a servicing insurer. MCL 500.3173a. The servicing insurer must promptly pay assigned benefits, or face assessment of interest penalties. MCL 500.3175(1); 1989 AACS, R 11.109. The servicing insurer is entitled to reimbursement from the ACF for payments and for loss adjustment costs. MCL 500.3175(1). However, the servicing insurer must preserve and enforce the ACF’s indemnity and reimbursement rights as against third parties, including higher priority insurers. MCL 500.3175(2); 1989 AACS, R 11.110; *Auto-Owners Ins Co v Michigan Mut Ins Co*, 223 Mich App 205, 210; 565 NW2d 907 (1997).

Great Lakes argued below and on appeal that Allstate knew or should have known that Great Lakes had acknowledged coverage before the date that Allstate received Sareini’s assigned claim yet Allstate failed to deny the claim. Great Lakes proceeds to argue that because none of the statutory conditions for eligibility were triggered, Allstate’s failure to deny the claim precludes Allstate from obtaining reimbursement from Great Lakes. We review de novo the trial court’s order on summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

We reject Great Lakes’s assertion that Allstate could have or must have denied Sareini PPI benefits even assuming Allstate knew that Sareini had not met any of the four statutory conditions of an assigned claim. MCL 500.3175(1) expressly states that, “An insurer to whom claims have been assigned *shall* make prompt payment of loss in accordance with this act.” The term “shall” indicates mandatory conduct. *Kenefick v City of Battle Creek*, 284 Mich App 653, 675; 774 NW2d 925 (2009). Great Lakes has not provided any authority establishing Allstate’s power to unilaterally overturn the ACF’s decision that Sareini was not “obviously ineligible” for PPI benefits. In short, there is no statutory authority allowing Allstate to deny a claim assigned by the ACF. Although Great Lakes maintains that Allstate must exercise due diligence and determine the existence of an insurer of higher priority, the only provision referring to identifying insurance applicable to the injury, MCL 500.3172(1),² only expressly refers to

² MCL 500.3172(1) states:

A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan if no personal protection insurance is applicable to the injury, no
(continued...)

claimants and the ACF. Thus, there is no express statutory authority obligating Allstate to identify Great Lakes as the serving insurer. Accordingly, Great Lakes claim must be rejected.

Moreover, we agree with the trial court that when Allstate received Sareini's claim from the ACF, Allstate knew that Great Lakes had issued a policy that might provide PPI benefits, but Allstate also knew Great Lakes had not clearly accepted responsibility for paying those benefits. Given the ambiguity as to whether Great Lakes had accepted responsibility for Sareini's PPI benefits, the trial court did not err in finding that the dispute between the insurers arose after Allstate received the assigned claim. Accordingly, at the time Allstate received the claim, no PPI insurance covering Sareini had been identified, so Sareini was eligible for assigned claim benefits under MCL 500.3172(1).

III. LOSS ADJUSTMENT COSTS AND ATTORNEY FEES

In the cross-appeal, Allstate argues that the trial court erred in refusing to order Great Lakes to reimburse Allstate for loss adjustment costs and attorney fees.

This Court in, *Spectrum Health v Grahl*, 270 Mich App 248, 715 NW2d 357 (2006), addressed the availability of costs, attorney fees, and interest when seeking PPI benefits through the ACF under MCL 500.3172. The Court noted that "MCL 500.3172(1) concludes with a reimbursement provision, it does not specify whether the right to reimbursement includes a right to recover costs, attorney fees, and interest." *Id.* at 252. The Court also noted that, in contrast, MCL 500.3172(3)(f) specifically includes a right to recover costs, attorney fees, and interest. The Court concluded that "[b]ecause MCL 500.3172(1) does not specifically state that the assigned claims insurer can recover costs, attorney fees, and interest from a higher-priority insurer as part of its general right to reimbursement, . . . the right to reimbursement granted by this section does not include a right to recover those expenses from a higher-priority insurer." *Id.* at 253. Thus, when seeking PPI benefits through the ACF under MCL 500.3172, costs, attorney fees, and interest are only available under MCL 500.3172(3)(f).

Spectrum then addressed when MCL 500.3172(3)(f) is applicable. The Court held MCL 500.3172(3)(f) was not applicable when "the [ACF] assigned the insured's claim to [an insurer] because the insured claimed that no personal protection insurance applied to her injury and not

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personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In such case unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and 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.

because of a dispute between two or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss.” *Spectrum*, 270 Mich App at 249.

Here, as in *Spectrum*, “at the time of the assignment [to the ACF], both [Allstate] and the [ACF] were unable to identify any other source of [PIP] applicable to cover [Allstate]’s medical expenses.” 270 Mich App at 252. Thus, as in *Spectrum*, MCL 500.3172(3)(f) is inapplicable and Allstate cannot collect costs, attorney fees, and interest.

At oral argument, the parties addressed Administrative Rule 11.105,³ which the Secretary of State promulgated in 1989. It provides:

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 the 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. [1989 AACS, R 11.105 (emphasis added).]

Spectrum, 270 Mich App 248, simply does not address R 11.105 and focused exclusively the rights provided under MCL 500.3172(3)(f). However, unlike MCL 500.3172(3)(f), R 11.105 does not condition reimbursement on a “dispute” between two insurers. Rather, R 11.105 provides a specific right to the servicing insurers distinct from MCL 500.3172(3)(f) allowing the recovery of “appropriate loss adjustment costs.” Accordingly, Allstate is entitled to reimbursement of loss adjustment costs pursuant to R 11.105.⁴ However, because R 11.105 does

³ The rule amendments was promulgated pursuant to MCL 500.3175 included a requirement that “[t]he rules promulgated under section 3171 [the assigned claim section] shall include a rule establishing reasonable standards for enforcing rights to indemnity or reimbursement against third parties, including a standard establishing a value for such rights below which actions to preserve and enforce the rights need not be pursued.” 1984 PA 426.

⁴ At oral argument, counsel for Great Lakes maintained that Allstate was already entitled to loss adjustment costs from the ACF pursuant to MCL 500.3175(1), and argued Allstate was not entitled to double recovery. However, MCL 500.3175(3) provides, in part, that:

The insurer to whom claims have been assigned shall preserve and enforce rights to indemnity or reimbursement against third parties and account to the assigned claims facility therefor and shall assign such rights to the assigned claims facility upon reimbursement by the assigned claims facility

We conclude that the above provision prevents a double recovery of loss adjustments costs, and thus we reject Great Lake’s contention.

not address attorneys' fees, the trial court correctly denied Allstate's request for attorneys' fees pursuant to *Spectrum*.

Affirmed in part and reversed in part. No taxable costs pursuant to MCL 7.219, neither party having prevailed in full.

/s/ Henry William Saad
/s/ Peter D. O'Connell
/s/ Brian K. Zahra