

 KeyCite Yellow Flag - Negative Treatment

Distinguished by [Taddei v. State Farm Indem. Co.](#), N.J.Super.A.D.,
June 30, 2008

391 N.J.Super. 588
Superior Court of New Jersey,
Appellate Division.

ENDO SURGI CENTER, P.C., Plaintiff-Respondent,
v.
LIBERTY MUTUAL INSURANCE
COMPANY, Defendant-Appellant.

Argued Feb. 27, 2007.

Decided April 9, 2007.

Synopsis

Background: Medical services provider, as assignee of insureds under automobile liability policies, brought action against insurer to recover personal injury protection (PIP) benefits, and asserted a common-law claim for breach of good faith. The Superior Court, Law Division, Union County, denied insurer's motion to dismiss the bad faith claim. Insurer filed motion for leave to appeal, which was granted.

[Holding:] The Superior Court, Appellate Division, [Skillman](#), P.J.A.D., held that medical services provider, as insureds' assignee, could not maintain a common-law action against insurer for alleged bad faith denial of PIP benefits.

Reversed.

West Headnotes (7)

[1] **Automobiles**

 [Effect of No Fault Statutes](#)

Insurance

 [No-Fault Coverage; Medical Payments](#)

Two major objectives of the No-Fault Act are facilitating prompt and efficient provision of benefits for all accident injury victims and minimizing resort to the judicial process. [N.J.S.A. 39:6A-1](#) et seq.

[1 Cases that cite this headnote](#)

[2] **Insurance**

 [Costs and Attorney Fees](#)

An insured who prevails in a nonjudicial proceeding under the No-Fault Act to recover personal injury protection (PIP) benefits may be awarded attorney fees. [N.J.S.A. 39:6A-5.1](#), [39:6A-5.2](#).

[1 Cases that cite this headnote](#)

[3] **Insurance**

 [Claim Procedures](#)

Insurance

 [Nature and Form of Remedy](#)

Because personal injury protection (PIP) benefits are statutory in nature, the procedures and remedies provided by the No-Fault Act for enforcement of an insured's right to PIP benefits are exclusive. [N.J.S.A. 39:6A-5.1](#), [39:6A-5.2](#).

[3 Cases that cite this headnote](#)

[4] **Insurance**

 [Settlement by First-Party Insurer](#)

Insurance

 [Nature and Form of Remedy](#)

Insurance

 [Costs and Attorney Fees](#)

Assignee of insureds' claims for personal injury protection (PIP) benefits could not maintain a common-law action against automobile insurer for alleged bad faith denial of PIP benefits; assignee did not allege any independent tort committed by insurer in response to a claim for benefits and, thus, was limited to recovering payment of the improperly denied benefits plus interest thereon and reasonable attorney fees it had to incur to collect those benefits, all of which were recoverable through the procedures established by No-Fault Act. [N.J.S.A. 39:6A-5.1](#), [39:6A-5.2](#).

[2 Cases that cite this headnote](#)

[5] Insurance

🔑 Interest

Insurance

🔑 Costs and Attorney Fees

Statutory interest and attorney fees are the exclusive remedies for an automobile insurer's wrongful denial of personal injury protection (PIP) benefits under the No-Fault Act. *N.J.S.A. 39:6A-5*.

[3 Cases that cite this headnote](#)

[6] Insurance

🔑 Assignment of Claim or Right to Sue

Insurance

🔑 No-Fault Insurance

Medical services provider, which had no contractual or other relationship with its patients' automobile insurer, had standing to pursue a claim against insurer to recover personal injury protection (PIP) benefits solely as assignee of its patients' claims, and thus medical services provider had no standing to recover damages it had allegedly suffered as a result of its inability to collect "facility fees" for use of its surgical site.

[1 Cases that cite this headnote](#)

[7] Jury

🔑 Particular Actions and Proceedings

There is no right to a jury trial in an action for unpaid personal injury protection (PIP) benefits. *N.J.S.A. 39:6A-5.1*.

[Cases that cite this headnote](#)

Attorneys and Law Firms

****167** [William P. Krauss](#), argued the cause for appellant (Wilson, Elser, Moskowitz, Edelman & Dicker, Newark and Law Offices of Skrod & Baumann, attorneys; [Clifford J. Giantonio](#), of counsel; Mr. Krauss, of counsel and on the brief).

[Sean A. Smith](#), Roseland, argued the cause for respondent (Wolf Block Brach Eichler, attorneys; [Charles X. Gormally](#), of counsel; Mr. Gormally and Mr. Smith, on the brief).

Before Judges [SKILLMAN, LISA](#) and [HOLSTON, JR.](#)

Opinion

The opinion of the court was delivered by

[SKILLMAN, P.J.A.D.](#)

***591** The issue presented by this appeal is whether an insured under an automobile liability policy who is denied personal injury protection (PIP) benefits may maintain a common law action for breach of good faith against the insurer. We conclude that PIP benefits are statutory in origin, and therefore, an insured who is wrongfully denied such benefits is entitled to only the statutory remedy of interest on the benefits and attorney's fees.

Plaintiff Endo Surgi Center (Surgi Center) is a professional corporation, owned by a group of physicians, which operates a medical treatment facility. Surgi Center provided medical services to fifteen patients for injuries suffered in automobile accidents for which defendant Liberty Mutual is responsible for payment of PIP medical benefits. Liberty Mutual refused payment for the portion of the patients' medical bills attributable to "facility fees" for use of a surgical site in Surgi Center's facility. The patients assigned their PIP claims for these fees to Surgi Center.

Surgi Center filed an action in the Law Division for recovery of the assigned PIP medical benefit claims. Surgi Center's complaint also asserted various other causes of action, including claims for a "bad faith course of conduct" and "fraud," and sought both compensatory and punitive damages.

Before filing an answer, Liberty Mutual moved to dismiss the parts of Surgi Center's complaint that asserted claims for bad faith and fraud as well as its punitive damages claim. The trial court denied Liberty Mutual's motion to dismiss Surgi Center's bad faith claim. The court granted Liberty Mutual's motion to dismiss Surgi Center's claims for fraud and punitive damages without prejudice.

****168** We granted Liberty Mutual's motion for leave to appeal from the order denying its motion to dismiss Surgi Center's bad faith claim. We now reverse that order.

***592** [1] The requirement that an automobile insurance policy include PIP benefits is a fundamental part of the No-Fault Act, *N.J.S.A. 39:6A-1* to -35, first enacted in 1972, *L. 1972, c. 70*, and comprehensively amended in 1998 by enactment of the Automobile Insurance Cost Reduction Act (AICRA), *L. 1998, c. 21* and *c. 22*. Two major objectives of this legislation are facilitating “prompt and efficient provision of benefits for all accident injury victims” and “minimiz[ing] resort to the judicial process [.]” *Gambino v. Royal Globe Ins. Cos.*, 86 *N.J.* 100, 105-107, 429 *A.2d* 1039 (1981).

[2] To achieve these objectives, the No-Fault Act mandates that every automobile liability insurance policy include coverage for PIP benefits. *N.J.S.A. 39:6A-3.1*; *N.J.S.A. 39:6A-4*. In addition, the statute provides that any claim for PIP medical benefits “shall be overdue if not paid within 60 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same[.]” *N.J.S.A. 39:6A-5(g)*, and that “[a]ll overdue payments shall bear interest at the percentage of interest prescribed in the [Rules of Court] for judgments, awards and orders for the payment of money[.]” *N.J.S.A. 39:6A-5(h)*. The No-Fault Act also provides that either the insured or insurer may submit any dispute regarding payment of PIP medical benefits to alternative dispute resolution, which may consist of either arbitration or review by a medical review organization. *N.J.S.A. 39:6A-5.1*; *N.J.S.A. 39:6A-5.2*; see *Allstate Ins. Co. v. Sabato*, 380 *N.J.Super.* 463, 469-70, 882 *A.2d* 972 (App.Div.2005); Cynthia M. Craig & Daniel J. Pomeroy, *New Jersey Auto Insurance Law* § 10:2-1 (2007). An insured who prevails in such a proceeding may be awarded attorney’s fees. See *Maros v. Transamerica Ins. Co.*, 76 *N.J.* 572, 579, 388 *A.2d* 971 (1978); *Sabato, supra*, 380 *N.J.Super.* at 473-74, 882 *A.2d* 972.

[3] We have previously recognized that because PIP benefits are statutory in nature, see *Pickett v. Lloyd’s*, 131 *N.J.* 457, 476, 621 *A.2d* 445 (1993); *Manetti v. Prudential Prop. & Cas. Ins. Co.*, 196 *N.J.Super.* 317, 320-21, 482 *A.2d* 520 (App.Div.1984), the procedures and remedies provided by the No-Fault Act for enforcement ***593** of an insured’s right to PIP benefits are exclusive. See *Milcarek v. Nationwide Ins. Co.*, 190 *N.J.Super.* 358, 365-70, 463 *A.2d* 950 (App.Div.1983); *Kubiak v. Allstate Ins. Co.*, 198 *N.J.Super.* 115, 118-20, 486 *A.2d* 879 (App.Div.1984), *certif. denied*, 101 *N.J.* 290, 501 *A.2d* 952 (1985); *Pierzga v. Ohio Cas. Group of Ins. Cos.*, 208 *N.J.Super.* 40, 44-45, 504 *A.2d* 1200 (App.Div.), *certif. denied*, 104 *N.J.* 399, 517 *A.2d* 402

(1986). In *Milcarek*, we agreed with the defendant insurance company that the statutory requirement of payment of interest on overdue PIP benefits and the availability of attorney’s fees to a successful claimant were the exclusive remedies available to an insured for a wrongful denial of PIP benefits. 190 *N.J.Super.* at 365-70, 463 *A.2d* 950. Similarly, in *Kubiak*, we stated:

Our Legislature has provided the means for expediting PIP disputes and protecting “the rights of all parties” to such disputes by establishing a right to petition the courts for an order which may be entered “on motion for good cause shown.” *N.J.S.A. 39:6A-13*. This, together with the right to interest on overdue payments ... and the ability under *R. 4:42-9(a)(6)* to recover counsel fees if successful in the action should sufficiently guard against a situation [] where an ****169** injured party is subjected to protracted aggravated consequences because of an insurer’s failure to pay.

[198 *N.J.Super.* at 119-20, 486 *A.2d* 879.]

We also noted in both *Milcarek* and *Kubiak* that the Legislature has conferred authority upon the Commissioner of Insurance to impose monetary penalties upon an insurer that unreasonably denies claims, thereby establishing an additional deterrent to the unreasonable withholding of PIP benefits. *Milcarek, supra*, 190 *N.J.Super.* at 368, 463 *A.2d* 950; *Kubiak, supra*, 198 *N.J.Super.* at 119, 486 *A.2d* 879.

[4] [5] [6] Although *Milcarek*, *Kubiak* and *Pierzga* involved claims for punitive damages for the alleged bad faith withholding of PIP benefits, the conclusion of those cases—that statutory interest and attorney’s fees are the exclusive remedies for a wrongful denial of PIP benefits—is equally applicable to a claim for compensatory damages. In fact, it would appear that the only compensatory damages an insured could claim for wrongfully withheld PIP medical expense benefits would be the medical expenses plus ***594** interest thereon and the attorney’s fees the insured is forced to incur to collect the benefits, all of which are recoverable under the procedures established by the No-Fault Act. When we inquired at oral argument whether the insureds had incurred any other damages as a result of Liberty Mutual’s alleged wrongful denial of PIP benefits, Surgi Center’s counsel referred to alleged damages Surgi Center had suffered as a result of its inability to collect “facility fees” for use of its surgical site. However, Surgi Center has standing to pursue a claim against Liberty Mutual solely as assignee of its patients’ claims. See *Lech v. State Farm Ins. Co.*, 335 *N.J.Super.*

254, 258, 762 A.2d 269 (App.Div.2000); *Tirgan v. Mega Life & Health Ins.*, 304 N.J.Super. 385, 389-91, 700 A.2d 1239 (Law Div.1997). Surgi Center has no contractual or other relationship with Liberty Mutual that could provide a foundation for asserting its own cause of action. See *Lech, supra*, 335 N.J.Super. at 258, 762 A.2d 269.

[7] Our conclusion that the sole remedy for a wrongful denial of PIP benefits is an award of the interest mandated by N.J.S.A. 39:6A-5(h) and attorney's fees is also supported by the statutory mandate that either the insured or the insurer may require submission of any dispute regarding payment of PIP benefits to the alternative dispute resolution procedures provided by N.J.S.A. 39:6A-5.1. The evident purpose of this provision is to establish an expeditious non-judicial procedure for resolving any dispute regarding the payment of PIP benefits, in furtherance of the No-Fault Act's objectives of facilitating "prompt and efficient provision of benefits for all accident injury victims" and "minimiz[ing] resort to the judicial process [.]" *Gambino, supra*, 86 N.J. at 105, 107, 429 A.2d 1039. Moreover, even if these alternative dispute procedures are not utilized, there is no right to a jury trial in an action for unpaid PIP benefits. *Manetti, supra*, 196 N.J.Super. at 320-21, 482 A.2d 520. However, if an insured (or an insured's assignee) were allowed to pursue a common law claim for an alleged bad faith denial of PIP benefits, under which there would be an entitlement to a jury trial, this would open the door to *595 circumvention of the statutorily mandated alternative dispute resolution procedure provided by N.J.S.A. 39:6A-5.1.

In concluding that an insured can maintain a common law action for breach of good faith for denial of a PIP claim, the trial court relied primarily upon *Pickett, supra*, 131 N.J. at 466-80, 621 A.2d 445, in which the Court held that a trucker who suffered economic losses in addition to the value of his truck as a result of his insurance **170 carrier's failure to pay collision damage benefits could pursue a claim for a bad faith denial of benefits. The Court also held that the insured could seek punitive damages if the insurance carrier's conduct was wantonly reckless or malicious. *Id.* at 475-76, 621

A.2d 445. However, the Court expressly recognized, citing *Pierzga, Kubiak* and *Milcarek*, that a claim for a wrongful failure to pay statutorily mandated insurance benefits such as PIP should be treated differently than a claim that is not subject to statutory regulation:

We also concur with the courts holding, in the highly-regulated area of personal injury protection, see N.J.S.A. 39:6A-5, that wrongful failure to pay benefits, wrongful withholding of benefits or other violation of the statute does not thereby give rise to a claim for punitive damages.

[*Id.* at 476, 621 A.2d 445.]

The Court also indicated that even though a punitive damages claim is not maintainable for an alleged bad faith denial of a statutorily regulated insurance benefit, an insured still may pursue a claim for compensatory and punitive damages for an "independent tort" committed by an insurance carrier in response to a claim for benefits, "such as threats by the insurer's agents to kill the insured and the insured's children[.]" *Id.* at 475, 621 A.2d 445.

Surgi Center does not allege that Liberty Mutual committed such an independent tort against any of its patients. Surgi Center's sole claim is that Liberty Mutual's denial of PIP benefits for the portion of their patients' medical bills attributable to "facility fees" was made in bad faith. Therefore, even if Liberty Mutual improperly denied payments of PIP benefits for this medical service, Surgi Center is only entitled to payment of the *596 improperly denied benefits plus interest thereon and the reasonable attorney's fees it had to incur to collect those benefits.

Accordingly, the order denying Liberty Mutual's motion to dismiss Surgi Center's common law bad faith claim is reversed.

All Citations

391 N.J.Super. 588, 919 A.2d 166