Best's Insurance Law Podcast

Claims Impact of Michigan No-Fault Law Reformation - Episode #170

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Guest Adjuster: Larry Norman of L.W. Norman & Associates, Inc.
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John Czuba: Welcome to "Best's Insurance Law Podcast," the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Insurance Professional Resources.*

We're very pleased to have with us today Larry Norman from independent adjusting firm, L.W. Norman & Associates in Michigan. Larry founded L.W. Norman & Associates in 1975 and is the firm president and executive general adjuster.

Under his leadership, his team of trained, experienced, professional technicians represent insurance carriers, self-insured entities, as well as third-party administrators in Michigan, Ohio, and Indiana.

For many years, Mr. Norman has been a proud member of the National Association of Independent Insurance Adjusters and the Honorable Order of the Blue Goose, International. He has been admitted into the Society of Registered Professional Adjusters, or RPA, as well.

In 2018, having served on numerous appraisal dispute panels, Mr. Norman became a certificated insurance appraiser and a certificated insurance umpire. Larry, we're very pleased to have you join us this morning.

Larry Norman: Thank you, John. I appreciate the opportunity to speak with you.

John: Today's podcast discussion is how the new Michigan no-fault law is impacting insurance claims.

Larry, for our first question, what insight can be gained by the traditional insurance provider or captive insurance carrier claims executives, risk managers, third-party administrators, and active, frontline, decision-making adjusters through this discussion on the Michigan no-fault law change?

Larry: I hope this presentation will provide the interested parties with a brief explanation regarding how the new no-fault system in Michigan has differed from the other states. In addition, I hope to explain some of the major changes in the new law.

Finally, it's my sincere desire that the information gleaned through this discussion can be used so that the claims professionals will have the necessary tools to appraise the new Michigan no-fault rules of the road.

John: Larry, can you give us some background on Michigan's current no-fault law and share with us something about the reformed Michigan no-fault law that will be fully implemented on July 2nd of this year, 2020?

Larry: Thank you, John. In 1973, Michigan adopted its current no-fault law which grants, among other things, personal injury protection, which includes medical expenses, lost wages, and replacement services that provide daily household assistance to individuals that are injured in traffic accidents.

Under the current statute, these benefits are granted to the eligible individuals regardless as to who was at fault for the accident. By the way, I should mention that the benefits are unlimited. By that, I mean the medical expense provisions of the law is unlimited.

This is where Michigan departs from the other 12 states that have no-fault laws in place in that Michigan is the only state that guarantees unlimited medical expenses that are reasonable and necessary that are incurred by an injured party regardless of the duration and the amount of time they will be required to receive medical care following a traffic accident.

Now in exchange for this benefit though, in Michigan, except in rare cases, can an injured party ever bring lawsuits for damages arising from a traffic accident. In other words, for the most part, they are unable to sue the at-fault driver for accidents or injuries or damages under the current law.

However, as of July 2nd, 2020, there will be a new law in effect that will require Michigan drivers to purchase limited medical expense benefits -- I shouldn't say require, let me rephrase that -- that will give them an opportunity to acquire medical expense benefits that are less than unlimited. In other words, they will have a choice to purchase unlimited medical expense coverage or limited medical expense coverage based upon their individual selection.

Now of course, there will be a corresponding reduction in the cost of premiums depending on the level of medical expense coverage the individual purchases. In other words, if a person secures a policy that has a very limited amount of medical expense coverage, they should receive a corresponding reduction in the cost of their insurance premiums.

However, everybody's not going to be entitled to this type of selection of medical expense coverage. There are certain people such as individuals that are business owners, that operate certain commercial vehicles, or people that use their private passenger automobiles in such endeavors as Lyft or Uber drivers, they will be unable to take advantage of this new, optional PIP program.

John: Larry, under the new plan, what happens in the case of a pedestrian or an occupant in a vehicle who does not have his or her own personal PIP policy and no one else in their household has PIP coverage either? Where do they turn to, to secure payments for their medical expenses and lost wages?

Larry: Great question, John. Under the current law, a person who is injured while a pedestrian or a passenger inside an automobile that is involved in the traffic accident may recover their PIP benefits from the owner or registrant of the vehicle that was involved in the accident.

On the other hand, if the owner or registrant of the vehicle does not have their own personal automobile policy, then the victim -- meaning the pedestrian or occupant of the car -- will be able to obtain their PIP benefits from the insurance carrier of the driver of the automobile's PIP carrier. Now that's under the current law.

However, under this new law, the pedestrian or occupant that is injured in a traffic accident must secure their PIP benefits from their own individual PIP carrier. In other words, they have to first seek coverage from the insurance carrier that provides PIP protection in their own household.

Unlike under the previous scheme of the no-fault system, pedestrian or vehicle occupant, would seek the coverage from the owner or operator's insurance PIP carrier, they have to go to the insurance carrier within their own household.

Now assuming that there is no coverage available within the household of the pedestrian or occupant of the vehicle, that's when the injured party must turn to the Michigan Assigned Claims Plan to receive their no-fault benefits.

John: Larry, let's discuss the coverage issues. What are the implications if the healthcare provider in good faith renders treatment to an injured person related to an auto accident that occurs in Michigan?

Larry: Wow, another good question, John. Under the old Michigan no-fault law, the Michigan Supreme Court ruled healthcare providers could only demand payment for their professional services through a cause of action brought under an appropriate assignment of benefits documented by the eligible injured party.

If somebody comes into the treating facility and desires treatment, under the old system, the healthcare provider is well-advised to secure an assignment of benefits from the victim in order to guarantee payment for their services.

Nevertheless, under this new law, the healthcare provider who acts in good faith can assert an independent cause of action or an independent claim against the insurance carrier of the party that they rendered medical care to, involving a traffic accident, as long as it is shown that it was done in good faith.

In other words, the health provider no longer has to secure a document or an assignment of benefits from the injured or eligible party in order to secure or guarantee payment of their services. I should say secure the payment of their services.

Now since we're on the subject of medical health providers, I'd like to talk to you about another wrinkle that has occurred within the new law. Under the new law, there is a movement afoot to start the application of medical fee schedules.

By that I mean the doctors, hospitals, clinics, and rehabilitation facilities and others who treat automobile accident victims will only be able to receive compensation for the specific duties or treatments that they rendered to accident victims under an appropriate schedule or an approved schedule.

Now under the current system, the cost or the amount that a doctor or a hospital or other healthcare providers render to an individual is only required to be reasonable.

If the healthcare professional can show that the cost that they're charging the insurance carrier is reasonable in terms of the services rendered...Unless insurance carrier can prove that the charges are unreasonable, the insurer have to pay the charge as presented.

Under this new system, the doctors, hospitals, and other people that I've outlined will be controlled or the cost will be contained based upon the schedule that's posted under the new law. In other words, there will be a cap on the doctor's fees or the healthcare provider's fees under the new system.

John: Larry, is there a possible remedy for individuals that incur large medical expenses higher than the PIP option that select?

Larry: Yes, there is. Again, that's a great question, John. Under the new scheme of the no-fault system -- I think this area is embraced in Section 31-35 of the new law -- an injured party may be able to sue the party that causes the traffic accident for their medical expenses, if the victim's medical expenses that exceed their limit of liable PIP benefits.

If the injured individual incurs medical expenses that exceed their selected policy limit, then the amount that is not covered by their insurance policy can be recovered through a cause of action against the responsible party.

Now this is a substantial departure from the current system where the insurance carrier for the injured party would be obligated to pay all the continuing medical expenses to the injured party forever until there is some measure of recovery. By that, I mean physical recovery of the injured person.

Incidentally, under this new plan, there could be a recovery action brought by the eligible medical benefits individual that lacks coverage for future medical expenses against the at-fault driver.

I emphasis this, such general damages as pain and suffering, it's generally agreed that even under the new law, the injured party will not be able to sustain a cause of action against a responsible party unless there is a showing that they sustained a serious impairment of a bodily function, a serious disfigurement, or death as a result of a traffic accident.

John: Larry, are you aware of any changes under the new law related to third-party damage claims?

Larry: Good question again. Under the new law, as provided, as well as provided under the old law, an insurer is liable to a claimant property owner for accidental damage to their tangible, physical property, such as a building, and the loss of use of their property regardless of the degree of fault or lack of negligence on the part of the insured, unless it can be proven that the claimant intentionally caused the accident to occur.

For example, an insured is waiting at a traffic light, the traffic light is red for his or her direction of travel. Before they were able to continue toward their destination, another vehicle comes along and strikes them in the rear. The impact forces the innocent insured into a building and the adverse party does not collide with the structure at all.

Under these circumstances, the innocent insured, or I should say the carrier for the innocent insured would be responsible to respond to the building owners for the damages up to a limit of $1 million.

Under the circumstances here, is all the innocent building owner has to prove is that the insured, the innocent insured, actually came in contact with their structure. The carrier does not have a recourse to deny or resist the claim of the innocent building owner.

By July 2nd, let's turn to automobiles -- without insurance coverage, or I should say without collision coverage, or has a deductible up to $3,000, can collect the damages of the car from the party at fault as a part of general damages against the party at fault.

There has to be a showing on the part of the claimant party that they were not responsible for the accident, or if their negligence contributed to the accident at all, their negligence was less than 50 percent a contributing factor to the accident.

However, if a claimant's vehicle was legally parked, the responsible party's insurance carrier would have to pay the lesser of the replacement cost or repair, including but not limited to a reasonable allowance for temporary transportation during the pending of a resolution of the claim.

John: Larry, can this change in Michigan law ultimately impact other states? I know your company does work in Ohio and Indiana. Can those states potentially be impacted by this law change?

Larry: I don't think so, John. I think the changes in Michigan will not motivate Ohio or Indiana to adopt an auto insurance no-fault plan. Both of these states appear to have employed auto insurance financial responsibility laws that are more or less centered on the concept of tort liability.

In other words, these states generally speak to allotment of compensation to injured parties based upon the theories of negligence and damages.

More to the point, I can say under the methods that are employed by Ohio and Indiana, it appears that their automobile claims disputes are resolved in a timely fashion to the satisfaction of the majority of their citizenry because the overall cost of insurance coverage in Ohio and Indiana is currently less than the cost of insurance that is incurred by Michigan citizens.

So I don't see either Ohio or Indiana adopting a system of no-fault in order to respond to their auto financial responsibility laws.

John: Larry, thank you so much for joining us today.

Larry: Thank you, John. I appreciate the opportunity.

John: That was Larry Norman from L.W. Norman and Associates in Michigan. Special thanks to today's producer, Scott VanDemark, and thank you all for listening to today's "Best's Insurance Law Podcast" and for associating with *Best's Insurance Professional Resources*.

If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at lawpodcast@ambest.com.

I'm John Czuba, and now this message.

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