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John A. Kluwin

MEDICAL PAYMENT ENDORSEMENT OF CASUALTY POLICIES

JOHN A. KLUWIN

The insurance industry and particularly the Casualty underwriters have made valuable contributions to society since the first casualty policy covering vehicles was written on a risk in Milwaukee, Wisconsin insuring the Company against liability arising from the negligent handling of its teams.[1]

From time to time the various companies engaged in the business have broadened the coverages afforded. The comparatively recent innovation of providing for the payment of medical, hospital and nursing bills and reasonable funeral expense, within the prescribed limits of the policy, is of great humanitarian value and will tend to alleviate much mental suffering following unfortunate accidents. This form of coverage can become a part of an Owner's, Landlord and Tenants policy as well as an automobile policy.[2] This coverage generally obligates the insuror to pay up to Five Hundred Dollars ($500.00), but by the payment of a larger premium protection may be secured up to Two Thousand Dollars ($2000.00).

This type of protection is so new that as yet no disputes have arisen which have reached the courts of last resort for decision. It is not unlikely, however, as this form of insurance becomes more popular and the accident frequency increases with all its unusual ramifications that many knotty problems will be presented to the practicing attorney, the companies claim representatives, and the courts for solution.

Consider for the moment that portion of the agreement which provides payment "to or for each person who sustains bodily injury, caused by accident, while in or upon, entering or alighting from the automobile" covered by the policy.

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[1] Vol. VI, Insurance Counsel Journal, Pg. 64.

[2] Endorsement: Medical Payments: To pay to or for each person who sustains bodily injury, caused by accident, while in or upon, entering or alighting from (1) the automobile classified as "pleasure and business" if the injury arises out of the use thereof by or with the permission of the Named Insured, or (2) any other private passenger automobile with respect to the use of which insurance is afforded under Insuring Agreement V of this Policy, if the injury arises out of the use thereof and results from (a) the operation of said automobile by the Named Insured or spouse or by a private chauffeur or domestic servant of either or (b) the occupancy of said automobile by the Named Insured or spouse, the reasonable expense of necessary medical, surgical, ambulance, hospital and professional nursing services and, in the event of death resulting from such injury, the reasonable funeral expense, all incurred within one year from the date of accident.
The insurance afforded with respect to such other automobile shall be excess insurance over any other valid and collectible medical payments insurance applicable thereto.

Let us assume two hypothetical cases. In the first, while A, the operator of an automobile, is standing on the left hand running board removing the sleet from his windshield, a truck passes by and without coming in contact with A's car strikes, knocking him to the pavement causing injuries which result in his death. Upon such a statement of facts one would have no hesitancy in deciding that the insuror of A would be liable for "the reasonable expense of necessary medical, surgical, ambulance, hospital and professional nursing services and * * * reasonable funeral expense," within the limits of the endorsement and provided that the same were "all incurred within one year from the date of accident." Under a similar set of facts but under a different form of policy, an insured was denied recovery. The court held that at the time of injury the deceased was not riding in an auto that was "wrecked" as defined in the policy, nor was he a pedestrian who was "struck, knocked down or run over while standing or walking on a public street or highway by an automobile or animal-drawn vehicle."[3] In the second case A, while changing a tire on his truck, was killed when another tire on his own truck exploded. It could hardly be argued that the insurer would be liable under such circumstances. Recovery has been denied based upon similar facts where the court has interpreted a different type of policy.[4] The case clearly sets forth the Court's reasoning and is indicative of what it would probably do if called upon to interpret the "Medical Endorsement" based upon similar facts.

The coverage afforded is so broad that it applies not only to the automobile specifically described in the policy, but applies as well to any automobile not owned by the insured for which insurance has been afforded under that form of extended coverage popularly known as "Use of other automobiles" coverage. Such insurance, however, with respect to other automobiles is excess insurance over any other valid and collectible medical payments insurance which may be applicable. For example: A is driving B's automobile and, as a result of an accident, is insured and incurs expenses as defined in the endorsement which expenses total Seven Hundred Eighty-five Dollars

[3] Merrit v. Great Northern Life Co., 236 Wis. 1, 294 N.W. 26 (1940).

[4] Miller v. Washington National Ins. Co. 237 Wis. 475 at p. 475, 297 N.W. 359 (1941): "Under an accident policy providing indemnity for loss of life from bodily injuries effected by the wrecking or disablement of any automobile or truck 'in which the insured is riding or driving' or by being accidentally thrown from such wrecked or disabled vehicle, the death of the insured from the explosion of a tire on the outer rear wheel of a truck, while the insured was outside the truck removing such wheel at a garage in order to repair a flat tire on the inner rear wheel was not within the coverage of the policy, although the tire about to be repaired had become deflated while the insured was driving the truck, and such deflation, necessitating repairs in order to place the truck in as good condition as before, could be considered a 'wrecking or disablement' of the truck within a definition clause of the policy."

($785.00). The policy on A's car with "Use of other automobile" coverage, extends coverage up to $500.00 as does B's policy. B's insuror would be required to pay the first $500.00, and A's insuror the balance, or Two Hundred Eighty-five Dollars ($285.00).

There is no coverage for an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of the automobile. Likewise there is no coverage to or for whom any workman's compensation benefits are payable. It should be noted in this connection that it is not necessary that such workmen's compensation benefits be actually paid.

There is no provision in the policy or the endorsement for any right of subrogation on the part of the insuror in the event that the insured or the party benefiting under such coverage has a valid claim against a negligent third party. Many interesting examples can be cited.[5]

Our Supreme Court has already decided that a defendant is not entitled to have plaintiff's damages reduced because of benefits the plaintiff has already received by virtue of a casualty policy purchased by him. Such a policy is in the nature of an investment and the only parties interested are the insured and the insuror.[6] A similar interpretation has been placed upon wages which have been voluntarily paid to the plaintiff by his employer during the period of the employee's disability.[7] A negligent tortfeasor is not entitled to a diminution of plaintiff's claim for nursing services, where a member of plaintiff's family renders without charge services as a nurse for the value of which a tortfeasor is liable.[8]

The inclusion of this type of coverage in an O.L.T. policy should be of inestimable value in the matter of improved public relations in respect to accidents arising in stores, hotels, restaurants, apartment buildings and in places of amusement. In the majority of cases there is no liability on the part of the owner or operator of the establishment, who for business reasons desires that the medical expenses be paid. By the purchase of such insurance the owner or operator of a place

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[5] (a) A, who is insured with X Co. collides with D. A collects for his medical and hospital expenses from X Co. In a subsequent suit can he recover again from "D" for these same expenses?
(b) A, who is insured with X Co., collides with D, causing injuries to E, a guest occupant, in A's car. X Co., pays all of E's medical and hospital expenses. In a subsequent suit against A, X Co. and D, can E recover again for these same expenses?

[6] Gatzweiler v. Milwaukee E.R.& L. Co., 136 Wis. 34, 39, 116 N.W. 633 (1908).

[7] Cunnien v. Superior Iron Works Co., 175 Wis. 172, 188, 184 N.W. 767 (1921); Campbell v. Sutliff, 193 Wis. 370, 374, 214 N.W. 374 (1927).

[8] Verhelst Construction Co. v. Galles, 204 Wis. 96, 102, 235 N.W. 556 (1931).

of business can insure the payment of such claims and thus retain a satisfied customer.

To summarize, one can say with authority:

(1) That upon the happening of an accident which involves injuries to any one who is entitled to the benefits of the Medical Payments Coverage the insuror owes within the coverage limitations, regardless of fault, the reasonable expense of necessary medical, surgical, ambulance, hospital and professional nursing services and in the event of death resulting from such injury, the reasonable funeral expense, all incurred within one year from the date of the accident;

(2) That the insuror has no right to a release from the party claiming benefits of the common law liability claim which may exist as a result of the accident, but is entitled to a receipt;

(3) That the insuror is entitled to a release only in the event of a compromise settlement of a disputed bill, but such a release shall apply to the disputed item only and an additional claim may be made for subsequent expenses incurred within one year from the date of accident and within the amount of coverage;

(4) That the coverage afforded provides for a prompt payment of the claimant's expenses;

(5) That the insuror has no subrogation rights;

(6) That the possibility exists that a claimant may collect twice for the same items of expense.