Obamacare – A defense to PA MV Injury Claims

By Douglas Marcello

Obamacare has dominated national news since its enactment. Cable talk shows are consumed by it.

Everyone has an opinion as to its merits or flaws. However, regardless of any personal views, the fact is that it remains the law. The key is how can we make the best of the situation.

In that regard, Obamacare can be used in the defense of Pennsylvania motor vehicle injury cases. In two recent cases we were able to use Obamacare through motions in limine (at the start of a trial), one filed in Lehigh County in November and another last month in Philadelphia, to preclude plaintiffs from presenting claims for past and future medical expenses. The motions played a key role in the favorable settlement of both actions for far less than the plaintiffs' demands.

So how does Obamacare help you defend against injury claims and potentially save you money? As you are aware, medical bills are a key component of any injury litigation.

Frequently we see instances where the claimant sees an attorney before seeing a doctor. The attorney then directs him to a medical provider, often a chiropractor or therapist, who provides treatment multiple times per week.

Before you know it, a case of minimal value has built a significant amount of medical bills. The plaintiff's attorney will then use the amount of incurred expenses as a barometer of the value of the case.

They will then seek to compound this "value" with a report from their medical "expert" opining that the claimant not only needed the treatments provided, but faces a lengthy course of future treatment by multiple disciplines. Therapy, injections, and frequent follow-up MRIs are but a few of the projected treatments that generate voluminous additional expenses to which you are allegedly exposed.

We have, in the past, written of numerous methods of forcefully defending against these tactics before suit is filed. Immediate push back, pre-litigation IME's, and early limited-time offers for settlement for less than the costs of defense are but a few of the available defenses. For more on these strategies, see the articles on our webpage—www.cdl-law.com.

Obamacare provides another potential defense to these medical multipliers when suit is filed. It provides the potential in Pennsylvania law to reduce, if not totally preclude, the plaintiff's recovery of medical expenses.

So how does it work? It starts with Pennsylvania's Financial Responsibility Law. Whether you call it the no-fault law, PIP Act, or first party benefit law, it is the law that deals with the insurance an owner has on their own vehicle for the benefit of themselves or passengers in that vehicle. Enacted more than twenty years ago, it was intended to keep down the costs of car insurance.

To do so, the Pennsylvania legislature created a system intended to limit the exposure of insurance companies. One of the ways it did so was to limit an insurance company's liability exposure to those who sue them for motor vehicle claims.

Among the methods of doing so was to provide that the insurer was not liable to suing claimants for certain expenses if the expenses were paid by another source. Thus, this limits the payments that the insurer of the car would have to pay and thus allow them to reduce their rates.

That law, at 75 Pa. C.S. § 1722, provides that a suing claimant may not recover medical bills which are "paid or payable" by a first party insurer or other insurer. This means that the plaintiff cannot recover medical expenses in a suit to the extent the bills were paid by his own auto insurance. Thus, if a plaintiff has first party (PIP) insurance to pay their medical bills (past and future), they cannot recover them in a lawsuit.

But wait, there's more. If the plaintiff has any other insurance that would pay the past or future medical bills, they cannot recover those as well. Again, this

keeps a sued auto insurer from having to pay for the plaintiff's medical expenses that have already been paid by their health insurer.

The only exceptions are workers' compensation payments or payments made by health coverage that are ERISA plans for which federal law provides for subrogation. Otherwise, if health insurance pays, the covered past and future medical expenses cannot be recovered in a lawsuit.

So where does Obamacare come in? The enactment of the Affordable Care Act mandates that all Americans maintain health insurance coverage. 26 U. S. C. §5000A. It further mandates that coverage be provided for pre-existing conditions. 42 USCS § 18001. One cannot presume that an individual will violate the law, such as the Affordable Care Act. See Gray v. Pennsylvania R. Co., 293 Pa. 28, 33 (Pa. 1928).

Thus, federal law mandates that everyone acquire health insurance coverage. Plaintiffs are required to have insurance to pay their medical bills.

As noted earlier, if the medical expenses are "paid or payable" by medical insurance, the plaintiff cannot recover them in a lawsuit. The expenses do not have to have been paid—just paid or payable.

Thus, if there is insurance which is available to pay the medical expenses, the costs cannot be recovered in a lawsuit. There is case law that provides that the burden is upon the plaintiff who filed the suit to prove that the claimed medical bills are not paid or payable by their health insurance. Otherwise, they cannot be recovered in the lawsuit.

Putting this all together, all Americans must obtain health insurance. Medical bills paid or payable by insurance are generally precluded from recovery in a lawsuit. Thus, Obamacare provides a means of precluding exposure for past or future medical bills in litigation.

The impact of carving out these damages? Huge. In settlement discussions, it denies the plaintiff the potential leverage of seeking an excessive settlement based upon your potential exposure for voluminous medical expenses that could be awarded by a jury.

At trial, it prevents the plaintiff from playing upon the sympathy of the jury by arguing that they face a mountain of medical expenses if not awarded by the verdict. It also precludes the legitimization of dubious injury claims based upon the "logic" that they must be seriously injured because the medical bills were/will be so large. It also takes away a large medical bill claim as a starting point upon which other elements of damage are heaped in building a big verdict.

The song tells us that if we can't be with the one we love, love the one we're with. Well, even if Obamacare doesn't give you that lovin' feeling (which another song tells us is a second hand emotion) use what you've got.

Regardless of your thoughts on Obamacare, you have a resource to limit your exposure and reduce potential settlements and verdicts.

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