

Insurer's PIP Rights Limited to Statutory Recovery

The Oregon Court of Appeals recently decided two cases involving PIP benefits in personal injury actions. In *Mid-Century Insurance Co. v. Turner* (March 26, 2008) (A132918), the injured driver Turner received an ambiguous form letter from her PIP insurer advising that the insurer was asserting direct intercompany reimbursement, but that if reimbursement were disputed, the PIP insurer was somehow simultaneously reserving rights to a lien or subrogation. The policy said that Turner should do nothing to prejudice the insurer's rights.

Turner refused a settlement offer from the negligent driver proposing a joint check that would have included the PIP insurer. She settled for liability limits with a check in her name only. Since the liability limits were spent and left no money for intercompany reimbursement, the PIP insurer sued its insured, Turner, for breach of the policy's "no prejudice" clause, for money had and received, as a third-party beneficiary for breach of the indemnity clause in the tortfeasor's release, and for breach of a fiduciary duty to hold the settlement to repay PIP benefits.

To avoid Turner's statutory objections, the insurer had told the trial court it did not seek recovery by way of a lien or subrogation. The insurer relied on the terms of its contract of insurance. The court of appeals held that the policy's "no prejudice" clause could not grant the insurer greater rights than were provided by the statutes on PIP recovery. The means of PIP recovery are exclusively statutory. All of the non-statutory claims were properly dismissed. See ORS 742.021(1); ORS 742.534; ORS 742.536; ORS 742.538. See also *Farmers Ins. Co. v. Chan*

(March 26, 2008) (A132921). You can view the *Mid-Century* opinion at www.publications.ojd.state.or.us/A132918.htm and the *Farmers* opinion at www.publications.ojd.state.or.us/A132921.htm.

On this topic, see also *State Farm Mut. Auto. Ins. Co. v. Hale*, 215 Or App 19, 168 P3d 285 (2007) (where PIP insurer withdrew intercompany request in response to settlement for liability limits, no belated subrogation recovery permitted); *Farmers Ins. Co. v. Conner*, ___ Or App ___, 2008 WL 1734764 (April 16, 2008) (PIP may stack with UIM benefits under ORS 742.542, making PIP reimbursement not permissible); *Gaucin v. Farmers Ins. Co.*, 209 Or App 99, 146 P3d 370 (2006) (ORS 742.544 PIP recovery limit is not a stand-alone authorization for recovery; trial court's two-step methodology using ORS 742.544 after ORS 742.542 reversed); *Farmers Ins. Co. v. American Fire & Cas. Ins. Co.*, 117 Or App 347, 844 P2d 235 (1992) (where no lien filed, liability insurer has no reimbursement duty after paying limits to injured party).

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