COMMENTARY

Proposed bills on No-Fault 'reform' will be legislative whiplash for state drivers

BY STEVEN M. GURSTEN

Steven M. Gursten

Michigan drivers have the best insurance system in the country, but some lawmakers in the Michigan Legislature want to dismantle that system—so insurance companies can reap even bigger profits. Instead of taking a hard look at these record-breaking insurance company profits, these proposed bills would dismantle important protections for drivers, and shift the costs and burden to Medicaid and the taxpayers.

Currently, under Michigan's one-of-a-kind No Fault law, Michigan drivers who are seriously injured in a car crash are guaranteed unlimited lifetime medical benefits, attendant care, wage loss and replacement services; to the extent those benefits are reasonably necessary to the injured driver's care, recovery and rehabilitation.

And injured Michigan drivers receive those benefits regardless of who was at fault in causing the accident. That's why the law is called Michigan "No Fault." But these generous No-Fault benefits are too good to remain true for some in Michigan's Legislature.

As such, it has introduced two bills, Senate Bills 0293 and 0294, to gut Michigan No-Fault's protections, especially, Michigan No Fault's crown jewel: unlimited, lifetime medical benefits for seriously and catastrophically injured drivers.

The sponsors say these bills will "lower insurance rates." But we've heard this siren song before.

We heard these promises in 1995, when Michigan's auto accident threshold law became the most difficult in the nation for innocent accident victims to recover under. And the promised rate cuts never materialized. Instead—even though auto accident lawsuit filings dropped dramatically—and especially after the *Kreiner v. Fischer* decision in 2004, insurance rates kept increasing. As did insurance company profits.

Whatever the lawmakers' reasoning, it does not justify taking away the important No-Fault protections that Michigan drivers currently have.

I've been a staunch defender of the Michigan No-Fault insurance system for my entire legal career. It is quite simply, one of the very best things that we have in our state. It isn't just lawyers, consumer groups, medical groups and hospitals, the AARP, the Coalition Protecting Auto No-Fault (CPAN) and the catastrophically injured who feel this way.

As recently as December 2010, the Insurance Institute of Michigan and its Executive Director Pete Kuhnmuench stated that "the benefits policyholders receive under the No-Fault policy in Michigan far outpace benefits available in any other state" and that "'Michigan policyholders have the Cadillac of auto insurance policies.'" (These quotes are taken from a December 21, 2010 press release that appeared on the Insurance Institute of Michigan website, but has since been removed.)

Previously, the Insurance Institute and Kuhnmuench have heaped the following praise on Michigan's No- Fault law:

• Michigan No-Fault provides "the best auto insurance coverage in the country."

• Michigan's No-Fault personal protection insurance (No-Fault PIP) is "the most efficient and effective auto insurance law in the United States."

• The Michigan No-Fault law "offer[s] the best No-Fault medical benefits of any state."

The incredible value of Michigan's No-Fault law has also been recognized by experts outside of Michigan:

• The American Insurance Association has said Michigan's No-Fault system "is cost effectively providing the nation's most extensive auto insurance benefits at affordable rates …"

• The Insurance Journal has said that, "[g]iven that Michigan's No-Fault injury benefits package is unlimited, the average price paid by drivers in the state is extremely reasonable."

For Michigan drivers who have been seriously in a Michigan car crash, Michigan's No-Fault law is literally a lifesaver. And, for the rest of us who have been fortunate enough to drive without serious incident on Michigan's roadways, Michigan's No-Fault law exists as a ready and vital safety blanket should fortunes change.

The worthy goal of saving money on insurance premiums can be better achieved by regulating insurance company profits in this state, as they are regulated in almost every other state in the nation, not to eviscerate the best insurance protection in America.

Steven M. Gursten is partner of Farmington Hills-based Michigan Auto Law. He is co-chair of the Michigan Association for Justice Auto Accident No-Fault Committee, and holds leadership in several other local and national legal organizations helping auto accident lawyers with traumatic brain injury cases. www.michiganautolaw.com.

Protect yourself from unethical debt collectors

BY CHERYL WYKOFF PEZON

If you ever settled a debt with a creditor or debt collector, keep the documentation—forever.

I am not exaggerating. It is the best way to protect yourself from future claims on the same old debt. Always get settlements in writing for disputed debts.

Most people have contacted a creditor with questions about a bill at some point in their adult life.

Probably in most cases, the issue is resolved without further problems. However, if the creditor turns over unpaid invoices to a debt collector, you may have to deal with the same issue all over again.

Even if you settled the debt with the creditor, it may end up in their "uncollectible pile."

And it does happen.

Eventually the company sells their outstanding account receivables to debt collectors who then try to collect on those invoices again.

I have seen it happen quite often. It is easy to take care of if you still have the original settlement paperwork with the original creditor.

Usually a letter to the debt collector will stop the onslaught of "attempt to collect" letters. If you reach a settlement with the debt collector, make sure that you get it in writing. However, that may not be the end of it.

Wait about a year and the first debt collecting agency sells their uncollectible debts to yet another debt collecting agency. Your settled debt may end up in the "uncollectible pile" again.

Don't ask how that can happen. It just does. Obviously someone made an error. There may be some violations of state and federal law on the part of the debt collector but that is of little consolation to you at this point.

You then start receiving "attempt to collect" letters on an account you vaguely remember.

Often these letters have an attractive payment plan or offer to cut the debt in half if you pay within 30 days. Some people will pay just to get the debt collector to stop calling or sending letters.

Or they mistakenly believe they really owe this debt and pay it. However, that may not end the issue—just wait another year.

Always keep good records.

Cheryl Wykoff Pezon is an associate attorney with Curtis and Curtis PC, a full service law firm located in Jackson, Michigan providing legal services and advice to individuals, families and businesses throughout mid-Michigan since 1901. Wykoff Pezon can be reached at cheryl@curtiscurtislaw.com or by calling (517) 787-9481.

COMMENTARY PAGE

The Legal News presents a weekly Commentary Page.

Anyone interested in contributing on an occasional or weekly basis to future commentary pages should contact Tom Kirvan, editor-in-chief, at tkirvan@legalnews.com.

A JUDGE'S JOURNAL

BY THOMAS E. BRENNAN

Turbulent time at the Michigan Supreme Court, Part VI

In the Dugout

The word dugout is older than baseball. It's basically just a hole in the ground. The most primitive form of shelter known to man.

When Harry Kelly wanted to share a confidence, he'd say, "We're talkin' in the dugout here."

A colleague of mine on the Michigan Supreme Court and one time governor, Harry was left for dead at the Battle of the Argonne Forest in 1918. Stacked in a temporary battlefield morgue, he managed to move enough to get noticed, and came home with only one leg, but otherwise very much alive.

Harry liked to say that the meetings of the Supreme Court in the conference room immediately after hearing oral arguments were "in the dugout."

It was a time and place where justices talked to each other off the record. Shared their impressions, preferences, hunches.

Nothing was in stone. Nothing was final. Nothing was binding.

Still, there were straw votes, and humans being what they are, the gut reactions that got shared in the dugout very often matured into the final, formal opinion of the court.

On January 24, 1983, the justices did what they always did in the dugout.

Chief Justice Williams went around the table, asking each member of the court to express an opinion about the case of *Attorney General v Riley*.

The split was predictable.

The "K" Kavanagh and the "C" Cavanagh both felt the attorney general was right. So did the chief justice. Brickley and Ryan were inclined to go the other way.

Which, again predictably, left the matter up to Charles L. Levin.

Chuck Levin, the only surviving member of the court on which I served, is a very intelligent man.

I remember him as a man who spoke and wrote in very long sentences. No combination of words or ideas was too complex or convoluted to overload his brain or his pen.

He was, and remains, a scrupulously gentle and caring human being who shows up at the most inauspicious funerals and sends thoughtful, if not timely, notes of condolence, appreciation or congratulation.

That gentility spills over into his decision-making.

He never jumps to a conclusion. Indeed, the very notion of a conclusion is nearly anathema to him. He is never happier than when a fork in the road has a multitude of prongs.

When it came time for Chuck to express his initial impression of the Riley case, he deferred. It was his usual way. He wanted to hear what the others would say. He wanted to weigh all the factors.

And so the discussion continued. But nobody changed their mind. It came back to Levin.

As he often did, he began by summarizing the arguments on both sides, noting the strengths and weaknesses of each.

Finally, he admitted what he so frequently had to admit.

He couldn't make up his mind.

That said, he reluctantly deferred to the ancient, logical, and common sense rule of judicial decision-making.

The Plaintiff always has the burden of proof and the burden of persuasion. If you make a claim, you have to prove your claim. If you want the court to do something, you have to prove your entitlement.

The attorney general hadn't convinced him that Justice Riley should be ousted.

And so he said, "I guess I'm with Dorothy."

A Time to Write

In the Supreme Court of Michigan, the process of writing opinions is often a free for all.

Having expressed their gut reactions on the day of argument, the justices repair to their caves to ferret out the footnotes and compose the soaring prose by which they will justify to the public, the legal profession, the media and the ages the very same conclusion they hinted at in conference.

These draft opinions are then circulated among the members of the court, and memos fly between and among their offices, agreeing, disagreeing, praising, criticizing, debunking, and concurring.

Eventually, the court complies with the mandate of Article 6, Section 6 of the State Constitution. It says:

"Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent."

In the case of *Attorney General Kelley v Riley*, the six participating justices ended up filing five opinions.

The longest came from Soapy Williams.

Covering 27 pages, the chief justice's opinion was divided by Roman numerals into eight segments. It cites the constitution, it cites statutes, it cites cases. It concludes that Dorothy Riley's appointment ended on January 1, 1983, and that newly elected Governor Blanchard was entitled to appoint someone to fill the vacancy caused by the death of Justice Moody.

Justices Kavanagh and Cavanagh concurred with the chief.

Mike Cavanagh had been elected to the Court of Appeals in 1975. Dorothy Riley came on that court a year later, the first woman to be seated there.

They were colleagues for nearly seven years, but they had known each other much longer. As a young lawyer, Cavanagh had been an investigator for the Wayne County Friend of the Court's office. His supervisor was Dorothy Comstock Riley.

The Court of Appeals sits in panels of three judges. Dorothy and Mike sat on cases together many times. They were friends.

Mike Cavanagh is an affable Irishman. Charming and witty, people like him and he likes people.

The Riley case greeted him on his first day on the Supreme Court. It was hardly the kind of decision he had dreamed of confronting while campaigning across Michigan two months before.

His concurring opinion revealed discomfort:

"(T)his case is not only of constitutional significance to our state, but it is also of personal significance to us, as we have been faced with the difficult task of making a legal judgment involving one of our own colleagues. Certainly no one has disputed defendant's personal qualifications to hold office."

Justice Levin's opinion revealed discomfort too, but not so much at ousting a colleague, as with embroiling the court in the process of judicial selection. He wrote:

"We should carefully guard the reputation of this Court. Which Governor's appointee sits on this Court matters far less in the long run than that this Court continue to be, and be perceived as, impartial and objective ... I am accordingly of the opinion that no judgment of ouster should be issued at this time by this Court in respect to the appointment of Justice Dorothy C. Riley."

On Friday, February 11, 1983, the six sitting justices met in the conference room and signed their opinions.

Then they directed the clerk, Hal Hoag, to prepare an order dismissing the attorney general's lawsuit. And giving it immediate effect.

Dorothy was back on the Court. The nightmare was over, she told herself.

(Continued next week in Part VII.)

Thomas E. Brennan is a former trial and appellate judge, and youngest chief justice of the Supreme Court in Michigan history. He is the founder of the Thomas M. Cooley Law School, the largest accredited college of law in the United States, formerly serving as its dean and president before retiring.