

## Oregon Case Update



### ***Oregon Court of Appeals Provides Guidance on a PIP Insurer's Duty to Promptly Pay PIP Benefits after Receiving Proof of Loss***

**From the desk of Cliff J. Wilson:** Under Oregon's no-fault personal injury protection ("PIP") statute, insurers must provide certain benefits (e.g. medical expenses and wage loss) to insured drivers involved in car accidents, without regard to fault. In the case of PIP medical benefits, the statute requires that benefits must be paid "promptly" after receiving proof of loss. The statute also provides that PIP medical expenses are deemed "reasonable and necessary" unless the PIP insurer provides the medical provider notice of denial within 60 days. Does the statute require that the PIP insurer pay the expenses within 61 days, though? Further, is the insured excused from complying with the terms of the insurance policy if the insurer does not pay the PIP medical expenses within 61 days? Read on to find out.

**Claims Pointer:** In this case, the Oregon Court of Appeals held that an insured party's attendance at an examination under oath ("EUO") was a condition precedent to filing an action for breach of contract. The court also held that the insurer's failure to pay or deny benefits within 60 days of receiving a proof of loss was not a material breach of the insurance policy. Importantly, the court relied on this holding to reject Plaintiff's argument that an insurer's failure to pay or deny benefits within 60 days made such benefits immediately payable 61 days after receiving the proof of loss.

#### ***Moore v. Allstate Ins. Co., 293 Or App 690 (September 6, 2018)***

Under Oregon's PIP statute, a driver involved in a motor vehicle accident is entitled to receive up to \$15,000 from their own insurance provider for "[a]ll reasonable and necessary expenses...incurred within one year<sup>1</sup> after the date of the person's injury..." The insurer is required to provide such benefits "promptly after proof of loss has been submitted to the insurer." If an insurer does not pay or deny the injured party's PIP medical expenses within 60 days, the statute establishes a presumption that the insured's treatment was reasonable and necessary. ORS 742.524(1)(a).

On January 16, 2015, Plaintiff Yasmine Moore ("Plaintiff") was in a car accident. Afterwards, Plaintiff tendered a notice of loss to her automobile insurance provider ("Allstate"). Because Plaintiff informed Allstate that there was a passenger in her vehicle at the time of the accident, Allstate sent letters to both Plaintiff and her passenger along with the necessary PIP applications. On August 3, 2018, Plaintiff submitted some of her medical bills to Allstate. Allstate responded with a notification that payment was "pending for further investigation while outstanding issues [were] resolved." Specifically, Allstate questioned Plaintiff's claim that she was accompanied by a passenger at the time of the accident. On October 1, 2015, in accordance with the insurance policy terms, Allstate requested that Plaintiff submit to an EUO before it would tender PIP benefits. Plaintiff refused, contending that "Allstate had breached its duty to pay the PIP benefits promptly...and, therefore, she was not obligated to submit to the EUO." She then filed a lawsuit claiming that Allstate breached its obligations under the applicable insurance policy and the PIP statutes.

Allstate responded by filing a motion for summary judgment arguing that "plaintiff could not assert a claim for breach



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because, by refusing to submit to an EUO, plaintiff was not in “full compliance with all the terms of the policy.” Plaintiff countered by asserting that ORS 742.524(1) “imposed a duty [on Allstate] to pay or deny the PIP benefits within 60 days” of receiving Plaintiff’s medical bills and, because more than 60 days had passed, Allstate had breached its duty to promptly pay PIP benefits, relieving her of her obligation to submit to an EUO. The trial court agreed with Allstate and granted its motion for summary judgment. Plaintiff appealed.

On appeal, Plaintiff again argued that Allstate breached the applicable insurance policy by failing to “pay or deny her medical bills within 60 days of receiving them.” Plaintiff relied on McBride v. State Farm Mutual Automobile Ins. Co., 282 Or App 675 (2016), where an insured was injured in a car accident but refused to participate in a medical examination as required by her policy. The plaintiff’s insurer in that case refused to pay her PIP benefits based on her failure to participate in the medical examination. The plaintiff sued, claiming her insurer’s failure to pay or deny her requested PIP benefits within the 60-day window of ORS 742.528(1) created a conclusive presumption that her treatment was reasonable. The *McBride* court ruled that the insurer’s failure to pay or deny benefits within 60 days of receiving proof of loss created a rebuttable, not conclusive, presumption of the reasonableness of plaintiff’s medical expenses. The *McBride* court further held that the plaintiff’s attendance at the medical examination was a condition precedent to receiving PIP benefits.

In this matter, Plaintiff conceded on appeal that attending the EUO was a condition precedent to filing a PIP action. Nonetheless, she argued that according to *McBride*, Allstate’s failure to pay or deny medical treatment within 60 days under ORS 742.524(1) created a rebuttable presumption of the reasonableness of Plaintiff’s medical treatment and “until that presumption has been rebutted, the medical bills are immediately payable on the 61st day after presentation.” The Court of Appeals rejected Plaintiff’s reading of both the statute and *McBride*. It held that, although ORS 742.524(1) does create a rebuttable presumption if PIP benefits are not paid within 60 days, it “does not mean ... that Allstate is statutorily required to pay or deny the PIP benefits within 60 days.” Instead, it merely shifts the burden to Allstate to prove that the benefits are not reasonable or necessary. Accordingly, because Allstate was not required to pay or deny Plaintiff’s PIP benefits within 60 days, it did not breach its policy. As a result, because Plaintiff refused to submit to an EUO, she was precluded from filing her lawsuit against Allstate. The Court of Appeals affirmed the trial court’s summary judgment in favor of Allstate

<sup>1</sup>A 2016 amendment to the statute extended the covered time-period to two years.

View full opinion at <https://cdm17027.contentdm.oclc.org/digital/pdf.js/web/viewer.html?file=/digital/api/collection/p17027coll5/id/15967/download#page=1&zoom=auto>



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