Failure to Warn: Medical Payment Provision can be a Trap for the Unwary

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Consider this situation: a plaintiff is injured and some medical bills are paid under the medical payment provision of the defendant's insurance policy. The plaintiff then sues the insured and settles all claims on account of his injuries and medical expenses in exchange for payment from the defendant's insurer. But, while the liability action was pending against its policyholder, the insurer rejects an additional medical payment claim from the plaintiff, contending it is untimely and unnecessary. May the plaintiff now bring a "bad faith" lawsuit against the insurer on account of the denial?

In *Barnes v. Western Heritage Ins. Co.*, No.C066002, the California Court of Appeal said "yes," reversing a summary judgment order and allowing plaintiff's claim for emotional distress, past and future medical treatment, lost earnings, and punitive damages to go forward to trial. It reasoned that "an insurer's obligation to indemnify its insured under the liability provision of an insurance policy is separate and distinct from its obligation to pay for medical expense under a medical payment provision of the same policy." This decision is the first appellate ruling on the issue in California, although a 1970 decision by the appellate division of a trial court reached a contrary result, barring the plaintiff's attempt to "double dip" for his medical payments. See, *Jones v. California Casualty Indem. Exch.* (1970) 13 Cal.App.3d Supp. 1. Decisions from other jurisdictions are split.

Perhaps the most important lesson, though, is in the unpublished portion of the opinion: the Court of Appeal rejected Western Heritage's reliance on the time limit contained within the medical payment coverage because it failed to call that provision to the plaintiff's attention. Rejecting Western Heritage's contention that notice was not required because the plaintiff was represented by counsel, the Court held there was a triable question whether Western Heritage was equitably estopped from relying on the time bar.

We take two lessons from this case. First, the recital of parties released when a personal injury claim is settled should always include the defendant's insurer. (Here, Western Heritage sought such a release, but the plaintiff refused to provide it.) Second, it is always wise to remind claimants of all potentially applicable time limits. While one part of the California regulations excuses such notice where a claimant is represented by counsel, the Court of Appeal found another section separately applicable.