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Appeals Court: Notice To No-Fault Insurer Doesn't Have To Specify All The Injuries

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The notice that auto-accident victims are required to give their no-fault insurer in order to collect insurance benefits does not have to specifically identify all their injuries, the Michigan Court of Appeals has ruled in a published decision.

In *Dillon v State Farm Mutual Automobile Ins Co* (issued May 3, 2016), the Court of Appeals said it was sufficient that the claimant gave a general notice that she *"suffered physical injuries in a motor vehicle accident."*

The claimant was in a car accident in 2008 and notified her no-fault auto insurer, State Farm, that she suffered lower back and left shoulder injuries. State Farm paid personal protection insurance (PIP) benefits for these injuries. In 2011, the claimant began having hip pain and sought treatment, and eventually had arthroscopic hip surgery. She attributed her hip problem to the 2008 car accident and sought additional PIP coverage from State Farm, which denied benefits. State Farm maintained that it did not receive notice of the hip injury within one year of the accident, as required under the No-Fault Act. Rather, State Farm claimed it only received timely notice of the claimant's lower back and left shoulder injuries.

The claimant filed suit against State Farm, seeking coverage for her hip treatment and surgery. The trial court denied State Farm's motion to dismiss the case, and a jury found in the claimant's favor. State Farm appealed, asserting it rightfully denied the hip injury claim, because the injury was not specifically identified in the notice it received in 2008. State Farm asserted the claimant's general notice that she had *"suffered physical injuries in a motor vehicle accident"* was insufficient.

Addressing State Farm's argument, the Court of Appeals focused on MCL 500.3145(1), which says:

"An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. … The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury."

In particular, the Court of Appeals had to determine what is meant by the phrase *"the time, place and nature"* of the injury, in the last sentence of §3145(1).

To support its argument, State Farm cited several unpublished appellate opinions, but not any published decisions, and did not cite any relevant decisions from the Michigan Supreme Court. In fact, the Court of Appeals noted that it could not find any published appellate cases that addressed the issue at hand.

Looking to the two unpublished opinions cited by State Farm — *Mousa v State Auto Ins Co* (185 Mich App 293 [1990]) and *Welton v Carriers Ins Co* (421 Mich 571 [1984]) — the Court of Appeals said these cases did not seem to support State Farm's argument:

"[I]f any conclusion can be reached it would be that Mousa stands for the proposition that the notice of loss does not need to identify the specific injury. … While hardly definitive of the question before us, it would seem that the Welton Court … viewed the notice of injury required by the statute in much more general terms than defendant proposes or than did this Court in the unpublished decisions relied upon by defendant."

The Court of Appeals then turned to the language of §3145(1) itself. Reviewing the first sentence, the Court said:

"[I]f the Legislature intended for the 'notice of injury' to identify a very specific injury, such as an injury to the left hip, rather than the mere fact that an accident resulted in some injury, it would have provided that 'notice of the injury' must be given."

Reviewing the last sentence of §3145(1), the Court of Appeals noted:

"[T]he Legislature tells us that, among other things, the notice shall give the 'nature of his injury.' Merriam-Webster's in this context defines 'nature' as 'a kind or class usu. distinguished by fundamental or essential characteristics.' Thus, we see reference to the general, not the specific."

Accordingly, the Court of Appeals held the notice of injury required by §3145(1) did not have to specify the hip injury, and it was sufficient that State Farm received notice that the claimant had *"suffered physical injuries in a motor vehicle accident."*

Because the claimant provided an adequate notice of injury within one year of the accident, the Court of Appeals concluded that §3145(1) permitted her to recover PIP benefits *"for any loss incurred within one year of the commencement of the action."*