STATE OF MICHIGAN

COURT OF APPEALS

MT. CARMEL MERCY HOSPITAL,

Plaintiff-Appellant,
Cross-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and HANI NAFSO,

Defendants,

and

HANNE NAFSO AND NAIMA NAFSO,

Defendants-Appellees,
Cross-Appellants.

March 22, 1993

No. 119978

ON REHEARING

Before: M.J. Kelly, P.J., and Jansen and T.J. Lesinski,* JJ.

PER CURIAM.

On July 6, 1992, this Court issued its opinion in this matter. See Mt Carmel Mercy Hospital v Allstate Ins Co, 194 Mich App 580; 487 NW2d 849 (1992)(Jansen, J., dissenting). The pertinent facts are set forth in the prior opinion. Id. The majority concluded that the language used in Allstate's February 24, 1987, letter purportedly denying Naima Nafso's claim for personal injury protection (PIP) benefits was unambiguous and constituted a formal denial of Naima Nafso's PIP claim. Id., pp 587-588. The majority further concluded that Mt. Carmel was entitled to a remand to allow it the opportunity to establish its promissory estoppel claim, which carries a six-year limitation period. Id., pp 590-591. On October 13, 1992, this Court granted rehearing in this matter.

After further review, we adopt the views expressed by Judge Jansen in her dissenting opinion. Id., pp 591-592. Allstate's February 24, 1987, letter purportedly denying Naima Nafso's claim for PIP benefits was ambiguous. In its opinion and order filed July 3, 1989, the trial court stated that "the letter does not specifically indicate a denial of claim." However, the court concluded that the letter did constitute a sufficient denial "based on counsel's presumed expertise in the field of No-Fault Insurance." This was improper.

What is required is a formal denial of liability. Mousa v State Auto Ins Companies, 185 Mich App 293, 295; 460 NW2d 310 (1990). The insurer must formally and explicitly deny liability, Johnson v State Farm Mutual Automobile Ins Co, 183 Mich App 752, 763; 455 NW2d 420 (1990), and the formal notice must be sufficiently direct. Mousa, p 295.

It is incumbent upon an insurer to formally and explicitly deny liability in a sufficiently direct manner so as to apprise a claimant that his or her claim is being formally denied. This is so, irrespective of the claimant's attorney's experience or expertise in the field of No-Fault Insurance.

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

As the trial court correctly noted, the letter dated February 24, 1987, did not specifically indicate a denial of Naima Nafso's claim for PIP benefits. The letter did not formally and explicitly deny liability in a sufficiently direct fashion and, coupled with the alleged representations made by Allstate regarding the fact that it was still considering the claim, a question of fact exists regarding the meaning attached to the letter by the parties. Because of the ambiguous nature of the letter, it was inappropriate for the trial court to construe it as a matter of law.

We vacate our previously filed opinion only to the extent that it concluded that the February 24, 1987, letter constituted an unambiguous, formal denial of Naima Nafso's claim for PIP benefits. In all other respects, our previously filed opinion remains in effect.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ T. John Lesinski