

A05-2020

CASE NO. A06-59, A06-58

State of Minnesota
In Court of Appeals

MINNESOTA STATE LAW LIBRARY

IN RE THE CLAIMS FOR NO-FAULT BENEFITS
AGAINST PROGRESSIVE INSURANCE COMPANY,

PROGRESSIVE INSURANCE COMPANY,

Appellant,

vs.

PEDRO SANCHEZ, ANETH GALINDO, FRANCISCO MARTINEZ,
ELIZUR GARCIA, ELMER MINERO, BLANCA BONAVIDES,
PEDRO FERNANDEZ, MARIA CASTREJON, LUIS PALLARES,

Respondents.

RESPONDENTS' BRIEF

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STATEMENT OF LEGAL ISSUES

- I. Where the parties had full opportunity to submit written briefs and oral arguments, and these submissions were received by the District Court, was Progressive denied due process?

Trial Court Ruling: The District Court confirmed the arbitration award and denied Progressive’s motion to vacate or stay the arbitration awards.

Apposite Cases:

Matthews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1975)

Apposite Statutes:

None

- II. Did the American Arbitration Association and the arbitrators appointed by it have jurisdiction to hear these cases?

Trial Court Ruling: The District Court found that the American Arbitration Association and the arbitrators appointed by it had jurisdiction to hear these cases because the cases qualify for mandatory arbitration in that the cases are No-Fault claims and Respondents’ requests for benefits were constructively denied by Appellant.

Apposite Cases:

Wolf v. State Farm Ins. Co., 450 N.W.2d 359 (Minn. Ct. App. 1989)

Westgor v. Grimm, 318 N.W.2d 56 (Minn. 1982)

Perry v. State Farm Mut. Auto. Ins. Co., 506 F.Supp. 130 (D. Minn. 1980)

American Family Ins. Group v. Kiess, 680 N.W.2d 552 (Minn. Ct. App. 2004)

Apposite Statutes:

Minn. Stat. § 65B.54

Minn. Stat. § 65B.525

- III. Did the District Court properly determine that it had jurisdiction to confirm the arbitration awards and to decline to vacate or stay the arbitration awards?

Trial Court Ruling: The District Court confirmed the arbitration awards and denied Progressive's motion to vacate or stay the arbitration awards.

Apposite Cases:

St. Paul Surplus Lines Ins. Co. v Mentor Corp., 503 N.W.2d 511 (Minn. Ct. App. 1993)

Armstrong v. Mille Lacs County Sheriff's Dept., 112 F.Supp.2d 849 (D. Minn. 2000)

Apposite Statutes:

Minn. Stat. § 572.18

Minn. Stat. § 572.19

Minn. Stat. § 572.09

- IV. Were sanctions properly assessed against Progressive because it had received statutory notice of Respondent's intention to seek sanctions pursuant to Minn. Stat. § 549.211 and nevertheless proceeded with its frivolous motions to Respondents' financial detriment?

Trial Court Ruling: The District Court awarded sanctions against Progressive in the amount of \$1,500 per Respondent.

Apposite Cases:

Douglas v. Schuette, 607 N.W.2d 142 (Minn. Ct. App. 2000)

Mutual Service Cas. Ins. Co. v. Midway Massage, Inc., 695 N.W.2d 139 (Minn. Ct. App. 2005)

Minnesota Humane Soc. v. Minnesota Federated Humane Societies, 611 N.W.2d 587 (Minn. Ct. App. 2000)

Apposite Statutes:

Minn. Stat. § 549.211

STATEMENT OF THE CASE

This is an appeal from the Order of the District Court dated November 18, 2005 which confirmed nine No-Fault arbitration awards in favor of Respondents and which denied the motion of Appellant Progressive Insurance Company (“Progressive”) to vacate or stay the arbitration awards.

The arbitration awards in question involved claims for No-Fault insurance benefits. The benefits had been awarded by qualified arbitrators appointed by the American Arbitration Association pursuant to the Minnesota No-Fault Arbitration Rules promulgated by the Minnesota Supreme Court, and the Minnesota No-Fault Insurance Act, Minn. Stat. § 65B.525.

Following the issuance of the awards, Progressive filed its Notice of Motion to Vacate the Award in the District Court on July 27, 2005.¹ Progressive’s motion asserted that the arbitrators did not have jurisdiction to hear the arbitrations, and that the arbitrations were barred by the mere allegations of fraud on the part of Respondents’ medical providers.

Respondents filed motions to confirm the arbitration awards pursuant to Minn. Stat. § 572.19, subd. 4. See A-25, A-39, A-53, A-59. In addition, Respondents filed motions for sanctions against Progressive and its attorneys pursuant to Minn. Stat. § 549.211, subs. 3 and 4. See A-33, A-47, A-53, A-59.

¹ Motion to vacate the awards in favor of Pedro Fernandez and Aneth Galindo were filed in Ramsey County (A-13), and a motion to vacate the award in favor of Blanca Bonavides was filed in Anoka County (A-21). These were later consolidated with the Hennepin County files of the other Respondents (A-91-92).

The District Court Order dated November 18, 2005 ordered that judgment be entered in favor of the nine Respondents in the following amounts:

Elmer Minero	\$6,010.68
Pedro Fernandez	\$5,715.00
Blanca Benavides	\$4,604.25
Maria Castrejon	\$3,131.82
Elizur Garcia	\$2,459.40
Aneth Galindo	\$6,135.00
Francisco Martinez	\$5,029.50
Luis Palleres	\$864.00
Pedro Sanchez	\$6,695.35

In addition, the District Court awarded statutory interest in favor of Aneth Galindo and Pedro Sanchez and assessed sanctions against Progressive in the amount of \$1,500.00 per Respondent.

Progressive filed its Notice of Appeal on or about January 9, 2006.

STATEMENT OF FACTS

Each of the Respondents was injured in a motor vehicle collision and sought chiropractic care from Dr. Josh Anderson at Alivio Chiropractic Clinic. Some of the Respondent received massage therapy from Andrea Bongart. Each of the Respondents was insured with Progressive under a policy of automobile insurance that included the statutorily-mandated No-Fault coverage.

Progressive initially accepted its legal responsibility to pay Respondents' medical expenses. Later, Progressive refused to pay Respondents' medical expenses, and effected a constructive denial of their claims for benefits. Progressive asserts that these claims should have never been arbitrated because the claims were never denied. However, "[i]nstead of denying the claims, Progressive

delayed taking official action, and sent periodic letters to [Respondents] stating their claims were “[p]ending further investigation.”” A-538. There has been no claim that any of the individual Respondents engaged in any fraudulent wrongdoing. A-538. In fact, Progressive specifically stated to the District Court that there had been no fraud on the part of any of the Respondents.

Respondents filed for arbitration of their claims with the American Arbitration Association pursuant to Minn. Stat. § 65B.525. Arbitrators were duly appointed and hearings were held pursuant to the Rules. Awards were rendered in favor of Respondents in the amount set forth above.

Following the issuance of the awards, Progressive filed its Notice of Motion to Vacate the Award in the District Court on July 27, 2005. The Notice of Motion contained only a conclusory allegation of fraud on the part of Respondents’ medical providers. It did not contain any allegations of fact or law to support that conclusion as required by Rule 7.02 of the Minnesota Rules of Civil Procedure. See A-2.

Respondents responded to the motion to vacate by filing motions to confirm the arbitration awards pursuant to Minn. Stat. § 572.19, Subd. 4. See A-25, A-39, A-53, A-59. In addition, each of the Respondents filed motions for sanctions against Progressive and its attorneys pursuant to Minn. Stat. § 549.211, subds. 3 and 4. See A-33, A-47, A-53, A-59.

On October 26, 2005 the District Court, the Honorable Charles Porter presiding, held a hearing on Progressive’s motion to vacate the arbitration award

and Respondents' motions to confirm. The transcript of the hearing reveals the following pertinent exchanges:

THE COURT: Well, I'll hear you on your motion to vacate.

MR. LOWDEN: Is it on a motion to vacate or a motion to stay, your Honor?

THE COURT: I have no intention of staying these proceedings based on the written submissions. If there's something else you think I ought to have, take it away.

MR. LOWDEN: Well, there would be nothing on it then, Your Honor.

Transcript of October 26, 2005 Hearing ("Transcript"), p.6.

MR. LOWDEN: There was absolutely nothing that the individual claimants did that was fraudulent.

Transcript, p.7.

THE COURT: And your tactical decision was not to fight that [the alleged fraud] on a claim-by-claim basis.

MR. LOWDEN: You can't fight that on a claim-by-claim basis, Your Honor.

THE COURT: Why can't you? I mean, you stand up at the arbitrations and say these are fraudulent bills. I don't know why you couldn't fight it on a claim-by-claim basis.

Transcript, pp.7-8.

THE COURT; It sounds to me that it is a matter -- it sounds to me like it is a matter of tactics.

MR. LOWDEN: I think it's a matter of law, and again I can brief that issue if you like, I wasn't prepared to brief that issue on the timeliness of it.

Transcript, p.8.

THE COURT: . . . You had the information that you could have brought to the attention of these arbitrators that every one of these bills looked the same And if you go before the arbitrator and you say here's our claim, here's what we have to date, we need another 30 days to make the rest of the submissions, please keep the record open, there's no question but that these arbitrators would have kept the record open. But as a tactical decision, you decided to not go and play in the sandbox and you don't show up, you don't submit your defenses, you let the thing go essentially by default, in some cases. That's a tactic. Maybe it was a good one. I'm not questioning the validity of the tactic, but the necessary consequence of the tactic is you got to win the way you chose to try to win and you lose in the way you didn't choose to try to win. These get confirmed.

Transcript, pp.9-10.

MR. LOWDEN: . . . [W]e should have never been in arbitration in the first place so none of these claims have been denied. They have been told that they were under investigation.

. . .

THE COURT: -- that question may very well be a legal question. You've got the answer to that question. You've already had that answer given to you at least twice. You are going to get the same answer from me.

MR. LOWDEN: As far as?

THE COURT: Whether you can keep the no-fault claim in the air indefinitely by sending a letter every 30 days saying we are investigating. That's the underlying basis for your claim that the claim should not have been arbitrated.

MR. LOWDEN: That's correct.

THE COURT: Well, you've already got your answer to that. You got your answer from Judge Burke and you are going to get the same answer from me, not because Judge Burke gave that answer, but because that answer happens to be correct.

. . .

THE COURT: You can conduct all the insurance fraud investigations you want, but in the meantime the no-fault scheme says pay the claimants.

Transcript, pp. 12-13.

MR. LOWDEN: Unfortunately, this investigation, Your Honor, took a year and a half and --

THE COURT: During which time you did virtually nothing to protect your client, did virtually nothing to accommodate the interests of the innocent claimants under the no-fault statute.

Transcript, p.18.

By Order dated November 18, 2005, the District Court confirmed the arbitration awards and imposed sanctions against Progressive in the amount of \$1,500.00 per Respondent. A-536-543. The District Court concluded that Progressive's indefinite suspension of Plaintiffs claims was a constructive denial of the claims, and that each of the arbitrators therefore had jurisdiction under the No-Fault Act to hear the cases. Further, because the fraud allegations in a separate federal court proceeding were not directed at any of the Respondents, and because the federal action did not mandate an automatic stay of the District Court proceedings, the District Court denied Progressive's motion for a stay. Finally, the District Court granted Respondent's motions to confirm their arbitration awards, and determined that sanctions were appropriate. A-542-543.

STANDARD OF REVIEW

The standard of review on appeal from the decision of a District Court that has confirmed an arbitration award has been established in the case law as follows:

1. The review is extremely narrow and will be confined to the sole issue of whether the arbitrator exceeded his or her authority. Liberty Mutual v. Sankey, 605 N.W.2d 411, 413-414 (Minn. Ct. App.2005).
2. It is not proper to examine the underlying evidence or delve into the merits of the case. Id.
3. Only rulings of law, and not decision of fact, are to be reviewed. Id. The review of legal rulings will be limited to the record created in the arbitration. Affidavits of the arbitrator, attorneys, or others are not to be considered to impeach the award. Grudem Brothers Co. v. Great W. Piping Corp., 213 N.W.2d 920 (Minn. 1973).
4. Great deference will be given to the decisions of the arbitrator. Only clear errors of law are subject to review. Liberty Mutual at 413.
5. The scope of the review is limited to the issue of whether the party challenging the arbitration award has met the burden of showing that there are grounds for vacation of the award as itemized in Minn. Stat. § 572.16 et. seq. No other review is appropriate beyond the statutory grounds.

“It is well settled that arbitration is meant to be a final judgment of both law and fact.” Johnson v. Consolidated Freightways, Inc., 420 N.W.2d 608, 613 (Minn. 1988). “Minnesota law clearly establishes that an arbitration award constitutes a final judgment on the merits for collateral estoppel purposes.” Landmark Partners, Inc. v. Michael Investments, 2002 WL 17688, 3 (Minn. App.

District Court in conclusory fashion, and were admittedly not based on any alleged fraudulent activity of any of the Respondents. Transcript, p.7. Rather, Progressive's fraud claims were based on alleged conduct of certain medical providers, and there is a federal court action pending in which Progressive can and is vigorously pursuing these purported claims.

The evidence (and lack thereof) presented to the District Court in connection with Progressive's motion to vacate or stay the arbitration awards was anything but "progressive." Rather than reconsider its dubious tactics after receiving Respondents' notice of their intention to seek an award of sanctions, Progressive continued to proceed with its ham-handed and bullying approach to this litigation. Interestingly, Progressive points to Respondents' alleged illegal alien status (clearly irrelevant) and asserts that the Respondents are somehow victims of their allegedly-predatory medical providers, as if the course of this proceeding establishes that Progressive is looking out for Respondents' best interests. Appellant's Brief, p. 3. See Transcript, p.18. The evidence more fairly shows that Respondents have been the victims of a predatory, intimidating and intransigent insurance company which readily accepts premiums from alleged illegal aliens, and then delays and refuses to pay earned benefits on entirely specious grounds, likely hoping for claims avoidance due to deportation attrition. The awards of sanctions are subject to attack only on the ground that they are not high enough.

ARGUMENT

The purpose of the No-Fault Act is to encourage reasonable, necessary and related medical care for accident injuries by facilitating the prompt payment of medical bills. Minn. Stat. § 65B.42. In addition, judicial economy is supposed to be served under the No-Fault Act by creating a mandatory arbitration system. Id. The No-Fault Act was enacted in part in response to insurance company abuses of claimants legitimately seeking the payment of medical and other benefits. In particular, it was designed to prevent what has occurred in these cases in which nine legitimate claimants have been unable to get their medical bills paid nearly two years after having been involved in motor vehicle accidents while insured with Progressive. Due solely to the actions of Progressive, the interests of judicial economy have certainly not been served here to date.

Minnesota courts strongly favor arbitration, and are cautious about interfering with an arbitrator's authority. Beebout v. St. Paul Fire & Marine Ins. Co., 365 N.W.2d 271, 273 (Minn. Ct. App. 1985). District courts are to confirm arbitration awards unless it would be more appropriate to vacate, modify, or correct the award. Minn. Stat. §572.18. The party seeking to vacate an arbitration award bears the burden of proving the award is invalid. Nat'l Indem. Co. v. Farm Bureau Mut. Ins. Co., 348 N.W.2d 748, 750 (Minn. 1984).

I.

WHERE THE PARTIES HAD FULL OPPORTUNITY TO SUBMIT WRITTEN BRIEFS AND ORAL ARGUMENTS, AND THESE SUBMISSIONS WERE RECEIVED BY THE DISTRICT COURT, PROGRESSIVE WAS NOT DENIED DUE PROCESS

Progressive goes so far in its zealotry to seek to interject the Due Process Clause of the United States Constitution into this appeal. The Due Process Clause provides that no person shall be deprived of life, liberty or property without due process of law. Under Matthews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1975), this means the opportunity to be heard at a meaningful time, and in a meaningful manner.

In the present case a hearing was held on October 26, 2005 to determine Progressive's motion to stay the arbitration proceedings and to determine Respondents' motions to confirm the arbitration awards. Progressive was given plenty of advance notice of the hearing and was permitted to submit a memorandum of law to the District Court addressing its motion for a stay and its assertion that there was no subject matter jurisdiction. Appellant's Brief, p. 7. It was also given the opportunity to tender further submissions at the motion hearing on October 26, 2005, but declined to do so. Transcript, p.6. It was also free to submit evidence of alleged fraud at the hearing, but failed to do so, just as it had failed in the arbitrations at issue.

Despite its blatant failures in connection with the October 26, 2005 hearing, Progressive now complains that the District Court violated its due process rights by "render[ing] an Order denying all of [Progressive's grounds for vacating the

arbitration award along with the issue on staying the proceedings.” Appellant’s Brief, p. 7. Accordingly, it would appear that under Progressive’s analysis, any insurance company that loses a motion hearing is entitled to claim a denial of due process merely by virtue of having lost. It is axiomatic that the Due Process does not guarantee particular results for litigants, just that they will have a meaningful opportunity to be heard. Progressive failed to prevail in its motions for one of two reasons; either it had no legal authorities or evidence to support its fraud, stay and vacation allegations, or it squandered its opportunity to present the authorities and evidence. See Transcript, p.6. In either event, Progressive was given the opportunity to present evidence and legal arguments, did so to the extent it was able, and justifiably lost on the merits. It is not that Progressive did not have a meaningful opportunity to be heard, but that it did not make meaningful use of its opportunity. The District Court’s decision clearly does not offend the Due Process Clause. Progressive’s nonsensical due process argument is yet another example of its willingness to waste the court’s and Respondents’ time with frivolous claims in violation of Minn. Stat. §549.211.

II.

THE AMERICAN ARBITRATION ASSOCIATION AND THE ARBITRATORS APPOINTED BY IT HAD JURISDICTION TO HEAR THESE CASES

Under Minn. Stat. § 65B.54, an insurer has an obligation to promptly investigate claims, and the responsibility to either accept its payment obligation or deny coverage. The Supreme Court has promulgated rules for mandatory

arbitration governing actions filed with the American Arbitration Association. Minn. Stat. § 65B.525. Under these rules, known as the Rules of Procedure for No-Fault Arbitration and set forth in § 65B.525, a claim is deemed denied if an insurer does not respond to the claim within thirty days after receipt of reasonable proof of the claim. Rule 5. Upon receipt of reasonable proof of the claim, the burden shifts to the insurer to investigate the claim and either pay it or specifically deny payment within the thirty day period. Wolf v, State Farm Ins. Co., 450 N.W.2d 359, 362 (Minn. Ct. App. 1989). The American Arbitration Association accepted all of the cases submitted by the Respondents because their petitions for arbitration established that jurisdiction with the American Arbitration Association was proper.

It would not be in keeping with the No-Fault Act's policy in favor of prompt resolutions of claims to permit insurance companies to indefinitely delay payment of claims by writing letters to their insured every thirty days informing them that their claim is being investigated. Rather, the No-Fault Act imposes an absolute statutory duty to make a decision within thirty days. Further, Minn. Stat. Ch. 72A does not suspend an insurer's obligation under the No-Fault Act.

Likewise, it would not be in keeping with the tenets of the No-Fault Act to permit insurers to indefinitely suspend their obligation to pay No-Fault benefits by merely alleging fraud. Rather, the insurer must specifically plead the alleged fraud with particularity, and bears the burden of proving it in the context of the

mandatory No-Fault claim. Wolf, 450 N.W.2d at 362; Michael-Curry Companies, Inc. v. Knutson Shareholder Liquidating Trust, 449 N.W.2d 139 (Minn. 1989).

Under Minnesota Rules of Civil Procedure 9.02, it is required that fraud be pled with particularity. Westgor v. Grimm, 318 N.W.2d 56, 58 (Minn. 1982), Fitzgerald v. St. Joseph's Hospital, 221 N.W.2d 702, 703 (Minn. 1974).

Moreover, fraud must also be proven with specificity. Hutchins v. Bassin, 212 N.W. 202, 203 (Minn. 1927), Rogers v. Drewry, 264 N.W. 225, 226 (Minn. 1935), Twin Ports Oil Co. v. Whiteside, 15 N.W.2d 125, 126-127 (Minn. 1944).

The issue of fraud is a purely factual issue within the jurisdiction of the arbitrator. An insurer has the obligation to produce any proof it has of fraud at the arbitration. In doing so, the insurer cannot rely on mere allegations, but has to present proof. In the present case, Progressive failed to do this. Rather, Progressive failed to show up for some arbitrations, and participated in other arbitrations without even raising the issue of fraud. Accordingly, Progressive's belated allegations of fraud, not presented in the arbitrations, do not serve to deprive the arbitrators of jurisdiction.²

Progressive contends that the District Court created a new form of claim denial in No-Fault cases, namely constructive denial. Appellant's Brief, p. 8.

First, the theory of constructive denial is not new or novel. It was established at

² Further, Progressive ignores the issue of waiver. Progressive has admitted that it never raised the claim of fraud in the arbitrations. Progressive also admits that it never presented any evidence of fraud at the arbitration hearings. In fact, Progressive made a "tactical decision" not to present any such evidence at the arbitration hearings. That being true, it is quite clear that Progressive has waived its fraud claims by its failure to assert them in a timely fashion.

least as long ago as 1980 in Perry v. State Farm Mut. Auto. Ins. Co., 506 F.Supp. 130, 134 (D. Minn. 1980), and later recognized in American Family Ins. Group v. Kiess, 680 N.W.2d 552, 557 (Minn. Ct. App. 2004). Second, the District Court did not create a new form of denial. Rather, the District Court merely stated the obvious, that the actions of Progressive in not paying Respondent's claims is a denial no matter what excuse is given for non-payment. Transcript, p.12-13. Alleging an ongoing investigation or even alleging fraud does not relieve an insurer of its duties under the No-Fault Act. It must still adhere to the rule requiring prompt payment, or submit to mandatory arbitration and meet its burden of proof to deny payment.

In this case Progressive did not pay Respondent's claims for medical benefits, and this unpaid status persisted for in excess of thirty days. Under these circumstances, Progressive was required to submit to mandatory arbitration and meet its burden of proof to deny payment. If Progressive desired to take discovery in the arbitrations, or seek a continuance to obtain evidence, it was free to ask the arbitrators for assistance. Transcript, p.9-10. However, Progressive did not do any of these things, instead failing to appear for some arbitrations and participating in others without objection. These actions and inaction of Progressive did not deprive the arbitrator of jurisdiction to hear the evidence and decide whether benefits could be denied.

III.

THE DISTRICT COURT PROPERLY DETERMINED THAT IT HAD JURISDICTION TO CONFIRM THE ARBITRATION AWARDS AND PROPERLY DECLINED TO VACATE OR STAY THE ARBITRATION AWARDS

Arbitration is a respected and honored method of dispute resolution. Appeals from the decisions of arbitrators is strictly governed by the provision of Minn. Stat. § 572.01, et seq. This statute mandates that the District Courts “shall” confirm arbitration awards in the absence of a clear showing of a legal error by the arbitrator. Minn. Stat. § 572.18. Accordingly, a district court’s scope of review of an arbitration award is very narrow.

A district court’s ability to review arbitration awards is set forth in its entirety in Minn. Stat. § 572.19, Subd. 1, which states as follows:

Upon application of a party, the court shall vacate a award where:

- (1) The award was procured by corruption, fraud or other undue mean;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of an party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrator refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provision of section 572.12, as to prejudice substantially the rights of a party;
or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 572.09 and the party did not participate in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

Minn. Stat. § 572.19, subd. 1. Minn. Stat. § 572.19, Subd. 4, follows this up by stating that “[i]f an application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.” Minn. Stat. § 572.19, subd. 4.

§ 572.19 contains no provision whatsoever providing for staying a valid arbitration award on appeal for any purpose. § 572.09 is the only provision within the Uniform Arbitration Act which addresses the possibility of the imposition of a stay. § 572.09(b) provides that, on application, a court may stay an arbitration proceeding on a showing that there is no agreement to arbitrate. This is clearly not applicable here, as arbitration is mandatory under the No-Fault Act and the insurance policies issued thereunder, including Respondents’ policies. § 572.09(d) provides for *other actions or proceedings* to be stayed *pending arbitration*. Other than establishing the statutory preference for the arbitration of arbitrable disputes, this statute is not applicable. Pursuant to § 572.19, the District Court only had jurisdiction to either vacate the arbitration awards or to confirm the awards. There was no applicable provision for a stay. Accordingly, it cannot be convincingly argued that the District Court exceeded its authority in simply applying the statute.

Apart from the absence of a stay as a remedy under the statute, Progressive provided neither the arbitrators in the nine arbitrations at issue, nor the District Court on appeal, with any evidence of fraud to support the claimed remedy. As is stated above, fraud must be pled with particularity and must be specifically

proven. Supra, p. 13. A litigant cannot meet his burden merely by virtue of the allegations in a complaint in a lawsuit in a separate venue. Allegations in a complaint are not proof of the factual allegations set forth therein, but are mere allegations subject to rebuttal. It is hardly surprising, or grounds for appeal, for Progressive to have failed to convince the District Court that the arbitration awards were procured by fraud when Progressive relied solely on the allegations in the federal lawsuit³ and its legal counsel admitted in open court that he had no actual evidence and nothing further to add. Transcript, p.6.

Apart from the absence of a stay remedy in § 572.19, district courts have the general discretion to grant stays for the sake of judicial economy. St. Paul Surplus Lines Ins. Co. v Mentor Corp., 503 N.W.2d 511 (Minn. Ct. App. 1993); Armstrong v. Mille Lacs County Sheriff's Dept., 112 F.Supp.2d 849 (D. Minn. 2000). However, Progressive did not provide the District Court with any proof to convince it to exercise its discretion to do so. Transcript, p.6. Progressive's argument for a stay in the interests of judicial economy is flawed, and in fact the opposite is true. That is, judicial economy was served by the District Court's refusal to grant a stay.

Mandatory arbitration in the context of No-Fault claims was created by the Supreme Court to promote judicial economy. It is a quicker means to have claims determined, and the parties can avoid the formal and often lengthy process of litigating their insurance benefit claims in the district courts. The parties receive

³ Progressive Ins. Co., et al. v. Alivio Chiropractic Clinic, Inc., et. al., Civil No. 05-0951 (D. Minn. 2005).

due process in the arbitration proceedings in that they are permitted to introduce any evidence they wish in support of their respective positions. This even includes evidence that would not normally be allowable in the district courts.

If an insurer in a No-Fault arbitration has proof of fraud and can convince the arbitrator of the validity of its position, the insurer would prevail in the arbitration and there would be no grounds for the claimant to appeal to the district court, and no reason for anyone to file a federal lawsuit. The insurer would not be required to pay the claim, the doctor would not be able to proceed directly against the insurer to collect payment, and if fraud is proven the insurer could report it to the doctor's licensing board.

The proper procedure to follow to ensure judicial economy is mandatory arbitration because it avoids the costs and attorney's fees associated with this case, namely nine appeals to the District Court following the arbitration decisions with associated filing fees, motions to the Supreme Court to consolidate the cases, a federal district court filing with its associated costs and the appeal to this Court of all nine cases. It cannot be reasonably argued that Progressive's motions seeking stays promotes judicial economy.

The only way Progressive's choice of proceeding can make sense from a judicial economy standpoint is if it does not have any evidence of fraud, but merely suspects it. Under these circumstances, it would be to Progressive's advantage to delay for as long as possible the payment of No-Fault benefits until it can conduct discovery in the federal lawsuit to try to locate proof of possible

fraud. In fact, this is what has occurred. Progressive has failed to provide the nine arbitrators or the District Court with any tangible evidence of fraud of any kind. It relies solely on the mere allegations in its complaint in an obvious attempt to delay for as long as possible the payment of No-Fault benefits.⁴

Even if Progressive paid the medical benefits to Respondent, it could still recover the payments back from the medical providers, provided it is able to prove fraud in the federal lawsuit.⁵ Progressive acknowledges this in its Brief.

Appellant's Brief, p. 22. Further, Progressive could have avoided paying Respondents' claims entirely simply by providing each of the arbitrators with proof of actual fraud. Progressive had or has multiple remedies available to it to recoup any No-Fault benefits paid as a result of fraud. A court-imposed stay, which is a remedy that is not provided for in § 572.19, is not a necessary tool that Progressive needs in its already-substantial arsenal. This is especially the case where Progressive has acknowledged that Respondents were not participants in the alleged fraud. Further, the course of this proceeding evidences that such a tool would not advance judicial economy, but rather would be contrary thereto.

⁴ Progressive makes mention in its Brief of Respondents' alleged "illegal aliens" status, and asserts they were targeted by predatory medical providers in connection with an alleged insurance fraud scheme. Appellant's Brief, p. 3. Suffice it to say that Progressive stands to avoid paying No-Fault benefits if these claimants are deported at some point due to their alleged illegal status. At some point in this delayed course of events, one must question whether the real scheme at play here is an effort by Progressive to utilize claims payment delays in order to eventually rid itself of claims through attrition arising from the course of deportation events.

⁵ It should be noted, however, that Progressive has been resoundingly unsuccessful to date in its efforts to establish fraud in the federal action. Certain defendants in the federal action brought motions to dismiss Progressive's RICO claims, and Judge Magnuson granted these motions and dismissed these claims. Memorandum and Order of the Honorable Paul A. Magnuson, filed October 24, 2005 in Progressive Ins. Co., et al. v. Alivio Chiropractic Clinic, Inc., et. al., Civil No. 05-0951 (D. Minn. 2005).

IV.

SANCTIONS WERE PROPERLY ASSESSED AGAINST PROGRESSIVE BECAUSE IT HAD RECEIVED STATUTORY NOTICE OF RESPONDENT'S INTENTION TO SEEK SANCTIONS PURSUANT TO MINN. STAT. § 549.211 AND NEVERTHELESS PROCEEDED WITH ITS FRIVOLOUS MOTIONS TO RESPONDENTS' FINANCIAL DETRIMENT

A district court's decision whether to award sanctions under Minn. Stat. § 549.211 is discretionary. Douglas v. Schuette, 607 N.W.2d 142 (Minn. Ct. App. 2000). This Court is to review the District Court's decision to impose sanctions against Progressive under an abuse of discretion standard. Minnesota Humane Soc., 611 N.W.2d at 590-91. Monetary sanctions may be awarded against a party who engages in action to cause unnecessary delay in litigation. Id. p. 591. Such sanctions are to be awarded in a sum sufficient to deter repetition of the conduct. Id.

In this case the statutory requirements for the imposition of sanctions against Progressive have clearly been met. First, each of the nine Respondents gave progressive a 21-day notice listing the grounds for the notification of their intention to seek an award of sanctions, as required by § 549.211, subd. 4. Specifically, Respondents' notices informed Progressive that sanctions were being sought because:

1. Progressive's motion to vacate violated Minn. R. Civ. P. 7.02 and 9.02 in that it failed to state the grounds for such motion and failed to contain any statements of law or fact to support the motion;
2. The motion to vacate was contrary to, and unwarranted by, existing law and without any non-frivolous argument for the extension, modification or reversal thereof;

3. The motion to vacate failed to contain any factual allegations or contentions which had evidentiary support; and
4. That Progressive, and its attorney, had engaged in repeated violations of the Minnesota Rules of Civil Procedure.

See, e.g., A-75-76.

Having received nine notices, Progressive cannot claim an absence of notice. Following its receipt of these nine separate notices, Progressive indisputably refused to withdraw its offensive pleadings, and forced Respondents to litigate the above-discussed issues. At this hearing, Progressive's attorney admitted he had nothing to submit the court District Court establishing Respondents' involvement in fraud. Transcript, p.7. Progressive's unwarranted actions in this regard forced Respondents to defend against Progressive's frivolous motions, and forced them to pursue a motion for confirmation of their arbitration awards, to their substantial economic detriment.

Unfortunately, Progressive's abusive conduct in this matter, warranting sanctions, is not unprecedented in the No-Fault context. In Mutual Service Cas. Ins. Co. v. Midway Massage, Inc., 695 N.W.2d 139 (Minn. Ct. App. 2005), a No-Fault insurer was found to have acted in bad faith in bringing an action under the Minnesota Professional Firms Act against massage, physical therapy, and neurological clinics which provided medical services to motor vehicle accident victims. Mutual Service, 695 N.W.2d at 143. The insurer had delayed resolution of the No-Fault claims for treatment expenses and had attempted to use the

discovery process to investigate clinics' patients and practices. Id. Progressive's conduct here is analogous to the conduct of the insurer in Mutual Service, but is actually worse. At least in Mutual Service the insurer did not commence litigation against the innocent accident victims, and actually paid their arbitration awards. Id. p. 141. Rather, the insurer aimed its wayward conduct toward the medical providers only. In the present case, on the other hand, Progressive has zealously gone after the innocent accident victims, despite its acknowledgment that it has no evidence of any fraudulent activity on their part.

Also on point is Hansen v. American Nat. Bank, 396 N.W.2d 642 (Minn. Ct. App. 1986), in which a litigant's repeated stale claims of fraud and lack of jurisdiction were found to justify an award of attorney's fees to the opposing litigant under § 549.211. Likewise, in the present case Progressive's frivolous claims of fraud and lack of jurisdiction justified the District Court's imposition of sanctions. See also Pierce v. Midwest Family Mut. Ins. Co., 390 N.W.2d 358 (Minn. Ct. App. 1986) (award of sanctions against a No-Fault insurer who submitted an untimely motion to vacate an arbitration award).

Under § 549.211, sanctions are allowable in the discretion of a district court and cannot be overturned on appeal unless there is an abuse of discretion. Minnesota Humane Soc., 611 N.W.2d at 590-91. Although the offending party is entitled to "a reasonable opportunity to respond" under § 549.211, subd. 3, a district court is not required to conduct a full-blown evidentiary hearing on the issue of sanctions. § 549.211, subd. 3. Further, Progressive has not stated any

grounds establishing that the District Court's decision to award sanctions constitutes reversible error. The District Court's award of sanctions against Progressive must stand.⁶

CONCLUSION

The purposes of the No-Fault Act are best served when parties to a No-Fault dispute proceed through mandatory arbitration. This promotes the interest of judicial economy, to the benefit of both the litigants and the court system. It allows a prompt resolution of benefit claims, while at the same time allowing each party due process of law. It also curbs abuses prevalent in the insurance industry by leveling the playing field between claimants and the insurance companies. Progressive's abusive handling of these nine innocent accident victims points to the merit of the No-Fault Act because it brings to light the delay in payment, costs, and attorney's fees, not to mention the waste of judicial time, that proceeding in a contrary fashion entails.

As the District Court pointed out, Progressive chose to proceed in a tactical manner in which it essentially ignored the mandatory arbitration process. Progressive could have provided each arbitrator with its alleged evidence of fraud, and presumably would have prevailed in each arbitration if its evidence stood up to analysis. The decision of each arbitrator would have been final and binding,

⁶ The existing sanctions award imposed under Minn. Stat. §549.211 is against Progressive only. Respondents have also served a motion in the District Court seeking an award of sanctions against Progressive's counsel. However, that motion has yet to be decided. Further, Respondents intend to assert a claim for sanctions against Progressive and its counsel under Minn. R. Civ. App. P. 139.06 for prosecuting this frivolous appeal.

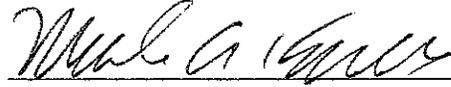
and there would have been no grounds for Respondents to appeal. Further, if Progressive succeeded, the medical providers could not have required the claimants or Progressive to pay the medical bills after the fact, and could have been held responsible for their fraudulent activities by their licensing boards.

Progressive's tactic of ignoring the No-Fault scheme has resulted in substantial litigation in multiple forums, which will end up costing each Respondent a relative fortune in attorney's fees and costs to obtain the same result (resolution of outstanding medical expenses) they could have and should have gotten in their respective arbitrations. In addition, Progressive's approach has required substantial judicial involvement, in the Hennepin County District Court, Ramsey County District Court, Anoka County District Court, the Minnesota Supreme Court, the Minnesota Court of Appeals, and the United States District Court for the District of Minnesota, to reach the same result. The costs of all this judicial involvement is being passed on to the innocent accident victims from whom Progressive has extracted premium dollars and to whom Progressive owes a duty of service. It is this obvious choice of tactics, refusing to participate in mandatory arbitration while passing the burden of refusal onto innocent accident victims and our court system, that merit the District Court's order for sanctions.

Dated March 23, 2006.

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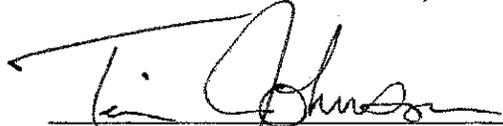
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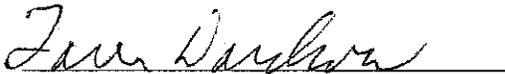
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STATE OF MINNESOTA
IN COURT OF APPEALS
CASE NO. A06-59

IN RE THE CLAIMS FOR NO-FAULT BENEFITS
AGAINST PROGRESSIVE INSURANCE COMPANY,

PROGRESSIVE INSURANCE COMPANY,

Appellant,

vs.

**CERTIFICATE OF
BRIEF LENGTH**

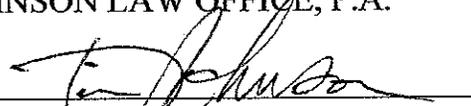
PEDRO SANCHEZ, ANETH GALINDO,
FRANCISCO MARTINEZ, ELIZUR GARCIA,
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Respondents.

I hereby certify that this brief conform to the requirements of Minn. R. Civ. App. P. 132.02, subs. 1 and 3, for a brief produced with a Times New Roman font. The length of the brief is 6,241 words. I certify that the word processing program has been applied specifically to include all text, including headings, footnotes, and quotations. This brief was prepared using Microsoft Office Word 2003.

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