

STATE OF MINNESOTA
IN COURT OF APPEALS

A08-1045

OFFICE OF
APPELLATE COURTS

SEP 15 2008

State Farm Mutual Automobile
Insurance Company,

Respondent,

vs.

John Frelix,

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF FACTS

The accident giving rise to this claim for no-fault benefits occurred on September 7, 2001. The Appellant complained of headaches and neck pain which he related to that accident and submitted a claim for no-fault medical expense benefits with Petitioner State Farm Mutual Automobile Insurance Company (hereafter State Farm). Unfortunately, the Appellant has a relevant medical history that predates the 2001 accident of similar complaints related to a diagnosis of multiple sclerosis. He also had a subsequent motor vehicle accident and again had similar complaints. As such, State Farm arranged for an independent medical examination of the Claimant on March 3, 2003 to address whether the claimed expenses were necessary as a result of the 2001 accident. (RA-3) As a result of the report issued from that examination, no-fault medical expense benefits were discontinued in March of 2003. (A6-7)¹

Over three years later, counsel for the Appellant prepared a Petition for No-Fault Arbitration (hereafter Petition) that he signed and mailed to the American Arbitration Association (hereafter AAA) on May 25, 2007. (RA-10) It is undisputed, however, that the Petition was **received** by the AAA on May 29, 2007. Id. That very same day, May 29, 2007, the Appellant underwent an anterior cervical fusion at C4-C6 at St. John's Hospital. (RA-13) According to the anesthesia record, anesthesia was administered beginning at 7:30 a.m. and the surgery began at 8:02 a.m. (RA-2)

The only expenses itemized on the Petition when it was received by the AAA on May 29, 2007 was \$2,541.10 for treatment at Midwest Spine Institute and related mileage, for dates

¹To avoid duplication of records, when appropriate, State Farm will make reference to the Appellant's Appendix.

of service of May 23, 2002 through April 2, 2007. (RA-10) About a month later (which was also a month postsurgery), the Appellant informed State Farm that the claim had increased to include expenses for the Center for Diagnostic Imaging for dates of service of November 8, 2001 through August 26, 2003 totaling \$18,962. (RA-11) Because the Appellant recognized the \$10,000 jurisdictional limit for mandatory no-fault arbitration, he waived \$11,503.10 of those expenses. Id. As a result, the Petition was amended to include the remaining \$7,458.90 for expenses related to the Center for Diagnostic Imaging. Id. On December 11, 2007, the Respondent then provided an updated itemization totaling **\$72,044.55**. (RA-13)

Based on the Appellant's submissions to State Farm, the total claim as of the date the Petition was received by the AAA (i.e. May 29, 2007), after the waiver of \$11,503.10, was as follows:

Midwest Spine	\$ 2,210.62	(per original Petition)
Center for Diagnostic Imaging	\$ 7,458.90	(per June 27, 2007 correspondence)
Associated Anesthesiologists	\$ 2,544.50	(per the Updated Itemization of Claim)
St. John's Hospital	<u>\$43,250.83</u>	(per the Updated Itemization of Claim)
Total:	\$55,484.85	

The above expenses all have a date of service of May 29, 2007 or earlier.

Since the claim submitted clearly exceeded the \$10,000 jurisdictional limit as of the May 29, 2007 commencement date, State Farm filed a motion to stay the arbitration. The matter was heard on March 5, 2008 before the Honorable Joanne M. Smith, Judge of District Court. Judge Smith granted State Farm's motion, ultimately finding that a claim of this magnitude was "not appropriate for mandatory arbitration." (A14) The Appellant had the option to commence a civil action in district court. Instead, this appeal followed.

STATEMENT OF LEGAL ISSUES

- 1. When is an arbitration “commenced” for purposes of the Minnesota No-Fault Automobile Insurance Act?**

Trial Court held: An arbitration is commenced when a petition for no-fault arbitration is received by the American Arbitration Association, not when it was put in the mail.

- 2. When determining whether a claim falls within the jurisdictional limit for mandatory arbitration, should all expenses for dates of service up to and including the date the arbitration was commenced be considered?**

Trial Court held: Yes.

ARGUMENT

The sole issue on appeal is whether the claim at the commencement of the arbitration exceeded the jurisdictional limit for mandatory arbitration. It is undisputed that the Petition was received by the American Arbitration Association (hereafter AAA) on May 29, 2007. It is also undisputed that on that very date the Appellant was undergoing an anterior cervical fusion at St. John's Hospital in Maplewood, Minnesota. (RA-13) The bills for surgery-related expenses ultimately claimed by the Appellant have a date of service of May 29, 2007. *Id.* Using the dates of service to determine the amount of the claim at the commencement of the arbitration is consistent with the applicable statute, the rules governing the administration of no-fault arbitration and common sense.

1. The standard of review is de novo.

Application of the above undisputed facts to the language of Minnesota Statute §65B.525 and Rule 5(c) of the Minnesota No-Fault Automobile Insurance Arbitration Rules is subject to de novo review. Brookfield Trade Center, Inc. v. County of Ramsey, 584 N.W.2d 390, 393 (Minn. 1998).

2. Arbitration was commenced on May 29, 2007 when the AAA received the Petition and filing fee.

The stated purpose of the Minnesota No-Fault Automobile Insurance Act (hereafter No-Fault Act) is to “speed the administration of justice, to ease the burden of litigation on the courts of this state, and to create a system of small claims arbitration to decrease the expense of and to simplify litigation. . . .” Minnesota Statute §65B.42(4). (Emphasis added.) The statute specifically delineates what is to be considered a “small claim.” Minnesota Statute

§65B.525, Subd. (a), provides for mandatory arbitration “where the claim at the commencement of the arbitration is in an amount of \$10,000 or less.”²

The answer to the question of when an arbitration is “commenced” is spelled out in the No-Fault Act and the rules governing no-fault arbitrations. Minnesota Statute §65B.525 granted the Minnesota Supreme Court the authority to adopt rules of procedure for no-fault arbitrations. Rule 5(c) of the Minnesota No-Fault Automobile Insurance Arbitration Rules (hereafter Rule 5(c)) specifies when an arbitration is commenced. It states as follows:

Arbitration is commenced by the filing of the signed, executed form, together with the required filing fee, with the arbitration organization.

Emphasis added. The arbitration organization designated by the standing committee is the AAA. Based on the plain language of Rule 5(c), an arbitration is commenced not when a petition for no-fault arbitration is signed or mailed but, instead, when it is received by the AAA for filing.

In order to avoid this obvious jurisdictional issue, the Appellant argues that the mailbox rule should apply. While he does not specify exactly what he is referring to, it is presumed that he is arguing that the petition should be considered filed with the AAA as of May 25, 2007, when it was placed in the mail. This argument is contrary to the plain language of Rule 5(c), however. Rule 5(c) specifically provides that the commencement of an arbitration occurs

²When the No-Fault Act was first passed, arbitration was optional. It became mandatory for “a claim in an amount of \$5,000 or less” in 1985. 1985 Minn. Laws c. 168 §13. Since there was no time frame included for determining when to consider the \$5,000 limit, arbitrators were routinely losing jurisdiction of claims. As such, in 1987 the legislature amended the statute to include the phrase “at the commencement of the arbitration.” 1987 Minn. Laws c. 337 §108. The mandatory jurisdiction amount was increased to \$10,000 or less in 1991. 1991 Minn. Laws c. 321 §1.

upon the filing of the signed petition, along with receipt of the required filing fee, with the AAA.

Minnesota Statute §645.08(1) provides that statutory language should be construed according to its plain, common and approved usage. The same general rule of construction should apply to rules promulgated pursuant to statutory authority. The plain usage of the language found in Rule 5(c) is that the arbitration is commenced when the AAA receives the petition and filing fee. Presumably that is why the AAA stamps every petition with a “received” date. RA-10.

Further, the Appellant cites no authority for adoption of the “mailbox” rule. Instead, he acknowledges that Rule 5.04 of the Minnesota Rules of Civil Procedure does not consider a document “filed” until it is received by the court administrator. Unless Rule 5(c) is revised, the plain meaning of the current rule requires the arbitration is commenced when the AAA actually receives for filing both a petition for no-fault arbitration and the appropriate filing fee.

3. The Appellant’s claim far exceeds the \$10,000 jurisdictional limit at the time the arbitration was commenced.

In this case, the arbitration was commenced on May 29, 2007. At that point, the Claimant was undergoing surgery and certainly accrued medical expenses that far exceeded the \$10,000 mandatory jurisdictional limit. It is for this reason that the claim is no longer appropriate for mandatory arbitration. Instead, the appropriate remedy is a civil action in district court.³

³It is unclear why the Appellant continues to pursue arbitration, where he already had to waive nearly \$12,000 of medical expenses even **before** the surgery expenses are taken into account. There would be no need to waive expenses in a civil action.

a. The Appellant's argument is akin to an impermissible splitting of his claim.

Using anything other than the "date of service" as the standard for determining jurisdiction would, in essence, allow the Appellant to split his claims. It is long held that an insured cannot split his claims in order to stay within the mandatory jurisdiction limit. Charboneau v. American Family Ins. Co., 481 N.W.2d 19, 21 (Minn. 1992). In Charboneau, the claimant received no-fault benefits from her insurer but the benefits were eventually terminated following an independent medical examination. Charboneau later filed two petitions for arbitration, the first for medical expenses and the second for wage loss.⁴ By the time the claim was actually arbitrated, the Charboneaus' wage loss claim totaled over \$25,000.

The Supreme Court in the Charboneau decision recognized that a party to a court action could not split a cause of action. Hauser v. Mealey, 263 N.W.2d 803, 807 (Minn. 1978). Prohibiting the splitting of a cause of action avoids multiple lawsuits and wasteful litigation. Mattsen v. Packman, 358 N.W.2d 48, 50 (Minn. 1984). The Supreme Court in Charboneau also found the practice of splitting causes of action equally troubling in the no-fault arena. This is especially true since the whole purpose of the No-Fault Act is to create a system of "small claims arbitration." By allowing insureds to split their causes of action, it could be argued that the insured was manipulating the system beyond what was intended. As the Charboneau court noted, "splitting a no-fault claim depreciates the legislature's decision to set a jurisdictional limit." 481 N.W.2d at 21.⁵

⁴At the time of the Charboneau decision, the jurisdictional limit for mandatory arbitration was \$5,000.

⁵The Charboneau decision was also based on the fact that the arbitrator has continuing jurisdiction for expenses incurred after the arbitration is commenced to the time of the hearing. Id. That is not the issue

b. The fact the Appellant had not yet received the bills for the surgery at the time the arbitration was commenced is irrelevant.

The Appellant next argues that even though he was already “under the knife” at the time the Petition was filed, the fact that the billing department had not yet sent him a bill for the surgery means that he owed nothing with regard to the surgery at the time the arbitration was commenced. This is an unreasonable argument. The only caselaw cited by the Appellant in support of this argument is the decision of Karels v. State Farm Ins. Co., 617 N.W.2d 432 (Minn. 2000).

In Karels, the insured filed a petition for no-fault arbitration alleging over \$2,500 in medical benefits and indicating that her claim was “ongoing.” Several weeks later, she underwent a cervical discectomy and fusion. The no-fault insurer was not apprised of the surgery until the day before the arbitration hearing. The Karels decision is easily distinguished from the case at hand, to the extent that the arbitrator had continuing jurisdiction with regard to the claim because the additional medical expenses had date of services **after** the arbitration was commenced. The same is not true here. The minute the surgery began, the claim for surgery-related medical expenses had “accrued.”⁶

Indeed, the subsequent billing that was provided to State Farm for the May 29, 2007 surgery indicates the date of service as that exact date. The Arbitration Rules contemplate that there may be a delay in the actual billing for services, for Rule 5(e) provides a claimant with

before the court in this case. The issue before the court in this case is not one of continuing jurisdiction but whether there was original jurisdiction for mandatory arbitration (i.e. whether the claim was \$10,000 or less) as of the date the AAA received the Petition.

⁶Minnesota Statute §65B.54, Subd. 1, states that “loss accrues not when the injury occurs but when theexpense is incurred. By the time the surgery began, the Appellant surely incurred expenses.

30 days following the commencement of the arbitration to provide an itemization of benefits claimed and supporting documentation. Rule 5(e) specifically provides that claims for medical expenses must “detail the names of providers, **dates of services claimed**, and total amounts owing.” The main reason to require the itemization include “dates of services claimed” would be to ensure that jurisdiction is appropriate.

While “claim” is not defined in the No-Fault Act, it has been interpreted by the Minnesota Supreme Court to be “the amount the Claimant is asking for.” Brown v. Allstate Ins. Co., 481 N.W.2d 17, 19 (Minn. 1992). The amount the Appellant is asking for includes the surgery and other surgery-related expenses which all have a “date of service” of May 29, 2007. Using the “date of service” as the bright line to determine jurisdiction for mandatory arbitration is the easiest and most logical test.

Analyzing the itemization provided by the Claimant by “date of service” results in a finding that as of May 29, 2007, the claim was \$55,484.85 – **\$45,484.85 beyond the jurisdictional limit set forth in Minnesota Statute §65B.525, Subd. (a).**

CONCLUSION

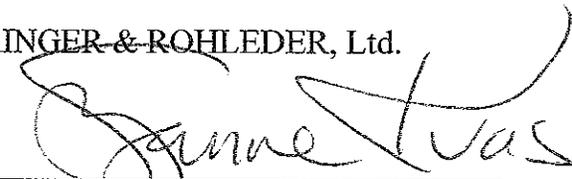
A claim for no-fault medical expense benefits totaling \$55,485.85 is not the “small claim” the legislature intended to be subject to mandatory arbitration, especially since those expenses were incurred as of the date the arbitration was commenced. Instead, the Appellant should exercise his other legal remedy and commence a civil action in district court for the medical expenses he is claiming from the September 7, 2001 accident if he so chooses.

Based on the foregoing, State Farm respectfully requests that the decision of the district court, dismissing the Petition for No-Fault Arbitration in the above matter, be affirmed.

Dated: September 15, 2008.

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