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Medical Payment Coverage Within Liability Insurance Policies

Sweeney advocates fear, tend to encourage jail-breaking and bail-jumping. Unfortunately, it appears that *Hunt* itself has fallen victim to this danger; the only "irreparable harm" the petitioner would face upon return to Arizona would be restraint of freedom while in jail or out on bail pending appeal of her conviction. Such harm is hardly irreparable in the *Noia* sense where the petitioner would have spent the rest of his life in prison if habeas corpus relief had been denied. Nor is it comparable to future physical torture in the demanding state's prison[36] or threatened lynching,[37] for which remedies in the demanding state would come too late. Minor periods of detention and the unavailability of monetary compensation for interim loss of liberty should not be considered irreparable so as to justify release in an extradition habeas corpus proceeding; rather, such injury is "an intrinsic . . . part of our system of criminal justice . . . ."[38]

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MEDICAL PAYMENT COVERAGE WITHIN LIABILITY INSURANCE POLICIES

A prevalent trend today is the inclusion of medical payment coverage within basic liability insurance policies. The wording of such clauses varies only slightly irrespective of whether they are in a medical liability policy, an automobile policy, or a homeowner's policy.[1] Generally, the insurer agrees to pay the insured such medical expenses, within the policy limits, which are occasioned by accidental injuries if such expenses are incurred within a fixed period of time from the date of the accident. Litigation concerning when such expenses have actually been incurred within the meaning of the policy

[36]Sweeney v. Woodall, 344 U.S. 86 (1952).

[37]Commonwealth *ex rel.* Mattox v. Superintendent of County Prisons, 152 Pa. Super. 167, 31 A.2d 576 (1943).

[38]Note, *Extradition Habeas Corpus*, 74 YALE L.J. 78, 126 (1964).

[1]*E.g.*, Hoehner v. Western Cas. & Sur. Co., 8 Mich. App. 708, 155 N.W.2d 231, 233 (1967). "'to pay all reasonable expenses incurred within one year from the date of the accident for necessary medical, surgical and dental services . . . caused by accident, (a) while on the premises with the permission of the insured'"; Drobne v. Aetna Cas. & Sur. Co., 66 Ohio L. Abs. 1, 115 N.E.2d 589, 590 (Ct. App. 1950), "[t]o pay to or for each person who sustains bodily injury . . . the reasonable expense of necessary medical . . . services . . . all incurred within one year from the date of the accident"; Marroquin v. Trinity Universal Ins. Co., 394 S.W.2d 246, 247 (Tex. Ct. Civ. App. 1965), "To pay all reasonable expenses incurred within one year from the date of accident. . . ."

has produced varying results. Consequently, the extent of the insurer's liability is not uniformly recognized. The major problem is that the actual medical service cannot always be rendered within the prescribed period of limitation.[2]

A recent case, *Hoehner v. Western Casualty & Surety Company*,[3] illustrates the reasoning utilized to impose liability upon the insurer under circumstances which do not facilitate actual performance of the medical services within the period of limitation imposed by the policy. On May 31, 1964, Mr. Hoehner's minor son fell and injured his mouth while visiting on the premises of the insured. The boy was immediately taken to a dentist where temporary treatment was administered. The boy's teeth were severely damaged, but due to his age, the dentist advised that further dental work should be postponed until the boy was older. The basic insuring agreement limited the insurer's liability to all expenses incurred within one year from the date of the accident. On April 5, 1965, Mr. Hoehner paid the dentist the full amount necessary to repair the boy's teeth at a future date, receiving a receipt with the understanding that service would be performed when it was deemed proper. Mr. Hoehner then requested payment from the insurer who rejected such claim on the basis that only those expenses for services performed within one year were within the coverage of the policy.[4] The court, interpreting the phrase "expenses incurred," held that the insurance company becomes liable for payment when the injured party becomes legally obligated by contracting within one year following the accident to pay a sum certain for necessary medical services, although the services might be delayed for an indeterminate amount of time in the discretion of the treating physician. Although payment to the physician was actually made within the year period, the language of the court implies that actual payment is not necessary to render the agreement valid.

With the exception that payment generally is required within the year period, several courts on similar facts have reached a decision

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[2]Annot., 10 A.L.R.3d 468, 471 (1966).

[3]8 Mich. App. 708, 155 N.W.2d 231 (1967).

[4]A direct action against the insurer is permitted because the injured party, by entering the premises with the permission of the named insured, becomes an insured under the medical provisions of the policy. 155 N.W.2d at 236. This is to be distinguished from the situation where the injured party attempts to sue the insurance company under the liability provisions of a policy in which case a direct action on the policy is generally not allowed in absence of statute. Goodman v. Georgia Life Ins. Co., 189 Ala. 130, 66 So. 649 (1914); Combs v. Hunt, 140 Va. 627, 125 S.E. 661 (1924).

in accord with *Hoehner*.[5] These courts place considerable emphasis upon the definition of the word "incurred" as used in the policies.[6] It is generally recognized that incurred means to become liable for or subject to liability.[7] It follows from this definition that when the insured engages the future services of a physician within the one year period and a contract arises which imposes an obligation on the insured to pay a sum certain within the year he has thereby "incurred" expenses within the limitation period. Thus, the insurer is liable although the actual services will not be performed within the prescribed period of limitation.[8]

Earlier cases placed considerable emphasis upon the necessity for a valid contractual arrangement between patient and physician.[9] In *Drobne v. Aetna Casualty & Surety Company*[10] liability was imposed upon the insurer entirely by reason of a contract between patient and physician, where the amount of the recovery was entirely dependent upon the physician's compliance with the contract. In view of *Hoehner* and the recently decided *Perullo v. Allstate Insurance Company*,[11] however, it seems that as a practical matter the courts place little emphasis upon the existence of a legal contract.

Hoehner may be viewed as a transitional case between older cases which strictly adhere to the necessity of a contractual obligation to establish liability and *Perullo* which imposed liability upon the insurer without discussing contractual obligations. Although *Hoehner* does indicate that a contract is necessary, the requirements for establishing a contract are less rigid than in earlier cases in that payment need not be made within the year period nor do the actual negotiations leading to the formation of a contract need be so explicit.

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[5]Perullo v. Allstate Ins. Co., 54 Misc. 2d 303, 282 N.Y.S.2d 830 (Dist. Ct. 1967); Drobne v. Aetna Cas. & Sur. Co., 66 Ohio L. Abs. 1, 115 N.E.2d 589 (Ct. App. 1950); Maryland Cas. Co. v. Thomas, 289 S.W.2d 652 (Tex. Ct. Civ. App. 1956). *Cf.*, McCleneghan v. London Guarantee & Accident Co., 132 Neb. 131, 271 N.W. 276 (1937).

[6]United States v. St. Paul Mercury Indem. Co., 238 F.2d 594 (8th Cir. 1956); Weinberg Co. v. Heller, 73 Cal. App. 769, 239 P. 358 (1925); Irby v. Government Employee Ins. Co., 175 So. 2d 9 (La. Ct. App. 1965).

[7]Collins v. Farmers Ins. Exchange, 271 Minn. 239, 135 N.W.2d 503 (1965); Reserve Life Ins. Co. v. Coke, 254 Miss. 936, 183 So. 2d 490 (1966); Nagy v. Lumbermens Mut. Cas. Co., 219 A.2d 396 (R.I. 1966).

[8]Hoehner v. Western Cas. & Sur. Co., 8 Mich. App. 708, 155 N.W.2d 231 (1967); Drobne v. Aetna Cas. & Sur. Co., 66 Ohio L. Abs. 1, 115 N.E.2d 589 (Ct. App. 1950); Maryland Cas. Co. v. Thomas, 289 S.W.2d 652 (Tex. Ct. Civ. App. 1956).

[9]Drobne v. Aetna Cas. & Sur. Co., 66 Ohio L. Abs. 1, 115 N.E.2d 589 (Ct. App. 1950); Maryland Cas. Co. v. Thomas, 289 S.W.2d 652 (Tex. Ct. Civ. App. 1956).

[10]66 Ohio L. Abs. 1, 115 N.E.2d 589 (Ct. App. 1950).

[11]54 Misc. 2d 303, 282 N.Y.S.2d 830 (1967).

In *Perullo* this gradual erosion of the strict necessity for a legal contract between patient and physician becomes complete. The injured party incurred expenses beyond the year period of limitation and sought to establish liability upon the insurer by alleging an undefined arrangement with the physician within the year period. It was difficult to define any contractual arrangement between patient and physician as there was not an actual fixed sum tendered to the physician; neither were the arrangements for the operation clearly defined nor did the court mention the formation of a contract between the parties.[12] However, the existence of an agreement between the patient and physician, although not in all cases a legal contact, does serve as a useful tool in enabling the courts to logically impose liability upon the insurer.

Insurance companies contend that the *Hoehner* interpretation of the medical clause is a revision of the insurance contract which renders the insurer liable for all reasonable expenses incurred from the date of the accident, disregarding the period of limitation.[13] Insurance companies want to avoid payment of claims where there is a possibility that the compensated injury may have occurred other than as a result of the original accident.[14] The one year limitation helps to assure that a causal connection will be shown between the accident and resulting injury.[15]

Such contentions are clearly worthy of merit and have not been ignored by the courts. It is generally recognized that such limitation clauses are necessary in reasonably defining liability.[16] Yet it is difficult to deny the injured party medical expenses which directly result from an accident within the coverage of the policy when the nature of the injury does not permit medical services to be performed within the prescribed period of limitation. Therefore, the courts permit the insured to recover those expenses for medical services which arise directly from the accident regardless of when such services are to be performed, provided such expenses are ascertainable within one year from the date of the accident.

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[12]282 N.Y.S.2d at 832.

[13]Marroquin v. Trinity Universal Ins. Co., 394 S.W.2d 246, 247 (Tex. Ct. Civ. App. 1965). The court stated: "In our opinion in order to hold defendant liable... we would necessarily have to re-write the provision 'to pay all reasonable expenses incurred within one year from the date of accident...' to read, 'to pay all reasonable expenses incurred from the date of accident....'"

[14]French v. Fidelity & Cas. Co., 135 Wis. 259, 115 N.W. 869 (1908).

[15]*See* Cary v. Preferred Acc. Ins. Co., 127 Wis. 67, 106 N.W. 1055 (1906).

[16]*See generally* Grey v. Silver Bow County, 425 P.2d 819 (Mont. 1967); LaBarbera v. Batsch, 10 Ohio St. 2d 106, 227 N.E.2d 55 (1967); Schmucker v. Naugle, 426 Pa. 203, 231 A.2d 121 (1967).

The major problem in the application of this liability theory is to establish an acceptable criteria for ascertaining such expenses without abusing the probability of causal connection. For this reason courts generally require an agreement between the patient and physician for future services, for such an agreement conveniently serves to establish those expenses which are ascertainable as the result of a timely, competent medical diagnosis within the year period.[17] Such an agreement, although not necessarily a valid legal contract, does enable the courts to reasonably conclude that expenses which arise as a result of the agreement are incurred within the meaning of the policy and have a causal connection with the original injury.[18]

The courts are not requiring, as contended by the insurance companies, that the insurer pay all expenses from the date of the accident,[19] but only those expenses which are ascertained within one year as a result of the accident. Consequently, the one year limitation period is still in effect to delineate the insurer's liability, as any expenses which cannot definitely be ascertained within one year are noncompensable. This conclusion neither works an undue hardship upon the insurer, nor does it actually extend his liability beyond that for which he contracted and contemplated. In addition, the insured's right to receive compensation for injuries which he would normally expect to receive under the coverage of the policy is preserved.[20]

The fact that at present litigation of this problem is rare is no indication that it will continue to be so. Advance techniques in the field of medicine necessitates a longer period of diagnosis prior to the actual corrective services.[21] Plastic surgery, now considered a necessary medical service,[22] is being utilized more frequently and in most cases cannot be performed within one year from the date of

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[17]It is recognized that in the absence of an arrangement within the year period recovery is generally denied. See, Marroquin v. Trinity Universal Ins. Co., 394 S.W.2d 246, 247 (Tex. Ct. Civ. App. 1965).

[18]Drobne v. Aetna Cas. & Sur. Co., 66 Ohio L. Abs. 1, 115 N.E.2d 589 (Ct. App. 1950); Maryland Cas. Co. v. Thomas, 289 S.W.2d 652 (Tex. Ct. Civ. App. 1956); Marroquin v. Trinity Universal Ins. Co., 394 S.W.2d 246 (Tex. Ct. Civ. App. 1965).

[19]Marroquin v. Trinity Universal Ins. Co., 394 S.W.2d 246 (Tex. Ct. Civ. App. 1965).

[20]An alternative would be to amend the insuring clause by eliminating the word incurred and substituting a statement of liability for all reasonable treatment, confinement or services which occurred within one year from the date of accident. See, Pilot Life Ins. Co. v. Stephens, 97 Ga. App. 529, 103 S.E.2d 651 (1958).

[21]*See, e.g.*, 2 R. GRAY, ATTORNEY'S TEXTBOOK OF MEDICINE, ¶ 36.10 (3d ed. 1967).

[22]Reliance Mut. Life Ins. Co. v. Booher, 166 So. 2d 222 (Fla. Dist. Ct. App. 1964).