

IN THE SUPREME COURT OF OHIO

PHILLIP A. LABOY, et al.,	:	CASE NO. 2014-0708
	:	
Plaintiffs-Appellees,	:	
	:	
v.	:	On Appeal From the Cuyahoga County
	:	Court of Appeals, Eighth Appellate District
GRANGE INDEMNITY INSURANCE	:	
COMPANY, et al.,	:	
	:	
Defendant-Appellant.	:	Court of Appeals Case No. 13-100116

PLAINTIFFS-APPELLEES' MEMORANDUM IN RESPONSE TO DEFENDANT-APPELLANT GRANGE MUTUAL CASUALTY COMPANY'S MEMORANDUM IN SUPPORT OF JURISDICTION

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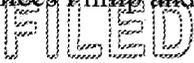
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 JUN 03 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

This case does not involve a substantial constitutional question, is not an appeal from a felony case, and does not involve a matter of public or great general interest pursuant to the Ohio Constitution, Article IV, Section 2(B)(2)(e). This appeal is nothing more than Appellant-Defendant Grange Mutual Casualty Company's ("Appellant") expression of disappointment with an unfavorable ruling in the Eighth District Court of Appeals (the "Appellate Court") which correctly reversed the decision of the Cuyahoga County Court of Common Pleas (the "Trial Court"). In addition, this matter concerns issues of purely private and corporate interests. Contrary to Appellant's contentions, the Appellate Court did not make a broad holding that will turn the automobile insurance industry in Ohio on its head. To the contrary, this case is about one specific sentence in Appellant's automobile insurance policy, and no similar sentence, to Appellee's knowledge, exists in the automobile insurance policies of other Ohio insurance companies. Certainly, Appellant has not directed this Honorable Court's attention to any other policies containing this provision. The Appellate Court's decision is narrowly written to apply only to the instant case and therefore does not present any issues of public or great general interest.

Appellant presents four propositions of law: (1) an insurer does not breach an obligation to pay negotiated rates for medical care when it has no contractual right to pay those rates; (2) when a contract is found to be unambiguous, it is error to order further fact finding about its meaning; (3) an appellate court errs when it fails to consider alternative grounds upon which summary judgment could have been sustained; and (4) speculation that a settlement with a third-party tortfeasor was reduced because an insurer allegedly "overpaid" its insured's medical expenses and then exercised its subrogation right is not an injury sufficient for standing. None of

these propositions involve matters of public or great general interest pursuant to the Ohio Constitution, Article IV, Section 2(B)(2)(e).

Appellant's propositions of law are merely matters of great personal interest and great company interest for Appellants because the Appellate Court's decision is only applicable to the facts of this case. Although automobile insurance policies affect many Ohio residents, the Appellate Court decision, contrary to Appellant's contention, would in no way "force Ohio insurers to fulfill an impossible mandate in administering medical payments coverage" or "require Ohio insurers to scour the market for the lowest rate before paying insureds' medical expenses" because the insurance policy at issue in this case is the only one of its kind, to Appellee's knowledge, in Ohio. *See Def.-Appellant Mem. in Supp. of Jurisdiction* 1, 3. Contrary to Appellant's contention, the Appellate Court's decision only impacts Appellant's duties to its insureds under one specific sentence of Appellant's policies, contained only in Appellant's policies, and does not impose "new and inconsistent duties" on Ohio insurers generally. *See Id.* at 4. Therefore, Appellant's propositions of law present matters of interest purely to the parties in this case, which in no way entitles Appellants to this Honorable Court's jurisdiction. *See Williamson v. Rubich*, 171 Ohio St. 253, 168 N.E.2d 876 (1960).

Appellant is merely seeking a second opinion on the Appellate Court's well-reasoned decision and, in doing so, is unable to present any issues of public or great general interest that are the proper subject of this Honorable Court's jurisdiction. Appellant's Notice of Appeal and Memorandum in Support of Jurisdiction (collectively, the "Appeal") present only issues of great private and corporate interests to the parties involved in this case. Furthermore, the Appellate Court's decision correctly applied well established law to the specific facts of this case and issued a narrowly construed opinion rendering its decision incapable of broad application or

being subject to public or great general interest. Accordingly, the issues raised in this case an inappropriate basis for this Honorable Court to exercise jurisdiction.

For the foregoing reasons, Appellees respectfully request that this Honorable Court decline to exercise jurisdiction over Appellant's Appeal from the Appellate Court's decision which reversed, in Appellee's favor, the decision of the Trial Court granting summary judgment in Appellant's favor.

STATEMENT OF THE CASE AND FACTS

In 2006, Appellees were injured in a car accident and subsequently submitted a claim under their automobile insurance policy they held with Appellant. The "med-pay" provision of Appellee's policy with Appellant states:

- A. We will pay under Part B – Medical Payments Coverage, the lesser of:
 - 1. Reasonable expenses incurred by the **insured** for **necessary** medical and funeral services because of **bodily injury**; or
 - 2. Any negotiated reduced rate accepted by a medical provider.

(hereinafter referred to as the "Policy") (emphasis added). Following the accident, Appellees submitted their medical bills to Appellant for payment pursuant to the Policy. Through Appellee's health insurer, Medical Mutual Insurance Company, Appellee's had a "negotiated reduced rate accepted by [the] medical provider" who treated their injuries. However, Appellant ignored this available discount and paid for said medical bills at approximately double the rate available from Medical Mutual.

Ultimately, Appellees had to reimburse Appellant for Appellant's subrogation claim in the higher amount provided by Appellant instead of the lower discounted rate provided by Medical Mutual, after Appellees settled their tort lawsuit for personal injuries. Consequently, due to Appellant's failure to take advantage of the Medical Mutual discount, the subrogation liability of Appellees was roughly double what it should have been.

Appellee's filed their original Class Action Complaint against Appellant on January 18, 2012. On February 24, 2012, Appellees filed their First Amended Class Action Complaint. Appellant filed its motion for summary judgment on August 13, 2012, seeking dismissal of Plaintiffs individual claims.

On June 24, 2013, the Trial Court granted Appellant's motion for summary judgment. Appellee's appealed and submitted ample evidence in the form of deposition testimony from Appellant's representatives that (1) under the Policy, insureds are entitled to have their med-pay claims paid at the lowest amount possible (i.e. the greatest discount), (2) Appellant reviews medical bills in order to utilize the greatest discount available, (3) Appellant is not limited to the discounts contained in its own contracts with providers, (4) Appellant has utilized other (greater) discounts that are not available in their own contracts, (5) Appellant could pay a medical provider the lower discounted amount negotiated by the insured's health carrier, even though Appellant has no contract of its own with said provider or carrier, and (6) Appellant does not have a policy that prohibits it from paying a lower reduced rate that the insured has access to through the insured's own health insurance carrier.

On appeal, Appellant continued to contend that its obligation to pay a negotiated reduced rate is limited only to a medical provider that it has access to through its relationship with its third-party review company, Review Works. Appellees maintained their position, narrowly construed to the facts of this case, that Appellant's duty under the Policy includes honoring a reduced rate available through Appellee's health insurance provider.

The Appellate Court reversed the Trial Court's decision and found that there was no patent ambiguity in the Policy. (Op. ¶¶ 5-6). The Appellate Court went on to discuss the parties' interpretations of the Policy and the Trial Court's interpretation that the Policy results in

Appellant's "having to reimburse medical expenses at a rate negotiated by any medical provider, anywhere." *Id.* at ¶2. The Appellate Court agreed with the Trial Court's finding that a *literal* interpretation of the Policy would lead to an absurd result. *Id.* at ¶¶ 8, 9. This finding in turn rendered the Policy ambiguous, according to the Appellate Court. Accordingly, the Appellate Court ordered fact finding in order to resolve the latent ambiguity in the Policy. *Id.* at ¶¶ 8,9.

Appellants have instituted the instant Appeal in an effort to seek a second opinion on a matter of purely private and corporate interest. Appellants' Policy only applies to the specific facts and circumstances of the instant case and, thus, has no general applicability to the insurance industry. Although Appellant's Appeal addresses the merits of this case at length, this Honorable Court's only consideration for granting jurisdiction is whether the case itself presents issues of great public or great general interest. The Appellant fails to present issues appropriate for this Honorable Court's review. Accordingly, Appellees respectfully request that this Honorable Court decline to exercise jurisdiction over Appellant's Appeal.

ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITIONS OF LAW

Appellant's Proposition of Law No. 1: An Insurer Does Not Breach An Obligation To Pay Negotiated Rates For Medical Care When It Has No Contractual Right to Pay Those Rates.

Appellant's Proposition of Law No. 2: When A Contract Is Found to Be Unambiguous, It Is Error to Order Further Fact Finding About Its Meaning.

Appellant's first two propositions of law will be addressed simultaneously as these propositions of law fail in identical respects to convey accurately the Appellate Court's findings and its holding. Appellant attempts to persuade this Court that its Appeal presents issues having "profound consequences for Ohio insurers and medical providers handling medical payments coverage claims." *See Def.-Appellant Mem. in Supp. of Jurisdiction* 8. Appellant's Appeal is premature at best as the decision of the Appellate Court has no such impact.

Appellants wholly ignore the fact that the single issue remaining at the core of this case is simply a matter of the interpretation of a single contract between a corporate entity and a private party. The sole issue for resolution in this matter is whether, based on the Appellate Court ordered fact-finding, Appellant had access to Appellee's "lesser negotiated rate via medical providers who have agreed with [Appellees] medical insurer to provide a discounted rate." Op. at ¶ 8 (quoting Appellees Brief In Opp. To Mot. for Summ. J. 12). The Appellate Court's decision merely ordered fact-finding to determine whether Appellant's interpretation of the Policy is the only reasonable one. Op. ¶ 9. Simply put, the Appellate Court found that the Policy, on its face, was not ambiguous, but upon further examination found a latent ambiguity in the Policy because it was subject to more than one interpretation. *Id.* at ¶¶ 5-8. Accordingly, the Appellate Court concluded that Appellee's were entitled to have such latent ambiguity construed most favorably to them, which required fact-finding not conducted by the Trial Court. *Id.* at ¶¶ 8-9.

The Appellate Court's decision, left to stand, does not impose any new duties upon Appellants or any other automobile insurer in Ohio. It merely requires the Trial Court to conduct further fact finding and interpret the Policy in the contract entered into between Appellant and Appellees.

Contrary to Appellant's arguments proffered in its Appeal, no issues of great public or great general issues exist. The Appellate Court's decision does not require automobile insurers to "pay the rates negotiated by their insureds' health insurers for medical care, even if the providers have not agreed (or refused) to accept those rates from the automobile insurer." *See Def.-Appellant Mem. in Supp. of Jurisdiction* 8. The Appellate Court's decision does not throw into question how "automobile insurers would learn of" negotiated rates." *Id.* The Appellate Court's decision does not compel medical providers "to accept payment by automobile insurers for

medical expenses at rates those providers agreed to with a health insurer, regardless of whether the providers agreed to accept those rates from the automobile insurer.” *Id.* The only impact the Appellate Court’s decision has on the parties in this case is that this matter will be subject to fact finding by the Trial Court. Only then will the Trial Court issue a ruling as to the interpretation of the Policy; and that interpretation will apply to this policy only.

Contrary to Appellant’s contentions, the Appellate Court did not issue a ruling as to Appellant’s breach of its obligation to pay negotiated rates for medical care or its contractual duty to pay such rates. Furthermore, the Appellate Court did not create new law. Instead, the Appellate Court merely issued a ruling as to the latent ambiguity in the Policy and ordered fact finding as to whether Appellant had access to a lesser negotiated rate via Appellees’ medical insurance provider. *Op.* at ¶¶ 8-9. The Appellate Court further found that Appellant failed to demonstrate that it was entitled to *summary judgment* because, based on the facts, the Appellate Court was not convinced that Appellant’s interpretation of the Policy was the only reasonable one. *Id.* at ¶9. The Appellate Court did not issue a holding as to whether Appellee’s interpretation was reasonable—it ordered the Trial Court to do so. Such a determination is up to the Trial Court and is not an appropriate basis for this Honorable Court to exercise jurisdiction.

Appellant’s Appeal is premature as it overstates the Appellate Court’s findings and holding and the potential impact that could arise in the event the Trial Court ultimately holds in favor of Appellee regarding an interpretation of the Policy. The Appellate Court has not created new law and has not created new duties for automobile insurers. As such there is nothing to “forestall” because Appellant fails to present any issues of great public or great general interest ripe for this Honorable Court to exercise its jurisdiction. Accordingly, Appellees respectfully request that this Honorable Court decline to exercise jurisdiction over Appellant’s Appeal.

Appellant's Proposition of Law No. 3: An Appellate Court Errs When It Fails to Consider Alternative Grounds Upon Which Summary Judgment Could Have Been Sustained.

Appellant's Proposition of Law No. 4: Speculation That A Settlement With A Third-Party Tortfeasor Was Reduced Because An Insurer Allegedly "Overpaid" Its Insured's Medical Expenses And Then Exercised Its Subrogation Right Is Not An Injury Sufficient For Standing.

Appellant's third and fourth propositions of law will be addressed simultaneously as these propositions of law are identically speculative, conclusory, and fail to present an issue of great general or great public interest to merit this Honorable Court's acceptance of jurisdiction over Appellant's Appeal. Both propositions of law are based upon an issue not addressed by the Appellate Court which Appellant speculates would have led to a different result after its first appeal.

The Appellate Court's decision not to consider Appellant's alternative arguments in support of summary judgment is not a matter of great general or great public interest itself. The Appellate Court simply held that Appellant had not demonstrated that it was entitled to judgment as a matter of law and thus was precluded from affirming summary judgment. Op. ¶ 9. Moreover, the simple fact that Appellants are dissatisfied with the Appellate Court's decision does not make this matter appropriate for this Honorable Court to exercise jurisdiction over the Appeal.

The Appellate Court was not required to affirm the Trial Court's decision merely because Appellant believes its alternative basis for affirmation of the Trial Court's decision was a winning argument, nor does Appellant cite any controlling authority holding as such. In spite of its third proposition of law, Appellant fails to cite to any controlling authority holding that an Appellate Court errs, as a matter of law, when it does not issue a ruling as to alternative grounds

for sustaining summary judgment. Furthermore, Appellant's argument that its other proffered grounds for sustaining the Trial Court's decision were valid is speculative and conclusory.

Essentially, Appellant's third and fourth propositions of law prematurely argue that Appellant's other basis for granting summary judgment was valid and, thus, the Appellate Court was required to affirm summary judgment on that basis. Such a contention does not present an issue of great general or great public interest to merit this Honorable Court's acceptance of jurisdiction over Appellant's Appeal.

CONCLUSION

As set forth herein, Appellant's Appeal fails to set forth any issues of great public or great general interest because (1) Appellant presents issues that pertain only to its private and corporate interests, (2) the Policy does not generally appear in the automobile insurance policies of other companies in Ohio, and (3) Appellant's argument that its alternative grounds for summary judgment and required the Appellate Court to affirm summary judgment is speculative and conclusory. Contrary to Appellant's Appeal, this case has no general applicability to the insurance industry and thus is not appropriate for this Honorable Court's review. Accordingly, Appellees respectfully request that this Honorable Court decline to exercise jurisdiction over Appellant's Appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing ***PLAINTIFFS-APPELLEES' MEMORANDUM IN RESPONSE TO DEFENDANT-APPELLANT GRANGE MUTUAL CASUALTY COMPANY'S MEMORANDUM IN SUPPORT OF JURISDICTION*** was served upon the following by first class U.S. mail, postage prepaid, this 2nd day of June, 2014:

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