



August 30, 2011

Today the Ohio Supreme Court released an important decision regarding medical payment coverage. A copy of *King v. ProMedica Health System, Inc.*, 2011-Ohio-4200 may be obtained via the link below.

<http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2011/2011-Ohio-4200.pdf>

In *King*, the plaintiff was injured in a motor vehicle accident and sought treatment at a local hospital. At the hospital plaintiff provided information for billing purposes regarding her health insurance plan. The hospital instead billed the plaintiff's auto insurer for her treatment, under her policy's medical payment coverage. Plaintiff sued the hospital alleging that by billing her auto insurer instead of her health insurer, the hospital violated various Ohio statutes as well as common law.

In a six to one decision, the Supreme Court held the hospital was not barred from billing the auto insurer directly and did not require the patient's consent to do so.

Despite this ruling, there will continue to be considerable litigation on this issue as plaintiff attorneys are taking the position the actual insured should have the right to direct and control how their medical payment coverage is allocated. The argument for this approach is this allows the insured to better manage their co-payments and deductibles under any health insurance plan.

Interestingly, some plaintiff attorneys with whom I work with regularly actually encourage their clients to use their medical payment coverage as opposed to health insurance to pay for initial emergency room visits, on the basis that auto insurers are much more likely to pay the full amount charged, whereas with health insurance the amount charged is usually reduced by at least 60%. This differential is important under any *Robinson v. Bates* analysis.

Based upon *King*, an insurer is free to pay a medical provider's bill when it is submitted for direct payment. At the same time though, we do recommend caution in paying such bills, particularly if there has been prior communication from the insured or their counsel expressing particular wishes as to how the coverage is to be used. If you have any questions about this decision or its implications, please do not hesitate to contact me.

Sincerely yours,

Thomas F. Glassman