NOTICE OF AVAILABLE GRANT FUNDS

Franklin County Bar Association, expects to authorize the issuance of IOLTA (Interest on Lawyers' trust Accounts) grants to qualified recipients.

Applications for grant funding must be postmarked to the Franklin County Bar Association by October 25, 1995 Applications postmarked after this date may not be considered for funding.

Recipients of IOLTA funds must meet all the general criteria and all of the criteria for one of the two categories identified below.

I. GENERAL CRITERIA

Qualified recipients must:

1. Be a not-for-profit Pennsylvania Corporation.
2. Be tax-exempt under Section 501 (c)(3) of the Internal Revenue Code.
3. Operate only within Pennsylvania.
4. Have as their primary purpose the provision of civil legal services without charge.

II. CATEGORY CRITERIA

1. GENERAL LEGAL SERVICES
   a. Operate to provide civil legal services to eligible clients and victims of abuse.
   b. Funds for such services must be:
      i. appropriated by the General Assembly;
      ii. received under contract with the Department of Public Welfare.
2. SPECIALIZED LEGAL SERVICES

Provide direct specialized legal services primarily to individuals from one of the classifications identified below:

a. elderly;
b. disabled;
c. homeless;
d. seasonal farmworkers;
e. victims of crime or abuse.

Requests for grant applications can be made and details on the IOLTA program obtained by contacting Thomas B. Steiger, Jr. 120 North Main Street, Mercersburg, PA 17236, (717) 328-3525 after October 16, 1995.

THE MILTON S. HERSHEY MEDICAL CENTER, F. TODD WETZEL, M.D., AND LINDA S. HERSHEY, VS. STATE FARM INSURANCE COMPANY, Franklin County Branch, No. A.D.1992-298

MOTOR VEHICLE INSURANCE - DISPUTED MEDICAL CLAIMS- PEER REVIEW ORGANIZATIONS- BAD FAITH DENIAL OF PAYMENT

1.. Under 75 Pa. C.S.A. §1797(b)(4), an insurer is liable for treble damages only where it fails to submit a claim to a peer review organization; bad faith submissions are not addressed by that statute.

2. Bad faith submissions to peer review organizations, and collusion between insurers and peer review organizations are remedied by 42 Pa. C.S.A. §8371, which allows, inter alia, punitive damages.

3. Because 75 Pa. C.S.A. §1797(b)(4) and 42 Pa. C.S.A. §8371 provide remedies for different conduct, they are not inconsistent.

Bradley R. Bolinger, Esquire, Attorney for Plaintiffs
Rolf E. Kroll, Esquire, Attorney for Defendant

OPINION AND ORDER

WALKER, P.J., December 8, 1994:

FINDINGS OF FACT

As a result of an automobile accident which occurred on November 8, 1990, plaintiff, Linda S. Hershey, was injured and subsequently treated by plaintiffs, Dr. F. Todd Wetzel and the Milton S. Hershey Medical Center.

Upon submission of the medical bills by Dr. Wetzel and the Hershey Medical Center, defendant - State Farm Insurance Company, presented those bills to a peer review organization pursuant to 75 Pa.C.S.A. § 1797 to ascertain the necessity of treatment, services, and products provided to Ms. Hershey.

Defendant, State Farm, refused to pay certain medical expenses as a result of the peer review report asserting that they were unnecessary. State Farm has also refused to pay Ms. Hershey's wage loss benefits which have accrued since October of 1991.

Upon defendant's initial refusal to pay Ms. Hershey's medical expenses and lost wages, plaintiffs requested a peer review reconsideration pursuant to 75 Pa.C.S.A. § 1797(b) (2).

Based upon the reconsideration report issued by the same peer review organization (hereinafter "PRO"), defendant again refused to pay the medical bills.

Plaintiffs have filed this suit to recover the cost of Ms. Hershey's medical treatment and services, and wage loss benefits which defendant has refused to pay, plus reasonable attorney's fees, costs and interest on the overdue benefits. Plaintiffs have further alleged that defendant has acted in bad faith in employing the particular PRO utilized in the present situation due to the PRO's financial interest in providing a biased report.

Defendant has filed several motions including preliminary objections, motion for reconsideration, motion for leave to appeal and motion for stay of discovery; all have been denied. Defendant then filed a petition for review with the Pennsylvania Superior Court which was denied on September 28, 1993.

Defendant has refused to pay the medical bills of Ms. Hershey as well as wage loss benefits. Defendant has also failed to comply with plaintiffs' requests for discovery even after this court's order of March 4, 1993 requiring defendant to provide discovery to, plaintiffs' counsel. Defendant is now coming before this court and requesting a partial summary judgment as to plaintiffs' claims for damages pursuant to 42 Pa.C.S.A. § 8371. Although this issue has previously been raised and answered by this court in an opinion dated December 8, 1992, which is made a part hereof, we will nonetheless address it again.

DISCUSSION

Defendant argues that the remedies provided in 75 Pa.C.S.A.§ 1797 relating to recovery of first party medical benefits preclude the imposition of punitive damages under 42 Pa.C.S.A. § 8371.

An injured party may receive treble damages for an insurer's wanton conduct, but only if the insurer refuses payment without submitting the claims to a PRO. 75 Pa.C.S.A. §1797(b) provides in pertinent parts:

> (4) Appeal to court.--A provider of medical treatment or rehabilitative services or merchandise or an insured may challenge before a court an insurer's refusal to pay for past or future medical treatment or rehabilitative services or merchandise, *the reasonableness or necessity of which the insurer has not challenged before a PRO. Conduct considered to be wanton shall be subject to a payment of treble damages to the injured party.* (emphasis added)

Upon careful inspection of this subparagraph, this court feels that one is only entitled to treble damages for an insurer's wanton conduct when the insurer has failed to utilize the services of a PRO after refusing payment to the insured. If an insurer submits an insured's claim to a PRO and the PRO determines that the medical treatment, services, or merchandise was unnecessary, the insured is strictly limited to the outstanding amount plus interest at 12%, the costs of the challenge and all attorney fees if a court later determines that the treatment, services, or merchandise was necessary. 75 Pa.C.S.A. §1797(b)(6). Insureds have no retribution for an insurer's submission of a claim to a PRO who due to preconceived notions as to whether an insured's claims are genuine would not perform a legitimate review.

Because there is no provision in 75 Pa.C.S.A.§ 1797 which would rectify bad faith on the part of an insurer once a claim is submitted to a PRO, this court sees no conflict between 75 Pa.C.S.A.§1797 and 42 Pa.C.S.A.§ 8371. 42 Pa.C.S.A. §8371 provides that:

> [i] n an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:
>
> (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
>
> (2) Award punitive damages against the insurer.
>
> (3) Assess court costs and attorney fees against the insurer.

This court views 42 Pa.C.S.A.§ 8371 as providing a remedy for the insured for a bad faith submission to a PRO which 75 Pa. C.S.A. Section 1797 has failed to provide for and for which plaintiffs are unable to exact a remedy. Without such an

interpretation, an insurer would be presumed to have acted in good faith by simply submitting a contested claim to a PRO. This court is suspect of the assertion that an insurer's submission of a contested claim to a PRO is necessarily done so in good faith. Because 75Pa.C.S.A. §1797 allows insurers to select the so called independent PROs to perform the review, one must question the legitimacy of the review proceeding. Due to the financial relationship between the insurance companies and PROs, it is very possible that the PRO may be tempted to write a report favoring the insurance company in order to secure subsequent employment by that insurance company. There are few who will bite the hand that feeds them.

75 Pa.C.S.A.§ 1797 conspicuously omits a provision which deals with an insurer who has collaborated with a PRO in bad faith. Without 42 Pa.C.S.A. § 8371, insureds who have been successful in getting their claim submitted to a PRO would have no punitive action against an insurer who has submitted the claim to a PRO in bad faith.

The court recognizes that there has been a recent decision by the Superior Court which has held that 75 Pa.C.S.A. §1797 and 42 Pa.C.S.A. § 8371 are irreconcilably inconsistent so that 75 Pa.C.S.A. §1797 governs claims for first party medical benefits. *Barnum v. State Farm Insurance Company*, 430 Pa.Super. 488, 635 A.2d 155 (1993). However, the Superior Court also notes, as we do, that when an insurer denies a claim without submitting that claim to a PRO and a court later decides in favor of the insured, the insurer becomes liable for the amount of the claim, counsel fees, costs, and interest of 12%. *Id.* On the other hand, the Superior Court also found that the only potential remedy available to an insured if an insurer submits a claim to a PRO is the amount of the claim plus interest even if the PRO or a court later determines in favor of the insured. *Id.* Because this court does not believe that every claim submitted to a PRO is done so necessarily in good faith, it cannot support the assertion that an insurer who follows the PRO procedure cannot be subjected to damages for bad faith.

Because this court views 75 Pa.C.S.A. § 1797 and 42 Pa.C.S.A. §8371 as reconcilable, it is allowing plaintiffs to

pursue the bad faith claim for punitive damages as provided by §8371. 75 Pa.C.S.A. §1797, as is presently constructed, is ripe for misinterpretation. It is dangerous to banish 42 Pa.C.S.A. §8371 as a remedy for insureds who have attempted to settle a dispute outside the legal system by first submitting that claim to a PRO if they are then refused payment of medical treatment, services and merchandise as a result of a peer review performed in bad faith.

The relationship between the insurers and the PROs must not be allowed to run unchecked. Courts must be permitted to examine this relationship to ensure that the Legislature's intent is not being misapplied to the detriment of insureds and their health care providers. Accordingly, this court is allowing plaintiffs to proceed with a bad faith claim under 42 Pa.C.S.A. § 8371.

ORDER OF COURT

December 8, 1994, defendant's motion for partial summary judgment is denied.

Defendant is ordered to comply with the March 4, 1993 order compelling defendant to provide discovery to plaintiffs' counsel within forty-five (45) days of this order.