

**ERISA: How does it Apply to Personal Injury Protection Benefits**

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In a recent decision, Salafia v. Hanover Ins. Co., 72 Mass. App. Ct. 1107 (2008), the Appeals Court of Massachusetts heard argument on a case in which the plaintiff, a chiropractor, treated two motor vehicle collision victims both of whom had health insurance under an employment health plan. The initial \$2,000 in medical expenses was paid by the defendant, Hanover Insurance Company (“Hanover”), under the applicable Personal Injury Protection (“PIP”) coverage. Thereafter, the plaintiff submitted the remainder of his bills to the victims’ employment health plan. That employment health plan paid some, but not all, of the chiropractor’s charges in accordance with the limitations of his provider agreement. The plaintiff then sought payment from Hanover for charges that were disallowed under the employment health plan. After the defendant refused to make additional payments, the plaintiff filed suit in the Lawrence District Court. After hearing cross-motions for summary judgment, the trial judge denied the plaintiff’s motion, and entered summary judgment for Hanover. The plaintiff then appealed to the Appellate Division of the District Court.

In the Appellate Division, the plaintiff argued that as the patients’ employment health plan is governed by ERISA, the express language in the plan controls and it deemed that the PIP carrier was primarily liable. The Appellate Division of the District Court disagreed with the plaintiff, affirming the decision of the Lawrence District Court (2006 Mass. App. Div. 188), holding that the defendant was not responsible for the additional charges because health insurance existed and the PIP claimant was actually seeking to avoid specific objectives of the health insurance plan (i.e., balance billing). Further, the plaintiff chiropractor lacked standing to argue that ERISA preempted the PIP statutory scheme. Even if the plaintiff had standing, it was clear that there was no ERISA preemption in this case because the PIP statute was not one

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which related to an employee benefit plan.

The plaintiff filed a further appeal to the Appeals Court. The Appeals Court also ruled in Hanover's favor, and affirmed the decision of the Appellate Division. The Court rejected the plaintiff's argument that he had standing as a beneficiary under the ERISA plan of his patients. The Court found that although the patients assigned their rights to payment of PIP benefits to the provider, the assignment did not include the patients' ERISA rights under the plan.

If you have any questions, please contact David O. Brink, Esquire at  
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