



National Association of Subrogation Professionals

Amicus Committee Update

Two Class-Action Lawsuits

Over the past several weeks, two lawsuits seeking class certification have been filed and both suits could potentially affect the way carriers pursue and handle their subrogation rights.

Rebecca Meek-Horton v Trover Solutions, Inc. d/b/a Healthcare Recoveries, et. al.

The Horton case threatens to jeopardize Medicare Advantage plans right to subrogate in the State of New York. The Horton case questions a Medicare Advantage plans right to recover or right of subrogation. The case was filed in the New York County Supreme Court on August 1, 2011, and alleges federal Medicare Advantage statues and regulations do not preempt New York's anti-subrogation law. Therefore, a Medicare Advantage plan is unable to assert a lien in New York against a personal injury or wrongful death settlement and any such lien should be extinguished.

The plaintiff's argument reasons that since the enactment of New York's anti-subrogation law (Section 5-335 of the General Obligations Law) no benefit provider has a lien except where a statutory right of reimbursement exists, that the "Medicare Act" does not provide preemption and therefore, in New York, Medicare Advantage plans have no right of reimbursement or subrogation or a valid lien on any recovery.

The complaint seeks compensatory damages, restitution, injunctive relief and punitive damages.

Melissa Thrasher-Lyon v. Illinois Farmers Insurance Company and CCS Commercial LLC d/b/a Credit collection Services Commercial

The Thrasher case was filed in federal court in Illinois on July 1, 2011 and eerily resembles the allegations that were asserted in the Panag v Farmers and Credit Control Services (CCS), 204 P.3d 885 (Wash. 2009). In

Thrasher the plaintiff seeks statutory, treble and punitive damages due to defendants' alleged repeated patterns and practices of deceptive mailings and harassing telephone calls to collect monies. Plaintiff alleges that Farmers sent her a series of misleading letters stating she owed the full amount of damages from the accident and threatening to sue her if she did not pay. The complaint alleges "the letters created the misleading impression that Plaintiff had a certain legal obligation to pay the entire amount claimed by Farmers immediately and that it was not subject to dispute...".

CCS continued the letter campaign, as well as alleged harassing telephone calls to Thrasher. The allegations are that CCS placed calls from an automatic telephone dialing system and voicemail messages were left using a machine or prerecorded voice on Thrasher's cell phone. The complaint alleges both Farmers and CCS are in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. Additional assertions accuse CCS of violating the Federal Telephone Consumer Protection Act and the Illinois Automatic Telephone Dialers Act.

NASP will continue to follow and monitor these important cases. We will report significant events that occur on these cases. Following are links to complaints for both suits:

[Horton v Trover, et al.](#)

[Thrasher-Lyon v. IL Farmers, et al.](#)

Copies are also available to members on our website at www.subrogation.org.

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