EXAMINERS' ANALYSIS OF QUESTION NO. 5

New lawyer Larry has given Derek horribly inaccurate advice under Michigan's No Fault Act. Derek having "full coverage" means that he was in compliance with the requirement under statute that he carry personal injury insurance benefits, as well as liability coverage. MCL 500.3101(1). Lawyer Larry's focus on Derek being at fault reflects his misunderstanding of Michigan's no fault law. He then gives inaccurate advice even beyond this basic mistake.

Derek's Benefits

Under Michigan's no fault law, an insured driver such as Derek looks to his own carrier for personal injury protection (PIP) benefits. These are payable even if Derek is at fault. These benefits include payments for lost wages, medical expenses, replacement services, and rehabilitation expenses. These are payable on a demonstration that they were incurred as a result of the accident. Medical expenses, rehabilitation expenses and replacement services must be customary and reasonable in the amount charged and reasonably necessary to the treatment or service in question. MCL 500.3107. Loss of earning from work the person would have performed had he not been injured are as well payable. MCL 500.3107(1)(b). Derek, being at fault, does not negate his statutory and policy rights.

Moreover, aside from not losing his rights because he was at fault, Derek is entitled to his lost wages up to the statutory maximum, less up to 150. MCL 500.3107(1)(b). His physical therapy would be covered as a rehabilitative expense. Additionally, a family member is allowed to provide replacement services up to $20 per day. MCL 500.3107(1)(c). Transportation costs would similarly fall under these reimbursable costs. As to the $25,000 hospital bill, not having health insurance has no bearing on Derek's carrier's obligation to cover that bill.

In sum, Lawyer Larry has totally misadvised Derek on his ability to collect his PIP benefits. The whole point of Michigan's no fault law in this area is to take fault out of a claim for PIP benefits.

Derek's Liability

Similarly, Lawyer Larry misadvised Derek on his personal liability to other parties. He has insurance coverage so his carrier must defend him and cover his liability up to the policy limits. Being at fault does not invalidate the carrier's duty. If it were otherwise, the carrier would only be obligated when the insured was not at fault; in other words, when the insured needed no defense.

Aside from this errant advice, Lawyer Larry should have advised Derek that when someone is involved in a motor vehicle accident they can only sue the negligent driver or owner, if a death occurs, or the plaintiff has a serious impairment of a body function or a serious, permanent disfigurement. In Michigan's no fault law scheme, tort liability for non-economic damages has been retained but only on showing one or more of the "threshold" injuries. *McCormick v Carrier,* 487 Mich 180 (2010) and MCL 500.3135.

Of the three categories statutorily delineated, two at most are arguably in play: Polly's as to serious impairment of a bodily function and Kent's as to a permanent, serious disfigurement. Injuries of these types are often the subject of dispute as to whether or not the threshold has been met. While subject to dispute and capable of resolution either in favor of Derek or against him, it is his insurance carrier that must take up his defense including any argument that the threshold has not been met.   While Derek should be advised that he may have potential liability, should an award transcend policy limits, his fault in the accident does not negate his coverage in the first instance.

In sum, Lawyer Larry's central conclusion, i.e. that fault vitiates coverage, poisoned the advice he gave Derek.   Rather than let fault guide his analysis, Lawyer Larry should have advised Derek as described above: (1) Derek can make a claim against his carrier for lost wages, medical expenses, replacement services, and transportation costs; and (2) his carrier is obligated to defend him and pay any liability up to his policy limits.