Automobile Insurer Not Required to Reimburse Group Health Insurance Plan Under Automobile Liability Policy's Medical Expense Coverage

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***Security Health Plan of Wisconsin, Inc. v. American Standard Ins. Co. of WI, et al.*, No. 2017AP1914, unpublished slip op. (Wis. App. Ct. Oct. 25, 2018), 2018 WI 47 (May 11, 2018)**

In *Security Health Plan of Wisconsin, Inc. v. American Standard Ins. Co. of WI, et al.* the Wisconsin Court of Appeals held that American Standard Insurance Company of Wisconsin and American Family Mutual Insurance Company ("American Family") did not have to reimburse Security Health Plan of Wisconsin, Inc. ("Security Health") for medical expenses Security Health paid to forty-two persons who were insured by both Security Health and American Family and were injured in separate automobile accidents. The court determined that the coverage provided by American Family was not a "plan" under WIS. ADMIN. CODE § INS 3.40, and therefore Security Health had no right to recovery.

Security Health issues group health insurance plans and American Family issues automobile insurance policies in Wisconsin. Forty-two individuals, who were insured by both Security Health and American Family, were involved in separate auto accidents and incurred medical expenses. Security Health paid for most of those medical expenses and sued American Family to recover the amount it paid. The circuit court granted declaratory judgment in favor of Security Health and a money judgment in the principal amount of $165,799.30 against American Family.

SECTION INS 3.40 regulates how a health insurance plan may interact with other insurance plans, *e.g.* automobile insurance plans. Security Health invoked the "right of recovery" provisions under § INS 3.40, which provides that if an insurer pays "more than it should have paid" under the coordination of benefits provision, the insurance plan then has the right to recover the excess paid from an insurance company that was required to pay the amount. However, to invoke the "right to recovery" provisions, the coverage provided by both Security Health and American Family has to be a "plan" as defined under § INS 3.40(3)(i) and (8)(a).

The court of appeals ruled that American Family's coverage was not a "plan" for two independently dispositive reasons: (1) the medical expense coverage in the American Family policies was not "required by law" because Wis. Stat. § 632.32(4)(bc) specifically states that a named insured may reject medical expense coverage; and (2) the American Family medical expense coverage was not a "no-fault" contract because "no-fault" did not refer to medical expense coverage in an automobile insurance policy issued in Wisconsin.

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