

1998

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Meyer, Helen M. and Downes, Paul K. (1998) "Entitlement to Benefits: Recurring Areas of Dispute," *William Mitchell Law Review*: Vol. 24: Iss. 4, Article 5.

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ENTITLEMENT TO BENEFITS: RECURRING AREAS OF DISPUTE

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I. INTRODUCTION

Created in 1975, the Minnesota No-Fault Automobile Insurance Act (No-Fault Act) is a first party system which was designed to meet a number of purposes. Primary among those, was to provide for the basic expenses such as medical bills and wage loss incurred by someone injured in an automobile accident. For the most part, the No-Fault Act has successfully and efficiently met its intended goals. However, there are a number of no-fault issues which recur

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in day to day practice which effectively contravene the intended purposes of the No-Fault Act.

As a first party system, a person injured in a motor vehicle collision is often under the impression that they will encounter no difficulties with their own insurance company. In fact, the claimant's reaction to their own insurance company's apparent lack of cooperation is usually more extreme than their reaction to the other party's lack of cooperation. A claimant frequently finds herself in an adversarial position with her own insurance company, needing to hire an attorney, and sometimes engaging in expensive and time-consuming litigation.

The objective of this article is to consider whether the No-Fault Act has successfully created a system of small claims arbitration which has decreased the expense of and complexity of litigation and, assured prompt payment for medical treatment.

II. PURPOSES OF THE NO-FAULT ACT

From a practical standpoint, the no-fault system was designed to efficiently pay medical bills, wage loss, and other benefits to someone as a result of an automobile accident without any reference to fault. Prior to the No-Fault Act, the primary problem faced by someone injured as a result of someone else's fault was the inability to pay for her medical bills and wage loss which continued to mount as the parties engaged in lengthy litigation. The drafters of the No-Fault Act hoped to satisfy a number of purposes. Section 65B.42 specifically cites the intended purposes of the No-Fault Act:

- (1) To relieve the severe economic distress of uncompensated victims of automobile accidents within this state by requiring automobile insurers to offer and automobile owners to maintain automobile insurance policies or other pledges of indemnity which will provide prompt payment of specified basic economic loss benefits to victims of automobile accidents without regard to whose fault caused the accident;
- (2) To prevent the overcompensation of those automobile accident victims suffering minor injuries by restricting the right to recover general damages to cases of serious injury;
- (3) To encourage appropriate medical and rehabilitation treatment of the automobile accident victim by assuring prompt payment for such treatment;

(4) To speed the administration of justice, to ease the burden of litigation on the courts of this state, and to create a system of small claims arbitration to decrease the expense of and to simplify litigation, and to create a system of mandatory inter company arbitration to assure a prompt and proper allocation of the costs of insurance benefits between motor vehicle insurers;

(5) To correct imbalances and abuses in the operation of the automobile accident tort liability system, to provide offsets to avoid duplicate recovery, to require medical examination and disclosure, and to govern the effect of advance payments prior to final settlement of liability.¹

Simply put, the no-fault system was intended to allow an injured person to be able to quickly seek medical treatment and have their medical bills paid for with no dispute between the injured person and their no-fault carrier.

The objective of this article is to consider whether the No-Fault Act has successfully created a system of small claims arbitration which has decreased the expense of and complexity of litigation and, assures prompt payment for medical treatment.

III. AREAS OF DISPUTE

A. *The Duty to Attend an Independent Medical Examination and the Effect of Failing To Do So*

Under most no-fault automobile insurance policies, the claimant is entitled to \$20,000 in medical expense coverage and \$20,000 in wage loss coverage. However, in most cases, before the claimant has exhausted her \$20,000 in medical coverage (and frequently within several months of the injury-causing collision), the no-fault carrier will ask the claimant to undergo an independent medical examination. In the majority of cases, the examining doctor will opine that the claimant no longer needs medical treatment and/or is capable of returning to work without restriction. As a result, following most independent medical examinations, the claimant's no-fault benefits will be terminated before they have used up their available coverage. With that expected outcome, a recurring area of dispute in the no-fault system is the question of when a claimant is obligated to attend an independent medical examination and

1. MINN. STAT. § 65B.42 (1996)

the effect of a failure to attend.

1. *Statutory right to an examination*

A no-fault carrier's right to request a medical examination is governed by Section 65B.56 which provides:

Any person with respect to whose injury benefits are claimed under a plan of reparation security shall, upon request of the reparation obligor from whom recovery is sought, submit to a physical examination by a physician or physicians selected by the obligor as may reasonably be required.

The costs of any examinations requested by the obligor shall be borne entirely by the requesting obligor. Such examinations shall be conducted within the city, town, or statutory city of residence of the injured person. If there is no qualified physician to conduct the examination within the city, town, or statutory city of residence of the injured person, then such examination shall be conducted at another place of the closest proximity to the injured person's residence.²

The insurer's right to have an independent medical examination is not an absolute right. Situations arise in which recent case law suggests that a claimant is not obligated to attend an independent medical examination (IME).

2. *Discussion of case law*

Case law has established that an insured's failure to attend an independent medical examination does not automatically terminate no-fault benefits. The issue was first addressed in the case of *Maryland Casualty Company v. Harvey*.³ In that case, the court of appeals determined that the insurer's failure to pay basic economic loss benefits within 30 days after proof of loss as required under the statute precluded termination of benefits based on the claimant's failure to attend the IME.⁴ The Court suggested that since the no-

2. *Id.* § 65B.56, subd. 1.

3. 474 N.W.2d 189 (Minn. App. Ct. 1991), *overruled by* Neal v. State Farm Mut. Ins. Co., 529 N.W.2d 330 (Minn. 1995).

4. *See id.* at 193-94. The court noted that "[t]he statute rejects automatic termination of benefits for failure to attend an examination." *Id.* at 194. "Rather, the statute allows the arbitrator to consider an insured's noncooperation with reasonable medical examination requests." *Id.* at 193.

fault carrier had not fulfilled its obligations under the contract, that the claimant should not be required to fulfill his or her obligation to attend the medical examination.⁵ The *Harvey* court went on to indicate that the issue of whether or not the claimant reasonably failed to attend the examination is a question of fact for the arbitrator to decide.⁶

The second case which determined that there is no absolute right to an independent medical examination is *Milwaukee Mutual Insurance Company v. Murphy*.⁷ In *Murphy*, the claimant was injured in an automobile accident in January, 1989.⁸ On September 19, 1989 his no-fault carrier, Milwaukee Mutual, scheduled an IME to take place on October 26, 1989.⁹ On October 20, 1989, the claimant wrote to his no-fault carrier indicating that he would not be attending this scheduled IME because Milwaukee Mutual had not paid over \$800 in unpaid medical expenses, some of which had been held for over 30 days.¹⁰ The insurer wanted the exam to *retrospectively determine* whether certain bills were to be paid.¹¹ Mr. Murphy failed to attend the exam and Milwaukee Mutual then brought a declaratory judgment action seeking an order that it was not required to pay further medical expense benefits due to Mr. Murphy's failure to attend the IME.¹² The trial court agreed with Milwaukee Mutual but was reversed by the court of appeals.¹³

In reaching its decision, the court of appeals affirmed that "[i]t is well established that an insurance policy is a contract," and that "the Milwaukee Mutual policy is subject to the statutory requirements of the Minnesota No-Fault Act."¹⁴ The court indicated that the No-Fault Act "requires insurers to pay basic economic loss benefits within 30 days after receipt of reasonable proof of loss" and that "[b]enefits are overdue if not paid within 30 days after the reparation obligor receives reasonable proof of the fact and amount of loss realized."¹⁵

5. *See id.* at 194.

6. *See id.*

7. 474 N.W.2d 438 (Minn. Ct. App. 1991).

8. *See id.* at 439.

9. *See id.*

10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *Id.* at 440.

15. *Id.*

In light of the above, the *Murphy* court ruled that the claimant could reasonably refuse to attend an IME if the insurer has breached the contract by not timely paying medical bills.¹⁶ "If Milwaukee Mutual breached the insurance contract by failing to pay medical expense as they came due, Milwaukee Mutual cannot raise Murphy's failure to attend an IME as a basis for terminating payment of benefits."¹⁷ The decisions in *Harvey* and *Murphy* made it clear that if benefits were overdue, the insured could reasonably refuse to attend an independent medical examination.

The holdings in *Harvey* and *Murphy* were clouded by the supreme court's decision in *Neal v. State Farm Mutual Insurance Co.*¹⁸ In *Neal*, the claimant refused to attend a medical examination since it was outside his city of residence.¹⁹ The Court determined that the reasonableness of that failure to attend was a question for the arbitrator.²⁰ However, the court in *Neal* also ruled for the first time that it is appropriate for a no-fault insurer to "suspend" benefits, rather than terminate benefits, until it has been determined by the arbitrator whether the failure to attend the medical examination was reasonable.²¹ Under *Neal* the first issue to be decided at an arbitration hearing is whether the claimant's refusal to attend the medical examination was reasonable.²² The court stated:

That the insurer suspends, rather than terminates, payment until the claimant has, upon request, submitted to a physical examination scheduled in accordance with the statutory guidelines seems eminently reasonable. Thereafter, during the arbitration process, the parties may produce evidence of either the reasonableness of the refusal to attend the IME so as to warrant the reinstatement of benefits, in the case of the claimant, or the appropriateness of the suspension of benefits for the claimant's lack of cooperation within the terms of the insurance contract

16. *See id.*

17. *Id.*

18. 529 N.W.2d 330 (Minn. 1995).

19. *See id.* at 331.

20. *See id.* at 331-32.

21. *Id.* at 333. The court held that section 65B.56 "contemplates a balancing of the entitlements of each party in the sense that the continued receipt of benefits is conditioned on the reasonable submission to an independent medical examination." *Id.* This is because "[i]nasmuch as an insured is entitled to prompt payment of benefits, an insurer correspondingly is entitled to prompt access to independent medical information about a claimant." *Id.*

22. *See id.*

or Minn. Stat. § 65B.56, subd. 1 and the prejudice suffered by the insurer in its efforts to gather information with regard to the claim, in the case of the insurer.²³

3. *Effect of the case law*

In *Neal* the supreme court specifically overruled the court of appeals' decision in *Harvey*.²⁴ However, the fact that the *Neal* court did not overrule and, in fact, did not even address *Murphy*, has resulted in some ongoing confusion. Procedurally, a claimant can still refuse to attend an IME if the no-fault carrier has not paid all of the bills up to the date of the IME. Typically, the no-fault carrier would then suspend benefits under the authority of *Neal* until an arbitrator can address the reasonableness of the failure to attend the medical examination.

Confusion under *Neal* has also resulted in questions of what happens after the arbitrator makes his or her initial decision regarding the reasonableness of the failure to attend. If the arbitrator determines that the failure to attend was reasonable, are unpaid medical bills up to the date of the arbitration automatically payable without even showing that the medical treatment was reasonable? Or, is the claimant still required to prove the reasonableness and necessity of the treatment even though there has been no termination of benefits?

Conversely, if the arbitrator determines that the claimant's failure to attend the examination was not reasonable, even more chaos may ensue. If the failure to attend the examination was not reasonable and the claimant is ordered to attend the IME, are benefits then reinstated once the claimant simply attends the medical examination? Or, assuming that the benefits are terminated following the IME, is the claimant entitled to make a claim for benefits dating back to the original suspension of benefits or dating back to only the termination of benefits following the IME?

The answers to these questions are as unclear as the arbitration decisions that have addressed them. The supreme court in *Neal* made a great effort to specifically create the concept of "suspension" of benefits versus termination,²⁵ but the court failed to look beyond and specify what effect the arbitrator's decision would have

23. *Id.*

24. *See id.* at 334.

25. *See id.* at 333.

regarding the reasonableness of failing to attend an IME.

The only appellate guidance to date is an unpublished decision of *Jacobsen v. Auto Owners Insurance Company*.²⁶ In that case, the no-fault carrier suspended benefits as authorized under *Neal* after the claimant had failed to attend two IMEs.²⁷ The claimant's failure to attend the two IMEs was based on the fact that some of his medical bills remained unpaid.²⁸ The arbitrator determined that claimant's failure to attend the medical examination was reasonable.²⁹ The *Jacobsen* court sheds some light on the effect of the arbitrator's decision in that case by indicating that:

Neal's holding does not mandate termination of all benefits, but describes suspension of benefits as an intermediate sanction "until the claimant has, upon request, submitted to a physical examination scheduled in accordance with the statutory guidelines". Then the arbitrator may decide, based on the evidence, whether to reinstate benefits or suspend them due to lack of cooperation and prejudice to the insurer.³⁰

Without any further guidance from the court, the effect of an arbitrator's decision in determining whether or not a failure to attend an IME was reasonable remains subject to differing interpretation and argument. The decision in *Neal* places many claimants in an unfair and unfavorable position. If the claimant's no-fault carrier has not paid medical bills up to the date of the IME, the claimant should not be required to attend the exam as stated by the court in *Murphy*.³¹ By allowing a suspension of benefits, the *Neal* case seems to question the authority of *Murphy* but clearly does not overrule the decision in *Murphy*.³² Unfortunately, because of the *Neal* decision, the claimant is no longer guaranteed "prompt payment" of their medical treatment as was intended by the drafters of the No-fault Act.³³ A claimant now begins treatment with any medi-

26. No. C3-96-587, 1996 WL 523805 (Minn. Ct. App.), *review denied*, (Minn. Nov. 20, 1996).

27. *See id.* at *1.

28. *See id.*

29. *See id.*

30. *Id.* at *2 (citations omitted).

31. *See Milwaukee Mut. Ins. Co. v. Murphy*, 474 N.W.2d 438, 440 (Minn. Ct. App. 1991).

32. *See Neal v. State Farm Mut. Ins. Co.*, 529 N.W.2d 330, 333 (Minn. 1995).

33. *Compare Neal*, 529 N.W.2d at 333, with MINN. STAT. § 65B.42, subd. 3 (1996) (stating that one of the purposes of the No-Fault Act is to "encourage appropriate medical and rehabilitation treatment of the automobile accident victim

cal provider not knowing whether prompt payment of their bills will occur.

The financial stakes for a claimant have also become much higher since the *Neal* decision. As mentioned above, the effect of an arbitrator's decision on the reasonableness of failing to attend the exam is far from crystal clear. By failing to attend the exam due to the unpaid medical bill, a claimant must at least consider the possibility that if a failure to attend is deemed unreasonable, a claimant may then be personally responsible for the bill from the date of suspension of benefits up to the time of attendance at the IME. That is not necessarily the correct state of the law but could be interpreted by an arbitrator as such.

4. *Proposed Solutions*

The proposed solution to eliminate all the confusion caused by the *Neal* decision is to abandon the concept of "suspension of benefits." Prior to the *Neal* case, the law was clear under *Murphy* that all substantiated medical bills had to be paid prior to the claimant attending an IME.³⁴ If a no-fault carrier had questions regarding some of the bills being submitted, an IME could then quickly be set up. The *Neal* decision has created great chaos and uncertainty regarding the effect of an arbitrator's decision as to whether or not the failure to attend an IME was reasonable.

B. *The Use of a Paper Review*

Another recurring topic related to independent medical examinations is the use of "paper reviews" in the no-fault system. Instead of hiring a physician to examine the claimant for purposes of an IME, some no-fault carriers choose to have a physician review the medical records of the claimant only and not conduct a physical examination. The claimant's termination of no-fault benefits is then based on this "paper review" of the records.

The ability to use a paper review as the basis for terminating no-fault benefits has become an age old debate. Occasionally, a district court decision will surface allowing a paper review but it also remains clear that there is no authority under the no-fault statute for paper reviews. The specific language of the No-Fault Act sug-

by assuring prompt payment for such treatment.")

34. See *Murphy*, 474 N.W.2d at 440.

gests that only physical, in person examinations, are authorized.³⁵

As a practical matter, paper reviews are used periodically and are often admitted into evidence at the arbitration hearing. During the hearing, the credibility of the doctor issuing opinions without actually seeing the claimant is strongly questioned.

C. *Auditing Bills*

An insurance practice related to paper reviews is bill auditing. At the no-fault arbitration, the claimant must show that the amount of the medical bill is reasonable for that given community. In other words, the claimant's doctor cannot be charging a substantially higher amount than a similar doctor in that area. Many no-fault carriers are auditing the bills that are submitted. Little, if no, explanation is usually given as to how the audit was conducted or by whom. Nonetheless, the end result is that the no-fault carrier is only willing to pay a portion of the actual amount charged. This results in the claimant being placed in an unfavorable position through no fault of his or her own. Not surprisingly, the treating provider is usually not willing to accept the amount recommended by the bill auditing company and therefore pursues the claimant for the unpaid portion of the bill. Some insurers will pay the disallowed amount if it becomes clear that the insured is being pursued for the balance of the bill.

Other insurers are taking a hard line. They agree only to "indemnify" the insured if the provider seeks and obtains a judgment against the claimant for the remaining balance. Such a judgment would presumably be obtained by the provider in small claims court, after a collection agency has exhausted collection attempts against the claimant. Claimants will have suffered damage to their credit history and been subjected to costly litigation, before their insurer will finally pay on their obligation.

For that reason, the use of bill auditing companies should not be allowed under the no-fault system until the time of the actual arbitration, if at all. At that point, the arbitrator could decide what, if any, weight to give to the opinion of the auditing company. Medical providers are also much more willing to acknowledge the opinion of an arbitrator regarding the reasonableness of their bill

35. See MINN. STAT. § 65B.56, subd. 1 (1996) (requiring that a claimant "submit to a physical examination by a physician or physicians selected by the obligor as may reasonably be required").

than they are to acknowledge the opinion of an unknown auditing company hired by the no-fault carrier.

D. Arbitrator Bias and Post-Arbitration Relief

By statute, any dispute over no-fault benefits, which total \$10,000 or less must be resolved through no-fault arbitration.³⁶ The process by which an arbitrator is selected is somewhat unique. The American Arbitration Association sends each party a list of four potential arbitrators.³⁷ Each party is then allowed to strike one potential arbitrator from the list and rank by preference the remaining three arbitrators.³⁸ Between the two remaining names, the one that is most preferred between both parties will be the arbitrator.³⁹ In the case of a tie between the two remaining names, the arbitrator is randomly selected between the two. Each potential arbitrator is more often than not, an attorney that practices in the personal injury area and may practice exclusively as a plaintiff attorney or as a defense attorney.⁴⁰ As a result, each arbitrator is required to disclose any potential conflict he or she may have with the parties in that case and indicate whether or not that would affect the arbitrator's ability to be impartial.⁴¹

A recurring dispute regarding no-fault arbitrations involves the claim of arbitrator bias. There is a concerted effort on behalf of many no-fault carriers to disqualify plaintiff's lawyers as arbitrators in no-fault cases based on the fact that they have handled or are handling cases against that same insurance company. When dealing with many of the larger insurance companies such as State Farm, which insures the majority of drivers in this state, such a proposal would effectively eliminate all plaintiff's lawyers from acting as no-fault arbitrators. A recent Hennepin County District Court case illustrates the lengths to which a no-fault carrier will go in an attempt to disqualify an arbitrator.

36. *See id.*

37. *See id.*, Rule 8.

38. *See id.*

39. *See id.*

40. *See id.*, Rule 10.

41. *See id.*

I. "Claimant Smith" v. State Farm Mutual Automobile Insurance Company

On November 24, 1993 "Claimant Smith" was injured in a collision and applied for and was paid no-fault benefits by State Farm. On June 19, 1996 respondent State Farm scheduled an IME of Ms. Smith to take place on August 5. At the time the IME was scheduled, State Farm had failed to pay approximately \$2,000 in bills from the Northwestern College of Chiropractic. Ms. Smith was specifically referred there by her treating chiropractor for a functional rehabilitation program, and there was even evidence to indicate that State Farm had given pre-approval for the rehabilitation program. Due to the unpaid medical bills, claimant's counsel sent a letter to the no-fault adjuster asking that those bills be paid prior to Ms. Smith's attendance at an IME. State Farm refused to pay the bills.

Claimant Smith did not attend her independent medical examination under the authority of *Murphy*. State Farm then suspended her no-fault benefits and Ms. Smith filed for arbitration with the American Arbitration Association ("AAA") as required by statute. Both parties executed their arbitrator strike lists and an arbitrator was selected. The selected arbitrator indicated in his background that he was a plaintiff's attorney. In his disclosure statement, he revealed that he currently and in the past, had represented clients pursuing claims against State Farm or their insured. The arbitrator also noted that he currently represented a client pursuing a claim against State Farm which was being defended by the law firm which was defending Ms. Smith's no-fault claim. The arbitrator went on to note "I don't believe the circumstances affect my ability to be impartial, but I am compelled to make the disclosures."

After this disclosure was made, State Farm petitioned the AAA to have the arbitrator removed. AAA received written arguments on the matter and issued a letter indicating that the arbitrator "should be reaffirmed as the arbitrator on this file." Following this decision by AAA, State Farm failed to appeal AAA's decision to the No-Fault Standing Committee as provided for under Rule 4 of the Policy Statement of the Minnesota No-Fault Standing Committee. Likewise, State Farm failed to object to the arbitrator prior to exercising their strikes as required under Rule 8 of the No-fault Arbitration Rules. The case then proceeded to arbitration before the arbitrator who issued an award in favor of the claimant. Following that

decision, State Farm made a motion to vacate the arbitrator's decision arguing that he exceeded his authority by determining a question of law and also arguing that the case should be remanded to a different arbitrator due to the arbitrator's history of handling claims against State Farm.

Surprisingly, a Hennepin County trial judge agreed with State Farm and determined that the arbitrator was biased and should not have been an arbitrator on the case against State Farm. The judge's decision was based on the arbitrator's plaintiff's practice and "the fact that he actively represents clients who are opposed to State Farm."

No-fault carriers are routinely asking AAA to exclude as arbitrator a plaintiff's lawyer who has ever handled a claim against that insurance company.

2. *Discussion of the "Smith" decision*

The trial court's decision is wrong for a number of reasons. (Unfortunately, the claimant opted not to appeal the decision on this relatively small no-fault claim). The judge's decision would eliminate the majority of potential arbitrators qualified to hear no-fault cases. To suggest that an attorney who has handled claims against an insurance company in the past would not be "free from appearance of impropriety" on an unrelated case is unprecedented.

Secondly, the judge's decision is being used as an attempt to broadly eliminate all plaintiff lawyers as potential arbitrators instead of examining the circumstances on a case-by-case basis. Rules 8 and 10 of the Minnesota No-Fault Arbitration Rules and Rule 14 from the AAA Policy Statement allow AAA and the No-Fault Standing Committee to examine the particular facts of each case to determine whether or not the arbitrator has a conflict of interest which would prevent him or her from deciding a case based on a number of factors, including whether the potential conflict is continuing, intermittent, singular, recent, distant or substantial.⁴² The judge's decision undermines the authority of AAA and the No-Fault Standing Committee and suggests that instead of examining individual factors on a case-by-case basis, the analysis should be solely based on whether that arbitrator has ever handled any claims

42. See, e.g., *id.*, Rules 8 & 10.

against the respondent insurance company.⁴³

The problems encountered in the *Smith* case lie not only with the judge's decision but also with the current no-fault arbitration system. One of the most troubling aspects involving the *Smith* decision, and many cases like it, is that the respondent was allowed to wait and see what the arbitrator's decision was before appealing to the district court. Either party is essentially entitled to take a "wait and see" approach to any issue they have regarding the arbitrator's bias. For example, in *Smith*, State Farm objected to the arbitrator being appointed as the arbitrator prior to the hearing. However, once AAA had denied State Farm's request to remove the arbitrator as the arbitrator, there was no provision requiring a party to appeal AAA's decision regarding arbitrator bias prior to the hearing.

Ms. Smith's case illustrates the delay and expense that can be associated with disputes arising under the No Fault Act. Ms. Smith has now been holding onto unpaid medical bills for a year and a half and is being pursued by medical providers and collection agencies.⁴⁴ She is concerned that her case will go on so long that the medical provider will no longer be willing to wait for the result of her litigation and will fully pursue collection of the medical bills through a lawsuit of its own. She has delayed seeking appropriate medical treatment for fear that she will be responsible for the bills, a result that runs counter to one of the express purposes for the No-Fault Act: "[t]o encourage appropriate medical and rehabilitation treatment of the automobile accident victim by assuring prompt payment for such treatment."⁴⁵

Unfortunately, too many no-fault claims still end up in costly litigation. If a party claims that an arbitrator is biased prior to the hearing, there is very little to prevent that party from taking a wait-and-see approach to first determine what the arbitrator's award will be before deciding to appeal the issue of bias to the court. Any claim of arbitrator bias that is present before the arbitration hear-

43. The authors of this article have proposed to the No-Fault Standing Committee that a change be made to Rule 8 of the No-fault Arbitration Rules indicating that an arbitrator will not be removed from a case based solely on the fact that they have had cases or are handling cases against the respondent insurance company. This proposed rule is under consideration by the Standing Committee.

44. Ms. Smith's no-fault benefits were terminated on July 25, 1996. She is currently waiting for her second arbitration to be scheduled while the Respondent again petitions that any plaintiff's lawyers be removed as arbitrators in her second arbitration. Her medical bills for the last year and a half remain unpaid.

45. MINN. STAT. § 65B.42, subd. 3 (1996).

ing ought to be determined prior to the actual hearing. Otherwise, it does nothing but produce a cycle of litigation in which the no-fault claim is arbitrated, then appealed to the district court and if successful at the district court it is then sent back to begin the whole process again. Such a process clearly does not “speed the administration of justice”, “ease the burden of litigation,” or “decrease the expense of and simplify litigation” as intended by the drafters of the No-Fault Act.⁴⁶

3. *Proposed Solution*

The proposed solution to this effort of attempting to remove all plaintiff’s attorneys as potential arbitrators is to have any question of arbitrator bias determined solely by the No-Fault Standing Committee. The Committee is a group of practicing attorneys, both plaintiff and defense, experienced in the no-fault area, originally appointed by the Supreme Court.⁴⁷ New members are continuously appointed by the current board.⁴⁸ The twelve members of the Standing Committee are responsible for the administration of the no-fault arbitration system.⁴⁹ According to the Minnesota No-Fault Arbitration Rule, if the American Arbitration Association refuses to remove an arbitrator based on a claim of bias, that claim must then be appealed to the Standing Committee.⁵⁰ The Standing Committee’s decision should be the final determination of whether an arbitrator should be removed. Having the Standing Committee determine the issue of arbitrator bias will result in consistent and thorough decisions. The current system, which allows the Standing Committee’s decision to be appealed to the district court, can result in a number of inconsistent decisions by district court judges who may not be familiar with the no-fault system.

IV. CONCLUSION

The Minnesota No-Fault system is meeting many of its stated purposes. However, there are recurring areas of dispute which serve to unnecessarily prolong disputes, create expensive litigation, and dissuade injured people from getting necessary and reasonable

46. *Id.*, subd. 4.
 47. *See id.* § 65B.525, Rule 1.
 48. *See id.*, Rule 2.
 49. *See id.*, Rule 1.
 50. *See id.*, Rule 8.

medical treatment. The No-Fault Act was specifically designed to be interpreted liberally in favor of the claimant. Failure to promptly pay medical bills prior to an IME, use of paper reviews, audits of medical bills, and attempts to remove an arbitrator based solely on his or her background as a plaintiff's attorney, all represent barriers to the claimant and prevent the intended purposes of the No-Fault Act from being met.