



# Commercial Law Reporter

A Publication Devoted to Commercial Law and Intellectual Property Issues • [www.garanlucow.com](http://www.garanlucow.com)

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## From the Editors

by Karen Libertiny Ludden

This edition of Commercial Law Reporter contains the following:

- **Article:** New law governs the scope and reimbursement of chiropractic care in personal injury lawsuits against businesses
- Our new **practical advice column:** What you need to know about... [setting aside a default](#).
- **Commercial law update:** New requirements for “furnishers” under the Fair and Accurate Credit Transactions act.
- **Breaking news:** Announcing Garan Lucow Miller’s Indiana Office.

## New law changes scope and reimbursement of chiropractic care, which affects insurance coverage for personal injury suits against businesses

by: C. David Miller

Under a new statute, the scope of chiropractic practice in the State of Michigan has significantly changed, and this can have an impact on insurance

coverage for companies that are sued for personal injuries; whether they be caused by company vehicles, slip and falls, or other accidental occurrences. While the scope of the activities that a chiropractor can perform has been broadened, in most instances insurance reimbursement for the newly allowed activities has not. This complicates the process of determining insurance reimbursement for both businesses and their insurers. New litigation over this issue is likely to occur.

Before the new law, chiropractors in the State of Michigan were previously limited in both their diagnoses and treatment of patients, as well as the use of equipment for diagnosis and treatment. Diagnoses included analysis of the spine purely to determine the existence of spinal subluxation or misalignment that produced nerve interference. A chiropractor could perform adjustments of subluxations or misalignments only on the spine. Equipment, nutritional advice and rehabilitative exercise and any adjustment apparatus could only be used for the purpose of locating and treating spinal subluxations or misaligned vertebrae. Chiropractors could not diagnose patients’ general health conditions by a physical examination as such was outside the scope of chiropractic practice. In particular, a differential diagnosis of conditions were outside the scope of chiropractic practice. *Hoffman v ACIA*, 211 Mich App 55 (1995).



The changes made by the Legislature expanded the practice of chiropractic medicine to mean “that discipline within the healing arts that deals with the human nervous system **and the musculoskeletal system** and their interrelationship with other body systems.” The Legislature now defines the musculoskeletal system as “muscles, tendons, ligaments, bones, joints and associated tissues that move the body and maintains its form.” Now, the chiropractor can perform complete physical examinations, including tests for other conditions than those just related to spinal integrity.

Although the scope of a chiropractor's licensed activities is broader, the new law exempts many insurers from coverage for these new activities. This is because the Senate Bill expanding the scope of chiropractic activities was tie-barred to three other Senate Bills that limited many insurance providers' obligations to the old definition of chiropractic services. Under the new law, the only services that are reimbursable by most insurers for chiropractic services are those which were already reimbursable as of January 1, 2009; before the expansion of chiropractic services.

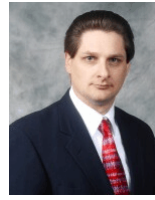


What this means for insurers such as no-fault and health insurers who are being billed by a chiropractor, is that you will have to require significant documentary support of the care being rendered by the chiropractor to determine if the latter is charging for services that were not reimbursable as of January 1, 2009.

What this means for companies is that if your employee is involved in an automobile accident while on company time, and someone sues your company for those injuries, not all of the plaintiff's chiropractic care will be covered by your no-fault insurance. Likewise, your health insurance carrier may not cover all of the chiropractic care that employees might seek. The issue will also come up if your company is sued for a lawsuit claiming that a patron slipped and fell on your premises.

Regulations to establish the criteria for how to separate out reimbursable activities from those which are not when they might overlap have not yet been promulgated. Moreover, it will take some time before

cases addressing this issue wend their way through the court system.



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## What you need to know about... setting aside a default

*by: Sarah Robertson*

In the rush of the daily demands of operating a business, it is easy to underestimate the need to immediately respond to a lawsuit. Often, a business will place a phone call to its insurer, or simply table the issue until the next board meeting, only to find that a default has already been entered.

The Michigan Court Rules dictate that if a defendant to a lawsuit has failed to file the necessary documents in defense of its position within the time frame allotted, the court clerk *must* enter the default of that party. Once a default is entered, the defendant is often just one court hearing away from a default judgment, which empowers the suing party to seek payment of that judgment through a variety of unpleasant means.



A default, however, can be set aside if good cause is shown and an affidavit of facts showing a meritorious defense is filed. Moreover, the law favors the determination of claims on their merits, rather than by default. *Alken-Zeigler, Inc v Waterbury Headers Corp*, 461 Mich 219; 600 NW2d 638 (1999). “[rules of practice and procedure] must be followed but they must also be thought of as guides and standards to the means of achieving justice, not the end of justice itself.” *Higgins v Henry Ford Hosp*, 384 Mich 633; 186 NW2d 337 (1971).

Recently, in *Shawl v Spence Brothers Inc*, 280 Mich App 213;760 NW2d 674 (2008), the Michigan Court of



Appeals addressed the meaning and application of the “good cause” and “meritorious defense” elements in the context of setting aside defaults. In that case, the Court specifically addressed the question of whether an insurer’s negligence in failing to timely file the necessary defense documents can be imputed to its insured. The Court found that defendant in that case had presented a reasonable excuse under the good cause test and that a meritorious defense had been established. The Court stated that, in determining whether a party has shown good cause, the following factors were important:

- (1) Whether the party completely failed to respond or simply missed the deadline to file;
- (2) If the party simply missed the deadline to file, how long after the deadline the filing occurred;
- (3) The duration between entry of the default judgment and the filing of the motion to set aside;
- (4) Whether there was defective process or notice;
- (5) The circumstances behind the failure to file or file timely;
- (6) Whether the failure was knowing or intentional;
- (7) The size of the judgment and the amount of costs due;
- (8) Whether the default judgment results in an ongoing liability (as with paternity or child support); and
- (9) If an insurer is involved, whether internal policies of the company were followed.

When determining whether defendant has a meritorious defense, the following factors are to be considered:

- (1) The plaintiff cannot prove, or the defendant can disprove, an element of the claim or a statutory requirement;
- (2) A ground for summary disposition exists; or
- (3) The plaintiff’s claim rests on evidence that is inadmissible.

While it is important to immediately consult an attorney or take other action to defend against a lawsuit, there is some relief from defaults. Take action before the default turns into a default judgment.



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## Commercial Law Update

by Rachel Bissett

### NEW REQUIREMENTS FOR “FURNISHERS” UNDER THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT

The Fair And Accurate Transactions Act (FACT) places certain duties on entities that *furnish* information about consumers to credit reporting agencies such as TransUnion, Equifax and Experian. 15 U.S.C.A. 1681s-2. A “furnisher, as it is termed in the statute, is defined as an “entity which transmits information concerning a particular debt owed by a particular customer to consumer reporting agencies,” and includes numerous types of lending institutions. *Barkho v. Homecomings*, \_\_\_ F.Supp 2d \_\_\_ (September 30, 2009), citing *Carney v. Experian Info. Systems, Inc.*, 57 F.Supp.2d 496, 501 (W.D. Tenn. 1999).

Pursuant to 15 U.S.C.A. 1681s-2(a)(8) and (e), the Federal banking agencies, the National Credit Union Administration, and the Commission were required to establish regulations and guidelines for furnishers to follow regarding the information they provide to credit reporting agencies and mechanisms for dealing with disputes directly from consumers. These regulations have recently been issued and place additional requirements on furnishers of information when dealing with consumer debt. Amongst other things, the guidelines implemented:



- 1) require furnishers to establish reasonable policies and procedures regarding the accuracy and integrity of the information about consumers that they furnish to credit reporting agencies (including the objectives of such policies, ways to implement the same, and specific

components that should be addressed in each); and

2) identify the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information contained in a credit report based on a direct request from a consumer.

These new guidelines become effective July 1, 2010 and, at that time, furnishers must be prepared to implement their new policies and understand the circumstances under which they must reinvestigate information already reported to a credit reporting agency.

For a review of the guidelines, which includes all six sets issued (depending on the type of entity involved), see:

<http://www.ftc.gov/opa/2009/07/facta.shtm>.



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## Breaking News

*Garan Lucow Miller, P.C. is pleased to announce the opening of its*

## Indiana office

**Barrister Court  
9211 Broadway  
Merillville, IN 46410  
Phone: (219) 756.7901  
Fax: (219) 756.7902**

*See the attached announcement for a full biography of the experienced attorneys servicing claims arising in Indiana.*

## SAVE THE DATE

*If your company is interested in receiving a free in-house seminar on any commercial law topic, please contact [kludden@garanlucow.com](mailto:kludden@garanlucow.com)*

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*Announcing Our New Indiana Office*

*Garan Lucow Miller, P.C.  
Is Pleased To Announce*

*Gregory M. Bokota*

*Jennifer L. McCloskey*

*and*

*David A. Wilson*

*have joined the firm as Shareholders in our new  
Merrillville, Indiana office.*

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**Gregory M. Bokota** was founding partner at Bokota Wilson McCloskey & Long, P.C. In 1985, Mr. Bokota earned his B.A. from the University of Chicago with honors, and in 1991, he received his J.D. from Indiana University School of Law. Mr. Bokota concentrates his practice in the areas of insurance defense litigation and appellate law. Mr. Bokota is licensed in the State of Indiana and State of Illinois.

**Jennifer L. McCloskey** was founding partner at Bokota Wilson McCloskey & Long, P.C. In 1992, Ms. McCloskey earned her B.A. from Hillsdale College, and in 1995, she received a J.D. from Valparaiso University School of Law. Ms. McCloskey concentrates her areas of practice in the field of insurance defense, criminal law and premises liability. Ms. McCloskey is licensed in the State of Indiana.

**David A. Wilson** was founding partner at Bokota Wilson McCloskey & Long, P.C. In 1990, Mr. Wilson earned his B.A. from University of Central Florida, and in 1996, he received a J.D. from Valparaiso University School of Law. Mr. Wilson concentrates his areas of practice in the field of insurance defense litigation, commercial trucking and transportation defense, and is a member in TIDA. Mr. Wilson is licensed in the State of Indiana and State of Illinois.

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**Robert D. Goldstein** of our Grand Blanc office, **Timothy J. Jordan** of our Detroit office, and **Kelly M. Kluting** of our Grand Rapids office, are licensed in the State of Indiana. They are also available for assignments in both the Indiana and Michigan offices.

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Garan Lucow Miller, P.C., a full-service law firm since 1948, providing quality representation to a national clientele from the Great Lakes Region, is pleased to announce that it has opened an office in Merrillville, Indiana, to further facilitate your claim and litigation needs in Indiana and Illinois.

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