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www.garanlucow.com

Garan Lucow Miller, P.C. 1111 West Long Lake Road, Suite 300 Troy, Michigan 48098 248.641.7600

From the Co-Editors
James L. Borin & Simeon R. Orlowski

OAKLAND COUNTY JURY AWARDS \$24/HOUR FOR FAMILY PROVIDED ATTENDANT CARE TO A QUADRIPLÉGIC

CONTRIBUTOR - JAMES L. BORIN¹

The case of *Reid v Progressive Michigan Insurance Company* was recently tried in Oakland County Circuit Court before Judge Denise Langford-Morris. The claimant, Steven Reid, was injured in December 2006 and was rendered a C5 quadriplegic. Upon discharge from Beaumont Hospital, he was cared for by his niece/guardian, Jackie Clayton. Progressive voluntarily paid \$16.00/hour, 24 hours per day to Ms. Clayton.

A lawsuit was commenced alleging that Progressive refused to pay the full value of the attendant care. Plaintiff's counsel obtained an expert, Renee LaPorte, who valued the case at \$45.00/hour. A second expert, Dr. Robert Ancell, valued the care at \$40.00 to \$50.00 per hour. A third expert, Laura Kling, R.N. agreed with Dr. Ancell.

¹Mr. Borin is a Senior Partner in our Firm's Troy Office and can be reached at (248)641-7600 or jborin@garanlucow.com

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Progressive offered to increase the rate to \$20.00/hour on the morning of trial. Progressive's experts assessed the care at the skill level of a home health aide/high tech aide and testified to employee rates for such care in the market place at \$12.00 to \$18.00/hour.

The jury, which was extremely attentive, returned a verdict reflecting an hourly rate of \$24.00/hour. The jury rejected plaintiff's request for penalty interest which pursuant to *Allard v State Farm*² precludes any claim for attorney fees under MCL 500.3148(1).

In speaking to the jury following the verdict, there were several important comments:

1. The jurors had pretty much made up their minds after hearing just three witnesses. They re-enforced what I have repeatedly heard from jurors; namely, the protracted presentation of multiple experts offers very little to their analysis and decision making process.
2. The jurors were very complimentary of plaintiff counsel who projected all exhibits on an overhead screen which allowed them to visualize the document upon which the witness was testifying.
3. The jurors well understood the distinction between the agency rate and the employee rate, even though the Judge refused to give the *Bonkowski*³ instruction to ignore agency rates. Moreover, the jury was reluctant to award compensation at the LPN market rate because the care giver was not licensed as an LPN.
4. The jurors were very impressed with the family care giver, Jackie Clayton, who was an excellent witness. Surprisingly, the jury was not significantly impacted by a day-in-the-life video which graphically depicted the details of wound care, bowel and bladder routine and personal hygiene.
5. The jurors felt that note taking, which is not always permitted, was helpful, if not essential, to their deliberations. Several of the jurors were seen to be taking copious notes during trial. As expected, the most diligent note taker was elected as foreman.

These attendant care cases are complex and difficult to try. Nonetheless, if the insurer has made a fair and reasonable determination as to the number of hours and the appropriate hourly rate, jurors are not inclined to award agency rates as the reasonable value of attendant care by family members.

²271 MA 394 (2006)

³281 MA 154 (2008), lv. granted

INDY SEMINAR
October 22, 2009 – MARRIOTT DOWNTOWN
350 West Maryland, Indianapolis

- 8:00 - 8:25 Continental Breakfast
- 8:25 - 8:30 **Welcome and Introductions**
Michael J. Swogger
- 8:30 - 9:30 **No-Fault First- Party Law; 2009 Year In Review**
Speaker: **John W. Whitman**
- 9:30 - 10:30 **Is it Covered?**
*Issues Related to Non-Standard/Experimental Treatment in No-Fault First-Party Cases.
Speaker: **Matthew S. LaBeau**
- 10:30 - 10:45 Break
- 10:45 - 11:30 **Intellectual Property:**
*Frequent Coverage and Defense Issues Involving Copyrights, Trademarks and Unfair Competition
Speakers: **Robert D. Goldstein and Timothy J. Jordan**
- 11:30 - 12:15 **The New Supreme Court and What The Future May Hold**
*Current State of the Law for Third-Party Liability/Serious Impairment
*Medicare/Medicaid: Comments and Suggestions
Speaker: **Michael J. Swogger**
- 12:15 - 12:45 Question & Answer Session
Closing Remarks

Garan Lucow Miller is pleased to present its annual Indy Seminar on October 22, 2009, at the Marriott Downtown, located at 350 West Maryland in Indianapolis. Comprehensive written materials will be distributed to all program attendees.

To register, please e-mail Eileen Carty your name, company, address, phone and fax numbers to ecarty@garanlucow.com. We'll see you at the event!

FALL BREAKFAST SEMINAR

Mark your calendar for the Firm's Fall Breakfast Seminar which will be held at the Troy Marriott Hotel on Thursday November 5, 2009. Watch Law Fax for further details.