

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

SPECTRUM HEALTH HOSPITALS
and SPECTRUM HEALTH UNITED;
Appellees,

Michigan Supreme Court
Docket No. 150384

Michigan Court of Appeals
Docket No. 323804

17th Circuit Court Appeal No. 14-02515-AV
HON. DONALD JOHNSTON

vs

WESTFEILD INSURANCE COMPANY
Appellant.

61st District Court
Case No. 13-GC-2025
HON. J. MICHAEL CHRISTENSEN

Andrew D. Oostema (P68595)
Stephen R. Ryan (P40798)
MILLER JOHNSON
Attorneys for Spectrum
250 Monroe Avenue, N.W., Suite 800
Grand Rapids, MI 49501-0306
(616) 831-1732

Ronald M. Sangster, Jr. (P39253)
LAW OFFICES OF RONALD M. SANGSTER PLLC
Attorney for Westfield
901 Wilshire Drive, Suite 230
Troy, MI 48084
(248) 269-7040

**APPELLEES, SPECTRUM HEALTH HOSPITALS' AND SPECTRUM HEALTH
UNITED'S BRIEF IN OPPOSITION TO WESTFIELD INSURANCE COMPANY'S
APPLICATION FOR LEAVE TO APPEAL**

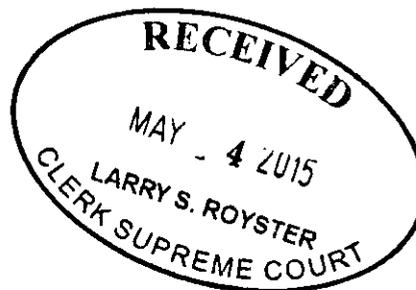


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**STATEMENT CHALLENGING GROUNDS FOR APPELLANT'S APPLICATION FOR
LEAVE TO APPEAL**

MCR 7.302(b) says that an application must show that; (1) the issue involves a substantial question as to the validity of a legislative act; (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity; (3) the issue involves legal principles of major significance to the state's jurisprudence; (4) in an appeal before decision by the Court of Appeals, (a) delay in final adjudication is likely to cause substantial harm, or, (b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan administrative code, or any other action of the a legislative of executive branch of state government is invalid; (5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or (6) in an appeal from the Attorney Discipline Board, the decision is erroneous and will cause material injustice.

Appellant relies on paragraph (3) and (5) as its justification for its application for leave to appeal. The outcome of this case is important for the litigants and those who may be directly affected by it. However, Appellant has not shown that whether a no fault claimant must prove that one of the exceptions to the parked vehicle exclusion applies in cases involving injuries that occur during vehicle maintenance is an issue of "major significance" to the jurisprudence of this state. In addition, Appellant has made no showing that the decision of the Court of Appeals was "clearly erroneous" and will cause material injustice or that the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

Since 1981, *Miller v Auto Owners Ins. Co.*, 411 Mich 633, 309 NW2d 544 (1981) has been the law of the land regarding no fault coverage for vehicle maintenance related injuries. In *Robinson v City of Detroit*, 462 Mich 439, 613 NW2d 307 (2000) this court established a test to determine when it should depart from *stare decisis* and overrule precedent. This court held that the first question in deciding whether to overrule precedent is whether an earlier decision was wrongly decided. *Id.* at 464. Next, courts should review, (1) whether the decision defies practical workability, (2) whether reliance interests would work an undue hardship if the decision were overturned, and (3) whether changes in the law or facts no longer justify the decision. *Peterson infra* at 315. *Robinson* enunciated a test premised on whether the questioned decision was wrongly decided, to be followed by a three-pronged analysis of whether *stare decisis* nonetheless counsels upholding it. *Peterson v Magna Corp.*, 484 Mich 300, 315, 773 NW 2d 564 (2009). In *Peterson*, Justice Kelly noted that, “a mere belief that a precedential case was wrongly decided or that the Court, as currently composed, would have decided the case differently” is not a compelling justification for overruling precedent. *Id.* at 320.

First, the no fault coverage analysis for motor vehicle maintenance related injuries under *Miller* is practical and workable. Under *Miller* if the injury arises out of motor vehicle maintenance, no fault coverage applies. Whether an activity qualifies as vehicle maintenance is generally an easy-to-apply analysis, and for 34 years, insurance companies, policy holders, health insurers and consumers alike have done so. Appellant’s proposed construction of MCL 500.3106 is simply not practical or workable and would only serve to complicate no fault claim processing in motor vehicle maintenance injury claims.

The vast majority of motor vehicle maintenance related injuries occur in circumstances where none of the MCL 500.3106 exceptions apply. Adopting Appellant’s

construction of MCL 500.3106 would create the need for intensive fact analysis, and in some cases, protracted litigation, over whether the exceptions to the parked vehicle exclusion apply in any given case. For example, Appellant has suggested that, under its proposed construction of MCL 500.3106, coverage would continue to exist for a person who sustains injury while attempting to change a flat tire on a motor vehicle that was parked on a steep downhill grade and the injured person failed to use wheel chocks. Appellant asserts that the vehicle in this scenario was being maintained and would also be “parked in such a way as to cause unreasonable risk of the bodily injury that occurred,” therefore; coverage would be available under MCL 500.3106. This means that, when handling this hypothetical claim, an insurance company claim adjuster will decide on the “reasonableness” of how and where the vehicle was parked. It is axiomatic that questions regarding the reasonableness are generally for juries to decide. Consequently, an otherwise garden variety claim for no fault benefits arising out of vehicle maintenance related injuries results in protracted litigation regarding whether, under the circumstances, the vehicle was “unreasonably parked” at the time of the injury. Appellant’s proposed construction of MCL 500.3106 is simply not workable.

Second, reliance interests favor Appellees’ position. *Miller* has become embedded in no fault law regarding coverage for vehicle maintenance related injuries. The *Miller* court took a straight forward approach to the analysis and, for 34 years, no fault insurers, health insurers and the general public have ordered their relationships and assessed risk accordingly. For example, under *Miller*, consumers have certainty that if they are injured in a motor vehicle maintenance related situation, no fault will cover reasonable and necessary medical expenses incurred to further their recovery. If this Court adopts Appellant’s proposed construction, consumers will be forced to negotiate with health carriers to ensure that health plan

terms make provision for all the contingencies involved in determining whether no fault coverage will exist for any motor vehicle maintenance related injury. Given the idiosyncratic nature of this issue, is it likely that only the most sophisticated consumers will anticipate this potential medical coverage gap and negotiate with their health insurer accordingly. Appellant's proposed construction of MCL 500.3106 will make it more difficult to predict outcomes and to assess risk.

Third, the legal and factual justifications for this Court's decision in *Miller* are as true today as they were in 1981. Enactment of the no-fault act was a major departure from prior methods of obtaining reparation for injuries suffered in motor vehicle accidents. The Legislature modified traditional tort principles of compensation by creating a comprehensive statutory scheme of reparation with the objective of providing assured, adequate and prompt recovery for certain economic losses arising from motor vehicle accidents. *Miller v State Farm Mutual Automobile Ins Co*, 410 Mich 538, 568; 302 NW2d 537 (1981); *Belcher v Aetna Casualty & Surety Co*, 409 Mich 231, 243; 293 NW2d 594 (1980); *Shavers v Attorney General*, 402 Mich 554, 579; 267 NW2d 72 (1978); *Perez v. State Farm Mut. Auto. Ins. Co.*, 418 Mich. 634, 647, 344 N.W.2d 773, 779 (1984). The policy of providing "adequate, assured and prompt" recovery of economic losses (such as medical expenses) has not changed. That people sometimes sustain injuries while performing motor vehicle maintenance has not changed. No fault insurers, health insurers and the public in general need to be able to rely on clear and predictable rules of law regarding whether vehicle maintenance related injuries will be covered under the no fault system.

COUNTER JURISDICTIONAL STATEMENT

The Michigan Supreme Court has jurisdiction over Appellant's application for leave to appeal pursuant to MCR 7.301(A)(2).

COUNTER STATEMENT OF STANDARD OF REVIEW

Orders regarding motions for summary disposition are reviewed de novo. *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999); *Associated Builders & Contractors v Wilbur*, 472 Mich 117, 123; 693 NW2d 374 (2005). This standard of review applies to whether Appellant is obligated to pay the subject medical charges incurred by Appellees in treating Shawn Norman for injuries he sustained arising out of the May 2, 2012 motor vehicle accident.

This Court reviews a trial court's decision to award or deny attorney fees under MCL 500.3148 for clear error. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999). A finding is clearly erroneous when this Court is left with a definite and firm conviction that a mistake has been made by the trial court. *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 24; 684 NW2d 391 (2004).

COUNTER STATEMENT OF QUESTIONS PRESENTED

- I. Did the Trial Court properly conclude that Appellant was liable to pay Appellees' outstanding medical charges?

The Trial Court would answer ... "Yes"

The Circuit Court would answer ... "Yes"

The Court of Appeals would answer ... "Yes"

Appellant's answer ... "No"

Appellees' answer ... "Yes"

- II. Did the Trial Court properly conclude that Appellant unreasonably refused to pay no fault benefits when Appellant ignored controlling authority from the Michigan Supreme Court and that; as a result, Appellees were entitled to reasonable attorney fees under MCL 500.3148?

The Trial Court would answer ... "Yes"

The Circuit Court would answer ... "Yes"

The Court of Appeals would answer ... "Yes"

Appellant's answer ... "No"

Appellees' answer ... "Yes"

COUNTER STATEMENT OF FACTS

On May 5, 2012, Shawn Norman (“Norman”) injured his right hand while he was changing a flat tire on a 2004 Chevrolet Blazer owned by his parents, Godfrey Norman and Pam Jewell. The incident took place in Norman’s parent’s driveway located at 9655 Rentsman, Cedar Springs, MI. In his deposition, Norman described the incident this way:

The tire was flat, so I took it upon myself so my mother didn’t have to do it and neither did my father. Started changing it, slid the tire underneath the brake caliper, you know, to catch it in case the jack were to fail or something like that. While doing that, the tire bumped the jack, causing it to fall, and the corner of the brakes caught these two fingers. (Exhibit 1 p. 7).

* * *

I pulled the tire off and I just went to slide it underneath the end of the axle, in case the jack were to fail, ‘cause things like that – ‘cause I didn’t have access to a jack stand, where a jack stand would prevent a failure, which actually I used the tire as a supplement. While sliding it under, caught the edge of the jack or hit the jack somehow, for some reason, and it shifted in the gravel driveway and collapsed down and caught these two fingers right here, which would be right middle and right ring finger, and pinched them. This one, it peeled off a good layer of skin, bruised it badly. This one, it pinched all the way through, severing muscle, tendon, breaking bone; whole nine. (Exhibit 1 p. 9).

* * *

Q: And what part of the truck caught your fingers?

A: It would be the disc brake caliper or, actually, the caliper bracket or the caliper itself, the contraption right there... (Exhibit 1 p. 10).

Norman presented to Spectrum Health – United on May 5, 2012. His right hand injury was stabilized and he was discharged. He received follow up treatment at Spectrum Health – Downtown on May 10, 2012. On that date Dr. Scott Burgess, M.D. surgically repaired Norman’s right ring finger. Appellees incurred \$6,770.76 treating Norman on the above referenced dates of service. (Exhibit 4).

On May 17, 2012 and August 7, 2012, Appellees provided Appellant with UB billing forms, itemized statements of charges and medical records documenting Norman's care and treatment.¹ Appellant denied Appellees' claims stating that Norman's treatment was, "not related to a motor vehicle accident." (Exhibit 2). Appellees filed this suit on or about April 18, 2013.

In its answers to discovery, Appellant articulated the basis for its denial. Appellant asserted that under MCL 500.3105 and MCL 500.3106 there was no coverage for injuries an insured sustains while performing vehicle maintenance unless the insured also shows that one of the MCL 500.3106 "parked vehicle exceptions" applies. (Exhibit 3 No. 13).

¹ It is undisputed that Appellant (as the insurer of Shawn Norman's resident relative) was highest in the order of priority for the payment of any and all no fault benefits due and owing arising out of the May 2, 2012 motor vehicle accident.

PROCEDURAL HISTORY

Appellant and Appellees filed cross motions for summary disposition in the 61st District Court. The sole issue in dispute was whether Appellees were required to show that one of the exceptions to the parked vehicle exclusion applied to the facts in the case. Appellant conceded that *Miller v Auto-Owners Ins. Co.* 411 Mich 633, 309 NW2d 544 (1981) controlled in motor vehicle maintenance cases, but contended that *Miller* was wrongly decided. The trial court concluded that the facts in this case were substantially similar to the facts in *Miller*; therefore, consistent with the holding in *Miller*, Appellees were entitled to summary disposition.

The trial court also concluded that Appellant's denial was unreasonable and that Appellees were entitled to attorney fees under MCL 500.3148. The trial court reasoned that, while Appellant was free to try to change the law, doing so through the litigation process exposed Appellant to attorney fees under MCL 500.3148 because *Miller* addressed and disposed of the argument Appellant made in this case.

Appellant appealed by right the final judgment of the District Court to the Kent County Circuit Court. Two issues presented in Appellant's Circuit Court appeal. First, Appellant argued that, despite the Michigan Supreme Court's decision in *Miller v Auto-Owners Ins Co.* 411 Mich 633, 309 NW2d 544 (1981), Shawn Norman's injuries were not compensable under the Michigan No Fault Act because none of the exceptions to the MCL 500.3106 parked vehicle exclusion applied. Second, Appellant argued that the District Court erred in granting Appellees reasonable attorney fees pursuant to MCL 500.3148 because Appellant's denial was based on legitimate questions of statutory construction and interpretation.

The parties submitted briefs and on July 31, 2014, the court heard oral argument. The Circuit Court rejected Appellant's arguments and affirmed the District Court's Judgment in all respects. On September 3, 2014, the Circuit Court entered its order affirming the Judgment of

the District Court. On September 23, 2014, Appellant filed an application for leave with the Court of Appeals. On November 5, 2014, Appellant filed its Bypass Application for Leave with this Court.

On February 3, 2015, this Court denied Appellant's Bypass Application for Leave to Appeal. In its order, this Court stated that it was "not persuaded that the questions presented should be reviewed by this Court before consideration by the Court of Appeals." (Exhibit 5).

On March 2, 2015, the Court of Appeals denied Appellant's Application for Leave to Appeal. Significantly, in its order the Court of Appeals stated that Appellant's Application for Leave to Appeal was, "DENIED for lack of merit in the grounds presented." (Exhibit 6).

LEGAL ARGUMENT

I. THE TRIAL COURT PROPERLY CONCLUDED THAT APPELLANT WAS LIABLE TO PAY APPELLEES OUTSTANDING MEDICAL CHARGES.

MCL 500.3105(1) provides in pertinent part:

Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, **maintenance** or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

MCL 500.3107(1)(a) provides in pertinent part:

Except as provided in subsection (2), personal protection insurance benefits are payable for the following:

- (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation.

MCL 500.3114(1) provides in pertinent part:

Except as provided in subsection (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

It was undisputed that Norman's injuries arose out of motor vehicle maintenance.

Norman's right hand was crushed by a brake caliper when the vehicle he was working on fell off its jack. Changing a flat tire is a textbook example of vehicle maintenance. It was undisputed that Appellant, as the insurer of Norman's resident relative, was highest in the order of priority for the payment of no fault benefits to or for Norman. It was undisputed that Appellee's charges were reasonable and that the treatment was reasonably necessary for Norman's care, recovery or rehabilitation. Therefore, Appellant was liable pay \$6,770.76 for Appellees' outstanding medical expenses.

MCL 500.3106 states in pertinent part:

- (1) Accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked vehicle as a motor vehicle unless any of the following occur:
 - (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury that occurred.
 - (b) Except as provided in subsection (2), the injury was the direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.
 - (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

The courts broadly interpret the term “maintenance.” *Gentry v Allstate Ins Co*, 208 Mich App 109, 527 NW2d 39 (1994). In *Miller v Auto-Owners Ins Co*, 411 Mich 633, 309 NW2d 544 (1981), the Michigan Supreme Court analyzed the interplay between MCL 500.3106 (the parked vehicle exclusion) and a claim for no fault benefits arising out of motor vehicle maintenance. In *Miller*, Richard Miller was severely injured when his automobile fell on his chest while he was attempting to replace a pair of shock absorbers. *Id* at 636. Miller sought no fault benefits from Auto-Owners, his no fault insurer. Auto-Owners denied Miller’s claim because, although Miller was clearly performing maintenance on the vehicle when his injury occurred, the vehicle was parked at the time and none of the MCL 500.3106 exceptions applied. Miller sued Auto Owners and filed a motion for summary disposition on the issue of liability. The trial court granted Miller’s motion and held that Miller was maintaining the vehicle under MCL 500.3105 and that it was not “parked” within the meaning of MCL 500.3106. *Id* at 637. The Court of Appeals reversed the trial court and remanded the case for a determination

regarding whether Miller's injury fell within one of the three classes of injury enumerated in MCL 500.3106(a)-(c). The Michigan Supreme Court reversed the Court of Appeals and held that Miller's injury was compensable under the no fault act. The Court said this:

Each of the exceptions to the parking exclusion thus describes an instance where, although the vehicle is parked, its involvement in an accident is nonetheless directly related to its character as a motor vehicle. The underlying policy of the parking exclusion is that, except in three general types of situations, a parked car is not involved in an accident *as a motor vehicle*. It is therefore inappropriate to compensate injuries arising from its non-vehicular involvement in an accident within a system designed to compensate injuries involving motor vehicles as motor vehicles.

The policies underlying § 3105(1) and § 3106 thus are complementary rather than conflicting. Nothing of the policy behind the parking exclusion—to exclude injuries not resulting from the involvement of a vehicle as a motor vehicle—conflicts with the policy of compensating injuries incurred in the course of maintaining (repairing) a motor vehicle. The terms of the parking exclusion should be construed to effectuate the policy they embody and to avoid conflict with another provision whose effect was intended to be complementary.

Miller's injury while replacing his shock absorbers clearly involved the maintenance of his vehicle as a motor vehicle. Compensation is thus required by the no-fault act without regard to whether his vehicle might be considered "parked" at the time of injury. *Id* at 640-641.

Miller controls this case, and it was rightly decided. Under *Miller*, Appellees were not required to show that one of the “parked vehicle” exceptions applied in order to obtain no fault coverage. In reaching its conclusion, this Court in *Miller* honored the “maintenance” coverage grant listed in MCL 500.3105(1) that Appellant now invites this court to ignore. When interpreting statutes, the court “must give effect to every word, phrase and clause in the statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.” *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

To accept Appellant's construction of MCL 500.3106(1) would operate as a complete "take-back" of the MCL 500.3105(1) maintenance coverage grant. Appellant suggests that there are circumstances where one could sustain injury while performing maintenance on a motor vehicle, and still recovery benefits because one of the 3106 exceptions also applied. As referenced above, Appellant hypothesizes that a person would be entitled to no fault coverage for injuries that occurred while that person was changing a tire on a disabled vehicle that was parked unreasonably because the situation would fit within the MCL 500.3106(1)(a) exception. The problem with Appellant's argument is the fact that maintenance becomes purely incidental to the coverage analysis. That the motor vehicle was unreasonably parked is then the basis for coverage; that the vehicle was being maintained at the same time is essentially irrelevant. In order for the MCL 500.3105(1) "maintenance" coverage grant to have any meaning, no fault coverage must be available in scenarios where the only basis for no fault coverage is that the injury occurred while a motor vehicle was being maintained. Appellant spends many pages in its Application arguing that the *Miller* court impermissibly removed the word "maintenance" from MCL 500.3106(1). Despite this, Appellant apparently has no reservations about this court adopting a construction of MCL 500.3106 that would effectively remove the word "maintenance" from MCL 500.3105(1).

From a policy standpoint, the court's decision in *Miller* makes good sense. It is axiomatic that the stated policy of the no fault act is to ensure that benefits to accident victims are paid promptly. Construing "maintenance of a motor vehicle" broadly is one way to effectuate that policy. See *Gentry, supra*. To construe MCL 500.3105 otherwise would frustrate the purpose of the no fault act. Motor vehicle "maintenance" related injuries occur in factual situations where none of the MCL 500.3106 "parked vehicle exceptions," apply. Construing

3105 and 3106 in the manner suggested by Appellant would, for all practical purposes, eliminate no fault coverage for accidental bodily injury that arises out of vehicle maintenance. In a dissenting opinion in *Willer v Titan*, 480 Mich 1177, 747 NW2d 245 (2008), Justice Weaver made the following observation: “It defies common sense to expect one to perform maintenance on one's vehicle while the vehicle it is not parked. Clearly one cannot be expected to scrape the windshield of one's vehicle while sitting behind the wheel and driving the vehicle down the road. Any reasonable person would conclude that in order to safely perform vehicle maintenance, one must do so while the vehicle is parked.” *Id* at 249.

Appellant concedes that the Supreme Court’s decision in *Miller* controls the outcome in this case. Despite that *Miller* is binding precedent, Appellant asks this Court to overrule it. As discussed above, Appellant has not demonstrated a valid basis to overrule *Miller*, and Appellant’s proposed statutory construction eviscerates the MCL 500.3105(1) motor vehicle maintenance coverage grant.

II. THE TRIAL COURT PROPERLY CONCLUDED THAT APPELLANT UNREASONABLY REFUSED TO PAY NO FAULT BENEFITS WHEN IT IGNORED CONTROLLING AUTHORITY FROM THE MICHIGAN SUPREME COURT AND THAT; AS A RESULT, APPELLEES WERE ENTITLED TO REASONABLE ATTORNEY FEES UNDER MCL 500.3148

MCL 500.3148 provides that a no-fault claimant is entitled to attorney fees if an insurer “unreasonably delays” or “unreasonably refuses” payment. That statute provides as follows:

An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment. [MCL 500.3148(1)]

Under this statute, the question of whether an insurer unreasonably refused or unreasonably delayed in making payment is a question for the court, not the jury, to decide. *Regents of the Univ of Mich v State Farm Mut Ins Co*, 250 Mich App 719, 737; 650 NW2d 129 (2002).

The no fault act attorney fee provision was created to ensure prompt payment of no-fault benefits by penalizing an insurer that unreasonably delays or refuses payment of benefits. *McKelvie v Auto Club Ins Ass'n*, 203 Mich App 331, 334; 512 NW2d 74 (1994). Where benefits are “overdue” within the meaning of MCL 500.3142(2), a rebuttable presumption of unreasonable refusal or denial arises and the burden shifts to the insurer to justify its denial. *Combs v Commercial Carriers, Inc*, 117 Mich App 67, 73; 323 NW2d 596 (1982). Where benefits are not paid within the statutory period, a rebuttable presumption of unreasonable refusal or undue delay arises such that the insurer has the burden to justify the refusal or delay. An insurer may rebut this presumption by showing that its denial or delay in payment is the product of a legitimate question of statutory construction, constitutional law, or bona-fide factual uncertainty. *Bloemsma v Auto Club Ins. Co.*, 174 Mich App 692, 697, 436 NW2d 442 (1989).

When considering whether to award attorney fees under MCL 500.3148, the court evaluates the reasonableness of the insurer’s conduct. *Combs v Commercial Carriers*, 117 Mich App 67; 323 NW2d 596 (1982). As explained in *McCarthy v. Auto Club Ins. Ass'n*, 208 Mich App 97, 105, 527 NW 2d 524 (1994), when considering whether attorney fees are warranted under the no-fault act, the inquiry is not whether coverage is ultimately determined to exist, ***but whether the insurer's initial refusal to pay was reasonable.***

In *Ivezaj v Auto Club*, 275 Mich App 349, 737 NW 2d 807 (2007), plaintiff filed a no fault action against Auto Club for recovery of certain no fault benefits. The matter was tried

before a jury and the jury awarded the plaintiff only a fraction of the no fault benefits claimed. After the verdict, the plaintiff filed a motion for attorney fees under MCL 500.3148 claiming that Auto Club's initial denial was unreasonable. Auto Club responded by arguing that its denial was reasonable in light of the jury's verdict. Specifically, Auto Club claimed that jury verdict proved that Auto Club's initial denial was reasonable because the jury rejected the majority of the plaintiff's claim for no fault benefits. The trial court rejected this argument and awarded plaintiff attorney fees. Auto Club appealed. In affirming the trial court's ruling, the Court of Appeals said this:

In this case, defendant relies exclusively on the jury verdict to support its argument that its initial decision not to pay for certain medical and replacement service expenses requested by plaintiff was reasonable. Notably, defendant argues that its initial refusal to pay these expenses was reasonable because the jury only held it liable for a small percentage of plaintiff's claims. Yet defendant did not know that a jury would only find it liable for a percentage of the disputed medical and replacement service expenses when it refused to pay these expenses. Accordingly, defendant cannot use the jury verdict as evidence to rebut the presumption that its initial refusal to reimburse plaintiff for these expenses was unreasonable. See *Attard, supra* at 317, 602 N.W.2d 633; *McCarthy, supra* at 105, 527 N.W.2d 524.

Again, defendant fails to identify any evidence indicating that it recognized that plaintiff's claims were unreasonable *at the time it initially refused to make the payments*. Defendant fails to indicate that it was not required pursuant to statute or constitutional law to reimburse plaintiff for the disputed claims, that it contacted doctors or other experts to determine if plaintiff reasonably needed the requested medical services when it decided not to pay, or that it had another reasonable basis for disputing the legitimacy of plaintiff's claims for benefits. Accordingly, defendant fails to provide any evidence or make any argument justifying its refusal to make the requested payments or to otherwise rebut the presumption that its failure to pay these disputed benefits when they were initially requested was unreasonable. See *McKelvie, supra* at 335, 512 N.W.2d 74. Because defendant failed to identify any evidence indicating that its initial refusal to reimburse plaintiff was reasonable, the trial court did not clearly err when it concluded

that defendant failed to rebut the presumption of unreasonableness and awarded plaintiff attorney fees pursuant to MCL 500.3148(1). *Ivezaj* at 354-355.

The most important lesson from *Ivezaj* is that the court must confine its consideration of the reasonableness of an insurer's denial to an analysis of the facts upon which the insurer based its *initial* denial. Here, Appellant's sole argument in response to Appellees' attorney fee request was that it believed *Miller* was wrongly decided and, therefore, Appellant was not bound to follow it. Per *Ivezaj*, even if Appellant is successful in convincing the Michigan to Supreme Court to overrule *Miller*, that will not inoculate Appellant from the consequences of ignoring controlling law when it denied Appellees' claim.

Here, Appellant denied payment in the face of binding Michigan precedent. *Miller* has been the law since 1981. If Appellant was unhappy with the status of the law, it should have gone to the Michigan legislature. Instead, it ignored *Miller* in the hopes that Norman, or one of his medical providers, would sue Appellant and thereby create an opportunity for Appellant to test its theories in the Michigan appellate courts.

Attorney fees under MCL 500.3148 are appropriate when an insurer ignores controlling law in denying a no fault claim. In *Shanafelt v Allstate Insurance Company*, 217 Mich App 625, 552 NW2d 671 (1996), the no fault insurer denied the plaintiff's claim for no fault benefits because it claimed that the undisputed facts did not constitute "entering into" a vehicle as that term was used in MCL 500.3106. In that case, the plaintiff placed her hand on the vehicle door, opened the door, took a small step towards her truck, and due to ice on the ground, slipped and fell, severely injuring her leg. After granting plaintiff's motion for summary disposition against insurer, the trial court also awarded plaintiff attorney fees under MCL

500.3148. In affirming the lower court's ruling on the issue of attorney fees, the Court of Appeals said this:

As explained in section I, given Michigan precedent, one could not seriously contend that the undisputed facts did not constitute "entering into" a vehicle as that term is used in MCL 500.3106 ... Because of the relative clarity of the governing precedent, we agree with the circuit court that defendant's denial was unreasonable. *Shanafelt* at 636.

Just like the insurer in *Shanafelt*, Appellant unreasonably ignored *Miller* and refused to pay Appellees' claim. There was no legitimate question of statutory construction in this case. The Court in *Miller* considered and rejected Appellant's proposed construction of MCL 500.3106. Appellant was aware that Appellees were not required to qualify this case under one of the three exceptions to the MCL 500.3106 parked vehicle exclusion in order to obtain no fault coverage. That Appellant disagreed with the holding in *Miller* did not give Appellant the right to ignore it.

Appellant cites three cases in support of its argument that its denial not unreasonable, *Willer v Titan, supra, Frazier v Allstate*, 490 Mich 381, 808 NW2d 450 (2011) and *Lefevers v State Farm*, 426 Mich 960, 828 NW2d 678 (2013). An examination of each decision shows that they are inapposite.

Willer involved the issue of whether a particular injury "arose out of" the ownership, operation or use of a motor vehicle as a motor vehicle for purposes of MCL 500.3105. In that case, the claimant slipped and was injured while scraping ice from the windshield of a motor vehicle. The claimant sued Titan for non-payment of no-fault benefits arising out of the incident. Titan filed a motion for summary disposition in the trial court arguing that there was no coverage because the connection between the injury and the ownership,

operation, maintenance or use of a motor vehicle was only “incidental”. The trial court rejected Titan’s argument. Titan filed an application for leave to appeal with the Michigan Court of Appeals, which was rejected. Titan then filed an application with the Michigan Supreme Court for review of the Court of Appeals order. The Supreme Court invited the parties to brief and argue the merits of Titan’s application. Following oral argument, the Supreme Court issued an order reversing the trial court and remanding the case to the trial court for entry of an order granting summary disposition to Titan. In its order, the Supreme Court concluded that there was no genuine issue of material fact that the claimant failed to show that the causal connection between her injuries and the ice scraping was anything beyond incidental, fortuitous or “but for”. *Id* at 1167. Justice Markman’s comments regarding *Miller* were made in a concurring opinion and went beyond the scope of the question presented to the court. Justice Markman’s opinion about whether *Miller* was wrongly decided had no bearing in the Supreme Court’s disposition in *Willer*.

Frazier and *Lefever* were decisions regarding no fault coverage under the “equipment permanently mounted to the vehicle” exception to the parked vehicle exclusion (MCL 500.3106 (1)(b)). *Frazier* dealt with an injury that occurred while the claimant was shutting the door of a parked vehicle. *Id* at 386. *Lefevers* dealt with an injury occurring when the claimant was hit by the tailgate of a dump trailer. *Id* at 960. Neither *Frazier* nor *Lefever* involved vehicle maintenance, thus, the Supreme Court never discussed the controlling portion of the *Miller* decision.

Counsel for Appellant puts heavy emphasis on the Supreme Court’s comment in *Lefever* that *Miller* has been “disavowed”. *Lefever* at 960. A closer examination shows that only the portion of *Miller* which briefly describes how to analyze a claim for benefits under the

“equipment permanently mounted to the vehicle” exception to the parked vehicle exclusion has been “disavowed”. The rule of law regarding coverage for vehicle maintenance injuries set forth in *Miller* remains unaffected.

The bottom line is this: Appellant did not agree with the Supreme Court’s holding in *Miller* and, in the context of this claim, chose to ignore it. Appellant argues that its actions were the product of a legitimate question of statutory construction. This assertion is meritless. Thirty four years ago the Supreme Court considered and rejected Appellant’s proposed construction of MCL 500.3106; therefore, Appellant’s actions were not the product of a “legitimate question of statutory construction.” Appellant unreasonably denied Appellees’ claims and the award of attorney fees under MCL 500.3148 was appropriate.

RELIEF REQUESTED

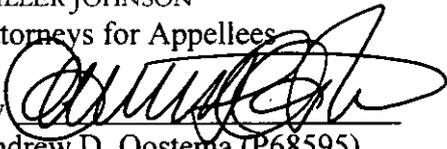
Appellees respectfully request that this Honorable Court deny in all respects

Appellant's application for leave to appeal.

Dated: May 1, 2015

MILLER JOHNSON

Attorneys for Appellees

By 

Andrew D. Oostema (P68595)

Stephen R. Ryan (P40798)

Business Address:

250 Monroe Avenue, N.W., Suite 800

PO Box 306

Grand Rapids, Michigan 49501-0306

Telephone: (616) 831-1700

1 Sand Lake, Michigan (1)

2 Friday, August 9, 2013 - 1:05 p.m.

3 REPORTER: The Court Rules require me to state
4 that Network Reporting has agreed to provide court reporting
5 services to this Noticing Attorney at an agreed-upon rate.

6 MR. SANGSTER: Let the record reflect that this is
7 the deposition of Shawn Norman. This deposition is being
8 taken pursuant to notice and subpoena and is to be used for
9 all purposes consistent with the Michigan Court Rules and
10 the Michigan Rules of Evidence. Mr. Norman, my name is Ron
11 Sangster. I'm an attorney representing the Westfield
12 Insurance Company. I'm just here to ask you some questions
13 regarding an incident that occurred back on May 5th of 2012,
14 and a claim for medical expenses that has been filed against
15 my client by one of your treating facilities, Spectrum
16 Health. Let me begin by asking you whether you've ever
17 given a deposition before --

18 MR. NORMAN: No.

19 MR. SANGSTER: -- where you've had an attorney
20 such as myself asking you questions under oath? No?

21 MR. NORMAN: No; no, I'm certain.

22 MR. SANGSTER: Okay. There's some ground rules
23 that we have for today's proceedings. The first ground rule
24 is if I ask you a question and you don't understand it, for
25 whatever reason, please let me know and I'll be able happy
Page 3..

1 to restate it or rephrase it. Is that fair enough?

2 MR. NORMAN: Yup.

3 MR. SANGSTER: The next ground rule that we have
4 is that when you answer one of my questions you have to
5 speak verbally; can't shake your head, can't shrug your
6 shoulders, can't say "unh-unh" or "uh-huh," because
7 everything you say is being taken down by the court
8 reporter. Okay?

9 MR. NORMAN: Yup.

10 MR. SANGSTER: Lastly, if you need to take a break
11 for any reason, just let me know and I'll be happy to
12 accommodate you.

13 MR. NORMAN: Okay.

14 REPORTER: Do you solemnly swear or affirm that
15 the testimony you're about to give will be the whole truth?

16 MR. NORMAN: I do.

17 SHAWN B. NORMAN

18 having been called by the Defendants and sworn:

19 EXAMINATION

20 BY MR. SANGSTER:

21 Q All right. Please state your full name for the record.

22 A Shawn Braddock Norman.

23 Q And your current address, please?

24 A 9675 Rentsman.

25 Q Can you spell that street name?

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- 1 A R-e-n-t-s-m-a-n.
- 2 Q And what city is that in?
- 3 A Cedar Springs.
- 4 Q And how long have you lived at that address?
- 5 A Two years now, I want to say, roughly.
- 6 Q And who do you currently live with?
- 7 A My father, Godfrey Norman.
- 8 Q And anyone else?
- 9 A No.
- 10 Q Were you living at that address back on May 5th of 2012?
- 11 A Yes, sir.
- 12 Q And who were you living with at that time?
- 13 A Godfrey Norman.
- 14 Q Anyone else at that time?
- 15 A No.
- 16 Q Who is Pam Jewell, J-e-w-e-l-l?
- 17 A That's my mother.
- 18 Q Are Pam and Godfrey divorced?
- 19 A Never married.
- 20 Q Never married. Okay. And where was Ms. Jewell living at
- 21 the time of the accident?
- 22 A 9655 Rentsman.
- 23 Q Same city?
- 24 A Yes, sir.
- 25 Q Obviously, the addresses are very close?

1 A Uh-huh (affirmative).

2 Q Are they next-door neighbors or --

3 A Basically, yes.

4 Q And your date of birth, please?

5 A 11-22-1988.

6 Q And do you hold a Michigan driver's license?

7 A Yes, sir.

8 Q Do you have it with you today?

9 A Yes, I do.

10 Q Can I see it real quick?

11 (Witness hands document to counsel)

12 Q Thank you.

13 A Address is current on the back.

14 MR. SANGSTER: Let the record reflect that.

15 Mr. Norman has handed me a Michigan driver's license bearing
16 license number N 655 765 098 893, currently set to expire on
17 his birthday in the year 2013, and it does show the date of
18 birth of November 22nd, 1988. No endorsements, no
19 restrictions. The back side of the license does show an
20 address of 9675 Rentsman Road, Cedar Springs, Michigan
21 49319, with a date of December 14th, 2011. The address on
22 the front of the license is listed as 12631 Harvard Avenue,
23 NE, Cedar Springs, Michigan 49319.

24 Q Thank you.

25 (Counsel hands document to witness)

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1 MR. SANGSTER: Off the record.

2 (Off the record)

3 MR. SANGSTER: Let's go back on.

4 Q I want to talk about the incident of May 5th, 2012. Where
5 did that take place?

6 A That happened at 9675 Rentsman; father's address.

7 Q And it's my understanding that you were changing a tire?

8 A Yes, sir.

9 Q And on whose vehicle were you changing the tire?

10 A It would be my mother and father's vehicles, both theirs, I
11 believe.

12 Q Which vehicle is it?

13 A It would be a 2004 Chevy Blazer, ZR-2; the two-door model.

14 Q And do you remember which tire it was?

15 A The driver-side rear.

16 Q Were you asked to change it? Did you pay on --

17 A The tire was flat, so I took it upon myself so my mother
18 didn't have to do it and neither did my father. Started
19 changing it, slid the tire underneath the brake caliper, you
20 know, to catch it in case the jack were to fail or something
21 like that. While doing that, the tire bumped the jack,
22 causing it to fall, and the corner of the brakes caught
23 these (indicating) two fingers.

24 Q Okay. I'll try and get this clear, then. The tire is flat?

25 A Yes, sir.

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1 Q And I assume you go to jack up the vehicle?

2 A Uh-huh (affirmative).

3 Q That "yes"?

4 A Yes, sir.

5 Q And what jack do you use?

6 A I used the factory jack.

7 Q Is it a screw-type jack or is it a -- you know, you get the
8 wrench, you turn enough, and it's like a scissor?

9 A Yes.

10 Q Or is it a -- it's not the hydraulic-type jack?

11 A No, it wasn't a hydraulic type.

12 Q It's a scissor jack?

13 A That's what was in it. I don't know if it's been changed
14 out over time or anything, but that's the model that was in
15 there, yes.

16 Q And where did you put the jack?

17 A Underneath the axle pad; one of the specified jacking
18 points, actually. I go to school for mechanics and know
19 where to jack a vehicle up correctly.

20 Q So it's on the rear axle pads?

21 A Yes, sir.

22 Q I assume you loosened the lug nuts before you jacked it up?

23 A Only cracked them free, not actually taking them off or
24 anything like that, yes.

25 Q Then you jacked it up?

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1 A Uh-huh (affirmative).

2 Q That's "yes"?

3 A Yes, sir.

4 Q And then you -- I assume you finished taking the lug nuts
5 off?

6 A Yup, finished taking them off.

7 Q And then it's unclear. What happened after you got the lug
8 nuts off?

9 A I pulled the tire off and I just went to slide it underneath
10 the end of the axle, in case the jack were to fail, 'cause
11 things like that -- 'cause I didn't have access to a jack
12 stand, where a jack stand would prevent a failure, which
13 actually I used the tire as a supplement for it. While
14 sliding it under, caught the edge of the jack or hit the
15 jack somehow, for some reason, and it shifted in the gravel
16 driveway and collapsed down and caught these two fingers
17 right here (indicating), which would be right middle and
18 right ring finger, and pinched them. This (indicating) one,
19 it peeled off a good layer of skin, bruised it badly. This
20 (indicating) one, it pinched all the way through, severing
21 muscle, tendon, breaking bone; whole nine.

22 Q It was the contact with the -- was it the flat tire that you
23 were sliding under the axle?

24 A It was actually the rim to the flat tire and the axle, yes.

25 Q That hit the jack?

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- 1 A Uh-huh (affirmative).
- 2 Q That's "yes"?
- 3 A "Yes," yes, sir. I'm sorry about that.
- 4 Q Again, please pardon us if we need to say it. We just want
5 the record to be clear on this.
- 6 A Yes; I'm sorry about that.
- 7 Q And that caused the jack to shift?
- 8 A Yup, it moved in the gravel, did something, caused it to,
9 basically, just tip, causing the truck to collapse downward.
- 10 Q And what part of the truck caught your fingers?
- 11 A It would be the disc brake caliper or, actually, the caliper
12 bracket or the caliper itself, the contraption right there.
13 I want to say the bracket, 'cause it would be unlikely to
14 hit the caliper, because the caliper is usually shielded by
15 the bracket.
- 16 Q So it got caught between the disc brake caliper and --
- 17 A The rim; the rim of the flat tire that I was using more for
18 a safety feature, and trying to be safe got me injured.
- 19 Q What did you do to get your fingers unpinched?
- 20 A Yelled for my father and had him come and jack the vehicle
21 up enough to get my hand out.
- 22 Q So he had to reset the jack underneath the axle pad?
- 23 A Uh-huh; yes, sir; yes, sir. I'm sorry about that, again.
- 24 Q Okay. And jacked it up again?
- 25 A Yes.

1 Q And that got your hand free?

2 A Yes.

3 Q When all this occurred, you were not entering into the
4 vehicle; correct?

5 A Hmm?

6 Q You were not getting inside the vehicle?

7 A I wasn't inside the vehicle, but the doors were open to the
8 driver side and rear hatch for access to jack, obviously.

9 Q You were not inside the vehicle when this happened?

10 A No.

11 Q And you were not getting out of the vehicle; correct?

12 A No.

13 Q That's a true statement?

14 A Yes, sir.

15 Q You were not loading any property into the vehicle or
16 unloading property?

17 A Technically, if you want to say, I was unloading the flat
18 tire off of the vehicle, if you want to get real -- I see
19 where you're trying to go with this, is get real technical,
20 find a loophole, not have to pay --

21 Q No, I --

22 A No, that's exactly what you're trying to do. I see where
23 you're going with this; "Oh, you weren't in the vehicle.

24 You weren't putting something into the vehicle."

25 Q Okay.

Page 11.

1 A No, it's upsetting 'cause I'm receiving thousands of dollars
2 in bills, hurting my credit, everything else, 'cause you
3 guys refused to pay, even though we contacted you and asked
4 if auto insurance should pay or homeowners should pay. And
5 you guys said it should go on the auto's because I was
6 working on the vehicle with the auto insurance.

7 Q Okay.

8 A And that's the only reason I'm finding it upsetting, and it
9 seems like you're trying to weasel around and get out of
10 paying it, and I don't like it one bit.

11 Q Okay. Was there anything unusual about the way that this
12 vehicle was parked when you were trying to work on it?

13 A No. A slight grade on a gravel driveway.

14 (Off the record interruption)

15 Q All right. In terms of your medical treatment, --

16 A Yes, sir.

17 Q -- where did you go after you got your hand free?

18 A Greenville Hospital. I'm not sure exactly the name of the
19 hospital.

20 Q And what did they do for you at Greenville Hospital?

21 A They cleaned the wound and sealed it up so it would stop
22 bleeding everywhere, basically, and -- and gave me some
23 antibiotics and then scheduled, obviously, the hand surgery
24 and all that with Orthopaedic Associates of Michigan.

25 Q Right. With Dr. Burgess?

1 A Yes, sir.

2 Q The information we have in our file regarding your medical
3 treatment is that you saw Dr. Burgess on May 7th, 2012, who
4 said that you need surgery to repair the tendon; correct?

5 A Yeah, I believe so.

6 Q You were seen at Spectrum Health on May 10th, 2012, for --
7 that's when the surgery was done.

8 A Uh-huh (affirmative).

9 Q Then there was a couple follow-up visits with Dr. Burgess on
10 May 14th, 2012, and June 15th, 2012?

11 A I believe so. I don't have the exact records with me to say
12 that's the exact dates, but it sounds correct.

13 Q And then there was some physical therapy treatments --

14 A Yes.

15 Q -- through Northern Physical Therapy through June 29th,
16 2012?

17 A I believe so, yes.

18 Q And did that -- have you had any medical treatment at all
19 since June 29th, 2012?

20 A No. I probably should have, but since the nonpayment from
21 the insurance company it's kind of hard to get anything
22 done, especially when it's related to the hand where --

23 Q Did you have any health insurance available to you?

24 A No, sir.

25 Q Were you on Medicaid?

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1 A No.

2 Q Who is the -- your homeowners insurance that you eluded to
3 before; do you know?

4 A Countrywide, I believe. I'm not 100 percent, but I believe
5 it's Countrywide. I believe he has a different carrier now,
6 but --

7 Q To your knowledge, have any claims been filed for any
8 medical pay coverage or MedPay coverage with the homeowners
9 insurance company?

10 A No, sir.

11 MR. SANGSTER: Okay. I have no other questions.

12 MR. BAKER: Mr. Norman, my name is Tom Baker. I
13 represent Spectrum Hospital.

14 THE WITNESS: Yes, sir.

15 MR. BAKER: I filed a lawsuit against Westfield to
16 try to get some bills paid regarding the injuries you
17 suffered to your right hand while changing your tire. Is it
18 okay if I call you Shawn?

19 THE WITNESS: Yes, sir.

20 MR. BAKER: All right. Shawn, I just have a few
21 questions for you.

22 EXAMINATION

23 BY MR. BAKER:

24 Q You mentioned that Westfield Insurance Company, at least
25 initially, was paying your bills with regard to your right

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1 hand?

2 A From these paperwork that I do have here, this one says a
3 pending claim, but this other one here actually says claim
4 to insurance company from West Michigan Anesthesia --

5 Q And I'll look at all that in a second, but the answer to the
6 question then is "yes"?

7 A Yes, sir.

8 Q They were paying some of your bills?

9 A At least that's how it appears to me. When I get a bill in
10 the mail and it says amount due is zero dollars and it shows
11 charges and the claim number and everything through
12 Westfield, then I assume they're paying it, yes.

13 Q Did Westfield Insurance Company ever give you any reason as
14 to why they stopped paying for the medical treatment?

15 A They stopped paying, made contact with the adjuster. I
16 can't think of her name right now off the top of my head. I
17 might have it in here. I'm not sure. Kim Byers. I made a
18 call to her because they -- we got notified by Michigan
19 Orthopaedics there that they were not getting paid. So we
20 called them and she said that she's still reviewing the
21 claim, and then by the time it was all done that's when I
22 started getting notices that they weren't going to follow
23 through with the claim and, according to them, it wasn't
24 related to motor vehicle accident. It was long after all
25 the medical bills were put into effect and all the

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1 treatments were done. Where if I knew at the time that they
2 weren't even gonna pay the bills, I probably would have
3 stepped back on the more expensive treatments that they did,
4 things like that. 'Cause they had two different types of
5 casts and they preferred this cast over the other one and it
6 was five times the cost. Where if I knew that they weren't
7 gonna pay, I would have -- I would have opted out of some of
8 the options that they prefer that I would have done.

9 Q Sure. I'd like to talk a little about the home-insurance
10 issue.

11 A Yes, sir.

12 Q Now, were you at your mom's house or dad's house when this
13 happened?

14 A Father's house.

15 Q And you believe your father has home insurance through
16 Countrywide?

17 A He did at that time. He changed, 'cause his rates went up
18 for some reason.

19 Q Now, it seemed to me that when you were answering
20 Mr. Sangster's questions you felt that after you were
21 injured you had at least a couple of options to get the
22 bills paid. One of them was to go through the homeowners
23 insurance; correct?

24 A Yes, sir; yes, sir.

25 Q But you didn't, because Westfield told you it was auto

1 related?

2 A Yes. We called the insurance company to see which route we
3 should go and they suggested that we go with the auto
4 insurance company because it happened related to automobile
5 with full-coverage insurance on it. Where if I knew that it
6 would have been this big of a hassle, I probably would have
7 just went through homeowners because homeowners is a lot
8 easier going for something like this, at least I would think
9 so, but -- I don't know. Being related to a vehicle, I
10 think a vehicle would pay for it.

11 Q Let me ask you this, Shawn: Who made the claim to
12 Westfield? Was it you or your dad; do you remember?

13 A It was my mother and father. They have the account
14 together, I believe, through Westfield.

15 Q And do you know who they -- was Kim Byers -- was she the
16 person who handled this claim from the beginning?

17 A She is the one that I talked to every time that I called and
18 actually I talked to a claim adjuster it was Kim Byers.

19 Q You mentioned the factory jack, and I just want to be clear,
20 that's the jack that you believe probably came with the car?

21 A It is a factory-style jack. It was a scissor-type jack that
22 you usually only see with the spare tire in the spare tire
23 location for the tools.

24 Q When you were going about changing the tire, where, exactly,
25 is the jack located and, specifically, what do you have to

1 do to get to the jack to get it out of the car so you can --

2 A Oh, to get it out of the car? Oh, you have to open up the
3 driver's door, flip the seat forward. There's a little
4 door-type thing in the side molding there. You flip that
5 open and the jack sits in this -- down inside that opening
6 in there and then you pull it out from there and --

7 Q Okay. It's inside the door?

8 A It's not in the door. 'Cause it's a two-door model truck,
9 but it's a five-passenger so it has rear seats, so you got
10 to tip the front seats forward to get in the back. Well,
11 you tip the front driver seat forward and then you see the
12 rear seat on the driver's side there. There's little doors
13 in the plastic next to the seat, like underneath the window
14 there. You open that up. The jack was inside that.

15 Q When is the last time you went to the doctor for your right-
16 hand problem, Shawn?

17 A Oh, the last time I went was -- it wasn't even a doctor. It
18 was just physical therapy. Otherwise, it was my last
19 follow-up visit with Dr. Burgess.

20 Q Do you know when that was? And this isn't a memory test.
21 Was a month ago? A couple months ago?

22 A Over a year ago.

23 Q Over a year. Why did you stop going?

24 A Because of nonpayment, and I see the bills that are starting
25 to get mailed to me in the multiple thousand-dollar range.

1 And as far as I know the insurance company was taking care
2 of it and then all of a sudden decided not to take care of
3 it, where I ain't got the funds to pay that kind of money,
4 you know.

5 Q Did your treating physician tell you that you needed more
6 care and treatment or physical therapy?

7 A Well, he said that there's possibility that scar tissue
8 would form to the tendon which would not release full
9 movement of the finger, which as you can see right there
10 (indicating), that's as straight as it goes compared to --

11 Q Sure.

12 A Where scar tissue is actually binding the finger down, where
13 it's not allowing full release of the tendon back. He said
14 I might have to come in and get that cut, but he wouldn't
15 know until later on down the road, after physical therapy,
16 'cause he thought physical therapy might break it free or
17 loosen it up.

18 Q Do you have any understanding right now as to how much in
19 medical bills you have that are due and owing?

20 A I want to say 10- to 15,000 or right around that range. I
21 know the one from Orthopaedic Associates is over 5,000, I
22 think, by itself.

23 Q Did the injury to your right hand affect your ability to
24 work or anything like that, get a job?

25 A It does, because I go to school for automotive, where you

1 use your hands, obviously, to do your work, perform your
2 work, everything else, where when you're grabbing a wrench
3 and it kind of hits the soft spot in there, you know, where
4 a nerve is still kind of alive. And you can only do so
5 much. You got to start going to ergonomic tools and your
6 cost starts going out on tools there. You got to take
7 things a little bit slower. If I work too long, the hand
8 starts cramping up, get pain down the finger.

9 Q All right. Shawn, can I look at what you brought today?

10 A Yeah, it's not a problem. This is the bills that appeared
11 to be paid, to me; some more. This is just a copy of my
12 previous statement that I brought for my own memory, if you
13 want to look at that, too. Look at all of it.

14 Q Sure.

15 (Counsel reviews documents)

16 A As far as I can tell, it looked like all the bills are
17 there. It looked like they'd been paid by Westfield, to me,
18 when they're showing zero balance to me as a bill. And
19 that's an appearance of paying it, to me. But I kept
20 getting multiple copies over and over of the same things
21 but -- on the back sides is totals on some of them. Some of
22 them have totals; some of them don't. And one of them shows
23 claim pending, another one just shows like the claim
24 actually went through, and it's from the same company, same
25 bill. I believe those are more like the other ones; the

Page 20

1 long-skewed bill -- bill pay outs. That's Kim Byers. I
2 think that's the number, even, I had to call her from, but
3 I'm not sure.

4 Q Shawn, let me ask you this: Back to the actual changing of
5 the tire. You've already explained how you got the jack out
6 of the car. Was there a lug wrench that came with the jack
7 or was with the car?

8 A Yes, there's a factory lug wrench that comes with it.

9 Q And where was that located?

10 A With the jack.

11 Q And that's the equipment you were using to change the tire?

12 A Yes.

13 Q The stuff that came with the car?

14 A Yes, everything that came with the vehicle.

15 Q Are you still presently going to auto school?

16 A Yes.

17 Q Are you going to be a mechanic or --

18 A Yes, I'll have a bachelor's degree in automotive science for
19 automotive.

20 Q Where do you go for that?

21 A Baker College, Owosso. They actually set me back a semester
22 and a half because of the injury, 'cause you can't really
23 work in a lab with a busted hand.

24 Q When do you plan on graduating?

25 A It should be this -- two more semesters. It will be May of
Page 21

1 2014 then.

2 Q When they set you back that semester and a half, did that
3 cost you money out of your pocket?

4 A Yes, 'cause I had to wait -- because of that setback on that
5 semester, I had to wait until the class was freed up that I
6 would have been going into, which they only open them up
7 once a year. So I had to wait a whole other cycle of a year
8 to go back into those classes, 'cause they only offer them
9 at that one semester.

10 Q Did you have to drop out of any classes because of the
11 injury?

12 A Drop out of classes, no. I just couldn't progress on to
13 automotive classes. I had to take more of literature-type
14 classes.

15 Q All right. The stuff you need for your bachelor?

16 A Yeah, like book-work-related classes compared to hands-on.
17 Well, I was out numerous expenses, though, from people
18 having to transport me back and forth to medical visits,
19 follow-ups, physical therapy, back and forth to school,
20 because I drove a manual vehicle. When your arm is bandaged
21 up almost to your elbow and you can't grab nothing, it's
22 kind of hard to drive a stick shift when your hand is all
23 tore up.

24 Q And we talked a little bit about this, but I want to make
25 sure. The car, where was it parked? Was it in driveway?

Page 22

1 On the street? Parking lot? Where was it at?

2 A Driveway on -- it was like, I want to say, not even a five
3 percent incline, maybe ten percent incline, on a gravel
4 driveway.

5 MR. BAKER: Shawn, those are all the questions I
6 have for you.

7 MR. SANGSTER: I just have a few follow-up, Shawn,
8 and we'll be done.

9 THE WITNESS: Yes, sir.

10 EXAMINATION

11 BY MR. SANGSTER:

12 Q The statements that -- you provided us with some documents.
13 One is a copy of your application for benefits.

14 A Uh-huh (affirmative).

15 Q Okay. Then you also provided us with two statements from
16 West Michigan Anesthesia?

17 A Yes, sir.

18 Q This is the anesthesia services that were rendered on
19 May 10th of 2012?

20 A Yes, sir.

21 Q And these statements are dated June 20th, 2012, and May
22 21st, 2012; correct? Statement date (indicating)?

23 A Yes.

24 Q Statement date (indicating)?

25 A Yes.

Page 23

- 1 Q And it indicates the charges for the physician, --
- 2 A Yes.
- 3 Q -- after the CRNA?
- 4 A Yes.
- 5 Q Then it indicates, in the second column, "insurance
- 6 pending"; correct?
- 7 A Yeah.
- 8 Q And on both statements "insurance pending"?
- 9 A Yes.
- 10 Q You were then provided with a statement from Rising Medical
- 11 Solutions regarding the May 10th bill for the physician
- 12 services, and you produced that as well?
- 13 A Yes.
- 14 Q And this statement is dated June 15th, 2012?
- 15 A Yes.
- 16 Q So three weeks after this expense was incurred you received
- 17 what's called an "Explanation of Review" form for that \$483
- 18 service from Anesthesia; correct?
- 19 A Yes.
- 20 Q And you would agree that down at the bottom it says that the
- 21 bill was being denied because services were not related to
- 22 the motor vehicle accident; down at the bottom there?
- 23 A Yes.
- 24 Q Okay.
- 25 A Then why does it not -- then why is it showing zero balance

1 due? Why is it showing zero here (indicating)? Maybe if
2 you guys give an explanation to your confusing paperwork
3 that you give out -- I think I just refuse to answer any
4 more questions to you.

5 Q I just have a few more -- one more, and that's --

6 A All right. What's your last question?

7 Q It's not a last question. You received a similar
8 Explanation of Review form, again dated June 15th, 2012, for
9 the other charges that were listed in this invoice for the
10 \$322; correct?

11 A Possibly.

12 Q It was in your folder.

13 A I'm gonna get my own lawyer and I'm gonna have to have him
14 contact your insurance company, your -- your partner.

15 Q Did you read the insurance policy that was issued to your
16 father?

17 A Why would I read his insurance policy?

18 Q Did you, sir?

19 A Why would I read his insurance policy? Explain that one to
20 me. Why would I read his insurance policy?

21 Q Sir, I assume the answer is "no" you did not read his
22 insurance policy?

23 A Okay. Why? Why would I read his insurance policy?

24 Q To determine what coverages were -- what was or was not
25 covered under the policy.

1 A Okay. Then -- okay. Okay.

2 Q Did you read the policy?

3 A No.

4 Q Thank you.

5 A No.

6 Q Okay.

7 A I'm just gonna have to get my own lawyer involved in this,
8 it sounds like. It won't be a problem.

9 THE WITNESS: Thank you for your time, sir. You
10 were wonderful. You, I'm not too sure about.

11 MR. BAKER: Wait. You done, Ron?

12 MR. SANGSTER: Well, actually, he's leaving right
13 now. Okay?

14 THE WITNESS: No, I'll talk to you more, but --

15 MR. BAKER: Well, Shawn, but he --

16 THE WITNESS: -- I'm not liking what he has to say
17 at all.

18 MR. BAKER: -- he can subpoena you. He can make
19 you come back. You know, I'm not your lawyer. I can't tell
20 you what to do, but if he's got a couple more questions I'd
21 just answer them unless you're going to come back.

22 THE WITNESS: All right. What's your last
23 question?

24 MR. SANGSTER: First of all, I want to indicate on
25 the record that I'm going to be asking for a copy of -- that

1 the audio recording of this deposition be preserved, if
2 possible. Because I don't think I've raised my voice at
3 all. I've tried to be respectful to you during the course
4 of this deposition. I don't get hostile. I'm simply here
5 to ask you questions about what happened and to see whether
6 or not -- I'm going to put this on the record -- whether or
7 not your injury fits within the policy provisions that
8 govern entitlement to no-fault benefits and to the statutory
9 language that's utilized in the No-fault Act regarding
10 entitlement to benefits. That was my sole job here was to
11 get from you the information that we need regarding how this
12 occurred and it will be up to a court to decide whether or
13 not we do or do not owe coverage for the loss. I do not --
14 I want to indicate on the record I do not believe I've been
15 hostile toward you. I've been asking you questions that the
16 law requires me to ask to find out what happened here and
17 whether or not certain things have been complied with. I
18 will indicate that you have answered my questions that I've
19 asked you so far, and at this point I'm going to conclude
20 the dep so you don't think I'm a mean, evil, nasty guy,
21 'cause I'm really not. I'm simply here to gather
22 information.

23 THE WITNESS: No, what's your final -- let's hear
24 all the questions you got --

25 MR. SANGSTER: I'm done.
Page 27

1 THE WITNESS: -- to make.

2 MR. SANGSTER: I have no other questions for you.

3 THE WITNESS: Okay.

4 MR. SANGSTER: You're done. Okay? You're free to
5 go.

6 THE WITNESS: Okay. You got anything else?

7 MR. BAKER: No further questions.

8 (Deposition concluded at 1:36 p.m.)

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I certify that this transcript, consisting of 28 pages, is a complete, true and correct record of the testimony of Shawn B. Norman held in this case on August 9, 2013.

I also certify that prior to taking this deposition, Shawn B. Norman was duly sworn to tell the truth.

August 16, 2013

Ann M. Holmes

Ann M. Holmes, CER 2629
Network Reporting Corporation
2604 Sunnyside Drive
Cadillac, Michigan 49601-8749

TOTAL CHARGES	\$	5,037.68
BILL REVIEW REDUCTION	\$	5,037.68
NETWORK REDUCTION	\$	0.00
OTHER REDUCTION	\$	0.00
TOTAL ALLOWANCE	\$	0.00
PREVIOUS TOTAL ALLOWANCE	\$	0.00
REVISED TOTAL ALLOWANCE	\$	0.00

15000/0/0/0/0/0/1500/71500/0/0/0/0/0/1500/0

EXPLANATION CODES

850-502 DENIED: TREATMENT/SERVICES NOT RELATED TO MOTOR VEHICLE ACCIDENT.

Unless otherwise noted, all reductions are due to standard coding guidelines and line items were reviewed using the FH RV Benchmark Database.

If disputing this review, a formal written request must be submitted to RISING PO BOX 3098 MILWAUKEE, WI 53201-3098 within the timeframes as defined under state law or 60 days of receipt of payment if undefined. FOR BILLING INQUIRES CALL 1-877-WSTFLD-1.

PLEASE NOTE: THE FOLLOWING ADDRESS CHANGE EFFECTIVE 5/17/2010:
ALL FUTURE BILLINGS FOR SERVICES PROVIDED SHOULD BE SENT TO THE FOLLOWING ADDRESS:

WESTFIELD INSURANCE C/O RISING MEDICAL SOLUTIONS, INC.
P.O. BOX 3098 MILWAUKEE, WI 53201-3098

DDS	Submitted Code Modifier(s)	Reimbursed Code(s) Modifier(s)	Minutes Units	Total Charges	Reductions Bill Review	Network	Other	Total Allowance
05/10/2012	250 PHARMACY	250	- / 2	99.99	99.99	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	271 NONSTER SUPPLY	271	- / 2	303.65	303.65	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	272 STERILE SUPPLY	272	- / 4	244.81	244.81	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	360 OR SERVICES	360	- / 1	3,007.13	3,007.13	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	26356 FB	26356 FB	- / 1	3,007.13	3,007.13	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	370 ANESTHESIA	370	- / 3	496.95	496.95	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	638 DRUGS/DETAIL CODE	638	- / 2	173.89	173.89	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	J0690 J0690	J0690	- / 2	173.89	173.89	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	636 DRUGS/DETAIL CODE	636	- / 1	18.84	18.84	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	J1580 J1580	J1580	- / 1	18.84	18.84	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	636 DRUGS/DETAIL CODE	636	- / 1	148.22	148.22	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	J7120 J7120	J7120	- / 1	148.22	148.22	-	-	-
	Explanation Codes*: 850-502							
05/10/2012	710 RECOVERY ROOM	710	- / 5	544.80	544.80	-	-	-
	Explanation Codes*: 850-502							

NOV 5 '12 RCUD

EXPLANATION CODES

850-502 DENIED: TREATMENT/SERVICES NOT RELATED TO MOTOR VEHICLE ACCIDENT.

RISING MEDICAL SOLUTIONS, INC.
 700 W VIRGINIA ST
 STE 401
 MILWAUKEE, WI 53204
 Phone: (866)274-7454
 Fax: (866)767-3290

AMENDED
 EXPLANATION OF REVIEW

Provider: SPECTRUM HEALTH UNITED PO BOX 2709 GRAND RAPIDS, MI 49501 Provider ID: #2994202 Provider TIN: 381358412 Individual Provider: MD Individual Provider ID: Individual Provider TIN: Patient Control #: 0256175DU Network: Network Plan: Network Plan #:	Process Date: 10/26/2012 Bill ID: 99997-U-2262745-1 Claim #: APV4802DB8050512AD1 DOI: 05/05/2012 Adjuster: 316 Flag MRC: Flag Cnt: Client: S080883981-01 Master#: Merge Tot: Patient: NORMAN, SHAWN Patient Key: 978290 Audit Account: WESTFIELD/WESTFIELD INS MI 1 ONE PARK CIRCLE P.O. BOX 5001 WESTFIELD CENTER, OH 44251 Audit Account ID: WEST07AMI1 Report Account: PAM JEWELL & GODFREY T NORMAN Report Account ID: 1108842 Everest #: Office: W100MF Account Use: Sales Rep: W100MF Pt Flag:
---	--

Admit/Discharge Dates: 05/05/2012 - 05/05/2012
 Dates of Service: 05/05/2012 - 05/05/2012
 Submitted DRG: Adjusted DRG:
 Batch #: 274882005 Client Use: D00021
 Pro Rev: RPN Con #:
 MBA Value: PPO ID#:

ICD-9 DX:
 883.2 OPEN WOUND OF FINGER WITH TENDON INVOLVEMENT
 305.1 NONDEPENDENT TOBACCO USE DISORDER
 E918 CAUGHT ACCIDENTALLY IN OR BETWEEN OBJECTS
 FX CODES:

816.02 CLOSED FRACTURE DISTAL PHALANX OR PHALANGES HAND
 V06.1 NEED PROPH VAC W/COMB DIPHTH-TETANUS-PERTUSS VAC

Submitted Code	Modifiers	Reimbursed Code(s)	Modifiers	Minutes /Units	Total Charges	Reductions - BID Review	Network	Other	Total Allowance
Date of Service: 05/05/2012									
Z50		250		- /1	10.27	10.27	0.00	0.00	0.00
PHARMACY									
Explanation Codes*:		850-502							
320		320		- /1	185.29	185.29	0.00	0.00	0.00
DX X-RAY									
Explanation Codes*:		850-502							
450		450		- /1	171.71	171.71	0.00	0.00	0.00
EMERG ROOM									
Explanation Codes*:		850-502							
450		450		- /1	43.35	43.35	0.00	0.00	0.00
EMERG ROOM									
Explanation Codes*:		850-502							
450		450		- /1	805.32	805.32	0.00	0.00	0.00
EMERG ROOM									
Explanation Codes*:		850-502							
636		636		- /1	146.09	146.09	0.00	0.00	0.00
DRUGS/DETAL CODE									
Explanation Codes*:		850-502							
636		636		- /4	153.76	153.76	0.00	0.00	0.00
DRUGS/DETAL CODE									
Explanation Codes*:		850-502							

Submitted Code	Modifiers	Reimbursed Code(s)	Modifiers	Minutes Units	Total Charges	Reductions Bill Review	Network	Other	Total Allowance
Date of Service: 0505/2012									
771		771		1	43.35	43.35	0.00	0.00	0.00
VACCINE ADMIN									
Explanation Codes*: 850-502									

TOTAL CHARGES	\$	1,574.14
BILL REVIEW REDUCTION	\$	1,574.14
NETWORK REDUCTION	\$	0.00
OTHER REDUCTION	\$	0.00
TOTAL ALLOWANCE	\$	0.00
PREVIOUS TOTAL ALLOWANCE	\$	0.00
REVISED TOTAL ALLOWANCE	\$	0.00

1500/0/0/0/0/0/0/1500/7/1500/0/0/0/0/0/1500/0

EXPLANATION CODES

850-502 DENIED: TREATMENT/SERVICES NOT RELATED TO MOTOR VEHICLE ACCIDENT.

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PLEASE NOTE: THE FOLLOWING ADDRESS CHANGE EFFECTIVE 5/17/2010:
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WESTFIELD INSURANCE C/O RISING MEDICAL SOLUTIONS, INC.
P.O. BOX 3098 MILWAUKEE, WI 53201-3098

POS	Submitted Code Modifier(s)	Reimbursed Code(s) Modifier(s)	Minutes /Units	Total Charges	Reductions Bll Review	Network	Other	Total Allowance
05/05/2012	250	250	- /1	10.27	10.27			
	PHARMACY							
	Explanation Codes*: 850-502							
05/05/2012	320	320	- /1	195.29	195.29			
	DX,X-RAY							
	Explanation Codes*: 850-502							
05/05/2012	73130	73130	- /1	195.29	195.29			
	RT							
	Explanation Codes*: 850-502							
05/05/2012	450	450	- /1	171.71	171.71			
	EMERG ROOM							
	Explanation Codes*: 850-502							
05/05/2012	12002	12002	- /1	171.71	171.71			
	Explanation Codes*: 850-502							
05/05/2012	450	450	- /1	43.35	43.35			
	EMERG ROOM							
	Explanation Codes*: 850-502							
05/05/2012	96372	96372	- /1	43.35	43.35			
	59							
	Explanation Codes*: 850-502							
05/05/2012	450	450	- /1	805.32	805.32			
	EMERG ROOM							
	Explanation Codes*: 850-502							
05/05/2012	99284	99284	- /1	805.32	805.32			
	25							
	Explanation Codes*: 850-502							
05/05/2012	636	636	- /1	146.09	146.09			
	DRUGS/DETAIL CODE							
	Explanation Codes*: 850-502							
05/05/2012	90715	90715	- /1	146.09	146.09			
	Explanation Codes*: 850-502							
05/05/2012	636	636	- /1	158.76	158.76			
	DRUGS/DETAIL CODE							
	Explanation Codes*: 850-502							
05/05/2012	J0698	J0698	- /1	158.76	158.76			
	Explanation Codes*: 850-502							
05/05/2012	771	771	- /1	43.35	43.35			
	VACCINE ADMIN							
	Explanation Codes*: 850-502							
05/05/2012	90471	90471	- /1	43.35	43.35			
	Explanation Codes*: 850-502							

EXPLANATION CODES

850-502 DENIED: TREATMENT/SERVICES NOT RELATED TO MOTOR VEHICLE ACCIDENT.

(3)

STATE OF MICHIGAN

IN THE 61st JUDICIAL DISTRICT COURT

SPECTRUM HEALTH HOSPITALS, and
SPECTRUM HEALTH UNITED (Norman),

Plaintiffs,

v

Docket No: 13-GC-2025
Hon. Benjamin H. Logan II

WESTFIELD INSURANCE COMPANY,

Defendant.

MILLER JOHNSON
BY: ANDREW D. OOSTEMA (P68595)
STEPHEN R. RYAN (P40798)
Attorneys for Plaintiff
250 Monroe Avenue, NW - Suite 800
Grand Rapids, Michigan 49503
616/831.1732 Fax: 616/988.1732

LAW OFFICES OF RONALD M. SANGSTER PLLC
BY: RONALD M. SANGSTER, JR. (P39253)
Attorney for Defendant, Westfield Insurance Company
901 Wilshire Drive - Suite 230
Troy, Michigan 48084
248/269.7040 Fax: 248/269.7050

DEFENDANT, WESTFIELD INSURANCE COMPANY'S,
RESPONSE TO
PLAINTIFFS'
FIRST SET OF REQUESTS FOR ADMISSIONS

NOW COMES Defendant, Westfield Insurance Company, by and through its attorney,
the Law Offices of Ronald M. Sangster PLLC, by Ronald M. Sangster Jr., and for their Response
to Plaintiffs' First Requests for Admissions to Defendants, states as follows:

GENERAL OBJECTIONS

- (1) On the advice of counsel, Defendant objects to Plaintiffs' definitions and instructions to the extent that they attempt to impose anything other than the normal meaning to words and the requirements of the Michigan Court Rules. Defendant has responded to Plaintiffs' Requests for Admissions using the ordinary and commonly understood meaning of the words used by Plaintiffs.
- (2) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they are overly broad, unreasonably burdensome, and designed to harass Defendant.
- (3) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they are compound.
- (4) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they seek information that is protected by the attorney-client privilege.
- (5) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they seek information that is protected by the work-product doctrine.
- (6) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence.
- (7) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they are premature. Discovery is continuing.
- (8) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they request information not in Defendant's possession, custody or control.
- (9) On the advice of counsel, Defendant reserves the right to object at the time of Trial to the admissibility of information disclosed in its responses to Plaintiffs' Requests for Admissions.
- (10) All of Defendant's responses to Plaintiffs' Requests for Admissions are subject to the general objections stated above.

Defendant, Westfield Insurance Company, hereby incorporates by reference their objections and Answers to Plaintiffs' First Discovery Request filed in connection with the instant litigation.

1.) Admit that on May 2, 2012, Shawn Norman sustained bodily injury arising out of maintenance of a motor vehicle.

RESPONSE:

After making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Defendant states that based solely upon information derived from the claim file materials, Shawn Norman was injured while attempting to change a tire on his parents' motor vehicle on May 5, 2012. Defendant has subpoenaed Shawn Norman to appear for a deposition on August 9, 2013, to obtain further information regarding the subject accident.

Defendant reserves the right to amend its response to this Request for Admission during the course of discovery.

2.) Admit that Plaintiff provided medical care and treatment to Shawn Norman on May 5, 2012 and May 10, 2012.

RESPONSE:

Defendant admits that it is within the possession of a medical reports and billing ledgers for services provided by the Plaintiffs to Shawn Norman on May 5, 2012 and May 10, 2012.

Defendant reserves the right to amend its response to this Request for Admission during the course of discovery.

3.) Admit that Plaintiff's charges for the treatment of Shawn Norman total \$6,770.76.

RESPONSE:

Admitted in part and denied in part. Defendant admits that based solely upon information derived from the allegations contained within Plaintiffs' Complaint, Plaintiffs are claiming unpaid charges in the amount of \$6,770.76. However, based on the medical records and billings submitted by Plaintiffs to the Defendant, to date, Defendant has only received billings totaling \$6611.82.

Defendant states that it is not currently in possession of the complete medical records or billing records pertaining to Plaintiffs' treatment of Shawn Norman, which are at issue in the instant litigation.

Defendant reserves the right to amend its response to this Request for Admission during the course of discovery.

4.) Admit that the medical care and treatment provided by Plaintiff to Shawn Norman on May 5, 2012 and May 10, 2012 (*sic. are*) related to injuries sustained in the May 2, 2012 motor vehicle maintenance incident.

RESPONSE:

After making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Counsel for Defendant has not yet received the entire set of medical and billing records from Plaintiffs as requested within its discovery requests to Plaintiffs. Defendant admits only that Shawn Norman was involved in an incident while apparently changing a tire on May 5, 2012 and that he sought treatment with the Plaintiffs following the subject incident on May 5, 2012 and May 10, 2012.

Defendant reserves the right to amend its response to this Request for Admission during the course of discovery.

5.) Admit that the medical care and treatment provided by Plaintiff to Shawn Norman was medically necessary and the charges for the incurred medical treatment are reasonable.

RESPONSE:

After making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Counsel for Defendant has not yet received the entire set of medical and billing records from Plaintiffs as requested within its discovery requests to Plaintiffs.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

6.) Admit that Defendant received the following information on this claim on May 17, 2012:

- a. Itemized Statement regarding Plaintiff's charges;
- b. UB04 form; and
- c. Medical records documenting Plaintiff's charges.

RESPONSE:

Defendant admits only that it received partial medical records and billing ledgers for services provided to Shawn Norman on May 5, 2012 and May 10, 2012. Counsel for Defendant has not yet received the entire set of medical and billing records from Plaintiffs as requested within its discovery requests to Plaintiffs.

As to the balance of this request, after making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Defendant is in the process of determining precisely when the medical expenses were received by Defendant's medical expense auditing company, Rising Medical Solutions.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

7.) Admit that Shawn Norman is eligible for PIP benefits under MCL 500.3105.

RESPONSE:

Denied as untrue. MCL 500.3105 clearly states that an injured person's eligibility for benefits is "subject to the other provisions of this chapter." The very next section, MCL 500.3106 clearly states that accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked motor vehicle as a motor vehicle unless one of statutorily enumerated exceptions applies. In this case, it does not appear that any of the exceptions to the Parked Vehicle Exclusion, set forth in MCL 500.3106 apply. Therefore, Shawn Norman and his medical providers would not be eligible for No Fault benefits.

8.) Admit that Shawn Norman is not excluded from PIP benefits under any exclusion set forth in MCL 500.3113.

RESPONSE:

After making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Defendant has subpoenaed Shawn Norman to appear for a deposition on August 9, 2013, to obtain further information regarding the subject accident.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

9.) Admit that Defendant has denied Shawn Norman's claim for PIP benefits.

RESPONSE:

Admitted

10.) Admit that Plaintiff's charges have not been paid by Defendant.

RESPONSE:

Admitted.

11.) Admit that PIP benefits are overdue if not paid within thirty (30) days after the insurer receives reasonable proof of the fact and the amount of the loss sustained pursuant to MCL 500.3142.

RESPONSE:

Admitted as a general proposition, only. Defendant denies that this provision is applicable under the facts and circumstances of this claim.

12.) Admit that Defendant received reasonable proof of the fact and that amount of the claim prior to the filing of Plaintiff's Complaint in this matter.

RESPONSE:

Denied as untrue. Defendant has not received reasonable proof of the fact and the amount of the claim and, rather, was only provided with incomplete medical records and medical billings regarding Plaintiffs' alleged treatment of Shawn Norman. Plaintiffs have failed to submit reasonable proof of the fact regarding Shawn Norman's entitlement to No Fault benefits.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

13.) Admit that Defendant has unreasonably delayed payment of Plaintiff's claim after it received reasonable proof of the fact and the amount of Plaintiff's claim.

RESPONSE:

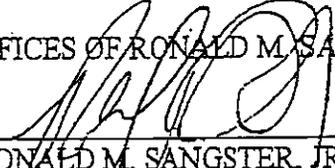
Denied as untrue. Defendant has not received reasonable proof of the fact and the amount of the claim and, rather, was only provided with incomplete medical records and medical billings regarding Plaintiffs' alleged treatment of Shawn Norman. Plaintiffs have failed to submit reasonable proof of the fact regarding Shawn Norman's entitlement to No Fault benefits.

Furthermore, a legitimate issue of statutory construction exists in this case. MCL 500.3105 clearly states that an injured person's eligibility for benefits is "subject to the other provisions of this chapter." The very next section, MCL 500.3106 clearly states that accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked motor vehicle as a motor vehicle unless one of statutorily enumerated exceptions applies. In this case, it does not appear that any of the exceptions to the Parked Vehicle Exclusion, set forth in MCL 500.3106 apply. Therefore, Shawn Norman and his medical providers would not be eligible for No Fault benefits.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

LAW OFFICES OF RONALD M. SANGSTER, PLLC

BY:



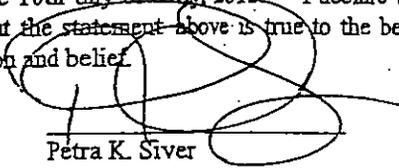
RONALD M. SANGSTER, JR. (P39253)

Attorney for Defendant, Westfield Insurance Company

Dated: July 10, 2013

PROOF OF SERVICE

Petra K. Siver hereby certifies that a copy of the foregoing instrument was served upon all attorneys on record for all of the parties herein by mailing same to their attention at their respective business addresses as disclosed within the pleadings of record herein, with postage fully prepaid thereon on the 10th day of July, 2013. I declare under the penalty of perjury that the statement above is true to the best of my knowledge, information and belief.



Petra K. Siver

(4)

STATE OF MICHIGAN
IN THE 61st JUDICIAL DISTRICT COURT

SPECTRUM HEALTH HOSPITALS;
and SPECTRUM HEALTH UNITED;

Plaintiffs,

Case No. 13-GC _____

vs.

HON. _____

WESTFIELD INSURANCE COMPANY; and
WESTFIELD NATIONAL INSURANCE COMPANY;

Defendants.

Andrew D. Oostema (P68595)
Stephen R. Ryan (P40798)
MILLER JOHNSON
Attorneys for Plaintiffs
250 Monroe Avenue, N.W., Suite 800
Grand Rapids, MI 49501-0306
(616) 831-1732

AFFIDAVIT OF NO-FAULT CHARGES

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

I, Mary Froehlke, having been duly sworn, state:

1. I am employed by Spectrum Health Hospitals and Spectrum Health United as its Commercial Billing Supervisor, and have personal knowledge regarding the account of Shawn Norman.

2. Spectrum United provided professional medical services to Shawn Norman on May 2, 2012. Spectrum United's charges totaling \$1,574.14 are the hospital's standard charges for like products, services and accommodations, and are commercially



reasonable. On August 7, 2012, Spectrum United provided Westfield with its UB-04 billing form, Itemized Statement and medical records documenting the claim.

3. Spectrum provided professional medical services to Shawn Norman on May 10, 2012. Spectrum's charges totaling \$5,196.62 are the hospital's standard charges for like products, services and accommodations and are commercially reasonable. On May 17, 2012, Spectrum provided Westfield with its UB-04 billing form, Itemized Statement and medical records documenting the claim.

4. Westfield has failed to pay the claims.

5. As of the date of this Affidavit, the principal amount of \$1,574.14 remains due and owing to Spectrum United, plus interest, costs and fees allowed by law.

6. As of the date of this Affidavit, the principal amount of \$5,196.62 remains due and owing to Spectrum, plus interest, costs and fees allowed by law.

7. I verify that the facts stated in this Affidavit are true, and that if sworn as a witness, I can testify with personal knowledge as to these facts.

Mary Froehle
MARY FROEHLKE

Subscribed and sworn to before me
this 15 day of April, 2013.

Peter Traska
Peter Traska
Notary Public, Kent County, MI
My Commission Expires: 10/07/2014
Acting in Kent County

Order

February 3, 2015

150384

SPECTRUM HEALTH HOSPITALS
and SPECTRUM HEALTH UNITED,
Plaintiffs-Appellees,

v

WESTFIELD INSURANCE COMPANY,
Defendant-Appellant.

Michigan Supreme Court
Lansing, Michigan

(5)
Robert P. Young, Jr.,
Chief Justice

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

SC: 150384
COA: 323804
Kent CC: 14-002515-AV

On order of the Court, the application for leave to appeal prior to decision by the Court of Appeals is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court before consideration by the Court of Appeals.



h0126

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 3, 2015

Clerk

Court of Appeals, State of Michigan

(6)

ORDER

Spectrum Health Hospitals v Westfield Insurance Company

William B. Murphy
Presiding Judge

Docket No. 323804

Jane M. Beckering

LC No. 14-002515-AV

Douglas B. Shapiro
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

William B. Murphy
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 02 2015

Date

Jerome W. Zimmer Jr.
Chief Clerk

STATE OF MICHIGAN
MICHIGAN SUPREME COURT



SPECTRUM HEALTH HOSPITALS
and SPECTRUM HEALTH UNITED;
Appellees,

Michigan Supreme Court
Docket No. 150384

Michigan Court of Appeals
Docket No. 323804

17th Circuit Court Appeal No. 14-02515-AV
HON. DONALD JOHNSTON

vs

WESTFIELD INSURANCE COMPANY
Appellant.

61st District Court
Case No. 13-GC-2025
HON. J. MICHAEL CHRISTENSEN

Andrew D. Oostema (P68595)
Stephen R. Ryan (P40798)
MILLER JOHNSON
Attorneys for Spectrum
250 Monroe Avenue, N.W., Suite 800
Grand Rapids, MI 49501-0306
(616) 831-1732

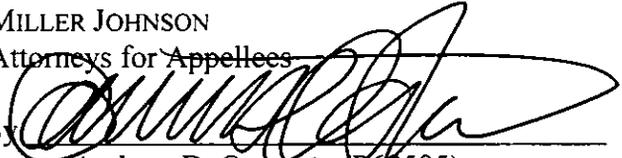
Ronald M. Sangster, Jr. (P39253)
LAW OFFICES OF RONALD M. SANGSTER PLLC
Attorney for Westfield
901 Wilshire Drive, Suite 230
Troy, MI 48084
(248) 269-7040

APPEARANCE

NOW COMES the law firm of Miller Johnson, who hereby enters its appearance as counsel of record for Appellees, Spectrum Health Hospitals and Spectrum Health United, (hereafter collectively referred to as "Spectrum" or Appellees), regarding the Application for Leave to Appeal filed by Westfield Insurance Company ("Appellant").

Dated: May 1, 2015

MILLER JOHNSON
Attorneys for Appellees

By 
Andrew D. Oostema (P68595)
Stephen R. Ryan (P40798)

Business Address:
250 Monroe Avenue, N.W., Suite 800
Grand Rapids, Michigan 49503
Telephone: (616) 831-1700

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

SPECTRUM HEALTH HOSPITALS
and SPECTRUM HEALTH UNITED;
Appellees,

Michigan Supreme Court
Docket No. 150384

Michigan Court of Appeals
Docket No. 323804

17th Circuit Court Appeal No. 14-02515-AV
HON. DONALD JOHNSTON

vs

WESTFEILD INSURANCE COMPANY
Appellant.

61st District Court
Case No. 13-GC-2025
HON. J. MICHAEL CHRISTENSEN

Andrew D. Oostema (P68595)
Stephen R. Ryan (P40798)
MILLER JOHNSON
Attorneys for Spectrum
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Grand Rapids, MI 49501-0306
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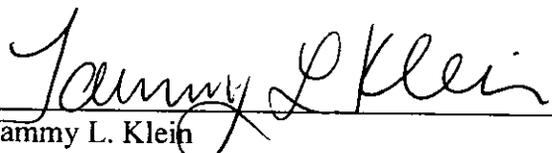
Ronald M. Sangster, Jr. (P39253)
LAW OFFICES OF RONALD M. SANGSTER PLLC
Attorney for Westfield
901 Wilshire Drive, Suite 230
Troy, MI 48084
(248) 269-7040

PROOF OF SERVICE

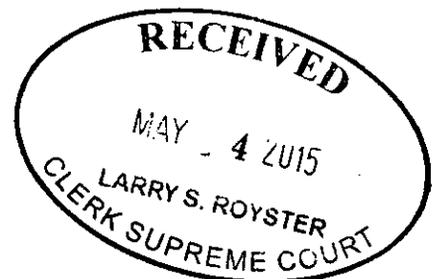
Tammy L. Klein being first duly sworn, deposes and states that on May 1, 2015,
she served a copy of the Appellees, Spectrum Health Hospitals and Spectrum Health United's
Brief in Opposition to Westfield Insurance Company's Application for Leave to Appeal upon:

Ronald M. Sangster, Jr. (P39253)
Attorney for Defendant
901 Wilshire Drive, Suite 230
Troy, MI 48084

Via Federal Express



Tammy L. Klein



May 1, 2015

VIA FEDERAL EXPRESS

Michigan Supreme Court
Attn: Clerk of the Court, 4th Floor
Michigan Hall of Justice
925 W. Ottawa Street
Lansing, MI 48915

Re: Spectrum Health Hospitals and Spectrum Health United v Westfield
Insurance Company
Michigan Supreme Court Docket No. 150384

Dear Court Clerk:

Enclosed for filing please find:

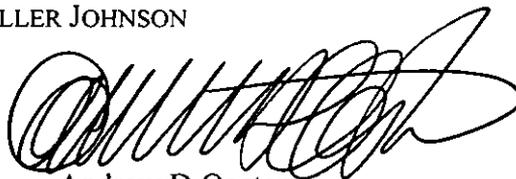
1. Appearance of Counsel;
2. An original and seven (7) copies Appellees, Spectrum Health Hospitals and Spectrum Health United's Brief in Opposition to Westfield Insurance Company's Application for Leave to Appeal;
3. Proof of Service.

If you have any questions, please feel free to contact me.

Sincerely,

MILLER JOHNSON

By



Andrew D Oostema

ADO:tlk
Enclosures

cc: Ronald M. Sangster, Jr. (w/encs.)

