

# [ Verdicts & Settlements ]

## Blue Cross OK's autism class-action settlement

Insurer's documents say treatment is 'standard of care,' not 'experimental'

### \$1 million

In a class-action lawsuit filed in U.S. District Court, Eastern District of Michigan, the family of plaintiff-minor sought damages after asserting that defendant insurer Blue Cross Blue Shield of Michigan wrongfully refused to cover behavioral therapy for children with autism spectrum disorder (ASD).

The plaintiff contended that Blue Cross' pattern and practice of characterizing the scientifically established Applied Behavioral Therapy as "experimental," and thus, as excluded under its insurance policies, was arbitrary, capricious, illegal and contradicted by many years of scientific validation.

The case settled for \$1 million shortly after plaintiff's counsel obtained a court order requiring Blue Cross to produce file documents that validated the effectiveness of Applied Behavioral Analysis (ABA) therapy for treating children with ASD. Among the documents in the Blue Cross files obtained by plaintiff's counsel were Blue Cross Blue Shield Medical Policies for 2005, 2008 and 2009, which acknowledged:

**Type of action:** Claim under the Elliott-Larsen Civil Rights Act alleging that plan administrator acted arbitrarily and capriciously

**Type of injuries:**  
Denial of insurance benefits

**Name of case:** *Johns v. Blue Cross Blue Shield of Michigan*

**Court/Case no./Date:** U.S. District Court, Eastern District of Michigan; 08-cv-12272; June 17, 2009

**Tried before:** Facilitation

**Name of judge:** Stephen J. Murphy III

**Name of facilitator:**  
Michael J. Hluchaniuk

**Settlement amount:** \$1 million

• "Applied behavioral analysis is currently the most thoroughly researched treatment modality for early intervention approaches to autism spectrum disorders and is the standard of care recommended by the American Academy of Pediatrics, National Academy of Sciences Committee and the Association for Science in Autism Treatment, among others."

• "The earlier the disorder is diagnosed, the sooner the child can be helped through



MANTESE



CONWAY

**Most helpful experts:** Ruth Anan, Ph.D., and Lori Warner, Ph.D., both of William Beaumont Hospital HOPE Center

**Attorneys for plaintiff:** John J. Conway, Gerard V. Mantese

**Attorney(s) for defendant:** Withheld

treatment interventions."

Under the terms of the settlement, Blue Cross agreed to reimburse all families who paid for behavioral therapy for their children after May 1, 2003, and who were covered under a Blue Cross Blue Shield of Michigan insurance policy.

Blue Cross agreed to class certification per a binding settlement placed on the record, and the court is expected to give approval come the end of the month.

## Insurer asserts rehab clinic acted fraudulently

Plaintiff's expert: Physical therapy provided was outside scope of licensure

### \$100,999.26

**Type of action:** Fraud and unjust enrichment on the basis of the payment of state no-fault benefits

**Name of case:** *State Farm Mutual Automobile Insurance Co. v. Pain and Injury Rehabilitation Clinic, et al.*

**Court/Case no./Date:** U.S. District

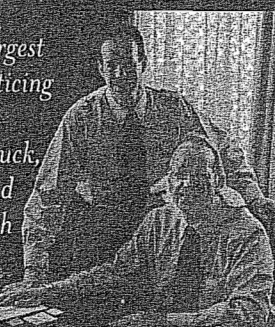


**Most helpful experts:** Polly Swingle, P.T., Livonia; Donna Bauby, R.N., C.M.A.S., Okemos; Dr. Jeffrey Middledorf, D.C., D.O., Warren; Don Baker, engineer

## Auto Lawyers

Gursten, Koltonow, Gursten, Christensen & Raitt, P.C.

Michigan's largest law firm practicing exclusively in serious car, truck, motorcycle and wrongful death injury cases



AV-Rated® Firm

- 2009: Lawrence E. Gursten and Steven M. Gursten selected in "Best Lawyers in America"
- 2009: Lawrence E. Gursten, Leonard M. Koltonow, Steven M. Gursten, David E. Christensen & Robert M. Raitt named "Michigan Super Lawyers®"
- 2008: Robert M. Raitt – President of MAJ
- 2008: Steven M. Gursten – President "Interstate Trucking Litigation Group" of AAJ
- Steven M. Gursten elected "Lawyer of the Year" by MI Lawyers Weekly
- Largest auto jury verdict in Michigan in 5 of last 8 years

### Notable Auto Verdicts

- \$2 million verdict on zero offer for head injury
- \$4.25 million on defense offer of \$100,000 for head injury/auto injury
- \$2.5 million on defense offer of \$250,000
- 5 separate trial verdicts of over \$1 million on defense offers of \$0 to \$30K

WRITING

"As both an attorney and client, I'm not your typical consumer. My expectations were definitely exceeded. They are extremely talented, and their