

VERDICTS & SETTLEMENTS

No-Fault Insurance Coverage Established By Estoppel *Infectious Disease Physician Charges Reasonable, Customary*

An Oakland County jury, in front of Circuit Court Judge Steven N. Andrews, handed down a unanimous verdict in favor of a medical provider who commenced a lawsuit to recover a substantial amount of medical charges incurred in the treatment of a patient whose insurance company had refused to pay.

The jury found the physician's charges to be reasonable and customary, and the treatment provided to be necessary and appropriate.

The jury awarded 100 percent of the physician's medical charges, found that such medical charges were "overdue," and that no-fault statutory penalty interest was to be awarded at 12 percent per annum. The jury also found that the defendant-insurer acted in bad faith by failing to pay the physician's medical charges in a timely fashion.

A judgment was entered pursuant to this jury verdict on July 16, 2003 that awarded 100 percent of the provider's medical charges and attorneys' fees under the No-Fault Act, No-Fault statutory interest, taxable costs, and pre-judgment interest, in the amount of \$371,670.

As the Michigan No-Fault Act does not provide any detailed guidance on what constitutes a reasonable and customary charge — and in light of the fact that fee schedules of any sort are illegal under Michigan No-Fault law — this case serves to provide more guidance in an area of the law that has been subject to much speculation.

In the instant case, the provider's charges, which were held to be reasonable and customary, were supported by: 1) expert medical testimony; 2) testimony that several insurance companies had paid 100 percent of the physician's same charges for the same medications and treatments at issue in this case; and 3) the fact that the physician charged all of his patients consistently.

Furthermore, at trial, the defendant-insurer decided not to call its own expert witness on the issue of medical necessity — an expert witness who actually supported the treatments provided by the plaintiff. As a result, the plaintiff read the de bene esse deposition transcript of the defendant's expert witness into evidence during trial to support the plaintiff's own case.

Originally, the insurance company argued that its refusal to pay a substantial

amount of the medical provider's medical charges was due to its position that the provider's charges were not reasonable and customary, and the medical care provided was not necessary under MCL 500.3107 and MCL 500.3157 of the Michigan No-Fault Act.

However, the insurance company later changed its position and denied that no-fault insurance coverage was authorized for the patient pursuant to MCL 500.3105. The defendant-insurer's denial of coverage came well after two years of medical treatments were already authorized by the insurer and provided to the patient, after two years of partial reimbursement of medical providers' charges were already paid by the insurer, after the instant lawsuit had been in existence for more than one year, and after discovery had already concluded.

Indeed, the defendant insurance company had not made any mention of denying insurance coverage until after case evaluation, the final pretrial, and only weeks before the trial date.

Judge Andrews denied the insurance company's motion for directed verdict, finding that insurance coverage had been au-

thorized and represented by the insurance company, and the medical provider had relied on such represented coverage to its detriment.

Further, the evidence on record was replete with admissions by the defendant-insurance company that no-fault insurance coverage for the patient had been approved and authorized, including binding admissions in the defendant's answer to the plaintiff's complaint, admissions from the insurance company's legal counsel and claims adjuster in the defendant's claim diaries; deposition testimony of the insurer's company representative; and correspondence from the insurance company to the medical provider.

Type of action: Insurance
Name of case: Ruben, M.D., P.C. v. Auto Club Insurance Company

Court/case no./date: Oakland County Circuit Court; #02-041014-NF; July 16, 2003

Name of judge: Steven N. Andrews
Verdict amount: \$371,670

Attorneys for the plaintiff: Gerard V. Mantese and Robert J. Cardillo
Attorney for the defendant: Withheld