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*"We truly enjoy our work...not only for the mental challenge it presents, but also because it provides us with the opportunity to serve and defend reputable clients. We receive great satisfaction from seeing the judicial system work as it was intended and assisting our clients through the process."*

## No Cause Verdict In Subrogation Case

The trial of a subrogation fire loss case against a utility resulted in a no cause jury verdict for Tara Cannatella, who represented the utility. The plaintiff insurance company paid its insured more than \$400,000 for fire damage to a commercial building and sued the utility claiming that it negligently installed and maintained electrical equipment inside the building which caused the fire.

Using eyewitness testimony, firefighter statements, photographs, and its own experts, the defense was able to demonstrate that the fire originated inside the attached building and spread to the electrical equipment. The defense was also able to show that the electrical equipment which allegedly caused the fire was actually owned by the plaintiff's insured and that it was his responsibility to maintain it. Ms. Cannatella also successfully used plaintiff's own evidence and experts to support the utility's position.

## Insurance Policy Provision To Select Medical Examiner Upheld

A recent Michigan Supreme Court decision held that insurance companies involved in no-fault benefit claims have the right to include insurance policy provisions which allow them to select the examiner for physical or mental examinations. Furthermore, conditions can only be placed on the examination if the claimant can provide demonstrable evidence that the examination will cause annoyance, embarrassment, or oppression because, "Physicians are presumed to be bound by the methodologies of their profession and by principles of professional integrity."

In the case, the plaintiff argued that the examining physician had, during a previous examination, inappropriately asked about issues protected by attorney-client privilege. However, the Plaintiff insisted on a protective order which included many conditions unrelated to those questions. The Court ruled that certain conditions could be imposed, but they had to be limited to address the improper questioning. Contact Philip Reed for details.

## Plaintiff's Failure to Appear for Medical Exam Can Result in Suspended Benefit Payments

In another decision involving no-fault medical examinations scheduled by the insurer, the Michigan Court of Appeals ruled that, where a claimant failed to appear for examinations, the insurer could suspend payment of benefits until the claimant did appear and reimbursed the insurer for cancellation fees. The suspension by the insurer was not an unreasonable denial and the claimant was not entitled to attorney fees. Contact Philip Reed for details.

*"It appears we have appointed our worst generals to command forces, and our most gifted and brilliant to edit newspapers. In fact, I discovered by reading newspapers that these editor/geniuses plainly saw all my strategic defects from the start, yet failed to inform me until it was too late. Accordingly, I am readily willing to yield my command to these obviously superior intellects, and I will, in turn, do my best for the Cause by writing editorials – after the fact."*

*- Robert R. Lee, 1863*

## Attorney Fees Awarded Despite De Minimis Award for "Overdue Benefits"

The Michigan Court of Appeals also recently upheld a post-trial order in a no-fault benefit case awarding attorney fees in the amount of \$79,415 for the insurance company's unreasonable refusal to pay wage loss benefits. However, the jury had awarded only \$98.71 in penalty interest for unpaid wage loss suggesting that it found an unreasonable delay in the payment of only one week of wage loss and that the remainder of its \$42,000 unpaid wage loss award was not overdue. The Court ruled that, even though the jury apparently found only some benefits overdue, the cause of action was still one for "overdue benefits" and the plaintiff was entitled to reasonable attorney fees engendered by the action. It was irrelevant that the amount of penalty interest awarded was disproportionate to the amount of attorney fees awarded. The trial court had not abused its discretion in determining that the attorney fees were reasonable.

The insurance company's Motion for Reconsideration was very recently denied and it is not known if an appeal to the Michigan Supreme Court is planned. Contact Philip Reed for details.

## Treatment By Traumatic Brain Catastrophic Injury, P.C. May Not Be Covered by No Fault Benefits

Traumatic Brain Catastrophic Injury, P.C. ("TCBI") was founded by Dr. Thomas Park to "restore functional independence" to catastrophically injured persons.

After a bench trial in a lawsuit filed by TCBI against an insurer for payment of no-fault benefits, a circuit court judge ruled in a written opinion and order that the "program and treatment" by TCBI for an allegedly traumatic brain injury had "no scientific or medical validity." Therefore, the treatment was not reasonable and necessary.

The Court found that TCBI did not design a treatment program to address the alleged deficits of the injured person, there were no assessments of specific deficits and no assessments to measure progress. Although symptoms were identified, there was no specific treatment program for those symptoms and no measurable goals. The Court described the program as "...teaching patients to use Microsoft Windows and teaching them to type." Contact Philip Reed for details.