

2018 MILLION DOLLAR VERDICTS & SETTLEMENTS

This section includes verdicts and settlements of \$1 million or more obtained in a Michigan court in 2018 that were reported to Michigan Lawyers Weekly on or before Dec. 21, 2018.

\$3.5 million

Insurer's failure to pay benefits prompted lawsuit

Plaintiff was involved in a 2007 automobile accident suffering a traumatic brain injury. His doctors prescribed attendant care that was provided by his family members. The insurance company initially refused to properly pay attendant care benefits and this lawsuit was instituted. Defendant insurance company did not cooperate with discovery, which resulted in multiple motions and orders compelling discovery. Defendant did not comply with these orders even though defendant stipulated to the orders.

Because of the repeated violation of the orders, the court, as a sanction, limited defendant's witnesses and evidence at trial. Plaintiff obtained a favorable jury verdict in 2009 which defendant appealed. The Court of Appeals overturned the verdict, holding the sanction was too harsh and ordered a second trial. The trial court ordered additional discovery after the case was returned to the circuit court.

The defendant was now represented by three law firms. The court ordered the insurance company to answer interrogatories relating to their expert's opinion by a date selected by defendant. These interrogatories had never been properly answered despite an earlier order. Defendant eventually answered the interrogatories, but it was discovered during the deposition of defendant's expert nurse that she had not reviewed the records defendant claimed she relied on to form her opinions. It was also learned she did not form her opinions until after the interrogatories were answered by defendant's lawyers and

the opinion in the interrogatories was not her opinion.

The court ordered an evidentiary hearing to determine if the insurance company's house counsel and private attorney violated the court rules by making false statements regarding the expert's opinions. The evidentiary hearing lasted six days over the course of one year. During the hearing, defendant's expert and both the insurance company house counsel and their outside counsel testified. The insurance company hired another law firm bringing the total law firms representing the insurance company to four. The expert also retained an attorney to represent her interests after the court advised the expert of her right against self-incrimination.

After the testimony, the court issued a lengthy opinion finding the expert's testimony "incredible" and also that the lawyers violated the court rules. The court awarded plaintiff sanctions. The insurance company appealed. The Michigan Court of Appeals did not accept

the application. The insurance company appealed to the Michigan Supreme Court, which also did not accept the case and returned it to the circuit court for trial. After 10 years, the insurance company finally resolved the case and paid for all of the accrued attendant care, interest, attorney fees, and costs totaling \$3,502,000. Defendant rejected the case evaluation of \$72,000.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Confidential

Date: Feb. 22, 2018

Tried before: Jury

Case evaluation: \$72,000 rejected by all parties

Settlement amount: \$3,502,000

Attorneys for plaintiff: Nicholas S. Andrews, Arthur Y. Liss



\$2.23 million

Settlement reached over attendant care before second trial

Plaintiff suffered a severe traumatic brain injury in a 2011 automobile accident. His treating doctors prescribed 24-hour attendant care. His insurance company would only compensate for aide-level care despite the complexity of the care provided by his mother, a registered nurse and also despite the prescription for attendant care by a treating physician at a behavioral technician level.

The case was initially tried in 2014. Although the verdict was favorable to plaintiff, the amount was less than demanded and because of irregularities with the jury instructions, plaintiff appealed.

The Court of Appeals found the trial court should have instructed the jury on agency rates, especially in light of the mother's testimony regarding her expenses, and the case was returned to circuit court for a new trial. In the interim, plaintiff had filed a second lawsuit. When the first lawsuit was returned from the Court of Appeals, the cases were consolidated for trial. The case settled shortly before the second trial.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Confidential

Date: Nov. 23, 2018

Settlement amount: \$2,225,000

Attorneys for plaintiff: Nicholas S. Andrews, Arthur Y. Liss

\$2.1 million

Third lawsuit avoided by settlement

Plaintiff was six years old when he suffered a severe traumatic brain injury in 1995. His mother filed a lawsuit against defendant insurance company in 2000 which resulted in a favorable judgment.

Plaintiff's mother filed a second lawsuit against the insurance company in 2002. Again, this suit terminated with a favorable outcome to plaintiff. The residual effects of plaintiff's traumatic brain injury have continued and plaintiff requires continuous attendant care.

Plaintiff demanded a cost-of-living increase due to the passage of time and the expected

complications related to his age and injuries. Plaintiff and defendant insurance company have been able to resolve their differences and enter into a long-term resolution of the attendant care benefits rather than go through a third lawsuit.

Plaintiff provided the insurance company with additional documentation and expert economic opinions as to the reasonable value of the attendant care services provided by the family.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Confidential

Court/Date: Pre-suit settlement/
Feb. 26, 2018

Settlement amount: \$2,098,750

Attorneys for plaintiff: Nicholas S. Andrews, Arthur Y. Liss

\$2.08 million

Insurer sued over attendant care benefits

Plaintiff, now age 82, suffered a traumatic brain injury in a 2006 automobile accident. This was her second lawsuit against the insurance company relating to attendant care benefits. She had asked the insurance company for a cost-of-living increase in her attendant care benefits. She provided an economist's report supporting her demand. The insurance company refused to a COLA and litigation was instituted. The insurance company blocked discovery at every turn.

Plaintiff filed multiple motions seeking the entirety of the claim file because it was suspected the defendant had withheld many electronic documents. Defendant initially claimed there were no emails or instant messages between claims adjusters and their supervisors. Further discovery revealed a substantial number of electronic documents that had been withheld by defendant including an employee evaluation form that revealed the claim supervisor involved in this case had been disciplined for misconduct and poor judgment handling injury claims that were in litigation. Rather than face demotion, the claim manager of more than 20 years quit his job.

Plaintiff requested additional discovery because of this revelation and the court

ordered an in-camera review of the claim supervisor's employment file that had previously been improperly withheld. The court also ordered an additional deposition of the claim supervisor's manager. The Court of Appeals rejected the insurance company's appeal and the case was returned to the circuit court for trial.

The defendant's disciplined claim manager claimed during his deposition that the level of attendant care claimed by plaintiff's expert witness to have been provided to plaintiff, a Life Skills Trainer, did not exist. During discovery, it was learned that the defendant hired an accountant to perform a survey of attendant care providers in Michigan.

The defendant's accountant testified that a Life Skills Trainer did in fact exist and testified to the value of Life Skills Trainer services. Additionally, the defendant's expert accountant clarified at deposition that the "survey" was not a real survey because it had no scientific basis. The expert also testified that calling it a "survey" could be misleading.

Further testimony disclosed that this alleged "survey" was conceived by one of defendant's supervising attorneys with the help of a high-level claim manager. At the direction of the attorney and high-level claim manager, portions of the survey that proved plaintiff's case were withheld from claim adjusters and claim managers, including the portion relating to Life Skills Trainers.

Defendant's accountant, economist, physiatrist, neuropsychologist, and neurologist all supported plaintiff's case.

Ultimately, the insurance company paid many times the amount of the original request for a cost-of-living increase in the attendant care rate.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Confidential

Date: Feb. 22, 2018

Case evaluation: \$185,000. The award was rejected by both parties

Settlement amount: \$2,077,000

Most helpful experts: Robert Ancell, Ph.D. (case management and vocational expert); Sharon Filas (defendant's expert accountant); and Palmer Morrel-Samuels (statistical expert)

Attorneys for plaintiff: Nicholas S. Andrews, Arthur Y. Liss

\$1.97 million

Rather than release documents, insurer settles case

This was plaintiff's second lawsuit against his insurance company because the insurance company refused to pay attendant care benefits. The insurance company cut off all attendant care benefits on the basis of a medical examination with an insurance company doctor.

Shortly after filing suit, the insurance company sought summary disposition claiming the guardian under the Mental Health Code did not have authority to sue on behalf of her ward, the injured person.

The circuit court denied the motion and defendant appealed. The probate court reiterated its order that the guardian under the Mental Health Code had the authority to file a lawsuit on behalf of her ward. The Court of Appeals denied the appeal. The insurance company appealed to the Michigan Supreme Court, which also denied the appeal.

Upon return to the circuit court, the court ordered the insurance company to turn over certain corporate documents related to claim handling and its employees. Plaintiff believed these documents proved the basis for the insurance company's delay-deny-defend tactics. Rather than turn over these documents, the insurance company settled the case.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury

Name of case: Confidential

Date: Dec. 10, 2018

Settlement amount: \$1,966,941.60

Attorneys for plaintiff: Nicholas S. Andrews, Arthur Y. Liss

\$1.85 million

Long-term attendant care agreement reached

Plaintiff minor was 11 years old when he suffered a catastrophic brain injury. The defendant insurance company refused to pay attendant care benefits at an adequate or reasonable rate. The first lawsuit to recover these benefits was started in 2003.

This evolved into a highly contested lawsuit which ultimately resulted in judgment in plaintiff's favor in 2005. Defendant insurance company paid for attendant care on a daily basis and, as time went on, the insurance adjuster converted this daily payment to an hourly payment contrary to the parties' original agreement and intent.

As the plaintiff minor grew older, he became more difficult to structure, support, supervise, and manage due to the unpredictable nature of his behaviors as a result of his brain injury. At the same time, the insurance adjuster began reducing the number of hours compensated for attendant care.

Controversy arose between the parties because the insurance company acknowledged that plaintiff's injuries were continuing and based upon all of the available information his condition was unlikely to change. The insurance adjuster did not want to compensate for sleep hours even though the injured would try to elope in the middle of the night.

Ultimately, with the difference of opinion between the insurance company and the injured claimant's care providers, it became clear that litigation would be necessary. Due to the historical and continuing difficulties presented in providing the attendant care for this seriously injured young man, significant discussions between the parties continued relating to the need and the value of the attendant care services provided. The parties ultimately, in 2018, resolved their differences and entered into a long-term attendant care agreement.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Confidential

Court/Date: Pre-suit settlement/
Feb. 23, 2018

Settlement amount: \$1,848,360

Attorneys for plaintiff: Nicholas S. Andrews, Arthur Y. Liss

\$1.75 million

Pedestrian suffers brain injury when struck by vehicle

Plaintiff-minor was a pedestrian injured by an automobile while walking across a street. Not only did she suffer a severe brain injury

resulting in a coma, intubation and ventilation but also other significant injuries to her head and face.

Due to the protracted length of time of the initial phase of recovery, the injured suffered significant emotional trauma including depression. Plaintiff was compelled to file a lawsuit against the insurance company relating to the insurance company's failure to properly pay family-provided attendant care benefits.

The first lawsuit involved a dispute among medical experts and was successfully resolved in plaintiff's favor in 2007. However, the plaintiff's injuries had not resolved and she continues to require family-provided attendant care because of her brain injury and the extensive psychiatric and psychological ramifications of her injuries.

Over the course of the last 10 years, the insurance company and plaintiff's attorney have continued to monitor the injured's rehabilitation and efforts toward recovery. As the result of tremendous effort on behalf of all the parties involved, this matter has been resolved to everyone's satisfaction, according to plaintiff's counsel.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Confidential

Court/Date: Pre-suit settlement/
Feb. 28, 2018

Settlement amount: \$1,752,000

Attorneys for plaintiff: Nicholas S. Andrews, Arthur Y. Liss

\$1.75 million

Man suffers brain injury in auto accident

Plaintiff, a highly educated and functioning husband, father and provider for his family before the automobile accident sustained a frontal lobe traumatic brain injury and associated significant impairments in his judgment and higher-level executive functions as a result of a catastrophic motor vehicle accident.

Plaintiff being unable to adjust to his incapacity to work and engage in meaningful employment suffers psychological impairments, mood disorder, post-traumatic cephalgia, and disturbed sleep. He cannot safely function

without significant attendant care including psychological intervention and redirection necessary at a moment's notice because of his executive dysfunction which has manifested itself frequently with anti-social and potentially dangerous behaviors.

His attendant care has included many directed activities to attempt to keep the injured engaged as part of his therapy and to prevent further regression. Since the first litigation ending in 2007, the parties have had multiple disputes relating to the injured's medical and rehabilitative needs, including attendant care. In 2018, the insurance company successfully negotiated a long-term agreement resolving these issues.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Confidential

Court/Date: Pre-suit settlement/
June 7, 2018

Settlement amount: \$1,752,000

Attorneys for plaintiff: Nicholas S. Andrews,
Arthur Y. Liss

\$1.09 million

Bicyclist fractures skull when hit by car

Plaintiff Christefer Malone was 47 years old when he was hit by a car while riding a bicycle. He suffered a skull fracture and brain hemorrhage in this accident. Although he had a history of intellectual disability since childhood, he was high functioning and independent at the time of the automobile accident.

After the accident and his discharge from the hospital, he required significant attendant care described by his doctors as at the level of a life skills trainer/behavioral technician and, particularly, not a home health aide because of the cognitive and emotional impairments from the brain injury.

After the accident, he had significant episodes of frustration, easy agitation and verbal and physical anger outbursts that required significant monitoring and intervention. He was also no longer able to monitor and manage his diabetes after the accident.

Allstate did not pay any attendant care benefits, claiming before the lawsuit was filed

that it did not have reasonable proof although it received detailed invoices, detailed attendant care service forms, detailed medical records and prescriptions that identified the type of care being provided, and expert reports, according to plaintiff's counsel.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Eric Mead, Conservator of Estate of Christefer Malone v. Allstate Insurance

Court/Case no./Date: Oakland County Circuit Court/ 2016-153185-NF/
May 10, 2018

Name of Judge: Hon. Rae Lee Chabot

Name of mediator: Daniel Makarski

Settlement amount: \$1,093,880

Most helpful expert: Edward Atty, MD

Insurance carrier: Allstate Insurance

Attorneys for plaintiff: Nicholas S. Andrews,
Arthur Y. Liss
