

Capital News Outlet coverage:

GONGWER: Trial Lawyers: We Want To Get Rid Of Auto Insurance Bad Actors

The Michigan Association for Justice on Wednesday told the House Select Committee on Reducing Auto Insurance Rates that it asked its members to think about the worst actors in the auto insurance world and to ask themselves: "How do we put them out of business?"

Steven Pontoni, executive director for the Michigan Association for Justice, told the panel the group knows trial lawyers are not blameless in the high costs of auto insurance.

He said some of the solutions they have come up with include a fee schedule for health procedure reimbursements, making it a felony to access a police report sooner than 30 days after an accident and prohibiting attorneys from having financial interests in transportation companies, MRI companies or others related to auto insurance.

"95 percent of my members are doing it the right way," he said. "We want to get rid of the other 5 percent."

Rep. Jason Wentworth (R-Clare) said the committee could work with those suggestions and appreciated the group bringing them to the committee.

Wayne Miller, another member of the group, said that if the committee moved toward personal injury protection choice, it would increase costs in other areas, like in the liability portion of an auto insurance premium.

"It will cost in ways that are not calculated in whatever the PIP reduction is hoped to be," he said.

The panel also asked those members about attorneys who are reportedly charging clients from funds they receive through attendant care judgments "in perpetuity" even if they are not providing services any longer.

Nick Andrews, another member of the group, described scenarios where a catastrophically injured individual he represented was cut off from benefits multiple times after successful judgments in the client's favor. Mr. Andrews said the insurance company was simply cutting off benefits causing more litigation to be necessary.

But Mr. Andrews also said he always advises his clients on when they can "fire" him if work is no

longer ongoing and said no attorney should be charging a client if work is not being done.

Later, attorneys representing the Michigan Association for Justice and the Negligence Law Section of the Michigan State Bar said there are attorneys abusing the attendant care system, but said Mr. Andrews was not one of them.

Bobby Raitt and James Bradley, with the Negligence Law Section, said it remains neutral on partisan issues and isn't taking a position on what the committee may or may not do policy wise.

Mr. Raitt and Mr. Bradley, like others involved in the policy conversation, said a fee schedule for what providers charge and cost controls for attendant care would provide significant savings in the auto insurance world.

Mr. Bradley also encouraged the committee to think about medical costs that exceed a PIP choice cap potentially implemented by the Legislature. He said at the very least, it could increase the state's Medicaid costs.

He said it is also possible there are potential Medicare implications.

"I am not suggesting there shouldn't be a cap, or there can't be a cap, what I am suggesting is this panel would do well to think about what happens when those medical expenses exceed the cap," he said.

The House panel has not yet unveiled a policy proposal and is continuing to hold hearing with relevant stakeholders. The members include those who supported PIP choice last term and those who did not.

MIRS: Trial Lawyers In The Witness Chair Before No-Fault Committee

Trial attorneys had the chance to defend themselves and their practices today when members of the Michigan Association for Justice (MAJ) and the Negligence Law Section of the State Bar appeared before the House Select Committee on Reducing Car Insurance Rates.

"Being in the trenches," they also pointed out places where they see excessive costs that drive up the cost of no-fault auto insurance in Michigan.

But they also admitted there are "bad actors" out there collecting attorney fees out of awarded benefits for attendant care indefinitely.

"And that is wrong," said Bob RAITT, representing the State Bar. "And something has to be done about that, there is no doubt about it. The problem is, whatever you do to force that change can't affect someone who is doing it right, and all I can suggest to you is some wording that you only get paid for doing work. Because if you are not doing work, no attorney should get paid for doing nothing."

But when committee members questioned the practice of taking cases against insurance companies on contingency, which is one-third of any award won in court, the lawyers stood their ground.

Nick ANDREWS, representing MAJ, told the story of one catastrophically injured client who was quadriplegic, on a ventilator, with brain damage.

"The wife had given up her occupation to provide care for her husband. The insurance company had four law firms defending the case -- not four lawyers, four law firms -- defending the case. This family did not have the means to hire four law firms. They did have the means to hire me and the way that they hired me was under a contingency fee contract. The other option that they had was to hire me by way of an hourly rate. They couldn't do that. There is no other way for a family like this to take on an insurance company that has the wherewithal to hire four law firms. Those law firms are upwards of \$3,500 an hour."

Andrews also noted that had he lost the case, he'd have received nothing.

"That would have been a terrible loss to my client, but it also would have been a financial loss to my firm. So, it's a risk," Andrews contended.

Rep. Jason WENTWORTH (R-Farwell) asked him why, when he wins a case, he takes one-third of the judgment rather than going back and taking an hourly rate. Andrews contended billing at the hourly rate would have exceeded one-third of the award.

Wentworth is tasked with chairing the Select Committee, which has been holding a series of hearings to gather information intended to lead to the drafting of a no-fault reform package this year. Today, it was trial lawyers' turn at the witness table (See "The No-Fault Inside-Outside Game Update," 3/11/19).

Wayne MILLER, also with MAJ, contended that if trial attorneys contribute to the high cost of no-fault insurance, so do the insurance companies themselves.

"The insurance company didn't pay the money until (the lawyers) got involved and took it to a jury. Why don't they pay what they owe?" Miller said. "Instead, what they do is delay, deny, defend. They hire IME (independent medical examination) doctors as well as law firms at extraordinary expense. One of the things we would like to see as part of the bullet point of holding insurance companies accountable is their responsibility for contributing to the cost of auto insurance. It has not been explored. There is no data available, but we know, being in the trenches, seeing this in every case where reputable treating physicians make prescriptions that are not honored by insurance companies and are challenged by insurance companies. They have the right to challenge, of course they do. I'm not saying they don't. I'm saying let's take a look at how much that costs the system, and it will be extraordinary, I assure you."

Doctors and healthcare providers also contribute to the high cost, according to Jim BRADLEY, who represented the State Bar. He advocates for cost containment and the implementation of a fee

schedule for medical services to accident victims and for attendant care after the fact. The State Bar attorneys argued that would help avoid a lot of litigation. Insurance companies often don't dispute whether a patient needs a prescribed medical service but do dispute how much they are being charged for it.

"There are obscene amounts being charged for various services by providers. I have a case right now where a doctor is charging four times the wholesale rate for a nerve stimulator. It costs about \$17,000 and I'm in litigation over whether we should pay him \$105,000. Those occur in my practice as a defense attorney way more often than the catastrophically injured individual. And I think adequate cost containment would begin to address those issues," Bradley told the committee.

Asked by the committee where the committee should look to devise a fee schedule, Bradley said there are many already. Workers Compensation has a fee schedule, as does Medicare and Blue Cross. He said the committee should not have to reinvent the wheel to come up with an appropriate fee schedule.