

## Insurer's failure to pay benefits prompted lawsuit

*Case was resolved after 10 years*

👤 By: Michigan Lawyers Weekly Staff 📌 in Verdicts & Settlements 📅 February 11, 2019

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.

Nicholas S. Andrews, counsel for plaintiff, provided case information.

**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

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