



NEGLIGENCE LAW SECTION

January 24, 2011

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Corbin R. Davis
Clerk, Michigan Supreme Court
P. O. Box 30052
Lansing, Michigan 48909

Re: Proposed Amendment of MCR 8.121(A)

Dear Mr. Davis:

The Negligence Section of the State Bar of Michigan is a practice section consisting of roughly equal numbers of plaintiff and defense attorneys who practice negligence law. The Negligence Section Council is the governing body of the Negligence Section, and consists of equal numbers of plaintiff and defense attorneys. The Council has voted unanimously to submit the following comments on the Proposed Amendment of Rule 8.121(A) of the Michigan Court Rules.

The Proposed Amendment would limit contingent fees to one-third in suits to force no-fault insurers to pay wrongfully denied benefits. It is the considered experience of no-fault practitioners that the vast majority of wrongful denial of no-fault benefits involve relatively small amounts of money, usually under \$10,000.00, and frequently much less. These are usually claims for some medical bills that the insurer has, for whatever reason, not paid.

Virtually all of these cases are handled by a plaintiff's attorney on a contingent fee basis, as very few clients can afford to pay an attorney's hourly rate to collect such a small sum. The No-Fault Act has a provision that makes it possible for insureds to enforce their contracts against their insurers when small sums are involved.

Section 3148 of the No-Fault Act has a penalty provision that awards a claimant an attorney fee if the Court determines that the benefits were unreasonably denied by the insurer. In these small cases the attorney fee greatly outstrips the amount of the benefits recovered. In many cases, the penalty attorney fee provision is the only way an attorney can afford to pursue a small, but legitimate, no-fault claim.

For example, when an insurer refuses to pay a \$3,300.00 emergency room bill and an attorney must litigate the case for years to recover the benefit owed, the attorney fees may amount to many tens of thousands of dollars, and perhaps more, if the case requires a trial. No attorney could handle such a claim for an \$1,100.00 fee, as the strict language of this Amendment would require.

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The Proposed Amendment limits a contingent attorney fee to one-third in a “claim or action...for no-fault benefits...” As written, the Amendment could be strictly construed, rightly or wrongly, to limit an attorney fee to one-third of the no-fault *benefits* claimed or recovered. This would obviously negate Section 3148’s important penalty fee provision.

If the Proposed Amendment were adopted, and was strictly construed to limit attorney fees to one-third of the benefits claimed, then it would become impractical for attorneys to pursue cases where insurance companies have unreasonably and unlawfully withheld payment of legitimate benefits. Essentially, it would allow insurers to refuse to pay small bills with impunity, and saddle the insured with these debts. The No-Fault Act’s penalty attorney fee provision must remain accessible to maintain the intent of Section 3148 of the No-Fault Act.

This argument applies analogously to civil rights cases where a relatively small damages award is recovered, but the statutory attorney fees greatly outstrip the damage award. The legislature has determined that access to these attorney fees are in society’s interest.

The Negligence Section does not object to a limitation of contingent fees in no-fault cases to one-third of the benefits re covered, *exclusive of recoverable sanctions and recoverable penalty attorney fees.*

Thank you for the opportunity to comment on this Proposed Amendment.

Very truly yours,



David E. Christensen
Chairman, Negligence Section Council, State Bar of Michigan
Gursten, Koltonow, Gursten, Christensen & Raitt, P.C.