

CPAN AMICUS ACTIVITY SUMMARY

March 1, 2010

1. *Kreiner v Fischer*

Citation: 471 Mich 109 (2004)

Issue: The definition of the “serious impairment of body function” threshold.

CPAN’s Interest: Preserving the essential “quid pro quo balance” contained in the original no-fault law ensuring payment of comprehensive PIP benefits while imposing reasonable limitations on third-party non-economic loss claims.

Result/Holding: Supreme Court substantially altered the threshold definition and significantly increased limitations on third-party claims by requiring that an injury alter “the course or trajectory” of a person’s life and render that person “for the most part generally unable” to live their normal life. The ruling rendered the no-fault system substantially out of balance thus threatening its continued viability.

Amicus Counsel: Kevin J. Moody and Jaclyn Shoshana Levine, *Miller Canfield, Lansing*

2. *Griffith v State Farm*

Citation: 472 Mich 521 (2005)

Issue: Whether food consumed by persons cared for at home is a compensable PIP benefit.

CPAN’s Interest: Protect the right of injured persons who would otherwise require institutionalization to recover the full cost of food and room and board expenses.

Result/Holding: Supreme Court held that food expenses for persons cared for at home is not compensable unless the patient’s food needs have been altered by the accident (i.e., special diet). The Court also overruled existing law that “room and board expenses” are compensable for persons cared for at home. The Court also used

language that insurers now contend permits all PIP benefits to be reduced by what a patient would have needed had the injury not occurred.

Amicus Counsel: Terry L. Cochran and Mary K. Freedman, *Cochran Foley, P.C.*, Livonia

3. *Advocacy Organization for Patients & Providers (AOPP) v Allstate Ins Co*

Citation: 472 Mich 91 (2005)

Issue: The use of medical bill auditing by no-fault insurers to determine whether a provider's charges are "reasonable."

CPAN's Interest: Oppose the use of arbitrary bill auditing as a basis to deny payment of provider charges.

Result/Holding: Supreme Court upheld, in principle, the right of no-fault insurers to audit provider charges but did not elaborate or issue any guidelines.

Amicus Counsel: George T. Sinas and L. Page Graves, *Sinas Dramis Law Firm*

4. *Devillers v Auto Club Ins Ass'n*

Citation: 473 Mich 562 (2005)

Issue: The continued viability of equitable tolling principles so that no-fault insurers must pay bills submitted within one year of the date of service, even though a lawsuit was not filed within that one-year period.

CPAN's Interest: Preserve equitable tolling so as to protect the right of providers to recover payment on bills submitted within one year of service date.

Result/Holding: Supreme Court overruled equitable tolling and strictly enforced the one year back rule thus barring payment of any claim not put into suit within one year of date of service.

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*

5. *Chartier v Auto Club Ins Ass'n*

- Citation:** COA #257301 (January 12, 2006)
- Issue:** The obligation of no-fault insurers to pay the full cost of handicap accessible vans.
- CPAN's Interest:** Protecting the right of severely injured persons to recover the full cost of purchasing handicap accessible vans and all modifications thereto.
- Result/Holding:** Court of Appeals affirmed trial judge's ruling that AAA was obligated to pay for the full cost of purchasing a modified van for a paraplegic.
- Amicus Counsel:** George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*

6. *Michigan Chiropractic Council v Insurance Commissioner*

- Citation:** 262 Mich App 228 (2004), vacated by 475 Mich 363 (2006)
- Issue:** The validity of PPO managed care options in no-fault PIP coverage.
- CPAN's Interest:** Preventing no-fault insurers from instituting managed care by selling PPO endorsement options on no-fault PIP coverages.
- Result/Holding:** Supreme Court reversed favorable Court of Appeals' decision prohibiting the sale of managed care endorsements in PIP coverages.
- Amicus Counsel:** George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*

7. *Cameron v Auto Club Ins Ass'n*

- Citation:** 476 Mich 55 (2006)
- Issue:** The continued application of RJA tolling principles to the no-fault one year back rule so that minors and mentally incompetent

patients can recover benefits even though there was non-compliance with the one year notice rule .

CPAN's Interest: Protect the right of minors and incompetent persons to recover no-fault benefits without being barred by the one year back rule or one year notice rule.

Result/Holding: Supreme Court rejected tolling of the one year back rule under the RJA's tolling provisions for minors and incompetent persons on the grounds that the RJA tolls only statutes of limitations and the one year back rule is a damages limitation, not a true statute of limitations. On the positive side, the Supreme Court vacated the Court of Appeals' decision which had allowed no tolling of the one year notice provision.

Amicus Counsel: Louis A. Smith, *Smith & Johnson, P.C.*, Traverse City; George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*

8. *Ross v Auto Club Ins Ass'n*

Citation: 481 Mich 1 (2008)

Issue: The standard of review on appeal for no-fault attorney fee awards.

CPAN's Interest: Protect the right to recover attorney fees under the No-Fault Act by retaining bifurcated standard of review on appeal, instead of adopting de novo review as to all attorney fee awards.

Result/Holding: Supreme Court affirmed existing bifurcated standard of review on appeal as to judge's award of attorney fees in no-fault benefits cases.

Amicus Counsel: Stephen R. Ryan and Salvatore W. Pirrotta, *Miller Johnson*, Grand Rapids

9. *Community Resource Consultants, Inc v Progressive Michigan Ins Co*

Citation: 480 Mich 1097 (2008)

Issue: The tolling of the one year back rule for open account medical billing.

CPAN's Interest: Oppose application of one year back rule to medical provider open account claims.

Result/Holding: Supreme Court applied one year back rule strictly but limited its ruling to the particular form of "open account" billing practices used by this provider.

Amicus Counsel: Wayne J. Miller, *Miller & Tischler, P.C.*, Southfield

10. *Burris v Allstate Ins Co*

Citation: 480 Mich 1081 (2008)

Issue: The incurred expense requirement in family provided attendant care claims.

CPAN's Interest: Enforce payment of family provided attendant care claims by avoiding overly technical definition of "incurred expense" requirement.

Result/Holding: Supreme Court adhered to traditional definition of the term "incurred" and rejected the plaintiff's claim that expenses had been incurred.

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*; Natalie Alane and Mary Chartier, *Alane & Chartier*, Lansing

11. *Benefiel v Auto-Owners Ins Co*

Citation: 482 Mich 1087 (2008)

Issue: Application of *Kreiner* decision to persons with preexisting conditions.

CPAN's Interest: Restore the quid pro quo balance in no-fault law between first-party PIP benefits claims and third-party auto negligence claims by revisiting *Kreiner* or avoiding an extension of *Kreiner*.

Result/Holding: Supreme Court remanded the case after oral argument without addressing or extending the *Kreiner* ruling.

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*

12. *Budget Rent-A-Car System, Inc v City of Detroit*

Citation: 482 Mich 1098 (2008)

Issue: The payment of no-fault benefits where the claimant acted criminally.

CPAN's Interest: Avoid a narrow definition of the "arising out of" entitlement test which could disallow PIP benefits where the patient acted "wrongfully."

Result/Holding: The Supreme Court chose not to decide the issue.

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*; Robert J. Andretz, *Law Offices of Robert J. Andretz*, East Lansing

13. *McCormick v Carrier, et al*

Citation: Supreme Court # 136738

Issue: The continued viability of the *Kreiner* threshold definition.

CPAN's Interest: A revisitation and ultimate reversal of the Supreme Court's decision in *Kreiner v Fischer* (see case #1). Two briefs were filed by CPAN: one supporting application for leave and the other supporting reversal on the merits.

Result/Holding: Leave was granted and oral argument was held in January, 2010. A ruling will be issued by the end of the Supreme Court's term.

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*; Liisa R. Speaker, *Speaker Law Firm*, Lansing

14. *Hoover v Michigan Mutual Ins Co*

Citation: Supreme Court #138018 (January 15, 2010)

Issue: Application of *Griffith v State Farm* (see case #2) to home accommodation claims.

CPAN's Interest: Obtain either a reversal of *Griffith* or clarification that it does not authorize denial of benefits where an accident affects a patient's pre-accident needs.

Result/Holding: Leave was granted by the Supreme Court but the case was settled by the parties shortly before oral argument was to be held and the case was dismissed based on the parties' stipulation to dismiss it.

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*; Liisa R. Speaker, *Speaker Law Firm*, Lansing

15. *USF&G v Mich Catastrophic Claims Ass'n*

Citation: Supreme Court #133466 and 133468 (July 21, 2009)

Issue: The right of PIP insurers to claim 100% reimbursement of claims submitted to the MCCA.

CPAN'S Interest: Enforce obligation of the MCCA to fully reimburse no-fault insurers who pay benefits to catastrophic injury patients without second guessing the "reasonableness" of the charge.

Result/Holding: Supreme Court granted reconsideration, vacating its ruling under the Taylor-led Court, and ultimately reversed the lower court ruling, thus upholding the right of PIP insurers to be fully reimbursed by the MCCA in full on paid no-fault benefits claims.

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*; Liisa R. Speaker, *Speaker Law Firm*, Lansing

16. *Plaggemeyer v Lee*

Citation: COA #284016 (May 12, 2009); Supreme Court #139101

Issue: The continued viability of the *Kreiner* decision.

CPAN's Interest: Overturning the Supreme Court's ruling in *Kreiner v Fischer* (see case #1).

Result/Holding: Leave Application is currently being held in abeyance by the Supreme Court pending the outcome in McCormick (see case #13).

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*, Lansing

17. ***Bonkowski v Allstate Ins Co***

Citation: Supreme Court #137672 (January 22, 2010)

Issue: Whether No-Fault 12% Penalty Interest runs after judgment and during appeal

CPAN's Interest: Enforce the 12% interest penalty until the judgment is fully paid.

Result/Holding: Supreme Court granted oral argument on the question of whether leave should be granted to address the Court of Appeals' ruling that 12% penalty interest ends when a judgment is entered. Oral argument was held, but the Court ultimately denied leave to appeal, thus leaving undisturbed the Court of Appeals' ruling.

Amicus Counsel: Richard E. Hillary, II, *Miller Johnson*, Grand Rapids

18. ***Darmer v Citizens Insurance Company***

Citation: Court of Appeals # 290805

Issue: Whether no-fault coverage is coordinated when no review was performed by the Insurance Commissioner as required by statute to determine if the premium for such coordinated coverage was appropriately reduced and reasonably related to other health and accident coverage as is expressly required by the No-Fault Act.

CPAN's Interest: To ensure that no-fault consumers obtain the statutorily-required appropriate premium reductions when coverage is coordinated and to determine the validity of coordinated policies that were never reviewed by the commissioner as required by the statute.

Result/Holding: Case is currently pending on appeal in the Court of Appeals.

Amicus Counsel: Liisa R. Speaker, *Speaker Law Firm*, Lansing

19. ***University of Michigan Regents v Titan Ins Co***

Citation: Supreme Court # 136905

Issue: The continued viability of the *Cameron* decision and the application of RJA tolling principles to the no-fault one year back rule.

CPAN's Interest: Restore the right of minors and incompetent persons to recover no-fault benefits without being barred by the one year back rule by reversing the ruling in *Cameron* (see case #7).

Result/Holding: Leave was granted by the Supreme Court on reconsideration to consider issues including whether *Cameron* was correctly decided.

Amicus Counsel: Liisa R. Speaker, *Speaker Law Firm*; George T. Sinas, *Sinas Dramis Law Firm*, Lansing

20. ***Wilcox v State Farm Mut Auto Ins Co***

Citation: Supreme Court #138602

Issue: Application of *Griffith v State Farm* (see case #2) to home accommodation claims.

CPAN's Interest: Obtain either a reversal of *Griffith* or clarification that it does not authorize denial of (or incremental reduction in) benefits where an accident affects a patient's pre-accident needs.

Result/Holding: Application for leave to appeal to the Supreme Court, bypassing the Court of Appeals, is pending. Case was being held in abeyance pending the result in *Hoover* (see case #14), and its status is uncertain since *Hoover* settled and has been dismissed.

Amicus Counsel: George T. Sinas and Steven A. Hicks, *Sinas Dramis Law Firm*, Lansing