

Appellate Court Rules plaintiffs Responsible for Collecting Medical Bills to Support Claims

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Not surprisingly, the Michigan Court of Appeals ruled in *Clark v Progressive Ins Co*, Docket No. 319454 (March 5, 2015), that the plaintiffs and their attorneys, **not the defendants**, are responsible for finding all medical bills to support their claims for damages.

In *Clark*, the plaintiff entered into a settlement at facilitation with the defendant Progressive for the amount of \$78,000, which included any and all no-fault benefits, including allowable expenses incurred to that date. Days after the settlement release was executed, the plaintiff's counsel received a bill from Synergy Spine for surgery performed during the litigation in the amount of \$28,000. The plaintiff and her counsel claimed they were unaware of this bill at the time of facilitation while the defendant had previously received the bill. The trial court denied Progressive's motion to enforce the settlement, finding that Progressive should have given notice of the bill to the plaintiff and her counsel.

Progressive appealed and the Michigan Court of Appeals swiftly reversed its analysis of the plaintiff's misplaced arguments. The appellate court noted that settlements are final and cannot be modified except for fraud, mutual mistake or duress. The court rejected the plaintiff's argument that the settlement involved a "mutual mistake" because (1) the plaintiff alleged Progressive knew about the bill and (2) that regardless, the language of the settlement released all PIP benefits *incurred to date* and was not an itemized settlement where the bill was mistakenly excluded.

More importantly, the appellate court boldly rejected the argument that Progressive had some duty to disclose the bill to the plaintiff and her counsel. Rather, the court found that the plaintiff could not shift a duty to the defendant that should have been performed by her own counsel. The court indicated that before a plaintiff settles a case for all charges incurred to date, it is incumbent upon the plaintiff's attorney to ensure that he and his client consider all possible claims, so that the client makes an informed settlement. "This professional obligation is the core duty of the plaintiff's lawyer – not the opposing party or its counsel."

APPELLATE COURT RULES PLAINTIFFS RESPONSIBLE FOR COLLECTING MEDICAL BILLS TO SUPPORT CLAIMS Cont.

As noted by the appellate court, an often forgotten concept in the realm of no fault claims is that it is the plaintiff's burden, not the defendant's, to support claims for any benefits alleged. The no-fault act is written into Michigan auto policies and the insured contracts for benefits which become due only when it can be shown that their burden of proof has been met. The defendants and their counsel **do not** have a duty to make sure that the plaintiffs are properly bolstering their claims.

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