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Don't Knock on *Wood*: Supreme Court Codifies the Factors to be Used in Assessing Reasonable Attorney Fees in a No-Fault Case

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SECRET WARDLE NOTES

In *Pirgu v USAA*, the Supreme Court clarified the factors to be contemplated when issuing attorney fees. The Court clarified that a determination of attorney fees under the No-Fault Act must begin with calculating the reasonable hourly rate and multiplying the rate by the reasonable number of hours expended by the attorney.

Then, the trial court can consider a “hybrid” of the factors articulated in *Wood* and MRPC 1.5(a). Using this more certain framework under which attorney fee determinations are assessed, it is imperative to consider possible attorney fees when assessing the potential exposure of a claim.

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The Michigan Supreme Court recently clarified the framework under which attorney's fees may be recovered pursuant to the Michigan No-Fault Act in *Pirgu v USAA*, filed June 6, 2016 (Docket No. 150834).

In *Pirgu*, the claimant sustained a closed head injury in 2008, leading to the appointment of his wife as the conservator. The subsequent PIP claim was assigned through the Michigan Assigned Claims Facility. When the assigned carrier terminated benefits, the plaintiff brought suit. After a trial, the jury awarded the plaintiff \$70,237.44.

Plaintiff's counsel sought \$220,945 in attorney fees, claiming over 600 hours were expended during the pendency of the litigation while arguing that his normal billing rate was \$350 per hour. The trial court determined that defendant's denial of benefits was unreasonable and awarded attorney fees pursuant to MCL § 500.3148(1). To calculate attorney fees, the trial court simply awarded approximately 33% of the verdict and noted that the jury had awarded the plaintiff 33% of the judgment amount sought.

The defendant appealed and the Court of Appeals affirmed the ruling in a split, unpublished opinion. The majority concluded it was bound to follow *University Rehab Alliance, Inc. v Farm Bureau Gen Ins Co of Mich*, 279 Mich App 691 (2008), which held that the *Smith v Khouri*, 481 Mich 519, 481 Mich 519 (2008) framework does not apply to reasonable attorney fee awards under MCL § 500.3148(1). The majority

opinion justified the award by stating that (1) the verdict was considerably less than the amount sought; (2) the fee award was commensurate with what plaintiff's counsel would have received under a contingency fee arrangement, and (3) the trial court expressly found not all the hours expended by counsel were necessary.

In analyzing the appellate ruling, the Supreme Court turned to MCL § 500.3148(1) and discussed the status of the law regarding attorney fee determinations by turning to recent decisions. The Court looked to its holding in *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573 (1982), another case involving an attorney fee award under the Michigan No-Fault Act. In *Wood*, the Supreme Court promulgated the following factors when contemplating the reasonableness of an attorney fee, while noting a trial court is not expressly limited to same when making its determination:

- (1) the professional standing and experience of the attorney;
- (2) the skill, time and labor involved;
- (3) the amount in question and the results achieved;
- (4) the difficulty of the case;
- (5) the expenses incurred; and
- (6) the nature and length of the professional relationship with the client.

The Court held a trial court must begin its reasonable analysis "...by determining the fee customarily charged in the locality for similar legal services," and then multiplying same "by the reasonable number of hours expended in the case." See *Smith*. Once this baseline figure has been determined, a court must then make a record analyzing the remaining *Wood* factors, as well as the factors in MRPC 1.5(a), to determine any appropriate adjustments. The lead opinion in *Smith* concluded two factors were irrelevant—whether the fee is fixed or contingent and the amount at issue in light of the results achieved.

The Supreme Court noted that the Court of Appeals had relied on the *University Rehab* opinion to find that the *Smith* framework did not apply to reasonable attorney fee determinations under MCL § 500.3148(1). However, the Court expressly stated the *Smith* framework does, in fact, apply in this context.

The Court acknowledged the differences between MCR 2.403(O)(6)(b) (case evaluation sanctions) and MCL § 500.3148(1) (no-fault attorney fees), but held they were not material to determining whether the *Smith* framework applies. Instead, the Court noted they both spoke in terms of a reasonable fee, and that the *University Rehab* panel erred by disregarding the language in MCL § 500.3148(1) when it concluded *Smith* was distinguishable because it only applied to case evaluation sanctions.

Moreover, the Court maintained that all of the factors must be considered by a trial court when awarding attorney fees under MCL § 500.3148(1). While agreeing with portions of *University Rehab*, the Supreme Court disagreed with the appellate holding that *Smith* is inapplicable to reasonable attorney fee determinations under the No-Fault Act.

In sum, the Supreme Court held that, when determining the reasonableness of attorney fees awarded under §3148(1), a trial court must begin its analysis by determining the reasonable hourly rate customarily charged in the locality for similar services, then multiply that rate by the reasonable number of hours expended. Thereafter, a trial court must consider all of the remaining *Wood* and MRPC 1.5(a) factors to determine whether an adjustment is appropriate.

Realizing that *Smith* requires trial courts to consult two separate lists of factors with significant overlap, the Supreme Court distilled the remaining *Wood* and MRPC 1.5(a) factors into one list to assist trial courts:

- (1) the experience, reputation, and ability of the lawyer or lawyers performing the services,
- (2) the difficulty of the case, i.e., the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly,
- (3) the amount in question and the results obtained,
- (4) the expenses incurred,
- (5) the nature and length of the professional relationship with the client,
- (6) the likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer,
- (7) the time limitations imposed by the client or by the circumstances, and
- (8) whether the fee is fixed or contingent.

Notably, these factors are not exclusive, and a trial court may consider additional relevant factors. For appellate purposes, a trial court needs to discuss its rationale relative to the *Wood* factors and any other factors considered on the record.

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