

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Attorney Fraud Negates Attendant Care Agreement

By Michael K. Faust, II

The Court of Appeals has found that an insurance company was not bound by an attendant care service agreement procured by fraud between Plaintiff counsel and the claims representative.

Raymond Andres allegedly sustained a severe brain injury after being involved in a motor vehicle accident and required 24-hour attendant care. Raymond's former wife, Lori Andres, signed an attendant care services agreement with Raymond's no-fault insurer for his care. It was later discovered that this agreement was procured through a collusive agreement between Plaintiff's counsel and the claim representative. There was no indication that Lori Andres (who signed the attendant care services agreement on behalf of Raymond) was involved in the fraudulent agreement. *Andres v. State Farm Mutual Automobile Insurance Company* (unpublished COA No. 279608, January 5, 2010).

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Contact with physicians and an attendant care provider is recommended to verify the medical necessity, duration and performance of the services. Surveillance is another technique to independently verify that services are being provided. This ruling eliminates a claimant's ability to profit by the fraudulent acts of counsel performed on their behalf.

It was alleged, in an associated federal case, that Plaintiff counsel and the claim representative conspired to cause "State Farm to issue unjustified and excessive payments ... either directly to [Plaintiff counsel] or to [claimants] ... , who would in turn, endorse the payments over to [Plaintiff counsel]." See *Rivet v. State Farm Mutual Automobile Insurance Company*, 316 Fed Appx 440 (6th Cir 2009). Plaintiff counsel represented at least nine individuals who made claims against State Farm and the claim representative was the case manager on each claim. The fraud allegedly involved multiple misrepresentations including submitting forged prescriptions for attendant care and instructing a care provider to claim 24-hour care where only four to eight hours were provided. *Id.* at 443.

In the *Andres* case, the trial court granted Plaintiff's motion for summary disposition finding that the agreement was enforceable because Lori Andres was not involved in the fraud and the claim representative had the authority to enter into the agreement. The Court of Appeals initially affirmed the trial court's decision holding that the insurance company waived its defense of fraud by failing to assert it as an affirmative defense. The Michigan Supreme Court found that the affirmative defense was not waived and remanded the case to the Court of Appeals for further review.

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On remand, the Court of Appeals noted that “[a]lthough plaintiff was not involved in the fraud, his attorney perpetrated the fraud on plaintiff’s behalf, and for plaintiff’s benefit” and that “[a]gency principles apply to the attorney-client relationship and impute the actions of an attorney to the client.” Plaintiff counsel was authorized to negotiate an attendant care services agreement on plaintiff’s behalf and procured the agreement by fraud. The Court of Appeals held that “plaintiff may not benefit from his attorney’s fraudulent actions which were perpetrated on plaintiff’s behalf” and the agreement was not enforceable.

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