

# MICHIGAN LAWYERS WEEKLY

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From the September 05, 2005 Michigan Lawyers Weekly.

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## Verdicts & Settlements

### Doctor's charges for PIP patient not reasonable

#### Defense counsel: Jury used line-item form for costs

John Doe, who is currently 36 years old, was injured in a motor vehicle accident in 1990, and was entitled to no-fault benefits under a policy issued by Allstate to his mother. A severe fracture of Doe's left lower extremity eventually became infected, leading to chronic osteomyelitis, an open wound, and excessive swelling (lymphadema).

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In 1993, Doe became a patient of the plaintiff, Dr. Bruce Ruben, an internist with a subspecialty in infectious diseases, who instituted a regimen of home infused IV antibiotics.

In 1997, Ruben commenced treatments in his office, adding various other modalities to the treatment regimen. Ruben, M.D., P.C., billed Allstate millions of dollars over the next six years, at which time Allstate decided to challenge the reasonableness of those charges.

Allstate commenced suit in 2002 and, after protracted discovery and numerous motions, a partial settlement was reached with Allstate paying \$1.6 million out of \$2.6 million in accrued bills.

However, the parties could not agree to a fee schedule for future ongoing care, which Ruben expected to be necessary for the rest of Doe's life.

A jury trial commenced with Ruben alleging that the accrued charges of \$1.4 million over the preceding 17 months (February 2004 -August 2005) were reasonable.

Ruben called one expert — Dr. Keith Daniels, a podiatrist from Flint — to support the reasonableness of his care. Ruben also called Dr. Scott Steinecker from Lima, Ohio, and Georgeann Edford, a specialist in medical coding, billing and auditing, both of whom testified that his charges were reasonable.

Meanwhile, Allstate called three witnesses: 1) Dr. Arnold Markowitz, who testified that the charges were outrageous; 2) Dr. Riley Rees, head of plastic surgery at the University of Michigan Hospital and the VA Hospital in Ann Arbor, who testified that one of the modalities used extensively by Ruben (TOPOX, or topical hyperbaric oxygen therapy) had no scientific validity for treatment of wounds or to reduce swelling; and 3) Pamela Feinberg, a case manager, who testified as to comparison pricing for similar services in the local medical community.

After only two hours of deliberation, the jury unanimously completed a 10-page verdict form that itemized all of the procedures, antibiotic and product codes.

In addition to finding that TOPOX was not a reasonably necessary modality, the jury reduced the drug payments to cost plus 75 percent, dramatically lower than what was being charged. As just one example, the jury reduced the charge for Bactrim from \$361.24 to \$7.

Moreover, the jurors unanimously expressed their approval and support for Allstate's willingness to effectuate cost containment in the case.

Based on a pretrial stipulation, the jury's verdict has retroactive application, and serves as a fee schedule for all future care provided by Ruben to Doe. According to defense counsel, an estimate of annual savings will approach \$750,000 - \$1 million.

Finally, defense counsel told Lawyers Weekly the most interesting and unique aspect of this case was the parties' stipulation to use a line-item verdict form, rather than asking the jury to compute a lump-sum amount.

Counsel added that, based upon his experience over the past 30 years as a litigator of no-fault, first-party cases, this has never been previously attempted in a jury trial. Therefore, neither Allstate nor Ruben, M.D., P.C., will be forced to litigate these issues again.

**Type of action:** No-fault first-party; PIP medical benefits

**Type of injuries:** Chronic osteomyelitis with large open wound; lymphadema

**Name of case:** Ruben M.D., P.C. v. Allstate Insurance Company

**Court/case no./date:** Oakland County Circuit Court; 02-041588-NF; Aug. 19, 2005

**Name of judge:** Rudy J. Nichols

**Verdict amount:** Final judgment has not been calculated

**Allocation of fault:** N/A

**Attorney for the plaintiff:** Withheld

**Attorneys for the defendant:** James Borin and Karen Libertiny Ludden

**Name/city of most helpful experts:** Arnold Markowitz, M.D., Keego Harbor, internal medicine/infectious disease

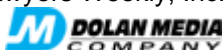
**Insurance carrier(s):** Allstate

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