

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

EDDIE D. WAGONER,

Plaintiff,

-vs-

TITAN INSURANCE COMPANY

Defendant.

Case No.: 08-107061 NF
Hon. Isidore B. Torres

THOMAS W. JAMES (P68563)
GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.
Attorney for Plaintiff
26555 Evergreen Road, Suite 1530
Southfield, Michigan 48076
(248) 353-7575, fax 353-4504

KURT A. ANSEMI (P 32621)
ANSEMI & MIERZEJEWSKI
Attorney for Defendant
1277 W. Square Lake Road
Bloomfield Hills, MI 48302
(248) 338-2290

**PLAINTIFF'S MOTION TO COMPEL
PAYMENT LOGS AND ADJUSTER LOGS**

NOW COMES Plaintiff, EDDIE D. WAGONER, by and through his attorneys, GURSTEN KOLTONOW, GURSTEN CHRISTENSEN & RAITT, P.C., and for his Motion to Compel Payment Logs and Adjuster's Logs states as follows:

1. This is a No-Fault case wherein the Defendant's claim representative unlawfully refused to pay Plaintiff's No-Fault benefits.
2. Every No-Fault claim file contains adjuster log notes, payment logs and claim file documents which evidence the Defendant's every action, decision and conversation concerning the claim.
3. Plaintiff properly served Interrogatories and Request for Production of the complete claim file, including adjuster log notes and payment logs, along with other documentation concerning Plaintiff's PIP claim. (Exhibit 1)

4. The heart of this and every No-Fault claim is in the claims representative's decision to deny benefits that an insured is entitled, and the underpinnings of that decision.

5. The Defendant's activity log and claim file are the ongoing documentary records of the Defendant's communications and reasons for denying Plaintiff's claims and is, therefore, centrally relevant.

6. Plaintiff is, therefore, entitled to a complete and up to date copy of the activity log and the entirety of the claim file.

7. Neither the activity logs nor claim file are attorney work product, or litigation work product. Even if protected, these documents cannot be reasonably obtained by the Plaintiff through any other means, and therefore should be produced.

WHEREFORE, Plaintiff moves this Honorable Court for an order under MCR 2.313(A) granting Plaintiff's Motion to compel production of complete and copies of Defendant's activity log and claim file, and to assess costs and fees for having to bring this Motion.

GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.

By: _____
THOMAS W. JAMES (P68563)
Attorney for Plaintiff
26555 Evergreen Road, Suite 1530
Southfield, MI 48076
(248) 353-7575

Dated: September 27, 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

EDDIE D. WAGONER,

Plaintiff,

-vs-

TITAN INSURANCE COMPANY

Defendant.

Case No.: 08-107061 NF

Hon. Isidore B. Torres

THOMAS W. JAMES (P68563)
GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.
Attorney for Plaintiff
26555 Evergreen Road, Suite 1530
Southfield, Michigan 48076
(248) 353-7575, fax 353-4504

KURT A. ANSELM (P 32621)
ANSELM & MIERZEJEWSKI, P.C.
Attorney for Defendant
1277 W. Square Lake Road
Bloomfield Hills, MI 48302
(248) 338-2290

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL
COMPLETE PIP ADJUSTER'S LOG**

This is a No-Fault PIP claim for unpaid wage loss, medical bills, household services, attendant care and mileage. Plaintiff submitted Interrogatories and Requests for Production of Documents seeking the entire claim file, including the complete activity logs and adjuster log notes. Defendant failed to respond to Requests #46 of Plaintiff's Request for Production without valid objection or explanation for its failure to comply with the discovery request.

1. PLAINTIFF IS ENTITLED TO COMPLETE, UP-TO-DATE, AND UNEDITED ACTIVITY LOGS.

A case for unpaid No-Fault benefits usually centers on a claim adjuster's decision that insurance benefits are no longer reasonable or necessary, and

therefore terminates a customer's benefits. Every No-Fault claim file contains an ongoing "activity log," which documents every conversation, meeting, decision and action taken on that file. It tells the story of the Defendant's handling of the claim. It is the most relevant evidence in the case.

ADJUSTER'S ACTIONS ARE THE CORE OF A PIP CASE.

The central issue in this No-Fault case concerns the underpinnings of this adjuster's decision that Plaintiff's medical care is unrelated to the accident of October 2, 2006. It is possible that the adjuster's decision was made for reasons that are entirely unrelated to Plaintiff's medical needs. It is possible that the benefits were denied based upon internal office politics, for profit, for less than sound medical reasoning. There is a limitless list of possibilities, which is likely to be explained by the activity log. But, the Defendant has chosen to hide that information from the Court. All the elements of that decision-making process are critical pieces of this case, and will certainly be relevant to a jury's determination as it passes judgment on the insurer's actions. If the attorneys allege that the requested documents quote attorney-client communications, and these attorneys therefore played a role in the adjusting of the insured's claim, then the Plaintiff has a right to add the involved attorneys to his Witness List. Plaintiff has been deprived of a service that he paid for, and he is entitled to marshal all relevant evidence into this trial.

2. PLAINTIFF REQUESTS AN IN-CAMERA REVIEW OF ALL ADJUSTER LOG NOTES AND THE ENTIRE CLAIM FILE

At minimum, Plaintiff requests an in-camera review of adjuster log notes and claim file documents requested in this motion to compel requested. The Michigan Court of Appeals has held it is error for a trial court to deny a motion for the production of documents on the ground of privilege where the privilege is not apparent and the court failed to hold an in camera evidentiary hearing on the issue. *Davis v O'Brien* 152 Mich App 495, (1986), *app den* 426 Mich 869 (1986).

Therefore, at minimum, Plaintiff respectfully requests this Court review in-camera the non-redacted activity log notes through the present date.

WHEREFORE, Plaintiff prays this Honorable Court to grant his Motion and compel this Defendant to produce activity logs and a copy of the entire claim file through the present, or at minimum perform an in-camera review of the **entire file** and to award a reasonable attorney fee and costs for having to bring this Motion.

GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.

By: _____
THOMAS W. JAMES (P68563)
Attorney for Plaintiff
26555 Evergreen Road, Suite 1530
Southfield, MI 48076
(248) 353-7575

Dated: September 27, 2010