

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

JACQULN BARYLSKI,

Plaintiff,

vs-

Case No: 06-083-223-NF

Hon. Richard B. Yulle

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign corporation,

Defendant.

TRUE COPY
Michael J. Carr, Clerk

LAW OFFICES OF GURSTEN, KOLTONOW, GURSTEN, CHRISTENSEN & RAITT, P.C., 26555 EVERGREEN RD., STE. 1530, SOUTHFIELD, MI 48076 (248) 353-7575

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

ZIMOSTRAD, ZIMOSTRAD &
POLLARD, P.C.
ERIC W. ZIMOSTRAD (P30321)
Attorneys for Defendant
1015 N. Johnson, P.O. Box 689
Bay City, MI 48707
(989) 894-0623 (Fax-2017)

**ORDER GRANTING PLAINTIFF'S [PARTIAL] MOTION FOR SUMMARY
DISPOSITION TO AWARD ATTORNEY FEES AND INTEREST**

At session of said Court
held in the County of Genesee
State of Michigan on April 16, 2008

PRESENT. HON: _____

This matter having been heard on Plaintiff's motion for [partial] summary disposition to award attorney fees and interest; and the Court having heard oral argument on said motion on April 16, 2008;

IT IS HEREBY ORDERED, that Plaintiff's motion is granted for the reasons stated on the record. The amounts for interest and attorney fees to be determined at a later date.

RICHARD B. YULLE
P-22684

CIRCUIT COURT JUDGE

7/31/08

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE**

JACQULN BARYLSKI,

Plaintiff,

-vs-

Case No: 06-083-223-NF

Hon. Richard B. Yuille

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign corporation,**

Defendant.

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

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ERIC W. ZIMOSTRAD (P30321)
Attorneys for Defendant
1015 N. Johnson, P.O. Box 689
Bay City, MI 48707
(989) 894-0623 (Fax-2017)**

**PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION
TO AWARD ATTORNEY FEES AND INTEREST**

NOW COMES Plaintiff, Jacqueln Barylski, by and through her attorneys, Gursten, Koltonow, Gursten, Christensen & Raitt, P.C., and hereby moves this Honorable Court to grant attorney fees and interest pursuant to MCL 500.3148 for the following reasons:

1. This no-fault claim arose out of an October 17, 2004 automobile accident.
2. Suit was filed pursuant to the Michigan No-Fault Act for Defendant's failure to pay no-fault benefits specifically provided for under Michigan no-fault law.
3. Plaintiff underwent two MRI exams on December 1, 2004, and incurred expenses of \$150.56 and \$24.88 for the exams. *See* Covenant Medical Center Billing Ledger (Exhibit 1); Advanced Diagnostic Imaging PC Billing Ledger (Exhibit 2).

4. On August 8, 2005, Defendant's own defense examiner opined that the MRI exams were reasonable, in an addendum to a February 1, 2005 report. *See August 8, 2005 Addendum to IME (Exhibit 3)*. Dr. Boike repeated his opinion in a September 8, 2005 Addendum to IME (Exhibit 4). See also Dr. Boike's February 1, 2005 IME Report (Exhibit 5).
5. Despite this proof provided by Defendant's own doctor, Defendant did not tender payment for the MRI exams until **August 27, 2007, over two years after** Defendant was provided reasonable proof, at the deposition of State Farm Adjuster Sherri Peterson. *See Dep. of S. Peterson, pg. 47, lines 3-4; pg. 51, lines 13-16 (Exhibit 6)*. *See also* copies of Check of \$150.56 tendered on August 27, 2007 (Exhibit 7); Check of \$24.88 tendered on August 27, 2007 (Exhibit 8).
6. Defendant's excuse that "new information" had come to light during the August 15, 2007 deposition of Dr. Wilbur Boike is disingenuous given that Dr. Boike's opinion on August 15, 2007 that the MRI exams were "reasonable" **was the same opinion he gave on August 8, 2005** (and again on September 8, 2005). *See Dep. of W. Boike, pgs. 25-27 (Exhibit 9)*.
7. Defendant had no basis for delaying payment beyond September 7, 2005, 30 days after they received reasonable proof that the treatment was necessary.
8. The payments tendered on August 27, 2007 are overdue pursuant to MCL 500.3148, and as such, Plaintiff's counsel is entitled to attorney fees and interest for his work on this case since filing on August 10, 2005.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant her motion for attorney fees and interest on this no-fault suit, because Defendants have unreasonable denied and delayed payment of reasonable medical expenses beyond 30 days under MCL 500.3148.

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

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

Dated: September 27, 2010

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

JACQULN BARYLSKI,

Plaintiff,

-vs-

Case No: 06-083-223-NF

Hon. Richard B. Yuille

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign corporation,

Defendant.

GURSTEN, KOLTONOW, GURSTEN,
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THOMAS W. JAMES (P68563)
Attorneys for Plaintiff
26555 Evergreen Road, Suite 1530
Southfield, MI 48076
(248) 353-7575–(fax- 4504)

ZIMOSTRAD, ZIMOSTRAD &
POLLARD, P.C.
ERIC W. ZIMOSTRAD (P30321)
Attorneys for Defendant
1015 N. Johnson, P.O. Box 689
Bay City, MI 48707
(989) 894-0623 (Fax–2017)

**PLAINTIFF’S BRIEF IN SUPPORT OF HER MOTION FOR SUMMARY
DISPOSITION TO AWARD ATTORNEY FEES AND INTEREST**

NOW COMES Plaintiff, Jacquln Barylski, by and through her attorneys,
Gursten, Koltonow, Gursten, Christensen & Raitt, P.C., and hereby moves this Honorable
Court to grant attorney fees and interest pursuant to MCL 500.3148 for the following
reasons:

1. **PLAINTIFF IS ENTITLED TO ATTORNEY FEES AND INTEREST FOR THE
UNREASONABLE DENIAL, THEN DELAY IN THE PAYMENTS TO
COVENANT MEDICAL CENTER AND ADVANCED DIAGNOSTIC
IMAGING P.C.**
 - a. **The Late Payments of \$150.56 and \$24.88 are Overdue Pursuant to MCL
500.3142.**

The payments Defendant tendered to Plaintiff on August 27, 2007 are clearly
“overdue” payments under the Michigan No-Fault Act. (*See* Dep. of S. Peterson, pg. 47,

lines 3-4; pg. 51, lines 13-16 (Exhibit 6). *See also* copies of Check of \$150.56 tendered on August 27, 2007 (Exhibit 7); Check of \$24.88 tendered on August 27, 2007 (Exhibit 8)).

MCL 500.3142 provides:

(2) Personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained.

(3) An overdue payment bears simple interest at the rate of 12% annum.

Defendant originally denied payment for the MRI's Plaintiff underwent, stating they were "not related" to the automobile accident. However, Defendant's own doctor, neurologist Wilbur J. Boike, M.D., stated in an August 8, 2005 report that the MRI's were reasonable. ***See August 8, 2005 Addendum to Medical Report (Exhibit 3).***

Defendant was provided a copy of this report, yet refused to submit payment for these reasonably necessary exams. In fact, it wasn't until August 27, 2007, at the deposition of Dr. Boike, that Defendant tendered payment of the forgoing overdue bills. ***See Dep. of S. Peterson, pg. 47, lines 3-4; pg. 51, lines 13-16 (Exhibit 6).***

Upon tendering these bills, Defendant's adjuster stated that she had determined based on "new information" provided by Dr. Boike in his August 17, 2007 deposition, that the MRI exams were reasonable. ***See id., pp. 47-48 (Exhibit 6).*** However, Dr. Boike's opinion regarding the MRI exams was the exact same opinion he gave on August 8, 2005. Thus, Defendant had 30 days from Dr. Boike's August 8, 2005 report, which provided reasonable proof of the amount of loss, to tender payment. Defendant did not tender payment until August 27, 2007. As such, the payments of \$150.56 and \$24.88 are overdue pursuant to MCL 500.3142, and interest is owed on these overdue payments.

b. Attorney Fees are Payable under MCL 500.3148 because Defendant Adjuster Had No Reason to Deny Medical Payments beyond September 7, 2005.

MCL 500.3148 provides:

(1)An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney’s fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

MCL 500.3148 (emphasis added).

Defendant has unreasonably refused to pay, and unreasonably delayed in making proper payment of Plaintiff’s MRI exam expenses. Defendant bears the burden of proof to disprove the unreasonableness of the denial and delay. *Johnson v Mich Mut*, 180 Mich App 314 (1989). Defendant’s burden is a difficult one, based on the blatant disregard for reasonable proof supplied in August 2005, and the subsequent disingenuous reliance on “new information” provided in August 2007. As such, Plaintiff is entitled to attorney fees pursuant to MCL 500.3148 for advising and representing Plaintiff in this matter.

2. ATTORNEY FEES AND INTEREST ARE DUE ON THIS ENTIRE NO-FAULT MATTER

a. This Court’s Assessment of Attorney Fees Plaintiff is Entitled to should be Based on Quantum Meruit, or the Actual Time Involved.

Plaintiff’s counsel is entitled to attorney fees for the actual time involved in advising and representing Plaintiff in this matter. Michigan Courts have held that assessment of fees should be based on quantum meruit. For example, in *Amerisure v Auto Owners*, the Michigan Court of Appeals **awarded attorney fees from the point in time that the insurer had “reasonable proof” of the claim.** 262 Mich App 10, 25 (2004) (emphasis added).

In the instant case, Defendant had reasonable proof of the subject claim on August 8, 2005. As such, Plaintiff should be awarded attorney fees from this point in time on, as provided by Michigan case law. *See also infra, Cole v Detroit Auto Inter-Ins Exchange*, 137 Mich App 603 (1984), holding that the court does not have to allocate the award of attorney fees between benefits in dispute and those acknowledged by insurer.

b. Plaintiff's Counsel is Entitled to Attorney Fees for his Work on this Entire No-Fault Matter, Not Only two Unreasonably Denied Bills.

As provided above, MCL 500.3148 states:

(1)An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

MCL 500.3148 (emphasis added).

The statute does not allocate "attorney fees" to a particular bill that is determined to be overdue. The language is clear that the attorney is entitled to fees for representing and advising the client in **the action**- not a portion of the action.

In addition to the clear language of the statute, Michigan courts have expressly opined that MCL 500.3148 does not require a court to sort out unreasonably denied payments from properly tendered payments, and calculate a portion of attorney fees attributable to the former. In *Cole v DAIE*, the Michigan Court of Appeals **upheld the trial court's refusal to allocate attorney fees** where the defendant had unreasonably refused to pay certain benefits, and reasonably refused to pay other benefits. 137 Mich App 603, 614 (1984). The Court reasoned: "**The trial court's refusal to allocate or to shift to plaintiff the burden of allocation is grounded in common sense and**

effectuates the purpose of the no-fault act, which is to promptly and adequately compensate persons who were injured in motor vehicle mishap.” *Id.* at 615 (emphasis added) (citing *Nash v Detroit Automobile Inter-Ins Exchange*, 120 Mich App 568, 572 (1982)).

Recently, the Genesee Circuit Court echoed the *Cole* court’s holding. In *Moore v Secura Insurance*, the defendant argued that *plaintiff’s counsel could only be entitled to a portion of attorney fees* “directly attributable to securing the \$98.71 penalty interest award, and no more.” *Moore v Secura Ins.*, 2007 LEXIS 1723, No. 267191 (Mich App July 3, 2007) (Exhibit 10). The court rejected the defendant’s theory, concluding “**We find no support for this position in the plain language of the statute. Under MCL 500.3148(1), attorney fees are available ‘for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue.’**” *Id.* at *11.

Based on the plain language of MCL 500.3148 and Michigan case law, Plaintiff’s counsel is entitled to reasonable attorney fees for representing and advising Plaintiff in this no-fault matter, without allocation of the forgoing fees to a particular claim.

3. CONCLUSION

Plaintiff is entitled to attorney fees and interest for Defendant’s unreasonable denial and delay in the payment of costs for MRI exams that were incurred on December 1, 2004. Defendant originally denied payment as the need for the exams was “not related to the accident.” However, on August 8, 2005, Defendant was provided with reasonable proof from their own defense-hired doctor, Wilbur Boike, that the MRI exams were

reasonable. Yet, Defendant failed to tender payment for these exams until August 27, 2007. The payments of \$150 and \$24 for the MRI exams are overdue under MCL 500.3142. In addition, Plaintiff is entitled to attorney fees under MCL 500.3148 for representing and advising the claimant in this matter.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant her motion for summary disposition and award attorney fees and interest on this no-fault suit, because Defendants have unreasonably denied and delayed payment of reasonable medical expenses beyond 30 days under MCL 500.3148.

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

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

Dated: September 27, 2010

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

LAW OFFICES OF GURSTEN, KOLTONOW, GURSTEN, CHRISTENSEN & RAITT, P.C., 26555 EVERGREEN RD., STE. 1530, SOUTHFIELD, MI 48076 (248) 353-7575

WALI AHMED,
Plaintiff,

Case No. 08-110609 NF
Hon. Daphne Means Curtis

VS.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,
Defendant.

Brandon Mark Hewitt (P70820)
GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.
Attorney for Plaintiff
26555 Evergreen Road, Suite 1530
Southfield, Michigan 48076
(248) 353-7575, Fax 353-7575
bhewitt@michiganautolaw.com

ERIC D. SMITH (P38961)
MIZEROWSKI SMITH, P.C.
Attorney For Defendant
873 N. Mill Street
Plymouth, MI 48170
(734) 656-1500, Fax 656-1505

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the
City of Detroit, County of Wayne, State
of Michigan on February 12, 2010

PRESENT: HON. **HONORABLE DAPHNE MEANS CURTIS**
CIRCUIT COURT JUDGE

Plaintiff's Motion for Summary Disposition having come on for hearing and the
Court being otherwise duly advised in the premises;

IT IS ORDERED that Plaintiff's Motion for Summary Disposition is granted based
on the reasons set forth on the record.

IT IS FURTHER ORDERED that an evidentiary hearing will be held with this Court
to determine the amount of interest and attorney fees thus due.

HONORABLE DAPHNE MEANS CURTIS
MAR 04 2010
A TRUE COPY
CATHY M. GARRETT
WAYNE
BY *[Signature]*
Daphne Means Curtis
Circuit Court Judge
DEPUTY CLERK

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WALI AHMED,

Plaintiff,

Case No.: 08-110609-NF
Hon. Daphne Means Curtis

-VS-

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

Brandon M. Hewitt (P70820)
GURSTEN, KOLTONOW
Attorneys for Plaintiff
26555 Evergreen Road, Ste. 1530
Southfield, MI 48076
(248) 353-7575

ERIC D. SMITH (P38961)
HOPKINS, YEAGER & SMITH, P.C.
Attorneys for Defendant State Farm
20700 Civic Center Dr., Suite 290
Southfield, MI 48076
(248) 213-2900, Fax 213-0998

**PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION
TO AWARD ATTORNEY FEES AND INTEREST**

NOW COMES Plaintiff, Wali Ahmed, by and through his attorneys, Gursten, Koltonow, Gursten, Christensen & Raitt, P.C., and hereby moves this Honorable Court to grant attorney fees and interest pursuant to MCL 500.3148 for the following reasons:

1. This no-fault claim arose out of an April 27, 2007 automobile accident in which Plaintiff, Wali Ahmed, was seriously injured.
2. This action was filed by Plaintiff on April 25, 2008, pursuant to the Michigan No-Fault Act for Defendant's failure to pay no-fault benefits specifically provided for under Michigan no-fault law including allowable expenses for medical treatment and replacement services.
3. Plaintiff's claim for unpaid medical bills included the following incurred charges:

- a. \$2,354 for pain management treatment of Plaintiff's lower back at Providence Hospital
 - b. \$678 for pain management treatment of Plaintiff's lower back at Michigan Spine and Brain Surgeons
 - c. \$13,442 for diagnostic imaging of Plaintiff's neck and lower back conducted at Central Medical Imaging
4. Defendant received reasonable proof of the fact and amount of loss pertaining to these outstanding medical bills on the following dates, as evidenced by their Explanation of Reviews: (Exhibit 1)
- a. Providence Hospital – Received: **01/12/08**
 - b. Michigan Spine and Brain Surgeons – Received: **08/13/07**
 - c. Central Medical Imaging 1st billing – Received: **08/04/07**
 - d. Central Medical Imaging 2nd billing – Received: **08/16/07**
5. Defendant recently paid the charges submitted by Plaintiff's providers outlined in paragraph 4, with the following payments being made on or around the corresponding dates: (Exhibit 1)
- a. Providence Hospital – **\$2000.90, paid 07/27/09**
 - b. Michigan Spine and Brain surgeons **\$502.08, paid 07/27/09**
 - c. Central Medical Imaging 1st billing **\$1,771.09, paid 10/22/09**
 - d. Central Medical Imaging 2nd billing **\$1,095.25, paid 10/22/09**
6. Defendant's payments outlined in paragraph 5 are an admission of the following facts:
- a. Plaintiff's neck and lower back injuries arose out of the motor vehicle accident of April 27, 2007.

- b. Plaintiff incurred charges at Providence Hospital, Michigan Spine and Brain Surgeons, and Central Medical Imaging
 - c. Plaintiff's treatment at Providence Hospital, Michigan Spine and Brain Surgeons, and Central Medical Imaging was reasonable and reasonably necessary for his care, recovery or rehabilitation.
 - d. The charges incurred by Plaintiff for said treatment were reasonable inasmuch to the amounts that Defendant paid.
7. Defendant had no basis for delaying payment beyond 30 days after it received reasonable proof of the fact and amount of loss for these medical charges.
8. The payments tendered on July 27 and October 22, 2009 are overdue pursuant to MCL 500.3148, and as such, Plaintiff's counsel is entitled to attorney fees and interest for his work on this case since filing on April 25, 2008.
9. Additionally, Plaintiff claimed unpaid expenses for household replacement services totaling **\$4,620.00** for help he required performing household chores from April 28, 2007 until December 14, 2007.
10. Reasonable proof of the fact and amount of loss of these incurred expenses for replacement services were submitted to Defendant on or before April 18, 2008. (Exhibit 2)
11. On October 21, 2009, Defendant paid \$880.87 for these incurred replacement service expenses. (Exhibits 3-4).
12. Defendant's payment of these replacement services are an admission of the following facts:
- a. Plaintiff's neck and lower back injuries arose out of the motor vehicle accident of April 27, 2007.

- b. Plaintiff reasonably incurred expenses in obtaining ordinary and necessary services in lieu of those that, if he had not been injured, would have performed from April 28, 2007 until August 31, 2007.
- 13. Defendant had no basis for delaying payment beyond 30 days after it received reasonable proof of the fact and amount of loss for these replacement services.
- 14. The payment tendered on October 21, 2009 is overdue pursuant to MCL 500.3148; and as such, Plaintiff's counsel is entitled to attorney fees and interest for his work on this case since filing on April 25, 2008.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant his motion for attorney fees and interest on this no-fault suit, because Defendant has unreasonably denied and delayed payment of personal protection benefits beyond the 30 days allowed under the No-Fault Act.

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

BY: _____
Brandon Hewitt (P70820)
Attorney for Plaintiff
26555 Evergreen Road, Suite 1530
Southfield, Michigan 48076
(248) 353-7575

Dated: September 27, 2010

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WALI AHMED,

Plaintiff,

Case No.: 08-110609-NF
Hon. Daphne Means Curtis

-VS-

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INSURANCE COMPANY,

Defendant.

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Attorneys for Plaintiff
26555 Evergreen Road, Ste. 1530
Southfield, MI 48076
(248) 353-7575

ERIC D. SMITH (P38961)
HOPKINS, YEAGER & SMITH, P.C.
Attorneys for Defendant State Farm
26899 Northwestern Hwy, Ste. 316
Southfield, MI 48033
(248) 213-2900

**PLAINTIFF'S BRIEF IN SUPPORT OF HIS MOTION FOR SUMMARY
DISPOSITION TO AWARD ATTORNEY FEES AND INTEREST**

NOW COMES Plaintiff, Wali Ahmed, by and through his attorneys, Gursten, Koltonow, Gursten, Christensen & Raitt, P.C., and hereby moves this Honorable Court to grant attorney fees and interest pursuant to MCL 500.3148 for the following reasons:

1. **PLAINTIFF IS ENTITLED TO ATTORNEY FEES AND INTEREST FOR THE UNREASONABLE DENIAL THEN DELAY IN THE PAYMENTS OF ALLOWABLE EXPENSES AND REPLACEMENT SERVICES**

a. The Late Payments are Overdue Pursuant to MCL 500.3142.

The payments Defendant tendered to Plaintiff on July 22, October 21, and October 27, 2009 are clearly overdue payments under the Michigan No-Fault Act.

MCL 500.3142 provides:

(2) Personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained.

(3) An overdue payment bears simple interest at the rate of 12% annum.

Defendant originally denied payment of these expenses arguing that Plaintiff's neck and lower back injuries did not arise out of the April 27, 2007 motor vehicle accident, that the incurred charges were not reasonable or reasonably necessary for his care, recovery or rehabilitation, and that Plaintiff did not incur said charges. This action was filed April 25, 2008, and until July 22, 2009, Defendant has ferociously fought Plaintiff on each of these charges. Then, inexplicably and without explanation, Defendant paid some of the outstanding medical charges and replacement services. Defendant offered no explanation as to the delay and sudden payment and did not include interest in its untimely payments.

b. Attorney Fees are Payable under MCL 500.3148 because Defendant Adjuster Had No Reason to Deny Medical Payments beyond September 7, 2005.

MCL 500.3148 provides:

(1)An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

MCL 500.3148 (emphasis added).

Defendant has unreasonably refused to pay, and unreasonably delayed in making proper payment of Plaintiff's personal injury protection benefits. Defendant bares the burden of proof to disprove the unreasonableness of the denial and delay. *Johnson v Mich Mut*, 180 Mich App 314 (1989). Defendant's burden is a difficult one, based on the blatant disregard for reasonable proof supplied in August, 2007 and April, 2008. Plaintiff is entitled to attorney fees pursuant to MCL 500.3148 for advising and representing Plaintiff in this matter.

2. ATTORNEY FEES AND INTEREST ARE DUE ON THIS ENTIRE NO-FAULT MATTER

a. This Court's Assessment of Attorney Fees Plaintiff is Entitled to should be Based on Quantum Meruit, or the Actual Time Involved.

Plaintiff's counsel is entitled to attorney fees for the actual time involved in advising and representing Plaintiff in this matter. Michigan Courts have held that assessment of fees should be based on quantum meruit. For example, in *Amerisure v Auto Owners*, the Michigan Court of Appeals **awarded attorney fees from the point in time that the insurer had "reasonable proof" of the claim.** 262 Mich App 10, 25 (2004) (emphasis added).

In the instant case, Defendant had reasonable proof of the subject claim in April, 2007; as such, Plaintiff should be awarded attorney fees from this point in time on, as provided by Michigan case law. *See also infra, Cole v Detroit Auto Inter-Ins Exchange*, 137 Mich App 603 (1984), holding that the court does not have to allocate the award of attorney fees between benefits in dispute and those acknowledged by insurer.

b. Plaintiff's Counsel is Entitled to Attorney Fees for his Work on this Entire No-Fault Matter, Not Only the recently Paid Bills.

As provided above, MCL 500.3148 states:

(1)An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

MCL 500.3148 (emphasis added).

The statute does not allocate "attorney fees" to a particular bill that is determined to be overdue. The language is clear that the attorney is entitled to fees for representing and advising the client in **the action**- not a portion of the action.

In addition to the clear language of the statute, Michigan courts have expressly opined that MCL 500.3148 does not require a court to sort out unreasonably denied payments from properly tendered payments, and calculate a portion of attorney fees attributable to the former. In *Cole v DAIE*, the Michigan Court of Appeals **upheld the trial court's refusal to allocate attorney fees** where the defendant had unreasonably refused to pay certain benefits, and reasonably refused to pay other benefits. 137 Mich App 603, 614 (1984). The Court reasoned: “**The trial court's refusal to allocate or to shift to plaintiff the burden of allocation is grounded in common sense and effectuates the purpose of the no-fault act, which is to promptly and adequately compensate persons who were injured in motor vehicle mishap.**” *Id.* at 615 (emphasis added) (citing *Nash v Detroit Automobile Inter-Ins Exchange*, 120 Mich App 568, 572 (1982)).

Based on the plain language of MCL 500.3148 and Michigan case law, Plaintiff's counsel is entitled to reasonable attorney fees for representing and advising Plaintiff in this no-fault matter, without allocation of the forgoing fees to a particular claim.

3. CONCLUSION

Plaintiff is entitled to attorney fees and interest for Defendant's unreasonable denial and delay in the payment of costs for allowable medical expenses and replacement services. Defendant originally denied payment altogether, then paid the reasonable charges more than two years after reasonable proof had been submitted. The payments are overdue under MCL 500.3142. In addition, Plaintiff is entitled to attorney fees under MCL 500.3148 for representing and advising the claimant in this matter.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant his motion for summary disposition and award attorney fees and interest on this no-fault suit, because Defendant has unreasonably denied and delayed payment of personal injury protection benefits under MCL 500.3148.

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

BY: _____

Brandon Hewitt (P70820)
Attorney for Plaintiff
26555 Evergreen Road, Suite 1530
Southfield, Michigan 48076
(248) 353-7575

Dated: September 27, 2010