

Transcript: The Nolan Finley Show, WFDF-AM (910), October 4, 2017

Guest: Steven Gursten, attorney, Michigan Auto Law,
discussing House Bill 5013, the "Driver's Choice Insurance Reform

FINLEY: Let's hear your perspective on this, from the trial attorney's perspective.

GURSTEN: What I would say is we do need to lower the cost of auto insurance. I don't think this bill does that. I don't think the rhetoric and the promises that are being made about this bill actually do the things they say it's going to do. It's not a rate relief bill. It's certainly not a consumer bill. It's not a civil rights bill. It's an insurance company-written bill, and it's really, really good for the auto insurance companies. But for you and I as taxpayers, all that money that the insurance companies aren't going to pay if there's a \$25,000 cap for people, where does *that* go? It gets shifted onto us as taxpayers in the form of paying off her Medicaid. And as you heard yesterday, about \$150 million more will be shifted onto the taxpayers. As a small business owner, the other part is we're going to have higher health care costs. Health care is going to cost a lot more for employers, especially in places like Detroit.

So, Steve Gursten, you're saying this cost is going to shift, but motorists *will* have choices. They can choose the \$25,000 option, there's a \$250,000 option, right?

I think that's a little disingenuous, though. The political reality is, they're calling it \$250,000. It's really \$25,000 for people, for individuals. The remaining \$225,000 is really just a kickback, it's a bribe the hospitals to try and get them to go along with this bill, and it's limited only to acute emergency room care. So it doesn't cover you as soon as you leave the emergency room. That's \$25,000 that has to cover everything else.

OK, so Steven, we keep hearing folks say Michigan is the only state in the nation with this setup, and other states don't have unlimited catastrophic care. How do they get by? What's happening in those other 49 states where rates *are* lower, much lower than they are in Michigan? Are people [in those states] getting cast out onto the street with catastrophic injuries?

I have the benefit of practicing in other states as well, so I see firsthand what's happening and I'm actually the president of the Motor Vehicle Trial Lawyers Association, so I lecture in all 50 states. Let me tell you what happens when you have the misfortune of being involved in a terrible car crash in a pure tort state. What happens is, if you don't have great health insurance, and many people don't, or they have health insurance plans with auto exclusions that don't pay for auto accidents, or they have ERISA plans that claw back everything, what happens is, they lose everything. The reality is, they blow through all their personal savings, they have to declare personal bankruptcy because of medical debt, they get pushed onto Medicaid. And normally, if they have catastrophic injuries, then they're warehoused in substandard facilities. And in most of these pure tort states, they maybe, if they're lucky, have one great trauma center for TBI rehabilitation or spinal cord rehabilitation, but they don't have the medical care that we have in Michigan because of No Fault.

So if this such a great system, an exemplary system, why haven't any of the other 49 states followed us into it? Why haven't they adopted the same system?

That's a good question. I think ... the terrible frustration I have as an attorney who helps people who are hurt, is I feel like we are ... we have the potential to really have our cake and eat it, too. We have the

potential to keep all these amazing, life-saving benefits and protections for people in Michigan, and we have the potential to really drastically reduce the cost of auto insurance, especially for people in Detroit but all over the state. And the reason we don't, in my opinion, is Michigan is one of the only states in the country that has this giant loophole in our law, where the insurance commissioner does not have the power to regulate profit margins. So we have this system now — think about it, it's insane — where by law, we're required to purchase auto No Fault insurance, where we pay very significant criminal and civil penalties if we don't purchase auto insurance, but our state then can't regulate the profit margins of the companies that *sell* it to us. So people like Duggan right now, and this is what's so frustrating to me, is he goes around saying he's a numbers guy, he's a metrics nut. But everybody's going into this blind. Nobody knows exactly how much money the insurance companies are making. We *do* know the last time a study was done on this in 2009 by Jay Angoff, who is the former insurance commissioner, he said they are highly profitable. So all I'm saying is, shouldn't we have the facts first?

Yes, but Steven, clearly there's a lot of people with their hands in this thing and not everybody's hands are entirely clean, including your side of this equation. Your side of the argument sort of brought this situation on yourself with the sort of gluttonous abuse of the catastrophic care fund. I sat down with some folks not long ago to look at the sort of things that are paid for, and almost nothing isn't paid for — whether it's aromatherapy or if you have a family member who takes care of you, that person is paid almost around the clock. We heard Chad Livengood [of Crain's Detroit Business] talk about some of the testimony in these hearings about, "You [attorneys] all take one-third of the medical benefits," and have incentive to keep filing suit after suit after suit. And a lot times, trial lawyers and medical providers are in partnership in terms of ordering tests and providing tests, demanding tests in court. It has not been a clean system by a long shot.

I'm so glad you brought that up.

I imagine you are. (laughs)

I am, because I've been speaking out against the lawyers who have been committing fraud and abusing the system for years. And I just want to be absolutely clear, that is not all of us. It is a smaller handful. And frankly, if the rumors are true, there are coming indictments regarding some of the worst abusers. But let me address what's happening here. There is a small group of trial lawyers ... most of us go into this business because we really like people and we really want to help people.

And I accept that, and I know you guys take a lot of abuse. But you don't have to commit fraud necessarily to abuse a system that is unchecked. There is no ability by the insurance company to challenge the rates ...

Oh, that's wrong.

Well, that's what they claim. It's not true?

That's so wrong. First, the people who are committing fraud should lose their license, they should go to jail. There's no room for them in the professions. The one thing I do support in this bill is a fee schedule.

Which doesn't exist now.

Which does not exist now. And the reality is, a fee schedule is going to eliminate all the fraud overnight.

Explain a fee schedule, just for listeners who might not know what you're talking about.

So, part of the issue of medical provider fraud and attorney fraud is that hospitals, like Duggan used to do [as CEO of the Detroit Medical Center], they're charging more for let's say an MRI or an X-ray than they would through Blue Cross or through other health insurance plans.

Gouging a little bit.

Well, gouging, but if you talk to [Oakland County Executive] L. Brooks Patterson, he'll say, "Listen, there's a really good reason for it. Insurance companies delay, delay and delay, they make you wait a year and a half for payment, they make you hire a lawyer and jump through all these legal hoops." He compares it to the person with really bad credit, and that they shouldn't pay the same price as someone who has good credit and pays right away. That said, and by the way we haven't even talked about the insurance company denials; don't forget, those have spiked almost 300 percent in the last several years.

Denials of care?

Denials of care. So when you say, respectfully, that they pay everything, as someone in the trenches, let me tell you they don't. They don't.

So could you reduce the overall costs of this system with a reasonable fee schedule?

Absolutely. That really achieves the goal.

And your side of the argument, the people [trial lawyers] you represent, would accept a fee schedule?

I think everybody at this point wants a fee schedule. I think the issue is going to be the right ... CPAN [Coalition Protecting Auto No Fault], which is a collation of hospitals and medical providers, have a more reasonable rate, I think. But the reality is, a fee schedule overnight wipes out a lot of the fraud, it wipes out a lot of the ambulance chasing and solicitation that disgusts me as an attorney. It really forces the bad actors on the medical provider part ... they can't price gouge. They don't have to hire lawyers now, they don't have to bring lawsuits, it eliminates the clog of lawsuits in the courts. I've been in support of a fee schedule for a number of years.

Would that also include, Steve, some examination of the sorts of services that are covered and maybe a menu [of things] that you do cover and a menu of things you don't cover?

Yes, but remember, that exists today. So for example, for chronic pain patients, people with horrific injuries, they've shown that medical marijuana is so much more effective and safer than opiates. We have this opiate crisis in America. The insurance companies don't pay for medical marijuana even though it's cheaper and much safer. I've had clients who have had 22 surgeries. They can't get medical marijuana; the doctors want to keep giving them these strong narcotic opiates and stem cell therapy.

It's so much expensive and more dangerous.

So much more. We have a crisis in America because of this.

So we're paying for some that we might not ought to pay for and not some things that would be useful. We had a guy on not long ago who told us about a farmer who was injured, his leg was hurt or whatever, and he ended up getting one of these all-terrain vehicles paid for so he could work his farm. I mean, there's some things that seem ...

Well, that doesn't happen now, because there's a case called *Admire* [*v. Auto-Owners Insurance Company*], so they stopped that.

But the system has been sort of a honey pot for a lot of people for a long time.

There have clearly been excesses, and that's again why I do support a fee schedule.

And other reforms?

And certainly other reforms. What the frustration for me is, this bill has so much promise potentially. If they just do the things they're saying it would do, it would be great. Like, for example, they're talking about a fraud authority. A fraud authority is great. We need a fraud authority. But you know what? It should be a fraud authority that looks at fraud by the insurance companies also, not just fraud by claimants. All I'm saying is it should be both sides, not just one.

Steve, let's pause a minute and take a call. We've got John on the line. John, welcome to the Nolan Finley Show, on 910 AM Superstation.

CALLER: Good morning, Nolan Finley Show. Yes, I'm just sitting here thinking about Mayor Duggan and L. Brooks Patterson. I'm wondering if they're both working for the lawyers and the insurance companies, [if] they're working together on both sides. Because if either one of them had gotten into a catastrophic accident — and we all know Brooks Patterson did — neither one of them would lose the health insurance that they have. They're already on the taxpayers' payroll. So these guys are just supporting the lawyers and the insurance companies that are writing the bill. These guys aren't writing the bills. That's the problem right there, I think.

John, thank you for that comment. Steve Gursten, who is here from Michigan Auto Law talking from the trial lawyers' perspective on this issue: who is speaking for consumers, the people who are paying these high insurance rates? As this bill is being pushed through Lansing or being debated in Lansing, is there a voice for consumers?

In this bill, no.

In this process?

There was another competing bill that came out about two weeks earlier that's supported by a number of Republicans and Democrats and the Coalition Protecting Auto No Fault, which is a number of medical providers, and L. Brooks. I think they have a more balanced approach. But again, what's the key driver of high auto insurance in Detroit? Well, this bill doesn't do much for Detroit.

What is that key driver?

To me, this is not a civil rights bill. The key thing are the things like redlining, credit scoring, using ZIP codes, using non-driving related factors.

So you think those are bigger cost drivers than the medical and catastrophic care?

I think they both are huge cost drivers. But this bill does nothing about that.

Kelly on Line 1. Let's go to Kelly. Welcome to the Nolan Finley Show, on the 910 AM Superstation. We're talking auto insurance rates. Our guest has been Steve Gursten of the Michigan Auto Law. Kelly, what's on your mind?

You know, when you see commercials from the trial attorneys saying they've collected over a billion dollars in lawsuits? That makes me ... number one, that infuriates me because a billion dollars is a lot of money.

It is.

And I would really like to know why is L. Brooks Patterson so staunchly against lowering the catastrophic dollar amount as opposed to lobbying and railing against the health care system that actually drives those costs that would even make you have to spend a quarter of a million to a half-million dollars just for care? In my opinion, follow the money, so that somewhere in these whole shenanigans, somebody is pocketing profits from somewhere. And I would really like to know why he's against lowering that dollar amount instead of, you know, just like I said, just going against the health care industry? What is the big deal about lowering it? I guess, I don't know, I'm not understanding it. If you have a three-tier system, let somebody decide how much they want to pay for their care. What's the big deal in that?

Thank you, Kelly, and we're going to get Steve Gursten to respond to that. But you can hear the frustration people have with their insurance rates, and the cost of care is a major factor in all of this, and the reason why this catastrophic fund costs so much.

A couple of things. The cost of catastrophic care would be lowered by definition with fee schedules. So that would create enormous savings right off the bat. But the reason I think the caller was mentioning L. Brooks Patterson, the reason I think he's against it as a fiscally conservative Oakland County Republican, is also because he's looking at this bill and he's saying, "OK, what is it going to do?" Well, if you replace an unlimited — and by the way, it's really not unlimited; it's \$550,000, because everything after that goes into the MCCA fund, so people forget that. I think what people like L. Brooks are saying is a couple things. One, if you're dropping \$550,000, which exists today, to \$25,000, we should have a heck of a lot more guaranteed savings than this 40 percent of 40 percent of PIP. If we're dropping it from \$550,000 to \$25,000, that's a 90 percent drop. So shouldn't there be a lot more savings?

That's a good point.

It's a really good point.

Let's hear from Pat. Pat, welcome to the Nolan Finley Show, on 910 AM Superstation.

Well, good morning to you both. I appreciate this and I'm wondering: [Detroit] City Council makes \$75,000 a year. We pay for their car, we pay for their insurance, we pay for their gas. If we didn't do this and all these high officials didn't have cars that we pay for, do you think this car insurance would be more to our benefit as they'd have to pay for their car, they'd have to pay for their gas, and they'd have to pay for their insurance? Maybe it would not be a revolving door and it would be a standard fact that they would feel the pain that we all do.

Thanks, Pat. We appreciate your comment. Sylvia, Line 1. You're on the Nolan Finley Show, on the 910 AM Superstation. What's on your mind?

Good morning. I just chimed in so I didn't hear a lot, but my question is: what's the big deal and why can't they correct the redlining that's really going on? Let's get to the root of the evil — the fact that people's ZIP codes and credit scores, and the list goes on. And what is that secret cap that they already have for insureds that get in a catastrophic medical condition? Thank you for taking my call.

Steve Gursten, that was one of the issues you raised, that redlining, credit scoring and all of that is far more responsible for the high rates. Is that included in this bill?

No, and that's why I'm so exasperated when Duggan and others say this is a civil rights bill because it's not doing *anything* about these things like credit scoring and redlining that are illegal in many other states. And this is the thing, even if this law and this "rate reduction" took effect — and by the way, there is no guaranteed rate reduction with this bill, and that's really important to remember — Detroit's still going to be paying so much more than everybody else in the country. And if you took Detroit out of the picture entirely, Michigan drops from the most expensive, to now about 12 or 14 in the nation on most expensive. So why is Detroit so much more expensive? And the reason is, in Michigan the insurance companies are allowed to use a lot of factors like ZIP codes. Totally non-driving-related factors — income, redlining — that they can't use in other states. So people in Detroit are penalized. And if you want to lower the price dramatically in places like Detroit, we should have the same laws that they have in places like California.

Kim, welcome to the Nolan Finley Show. We're talking auto insurance reform with Steve Gursten of Michigan Auto Law, speaking on behalf of the trial attorneys. Kim, what's on your mind?

Yes ... I don't know why ... Nolan, you've been doing what you've been doing for years, so I think you know the problem. This redlining. For example, there's a neighbor who lived next door to me who moved to Lansing. Automatically, she went from paying \$375 a month to paying \$85 a month for the same car. She had the same credit. So it shows there's a line in Detroit. And mostly it's all black areas.

OK, Kim, let's finish out with Steve Gursten here. He's been talking about redlining. The question I would have, Steve, is it true, redlining? Or are the risks for insurance companies higher in Detroit?

Sure, the risks are higher, but there are factors. A huge part of your auto insurance bill, again, is not going to be touched by those risks. Things like comprehensive and collision coverage, which are huge drivers of high car insurance rates, those aren't going to be touched by this bill.

No different in Detroit than in Lansing. What about this idea that the fact so many people in Detroit don't have auto insurance contributes to the higher costs?

Now *that's* a civil rights issue. And that really is troubling. What's also troubling is how our law, in the most draconian way possible, punishes people without auto insurance. So if you're a Detroiter and you don't have auto insurance, and let's say you're completely innocent and stopped at a red light, and you're hit by a drunk driver and paralyzed, do you know that you can't even sue the drunk driver that paralyzed you? You don't even have the Seventh Amendment right to sue someone who caused your injuries. So our law has some really draconian punishments.

We've got to go, we've got to get to a break. Steve, I just want to ask you for your assessment. You've been up there watching it, you're in the business of counting votes, I guess, and assessing these sort of political situations. Is going to pass or is it not going to pass?

It's not going to pass because it doesn't do the things it says it's going to do.

Is there any form of it that might pass?

I think we will see fee schedules. I wish we could take out the loopholes they have here.

So you think we'll see some sort of bill come out of this?

Hopefully we will. I would love to eliminate a lot of the fraud — lawyer fraud, medical provider fraud and insurance company fraud. I'd like to see real meaningful rate relief, which this bill doesn't do, because there are too many loopholes. It's more of a "pretty please" from the insurance companies, asking them to reduce rates.

Steve Gursten from Michigan Auto Law, thanks for being with us on the Nolan Finley Show, on 910 AM Superstation.