

THE DIRTIEST INSURANCE COMPANY TRICK OF ALL?

By Steven M. Gursten

Would we ever let a lawyer stand up in court and knowingly and intentionally mislead a jury? Yes. It happens all the time. And unfortunately, it just happened again.

Farm Bureau Insurance recently forced a serious auto accident injury case to trial. The defendant was an 18-year-old girl. Of course, she was not the real defendant. The real defendant was Farm Bureau. Douglas Mayher was seriously injured when the reckless teenager slammed into his Yukon while she was speeding illegally on the dirt shoulder to avoid waiting a few extra seconds for traffic to clear. Mr. Mayher had to be pulled out of his vehicle by the Jaws of Life and was transported by helicopter to the hospital. He suffered a serious traumatic brain injury and shoulder injuries which required surgery. Additionally, he developed severe chronic pain in his leg and chronic fatigue. Farm Bureau insured the vehicle the girl was driving. Despite the obvious seriousness of the injuries, the adjuster, Doris Keefer, refused to make any meaningful attempts to settle this case.

WHY FARM BUREAU WOULD NOT SETTLE

Why would an insurance company, in a very serious injury case, where everyone agrees the teenager who caused the crash acted recklessly and foolishly, refuse to make any meaningful attempts to settle and force a case to trial? Because, there is a federal rule of evidence that has been adopted by almost all states, that says juries cannot be informed whether a defendant in a lawsuit has insurance, or that an insurance company will be paying the verdict. Therefore, juries are left to presume that it is an individual, uninsured defendant who will be paying any verdict in a personal injury case.

The supposed public policy behind the rule is that telling a jury a defendant has insurance will result in higher verdicts, which is unfair to insurance companies. But in this case, Farm Bureau made an intentional calculation that turns the public policy of not telling juries about the existence of insurance on its head. Farm Bureau forced this catastrophic injury case to trial, knowing the jury would not be told the teenage driver was insured, let alone that her insurance policy was substantial. In turn, Farm Bureau, its adjuster and defense lawyers led a jury to believe the teenage driver was the one who would be paying up; simply taking the attitude that a jury would never return a significant verdict, because it would feel sorry

for her or think she would never be able to pay a substantial verdict. Keep in mind the teenage driver served 30 days in jail for felony reckless driving, but that was not disclosed to the jury either.

FARM BUREAU: TAKE IT OR LEAVE IT

Farm Bureau used the evidentiary rule about insurance as a shield to hide behind, and as a sword to intentionally attempt to deprive our client of a fair day in court. And there is something very wrong with that, especially since this is a defense tactic that is commonly used in courtrooms across the United States. Specifically, Farm Bureau and company were actually depending upon this jury improperly using unfair outside considerations, such as the obvious inability of the teenage girl to pay any substantial verdict, to deliberately avoid responsibility for a catastrophic injury accident its own insured had caused. The insurance company was not just depending on improper considerations by the jury, but it was counting on it. And this colored everything the defendant, the real defendant, that is, did to resolve the case. The settlement offer was only a paltry \$100,000. The Farm Bureau insurance policy limits were substantially higher than this amount. But the adjuster and defense lawyers believed it was impossible a jury would award more than this, no matter how serious the injuries, because they were going to be looking at a teenager throughout the trial, wondering how she would ever pay. Their attitude was, "Take it or leave it. You will probably get less." Thankfully, at least this time, the jury was not fooled by this insurance company tactic. On September 15, the jury returned a verdict of more than \$2 million to protect and provide for the Mayher family.

THE RULE NEEDS REVISING

I have been trying auto accident cases throughout Michigan for 15 years now. I personally feel what Farm Bureau did in this case was morally wrong, and I am offended. The public policy behind the tactic that allows insurance companies to deliberately pervert a rule of evidence that is meant to ensure fairness for both parties needs to be re-examined. It is time to ask: How we can let a rule be deliberately misused to rob one side of its one and only chance for a fair trial and just verdict? It is time to think perhaps less about protecting insurance companies, which after all are paid handsomely for many years to protect their insureds in the event someone does cause a car crash, and consider how insurance companies are deliberately perverting this rule of evidence.

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