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Front Page Story

Soft-Tissue Injury Case Settles For Five Times Ins. Policy Limit

'Commitment' Is Key To Successful Negotiations

By Lynn Patrick Ingram

Can a plaintiff who suffered soft-tissue injuries in a car accident recover more than the policy limit from the defendant's insurance company -- even though the company typically offers nothing to settle soft-tissue cases?

The answer is "yes" based on a recent \$500,000 settlement in a soft-tissue case involving a \$100,000 insurance policy limit.

Southfield attorney Steven M. Gursten, who represented the plaintiff in the case, said that commitment and preparation are essential in soft-tissue suits.

"It really boils down to your ability to negotiate and your willingness to follow through," Gursten said.

The carrier in Gursten's case, Allstate Insurance Company, has been criticized by plaintiffs' attorneys for refusing to settle soft-tissue injury cases.

"We applied the pressure on Allstate to settle," Gursten observed.

According to Gursten, convincing an insurance company to settle a soft-tissue case for more than the policy limit is possible if attorneys:

- stand their ground during negotiations;
- hire a good investigator to determine the insured party's assets;
- consider suits against the insurance company for punitive damages, fraud and conspiracy, and legal malpractice; and
- push for better bad-faith negotiation laws in Michigan.

Rear-End Collision

In Gursten's case, the plaintiff's vehicle was rear-ended by the defendant's vehicle. The defendant was insured by Allstate Insurance Company. The plaintiff was diagnosed with three herniated disks in his neck and another in his back.

The plaintiff then sued the defendant in Oakland County Circuit Court. The case mediated for

\$25,000, which was rejected by both sides.

At trial, the defendant admitted liability, but argued that the plaintiff's injuries existed prior to the accident.

A jury awarded the plaintiff \$1.06 million for pain and suffering. (See, "Are Soft-Tissue Injury Cases Creating 'Super' Trial Lawyers?" Aug. 17, 1998.)

The insurance company settled for \$500,000 after the jury rendered its verdict. The limit on the defendant's policy with Allstate was \$100,000.

Keep Your Cool

Gursten said that the biggest obstacle he faced was the "lack of teeth" in Michigan's bad-faith negotiation law.

"The law is emasculated," he observed.

"But you can't just look at the blackletter law in Michigan," Gursten advised. "We were able to convince Allstate that they'd lose business if they didn't settle. If the public knew Allstate was hanging their insureds out to dry, they'd be dropped left and right."

Gursten added that attorneys should not be "bluffed" by an insurance company's hardline stance or threat of an appeal.

"You've got to keep your cool," Gursten advised. "You've probably got a lot of good negotiating points as well."

Gursten explained that he settled his case for \$500,000 because his client was age 65.

"We didn't think there was a reversible issue [on appeal], just the threat of delay," Gursten said. "As part of our settlement, we got the check within 10 days."

Other Avenues Of Recourse

According to Gursten, "applying the pressure" to the insurance company was an effective tactic.

"We made [the insurance company] look at the big picture," Gursten explained. "It knew that it would lose clients if it didn't settle this case."

But Gursten said that he was also prepared to act if the insurance company refused to settle.

"We could have filed a lawsuit for punitive damages or maybe a class action suit in a state with a better bad-faith law," Gursten said. "There is no limit to the amount of damages we could have recovered."

The basis of such a suit would have been Allstate's failure to negotiate a settlement in good faith, Gursten explained, noting that insurance companies across the country are "getting hit" on bad-faith negotiation claims.

Meanwhile, Gursten said that he considered other types of legal action, such as fraud and

conspiracy claims, because "Allstate is pursuing larger national interests and goals over the best interest of its insureds."

In addition, a legal malpractice suit could also be possible, he said.

"If the attorneys are in cahoots with the insurance company and are violating their ethical duty to their real client -- the insured -- to pursue the company's larger national policy goals, then they are committing legal malpractice," he said.

"If there is no recommendation to settle within the policy limits and it is reasonable to do so within the experience of the defense attorney, then he is violating his duty," Gursten asserted.

Helpful Hints

Gursten said that he faced other obstacles as well.

"A lot of plaintiffs' lawyers settle these types of case for the policy limit plus interest," Gursten noted. "That hurts our bargaining position."

However, "we overcame this problem by making Allstate understand what was at stake if it refused to settle," he said.

Gursten suggested that plaintiffs' attorneys hire an investigator to help overcome obstacles.

"A good investigator can give you a preliminary asset check of the insured when you sit at the negotiating table with the insurance company," he said.

Finally, Gursten advised plaintiffs' attorneys to continue pushing for stricter bad-faith laws in Michigan.

"Pray that the Legislature will give us a better bad-faith law," he said.
