

STATE OF MICHIGAN
COURT OF APPEALS

ADVOCACY ORGANIZATION FOR
PATIENTS & PROVIDERS, et al.,

Plaintiffs-Appellants,

v

AUTO CLUB INSURANCE ASSOCIATION,
ALLSTATE INSURANCE COMPANY,
CITIZENS INSURANCE COMPANY, FARM
BUREAU INSURANCE COMPANY,
FARMER'S INSURANCE EXCHANGE,
FRANKENMUTH MUTUAL INSURANCE
COMPANY, IMPERIAL MIDWEST
INSURANCE COMPANY, SECURA
INSURANCE MUTUAL COMPANY, STATE
FARM INSURANCE COMPANY,
TRANSAMERICA INSURANCE GROUP,
WOLVERINE MUTUAL INSURANCE
COMPANY, LAHOUSSE-BARTLETT
DISABILITY, MANAGEABILITY, INC.,
MEDCHECK MEDICAL AUDIT SERVICES,
RECOVERY UNLIMITED, INC., and AUTO
OWNERS INSURANCE COMPANY,

Defendants-Appellees

and

LINKAGE ENTERPRISES, INC.,

Defendant.

FOR PUBLICATION
July 3, 2003
9:00 a.m.

No. 231804
Eaton Circuit Court
LC No. 96-001409-CZ

Updated Copy
August 15, 2003

Before: Fitzgerald, P.J., and Markey and Murray, JJ.

FITZGERALD, P.J., (*concurring*).

In reaching its conclusion, the majority strictly applied the plain and unambiguous language of MCL 500.3107, as they are required to do. Therefore, I agree with the analysis

employed by the majority. I write separately, however, because I am bothered by the fact that the Legislature has not declared what is a "reasonable" charge for a particular product or service and has not provided statutory criteria to determine whether a charge is reasonable under MCL 500.3107.

As noted by the majority, § 3107 is subjective and requires insurers to make a determination in each instance whether a charge is reasonable. When an insurer does not pay the amount of the charge in full, doctors and physicians often sue their patients for the balance unpaid by the insurer. The unfortunate results of the failure to provide criteria for determining the reasonableness of a charge are destruction of the doctor-patient relationship when the doctor sues the patient, as well as increased litigation where a trier of fact is required to determine the reasonableness of the charge. To address these problems, I would strongly recommend that legislation be enacted that requires the Commissioner of Insurance to adopt medical-fee schedules, similar to the reimbursement schedules for health-care providers that are common in connection with health-insurance policies, with respect to reimbursement of health-care providers under policies of automobile insurance. Under this scheme, no health-care provider could demand or request any payment from any person in excess of those fees permitted by the medical-fee schedules established pursuant to the act, nor would any person be liable to any health-care provider for any amount of money that resulted from the charging of fees in excess of those permitted by the medical-fee schedules.

/s/ E. Thomas Fitzgerald