



## Michigan Supreme Court holds that No Fault Attorney Fees Cannot be Awarded on Benefits Not Overdue; Insurer is Not Obligated to Reconcile Conflicting Opinions of Insurer's Doctor and IME Physician

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The Michigan Supreme Court has held that No Fault attorney fees cannot be awarded on PIP benefits that are not overdue and that an insurer is not obligated under MCL 500.3148 to reconcile conflicting opinions of the insured's treating physician and of the insurer's IME physician. *Moore v Secura Insurance* (No. 135028)(12-30-08).

After trial, the jury awarded the plaintiff \$42,755 in unpaid work loss benefits but only \$98.71 in penalty interest. The trial court nevertheless awarded plaintiff attorney fees of \$79,415. The Court of Appeals affirmed the trial court's decision, holding that the jury's finding that some of the benefit payments were overdue supported the ruling. The Court of Appeals also held that an insurer can be found liable for unreasonably refusing to pay benefits even if it is later determined that the benefits were not due.

The Supreme Court reversed by a 4-2 majority, reasoning that the language of MCL 500.3142(2) and MCL 500.3148(1) do not provide for attorney fees where claimed benefits were reasonably in dispute. The Court also overruled *Liddell v Detroit Automobile Inter-Ins Exchange*, 102 Mich App 636; 302 NW2d 260 (1981) (insurer unreasonably denied benefits where it did not attempt to reconcile conflict between opinions of insured's physician and opinions of insurer's IME physician), holding that nothing in the plain language of MCL 500.3148(1) requires an insurer to reconcile conflicting medical opinions. An insurer need only evaluate evidence of the claim and any IME evidence before reasonably deciding whether benefits are required.

This case is important for its limitation on attorney fee awards and its refusal to impose obligations on insurers that are not expressly mandated by statute.

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