

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

LEVISE L. SETTLES,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: 2003-01-598
)	
ALLSTATE INSURANCE)	
COMPANY,)	
)	
Defendant.)	

Submitted: July 22, 2004

Decided: August 3, 2004

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DECISION AFTER TRIAL

Plaintiff Leise Settles (“Settles”) brings this action against her automobile insurance carrier, Allstate Insurance Company (“Allstate”), to recover certain health care expenditures that have been denied coverage by Allstate. Prior to trial, the parties stipulated that Allstate would be responsible for the unpaid medical bills for Dr. Palmer and Dr. Rasis. Therefore, the only unpaid medical bills at issue are those of Dr. George Bohatiuk.

Settles argues that Allstate wrongfully denied coverage for various treatments of injuries resulting from an automobile accident. Allstate claims that the bills are not reasonable and necessary treatment for the injuries received. A trial was held on these matters on July 22, 2004, and the Court reserved decision. This is the Court’s decision after trial.

The Court received the testimony of Dr. George Bohatiuk and Settles for the Plaintiff. The Court also received into evidence Plaintiff’s Exhibit “1”, which are medical records and bills from Dr. Bohatiuk, and Plaintiff’s Exhibit “2”, a document reflecting the balance of outstanding medical bills. Settles’ claim is for \$3510.00 in unpaid medical bills for Dr. Bohatiuk.

The relevant facts as found by the Court are as follows. Settles was involved in an automobile accident February 14, 2001. Her car was impacted on the driver-side. She was taken to the emergency room where she was evaluated and eventually released following x-rays. She was told to seek further treatment if she experienced any pain. Settles went to see Dr. Palmer the day after the accident. Dr. Palmer referred her to Dr. Bohatiuk for continued care.

On March 20, 2001, Settles went to see Dr. Bohatiuk, complaining of neck pain, back pain, wrist and arm pain, and also numbness and tingling in her legs and back. After an initial exam, Dr. Bohatiuk concluded that Settles had back sprain/strain, neck sprain/strain, and injury to her left wrist. His advised course of treatment was for Settles to continue her treatment with

Dr. Palmer and he ordered that EMG/NCV (diagnostic) studies be performed. Dr. Bohatiuk continued to treat Settles through April of 2001. During that time, Settles was given trigger point injections of anti-inflammatory medication to alleviate some of her pain. According to Dr. Bohatiuk, the injections helped improve Settles' symptoms to some extent.

Settles returned to Dr. Bohatiuk on August 14, 2002 because she continued to experience neck pain, left side pain, numbness in her left hand, and numbness and tingling in her back and legs. Another set of diagnostic tests were ordered by Dr. Bohatiuk to update Settles' condition and to determine whether any nerve damage existed. Settles was also given more trigger point injections for her symptoms. Based upon the results of the follow-up diagnostic tests, Dr. Bohatiuk referred Settles to Dr. Rasis, who recommended and performed carpal tunnel surgery. Settles' last visit with Dr. Bohatiuk was January 9, 2003. All symptoms ceased following her surgery.

It should be noted that Settles was in a previous automobile accident in 1995 and injured both her neck and back. She sought medical treatment for those injuries and was last treated in May of 1996. According to Settles, she had completely recovered from the 1995 accident and had no symptoms prior to the 2001 accident.

The question for the Court is whether Settles' continued treatments with Dr. Bohatiuk were reasonable and necessary medical treatment as a result of the February 14, 2001 automobile accident.

In establishing her right to payment, "the Plaintiff has the burden of demonstrating the reasonableness and necessity of the medical treatment provided." *Lundenberg v. State Farm Mutual Auto Ins. Co., Del.Com.Pl., C.A. No. 1993-04-227, Smalls, C.J., 1994 WL 1547774* (July 11, 1994). Dr. Bohatiuk, the treating physician, testified that in his expert opinion he believed

the treatment he gave Settles to be reasonable, necessary and related to the 2001 automobile accident. The medical records introduced into evidence support his testimony.

Based on the evidence in the record, the Court finds that Settles proved by a preponderance of the evidence that the treatment given to her by Dr. Bohatiuk from March 20, 2001 through January 9, 2003 was reasonable, necessary, and related to the February 14, 2001 automobile accident. The Court finds the uncontroverted testimony of both Dr. Bohatiuk and Settles to be credible. Therefore, the claim of Settles for the unpaid medical bills of Dr. Bohatiuk in the amount of \$3510 is granted.

Additionally, Settles seeks reimbursement of \$2000 in expert fees which she incurred in connection with having Dr. Bohatiuk testify on her behalf. When a physician testifies as an expert, for three hours or less, a minimum witness fee should be allowed based upon a flat amount for a one-half day interruption in the physician's usual schedule. *Sliwinski v. Duncan*, 1992 WL 21132 (Del. Supr.) In 2002, the reasonable range of fees for a physician testifying as an expert witness in court was between \$1,677 and \$2,322 per one-half day. *Preux v. Leap*, 2002 WL 318192550 (Del.Super.) Dr. Bohatiuk spent approximately forty-five minutes testifying in court. He also traveled to and from the court during the morning rush hour and paid for parking. Therefore, pursuant to C.C.P. Civ. R. 54(h) and 10 Del. C. §8906, the Court finds the \$2000 expert fee of Dr. Bohatiuk to be reasonable and therefore shall be paid by Allstate.

Accordingly, judgment is hereby entered in favor of Settles in the amount of \$3510 plus \$2000 in expert fees, pre- and post judgment interest at the legal rate, and court costs.

IT IS SO ORDERED.

Jay Paul James
Associate Judge

