

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEMARIA L. WYNN, as Guardian for
DUANE L. WALLACE, a protected individual,

Plaintiff,

-vs-

Case No. 06-10534
Hon: AVERN COHN

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

_____ /

ORDER RECONSIDERING DEFENDANT'S
MOTION FOR ATTORNEY FEES
and
ORDER DENYING DEFENDANT'S MOTION FOR ATTORNEY FEES

On June 08, 2009, the Court, without waiting for defendant to file a reply brief, denied (Dkt. 114) defendant's Motion For Attorney Fees Under M.C.L. § 500.3148(2) (Dkt. 110). Defendant has moved for reconsideration (Dkt. 116) on the grounds it was error to adjudicate the motion without giving defendant an opportunity to file a reply brief. Defendant is correct. The order denying attorney fees is VACATED.

The Court has reconsidered the motion for attorney fees, taking into consideration the reply brief attached to the motion for reconsideration (Dkt. 116-3).

The reply brief adds nothing to defendant's argument and does not change the Court's view that the motion for attorney fees should be denied. The Court finds no error

in the hours claimed for work done on the case or the hourly rates charged. As the Court stated in the vacated order, "Failure of proofs at trial to persuade a jury at trial is not the same as an absence of proofs." Defendant's position would lead to an award of attorney fees in every attendant care case in which a jury found against the claimant.

The motion for attorney fees (Dkt. 110) is DENIED.

SO ORDERED.

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: July 9, 2009

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, July 9, 2009, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160