

STATE OF MICHIGAN
COURT OF APPEALS

UNITED STATES FIDELITY INSURANCE &
GUARANTY COMPANY,

Plaintiff-Appellee,

v

MICHIGAN CATASTROPHIC CLAIMS
ASSOCIATION,

Defendant-Appellant,

and

MICHAEL MIGDAL, Individually and as
Conservator for the Estate of DANIEL MIGDAL, a
Protected Person,

Defendant.

FOR PUBLICATION
February 6, 2007
9:00 a.m.

No. 260604
Oakland Circuit Court
LC No. 2003-051485-CK

THE HARTFORD INSURANCE COMPANY OF
THE MIDWEST,

Plaintiff-Appellant,

v

MICHIGAN CATASTROPHIC CLAIMS
ASSOCIATION,

Defendant-Appellee.

No. 271199
Oakland Circuit Court
LC No. 2006-071933-CK

Official Reported Version

Before: Owens, P.J., and White and Hoekstra, JJ.

WHITE, J. (*concurring*).

I concur in the majority's conclusion that the Michigan Catastrophic Claims Association (MCCA) is required to provide full reimbursement for amounts paid under PIP coverage. While

in retrospect the settlement in the Migdal case might seem excessive, there is no allegation or indication that it was entered into in bad faith, or without consideration of the amounts the United States Fidelity & Guaranty Company might be required to pay if it took the case to trial. Similarly, there is no indication that Hartford Insurance Company of the Midwest acted in bad faith in agreeing to pay \$30 an hour for attendant care in exchange for a three-year freeze of the rate. Most important, there is no indication that either insurer actually applies a double standard in adjusting claims that will ultimately be reimbursed by the MCCA.¹

Under the statutory framework, the determination of reasonableness is to be made by the insurer, or the judicial system after litigation. Whatever payments then result are the amounts that the insurer is "obligated to pay," and that are "payable," under personal protection insurance coverage, within the meaning of MCL 500.3104(2) and (25)(c). This is the amount for which the MCCA must provide, and the insurer must accept, indemnification. The statute does not contemplate that the MCCA will become a party to the insurance contract, or possible litigation, between the insured and the insurer, with a voice regarding whether a lesser or greater sum is reasonable under MCL 500.3107. Nor does it contemplate that the MCCA will act as a de facto regulatory body, determining what amounts are reasonable for which services.

/s/ Helene N. White

¹ As the majority observed, if this were asserted, one would expect the MCAA to exercise its powers under MCL 500.3104(7)(g).