

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

01.11.06

Eastern District Extends Griffith's Decision to Room and Board and Ordinary Living Expenses

By Nathan J. Edmonds

In *Peabody v. State Farm Mutual Automobile Ins Co.*, a case pending in the U.S. District Court for the Eastern District of Michigan, Judge Lawrence Zatkoff recently entered an Opinion and Order Granting State Farm's Motion for Summary Judgment by extending the analysis of *Griffith v State Farm Mutual Automobile Ins. Co.*, 472 Mich 521 (2005) to claims for room and board, utilities, phone service, cellular phone service, internet access, and cleaning.

Plaintiff Bradley Peabody filed this case as the guardian of Jennifer Lynn Peabody. Jennifer was tragically injured in a car accident on May 7, 1987. She suffered a closed head injury which has caused her to be mentally incapacitated. Following her accident, Jennifer was in and out of various hospitals and rehabilitation facilities. In 1988, Jennifer was transferred to the PTI (Personal Therapists Incorporated) rehabilitation center in Livonia, Michigan. Jennifer was there for approximately six years until 1995, when she moved to a home in Grosse Pointe, Michigan. This move brought Jennifer closer to the home of her parents who were Grosse Pointe natives. While Jennifer was at PTI, Defendant paid \$575 per month for rent. Following her move to Grosse Pointe, Defendant continued to pay \$560 per month, though Jennifer's monthly rent was now \$1,500 per month.

In 2003, Jennifer's mother, through Jennifer's trust, purchased the house at 370 Neff for Jennifer to live. The monthly mortgage for the home was \$3,300. Mrs. Peabody was able to find an upstairs tenant to pay \$1,350 per month, leaving approximately \$2000 per month as Jennifer's housing cost. Plaintiff continued to pay approximately \$560 per month in rent over this period.

Plaintiff filed this action pursuant to Michigan's No-Fault Insurance Act and alleges that Defendant owes any uncompensated portions of Jennifer's room and board from 1995, when Jennifer moved out of the PTI rehabilitation facility, to the present. In addition to compensation for room and board,

SECRET WARDLE NOTES:

Since the *Griffith* opinion was released, the defense bar has anticipated that the plaintiff's bar would attempt to limit its applicability to food expenses, which is what the Plaintiff in the Peabody case attempted to do. However, as is clearly stated by Judge Zatkoff, the Michigan Supreme Court envisioned this type of situation and, if the test applied in *Griffith* is applied objectively, i.e. is the expense necessary for the care, recovery or rehabilitation of the injured person as an injured person, results similar to that obtained in the Peabody case should be forthcoming. It is anticipated that the Plaintiff will appeal to the Sixth Circuit Court of Appeals.

This case was handled by Nathan Edmonds and Brandy Kuretich of Secret Wardle.

CONTINUED...

Plaintiff's Complaint asserts that since 2003, Defendant owes monthly amounts for utilities, phone service, cellular phone service, internet access and cleaning.

In *Griffith*, a 2005 decision of the Michigan Supreme Court, the plaintiff claimed that defendant insurance company owed personal protection insurance benefits for the cost of food. However, the Michigan Supreme Court held that food was not an allowable expense pursuant to MCL § 500.3107(1)(a) and, therefore, the insurance company did not have to reimburse plaintiff for the cost of food. The Michigan Supreme Court's holding was based on the language of MCL § 500.3107(1)(a), which defines an "allowable expense" as "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." The care, recovery, or rehabilitation expenses have to be necessary because of the injuries sustained in the automobile accident. Since the plaintiff did not require a special diet different from that of an uninjured person, his food expenses do not qualify as an "allowable expense" because the food is not necessary for the injured person's care, recovery, or rehabilitation.

In *Peabody*, Judge Zatkoff extended that analysis to Plaintiff's claims for room and board, utilities, phone service, cellular phone service, internet access, and cleaning. Since Plaintiff Peabody could not show that the alleged room and board and other living expenses were related to her care, recovery or rehabilitation, these expenses are simply ordinary living expenses that Plaintiff Peabody would incur regardless of her injury. Therefore, the expenses are not "allowable expenses" and are not compensable under *Griffith*. In fact, Judge Zatkoff's opinion states that this is exactly the type of situation envisioned by the Court in *Griffith*.

The analysis from *Griffith v State Farm Mutual Automobile Ins. Co.* was correctly applied by Judge Zatkoff to include ordinary living expenses other than food only. According to Judge Zatkoff, expenses for room and board, as well as other utilities, are not compensable under the No Fault Act because they do not qualify as "allowable expenses" under MCL § 500.3107(1)(a). To qualify as an "allowable expense," the expense must be one that is necessary for the injured person's care, recovery, or rehabilitation from injuries related to the subject motor vehicle accident. Since Peabody could not show that these ordinary living expenses were necessary because of her injuries from the motor vehicle accident, summary judgment in favor of State Farm, the no fault insurer, was appropriate.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2550 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2006 Secrest, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chair

John H. Cowley, Jr.

Editor

Carina Nelson

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newslines, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at cnelson@secrestwardle.com, or **248-539-2850**.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowners' Alert – Defense strategies for property owners and managers
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability
Update Illinois - Current trends in Illinois law