



**GATTI, GATTI
MAIER, SAYER, THAYER
SMITH AND ASSOCIATES**

ATTORNEYS AT LAW
TAX ID 93-1283063

REPLY TO SALEM OFFICE
email gatti@gattilaw.com

DANIEL J. GATTI
RICHARD D. GATTI
CHARLES D. MAIER
RON L. SAYER
MICHAEL G. SMITH
JEFFREY P. THAYER*
RYAN S. JENNINGS
LYLE B. BOSKET*
CHRISTOPHER R. BEST

SALEM OFFICE
1781 LIBERTY ST. SE
SALEM, OR 97302
503-363-3443

EUGENE OFFICE
96 EAST BROADWAY, SUITE 7
EUGENE, OR 97401
541-343-6587

PORTLAND OFFICE
5320 SW MACADAM AVE.
PORTLAND, OR 97239
503-224-1524

LAKE OSWEGO OFFICE
5200 SW MEADOWS RD., SUITE 150
LAKE OSWEGO, OR 97035
503-224-1524

* ALSO ADMITTED TO PRACTICE IN WASHINGTON

TELEFAX 503-371-2482

TOLL FREE 1-800-289-3443

July, 2011

RE: LITIGATION UPDATE

The purpose of this letter is to bring you up to date with reference to litigation and claims which we think are important to health providers and their patients. Our goal at Gatti, Gatti, Maier, Sayer, Thayer, Smith & Associates is to make certain that injured parties receive all of the care and treatment that is reasonable and necessary, and that these injured parties seek out the appropriate care from the appropriate health provider who should be paid accordingly. It is vital that a lawyer should do three things for someone who has been injured:

1. Do everything possible to ensure that the injured party receives the treatment he or she needs.
2. Insure that healthcare providers should be paid for all reasonable and necessary care provided.
3. Help injured people document their injuries so that they can receive just compensation when the time comes for resolution of the claim.

USAA

USAA Insurance Company has been sued on a class action basis for breach of contract and breach of the duty of good faith and fair dealings to its insureds. This case is in its infancy, and all of the lawyers at our offices throughout Oregon can help any USAA insured who has been injured in an automobile accident.

The USAA case basically claims that USAA has breached its contract to its insureds via the utilization of Auto Injury

Solutions (AIS), which company in turn utilizes "file reviewers" who routinely deny reasonable and necessary care based upon criteria and authorities which are immaterial to the individualized claims of injured parties. The allegations state that file reviewers wrongfully recommend the termination of care based upon bogus criteria and authorities which are not appropriate to the individualized injuries. This case is ongoing, and we are gathering evidence and facts which would support the contentions of the class representatives so that this type of file review will no longer be tolerated in the state of Oregon and elsewhere.

PUNITIVE DAMAGES FOR FRAUD

In another matter, the Oregon Supreme Court recently ruled that an injured party can recover significant punitive damages plus attorney fees for fraudulent conduct even though the actual damages of the injured party may be somewhat de minimis. In the case of a man named Ken Hamlin, the Supreme Court said that Hamlin could recover up to \$75,000 in punitive damages even though Hamlin's out-of-pocket losses were \$6,000 or less. This decision has important ramifications for injured parties whose healthcare bills have been fraudulently denied.

In many states, a person would be limited to punitive damages in the sum of six times the amount of the underlying monetary loss. However, that is no longer the rule in Oregon; and, because of this case, insurance companies should think twice before maliciously terminating care based upon fraudulent reviews or examinations which do not recognize the minimum practice and utilization guidelines and evidence-based treatment protocols as promulgated by the Oregon Board of Chiropractic Examiners.

FARMERS' WRONGFUL TERMINATION OF PIP BENEFITS

In another matter, Daniel J. Gatti was one of the lead attorneys on the case of Ivanov v. Farmers, which is an Oregon state class action against Farmers for the wrongful termination of PIP benefits based upon unilateral and arbitrary denials for bills categorized under certain CPT codes.

In the Ivanov case, the Oregon Supreme Court ruled that a class action was possible against an insurance company with reference to the fraudulent termination of PIP benefits under certain circumstances; and, as a result, we are hopeful that the facts of our case will fit into the circumstances outlined by the Supreme Court so that we can continue to push forward on the claim mentioned.

AMERICAN FAMILY DME EXAMS

American Family was sued by our offices on behalf of several insureds who alleged that their care and treatment was wrongfully terminated as a result of a cost containment scheme that was arbitrary and capricious. The American Family terminations were based upon adjuster requested DMEs that failed to recognize the practice and utilization guidelines and the reasonable and necessary care of individualized patients who were entitled to individualized investigations as to their need for ongoing care and treatment.

American Family had a PIP Initiative Goals seminar, aka the "PIG" seminar. The evidence was compelling and the underlying case did not ask for class certification but was settled on an individualized basis on behalf of all of the injured parties. The settlement amounts were confidential, but our offices will continue to advocate for patients whose care is wrongfully terminated or whose care is limited to arbitrary parameters which are in contradiction to the minimum standards of care, practice and utilization guidelines and evidence-based outcomes as mandated by the Oregon Administrative Rules.

DIMINISHED VALUE

Lastly, the Oregon Supreme Court also ruled in our favor with reference to an insured's right to file a claim for "diminished value." Diminished value is the difference in value of a car before it has been damaged and after the car has been repaired properly, but damaged nevertheless. Along with the Nelson and D'Amore law offices and others, the Gonzalez v. Farmers case went on for nearly 10 years. Even though class action certification was ultimately denied, the right to file individualized claims for diminished value was recently affirmed; and that right is alive and well in Oregon.

In Oregon, as long as an insurance company does not exclude the reimbursement of diminished value in the contract, one can sue their own insurance company for diminished value. If a client's automobile is damaged, then the client can collect for diminished value, together with attorney fees and costs. However, most insurance companies have already re-worked the language in their contracts by excluding diminished value of their own insureds. Diminished value, nevertheless, will continue to apply on third-party claims. In other words, when someone else damages a person's car, then in that event, there is no contract excluding diminished value; and the third-party insurance carrier would be responsible to the injured party for diminished value on a vehicle.

Gatti, Gatti, Maier, Sayer, Thayer, Smith & Associates continues in the attempt to make certain that injured parties are reasonably compensated for all of their injuries whether they be for medical expenses, total loss damages of their vehicles, diminished value of their vehicles, and/or reasonable compensation for pain and suffering when someone is hurt through no fault of their own. The need to gather evidence on the above issues and other issues of importance continues; and, if you have any questions or if anyone has questions with reference to these issues or others, they are welcome to call us for an initial consultation without charge.

We look forward to hearing from anyone on these types of claims and/or on these companies and others; and please feel free to contact any of the lawyers in our offices at any time.

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THAYER, SMITH & ASSOCIATES

Trial Lawyers Serving
All of Oregon