

Legal News You Can Use
The Client Newsletter of The Law Offices of
David L. Moffitt & Associates
Winter 2005

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Award Winning, Headline-Making
Legal Representation For Over 25 Years

Moffitt Law Firm Takes Hard Case “No-Pay” Auto Insurance Company To Trial With Devastating Results

A Single Mom Asks “What To Do?”

A single mom, we'll call her Doreen, on disability from a previous roller blade accident that resulted in back surgery, had a car accident that she walked away from. She had neck pain and her back, which never stopped bothering her, continued to hurt, and sometimes worse than before.

She consulted a well known attorney who turned her case down, saying there was nothing that could justify a recovery. Her auto insurance company was refusing to pay for any treatment for her neck or back, on the ground that those problems were “pre-existing”, that is, that she had them before the accident.

She was in pain, was incurring expenses for doctors' visits and prescriptions, and, being on disability to begin with, couldn't afford to go on paying them herself. Worse, since the insurance company wouldn't pay for her treatment, it would continue to look like she wasn't injured, because she couldn't afford to pay for the treatment.

A friend referred her to our office. She bitterly repeated the warm, upbeat motto of her insurance company's ads on TV. “What am I supposed to do?” she asked.

Mr. Moffitt explained the “first party” or “PIP” [discussed in detail last issue] benefits

owed by your own insurance company: 1) wage loss replacement; 2) accident medical care, for life, as long as it's related to the accident; and 3) attendant care, help if you need at-home care, “replacement services” (up to \$20 per day) for someone to help you with household tasks you would have done yourself but had to pay someone to do because of your injuries, and prescription medicine reimbursement.

Told that the previous attorney didn't view her injuries as serious, Mr. Moffitt explained that the Michigan Supreme Court has set a very high “hurdle” to be able to make a “third party” claim, that is, an injury claim against the other driver, requiring the injury to be “life-changing.” He was confident that the seriousness of her injuries could be medically proved and the “third party” insurer could be convinced to settle.

The “First Party” insurance carrier was a different story, flatly refusing to pay at all. “There's only one way I know to make the First party insurance company live up to its policy obligations,” said Mr. Moffitt, “and that's to sue.” Doreen was frightened at suing her own insurance company. “Won't they bring up my past and try to embarrass me?” “Yes, they can try,” came the answer, “but you need to stand up to them. Put it in our hands.” Although Doreen was deeply worried at the thought of actually

taking both her “First party” and “Third party” insurers to court at the time, Mr. Moffitt insisted that he would invest his time in the case without

Filing Suit And Convincing The “Third Party” Insurer To Settle. Suit was filed, and within months, Mr. Moffitt had convinced a panel of three case evaluators appointed by the court that her injuries were indeed “life-changing.” The other driver's insurance company [the “Third party” insurer] reluctantly but wisely, it turned out, agreed to settle, rather than face trial and risk being hit for financial “sanctions,” that is, the possibility of paying Diane's side's attorneys fees and litigation costs, that might follow an unsuccessful trial.

First Party Insurer Continues Its Hard Line. The other insurance company, Doreen's own, for her first party PIP benefits, decided not to settle with her at all, refusing for over a year to pay anything. Finally, it threatened to try the case if Doreen didn't take their \$15,000.00 formal offer to settle, called an “Offer of Judgment,” that came in the mail to Mr. Moffitt's office some 30 days before the trial date. Mr. Moffitt told Doreen about it, and, to her amazement, told her to ignore it. The insurer didn't know it then, but Mr. Moffitt knew that two page Offer of Judgment was going to be one of the most expensive two pages that the insurer had ever sent through the mail.

The Showdown: 11 Days Of Trial. In the days before trial, Mr. Moffitt also carefully scrutinized the insurance company's 3000 plus page file it had unsuccessfully withheld from disclosure, despite prior court orders requiring it be turned over to Mr. Moffitt. He discovered that the insurance company had simultaneously insisted that Doreen get certain tests and diagnostic procedures, *while at the same time* instructing its adjusters to deny payment for this procedure and treatment. Internal memos by outside nurse consultants of the insurance company, unearthed by Mr. Moffitt, pointed out that the insurer was completely without sufficient information to evaluate her “complex medical picture” even while it was denying payment of her medical treatment

a fee unless he won money for her and that she would win out in the end.

claims based on their being supposedly based upon “pre-existing” conditions.

Seven of Doreen's doctors were deposed at length on video tape for playback to the jury at trial. To prepare Diane for her testimony, Mr. Moffitt worked for hours with her, finally putting her in front of a panel of lawyers and staff as a mock jury and building up her confidence to testify truthfully and forcefully on her own behalf. “I was good enough to go on Oprah when he got done coaching me,” she said.

The defendant hired a well known neurosurgeon from Beaumont Hospital to dispute the need for the medical treatment Doreen had received. Mr. Moffitt forced him to admit in cross examination that he had been given only a select fraction of her actual records, and proved to the jury, as he said in his closing statement, “that the defense treated their own doctor like a mushroom” to get him to opine her treatment was unnecessary, that is, “they kept him in the *dark* and fed him [*'stuff'*].”

Under Mr. Moffitt's rigorous cross examination at trial, the claims adjuster sheepishly admitted to the clear picture the memos painted. Mr. Moffitt then innocently asked if the adjuster was familiar with the mottos of its largest rivals, *e.g.*, “You're in good hand with...*etc*”. and “Like a good neighbor...*etc*,” and brought a roar of laughter from the jury when he suggested that their company's motto ought to be “Deny The Claim First, And Ask Questions Later.” The insurer never recovered from that, and the jury brought in a verdict of \$35,000.00, far above the \$15,000.00 in the Offer of Judgment the insurer had made.

Mr. Moffitt Demands And Judge Imposes Huge Sanctions On Insurance Company. In a post-trial motion Mr. Moffitt pointed out, to the utter surprise and horror of the

insurer, that its Offer of Judgment, made less than 42 days before trial, was under the terms of a little-known court rule, actually a legal line-in-the-sand, that if the plaintiff Doreen did better at trial than the \$15,000.00 offered, the insurer would be required to pay Doreen's

Michigan Lawyers Weekly Features Trial Victory In Front Page Story.

The sanctions being bigger than the verdict was news to the *Michigan Lawyers Weekly*, which put the story on its front page of the 9-5-05 issue complete with color picture and a full explanation of the "sanctions" trap Mr. Moffitt had sprung at trial. Lynn Talbert, the Moffitt firm's Office Manager, was present at trial. "Doreen was ecstatic," and "couldn't believe she had really taken on the insurance company and won." "The insurer paid all the bills I incurred after that promptly," Doreen reported, to which Mr. Moffitt responded, "They'd better, or we'll sue them again."

Know Someone You'd Like To Receive This Newsletter?

Call and leave the name and address of someone you'd like to receive our newsletter. They'll be informed of important developments in the law that may directly affect them, and they will have an attorney they know, trust, and can ask questions of.

Just leave their name and address with our office, and we'll do the rest, telling them, too, who was kind enough to help them stay legally alert.

What Kind Of Legal Work We Do

Our office handles **all personal injury** claims, including automobile accidents, wrongful death, workman's compensation, slip and fall, sexual harassment, nursing home abuse, as well as **all criminal cases**, from traffic tickets to federal indictments, and **every day legal needs** such as name changes, guardian and conservatorships, real estate transactions, contracts, **small business assistance**, and more.

attorney fees and costs of litigation. That's exactly what the judge did, assessing the insurer at Mr. Moffitt's insistence an extra \$42,500.00 in attorneys fees and costs on top of the \$35,000.00 verdict.

How To Contact Us

Communication with our clients keeps you updated on what is going on with your case, and keeps us informed on what is happening with you. Here's how to contact us:

Call **Toll free** 800-354-5202
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In after-hours emergencies, call

Cell 248-318-2300

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Call us to tell us about new addresses and phone numbers, new events that may affect your case, new your medical treatment for your injuries, important developments, to ask questions about something we've sent you, if you feel you haven't heard from us recently, or even with good news about you and your family, impending marriages, new babies, graduations. We care!

Mail to us those documents you could not fax. Just call if you need us to send you a pre-addressed, postage-paid envelope.

Remember we are working hard to move your case forward, and cannot easily always immediately return your call, *every* time you call. Sometimes information or questions are best taken by our staff, who can call back with your attorney's answer.

Did You Know . . . ?

1. That Mr. Moffitt has been featured on the front page of the *Michigan Lawyers*

Weekly in color-picture stories for victories in automobile accident cases *twice* in the past 12 months?

2. That if you are accused of criminal sexual conduct and don't agree to take a police polygraph ["lie detector"] test, the police will probably not bother to thoroughly investigate the credibility of the accuser and may seek to prosecute you just upon the mere fact of your declining to take the test?

5. That [after 20 years] we are moving our offices, still in the same building, down two floors, to the first floor from the third floor, same address, same phone number, just a different suite number, beginning April 1, 2006?

6. That if you drive without auto insurance, and are in an accident, you not only don't have the various benefits your own insurance company is required to provide, you also lose all your rights to try to sue and recover against the other driver who hit you, even when they're 100% at fault.

Briefly Speaking

Make a Holiday Gift of our firm's preparation of a **last will & testament** to someone special who needs one—it's easy and surprisingly reasonable—\$25.00 to \$199.00--Contact our office for details.

Coming Attractions

Next Issue: The Michigan State Bar Honors Attorney Moffitt As "Citizen Lawyer" In The Michigan Bar *Journal*; Criminal Case Showdown: Moffitt Wins 4 Day First Degree CSC Trial; 2005 Year End Round Up; Easy Fill-In "Request A Simple Will" Form.

3. That it is a documented fact that some people can pass one polygraph and then fail another just on the way the questions are phrased and asked?

4. That evidence of polygraph test results *can* sometimes be admissible into evidence in a civil [but not criminal] trial?

If You Missed the last issue, featuring "Questions And Answers About Work Injuries," just call our office and we'll rush one out to you or a friend!

Lawyer Joke

A woman saw her doctor and was told she needed a transplant of a one pound brain. Her doctor asked her "what kind of brain would you like?"

"I have a choice the woman said in astonishment?"

"Yes," replied the doctor, but there is a substantial difference in price. For example, a one pound brain of a surgeon costs \$60,000.00 whereas the one pound brain of a toll booth operator costs just \$20,000.00."

The woman thought for a moment, "Can you get me a one pound lawyer brain?" Ever since I was a little girl I dreamed of being a trial attorney."

"I can, but it will cost you \$250,000.00."

"But doctor, why so much? That's four times what the surgeon's brain cost."

The doctor nodded. "Yes, but do you have any idea how many lawyers it takes to produce a pound of brain?"

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Your Client Newsletter
Keeping You Informed

Address Service Requested

**In This Issue: Moffitt Law Firm Takes “No-Pay”
Auto Insurer To Trial With Devastating Results, Making
Front Page News In “*Michigan Lawyers Weekly!*”**

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If you have questions about a work related injury, call our office immediately for a free consultation at 248 644.0880 or toll free at 800 354.5202.

