

\$1.2M settlement: New home for catastrophically injured child

Court ordered MCCA to bargaining table

By Douglas Levy

A Detroit family caring for their son who was catastrophically injured in a traffic accident originally called Heather J. Atnip for help after their attendant-care rates had been reduced.

But when Atnip arrived at their home, she couldn't believe what she saw.

"His hospital bed was in his kitchen, unable to fully recline because the space was so small," said Atnip, of Rochester-based Atnip and Associates PLLC. "A lift to transfer him in and out of the bed ... couldn't even fit inside the house; it was on the porch. They couldn't get him to the bath because the hallways weren't wide enough."

Atnip discovered that five years earlier the no-fault insurer, American Casualty Co., had assessed the home for necessary modifications but funding was never provided.

Atnip said there was unexplained friction between the Michigan Catastrophic Claims Association and American Casualty. In fact, it took a court order to get the MCCA to attend a facilitation proceeding.

"There was no denying once they had all the evidence that the benefits were owed. It was just getting them to pay," Atnip said. "That's why we had to have court-ordered facilitations with MCCA."

"Something wasn't making sense. I couldn't figure out if MCCA was the problem or if American Casualty was the problem. It was very difficult to get the responses."

After two years of litigation, the case settled for \$1.2 million. The settlement included money for a newly built home to accommodate the injured boy and his family. A Verdicts & Settlements report on *Maxwell v. American Casualty Co.* can be found on page 6.

Capturing scene on video

The plaintiff's son suffered a severe brain injury in 2007 when he was 12 years old. A car struck him while he was trying to cross a freeway. After the accident, his mother and his aunt provided home-care services.

When the MCCA cut their hourly attendant-care rate, they asked two other law firms to represent them.



ATNIP

The firms turned them down, Atnip said, noting that lawyers customarily take a percentage of the disputed amount as their attorney's fee.

She speculated that the firms may have been thinking, "if we get an increase at \$2 or \$5 [for hourly attendant-care] we're only making \$400 a month, and that's not really worth it."

But there was more to the case than just attendant-care pay.

After uncovering the home modification conflict, Atnip immediately decided to produce a day-in-the-life video before she even filed a suit.

"I had to document the difficulties this family is having," she said. "Can you imagine being in a hospital bed in your kitchen?"

"Can you imagine how embarrassing that is? And not being able to fully recline, and the only time you can fully recline is if you're in a hospital? It was ridiculous."

She said the video showed American Casualty's Florida-based adjuster that the injured boy and his family could not cope with their unmodified living space.

As for the attendant care dispute, Atnip said she obtained the family's financial records, which showed how much work was being done.

"I've never seen such great submissions," she said.

"They were going through ADP payroll. ... They provided 401(k), workers' comp and all that."

Settlement eventually tendered

But a settlement remained elusive.

Speaking of a settlement offer, Atnip said, "MCCA can't just not approve it." Atnip said she could not determine whether the MCCA was being reluctant or whether American Casualty was "not properly putting it [the claim] before the MCCA."

She said that when it became clear that the MCCA's absence was hindering settlement discussions, Wayne County Judge Kathleen Macdonald ordered the MCCA to appear.

The parties eventually agreed to a \$1.2 million settlement, which included \$100,000 in recovered policy limits from the driver for excess wage loss, \$70,000 in voluntarily paid attorney's fees, and all past medical expenses.

The attendant-care rate was increased to \$18 and included a respite care provision, allowing for an agency to relieve the family for 28 hours each week.

In addition, the settlement provided \$250,000 for a new house with no reversionary interest, meaning that when the plaintiff dies, the house will remain in the family's hands.

Atnip said she held the closing for the new house at her office a few weeks ago.

She said based on her experience with this case, she would advise other attorneys to meet clients with attendant-care disputes directly in their home setting.

"Don't send a paralegal to a house to do a sign-up and don't do an intake over the phone," she said.

"Get out there so you can see exactly what's going on."

Verdicts & Settlements

Attendant care, home modifications at issue

Settlement included new home, driver's insurance policy limits

\$1.2 million

This was a highly complex case involving home modifications from a 2007 automobile accident. Plaintiff was a 12-year-old pedestrian who ran across Interstate 75 and was struck by a car. He was 18½ years old when counsel was retained.

The \$1.2 million settlement included \$250,000 for the outright purchase of a new home without a reversionary interest, as well as an agreement as to attendant care and

Type of action: Class action for wage and overtime violations

Type of injuries: Wage loss under claim that employer withheld compensation for "off-the-clock" work

Name of case: *Williams v. Sykes Enterprises Inc.*

Court/Case no./Date: U.S. District Court, District of Minnesota; 13-cv-946 JRT/HB; June 24, 2015

Name of judge: Hon. John R. Tunheim

Settlement amount: \$940,000

Attorneys for plaintiffs: Jason J. Thompson, Jesse L. Young (Southfield)

Attorneys for defendant: Andrew J. Voss, Joseph Weiner (Minneapolis); John W. Campbell (Tampa, Florida)

agency care. The \$100,000 policy limits for the driver were tendered upon demand based on excess wage loss and a pure comparative-fault analysis. The settlement also included voluntarily paid attorney fees.

Litigation was intense and involved multiple full-day

facilitations with the Michigan Catastrophic Claims Association, which, over the course of several months, was ordered by the court to be present.

Heather J. Atnip, counsel for plaintiff, provided case information.