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Huron jury awards $1.26M for 15-year-old's 1-car crash

Witnesses' helping establish pattern of auto use redeemed mom's lie to adjuster

By Douglas Levy

A mother's lie to an insurance adjuster about whether her 15-year-old daughter had permission to drive her car was a damning statement.

The girl had a learner's permit, which required a parent to be in the car while she was driving. The mother told the adjuster her daughter was driving alone without permission when she was catastrophically injured in a one-car accident.

What the mother said wasn't true and it stood in the way of the girl and her family being eligible for no-fault benefits.

It was a problem for the hospitals seeking payment for the $1 million in medical care the teen received.

The no-fault act precludes personal protection insurance benefits for a driver who illegally takes a vehicle.

Phillip S. Serafini, who handled the family's no-fault claim, had never seen anything like this.

The mother, "whose claim it is not, screws up the claim" for her daughter, the person who was "entitled to make the claim," he said.

But by addressing the lie from the outset and establishing a pattern of the girl's regular use of the car without a parent, Serafini and the attorneys representing the hospitals convinced a Huron County jury that the girl indeed did have permission — and, thus, was entitled to benefits.

SERAFINI

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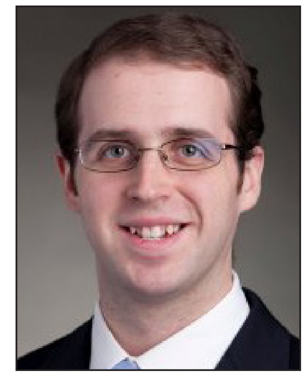
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The jury on July 24, 2015, awarded $246,897 to the family and $1,018,467 to intervening plaintiffs Covenant Medical Center Inc. and Mary Free Bed Rehabilitation Hospital.

A Verdicts & Settlements report on *Monaco v. Home-Owners Insurance Co.* was in the Aug. 17, 2015, edition of Michigan Lawyers Weekly.

'You screwed this up'

Serafini said Laura Monaco had reached out to him a day before the statute of limitations ran out on her claim. She told him she lied to the adjuster because she feared she would go to jail for allowing her daughter, Alison, to drive unaccompanied by a parent.

Monaco, who is a nurse, feared that if she were jailed, she would be unable to provide attendant care to her daughter.

Serafini, of Serafini, Michalowski, Derkacz & Associates PC in Sterling Heights, said he had only one solution.

"I told her, 'You understand, you screwed this up for your daughter, and you're going to have to take it on the chin. The risk is there. You have to testify to the truth and you have to set the record straight,'" he said.

Thomas S. Baker and C.J. Schneider represented the hospitals. When they found out about Serafini's suit, all three joined forces and came up with a strategy: get Laura's statement to the Home-Owners adjuster out in front immediately.

"It was important for us to acknowledge the weakness in our case and to be up front about it," said Baker, of Miller, Johnson, Snell & Cummiskey PLC in Grand Rapids. "We as lawyers needed to maintain our integrity and credibility with the jury, and not make them think we were running away from anything.

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'This is the case, warts and all. This is what you're going to hear. And this is how we will address it and put it into context for you.'"

Serafini said that by bringing the lie up during voir dire and opening statements, "the elephant would be out of the room right out of the gate," setting up defendant's burden of proof to argue that Alison did not have permission to use the car and did not qualify for benefits.

"Within the first 10 minutes, I was playing that statement for the jury," he said. "I'm taking the wind out of [defendant's] sails. You won't get an 'a-ha' moment on me."

Monaco took the stand first and explained that somebody had told her permission wouldn't have mattered because Alison would still get full benefits under the policy, which did not have an excluded drivers provision.

Monaco acknowledged making the wrong decision, and testified that she regularly allowed Alison, an honors student, to use the car alone to go to school, softball practice and work.

People who saw

Baker said that having the mother "fall on her sword at trial and say 'I lied, here's why,'" would have some persuasive value, but rehabilitating the mother with testimony from disinterested witnesses would make a much stronger case.

So the next step was to get six witnesses to confirm that Alison would often be driving alone. (Alison died in a January 2015 house fire, and her deposition statements about being allowed to use the car alone were presented at trial.)

"We started digging in and scheduling depositions and asking them, point blank, whether she drove by herself, and they repeatedly kept saying, 'Yes, she'd come to work by herself in that red car and then she'd leave by herself in that red car in the month or two leading up to the accident,'" Baker said.

Serafini said Alison was taking college-level classes while attending high school. The teacher administering the college-level testing during the summer testified that Alison was due to see her the day of the accident. She also said Alison always arrived alone. When Alison didn't show up on the day of the accident, the teacher called her house with concern.

In addition, two other witnesses — a father and his son — came in and testified that they had seen the father, Brian Bruess, give Alison direct permission to use the car by herself prior to the accident. For example, one said he saw Bruess at the softball field, where Alison played, handing Alison the keys to the car to go to work.

"The last thing I said in my rebuttal was, 'I want you to think about this one thing when you go back there: What 15-year-old kid takes her parents' car without permission to take a test? They don't. It doesn't make sense,'" Baker said.

Interpreting dad's statement

Serafini and Baker said the defense was adamant that something Bruess said corroborated the mother's statement to the adjuster.

Baker said the ambulance driver at the scene of the accident claimed that Bruess said, "'I told her not to take the damn car.'" This, Baker said, was what the insurer argued was the "coup de grâce" and was to be meant to be interpreted as Bruess having not given Alison permission to use the car.

Baker said he asked if Bruess made that statement. He said Bruess didn't recall, explaining he was in a whirlwind of emotions at the time, but eventually said, "'Truthfully, I didn't agree with Laura in allowing [Alison] to drive. She was 15, she had a permit, I didn't agree.'"

But Bruess said that because Alison wasn't his biological daughter, and because Monaco owned the car, "'ultimately, it's the mom's call,'" before tearfully adding, "'[but] I should have stuck to my guns.'"

Baker said that the insurer tried to cast Bruess in a bad light. The insurer, however, did not attack the independent witnesses, because, according to Baker, "they were unassailable. They had no ax to grind, and they all say the same thing: they saw her driving around on a regular basis by herself prior to the collision."

The jury was out for less than two hours before determining that the insurer did not meet its burden in proving that Alison took the car without permission the day of the accident.

David M. Nelson of Willingham & Coté PC in East Lansing, who represented Home-Owners, did not return a request for comment.

Serafini said that after the trial, the jury foreperson told him how he saw the case: "'If someone is taking the car continuously without permission, there's an easy way to put a stop to it: I'd keep the keys in my pocket, and they're not going anywhere.' That was a very common sense way of analyzing the situation."

Baker agreed.

"From the get-go, I think the jury knew that both Phil and I were straight with them," he said.

If you would like to comment on this story, email Douglas Levy at douglas.levy@mi.lawyersweekly.com.

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