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STATE OF MICHIGAN

COURT OF APPEALS

AFFILIATED DIAGNOSTICS OF OAKLAND, LLC, Plaintiff-Appellant,	UNPUBLISHED November 23, 2026 2:16 PM
v	No. 366769 Washtenaw Circuit Court
HOME-OWNERS INSURANCE COMPANY, Defendant-Appellee.	LC No. 22-000331-AV 22-000656-AV

Before: KOROBKIN, P.J., and RIORDAN and MARIANI, JJ.

PER CURIAM.

This is a first-party action for payment of overdue personal protection insurance (PIP) benefits under Michigan's no-fault act, MCL 500.3101 *et seq*. Plaintiff provided healthcare services to an individual who had been involved in a motor vehicle collision. The individual assigned her rights to recover PIP benefits for those services to plaintiff, who then sought recovery from defendant. After defendant refused to pay, plaintiff filed the instant lawsuit which, following two trials in district court (and appellate proceedings in between), resulted in a $1,183 verdict in favor of plaintiff. Pursuant to MCL 500.3148(1), plaintiff was also awarded $89,822.48 in attorney fees and attendant interest for the litigation that the verdict required at the trial and appellate levels. Defendant appealed to the circuit court, which affirmed the verdict but reversed the award of fees and attendant interest on the basis that defendant had not unreasonably refused payment. Plaintiff now appeals by leave granted[1] the circuit court's reversal of the fee award. For the reasons set forth below, we reverse the circuit court's ruling as to the fee award, reinstate the district court's award of attorney fees and interest, and remand for further proceedings.

[1] A panel of this Court denied plaintiff's application for leave to appeal for lack of merit. *Affiliated Diagnostics of Oakland LLC v Home-Owners Ins Co*, unpublished order of the Court of Appeals, entered February 28, 2024. In lieu of granting leave to appeal, the Michigan Supreme Court remanded this case to this Court as on leave granted. *Affiliated Diagnostics of Oakland, LLC v Home-Owners Ins Co*, 515 Mich 932 (2024).

I. BACKGROUND

A. ACCIDENT & TREATMENT

This case arose from a motor vehicle collision that occurred on March 31, 2017. Sheree Thurmond, plaintiff's assignor, was riding in the front passenger seat of a car belonging to defendant's insured when the car was "T-boned" on the passenger side by another vehicle. Emergency services extricated Thurmond from the vehicle and transported her by ambulance to Henry Ford Hospital (Henry Ford), where she complained of chest discomfort, tingling on the right side of her upper and lower extremities, pain in the middle of her neck, chest pain in her mandible and jaw, and diffuse abdominal pain. She also reported a past medical history of diabetes and hypertension. CT scans of Thurmond's chest, abdomen, pelvis, thoracic spine, and lumbar spine were all negative for "acute posttraumatic sequelae," and an x-ray of her right shoulder was also negative. Thurmond was discharged from Henry Ford on April 1, 2017, with continued reports of midline cervical tenderness and weakness in her right upper and lower extremities.

On May 9, 2017, Thurmond received treatment from Dr. Hamad Houwari[2] at NextGen Pain Associates and Rehab. She reported pain in her neck, middle and lower back, right shoulder, and right knee. She informed Dr. Houwari that, at some point prior to the March 2017 collision, she had been diagnosed with chronic lumbar spondylosis, and she expressed concern that the collision had "extremely aggravated" that preexisting condition. Dr. Houwari's examination revealed that Thurmond had muscle spasms in her lumbar and thoracic spine as well as tenderness and a decreased range of motion. Dr. Houwari also observed tenderness and a painful, decreased range of motion in Thurmond's right shoulder and right knee. Dr. Houwari diagnosed Thurmond with cervicalgia, lumbago, and pain in her thoracic spine, right knee, and right shoulder. He concluded that these injuries were "causally-related to the accident that occurred" at the end of March 2017. Accordingly, he prepared a treatment plan for Thurmond's injuries which included prescriptions for new medication, physical therapy, and durable medical equipment (DME). The treatment plan did not mention additional diagnostic imaging.

Plaintiff performed MRIs on Thurmond's cervical spine, thoracic spine, lumbar spine, and pelvis on May 18, 2017. Plaintiff's records list Dr. Houwari as the referring physician. The record also contains a prescription—signed by Dr. Houwari on a prescription bearing plaintiff's letterhead—for MRIs of Thurmond's spine and pelvis. The prescription notes a diagnosis of "post traumatic cervical & lumbar radiculopathy [i.e., a pinched spinal nerve] & possible SI join inflammation." It also lists an incorrect date of birth for Thurmond.[3]

Thurmond assigned to plaintiff her right to collect PIP benefits for the services plaintiff provided to her, and plaintiff then submitted a claim for those services to defendant on June 19,

[2] According to defendant, Dr. Houwari has since passed away, although the precise timing of his passing is unclear.

[3] The prescription identifies Thurmond's date of birth as November 1, 1955, but she was born on August 12, 1964.

2017.[4] Plaintiff requested $4,750.00 for each MRI, for a total of $19,000.00. Defendant did not pay the claim. In the "Explanation of Review" letter sent to plaintiff in July 2017, defendant indicated that the submitted costs were "[p]ending investigation."

B. FIRST TRIAL & FIRST CIRCUIT COURT APPEAL

Plaintiff filed suit in district court on September 5, 2017, alleging, *inter alia*, that defendant failed to timely pay PIP benefits owed to plaintiff for the four MRIs it performed. Plaintiff sought $19,000 for its services plus interest, costs, and attorney fees. On October 23, 2018, defendant's claim adjuster, Charles Bloomfield, sent plaintiff's counsel a letter formally denying plaintiff's claim for PIP benefits. Bloomfield, who was the third adjuster assigned to plaintiff's claim by that time, wrote in relevant part:

> In reviewing Dr. Houwari's office visit records from 05/09/2017, I note that he does not specify any prescription for MRI's [sic] for Ms. Thurmond. Additionally, our investigation has revealed that the four MRI's [sic] which your client performed on 05/18/2017 were not reasonably necessary relative to injuries arising out of the 03/31/2017 motor vehicle accident.

Bloomfield also took issue with the cost submitted for each MRI, asserting that the cost per image was a markup of "over 1,700%" compared to the average charge for an MRI of $425. Bloomfield closed the letter by reiterating that plaintiff's claim was denied because "none of the four MRI's [sic] which were taken were reasonably necessary."

A two-day jury trial occurred on March 11 and 12, 2019. Defendant's principal argument was that there was no reasonable proof that Dr. Houwari prescribed any MRIs for Thurmond in connection with the March 2017 collision. Bloomfield testified that an August 29, 2017 note in the claim file showed that Thurmond had a "whole history of prior accidents" and a separate lawsuit against another insurer. He further testified that Thurmond's medical records demonstrated that she had a history of pain symptoms going back to 2000. Bloomfield also stated that medical opinions from Dr. Namaan, a physical medicine rehabilitation specialist, and Dr. "Soccu,"[5] an orthopedic surgeon, informed the decision to deny plaintiff's claim. The jury also viewed the video-deposition testimony from Dr. Naaman, who had performed an insurance medical examination[6] (IME) during the pendency of the litigation and opined that the MRIs were not reasonably necessary.

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[4] There is no dispute that, at the relevant time, defendant was the correct insurer to whom the claim should be submitted for payment.

[5] In the trial transcript, the doctor's name is spelled "Soccu," but it appears from the record that Bloomfield was referring to Dr. Saqqa, who is discussed below.

[6] Although the record refers to these examinations as "independent," this Court has previously opted to forgo that "euphemistic term of art." *Gueye v State Farm Auto Ins Co*, 343 Mich App 473, 478 n 2; 997 NW2d 307 (2022) (quotation marks and citation omitted).

The jury returned a verdict in favor of plaintiff, finding that the MRIs were reasonably necessary and that payment for those MRIs was overdue. The jury awarded plaintiff $19,000 in allowable expenses and $3,420 in interest; the district court also awarded plaintiff $19,075 in attorney fees pursuant to MCL 500.3148(1). Defendant appealed to the circuit court. Citing evidentiary errors made by the district court, the circuit court vacated the jury's verdict, vacated the monetary award to plaintiff in all respects, and remanded for a new trial on all issues. This Court denied plaintiff's application for leave to appeal.[7]

C. SECOND TRIAL & POST-TRIAL MOTIONS

The second jury trial took place on October 4 and 5, 2021. Beforehand, defendant moved for a special jury instruction regarding fraud, asserting that Thurmond had fraudulently misrepresented her medical history, her ability to use her left shoulder, and her ability to walk without a cane. The district court denied defendant's motion.

At the second trial, defendant advanced the same principal theory of the case as it had at the first trial, but offered a substantial amount of new evidence in support. This included new evidence regarding Thurmond's prior car accidents and her history of chronic neck and back pain, as well as new medical testimony. As to the latter, in addition to reading Dr. Naaman's deposition testimony into the record, defendant admitted the video deposition of Dr. George Saqqa, an orthopedic spine specialist, who conducted an IME on December 18, 2018 and who, like Dr. Naaman, opined that Thurmond's MRIs were not reasonably necessary. That said, Dr. Saqqa—who was aware of Thurmond's history of neck and back pain—also opined that the subject accident "may have aggravated [Thurmond's] preexisting condition." Defendant also played for the jury video depositions from Dr. David Rossow, a radiologist who had also conducted an IME, and Dr. Zachary Delproposto, an emergency radiologist who had been involved in Thurmond's treatment at Henry Ford. Dr. Rossow testified that he did not see, in his review of scans and MRIs of Thurmond, indication of traumatic injury caused by the subject accident. Dr. Delproposto testified similarly based on the information he knew about Thurmond at the time of her treatment at Henry Ford, but he acknowledged that MRIs and CT scans might reveal different information since MRIs "show some things in much more detail."

Charles Bloomfield also testified for defendant at the second trial. While expounding upon the rationale for the October 2018 denial, he explained that the file on plaintiff's claim contained: records from plaintiff, Dr. Houwari's office, and Henry Ford; the police report from the subject accident; pictures of the vehicles involved; the appraisal report of defendant's insured's vehicle; the tow company's bills; documents from the providers of defendant's DME and physical therapy; surveillance of Thurmond performed at defendant's request; and IME reports. As for Thurmond's preexisting conditions and history of accidents, Bloomfield testified that defendant first learned of such information during an "examination under oath" (EUO) on July 24, 2017, which prompted "further investigation . . . to discern exactly what condition she was in before the accident and

[7] *Affiliated Diagnostics of Oakland, LLC v Home-Owners Ins Co*, unpublished order of the Court of Appeals, entered March 31, 2020 (Docket No. 351684).

what changes took place because of the accident." Bloomfield also agreed that the aggravation of a preexisting condition constituted a compensable injury for purposes of the no-fault act.

The jury again returned a verdict in plaintiff's favor, concluding that Thurmond suffered accidental bodily injury arising from the subject accident and that she incurred allowable expenses as a result. This time, however, the jury awarded plaintiff $786 in overdue PIP benefits. Combined with interest thereon, the jury awarded plaintiff a total of $1,183.

Plaintiff then moved for, among other things, attorney fees pursuant to MCL 500.3148(1) because defendant's initial refusal to pay PIP benefits on the MRIs was presumptively unreasonable given the jury's verdict. For the 253.3 hours counsel reportedly spent litigating the case to that point,[8] plaintiff posited that a fee award of $88,655 (at $350 per hour) or $75,990 (at $300 per hour) would be reasonable. Defendant filed its own motion for attorney fees pursuant to MCL 500.3148(2) and stipulated on the record that its counsel expended 444.6 hours litigating the case, including appellate litigation. After hearing oral arguments on the parties' respective motions, the district court issued an 11-page opinion and order that denied defendant's motion and granted plaintiff's motion insofar as it agreed that defendant's initial denial of benefits was unreasonable. The district court stated that defendant's initial "refusal to pay in this matter was based on nothing of record" since the "[p]ending investigation" notation in the "Explanation of Review" document was tantamount to "saying nothing." Accordingly, the court could not ascertain the basis for defendant's initial refusal to pay. Stressing the 16-month span between that refusal to pay and defendant's formal denial of plaintiff's claim, the court took issue with defendant's attempt to fill the "information hole . . . two to four years after the fact" and found that defendant's post hoc investigation undercut its "argument that it had a legitimate factual uncertainty" at the time of its initial denial.

At a subsequent hearing, the district court held that the time plaintiff's counsel spent litigating the first trial and first appeal was compensable. After incorporating its fee determination from the first trial—which awarded plaintiff $19,075.00 for 75.8 hours at an hourly rate of $250—the court's focus turned to calculating the appropriate fee for the remaining 176.2 hours plaintiff's counsel reportedly spent litigating the first-trial appeal and the ensuing second trial.[9]

The court heard testimony from David Christensen, an experienced attorney who specialized in automobile negligence and no-fault insurance. Christensen testified that plaintiff's counsel's performance was exemplary considering that (1) defense counsel's firm was not only "at the very peak of the defense bar" for no-fault litigation but also steadfastly committed to the litigation, as evinced by its use of testimony from three IME physicians; (2) Bloomfield was a "very significant" opponent given his sophisticated understanding of the law and the claim file;

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[8] Plaintiff's counsel explained that he "did not use any sort of software to track his hours" but "went to great lengths to properly estimate his time" through other means and also "purposely left out time" spent on certain tasks.

[9] Though plaintiff's motion for fees indicated a total of 253.3 hours, the total number of hours considered at the hearing was 252 hours, and this latter figure is consistent with the itemization of plaintiff's hours in the record.

and (3) Thurmond had a lengthy history of preexisting injuries and car accidents. In Christensen's estimation, the contingency-fee arrangement between plaintiff and plaintiff's counsel only compounded the case's complexity for counsel. He also "guessed that [plaintiff's counsel] left a lot out" of his itemization of hours since the 252 hours counsel reported "sound[ed] low to [him.]" Plaintiff's counsel also testified. He explained that there were "a lot of complications with trying this case," especially since the issues in the case were "constantly moving." And as for his itemization of hours, counsel testified that he relied on metadata from Microsoft Word documents he prepared throughout the case. He offered to explain his hours "line by line," but defendant declined.

After the close of proofs, the district court made its findings. First, it determined that plaintiff's counsel was an "above average attorney." Looking at the rates charged in Washtenaw County, the situs of the district court, as reported in the 2020 State Bar of Michigan's Economic Law Survey (SBM Survey), the court found that an hourly rate of $340[10] was appropriate for "everything that occurred after the first trial" given that counsel had gained more experience and further sharpened his legal acumen since the first trial. The court also concluded that this hourly rate was reasonable based on the factors enumerated in *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008). The court found counsel's itemization of hours reasonable as well. It took no issue with how counsel calculated his hours and observed that defense counsel had expended "between double and triple" the time litigating the case. Accordingly, the court found a fee award of $59,908 to be reasonable.

When combined with the fee award from the first trial, the total award of attorney fees under MCL 500.3148(1) amounted to $78,983.00. In addition to those fees and the jury's award of overdue benefits and interest, the court awarded plaintiff $162.35 in interest under the Revised Judicature Act, MCL 600.101 *et seq.* (RJA), $170 in taxable costs, $23.33 in RJA interest on those costs, and $10,839.48 in RJA interest on plaintiff's attorney fees. The district court ultimately entered judgment for plaintiff in the amount of $91,361.61.

D. SECOND CIRCUIT COURT APPEAL

Defendant appealed the verdict and fee award to the Washtenaw Circuit Court. As to the verdict, defendant argued that a new trial was warranted because the district court erred by denying defendant's motion for a special jury instruction. And as to the fee award, defendant contended that its denial of plaintiff's claim was reasonable because there was a bona fide factual uncertainty regarding the reasonable medical necessity of plaintiff's MRIs and that the district court erred by concluding otherwise. In the alternative, defendant asserted that the fee award was unreasonable because the hourly rate was not commensurate with plaintiff's counsel's level of experience, the itemization of counsel's hours was unsubstantiated, and the reasonableness factors favored a lesser award. Defendant also argued that (1) any award of fees was capped by the district court's $25,000 jurisdictional limit; (2) plaintiff could not recover attorney fees for the time plaintiff's counsel spent litigating the first trial, first appeal, and the issue of attorney fees; and (3) plaintiff could not

[10] According to the SBM Survey, the average hourly rate in Washtenaw County was $331.

recover taxable costs because defendant was the prevailing party following the first trial in light of its favorable decision on the first appeal.[11]

After a hearing on the matter, the circuit court issued an order upholding the jury's verdict but vacating the district court's award of attorney fees and interest. As relevant here, the circuit court held that the fee award "was outside the range of reasonable and principled outcomes and therefore an abuse of discretion" because defendant "DID justify [its] delay" in paying plaintiff's claim—namely, by demonstrating the existence of a "bona-fide factual uncertainty" that rendered defendant's "initial refusal to pay" reasonable.[12] The circuit court explained:

> Evidence at the time supported [defendant's] conclusion that Thurmond had an extensive history of pre-accident pain complaints, including receiving treatment from a doctor shortly before the accident for the same complaints. There was a legitimate question about whether the doctor's order included an MRI, a later referral made no reference to a motor vehicle accident. There was a reasonable belief that the MRIs were more related to Thurmond's years of back pain, rather than the [subject accident.]"

Accordingly, the circuit court vacated the district court's award of attorney fees and attendant interest; it did not, however, vacate the other costs the district court awarded to plaintiff as the prevailing party. Plaintiff thereafter filed a motion for reconsideration, which the circuit court denied.

This appeal followed.

II. STANDARDS OF REVIEW

"The trial court's decision about whether the insurer acted reasonably involves a mixed question of law and fact. What constitutes reasonableness is a question of law, but whether the defendant's denial of benefits is reasonable under the particular facts of the case is a question of fact." *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008) (quotation marks and citation omitted). While we review questions of law de novo, "a trial court's findings of fact are reviewed for clear error." *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008). "A decision is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* (quotation marks and citation omitted).

The trial court's award of attorney fees and costs is reviewed for an abuse of discretion. *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.* This standard "acknowledges that there will be circumstances in which there will

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[11] Defendant raised the same arguments before the district court, but to no avail.

[12] As discussed in this opinion, while the circuit court referred to defendant's "delay" in paying plaintiff's claim, the record makes clear that defendant refused to pay any part of the claim and had not made any payment by the time of the circuit court's decision (and indeed, still had not done so by the time of oral argument before this Court).

be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006) (quotation marks and citation omitted). "A trial court necessarily abuses its discretion when it makes an error of law." *Pirgu*, 499 Mich at 274.

We review de novo issues of statutory interpretation. *Moore*, 482 Mich at 516. When interpreting statutes, our primary goal is to discern the Legislature's intent based on the "common and ordinary meaning" of the statute's text; when the text is unambiguous, "we presume that the Legislature intended the meaning that it clearly expressed, and further construction is neither required nor permitted." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205-206; 815 NW2d 412 (2012).

III. ANALYSIS

On appeal, plaintiff argues that the circuit court erred by vacating the district court's fee award and seeks reinstatement of that award. In response, defendant asserts, as it did in the circuit court, that (1) plaintiff is not entitled to attorney fees under MCL 500.3148(1), and (2) the district court's fee award was unreasonable and otherwise improper.

A. ENTITLEMENT TO FEES UNDER MCL 500.3148(1)

The Legislature enacted the no-fault act's "system of compulsory insurance" with the "goal of providing victims of motor vehicle accidents with assured, adequate, and prompt reparation for certain economic losses[.]" *Andary v USAA Cas Ins Co*, 512 Mich 207, 216; 1 NW3d 186 (2023) (quotation marks and citation omitted). Correspondingly, the no-fault act makes clear that PIP benefits owed under the act are "overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2). As relevant here, PIP benefits include "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). An insurer is only obligated to pay benefits "to the extent the claimed benefits are causally connected to the accidental bodily injury arising out of an automobile accident." *Synergy Spine & Orthopedic Surgery Ctr, LLC v State Farm Mut Auto Ins Co*, 350 Mich App 678, 690; 33 NW3d 893 (2024) (quotation marks and citation omitted). The aggravation of a preexisting injury is a compensable injury under the no-fault act. See *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000); *Fisher v Blankenship*, 286 Mich App 54, 63; 777 NW2d 469 (2009).

The no-fault act also includes an attorney-fee provision, MCL 500.3148(1), which acts as a "penalty provision . . . to ensure prompt payment to the insured." *Ross*, 481 Mich at 11. As explained in *Moore*, 482 Mich at 517:

> MCL 500.3148(1) establishes two prerequisites for the award of attorney fees. First, the benefits must be overdue, meaning "not paid within 30 days after [the] insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2). Second, in postjudgment proceedings, the trial court must find that the insurer "unreasonably refused to pay the claim or unreasonably delayed in making proper payment." MCL 500.3148(1). Therefore,

> assigning the words in MCL 500.3142 and MCL 500.3148 their common and ordinary meaning, "attorney fees are payable only on overdue benefits for which the insurer has unreasonably refused to pay or unreasonably delayed in paying." *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 485; 673 NW2d 739 (2003) (emphasis omitted).

"When an insurer refuses to make or delays in making payment, a rebuttable presumption arises that places the burden on the insurer to justify the refusal or delay." *Slocum v Farm Bureau Gen Ins Co of Mich*, 328 Mich App 626, 643; 939 NW2d 717 (2019) (quotation marks and citation omitted). The insurer's refusal or delay "is not unreasonable if it is based on a legitimate question of statutory construction, constitutional law, or factual uncertainty." *Ivezaj v Auto Club Ins Ass'n*, 275 Mich App 349, 353; 737 NW2d 807 (2007) (quotation marks and citation omitted). "[T]he scope of inquiry under [MCL 500.3148] is not whether the insurer ultimately is held responsible for a given expense, but whether its initial refusal to pay the expense was unreasonable." *Moore*, 482 Mich at 525 (quotation marks and citation omitted; second alteration in original).

Applying these principles to the instant appeal, we first note—and the parties do not dispute—that defendant's refusal to pay plaintiff's claim was presumptively unreasonable in light of the jury's verdict. See *Slocum*, 328 Mich App at 643. To rebut this presumption and escape penalty under MCL 500.3148(1), defendant argues that its refusal to pay was grounded in a bona fide factual uncertainty because there was a legitimate dispute as to whether the MRIs were reasonably necessary. We disagree.

As noted, the no-fault act, pursuant to MCL 500.3142(2), provides a "thirty-day legislative grace period" for insurers to investigate the propriety of a submitted claim. *Williams v AAA Mich*, 250 Mich App 249, 267; 646 NW2d 476 (2002). By the end of that legislatively prescribed period, an insurer must decide whether to pay the claimed benefits. See *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 600-602; 648 NW2d 591 (2002) (holding that an insurer cannot "vitiate" its "duty to pay benefits in a timely fashion" by contracting around MCL 500.3142(2)). Correspondingly, when an insurer does not pay a submitted claim by the end of that 30-day period, whether that decision was based on a bona fide factual uncertainty for purposes of MCL 500.3148(1) depends on "the circumstances as they existed at the time the insurer made the decision[.]" *Brown v Home-Owners Ins Co*, 298 Mich App 678, 691; 828 NW2d 400 (2012); see also *Ivezaj*, 275 Mich App at 355 (remarking that rebutting the presumption of unreasonableness hinges on evidence available "*at the time it initially refused to make the payments*"). As defendant received plaintiff's claim on June 19, 2017, our review of the reasonableness of defendant's decision not to pay plaintiff's claim is limited to the evidence that was before defendant as of July 19, 2017.

Defendant posits that its "denial of [plaintiff's] claim was reasonable and supported by substantial evidence." Because Thurmond's CT scans following the subject accident were negative for acute trauma, defendant reasons, the MRIs were not reasonably necessary, and Dr. Houwari's records confirm this conclusion because his treatment plan did not include an order for MRIs. And the only evidence to the contrary—the prescription on plaintiff's letterhead bearing Dr. Houwari's signature—makes no reference to a motor vehicle accident and incorrectly lists Thurmond's date of birth. Considering Thurmond's extensive history of chronic neck and back pain, defendant maintains that it "had every reason to believe that the MRIs were related to [her

preexisting conditions] rather than [the subject accident]." The IMEs, defendant says, only confirmed that the MRIs were unnecessary and supported its refusal to pay plaintiff's claim

We are not persuaded. Like the circuit court, defendant erroneously relies on evidence that it did not have until *after* July 19, 2017. Bloomfield testified that defendant first learned of Thurmond's medical history following the EUO that occurred on July 24, 2017 and that prompted a "request[ ] for medical records." As defendant was not aware of Thurmond's complete medical history until July 24 at the earliest, such evidence cannot be used to show that defendant's refusal to pay plaintiff's claim on July 19 was reasonable. The circuit court therefore erred when it relied on Thurmond's "extensive history of pre-accident pain complaints" to conclude that defendant's refusal to pay was reasonable under MCL 500.3148(1). See *Ivezaj*, 275 Mich App at 355.

In fact, the only preexisting conditions reflected in the records defendant had as of July 19 were Thurmond's diabetes and hypertension (which were reported to Henry Ford) and her chronic lumbar spondylosis (which was reported to Dr. Houwari). Those records reflect that, of the physicians who evaluated Thurmond between the subject accident and July 19, only Dr. Houwari was aware of defendant's chronic lumbar spondylosis diagnosis.[13] And it was Dr. Houwari's "professional medical opinion" that the pain Thurmond was experiencing was "causally-related" to the subject accident. That the physicians conducting the IMEs opined otherwise is immaterial since those examinations all occurred after July 19, 2017.

Defendant's argument questioning whether Dr. Houwari ordered the MRIs is also unavailing. While Dr. Houwari's treatment plan did not refer to further diagnostic imaging, plaintiff's MRI reports clearly list Dr. Houwari as the referring physician. Defendant also ignores the "post traumatic" notation included on the prescription, which aligns with Dr. Houwari's attribution of Thurmond's injuries and pain to the subject accident. And though defendant takes issue with the incorrect date of birth on the prescription, Bloomfield affirmed that the October 2018 denial letter said nothing about Thurmond's date of birth being wrong, and there is nothing to indicate that this error was part of defendant's evaluation between June 19, 2017, and July 19, 2017 or would have provided a reasonable basis in itself for defendant's refusal to pay at that time.

Finally, defendant points out that the CT scans performed at Henry Ford after the accident were all negative. But as Dr. Delproposto testified, an MRI "show[s] some things in much more detail" compared to a CT scan, and as discussed, the record before defendant on July 19, 2017 indicated that Dr. Houwari—based on his evaluation of Thurmond and his knowledge of her medical history—concluded that Thurmond's injuries were causally related to the subject accident and that MRIs were needed to properly assess and treat them. There is nothing in that record to indicate that such MRIs were not, in fact, reasonably necessary simply because the CT scans were negative.

On the record that is properly considered for purposes of MCL 500.3148(1), defendant has failed to show that its initial refusal to pay plaintiff's claim was based on a legitimate factual

[13] Though Dr. Delproposto reviewed Thurmond's spinal scans at Henry Ford following the subject accident, Thurmond had not reported a preexisting chronic lumbar spondylosis diagnosis to Henry Ford.

uncertainty regarding the reasonable necessity of the MRIs at issue. See *Ivezaj*, 275 Mich App at 354. More to the point, we fail to see any legal or clear factual error in the district court's conclusion to that effect. See *Moore*, 482 Mich at 516. Accordingly, the district court did not reversibly err by concluding plaintiff was entitled to attorney fees under MCL 500.3148(1) and the circuit court erred by vacating the fee award on that basis.

B. REASONABLENESS AND PROPRIETY OF FEE AWARD

Defendant next argues that, even if plaintiff is entitled to attorney fees under MCL 500.3148(1), the amount of the district court's fee award was unreasonable and contrary to law. Defendant's arguments lack merit.[14]

When determining the reasonableness of an award of attorney fees, our Supreme Court has instructed lower courts to begin "by determining the fee customarily charged in the locality for similar legal services" based on "reliable surveys or other credible evidence of the legal market." *Smith*, 481 Mich at 530-531. The hourly rate is then multiplied "by the reasonable number of hours expended in the case." *Id.* at 531. Then, the court should consider "whether an up or down adjustment is appropriate," *id.*, based on: "(1) the experience, reputation, and ability of the lawyer or lawyers performing the services"; "(2) the difficulty of the case, i.e., the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly"; "(3) the amount in question and the results obtained"; "(4) the expenses incurred"; "(5) the nature and length of the professional relationship with the client"; "(6) the likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer"; "(7) the time limitations imposed by the client or by the circumstances"; and "(8) whether the fee is fixed or contingent." *Pirgu*, 499 Mich at 282. "These factors are not exclusive, and the trial court may consider any additional relevant factors." *Id.*

According to defendant, the district court erred at each step of the reasonableness analysis. To start, defendant argues in its brief that the $340 hourly rate reached by the district court for proceedings following the first trial was unreasonable.[15] At oral argument before this Court, however, defense counsel acknowledged that "the rate in this case was not . . . out of the ordinary." Even setting this concession aside, we do not see merit in defendant's previously offered position—namely, that the $340 hourly rate is excessive considering plaintiff's counsel's six years of experience at the time of the second trial and the modest jury award he achieved. In line with *Smith*, the district court relied on the SBM Survey and decided an hourly rate of $340 was

[14] At the outset, we note that one such contention is not properly before this Court. Defendant posits that plaintiff is not entitled to an award of costs where defendant was the prevailing party. The circuit court, however, deemed plaintiff the prevailing party and, as a result, did not vacate the district court's award of costs. Defendant did not file a cross-appeal on this issue, and so it cannot seek relief for it through the instant appeal. See *Barrow v City of Detroit Election Comm*, 305 Mich App 649, 683; 854 NW2d 489 (2014).

[15] As mentioned, the district court incorporated its fee award from the first trial; that award included an hourly rate of $250. Defendant's briefing on this issue makes no mention of this fact and focuses solely on the larger hourly rate awarded following the second trial.

appropriate based on counsel's overall performance since the first trial. The district court accounted for plaintiff's counsel's level of experience in doing so. While defendant disagrees with the trial court's assessment in that regard, it has not shown how, based on the information before the court, that assessment fell outside the range of reasonable and principled outcomes. See *Maldonado*, 476 Mich at 388.

Next, defendant takes issue plaintiff's counsel's itemization of his hours. Citing *Augustine v Allstate Ins Co*, 292 Mich App 408, 433-434; 807 NW2d 77 (2011), defendant maintains that plaintiff's counsel's failure to contemporaneously track his hours renders the number of compensable hours speculative. This Court, however, recently rejected the notion that "*Augustine*—or any other case this Court is aware of—requires contemporaneous timekeeping." *Zielinski v Auto-Owners Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 371692); slip op at 13. The record in this case shows that plaintiff's counsel relied on metadata to determine the number of hours he expended—a method defendant has not attacked as inaccurate or unreliable—as well as that plaintiff left time out of his accounting and that his itemized hours totaled less than half of the time defense counsel expended on the case—points defendant does not attempt to rebut. We fail to see how the district court abused its discretion in this regard.

Defendant also argues that the fee award cannot include time expended litigating the first trial or first appeal because those proceedings ultimately did not result in a finding that benefits were overdue. MCL 500.3148(1) "authorizes an award of attorney fees only in conjunction with representation concerning personal or property protection insurance benefits that are overdue." *McKelvie v Auto Club Ins Ass'n*, 459 Mich 42, 48; 586 NW2d 395 (1998) (quotation marks and citation omitted). "[I]n determining the baseline fee in accordance with *Pirgu*, the court is to include all attorney time that was relevant to recovery of the overdue benefit, even if that time was also relevant to other aspects of the case." *Komendat v Gifford*, 334 Mich App 138, 158; 964 NW2d 75 (2020). Furthermore, "attorney fees for services on appeal can be awarded under MCL 500.3148(1)." *Bonkowski v Allstate Ins Co*, 281 Mich App 154, 181; 761 NW2d 784 (2008) (cleaned up). The first trial and first appeal each involved the merits of plaintiff's claim—that is, both proceedings were "relevant to recovery of the overdue benefit[s]." *Komendat*, 334 Mich App at 158. It follows that plaintiff's counsel's efforts "in conjunction with [that] representation" are compensable. *McKelvie*, 459 Mich at 48.

Citing *McKelvie*, defendant further asserts that plaintiff cannot be awarded attorney fees for time spent litigating the issue of attorney fees. In *McKelvie*, the defendant paid the overdue benefits to the plaintiff in accordance with the jury's verdict, and the circuit court awarded attorney fees pursuant to MCL 500.3148(1). *Id.* at 45. The parties appealed issues related to the fee award and the calculation of interest and, after this Court affirmed, the plaintiff moved in the circuit court for attorney fees in connection with that appeal. *Id.* at 45-46. The circuit court denied that motion; this Court, in a split decision, reversed and remanded. *Id.* at 46-47. Our Supreme Court, however, agreed with the dissenting opinion from this Court and reinstated the circuit court's ruling. *Id.* at 49. The Supreme Court reasoned that the litigation concerning appellate fees fell outside MCL 500.3148(1)'s scope because the "defendant had paid the no-fault benefits before taking the initial appeal and did not raise on appeal any issue related to its liability for those benefits"; accordingly, the appeal "did not concern the disputed benefits, and the accompanying expense of appellate counsel was not incurred for the purpose of obtaining those benefits." *Id.* at 48. The Court noted that "[t]he intent of the Legislature was that insured persons promptly receive the benefits required

by law," and "[s]uch persons would not be aided by an interpretation that rendered irrelevant [the defendant's] decision to pay the disputed benefits before undertaking an appeal of the . . . attorney-fee award." *Id.* at 49.

While *McKelvie* is instructive, it is distinguishable here. The district court's fee award in this case accounted for time plaintiff's counsel spent litigating attorney fees after both trials. Unlike *McKelvie*, defendant had not paid the overdue benefits awarded to plaintiff prior to the proceedings for which fees were sought—and indeed, per defense counsel's representation at oral argument before this Court in May 2026, defendant still had not paid the jury's verdict at that time.[16] As a result, litigation concerning attorney fees remained intertwined with the recovery of overdue benefits, rendering the time expended during such litigation compensable. See *McKelvie*, 459 Mich at 48; *Komendat*, 334 Mich App at 158. Such a conclusion is consistent with "[t]he intent of the Legislature . . . that insured persons promptly receive the benefits required by law." *McKelvie*, 459 Mich at 49; see also *Ross*, 481 Mich at 11; *Andary*, 512 Mich at 216.[17]

Defendant also challenges the district court's reasonableness analysis on three discrete issues. It first asserts that the issues presented in this case "were neither novel nor difficult" because "the case involved a single bill . . . and no medical evidence on [plaintiff's] part." Defendant, however, overlooks the complexities in litigating this case that informed the district court's assessment. Defendant does not dispute that it was represented by counsel at the top of the no-fault defense bar, and as detailed above, plaintiff was required to litigate the matter twice, with defendant offering in the second trial a substantial amount of additional evidence not presented at the first. And as the district court stated, "[E]verything was a fight. There were lots of motion[s]. There were lots of motions in limine. All of the elements of the trial were fought twice." We see no abuse of discretion in the district court's analysis of this point. Second, and relatedly, defendant notes that the case required "minimal appearances" from plaintiff's counsel; defendant does not, however, explain why that would render the fee award an abuse of discretion, particularly in light of the complexities and demands otherwise presented by the litigation.

Third, defendant stresses the disparity between the amount of benefits plaintiff sought and the modest jury verdict it ultimately secured. The district court acknowledged that "the amount received was not the same as the amount in question," but the court noted that the amount remained

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[16] We note further that, while defendant has not sought reversal of the verdict in the instant appeal, defendant still raises a harmless-error argument premised on impugning the verdict's validity. Given the lack of a cross-appeal challenging the verdict, we see no basis to entertain this argument. See *Borrow*, 305 Mich App at 683. It strikes us, however, that the very presentation of this argument to this Court stands in contrast to the defendant in *McKelvie*, who "did not raise on appeal any issue related to its liability for [the] benefits" at issue. 459 Mich at 48 (quotation marks and citation omitted).

[17] On appeal, plaintiff argues that, in addition to the fees already awarded by the district court, it is entitled to fees for the time spent litigating this matter since that award. Whether attorney fees may be awarded for litigation in connection with the second circuit court appeal and the instant appeal is a question for the district court to resolve in the first instance, should plaintiff opt to pursue it. See *Bonkowski*, 281 Mich App at 181.

a net positive in favor of plaintiff since "benefits were at least ordered" and that defendant's "position of nothing, we will pay nothing on this case, was stood on its head twice[.]" Defendant has not identified a factual or legal error in this rationale, nor have we found authority to that effect. Cf. *Komendat*, 334 Mich App at 154 n 7 (noting that no case has determined that a fee award calculation is improper because it is "a greater portion of the sought fee than is the amount of overdue benefit in relation to the entire claim"). The trial court, in its discretion, can adjust a fee award based on the results achieved, but it need not do so "as long as the ultimate award remains reasonable." *Tinnin v Farmers Ins Exch*, 287 Mich App 511, 522; 791 NW2d 747 (2010) (affirming $57,960 award of attorney fees despite an award of $1,235 in overdue benefits on a claim for $90,000 in attendant care services). The district court—which expressly considered the amount sought and result achieved—deemed its fee award reasonable. It may well be that a different conclusion, or a lesser fee award, would be within the range of reasonable and principled outcomes. But that does not mean the district court abused its discretion in reaching the conclusion it did, see *Maldonado*, 476 Mich at 388, and defendant has provided no colorable basis to disrupt that conclusion on appeal.

Finally, defendant maintains that any award of attorney fees in this case is necessarily capped at the district court's jurisdictional limit of $25,000. As a general rule, "a district court determines the amount in controversy using the prayer for relief set forth in the plaintiff's pleadings, *calculated exclusive of fees, costs, and interest*." *Hodge v State Farm Mut Auto Ins Co*, 499 Mich 211, 223-224; 884 NW2d 238 (2016) (emphasis added). Though the amount-in-controversy calculation may include "contractual attorney fees," *ABCS Troy LLC v Loancraft LLC*, 337 Mich App 125, 140; 972 NW2d 317 (2021), no such attorney fees are at issue here, and we do not see any reason in this case to deviate from the general rule set forth in *Hodge*.

IV. CONCLUSION

For the reasons discussed, the circuit court erred when it vacated the district court's award of attorney fees and attendant interest, and we are not convinced by defendant's arguments to the contrary. Accordingly, we reverse the circuit court, reinstate the district court's fee award, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel S. Korobkin
/s/ Philip P. Mariani