

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

CHAMPLOST FAMILY PRACTICE	:	May Term, 2002
	:	
v.	:	No. 1167
	:	
STATE FARM INSURANCE CO.	:	
	:	
v.	:	CONSOLIDATED CASES
	:	
CHAMPLOST FAMILY PRACTICE,	:	(Commerce Program)
INC. and CHAMPLOST FAMILY	:	
MEDICAL PRACTICE, P.C. and	:	
ALAN LICHT and ALEXANDER S.	:	
FINE, M.D.	:	

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STATE FARM MUTUAL	:	January Term, 2004
AUTOMOBILE INSURANCE CO.	:	
AND STATE FARM FIRE AND	:	No. 02669
CASUALTY COMPANY	:	
	:	
v.	:	
	:	
CHAMPLOST FAMILY PRACTICE,	:	
INC. and CHAMPLOST FAMILY	:	
MEDICAL PRACTICE, P.C. and	:	Superior Court Docket Nos.
ALEXANDER S. FINE, M.D. and	:	769 EDA 2007
OSCAR KATZ	:	877 EDA 2007

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**OPINION**

**Albert W. Sheppard, Jr., J. ....July 10, 2007**

This Opinion is submitted relative to the cross-appeals of plaintiffs/cross-claim defendants, Champlost Family Medical Practice, P.C. (“Champlost”) and Allan Licht (“Licht”), and defendant/cross-claim plaintiff, State Farm Insurance Co. (“State Farm”)

of this court's Order of March 8, 2007. In that Order, this court granted State Farm's Petition for Attorneys' Fees under 18 Pa.C.S.A. § 4117(g) in the amount of \$200,000: \$100,000 to be paid by Champlost Family Medical Practice, and \$100,000 to be paid by Alan Licht.

The parties also appeal the January 24, 2007 Order relative to Post-Trial Motions in which this court: (1) vacated the jury's \$560,000.00 compensatory damage award in favor of State Farm; (2) upheld the jury's \$100,000.00 punitive damage award in favor of State Farm; and (3) denied State Farm's Motion for Treble Damages.

For the reasons discussed, this court respectfully submits that its Orders should be affirmed.

### **BACKGROUND**

Champlost was a physical therapy practice located in Philadelphia, Pennsylvania that provided care and treatment to, among others, State Farm policyholders. Under Pennsylvania law, State Farm is required to pay necessary and reasonable medical expenses on behalf of its policyholders for injuries arising out of the use or operation of a motor vehicle. Alan Licht was an owner and/or administrator of Champlost.

Beginning in 1992, Champlost submitted bills to State Farm seeking reimbursement for physical therapy treatments allegedly rendered to State Farm policyholders for injuries sustained in motor vehicle accidents. Included in these bills were copies of medical records and HCFA-1500 forms that purported to document examinations and physical therapy treatments given by Champlost's physician employees. Champlost used a pre-printed "treatment plan" form to document the physical therapy treatments given to patients, which was then submitted to State Farm for

reimbursement. At trial, Jeffery Denner (“Denner”), a State Farm claims representative, testified that between 1992 and 2002, State Farm reimbursed Champlost for physical therapy services allegedly rendered to its policyholders in the amount of \$1.3 million.

On or about October 11, 2002 Champlost filed its Second Amended Complaint against State Farm alleging violations of 75 Pa.C.S.A. § 1716 and 42 Pa.C.S.A. § 8371. Champlost alleged that State Farm failed to pay benefits due on its insureds in the amount of \$300,000.00. On or about January 21, 2004 State Farm brought suit against Champlost, Licht, and others alleging, *inter alia*, common law fraud and statutory insurance fraud under 18 Pa.C.S.A. §§ 4117(a)(2), (a)(3), (a)(5), and (a)(6). The two cases were consolidated.

State Farm initiated its lawsuit against Champlost after State Farm uncovered evidence that suggested that Champlost was engaging in fraudulent billing practices. Lillian Gregg, a former employee of Champlost, testified in her December 18, 2002 deposition that physical therapy treatments were regularly administered to patients by unlicensed medical assistants. She also testified that physical therapy treatments were administered without a physician present. Further, Champlost instructed its medical assistants to use “post-it” notes to document any divergence from the pre-printed treatment plan, such as if a patient regularly refused a specific physical therapy treatment.

Such changes to the treatment plan were not made part of the patient’s physical therapy record, nor did the record reflect that treatment was given by a medical assistant rather than a licensed physician. However, Champlost billed State Farm as if all physical therapy services recorded in the patient’s treatment plan were performed, and as if all physical therapy services were performed by a licensed physician.

At trial, several State Farm insureds who received physical therapy services at Champlost testified that they were not given all of the treatments for which Champlost sought reimbursement. In addition, State Farm introduced evidence of which treatments were billed (and the corresponding dollar amounts) for these same insureds in excess of what the insureds testified they actually received.

The jury found in favor of State Farm and against both Champlost and Licht on State Farm's claims of statutory insurance fraud and common law fraud. The jury awarded State Farm \$560,000.00 in compensatory damages and \$100,000.00 in punitive damages.

After a hearing on post-trial motions, in an Order dated January 24, 2007, this court vacated the jury's compensatory damage award, on the ground that the jury improperly relied upon testimony that was speculative. This court upheld the jury's punitive damage award.

In its January 24, 2007 Order, this court granted State Farm's Petition for Attorneys' Fees and held a hearing on the matter on March 5, 2007. State Farm sought \$304,546.00 in attorneys' fees. This court granted State Farm \$200,000.00 in fees: \$100,000.00 to be paid by Champlost Family Medical Practice, P.C., and \$100,000.00 to be paid by Alan Licht.

These appeals followed.

### **DISCUSSION**

In its Statement of Matters Complained of on Appeal, Champlost contends that this court erred: (1) in entering judgment in the amount of \$100,000.00 in favor of State Farm for punitive damages, in that the court had vacated the compensatory damages; and

(2) in granting State Farm’s Petition for Attorney’s Fees in this instance where State Farm failed to obtain a judgment for compensatory damages and is not entitled to punitive damages. In addition, Champlost argues that this court erred “to the extent that any award of attorneys’ fees to State Farm pursuant to 75 Pa.C.S. § 1798(d) is entered against Allen Licht personally.” This court need not address this argument as it entered its award of attorneys’ fees against Licht under 18 Pa.C.S. § 4117(g).<sup>1</sup>

On appeal, State Farm contends that this court erred: (1) in striking damages testimony as speculative; (2) in vacating the jury’s compensatory damage award; (3) in denying treble damages; and (4) in failing to award the full amount of attorneys’ fees sought.

State Farm further contends that this court failed to properly apply and follow Kleinberg v. SEPTA and the Physical Therapy Practices Act regarding treatment performed by unlicensed personnel. This court submits that, by analogy, unlicensed support personnel should be treated under the Physical Therapy Practices Act the same as under the Chiropractic Practice Act.<sup>2</sup> Thus, it is not improper for support personnel to apply physical therapy treatment as long as they are supervised by a licensed physical therapist.

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<sup>1</sup> Counsel for Champlost admitted that attorneys’ fees may be assessed against Licht personally under § 4117(g). See N.T. 3/5/2007 at 11:25-12:7.

<sup>2</sup> See 63 P.S. § 625.601. “Nothing in this act shall prohibit a licensed chiropractor from utilizing the assistance of unlicensed supportive personnel performing under the direct on-premises supervision of a licensed chiropractor, provided that a chiropractor may not delegate any activity or duty to such unlicensed individuals which requires formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor.”

I. This Court Did Not Err in Striking State Farm’s Damages Testimony and in Vacating the Jury’s Compensatory Damage Award.

This court found that the evidence offered by State Farm to prove compensatory damages was fatally speculative. A jury’s damage award “cannot be based upon mere guess or speculation.”<sup>3</sup> “[T]here must be evidence upon which logically [a jury’s] conclusion may be based.”<sup>4</sup> “[T]he evidence presented must be such that by reasoning from it, without resort to prejudice or guess, a jury can reach the conclusion sought by plaintiff.”<sup>5</sup> The method used by State Farm to calculate the damage it suffered as a result of Champlost’s fraudulent billing practices gave the jury too much room to speculate.

At trial, Denner testified as to the manner in which State Farm calculated its damages. It was established at trial that 352 State Farm insureds were treated at Champlost over the relevant period of time.<sup>6</sup> As part of State Farm’s investigation, statements were given by thirty State Farm insureds who had received physical therapy treatment through Champlost.<sup>7</sup> Of these thirty statements, Denner and his colleagues randomly selected thirteen files to review to determine how much treatment Champlost billed but did not provide. Based upon this limited review, State Farm determined that Champlost billed State Farm for, but did not render to its insureds, an average of 4.54 physical therapy modalities per visit.<sup>8</sup> Denner testified that the estimated cost to State Farm as a result of Champlost’s fraud was \$513,511.66.<sup>9</sup>

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<sup>3</sup> Scobell Inc. v. Schade, 688 A.2d 715, 719 (Pa. Super. 1997).

<sup>4</sup> Griffith v. Clearfield Truck Rentals, Inc., 233 A.2d 896 (Pa. 1967).

<sup>5</sup> Id.

<sup>6</sup> See N.T. 9/12/2006 at 81:3-13.

<sup>7</sup> Id. at 9:23-10:16.

<sup>8</sup> Id. at 20:23-21:19.

<sup>9</sup> Id. at 22:13-23:8.

This court struck Denner’s testimony because it was too speculative. On cross-examination by counsel for Champlost, Denner testified that there was no scientific method guiding their review; that the thirteen files were selected at random out of thirty statements.<sup>10</sup> This court found that State Farm made too many assumptions in their analysis for a jury to determine, without resorting to speculation, the amount of damage State Farm actually incurred. Simply stated, the damage evidence presented by State Farm did not afford the jury a reasonable basis to calculate State Farm’s loss.

Despite the fact that this court struck Denner’s damage testimony and specifically instructed the jury not to consider it in their deliberations, the jury awarded compensatory damages in favor of State Farm in the amount of \$560,000.00. As a general matter, a court should not disturb a jury’s compensatory damage award “unless it clearly appears that the amount awarded resulted from caprice, prejudice, partiality, corruption or some other improper influence.”<sup>11</sup> However, “the law presumes that the jury follows the court’s instructions.”<sup>12</sup> Here, the jury did not follow this court’s instruction to disregard the damage evidence State Farm presented. On post-trial motions, this court was compelled to vacate the jury’s compensatory damage award as it was based upon speculative testimony that had been previously stricken from the record.

## II. This Court Properly Denied State Farm’s Request for Treble Damages.

State Farm argues that this court erred in denying its request for treble damages under 18 Pa.C.S. § 4117(g). The statute states in relevant part that “[a]n insurer **may** recover treble damages if the court determines that the defendant has engaged in a pattern of

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<sup>10</sup> Id. at 48:2-49:4.

<sup>11</sup> Paves v. Corson, 801 A.2d 546, 549 (Pa. 2002).

<sup>12</sup> Id. at 550.

violating this section.”<sup>13</sup> The decision to award treble damages under this statute is discretionary. At trial, State Farm did not establish that Champlost engaged in a pattern of violating this statute. Moreover, this court vacated the jury’s compensatory damage award because it was based upon speculative testimony that had been previously stricken from the record. It would have been improper for this court to award State Farm treble damages after vacating the jury’s compensatory damage award. Thus, this court properly denied State Farm’s Motion for Treble Damages.

III. This Court Properly Upheld the Jury’s Punitive Damage Award In Favor of State Farm.

Champlost contends that this court erred in entering judgment in the amount of \$100,000.00 in favor of State Farm for punitive damages where State Farm failed to obtain a judgment for compensatory damages. “It is well-established that the decision of whether to award punitive damages...lies in the jury’s determination of whether the defendant’s conduct was outrageous.”<sup>14</sup> Punitive damages are properly awarded “for acts done with a bad motive or with a reckless indifference to the interests of others.”<sup>15</sup> Champlost contends that this court cannot award punitive damages where it vacated the jury’s compensatory damage award. However, our Supreme Court has said, “punitive damages must, by necessity, be related to the injury-producing cause of action. This does not mean, however, that specific compensatory damages must be awarded to sustain a punitive damage award.”<sup>16</sup> The jury found Champlost liable for fraud against State Farm. Because the punitive damage award flowed directly from this finding of liability, this court did not err in upholding the jury’s punitive damage award.

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<sup>13</sup> 18 Pa.C.S. § 4117(g) (emphasis added).

<sup>14</sup> Vance v. 46 & 2, Inc., 920 A.2d 202, 206 (Pa. Super. 2007).

<sup>15</sup> Id.

<sup>16</sup> Kirkbride v. Lisbon Contractors, Inc., 555 A.2d 800, 802 (Pa. 1989).

IV. This Court Did Not Abuse Its Discretion in Awarding Attorneys' Fees to State Farm.

Both parties appeal this court's Order granting State Farm attorneys' fees. Champlost and Licht do not claim that the fees requested are unreasonable, rather they argue that there is no basis to award fees where this court vacated the jury's compensatory damage award. State Farm argues that this court should have awarded it the full amount of attorneys' fees sought. In an action for statutory insurance fraud, an insurer may recover "...reasonable investigation expenses, costs of suit and attorney fees."<sup>17</sup> A close reading of the statutory language indicates that the decision to award attorneys' fees is within the court's discretion.<sup>18</sup>

In determining whether a party's fee request is reasonable, a court should base its decision upon the "lodestar": that is, the total number of hours reasonably expended in the litigation by the reasonable hourly rate.<sup>19</sup> A court may also look to the prevailing party's degree of success in the litigation taking into consideration the "relationship between the damages sought and those actually recovered."<sup>20</sup> However, contrary to Champlost's assertion,<sup>21</sup> a court may not reduce a fee award in order to achieve proportionality with the size of the verdict.<sup>22</sup> In addition, where, as here, counsel fees are specifically authorized by statute, a court "should consider whether an award of fees would....promote the purposes of the specific statute involved."<sup>23</sup>

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<sup>17</sup> See 18 Pa.C.S.A. § 4117(g).

<sup>18</sup> Oberneder v. Link Computer Corp., 696 A.2d 148, 150 (Pa. 1997) ("[C]ourts have found fee awards mandatory when the applicable statute states that they "shall" be awarded. Courts have also found fee awards discretionary when the applicable statute states that a court "may" award attorneys' fees.").

<sup>19</sup> Signora v. Liberty Travel, Inc., 886 A.2d 284, 293 (Pa. Super. 2005).

<sup>20</sup> Signora, 886 A.2d at 293.

<sup>21</sup> See N.T. 3/5/2007 at 15:4-25, 24:18-24, 41:2-11.

<sup>22</sup> Signora, 886 A.2d at 293; Logan v. Marks, 704 A.2d 671, 674 (Pa. Super. 1997).

<sup>23</sup> Krassnoski v. Rosey, 684 A.2d 635, 639 (Pa. Super. 1996).

In this case, the jury found in favor of State Farm and against Champlost and Allen Licht for statutory insurance fraud and common law fraud. The jury's verdict was supported by credible evidence. This court exercised its discretion under the statute to grant State Farm reasonable attorneys' fees. Further, by awarding attorneys' fees to State Farm, this court took into account the purpose behind the enactment of the insurance fraud statute: specifically, that Champlost and Licht should be deterred from repeating the type of conduct that led to the jury's finding of fraud.

State Farm petitioned this court for attorneys' fees in the amount of \$304,546.00. This court reduced the fee award to \$200,000.00. This court believes that counsel's hourly rate was reasonable, but finds that the number of hours expended by State Farm in this litigation was excessive.

#### **CONCLUSION**

For these reasons, this court respectfully submits that its Orders should be affirmed.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**