

**A Case Study Approach Presentation to
Hamilton Health Sciences Centre's Acquired Brain Injury Program Slow to
Recover Team – March 03, 2008**

INSURER-FUNDED MEDICAL, REHABILITATION AND ATTENDANT CARE SERVICES FOR BRAIN INJURY SURVIVORS WHILE IN HOSPITAL



**David F. MacDonald
416-868-3155**

dmacdonald@thomsonrogers.com

**Wendy Moore Johns
416-868-3165**

wmoorejohns@thomsonrogers.com

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OVERVIEW OF TOPICS:

- a) Who has to pay first? Insurer or Hospital?
- b) Arbitration Decision and Client Study –
(Haimov and ING)
- c) Client Study – Stella Pernito
- d) Client Study – Donald Greer – a “View” from the
Court Room

INSURER FUNDED SERVICES IN HOSPITAL

A team work approach which engages hospital health care professionals, patients, family members and in some cases private care and private treatment providers, can best meet the needs of the patient and the interests of the hospital.

In many cases, family members and private health care professionals can provide great assistance to patients and hospitals alike by augmenting the assistance available from the hospital.

WHO IS RESPONSIBLE FOR WHAT?

HOSPITAL RESPONSIBILITIES:

Regulation 552 of the *Health Insurance Act* identifies the following services that hospitals are responsible to provide to patients:

1. accommodation and meals;
2. necessary nursing service except for services of a private duty nurse;
3. laboratory, radiological and other diagnostic procedures;
4. drugs; and
5. use of operating room.

WHO IS RESPONSIBLE FOR WHAT?

HOSPITAL RESPONSIBILITIES:

- **not responsible to provide rehab but where choose to do so must provide assistance according to resources available**
- **may be supplemented by private rehab**
- **not responsible to provide 1-1 attendant care**
- **attendant care may be provided by private provider or family, depending on hospital policy**

WHAT MUST THE INSURER PROVIDE PAYMENT FOR?

**INSURERS ARE GOVERNED BY THE STATUTORY
ACCIDENT BENEFITS SCHEDULE.**

WHAT MUST THE INSURER PROVIDE PAYMENT FOR?

MEDICAL EXPENSES:

Section 14 of the Statutory Accident Benefits Schedule identifies the following medical coverages: (see tab 4 of binder for full text of sections 14, 15, 16)

Section 14

- a) medical, surgical, dental, optometric, hospital, nursing, ambulance, audiometric and speech language pathology services;
- b) chiropractic, psychological, occupational and physiotherapy services;
- c) medication;...
- f) wheelchairs...prosthesis, orthodontics;
- j) transportation; and
- h) other goods and services of a medical nature.

WHAT MUST THE INSURER PROVIDE PAYMENT FOR?

REHABILITATION EXPENSES:

In addition, the insurer must provide coverage for rehabilitation benefits which are defined in SABS section 15(2) as:

“ measures...to reduce or eliminate the effects of any disability resulting from the impairment or to facilitate the insured person’s reintegration into his or her family, the rest of society or the labour market.”

WHAT MUST THE INSURER PROVIDE PAYMENT FOR?

REHABILITATION BENEFITS INCLUDE:

SABS section 5

- (a) life skills training
- (b) family counselling
- (c) social rehabilitation counselling...
- (i) home modifications and home devices
- (j) vehicle modifications
- (k) transportation
- (l) other goods and services.

WHAT MUST THE INSURER PROVIDE PAYMENT FOR?

ATTENDANT CARE

The insurer's obligation to pay attendant care to patients in hospital includes:

SABS section 16 (2)

(a) services provided by an aide or attendant; or *[read as meaning "and"]*

(b) services provided by a long-term care facility including a nursing home, home for the aged or chronic care hospital.

DOES THE HOSPITAL HAVE TO PROVIDE ATTENDANT CARE?

NO - the *Health Insurance Act* does not mandate any provision of attendant care or personal support worker by a hospital and its staff.

The accident benefit insurer is responsible to pay for required in-hospital attendant care.

WHAT MUST THE INSURER PROVIDE PAYMENT FOR?

ARBITRATION DECISION – INSURER RESPONSIBLE TO PAY IN HOSPITAL ATTENDANT CARE:

Bellavia and ING

Mr. Bellavia was an in-patient who required \$4,082.00 in attendant care in addition to the nursing care provided by Baycrest Hospital. He required diaper care, tracheostomy suctioning, and assistance dressing and undressing, among other care needs. The patient had suffered medical complications such as pressure sores.

Mr. Bellavia's family provided the assistance.

The arbitrator found that even though some of the services which Mr. Bellavia required were offered by the hospital, he could not fault the Bellavia family for choosing to perform some of these services in order to guarantee prompt, high quality care.

The insurance company (ING) was obliged to pay \$4,082 per month this amount in addition to the co-payment amount which is payable for accommodation and meals in a long-term care facility.

CASE STUDY - MARKUS HAIMOV

Haimov and ING

Mr. Haimov was 67 at the time he was a pedestrian and involved in an accident with a car on February 22, 2005. He suffered a catastrophic brain injury that left him comatose and minimally responsive. He had a tracheotomy and feeding tube.

Mr. Haimov's family provided attendant care, daily companionship and assistance to Mr. Haimov to the point of exhaustion. They had been doing so since the date of his accident. His wife and other family members attended to him in hospital between 11:00 a.m. and 9:00 p.m. daily.

CASE STUDY - MARKUS HAIMOV

Haimov and ING

The car insurance company had refused to pay attendant care while he was in Sunnybrook, Toronto Rehabilitation Institute and at Baycrest Hospital (where he resided at the time of the arbitration).

CASE STUDY - MARKUS HAIMOV

Haimov and ING

Mr Haimov subsequently developed a seizure disorder and urgently required the attendant care that had been recommended by his treatment team.

Something had to be done urgently to help Mr. Haimov.

CASE STUDY – MARKUS HAIMOV

The Process

An application for mediation was brought and quickly failed.

Arbitration was applied for.

A motion for interim benefits was filed.

Motion for Interim Benefits:

- Normally an arbitration hearing is not held until at least 6 months after a failed mediation.
- A motion for interim benefits hearing may be held as early as 2-6 weeks after mediation application is filed because of the urgency of the concern.
- To win a motion for interim benefits, one must demonstrate urgency of need and the likelihood of succeeding at arbitration.

CASE STUDY – MARKUS HAIMOV

Attendant Care Provided by Family:

- assisting with range of motion exercises;
- putting splints on and off hands;
- washing hands, face and mouth throughout the day;
- change feeding bags, three times daily;
- adjusting him while in wheelchair to ensure skin integrity and comfort;
- speak to Mr. Haimov in Russian which prompted a greater responsiveness from him;
- took him outside the hospital by wheelchair and to musical performances within the facility;
- monitoring oxygen levels;
- suction Mr. Haimov's tracheostomy 6 to 8 times per day;
- massage arms, legs and back; and
- laundry and personal hygiene.

CASE STUDY – MARKUS HAIMOV

Haimov and ING

The Insurance Company Argued that the Hospital Was Required to Provide Attendant Care.

CASE STUDY – MARKUS HAIMOV

Finding by Arbitrator Murray:

The Arbitrator found that there was substantial likelihood of danger to Mr. Haimov’s life and health if someone was not with him 24 hours a day.

The Arbitrator accepted a letter from the Ministry of Health, outlining the Ministry’s position:

“Simply put, attendant care (or personal support service) is not a service provided by a nurse; is not an insured service under the *Health Insurance Act*, and is not an insured hospital service under the act and is lastly not an OHIP insured service.”

CASE STUDY – MARKUS HAIMOV

Finding by Arbitrator Murray

The Arbitrator held ING responsible to pay the maximum amount of attendant care under the policy = \$6,000.00 per month.

The Arbitrator held ING responsible to pay \$1,500 per month for the chronic care co-payment^[1], in addition to the \$6,000 per month for attendant care.

The Arbitrator held ING responsible to pay past attendant care in accordance with the assessments of the treating OT.

^[1] See Decision *Haimov and ING* at Tab 3 to binder

CASE STUDY – STELLA PERNITO

Stella Pernito, born May 24, 1963, was involved in a single vehicle accident on November 7, 2003. She suffered a severe closed head injury with a subarachnoid bleed, a mid brain haemorrhage and diffuse axonal injury. She had pelvic fractures, a left sacral iliac joint fracture, splenic laceration, bladder rupture, lumbar transverse process fractures, multiple rib fractures, a right abdominal wall hernia, and scalp lacerations.

Stella's initial GCS was 3 at Cambridge Hospital. She was transferred to London Health Sciences Centre and then to St. Michael's Hospital in Toronto. Fourteen days after her accident her GCS was 5T.

She was transferred to Bridgepoint Hospital in January 2004 into Bridgepoint's Slow Stream ABI Program.

CASE STUDY – STELLA PERNITO

While at Bridgepoint between January 12, 2004 and June 19, 2006, Stella received a modest amount of rehabilitation. Stella's responsiveness was considered to be very low. Family members had found Stella to be more responsive to their presence. Stella's mother was providing the majority of the attendant care.

CASE STUDY – STELLA PERNITO

Stella was subsequently assessed by Dr. Jane Gillett who determined Stella to be an appropriate candidate for the ABI Slow to Recover Program at Hamilton Health Sciences Centre.

Stella was admitted June 19, 2006.

CASE STUDY – STELLA PERNITO

While at HHSC, Stella made great progress in responsiveness and made gains in her physical status. Stella clearly benefited from the intensive rehabilitation process which she enjoyed at HHSC.

On discharge, recommendations were made for ongoing medical and rehabilitation services to assist her in further recovery.

CASE STUDY – STELLA PERNITO

As a result of the recommendations from the HHSC slow to recover team, given the lack of availability of some of the services in the Bridgepoint program, the accident benefit insurer was approached to fund and agreed to begin funding private services for Stella to be provided in hospital, specifically:

- Rehabilitation Support Worker;
- Speech Therapy;
- Physiotherapy; and
- Treating Occupational Therapy (in hospital).

Private healthcare services are payable by the insurer pursuant to SABS sections 14 and 15.

CASE STUDY – STELLA PERNITO

ATTENDANT CARE IN HOSPITAL

Unfortunately, despite having received a number of reports from treating private OTs which identified that Stella was unable to respond to an emergency and required 24 hour care, the insurer continued to pay very modest attendant care as a result of an assessment by an insurer appointed OT.

Stella's family was quite concerned with her health and safety without them and therefore attended at the hospital to meet her needs.

The insurance company's position was that the hospital was meeting her needs.

CASE STUDY – STELLA PERNITO

The Solution: Motion for Payment of Interim Attendant Care Benefits

Similar to the Haimov case, our office brought a motion to compel Stella's insurance company to pay additional attendant care benefits to meet Stella's attendant care needs in hospital.

We prepared and filed the following information at the arbitration

- video of Stella receiving exercises
- Affidavit of Dr. Gillett
- Affidavit of occupational therapist
- Affidavit of Stella's mother
- Affidavit of Lawyer as to insurer's conduct

During the arbitration hearing, the insurance company agreed to pay substantially increased attendant care to Stella.

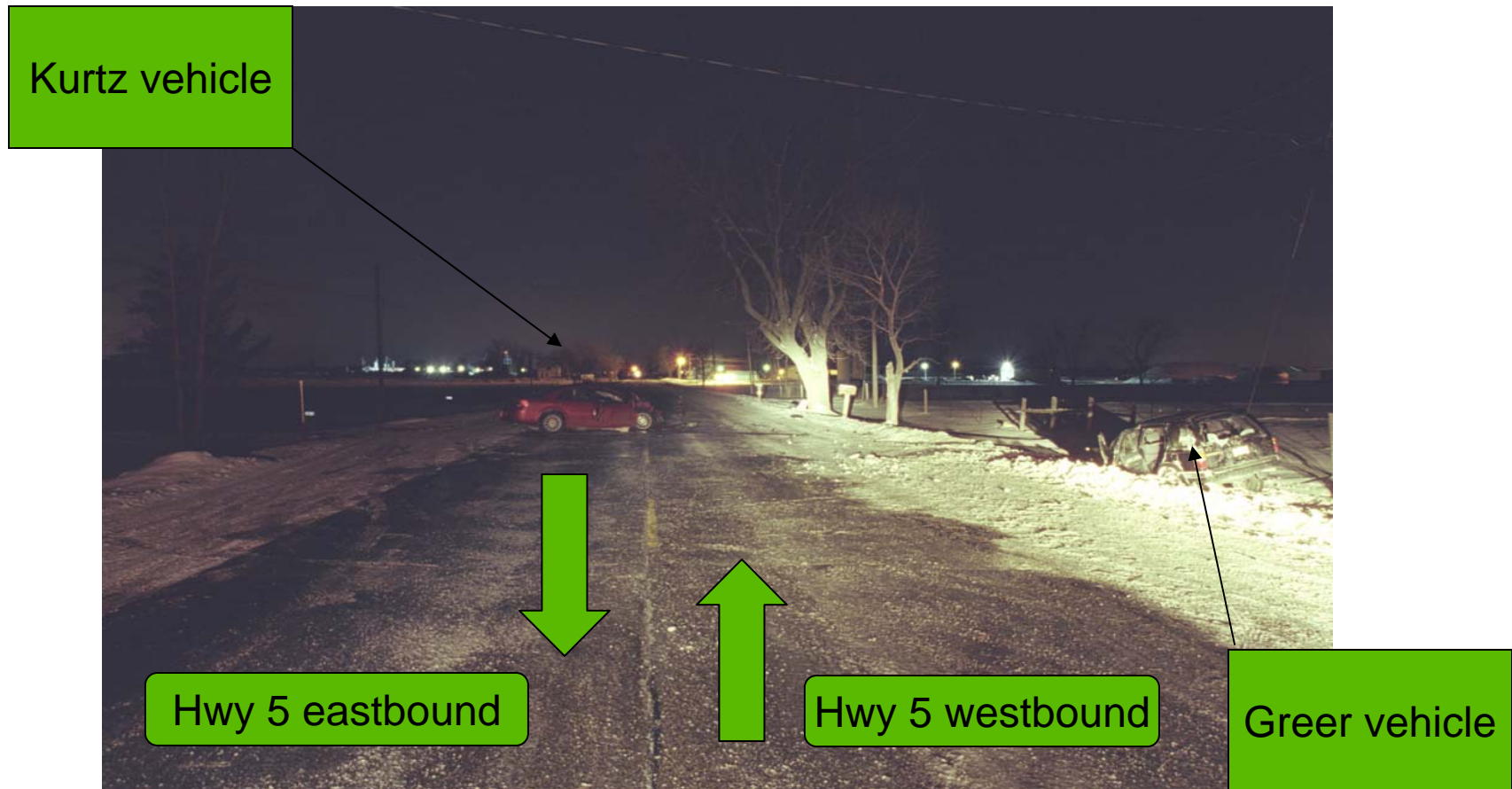
CASE STUDY – DONALD GREER

- Donald also enjoyed the benefits of Interim Rehabilitation from the HHSC ABI Program
- After settling his accident benefit entitlement and his claims against the City of Hamilton and IMOS in December of 2007, Donald went to trial against the last remaining defendant, the driver of the car that struck him

Donald Greer in Hospital after March 2, 2003 crash



The Crash: March 2, 2003



The Crash: March 2, 2003



Donald Greer's vehicle

The Crash: March 2, 2003



DONALD GREER

Use of Accident Reconstruction Visualization
at trial...

Don and his family, including his new baby Alexander Hunter Greer, who was born during the trial, continue to await the decision in the trial.
Stay tuned!

