

Interesting Developments in Recent Case Law

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The Supreme Court has been quite busy lately in issuing decisions that affect the course of the practice of insurance defense. A recent decision of note involved a determination regarding an award of attorney fees pursuant to MCR 2.403. A decision was issued in Smith vs. Khouri, ___ Mich. ___ (Supreme Court #132823), greatly effecting the analysis to be used by a trial court in determining case evaluation sanctions levied pursuant to MCR 2.403(O). In the Smith case, the Supreme Court developed a revised analysis to be used by the trial courts in determining an award of attorney fees.

Previously, courts relied primarily upon the precedents of Wood vs. Detroit Automobile Inter-Ins. Exch., 413 Mich 573; 321 N.W. 2d 653 (1982) and Crawley vs. Schick at 48 Mich App 728; 211 N.W. 2d 217 (1973). These two precedents outlined several factors to be taken into consideration in determining the reasonableness of an attorney fee requested as sanctions against a party. The Supreme Court has now changed the rules to be applied by the trial court in coming to any such determination. The Smith court created a two prong analysis in determining a reasonable award for attorney fees that must be applied prior to considering the Wood factors. The first part of the new analysis requires the trial court to determine “the reasonable hourly or daily rate customarily charged in the locality for similar legal services, using reliable surveys or other credible evidence.” Smith vs. Khouri, ___ Mich. ___ (Supreme Court #132823). The second prong of the analysis requires the trial court to determine a reasonable number of hours expended. The Smith panel notes that the trial court should exclude any hours that are excessive, unnecessary, or duplicative. Then, and only then, should the trial court consider the factors outlined in Wood and in MRPC 1.5(a) to decide whether there should be any up or down adjustment of the number devised using the two-prong analysis.

The Supreme Court reasoned that this new analysis will help create more consistent awards of attorney fees. As this decision has only recently been issued, it is yet to be seen whether or not this precedent will have the desired affect.