

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF XXXXXX

XXXXXXXXXXXX

Plaintiff,

Case No.
Hon.

Plaintiff,

vs

Defendant, Jointly & Severally and
ALLSTATE PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendants.

Attorney for Plaintiff 30101 Northwestern Highway Farmington Hills, MI 48334 (248) 353-7575 Fax: 248) 254-8080	Attorney for Def. Allstate

**PLAINTIFF’S MOTION FOR COSTS AND ATTORNEY FEES RELATIVE TO BAD
FAITH FACILITATION REQUESTED BY THE DEFENDANT, ALLSTATE
INSURANCE COMPANY**

NOW COMES the Plaintiff, , by and through her counsel, GURSTEN, KOLTONOW,
GURSTEN & RAITT, PC, and for her Motion to Compel Costs and Attorney Fees relative to bad
faith facilitation, states as follows:

1. This is an uninsured motorist and first party PIP Claim relative to a , motor vehicle collision.
2. As a result of the motor vehicle collision, Plaintiff has suffered serious injuries requiring surgery.
3. The matter went to case evaluation and the panel awarded \$xxxxxxxxxx.

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4. The case evaluation was prior to Plaintiff undergoing subsequent surgery.
5. Plaintiff accepted the case evaluation award.
6. Plaintiff had informed Defense Counsel on multiple occasions prior to the Settlement Conference on , that Plaintiff would only settle the matter for the case evaluation awards ... Plaintiff also informed Defense Counsel that if Plaintiff undergoes the surgery recommended for her, she would no longer accept the case evaluation awards and would demand the policy limit of \$100,000.
7. Plaintiff emailed Defense Counsel immediately before the settlement conference again that he only desired to get a trial date at the settlement conference.
8. The matter went to this honorable Court on , and Defense Counsel (Defense Counsel had a different attorney from his office show up) asked Plaintiff's Counsel if he wished to facilitate. Plaintiff said no and that his demand was the case evaluation award and that would only change if Plaintiff underwent the surgery and then it would be the \$100,000.00 policy and all benefits owed plus benefits for the surgery.
9. Despite Plaintiff's Counsel saying that he did not want to facilitate and conveying the exact above terms, Defense Counsel insisted on facilitation saying that they understood Plaintiff's demands and that would be the way to resolve the matter as it would get the adjusters in the room and, according to defense counsel, resolution done.
10. Plaintiff only agreed to facilitate based upon Defendant's explicit representations that facilitation would be worthwhile.
11. The parties agreed to facilitate with on , **at 7:00 in the morning.**
12. Shortly after the settlement conference, Plaintiff informed Plaintiff's Counsel she would be undergoing surgery in the beginning of June.

13. Plaintiff immediately emailed and left messages for Defense Counsel relative to the same, reiterating that the plaintiff will not settle for \$80,000.00 after surgery, as the matter would clearly be above the policy limits.
14. Defense Counsel never responded to Plaintiff relative to the demand.
15. The parties went to facilitation/ mediation which falls under MCR 2.410 and 2.411 on .
16. At the facilitation, Defense Counsel did not show up for Allstate and, instead, had someone cover from [an outside law firm].
17. Despite the facilitation having been scheduled for months, the Uninsured Motorist Adjuster never came to the facilitation.
18. Despite the facilitation having been scheduled for months, the PIP Adjuster/Litigation PIP Adjuster never came to the facilitation.
19. Defense Counsel did not submit a summary relative to the facilitation until the day before the facilitation. And the facilitation summary that was submitted was simply the case evaluation summary previously used with the date changed.
20. **Despite insisting on facilitation, and informing Plaintiff that it would be worthwhile, and having Plaintiff pay for a facilitator and have her client come to Plaintiff's Counsel's office at 7 in the morning (which is NOT the usual time for facilitation), and full knowledge of Plaintiff's demand prior to facilitation, DEFENDANT DID NOT OFFER A NICKEL ON EITHER CASE. NO OFFER WAS EVER MADE TO THE PLAINTIFF ON EITHER THE PIP CLAIM OR THE UNINSURED MOTORIST CLAIM.**

21. Quite frankly, Defendant acted in bad faith by not having the adjusters at the facilitation, insisting it would be worthwhile and then showing up with no money, having Plaintiff fully comply and attend at 7:00 a.m., and not making a single offer.
22. 30 minutes into the facilitation, there was not even a phone call from an adjuster regarding their status. 1.5 hours into the facilitation, Plaintiff's Counsel was called in to be told no money was being offered or that any offer would "simply offend".
23. Defendant's actions were in bad faith and violate MCR 2.410 relative to having the parties with authority attend and/or have parties there capable of effective participation, including settlement. MCR 2.410.
24. Plaintiff's Counsel spent 5 hours working on his facilitation summary, wasted two hours at the hearing, had to write this motion, and has to pay the facilitator's facilitation bill of \$600.00 per party (\$1,200.00 in total – 2 hours of preparation time and 2 hours at the facilitation).
25. Additionally, Plaintiff travelled from her home ... to Plaintiff's Counsel's office at 7:00 a.m. and should be reimbursed for her travel based upon Defendant's bad faith.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court required Defendant to reimburse Plaintiff for the costs paid relative to the facilitation and pay attorney fees as the "offending party" based upon the above and facts contained below.

GURSTEN, KOLTONOW, GURSTEN
& RAITT, PC

By: _____

Attorney for Plaintiff

Dated: