

FOR THE RECORD

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"Before hiring Bailey & Greer, I felt scared and hopeless. Several local lawyers were harassing me and I felt like they only saw me as a money-making tool. Bailey & Greer treated me like the innocent, hurt individual that I was. Everyone at the firm put my health and well-being first.

I liked how quick and easy it was to communicate with whoever I needed to talk to. Legal terms were explained to me in ways that I could understand so I always knew what was going on.

I would absolutely recommend Bailey & Greer to others. The staff is friendly and efficient and they always do what is best for their client. Communication is excellent and you will never be in the dark about what is happening with your case."

Anna Whitaker - Jackson, TN

PROGRESSIVE INSURANCE NOT ALONE IN TREATING CUSTOMERS UNFAIRLY

The story of Kaitlynn Fisher's death created a media firestorm recently, generating shock and outrage across the country. The story received coverage from media outlets such as CNN, ABC, and the *Wall Street Journal*. While the events of her death were unquestionably tragic, it was the conduct of Fisher's insurance company that garnered the most attention.

Progressive Defends the Person Who Killed its Insured

Fisher was a 24-year-old Johns Hopkins graduate who died after another driver ran a red light and struck her vehicle. The driver responsible for Fisher's death was underinsured, carrying only a \$25,000 liability policy. Fisher carried a \$100,000 uninsured/underinsured motorist policy with Progressive. Uninsured/underinsured motorist coverage is intended to protect a policy holder if he or she is injured in a car accident when the responsible party either has no insurance or insufficient insurance coverage.

What many people do not know is that when they file an uninsured/underinsured motorist claim with their insurance company, the insurance company has a contractual right to defend the at-fault driver to avoid paying the fair value of a claim to its own policy holder. Fisher's family learned this the hard way. They were appalled to learn that Progressive's attorneys defended the at-fault driver by claiming that Fisher was partially responsible for the accident. Sadly, Progressive's conduct amounted to a simple business decision—they did not want to pay Fisher's claim.

Nationwide and Others Have Similar Practices

Many people are confused when they discover that their own insurance company has become

their adversary. Confusion gives way to anger when they see how far their insurance company will go to avoid paying a claim. Unfortunately, this type of practice is not confined to the Fisher case. Insurance companies go to absurd lengths to avoid paying legitimate claims in Tennessee every day.

Our firm recently handled a case in which a Nationwide policy holder sustained significant injuries after she was struck by an underinsured driver. Nationwide summarily denied the claim without ever speaking to the at-fault driver or doing any investigation. Nationwide's lawyer even accused our client of causing the wreck, despite the fact that the other driver admitted fault. Nationwide also denied that its policyholder's medical bills were related to the wreck. The attorney for Nationwide went so far as to accuse her treating doctor of lying about her treatment. Ultimately we had to take the case to arbitration and the arbitrator awarded almost three times the amount Nationwide offered to pay as a settlement.

Changes to Tennessee Law Give Added Protections for Insurance Company Misconduct

Due to recent changes in state law, Tennesseans have fewer ways to fight back. Tennessee law places a general duty on insurance companies to deal with their customers in good faith. Prior to 2011, the Tennessee Consumer Protection Act ("TCPA") provided recourse for a consumer or small business when an insurance company breached this duty of good faith. Under the TCPA, a policyholder could obtain an award of punitive damages or treble damages. In addition, the TCPA provided payment of the plaintiff's attorneys' fees, which helped consumers and small businesses hire an attorney to take their case. **See Insurance Bad Faith, Page 3**





"The evidence is really quite clear that money has a major influence on decisions doctors make,"

For answers to more frequently asked questions visit our website
www.baileygreer.com

Q: HOW MUCH INFLUENCE DO DRUG COMPANIES HAVE ON MY DOCTOR?



By Austin Byrd

We all like to think that doctors act in our best interest and cannot be influenced by drug companies. However, the research on this subject suggests that drug companies exert considerable influence over physicians.

A 2004 study revealed that of the 15 largest drug companies, the industry spent about 1/3 of its total marketing budget on payments to physicians. Another study done in 2007 showed that 94% of doctors had some type of relationship with a drug company:

- 83% received meals from drug companies
- 35% received reimbursement for costs associated with a professional meeting
- 28% received payment for consulting, giving lectures, serving on advisory panels, or enrolling patients in clinical trials.

Dr. Jerome Kassirer, former editor-in-chief of the prestigious *New England Journal of Medicine*, says that doctors are indeed influenced by these relationships. "The evidence is really quite clear that money has a major influence on decisions doctors make," said Dr. Kassirer.

Another area of influence occurs at medical

education courses attended by doctors. These seminars, often held in exotic destinations, are often paid for by the drug industry.

Another common area of influence occurs with "ghostwriting." Under this scenario, a drug company writes an article for a medical journal and then pays a doctor to sign his or her name to the article in order to give the article credibility.

Clinical drug trials are also frequently manipulated. At least 70% of all drug trials are funded by the industry and every aspect of a trial can be manipulated. The physician researchers have a conflict of interest because they are being paid to conduct the study by a company that wants a favorable result. One court found that industry funded drug trials are 5.3 times as likely to be approved as non-commercially funded studies. The result is that dangerous drugs enter the market every year.

Although drug companies have been ordered to pay immense fines for wrongdoing, these fines are meaningless. Even the most staggering fines represent only a few weeks of income for these companies. The process is clear: companies violate the law, make huge profits until they are caught, and then give a small portion of the profit back to the government. Until someone goes to jail, this will continue to be the standard practice for many drug companies.

Tennessee Law Change is Designed to Save Money and to Keep Some Low Income Elderly at Home



By Thomas Greer

According to a July 2012 Washington Post report, a Tennessee revision of its Medicare long-term care program has gained national attention. I would like to share the changes that will affect some of the low-income elderly in the state.

The TennCare Medicaid program changes focus on the bottom line, with a mandate to save \$47 million. It targets those Tennessee elderly who perhaps do not need the full-time care of a nursing home and pays up to \$15,000 per year to keep these residents in their homes, providing services

either in the home or through adult day-care programs.

It costs \$55,000 annually to provide full-time nursing home care for these same people. TennCare, which is funded by federal and state dollars, is like Medicaid programs of other states and also covers the disabled, children and pregnant women. The total dollar amount spent by the state on long-term care for the elderly is \$1.1 billion.

Gordon Bonnyman, Tennessee Justice Center executive director, worries that \$15,000 is not enough to support some of the affected senior citizens. He said that "a lot of frail people are not going to make it on the reduced package."

However, most of Tennessee's nursing home residents would prefer to be at home. Many residents feel as if they lose their independence in a nursing home and enjoy the comfort of being at home.

Residents who are able to stay at home or transition from a nursing home back to their own home can have a caregiver come to their house several days a week to assist with housework, shopping and personal needs.

The new program, which took effect last month, has also instituted a more rigorous qualifying point system that will eliminate more people from receiving nursing home care.

TENNESSEE LAW LEAVES FAMILIES GROSSLY UNDERCOMPENSATED



By R. Sadler Bailey

On August 27, 2012, two lives were cut tragically short when a Memphis Police Officer, who some witnesses claim was driving at speeds in excess of 90 mph, struck their automobile, killing them and critically injuring two others. Witnesses also claim that the officer ran through a red light. The police officer was allegedly driving to a call, but failed to engage his lights and sirens. The urgency of the call is unknown at this time.

Although no amount of money will bring back those lost in this senseless tragedy, it is only right that the City of Memphis be held accountable for the reckless actions of its officers. So, how much is a life worth when the government causes a death?

In weighing a regulatory burden, governmental agencies have valued human life as follows:

- ◆ EPA - \$9.1 million
- ◆ FDA - \$7.9 million

- ◆ DOT - \$6.0 million

Under the Tennessee Governmental Tort Liability Act (TGTLA), however, the value of a human life is only \$300,000. Under the TGTLA, government entities, such as cities and police departments, are only liable for up to \$300,000 in damages per person, and \$700,000 per incident, regardless of how many people are injured or killed. These caps leave the most seriously injured citizens without full compensation.

Is this law likely to change anytime soon? Not with our current Governor and Legislature, who last year passed a law that placed arbitrary damage caps on almost all injury and wrongful death cases. That's right. The same politicians who preach "personal responsibility" were first in line to limit the responsibility of those who kill and injure others.

The fundamental problem is that caps on verdicts are unfair to those who are most seriously injured and the families of those who are killed, regardless of whether the government or a private citizen or company caused the harm.



INSURANCE BAD FAITH

Continued from page 1 These provisions of the TCPA not only provided a means of redress for the average Tennessean, but encouraged insurance companies to handle claims in good faith. Unfortunately, the protections afforded by the TCPA are now a thing of the past.

The ironically titled Tennessee Civil Justice Act of 2011, which became law on October 1, 2011, removed private citizens' and small businesses' rights to sue insurance companies on bad faith claims under the TCPA. The Act also removed punitive and treble damage awards as a potential sanction. Thus, insurance companies have even less incentive to act in good faith when handling legitimate claims. Tennessee law still provides a "bad faith" penalty for insurance companies that breach the duty of good faith. This penalty, however, cannot exceed 25% of the disputed claim. For many insurance companies, this meager penalty is worth the risk of routinely denying claims because few policyholders can afford to pursue litigation. Now that the TCPA has been gutted, Tennesseans that find themselves in an adversarial posture with their own insurance company have little means for obtaining fair resolution.

Tennessee Drivers More Likely to Face-off Against Their Insurance Company than Others

Tennessee drivers are more likely than the average American driver to become embroiled in a dispute with an insurance company over an uninsured motorist claim. A 2011 study by the Insurance Research Council showed that approximately 24 percent of Tennessee drivers are uninsured, which ranked third in the nation for the percentage of uninsured motorists. These statistics make clear that uninsured motorist coverage is a must for Tennessee drivers.

As the stories of Fisher and our own client illustrate, it is often a lengthy and painstaking process to get an insurance company to comport with its duty of good faith. Remember, it is always in the best financial interest of insurance companies to either deny or underpay claims filed by policy holders. Insurance companies only care about the bottom line, not the health and welfare of you and your family. Tennesseans must understand the realities of dealing with insurance companies, and be ready to seek legal representation when their rights are being abused.

Recent Verdicts and Settlements

Medical Malpractice

- \$1 million settlement
- \$550,000 settlement

Auto Accidents

- \$550,000 settlement
- \$250,000 settlement
- \$136,000 arbitration verdict
- \$75,000 jury verdict

Truck Accident

- \$150,000 settlement

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FIRM INFORMATION



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*The greatest compliment we
can receive is the referral of a
friend or family member*

At Bailey & Greer, we take only a limited number of serious injury, wrongful death, and professional malpractice cases. While some law firms work to settle, we work to get the best possible result for you. We have the experience, expertise and financial resources to carry each and every case to trial. We have been involved in numerous multi-million dollar verdicts and settlements, including birth injury, medical malpractice, auto accident, product liability, and premises liability cases.

When you choose us as your attorneys, you will always be able to speak to a lawyer and you will always be treated as a person, not just a case. In addition to our attorneys, we are also proud of our courteous, knowledgeable office team, which includes a full-time nurse.

Practice Areas:

- ◇ Medical Malpractice
- ◇ Birth Injuries
- ◇ Legal Malpractice
- ◇ Auto Accidents
- ◇ Trucking Accidents
- ◇ Nursing Home Abuse
- ◇ Wrongful Death
- ◇ Premises Liability
- ◇ Workers' Compensation
- ◇ Dangerous Drugs and Devices
- ◇ Aviation Litigation