

Lawsuit probes mercenary doctors who deny injury claims

By: Jonathan Ellis

It was near midnight on Jan. 19, 2013 when Steven Hofer was driving his truck on the frozen plains of northwestern North Dakota. A car driven by a drunk driver crossed the center line, hitting Hofer head on. He suffered severe injuries in the collision.

The motorist who hit him didn't have insurance. But Hofer, a Sioux Falls man who owned a trucking business, had purchased a \$1 million policy that protected him from uninsured motorists.

Or so he thought.

Today, Hofer has a pending lawsuit in federal court against the insurer, Progressive Northern Insurance Co. At first blush, it's a case like many others: Someone who thought they were insured suing an insurance company for bad faith and breach of contract, claims that are common in federal court.

But the Hofer case could have larger ramifications. In April, Judge Karen Schreier sanctioned the company for neglecting to turn over hundreds of Independent Medical Examinations, or IMEs, conducted by three Minnesota doctors on behalf of Progressive, including a doctor who examined Hofer.

The sanctions were unusual. But even more notable, say lawyers who handle bad faith insurance cases, is the fact that Hofer's legal team now has access to more than 500 IMEs that were conducted by doctors chosen by Progressive to evaluate injuries. Insurance companies use the IMEs to determine whether they will pay benefits to people hurt in car crashes, accidents and worker compensation cases.

In Hofer's case, Progressive withheld benefits after Dr. Nolan Segal wrote an IME that said Hofer's spine injuries weren't caused by the accident. Segal's reports contradicted Hofer's own medical doctors and an MRI taken after the accident, but Progressive relied on Segal. Hofer's lawsuit contends that Progressive "knew or should have known that Dr. Segal has a long history of bias in favor of insurance companies."

"Dr. Nolan," the complaint says, "concluded that plaintiff had suffered no injury whatsoever in the head-on collision that had occurred at a speed of 55 mph."

Shining a light

The sheer number of IMEs that Progressive turned over could open a window into insurance

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companies' use of doctors. The hundreds of IMEs will show how often the doctors gave opinions that were favorable to the insurance company, allowing the company to terminate or deny benefits.

The Insurance Information Institute, an industry group, did not respond to an interview request. But insurance companies have argued that IMEs are essential to weeding out fraudulent claims by people faking injuries, and there have been numerous examples of people committing insurance fraud.

Another industry group, the Coalition Against Insurance Fraud, estimates that the industry loses billions of dollars a year in bogus worker comp and auto accident claims. In 2012, injury claims in auto accidents grew 4 percent.

Seamus Culhane, a Watertown lawyer who tries cases against insurance companies, said a rule designed to promote fairness in the legal system allows both sides in a lawsuit to examine an injured person.

Typically an injured person relies on the opinions of treating doctors, while insurance companies are using "compulsory medical exams" to acquire a predictable medical opinion that can be used to deny a claim.