

April 2010

Special points of interest:

- **When are you entitled to receive No-Fault Benefits?**
- **What is the Kreiner legacy?**
- **Stand Up For All**
- **The benefits of joining the No-Fault Network**
- **Our Library of FREE legal books**

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The Michigan No-Fault Newsletter

Supreme Court Renders Important Decision on Causation in No-Fault Case

In *Scott v. State Farm Mut. Auto. Ins. Co.*, 483 Mich. 1032, 1033 (2009), the Michigan Supreme Court reversed its prior order and upheld the Court of Appeals decision in *Scott* on an important issue involving causation in a no-fault benefits case.

In *Scott*, the plaintiff argued that the accident in question caused brain and skeletal injuries to the victim, which made it difficult for the victim to exercise and which contributed to poor judgment regarding her diet.

There was also evidence that this difficulty in exercising and poor diet contributed

to the victim's cholesterol problem. Therefore, the issue in the case was whether State Farm was required to pay for treatment and expenses associated with the victim's high cholesterol.

Under the § 3105 of No-Fault Act, medical expense benefits are limited to injuries "arising out of" the "use of a motor vehicle as a motor vehicle." The Court of Appeals held that there was no requirement to establish direct or proximate causation, which is the standard in a general negligence case.

The Court stated that al-

though the victim apparently had a genetic predisposition to the cholesterol problem, there was no authority that, for purposes of no-fault insurance, a plaintiff had to exclude other possible causes and that "[almost any causal connection or relationship will do."

Furthermore, the Court stated that although the chain of causation was somewhat attenuated, it was enough to allow the jury to decide the issue of whether the high cholesterol *arose out of* the accident.

Court Dismisses Plaintiff's Case Involving Knee and Shoulder Injuries with Surgery

In *Miller v. Cooper*, unpublished opinion per curiam of the Court of Appeals decided February 23, 2010 (Docket No. 289114), the plaintiff was involved in a head-on collision. She suffered injuries to her left shoulder and right knee, each requiring surgery, and a laceration and other damage to her face, also requiring surgery.

After both surgeries, the plaintiff required significant assistance with basic activities of daily living, such as bathing, dressing, etc. Following her knee surgery, the plaintiff underwent more than two months of recuperation where her activities

of daily living (ADLs) were severely limited.

Six months after her knee surgery, she underwent shoulder surgery which required an additional 10 weeks of recuperation. This included intensive pain therapy, assistance with almost all of her ADLs. Moreover, during this time she was forced to sleep in a recliner with her foot on a stool.

The trial court dismissed the plaintiff's case, holding that the Plaintiff's injuries failed to meet the serious impairment of body function threshold requirement of § 3135 of the No-Fault Act as interpreted by

Michigan Supreme Court in the seminal decision in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004).

The Court of Appeals agreed with the trial court and held that the injuries did not affect the *course or trajectory of the plaintiff's normal life* – part of the standard set forth in *Kreiner*.

This case is yet another casualty of the *Kreiner* legacy. However, the Michigan Supreme Court has granted leave in *McCormick v. Carrier*, *lv gtd* 770 N.W.2d 357, which may overturn *Kreiner*.



**Michigan Attorney
Daniel L. Buckfire**

Michigan car accident attorney Daniel L. Buckfire has devoted his career to representing individuals who have suffered serious injuries in car, truck, and motorcycle accidents. He is recognized as a legal expert throughout the State of Michigan on motor vehicles accidents and cases involving Michigan No-Fault Insurance Benefits. Daniel has an undergraduate degree from the University of Michigan School of Business and a law degree from the University of Michigan Law School.

Insurer Ordered To Pay \$57,690.00 in Attorney Fees For Failure To Pay Medical Bill

In *Tinnin v. Farmers Ins.*, unpublished opinion per curiam of the Court of Appeals decided March 2, 2010 (Docket No. 286141), the Court of Appeals upheld a trial judge's decision to award no-fault penalty attorney fees against Farmers Insurance for the unreasonable denial of the plaintiff's medical expense claim.

At trial, the jury awarded the Plaintiff \$1,235.00 in medical bills and \$218.95 in no-fault

interest but denied the plaintiff's \$90,000.00 attendant care claim.

The trial court awarded \$57,690.00 in attorney fees to the plaintiff, concluding that defendant's failure to pay the medical expenses was unreasonable.

On appeal, Farmers argued that the plaintiff's request for attorney fees was excessive in light of the nominal verdict and the jury's rejection of the bulk of the plaintiff's claim.

The Court of Appeals

disagreed and held that the time spent by the plaintiff's attorney litigating the attendant care claim and the overdue medical expenses were interrelated.

Thus, the Court held that because the language of MCL 500.3148(1) (the no-fault attorney fee statute) does not require the apportionment the defendant requested, the trial court was correct in refusing to apportion plaintiff's award of attorney fees.

Owner Occupant of Uninsured Parked Car Held Ineligible For No-Fault Benefits

In *Gamble v. Farmers*, unpublished opinion per curiam of the Court of Appeals decided February 23, 2010 (Docket No. 290119), the trial court dismissed the plaintiff's claim for no-fault benefits based on its determination she was ineligible for benefits under § 3113(b) of the No-Fault Act.

§ 3113(b) precludes PIP benefits to the owner or registrant of a vehicle

who fails to maintain the required insurance coverage. It was undisputed that the plaintiff owned the vehicle and did not maintain insurance coverage on the car.

The Plaintiff argued that she was entitled to receive no-fault benefits "because she did not occupy the vehicle incident to its use as a motor vehicle, but rather merely as a structure for

shelter."

The Court of Appeals rejected this argument, and held that because the plaintiff was occupying the vehicle at the time she was injured and the vehicle was "involved in the accident" within the meaning of § 3113(b), she was precluded from PIP benefits under § 3113.

Plaintiff Attempting To Enter Car Not Entitled To No-Fault Benefits

In *Webster v. AAA*, unpublished opinion per curiam of the Court of Appeals decided March 2, 2010 (Docket No. 288971), the Court held that a plaintiff who fell on ice, as she placed her hand on her car door handle, was not entitled to Michigan No-Fault benefits.

With respect to parked cars, under § 3106(1)(c) of the No-Fault Act, a person

is entitled to benefits if the injury "was sustained by a person while occupying, *entering into*, or alighting from the vehicle." Thus, the issue was whether the plaintiff was *entering* the car at the time the injury occurred.

The Court held that although the plaintiff "reports touching the door handle...she cannot remember if she had begun to pull

up on it.... [the car] remained completely closed" as she fell.

The *Webster* decision is in conflict with the decision in *Hunt v Citizens Ins Co*, 183 Mich App 660, 664; 455 NW2d 384 (1990) but under the Michigan Court rules, the Court was not required to follow *Hunt* because it was decided prior to November 1, 1990.

Maximum Monthly Wage Loss Benefit—10/1/09 to 9/30/10— \$4,878.00

MCCA Reimbursement Levels—10/1/09 to 9/30/10—\$460,000.00

FREE Binder Offer – ~~100~~ Only 7 Left

As a resource to no-fault insurance providers, we are offering a **FREE BINDER** to the next 7 requestors. The binder is a great place to keep and organize our Monthly Newsletters, our No-Fault Priority Chart, and other important materials.

We'll include a CD containing no-fault insurance claim forms so that you can print them, and a PDF ver-

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Firm Sponsors "Stand Up For All" Event To Help Amputees



Daniel and Jasmine at the Stand Up For All Fundraiser. The event raised funds to help amputees purchase prosthetic limbs.

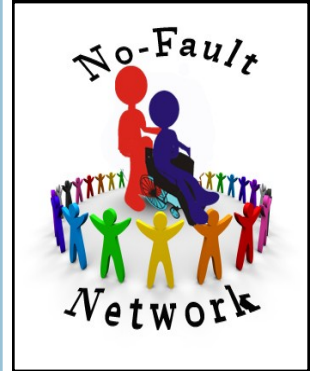
When our client Jasmine Buckwalter suffered a leg amputation after a hit and run accident, we were able to assist her in being fitted for a prosthesis through her Michigan No-Fault Insurance benefits.

During her rehabilitation, Ms. Buckwalter realized that many amputees were unable to be fitted for prosthetics because they did not have any insurance or other financial resources to pay for them. She then made it her mission to help those people.

Ms. Buckwalter started a charity, Stand Up For All, a non-profit organization dedicated to raising funds for amputee victims who could not afford prosthetic devices. When she asked our firm to help sponsor a fundraising dinner in Novi in December 2009, we immediately agreed to help.

Our firm helped sponsored the event with Volunteers of America and other generous donors. Jasmine's inspiration and drive made this inaugural event a tremendous success and raised substantial funds for amputee victims. We were happy to be part of this great cause.

*"I can't thank Buckfire & Buckfire enough for everything they did to help my charity event. Not only do they help sponsor the event, but every attorney in their firm attended the event to show their support. They are the best. I can't imagine any other law firm doing the same thing."
- Jasmine Buckwalter*



Michigan's No-Fault Social Network

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<http://nofaultnetwork.com>

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The Michigan No-Fault Newsletter



25800 Northwestern Hwy, Ste. 890
Southfield, MI 48075

Phone: 248-569-4646
Toll: 800-606-1717
Fax: 248-569-6737

E-mail: daniel@buckfirelaw.com

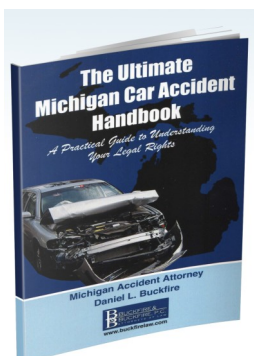
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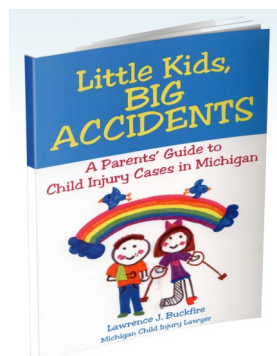
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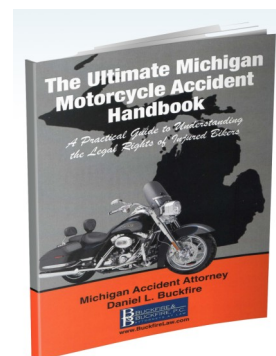
We will send multiple copies for you to distribute to patients and clients.



The 69 page book explains No-Fault benefits, personal injury claims, and property damage.



The 76 page book explains the laws in Michigan for Michigan child injury and accident cases.



The 63 page book explains the rights of bikers injured in Michigan motorcycle accidents, including No-Fault benefits.

To request these books and our other legal guides visit www.BuckfireLaw.com