

December 2010

Special points of interest:

- **When are you NOT entitled to No-Fault Benefits?**
- **What should you do if your client is injured in an auto accident and there does not seem to be insurance to cover their claim?**
- **The benefits of joining the No-Fault Network**

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The Michigan No-Fault Newsletter

Medical Provider's Case Dismissed Because of Late Lawsuit

In *Detroit Physical Therapy v. Farm Bureau*, unpublished opinion per curiam of the Court of Appeals decided November 9, 2010 (Docket No. 294081), the Court upheld the dismissal of a lawsuit filed by Detroit Physical Therapy (Detroit PT) against Farm Bureau.

Detroit PT sued Farm Bureau claiming payment for \$29,470.00 in medical services provided to its patient and Farm Bureau's insured Sarleatha Stove. Ms. Stove was injured in an automobile accident on March 20, 2005.

Farm Bureau was assigned Stove's claim for no-fault benefits by the Michigan Assigned Claims Facility. At some point, Detroit Physical Therapy and/or Stove submitted claims for payment of medical expenses incurred by Stove to Farm Bureau.

Farm Bureau apparently refused to pay the claims. Stove filed an action against Farm Bureau, seeking recovery of no-fault benefits. Detroit PT was not a party to this action.

Stove's claim was voluntarily dismissed with prejudice, after she and Farm Bureau accepted a case evaluation award of

\$15,000 and settled the case.

The settlement agreement between Stove and Farm Bureau released and discharged Farm Bureau from any and all liability for no-fault benefits arising out of Stove's auto accident.

Stove never paid Detroit PT out of her settlement and Detroit PT sued Farm Bureau directly for the expenses it incurred in treating Stove.

Farm Bureau argued that Detroit PT's lawsuit should be dismissed because: (1) Detroit PT should be bound by the release and order of dismissal in Stove's lawsuit; and/or (2) Detroit PT's bill's were incurred more than one year from the date its lawsuit was filed and thus the claim was barred by the "one-year back rule" set forth in § 3145 of the No-Fault Act. §3145(1) precludes an action to recover benefits for any portion of a loss incurred more than one year before the date on which the action was commenced.

The trial court agreed with Farm Bureau and dismissed the case. On appeal, the Court of Appeals held that Detroit PT was not bound by the release and

settlement agreement between Stove and Farm Bureau because Detroit PT was not a party to the action and thus its rights were not protected.

However, the Court held that Detroit PT's claim was barred by the "one year back rule" set forth in § 3145 because Stove's lawsuit did not toll the statute of limitations and thus upheld the dismissal.

In this regard, the Court implied that had Detroit PT intervened in Stove's lawsuit before the case settled, its claim would have been preserved.

However, because Detroit PT filed its own separate lawsuit, after the one year had already passed, the claim was barred by § 3145.

Thus, the lesson of this case for providers in no-fault cases is: (1) assert liens in writing to the Plaintiff's attorney to protect your rights; (2) If a lawsuit has been filed by the claimant you may consider intervening unless you are provided written assurances that your lien will be honored; and/or (3) file your own lawsuit against the insurer before one year from the date the earliest bill is incurred.

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



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.

Uninsured Owner of Disabled Vehicle Not Entitled To No-Fault Benefits

In *DMC v. Titan*, unpublished opinion per curiam of the Court of Appeals decided October 14, 2010 (Docket No. 292657), the Court held that the claimant was not entitled to no-fault benefits because his car was uninsured.

In this case the plaintiff was traveling on the freeway, and it was raining when he spun out of control striking the center median wall. His car came to rest perpendicular to the median wall with the driver's side facing traffic and blocked at least one lane of travel.

Unable to start the vehicle, the Plaintiff reached for the paperwork out of the glove box, closed the car door, and proceeded to the shoulder to call a friend for help.

He estimated that he took eight to ten steps from the vehicle when he was hit by another car (driven by Sandra Gray) and could not re-

call anything after that point.

The DMC treated him for his injuries. At the time of the accident, the Plaintiff was the owner the disabled vehicle and the insurance had lapsed.

Sandra Gray testified that she was traveling behind a truck on her way to work. The truck suddenly moved toward the left lane and shoulder to avoid hitting the Plaintiff and his vehicle.

Gray saw the Plaintiff leaning through the window of his vehicle, then stand up and look over his shoulder, but was unable to avoid striking Plaintiff.

The front right side of Gray's vehicle collided with the Plaintiff and his car. Although MCL 500.3113(b) of the No-Fault Act precludes coverage for individuals who fail to main-

tain no-fault insurance at the time the motor vehicle was *involved* in an accident, there is an exception for parked vehicles under MCL 500.3106.

The Court held that applying the plain language of §3113(b) and the case law to the present case, Plaintiff's vehicle was "involved in the accident."

The Court held that the Plaintiff vehicle was not *parked* as that term is used in § 3106, but rather *disabled* due to the fact that Plaintiff had lost control and struck the median.

Accordingly, the Court held that § 3106 did not apply and the Plaintiff was precluded from no-fault benefits because his uninsured vehicle was *involved* in the accident.

Help Buckfire & Buckfire Promote "Safe Driving"

Buckfire & Buckfire, P.C. was proud to announce in last month's newsletter that they are the Northern Regional sponsor for the American Lawyer Academy's (ALA) 2010-11 Viral Video Scholarship Contest. The ALA Viral Video Scholarship contest offers \$25,000 in scholarships toward college tuition at a recognized academic institution.

The scholarship program is dedicated to the thousands of accident victims who are injured or killed in motor vehicle collisions each year in the U.S. and hopes to save lives with a positive viral message. The theme of the contest is "*distracted driving*" and high school students and college students nationwide are encouraged to submit their videos promoting safe driving.

"We see outcomes of car accidents every day, handling cases for injury victims or ones who have lost a loved one in an accident. The injuries suffered in those car accidents are often serious and even catastrophic. At our firm we understand that distracted driving is a growing problem and want others to see the dangers of distracted driving," said Attorney Larry Buckfire.

Help us promote the idea of "safe driving" by spreading the word about the ALA Viral Video Scholarship to any college or high school students you may know.

To get video submission details and contest rules visit:

<http://www.buckfirelaw.com/library/viral-video-scholarship-contest-northern-region-buckfire-buckfire.cfm>

Court Reverses Dismissal of Injured Claimant's Attendant Care Case

In *Johnson v. Allstate*, unpublished opinion per curiam of the Court of Appeals decided November 9, 2010, (Docket No. 292401) the Court of Appeals reversed the trial court's dismissal of the plaintiff's case.

The plaintiff sued Allstate for no-fault benefits. The trial court dismissed the plaintiff's claims for attendant care and replacement services provided by the plaintiffs former mother-in-law, Harrietta.

The Court of Appeals reversed. First the Court held that the trial court erred when it determined that the plaintiff's claims were speculative.

The Court stated that although the plaintiff cannot provide documentation of each and every service

that Harrietta provided or how long she spends performing the services, the testimony of the plaintiff and her mother-in-law provided sufficient detail regarding the nature of the services and the approximate number of hours provided on a daily basis.

In addition the Court held that despite the plaintiff's pre-existing health problems, there was sufficient evidence to establish that the services provided by Harrietta were causally connected to the injuries plaintiff suffered in the accident and are reasonably necessary.

Moreover, the Court held that despite the fact that the plaintiff never paid Harrietta, could not afford to pay her, and never provided formal written docu-

mentation of the claim to Allstate, there was sufficient evidence to establish that attendant care and replacement services were incurred by the plaintiff.

In this regard, all benefits must be incurred before they are compensable. In terms of attendant care and replacement services, there must be some expectation of compensation by the care provider.

In this case, plaintiff and Harrietta testified that there was an agreement between them that plaintiff would pay Harrietta for her services.

This was sufficient to withstand a motion to dismiss and created a question for the jury to resolve.



Michigan's No-Fault Social Network

Join the No-Fault Network

<http://nofaultnetwork.com>

FREE MEMBERSHIP

- *Make & Receive Professional Referrals*
- *Network With Other Professionals*
- *Publicize Meetings and Events*
- *Find A Support Group*
- *Discover New Service Providers*
- *Promote Your Business or Service For Free*
- *Post Employment Opportunities*
- *Find New Employment*

ASK DAN - The No-Fault Insurance Expert



Q: *My patient has sued his/her no-fault insurer and the insurer had denied my bill, is my claim protected by the claimant's lawsuit?*

Dan: The answer to this question is somewhat complex. See for example the *Detroit Physical Therapy v. Farm Bureau* case summarized in this newsletter. My advice is to (1) assert a lien in writing to the Plaintiff's attorney to protect your rights; (2) if a lawsuit has been filed by the claimant you may consider intervening unless you are provided with written assurances that your lien will be honored; and/or (3) if the Plaintiff's attorney will not cooperate, file your own lawsuit against the insurer before one year from the date the earliest bill is incurred.

Q: *My client was injured in an auto accident and there does not seem to be insurance to cover his/her claim, what should I do?*

Dan: In situations where no-fault insurance is not available to cover the claim, the claim should be made with the Michigan Assigned Claims Facility (ACF) (517) 322-1875. The ACF application is available on our firm's website at <http://www.buckfirelaw.com/library/DOC003.PDF>. The ACF will assign an insurer to administer the claim and the claimant is entitled to all of the rights and benefits available under the No-Fault Act. However, if your client was an owner of an uninsured vehicle involved in the accident, then the client is not entitled to no-fault insurance benefits.

The Michigan No-Fault Newsletter



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We're on the Web!
www.BuckfireLaw.com



Our No-Fault Service Provider Spotlight

Hour Transportation

Provides Services Statewide With Headquarters in Southfield, MI

Ph: 888-290-4270

www.hourtransportation.com

This month we spotlight Hour Transportation, a non-emergency medical transportation for ambulatory and non-ambulatory individuals. Hour Transportation was founded in Southfield in 1997, however, over the recent years have opened additional offices in Ann Arbor, Flint, Grand Rapids, Kalamazoo, and Utica serving the entire lower half of Michigan's lower peninsula.

The vast majority of Hour's clientele consists of people who have suffered injuries in auto accidents. The company's mission is to provide quality non-emergency medical transportation with an emphasis on a high level of customer service. They can schedule rides 24 hours a day, 365 days a year and provide door-to-door assistance by CPR and First Aid-certified drivers.

Their fleet of over twenty vehicles include handicapped-accessible vehicles and wheelchair vans that have automatic hydraulic lifts with raised roofs and doors. Their staff consists of drivers, dispatchers, and customer service representatives who have experience and a special understanding of the challenges many auto-accident victims must face while adapting and recovering from their injuries.



Hour Transportation emphasizes that great customer service is impossible without a staff of great people.

To nominate yourself or another no-fault provider for the No-Fault Service Provider Spotlight, please e-mail your nomination to Kathryn@BuckfireLaw.com! Our newsletter is read by 1,000 readers every month!