

April 2011

**Special points of interest:**

- **How will the bill recently proposed in the Michigan Senate drastically alter the Michigan No-Fault System?**
- **Can an Insurer deny uninsured motorist benefits if the claim was not filed within 30 days of the accident?**
- **How can I schedule a No-Fault seminar?**

**Inside this issue:**

Myths About No-Fault Reform - Don't Buy The Insurance Companies Lies	<b>1 &amp; 2</b>
Set Up A No-Fault Seminar With Dan	<b>2</b>
Insurer Must Show Actual Prejudice To Deny UM Claim Under 30 Day Notice Clause	<b>3</b>
Court Finds That No-Fault Insurer Is Required To Pay For The Entire Cost of Modified Van	<b>3</b>
No-Fault Service Provider Spotlight	<b>4</b>

# The Michigan No-Fault Newsletter

**MYTHS ABOUT NO-FAULT REFORM - DON'T BUY THE INSURANCE COMPANIES LIES**  
A Special Editorial By Daniel L. Buckfire

The Michigan No-Fault Act was enacted in 1973. The concept behind the no-fault system was that people injured in auto accidents would be able to promptly collect their economic claims from their own insurance company, with the trade off being that it would be very difficult to sue a negligent driver for pain and suffering damages and physical scarring. In Michigan, included in the no-fault coverage, is unlimited lifetime medical coverage for injuries related to the accident.

A bill was recently proposed in the Michigan Senate that would drastically alter the Michigan No-Fault system. Senate bills 293 to 298 provides for options in purchasing no-fault coverage (\$50,000, \$100,000, \$200,000, \$400,000 and unlimited medical coverage), limits family provided attendant care to 56 hours per week, and sets fee schedules for medical expenses. Basically, this bill would completely destroy our present day no-fault system as we know it – catastrophically injured victims of auto accidents would no longer have the security of knowing that all of their medical bills would be paid throughout their lifetimes, and medical providers would not be able to provide the necessary medical services to the vic-

tims of the accidents.

The arguments that have been put forward for reforming the no-fault system are not based on facts but on myths which have been put forward by the insurance industry. The main argument is that auto insurance is very expensive and unaffordable in Michigan, especially in urban areas, and that by reforming the No-Fault Act, insurance costs will go down and become more affordable for people in the state. The proposed changes to the No-Fault system would only minimally reduce insurance costs, and would end up hurting the catastrophically injured victims in most need of care.

A typical auto insurance policy includes premiums for collision coverage (if your car is damaged in an accident), comprehensive coverage (if your car is stolen or vandalized), no-fault coverage, liability coverage, uninsured and underinsured motorist coverage, property damage coverage (if your car damages property, such as a building, street sign, traffic light, etc. or is involved in an accident with a car outside of Michigan), rental car coverage (if you need a rental car while your car is being repaired following an accident), and mini-tort cover-

age.

The costs for comprehensive and collision coverage usually comprise about 50% of total costs for auto insurance. No-Fault coverage, including the MCCA assessment, is about 25% of the total costs for an auto insurance policy in Michigan. The other coverages, such as liability, uninsured and underinsurance motorist, property damage, rental car, and mini-tort, generally comprise about 25% of the other costs for auto insurance.

So even if no-fault coverage was reduced, at best there would a small reduction in total premiums on an auto insurance policy.

What the proponents of reform also fail to understand is that the cost of liability coverage on an auto policy in Michigan will go up significantly if unlimited medical coverage is eliminated with reforms to the no-fault system. Presently, a victim of negligence in an auto accident makes claims for medical expenses against their own insurance policy. If the medical expense coverage has been exhausted on an auto no-fault



## 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.*

### **MYTHS, cont. from Page 1**

policy, as would occur often in the proposed legislation, then the victim will be able to sue the negligent driver for their medical expenses and other economic losses, which can be substantial. So while the costs of no-fault coverage may go down, most likely minimally, the costs of liability coverage will go up, so the overall savings to consumers would be at best very limited.

Also, without unlimited no-fault medical coverage, the State of Michigan, through Medicaid, will end up paying for medical expenses that are not covered through the no-fault coverage and liability claims. In essence, the bill will shift the responsibility to pay medical expenses from insurance companies to the taxpayers.

The Detroit Free Press recently cited two studies in a front page headline article on March 22, 2011, which purportedly shows the high cost of auto insurance in Michigan. The main study referred to by the Free Press is from **insure.com**.

The Free Press calls the website an "insurance consumer information site", but this is not true. Insure.com is a publicly traded company that sells auto insurance. The study states that Michigan auto insurance rates led the country - \$2,541 a year for a hypothetical 40-year-old man with a clean driving record (This was supposedly calculated by pricing policies from six major insurers in each state). I am a 43 year old man with a clean

driving record, with the best auto insurance coverage, and I pay about half that amount. As an attorney, I have reviewed hundreds of insurance policies, and have not seen anything close to that cost for a middle aged man with a clean driving record.

The other study cited by the Free Press was by the National Association of Insurance Commissioners which ranked Michigan the 11<sup>th</sup> most expensive state in auto insurance costs. The study was based on the actual costs of policies purchased in each state, and found that the average auto premium in Michigan in 2008 was \$1,032.02. It should be noted that the National Average premium for an auto insurance policy was \$902.86, that the average premium for an auto insurance policy in New Jersey was \$1,197.91, in New York was \$1,171.97, and in Florida was \$1,131.76.

New Jersey used to offer similar no-fault benefits, with unlimited medical coverage until the early 1990's, when that coverage was reduced to \$15,000 to \$250,000.00 in benefits.

New York offers \$50,000.00 in no-fault benefits, while Florida offers \$10,000.00 in no-fault benefits.

It is undisputed that Michigan offers the best benefits in the country to catastrophically injured victims of auto accidents by offering life-time,

unlimited medical coverage with its no-fault coverage. In comparing Michigan to other no-fault states, the coverage available in Michigan is a bargain compared to other states – it is cheaper and provides the best coverage.

In a person's lifetime, it can be statistically shown that it is likely that the person, or a close family member or friend, will be either be killed or catastrophically injured in a car accident. Currently, if this happens in Michigan, the injured person will receive lifetime care, and the person and their family will not be devastated financially with medical bills. Further, the accident victim will receive the best possible medical care to improve chances of a recovery.

The average auto insurance premium in Michigan is only \$129.16 more than the national average. This is a bargain. Any rational person would pay this cost for guaranteed medical benefits for life. Our No-Fault system, which has been in place for almost 40 years, should not be changed by the legislature. The proposed changes to the No-Fault system will only benefit the insurance industry and will have horrible consequences for the victims of auto accidents and their families.

**Book Your Free No-Fault Seminar Today!** Dan frequently gives educational seminars for groups of 10 or more attendees on Michigan No-Fault laws and current court cases. *There is absolutely no charge for the presentation! If you have a group of 10 or more and would like to schedule a seminar, please email Kathryn at [Kathryn@buckfirelaw.com](mailto:Kathryn@buckfirelaw.com)*

## Insurer Must Show Actual Prejudice To Deny UM Claim Under 30 Day Notice Clause

In *Defrain v. State Farm* \_\_\_ Mich App \_\_\_ (decided March 10, 2011) (Docket No. 294505) the issue was whether State Farm could deny the Plaintiff's uninsured motorist claim for failing to report a hit-and-run accident within 30 days.

This case arises out of a hit-and-run accident that resulted in the death of William DeFrain, who had uninsured motorist (UM) coverage through an insurance policy with State Farm.

On May 31, 2008, Mr. DeFrain was a pedestrian when he was struck by a hit-and-run driver and sustained severe head injuries. He first notified State Farm of the accident on August 25, 2008.

On November 11, 2008, Mr. DeFrain died as a result of his injuries. His State Farm policy included coverage relative to UM benefits.

Pursuant to the policy, a person making a claim for UM benefits "must report an accident involving a 'hit-and-run' motor vehicle to the police within 24 hours and to [State Farm] within 30 days[.]"

As reflected above, Mr. DeFrain failed to timely comply with the 30-day notice provision.

In *Koski v Allstate Ins Co*, 456 Mich 439; 572 NW2d 636 (1998), the Michigan Supreme Court held that an insurer must

establish *actual prejudice* before it is relieved from contractual liability under an insurance policy, where the insured failed to timely comply with a notice provision contained in the policy, which constituted a condition precedent to insurer liability.

The Court concluded that *Koski* applied to this case, and because State Farm failed to establish actual prejudice as a matter of law, State Farm could not deny the claim under the notice provision in its policy.

## Court Finds That No-Fault Insurer Is Required To Pay For The Entire Cost of a Modified Van

In *Admire v. Auto Owners*, unpublished opinion per curiam of the Court of Appeals decided February 15, 2011, (Docket No. 289080) the Plaintiff was injured in a motor vehicle accident in 1987, leaving him bound to a wheelchair that requires the use of a modified vehicle.

The parties entered into a Transportation Purchase Agreement in April 2000, which provided that Auto-Owners would pay \$37,807.76 for a van to meet plaintiff's transportation needs, that the operational use was estimated at seven years, and that [u]pon expiration of the operational use agreed to above, the van shall be traded in on a replacement van (i.e., the equity or value of that van [sic] shall be applied toward the purchase price of a replacement). [Plaintiff or his conservator and guardian] will give [Auto

-Owners] (60) sixty days advance written notice of their intent to purchase a replacement van.

On December 26, 2006, plaintiff gave Auto-Owners notice of his intent to replace the van.

On January 31, 2007, Auto-Owners advised that it did not believe it was obligated to purchase a new van under either the no-fault act, MCL 500.3101, *et seq.*, or the transportation purchase agreement.

However, it stated that plaintiff could trade in the existing van toward the price of a new van and that it would pay for "necessary medical modifications."

The trial court held that Auto-Owners was required to pay for the entire van, as opposed to only the modifications.

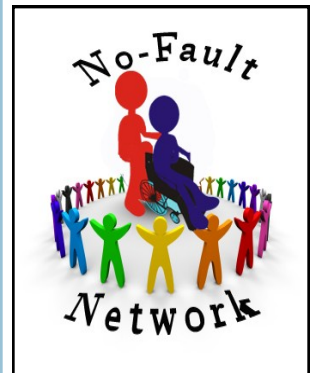
The Court of Appeals

agreed with the trial court and held that Auto-Owners was obligated to pay for the entire cost of the van.

The Court stated that the plaintiff clearly established that he could not drive a standard vehicle and needed a modified van.

Moreover, Auto-Owners did not make a showing that the plaintiff could easily use alternative transportation for his needs but instead focused on *the* argument that because plaintiff would have had a vehicle regardless of his injuries, the van is not compensable.

The Court found that existing case law ran contrary to Auto-Owners argument and ruled in favor of the plaintiff.



### 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*

# 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](mailto:daniel@buckfirelaw.com)

PRSRT STD  
US POSTAGE  
PAID  
MAIL WORKS  
II

**We're on the Web!**  
**[www.buckfirelaw.com](http://www.buckfirelaw.com)**



## Our No-Fault Service Provider Spotlight

*Mothers Against Drunk Driving (MADD)*  
625 E. Big Beaver, Suite 200 Troy, MI 48083  
Ph: 248-528-1745 [www.madd.org/mi](http://www.madd.org/mi) eMail: [mi.state@madd.org](mailto:mi.state@madd.org)

This month we spotlight Mothers Against Drunk Driving (MADD). MADD was founded in 1980 and is the nation's largest nonprofit working to protect families from drunk driving and underage drinking.

MADD Michigan provides many services and programs focused on MADD's mission to stop drunk driving, help the victims and survivors of these violent crashes, and prevent underage drinking. The nonprofit organization consists of all type of individuals including mothers, fathers, sons, daughters, relatives, friends, and neighbors all looking out for one another.

Some of the programs MADD provides include Victim Support, Life Saver event which is held annually in SE Michigan and other areas of Michigan as well, recognizing and awarding officers who support MADD's mission, Minor In Possession and Victim Impact Panels, and "Tie One On For Safety." A free 24/7 support phone line for victims/survivors in need of assistance is also provided by MADD: 1-800-232-6233.

MADD is also excited to announce their newest program launching April 21st - "Power of Parents-It's Your Influence" program. Knowledge and resources are provided to parents to engage their children in the very important dialogue about underage drinking.

Buckfire & Buckfire, P.C. sponsors many of the programs/events offered by MADD. In fact, our firm is proud to announce that we are the top corporate team to raise money for MADD's recent signature event, Walk Like MADD. Our firm is dedicated to eliminating drunk driving accidents in Michigan and will continue to promote awareness and support for MADD's mission.



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