

February 2010

**Special points of interest:**

- **What injuries must a person sustain in order to maintain a lawsuit under the No-fault law?**
- **How can you take advantage of our FREE Michigan No-Fault Insurance binder offer?**
- **Current settlements and firm news**
- **The benefits of joining the No-Fault Network**
- **Our Library of FREE legal books**

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# The Michigan No-Fault Newsletter

## No Dollar Requirements For Attendant Care Claims

*Salman v. Amica*, unpublished opinion per curiam of the Court of Appeals decided December 17, 2009 (Docket No. 286923) is an important appellate decision regarding the issue of attendant care. Under the law, No-Fault benefits must be “incurred” before a claimant is entitled to payment from the insurer.

With regard to attendant care and replacement services provided by family and friends, the Courts

have held that before an insurer will be held liable for the expense, the care providers “must perform the services with a reasonable expectation of payment.”

In *Salman*, the care provider completed forms providing the insurer with dates, hours and generally describing the nature of the care provided.

The *Salman* Court held that “there is no requirement that these forms be filled out contemporane-

ously. Rather, there is a permissible inference that [the provider] had a reasonable expectation of payment because she filled out the forms going back to the day of the accident.”

Moreover, the Court held that there is no requirement that the care provider assign a dollar amount to the care provided in order to satisfy the incurred requirement; it was permissible to request “whatever the jury thought was reasonable.”

## No-Fault One Year Statute of Limitations Is Extended

*Paquette v. State Farm*, unpublished opinion per curiam of the Court of Appeals decided July 21, 2009, (Docket No. 279309) the Plaintiff Richard Paquette was catastrophically injured in a motor vehicle accident on March 16, 1985, and had suffered a severe traumatic brain injury.

His No-Fault insurer, State Farm, never advised his parents that under the

law they were entitled to be paid for the considerable time they spent caring for him over the past 20 plus years.

In the lawsuit, the Plaintiff alleged that State Farm concealed their entitlement to No-Fault benefits, but State Farm asserted that their request was untimely under MCL 500.3145 (the one-year back rule) and all benefits were paid.

The Court held that un-

der the doctrine of equitable estoppel, the Plaintiff’s claims for attendant care and other benefits were not barred by the one year back rule- which generally precludes claims incurred beyond one year from the date a lawsuit is filed. State Farm has sought leave to appeal this decision with the Michigan Supreme Court and its request is pending.



## 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.

### Plaintiff's Car Accident Injuries Constitute A Serious Impairment As A Matter of Law

In *Caiger v. Oakley*, 285 Mich. App. 389 (August 25, 2009), the Michigan Court of Appeals held that the trial court improperly dismissed Donald Caiger's lawsuit in an automobile negligence case.

As a result of his accident, Mr. Caiger suffered severe injuries to his knee requiring a total knee replacement. He suffered significant pain after the accident, and had great difficulty walking for seven weeks following the surgery.

He also underwent extensive physical therapy from the surgery.

Under these facts, the court held that he had successfully proven that his injuries constituted a serious impairment of a body function as a matter of law and reinstated his case.

In more recent news, on January 12, 2009 the Michigan Supreme Court heard oral arguments in the case of *McCormick v. Carrier*, unpublished opinion per curiam of

lv gtd 770 N.W.2d357. In McCormick, the plaintiff was injured at work when a co-worker backed a truck over his left ankle.

The Michigan Supreme Court granted leave to Mr. McCormick's case and will decide whether he suffered a "serious impairment of body function." In this case, the Michigan Supreme Court may reconsider the standards set forth in *Kreiner v. Fischer*, 471 Mich. 109 (2004).

### Michigan Supreme Court Denies The MCCA Authority

In *U.S. Fidelity & Ins. Guarantee co. v. Mich. Catastrophic Claims Ass'n*, \_\_\_ Mich \_\_\_ (7/2009), the Michigan Supreme Court held that the Michigan Catastrophic Claims Association (MCCA), which indemnifies no-fault insurers for claims in excess of \$460,000, cannot withhold reimbursement to no-fault insurers based on its

own determination that a particular claimants' claim is unreasonable.

This is a positive and important decision for both no-fault claimants and no-fault insurers. Claimants will benefit because the insurers will be free to pay claims which they deem reasonable without interference from the MCCA.

Insurers will benefit

because they will not have to worry about whether they are going to be reimbursed by the MCCA on catastrophic claims.

Recently, though, the MCCA indicated that it will require insurers to forward proposed settlements for

### Injury Lawsuit Is Reinstated Against Negligent Driver

Under the Michigan No-Fault law a person must sustain a serious impairment of a body function in order to sue a negligent driver for pain and suffering damages.

In *O'Keefe v. Auto Club*, unpublished opinion per curiam of the Court of Appeals decided November 10, 2009 (Docket No. 287644), the Court of Appeals reversed the

trial court's dismissal of Ms. O'Keefe's case.

In this regard the Court held that her physician's letter, while not explicitly restricting her activities, stated that she needed attendant care services for household and yard work.

The Court of Appeals held that the letter created a reasonable inference that Ms. O'Keefe could not do these

things without assistance.

This is an important case because it's holding essentially states that rigid and strict standards (with respect to proof of physician imposed restrictions) is not required in these cases. Trial judges should make reasonable inferences based upon the medical evidence presented, as to whether a particular

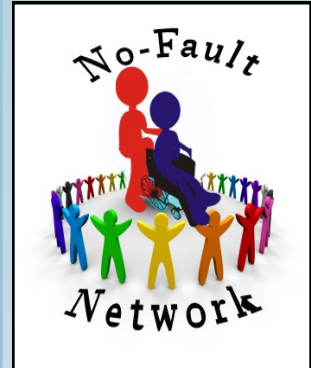
## FREE Binder Offer

As a resource to no-fault insurance providers, we are offering a **FREE BINDER** to the first 100 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 version of our book for you to print and keep in the binder.

**Request your FREE binder now!** Just email:

Kathryn@buckfirelaw.com and type "Send My Binder" in the subject line. Include your name and address and we'll send it out right away!



## Michigan's No-Fault Social Network

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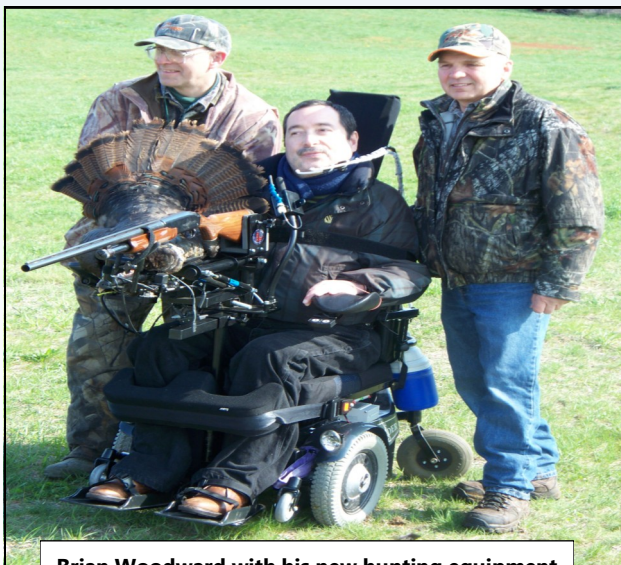
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## Current Case Study

After giving a presentation on Michigan No-Fault Insurance last year at a RINC (Rehabilitation & Insurance Nursing Council) event, attorney Daniel L. Buckfire was approached by a nurse case manager about an interesting and unusual claim.

His client, Brian Woodward, was rendered a quadriplegic in a catastrophic auto accident. Prior to the accident, he was an avid outdoorsman and could no longer engage in these activities due to his injuries. As part of his rehabilitation, his physician recommended that he be provided specialized hunting equipment. Mr. Woodward made a claim for this equipment to State Farm Insurance, which was flatly rejected.

Daniel stepped in and submitted the necessary documentation to the insurance company and cited the relevant law to support this claim. Shortly thereafter, the insurance company agreed to purchase the majority of the equipment. Mr. Woodward was not charged any legal fees for this work so that he could use all of the funds to purchase the equipment. He was able to resume hunting last fall which brought much enjoyment to his life. He was very grateful to the firm for coming to his aid.



Brian Woodward with his new hunting equipment

**"A lot in my life had been ripped away as a result of the car accident but Daniel was there to help me restore as much as possible. He even made sure that I was completely satisfied with the results. I highly recommend him to anyone injured in an accident. He really knows the law and insurance companies listen to him."**

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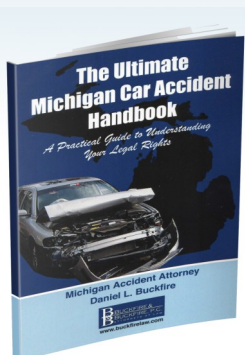
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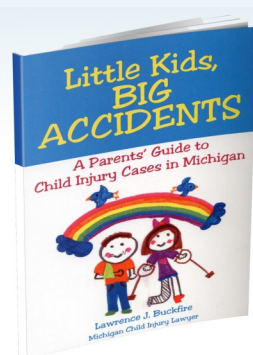
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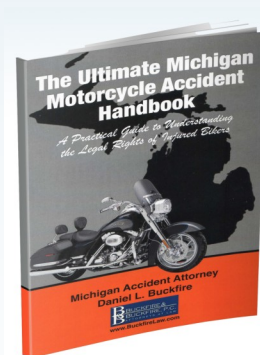
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The 57 page book explains **No-Fault benefits, personal injury claims, and property damage. claims.**



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