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Our No-Fault Service Provider Spotlight

*Medical Professionals Incorporated
Serving Mid and Southeast Michigan*

Ph: 800-223-5818 <http://www.medproinc.net>



This month we spotlight Medical Professionals, Inc. (MPI), a full service professional home care provider that specializes in caring for brain and spinal cord injured clients. MPI provides services for clients of all ages from children 18 months of age to the elderly. Its mission is to deliver high quality, exceptional healthcare services to individuals who have sustained simple injuries to complex catastrophic injuries.

A multi-disciplinary approach to healthcare focused on producing the best outcomes is used by MPI. MPI strives to help its clients live as independently as possible and help them live with the limitations caused by their illness or disability. Significantly improving the lives of its clients and families fulfills MPI's mission as healthcare professionals.

MPI has been owned and managed by a Registered Nurse for over 30 years. Its employees include a management team of licensed nurses and therapists, as well as paraprofessional care givers. As licensed nurses, professional standards of nursing practice are adhered to and a requirement at MPI.

MPI's management team are members of and support the Brain Injury Association, Michigan Brain Injury Provider Council, and Case Management Society of America, as well as other professional organizations. They have worked with, and are ardent supporters of the No Fault System in the State of Michigan.

September 2011

Special points of interest:

- **Is an experimental procedure an allowable expense?**
- **How can I attend a 2nd presentation on Michigan motorcycle laws?**
- **If a vehicle is non-functional and in need of repairs, will it still be considered an automobile in an insurance policy?**

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The Michigan No-Fault Newsletter

MSC Issues Important No-Fault Decision Involving Experimental Surgery

In *Krohn v. Home Owners Ins Co.*, ___ Mich ___ decided July 29, 2011 Docket No. 140945, the Michigan Supreme Court issued a 4-3 decision in a case involving the compensability of experimental treatment in a no-fault PIP case.

In *Krohn*, the Plaintiff suffered "an extremely severe spinal fracture" in a van/motorcycle accident that left him a paraplegic. He sought PIP benefits from his PIP insurer Home Owners Insurance Company (aka Auto Owners) to cover costs incurred for an experimental surgery performed in Portugal, an olfactory ensheathing glial cell transplantation, which involves transplanting tissue from behind the patient's sinus cavities (which contain stem cells) to the injury site. It was undisputed that the procedure was experimental and not a generally accepted treatment for the plaintiff's injury. The issue was "whether

this experimental procedure was a reasonably necessary service for plaintiff's care, recovery, or rehabilitation under § 3107(1)(a) of the No-Fault Act.

In the decision, the Court rendered several significant holdings. The court held that if a medical treatment is: (1) experimental and (2) not generally accepted within the medical community, an insured seeking reimbursement for the treatment must, at a minimum, produce objective and verifiable medical evidence that the treatment is efficacious.

"A treatment or procedure that has not been shown to be efficacious cannot be reasonable or necessary under" the No-Fault Act.

The Court went on to state that, whether a product, service, or accommodation is reasonably necessary for the insured's care,

recovery, or rehabilitation must be determined under an objective standard - an insured's subjective belief is insufficient.

In this case, the Court concluded that the plaintiff's experts only opined that his decision to undertake the procedure was an "understandable" personal decision that offered him "only a medically unproven 'possibility,' or hope, for an efficacious result."

Thus, the Court held that the objective and verifiable medical evidence presented at trial failed to show that the experimental surgery at issue was in any way efficacious in the plaintiff-insured's care, recovery, or rehabilitation.

Accordingly, the Court held that the procedure was not an allowable expense under § 3107(1)(a).

Michigan Motorcycle Accident Law Presentation Was a Success! 2nd Date Announced! RSVP Now!

Buckfire & Buckfire, P.C. and TBI Solutions hosted a Michigan Motorcycle Accident Law Presentation for free to all case managers and medical providers last month. The presentation turned out to be a success with a total of 80 in attendance! RN and CCM CEU's were offered to attendees.

We received excellent reviews from the attendees of the presentation. The seminar was in such demand that we were unable to accommodate everyone who wanted to attend. A waiting list was created and we will be hosting a 2nd presentation on Wednesday, November 9th, 2011 from 4:00 p.m. to 6:00 p.m. at TBI Solutions in Southfield, MI. If you were not able to attend the 1st presentation and are interested in attending the 2nd presentation, email or call Kathryn at 248-569-4646 or Kathryn@buckfirelaw.com.



**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.

COA Holds Certain Evidence Should Be Excluded in UIM Case

In *Chouman v. Home Owners Ins. Co.*, unpublished opinion per curiam of the Court of Appeals decided August 2, 2011, (Docket No. 295491), the Court of Appeals reversed a judgment in favor of the Plaintiffs in an underinsured motorists (UIM) benefits case.

This case arises out of an automobile accident in which Chouman was injured when Miriam Hamadi rear-ended her.

This case arises out of an automobile accident in which Chouman was injured when Miriam Hamadi rear-ended her. Defendant Home Owners (aka Auto-Owners Ins.) is her no-fault insurer. Hamadi was the original named defendant in this matter, but, with Defendant Home Owners' permission, Chouman settled her tort claim with Hamadi and Hamadi's insurer, AAA.

Plaintiff then proceeded with her claim against Defendant for underinsured motorist (UIM) benefits in the amount of the difference between plaintiffs' policy limits and Hamadi's policy limits.

In the trial court, the Plaintiff obtained a jury verdict and judgment against Defendant Home Owners, and Home Owners appealed.

On Appeal, the Defendant argued that the trial court erroneously admitted certain testimonial evidence, erroneously granted a directed verdict in plaintiffs' favor on the issue of a serious impairment of body function, and erroneously awarded case evaluation sanctions in excess of plaintiffs' policy limits.

The first piece of testimonial evidence to which defendant objected is that defendant initially paid first-party personal injury protection (PIP) no-fault benefits to plaintiffs, but eventually terminated those payments.

Defendant argued that the above evidence was irrelevant, unduly prejudicial, and legally inadmissible under MRE 408 and MRE 409.

The Court of Appeals held that because the Defendant terminated plaintiff's benefits and she stopped treating because of the lack of coverage, the evidence was highly and directly relevant to the underlying question of *why* she discontinued much of her treatment. This was important on the issue of whether Chouman suffered a serious impairment of body function.

However, the Court held that the identity of the payer (the Defendant) of those benefits was not relevant to any proper purpose. Thus, on remand, the Court instructed the trial court to allow the evidence but not disclose that the Defendant was the payer.

The second piece of evidence at issue was that Defendant consented to plaintiffs settling their direct claim against Hamadi and Hamadi's insurer, AAA, for Hamadi's policy limits.

The Court held that although the evidence did not violate MRE 408 (which bars evidence of offers to compromise), the defendant's consent to plaintiffs' settlement with Hamadi and AAA was, *itself*, inadmissible because it had so little "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable," MRE 401.

Thus, the Court held that its probative value is substantially outweighed by the danger of unfair prejudice, confusion, redundancy, or other related concerns. MRE 403.

On the issue of the directed verdict in Plaintiff's favor on the issue of serious impairment, the Court held that there remained questions of fact as to whether the Plaintiff's impairments were ongoing and thus whether her general ability to lead her normal life had been affected.

Because the trial court took the issue of whether Chouman suffered a "serious impairment of body function" from the jury's consideration, the judgment in favor of the plaintiffs was reversed and the award of case evaluation sanctions was vacated.

On retrial, the Court held that the Plaintiff may fully explain why she discontinued some of her medical treatment so long as she does not identify defendant as the payer, evidence of defendant's consent to plaintiffs' settlement with Hamadi shall not be admissible, and the trial court shall submit the issue of whether Chouman suffered a "serious impairment of body function" to the jury for its consideration.

COA Holds Owned Vehicle Exclusion In UM Policy Includes Damaged, Non-Functional Car

In *Owens v. Auto Owners Ins Co*, unpublished opinion per curiam of the Court of Appeals decided August 11, 2011, (Docket No. 297590) Plaintiff, Gary Scott Owens, was standing outside a pub near a line of parked motorcycles when he was struck by a van. He received extensive injuries from the accident.

At the time of the accident, the driver of the van that struck him was an uninsured motorist. The parties agreed for the purposes of the appeal that Plaintiff was a pedestrian that was struck by an uninsured motorist.

Plaintiff lived with his mother at the time of the accident. He filed a complaint against defendant Auto Owners Insurance Company for breach of contract for failure to pay uninsured motorist (UM) benefits under his mother's Auto Owners insurance policy as a resident relative.

Under the Auto-Owners

insurance policy, uninsured-motorist coverage extends to a relative who resides with the insured **and does not own an automobile.**

The Auto-Owners insurance policy defines an automobile as a private-passenger automobile, a truck, truck tractor, trailer, farm implement, or other land motor vehicle.

Auto Owners denied the claim because Plaintiff was the owner of a 1995 Buick Riviera at the time of the accident, which they claimed barred him from recovering uninsured-motorist benefits under the aforementioned exclusion.

Plaintiff responded that the Buick Riviera should not be considered an automobile for insurance-policy purposes because the Buick Riviera was an inoperable car that was only used for parts.

However, the affidavit

he filed in the trial court only stated that it was "not functional" and that the car had been damaged in an accident and had never been repaired.

The Court held that just because a vehicle is non-functional and in need of repairs does not mean that it is not an automobile.

In addition, the Court stated that the terms "operable" and "function" are not required under the definition of an automobile in the policy.

Furthermore, at the time of the accident, plaintiff had title to the Buick Riviera.

Based on these facts, the Court held that the Plaintiff was not entitled to UM benefits under the terms of the policy because he owned an automobile (Buick Riviera) at the time of the accident.

ASK DAN - The No-Fault Insurance Expert



Q: If an injured claimant is self employed, can the claimant still receive no-fault wage loss benefits?

Dan: Yes. However, it is more complicated to calculate the wage loss for a self employed person than a claimant who is paid a salary or is paid hourly. Often times it is necessary to retain a CPA to assist in submitting the claim.

Q: If a person is laid off from work at the time of the accident is he/she still entitled to wage loss benefits?

Dan: Yes. In this situation, the claimant is considered "temporarily unemployed" under § 3107a of the No-Fault Act. In order to obtain benefits the claimant has to show that he/she was actively seeking employment at the time of the accident. The wage loss claim would be based upon what the person earned in the last month of employment.

Book Your Free No-Fault Seminar Today!

Daniel frequently gives educational seminars to groups of 10 or more attendees on Michigan no-fault laws and current court cases. To schedule a free seminar, please email or call Kathryn at Kathryn@buckfirelaw.com or 248-569-4646.



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