

February 2012

Special points of interest:

- **What is the definition of "resident relative" and what relation does that term have to the payment of no-fault benefits?**
- **Come visit our table at the Carnival of Care 2012**

Inside this Issue:

Court Decides Priority Dispute Involving Injured 18 Year Old Student	1 & 2
Trial Court Must Determine Reasonableness of Insurer's Actions to Award Attorney Fees	2
Mothers Against Drunk Driving Announces Buckfire & Buckfire As Their Michigan Statewide Sponsor	3
Come Visit The Buckfire & Buckfire Table At The Carnival Of Care And Join The Fun!	3
Ask Dan—The No-Fault Insurance Expert	3
No-Fault Service Provider Spotlight	4

The Michigan No-Fault Newsletter

Court Decides Priority Dispute Involving Injured 18 Year Old Student

In *Lucio v. Great Lakes Casualty Ins. Co. and Auto Club Ins Assoc.*, unpublished opinion per curiam of the Court of Appeals decided December 29, 2011, (Docket No. 299786), the Court of Appeals was presented with a no-fault case involving a priority dispute between two no-fault insurers- Great Lakes Insurance Association and Auto Club Insurance Association (AAA).

When Andrew Lucio turned 18, he decided to attend high school in Saginaw, rather than in Frankenmuth where he resided with his mother and stepfather. Andrew moved into the Saginaw home of Penny Maxwell, located approximately six miles from the high school.

While staying with Maxwell and driving her car, Andrew sustained injuries in a motor vehicle accident. Andrew's subsequent claim for personal injury protection (no-fault) benefits launched this insurance coverage dispute.

Great Lakes Casualty Insurance Company insured Penny Maxwell, and Auto Club Insurance Association insured Julie Mossner, Andrew's mother. The insurance companies agreed that Andrew's "domicile" at the time of the accident dictated which insurance company was required to provide cover-

age for no-fault benefits pursuant to MCL 500.3114 of the No-Fault Act.

The trial court ruled that Andrew was domiciled in Saginaw rather than Frankenmuth, obligating Maxwell's no-fault carrier, Great Lakes, to pay for Andrew's PIP no fault benefits.

In resolving this question, the trial court relied heavily on the testimony of Andrew's stepfather, who claimed to have banished Andrew from the Frankenmuth home. Great Lakes appealed the decision.

The Court stated that there are several factors that should be considered in determining domicile, and these factors should be weighed or balanced with each other because no one factor is determinative. As was noted in *Workman v DAIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), the factors to be considered are: (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household"; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; (4) the existence of another place of lodging

by the person alleging "residence" or "domicile" in the household.

However, the Court noted that young adults in transition from parental homes to independent living arrangements pose special problems in determining domicile and that the Workman factors do not account for facts pertinent to determining the domicile of a student who has left home, but has yet to sever ties with his family's household.

Thus, as an aid to resolving when a student ceases to be a member of his family household, the Court identified the following pertinent factors: (1) whether the child continues to use the parents' home as the child's mailing address; (2) whether the child maintains some possessions with the parents; (3) whether the child uses the parents' address on the child's driver's license or other documents; (4) whether a room is maintained for the child at the parent's home; and (5) whether the child is dependent upon the parents for support.

The Court noted that the evidence indisputably substantiated that Andrew and his mother considered the Frankenmuth house to be his "domicile," and that



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.

COURT DECIDES, cont. from Page 1

Andrew intended to return to Frankenmuth after high school.

Moreover, Andrew lacked any formal relationship tethering him to the Maxwell home, maintained a Frankenmuth mailing address, deliberately and repeatedly identified Frankenmuth as his residence, kept most of his possessions in

Frankenmuth, and remained dependent on his mother for essential aspects of support.

The Court also held that AAA's insurance policy extended coverage to "resident relative[s]" of the named insured, and defined a "resident relative" as "your unmarried child attending school away from home."

The Court held that Andrew qualified as a resident relative of his mother under this definition. Based on the foregoing, the Court held that Andrew was domiciled in his mother's household and her insurer, AAA, was responsible for Andrew's no-fault benefits.

Trial Court Must Determine Reasonableness of Insurer's Actions to Award Attorney Fees

In *Carignan v. State Farm*, unpublished opinion per curiam of the Court of Appeals decided January 17, 2012, (Docket No. 302482), the Court of Appeals issued an unpublished opinion regarding an award of no-fault penalty attorney fees to the Plaintiff.

On July 4, 2008, plaintiff was riding his motorcycle when he was struck by a car driven by Cheryl Collon, State Farm's insured. Plaintiff suffered traumatic injuries including the amputation of his left leg.

Following the accident, State Farm paid some personal injury protection (no-fault) benefits to plaintiff, but a dispute eventually arose over payment for home modifications, attendant care, case management services, and other miscellaneous expenses.

On August 24, 2009, plaintiff filed a lawsuit against State Farm. Plaintiff asserted that his physicians prescribed, among other things, 24 hour per day attendant care, case management services, and home modifications, and that State Farm refused to pay.

The case proceeded through discovery, and shortly before trial, State Farm agreed to pay many of the

disputed expenses. State Farm issued checks to plaintiff totaling over \$30,000, and the case proceeded to a jury trial with respect to home modifications, attendant care, and penalty interest.

After a two day trial, the jury found in favor of the plaintiff. The jury found that plaintiff incurred \$2,500 in allowable expenses for home modification and \$8,500 for attendant care. The jury also found that payment for some of the expenses were overdue, and it awarded penalty interest pursuant to MCL §500.3142.

Following the verdict, plaintiff filed a motion requesting \$107,975 in no-fault attorney fees pursuant to MCL §500.3148(1) because State Farm unreasonably refused to pay his claims or unreasonably delayed in making proper payment.

After a hearing on the motion, the trial court granted plaintiff's motion and awarded him the full amount requested. State Farm appealed.

On Appeal, the plaintiff argued that he was entitled to no-fault attorney fees because the benefits were overdue, and defendant

unreasonably refused to pay his claims or unreasonably delayed in making payment. State Farm argued that the trial court never made any determination regarding the reasonableness of State Farm's delay or refusal to pay.

The Court held that "MCL 500.3148(1) requires that the trial court engage in a fact-specific inquiry to determine whether 'the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.'"

While the trial court addressed the reasonableness of the attorney fees requested, it failed to specifically address the reasonableness of defendant's actions.

Accordingly, the Court vacated the award of no fault attorney fees only and remanded the case to allow the trial court to engage in a fact specific inquiry to determine the reasonableness of defendant's refusal to pay plaintiff's claims and/or delay in making payment under the circumstances of this case.

Mothers Against Drunk Driving Announces Buckfire & Buckfire As Their Michigan Statewide Sponsor

Mothers Against Drunk Driving (MADD) Michigan and Buckfire & Buckfire, P.C. held a free public event on Monday, January 30, 2012, to inform people of their legal rights after a Michigan car crash

The public event began with the recognition of Buckfire & Buckfire as MADD's Michigan Statewide Sponsor, due to their continued involvement, sponsorships, and donations to MADD. A plaque was hung in the MADD Michigan office recognizing Buckfire & Buckfire's contributions to MADD. The night also offered a free presentation led by Daniel Buckfire explaining the Michigan no-fault laws, and advising how Michigan drivers can protect themselves and their families on the roads and highways through having the proper automobile insurance coverage.

In 2010, nearly 11,000 people were killed nationally, and more than 350,00 people injured in a drunk driving crashes. As personal injury attorneys handling drunk driving accidents, we are well aware of the catastrophic injuries caused due to these accidents.



Dan Buckfire at the presentation on January 30,

Come Visit The Buckfire & Buckfire Table At The Carnival of Care And Join The Fun!

The Careforward Foundation is holding its annual Carnival of Care on Saturday, March 10th at the Best Western Sterling Inn, in Sterling Heights, MI from 10:00 A.M. to 3:00 P.M. Buckfire & Buckfire, P.C. is proud to announce that we will be a sponsor of the event for the fourth consecutive year.

The Carnival of Care is held to help raise money for The Brain Injury Association of Michigan (BIAMI). It is a free fun-filled day of music, food, face painters, balloon artists, clowns, massages, carnival games and much more for survivors of auto accidents and brain injuries, and their caregivers.

Through our cases, we realize how important organizations such as The Brain Injury Association are to our clients. We are proud to again be a sponsor of such an exceptional event that supports the BIAMI, and we will continue to promote awareness and support for brain injury victims and the BIAMI.

Buckfire & Buckfire welcomes all caregivers and brain injury survivors to attend this event. Come visit our booth at the Carnival of Care and enjoy a free fun-filled day!



ASK DAN - The No-Fault Insurance Expert



Q: Can a person injured in a car accident treat with any doctor he or she chooses?

Dan: The simple answer is yes because the no-fault system is not a managed care system. However, if the person has a coordinated no-fault policy and has health insurance through an HMO, the person is required to treat within the network, unless the service or treatment is not covered by HMO.

Q: If an injured claimant's health insurance policy caps benefits, does a coordinated no-fault insurer have to assume paying on a primary basis after the cap is met?

Dan: Yes. The no-fault insurer is responsible for reasonable and necessary medical expenses once the claimant has met the cap in the health insurance policy.



Michigan's No-Fault Social Network

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<http://nofaultnetwork.com>

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The Michigan No-Fault Newsletter



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Our No-Fault Service Provider Spotlight

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This month we spotlight McGuffey Home Health Care, LLC. McGuffey Home Health Care provides in-home health care for brain injured and closed head injury patients. At McGuffey Home Health Care, its patients are the first priority, encouraging them and helping them to become as independent as possible.

McGuffey Home Health Care, LLC is CHAP accredited, and is a member of the Michigan Brain Injury Association, as well as the Michigan Home Health Association. It accepts no-fault insurance, workers compensation insurance, long term care insurance, Medicare, Medicaid, BCBS, Humana, Aetna, Total Health Care, and other commercial insurance.

An array of various supportive services and assistance is offered for the patients' needs. Its staff consists of registered nurses, case managers, physical therapists, occupational therapists, speech therapists, social workers, and certified nurses assistants, as well as a 24 hour on call person. It offers same day staffing and case management, and also utilizes real time electronic medical records. Its offices are located in Troy, Michigan and it is able to serve patients throughout the entire State of Michigan.



McGuffey Home Health Care, LLC Logo

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!