The Michigan No-Fault Newsletter

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Our No-Fault Service Provider Spotlight

AdvisaCare

Entire State of Michigan

Ph: 877-6544144 *http://www.advisacare.com*

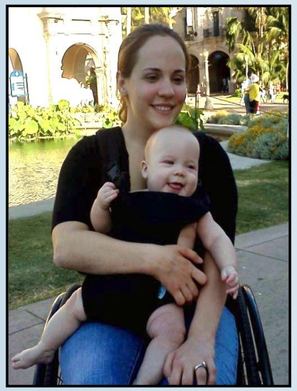
This month we spotlight AdvisaCare, a home health care agency helping patients and their families recover from their injuries, whether it's simple fractures to severe TBI/SCI, from auto or work related accidents. They use a personal approach in providing the care needed by their patients as they have found each situation unique.

AdvisaCare provides services that include companion attendant care to wound care, pain management, IV therapy, transportation, and ventilation care. Having eight locations, AdvisaCare provides 24/7 home health care services throughout the entire State of Michigan.

Trusted. Passionate. Proven. That is AdvisaCare's mission—to be a trusted part of the care team, passionate about improving patients' lives and proven to be committed to the recovery process for each patient they serve.

AdvisaCare has partnered with Evergreen Grove to provide a housing community in Genesee County which is a condo style duplex housing. Evergreen Grove, which will consist of 19 units, is specifically designed to accommodate catastrophically injured patients, families and their caregivers. Nine of the 19 units have already been completed. Ten more units along with a therapy center are scheduled to be completed soon. All units offer special features which include electronic lifts, stand-by generators, specialized kitchens, cabinetry/vanities, and security and are pet friendly.

To see a detailed photo gallery of Evergreen Grove visit the website at www.evergreengrovellc.com



Ashleigh Justice, one of AdvisaCare's patients, pictured with her child.

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!

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Special points of interest:

- **When does "on-call" supervisory time qualify as attendant care?**
- **What is an "illusory" insurance contract?**
- **How do I download the FREE accident lawyer app on the Android?**

Inside this issue:

Court Holds That "On-Call" Supervisory Time Qualifies As Attendant Care

In *Smith v. Allstate*, unpublished opinion per curiam of the Court of Appeals decided June 23, 2011, (Docket No. 295484), the Court of appeals rendered an important decision on issues involving claims for attendant care in a no-fault first party case.

In July 1996, the plaintiff sustained a traumatic brain injury when he was struck by a car while riding a bicycle. Although the injury impaired plaintiff's memory and affected his personality and mental well-being, he was able to return to work for a period of time after the accident.

In May 2005, the plaintiff filed a lawsuit for recovery of PIP benefits against Allstate, who had been assigned to administer plaintiff's claim by the Michigan Assigned Claims Facility. Defendant Allstate paid certain PIP benefits after the action was filed, but disputed plaintiff's entitlement to attendant care benefits.

The case proceeded to a bench trial. The trial judge held that the plaintiff was entitled to attendant care benefits for services provided by his wife, Katherine Douglas, from May 31, 2004, up to the date of trial.

Plaintiff was awarded weekday aide care of seven hours each day and weekend aide care of 16 hours each day up to November 1, 2007, and 40 hours each week from November 1, 2007, up to November 18, 2009, the date of the judgment. Allstate appealed.

On Appeal, the Court held that attendant care or nursing care for "on-call time" is compensable if it is necessary. Such time may be compensable even if the caregiver was pursuing his or her own interests or performing household tasks, so long as the caregiver performs these tasks within the limits of the on-call job.

Furthermore, the Court upheld the hourly rate of $40 used by the trial court to determine the award.

In this regard, the Court stated that compensation paid to a licensed healthcare professional who provides similar services may be used to determine reasonable compensation for an unlicensed person.

In addition, the rate *charged* by institutions may also provide a valid method for determining whether the charge for care provided by a family member for comparable services is reasonable.

Here, the $40 rate was supported by testimony regarding the rate charged by commercial agencies. Thus, the trial court's use of the $40/hr rate was within the range of evidence.

However, the Court held that the trial court's decision does not indicate that it rendered findings with respect to the requirement that the caregiver reasonably expect payment at the time of the claimed performance (i.e the requirement that the expenses be incurred).

In this regard, the caregiver, Katherine, did not maintain records of her claimed attendant care. Instead, she completed "affidavit of attendant care services" forms on June 25, 2007, for certain past months in an effort to reconstruct her time, which were vague and incomplete.

Thus, the Court remanded the case back to the trial court for further proceedings on the sufficiency of the documentation supporting the hours underlying any award.

Maximum Monthly Wage Loss Benefit—10/1/10 to 9/30/11— $4,929.00

MCCA Reimbursement Levels—7/1/11 to 6/30/13—$500,000.00

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.

Court Holds That Underinsured Motorist Benefits Payable to Motorcyclist's Estate

In *Estate of Darryl Ile v. Foremost Ins. Co.*, ____ Mich App. ____ decided July 14, 2011, (Docket No. 295685), the Court of Appeals upheld a trial court's decision in favor of the Plaintiff on an issue involving underinsured motorist coverage.

In this case, Foremost Insurance Co. issued to the decedent a motorcycle insurance policy that included "bundled" uninsured motorist and underinsured motorist coverage.

Uninsured motorist (UM) coverage provides a source of recovery to an injured person for injuries caused by an uninsured driver/vehicle.

Underinsured motorist coverage (UIM) provides coverage for an injured person, where the tortfeasor (the negligent driver) has insurance but is "underinsured", i.e has lower liability limits than the injured person's UIM coverage limits.

For example, where a person is seriously injured by a motorist who has the State statutory minimum liability limits of $20,0000 and the inured person's injuries are valued at more than $20,000 the tortfeasor is said to be underinsured.

UIM/UM coverage is optional, thus the court's interpret the conditions of these insurance policy provisions under general contract law principals.

In this case, the insurance policy sold to the decedent by Foremost provided UM and UIM coverage in an amount equal to the minimum liability coverage limits permitted under Michigan law of $20,000/$40,000. Although Foremost offered higher limit options, the decedent selected this amount of coverage and paid a single, unallocated premium amount of $26 for UM/UIM coverage.

Under the language of the policy, Foremost agreed to pay "compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'underinsured motor vehicle' because of 'bodily injury.'"

The decedent was killed in a motorcycle accident involving the underlying tortfeasor's car in 2006. The Plaintiff settled the underlying tort case with the tortfeasor for the tortfeasor's full liability limits of $20,000.

Plaintiff sought to recover an additional $20,000 from Foremost under the decedent's UIM policy. Foremost denied the claim on the basis that the Plaintiff had already received the maximum amount payable under decedent's policy from the insurer of the tortfeasor's vehicle.

In other words, there was no UIM claim because the UIM limits on the decedent's policy did not exceed the liability limits on the tortfeasors policy.

The Plaintiff sued Foremost arguing that the insurance contract it sold the decedent was illusory – i.e that because the state liability limits are $20,000 and underinsured coverage only applies when the tortfeasor is insured, the decedent paid a premium for coverage that did not exist.

The trial court held that the contract was illusory and that the Plaintiff was entitled to recover the $20,000 in UIM benefits in addition to the $20,000 already recovered under the tortfeasor's policy.

On appeal, the Court of Appeals agreed with the Plaintiff and the trial court. The Court stated that an "illusory contract" is defined as "[a]n agreement in which one party gives as consideration a promise that is so insubstantial as to impose no obligation".

The insubstantial promise renders the agreement "unenforceable." "**An illusory contract, which cannot be enforced because it violates public policy.**"

The Court determined that because Michigan mandates a minimum liability coverage for bodily injury equal to the amount of decedent's policy of $20,000/$40,000, there existed no possibility for the decedent to collect underinsured motorist benefits at the selected level of coverage.

Thus, the UIM coverage in the Foremost policy was illusory and the Plaintiff was entitled to recover the $20,000 in UIM benefits, in addition to the $20,000 already received from the tortfeasor's policy.

Android Version Now Available
In Case Of A Car Accident — Download Free Accident App Today!

In our recent issue of the Michigan No-Fault newsletter, we announced the release of our **FREE** mobile app for the iPhone, **the very first free mobile app by a Michigan Accident law firm**. **Buckfire & Buckfire is now proud to announce that the mobile app is now available for the Android!**

The Accident Lawyer App is completely free and includes many features that are helpful at the scene of the accident. Some of the features include an emergency accident center, accident tip checklist, one touch access to call the police or to locate the nearest Emergency Center, easy access to call a tow truck or taxi cab, accident form to report when you have been involved in an accident, and much more!

Download the mobile app on your Android today by searching on the Android Market for "**Michigan Accident Lawyers**" or scanning the QR code from your Android.

Court Of Appeals Orders Trial Court To Reconsider Plaintiff's Case In Light of McCormick Decision

In *Sikkenga v. Townsend*, unpublished opinion per curiam of the Court of Appeals decided June 14, 2011, (Docket No. 297195), the plaintiff sustained pelvic fractures in a 2007 automobile accident involving defendant. The plaintiff and her husband filed a tort action against defendant in 2009.

In February 2010, the defendant requested that the trial court dismiss the case, arguing that the plaintiff did not have a threshold injury under § 3135 of the No-Fault Act (serious impairment of body function), to support the tort action.

The trial court agreed, and in March 2010 concluded that plaintiff's injuries did not meet the threshold requirement under the test set forth in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004).

At the time the trial court rendered its decision, § 3135 was controlled by *Kreiner*. However, in July 2010, the Supreme Court issued *McCormick v Carrier*, 487 Mich 180; 795 NW2d 517 (2010).

The *McCormick* decision overruled the *Kreiner* Court's interpretation of MCL 500.3135.

Because the trial court utilized the now overruled *Kreiner* standard, the Court of Appeals vacated the trial court's dismissal and remanded the case back to the trial court to reconsider the Defendant's motion in light of *McCormick*.

ASK DAN - The No-Fault Insurance Expert

Q: *How much money does the insurance company have to pay for case management services?*

Dan: There is no limit on the amount of case management services that a patient can receive. The only limitation is that the case management services must be reasonable and necessary for the patient's care, recovery, and rehabilitation.

Q: What sort of proof is required of an insurer so that it will pay for case management services?

Dan: Reasonable proof of the fact and the amount of the claim is legally required for the insurance company to pay the claim. A prescription from a treating physician for case management services, case management reports, and itemized billings are usually sufficient for the adjuster to pay the claims.

Michigan's No-Fault Social Network

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http://nofaultnetwork.com

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- *Promote Your Business or Service For Free*
- *Post Employment Opportunities*
- *Find New Employment*