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Our No-Fault Service Provider Spotlight



Troy Home Care Services
Serving throughout the State of Michigan
Phone: 248-591-9200

This month we spotlight Troy Home Care Services PC. Troy Home Care Services PC specializes in providing care and services for injury victims who have sustained closed head injuries, spinal cord injuries, as well as serious injuries to the lower extremities, including ankle fractures, hip and pelvic fractures, and knee surgeries.

Since 2007, it has provided home care services for Michigan residents involved in automobile accidents, slip and fall accidents, and work related injuries. It maintains a knowledgeable and comprehensive staff of health care professionals with services featuring physical therapy, occupational therapy, social work, speech pathology, and home health aide care. It is also able to provide 24 hour supervision for clients who require around the clock care.

Troy Home Care Services will work in unison with its clients' attorneys, physicians, and case managers to provide the care and service they need while recovering from their injuries. Its team of specialists have also worked with major insurance companies to ensure their clients receive the best care available.

For more information, please call Jeffrey Hollander or another member of their staff at Troy Home Care Services PC at 248.591.9200.



Troy Home Care Services, PC

May 2012

Special points of interest:

- **Senate Bill 291: Michigan's Motorcycle Helmet Law Repeal**
- **Is there still time to nominate my client to receive tickets to the 2012 Detroit Tigers season?**

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The Michigan No-Fault Newsletter

Negligence Claim Against City of Detroit Dismissed Involving Police Chase

In *Ibrahim v. City of Detroit*, unpublished opinion per curiam of the Court of Appeals decided March 13, 2012, (Docket No. 301617), the Court upheld the dismissal of the Plaintiff's claim against the City of Detroit involving a police chase.

Plaintiff filed this action against the City after he was involved in an automobile accident with codefendant Ivan Lazar during a police pursuit of Lazar's vehicle.

In *Robinson v City of Detroit*, 462 Mich 439, 444, 613 NW2d 307 (2000), our Supreme Court specifically addressed the motor vehicle exception to governmental immunity under MCL 691.1405.

The Court held that an innocent person injured as a result of a police chase may seek recovery against a governmental agency under the motor vehicle exception to governmental immunity, MCL 691.1405, only if the

injuries resulted "from the police physically hitting the fleeing car or physically causing another vehicle or object to hit the fleeing car or physically forcing the fleeing car off the road into another vehicle or object." *Robinson*, 462 Mich at 445, 456-457, 469.

The Court of Appeals held that trial court correctly granted Detroit's motion to dismiss based on the governmental immunity statute.

In this regard, when the accident occurred between plaintiff's vehicle and Lazar's vehicle, Detroit police officers were pursuing Lazar after he failed to stop at a stop sign.

However, the Court found that it was undisputed that the police vehicle had no physical contact with plaintiff's vehicle or the fleeing vehicle.

There was also no evidence showing that the

police vehicle "physically forced" plaintiff's vehicle or Lazar's vehicle off the road or into another vehicle or object. Rather, the pursuing officer gave un rebutted testimony that his police vehicle was one block away from the accident scene when plaintiff and Lazar collided.

These undisputed facts establish that under *Robinson*, the motor vehicle exception to governmental immunity did not apply because the police vehicle was not physically involved in the collision.

Thus, in accordance with *Robinson*, the Court found that the trial court correctly granted summary disposition to Detroit because governmental immunity barred plaintiff's negligence claim.

Court Resolves No-Fault Priority Dispute by Looking to Terms of Insurance Policy

The case of *Titan v. State Farm*, unpublished opinion per curiam of the Court of Appeals decided March 27, 2012, (Docket No. 301978), involved a no-fault priority dispute between Titan Insurance Company and State Farm.

The trial court determined that Titan was responsible for Plaintiff's no-fault benefits, as opposed to State Farm.

Titan appealed the decision of the trial court.

The facts of the case are as follows: On September 20, 2007, Troy Hughes, while operating his motorcycle, collided with a 1994 Dodge pickup truck and sustained serious injuries. Hughes maintained insurance on a car that he owned through a policy issued by Titan. The Dodge pickup truck was driven by

Courtney Van Eck. Five days before the accident, she had married the owner and registrant of the truck, Bradley Curtiss.

Although it was Bradley Curtiss who owned the truck, David Curtiss, Bradley's father, obtained and maintained an insurance policy on the truck that was issued by State Farm. The State Farm po-



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.

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licy listed David Curtiss as the named insured. The policy indicated that David, pursuant to his representations, was the owner and operator of the truck, and the policy did not identify Bradley Curtiss or Courtney Van Eck as drivers. David Curtiss never owned or operated the truck. Courtney and Bradley were not covered by any other insurance policies.

At the time the State Farm policy was issued on the pickup truck, June of 2006, Bradley and Courtney lived with David at his home located in Middleville. The parties disputed whether Bradley Curtiss and Courtney Van Eck lived with David Curtiss on the date of the accident.

After the accident, State Farm paid PIP benefits to Hughes in the amount of approximately \$1 million. State Farm stopped paying after determining that, in its opinion, it was not liable to Hughes for PIP benefits. Titan then paid \$200,000 in PIP benefits to Hughes before filing suit against State Farm for reimbursement of the PIP payments, arguing that State Farm had higher priority under MCL 500.3114(5) - the section of the No-Fault Act which determines the order of priority.

State Farm filed a counterclaim, asserting that Titan alone was responsible for paying PIP benefits. Titan maintained that State Farm was the insurer of the truck's owner and registrant, Bradley Curtiss, where Bradley was a resident relative domiciled in David Curtiss' home.

Therefore, according to Titan, State Farm had priority to pay PIP benefits to Hughes under MCL 500.3114(5)(a). State Farm argued that Brad-

ley was not living with David at the time of the accident, submitting four supporting affidavits; therefore, it had no liability to pay benefits. The trial court agreed and ruled in favor of State Farm. Titan appealed.

Under the rules of priority involving motorcycles [(§ 3115(5)(a)-(d)], the insurer of the operator of the motor vehicle involved in the accident (Van Eck) is higher in priority than the insurer of the motorcycle operator's insurer (Titan). The question then became whether Van Eck was an insured under the State Farm Policy.

On appeal, the Court found that State Farm was higher in priority than Titan, where, for purposes of MCL 500.3114(5)(b), State Farm was the insurer of the operator of the motor vehicle involved in the accident, i.e., Courtney Van Eck.

The Court noted that the case law surrounding this issue provided that "the specific language of the relevant auto-insurance policy determines who is or is not insured under the policy." Given that MCL 500.3114(5) uses comparable language to MCL 500.3114(4), the Court concluded that the case law supported the proposition that if Van Eck fit the definition of an "insured" under the State Farm policy, State Farm would be Van Eck's "insurer" for purposes of § 3114(5)(b).

The State Farm policy defined insured as "any other person while occupying... your car" The Court found that Van Eck satisfied the first part in that she

was a person who was driving i.e occupying the truck insured by State Farm. The question then became whether the Dodge pick-up qualified as "your car" under the language of the policy.

Under the terms of the policy, the term "You" or "Your" referred to the named insured David Curtiss. "Your Car" was defined as "the vehicle or vehicles shown under YOUR CAR on the Declarations Page[,] [and] . . . does not include a vehicle that you no longer own or lease." The Dodge pick-up was listed on the declarations page. Therefore, the only way it could not meet the definition of "your car" would be if it was a vehicle that David no longer own[ed] or lease[ed].

The Court found that because David Curtiss never owed the Dodge, it could not be a vehicle he no longer owed. This, the court reasoned, was because the term *no longer* implies previous ownership. David Curtiss had never owned the Dodge so the it could not be considered a car he *no longer* owned. Thus, the Dodge satisfied the definition of "your car" under the terms of the policy, making State Farm an insurer of Van Eck and hence higher in priority under § 3114(5)(b).

Because Van Eck was "any other person occupying your car," State Farm was her insurer, and thus State Farm had priority for the payment of PIP benefits to Hughes under § 3114.

Michigan's Motorcycle Helmet Law Repeal Signed : Senate Bill 291

A new bill (Senate Bill 291) was recently signed into law on Thursday, April 13, 2012 by Gov. Rick Snyder. The bill repeals helmet requirements for most Michigan motorcycle riders and gives them the option of wearing a helmet under the legislation.

Senate Bill 291, sponsored by State Senator Phil Pavlov (R-St. Clair), lets motorcyclists choose whether to wear a helmet if they are at least 21 years of age, carry at least an additional \$20,000 in medi-

cal insurance coverage, and have passed a motorcycle safety course or have had their motorcycle endorsement for at least two years.

Motorcycle passengers who want to exercise this option also must be 21 or older and carry additional medical insurance coverage in the amount of \$20,000.

Originally, Michigan implemented its helmet-use law in 1967 to comply with U.S. Department of

Transportation requirements for federal funds, which is no longer in place.

Michigan will become the 31st state to allow motorcyclists the choice of wearing a helmet. It joins the Great Lakes states of Illinois, Indiana, Ohio, Wisconsin, Minnesota and Pennsylvania that have repealed or amended helmet-use laws.

Buckfire & Buckfire Detroit Tigers Tickets Giveaway

"We believe that giving back to the community not only enriches our own lives but also makes us better attorneys for our catastrophically injured clients."
Lawrence J. Buckfire

ASK DAN - The No-Fault Insurance Expert



Q: Can the no-fault insurer deduct disability benefits through a private insurance policy from wage loss benefits it owes?

Dan: It depends. If the claimant has *uncoordinated* wage loss benefits on his or her policy then the answer is No. However, if the claimant's wage loss benefits are *coordinated*, then the no-fault insurer is usually entitled to a set-off for money received from a disability policy.

Q: Under what circumstances is a motorcyclist entitled to no-fault PIP benefits?

Dan: This can be complicated, but the simple answer is that when a car or truck is "involved" in the accident with the motorcycle, the motorcyclist is entitled to no-fault PIP benefits. Although, physical contact between the car or truck and motorcycle is not required, the Courts have held that where there is contact, the involved requirement is satisfied.

There is still time to Nominate Your Client To Receive Tickets To A Detroit Tigers Game

To see list of games still available refer to the right column or visit <http://bit.ly/buckfirticketsgiveaway>

Recipients will receive two tickets in the handicapped section of the lower deck of Comerica Park as well as a handicapped parking pass for the game.

If you are a medical provider or a nurse case manager involved in the care and treatment of a TBI or SCI survivor, nominate your patient today! For more information on the Giveaway and to nominate someone today visit <http://bit.ly/buckfirticketsgiveaway>



Pictured: Recipient Dennis Lemanski enjoying the game on April 22, 2012. He was nominated on behalf of Special Tree Rehabilitation.

Schedule of Tiger Tickets

Available for Nomination

***Note: All games start at**

1:05 P.M.

- May 20, Pirates
- June 3, Yankees
- June 19, Cardinals
- July 5, Twins
- July 8, Royals
- July 22, White Sox
- August 5, Indians
- August 7, Yankees
- August 26, Angels
- September 23, Twins
- September 27, Royals