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## Our No-Fault Service Provider Spotlight



*The Lakeland Center*  
Southfield, MI - Serving all of Michigan  
Ph: 248-350-7919 [www.TheLakelandCenter.net](http://www.TheLakelandCenter.net)

This month we spotlight The Lakeland Center. The Lakeland Center has been serving the brain injury community of Michigan for almost 25 years. Starting as a small unit in a nursing facility, Lakeland has grown to a 91 bed rehabilitation facility with five residential homes in Oakland County. Although Lakeland works with patients suffering from many types of injuries and illnesses, the traumatic brain injury (TBI) population remains to be a passion among the staff.

Its TBI program is designed to be unique for each patient. The Lakeland Center works with patients that have just left the acute care setting and are still in the very early stages of recovery. This means something different to each patient, because their conditions can range from unresponsive and on a ventilator, to more basic physical and cognitive limitations.

Many of The Lakeland Center's patients are auto accident victims. Due to this, its staff is very familiar with No-Fault coverage and benefits. Often times, its patients do not have medical insurance at the time of the accident, or their policies did not cover the services needed. By working with the family, attorney, and case manager, The Lakeland Center is able to make sure the patient receive the best care needed.



June 2012

### Special points of interest:

- Is a County liable for accident injuries caused from an unrepaired pothole?
- Are family members of a person killed in a car accident entitled to no-fault benefits?

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# The Michigan No-Fault Newsletter

## Court Holds That County Liable To Motorcyclist For Bike Accident Caused By Pothole

In *Utley v. Washtenaw County*, unpublished opinion per curiam of the Court of Appeals decided April 24, 2012, (Docket No. 303572), the Court reinstated an injured motorcyclist's case against the Washtenaw County Road Commission.

In this case, the Plaintiff and five of her friends were riding motorcycles on Zeeb Road in Lodi Township when plaintiff hit a pothole and was thrown to the ground and suffered serious injuries. The pothole was located at the crest of a hill where the road transitions from pavement to gravel.

One of the riders testified that the hole was approximately six-inches deep and approximately two to three-feet wide. The other riders and the responding officer described the hole as "large" and "significant."

Plaintiff filed suit against defendant Road Commission, alleging that the Road Commission was liable under the highway exception to governmental immunity, MCL 691.1402(1). The trial court granted the Road Commission's Motion to Dismiss and the Plaintiff appealed.

The Government Tort Liability Act (GTLA), MCL 691.1401 *et seq.*, holds that a governmental agency is immune from tort liability whenever the agency is engaged in a governmental function. However, the *highway exception* to gov-

ernmental immunity allows a person to recover damages where a governmental agency having jurisdiction over a highway, fails to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel."

The law also requires that the agency either: (1) know of the existence of the defect; or (2) in the exercise of reasonable diligence should have known of the existence of the defect and had a reasonable time to repair it.

The trial court dismissed the case because the Road Commission argued that its employees had repaired the pothole three days before the crash and that an intervening heavy rainfall had caused the pothole to reappear. Thus, the Road Commission argued that it satisfied its duties under the statute.

The Court of Appeals disagreed and reversed. In this regard, the Court stated that "[w]hile defendant presented evidence to support its position, there was also contrary evidence from which a reasonable jury could conclude that the Road Commission had not reasonably repaired the pothole.

Although a department worksheet purported to show that a road worker conducted some spot

scraping on this gravel road three days prior to the accident, it did not demonstrate that this pothole had been repaired, let alone reasonably repaired. The worker testified that he did not recall whether he scraped or otherwise repaired the pothole.

Furthermore, the Court found that the mere presence of so large a pothole less than three full days after the road was spotscraped supports a reasonable inference that the pothole was not repaired.

The Court found that, viewed in a light most favorable to plaintiff, the evidence was sufficient to create a *question for the jury* concerning whether the pothole amounted to a defect that a reasonable road commission would have understood "posed an unreasonable threat to safe public travel and would have addressed it."

It was uncontested that at the time of the crash, the pothole was very large. Plaintiff's expert testified that the pothole was a "high level severity" pothole that had not been attended to by defendant. And, as noted, plaintiff lost control of her bike when her front tire hit the pothole



**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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and two of the other bikers who hit the pothole had trouble controlling their bikes. There was also no ques-

tion that the Road Commission was on notice of the defect, because it had ordered repairs for the

general area a week before the incident.

**Attorney Fees Awarded Against Insurer In Dispute Over Alleged Intentional Injury Case**

In *USAA v. Reyes*, unpublished opinion per curiam of the Court of Appeals decided April 19, 2012, (Docket No. 299307), Rana Reyes was severely injured when she intentionally exited a moving vehicle driven by Gabriel Tagg, after becoming emotional because Tagg did not reply in kind when Reyes told him that she loved him. Tagg and Reyes had been in a dating relationship for the preceding six months, although there was evidence that Tagg had taken measures to denounce that relationship a few days previous.

During the evening and night of November 15, 2008, Tagg and Reyes joined friends at a local establishment to celebrate Reyes birthday, where Reyes consumed a substantial amount of alcohol over the course of the evening. On more than one occasion, Reyes told Tagg that she loved him and Tagg did not reply in kind.

When Tagg was driving Reyes home later that night, Reyes became emotional and began saying that she needed to "get out of" the vehicle. As they were travelling along the roadway, at a speed of 35 to 45 miles per hour, Reyes again said "I need to get out of here," opened the door and exited the moving vehicle.

Reyes was struck by the rear passenger tire, suffering a significant closed head injury.

On November 19, 2008 Reyes made a claim for no-

fault benefits with United Services Automobile Association (USAA). USAA was advised that Reyes had fallen out of a vehicle and that the details of the incident were under investigation.

On December 9, 2008, USAA was provided with a medical record that stated that "[t]he full details surrounding the event remain unclear, however, it does appear that the [patient] may have intentionally tried to harm herself." Additional information in the form of newspaper articles and the traffic crash report of the accident indicated that Reyes had intentionally opened the passenger door of Tagg's vehicle.

On December 19, 2008, plaintiff became aware of a newspaper article reporting that Reyes "likely jumped from a moving vehicle during a dispute with her boyfriend."

After further investigation, USAA filed a declaratory Judgment action, requesting that the trial court find that Reyes was not entitled to no-fault benefits presumably under the intentional injury exclusion in § 3105(4) of the No-Fault Act. Under the Michigan No-Fault Law, a person who intentionally injures himself or herself is not entitled to receive no-fault benefits.

Spectrum Hospital was named in the lawsuit as a Defendant, due to its outstanding medical bill and

interest in the outcome of the case.

During discovery, USAA determined that reasonable proof of loss appeared to warrant the payment of the claim, and, on January 22, 2010, USAA tendered full payment to Spectrum for the medical treatment provided to Reyes.

The trial court awarded § 3148 penalty attorney fees to Spectrum and the other parties against USAA.

The trial court rejected USAA's assertion that there was a bona fide factual dispute as to whether Reyes's injury was accidental, determining that Reyes's statement before opening the vehicle's door did not indicate a subjective intent to injure herself, but rather was simply an indication that she wanted to exit the vehicle, and concluding that plaintiff did not have any evidence that Reyes intended to injure herself when she intentionally exited Tagg's moving vehicle. USAA appealed.

Spectrum moved for the penalty interest and attorney fees under the Michigan No-Fault Act. Defendants Charles and Park likewise moved for costs and attorney fees.

The trial court granted these motions, concluding that by December 12, 2008, plaintiff had reasonable proof of the fact

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and of the amount of the loss sustained and that plaintiff's decision to delay payment had been unreasonable.

The trial court rejected plaintiff's assertion that there was a bona fide factual dispute as to whether Reyes's injury was accidental, determining that Reyes's statement before opening the vehicle's door did not indicate a subjective intent to injure herself, but rather was simply an indication that she wanted to exit the vehicle. The trial court concluded that plaintiff did not have any evidence that Reyes intended to injure herself when she intentionally exited Tagg's moving vehicle.

On Appeal, the Court stated that when benefits initially denied or delayed are later determined to be payable,

under § 3148, a rebuttable presumption "arises that places the burden on the insurer to justify the refusal or delay."

Moreover, the Court reiterated that rule that "[o]ne acts intentionally if he intended both the act and the injury. The subjective intent of an actor is the focus of determining whether the actor acted intentionally."

The Appeals Court found that the trial court took into consideration all evidence available to plaintiff regarding Reyes' mental state and corresponding testimony from those who were with her on the date of the incident. The trial court made extensive use of the record evidence pro-

vided by the only eyewitness to the incident.

Furthermore, the trial court also found that when queried, representatives of USAA could not proffer what evidence USAA needed as proof that the injury was accidental.

Lastly, the trial court found that much of the delay in payment was due to USAA's decision to delay deposing witnesses. Thus, the trial court held that plaintiff had failed to rebut the presumption that the denial was unreasonable. The Appeals Court affirmed the trial court's award of penalty interest and no-fault attorney fees.

**ASK DAN - The No-Fault Insurance Expert**



**Q:** Are family members of a person killed in a car accident entitled to no-fault benefits?

**Dan:** Yes. These are called *survivors loss benefits*. The spouse and minor children of the decedent are entitled to essentially three things: (1) the value of lost services that the decedent would have performed for the dependents, capped at \$20/per day and limited to 3 years; (2) what the No-Fault Act calls *tangible things of economic value* which is essentially the loss of financial support. These are capped at \$5,104 per month and also limited to 3 years; and (3) payment of the funeral bill, usually in the amount of \$1,750.00.

**Q:** Can adult children of a decedent claim no-fault survivors loss benefits?

**Dan:** No. Not unless they have a disability that qualifies them as dependents, although they are still entitled to the funeral benefit.

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Lawrence J. Buckfire

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