

July 2010

Special points of interest:

- What entitles a motorcyclist to No-Fault Benefits?
- Are you entitled to Survivor Loss Benefits if your motorcycle was uninsured?
- The benefits of joining the No-Fault Network
- FREE Motorcycle Accident Book offer

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The Michigan No-Fault Newsletter



Special Edition: Motorcycle Accidents

While motorcycles can be thrilling to ride, accidents happen quite frequently and the injuries sustained by bikers and passengers are often severe and is the cause of many wrongful deaths. The number of motorcycle accidents in Michigan is significant. The statistics were tailored by Michigan Traffic Crash Facts and are worth noting.

There were a total of 4,082 motorcycle accidents in the year 2008. Of those accidents, 127 were fatal motorcycle crashes. The number of motorcycles involved in fatal crashes has increases 58.8 percent since 1999 (10 year period). 3,314 bikers were injured in 2008 in Michigan and 125 motorcyclists were wrongfully killed.

The injuries suffered in motorcycle accidents are often catastrophic and require significant and lifelong medical care. Bikers injured in Michigan accidents who qualify for No-Fault Insurance Benefits are entitled to lifetime medical benefits and attendant care services. With summer in full swing and bikers all over our Michigan roads and highways, we have devoted this issue to the laws in Michigan as they pertain to motorcycle accidents and No-Fault Insurance. Providers need to understand these laws in conjunction with their treatment of motorcycle accident victims in order to provide the best possible care and to be properly reimbursed for the services provided.

Physical Contact With Motor Vehicle Entitles Motorcyclist To No-Fault Benefits

In general, if a motorcycle is the only vehicle involved in an accident, the motorcyclist is not entitled to Michigan no-fault benefits, because a motorcycle is not considered a motor vehicle. The only time a motorcyclist will be entitled to no-fault benefits is when a *motor vehicle is involved* in the accident.

The Court of Appeals decision *Auto Club Ins Ass'n v State Auto Mut Ins Co*, 258 Mich App 328; 671 NW2d 132 (2003) provides a good example of what it means for a motor vehicle to be involved in an accident.

In that case the Court held that if there is actual physical contact with the injured claimant or the injured claimant's vehicle, a motor

vehicle's passive role in an accident does not preclude that vehicle from being *involved* in the accident.

More importantly the Court confirmed that there is no published case where there is physical contact between the motorcycle and motor vehicle that has not found that the motor vehicle was *involved* as contemplated by the Michigan No-Fault Act.

The Court further rejected the argument regarding the passive nature of the motor vehicle's involvement where there is contact between the motor vehicle and the motorcycle.

The Court stated that "... fault or passivity has no place in the analysis. The

question is whether the vehicle was *involved*, not whether the involvement was innocent. Regardless of the driver's lack of fault, or the vehicle's lack of movement, the Embury vehicle contributed to the accident and became involved when it was struck by Bateman."

Ultimately the Court held that there was an issue of fact for the jury to decide as to whether there was contact with a motor vehicle, but more importantly it held that if there was contact, then Michigan No-Fault benefits would need to be extended to the motorcyclist.



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.

Motorcyclist Forced To Swerve From Oncoming Car Is Entitled To No-Fault Benefits

In *Frierson v. W. Am. Ins. Co.*, 261 Mich. App. 732, 733 (2004) the Michigan Court of Appeals held that the motorcyclist was entitled to no-fault benefits.

In that case, the motorcycle's passenger testified that an unidentified motor vehicle seemed to be coming toward the motorcycle head on. The motorcycle operator testified that the vehicle was making a left hand turn and "crossed the center line and took almost all my lane, all but approximately maybe two to four feet."

In order to avoid a collision with the motor vehicle, the operator swerved or slammed on his brakes,

causing himself and plaintiff to hit the ground.

The police were unable to locate the motor vehicle and there is no information regarding the vehicle, its driver, or its insurance.

The Court stated, for a vehicle to be considered "involved in the accident", the motor vehicle must actively, as opposed to passively, contribute to the accident. Showing a mere "but for" connection between the operation or use of the motor vehicle and the damage is not enough to establish that the vehicle is "involved in the accident."

Moreover, physical contact is not required to establish that the vehicle

was "involved in the accident," nor is fault a relevant consideration in the determination whether a vehicle is "involved in an accident."

Thus, the Court held that the deposition testimony established that the motor vehicle contributed to the accident by turning left into the lane occupied by the motorcycle, causing the motorcycle operator to brake to avoid hitting the motor vehicle.

Therefore, the motor vehicle was involved in the accident and the passenger was entitled to no-fault benefits.

No No-Fault Benefits Where Only Passive Involvement Of Motor Vehicle

In *Galbreath v. TIG Ins. Co.*, unpublished opinion per curiam of the Court of Appeals decided Aug. 10, 2001, (Docket No. 223947), the motorcyclist was killed when his motorcycle flipped over as he was exiting U.S. 31.

His Estate filed a lawsuit against TIG Insurance alleging that a vehicle driven by TIG's insured was "involved" in the accident, and that TIG wrongfully denied the family's no-fault survivor loss benefits.

The testimony established that the motorcyclist and motor vehicle had

passed each other several times on the highway in a type of "cat and mouse" game.

As both drivers were on the exit ramp, the motorcyclist flipped end-over-end off the ramp. At that point, the motorcyclist was approximately 75 yards in front of the motor vehicle.

The motor vehicle in that cause of action was behind and did nothing to cause or contribute to the accident itself.

More importantly, there was no physical contact between the vehicles.

The Court stated that in order for a vehicle to be considered "involved" in an accident, that vehicle must be an "active link contributing to the accident," and "there must be 'evidence' which 'shows' the involvement of a motor vehicle."

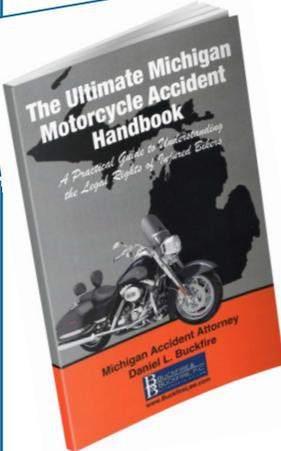
The Court held that because the family presented no documentary evidence to show that the motor vehicle "actively contributed" to the motorcycle accident, the trial properly dismissed the case.

REQUEST YOUR FREE MICHIGAN NO-FAULT RESOURCE BINDER NOW!

The binder is a great place to keep and organize our Monthly Newsletters, our No-Fault Priority Chart, and other important materials.

Just email Kathryn@buckfirelaw.com and type "Send My Binder" in the

Request Your FREE Michigan Motorcycle Accident Book



The “**Ultimate Michigan Motorcycle Handbook**” explains the rights of bikers injured in a Michigan motorcycle accident.

The book provides valuable information on Michigan No-Fault

insurance claims and benefits, the right to settlement for personal injuries, and property damage claims. The 65 page book also reveals the secret strategies that insurance companies will use to avoid paying a fair settlement.

Call (800) 606-1717 or visit www.MichiganMotorcycleBook.com to request your free copy.

Physical Contact Not Required For Motor Vehicle “Involvement” In Motorcycle Crash

In *Greater Flint HMO v Allstate Ins Co*, 172 Mich App 783, 432 NW2d 439 (1988), an unidentified truck cut off an unidentified car and caused a multi car accident.

A motorcyclist was injured in the accident. The issue was whether any of the motor vehicles were *involved* in the accident such that the motorcyclist would be entitled to no-fault benefits.

The Court stated that “[the relevant inquiry then is whether a causal nexus can be established that would link the injuries incurred in the accident to a motor vehicle” and concluded that there was involvement regardless of whether there was physical contact between the motorcycles and the automobiles.

Motorcycle Insurance Buying Guide

Over 90% of Michigan bikers buy the wrong motorcycle insurance and are not protected in the unfortunate event of an accident. We published a comprehensive **FREE** report with tips on how to purchase motorcycle insurance in Michigan. **Download it today!**

www.FreeMotorcycleReport.com



Michigan’s No-Fault Social Network

Join the No-Fault Network

<http://nofaultnetwork.com>

FREE MEMBERSHIP

- *Make & Receive Professional Referrals*
- *Network With Other Professionals*
- *Publicize Meetings and Events*
- *Find A Support Group*
- *Discover New Service Providers*
- *Promote Your Business or Service For Free*
- *Post Employment Opportunities*
- *Find New Employment*

Family Not Entitled To Survivor Loss Benefits Because Motorcycle Was Uninsured

Under the Michigan No-Fault Act, the owner or registrant of a motorcycle is required to carry liability insurance on their motorcycle.

If the owner or registrant is injured in an accident while he or she is riding an uninsured motorcycle, then they will be barred from receiving no-fault benefits.

The No-Fault Act provides survivors loss benefits to the dependents of an individual killed in a motorcycle-motor vehicle accident.

In *DeSot v Auto-Club Insurance Association*, 174 Mich App 251 (1988), the Court of Appeals held that the widow and children of a deceased motorcyclist, who did not have the required motorcycle insurance, were precluded from recovering no-fault benefits.

The Court held that the rights of the widow and children are derivative of the right of the deceased motorcyclist to recover no-fault benefits. Had he

lived, the motorcyclist would not have recovered no-fault benefits because he was operating his uninsured motorcycle at the time of the accident.

Thus, the widow and children are also barred from receiving survivors’ loss benefits under the Act.

This case illustrates the importance of keeping a motorcycle insured, not only to protect the rider, but also his or her family.

Maximum Monthly Wage Loss Benefit—10/1/09 to 9/30/10— \$4,878.00
MCCA Reimbursement Levels—10/1/09 to 9/30/10—\$460,000.00

The Michigan No-Fault Newsletter



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Our No-Fault Service Provider Spotlight

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This month we spotlight Advantage Mobility Outfitters, a company dedicated to building, installing, and delivering the highest quality accessible vehicles. Their goal is to provide a more independent lifestyle for the disabled, and to support the caregiver's ability to comfortably and safely transport their loved one. Their team of mobility specialists have over 70 years of combined experience, designing mobility solutions to fit each individual's needs.

Advantage Mobility Outfitters coordinates all aspects of their customer's vehicle needs from procuring the chassis and installing all necessary equipment, to delivering the finished product right to the customer's home. Working with leading mobility equipment manufacturers such as Braun, Bruno, Ricon, and VMI along with many other mobility and driving control companies they can create a custom vehicle solution that is right for the patient.

Advantage Mobility Outfitters are members of the National Mobility Equipment Dealers Association (N.M.E.D.A.) as well as one of the select few that have been certified to their Quality Assurance Program (QAP). Our technicians train, study and understand mobility technologies and are re-certified every two years. Many of their clients have become disabled as a result of motorcycle and car accidents, workers compensation cases as well as individuals with MD, MS, ALS, and amputation injuries. Patients are often referred to them by attorneys, insurance companies, case managers, social workers, hospital discharge planners, OT's and PT's.



Van ramp installed by Advantage Mobility Outfitters.

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!