Volume 2, Issue 1

BUCKFIRE & BUCKFIRE, P.C.

February 2011

The Michigan No-Fault Newsletter

Special points of interest:

- **Is a person entitled to No-Fault Benefits if they were injured while alighting from their parked vehicle?**
- **What type of proof is required for the no-fault insurer to consider paying a bill?**
- **The benefits of joining the No-Fault Network**

Inside this issue:

Woman Alighting From Car Entitled To No-Fault Benefits

In *Frazier v. Allstate*, unpublished opinion per curiam of the Court of Appeals decided December 21, 2010, (Docket No. 2932149) the Court of Appeals decided a case involving whether a person injured while she was alighting from her parked vehicle was entitled to no-fault benefits.

There are two steps involved in the determination of whether no-fault benefits are available to an injured claimant.

First, it is necessary to determine whether the injury "aris[es] out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle"

Second, it is necessary to determine whether the injury is excluded under a provision in the no-fault act and whether an exception to an exclusion would save the claim.

Whether an injury arises out of the use of plaintiff's vehicle as a motor vehicle "turns on whether the injury is closely related to "the transportational function of motor vehicles."

In this case, the Plaintiff testified that she put her work bag, coffee, and purse on the passenger side of her truck in anticipation of immediately walking around to the driver's side, entering the vehicle, and driving to work.

However, after placing the items in her vehicle, plaintiff stepped aside to close the passenger door and, while in the process of shutting the car door--with her hand still on the door--she slipped and fell flat on her back.

Plaintiff testified that her momentum from swinging the car door, combined with the steep incline of the parking lot, may have made her slide a bit on impact with the ground.

On these facts, the Court concluded that the plaintiff's parked vehicle was being used for transportational purposes, i.e., to transport herself and her personal effects to work, at the time the injury was sustained.

In addition, the Court held that exception to the parked vehicle exclusion under MCL 500.3106, applied. Under these facts, in order for the exception to apply under § 3106, the injury must be a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used or the injury must occur while the she was alighting from the vehicle.

The Court concluded that that the passenger car door is "equipment permanently mounted on the vehicle."

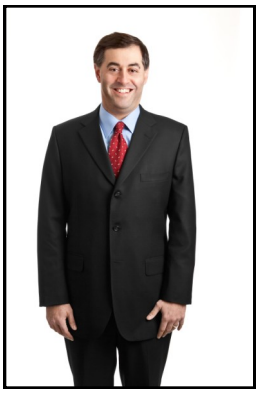
Second, the Court stated that if the jury determined that plaintiff was indeed in the process of closing the passenger door when the injury occurred--as opposed to merely falling in the parking lot as defendant claimed--plaintiff was "alighting" from her vehicle.

The Court also found that the Plaintiff was entitled to no-fault penalty attorney fees due to the Defendant's unreasonable denial of benefits.

The Court found that any factual uncertainty that initially existed with the claim was created by--not uncovered by—the insurer "investigation."

In this regard, the Court held that the "investigation" of plaintiff's claim was perfunctory and it was neither completely nor accurately documented; thus, it led to unsupported conclusions to plaintiff's detriment.

Furthermore, the Court stated that as a consequence of defendant's actions, plaintiff was forced to endure severe economic hardship and engage in extensive and time-consuming litigation to pursue her rights. Thus, the insurer was ordered to pay attorney fees to the Plaintiff.



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 Injury Case Under New McCormick Test

In *McManigal v. Levosinski*, unpublished opinion per curiam of the Court of Appeals decided January 11, 2011, (Docket No. 283030) the Court of Appeals held that the Plaintiff's injuries failed to meet the serious impairment of body function threshold requirement of § 3135 of the No-Fault Act.

On remand from the Michigan Supreme Court, the Court of Appeals considered the Plaintiff's injuries in light of the recent decision in *McCormick v. Carrier*, 487 Mich 180 (2010).

In *McCormick*, the Michigan Supreme Court overruled its prior decision in *Kreiner v. Fischer* which had made it very difficult for persons injured in auto accidents to recover non-economic damages (e.g. pain and suffering).

In most cases the threshold requirement to pursue these claims under the No-Fault Act is whether the plaintiff has suffered a "serious impairment of body function." *Kreiner* defined this phrase in an overly restrictive manner.

In the *McManigal* case, the Plaintiff suffered a broken hand. His treating physician placed his right hand in a thumb cast for two and one -half weeks, then replaced the cast with a thumb splint for an additional ten days.

Nine months post accident, Plaintiff's doctor indicated that plaintiff continued to report pain when flexing and extending his thumb, noted mild decreased range of motion and stated that he thought it a "good likelihood" that plaintiff would suffer from traumatic arthritis in this joint "in the years to come".

Subsequent reports stated that the changes in plaintiff's range of motion and his continued pain appeared to be permanent, as does mildly decreased grip strength. Plaintiff continued to work as a property manager after the accident and testified that he had no trouble performing his job duties as a result of his injury, and that no physician placed any restrictions on the type of work he could perform.

However, his doctor stated that he anticipated that the plaintiff's injury would restrict his ability to use certain hand tools or "vibratory" tools. The Plaintiff was able to resume most recreational activities after the accident.

The Court in *McManigal* acknowledged that that *McCormick* rejected the *Kreiner* Court's reliance on factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery, to determine whether the injury affected the "course or trajectory" of a person's entire normal life, *Kreiner*, 471 Mich at 130-133, and found that "the analysis does not 'lend itself to any bright-line rule or imposition of [a] nonexhaustive list of factors,' particularly where there is no basis in the statute for such factors." *McCormick*, 487 Mich at 216 (citation omitted).

McCormick requires an examination of the plaintiff's life before and after the accident in order to determine "the effect or influence that the impairment has had on a plaintiff's ability to lead a normal life[.]"

The *McCormick* Court indicated that the review of whether an injury has affected a person's general ability to lead his or her normal life is a review of whether the impairment "influences some of the plaintiff's capacity to live in his or her normal manner of living."

Nonetheless, the Court concluded that even under the test set out in *McCormick*, the Court held that the plaintiff had not met the serious impairment threshold as a matter of law and, therefore, the defendant was entitled to summary disposition.

In this regard, the Court held that the injuries did not influence some of plaintiff's capacity to live in his normal manner of living. *Id*. at 215.

The Court stated that to conclude otherwise would, under the facts presented by this case, render any impairment, even one that prevented a person from engaging in an activity only a few times per year, a threshold injury under MCL 500.3135(1). Nothing in the language of the majority opinion in *McCormick* indicates that such a broad result was intended.

Buckfire & Buckfire, P.C. Is Proud Sponsor of Carnival of Care

The Careforward Foundation is holding its annual Carnival of Care at the Sterling Inn of Sterling Heights on Saturday, March 12, 2011 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 this event for the third 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 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 on us!

ASK DAN - The No-Fault Insurance Expert

Q: *I submitted a bill for my services to the no-fault insurer but the adjuster hasn't paid it. Are there any time limits for filing a lawsuit for this type of claim?*

Dan: Yes. Under the No-Fault Act, a bill/claim must be submitted and paid by the insurer within one year from the date the bill was incurred/services rendered. A lawsuit is the only way to toll the time limitation if an insurer drags its feet in paying a bill. For example, if services are rendered on Jan 1, 2011, the bill must be **submitted to and paid by** the insurer by December 31, 2011, or the claim will expire unless a lawsuit is pending/or filed against the insurer within the one year time period. Thus, it is very important to submit the bill soon after the services are rendered so that the insurer has ample time to consider and pay the bill before the one year anniversary date of the bill.

Q: *What type of proof is required in order for the no-fault insurer to consider my bill?*

Dan: The No-Fault Act requires "reasonable proof of the fact and the amount of loss" and that the charges be "reasonable." Typically, a bill with an appropriate itemization of time and/or description of services rendered and/or procedure codes as well as a copy of the applicable records/reports that pertain to the services rendered are sufficient.

Book Your Free No-Fault Seminar Today!

Dan frequently gives educational seminars for groups of 10 or more attendees on Michigan No-Fault laws and current court cases. There is absolutely no charge for the presentation.

If you have a group of 10 or more and would like to schedule a seminar, please email Kathryn at Kathryn@buckfirelaw.com or call her at 248-569-4646.

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Our No-Fault Service Provider Spotlight

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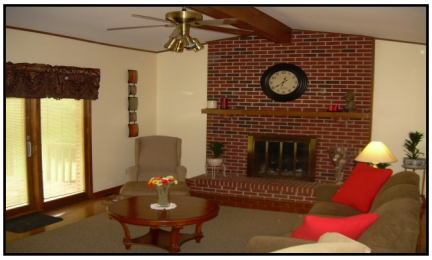
This month we spotlight Novi Attendant Care, LLC, an ambulatory Semi-Independent care program that provides supportive living for individuals with traumatic brain injuries. The two story colonial home is located in Novi, MI and provides 24-hour, 365 days a year, residential care for individuals who have been involved in motor vehicle accidents that resulted in a traumatic brain injury.

Owners Tony and Samantha Ingrao primarily got started in the field of traumatic brain injury rehabilitation when a close family member suffered a TBI after being seriously injured in an auto accident. Watching his bad experiences as a client in residential care homes gave them the initiative to begin their own residential home.

"We want to be able to provide a better way of assisted living and quality of life and help get back some of that independence as well as get your respect back," says Samantha on the ultimate mission of Novi Attendant Care.

Novi Attendant Care's program is designed to focus on independence and gradually decrease the amount of support that each client needs until they are living as independent as possible within the community.

Clients in the program are cared for by their own therapists, case managers, physicians, guardians or family members and participate in all aspects of living which include meal planning and cooking, budgeting and grocery shopping, laundry, household tasks, personal hygiene and grooming, community integration, activities and hobbies, volunteer opportunities, and social connections.



From top to bottom: Outside view of Novi Attendant Care Home; Family room with fire place and walk out to deck.

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!