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BUCKFIRE & BUCKFIRE, P.C.

March 2011

The Michigan No-Fault Newsletter

Special points of interest:

- **What does "family step-down" provision mean in an insurance policy and do you have this provision in your policy?**
- **When is a motorcyclist entitled to No-Fault Benefits?**
- **How are your rights to No-Fault benefits affected if an injury occurred prior to the auto No-Fault law?**

Inside this issue:

Court Upholds Insurance Clause Limiting Coverage

In *Fricke v. Farm Bureau*, unpublished opinion per curiam of the Court of Appeals decided February 15, 2011, (Docket No. 295338) the Court of Appeals upheld an exclusion in a liability insurance policy which limits coverage to the state statutory minimum of $20,000 where the injured person is injured by another family member of the insured.

In this case, Thomas Fricke was driving with his wife, Abigail Fricke, in the front passenger seat. As he was driving down the couple's driveway, Thomas lost control of the car and drove into a pond. Thomas and Abigail both drowned.

Abigail's estate filed a claim with the Fricke's automobile insurer, Farm Bureau. Although the policy provided for $500,000 in coverage for bodily injury, Farm Bureau sent a letter to the estate indicating that the coverage limit was only $20,000.

Farm Bureau cited an exclusion that limited coverage to $20,000 in the event that the insured injures a member of his or her own family.

Abigail's estate then sued Farm Bureau and requested that the court declare that the exclusion cited by Farm Bureau in its letter did not apply and, as a result, the proper coverage level was $500,000.

Farm Bureau moved to dismiss the case on the ground that the policy was unambiguous on its face and clearly excluded coverage in excess of the $20,000 for accidents involving the insured's own family.

The trial court determined that the exclusion was valid and enforceable and the appeal ensued. The Court of Appeals held that the exclusion was unambiguous, and that the provision was not contrary to public policy.

This case is disturbing to the author. It essentially allows insurers to bury provisions in their insurance policies which severely limit and/or eliminate coverage, even when the insured has nothing wrong.

The exclusions at issue in this case are commonly referred to as "family step-down" provisions. Not all insurers have these provisions in their polices but many do.

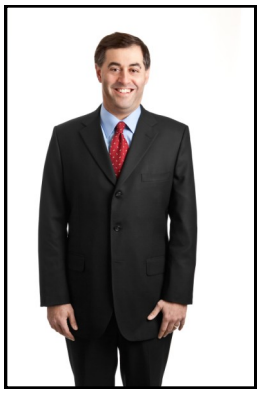
One should check with their insurer or agent to make sure their policy does not contain a similar provision because they will be enforceable as demonstrated by this decision.

Daniel L. Buckfire Receives A "Superb" Rating

Michigan car accident lawyer Daniel L. Buckfire received a "Superb" rating from AVVO, the nation's top Internet lawyer rating service. AVVO rates attorneys throughout the United States in a variety of practice areas in virtually every major city. Lawyers are rated based upon a number of important criteria, including experience, professional conduct, and industry recognition.

The rating scale is from 0 to 10, with only a very small percentage of lawyers receiving a 10 rating. Our firm is proud to announce that our own personal injury attorney, Dan Buckfire was awarded the perfect "10" rating.

You can visit Daniel's profile page on AVVO by visiting http://www.avvo.com and clicking on Find Lawyers. Enter his name in the search field along with the location of our office, Southfield, MI and you will be able to view Daniel's page. We welcome everyone that visits Daniel's page to please rate and review him.



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 Teacher's Wage Loss Benefits To Be Computed Over Entire Year

In *Copus v. MEEMIC*, _____ Mich App. _____ decided February 15, 2011, (Docket No. 295499) the Plaintiff was injured in a serious automobile accident and sought wage loss benefits from defendant MEEMIC, her no-fault insurer.

The Plaintiff's wage loss benefit under the no-fault act is governed by MCL 500.3107(1)(b) which states that wage loss benefits consist of: "Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured...."

The Plaintiff is a special education teacher on a yearly contract with a yearly salary of $63,895. She had the option of being paid only while school was in session (no paycheck during the summer) or spreading out her salary over the course of the entire year, even when she was off during the summer. She chose the latter.

The Plaintiff and the trial court computed her wage loss payments by dividing her yearly salary, less fifteen percent, by twelve months which resulted in her monthly wage loss benefit of $4,525.90 a month – bellow the maximum *monthly* amount payable under the no-fault act.

The Defendant, however, argued that the plaintiff's entitlement should be computed on the basis of the specific number of calendar days plaintiff's contract specified that she should work, notwithstanding the yearly nature of her contract and her election to be paid throughout the year.

Defendant therefore computed Plaintiff wage loss benefits differently for different times of the year which resulted in months where the Plaintiff's wage loss benefit exceeded the monthly maximum allowed under the No-Fault Act.

This resulted in Defendant owing less to the Plaintiff over the course of her disability period because part of the Plaintiff total lost income were lost on those months where Defendant claims she would have earned more than monthly cap.

The difference would have amounted to an approximate a $10,000 windfall for the insurer.

The Court of Appeals ruled in favor of the Plaintiff. In this regard, the Court stated that the no-fault statute does not mandate any sort of temporal correlation between the work and the income.

Put another way, the statute does *not* say *when* "work loss" must be deemed to occur, only that it in fact occurred.

In a straightforward hourly employment context, many employers delay paychecks by some number of pay periods, so missing a day of work may not be reflected in a claimant's paycheck for some considerable time. The income lost because the claimant did not work is therefore a reduction in pay several weeks—or more—later.

The Court reasoned that the Defendant improperly sought to create a fiction, completely unwarranted by anything in the statute, that plaintiff's lost income was something other than what it actually was.

Daniel L. Buckfire To Speak At Acclaimed Rehabilitation Symposium 2011

Buckfire & Buckfire, P.C. is proud to announce that their own Michigan car accident lawyer, Daniel L. Buckfire, is one of the featured speakers at the Acclaimed Rehabilitation Symposium 2011 on Friday, March 11.

The all day conference is being held at the Radisson-Kinglsey Inn in Bloomfield Hills and will focus on specific questions many nurse case managers, discharge planners, physical therapists, etc... all face in the Rehabilitation world; and provide solutions and alternatives.

Daniel will be speaking in the Panel Discussion on the Plaintiff position, "What is the coverage an Insured is entitled to—when a pre-existing condition has been exacerbated by a motor vehicle accident?"

Not only is Daniel speaking at the event, but Buckfire & Buckfire is the "Venue Sponsor" for the symposium.

If you are attending this event, please visit our table and be sure to hear Daniel's discussion on pre-existing conditions after an accident.

Court Holds That Motorcycle Case Will Go To A Jury

In *Progressive v. Elston*, unpublished opinion per curiam of the Court of Appeals decided February 17, 2011, (Docket No. 294553) the Court held there was a question of fact as to whether a motorcyclist was entitled to no-fault benefits.

Under the No-Fault Act an insurer is liable to pay no-fault benefits "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." MCL 500.3105(1). A motorcycle is not a motor vehicle under the No-Fault Act.

Therefore, in order for an injured motorcyclist to be entitled to no-fault benefits, a motor vehicle must be *involved* in the accident. If there is contact between a motorcycle and a motor vehicle, then the motor vehicle is deemed involved as a matter of law.

However, contact is not required. In this case, the evidence showed that the injured motorcyclist may have been forced off the road by a motor vehicle.

The trial court held that the motor vehicle was not involved as a mater of law.

The Court reversed stating that the because the testimony created a question of fact as to whether the motorcyclist was forced off the road by the motor vehicle, the trial court erred in granting a dismissal in favor of the insurance company.

ASK DAN - The No-Fault Insurance Expert

Q: *If a person was injured in an automobile accident injury prior to the auto no-fault law going into effect in 1973, how does this affect their right to no-fault benefits?*

Dan: If the injury occurred prior to October 1, 1973, then the injured person is not entitled to no-fault benefits.

Q: *When no-fault insurance companies send invoices to outside companies for review, why do some of these review companies approve a particular service and/or charge while other companies may not (for the same service in the same area)? In addition, oftentimes, there are discrepancies as to the determination of the reasonable and customary charge for the exact same service in the same geographic area, why is this the case?*

Dan: The answer is unclear. The most likely answer is that different review companies use different data and criteria in reviewing bills. However, a provider has the right to sue the insurer directly for underpayment.

Q: *If I need a case manager as a result of being injured in an automobile accident is there a cap on these services?*

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

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

Advent Home Medical
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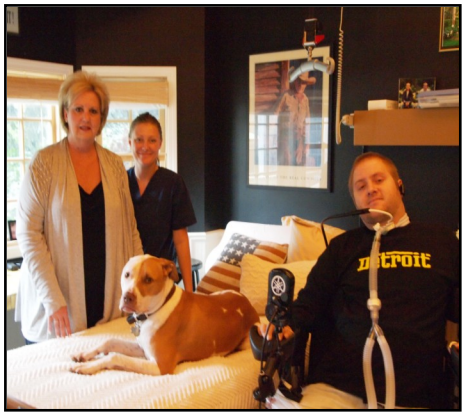
This month we spotlight Advent Home Medical, a durable medical equipment company specializing in long-term, complex and catastrophic injuries. Advent Home Medical supports mechanically ventilated patients in their own homes or while they travel and their clients have few return hospitalizations due to respiratory issues. Some of the services they offer include home ventilator programs (adult, pediatric and neonatal), home ventilator weaning program, monthly nursing and RT seminars, respiratory home assessment, private duty RT services, home oxygen services, and much more.

Advent Home Medical is a member of the Coalition to Protect Auto No-Fault (CPAN) and are specialists in catastrophic auto accident cases. The company's formula for success is to train the family and staff before they even leave the hospital, then follow up with all the support that is needed to assure their success. They call this formula the "Initial Discharge Process." The goal of the process being a safe and seamless transition for the patient from the acute care or long-term acute care to home.

Their staff which includes Dennis Vieau RN CBIS, William "Bill" Hart RRT LRT, and Kim Matlock RN, and owner Carlia Cichon RRT LRT have over 70 years of experience in this field. They provide homecare ventilator support services throughout Southeastern Michigan including the Detroit metropolitan area, Ann Arbor, Jackson, Monroe, Port Huron, Flint and Saginaw.



Owner Carlia Cichon and Danielle Soria RN with valued friend and client Ian McPherson.

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!