Volume 1, Issue 9

BUCKFIRE & BUCKFIRE, P.C.

October 2010

The Michigan No-Fault Newsletter

Special points of interest:

- **Is direct contact required in a hit-and-run uninsured motorist benefit case?**
- **Do services have to be lawfully rendered to be compensable under the No-Fault Act?**
- **The benefits of joining the No-Fault Network**
- **When can you get attorney fees?**

Inside this issue:

Court Holds That PIP Release Does Not Absolve Negligent Driver Of Liability

In *White v. Taylor Distributing* _____ Mich App _____ (Docket No. 292066 issued September 9, 2010) the Michigan Court of Appeals held in a published decision that the Release the plaintiff signed in settling her no-fault PIP case did not also release the third party tortfeasor from liability in her auto negligence lawsuit.

In this case, the Plaintiff was injured in an auto accident. She sued her no-fault insurer, AMEX Insurance Company, for first party no-fault /PIP benefits. She also sued the negligent driver for pain and suffering damages.

When she settled her PIP case against AMEX she signed a Release, which released AMEX "and their officers, employees, principals, shareholders, executors, administrators, agents, successors, insurers and assigns . . . ." from "any all (past present and future) claims."

In the third party negligence case against the negligent driver, the Defendant filed a motion to dismiss the case, claiming that the Release the Plaintiff signed in the PIP case against AMEX also released the Defendant.

In construing this release as precluding plaintiff's recovering from defendants, the trial court stated, "I find that the court's decision is . . . dictated by appellate law by precedent and in this instance I find that the case of *Romska [v Opper*, 234 Mich App 512; 594 NW2d 853 (1999)], or the cases upon which it[']s based is *stare decisis* to this case," but expressed doubts that this ruling reflected plaintiff's actual intent in signing the release.

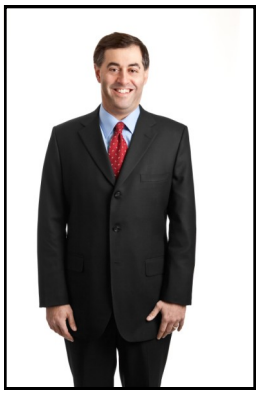
In *Romska*, the release language interpreted as applying to all potential defendants was "I/we hereby release and discharge [two named individuals] . . . and *all other parties, firms, or corporations who are or might be liable*, from all claims. . . ." The "all other parties" language was not present in the Release at issue in *White*.

Nonetheless, the Defendant was able to persuade the trial judge that the language which released "any all (past present and future) claims" also meant and all potential defendants.

The Court of Appeals reversed stating that the trial court confuses and conflates *who* is being released, with *what* is being released. In addition, the Court disagreed with the Defendant's argument that the subject language "invokes all humanity as released from potential liability," and instead agreed with the plaintiffs that it in fact the "and all claims" language only underscores the absolute immunity of Amex and its affiliates.

Moreover, although not expressly discussed in the opinion, in August of 2010 the Michigan Supreme Court overruled *Romska*, "to the extent that its holding precludes the use of outside evidence when an unnamed party [such as the Defendant in this case] asserts rights based on broad language included in a release from liability and an ambiguity exists with respect to the intended scope of that release." *Shay v. Aldrich* ____ Mich____ (Docket No. 138908, issued August 23, 2010), slip op at 15.

Therefore, even if the Release contained the broader language found in *Romska*, the Court still may have ruled in favor of the Plaintiffs based on *Shay, supra*.



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.

Services Must Be Lawfully Rendered To Be Compensable Under No-Fault Act

Healing Place v. Farm Bureau, unpublished opinion per curiam of the Court of Appeals decided August 5, 2010, (Docket No. 286050) involves the Michigan No-Fault Insurance Act and arises from Farm Bureau's failure to pay various medical facilities for services that were provided to Linda Wallace after she was involved in a serious car accident.

The accident caused numerous physical injuries, including several lacerations and contusions as well as fractures to her hip and femur and a traumatic brain injury.

Following the accident, Wallace sought treatment with the various facilities that are Plaintiffs in this cause of action. Dr. Roman Frankel founded each of those facilities.

Farmers refused to pay the Plaintiff's bills for treatment rendered to Linda Wallace and the Plaintiffs sued. Farmers argued that the Plaintiffs' case should be dismissed because the Michigan No-Fault Act explicitly provides that an insurance company is only responsible for paying for medical services that were lawfully provided.

Furthermore, pursuant to binding authority, a service is lawfully provided only if it is provided in accordance with Michigan's licensure requirements.

According to Farmers, the services at issue were not lawfully provided to Wallace because none of the providers were licensed as psychiatric hospitals or as adult foster care facilities.

Plaintiffs primarily response was that whether they were in violation of the state's licensure requirements was a regulatory question and that unless the appropriate regulatory agency declared that plaintiffs were operating in contravention of state law, the services at issue were lawfully provided and defendant was required to make the requested payments.

Additionally, plaintiffs argued that the courts did not have jurisdiction to decide this regulatory question. The trial court agreed with the insurer and dismissed the case.

First, the Court of Appeals held that it had jurisdiction to decide the case. Second, the Court held that to the extent that services were provided at the Healing Place facility located at North Oakland Medical Center (NOMC), licensure was required and thus the services were not lawfully rendered.

The licensure statute requires licensure for those facilities which were *a unit of a general hospital* (i.e. NOMC). Part of Wallace's treatment at the Healing Place was rendered when it was located in the NOMC.

However, some of the treatment was also rendered when the Healing Place was unaffiliated with the NOMC. The Court remanded the case back to the trial court for a hearing to determine whether any of the psychiatric services were provided to Wallace after the affiliation with NOMC ended.

Buckfire & Buckfire At Michigan BIA's Annual Conference

Our Michigan traumatic brain injury lawyers were a proud Bronze Exhibitor of the Michigan Brain Injury Association annual conference. The conference took place on September 23 & 24th at the Lansing Center in Lansing, Michigan and included speeches that covered the major categories of headache pain in patients with traumatic brain injury and other hot topics that have to with TBI and rehabilitation.

Our firm was happy to be involved in such a conference and will continue to promote awareness and support for BIA's mission. We are dedicated protecting the legal rights of brain injury victims in Michigan.

We would like to give out a special thanks to all who came to visit our table at the conference and for those who attended the Nut House Event. The Nut House Event proved to be a success and we were honored to be a member of the No-Fault Network (NFN).

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

Direct Contact Required in Hit-and-Run Uninsured Motorist Benefits Case

In *Mason v. AAA*, unpublished opinion per curiam of the Court of Appeals decided August 3, 2010, (Docket No. 289719) the Court of Appeals held in favor of the Defendant AAA in a "hit-and-run" uninsured motorist benefits (UIM) case.

The issue in the case was whether indirect contact caused by one of the hit-and-run vehicles satisfied the condition in the insurance policy which defined "uninsured motor vehicle" to include "a hit-and-run motor vehicle of which the operator or owner are unknown and **which makes direct physical contact** with: (1) you or a resident relative [i.e., the insured], or (2) a motor vehicle which an insured person is occupying."

According to plaintiffs' complaint, the plaintiffs were "run off the road by two racing vehicles" that apparently did not stop and could not be identified. Plaintiff Patrice Mason is the daughter of plaintiff Sharl Mason.

Patrice was driving her minivan, and Sharl was the front seat passenger. Patrice testified that the incident occurred as she was driving on a two-lane road through Chandler Park in Wayne County.

At least three cars were approaching her from the opposite direction and were "snake driving," i.e., veering from one side of the road to the other and back.

One of those cars lost control and spun off onto the west side of the road, "kicking up debris and boulders and rocks." Patrice swerved to avoid the vehicle, ran off the road, and "went up on the rocks and hit the fence and the curb." When she struck a fence post, some of the car windows were broken and the airbag deployed.

Patrice testified that rocks and debris from one of the other cars struck her vehicle. In addition, she stated that the unidentified car went off the road and caused the fence to lift up and hit her car.

The Defendant argued that given these facts, there was no direct physical contact between the Plaintiffs' car and the hit-and-run cars.

The Plaintiffs argued that when an insurance policy refers to physical contact between two vehicles, indirect physical contact is sufficient. Plaintiffs claimed that there was at least a question of fact regarding whether an unidentified vehicle caused something to strike plaintiffs' vehicle.

The Court of Appeals reversed the trial court. The Court stated that the plain language of the insurance policy required *direct contract* between the two vehicles.

Thus the Court held that the policy therefore makes clear that indirect contact, such as the contact that occurred in the present case, is insufficient to trigger UIM benefits.

ASK DAN - The No-Fault Insurance Expert

Q: *The no-fault insurer only paid part of my bill, can I recoup the difference from the patient?*

Dan: Yes. This is called balance billing. However, if you pursue the claim directly against the patient the no-fault insurer is obligated to step in and defend and indemnify their insured from any legal action. A better route is to go after the insurer directly if you believe the amount paid by the insurer is below what is considered reasonable. Either way, you will have to litigate the issue of whether the charge is reasonable. However, with a direct action against the insurer you can maintain a good relationship with the patient.

Q: *If I sue an insurer for a wrongful denial of my bill and I am successful, can I get attorney fees?*

Dan: Yes. The No-Fault Act contains a provision for penalty attorney fees, but only if the insurer's denial is deemed "unreasonable" by the Court.

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Our No-Fault Service Provider Spotlight

Crawl, Walk, Jump, Run Therapy Clinic
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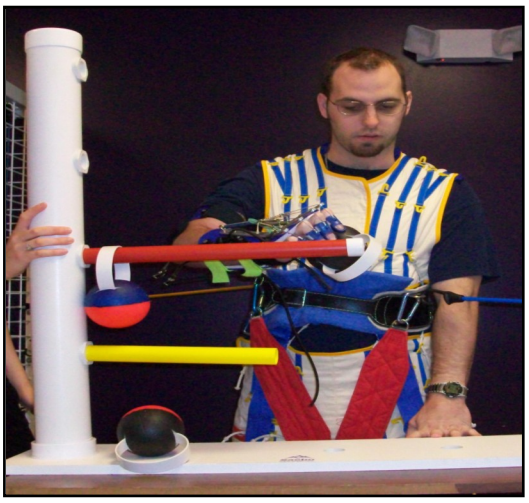
Ph: 586-323-2957 www.crawlwalkjumprun.com

This month we spotlight Crawl, Walk, Jump, Run Therapy Clinic, an intensive Physical, Occupational, and Speech Therapy Clinic specializing in treating pediatric and adult clients with diagnoses such as traumatic brain injury, spinal cord injury, cerebral palsy, autism spectrum disorder, post stroke, and other neurological disorders. Their goal is for each child and adult to achieve maximal functional progress while educating each parent/family on helping their child reach their highest potential.

Crawl, Walk, Jump, Run Therapy Clinic offers two to three hour treatment sessions and an intensive approach that reinforces functional gains with emphasis on increasing strength and motor planning to improve overall daily function. Their therapy tools include the Universal Exercise Unit, Therasuit, Sensory Integration Therapy, Hyperbaric Oxygen, Craniosacral Therapy, Cognitive Processing Therapy, Interactive Metronome, Brain Gym, Gross and Fine Motor Programs.

Crawl, Walk, Jump, Run Therapy Clinic also offers special programs to their patients such as pediatric yoga, potty training class for parents, bike riding clinic, handwriting program, and toy registry for birthdays and holidays.



Client using SaeboFlex, a functional dynamic orthoses developed to improve motor

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!