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BUCKFIRE & BUCKFIRE, P.C.

May 2011

The Michigan No-Fault Newsletter

Special points of interest:

- **Are replacement services an allowable expense?**
- **What is the requirement for a disfigurement to be considered "serious"?**
- **Do you have a question to "Ask Dan"?**

Inside this issue:

Appeals Court Reverses Trial Court's Dismissal of Injured Plaintiff's First and Third Party Cases

In *Johnson v. Recca*, ___ Mich App _____ decided April 5, 2011 (Docket 294363) the plaintiff, while a pedestrian, was hit by a vehicle driven by defendant Recca. She was knocked backwards and fell on her back and hit her head on the cement.

At the time of the accident, plaintiff lived with Harrietta Johnson, her ex-mother-in-law. Neither woman owned a vehicle.

The Defendant had a no-fault insurance policy with Allstate Insurance Company. The plaintiff sued Allstate for first party no-fault benefits including attendant care and replacement services provided by Harrietta Johnson.

She also sued defendant Recca for pain and suffering and excess economic losses for replacement services provided beyond the three year statutory period under the No-Fault Act.

The trial court dismissed Plaintiff's claim for excess replacement service losses, holding that replacement services were not "allowable expenses" under § 3107 and thus were not compensable damages under the excess economic loss provision in a third party tort case.

Second, the trial court held that plaintiff was not entitled to noneconomic damages because she had a history of back problems before the accident and could not prove that she suffered a serious impairment of body function.

The first issue in the case was whether the "excess" "damages for allowable expenses," under § 500.3135(3)(c), that an injured person may recover in a third-party action include expenses for services commonly known as replacement services that are rendered more than three years after the date of the accident.

The Court of Appeals reversed the trial court holding that replacement service expenses include allowable expenses and thus are compensable in a third party case.

The Court reasoned that because replacement "services" are for a person's "care", they are an "allowable expense" (which includes "services... for a person care..") and thus compensable as an excess loss under § 3135.

The Court further stated that the reason replacement services are addressed separately in § 3107, is because the Legislature wanted to place limits on the amount a no-fault insurer would be required to pay for replacement services as opposed to all other allowable expenses which are unlimited in scope.

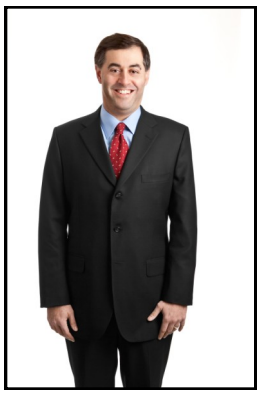
The Court also held that a factual dispute existed as to whether the plaintiff sustained a herniated disc in the accident that was not present before the event.

In addition, the Court stated whether the Plaintiff's life was sufficiently impacted needed to be reviewed under the new standards set forth in The Supreme Court's decision in *McCormick v Carrier*, 487 Mich 180 (2010).

Accordingly, the Court reversed the trial court decision to dismiss the Plaintiff's third party case based upon the serious impairment of body function issue.

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



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 Plaintiff Suffered Serious Impairment But Not Disfigurement

In *Dybas v. Madziar*, unpublished opinion per curiam of the Court of Appeals decided April 7, 2011, (Docket No. 295512) the plaintiff sued the defendant for non-economic loss under the Michigan No-Fault Act, MCL 500.3101 *et seq*.

The Defendant requested that the trial court dismiss the plaintiff's case, claiming that the plaintiff's injuries did not constitute a [serious] impairment of body function or permanent serious disfigurement under § 3135 of the No-Fault Act.

The trial court denied the defendant's motion, finding a question of fact with regard to whether the plaintiff's injuries *impaired his general ability to lead his normal life* and as to whether the plaintiff suffered a *permanent serious disfigurement*. The Defendant appealed.

The Court of Appeals found that the August 2005 collision caused the plaintiff to suffer a "[h]ematoma, left knee prepatellar bursa."

On September 14, 2005, the plaintiff's orthopedic surgeon performed outpatient surgery using general anesthesia on plaintiff's left knee, which consisted of a "debridement/closure of left knee."

The Plaintiff testified regarding his inability to bear weight on his leg, which was reflected in his doctor's records; plaintiff's functional limitations, which were reflected in the physical therapy records; and plaintiff's difficulty with repetitive bending, about which plaintiff testified extensively, indicating that his doctor restricted his activities.

In addition, before the accident, the plaintiff's normal manner of living consisted of an active lifestyle outside of work, which included jogging, bowling, working out, and riding his bicycle, and he testified to effects of his injury that impacted his ability to conduct that normal manner of living for at least three years following the accident.

The Court held that being able to move one's knee is an important body function as a matter of law.

In addition, the Court held that the plaintiff demonstrated that his "pre-incident manner of living was affected" by his injury.

Consequently, the Court held that the trial court properly denied the defendant's motion to dismiss the plaintiff's case.

However, the Court stated that the plaintiff failed to establish that the scars on his knees are permanent serious disfigurements. Both scars were less than 3-1/2 inches in length and, although there was some discoloration on both scars, they appeared to be partially covered by hair.

In addition, although the scars may be permanent, the Court stated that the scars do not rise to the level of being permanent serious disfigurements because the scars do not meet the requirement of being "serious." MCL 500.3135 (2)(a)(ii).

Accordingly, the Court held that issue of whether plaintiff suffered a permanent serious disfigurement should not have been left to the jury and summary disposition for the defendant on this claim was warranted.

Buckfire & Buckfire Receives Certificate of Environmental Accomplishment

Buckfire & Buckfire, P.C. is proud to announce their participation in the Shred-it shredding and recycling program.

Due to our participation, we were able to save 18 trees from destruction in the year of 2010.

Buckfire & Buckfire, will continue to have a positive impact on saving our environment by staying involved in the program and continuing in saving even more trees in the upcoming year.

"We believe that investing in our community not only improves the lives of our friends and neighbors, but it also enriches our own lives and makes us better lawyers. This includes our environment and having a positive impact on it," quotes Larry Buckfire.

Team Buckfire Is Top Corporate Fundraising Team for MADD

Buckfire & Buckfire, P.C. was the Survivor Victim Area Sponsor for Mother's Against Drunk Driving (MADD) signature event, Walk Like MADD.

Our firm is also proud to announce that our team, Team Buckfire, was the top corporate team to raise money for the signature event with a total amount of $2,750.00 raised.

Our very own personal injury attorneys Daniel Buckfire and Larry Buckfire were also recognized as top walkers raising more than $1,500.00 combined.

We would like to thank everyone who has came out to the walk, contributed, and helped support Team Buckfire.

Walk Like MADD Team Buckfire take a stand to stop drunk driving.

Every year nearly 500,000 people are injured in an alcohol related accident, an average of one every minute. We ask everyone to continue on with the support for MADD in their efforts to eliminate drunk driving.

ASK DAN - The No-Fault Insurance Expert

Q: *I operate a rehabilitation program and have a minor client where the mother is acting as the case manager. The insurance company has rejected my bill stating that they will only pay me $40 for a three hour session where the reasonable and customary rate is $600. The insurer claims that the mother negotiated this reduced rate - without my knowledge. Do I have to accept this reduced rate?*

Dan: No. The mother has no authority to make deals with the insurance company on how much to pay a provider. Your company was not a party to that contract and thus is not bound to accept the reduced rate. You should demand that your bill be reviewed as to whether your charges are "reasonable charges" under MCL 500.3107 not in relation to the agreement with the mom.

Do you have a question for Dan?
Email Kathryn at Kathryn@buckfirelaw.com with your question and see if your question gets answered in our next newsletter! Type "Ask Dan" in the subject line.

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

CAPS Remodeling
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This month we spotlight CAPS Remodeling, a home modification company that offers handicap accessible remodeling and accessibility modifications in the Detroit metropolitan area. Jeff Cates, the managing partner with CAPS Remodeling, has been in the remodeling business for over 20 years. He started the business in 2007, after his son was involved in a car accident a year previous.

Some of the products and services that CAPS Remodeling performs include grab bars, handheld shower sprays, overhead lift systems, along with many other major home modifications such as additions, curb less/roll in showers, door widening, accessible kitchens, and ramps.

CAPS Remodeling prides themselves on their quick turnaround time for estimates and the relationships they have built with case managers and insurance companies over the years. "We understand the clients needs and make it a priority to deal with them respectfully and with their compassion, we treat their homes and families like our own," says Jeff Cates on the operation of CAPS Remodeling.

CAPS Remodeling has recently expanded their business with a division named Michigan Ramps. Michigan Ramps concentrates specifically on modular ramp rental systems as well as permanent ramps throughout the State of Michigan.

SureHands Lift and Care Systems also selected CAPS Remodeling as the Michigan Dealer for their unique lifting system. SureHands is the only lift system available to patients with SCI, TBI, and many other debilitating diseases.

Managing partner Jeff Cates provided home modification services for customers, Mr.

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!