Volume 1, Issue 8

BUCKFIRE & BUCKFIRE, P.C.

September 2010

The Michigan No-Fault Newsletter

Special points of interest:

- ***McCormick V. Carrier***
- ***U of M v. Titan***
- **Support Team Buckfire in Walk Like MADD**
- **No-Fault Insurance Questions Answered**

Inside this issue:

Supreme Court Reverses *Kreiner* And Restores Rights To Auto Accident Victims

In 1973, the Michigan Legislature adopted the No-Fault Insurance Act, MCL 500.3101 et seq. The Act created a compulsory motor vehicle insurance program under which insurers may recover directly from their insurers, without regard to fault, for qualifying economic losses arising from motor vehicle incidents. See MCL 500.3101 and 500.3105. In exchange for ensuring certain and prompt recovery for economic loss (wages, medical bills, etc.), the Act also limited tort liability (e.g. pain and suffering damages).

Under the Act, tort liability for non-economic loss arising out of a motor vehicle accident is limited to a list of enumerated circumstances: (1) serious impairment of body function; (2) death; or (3) permanent serious disfigurement. MCL 500.3135(3). The threshold requirement at issue in most cases is whether plaintiff has suffered **"serious impairment of body function."** The Act did not originally define this phrase.

In the following years, the Michigan Supreme Court issued two conflicting opinions attempting to define the serious impairment threshold - in 1982 with *Cassidy v McGovern*, 415 Mich 483 (1982) and in 1986 with *DiFranco v Pickard*, 427 Mich 32 (1986).

Due to the conflict, the Legislature intervened in 1995 and amended § 3135 to define a "serious impairment of body function" as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). The Legislature also provided that whether a serious impairment of body function has occurred is a "question of law" for the court to decide unless there is a factual dispute regarding the nature and extent of injury and the dispute is relevant to deciding whether the standard is met. MCL 500.3135(2)(a). Most agree that the Legislature incorporated some language from *DiFranco* and *Cassidy* but also made its own changes.

In 2004 the Michigan Supreme Court issued a decision interpreting the 1995 amendments in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004). The Court's decision was divided 4-3 with four Republicans (Taylor, Young, Corrigan, & Markman, JJ.) voting with the majority. The dissent consisted of two democrats (Cavanaugh & Kelly, JJ.) and one republican (Weaver, J.)

The *Kreiner* majority interpreted the *serious impairment* threshold in a very restrictive manner - in particular with regard to the "general ability to lead [ones] normal life" element. Most notably, the *Kreiner* majority created a standard whereby the "trajectory" of a person's life had to be altered by the injury. In the years following *Kreiner*, countless Michigan car accident victims with very serious injuries (e.g. broken bones requiring surgery) had their cases dismissed under this new standard. These cases were known as "Kreiner Casualties."

In *McCormick v. Carrier* unpublished opinion per curiam of the Court of Appeals, decided March 25, 2008 [Docket No. 275888], the Michigan Court of Appeals upheld yet another dismissal of an injured person's case involving a serious ankle fracture injury caused by a coworker who backed a truck over Mr. McCormick's ankle at work.

In that case, Mr. McCormick underwent two surgeries and was completely disabled from returning to work for one year. In addition, the evidence showed that his work played a very large

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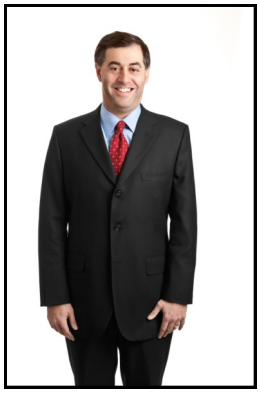

Michigan Attorney Daniel L. Buckfire

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.

Kreiner, cont. from Page 1

role in his life, and he was "at another duty" because his employer did not consider him capable of performing his prior duties. In addition, his doctor and an independent doctor both found some indication of arthritis in his ankle as a result of his injury. Mr. McCormick testified that after being disabled for a year his life is "painful, but normal."

The Court of Appeals (COA) acknowledged "that painful injuries, such as that sustained by plaintiff in the present case, do not generally disappear over time or necessarily improve with age." However, despite these facts, the COA held in a non-unanimous decision (Judge Davis dissenting) that Mr. McCormick's injuries did not affect his "ability to lead his normal life." In making this determination, the majority provided little analysis or reasoning for its holding.

In November 2008, Justice Clifford Taylor was defeated by current Justice Diane Hathaway. During their campaign, Justice Hathaway was very vocal about her disagreement with many of the decisions written by Justice Taylor including *Kreiner*. Following the election, the Supreme Court (which now consisted of only 3 of the 4 majority justices from *Kreiner*) granted leave to hear Mr. McCormick's appeal. The issue before the Court was the proper interpretation of the "serious impairment of body function" threshold for non-economic tort liability under MCL 500.3135.

On July 31, 2010, the Supreme Court in *McCormick v. Carrier* ____ Mich ____ (decided July 31, 2010) overruled *Kreiner* holding that it was wrongly decided because it departed from the plain language of § 3135. The Court further held that Mr. McCormick suffered a serious impairment as a matter of law and reversing the trial court and Court of Appeals.

The *McCormick* Court stated that § 315 only requires that "a person's general ability to lead his or her normal life has been affected, not destroyed" and that "there is no quantitative minimum as to the percentage of a person's normal manner of living that must be affected." In addition, the Court held that the test is subjective (case by case basis) as opposed to the objective test employed by the *Kreiner* Court. Moreover, the Court stated that "...the statute does not create an express temporal requirement as to how long an impairment must last in order to have an effect on 'the person's general ability to live his or her normal life.'" Thus, the Court reinforced the rule that an injury need not be permanent in order to cross the threshold.

The *McCormick* decision restores the rights of innocent victims to recover compensation for serious injuries caused by negligent and drunk drivers, by returning to the specific legal standards that were enacted by the Michigan Legislature when it passed the current law 15 years ago. In other words, this is not new law, but rather a return to the no-fault threshold passed by the Michigan Legislature in 1995. The decision recognizes that *Kreiner*, was nothing more than judge-made law that constituted a radical departure from the specific language and overall intent of the Michigan No-Fault Act. In addition, *McCormick* clearly illustrates the unfairness and injustice created by the *Kreiner* decision for people like Mr. McCormick.

Help Support Team Buckfire For Walk Like MADD

Buckfire & Buckfire is a proud Survivor Victim Area Sponsor for Mother's Against Drunk Driving (MADD) national fundraising event, Walk Like MADD. In an effort to raise money and eliminate drunk driving we have created a team and are asking for your help!

Help us go beyond our goal by visiting **www.WalkLikeMadd.org**, find an event—Detroit/Troy walk and click on Donate where you can search by team name, Team Buckfire, and then click on Support Team Buckfire! We greatly appreciate your donation at any level. Feel free to come walk at the event - visit www.WalkLikeMadd.org for details.

Supreme Court Reverses *Cameron* - No-Fault Claims of Minor's and Brain Injured Tolled

In *U of M v. Titan* ____ Mich ____ (decided July 31, 2010) the Michigan Supreme Court held that MCL 600.5851 tolls the no-fault claims of minors and mentally incapacitated individuals thereby reversing the Court's 2006 decision in *Cameron v. ACIA*, 476 Mich 55 (2006).

In the 24 years before *Cameron* was decided, the Courts unanimously held that the one year statue of limitations and one year back rule did not apply to minors and mentally incapacitated individuals pursuant to the minority savings provision set forth in § 5851.

However, the majority justices in *Cameron* reversed 24 years of precedent and held that the minority/insanity provision in MCL 600.5851(1) did not remove the plaintiff's claim from application of the one-year-back rule under § 3145.

The majority in *Cameron* reasoned that a statute governing when a party may bring an action (§ 5851) does not affect the damages recoverable under the one-year-back rule.

In *Titan*, the Supreme Court rejected the reasoning set forth in *Cameron*. Writing for the majority, Justice Kelly stated that "... the approach in *Cameron* was flawed because it read the statutory language in isolation."

In the regard, the Court stated § 5851 and the No-Fault Act must be read together and in "doing so, the statutes grant infants and incompetent persons one year after their disability is removed to 'bring the action' 'for recovery of personal protection insurance benefits . . . for accidental bodily injury . . . .'.

In addition, the Court held that on the basis of its language, § 5851(1) supersedes all limitations in §3145 of the No-Fault Act, including the one-year-back rule's limitation on the period of recovery. This decision is a major victory for injured minors and claimants with mentally incapacitating injuries as it protects them from the unfair application of the one year back rule set forth in § 3145, which is clearly what § 5851 was meant to accomplish.

ASK DAN - The No-Fault Insurance Expert

Q: *Do I need to obtain pre-authorization from a no-fault insurer to render treatment of a patient who has been in an auto accident?*
Dan: No. There is no requirement that medical treatment be preauthorized. In fact, many insurers will refuse to authorize treatment because the No-Fault Act only requires an insurer to consider payment once the expense has been *incurred*.

Q: *How does a no-fault insurer determine what they will pay me for my services?*
Dan: That is a good question. The No-Fault law is not a managed care system. The only criteria is that the services rendered must be reasonably necessary; related to the persons care, recovery and/or rehabilitation; and the charge must be "reasonable." Most insurers use a bill review company that compares the services rendered with the customary charges in the respective region. Fee schedules are not permitted. However, there are exceptions, for example when the provider is a PPOM participant.

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

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Www.BuckfireLaw.com

Our No-Fault Service Provider Spotlight

Michigan Transportation Services, Inc.
Statewide Services from Multiple Locations
Ph: 877-777-7900 www.michigantransportation.com

This month we spotlight Michigan Transportation Services, Inc., (MTS) a statewide transportation company that specializes in traumatic brain injury for over 20 years. Reliable transportation is crucial to brain injured victims and MTS's mission is timeliness.

Being late for something can bring on emotional stress for patients with brain injuries. That's why the company prides itself on its achievement of a 98 percent on-time success rating. They accomplish this by following ISO-certified processes, using time-saving software and online signup to schedule vans and sedans and accommodate last-minute changes.

MTS's fleet is equipped with GPS technology to help drivers determine fastest routing to pickup points and destinations to avoid traffic congestion. Operation centers are located around Michigan to shorten distances, and whenever a client is running late, MTS notifies the case manager to ease his/her concern and minimize time needed for possible rescheduling.

Marketing Director of Michigan Transportation Services, Barbara Porter, pictured with their vans/sedans.

MTS knows and recognizes the fact that timely transportation adds to self sufficiency, self worth and independency. MTS is committed to providing safe, timely transportation and with their dependable and economical transportation they are able to accomplish that sense of independency for a client while respecting their needs and wants.

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!