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The Michigan No-Fault Newsletter

Special points of interest:

- **Can you still get work loss benefits even if your employer does not provide earnings information to the insurance company?**
- **When are you not entitled to PIP benefits?**
- **The benefits of joining the No-Fault Network**
- **FREE No-Fault Resource Binder offer**

Inside this issue:

Claimant Paid "Under The Table" Entitled To Make No-Fault Wage

In *Ward v. Titan*, unpublished opinion per curiam of the Court of Appeals decided March 16, 2010 (Docket No. 284994), Mr. Ward sued Titan Insurance Company for no-fault benefits.

At the time of his accident, Mr. Ward was working as a bouncer at a club. He had not filed tax returns and admitted to being paid "under the table."

Titan argued that he was not entitled to work loss benefits because his employer refused to provide Titan with a sworn statement regarding his earnings, which is required under § 3158 of the No-Fault Act and the trial court agreed.

The Court of Appeals reversed, holding that although § 3158 requires an employer to furnish the earnings information, it does not state that if such information is not provided, the injured person loses the right to work loss benefits.

Furthermore the Court held that the Mr. Ward's failure to file tax returns and admission of being paid "under the table," does not bar his claim under the wrongful conduct rule -- which prohibits claims of a plaintiff only when the claim is based upon the specific illegal conduct.

The Court also held that the trial court erred in awarding Mr. Ward housing costs based on the full amount he currently pays for rent.

Under the Supreme Court's decision in *Griffith v. State Farm*, 472 Mich 521 (2005) his housing costs are only compensable to the extent that those costs became greater as a result of the accident.

Thus, the Court stated that Mr. Ward must show that his housing expenses are different from those of an uninjured person.

Uninsured Motorists Benefits Case Dismissed Due To Refusal to Submit To EUO

In *Graves v. State Farm*, unpublished opinion per curiam of the Court of Appeals decided February 25, 2010, (Docket No. 289822), the Court of Appeals upheld the trial court's dismissal of the plaintiff's uninsured motorist claim against defendant State Farm.

In this case, the plaintiff was injured while driving a vehicle owned by her mother and insured with State Farm.

There was a dispute as to whether or not the driver of the at-fault vehicle (which was insured by Bristol West) had stolen the vehicle.

As part of its investigation, State Farm attempted to schedule the Examination Under Oath (EUO) of the plaintiff and her mother, but was informed by plaintiff's counsel that they were unwilling to submit to an EUO, and would be filing suit instead.

The Court of Appeals held that trial court properly dismissed the case against State Farm, because its insurance policy unambiguously required the insured to submit to a EUO at State Farm's request and legal action cannot be brought against State Farm unless the insured fully complied with the policy's provisions.

The court noted case law holds "when an insured does not permit oral examination when required to do so, recovery under the policy is barred."

It is significant to note that according to State Farm, plaintiff's mother informed its agent a month after the accident that the Bristol West vehicle was not stolen and its insured knew the driver. This was contrary to the information plaintiff gave the police at the time of the accident.

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.

Liability Insurer's Named Driver Exclusion Held Invalid

In *Progressive v. Smith*, ___ Mich App. _____ (2010) (Docket No. 287505), the Court of Appeals held that the warning notice requirement of MCL 500.3009(2) must be enforced as written. § 3009 provides a statement that insurers are required to include in their Certificate of Insurance if they wish to excluded coverage when a vehicle is operated by a named person.

In this case, the Mihelsics were injured in an automobile accident when a truck driven by William Smith crossed the center line and struck their vehicle. When Smith had purchased the truck, he did not have a driver's license because he had too many points on his record.

In order to obtain license plates and insurance, he added his friend, Sheri Harris, to the title. Harris obtained insurance with Progressive, and Smith paid for it.

A form signed by Harris lists Smith as an excluded driver. The declaration page of the insurance policy also lists him as an excluded driver, as does the certificate of insurance.

The Mihelsics brought an action against Smith, and a default was entered against him. Progressive brought a declaratory judgment action and requested that the trial court determine that it had no liability to defend and indemnify Smith because of the previously discussed named driver exclusion.

The Mihelsics argued that Progressive had failed to use the required statutory language for the exclusion of a named driver in its insurance policy because the warning on the insurance declaration page used the term "responsible" instead of "liable" (which is the term used in § 3009(2)). The trial court ruled in favor of Progressive.

The Court of Appeals reversed the trial court and held that the named driver exclusion in the policy of insurance at issue in the case was invalid because it did not strictly comply with the statute. Thus, Progressive was required to afford coverage to Smith for the Mihelsics' injuries.

Constructive Owner of Uninsured Vehicle Not Entitled To PIP Benefits

In *Adams v. Citizens*, unpublished opinion per curiam of the Court of Appeals decided March 4, 2010 (Docket No. 290037), the plaintiff was injured while occupying a Chevrolet Impala that was purchased by his mother.

The plaintiff was seated in the Impala, which was parked in his mother's driveway, when another vehicle lost control, left the road, and struck the Impala.

At the time of the accident, the plaintiff was living with his mother. Because the Impala was uninsured, the plaintiff filed a claim for PIP benefits with the assigned claims facility, and the claim was assigned to Citizens.

After Citizens denied the plaintiff's claim, the plaintiff filed a lawsuit. The trial court dismissed the case in favor of Citizens, holding that the plaintiff was a "constructive owner" of the Impala for purposes of MCL 500.3113(b) and, having failed to obtain insurance, was not entitled to PIP benefits.

The Michigan No-Fault Act requires the "owner" of a motor vehicle to maintain Michigan no-fault insurance on that vehicle; under § 3113, if the owner fails to do so, they cannot recover PIP benefits for injuries in a subsequent accident.

A person can be considered a "constructive owner" of a vehicle if they (although not on the title) have use of a vehicle for a period greater than 30 days.

The Court of Appeals affirmed the trial court's holding stating that there was no dispute that the plaintiff had exclusive use of the Impala for at least 30 days and thus was a constructive owner.

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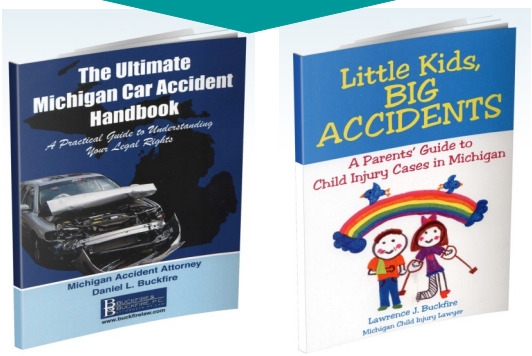

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Out-of-State Insurer Liable For No-Fault Benefits to Claimant From Florida

In *Titan v. BrotherHood Mut. Ins.*, unpublished opinion per curiam of the Court of Appeals decided February 23, 2010 (Docket No. 283050), the Court of Appeals affirmed the trial court's decision that State Farm was required to pay the claimant's no-fault benefits.

This case involved a priority dispute between three (3) no-fault insurers: Titan Insurance, Brotherhood Insurance and State Farm.

The claimant was 85 years old at the time of the accident and lived in Michigan for five (5) months each year and in Florida for the remainder of the year. He maintained auto insurance in Florida with State Farm.

While in Michigan the claimant worked as a volunteer at a Bible camp. While he was working at the Bible camp he was severely injured when a pickup truck rolled over his body.

Brotherhood insured the vehicle. Titan was the insurer assigned to the claim by the Michigan Assigned Claims Facility (ACF) when neither State Farm nor Brotherhood would agree to procure no-fault benefits.

State Farm argued that because the claimant was a resident of Michigan for part of the year, it was not the proper insurer of no-fault benefits under §3163 of the No-Fault Act - which only requires out-of-state insurers to pay no-fault benefits when the claimant is a nonresident of Michigan.

The Court of Appeals disagreed, holding that the facts clearly showed that the claimant was a Florida resident, and not a resident of Michigan.

The Court also rejected State Farm's argument that no-fault benefits should be precluded because the claimant did not register his vehicle in Michigan for the reason that the claimant was not occupying his vehicle at the time of the accident.

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Our No-Fault Service Provider Spotlight

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Jeffrey Ropp, C.P. (Certified Pros-

Jeffrey Ropp began working in the prosthetic field in 1980 as an assistant while still in college. He graduated from Michigan State University with a Bachelor of Science degree in physiology and received his Certificate of Prosthetics from the University of Minnesota with Century College.

Jeffrey practiced prosthetics at several clinics for over 20 years until he decided to form his own company, Ropp Orthopedic Clinic in 2005. Being the business owner allows Jeffrey to spend additional time with patients that have hard to fit residual limbs. This enables him to design prosthetic devices that are highly customized for the needs of each individual client.

Ropp Orthopedic works with the patient as part of a rehabilitation team, especially in the early stages of their recovery. The clinic also has a board-certified podiatrist on staff to create custom orthotic inserts and shoes and to provide diabetic foot care to clients.

Many of Jeffrey's clients are amputees who have been injured in motorcycle and car accidents. The majority of its clients are referred by medical specialists, nurse case managers, and hospital discharge planners who appreciate his attention to detail and the excellent services provided by the clinic. Jeffrey provides free in-services to case managers and other medical professionals who wish to learn more about the fitting process and new prosthetic componentry.

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!