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BUCKFIRE & BUCKFIRE, P.C.

June 2010

# The Michigan No-Fault Newsletter

**Special points of interest:**

- **Can an insurer get the same coverage policy in an accident if the policy is renewed without actual notice to the insured?**
- **Can a fraudulent patients claim bar a health care provider from seeking reimbursement?**
- **The benefits of joining the No-Fault Network**
- **FREE No-Fault Resource Binder offer**

**Inside this issue:**



## Medical Provider's No-Fault Claim Barred Due to Patient's Fraudulent Clam

In *TBCI v. State Farm*, unpublished opinion per curiam of the Court of Appeals decided April 27, 2010 (Docket No. 288853) the Court of Appeals held that a health care provider was barred from seeking reimbursement under the No-Fault Act where a jury in the injured claimant's case had previously determined that the injured claimant's attendant claim was fraudulent.

In this case, the injured claimant was injured in an automobile accident. His no-fault insurer, State Farm refused to pay his attendant care claim contending that the claim was fraudulent.

When the injured claimant sued, a jury found his claim for attendant care benefits was fraudulent.

State Farm denied all claims, including TBCI's bills, relying on an exclusionary clause in their policy.

TBCI sued and argued that the policy's exclusionary language should not be interpreted in such a way that it voided all coverage under the policy, including mandatory coverage for personal protection benefits.

In TBCI's view, this interpretation of the policy conflicted with the Act's mandatory coverage requirement.

The Court of Appeals disagreed and held that the exclusionary clause barred the entire claim, including the claim of the TBCI, even though the fraudulent attendant care claim had nothing to do with the treatment rendered by TBCI.

The Court stated that essentially TBCI stood in the shoes of the injured claimant and thus the exclusion barred its claim.

## Auto Lawsuit Dismissed In Serious Impairment Case

In *Schmidt v. Gwizdala*, unpublished opinion per curiam of the Court of Appeals decided April 13, 2010 (Docket No. 289981) the Court of Appeals upheld the trial court's dismissal of the plaintiff's bodily injury case arising out of an auto accident.

This lawsuit arose out of a 2004 automobile accident in which the plaintiff's vehicle was involved in a collision with a vehicle driven by defendant David Gwizdala, and owned by defendant Kenneth Gwizdala.

The plaintiff, who suffered from neck and back pain after an earlier automobile accident in 2002, claimed that her injuries were aggravated by the 2004 accident.

The trial court dismissed the plaintiff's case, holding that the Plaintiff's injuries failed to meet the serious impairment of body function threshold requirement of § 3135 of the No-Fault Act as interpreted by Michigan Supreme Court in the seminal decision in Kreiner v Fischer, 471 Mich 109; 683 NW2d 611(2004).

The trial court also held that the plaintiff had not suffered an objectively manifested impairment, as opposed to an injury, of an important body function.

On Appeal, the plaintiff did not address this aspect of the trial court's decision, which was fatal to the plaintiff's appeal because it was necessary to address whether the plaintiff suffered an objectively manifested impairment in order to reverse the trial court.

Nonetheless, the Michigan Supreme Court has granted leave in McCormick v. Carrier, unpublished opinion per curiam of the Court of Appeals decided March 25, 2008 (Docket No. 275888) lv gtd 770 N.W.2d 357 in a case which the Court has stated that it will decide whether it should reconsider its ruling in Kreiner.

A decision is expected soon.

## 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.*

## Family Step-Down Exclusion Stricken Because Insurer Failed To Notify Insured

In *Ruzak v. USAA Ins.*, unpublished opinion per curiam of the Court of Appeals decided April 27, 2010, (Docket No.288053) the plaintiff was injured when her husband, Jay Ruzak, drove their vehicle into a tree.

They had an automobile insurance policy through USAA, with general liability coverage limits of $300,000 per person with a maximum of $500,000 per accident.

USAA argued that it was only required to provide coverage up to $20,0000 due to what is referred to as a *family step-down provision* in the policy which states that coverage for bodily injury is limited to $20,000 per person or $40,000 for each accident where the injured person is a member of the insured's family who resides in the insured's household.

It is important to note that the Ruzak's originally purchased their insurance policy with USAA when they lived in Wisconsin.

The Michigan policy at issues was initiated in 1997. Family step-down provisions like the one at issue in this case are illegal in Wisconsin.

The Court of Appeals held that although the step down provision would normally be enforceable, the prior decision by the Court of Appeals required that the renewal rule apply where a policy is renewed without actual notice to the insured that the policy has been altered.

In this regard, where a renewal policy is issued without calling the insured's attention to a reduction in coverage, the insurer is bound to the greater coverage in the earlier policy.

Thus, the Court held it was bound by the prior decision because the policy was renewed without notice to the Ruzaks that the new policy contained the family step down provision.

However, the Court stated that if it were not bound by the prior panel's decision, it would have ruled differently.

## Court Finds Liability Policy Is Ambiguous

In *Progressive v. Sneden*, unpublished per curiam opinion of the Court of Appeals decided March 30, 2010 (docket number 285265) a milk truck being driven by Sneden rear-ended a vehicle being driven by Julie McComiskey, Taber McComiskey's wife.

Taber and Julie McComiskey were injured, and their son, a passenger, was fatally injured. At the time of the accident, Sneden was driving the milk truck as part of his work for a milk hauling service. Progressive insured Sneden's personal vehicle at the time of the accident.

Progressive filed a lawsuit requesting that the trial court rule that it was not responsible to afford liability coverage to Sneden as a result of the accident. Before Progressive filed the lawsuit, Taber McComiskey filed an action against Sneden to recover for injuries to him and his wife, and for the death of their son and the insurer of the milk hauling service paid its policy limits.

Progressive argued that Sneden was not an insured person under the policy with respect to this accident, because the policy only provided coverage if the insured was operating a vehicle less than 12,000 pounds and the milk truck exceeded that weight limit.

The trial court agreed and dismissed the case in Progressive's favor. On appeal, the McComisky's argued that coverage should be afforded to Sneden because the policy language at issue did not specify that the weight limit applied to the vehicle driven by the insured. Thus, because their vehicle weighed less than 10,000 pounds, coverage should be afforded.

The Court of Appeals agreed with the McComiskeys and held that Progressive was required to afford liability coverage to Sneden because the policy as written did not state that the vehicle involved in the accident had to be driven "by the insured," and because this accident arose out of the use of the McComiskey vehicle, which qualified as a vehicle because it weighed under 10,000 pounds.

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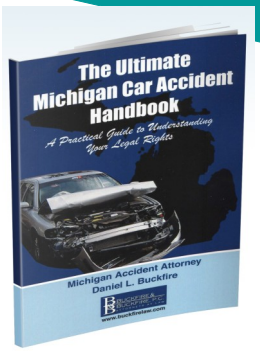



**"I wanted to thank you for sending me the No-Fault Resource binder. It is very informative and helpful!"**
**-Susan A. Cline, RN, CCM**

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## Injury Claim Barred Where Plaintiff Failed To Provide Notice

In *Rose v. SMART*, unpublished opinion per curiam of the Court of Appeals decided March 30, 2010, (Docket No. 289769) the Court of Appeals upheld the trial court's dismissal of the Plaintiff's case because the Plaintiff failed to provide SMART with written notice of the claim within 60 days of the accident.

In this case, the Plaintiff was injured on April 23, 2006 when he was riding in a bus owned by defendant Suburban Mobility Authority for Regional Transportation (SMART).

The Plaintiff was astride his three-wheeled, motorized wheelchair, but the chair was not secured. When the bus turned a sharp corner, the chair tipped over.

As a result, the Plaintiff was thrown from the chair and suffered a fractured hip and left femur. He was taken to the hospital by ambulance.

Two written reports were generated as a result, one by Fairlane Town Center, on whose property the incident occurred, and one by the bus driver, defendant Henry Thomas.

On July 31, 2006, more than three months after he was injured, plaintiff sent written notice of the claim to SMART. The Plaintiff filed a Complaint against SMART alleging negligence.

The trial court dismissed the Plaintiff's case in favor of SMART based on lack of statutory notice.

In this regard, the Metropolitan Transportation Authorities Act, MCL 124.401 et seq., requires that written notice of any claim based on injury to persons or property be served upon the authority no later than 60 days from the occurrence that resulted in the injury. MCL 124.419.

Thus, the plaintiff was required to serve SMART with written notice of a court-enforceable right based on a personal injury within 60 days of the date of the accident.

**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**

# The Michigan No-Fault Newsletter

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## Our No-Fault Service Provider Spotlight

***Advacare Health Care Professionals LLC***
***Southfield MI 48034***
***Ph: 248-208-0553 www.advacarehealth.com***

This month we spotlight Advacare, a home health agency professional service for accident insurance claims. Andre Benjamin is part of Advacare's team that includes other experienced professionals with over 15 years of experience.

Advacare professionals are responsible for designing, managing and implementing health care services for an individual's homecare and interfacing these services with hospitals, medical facilities, doctors, and surgical centers.

Advacare's professional administration manages all necessary insurance forms and reports to primary physicians and medical organization to ensure efficient and professional healthcare.

By providing comprehensive health care services and support, Advacare is able to assist and facilitate a patient's transition from a hospital or other health care facility to independence in their own home environment.

Advacare prides themselves on being able to administer quality health care services for patients in the home environment when caregivers are unable or unavailable to provide those services. Assisting the family in meeting the needs of the patient at home through counseling, teaching, and coordinating community services, maintaining patient functions appropriate to each individuals capabilities, lifestyles, and stage of life are only a few of Advacare's many objectives.

**Andre Benjamin (Executive Admin-**

**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!**