

March 2010

Special points of interest:

- **What written requirements does the Michigan No-Fault Act Require?**
- **How can you take advantage of our FREE Michigan No-Fault Insurance binder offer?**
- **Carnival of Care**
- **The benefits of joining the No-Fault Network**
- **Our Library of FREE legal books**

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The Michigan No-Fault Newsletter

Court Awards Attorney Fees Against No-Fault Insurer In Home Modification Case

In *Everett v. Auto-Owners Ins. Co.*, unpublished opinion per curiam of the Court of Appeals decided January 26, 2010, (Docket No. 287640), the Court of Appeals upheld a trial court’s award of no-fault penalty attorney fees and interest under §§ 3148 and 3142 of the No-Fault Act in a case involving home modifications. In this case, the plaintiff was rendered a paraplegic due to an auto accident in December of 2005.

As a result, he required modifications to his home. A contractor's proposal resulted in a \$64,426.69 contract with \$30,000.00 due upon acceptance.

The Plaintiff sought first-party benefits from defendant Auto-Owners to pay for the modifications, but the parties did not reach a settlement until February 2008, when the plaintiff was finally able to sign the contract. The trial

court awarded the Plaintiff § 3142 interest and § 3148 attorney fees for the Defendant’s delay in payment.

The Defendant appealed citing the Supreme Court’s decision in *Proudfoot v. State Farm*, 469 Mich 476 (2003). The Court held that this case was distinguishable from *Proudfoot* because the delay was the result of Defendant’s actions and thus Plaintiff was entitled to interest.

Insurer of Vehicle Registered In New Mexico Must Pay Michigan No-Fault Benefits

In *Geico v. Goldstein*, unpublished opinion per curiam of the Court of Appeals decided January 19, 2010, (Docket No. 288418), the claimant Goldstein drove her mother’s car from New Mexico to Michigan, because her mother wanted to leave a vehicle in Michigan for her use when she visited.

While the car was kept in Michigan, Goldstein used it only 3-4 times and always asked her mother for permission before each use. On one such occasion, Goldstein was injured in an accident while driving the vehicle and submitted a claim for no-fault benefits to Geico, which denied the claim.

The Michigan Assigned

Claims Facility assigned Farmers Ins. Exch. to pay Goldstein’s no-fault benefits. Litigation ensued and Farmers argued that Geico should be liable for plaintiff’s no-fault benefits under § 3163 of the No-Fault Act. § 3163 requires out-of-state insurers who are certified in Michigan to pay Michigan no-fault benefits in certain circumstances. The trial court agreed with Farmers and held Geico was responsible for Goldstein’s no-fault benefits.

Defendant Farmers also argued on appeal that despite the trial court’s ruling to the contrary, the plaintiff was a "constructive owner" of the vehicle and was barred from recovering PIP benefits.

The Michigan No-Fault Act

requires the “owner” of a motor vehicle to maintain Michigan no-fault insurance on that vehicle; 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 held that if it is determined that the plaintiff was not a constructive owner, then Geico, as the out-of-state insurer of the claimant’s mother’s vehicle, was required to provide no-fault benefits to the Plaintiff under § 3163 of the Michigan No-Fault Act.



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.

Appeal Denied In No-Fault Penalty Interest Case

On January 22, 2010, the Michigan Supreme Court issued an Order denying leave in the case of *Bonkowski v. Allstate*, Sup Ct. Docket no. 137672, (dated January 22, 2010).

The result of this Order is that the Court of Appeals decision in *Bonkowski* was upheld.

Under § 3142 of the No-Fault Act, an insurer must pay 12% penalty interest on all claims not paid within 30 days of receiving reasonable proof of the fact and of the amount of loss sustained.

In *Bonkowski*, the Court of Appeals held that the 12% penalty interest does not run from the entry of the judg-

ment through the satisfaction of judgment (i.e. when the Defendant actually tenders payment).

Instead, the penalty interest under § 3142 ceases to accrue when a Judgment is entered, not when it is actually paid.

Court Reinforces No-Fault Act's Written Notice Requirement

In *Magness v. Frankenmuth Mut. Ins. Co.*, unpublished opinion per curiam of the Court of Appeals decided January 19, 2010, (Docket No. 287369), the injured claimant appealed a trial court's order granting defendant Auto Club Ins. Assoc. (ACIA) and defendant-Frankenmuth dismissal of the plaintiff's case in a no-fault insurance case.

Under the No-Fault Act, an injured claimant must give written notice to the insurer of his or her injuries within a

year of the accident. The Plaintiff argued that ACIA received written notice of his injuries within a year of the accident.

The court rejected his contention that the police report ACIA received or the activities of an investigator it sent in connection with a claim for collision damage, constituted sufficient notice under MCL 500.3145(1).

The court held that because ACIA acted with Plaintiff's mother to create an "on-

screen report," written notice was provided. However, the Court held that the notice was insufficient because it did not fully describe the nature and extent of his injuries.

This case demonstrates the importance of providing the PIP insurer with full and complete written notice of an injured person's claim, including a complete list of the injured person's known injuries.

No-Fault Insurer Not Required To Pay For Experimental Surgery

In *Krohn v. Home-Owners Ins. Co.*, unpublished opinion per curiam of the Court of Appeals decided January 26, 2010, (Docket No. 283862), the Plaintiff was involved in a head-on collision and sustained multiple injuries, including a severe spinal fracture.

After the accident, he participated in intensive physical therapy at the University of Michigan in an attempt to regain function in his chest

and mid-level area which was unsuccessful.

During this time, he learned about an experimental medical procedure being performed in Portugal which involved surgery, followed by intensive physical therapy. The procedure had not been approved by the FDA.

A jury trial was held, and the jury awarded the medical expenses for the procedure to the plaintiff.

The Court of Appeals reversed the verdict because: (1) plaintiff's treating physician expert witness did not testify that the experimental stem cell surgery performed in Portugal was "reasonably necessary" and (2) the trial court erred in failing to determine the scientific reliability of the experimental surgery before admitting any testimony regarding the procedure.

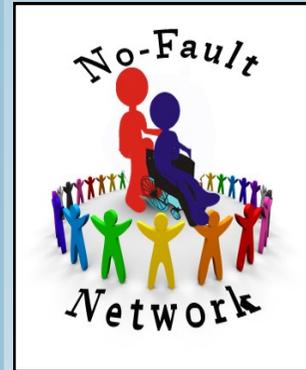
FREE Binder Offer – ~~100~~ Only 23 Left

As a resource to no-fault insurance providers, we are offering a **FREE BINDER** to the next 23 requestors. The binder is a great place to keep and organize our Monthly Newsletters, our No-Fault Priority Chart, and other important materials. We'll include a CD containing no-fault insurance claim forms so that you can print them, and a PDF version of our book for

you to print and keep in the binder.

Request your FREE binder now! Just email:

Kathryn@buckfirelaw.com and type "Send My Binder" in the subject line. Include your name and address and we'll send it out right away!



Michigan's No-Fault Social Network

Current Case Study – Injuries From Car Jacking

In Bourne v. Farmers Ins. Exchange, 449 Mich. 193, 543 NW2d 491 (1995), the Michigan Supreme Court held that a person who was assaulted during a car jacking was not entitled to receive no-fault benefits because the injury was not caused by the operational use of the car, and due to the car being merely the site of the robbery and injury.

no-fault benefits from a car jacking, the victim's injuries must be caused as a result of the use of the car itself. We represented a car jacking victim in a lawsuit against his no-fault insurance company. While driving to his home in Highland Park, Michigan, two armed men jumped into his car at a stop light. He was robbed and then pushed out of his car. His rain coat became

caught in the door and he was dragged for an entire city block by his own automobile. He sustained massive facial injuries and severe burns as a result of being dragged by the car. We successfully argued that his injuries were caused by the operational use of his car, and the no-fault insurance company paid for his medical expenses and his other no-fault claims.

Join the No-Fault Network

<http://nofaultnetwork.com>

FREE MEMBERSHIP

- *Make & Receive Professional Referrals*
- *Network With Other Professionals*
- *Publicize Meetings and Events*
- *Find A Support Group*
- *Discover New Service Providers*
- *Promote Your Business or Service For Free*
- *Post Employment Opportunities*
- *Find New Employment*

Buckfire & Buckfire, P.C. is A Proud Gold Sponsor of Carnival of Care

The Careforward Foundation is holding its annual Carnival of Care at San Marino Club of Troy, MI on March 20, 2010 from 10:00 A.M. to 3:00 P.M. Buckfire & Buckfire, P.C. is proud to announce that we will be a Gold sponsor of this event for the second consecutive year.



Carnival of Care is held to help raise money for The Brain Injury Association of Michigan. It is a free fun-filled day of music, food, face-painters, balloon artists, clowns, carnival games and much more for survivors of auto accidents and brain injuries, and their caregivers.

Not only do our clients learn a lot from us, but we learn a lot from them. Through our cases, we realize how important organizations such as The Brain Injury Association are to our clients. We will continue to be a proud supporter and sponsor of non-profit organizations.

Come visit our booth at the Carnival of Care and enjoy a free fun-filled day on us!

The Michigan No-Fault Newsletter



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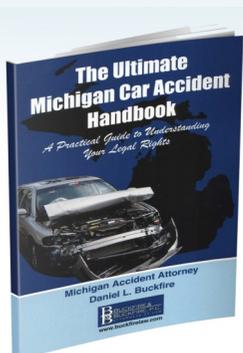
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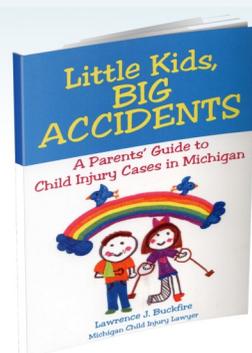
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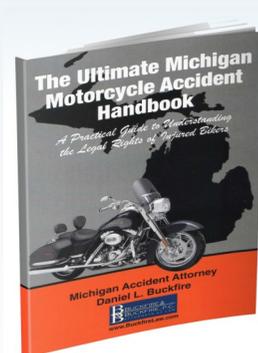
We will send multiple copies for you to distribute to patients and clients.



The 69 page book explains **No-Fault benefits, personal injury claims, and property damage. claims.**



The 76 page book explains the laws in Michigan for Michigan **child injury and accident cases.**



The 63 page book explains the rights of bikers injured in Michigan **motorcycle accidents, including No-Fault benefits.**

To request these books and our other legal guides visit www.BuckfireLaw.com