



25800 Northwestern Hwy, Ste. 890
Southfield, MI 48075

Phone: 248-569-4646
Toll: 800-606-1717
Fax: 248-569-6737

E-mail: daniel@buckfirelaw.com

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Our No-Fault Service Provider Spotlight

Spa Services for Men and Women
Serving the Metro Detroit Area
Ph: 313-999-3360 Email: mhyche614@yahoo.com

This month we spotlight Spa Services for Men and Women, a mobile medical massage company. Spa Services specializes in therapeutic massage therapy for motor vehicle accident victims.

Michelle Hyche, owner of Spa Services, founded the company in 2008. Hyche is a member of the American Massage Therapy Association (AMTA), and is certified in massage therapy.

Spa Services' mission is to ensure that its clients receive the care they need through massage, by helping relieve the constant pain that its clients are usually suffering from. Spa Services works with adults and teenagers, serving the entire metro Detroit Area. "We come to you" is its slogan, as its services can be provided at the patient's home, nursing home, assisted living facility, or whatever location works best for the patient.

"Spa Services not only provides excellent therapeutic massage, but provides service with a smile and a great attitude. Our therapists are friendly, caring, and very professional. We care about our client's well-being," says Hyche.



Michelle Hyche, Owner of Spa Services for Men and Women.

November 2012

Special points of interest:

- **What evidence must a Michigan auto accident victim present when making a third party auto negligence claim?**
- **Take the Second Michigan Auto No-Fault Quiz and Be Entered To Win a Prize**

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The Michigan No-Fault Newsletter

Plaintiff Raises Genuine Issue Over "Serious Impairment of Body Function" Despite Conflicting Doctors Reports

In *Lindeblad v. Grasman, et al.*, unpublished opinion of the Court of Appeals decided on October 23, 2012 (Docket No. 306159), the Court of Appeals reversed the trial court's order granting summary disposition to the Defendant in a third party auto negligence lawsuit, finding that there was a genuine issue of material fact as to whether Plaintiff suffered "an objectively manifested impairment of an important body function and whether his general ability to lead his normal life had been affected."

Plaintiff Scott Lindeblad's vehicle was rear-ended by a vehicle driven by Defendant causing Plaintiff's vehicle to collide with a motorcycle. He underwent 16 months of treatment for his neck and back before he was allowed to return to unrestricted work. Several physicians treated and examined the Plaintiff: a number of them determined that Plaintiff's bulging discs were degenerative in nature and not related to the motor vehicle accident. However, several physicians concluded that he suffered serious impairments as a result of the accident.

Further, a functional capacity evaluation, used to determine Plaintiff's ability to return to work, indicated that he could lift at most 10 pounds continuously throughout the day; a number below the requirements for his former position. The Plaintiff also testified that he was no longer able to participate in his hobbies as a result of the injury, which included: jet skiing, snowshoeing, bicycling, and playing basketball. He indicated that he was able to hunt, but not in the same fashion he had before.

Three elements are required to show serious impairment, per MCL 500.3135(7):

- 1.) An objectively manifested impairment,
- 2.) That affects a key bodily function, and
- 3.) Affects the person's general ability to lead his or her normal life.

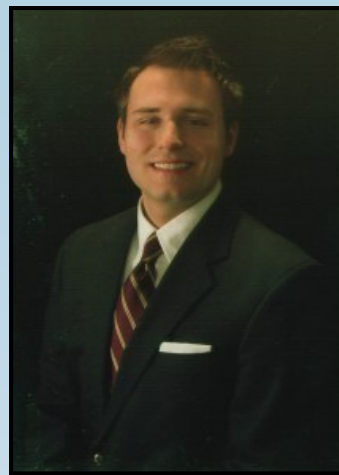
The trial court found that Plaintiff failed to present any evidence of an objectively manifested impairment or that his general ability to lead his normal life had been affected. The Court of Appeals reversed, indicating that viewing the evidence in a light most favorable to the Plaintiff, a fact finder could find plaintiff suffered an objectively manifested impairment.

The Court went on to explain that the proper inquiry is whether the *impairment* is objectively manifested, not the injury or its symptoms, and that medical documentation is not always required to establish an objectively manifested impairment. An objectively manifested impairment is "an impairment that is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function." *McCormick v. Carrier*, 487 Mich 180 (2010). The Court of Appeals, again citing *McCormick*, opined that a plaintiff need not show that his ability to lead his normal life was destroyed, but merely affected.

Bottom Line: Medical documentation is not always required to establish an objectively manifest impairment in a third party automobile negligence lawsuit.

Maximum Monthly Wage Loss Benefit—10/1/12 to 9/30/13— \$5,189.00

MCCA Reimbursement Levels—7/1/11 to 6/30/13—\$500,000.00



**Michigan Attorney
Bryan Valentine**

Michigan personal injury attorney Bryan Valentine specializes in personal injury litigation, with an emphasis on automobile negligence and Michigan No-Fault Insurance claims. He is a licensed attorney in the State of Michigan and a member of the State Bar of Michigan and Oakland County Bar Association. Bryan earned his Bachelor's degree from Ohio State University, Masters in Business Administration from the University of Toledo, and his Juris Doctor degree from the Ohio State University of Moritz College of Law. He is the newest addition to our team of attorneys at Buckfire & Buckfire, P.C.

No-Fault Benefits Denied Because the Injured Driver was Named as an Excluded Driver Under the Auto Insurance Policy

In *Bronson Methodist Hospital v. Progressive Michigan Insurance Co., et al.*, an opinion approved for publication on October 23, 2012 (Docket No. 30066, consolidated with Docket No. 30035), the Court of Appeals affirmed the trial court's order granting summary disposition to Defendant Progressive.

It is undisputed that Progressive issued a no-fault insurance policy to Nicholas Owsiany for a vehicle that was owned by his fiancé, Danielle Pillars. The insurance policy named Pillars as an excluded driver as permitted under MCL 500.3009(2). Plaintiff, Bronson Methodist Hospital, treated Pillars for injuries she received in a motor vehicle accident while driving her vehicle. Plaintiff billed Progressive for the costs of treating Pillars, and Progressive denied no-fault coverage indicating that there was no insurance in effect at the time of the accident because Pillars was an excluded driver.

Progressive's insurance policy contained a "Named Driver Exclusion Endorsement" that specifically excludes insurance coverage for named drivers. The declaration sheet of the policy states "WARNING – When a named excluded person operates a vehicle, all liability coverage is void – no one is insured." The policy also stated: "Additionally, if the owner or registrant of a **covered auto** is injured in an accident where an **auto** is being driven by a named excluded driver, no Personal Protection Insurance (PIP) is provided under Part II for that owner or registrant."

The Court of Appeals affirmed the trial court's grant of summary disposition explaining that by driving the vehicle, Pillars rendered the vehicle uninsured. Pursuant to MCL 500.3113(b), Pillars was not entitled to no-fault benefits because at the time of the accident, she was the owner or registrant of the vehicle involved in the accident and the security required by section 3101 was not in effect.

Bottom Line: A named excluded driver is not entitled to receive no-fault benefits if she is injured while operating a car where she is an excluded driver under the insurance policy covering the car that she is driving.

The Buckfire & Buckfire, P.C. Detroit Tigers Tickets Giveaway Was A Great Success

As most of you know, last year, Buckfire & Buckfire, P.C. kicked off a Detroit Tigers Tickets Giveaway for TBI and SCI patients. Due to the high volume of nominations and the multitude of thank you notes we received from both traumatic brain injury and SCI survivors and their caretakers, we are happy to announce that we will again be donating tickets for the 2013 Detroit Tigers season.

For those of you that did not take advantage of our giveaway, visit <http://bit.ly/buckfireticketsgiveaway> to view giveaway details and see how you can nominate your client to receive tickets. Recipients will receive two tickets to the game along with a handicapped parking pass.

Even though the baseball season is over, (and what a season it was!), we will be accepting nominations all year round. Make sure to get your nomination in soon so that your client will enjoy attending a Detroit Tigers game on us.

Just to give you an idea of how much recipients enjoyed attending the game, we would like to share with you a part of a thank you note we received from a medical provider on her experience with her client:

"I would like to thank you for the Tiger Tickets you graciously gave us. The game was fantastic, the seats were perfect, and lastly the weather...beautiful. Tommy and I had the best time ever at the game. The next day, Tommy still kept talking about the game. Thank you again for sharing a day of excitement. It only takes a moment to make a dream come true, thank you for that moment." ~ Raena Grishaber and Tommy Chadwick

Proving Serious Impairment: Evidence Must Show Change in Life from Before Accident to After Accident

In *Khami v. Gjonlleshaj*, unpublished opinion of the Court of Appeals decided on October 18, 2012 (Docket No. 306347), the Court of Appeals affirmed the trial court's order granting summary disposition to the Defendant in a third party auto negligence lawsuit. The trial court determined that Plaintiff did not meet the threshold for establishing a serious impairment of body function because her injuries did not affect her general ability to lead her normal life under *McCormick v. Carrier*.

Under *McCormick*, "whether the person has suffered a serious impairment of body function should be determined by the court as a matter of law as long as there is no factual dispute regarding the 'nature and extent of the person's injuries' that is material to determining whether threshold standards are met." Here, it is undisputed that Plaintiff fractured her non-dominant wrist and that it was immobilized for less than two months.

The Plaintiff must show that "the Plaintiff's ability to lead a normal life has been affected by comparing the Plaintiff's life before and after the injury." *Nelson v. Dubose*, 291 Mich App 496 (2011). The Plaintiff contended that her ability to perform the following tasks was affected by her injury: using sign language, performing chores and homemaker activities, and holding her baby.

The Court of Appeals explained that Plaintiff merely asserted a life change without supporting evidence regarding her life prior to the accident and without evidence or testimony to support her claims of impairment. As a result, the dismissal of the lawsuit was appropriate because the Plaintiff failed to establish that her ability to lead her normal life was affected.

Bottom Line: When making a claim of serious impairment of body function in a third party automobile negligence lawsuit, the Plaintiff must introduce evidence of his or her life before the accident and evidence to support the claim that the Plaintiff's life has been affected after the accident; mere assertions are not enough.

There is a NEW Michigan Auto No-Fault Insurance Quiz Coming December 3, 2012

Take the Quiz and Be Entered To Win a Prize

On December 3, 2012, Buckfire & Buckfire, P.C. will be releasing a NEW Michigan Auto No-Fault Insurance Quiz. Test your knowledge and see how well you know Michigan's No-Fault Insurance Laws.

Visit <http://bit.ly/No-FaultQuiz2> to take the second Michigan Auto No-Fault Insurance Quiz now. Good Luck!

- ⇒ The contest begins on December 3, 2012. Every one is eligible to take the Michigan Auto No-Fault Insurance Quiz – even if you took the first quiz, you are still able to enter this contest. Remember this is a NEW quiz, with all new questions and answers.
- ⇒ Every individual who scores 100% will receive a Winner's Certificate and be automatically entered into our giveaway contest.
- ⇒ Every week through January 31, 2013, we will give away a \$20 Starbucks gift card to a random winner. Contest ends January 31, 2013. We will contact you if you are the lucky winner.
- ⇒ You can take the quiz more than one time but you are only eligible to win on your first attempt.



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