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Our No-Fault Service Provider Spotlight

Preferred Rehabilitation, Inc.
Spine, Sports, & Occupational Medicine, P.C.
Serving the Detroit Metropolitan Area
Ph: 313-928-0700 www.Preferredrehabilitation.com

This month we spotlight Preferred Rehabilitation, Inc., a certified Medicare/BCBS facility. Certification sets them apart from other Rehab/Medical/Physical Therapy facilities due to the stringent guidelines set forth by the government to not only achieve this honor, but most importantly, to maintain it.

Providing Board Certified MD's specializing in Physical Medicine and Rehabilitation, Neurosurgery, Occupational Medicine, Internal Medicine, and Pulmonary Disease, Preferred Rehabilitation, Inc. is able to treat patients who have sustained any injury, whether it be as a result of a fall, auto accident, work injury, a generally painful condition, or those who have been exposed to asbestos. It offers full medical evaluations, physical therapy, pool therapy, and diagnostic testing for all injuries, including soft tissue to catastrophic and closed head injuries.

Preferred Rehabilitation, Inc. provides comprehensive narrative reports, secure outside medical records, and addresses the disability, attendant care and transportation needs of their patients. It also treats patients requiring pain management procedures and care. Also, ergonomic on site evaluations are available. Most insurance companies are accepted and payment plans are available.

With over 20 years of experience and credibility in providing the most hassle free environment for their patients and those responsible for referring them, Preferred Rehabilitation, Inc. is extremely versed in and happy to take all no-fault and assigned claims. Doctor, case manager, and attorney referrals are always welcome.

For more information, please contact Joanna Colella, Principal at Preferred Rehabilitation, Inc. by email at Joanna@PreferredRehabilitation.com or by phone at 313-928-0700 @ extension 233.



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!

September 2012

Special points of interest:

- Is a person injured while approaching his or her vehicle entitled to no-fault benefits?
- Is a person injured while driving a stolen vehicle entitled to no-fault benefits if he did not know the vehicle which he was driving was stolen?

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The Michigan No-Fault Newsletter

Defendant Insurance Company May Recover No-Fault Attorney Fees

In *Thomas v. State Farm*, _____ Mich. App. _____ (Decided May 17, 2012), the Michigan Court of Appeals addressed the trial court's denial of Defendant State Farm's motion for no-fault attorney's fees and taxable costs.

In 1997, John Gentry was struck as a pedestrian by a motor vehicle and severely injured at the age of 16. Ramona Thomas, on behalf of her son, filed a lawsuit alleging the underpayment and nonpayment of attendant care benefits.

There is no dispute that State Farm paid attendant care benefits from April, 2004 to July 22, 2008 at a rate of approximately \$9.00 per hour for 24 hours a day, 7 days a week.

No attendant care was paid from July 23, 2008 to November 30, 2008 because State Farm alleged misrepresentations in the paperwork submitted. Pursuant to a court order, State Farm resumed paying attendant care on December 1, 2008 and paid through July 31, 2009 for 16 hours per day instead of 24.

After that time, no attendant care benefits were paid by State Farm.

At trial, plaintiff sought an award of nearly \$800,000. After delibera-

tion, the jury determined that allowable expenses were not incurred by or on behalf of the plaintiff, and awarded no money for the attendant care claim.

State Farm sought \$101,415 in attorney fees under the no-fault act pursuant to MCL 500.3148(2): "An insurer may be allowed by a court an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense against a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation."

State Farm contended that the request for attendant care payments was fraudulent due to misrepresentations and untruths concerning the care provided to John.

State Farm pointed to several occasions in which the attendant care providers claimed to have provided services, but could not have because they were in another location; on one such occasion both attendant care providers were incarcerated, on another, they were attending a funeral, and on another, John was not at home for a portion of the day and was unsupervised.

State Farm also contended that plaintiff's request for

hundreds of thousands of dollars was so excessive as to have no reasonable foundation, evidenced by the fact that in the face of an \$800,000 demand, the jury awarded nothing.

The trial court denied the request for attorney fees on the basis that there was no dispute that the plaintiff was injured and in need of attendant care services, and the only issues at trial were whether the caregivers actually performed the services and what hourly rate should have been paid.

The Court of Appeals vacated the trial court's ruling, indicating that even though there was no dispute about the need for attendant care in this case, it could still be determined that the claim was fraudulent or so excessive as to have no reasonable foundation.

The Court of Appeals remanded the case to the trial court to make factual findings consistent with its ruling, recognizing that even if the trial court determined the claim to be fraudulent or excessive it had discretion in awarding attorney fees and was not required to by the statute to award attorney fees.

Maximum Monthly Wage Loss Benefit—10/1/11 to 9/30/12— \$5,104.00

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

Supreme Court Election 2012

Vote all the way down the ballot. Vote Kelley, Johnson and McCormack for Justice!

Your rights and the rights of families across Michigan are at stake!

The most important vote you cast on November 6, 2012 is for the Michigan Supreme Court!

Michigan Supreme Court Justices are the most important elected officials most voters do not know about.

As the highest court in the state, the Michigan Supreme Court can overturn laws enacted by our elected Legislature and alter or reverse laws that have existed for decades. These Justices have immense power. **Your vote counts.**

NONPARTISIAN SECTION	FIND IT
JUDICIAL	
JUSTICE OF SUPREME COURT	
Connie Marie Kelley	MARK IT
Shelia Johnson	
Bridget Mary McCormack	

- ✓ **Remember: Your 'straight party' vote is NOT enough. To vote for Kelley, Johnson and McCormack for Justice you have to do more!**
- ✓ **Make sure you vote all the way down to the NONPARTISIAN section of the ballot where judicial elections are located!**

Cast your vote! Together we can stand for children and families, and stand up to special interests and insurance companies.

For more information on your Supreme Court candidates:
 Judge Connie Marie Kelley <http://www.conniekelleyforjustice.com/>
 Judge Shelia Johnson <http://www.judgeshelijohnson.com/>
 Bridget Mary McCormack <http://www.mccormackforjustice.com/>

No Parked Vehicle Exception for No-Fault Benefits When Man Trips While Approaching His Vehicle

In *Lawrence v. MEEMIC Insurance Company*, unpublished opinion of the Court of Appeals decided August 2, 2012 (Docket No. 305385), the Court of Appeals upheld a trial court's ruling granting summary disposition for the defendant MEEMIC Insurance Company.

Plaintiff was injured when he tripped over an uneven slab of concrete as he approached his parked car and fell against the back of his car, near the taillight. He hit his shoulder on the rear of the vehicle and fell to the concrete.

The Court explained that this fact pattern did not entitle the Plaintiff to receive No-Fault benefits under any

of the recognized parked vehicle exceptions.

Plaintiff relied on MCL 500.31061(1) (b) and (c): (b) ...the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process; (c)...the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

The Court held that the Plaintiff's actions did not fall under these exceptions. The Court determined that he did not come into contact with "equipment mounted on the vehicle" but with the

vehicle itself, which is not provided for in the exception. It was also explained that Plaintiff's activity did not constitute loading or unloading. Further, Plaintiff's injury occurred while he was approaching the car, not while he was entering into it. Thus, his actions also fail to satisfy this exception as well.

Bottom Line: A person injured while approaching his or her vehicle is not entitled to no-fault benefits under MCL 500.31061(1)(c), as opposed to a person who is injured while actually entering the car.

"Unlawful Taking" Applies Only to the "End User"

In *Rambin v. Allstate, et al.* ___ Mich. App. ___ (decided August 30, 2012), the Michigan Court of Appeals further elucidated the meaning of the phrase "taken unlawfully" and reversed the trial court's decision to grant summary disposition in favor of defendants.

Scott Herzog owned a motorcycle, which was stolen on August 4, 2009. On August 22, 2009, Andre Smith offered to allow Plaintiff, Lejuan Rambin, use of an extra motorcycle for a club event.

Unbeknownst to Rambin, the motorcycle he borrowed from Smith was actually Herzog's stolen motorcycle. Smith told Plaintiff that he owned the motorcycle and gave his permission for Plaintiff to use it. On his way to return the motorcycle, after the event, Plaintiff collided with a car and was injured.

Defendants moved for summary disposition because it claimed that Plaintiff had unlawfully taken the motorcycle and was not en-

titled to No-Fault benefits under the statute. The trial court granted the motion.

MCL 500.3113 provides in pertinent part: A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed: (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle.

The Court of Appeals expressed that "the state of the law in this area has been hopelessly muddled and in desperate need of clarity."

The Court interpreted the phrase "taken unlawfully" to mean "(a) a vehicle must have been 'taken'; (b) the taking of the vehicle must have been 'unlawful'; (c) it must have been the injured person who took the vehicle unlawfully; and (d) the injured person must therefore have both 'taken' the vehicle and acted somehow 'unlawfully' in doing

so."

Citing the Supreme Court opinion in *Spectrum Health/Progressive Marathon*, the Court of Appeals further clarified that this requires that it be the "end user" who takes a vehicle "contrary to a provision of the Michigan Penal Code" for MCL 500.3113(a) to apply (which prevents the injured person from recovering no-fault benefits).

The Court of Appeals held that because the Plaintiff had no knowledge that the motorcycle was stolen, that the Plaintiff did not take the motorcycle unlawfully under MCL 500.3113 (a) and reversed the trial court's decision.

Bottom-Line: An individual may not be denied no-fault benefits if the individual was injured while driving a stolen vehicle, if the individual was not the party that stole the vehicle, and was not aware that the vehicle was stolen.

ASK DAN - The No-Fault Insurance Expert



Q: Can a person still obtain wage loss benefits if the person did not have a job but was looking for a job on the date of the accident?

Dan: If the person was not working, but was looking for a job, the person is still entitled to be paid wage loss benefits. The person will need to show proof that he or she was trying to find a job, such as submitting resumes or putting in job applications with potential employers. The amount of wage loss benefits will be based on the income from the last 30 days of employment before the car accident.

Q: Can a person obtain wage loss benefits if they person was being paid cash for his or her job?

Dan: Yes. This does not matter. The person simply needs proof that he or she was working and was being paid for the work. It will be necessary to file tax returns to show what the person's income was before the car accident.



Michigan Attorney George G. Burke

Michigan personal injury attorney George G. Burke has devoted his practice on personal injury litigation, with an emphasis on automobile negligence and Michigan no-fault law. George also practices general civil litigation. He is a licensed attorney in the State of Michigan and the Commonwealth of Massachusetts. George has an undergraduate degree from Syracuse University and a law degree from the Boston College Law School. He has recovered tens of millions of dollars for his clients over the course of his career.



Michigan's No-Fault Social Network

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