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## Our No-Fault Service Provider Spotlight



*Compassionate Care Home Health Services, Inc.*  
*Services nearly 50 counties in Michigan*  
*Ph: 877-308-1212 [www.compassionatecaremi.com](http://www.compassionatecaremi.com)*

This month we spotlight Compassionate Care Home Health Services, a home health care agency that has been providing home health care for Michigan residents and their families since 1998. It offers attendant care, nursing services, therapies and other services to individuals who have sustained auto related traumatic injuries.

Compassionate Care Home Health Services' mission is to provide the highest quality of home health services including, but not limited to personal care, private duty nursing, Alzheimer's and dementia care, COPD care, diabetes care, stroke care, cancer care, Parkinson's disease care, traumatic brain injury and therapy.



By working closely with case managers, families, guardians and other concerned parties, Compassionate Care is able to use a team approach to help survivors and their families find their way to recovery and begin life anew. It takes pride in customizing its care and programs to the specific needs of each client and is dedicated to keeping its clients happy and healthy in the comfort of their own home.

April 2013

### Special points of interest:

- **When are conservator fees compensable under the No-Fault Act?**
- **What damages are not available in lawsuits against a governmental entity for auto negligence?**

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# The Michigan No-Fault Newsletter

## Third Party Claims Against Governmental Entities Are Limited To Bodily Injury, Property, And Excess Economic Damages; Pain and Suffering and Emotional Damages Are Not Available

In *Hunter v. Sisco and City of Flint* \_\_\_\_ Mich App. \_\_\_\_ (2013) the Michigan Court of Appeals affirmed in part and reversed in part a trial court's denial of Defendants' motion for summary disposition. Plaintiff, Hunter, was sideswiped by a dump truck owned by the City of Flint and operated by Defendant, Sisco.

Plaintiff made a claim for bodily injuries, pain and suffering, and emotional damages. Governmental entities enjoy a broad grant of immunity, conversely, the exceptions to government immunity in tort cases, such as this, are narrowly drawn to preserve as much immunity as possible. There is a motor vehicle exception to the City of Flint's governmental immunity, which allows Plaintiff's to sue for bodily injury when a govt. employee is negligent in operating a govt. vehicle. In such instances, the Plaintiff must prove that their injuries reached the threshold of "serious impairment of an important body function."

In the present case, the Court of appeals affirmed the trial court's decision to allow the case to go forward because there was a genuine question of whether Plaintiff's injuries reached the threshold level.

The Court of Appeals, however, reversed the trial court's decision to allow the Plaintiff to seek pain and suffering and emotional damage because the definition of bodily injury in the Motor Vehicle Exception to governmental immunity does not encompass those claims.

The court held that the *Wesche* definition of "bodily injury" was clearly correct, regardless of whether the court viewed "bodily injury" as a legal term of art or with its commonly understood meaning. Because "bodily injury" encompasses only "a physical or corporeal injury to the body," the court held that the trial court erroneously ruled that plaintiff may recover damages for pain and suffering and "shock and emotional damage." Such damages do not constitute physical injury to the body and do not fall within the motor vehicle exception.

### Bottom Line

- **Pain and suffering and emotional damages are not available in lawsuits against a governmental entity for auto negligence.**



**Michigan Attorney Dondi Vesrpini**

Michigan personal injury attorney Dondi Vesrpini has devoted his practice on personal injury litigation, with an emphasis on motorcycle and automobile negligence, and Michigan No-Fault Insurance claims. He is a licensed attorney in the State of Michigan and a member of the Michigan Association for Justice and the State Bar of Michigan. Dondi earned his Bachelor's degree from Oakland University and his Juris Doctor Degree from the University of Detroit Mercy School of Law. His advocacy extends beyond the courtroom, meeting with both legislators and lobbyists on legislation affecting injured victims.

**Plaintiff Fails To Provide Evidence That His Injuries Affect His Ability To Lead His Normal Life**

In *Wilson v. Lathrop*, an unpublished opinion by the Michigan Court of Appeals decided on February 14, 2013 (Docket No: 305718), the Court of Appeals affirmed that trial court's order granting summary disposition to the Defendant. Plaintiff was injured in a rear-end accident and his treating doctors supported his disability, even though three independent medical evaluators concluded that his complaints were out of proportion to his injuries.

Plaintiff testified that his condition affected his general ability to lead a normal life because he could no longer work, perform basic tasks or play with his children. He did acknowledge that he could still motivate and train people in the course of his employment and did not attempt to perform basic tasks for himself, such as prepare a bowl of cereal. Defendant moved for summary disposition alleging that plaintiff did not establish an objective manifestation of an important body function that affected his general ability to lead a normal life.

Plaintiffs opposed the motion claiming that conflicts in the evidence prevented the trial court from granting the motion. The trial court granted the motion, holding that plaintiff failed to objectively demonstrate a serious impairment that affected his ability to lead his normal life.

The Court of Appeals affirmed this decision because "A party must oppose a motion for summary disposition with admissible documentary evidence that must contain a factual foundation without relying on speculation and conjecture." Rose, 466 Mich at 470; Cloverleaf Car Co, 213 Mich App at 192-193. In comparing plaintiff's life before and after the accident, plaintiff did not meet his evidentiary burden of proof.

**Bottom Line**

- **Plaintiff must objectively demonstrate a serious impairment that affects his ability to lead a normal life, rather than merely asserting that his or her life was affected without objective evidence. Without objective evidence the claim may be dismissed.**



**2nd Annual Detroit Tigers Tickets Giveaway For TBI And SCI Individuals**

**THERE IS STILL TIME TO NOMINATE YOUR CLIENT TO RECEIVE FREE TICKETS TO A 2013 DETROIT TIGERS GAME!**

For more information and to nominate your client today visit <http://bit.ly/buckfireticketsgiveaway>

**Some Fees For Conservatorship Are Compensable As Lifetime Benefits**

In *May v. Auto Club* \_\_\_\_\_ Mich App. \_\_\_\_\_ (2013) the Michigan Court of Appeals ruled in a matter remanded from the Michigan Supreme Court. At issue was whether conservatorship fees should properly be paid as being for "the injured person's care, recovery, and rehabilitation," a lifetime benefit, or as a replacement service which is only available for three years after the accident.

May was appointed as conservator of Carroll who sustained a severe head injury in an auto accident. May charged his conservator fees to Auto Club and his fees were denied.

After reviewing the relevant case law, the Court of Appeals concluded that conservator fees are compensable as replacement services so long as the services provided were the type of ordinary household management that would have been needed before the accident and continue to exist after, such as: paying bills, making deposits, buying and selling property etc. Conservatorship fees are payable as being necessary for "the injured person's care, recovery, and rehabilitation" if the services provided were a type that were only necessitated by the injury at issue; in this case: managing medical bills, negotiating with medical providers and insurers, and handling Carroll's assets in a way that provided best for his future given his limitations.

**Bottom Line**

- **Conservator fees are compensable under the No-Fault Act, however, they are only compensable as replacement services (3 year limit) if the Conservator is performing tasks that the injured person would have done for themselves prior to the accident.**

**ASK ROBERT - No-Fault Insurance Expert**



**Q: Does a person have to go to court to receive a settlement for their injuries in a Michigan car accident?**

**Robert:** Although every case is different, most cases are settled with the insurance company before going to court. Sometimes, claims are settled with the insurance company even before a lawsuit is filed with the court.

**Buckfire & Buckfire Detroit Tigers Tickets Giveaway**

*"I just wanted to let you know that I had a great time at the Tigers game. I really appreciate the tickets. Thank you very much," says Keith, a recipient of last years Tigers Tickets Giveaway.*

Schedule of Tigers Tickets

**Available for Nomination**

- June 9, Cleveland Indians
- June 23, Boston Red Sox
- June 27, Los Angeles Angels
- July 14, Texas Rangers
- July 18, Philadelphia Phillies
- August 4, Chicago White Sox
- August 18, Kansas City Royals
- September 1, Cleveland Indians
- September 15, Kansas City Royals
- September 18, Seattle Mariners