The Michigan No-Fault Newsletter

Buckfire & Buckfire, P.C.
Attorneys at Law

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

Facebook: *www.facebook.com/buckfirelaw*
Twitter: *www.twitter.com/buckfirelaw*

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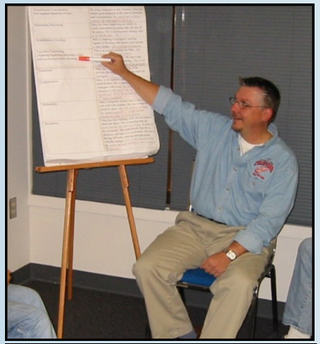
Our No-Fault Service Provider Spotlight

BrainTrainers Brain Injury Day Program
Ann Arbor, Michigan
Ph: 734-665-1922 BrainTrainersOnline.com

This month we spotlight BrainTrainers Brain Injury Day Program, a highly intensive cognitive rehabilitation outpatient program that runs group therapy with a select cohort of clients (6 to 8 a semester) for 21-week treatment semesters. These semesters are designed to return clients to work, school, or improve daily life post injury.

Located in Ann Arbor, BrainTrainers serves local as well as national clients, as far away as Alaska, New Mexico, Texas, and South Carolina. The goals of the program are to increase awareness of injury, teach strategies to compensate for deficits, assure malleability (i.e. openness to assistance from loved ones, supervisors, or teachers), and acceptance of long-term aspects of injury.

BrainTrainers Brain Injury Day Program meets four hours per day, four days per week, with all treatment provided in a group setting. 95% of its clients are auto no-fault clients. It does not accept any dual-diagnosis clients and is not affiliated with any other medical center or clinic.



Ronald Baumanis performing therapy to clients.

Over the course of the 13 years BrainTrainers Brain Injury Day Program has been in existence, over 140 graduates (95%) have returned to work or school. Graduates include teachers, nurses, school superintendents, doctors, many students, and even a nuclear reactor inspector. Ronald P. Baumanis, Ph. D, the owner of BrainTrainers Brain Injury Day Program, is a fully licensed Michigan psychologist and neuropsychological specialist who has worked in the field of brain injury cognitive rehabilitation for almost 25 years. Semesters begin in January and July each year. Many of times there is a waiting list.

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!

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Special points of interest:

- **Do I still have time to take the Michigan Auto No-Fault Insurance Quiz and Be Entered To Win A Prize?**
- **When is no-fault coverage available for chiropractic services?**

Inside this issue:

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Why The No-Fault System Is Important To Me

By: Daniel Buckfire

I have been a trial lawyer for over twenty years, specializing in no-fault and auto liability cases. During this time, I have been fortunate to have been able to provide legal assistance to hundreds of clients who sustained catastrophic injuries in car accidents. I have personally seen how my clients and their families have been virtually saved by our no-fault system in Michigan. My involvement with the Michigan No-Fault system, though, came before I became an attorney in 1992.

I was born and raised in Michigan. Both of my parents, David and Vicky Buckfire, were practicing attorneys for most of my life. Although many dinner conversations revolved around the law, I did not fully grasp or understand how our No-Fault system worked in Michigan.

Daniel Buckfire with his grandmother, Bertha Kreisman, in June, 1987 (4 years before her car accident).

While growing up, I was very close with my maternal grandmother, Bertha Kreisman. I have very fond memories of spending time with my grandmother, including sleeping over her house, swimming at the pool at her apartment complex, and eating her delicious Hungarian food and baked goods.

In February, 1991, my grandmother was in a horrible car accident where she sustained a significant traumatic brain injury. She was in a coma for several weeks, and was hospitalized for over 6 weeks. At that time, I was still in law school and was just coming home from a winter vacation. As my other family members were out of town at the time of the accident, I was the first one in my family to see my grandmother in the hospital shortly after the car accident. I will never forget seeing my grandmother with her horrible facial injuries right after the accident before she was cleaned up by the nursing staff.

As strange as it sounds, when my mother told me that my grandmother sustained a closed head injury in the accident, I had no idea what she was talking about. The science and the advances in the treatment of closed head injuries was really just beginning in the early 1990's. My grandmother received excellent medical treatment while in the hospital and at the rehabilitation center. Although she did not make a full recovery from her injuries, she did very well and was able to enjoy a quality life for another nine years following the accident.

I am certain that my grandmother's recovery and her ability to live a happy life following the accident was made possible by the Michigan No-Fault system. She received the absolute best care and treatment, and was able to live at home with home care assistance. My grandmother was able to see the births of three great grandchildren and enjoy many happy family occasions following the accident.

Protecting and advocating for the No-Fault system in Michigan is more than just a job – for me, ITS PERSONAL.

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.

Insurer May Void Contract if the Insured Supplies False Information on the Application

In *Titan Ins. Co. v. Hyten,* 491 Mich. 547 (2012), the Michigan Supreme Court addressed the following question: "whether an insurance carrier may avail itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud in the application for insurance, when the fraud was easily ascertainable and the claimant is a third party."

McKinley Hyten received her provisional driver's license in April, 2004. By January, 2007, Ms. Hyten had received multiple moving violations and was involved in two minor traffic accidents, and her license was suspended by the Secretary of State. Based on representations by her probation officer, Hyten and her mother believed that her license would be restored on August 24, 2007. They were told by an insurance agent that McKinley could not be insured until her license was restored. An application from Titan Insurance Co. was filled out for McKinley and post-dated for August 24, 2007. She signed the application on August 22, 2007. In response to a question on the application that asked whether the applicant's household had any unlicensed drivers or any drivers with suspended or revoked licenses, McKinley answered "no." The insurance policy went into effect on August 24, 2007.

McKinley's license was, in fact, not restored until September 20, 2007. Titan was not informed of this fact. In February, 2008, Hyten was driving the insured vehicle and was involved in a car accident that caused injuries to Howard and Martha Holmes. Through its investigation of the accident, Titan discovered that Hyten did not have a valid driver's license when the policy was issued. In anticipation that Mr. and Mrs. Holmes would file claims against Hyten for their injuries, Titan sought a court ruling that based on Hyten's fraud, Titan would not be obligated to insure and indemnify Hyten for any amounts above the statutory minimum liability coverage limits of $20,000.00 required by the financial responsibility act, MCL 257.501 *et seq*.

The Michigan Supreme held that "insurance policies are contracts and, in the absence of an applicable statute, are 'subject to the same contract construction principles that apply to any other species of contract.'" When a provision of an insurance policy is mandated by statute, the rights and limitations of the coverage are governed by that statute, but when the provision is not mandated by a statute, normal contract law applies. Thus, normal defenses to contracts may be used to avoid enforcement such as fraud. Further, the Court stated that an insurer has no duty to investigate the representations of a potential insured.

The Court rejected a Michigan Court of Appeals decision from 1976, *State Farm Mut. Auto. Ins. Co. v. Kurylowicz,* 67 Mich. App. 568 (1976), which established that "an insurer may not avail itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud when the fraud was easily ascertainable and the claimant is a third party." The Court, instead, reaffirmed *Keys v. Pace*, 358 Mich. 74 (1959) which held that "an insurer may avail itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud, notwithstanding that the fraud may have been easily ascertainable, and notwithstanding that the claimant is a third party."

The Court remanded the case to the trial court to determine whether a fraud was actually perpetrated by Hyten, as it was not initially addressed by the trial court.

Bottom Line

Any portion of an insurance contract that is not mandated by statute may be voided by common law contract defenses, such as fraud, even if the fraud was easily ascertainable by the insurer and the claimant is a third party.

There is still time to Win A Prize & Test Your Knowledge on Michigan's No-Fault Laws!

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

No-Fault Act Uses Definition of "Chiropractic Services" from Old Public Health Code

In *Warren Chiropractic & Rehab Clinic, P.C. v. Home-Owners Insurance Co.,* unpublished opinion of the Court of Appeals decided on November 8, 2012, (Docket No. 303919), the Court of Appeals addressed the trial court's order granting Defendant's motion for dismissal of the case. The Court of Appeals affirmed in part, reversed in part, and remanded the case for further proceedings. In doing so, the Court of Appeals ruled on the proper application of MCL 500.3107b as amended on January 5, 2010.

The Plaintiff is a provider of chiropractic services who sued Defendant for payment of services provided to Defendant's insured. At issue was how the amendment to the No-Fault Act on January 5, 2010 regarding the definition of chiropractic services should apply.

On January 5, 2010, MCL 500.3107b of the Michigan No-Fault Act was amended to read: "Reimbursement or coverage for expenses within personal protection insurance coverage under section 3107 is not required for . . . [b] practice of chiropractic service, unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009."

On the same day, January 5, 2010, MCL 333.16401 of the public health code was amended with an expanded definition of "chiropractic service."

The Court of Appeals first explained that the trial court erred by applying the amended statute retroactively to all of Plaintiff's claims, including the portion of charges that were incurred before the amendment on January 5, 2010. The Court held unless there is a clear contrary intention by the Legislature, an amended statute is only to be applied going forward and not retroactively.

Next, the Court of Appeals addressed the Plaintiff's argument that the amended No-Fault Act should incorporate the amended public health code with its expanded definition of chiropractic services. The Court explained that "the Legislature clearly intended for reimbursement of chiropractic services to be limited by the definition of chiropractic practice as it existed on January 1, 2009." Despite the amendment to the public health code, the No-Fault Act recognizes and utilizes the definition of chiropractic services as it existed on January 1, 2009 as follows:

> (b) "Practice of chiropractic" means that discipline within the healing arts which deals with the human nervous system and its relationship to the spinal column and its interrelationship with other body systems. Practice of chiropractic includes the following:
>
> (i) Diagnosis, including spinal analysis, to determine the existence of spinal subluxations or misalignments that produce nerve interference, indicating the necessity for chiropractic care.
>
> (ii) A chiropractic adjustment of spinal subluxations or misalignments and related bones and tissues for the establishment of neural integrity utilizing the inherent recuperative powers of the body for restoration and maintenance of health.
>
> (iii) The use of analytical instruments, nutritional advice, rehabilitative exercise and adjustment apparatus regulated by rules promulgated by the board pursuant to section 16423, and the use of x-ray machines in the examination of patients for the purpose of locating spinal subluxations or misaligned vertebrae of the human spine. The practice of chiropractic does not include the performance of incisive surgical procedures, the performance of an invasive procedure requiring instrumentation, or the dispensing or prescribing of drugs or medicine.

The Court of Appeals rejected the Plaintiff's argument, and held that MCL 500.3107b (b) was referring to the text of MCL 333.16401 as it existed at a "moment in time."

Bottom Line

- **No-Fault coverage is available for chiropractic services that are provided within the public health code's definition of the practice of chiropractic as it existed on January 1, 2009.**
- **The amendment to the No-Fault statute on January 5, 2010, dealing with coverage for chiropractic services is to be applied prospectively and not retroactively.**