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FROM THE LAW OFFICES OF GARAN LUCOW MILLER, P.C.

# LAW FAX

*A Publication for Insurance Providers and Adjusters*

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From the Co-Editors  
James L. Borin & Simeon R. Orlowski

## **NO FAULT ACT AMENDED TO EXCLUDE ORVs AS MOTOR VEHICLES OR MOTORCYCLES**

Edward Freeland<sup>1</sup> – Contributor

On July 17, 2008 Governor Jennifer Granholm signed into law House Bill 5559 which amends Section 3101 of the Michigan No Fault Act to exclude unregistered and uninsured ORVs as motor vehicles or motorcycles. This new legislation defines an ORV at 3101(2)(g) as:

“A motor driven recreational vehicle designed for off-road use and capable of cross-country travel without benefit of road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV includes, but is not limited to, a multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel, 3-wheel or 4-wheel vehicle, an amphibious machine, a ground effect air cushioned vehicle, an ATV as defined in Section 81101 of the Natural Resources and Environmental Protection Act, 1994 PA 454, MCL 324.81101, or other means of transportation deriving motor power from a source other than muscle or wind. ORV does not include a vehicle described in this subdivision that is registered for use upon a public highway and has the security described in Section 3101 or 3103 in effect.”

The definition of a motor vehicle, found at Section 3101(2)(e), has also been amended to exclude ORVs:

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“(e) ‘Motor vehicle’ means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b. Motor vehicle does not include a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan vehicle code pursuant to section 216 of the Michigan vehicle code, 1949 PA 300, MCL 257.216. Motor vehicle does not include an ORV.” (Emphasis supplied)

The definition of a motorcycle, found at Section 3101(2)(c), has also been amended to exclude ORVs:

“(c) ‘Motorcycle’ means a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than 3 wheels in contact with the ground, which is equipped with a motor that exceeds 50 cubic centimeters piston displacement. The wheels on any attachment to the vehicle shall not be considered as wheels in contact with the ground. Motorcycle does not include a moped, as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b. Motorcycle does not include an ORV.” (Emphasis supplied)

This legislation was given immediately effect and therefore, became effective when filed with the Secretary of State on July 17, 2008. As this constitutes new law, it is the opinion of this firm that it will not have retroactive effect but will only apply to accidents occurring on or after July 17, 2008. As such, an operator or occupant of an ORV seeking personal protection insurance benefits who was involved in a single vehicle accident with a four wheel ORV on a highway (as defined by the Michigan No Fault Act) or a pedestrian struck by a four wheel ORV on a highway will not be entitled to personal protection insurance benefits if the accident occurred on or after July 17, 2008 unless the four wheel ORV was registered for use on a public highway and insured as a motor vehicle. Operators or occupants of ORVs would not be entitled to PIP benefits unless a motor vehicle was also involved in the accident.

**{EDITOR’S NOTE: This Legislation has two further consequences:**

- 1. Passengers on a four wheel ORV which is involved in a motor vehicle accident, whether on or off the public highway, will now be considered non-occupants of a motor vehicle for purposes of determining the proper order of priority, that being Section 3115(1).**
- 2. Passengers on a two or three wheel ORV, involved in a motor vehicle accident, will no longer be considered occupants of a motorcycle, but now will be deemed non-occupants of a motor vehicle for purposes of determining the proper priority insurer, which will be Section 3115(1).**

**There is one further issue which deserves mention in the context of this new Legislation. We are experiencing more and more motor vehicle accidents involving motorized**

wheelchairs and Amigo-type vehicles. The priority determination often depends on whether the wheelchair or Amigo is considered a motor vehicle. In a pending case in Oakland County Circuit Court, the trial judge ruled that a four wheel motorized wheelchair was not a motor vehicle, even though the accident occurred on the public highway. The case will be appealed and, in my opinion, the new ORV amendment does not resolve this interesting situation. We will keep you advised. -JLB}

### WINDY CITY SEMINAR

The Windy City Seminar, hosted by Garan Lucow Miller, P.C., is being held Thursday, July 24, 2008, at the Chicago Marriott Downtown Magnificent Mile (540 North Michigan Avenue). The seminar is geared to all insurance professionals interested in Michigan first and third party no fault, recreational activities, and maritime/admiralty law.

This seminar is intended to provide the most current updates to those who presently handle claims in these complicated and ever-changing areas. We will also outline the important basics of handling such claims effectively for those who are new to Michigan law or seeking to expand their lines of business.

#### AGENDA

8:30 - 9:00 a.m. Continental Breakfast / Registration

9:00 - 9:05 a.m. Welcome and Introduction  
Speaker: **Edward M. Freeland**

9:05 - 10:05 a.m. **Michigan Automobile No-Fault - 1<sup>st</sup> Party Update / Year In Review**  
Speaker: **Edward M. Freeland**

“Constructive Ownership” & Responsibility to Insure (or not) a Motor Vehicle .3101  
\* Equitable Estoppel of 1 year Stature of Limitations . 3145 \* No-Fault Insurer’s Right to IME . 3151 & .3159 \* Equitable Estoppel with Denial of Coverage Relative to Failure to Disclose .3163 \* Tort Liability Exposure above P.P.I. \$1 million .3121  
\* Business Use Exclusions Enforceable with Auto, B.I. policy, *Bristol West v Burzbach*

10:05 - 10:30 a.m. **Workers Disability Compensation Issues in 1<sup>st</sup> Party No-Fault Claims**  
Speaker: **Edward M. Freeland**

Amount and Type of Set-Off \* Effect of Redemption of Work Comp Claim \* Set-Off for Attendant Care \* No-Fault Carrier’s Right to Intervene in Work Comp Action \* Payment of No-Fault Benefits When Work Comp Carrier Has Denied Claim

10:30 - 10:45 a.m. BREAK

10:45 - 11:45 a.m. **Michigan 3<sup>rd</sup> Party Auto Liability / Uninsured Motorist Updates**  
Speaker: **David A. Couch**

Non-Party At Fault Rule \* Threshold Requirements \* *Kreiner* and its Progeny \*  
Proposed Legislative Changes \* Uninsured Motorist/Under-Insured Motorist  
Coverage \* Statute of Limitations

11:45 - 1:00 p.m. LUNCH ON YOUR OWN

1:00 - 2:00 p.m. **Northern Michigan Recreational Accidents**  
Speaker: **Peter B. Worden, Jr.**

Land-based Accidents - Skiing, Off Road Vehicles, Snow Mobiling, Hunting, Fishing,  
Equine, Bicycling \* Water-based Accidents \* Michigan versus Maritime Law \*  
Federal Maritime Law

2:00 - 3:00 p.m. **Maritime / Admiralty Law**  
Speaker: **Thomas W. Emery**

Overview of Maritime Law \* Maritime Technology \* Distinctions between State and  
Federal Law \* First-Party Claims and Coverage Defenses \* Underinsured /  
Uninsured Boater Coverage \* Theft Claims \* Salvage, Towing and Wreck Removal  
\* Specialized Investigations \* Subrogation Claims against Marinas / Contractors

3:00 - 4:00 p.m. Question and Answer Session  
Return Evaluations Forms

Comprehensive written materials will be distributed to all program attendees. Don't miss this opportunity! Register Today! Seating is limited. To register, contact Kristi Woloszyk at [kwoloszyk@garanlucow.com](mailto:kwoloszyk@garanlucow.com). Please include your name, company, title, address, phone, fax and email address (if registering a colleague). We'll see you on July 24th!