



2021

**January-March**

## **Quarterly Case Summary Report:**

**A Chronological Anthology of Michigan's 2021  
First Quarter No-Fault Appellate Case Summaries**

## About AutoNoFaultLaw.com

[AutoNoFaultLaw.com](http://AutoNoFaultLaw.com) is an open-access academic resource provided by Sinas Dramis Law Firm to help further educate everyone about all that is going on in Michigan's Auto No-Fault Insurance Law.

Michigan's auto no-fault law is now more confusing and complicated than ever before due to the 2019 auto no-fault reforms. The system is no longer focused on providing people with lifetime auto medical expenses coverage. Many people injured in auto accidents will now have limited no-fault medical expense coverage or none at all; medical providers will be forced to accept drastically reduced payments for auto accident medical care; and the Michigan Department of Insurance and Financial Services (DIFS) has been given the power to work with insurance companies to regulate people's access to care.

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*AutoNoFaultLaw.com explores and critically analyzes this new and concerning frontier in Michigan's auto insurance law.*

## About This Quarterly Case Summary Report

AutoNoFaultLaw.com continues the commitment Sinas Dramis Law Firm has had for over 40 years to summarize all auto no-fault cases decided by Michigan Appellate Courts. These summaries can be found under "Case Summaries" on our site. We are publishing this quarterly report to allow people to easily understand and track the cases that have been decided in the first quarter (January through March) of 2021. We will be publishing these quarterly reports at the end of each quarter.

## Editor's Note Regarding Quarterly Report

### In the Michigan Supreme Court

The Supreme Court decided one new case on no-fault this quarter. That case was the case of **Turner, et al v Farmers Ins Exch, et al** (MSC – PUB; 1/29/2021; Docket Nos. 150660 & 150661). In *Turner*, the Supreme Court held that Enterprise Rental Car was not the insurer of highest priority under the no-fault act's then-applicable priority rules (which have since been changed pursuant to the 2019 amendments). In doing so, the Court interpreted the phrase "owner or registrant of the vehicle occupied" in the former MCL 500.3114(4) to mean "owner or registrant of a motor vehicle required to be registered in this state."

No new cases were taken up by our High Court this quarter. There are, however, two cases that currently remain pending before the Supreme Court pursuant to Orders issued in 2020. Those cases are ***Esurance Property & Cas. Ins. Co. v. Mich. Assigned Claims Plan, et al.*** (Docket No. 160592) (deciding whether “a finding that an insurance policy was void *ab initio* because it was procured by fraud bars a subsequent claim for equitable subrogation for benefits that were paid pursuant to that policy before it was found to be void.”); and ***Bronner v. City of Detroit*** (Docket No. 160242) (deciding whether “the Court of Appeals erred in holding that the no-fault insurance act, MCL 500.3101 et seq., precluded the City of Detroit from seeking contractual indemnification from GFL Environmental USA, Inc. for the City’s payment of personal protection insurance (PIP) benefits.”)

### Some Interesting Statistics Regarding the Court of Appeals Decisions

In the first quarter of this year (2021), the Michigan Court of Appeals decided at least **35 cases**. Out of those 35 cases, at least **18 cases** involved first party PIP benefits disputes. At least **3 cases** involved the tort threshold of serious impairment of body functions, and **1 case** dealt with a claim for uninsured motorist benefits. Also, at least **8 cases** (nearly 25% of all cases decided this quarter) involved issues of fraud or misrepresentation.

### An Observation on Fraud

In the 2020 decision of ***Meemic Ins. Co. v. Fortson***, \_\_\_ Mich \_\_\_ (2020) (Docket No. 158302), the Supreme Court clearly concluded that antifraud provisions in a no-fault policy of insurance are invalid to the extent that they bar recovery of PIP benefits for fraud or misrepresentations that occur after the policy has been issued (i.e., post-procurement fraud). Consistent with this conclusion, the Court of Appeals recognized in the recent case of ***Williams v Farm Bureau Mut Ins Co***, (COA - PUB 1/28/2021; RB #4211) that the Supreme Court’s conclusion in *Meemic* is directly at odds with the infamous decision of *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420 (2014), where the Court of Appeals held that the commission of post-procurement fraud completely barred the plaintiff from receiving no-fault PIP benefits under the terms of the no-fault policy at issue in that case. The court in *Williams*, therefore, concluded that much of the *Bahri* decision is no longer good law. In direct contrast with these decisions, however, the Court of Appeals held in the subsequent case of ***Johnson v Geico Indemnity Co***, (COA - UNP 3/18/2021; RB #4238) that an anti-fraud provision *can* be enforced even when it bars recovery of PIP benefits for post-procurement fraud. Notably, in so holding, the *Johnson* court relied on the *Bahri* decision without reconciling how that decision allowed for this result following the Michigan Supreme Court’s decision in *Meemic Ins Co v Forston*. Accordingly, there seems to be somewhat of an inconsistency developing in the case law on fraud.

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**Steven Smith v Pulkit Goenka (COA - UNP 1/7/2021; RB #4205)**

Michigan Court of Appeals; Docket # 347127; Unpublished  
Judges Stephens, Sawyer, and Beckering; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

## STATUTORY INDEXING:

[Causation Issue \[3135\]](#)  
[Evidentiary Issues \[3135\]](#)

## TOPICAL INDEXING:

Not Applicable

In this unanimous unpublished *per curiam* opinion, the Court of Appeals affirmed the trial court's denial of the plaintiff's motion for new trial. In so holding, the Court of Appeals reasoned that jury verdict that the plaintiff's injuries were not caused by the accident was not inconsistent with or unsubstantiated by the evidence. The Court of Appeals also ruled that the trial court had not abused its discretion in allowing the admissibility of the determination of the Social Security Administration that plaintiff was not disabled. The Court of Appeals also upheld the trial court's ruling denying the plaintiff's motion to produce the 1099 forms of the defense medical expert.

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**Butrus v IDS Prop Cas Ins Co (COA – UNP 1/14/2021; RB #4206)**

Michigan Court of Appeals; Docket # 349884; Unpublished  
Judges Kelly, Stephens, and Cameron; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

## STATUTORY INDEXING:

[§500.3113 Disqualification From PIP Benefit Entitlement \(Misrepresentation / Fraud as a Basis to Rescind Coverage\)](#)

## TOPICAL INDEXING:

[Fraud/Misrepresentation](#)

In this unanimous unpublished *per curiam* opinion, the Court of Appeals vacated the trial court's holding finding summary disposition for defendant on this issue of whether plaintiff was barred from recovering no-fault benefits in light of alleged misrepresentations by plaintiff following a 2017 auto accident. In doing so, the Court found that the trial court had failed to address whether plaintiff's alleged misrepresentations barred her from recovering no-fault benefits based on fraudulent procurement of the insurance policy, or whether she was barred from recovering benefits based on the application of the fraud exclusion provision in the subject policy. Moreover, the Court found that to the extent the fraud exclusion policy applied to the alleged misrepresentation, the trial court failed to determine whether plaintiff was entitled to benefits as a party to the policy or on a statutory basis, which distinction the Court noted is particularly significant following the Michigan Supreme Court's decision in *Meemic v Forston*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_NW2d \_\_\_ (2020) (Docket No. 158302) slip op.

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**McCarty v Akins, et al (COA – UNP 1/21/2021; RB #4208)**

Michigan Court of Appeals; Docket # 350052; Unpublished  
Judges Redford, Riordan, and Tukul; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

## STATUTORY INDEXING:

[Misrepresentation / Fraud as a Basis to Rescind Coverage \[§500.3113\]](#)

## TOPICAL INDEXING:

[Cancellation and Rescission of Insurance Policies](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition to defendants Akins and Everest National Insurance Company on the issue of the validity of plaintiff's insurance contract with defendant Everest and plaintiff's ability to bring a tort claim against defendant Akins. In its holding, the Michigan Court of Appeals found that plaintiff's material representations permitted Everest to rescind the insurance policy and that the rescission barred plaintiff from tort recovery against either defendants.

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**Lamb v Progressive Marathon Ins Co (COA - UNP 1/21/2021; RB #4209)**

Michigan Court of Appeals; Docket # 351304; Unpublished  
Judges Jansen, Servitto, and Riordan; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

## STATUTORY INDEXING:

[Entitlement to PIP Benefits: Arising Out of / Causation Requirement \[§3105\(1\)\]](#)

## TOPICAL INDEXING:

[Evidentiary Issues](#)

In this unpublished per curiam opinion, the Court of Appeals affirmed the trial court's order granting defendant's motion for reconsideration in which the trial court overturned its denial of defendant's motion for summary disposition regarding plaintiff's entitlement to no-fault benefits. The Court of Appeals affirmed the trial court on the basis that plaintiff failed to present any evidence in response to defendant's motion to establish that her injuries were caused by the incident in question and that the trial court was within its discretion in refusing to consider the physician's affidavit plaintiff submitted in response to defendant's motion for reconsideration.

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**Integrated Cognitive Rehab, LLC v Zurich American Ins Co (COA – UNP 1/21/2021; RB #4210)**

Michigan Court of Appeals; Docket # 353114; Unpublished  
Judges Letica, Gleicher, and O’Brien; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**  
[Allowable Expenses: Reasonable Necessity Requirement \[§3107\(1\)\(a\)\]](#)

**TOPICAL INDEXING:**  
[Intervention by Service Providers and Third Party Payors in PIP Claims](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court’s holding denying defendant’s motion for summary judgment on this issue of whether plaintiff was entitled to payment of PIP benefits under MCL 500.3107(1)(a). In doing so, the Court held that plaintiff failed to establish that its recreational therapy was reasonably necessary for the insured’s care, recovery, or rehabilitation.

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**Spectrum Health Hosps v Farm Bureau Gen Ins Co of Mich (COA - UNP 1/28/2021; RB #4213)**

Michigan Court of Appeals; Docket # 351018; Unpublished  
Judges Shapira, Sawyer, and Beckering; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**  
[Allowable expenses: Reasonable Charge Requirement \[§3107\(1\)\(a\)\]](#)

**TOPICAL INDEXING:**  
[INTERVENTION BY SERVICE PROVIDERS AND THIRD PARTY PAYORS IN PIP CLAIMS \[SEE ALSO STATUTORY SECTION 3107\]](#)

In this unpublished per curiam opinion, the Court of Appeals vacated and remanded the trial court’s award of unpaid charges, interest, and attorney fees to plaintiff on the issue of whether defendant was liable to pay plaintiff’s charges. The Court of Appeals held that based on recent decisions regarding the evidence that is admissible regarding the reasonableness of charges under MCL 500.3107(1)(a), the case must be remanded back to the trial court for a new trial because defendant should have been allowed to present evidence of payment by third parties, such as Medicare, Medicaid and private health insurance regarding the issue of whether the provider charges at issue were reasonable under MCL 500.3107(1)(a).

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**Williams v Mercyland Health Servs (COA - UNP 1/28/2021; RB #4211)**

Michigan Court of Appeals; Docket # 349903; Unpublished  
Judges Gleicher, Kelly, and Shapiro; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**  
[§500.3113 Disqualification From PIP Benefit Entitlement \(Misrepresentation / Fraud as a Basis to Rescind Coverage\)](#)

**TOPICAL INDEXING:**  
[Fraud/Misrepresentation](#)

In this unpublished 2-1 opinion (Judge Kelly dissenting), the Court of Appeals reversed the trial court's grant of summary disposition to defendant on the issue of whether defendant had properly voided plaintiff's policy due to her violation of an antifraud provision by making false statements to defendant after her auto accident. In doing so, the Court of Appeals relied on the Michigan Supreme Court's recent holding in *Meemic v Fortson* that found antifraud provisions are invalid to the degree they apply to post procurement fraud.

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**Webb v Progressive Marathon Ins Co (COA - UNP 1/28/2021; RB #4212)**

Michigan Court of Appeals; Docket # 351048; Unpublished  
Judges Jansen, Servitto, and Riordan; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**  
[Misrepresentation / Fraud as a Basis to Rescind Coverage](#)

**TOPICAL INDEXING:**  
[Cancellation and Rescission of Insurance Policies](#)

In this unanimous unpublished *per curiam* opinion, the Court of Appeals reversed the trial court's denial of defendant Progressive's motion for summary disposition on the issue of Progressive's ability to rescind the insurance policy at issue based on fraudulent procurement by the plaintiff Webb's mother and remanded the issue of whether plaintiff was an innocent third party in the fraudulent procurement of the policy. In doing so, the Court found that the evidence in the record was clear that plaintiff's mother committed fraud in the procurement of the insurance policy at issue, and that a question of fact remained as to whether plaintiff participated in the fraudulent procurement of the policy.

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**Matigian v Member Select Ins Co (COA - UNP 1/28/2021; RB #4215)**

Michigan Court of Appeals; Docket # 352059; Unpublished  
Judges Jansen, Servitto, and Riordan; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**

[Exception for Employer Provided Vehicles](#)  
[\[§3114\(3\)\]](#)

**TOPICAL INDEXING:**

[Equitable Estoppel](#)  
[Mend the Hold](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition to defendant on the issue of insurer priority, finding that the policy exclusions that excluded coverage to an insured driving an employer owned vehicle in the scope of employment were a valid defense, that the mend the hold doctrine may not be used to broaden policy coverage to protect an insured against risks expressly excluded from the policy, and that equitable estoppel was inapplicable because plaintiffs failed to establish that defendant had misrepresented the terms of the policy.

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**Sefcik v Home-Owners Ins Co (COA - UNP 1/28/2021; RB #4214)**

Michigan Court of Appeals; Docket # 351137; Unpublished  
Judges Shapiro, Sawyer and Beckering; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**

[One-Year Notice Rule Limitation \[§3145\(1\)\]](#)

**TOPICAL INDEXING:**

Not Applicable

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court's grant to Home-Owners on the issue of whether plaintiff properly supplied notice to Home-Owners within one year of the accident. In doing so, the Court held that the loss notice form submitted by the named insured and the police report constituted proper notice, and that the nature of injury requirement was satisfied by ordinary language such as "headache," as opposed to a specific medical diagnosis.

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**Turner by Sakowski, et al v Farmers Ins Exch, et al (SC – PUB 1/29/2021; RB #4245)**

Supreme Court of Michigan; Docket #159660, 159661; Published Judges McCormack, Zahra, Viviano, Bernstein, Clement, and Cavanagh; *per curiam* Official Michigan Reporter Citation:Forthcoming; [Link to Opinion](#)  
[Link to COA Opinion](#); [Link to COA Dissent](#)

**STATUTORY INDEXING:**

[Obligation of Non-Resident Owner/Registrant to Insure a Vehicle \[§3102\(1\)\]](#)  
[General/Miscellaneous\[§3114\(4\)\]](#)  
[Exception for Occupants \[§3114\(4\)\]](#)

**TOPICAL INDEXING:**

Not Applicable

In this 4-2 decision (Clement concurring; Cavanagh and Viviano dissenting) featuring two priority disputes between Defendants Enterprise Leasing Corporation of Detroit, LLC (“Enterprise”), and Farmers Insurance Exchange (“Farmers”), the Michigan Supreme Court ruled that Enterprise was not the insurer of highest priority under the no-fault act’s then-applicable priority rules (which were subsequently changed pursuant to the 2019 amendments). Relying on its decision in *Parks v Detroit Auto Inter-Ins Exch*, 426 Mich 191 (1986), the Court read the phrase “owner or registrant of the vehicle occupied” in the former MCL 500.3114(4) to really mean “owner or registrant of a motor vehicle required to be registered in this state.” Therefore, even though Enterprise was an authorized self-insured entity under the no-fault act and the owner and registrant of the two vehicles in question, it was not a priority insurer under the former MCL 500.3114(4)(a) because the two vehicles were neither registered in Michigan nor required to be registered in Michigan.

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**Roberts Orthopedic Servs v Allstate Ins Co (COA - UNP 2/4/2021;  
RB #4217)**

Michigan Court of Appeals; Docket # 349786; Unpublished  
Judges Fort Hood, Cavanagh, and Tukul; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
[§500.3113: DISQUALIFICATION FROM  
PIP BENEFIT ENTITLEMENT  
Misrepresentation / Fraud as a Basis to  
Rescind Coverage](#)

TOPICAL INDEXING:  
[Collateral Estoppel and Res Judicata](#)

In this unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition to defendant on the issue of whether plaintiff's claim was barred under res judicata, finding that the federal court's order in *Omar v. Allstate Ins Co (Omar I)*, opinion of the United States District Court for the Eastern District of Michigan, issues March 14, 2019 (Case No. 17-cv-13400), which granted summary disposition to defendant in a case based on the same accident at issue here, was controlling.

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**Midwest Med Assoc Inc v Liberty Mut Ins Co (COA - UNP  
2/11/2021; RB #4219)**

Michigan Court of Appeals; Docket # 348806; Unpublished  
Judges Cavanagh, Servitto and Cameron; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
Not Applicable

TOPICAL INDEXING:  
[Medical Provider Standing \(Post-Covenant\)](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals upheld the trial court's dismissal of plaintiff's claims with prejudice and upheld the trial court's order denying defendant's motion for case evaluation sanctions. In doing so, the Court found that plaintiff failed to establish a prima facie case for entitlement to no-fault benefits by failing to properly add its billing manager to its witness list and failing to properly subpoena defendant's claims adjuster. The Court further held that the trial court was permitted to rely on the interest of justice exception when denying defendant's motion for case evaluation sanctions.

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## Covenant Med Ctr Inc v Employers Mut Cas Co, et al (COA - UNP 2/11/2021; RB #4218)

Michigan Court of Appeals; Docket # 342379; Unpublished  
Judges Boonstra, Borrello and Rick; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

### STATUTORY INDEXING:

[One-Year Back Rule Limitation \[§3145\(1\)\]](#)

### TOPICAL INDEXING:

[Medical Provider Standing \(Post-Covenant\)](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court's order granting in part plaintiff's motion for summary disposition on the issue of whether the claims of plaintiff Covenant Medical Center, Inc were barred by the one-year-back rule and dismissed plaintiff's cross-appeal regarding attorney fees as moot. In doing so, the Court held that the holding in *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182; 920 NW2d 148 (2018), that healthcare providers do not possess any greater rights than an assignor insured possessed on the date of assignment, was binding.

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## Michigan Spine & Brain Surgeons, PLLC v Home-Owners Ins Co (COA - UNP 2/18/2021; RB #4220)

Michigan Court of Appeals; Docket # 349367; Unpublished  
Judges Stephens, Servitto and Letica; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

### STATUTORY INDEXING:

[One-Year Back Rule Limitation \[§3145\(1\)\]](#)

### TOPICAL INDEXING:

[Collateral Estoppel and Res Judicata](#)  
[Medical Provider Standing \(Post-Covenant\)](#)  
[Fraud/Misrepresentation](#)  
[Cancellation and Rescission of Insurance Policies](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court's order granting summary disposition to defendant Home-Owners Ins Co on the issue of whether rescission of the insured's insurance policy was appropriate as against the plaintiff medical provider. In doing so, the Court found that the doctrine of res judicata barred the fraud claim against plaintiff Michigan Spine & Brain Surgeons, PLLC, because Home-Owners had previously failed to prevail on the fraud claim in a lawsuit between the injured person and Home-Owners, and as the injured person's assignee, Michigan Brain & Spine possesses the same rights as Hosey, and therefore, is protected by res judicata from defendant's fraud allegations in this case.

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**Loiacana v Home-Owners Ins Co (COA - UNP 2/18/2021; RB #4222)**

Michigan Court of Appeals; Docket # 351876; Unpublished  
Judges Kelly, Krause and Redford; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
Not Applicable

TOPICAL INDEXING:  
[Interpretation of Insurance Contracts](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition to Universal on the issue of whether plaintiff was an insured under Universal's policy and affirmed the trial court's denial of Home-Owners's motion to amend its pleadings to assert a cross claim against Universal for common-law indemnity. In reaching its holding, the Court found that the policy language of Universal unambiguously provided who was entitled to uninsured benefits, and that plaintiff was not among them. Because of this fact, the Court held that any amendment to the pleadings to permit Home-Owners to assert a cross-claim against Universal for common-law indemnity would have been futile.

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**Jones v Esurance Ins Co (COA - UNP 2/25/2021; RB #4223)**

Michigan Court of Appeals; Docket # 349942; Unpublished  
Judges Swartzle, Markey and Tukul; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
[One-Year Back Rule Limitation – tolling under 2019 amendments \[§3145\(1\)\]](#)

TOPICAL INDEXING:  
[Collateral Estoppel and Res Judicata](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court's ruling dismissing plaintiff's action based on the doctrine of res judicata. In doing so, the Court held that by granting summary disposition to defendant Esurance under MCR 2.116(C)(6), the Wayne Circuit Court did not address the merits of plaintiff's claims, but rather the sole question of whether another action had been initiated between the same parties involving the same claim. The Court further affirmed the trial court's ruling that the one-year-back rule applied to plaintiff's actions, finding that the new amendments to MCL 500.3145 did not apply retroactively to plaintiff's claims. Finally, the Court affirmed the trial court's denial of plaintiff's motion to transfer this case to Washtenaw Circuit Court, as the record reflected that venue was proper because Wayne County was the place in which Esurance conducted business."

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## **Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co (COA – UNP 2/25/2021; RB #4224)**

Michigan Court of Appeals; Docket # 353298; Unpublished

Judges Swartzle, Beckering and Gleicher

Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#); [Link to Dissent](#)

### STATUTORY INDEXING:

[Lawfully Rendered Treatment \[§500.3157\]](#)

### TOPICAL INDEXING:

[Legislative Purpose and Intent](#)

In this unpublished 2-1 opinion (Judge Swartzle dissenting), the Court of Appeals reversed the trial court's holding in favor of the defendant, finding that the services provided by Insight Healing Center were not adult foster care services requiring corresponding licensure and were thus lawfully rendered within the meaning of the no-fault act, requiring payment of these services by defendant.

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## **North Shore Injury Center, Inc, et al v Home-Owners Insurance Company (COA – UNP 3/4/2021; RB #4228)**

Michigan Court of Appeals; Docket # 350750; Unpublished

Judges Letica, Gleicher, and O'Brien; *per curiam*

Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#); [Link to Dissent](#)

### STATUTORY INDEXING:

[One-Year Back Rule Limitation \[§3145\(1\)\]](#)

### TOPICAL INDEXING:

[Assignments of Benefits—Validity and Enforceability](#)

In this majority unpublished per curiam decision (Letica, concurring, Gleicher, dissenting), the Court of Appeals reversed the trial court's denial of Defendant Home-Owners Insurance Company's ("Home-Owners") motion for summary disposition seeking dismissal of the plaintiffs' first-party action to recover no-fault PIP benefits on the basis of an assignment. The plaintiffs (North Shore Injury Center, Inc., Excellent Pain Consultants, Inc., Red Wings Medical Transportation, LLC, and Northland Radiology, Inc.—collectively, "plaintiffs"), Joys King's medical providers, and Joys King, filed separate first-party actions one month apart, and almost one full year after the plaintiffs filed their action, the Supreme Court issued its decision in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191 (2017). The plaintiffs thereafter obtained assignments from King, and argued that the operative date for purposes of the one-year back rule was not the date they obtained their assignments, but rather the date King filed his separate first-party action against Home-Owners. The Court of Appeals disagreed, holding that the operative dates for purposes of the one-year back rule were the dates of assignment, and that, since all the plaintiffs' claims occurred more than one-year prior to the date they obtained their assignments, their action was barred.

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**Mustafa Almurisi v Avis Budget Car Rental, LLC (COA - UNP  
3/4/2021; RB #4226)**

Michigan Court of Appeals; Docket # 348805; Unpublished  
Judges Swartzle, Beckering and Gleicher; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
[Exception for Occupants \[§3114\(4\)\]](#)

TOPICAL INDEXING:  
Not Applicable

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition on the issue of whether defendant was the insurer of the owner or registrant of the vehicle for purposes of meeting the requirements of former MCL 500.3114(4)(a). In doing so, the Court clarified that it was compelled by the holding in *Turner v Farmers Ins Exch*, \_\_\_ Mich \_\_\_, 953 NW2d 204 (2021).

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**Michigan Spine & Brain Surgeons, PLLC v Citizens Ins Co of the  
Midwest, et al (COA - UNP 3/4/2021; RB #4227)**

Michigan Court of Appeals; Docket # 350498; Unpublished  
Judges FortHood, Gadola and Letica; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
Not Applicable

TOPICAL INDEXING:  
[Assignments of Benefits – Validity and Enforceability](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's holding that a medical provider did not have standing to assert a claim against an insured's insurer when the insured entered into an arbitration agreement with the insurer prior to assigning his right to payment to the medical provider. In doing so, the Court noted that an assignee obtains only the rights the assignor possessed at the time of the assignment.

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**Stevenson v Neubar, et al (COA – UNP 3/4/2021; RB #4230)**

Michigan Court of Appeals; Docket # 351886; Unpublished  
 Judges Swartzle, Markey, and Tukul; *per curiam*  
 Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**  
[General Ability / Normal Life Element of Serious Impairment \(McCormick Era: 2010 – Present\) \[§3135\(5\)\\*\\*\]](#)

**TOPICAL INDEXING:**  
 Not Applicable

In this unanimous unpublished *per curiam*, the Court of Appeals reversed the trial court’s summary disposition order dismissing plaintiff James Stevenson’s third-party action against defendants Sarah Neubar and Carl Neubar. The Court of Appeals held that a question of fact existed as to whether Stevenson satisfied the third prong of the “serious impairment of body function” test set forth in *McCormick v Carrier*, 487 Mich 180 (2010): whether his wrist injury affected his general ability to lead his normal life.

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**David E Christensen, PLLC v Pioneer State Mut Ins Co, et al (COA - UNP 3/4/2021; RB #4229)**

Michigan Court of Appeals; Docket # 351737; Unpublished  
Judges Gleicher, Kelly and Riordan; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
Not Applicable

TOPICAL INDEXING:  
[Attorney Fee Liens](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition to defendant Pioneer and third-party defendant Hurley Medical Center on the issue of whether either was liable to plaintiff David E. Christensen, P.L.L.C. for its alleged attorney's lien. In doing so, the Court held that neither defendant Pioneer or third-party defendant Hurley had actual notice of the lien, and that the funds due to Hurley were not part of a common fund generated by Christensen's services.

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**Pioneer State Mut Ins Co v Andrew Lynn Frantz (COA - UNP 3/11/2021; RB #4232)**

Michigan Court of Appeals; Docket # 344950; Unpublished  
Judges FortHood, Sawyer and Shapiro; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
Not Applicable

TOPICAL INDEXING:  
[Fraud/Misrepresentation](#)  
[Cancellation and Rescission of Insurance Policies](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's finding that defendant's fraudulent misrepresentation in the application for insurance made the policy void ab initio, but reversed the trial court's declaration that the plaintiff had no obligation to defend or indemnify defendant in the underlying tort suit and remanded to the trial court with instruction to conduct a hearing under *Bazzi* as to the defendant's rights for defense and indemnification. The Court further vacated the trial court's order rescinding the insurance policy and remanded the issue of rescission to the trial court, instructing it to balance the equities concerning the injured passengers claim.

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**Robinson, et al v Progressive Michigan Insurance Company, et al  
(COA – UNP 3/11/2021; RB #4234)**

Michigan Court of Appeals; Docket # 350450; Unpublished  
Judges Letica, Cavanagh, and Fort Hood; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

## STATUTORY INDEXING:

[Exception for Employer Provided Vehicles](#)

[\[§3114\(3\)\]](#)

[Exception for Occupants \[§3114\(4\)\]](#)

## TOPICAL INDEXING:

Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing the plaintiff's first-party action and remanded for further proceedings. The Court of Appeals held that a question of fact existed as to whether the plaintiff's employer, 313 Towing, LLC ("313") was a constructive owner of the tow truck the plaintiff, Donald Robinson, was driving at the time of the subject crash. If so, 313's insurer, Progressive Michigan Insurance Company ("Progressive"), would be required to pay Robinson's crash-related PIP benefits pursuant to MCL 500.3114(4)(a).

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**Sarah McClinton v Christopher Hartwell, et al (COA - UNP;  
3/18/2021; RB #4240)**

Michigan Court of Appeals; Docket # 352687; Unpublished  
Judges Murray, Kelly and Rick; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

## STATUTORY INDEXING:

[Serious Impairment of Body Function  
Definition \(McCormick Era: 2010 – present\)](#)

[\[§3135\(5\)\]](#)

## TOPICAL INDEXING:

Not Applicable

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition in favor of defendant on the issue of whether plaintiff failed to demonstrate the existence of a "serious impairment of body function" necessary to meet the no-fault tort threshold. In doing so, the Court found that plaintiff failed to establish a physical basis for her complaints of shoulder and back pain.

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**Roskamp v Fremont Insurance Co, et al (COA – UNP 3/18/2021;  
RB #4235)**

Michigan Court of Appeals; Docket # 348054; Unpublished  
Judges Boonstra, Gadola, and Tukul; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**

[Wage Loss for Temporarily Unemployed  
Persons / Qualifications \[§3107a\]](#)

**TOPICAL INDEXING:**

[Cancellation and Rescission of Insurance  
Policies](#)

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition ruling that, as a matter of law, Defendant Fremont Insurance Company was responsible for injured plaintiff Roskamp's no-fault PIP benefits as a matter of law a, and the Defendant Allstate Insurance Company, which was assigned through the Assigned Claims Plan to handle Roskamp's claims, was not. The Court of Appeals explained that the trial court erred in reaching its holding because the trial court determined that Fremont waived its right to rescind its no-fault insurance policy on the basis of fraud because Fremont issued a notice of nonrenewal on the policy. The Court of Appeals reasoned that with its notice of nonrenewal, Fremont did not induce belief that the policy was in effect through the date of the crash. Rather, Fremont sent its notice of nonrenewal after Roskamp was injured, so the trial court erred in ruling that Fremont's renewal waived its right to rescind the policy. As a separate issue, the Court of Appeals held that Roskamp presented sufficient evidence to create a question of fact about whether he was temporarily unemployed at the time of the subject car crash for purposes of MCL 500.3107a.

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**Pepaj v Allstate Insurance Company (COA – UNP 3/18/2021; RB  
#4239)**

Michigan Court of Appeals; Docket # 352498; Unpublished  
Judges Swartzle, Markey, and Tukul; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

**STATUTORY INDEXING:**

[Allowable Expenses: Reasonable Necessity  
Requirement \[§3107\(1\)\(a\)\]](#)

**TOPICAL INDEXING:**

Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Gjok Pepaj's first party action for no-fault PIP benefits. The Court of Appeals held that the trial court did not err in ruling that Pepaj failed to create a genuine issue of material fact as to whether the medical treatments and attendant care he received were reasonably necessary for his care, recovery, or rehabilitation pursuant to MCL 500.3107(1)(a).

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## Henderson v City of Detroit, et al (COA – UNP 3/18/2021; RB #4236)

Michigan Court of Appeals; Docket # 350858; Unpublished  
Judges O'Brien, Servitto, and Gleicher; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
[Applicability of Comparative Fault to Noneconomic Loss Claims \[§3135\(2\)\]](#)

TOPICAL INDEXING:  
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant City of Detroit's motion for summary disposition in which it sought dismissal of Plaintiff Christopher Henderson's third-party action against it. The Court of Appeals held that, although Henderson was at least partly negligent for attempting to change lanes without first ensuring that he could do so safely, he presented sufficient evidence to create a question of fact as to whether Patricia Lauderdale, a bus driver for the City of Detroit, was more than 50% negligent by driving her bus in excess of the speed limit at the time it crashed into Henderson's vehicle.

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## Johnson v Geico Indemnity Co (COA - UNP 3/18/2021; RB #4238)

Michigan Court of Appeals; Docket # 351838; Unpublished  
Judges Tukel, Jansen and Cameron; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
[§500.3113 Disqualification From PIP Benefit Entitlement \(Misrepresentation / Fraud as a Basis to Rescind Coverage\)](#)

TOPICAL INDEXING:  
[Fraud/Misrepresentation](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court's holding denying summary disposition in favor of defendant on the issue of whether plaintiff committed fraud when seeking reimbursement for replacement services and attendant care and, therefore, barred from pursuing her claims for no-fault PIP benefits. In doing so, the Court noted that plaintiff's submitted affidavits for attendant care and replacement services were inaccurate in that she claimed attendant care and replacement services took place while she was traveling without those she purported to be providing such care. Notably, in reaching its holding that the anti-fraud provision could be enforced to bar plaintiff's claims for no-fault PIP benefits, the Court relied upon the decision in *Bahri v IDS Prop Cas Ins Co*, and did not explain how *Bahri* allowed for this result following the Michigan Supreme Court's decision in *Meemic Ins Co v Forston and* the Michigan Court of Appeals recent decision in *William v Mercyland Health Services*.

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**Ferndale Rehabilitation Center v Allstate Ins Co (COA - UNP  
3/18/2021; RB #4237)**

Michigan Court of Appeals; Docket # 351746; Unpublished  
Judges Tukel, Jansen and Cameron; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
[§500.3173a: ASSIGNED CLAIMS  
FACILITY – Fraudulent Insurance Act as  
the Basis of Disqualification](#)

TOPICAL INDEXING:  
[Fraud/Misrepresentation](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the holding of the trial court granting summary disposition to defendant on the issue of whether Richard Thirkill, assignor to plaintiff, had committed a fraudulent insurance act such that he was ineligible for payment of PIP benefits under the MACP. In doing so, the Court found that Thirkill knew that his statements that he had no pre-existing medical conditions and his omission that he was already receiving replacement services was a fraudulent insurance act, and that the fraudulent act was material to his no-fault PIP claims he was pursuing from the MACP.

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**Zaiya v Encompass Indemnity Company (COA - UNP 3/25/2021;  
RB #4241)**

Michigan Court of Appeals; Docket # 350733; Unpublished  
Judges O'Brien, Servitto and Gleicher; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:  
[Determination of Domicile \[§3114\(1\)\]](#)

TOPICAL INDEXING:  
[Interpretation of Insurance Contracts](#)

In this unanimous unpublished per curiam opinion, the Court of Appeals found that: (1) the circuit court erred in determining Plaintiff Zaiya's domicile as a matter of law this case, because "Zaiya presented evidence that she resided in two separate households at the time of her accident; and (2) the circuit court correctly determined as a matter of law that Zaiya was not an "insured" under the language of her daughter, Renee's, no-fault policy.

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**Abdi v Progressive Michigan Ins Co (COA – UNP 3/25/2021; RB #4242)**

Michigan Court of Appeals; Docket # 349577, 350418; Unpublished  
Judges Fort Hood, Gadola and Letica; *per curiam*  
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

## STATUTORY INDEXING:

[Exception for Occupants \[§3114\(4\)\]](#)  
[Disqualification for Nonresidents \[§3113\(c\)\]](#)  
[\(pre-2019 amendments\)](#)

## TOPICAL INDEXING:

Not Applicable

In this unanimous unpublished per curiam opinion, the Court of Appeals held that Progressive was not legally obligated to pay PIP benefits to Plaintiff under MCL 500.3114(4)(a), because Progressive's insured, Jeffrey Draper and his trucking company, were no longer the "owners" or "registrants" of the truck plaintiff was occupying at the time of the crash that occurred shortly after plaintiff bought the truck from Draper. The Court further held that plaintiff was disqualified entirely from PIP benefits under the pre-2019 amended version of MCL 500.3113(c), because plaintiff was not a resident of Michigan, the truck was no longer registered in Michigan at the time of the accident, and plaintiff was not insured by an out-of-state insurer that was certified to sell insurance in Michigan under the pre-2019 amended version of MCL 500.3163.

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