AUTO NOFAULT LAW.COM
BY SINAS DRAMIS

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Quarterly Case Summary Report:

A Chronological Anthology of Michigan's 2022 First Quarter No-Fault Appellate Case Summaries

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About AutoNoFaultLaw.com

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 are now 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 2022. The following provides an overview of the notable cases and developments this quarter.

Editor's Note Regarding the First Quarterly Report of 2022

In the Supreme Court

The Michigan Supreme Court did not issue any opinions regarding the no-fault act in the first quarter of 2022. The Court did issue one order, in *Johnson v Geico Indemnity Co*, in which it vacated the opinion of the Court of Appeals, dated March 18, 2021, because the Court of Appeals failed to consider the Supreme Court's recent decision in *Meemic Ins Co v Fortson* in reaching its holding regarding fraud.

Two cases remain pending before the Supreme Court: *Griffin v Trumbull Ins Co* and *Mecosta Co Med Ctr v Metro Group Prop & Cas Ins Co*.

Five Published Opinions from the Michigan Court of Appeals

The Michigan Court of Appeals released five opinions for publication in the first quarter of 2022: *Corbin v Meemic Ins Co* (RB #4376), *University of Mich Regents v Mich Auto Ins Placement Facility* (RB #4379), *Precise MRI of Mich, LLC v State Auto Ins Co* (RB #4382), *Micheli v Mich Auto Ins Placement Facility* (RB #4385), and *Kennard v Liberty Mut Ins Co* (RB #4391).

Corbin featured a dispute over the legal domicile of a minor, Anya Corbin, who was left disabled as a result of a car crash. At the time of the crash, Anya's mother and father shared joint physical custody of Anya, pursuant to an order of filiation that was entered upon their divorce, and which left the issue of custody up to their discretion so long as they cooperated and worked together. After the crash, a dispute arose between Farm Bureau and Meemic over who was higher in priority for payment of Anya's PIP benefits—a dispute which turned on Anya's domicile at the time of the crash. In ruling on that issue, the trial court relied on the analysis set forth in footnote 78 of the Supreme Court's opinion in *Grange Ins Co of Mich v Lawrence* (RB #3351), which provides:

> *"In the unusual event that a custody order does grant an equal division of physical custody, and only in this instance, then the child's domicile would alternate between the parents so as to be the same as that of the parent with whom he is living at the time. Restatement [Conflict of Laws 2d], 22 (1971). Thus, the child's domicile is with the parent who has physical custody as established by the custody order at the specific time of the incident at issue. This approach is constituent with the terms of the custody order and avoids a finding that the child has dual coexisting domiciles. [Id. at 512 n 78 (first alteration in original).]"*

Since Anya was in her mother's custody at the time of the crash, the trial court held that, under *Grange*, she was legally domiciled with her mother. The Court of Appeals disagreed, however, holding that the above footnote did not apply to this case because the order of filiation entered upon Anya's parents' divorce did not "grant an equal division of physical custody." Rather, the order of filiation left the issue of custody unresolved, and up to the discretion of Anya's parents so long as they cooperated as co-parents. Thus, the Court of Appeals remanded back to the trial court for a new domicile analysis, focusing on the factors set forth in *Workman v Detroit Auto Inter-Insurance Exch* (RB #143) and *Dairyland Ins Co v Auto Owners Ins Co* (RB #619).

U of M Regents featured an interesting issue related to fraud. The plaintiff's patient, Valentino Trevino, was injured in a single-vehicle crash while traveling as a passenger in a vehicle driven by Sterling Pierson. After treating Trevino, the plaintiff sought reimbursement for the services it provided from Pierson's no-fault insurer, Falls Lake National Insurance Company. Falls Lake denied the plaintiff's claims, attempting, instead, to void Pierson's policy *ab initio*, based on misrepresentations he had made on his original application for insurance. Falls Lake mailed Pierson a refund check for the premium amount he paid for the policy, which Pierson, in turn, endorsed and cashed. Falls Lake then moved for summary disposition in the plaintiff's first-party action against it, asserting that the plaintiff could not make a claim under the now-voided policy, the rescission of which the policyholder, himself, assented to by cashing the refund check. The trial court granted Falls Lake's motion, concluding that it did not have to balance the equities before determining whether rescission was proper with respect to Trevino, an innocent third-party to the policyholder's fraud, because this case was distinguishable from *Bazzi v Sentinel Ins Co* (RB #3542). The trial court noted that in this case, rescission was accomplished by "mutuality of action"—i.e. Pierson's cashing of the refund check—whereas in *Bazzi*, the insurer sought rescission by grant of the trial court. The Court of Appeals acknowledged this distinction, but

deemed it immaterial and reversed the trial court. The Court of Appeals held that regardless of the mechanism by which rescission is sought or accomplished, trial courts must balance the equities before permitting an insurer to deny the claims of innocent third-parties. Accordingly, the Court remanded back to the trial court for further proceedings consistent with this holding.

Precise MRI expanded on a Court of Appeals' decision last quarter, *Skwierc v Whisnant* (RB #4350) , in which the Court held that an MRI of an individual's spine was compensable under the no-fault act, even though it was ordered by a chiropractor. Relying on *Skwierc*, the Court of Appeals, in this case, held that a chiropractor-ordered MRI of an individual's sacroiliac joints was also compensable under the no-fault act. In so holding, the Court concluded that the sacroiliac joints form part of the spine. Thus, MRIs of the sacroiliac joints constitute "spinal analysis" for purposes of the definition of "practice of chiropractic" under MCLs 500.3107b(b) and 333.16401.

Micheli may end up being the most consequential of the five published cases from the first quarter of 2022, with the Court handing down several important holdings regarding discovery of information related to insurance medical examiners' practices. After undergoing an insurance medical examination, counsel for Plaintiff Kathleen Micheli served a nonparty subpoena on the examiner and her outfit, seeking various information, including: the number of IMEs the examiner performed between 2017 and 2020, the number of regular patient examinations the examiner performed between 2017 and 2020, and the amount of money the examiner made doing IMEs between 2017 and 2020. The insurance company which ordered the IME, Citizens, moved to quash the subpoena, arguing (1) that under MCR 2.302(B)(4), Micheli had to seek leave of the trial court before serving a nonparty subpoena on its examiner, and (2) that the information sought by the subpoena was not relevant to the issues in the case. The Court of Appeals ultimately held that MCR 2.302(B)(4) did not apply to the subpoena, because it "did not seek facts or opinions acquired or developed in anticipation of litigation or trial," but rather "records kept in the ordinary course of business." Additionally, the Court of Appeals held that the information sought by Micheli was, in fact, relevant, as such information bears on an examiner's credibility.

In *Kennard*, a Maryland resident was injured in a car crash shortly after moving to Michigan. Prior to the move, she obtained Maryland automobile insurance from Liberty Mutual, then informed Liberty Mutual of her intention to move to Michigan. After the crash, she filed a claim for PIP benefits under her Maryland policy, asserting that her communications to Liberty Mutual regarding her intention to move to Michigan operated to bring the Maryland policy into compliance with Michigan's no-fault act, pursuant to MCL 500.3012. MCl 500.3012 provides:

> *"Such a liability insurance policy issued in violation of [MCL 500.3004 through MCL 500.3012 of the No-Fault Act] shall, nevertheless, be held valid but be deemed to include the provisions required by such sections, and when any provision in such policy or rider is in conflict with the provisions required to be contained by such sections, the rights, duties and obligations of the insured, the policyholder and the injured person shall be governed by the provisions of such sections."*

The Court of Appeals held that MCL 500.3012 will only "convert" a policy in the way sought by the plaintiff in situations such as where an insurer issues a policy that does not comply with the no-fault act to an individual it knows to be a Michigan resident. That was not the case here, where the plaintiff was a Maryland resident at the time Liberty Mutual issued her policy.

A Statistical Breakdown of the Court of Appeals' Decisions in Quarter One

The Court of Appeals issued opinions in 25 cases in the first quarter of 2022. Those cases are broken down categorically, below:

1. 14 cases featured disputes over no-fault PIP benefits. Of those 14 cases:
    a. three featured defenses based on the one-year-back rule;
        Premier Med Movement, LLC v Auto-Owners Ins Co
        Mobile MRI Staffing LLC v Meemic Ins Co
        Archangel Physical Therapy, LLC v State Farm Mut Auto Ins Co
    b. two featured issues related to claimants' domiciles and/or dependency;
        Corbin v Meemic Ins Co
        Estate of Lawrence v Schauf
    c. two featured claims for no-fault attorney fees;
        Collins v Nizzi
        Ramirez v Home-Owners Ins Co
    d. two featured issues related to assignments;
        Premier Med Movement, LLC v Auto-Owners Ins Co
        Jenkins v Suburban Mobility Auth for Regional Transp
    e. one featured an unlawful taking under MCL 500.3113(a);
        Mull v Citizens Ins Co of the Midwest
    f. one featured a dispute as to whether the plaintiff's patient's no-fault insurance was coordinated with his health insurance, and, if so, whether the plaintiff provider could balance bill the no-fault insurer;
        Jawad Al Shah, MD, PC v Liberty Mut Ins Co
    g. one featured the aforementioned claim for no-fault PIP benefits under an out-of-state automobile insurance policy;
        Kennard v Liberty Mut Ins

h. one featured the aforementioned dispute over the discoverability of information—financial and otherwise—related to an independent medical examiner's practice;

Micheli v Mich Auto Ins Placement Facility

i. one featured a claim by one no-fault insurer for reimbursement/equitable subrogation against another no-fault insurer;

Ravenell v Auto Club Ins Assoc

j. one featured the aforementioned attempt by a no-fault insurer to rescind a policy on the basis of fraud, as well as application of the "innocent third-party doctrine;"

Univ of Mich Regents v Mich Auto Ins Placement Facility

k. one featured an attempt by a plaintiff's counsel to assert an attorney charging lien over PIP benefits paid during the course of litigation, not as a part of any settlement or judgment; and

Moriah Inc v American Auto Ins Co

l. one featured the aforementioned dispute as to whether MRIs of the plaintiff's spine and sacroiliac joints were compensable under the no-fault act, even though they were ordered by a chiropractor.

Precise MRI of Mich, LLC v State Auto Ins Co

2. Eight cases featured miscellaneous third-party disputes. Of those eight cases:

a. three dealt with the tort threshold for serious impairment of body function;

Gurley v Gartha

Johnson v Liberty Mut Gen Ins Co

Scarber v Issa

b. three featured claims brought under the motor vehicle exception to governmental immunity and/or claims of gross negligence against individual government employees;

Gurley v Gartha

Schemahorn v City of Niles

Edwards v Cormier

c. three featured disputes over injury causation;

Gurley v Gartha

Johnson v Liberty Mut Gen Ins Co

Scarber v Issa

d. one featured a ruling on permanent serious disfigurement as a matter of law;

Scarber v Issa

e. one featured a dispute regarding comparative negligence, generally, and comparative negligence apropos of MCL 600.2955a, specifically, given the decedent's impairment at the time of the subject motor vehicle collision;

Estate of Lawrence v Schauf

f. one featured a ruling regarding immunity for negligent acts committed by first responders under the Emergency Medical Services Act, MCL 333.20901, *et seq*.;

Mentel v Emergent Health Partners, Inc

g. one featured an attempted invocation of the sudden emergency doctrine; and

Johnson v Liberty Mut Gen Ins Co

h. one featured a dispute as to owner liability.

Rodgers v Champs Auto Sales, Inc

3. Two cases featured claims for uninsured or underinsured coverage, both of which were dismissed based on policy language.

Yee v AAA Ins

Hanback v MemberSelect Ins Co

A Notable Holding Regarding Retroactivity of the 2019 Amendments

Perhaps the most noteworthy ruling handed down from the Court of Appeals in the first quarter of 2022 came in an unpublished opinion, issued January 20, 2022, in *Mobile MRI Staffing LLC v Meemic Ins Co* (RB # 4389). The *Mobile MRI Staffing* opinion is noteworthy because it addresses a ripe controversy in the no-fault world: whether the changes to the no-fault act, set forth in 2019 PA 21, have retroactive effect vis-a-vis people injured prior to the legislation's effective date of June 11, 2019. This controversy, of course, is presently being litigated in the Andary Lawsuit.

The facts in *Mobile MRI Staffing* are as follows: Sherita Minor, Meemic's insured, was injured in a car crash on July 11, 2018. On July 28, 2018, Minor underwent three MRIs at Mobile MRI Staffing, LLC ("Metro"), for which she was charged $5,000 each. After undergoing the MRIs, Minor assigned her right to pursue no-fault PIP benefits related to the MRIs to Metro, who, after receiving Minor's assignment, filed a claim with Meemic. On April 3, 2019, Meemic paid Metro $1,300 total for the MRIs but refused to pay the balance. On November 13, 2019, Metro filed a first-party action to recover the balance, and Meemic moved for summary disposition, arguing that Metro's claims were subject to the one-year-back rule as it existed prior to 2019 PA 21—which is to say, before 2019 PA 21 amended the one-year-back rule to include the tolling provision set forth in the newly-created MCL 500.3145(3). Metro argued, in response, that the 2019 reforms were to be given retroactive effect, and that, as a result, the operative date for purposes of the one-year-back rule was April 3, 2019: the date Meemic formally denied its claim.

The trial court agreed with Metro, but the Court of Appeals reversed. The Court emphasized the "foundational presumption in Michigan against retroactive application of legislation"—a presumption which can only be rebutted by a clear statement of intention for retroactive application in the statute, itself. As the Court correctly noted, 2019 PA 21 contains no such statement; therefore, the 2019 reforms do not apply retroactively.

As for Metro's numerous arguments on appeal, the Court found all unavailing. The Court rejected Metro's argument that "the relevant law is not the law in existence on the date the claim accrues, but rather the law in existence on the date the action was commenced." In fact, Michigan law stands for the contrary position: that "[g]enerally, a claim accrues at the time the wrong upon which the claim is based was done." The Court also rejected Metro's argument that, "had the Legislature intended for the amended MCL 500.3145 to be applied only prospectively, they would have said so." Not, so, held the Court: prospective application is presumed; retroactive application is not.

Insofar as *Mobile MRI Staffing* serves as an indication of how subsequent courts may rule on the issue of whether or not the amendments to the no-fault act, set forth in 2019 PA 21, apply retroactively, it is extremely significant. To date, oral arguments have not yet been scheduled in the Andary Lawsuit, but should Court of Appeals embrace the *Mobile MRI Staffing* panel's analysis, that would abate the devastating consequences lying ahead for many auto accident survivors injured prior to the effective date of the 2019 reforms.

A Clarification About Assignments

In *Jenkins v Suburban Mobility Auth for Regional Transp* (RB #4377), the Court emphasized an important fact about assignments: that, once a claim is assigned to a medical provider, the patient forfeits his or her right to personally pursue that claim.

Alice Jenkins received treatment from numerous medical providers for injuries she sustained while boarding a bus owned by the Suburban Mobility Authority for Regional Transportation ("SMART"). She executed assignment in favor of five of her providers, and subsequently filed a first-party action against SMART. Jenkins and SMART agreed to arbitrate Jenkins's claims, but at arbitration, Jenkins pursued the claims she had assigned to her five providers. This prompted SMART to file a motion to exclude the assigned claims from arbitration, which the trial court granted.

The Court of Appeals affirmed the trial court and clarified that, generally speaking, an assignment divests the patient of his or her exclusive right to pursue a claim, and invests that right in the provider. In this case, that meant that the assigned claims were no longer Jenkins's to pursue, and thus rightfully excluded from arbitration.

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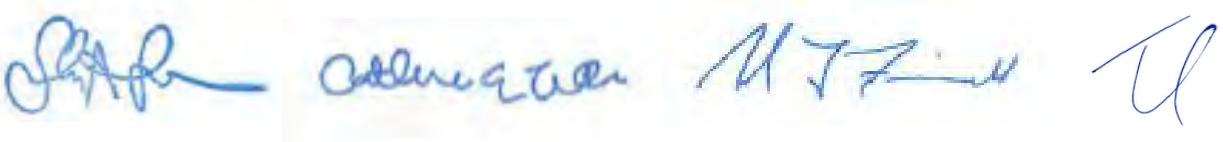

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Premier Medical Movement, LLC v Auto-Owners Ins Co, et al (COA – UNP 1/6/2022; RB #4374)

Michigan Court of Appeals; Docket #355543; Unpublished
Judges Boonstra, Gleicher, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

STATUTORY INDEXING:
One-Year Back Rule Limitation [§3145(1)]

TOPICAL INDEXING:
Assignment of Benefits – Validity and Enforceability

In this unanimous, unpublished, per curiam decision (Gleicher, concurring), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Premier Medical Movement, LLC's ("Premier") first-party action against Defendant Auto-Owners Insurance Company ("Auto-Owners"). The Court of Appeals held that the trial court did not err in dismissing Premier's first-party action—which Premier filed after obtaining an assignment from its patient, Natalian Ringo—because the assignment was executed in favor of a different entity altogether, Operation Wellness Group LLC ("OWG"). Therefore, under *Miller v Chapman Contracting*, 477 Mich 102 (2007), an amendment to substitute OWG for Premier would not relate back to the filing date of Premier's original complaint.

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Moriah Inc v American Auto Ins Co, et al (COA – UNP 1/6/2022; RB #4375)

Michigan Court of Appeals; Docket #355837; Unpublished
Judges Boonstra, Gleicher, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Reasonable Proof Requirement [§3142(2)]
General / Miscellaneous [§3142]
Requirement That Benefits Were Unreasonably Delayed or Denied [§3148(1)]
General / Miscellaneous [§3148]

TOPICAL INDEXING:
Attorney Fee Liens
Release and Settlements

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Plaintiff Moriah Incorporated's ("Moriah") motion to enforce an attorney charging lien against $168,735.56 in no-fault PIP benefits paid by Defendant American Automobile Insurance Company ("AAIC") directly to Moriah during the course of litigation, and for penalty interest and attorney fees under MCLs 500.3142 and 500.3148 on that amount. Moriah retained legal counsel to pursue more than $400,000 in unpaid PIP benefits from AAIC, and the retainer agreement provided that Moriah's counsel would be asserting " 'a lien . . . upon any and all settlements and/or adjustments resulting from this occurrence." During the course of litigation…

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Corbin v Meemic Ins Co, et al (COA – PUB 1/13/2022; RB #4376)

Michigan Court of Appeals; Docket #354672; Published
Judges Gadola, Markey, and Murray; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Determination of Domicile [§3114(1)]
Resident Relatives [3114(1)]
Separated and Divorced Spouses [3114(1)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order, in which it determined that Plaintiff Anya Corbin, a minor, was domiciled with her mother at the time of the subject motor vehicle collision, and that Defendant Farm Bureau General Insurance Company ("Farm Bureau"), therefore, was the highest priority insurer with respect to Corbin's claim for no-fault PIP benefits. The Court of Appeals held that the trial court erred in applying a sub-holding contained in a footnote in *Grange Ins Co of Mich v Lawrence*, 494 Mich 475 (2013) to the facts of this case. The footnote at issue instructs courts on how to determine the domicile of a minor whose parents have equal physical custody pursuant to the explicit terms of a custody order. In this case, the Court of Appeals noted that the consent order of filiation between Corbin's divorced parents left the custody arrangement up to their discretion, so long as they continued to cooperate…

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Jenkins v Suburban Mobility Auth for Regional Transp (COA – UNP 1/13/2022; RB #4377)

Michigan Court of Appeals; Docket #355452; Unpublished
Judges Boonstra, Cavanagh, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Revised Judicature Act – Arbitration (MCL 600.5001, Et Seq.)
Assignment of Benefits – Validity and Enforceability

In this unanimous, unpublished, per curiam decision (Boonstra, concurring), the Court of Appeals affirmed the trial court's order granting Defendant Suburban Mobility Authority for Regional Transportation's ("SMART") motion to strike and exclude certain of Plaintiff Alice Jenkins' claims for no-fault PIP benefits—those she had assigned to various medical providers—from arbitration. The Court of Appeals held, first, that the trial court had jurisdiction to decide whether Jenkins's assigned claims were subject to the arbitration agreement, and second, that Jenkins's assigned claims were not arbitrable under the terms of the parties' arbitration agreement, because those claims were no longer Jenkins's to pursue.

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Collins v Nizzi, et al (COA – UNP 1/13/2022; RB #4380)

Michigan Court of Appeals; Docket #354510, 354871; Unpublished
Judges Sawyer, Servitto, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Requirement that Benefits Were Unreasonably Delayed or Denied [§3148(1)]

TOPICAL INDEXING:
Evidentiary Issues

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the jury's verdict in Plaintiff Timmie Dewight Collins, Jr.'s first-party action against Defendant Auto-Owners Insurance Company ("Auto-Owners") and affirmed the trial court's denial of Collins's motion for no-fault attorney fees, but vacated the trial court's denial of Collins's motion for court costs. The Court of Appeals held (1) that Collins was not entitled to no-fault attorney fees because Auto-Owners' initial denial of the select claims for medical mileage Collins prevailed on at trial was not unreasonable; (2) that the jury's determination that Collins was not entitled to additional replacement services and work loss benefits was not against the great weight of the evidence; and (3) that the trial court erred in ruling that Collins was not the prevailing party at trial—even though the jury awarded him only $366.67 out of the approximately $79,000 in PIP benefits he was claiming—and denying his motion for court costs based on that ruling.

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Univ of Mich Regents v Mich Auto Ins Placement Facility, et al (COA – PUB 1/13/2022; RB #4379)

Michigan Court of Appeals; Docket #354808; Published
Judges Sawyer, Servitto, and Rick; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Cancellation and Rescission of Insurance Policies
Innocent Third Party Doctrine

In this unanimous, published, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff University of Michigan Regents' ("the University of Michigan" or "the University") first-party action against Defendants Michigan Automobile Insurance Placement Facility (MAIPF) and Falls Lake National Insurance Company ("Falls Lake"). The Court of Appeals held that a trial court must balance the equities before allowing a no-fault insurer to rescind a policy on the basis of fraud and deny the claims of an innocent third-party thereunder, even if the rescission was mutual—such as in this case, where Falls Lake, upon discovering that its insured committed fraud in procuring his no-fault policy, issued a refund to its insured who, in turn, endorsed and cashed the refund check.

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Gurley v Gartha, et al (COA – UNP 1/13/2022; RB #4378)

Michigan Court of Appeals; Docket #356988; Unpublished
Judges Boonstra, Cavanagh, and Riordan; 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)**]
Objective Manifestation Element of Serious Impairment (McCormick Era: 2010 – present) [§3135(5)**]
Important Body Function Element of Serious Impairment (McCormick Era: 2010 – present) [§3135(5)**]
General Ability / Normal Life Element of Serious Impairment (McCormick Era: 2010 – present) [§3135(5)**]
Causation Issues [§3135]

TOPICAL INDEXING:

Motor-Vehicle Exception to Governmental Tort Liability Act

In this unanimous, unpublished, per curiam decision, the Court of Appeals (1) affirmed the trial court's summary disposition order dismissing Plaintiff Jerilyn Nadine Gurley's third-party action against Defendant Russell Charles Gartha, a police officer for Defendant City of Southfield (or "the City"), in which Gurley alleged that Gartha acted with gross negligence in causing the subject motor vehicle collision, but (2) reversed the trial court's summary disposition order dismissing Gurley's third-party action against the City of Southfield. With respect to Gurley's claim against Gartha, the Court of Appeals held that Gartha was not grossly negligent by proceeding into an intersection with a red light, without his lights or siren activated, while responding to a call from a fellow officer for assistance. With respect to Gurley's remaining claim against the City of Southfield under the motor vehicle exception to governmental immunity, the Court of Appeals held that Gurley presented sufficient evidence to create a question of fact as to whether she suffered a serious impairment of body function as a result of the collision between her vehicle and Gartha's police cruiser.

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Rodgers v Champs Auto Sales, Inc (COA – UNP 1/20/2022; RB #4381)

Michigan Court of Appeals; Docket #355589, 355596; Unpublished
Judges Gleicher, Borrello, and Ronayne Krause; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Motor Vehicle Code (Civil Liability of Owner) (MCL 257.401)
Motor Vehicle Code (Definition of Owner) (MCL 257.37) (MCL 257.401a)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Tyrone Rodgers's third-party action against Defendant Champs Auto Sales, Inc. ("Champs"). The Court of Appeals held that a question of fact existed as to whether Champs was an owner of the vehicle that struck Rodgers as he crossed the street as a pedestrian.

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Mobile MRI Staffing LLC v Meemic Ins Co (COA – UNP 1/20/2022; RB #4389)

Michigan Court of Appeals; Docket #354694; Unpublished
Judges Sawyer, Servitto, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Legislative Purpose and Intent

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Meemic Insurance Company's ("Meemic") motion for summary disposition, in which Meemic sought dismissal of Plaintiff Mobile MRI Staffing LLC's ("Metro") first-party action against it. The Court of Appeals held that the 2019 amendments to the no-fault act—and to MCL 500.3145, specifically—do not apply retroactively. Metro's claims, therefore, in which it sought payment of charges more than one-year-old, but within one year of receiving a formal denial from Meemic, were barred by the pre-amendment version of the one-year-back rule.

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Precise MRI of Mich, LLC v State Auto Ins Co (COA – PUB 1/27/2022; RB #4382)

Michigan Court of Appeals; Docket #354653; Published
Judges Rick, Ronayne Krause, and Letica; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
PIP Benefits Not Payable for Certain Chiropractic Services [§3107b(b)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published, per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant State Auto Insurance Company's ("State Auto") motion for summary disposition, in which State Auto sought dismissal of Plaintiff Precise MRI of Michigan, LLC's ("Precise") first-party action against it. The Court of Appeals held that MRIs of State Auto's insured's spine and sacroiliac joints were compensable under the no-fault act, even though they were ordered by a chiropractor.

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Ravenell, et al v Auto Club Ins Assoc (COA – UNP 1/27/2022; RB #4383)

Michigan Court of Appeals; Docket #348436; Unpublished
Judges Swartzle, Jansen, and Borrello; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Reimbursement Based on a Mistake

In this unanimous, unpublished, per curiam decision, the Court of Appeals, on remand from the Supreme Court, affirmed the trial court's summary disposition order in favor of Plaintiff NGM Insurance Company ("NGM"), in NGM's equitable subrogation action against Defendant Auto Club Insurance Association ("ACIA"). In its earlier opinion, the Court of Appeals held that NGM acted as a "mere volunteer" when it mistakenly paid PIP benefits to Oliver Ravenell based on its initial belief that it was the highest priority insurer, and that its claim against ACIA for equitable subrogation failed as a result. The Supreme Court vacated the Court of Appeals' opinion and remanded the case back to the Court of Appeals for reconsideration in light of *Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan*, ___ Mich ___ (2021). The Court of Appeals applied *Esurance* on remand and held that NGM was not acting as a "mere volunteer" when it mistakenly paid Ravenell's benefits and was, therefore, entitled to reimbursement from ACIA.

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Jawad Al Shah, MD, PC v Liberty Mut Ins Co (COA – UNP 1/27/2022; RB #4384)

Michigan Court of Appeals; Docket #356062; Unpublished
Judges Gleicher, Borrello, and Ronayne Krause; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Coordination with Other Health and Accident Medical Insurance [3109a]

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 Jawad Al Shah, MD, PC's ("Insight") first-party action against Defendant Liberty Mutual Insurance Company ("Liberty Mutual"). The Court of Appeals held, first, that Ronald Stamps, Insight's patient/Liberty Mutual's insured, coordinated his Liberty Mutual no-fault policy with his Health Alliance Plan ("HAP") health insurance, such that HAP was primarily responsible for his collision-related medical treatment. The Court of Appeals held, second, that because Insight failed to present any evidence in support of its contention that it was entitled to balance bill Liberty Mutual after HAP paid for Stamps's treatment at a discounted rate, summary disposition was properly granted in Liberty Mutual's favor.

Read Full Summary

Micheli v Mich Auto Ins Placement Facility, et al (COA – PUB 2/10/2022; RB #4385)

Michigan Court of Appeals; Docket #356559; Published
Judges Gleicher, Borrello, and Ronayne Krause; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion; Link to Concurrence

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Independent (Insurance) Medical Evaluations
Evidentiary Issues

In this unanimous, published, per curiam decision (Gleicher, concurring), the Court of Appeals vacated the trial court's order denying Plaintiff Kathleen Micheli's subpoena of Defendant Citizens Insurance Company's ("Citizens") insurance medical examiner, in Micheli's first-party action against Citizens. The Court of Appeals held, first, that Micheli did not need to seek leave of the trial court before serving Citizens' insurance medical examiner (a nonparty) with a subpoena, seeking to discover information, financial and otherwise, related to the examiner's performance of insurance medical examinations (IMEs). The Court of Appeals held, second, that such information is not beyond the permissible scope of discovery. The Court of Appeals held, third, that the trial court failed to analyze whether Micheli's subpoena was "unreasonable and oppressive" under MCR 2.305(A)(4)(a), and therefore remanded to the trial court for consideration of that issue.

Read Full Summary

Ramirez v Home-Owners Ins Co, et al (COA – UNP 2/10/2022; RB #4386)

Michigan Court of Appeals; Docket #350884; Unpublished
Judges Boonstra, Borrello, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Conduct Establishing Unreasonable Delay or Denial
Penalty Attorney Fees and Other Court Rule Sanctions
Penalty Attorney Fees on Appeal

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals vacated the trial court's order granting Plaintiff Emil Ramirez's motion for no-fault attorney fees following a jury trial in which Ramirez was awarded $55,279.79 in overdue no-fault PIP benefits. The Court of Appeals held, first, that the trial court did not err in ruling that Defendant Home-Owners Insurance Company's denial of Ramirez's claims for no-fault PIP benefits was unreasonable for purposes of MCL 500.3148. The Court of Appeals held, second, that Ramirez was not barred by MCR 2.405 from collecting attorney fees—despite the fact that he failed to respond to Defendant's offer of judgment in the amount of $35,000, filed more than 42 days before trial—because MCL 600.2405(6) provides that attorney fees " 'may be taxed and awarded as costs' when 'authorized by statute or by court rule.' " Thus, even though Ramirez was not entitled to costs and fees under MCR 2.405, the trial court could still award attorney fees under MCL 500.3148. Despite these holdings, the Court of Appeals vacated the trial court's order, because the trial court failed to consider all the requisite factors for calculating a reasonable attorney fee before granting Ramirez's motion. Therefore, the Court of Appeals remanded back to the trial court for consideration of those factors.

Read Full Summary

Estate of Lawrence v Schauf, et al (COA – UNP 2/10/2022; RB #4387)

Michigan Court of Appeals; Docket #354872; Unpublished
Judges Borrello, Kelly, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Children as Dependents [§3110(1)]
Applicability of Comparative Fault to Noneconomic Loss Claims [§3135(2)]
Causation Issues [§3135]

TOPICAL INDEXING:
Evidentiary Issues
Revised Judicature Act – Impairment Due to Alcohol and DRUGS (MCL 600.2955(a))

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Estate of Krystal Gayle Lawrence's ("the Estate") first- and third-party actions against Defendants Sarah Elizabeth Schauf, Austin Patrick Martin, Progressive Marathon Insurance Company ("Progressive"), and Fremont Insurance Company ("Fremont"). With respect to the Estate's third-party claims against Defendants Shauf and Martin, the Court of Appeals held that the trial court did not err in ruling, as a matter of law, that Krystal Gayle was more than 50% at-fault for the subject pedestrian-versus-motor vehicle collision, and therefore barred from recovery by MCLs 600.2955a and MCL 500.3135. With respect to the Estate's first-party claim against Progressive and Fremont seeking survivor's loss benefits for Krystal Lawrence's surviving daughter, JL, the Court of Appeals held that JL was not domiciled with Lawrence at the time of the collision and that Lawrence failed to present any evidence that JL was "regularly" receiving support from Lawrence at the time of the collision.

Read Full Summary

Mull v Citizens Ins Co of the Midwest (COA – UNP 2/17/2022; RB #4388)

Michigan Court of Appeals; Docket #354725; Unpublished
Judges Rick, Murray, and Shapiro; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Disqualification for Unlawful Taking and Use of a Vehicle [§3113(a)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Citizens Insurance Company of the Midwest's ("Citizens") motion for summary disposition, seeking dismissal of Plaintiff Joseph Mull's first-party action against it. The Court of Appeals held that Mull's taking of the motorcycle he was operating when he crashed into a motor vehicle was unlawful for purposes of MCL 500.3113(a). In so holding, the Court relied on Mull's testimony that he "wasn't supposed to take the motorcycle" and did not ask the motorcycle's owner before doing so "because he knew she would say no."

Read Full Summary

Yee v AAA Ins (COA – UNP 2/24/2022; RB #4390)

Michigan Court of Appeals; Docket #356603; Unpublished
Judges Rick, Murray, and Shapiro; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Exclusions from Underinsured Motorist Benefits [Underinsured Motorist Coverage]

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant AAA Insurance's ("AAA") motion for summary disposition, in which it sought dismissal of Plaintiff Li Yun Yee's underinsured motorist claim against it. The Court of Appeals held that under the plain language of Yee's automobile insurance policy, she was excluded from pursuing a claim for underinsured motorist benefits after she was injured in a motor vehicle collision while traveling as a passenger in a motor vehicle owned by her husband.

Read Full Summary

Kennard v Liberty Mut Ins (COA – PUB 3/3/2022; RB #4391)

Michigan Court of Appeals; Docket #355462; Published
Judges Jansen, Cameron, and Rick; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Casualty Insurance Policies – Minimum Coverages and Required Provisions (MCL 500.3009)

In this unanimous, published decision authored by Judge Cameron, the Court of Appeals affirmed the trial court's summary disposition order dismissing Doris Kennard's first-party action against Liberty Mutual Insurance Company ("Liberty Mutual"). The Court of Appeals held that MCL 500.3012 did not operate to convert Kennard's Maryland automobile insurance policy into a Michigan no-fault insurance policy, after Kennard informed Liberty Mutual, in the middle of the policy term, that she was moving to Michigan.

Read Full Summary

Johnson v Liberty Mut Gen Ins Co, et al (COA – UNP 3/10/2022; RB #4392)

Michigan Court of Appeals; Docket #356559; Unpublished
Judges Borrello, Jansen, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

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

TOPICAL INDEXING:
Evidentiary Issues
Sudden Emergency Doctrine

In this unanimous, unpublished, per curiam decision (Boonstra, concurring), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Jonathan Johnson's third-party auto negligence action against Defendant Michael Aquilina. The Court of Appeals held that a question of fact existed as to whether Aquilina suffered a sudden emergency in the form of a first-time seizure immediately before rear-ending Johnson's vehicle. The Court further held that even if Aquilina had suffered a first-time seizure immediately before the crash, summary disposition would not have been proper based on that fact alone, as the sudden emergency doctrine is not an affirmative defense. Next, the Court of Appeals held that a question of fact existed as to whether Johnson satisfied the first and third prongs of the test for serious impairment of body function set forth in *McCormick v Carrier*, 487 Mich 180 (2010).

Read Full Summary

Schemahorn, et al v City of Niles, et al (COA – UNP 3/10/2022; RB #4393)

Michigan Court of Appeals; Docket #355028; Unpublished
Judges Riordan, Kelly, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Gross Negligence Exception to Governmental Immunity
Motor-Vehicle Exception to Governmental Tort Liability Act

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Sharyn Schemahorn's third-party auto negligence action against Defendants City of Niles, Police Officer Vincent Horton, and Police Officer Jenny Evans. The Court of Appeals held that Horton and Evans were not negligent in their pursuit of a fleeing suspect, who crashed into Schemahorn's vehicle while attempting to evade police.

Read Full Summary

Mentel v Emergent Health Partners, Inc, et al (COA – UNP 3/10/2022; RB #4394)

Michigan Court of Appeals; Docket #355788; Unpublished
Judges Jansen, Cameron, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Emergency Medical Services Act, MCL 333.20901, et seq

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff April Mentel's third-party auto negligence action against Defendant Matthew Leonard Voggenritter. The Court of Appeals held that Voggenritter, a paramedic who crashed an ambulance into Mentel's vehicle while responding to an emergency call, was not immune from liability under the emergency medical services act (EMSA), MCL 333.20901 et seq.

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Scarber, et al v Issa, et al (COA – UNP 3/10/2022; RB #4395)

Michigan Court of Appeals; Docket #356216; Unpublished
Judges Boonstra, Ronayne Krause, and Cameron; 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)**]
Determining Permanent Serious Disfigurement As a Matter of Law [§3135(1)(2)]
Causation Issues [§3135]

TOPICAL INDEXING:
Evidentiary Issues

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Nahsuante Scarber's third-party auto negligence action against Defendants Delvester Issa and Philip Accettura. The Court of Appeals held that Scarber did not present sufficient evidence to create a question of fact as to whether her injuries were causally connected to the subject motor vehicle collision. The Court also held that close-up photographs of Scarber's post-collision surgical scars were insufficient to demonstrate a permanent serious disfigurement.

Read Full Summary

Edwards, et al v Cormier, et al (COA – UNP 3/17/2022; RB #4396)

Michigan Court of Appeals; Docket #356754; Unpublished
Judges Redford, Sawyer, and Murray; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Motor Vehicle Exception to Governmental Tort Liability Act

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Rashaad Cormier's motion for summary disposition, in which Cormier sought dismissal of Plaintiff Shannon Edwards's third-party, gross negligence claim against him, and remanded for entry of an order granting Cormier's motion. The Court of Appeals held that Cormier, a Michigan State Police trooper, was not grossly negligent in performing a U-turn while attempting to effectuate a traffic stop, which resulted in a collision between his patrol car and Edwards's vehicle.

Read Full Summary

Hanback v MemberSelect Ins Co (COA – UNP 3/24/2022; RB #4397)

Michigan Court of Appeals; Docket #355098; Unpublished
Judges Cavanagh, Markey, and Servitto; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Exclusions from Underinsured Motorist Benefits

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant MemberSelect Insurance Company's ("MemberSelect") motion for summary disposition—in which MemberSelect sought dismissal of Plaintiff Brittney Hanback's action against it for underinsured motorist (UIM) coverage—and remanded for entry of summary disposition in MemberSelect's favor. The Court of Appeals held that Hanback could not pursue UIM coverage under her policy with MemberSelect because she failed to comply with the controlling provisions of the policy: specifically, that which required her to obtain MemberSelect's consent before settling her auto-negligence claim against the at-fault driver. In so holding, the Court concluded that a letter MemberSelect wrote to Hanback—in which it informed her that UIM coverage under her policy "would not come into play until all underlying policies had been exhausted through either a judgment or a settlement"—did not operate as a waiver of the consent provision.

Read Full Summary

Archangel Physical Therapy, LLC v State Farm Mut Auto Ins Co (COA – UNP 3/24/2022; RB #4398)

Michigan Court of Appeals; Docket #355220; Unpublished
Judges O'Brien, Shapiro, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Equitable Estoppel
Evidentiary Issues

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Archangel Physical Therapy, LLC's ("Archangel") first-party action against Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). The Court of Appeals held that Archangel failed to present any evidence in support of its claim that State Farm engaged in pre-suit negotiations in bad faith, with the intention of forestalling Archangel from filing its complaint until more than one year passed from the date Archangel last rendered treatment to State Farm's insured. As a result, the Court dismissed Archangel's argument that State Farm should be equitably estopped from invoking the one-year back rule as a defense against Archangel's claims.

Read Full Summary