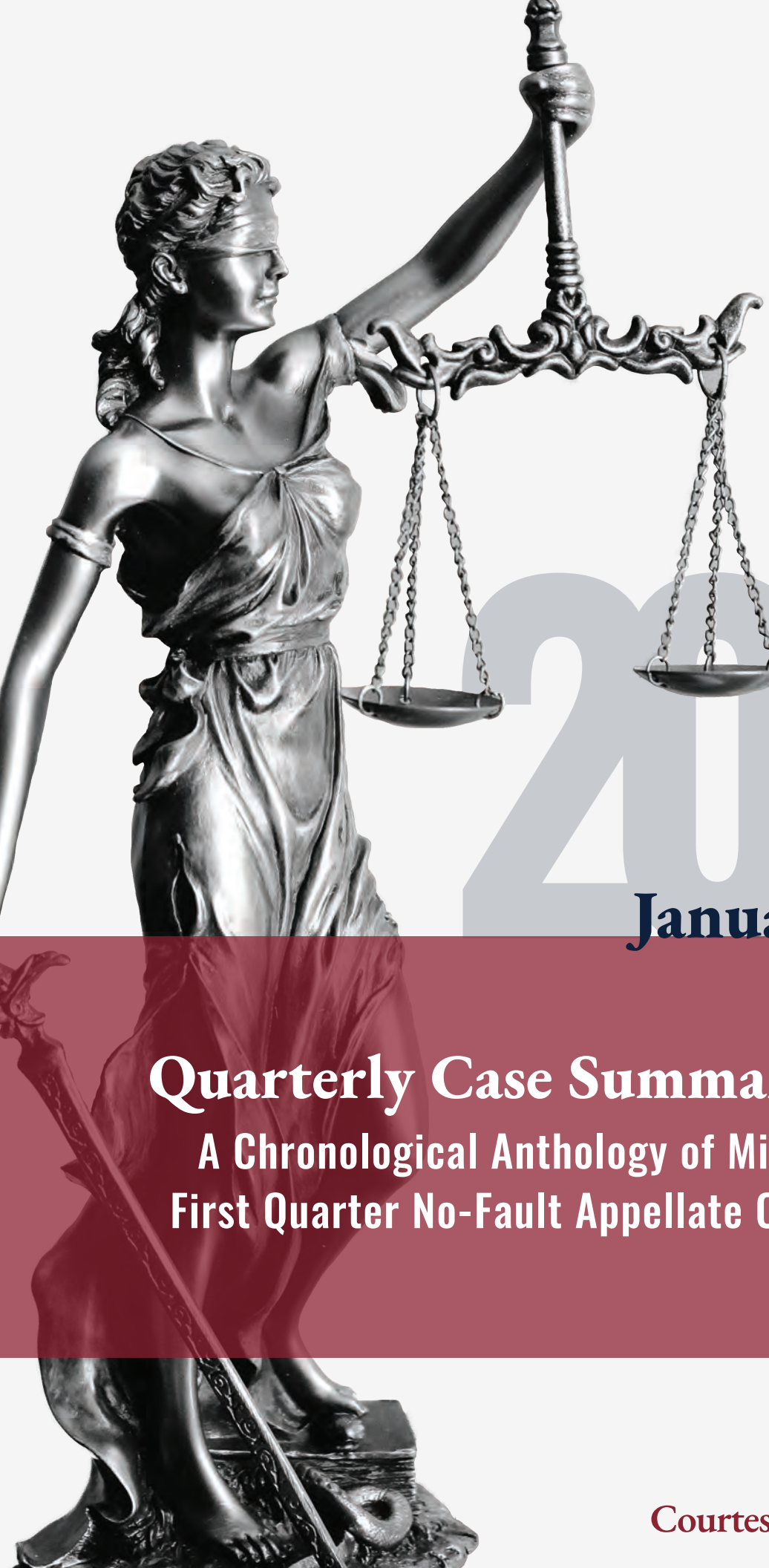

AUTO NOFAULT LAW.COM
BY SINAS DRAMIS

2023

January-March

Quarterly Case Summary Report:

A Chronological Anthology of Michigan's 2023 First Quarter No-Fault Appellate Case Summaries

Courtesy of AutoNoFaultLaw.com

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.

The site and its contents are managed by the AutoNoFaultLaw.com Editorial Board, presently consisting of the following individuals from the Sinas Dramis Law Firm: Stephen Sinas, Joel Finnell, Katie Tucker, and Ted Larkin. The Board is assisted by the hard work and efforts of Sinas Dramis Law Firm clerk Haley Wehner.

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 2023. The following provides an overview of the notable cases and developments this quarter.

Editor's Note

AutoNoFaultLaw.com continues the Sinas Dramis Law Firm's 40-year commitment to summarizing all auto No-Fault cases decided by Michigan's appellate courts. These summaries can be found under the "Case Summaries" heading on the website, but we are publishing this quarterly report to allow people to easily understand and track the cases that have been decided most recently.

In the Michigan Supreme Court

The Michigan Supreme Court granted two applications for leave to appeal in the first quarter of 2023: one in *Bellmore v Friendly Oil Change*; the other in *Flowers v Wilson*.

In *Bellmore*, Plaintiff Karen Bellmore sustained injury while getting her vehicle's oil changed at Friendly Oil Change, Inc. ("Friendly"). Bellmore's friend was driving her vehicle at the time—and after pulling into the service bay, a Friendly technician asked Bellmore to exit the vehicle and look under the hood of her vehicle. As Bellmore walked around to the front of the vehicle, she slipped and fell into the service pit below, which her friend had not pulled forward far enough to cover completely. Bellmore claimed PIP benefits related to the injuries she sustained in the fall from State Farm, asserting that she was engaged in "maintenance" of her vehicle for purposes of MCL 500.3105(1) at the time of the fall, or, alternatively, that her vehicle was parked in such a way so as to cause unreasonable risk of bodily injury for purposes of MCL 500.3106(1). The trial court found that Bellmore was entitled to PIP benefits for her injuries, but the Court of Appeals reversed and remanded for entry of summary disposition in State Farm's favor. Regarding MCL 500.3105(1), the Court of Appeals held that it was not any maintenance of the vehicle which caused Bellmore to fall into the service pit, but rather her "lack of attention to where she was walking." Regarding MCL 500.3106(1), the Court of Appeals held that "[u]nder these circumstances . . . [Bellmore's] vehicle was not 'parked' for purposes of the no-fault act" while it was being serviced (the Court declined to explain its reasoning). Plaintiff subsequently applied for leave to appeal to the Supreme Court, and in granting her application, the Supreme Court instructed the parties to file supplemental briefs regarding: (1) whether [Bellmore's] alleged injuries arose out of the maintenance . . . of a motor vehicle as a motor vehicle within the meaning of MCL 500.3105(1); and (2) whether [Bellmore's] motor vehicle was 'parked' within the meaning of MCL 500.3106(1)."

In *Flowers v Wilson*, Defendant Auto Club Insurance Association ("ACIA") paid only a fraction of the medical bills Tynina Flowers incurred as a result of a motor vehicle accident, and when Flowers filed suit to recover the balance, ACIA moved for summary disposition, arguing that because it had promised to defend and indemnify Flowers if her providers sued her for her unpaid balances, Flowers had not suffered any injury which would give her standing to sue ACIA. Flowers argued that the harm to her credit rating from having unpaid accounts constituted an injury, and the trial court agreed with her, denying ACIA's motion. The Court of Appeals then reversed the trial court and remanded for entry of summary disposition in Auto Club's favor, holding that *Lamothe v Auto Club Ins Ass'n*, 214 Mich App 577 (1995) was "directly on point" and controlled the

outcome in this case. In *LaMothe*, the Court of Appeals held that an insurer's promise to defend and indemnify its insured in the event that her provider sued her over her the portion of her bills that the insurer deemed "unreasonable" and refused to pay, "was legally enforceable . . . and, therefore, the plaintiff was not harmed by the insurer's actions, which required dismissal of the plaintiff's case." As to the issue of Flowers's credit, the Court of Appeals wrote, "Auto Club has repeatedly represented to this court that its promise to indemnify and defend Flowers also obligates it to protect her credit." Following the Court of Appeals' decision, Flowers applied for leave to appeal to the Supreme Court, and the Supreme Court granted her application, instructing the parties to file supplemental briefs

> addressing whether an insurer's partial payment of the insured's medical expenses on the basis of what the insurer considers reasonable, along with the insurer's promise to defend and indemnify the insured with respect to any remaining liability to the insured's healthcare providers if they challenge the amounts paid or seek additional payment, deprives the insured of a cause of action for personal protection insurance benefits for allowable expenses pursuant to MCL 500.3107(1)(a).

In its Order, the Supreme Court also invited the Coalition Protecting Auto No-Fault, the Insurance Alliance of Michigan, and Michigan Defense Trial Counsel, Inc., to file briefs amicus curiae.

Eight Published Decisions from the Michigan Court of Appeals

The Michigan Court of Appeals submitted eight opinions for publication in the first quarter of 2023: *Howard v LM Gen Ins Co*, *King v Select Specialists, LLC*, *Progressive Marathon Ins Co v Pena*, *Al-Hajjaj v Hartford Accident and Indemnity Co*, *Farrar v Suburban Mobility Auth for Regional Transp*, *Advance Therapy & Rehab Inc v Auto-Owners Ins Co*, *Centria Home Rehab, LLC v Philadelphia Indemnity Ins Co*, and *C-Spine Orthopedics, PLLC v Progressive Marathon Ins Co.*

Howard v LM Gen Ins Co featured a dispute over PIP benefits and a dispute over underinsured motorist ("UIM") coverage. Melvina Howard was involved in a motor vehicle accident while driving a 2008 Mercury Mariner, which was covered under an automobile insurance policy issued by LM General Insurance Company to both Howard and one Jasmine Bartell. After the accident, Howard applied for PIP benefits under the policy, but LM denied her claim and attempted to rescind the policy after discovering that Bartell had committed fraud approximately three weeks prior to the accident—by

adding a GMC Yukon to the policy and misrepresenting that she was its owner and that it was garaged at her house (it was actually her relative's vehicle, and garaged at her relative's house in Detroit). Howard filed suit against LM, arguing that it could not deny her claim for PIP benefits based on Bartell's unrelated fraud, and LM filed a motion for summary disposition, arguing that it could. The trial court agreed with Howard and denied LM's motion, and the Court of Appeals affirmed. In its analysis, the Court of Appeals noted that for LM to deny Howard's claim based on Bartell's misrepresentations, LM would need to show that the reason it became obligated for Howard's claim was because it relied on Bartell's misrepresentations. The Court of Appeals then determined that LM could not make this showing, because LM became obligated for Howard's claim when it decided to insure the Mercury Mariner, which occurred years before Bartell made any misrepresentations about the GMC Yukon. In other words, Bartell's misrepresentations were not "material" to LM's decision to insure the Mercury Mariner, and, therefore, LM also could not deny Howard's claim for UIM coverage under the policy, which, by its plain language, only allowed for rescission based on a "material misrepresentation."

King v Specialists, LLC featured a husband and wife's claims for PIP benefits and auto negligence claims. Emanuel King and Tiffany King were dual residents of Michigan and Georgia, and both were injured in a car accident caused by Mary Ann Page. The Kings' vehicle that they were traveling in at the time of the accident was insured under a Georgia insurance policy which did not provide for Michigan No-Fault coverage, and thus, after the accident, both Emanuel and Tiffany applied for PIP benefits through the Michigan Automobile Insurance Placement Facility ("MAIPF"). The MAIPF denied both their claims based on the fact that they were Michigan residents who failed to maintain Michigan No-Fault coverage at the time of the accident, and in the Kings' subsequent lawsuit against the MAIPF and Page, the MAIPF moved for summary disposition based on MCL 500.3113(b), and Page moved for summary disposition based on MCL 500.3135(2)(c). The trial court granted summary disposition as to all defendants, and the Court of Appeals affirmed in all regards except Tiffany King's auto negligence claim against Page. Regarding the Kings' claims for PIP benefits, the Court determined that both Emanuel and Tiffany were owners of the vehicle involved in the accident—Tiffany the titled owner; Emanuel a constructive owner—and therefore barred from benefits under MCL 500.3113(b). Regarding Emanuel King's auto negligence claim against Page, the Court determined that he was barred from recovery in tort for the accident by MCL 500.3135(2)—because he was both a constructive owner and the operator of the vehicle involved in the accident. Tiffany, however, was merely a passenger at the time of the

accident, and thus she was not barred under MCL 500.3135(2) from recovering against Page.

Progressive Marathon Ins Co v Pena featured a question about whether existing automobile insurance policies were automatically changed on July 2, 2020—the effective date of various amendments to the Insurance Code and the No-Fault Act. In March of 2020, Brittney Giddings purchased an automobile insurance policy from Progressive, with bodily injury liability coverage up to $20,000 per accident/$40,000 per occurrence—the minimum amounts required under the version of MCL 500.3009 then in effect. On August 5, 2020, Giddings caused a motor vehicle accident in which two others—Michael Pena and Krystle Sewell—were injured, after which Progressive filed an action for declaratory relief against Pena and Sewell, seeking an order from the trial court that Giddings's liability coverage limits were unchanged by the amendments to MCL 500.3009 which went into effect on July 2, 2020. Progressive moved for summary disposition on that basis, but the trial court denied its motion, ruling that on July 2, 2020, Giddings's policy was automatically converted into one with bodily injury liability coverage of $250,000 per accident/$500,000 per occurrence—the minimum amounts required under the amended version of MCL 500.3009. The Court of Appeals then reversed the trial court, holding that Giddings's policy underwent no changes on July 2, 2020 as a result of the 2019 amendments to the Insurance Code and the No-Fault Act. By their plain language, the amendments were only to apply to policies "delivered or issued for delivery . . . *after* July 1, 2020 (emphasis added)."

Al-Hajjaj v Hartford Accident and Indemnity Co featured a dispute over whether an independent insurance agent was acting as an agent of the insurance company or the prospective insured when facilitating a transaction between the two. The prospective insured, Ahmed Al-Hajjaj, had inquired with Sam Saeidi, an independent insurance agent for Golden Insurance Agency, LLC ("Golden"), about purchasing commercial automobile insurance. Saeidi recommended that Al-Hajjaj purchase a commercial policy from Hartford—one of ten insurers for which Golden sold policies—and submitted an application to Hartford on Al-Hajjaj's behalf. The application apparently misrepresented the nature of Al-Hajjaj's business, but Hartford issued the policy and either did not discover, or did not take exception to, the misrepresentations until after Al-Hajjaj was injured in a motor vehicle accident and made a claim for PIP benefits under the policy. After receiving Al-Hajjaj's claim, Hartford notified Al-Hajjaj that it was rescinding the policy based on the misrepresentations in the application, and in response, Al-Hajjaj filed suit against Hartford for breach of contract. Hartford then moved for summary disposition, arguing that there was no question of fact that Al-Hajjaj committed fraud in the policy's procurement, and Al-Hajjaj opposed the motion, alleging that Saeidi

provided the inaccurate information in the application, and that Saeidi's knowledge of the inaccurate information was imputed to Hartford because Saeidi was acting as Hartford's agent—not Al-Hajjaj's—during the transaction. Al-Hajjaj's argument in the latter regard was two-fold. First, he argued that a 2018 amendment to Chapter 12 of the Insurance Code abrogated the common law principle that an independent insurance agent acts as the agent of the insured—not the insurance company—when facilitating a transaction between the two. Second, he argued that the contract between Golden and Hartford—in which Golden agreed to sell Hartford policies—established that Saeidi was acting as Hartford's agent when facilitating the transaction. The trial court ultimately ruled in Al-Hajjaj's favor and denied Hartford's motion, but the Court of Appeals reversed. The Court of Appeals determined that the 2018 amendments to chapter 12 of the Insurance Code only abrogated the aforementioned common law principle regarding independent insurance agents in one specific circumstance: where "the insured and the insurer each have their own contractual agents, and those agents in turn have a contractual relationship with each other." This case presented an entirely different scenario, and thus Al-Hajjaj's first argument as to why Golden was acting as Hartford's agent during the transaction failed. As for his second argument, the Court of Appeals found that Golden's contract with Hartford was a standard independent insurance agent contract, which did not establish Golden's employees as agents of Hartford when selling Hartford policies.

Farrar v Suburban Mobility Auth for Regional Transp featured a dispute over whether an insured had standing to pursue PIP benefits assigned to his providers. Marcel Farrar was injured while traveling as a passenger on a SMART bus, and he assigned his right to pursue PIP benefits related to the treatments he received for his injuries to his various medical providers. Farrar then filed suit against SMART over the assigned benefits, and a dispute arose over whether he still had standing to pursue them. One of his providers, Focus Imaging, LLC ("Focus"), attempted to intervene to pursue the benefits to which it had been assigned, and SMART moved for summary disposition, arguing (1) that Farrar was no longer the real party in interest with respect to any claims he assigned to his providers, and (2) that Focus—as an intervening party not asserting new claims—could not rely on the filing date of Farrar's complaint, and was therefore barred from pursuing the claims to which it was assigned by the one-year-back rule. The trial court disagreed as to both arguments and denied SMART's motion, but the Court of Appeals reversed. The Court of Appeals held that once Farrar executed assignments in favor of his providers, the providers became the real parties in interest with respect to the assigned benefits, "and only they could sue to recover those benefits." The Court then held that Focus could not rely on the filing date of Farrar's complaint in order to circumvent one-

year-back rule, adopting its analysis in *Lakeland Neurocare Ctrs v Everest Nat'l Ins Co*, unpublished opinion of the Court of Appeals, issued October 8, 2019 (Docket No. 340346), in which it held that when an intervening plaintiff seeks not 'to add new claims or defenses . . . but rather, to assert the same claims as plaintiffs, but as a different party," the claims do not relate back to the filing date of the original plaintiff's complaint.

Advance Therapy & Rehab Inc v Auto-Owners Ins Co featured a dispute over a no-fault insurer's obligation to pay for out-of-pocket medical expenses. Andre Yglesias coordinated his No-Fault coverage with his PPO health insurance, and under the terms of his PPO plan, Yglesias was covered for treatment received by both in-network and out-of-network services—although there was a higher annual deductible for the latter. After becoming injured in a motor vehicle accident, Yglesias received physical therapy from an out-of-network provider, Advance Therapy & Rehab Inc ("Advance"), but when Advance billed Yglesias's PPO health insurer, CIGNA, CIGNA refused the bill because Yglesias had not yet met his deductible for out-of-network services. Advance Therapy then submitted the bill to Auto-Owners—Yglesias's No-Fault insurer—but Auto-Owners also refused to pay, claiming that under *Tousignant v Allstate Ins Co*, 444 Mich 301 (1993), a secondary No-Fault insurer does not have to pay its insured's out-of-pocket medical expenses if the insureds does not mitigate its out-of-pocket expenses by seeking less expensive, in-network treatment. Advance proceeded to file suit over its unpaid charges, and Auto-Owners moved for summary disposition based on *Tousignant*, which the trial court denied. The Court of Appeals then affirmed the trial court's denial, holding that *Tousignant* did not apply to this case and that, under the plain language of the "excess medical" provision in Yglesias's policy, Auto-Owners was required to pay for the treatment he received from Advance. The "excess medical" provision only required that Yglesias do two things to trigger Auto-Owners' obligation to pay: (1) receive treatment from a provider that was covered by his health insurance, and (2) seek payment for said treatment from his health insurer before turning to Auto-Owners. Yglesias' treatment with Advance was covered by his health insurance—CIGNA just did not pay for it because Yglesias had not yet met his annual deductible for out-of-network treatment—and Advance did seek payment from CIGNA before turning to Auto-Owners. Therefore, Auto-Owners' was obligated to pay under the plain language of the policy, and as for *Tousignant*—which dealt with an HMO plan that explicitly excluded out-of-network coverage, and a plaintiff who failed to establish that she could not receive the services at issue from an in-network provider— the Court of Appeals found nothing in the Supreme Court's opinion requiring an insured to "minimize the cost to a secondary no-fault insurer by maximizing the amount that the primary health insurer will cover."

Centria Home Rehab, LLC v Philadelphia Indemnity Ins Co featured a dispute over the proper way in which to litigate "reasonable charge" disputes. After being injured in a car accident, Philadelphia Indemnity Insurance Company's ("Philadelphia") insured, Nicholas Randall, received treatment from Centria Home Rehab, LLC ("Centria"). Centria billed Philadelphia for Randall's treatment, but Philadelphia disputed the reasonableness of Centria's rates and paid only a fraction of its charges for Randall's treatment. Centria proceeded to file suit against Philadelphia pursuant to an assignment it obtained from Randall, and Philadelphia moved for summary disposition, arguing that under *McGill v Auto Ass'n of Mich*, 207 Mich App 402 (1995) and *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577 (1996), Centria did not have standing to bring its action. More specifically, Philadelphia argued that because it had an obligation to defend and indemnify Randall if Centria ever sued him over his unpaid balance, Randall (or Centria—his assignee, standing in his shoes) had not suffered any injury as a result of Philadelphia's refusal to pay Centria's full charges, and therefore had no cause of action against Philadelphia. The trial court agreed with Philadelphia and granted its motion for summary disposition, but the Court of Appeals reversed, holding that Centria could settle its "reasonable charge dispute" by suing Phildaelphia, and distinguishing *McGill* and *LaMothe* based on (1) the fact that those cases did not involve assignments, and (2) the fact that in neither of those cases did the healthcare providers, themselves, actually take issue with the partial payments.

C-Spine Orthopedics, PLLC v Progressive Mich Ins Co featured a dispute over whether a treatment provider could pursue a direct cause of action against an insurer, despite having sold the benefits at issue to various factoring companies before filing suit. Sandra Cruz and Jose-Cruz Muniz were both injured in a motor vehicle accident, and both received treatment from C-Spine Orthopedics, PLLC ("C-Spine"). After treating the Cruzes, C-Spine began experiencing cash flow problems which forced it to sell the Cruzes' debts to various factoring companies, as well as to assign to the various factoring companies the right to pursue PIP benefits related to the Cruzes' treatments (which the Cruzes' originally assigned to C-Spine). C-Spine then filed suit against Progressive, the Cruzes' No-Fault insurer, seeking the very benefits it had just sold and assigned to the various factoring companies, and Progressive moved for summary disposition, arguing that C-Spine was no longer the real party in interest with respect to the Cruzes' benefits. The trial court agreed and granted Progressive's motion, but the Court of Appeals reversed, observing that under MCR 2.201(B)(1), 'a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.' Providers are authorized by statute (MCL 500.3112) to assert direct causes of action

against insurers, and thus C-Spine could sue Progressive in its own name, and without joining the factoring companies for whose benefit the action was brought.

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

Michigan appellate courts issued opinions in 39 cases dealing with Michigan's No-Fault Act in the first quarter of 2023. Those cases are broken down categorically, below:

1. 32 featured claims for No-Fault PIP benefits, of which:

    a. Two featured disputes over ownership for purposes of MCL 500.3101
    Jenkins v McCarver
    King v Select Specialists, LLC

    b. One featured a dispute over whether a person's injuries arose of a motor vehicle accident for purposes of MCL 500.3105(1)
    Kovach v Citizens Ins Co

    c. One featured a dispute over whether an injured person's ongoing need for medical treatment arose out of a motor vehicle accident for purposes of MCL 500.3105(1)
    Withers v Sentinel Ins Co Ltd

    d. One featured a dispute over the compensability of ADA-accessible housing pursuant to MCL 500.3107(1)(a)
    Centria Home Rehab, LLC v Progressive Marathon Ins Co

e. Two featured disputes over the proper way in which to litigate "reasonable charge" disputes pursuant to MCL 500.3107(1)(a)
Centria Home Rehab, LLC v Philadelphia Indemnity Ins Co
Progressive Mich Ins Co v Centria Home Rehab, LLC

f. Two featured disputes over whether a provider could pursue a direct cause of action against an insurer under MCL 500.3112, despite having sold the right to pursue the PIP benefits at issue to various factoring companies
C-Spine Orthopedics, PLLC v Allstate Ins Co
C-Spine Orthopedics, PLLC v Progressive Marathon Ins Co

g. One featured a dispute over whether a vehicle was taken unlawfully for purposes of MCL 500.3113(b)
Davis, Sr v MetLife Ins Co

h. Two featured disputes over whether motor vehicle/motorcycle owners/operators were disqualified from receiving PIP benefits under MCL 500.3113(b)
Jenkins v McCarver
King v Select Specialists, LLC

i. One featured a dispute over domicile for purposes of MCL 500.3114(1)
Farm Bureau Gen Ins Co of Mich v State Farm Mut Auto Ins Co

j. One featured a priority dispute pursuant to MCL 500.3114
Ridenour v Progressive Marathon Ins Co

k. One featured a dispute over the "one-year-back" rule in MCL 500.3145(1)
Farrar v Suburban Mobility Auth for Regional Trans

l. Two featured disputes over whether the pre- or post-2019-amendment version of MCL 500.3145 applied to injured persons' claims for PIP benefits
Health Partners, Inc v Progressive Mich Ins Co
Reid v Progressive Mich Ins Co

m. Four featured disputes over whether PIP claimants were entitled to attorney fees under MCL 500.3148
AdvisaCare Healthcare Solutions, Inc v Progressive Marathon Ins Co
Alkasemi v Auto-Owners Ins Co
Mauer v Farm Bureau Gen Ins Co
McLaughlin v Tavenner

n. Two featured disputes over whether treatments were "lawfully rendered" for purposes of MCL 500.3157
Maple Manor Rehab Center of Novi, Inc v Allstate Ins Co
Maple Manor Rehab Center of Novi, Inc v Progressive Mich Ins Co

o. One featured a preliminary injunction being ordered against an insurer, preventing it from applying the new fee schedule in MCL 500.3157 to the No-Fault claim of a person injured prior to the effective date of the 2019 amendments to the No-Fault Act
Buller v Titan Ins Co

p. One featured a dispute over whether an injured person was disqualified from receiving PIP benefits through the MAIPF pursuant to MCL 500.3173
Davis, Sr v MetLife Ins Co

q. One featured a dispute over whether an injured person committed a "fraudulent insurance act" for purposes of MCL 500.3173a(2)
Rodriguez v Farmers Ins Exch

r. One featured a dispute over whether policies issued before July 2, 2020 were affected by the 2019 amendments to the Insurance Code and the No-Fault Act
Progressive Marathon Ins Co v Pena

s. Four featured attempts to cancel or rescind automobile insurance policies because of fraud
Farm Bureau v Meadows
Howard v LM Gen Ins Co
Richardson v Menifee
Al-Hajjaj v Hartford Accident and Indemnity Co

t. One featured an attempt to deny an entire claim for PIP benefits on the basis of fraud
Reed v State Farm Mut Auto Ins Co

u. One featured a dispute over the applicability of the doctrines of collateral estoppel and/or res judicata
Flint Region ASC, LLC v Hartford Accident & Indemnity Co

v. One featured a dispute over the applicability of the innocent third party doctrine
Farm Bureau v Meadows

w. One featured a dispute over whether a plaintiff insured should have been allowed to amend an answer to an interrogatory regarding his insurance coverage at the time of the subject motor vehicle accident
Robinson v Wolverine Mut Ins Co

x. One featured a dispute over the applicability of the mend-the-hold doctrine
Ridenour v Progressive Marathon Ins Co

y. One featured a dispute over the validity and enforceability of an assignment
Flint Region ASC, LLC v Hartford Accident & Indemnity Co

z. One featured a dispute over whether an injured person has standing to pursue PIP benefits previously assigned to his providers
Farrar v Suburban Mobility Auth for Regional Transp

aa. One featured a dispute over whether an insurer defendant set forth an allegation of fraud in its affirmative defenses with sufficient particularity
Richardson v Menifee

bb. One featured an attempt to reopen a case and enforcement certain aspects of a settlement agreement pertaining to a claim for PIP benefits
AdvisaCare Healthcare Solutions, Inc v Progressive Marathon Ins Co

cc. One featured a dispute over whether an independent insurance agent was acting as an agent of the insurance company or the prospective insured when he facilitated a transaction between the two
Al-Hajjaj v Hartford Accident and Indemnity Co

dd. One featured a dispute over whether a No-Fault insurer was required to pay for out-of-pocket expenses incurred by a patient who coordinated his No-Fault insurance with his PPO health insurance plan
Advance Therapy & Rehab Inc v Auto-Owners Ins Co

ee. One featured a dispute between insurers over who was responsible for an injured person's ongoing medical treatment, given that the person was involved in two separate motor vehicle accidents and had a different insurer at the time of both
Withers v Sentinel Ins Co Ltd

2. Seven featured automobile negligence claims, of which:

    a. One featured a dispute over whether the driver and/or passenger of a motor vehicle involved in an accident were barred from recovery in tort for the injuries pursuant to MCL 500.3135(2)©
    King v Select Specialists, LLC

    b. Two featured disputes over factual causation and/or whether drivers of motor vehicles acted negligently
    Craig v Wegienka
    Estate of Bell v Knapp

    c. Three featured automobile negligence claims filed under the "motor vehicle exception" to the Governmental Tort Liability Act, and disputes over whether government employees negligently operated motor vehicles
    Hannah v Raspotnik
    Johnson v Suburban Mobility Auth for Regional Transp
    Saucillo v City of Detroit

    d. One featured a claim of gross negligence against an individual government employee
    Hannah v Raspotnik

    e. Two featured disputes over the applicability of the "sudden emergency doctrine"
    Estate of Bell v Knapp
    Johnson v Suburban Mobility Auth for Regional Transp

f. One featured a dispute between insurers as to who was responsible for providing liability coverage to a driver who caused an accident, as well as one of the insurers' claim for reimbursement against the other insurer for the amount the former paid to settle an automobile negligence claim against the driver.
Home-Owners Ins Co v AMCO Ins Co

3. Two featured claims for uninsured or underinsured motorist coverage, of which:
   a. One featured a dispute over whether a defendant driver was operating an "underinsured motor vehicle" as that term was defined in the plaintiffs' policy
   Shaw v Nowakowski

   b. One featured an attempt to deny uninsured or underinsured motorist coverage because of fraud
   Howard v LM Gen Ins Co

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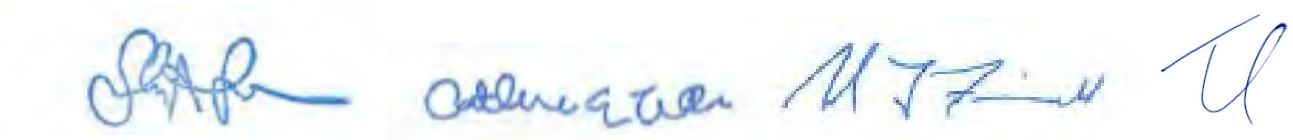

Stephen Sinas Catherine Tucker Joel Finnell Ted Larkin

Howard, et al v LM Gen Ins Co, et al (COA – PUB 1/12/2023; RB #4524)

Michigan Court of Appeals; Docket #357110; Published
Judges Shapiro, Rick, and Garrett; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Cancellation and Rescission of Insurance Policies
Fraud/Misrepresentation
Exclusions from Underinsured Motorist Benefits [Underinsured Motorist Coverage]

In this unanimous, published, per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant LM General Insurance Company's ("LM") motion for summary disposition, seeking dismissal of Plaintiff Melvina Howard's action for no-fault PIP benefits and underinsured motorist ("UIM") coverage. With respect to Howard's claim for PIP benefits, the Court of Appeals held that LM could not rescind Howard's policy and deny her claim thereunder based on misrepresentations Howard's coinsured made regarding a vehicle that was not involved in the accident and was added to the policy approximately only after its original procurement. With respect to Howard's claim for UIM benefits, the Court held that although LM could deny coverage as to all insureds based on the misrepresentations of only one insured, it could not do so in this case, because the policy's antifraud provision only allowed for voidance of the policy if the misrepresentation was of a "material fact or circumstance." In this case, the Court found, Howard's coinsured's misrepresentation was not material to Howard's claim.

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Farm Bureau v Meadows, et al (COA – UNP 1/12/2023; RB #4525)

Michigan Court of Appeals; Docket #358188; Unpublished
Judges Cavanagh, O'Brien, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Innocent Third Party Doctrine

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Defendant Pioneer State Mutual Insurance Company's ("Pioneer") motion for summary disposition, in which it sought dismissal of Plaintiff Farm Bureau Insurance Company's ("Farm Bureau") reimbursement action against it. The Court of Appeals held that the equities weighed in favor of rescinding the subject Pioneer insurance policy, even as to the claim of an innocent third party thereunder.

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Jenkins v McCarver, et al (COA – UNP 1/12/2023; RB #4526)

Michigan Court of Appeals; Docket #359051; Unpublished
Judges Cavanagh, O'Brien, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Definition of Owner [§3101(3)(l)(iii)]
Disqualification for Uninsured Owners or Registrants of Involved Motor Vehicles or Motorcycles [§3113(b)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Johnna Jenkins's (Personal Representative of the Estate of James Jenkins) action for no-fault PIP benefits against Defendant Farmers Insurance Exchange ("Farmers"). The Court of Appeals held that a question of fact existed as to whether James Jenkins was a constructive owner of the uninsured motorcycle he was operating at the time of the subject accident, such as would preclude him from receiving PIP benefits for the injuries he sustained in the accident pursuant to MCL 500.3113(b).

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Craig v Wegienka, et al (COA – UNP 1/12/2023; RB #4527)

Michigan Court of Appeals; Docket #359764; Unpublished
Judges Cavanagh, O'Brien, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Negligence-Duty

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Ethan Tyler Craig's auto negligence action against Defendant Timothy Lee Wegienka. The Court of Appeals held that Craig failed to present sufficient evidence to create a question of fact as to whether Wegienka's conduct was the cause in fact of the subject motor vehicle-versus-pedestrian collision.

Read Full Summary

King, et al v Select Specialists, LLC, et al (COA – PUB 1/19/2023; RB #4528)

Michigan Court of Appeals; Docket #359064; Published
Judges Yates, Jansen, and Servitto; Authored by Judge Yates
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Disqualification for Uninsured Owners or Registrants of Involved Motor Vehicles or Motorcycles [§3113(b)]
Disqualification for Uninsured Owners/Operators for Noneconomic Loss [§3135(2)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published decision authored by Judge Yates, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiffs Tiffany Lachell King's and Emanuel King, III's claims for no-fault PIP benefits against Defendant Michigan Automobile Insurance Placement Facility ("MAIPF"), as well as Emanuel King's auto negligence action against Defendant Mary Ann Page. The Court of Appeals then reversed that portion of the trial court's order dismissing Tiffany King's auto negligence action against Page. With respect to the Kings' claims against the MAIPF, the Court of Appeals held that both Tiffany and Emanuel were barred from recovering PIP benefits relative to the subject accident by MCL 500.3113(b). Both were Michigan residents at the time of the accident, and both were "owners" the vehicle involved, however, neither had in effect the security required by sections 3101 or 3103 of the No-Fault Act at the time of the accident. With respect to Emanuel King's claim against Page, the Court of Appeals held that King was barred from recovery in tort by MCL 500.3135(2)(c), because he constructively owned and was operating an uninsured vehicle involved in the accident. With respect to Tiffany King's claim against Page, the Court held that she was so barred because she was merely a passenger in the uninsured vehicle at the time of the accident.

Read Full Summary

Home-Owners Ins Co v AMCO Ins Co (COA – UNP 1/19/2023; RB #4529)

Michigan Court of Appeals; Docket #357273; Unpublished
Judges Riordan, Markey, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Insurer Reimbursement – Other Scenarios [No-Fault Insurer Claims for Reimbursement]

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant AMCO Insurance Company's ("AMCO") motion for summary disposition, in which AMCO sought reimbursement from Plaintiff Home-Owners Insurance Company ("Home-Owners") for the amount it paid to settle the tort claim of Jerry Wineland. The Court of Appeals held that a no-action clause in Home-Owners' policy was not enforceable under the particular circumstances present in the case and that AMCO was not barred from proceeding with its action for reimbursement. The Court did, however, remand for a determination of whether AMCO settled with Wineland in good faith, as well as a determination of whether the settlement amount was reasonable.

Read Full Summary

Alkasemi v Auto-Owners Ins Co (COA – UNP 1/19/2023; RB #4531)

Michigan Court of Appeals; Docket #359519; Unpublished
Judges Kelly, Boonstra, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Requirement That Benefits Were Unreasonably Delayed or Denied [§3148(1)]
Bona Fide Factual Uncertainty / Statutory Construction Defense [3148(1)]
Conduct Establishing Unreasonable Delay or Denial [3148(1)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Tracy Alkasemi (as Guardian of Hannah Tabroksi, LIP) claim for attorney fees against Defendant Auto-Owners Insurance Company ("Auto-Owners"), and remanded for the Court to properly address Alkasemi's claim for penalty interest. With respect to Alkasemi's claim for attorney fees, the Court of Appeals held that Auto-

Owners unreasonably delayed in making payment of Tabroski's PIP benefits. Auto-Owners waited approximately one year after Tabroski was injured in a motorcycle-versus-motor vehicle accident to pay Tabroski's PIP benefits, based on its adjuster's belief that the burden of proof was on Tabroski to prove that she was not a constructive owner of the motorcycle involved in the accident, which she was traveling on as a passenger at the time. The Court of Appeals noted that "the law places the burden on defendant to justify a delay in coverage," and that there was never any evidence to suggest that Tabroski was a constructive owner of the motorcycle.

Read Full Summary

Davis, Sr, et al v MetLife Ins Co, et al (COA – UNP 1/19/2023; RB #4532)

Michigan Court of Appeals; Docket #359313; Unpublished
Judges Cavanagh, O'Brien, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Disqualification for Unlawful Taking and Use of a Vehicle [§3113(a)]
Persons Disqualified from Receiving Benefits Through the Assigned Claims Facility [§3173]

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 Joseph Davis, Sr.'s action for no-fault PIP benefits against Defendants MetLife Insurance Company ("MetLife") and the Michigan Automobile Insurance Placement Facility ("MAIPF"). The Court of Appeals held that there was no question of fact that Davis had taken the vehicle he was operating at the time of the accident "unlawfully" for purposes of MCL 500.3113(a), and that he was therefore barred from recovering PIP benefits under the vehicle's owner's No-Fault policy with MetLife. The Court of Appeals further held that because Davis was barred from recovering PIP benefits under the MetLife policy by MCL 500.3113(a), he was also barred from recovering PIP benefits from the MAIPF by MCL 500.3173.

Read Full Summary

Flint Region ASC, LLC v Hartford Accident & Indemnity Co (COA – UNP 1/19/2023; RB #4533)

Michigan Court of Appeals; Docket #360950; Unpublished
Judges Cavanagh, O'Brien, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Collateral Estoppel and Res Judicata
Assignments of Benefits – Validity and Enforceability

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Flint Region ASC, LLC's ("ASC") action for No-Fault PIP benefits against Defendant Hartford Accident & Indemnity Company ("Hartford"). The Court of Appeals held that under Mecosta Co Med Ctr v Metro Group Prop & Cas Ins Co, ___ Mich ___ (2022), ASC's claim was not barred by res judicata, which Hartford sought to invoke based on the fact that ASC's patient/assignor, Thomas Fields, settled his separate lawsuit against Hartford, releasing Hartford from liability for any past and future PIP benefits related to the accident. ASC obtained its assignment before Fields and Hartford settled Fields's separate lawsuit, and thus, under Mecosta, ASC could not be said to have been in privity with Fields at the time of settlement for purposes of res judicata.

Read Full Summary

Saucillo v City of Detroit, et al (COA – UNP 1/19/2023; RB #4534)

Michigan Court of Appeals; Docket #360352; Unpublished
Judges Hood, Cameron, and Garrett; 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 affirmed the trial court's denial of Defendant City of Detroit's motion for summary disposition, in which it sought dismissal of Plaintiff Jacqueline Saucillo's auto negligence action. The Court of Appeals held that Saucillo presented sufficient evidence to create a question of fact as to whether a City of Detroit bus driver was negligent in his operation of the bus Saucillo was traveling on at the time of her injuries.

Read Full Summary

Centria Home Rehab, LLC, et al v Progressive Marathon Ins Co, et al (COA – UNP 1/19/2023; RB #4536)

Michigan Court of Appeals; Docket #359891; Unpublished
Judges Kelly, Boonstra, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Allowable Expenses for Home Accommodations [§3107(1)(a)]
Allowable Expenses for Room and Board [§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 Residential Care Solutions, LLC's ("RCS") action for No-Fault PIP benefits against Defendant Progressive Marathon Insurance Company ("Progressive"). The Court of Appeals held that under *Admire v Auto-Owners Ins Co*, 494 Mich 10 (2013), Alonzo White's rent payments for the ADA-accessible housing he required as a result of the catastrophic injuries he sustained in a motor vehicle accident were not compensable under the No-Fault Act.

Read Full Summary

Richardson v Menifee, et al (COA – UNP 1/19/2023; RB #4537)

Michigan Court of Appeals; Docket #359818; Unpublished
Judges Kelly, Boonstra, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Fraud/Misrepresentation
Issues Regarding Affirmative Defenses

In this unanimous, unpublished, per curiam decision, the Court of Appeals vacated the trial court's summary disposition order dismissing Plaintiff Diana Richardson's (as personal representative of the Estate of Naomi Richardson) action for No-Fault PIP benefits against Defendant Integon National Insurance Company ("Integon"), and remanded for consideration of whether Integon should be permitted to amend its affirmative defenses to allege fraud against Richardson with the required specificity applicable to fraud. The Court of Appeals held that Integon failed to set forth specific facts regarding Richardson's alleged fraud in its affirmative defenses, as is required by Glasker-Davis v Auvenshire, 333 Mich App 222 (2020), but that it should be allowed to move to amend its affirmative defenses.

Read Full Summary

Withers, et al v Sentinel Ins Co Ltd, et al (COA – UNP 1/20/2023; RB #4535)

Michigan Court of Appeals; Docket #360119; Unpublished
Judges Cavanagh, O'Brien, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Entitlement to PIP Benefits: Arising Out of / Causation Requirement [§3105(1)]
General/Miscellaneous [§3114]

TOPICAL INDEXING:
Evidentiary Issues

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order in favor of Defendant Sentinel Insurance Company Limited ("Limited"), in Sentinel's priority dispute with Defendant Progressive Michigan Insurance Company ("Progressive"). The Court of Appeals held that a question of fact existed as to whether Cherisse Withers's ongoing medical treatment were related to injuries she sustained in either a 2010 motor vehicle accident—at which time she was insured by Sentinel—or a 2012 motor vehicle accident—at which time she was insured by Progressive—or both.

Read Full Summary

Progressive Marathon Ins Co v Pena, et al (COA – PUB 1/26/2023; RB #4538)

Michigan Court of Appeals; Docket #358849; Published
Judges Kelly, Murray, and Riordan; Authored by Judge Murray
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)
Legislative Purpose and Intent

In this unanimous, published decision authored by Judge Murray, the Court of Appeals reversed the trial court's order denying Plaintiff Progressive Marathon Insurance Company's ("Progressive") motion for summary disposition. The Court of Appeals held that automobile insurance policy, issued prior to July 2, 2020 and providing bodily injury liability coverage up to $20,000 per person/$40,000 per occurrence, were not automatically converted into a policy

with bodily injury liability coverage of at least $250,000 per person/$500,000 per occurrence on July 2, 2020, under the amended version of MCL 500.3009. The Court of Appeals reasoned that such automatic conversion did not occur, , just as the various subsections of the No-Fault Act which also provided for coverage changes effective July 1, 2020 (MCL 500.3107c, MCL 500.3107d, MCL 500.3109a, and MCL 500.3135) did not affect policies issued prior to July 1, 2020.

Read Full Summary

Al-Hajjaj v Hartford Accident and Indemnity Co, et al (COA – PUB 1/26/2023; RB #4539)

Michigan Court of Appeals; Docket #359291; Published
Judges Hood, Swartzle, and Redford; Authored by Judge Swartzle
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Insurance Agents (Duty to Insured)

In this unanimous, published decision authored by Judge Swartzle, the Court of Appeals reversed the trial court's denial of Defendant Hartford Accident and Indemnity Company's ("Hartford") motion for summary disposition, in which it sought dismissal of Plaintiff Ahmed Al-Hajjaj's action for No-Fault PIP benefits. At issue was whether an independent insurance agency, Golden Insurance Agency, LLC ("Golden"), was acting as an agent of Al-Hajjaj (insured), or Hartford (insurer), when it facilitated Al-Hajjaj's purchase of a Hartford commercial automobile insurance policy. The Court of Appeals ultimately held that Golden was an agent of Al-Hajjaj with respect to the transaction, despite (1) 2018 amendments to Chapter 12 of the Insurance Code which the Court noted might, under certain circumstances (none present in this case), abrogate the common law principle that an independent insurance agent is an agent of the insured, not the insurer, and (2) a standard independent insurance agent contract between Golden and Hartford.

Read Full Summary

Rodriguez v Farmers Ins Exch (COA – UNP 1/26/2023; RB #4540)

Michigan Court of Appeals; Docket #359067; Unpublished
Judges Cavanagh, O'Brien, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Fraudulent Insurance Acts [§3173a]

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 David Rodriguez's action for No-Fault PIP benefits against Defendant Farmers Insurance Exchange ("Farmers"). The Court of Appeals held that there was no question of fact that Rodriguez committed a "fraudulent insurance act" for purposes of MCL 500.3173a(2), by failing to disclose numerous past injuries and medical events in his application for PIP benefits through the MAIPF.

Read Full Summary

Reed v State Farm Mut Auto Ins Co (COA – UNP 1/26/2023; RB #4541)

Michigan Court of Appeals; Docket #359083; Unpublished
Judges Yates, Jansen, and Servitto; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Fraud/Misrepresentation

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Harley Reed's action for No-Fault PIP benefits against Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). The Court of Appeals held that a question of fact existed as to whether Reed committed fraud when making representations about his injuries to State Farm, and whether State Farm could deny his claim as a result. Notably, the Court of Appeals declined to apply *Williams v Farm Bureau Mut Ins Co of Mich*, 335 Mich App 574 (2021) to this case, because State Farm was seeking to deny Reed's claim for PIP benefits under his policy, not void his policy altogether. The Court further interpreted *Meemic Ins Co v Fortson*, 506 Mich 287 (2020) as standing for the proposition that the Plaintiff's entire claim for PIP benefits could be denied on the basis of fraud, even aspects of it that are unrelated to any fraud.

Read Full Summary

Hannah v Raspotnik, et al (COA – UNP 2/2/2023; RB #4542)

Michigan Court of Appeals; Docket #358189; Unpublished
Judges Patel, Borrello, and Shapiro; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed (1) the trial court's denial of Defendant Mason County Road Commission's ("MCRC") motion for summary disposition, in which it sought dismissal of Plaintiff Dustin Hannah's automobile negligence action on governmental immunity grounds, (2) the trial court's dismissal of Hannah's gross negligence count against Stanley Raspotnik, and (3) the trial court's denial of Hannah's motion for sanctions, filed in response to what he argued was a frivolous motion filed by the defendants' regarding "serious impairment of body function." The Court of Appeals held, preliminarily, that it had jurisdiction over MCRC's appeal—brought under MCR 7.202(6)(a)(v)—because the trial court effectively denied MCRC's claim of governmental immunity by finding that a question of fact existed as to whether Raspotnik was negligent in causing the subject accident. The Court of Appeals held, second, that a question of fact existed as to whether Hannah's oncoming vehicle presented an "immediate hazard" to Raspotnik, such that Raspotnik should have remained stopped at his flashing red light before proceeding into the intersection where the accident occurred. The Court held, third, that even if Raspotnik failed to check his blind spot before entering the intersection, such a failure does not rise to the level of gross negligence. And the Court held, fourth, that it was not clearly erroneous for the trial court to have found that the defendants' motion for summary disposition—regarding Hannah's injuries and the "serious impairment of body function standard" in MCL 500.3135—was not frivolous. The defendants filed their motion despite having spoken to Hannah's neurosurgeon four months prior—the same neurosurgeon who later executed an affidavit averring that Hannah's lumbar spine injuries were accident-related. Hannah argued that the neurosurgeon 'must' have shared his opinion regarding causation with the defendants during this earlier conversation, but the Court of Appeals held that that was purely speculative.

Read Full Summary

Farrar, et al v Suburban Mobility Auth for Regional Transp (COA – PUB 2/9/2023; RB #4543)

Michigan Court of Appeals; Docket #358872, 358884; Published
Judges Cavanagh, Kelly, and Garrett; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

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

TOPICAL INDEXING:
Assignments of Benefits – Validity and Enforceability

In this unanimous, published, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Suburban Mobility Authority for Regional Transportation's ("SMART") motions for summary disposition, in which it sought dismissal of Plaintiff Focus Imaging, LLC's ("Focus") action for No-Fault PIP benefits, as well as certain aspects of Plaintiff Marcel Farrar's action for No-Fault PIP benefits.. The Court of Appeals held, first, that Focus Imaging, LLC ("Focus")— Farrar's treater/assignee, and an intervening plaintiff in Farrar's action against SMART—could not rely on the filing date of Farrar's action for purposes of the one-year-back rule under MCL 500.3145, reasoning that Focus Imaging was pursuing the same claims of plaintiff but as a different part, and, therefore, Focus' complaint did not relate back to the filing date Farrar's complaint The Court of Appeals held, second, that Farrar could not sue SMART for benefits he had assigned to various other providers because he was no longer the real party in interest with respect to those benefits.

Read Full Summary

C-Spine Orthopedics, PLLC v Progressive Marathon Ins Co (COA – UNP 2/9/2023; RB #4544)

Michigan Court of Appeals; Docket #358773; Unpublished
Judges Gleicher, Servitto, and Yates; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion, Link to Concurrence

STATUTORY INDEXING:
Statutory Right of Service Providers to Assert Direct Causes of Action Against Insurers [§3112]

TOPICAL INDEXING:
Assignments of Benefits – Validity and Enforceability
Medical Provider Standing (Post-Covenant)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff C-Spine Orthopedics, PLLC's ("C-Spine") action for No-Fault PIP benefits against Defendant Progressive Marathon Insurance Company

("Progressive"). Relying on C-Spine Orthopedics, PLLC v Progressive Marathon Ins Co, ___ Mich App ___ (2022) ("C-Spine I"), the Court of Appeals held that C-Spine could sue Progressive for PIP benefits it assigned to various factoring companies, even before (or without) obtaining counter-assignments from the factoring companies. Under MCR 2.201(B)(1), 'a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought,' and under MCL 500.3112, providers can assert direct causes of action against insurers. Thus, even if C-Spine filed suit before obtaining counter-assignments from the factoring companies, it could still sue Progressive for the assigned benefits in its own name, without joining the factoring companies.

Read Full Summary

Mauer v Farm Bureau Gen Ins Co (COA – UNP 2/9/2023; RB #4545)

Michigan Court of Appeals; Docket #359690; Unpublished
Judges Patel, Borrello, and Shapiro; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Requirement That Benefits Were Unreasonably Delayed or Denied [§3148(1)]
Conduct Establishing Unreasonable Delay or Denial [§3148(1)]
Penalty Attorney Fees on Appeal

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's award of attorney fees to Plaintiff Beth Maurer, after a jury returned a verdict in her favor in her action for No-Fault PIP benefits against Defendant Farm Bureau General Insurance Company ("Farm Bureau"). The Court of Appeals held that the trial court did not err in finding that it was unreasonable for Farm Bureau to withhold Maurer's PIP benefits. Farm Bureau based its denial on (1) the opinions of two insurance medical examiners ("IMEs"), and (2) the fact that Maurer failed to complete a detoxification program it insisted she undergo, but the Court found the examiners' opinions dubious—especially in light of the contrary opinions of Maurer's actual treating physicians—and found no authority in support of Farm Bureau's argument that it could make payment of Maurer's PIP benefits contingent on her undergoing a detoxification program.

Read Full Summary

Johnson v Suburban Mobility Auth for Regional Transp, et al (COA – UNP 2/16/2023; RB #4546)

Michigan Court of Appeals; Docket #359478; Unpublished
Judges Cavanagh, Kelly, and Garrett; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:	TOPICAL INDEXING:
Not Applicable	Motor-Vehicle Exception to Governmental Tort Liability Act Negligence-Duty Sudden Emergency Doctrine

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Suburban Mobility Authority for Regional Transportation's ("SMART") motion for summary disposition, in which it sought dismissal of Plaintiff Samone Johnson's auto negligence action. The Court of Appeals held that a question of fact existed as to whether Ronald Pressley—the driver of the SMART bus Johnson was traveling on—was negligent in rear-ending a vehicle whose driver, Shane Webster, changed into Pressley's lane, then slammed on his brakes to avoid rear-ending the vehicle in front of him.

Read Full Summary

Farm Bureau Gen Ins Co of Mich v State Farm Mut Auto Ins Co, et al (COA – UNP 2/21/2023; RB #4547)

Michigan Court of Appeals; Docket #358675; Unpublished
Judges Hood, Jansen, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:

Determination of Domicile [§3114(1)]

TOPICAL INDEXING:

Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Plaintiff Farm Bureau General Insurance Company of Michigan's ("Farm Bureau") motion for summary disposition, in which it sought a declaration from the trial court that Defendant State Farm Mutual Automobile Insurance Company ("State Farm") was the highest priority insurer with respect to David Munger's claim for No-Fault PIP benefits. After evaluating the factors for determining a No-Fault claimant's domicile at the time of a motor vehicle accident, set forth in Workman v Detroit Auto Inter-Ins Exchange, 404 Mich 477 (1979) and Dairyland Ins Co v Auto Owners Ins Co, 123 Mich App 675 (1983), the Court of Appeals held that a question of fact existed as to whether Munger was domiciled with his parents—State Farm's insureds—or his girlfriend's grandparents—Farm Bureau's insureds—at the time of the subject accident.

Read Full Summary

Buller v Titan Ins Co, et al (COA – UNP 2/21/2023; RB #4548)

Michigan Court of Appeals; Docket #360439; Unpublished
Judges Cavanagh, Servitto, and Garrett; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:

Not Applicable

TOPICAL INDEXING:

2019 PA 21 – Retroactivity
Injunctive and Equitable Relief in PIP Cases

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's order granting Plaintiff Brandon Buller a preliminary injunction against Defendant Titan Insurance Company ("Titan"), preventing Titan from applying the new No-Fault fee schedule to Buller's claim for PIP benefits—which arose out of a motor vehicle accident in 1994—during the pendency of the case. Considering its recent decision in *Andary v USAA Cas Ins Co*, ___ Mich App ___ (2022), the Court of Appeals held that the trial court did not abuse its discretion by awarding a preliminary injunction against Titan, ordering that, for the remainder of litigation, Titan continue paying for Buller's care at the rate the parties agreed upon prior to the 2019 amendments to the No-Fault Act.

Read Full Summary

Advance Therapy & Rehab Inc v Auto-Owners Ins Co (COA – PUB 3/2/2023; RB #4549)

Michigan Court of Appeals; Docket #359673; Published
Judges Kelly, Murray, and Swartzle; Authored by Judge Swartzle
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Coordination with HMO and PPO Coverages [§3109a]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published decision authored by Judge Swartzle, the Court of Appeals affirmed the trial court's denial of Defendant Auto-Owners Insurance Company's ("Auto-Owners") motion for summary disposition, in which it sought dismissal of Plaintiff Advance Therapy & Rehab Inc's ("Advance Therapy") action for No-Fault PIP benefits. The Court of Appeals held that under the "excess medical" provision in Andre Yglesias's coordinated No-Fault policy, Auto-Owners had to pay for the treatment he received from Advance Therapy—an out-of-network provider which, although covered under Yglesias's preferred provider organization ("PPO") health insurance plan, was more expensive to Yglesias than in-network treatment.

Read Full Summary

Centria Home Rehab, LLC v Philadelphia Indemnity Ins Co, et al (COA – PUB 3/2/2023; RB #4550)

Michigan Court of Appeals; Docket #359372; Published
Judges Kelly, Murray, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Statutory Right of Service Providers to Assert Direct Cause of Action Against Insurers [§3112]
Prohibition Against Assigning Future Right to Benefits [§3143]

TOPICAL INDEXING:
Assignments of Benefits—Validity and Enforceability
Fraud/Misrepresentation
Intervention by Service Providers and Third Party Payors in PIP Claims
Medical Provider Standing (Post-Covenant)

In this unanimous, published, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Centria Home Rehabilitation, LLC's ("Centria") action for unpaid No-Fault PIP benefits against Defendant Philadelphia Indemnity Insurance Company ("Philadelphia"). Centria provided treatment to Nicholas Randall—Philadelphia's insured—but Philadelphia paid only a fraction of Centria's charges. Centria obtained an

assignment from Randall and filed suit over the unpaid balance, but Philadelphia moved for summary disposition, invoking *McGill v Auto Ass'n of Mich*, 207 Mich App 402 (1995) and *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577 (1996). Philadelphia argued that because it had an obligation to defend and indemnify Randall if Centria ever sued him over his unpaid balance, Randall (or his assignee, standing in his shoes) had not suffered any injury as a result of Philadelphia's refusal to pay Centria's full charges, and therefore had no cause of action. The Court of Appeals disagreed, distinguishing *McGill* and *LaMothe* based on (1) the fact that those cases did not involve assignments and (2) the fact that in neither of those cases did the healthcare providers, themselves, actually take issue with the partial payments. The Court of Appeals also noted that "the implications of a ruling in defendant's favor are fraught with peril and uncertainty," and that to agree with defendant's position "would be contrary to the purpose of the no-fault act, which is to 'provid[e] assured, adequate, and prompt recovery for economic loss arising from motor vehicle accidents.' " Thus, the Court held that in cases such as this, insureds or their assignee providers can pursue unpaid balances from insurers in litigation, which is vastly preferable to providers suing their patients to settle "reasonable charge" disputes.

Read Full Summary

Ridenour v Progressive Marathon Ins Co (COA – UNP 3/2/2023; RB #4551)

Michigan Court of Appeals; Docket #356734, 356815; Unpublished
Judges Kelly, Shapiro, and Patel; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion, Link to Concurrence

STATUTORY INDEXING:
Exception for Occupants [§3114(4)]
Named Insured [§3114]

TOPICAL INDEXING:
Mend the Hold
Interpretation of Insurance Contracts

In this unanimous, unpublished, per curiam decision (Shapiro, concurring), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Zachary Ridenour's action for No-Fault PIP benefits against Defendant Progressive Marathon Insurance Company ("Progressive"). The Court of Appeals held, first, that although Ridenour was listed as an "additional driver" on his friend, Floyd Layport's policy with Progressive, Progressive was neither Ridenour's insurer, nor in the order of priority for payment of Ridenour's PIP benefits related to the accident. The Court of Appeals held, second, that Progressive was not precluded from raising its priority defense by the "mend-the-hold" doctrine, which Ridenour argued applied because Progressive originally denied his claim based on fraud. The Court of Appeals held, third, that the trial court did not err in denying Ridenour's motion to amend his complaint to add a claim for promissory estoppel, because Ridenour failed to identify any promise Progressive made to him regarding PIP coverage when it added him as an "additional driver" to Layport's policy.

Read Full Summary

Kovach v Citizens Ins Co, et al (COA – UNP 3/2/2023; RB #4552)

Michigan Court of Appeals; Docket #359474; Unpublished
Judges Rick, Kelly, 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:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Kenneth Kovach's action for No-Fault PIP benefits against Defendant Citizens Insurance Company ("Citizens"). Applying *McPherson v McPherson*, 493 Mich 294 (2013) to the case at bar, the Court of Appeals held that Kovach was not entitled to PIP benefits for the treatment of a subdural hematoma he developed after a fall. The fall was caused by vertigo Kovach developed after suffering a concussion in a motor vehicle accident, but under *McPherson*, the Court held that the relationship between the hematoma and the motor vehicle accident was too attenuated for Kovach to be entitled to PIP benefits under MCL 500.3105(1).

Read Full Summary

Estate of Bell v Knapp, et al, et al (COA – UNP 3/9/2023; RB #4554)

Michigan Court of Appeals; Docket #358641; Unpublished
Judges Gleicher, Kelly, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion, Link to Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Negligence-Duty
Sudden Emergency Doctrine

In this 2-1, unpublished decision (Kelly, dissenting), the Court of Appeals affirmed the trial court's denial of Defendant Jeffrey Knapp's motion for summary disposition, in which Knapp sought dismissal of Plaintiff Estate of Omari Bell's ("the Estate") wrongful death action against him. The Court of Appeals held that a question of fact existed as to whether Knapp was negligent in running over Bell, a pedestrian. Knapp testified that he did not see Bell walking on the freeway before crashing into him, but the Court noted that his testimony was subject to a credibility determination by the jury, especially considering two other motorists did observe Bell walking in the freeway and called 9-1-1 before Knapp crashed into him.

Read Full Summary

Progressive Mich Ins Co v Centria Home Rehab, LLC (COA – UNP 3/9/2023; RB #4555)

Michigan Court of Appeals; Docket #359555; Unpublished
Judges Kelly, Murray, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Allowable Expenses: Reasonable Charge Requirement [§3107(1)(a)]
Allowable Expenses: Claims by Service Providers [§3107(1)(a)]
Statutory Right of Service Providers to Assert Direct Causes of Action Against Insurers [§3112]

TOPICAL INDEXING:
Medical Provider Standing (Post-Covenant)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Defendant Centria Home Rehabilitation's ("Centria") counterclaim against Plaintiff Progressive Michigan Insurance Company ("Progressive"), in which Centria sought the difference between what it billed for treatment rendered to Samantha Calhoun, and what Progressive paid for said treatment. Progressive argued that under McGill v Auto Ass'n of Mich, 207 Mich App 402 (1994) and LaMothe v Auto Club Ins Ass'n, 214 Mich App 577 (1995), Centria's counterclaim had to be dismissed because "the proper method for challenging the reasonableness of an insurer's payments to a healthcare provider is through a lawsuit brought by the provider against the insured." The Court of Appeals held, however, that this case was actually controlled by the recent decision in Centria Home Rehab, LLC v Philadelphia Indemnity Ins Co, ___ Mich App ___ (2023), in which it held that when there is a dispute between a provider and its patient's insurer over the reasonableness of the provider's charges, the provider does have standing to pursue the balance directly from the provider, especially if the provider is acting under an assignment, as was the case here.

Read Full Summary

Reid v Progressive Mich Ins Co (COA – UNP 3/9/2023; RB #4556)

Michigan Court of Appeals; Docket #359412; Unpublished
Judges Rick, Kelly, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Accrual of PIP Benefits [§3110(4)]
One-Year Back Rule Limitation [§3145(1)]
One-Year Back Rule Limitation – tolling under 2019 amendments [§3145(1)]

TOPICAL INDEXING:
2019 PA 21 – Retroactivity

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Progressive Michigan Insurance Company's ("Progressive") motion for summary disposition, in which Progressive sought dismissal of Plaintiff Krystyna Reid's action for No-Fault PIP benefits against it. The Court of Appeals held, first, that the pre-2019-amendment version of MCL 500.3145 applied to Reid's claims for benefits related to services she received prior to June 11, 2019 (the amendment's effective date), and that the post-amendment version of MCL 500.3145 (which introduced "formal denial" tolling) applied to Reid's claims for benefits related to services she received after June 11, 2019. Therefore, Reid—who filed her lawsuit on November 4, 2020—was barred from recovery on her pre-June 11, 2019 claims by the former version of the one-year-back rule. The Court also held, however, that Reid was barred from recovery on her post-June 11, 2019 claims, as well, because the facts showed that she did not actually submit those claims until after filing her lawsuit, and thus could not avail herself of "formal denial" tolling.

Read Full Summary

Health Partners, Inc v Progressive Mich Ins Co (COA – UNP 3/9/2023; RB #4557)

Michigan Court of Appeals; Docket #359096; Unpublished
Judges Patel, Borrello, and Shapiro; 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:
2019 PA 21 – Retroactivity

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Progressive Michigan Insurance Company's ("Progressive") motion for summary disposition, in which Progressive sought dismissal of Plaintiff Health Partners, Inc.'s ("Health Partners") action for unpaid No-Fault PIP benefits against it. The claims at issue all accrued prior to June 11, 2019, and thus, in reliance on *Spine Specialists of Michigan, PC v MemberSelect Ins Co* ___ Mich App ___ (2023), the Court of Appeals held that the former version of MCL 500.3145 applied to this case, and that Health Partners' claims were barred thereunder.

Read Full Summary

Maple Manor Rehab Center of Novi, Inc, et al v Allstate Ins Co, et al (COA – UNP 3/16/2023; RB #4558)

Michigan Court of Appeals; Docket #358272; Unpublished
Judges Murray, Riordan, and Yates; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Lawfully Rendered Treatment [§3157]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiffs Maple Manor Rehab Center of Novi, Inc. ("Maple Manor Rehab Center") and Maple Manor Neuro Center, Inc.'s ("Maple Manor Neuro Center") action for unpaid No-Fault PIP benefits against Defendant Allstate Insurance Company ("Allstate"). The Court of Appeals held that a question of fact existed as to whether the treatment at issue was provided by Maple Manor Rehab Center—a licensed health care provider—or Maple Manor Neuro Center—which was not a licensed health care provider and held itself out as merely the billing agent for Maple Manor Rehab Center. If provided by Maple Manor Rehab Center, the services would have been "lawfully rendered" for purposes of MCL 500.3157.

Read Full Summary

Maple Manor Rehab Center of Novi, Inc, et al v Progressive Mich Ins, et al (COA – UNP 3/16/2023; RB #4559)

Michigan Court of Appeals; Docket #360172; Unpublished
Judges Murray, Riordan, and Yates; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Lawfully Rendered Treatment [§3157]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiffs Maple Manor Rehab Center of Novi, Inc. ("Maple Manor Rehab Center") and Maple Manor Neuro Center, Inc.'s ("Maple Manor Neuro Center") action for unpaid No-Fault PIP benefits against Defendant Progressive Michigan Insurance ("Progressive"). The Court of Appeals held that a question of fact existed as to whether the treatment at issue was provided by Maple Manor Rehab Center—a licensed health care provider—or Maple Manor Neuro Center—which was not a licensed health care provider and held itself out as merely the billing agent for Maple Manor Rehab Center. If provided by Maple Manor Rehab Center, the services would have been "lawfully rendered" for purposes of MCL 500.3157.

Read Full Summary

McLaughlin v Tavenner, et al (COA – UNP 3/23/2023; RB #4560)

Michigan Court of Appeals; Docket #359660; Unpublished
Judges Rick, Shapiro, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Conduct Establishing Unreasonable Delay or Denial [§3148]
Calculating Attorney Fees Not Based on Contingent Fee [§3148]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed in part, and vacated in part, the trial court's order awarding attorney fees to Plaintiff Marvel McLaughlin, after finding that Defendant Allstate Fire & Casualty Insurance Company ("Allstate") unreasonably delayed in paying McLaughlin's work loss benefits and allowable expense benefits, as well as a lien asserted by McLaughlin's health insurer. The Court of Appeals held, first, that the trial court did not err in finding Allstate's approximately 11-month delay in paying McLaughlin's work loss benefits "unreasonable," where Allstate never communicated to McLaughlin what additional information it needed to process her claim, or even that it did, apparently, need additional information to process her claim. The Court of Appeals held, second, that the trial court did not err in finding Allstate's 12-month delay in paying a lien asserted by

McLaughlin's health insurer "unreasonable," where Allstate conceded at a pretrial hearing more than year after receiving notice of the lien that it did not know why the lein had not been paid. The Court of Appeals held, third, that the trial court failed to conduct a 'fact-specific inquiry' before determining that Allstate unreasonably delayed in paying McLaughlin's other medical expenses. And the Court of Appeals held, fourth, that the trial court failed to follow the proper process for determining attorney fees under MCL 500.3148(1)—set forth in *Pirgu v United Servs Auto Ass'n*, 499 Mich 269 (2016)—before determining calculating the fee amount. Thus, the Court remanded to the trial court to conduct the aforementioned 'fact-specific inquiry' and to complete the *Pirgu* analysis before ordering an award.

Read Full Summary

AdvisaCare Healthcare Solutions, Inc v Progressive Marathon Ins Co (COA – UNP 3/30/2023; RB #4561)

Michigan Court of Appeals; Docket #359631; Unpublished
Judges Kelly, Boonstra, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Release and Settlements
Equitable Estoppel

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed in part, and vacated in part, the trial court's order granting Plaintiff AdvisaCare Healthcare Solutions, Inc.'s ("AdvisaCare") motion to re-open its case against Defendant Progressive Marathon Insurance Company ("Progressive"). The parties reached a settlement in AdvisaCare's action for No-Fault PIP benefits, after which they executed a settlement agreement which explicitly provided that certain charges for medical equipment would be excluded from the settlement amount because Progressive had already agreed to pay them. The settlement agreement also said that any disputes regarding the terms of the agreement would remain within the trial court's jurisdiction under the established case number. AdvisaCare later claimed that Progressive did not pay six of the equipment charges specified in the settlement agreement (Progressive presented evidence that it had, in fact, paid four of the charges), and thus the trial court granted AdvisaCare's motion to have the case re-opened, and ordered Progressive to pay for all six equipment charges, as well as attorney fees under MCL 500.3148(1). The Court of Appeals held that the trial court did not err in reopening the case, but that it could not order Progressive to issue duplicate payments on the four charges it had already paid. The Court also vacated the trial court's award of attorney fees, and remanded to the trial court to recalculate the amount in light of its holdings.

Read Full Summary

Robinson v Wolverine Mut Ins Co (COA – UNP 3/30/2023; RB #4562)

Michigan Court of Appeals; Docket #360092; Unpublished
Judges Patel, Swartzle, and Hood; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion, Link to Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Evidentiary Issues

In this 2-1, unpublished, decision (Swartzle, dissenting), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Benjamin Robinson's action for No-Fault PIP benefits against Defendant Wolverine Mutual Insurance Company ("Wolverine"). After filing suit against Wolverine—the insurer of the vehicle Robinson was driving at the time of the subject accident—Robinson answered an interrogatory by stating that he had personal No-Fault insurance through AAA at the time of the accident. When Wolverine moved for summary disposition on the basis of Robinson's answer and MCL 500.3114, Robinson filed an amended answer to the interrogatory and an affidavit claiming that his original answer was incorrect, and that he was not, in fact, insured through AAA at the time of the accident. The Court of Appeals held that Robinson's amended answer and affidavit should have been considered by the trial court in ruling on Wolverine's motion, and that they created a question of fact precluding summary disposition.

Read Full Summary

Shaw, et al v Nowakowski, et al (COA – UNP 3/30/2023; RB #4563)

Michigan Court of Appeals; Docket #360846; Unpublished
Judges Cavanagh, Markey, and Borrello; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion, Link to Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Interpretation of Insurance Contracts
Underinsured Motorist Coverage in General
Exclusions from Underinsured Motorist Benefits
Setoffs Applicable to Underinsured Motorist Cases

In this 2-1, unpublished decision (Markey, dissenting), the Court of Appeals affirmed the trial court's denial of Defendant The Auto Club Group's ("Auto Club") motion for summary disposition, in which it sought dismissal of Plaintiffs Randall Shaw and Hillary Shaw's action for underinsured motorist ("UIM") coverage against it. The Court of Appeals held that the driver who caused the subject motor vehicle accident—who had bodily injury liability coverage of up to $300,000—was operating an "underinsured vehicle" for purposes of the Shaws' policy with Auto Club. The Auto Club policy provided for UIM coverage up to $250,000 per person/$500,000 per accident, and contained a typical exclusion from coverage if the limits of the tortfeasor's policy exceeded the limits of UIM coverage. The Court held that the $500,000 "per accident" limit—not the $250,000 "per person" limit—was the relevant amount for determining whether the exclusion applied, because both Randall Shaw and Hillary Shaw were "insured persons" under the policy and were entitled to up to $500,000 for the accident. The Court of Appeals held, second, that based on the language of the Shaws' policy, UIM coverage could not be reduced by any amount paid or payable by the liability insurer of the bar, Defendant Crispelli's LLC ("Crispelli's"), which served intoxicating liquor to the driver who caused the accident.

Read Full Summary

C-Spine Orthopedics, PLLC v Allstate Ins Co (COA – UNP 3/30/2023; RB #4564)

Michigan Court of Appeals; Docket #360887; Unpublished
Judges Cavanagh, Markey, and Borrello; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion, Link to Concurrence

STATUTORY INDEXING:
Statutory Right of Service Providers to Assert Direct Causes of Action Against Insurers [§3112]

TOPICAL INDEXING:
Assignments of Benefits – Validity and Enforceability
Medical Provider Standing (Post-Covenant)

In this unanimous, unpublished, per curiam decision (Markey, concurring), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff C-Spine Orthopedics, PLLC's ("C-Spine") action for No-Fault PIP benefits against Defendant Allstate Insurance Company ("Allstate"). Relying on *C-Spine Orthopedics, PLLC v Progressive Marathon Ins Co*, ___ Mich App ___ (2022) ("C-Spine I"), the Court of Appeals held that C-Spine could sue Allstate for PIP benefits it assigned to various factoring companies, and despite the fact that C-Spine did not obtain counter-assignments from the factoring companies—reinvesting C-Spine with the right to pursue the benefits in litigation against Allstate—until after filing suit. Under MCR 2.201(B)(1), 'a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought,' and under MCL 500.3112, providers can assert direct causes of action against insurers. Thus, even though C-Spine filed suit before obtaining counter-assignments from the factoring companies, it could still sue Progressive for the assigned benefits in its own name, and without joining the factoring companies.

Read Full Summary