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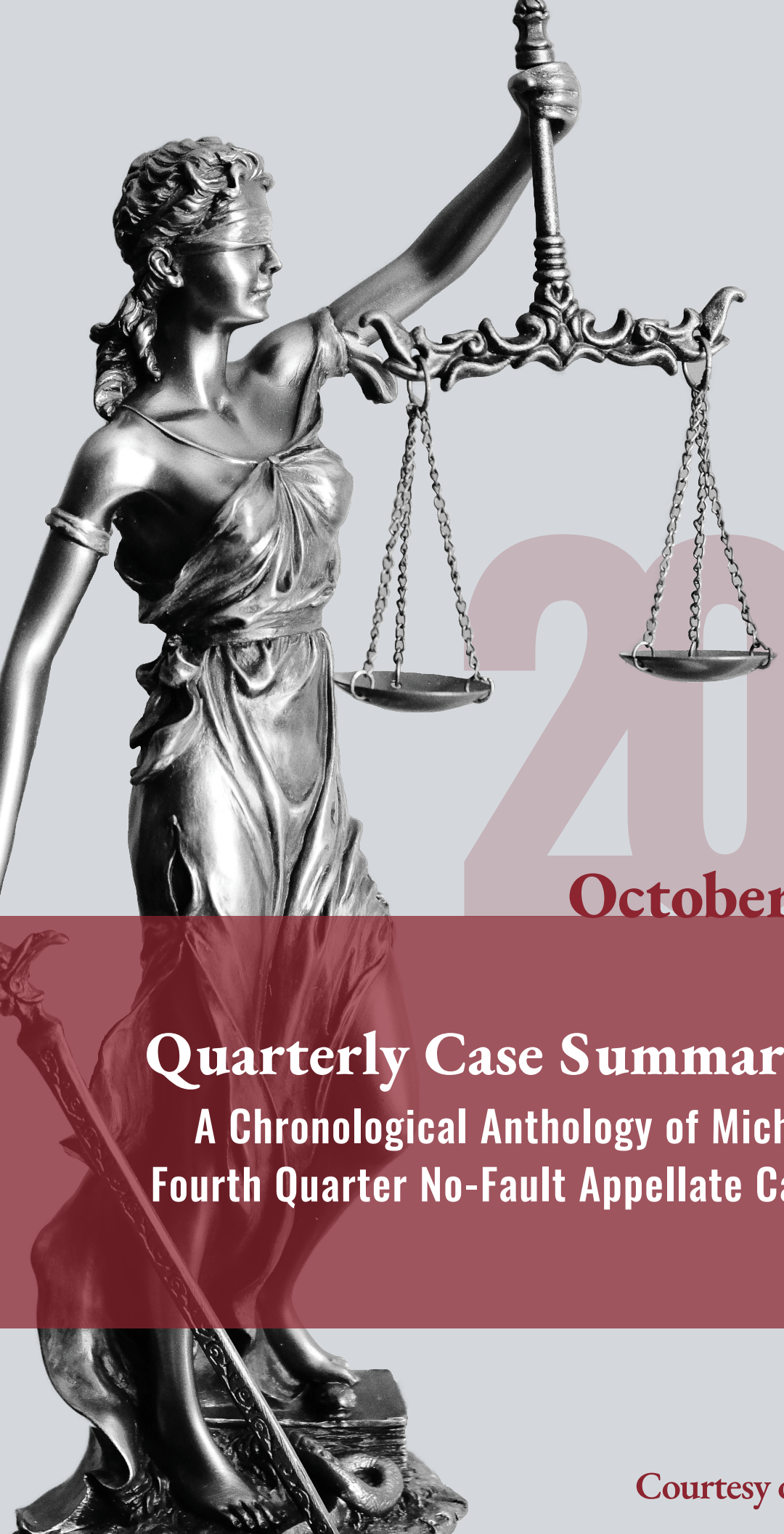

2021

October-December

Quarterly Case Summary Report:

A Chronological Anthology of Michigan's 2021 Fourth 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.

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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 second quarter (April through June) of 2021. We will be publishing these quarterly reports at the end of each quarter.

Editor's Note Regarding the Fourth Quarterly Report of 2021

In the Michigan Supreme Court

The Supreme Court did not issue any opinions regarding the no-fault act in the fourth quarter, although it did issue an Order denying multiple parties' applications for leave to appeal the Court of Appeals' decision in *Webb v Progressive Marathon Ins Co* (RB #4212), issued on January 28, 2021.

In *Webb*, the Court of Appeals held that Progressive was entitled to rescind Chirece Clark's no-fault insurance policy because of material misrepresentations Clark made in procuring the policy. The Court further held that a question of fact existed as to whether Clark's son, Brian Webb—who was injured in a motor vehicle collision and sought no-fault PIP benefits under his mother's now-rescinded policy—participated in his mother's fraud. If not, the trial court would have to engage in a balancing of the equities to determine whether or not Progressive could rescind the policy with respect to Webb, an innocent third party to his mother's fraud. If so, then "Webb

cannot be considered an innocent party, and the trial court need not engage in any balancing of the equities." The Court of Appeals thus remanded the case to the trial court for resolution of this issue.

Webb is still pending before the trial court on remand, although Justice Cavanagh noted in her concurrence to the Supreme Court's Order that the Court may revisit this case "after proceedings on remand are completed." She wrote separately to clarify what she viewed as a "potentially misleading reference" in the Court of Appeals' opinion, in which the panel seemingly conflated the right to rescind a contract based on an innocent misrepresentation with the right to rescind a contract based on a fraudulent misrepresentation. She noted that, while both innocent misrepresentations and fraudulent misrepresentations can be sufficient bases for rescinding policies, the test for rescission based on an innocent misrepresentation contains different elements than the test for rescission based on fraudulent misrepresentation, "such that sufficient proof as to one does not necessarily equate to sufficient proof of the other." Her concurrence provides, in pertinent part:

> *"The Court of Appeals in this case concluded that there is no genuine issue of material fact that defendant Progressive Marathon Insurance Company (Progressive) is entitled to rescind the insurance policy at issue as to Chirece Clark—the insured— because of fraudulent misrepresentation in her application for insurance. [citation omitted] However, before conducting this analysis, the Court of Appeals noted that rescission could also be justified in cases of innocent misrepresentation and suggested that this fact was relevant to its analysis. [citation omitted] The Court of Appeals did not note the distinct elements between claims for fraudulent and innocent misrepresentation, and this reference to innocent misrepresentation was seemingly unnecessary in light of its later conclusion that the elements of fraudulent misrepresentation were satisfied. It was erroneous for the Court of Appeals to imply that the possibility of rescission based on an innocent misrepresentation supported its analysis that there was a question of fact that Clark committed fraudulent misrepresentation."*

Three Published Opinions from the Michigan Court of Appeals

The Michigan Court of Appeals released three opinions for publication in the third quarter of 2021: *Mathis v Auto Owners* (RB #4339), *Grady v Wambach* (RB #4342), and *Skwierc v Whisnant* (RB #4350).

In *Mathis*, Plaintiff Gary Mathis was injured in the course and scope of his employment as he alighted from a parked semi-truck owned by his employer. After the incident, he received workers' compensation benefits from Guaranty Insurance, but Guaranty became insolvent while Mathis continued to receive treatment for his injuries. As a result, the Michigan Property & Casualty Guaranty Association ("MPCGA") assumed responsibility for Mathis's worker's compensation benefits. The MPCGA refused to pay Mathis any further benefits, however, arguing that, under the Property and Casualty Guaranty Association Act, MCL 500.7901, *et seq*, a claimant such as

Mathis must first exhaust all benefits available from any other applicable insurer before turning to the MPCGA. The Court of Appeals held that Mathis's employer's no-fault insurer, Home-Owners, was an applicable insurer, and that Home-Owners, therefore, became primarily responsible for payment of Mathis's benefits upon Guaranty's insolvency.

Grady featured a first-party action brought by Mercyland Health Services, PLLC against Meemic Insurance Company. Mercyland rendered treatment to Meemic's insured, Davina Grady, after Grady was injured in a motor vehicle collision. Meemic denied Mercyland's subsequent claim for benefits and moved for summary disposition in the first-party action that followed, arguing that, because Mercyland's owner and sole practitioner, Dr. Mohammad Abraham, was not licensed to practice medicine in the State of Michigan, Mercyland violated the Michigan Limited Liability Company Act ("MLLCA"), which requires that all members of a PLLC be licensed to render the same professional services as the corporate entity. Because Mercyland violated the MLLCA, Meemic's argument went, any treatments rendered by Dr. Abraham were not lawfully rendered for purposes of the no-fault act. The trial court agreed and granted summary disposition in Meemic's favor. However, the Court of Appeals reversed, holding that no-fault insurers such as Meemic do not have standing to challenge corporate status under the MLLCCA. Thus, because Meemic made no other argument regarding the lawfulness (or unlawfulness) of the treatments rendered to Grady, the Court of Appeals declined to actually decide whether Grady's treatments were lawfully or unlawfully rendered. Judge Sawyer, in his dissent, argued that the majority should have taken this next step and decided whether the treatments rendered by Dr. Abraham were lawfully rendered for purposes of the no-fault act.

In *Skwierc*, Meemic also sought to deny payment of certain no-fault benefits to its insured's provider. Plaintiff Jeffrey Skwierc injured his lower back in a motor vehicle collision and thereafter received treatment from a chiropractor, who in turn referred Skwierc for an MRI of his lower spine. The MRI was performed by medical doctors at Michigan Head & Spine Institute ("MHSI"), who intervened in Skwierc's subsequent first-party action against Meemic, seeking reimbursement for the MRI. Meemic moved for summary disposition, arguing that the MRI was not compensable under MCL 500.3107b(b) because MRI ordering is outside the scope of "practice of chiropractic," as that phrase is defined by MCL 333.16401. The trial court agreed and granted Meemic's motion, but the Court of Appeals reversed, holding that MRI ordering does fall within the statutory definition of "practice of chiropractic." In his concurrence, Judge Boonstra went a step further, suggesting that the majority could have reversed the trial court based on the simple fact that the MRI in question was *performed* by actual doctors, not a chiropractor. He went on to remark:

> *"And I find it highly questionable to presume that the mere fact that an MRI is ordered by a chiropractor somehow transforms the performance of MRIs (by non-chiropractor medical doctors) into the performance of chiropractic services. In any event, that is the question that first should have been asked and answered in this case. Instead, the summary disposition motion and, consequently, this appeal, skipped over that threshold question and focused both the trial court and this Court on whether a chiropractor may properly order an MRI."*

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

The Court of Appeals issued opinions in 46 cases in the fourth quarter of 2021. Of those 46 cases, 25 featured disputes over no-fault PIP benefits; eight featured miscellaneous third-party disputes; seven featured first-party claims brought by medical providers; five dealt with the tort threshold for serious impairment of body function; five featured priority disputes between insurers; four dealt with issues related to fraud or misrepresentation; four dealt with issues pertaining to the motor vehicle exception to governmental immunity; four contemplated whether the doctrines of res judicata or judicial estoppel applied to specific fact patterns; three featured disputes over uninsured or underinsured motorist benefits; three featured actions for declaratory relief brought by insurers; three dealt with issues pertaining to out-of-state residents and their entitlement to no-fault PIP benefits; two featured actions by insurers, against insurers, for recoupment of, or reimbursement for, no-fault PIP benefits paid; and two dealt with issues pertaining to constructive ownership under the no-fault act.

Provider Actions, Assignments, and Res Judicata

In two separate unpublished opinions, the Court of Appeals contemplated the applicability of the doctrine of res judicata in first-party actions brought by medical providers, pursuant to assignments the providers obtained from their patients, who had also brought their own, separate first-party actions against their no-fault insurers. The Courts' holdings answered fundamental questions about the relationship between assignors and assignees, and the significance of timing in such cases.

The first of these cases, *Mich Spine and Brain Surgeons, PLLC v Esurance Prop and Cas Ins Co* (RB #4334), featured the following facts: Felicia Jones was injured in a motor vehicle collision and filed a first-party action against her no-fault insurer, Esurance, in the Wayne County Circuit Court, on April 9, 2019. Months later, she underwent a surgical operation performed at Michigan Spine and Brain Surgeons, PLLC ("Michigan Spine"). She then assigned her right to pursue PIP benefits related to the surgery to Michigan Spine. While Jones' first-party action was pending in the Wayne County Circuit Court, Michigan Spine filed a separate first-party action against Esurance in the Oakland County Circuit Court, seeking to recover the PIP benefits to which it had been assigned. Approximately six months later, the Wayne County Circuit Court dismissed Jones' first-party action, ruling that Esurance was entitled to rescind Jones' policy because Jones had committed fraud. Esurance then moved for summary disposition in the Oakland County Circuit Court action, arguing that Michigan Spine's claim was now barred by the doctrine of res judicata. The Court of Appeals extensively addressed the case law related to this issue and ultimately held that res judicata did not apply in this case, with the critical fact being that Michigan Spine obtained its assignment *before* the Wayne County Circuit Court judgment was entered. The Court stated, in pertinent part, "the rights transferred by the assignor are measured at the time of the assignment and cannot be diminished by the assignor's subsequent actions or a subsequently issued judgment." The Court of Appeals also reversed the trial court's order dismissing Michigan Spine's claim under the Medicare Secondary Payor Act, because the trial court erroneously applied res judicata to that claim as well. The case was thus remanded back to the trial court for further litigation consistent with the Court of Appeals' holding that res judicata did not apply.

The second of these cases, *Enhance Center for Interventional Spine & Sports v Auto-Owners Ins Co* (RB #4338), featured a similar fact pattern, but a notably different procedural history: Kelly Johnson was injured in a motor vehicle collision and filed a first-party action against her no-fault insurer, Auto-Owners. While her action was pending, Johnson received treatment from Enhance Center for Interventional Spine & Sports ("Enhance"), to whom she assigned her right to pursue PIP benefits related to her treatment. Enhance never intervened in Johnson's first-party action, instead waiting until *after* Johnson's action was dismissed (as a result of Johnson's failure to cooperate in discovery) to file its own first-party action against Auto-Owners. Like the no-fault insurer in *Michigan Spine*, Auto-Owners moved for summary disposition, seeking to invoke the doctrine of res judicata to bar Enhance's action, and like the Oakland County Circuit Court in *Michigan Spine*, the trial court granted the motion. The Court of Appeals again reversed, because "the assignment was made before the judgment against Johnson was entered and Enhance had no opportunity to be heard in [Johnson's separate] case." It was immaterial, therefore, that Enhance waited until after Johnson's separate first-party action was dismissed to file its own suit.

In *Winfield v State Auto Prop and Cas Ins Co,* the Court of Appeals issued another noteworthy holding regarding an entirely different issue related to assignments. Plaintiff Larcheri Winfield was injured in a motor vehicle collision and, after receiving treatment from various medical providers, assigned to those providers her right to pursue PIP benefits related to her treatment. Later on, she filed a first-party action against her no-fault insurer, State Auto, and included claims for the same PIP benefits she assigned her providers the right to pursue. State Auto moved for summary disposition, arguing that the moment Winfield executed the assignments, she forfeited her right to pursue the subject benefits in her personal capacity. In other words, State Auto argued, her providers became the real parties in interest with respect to those benefits, and only her providers could pursue them. The Court of Appeals agreed with State Auto, holding that the assignments operated to vest in Winfield's providers the sole right to pursue the subject benefits. This was especially so, the Court noted, because "there was no indication that [Winfield] retained any power to revoke the assignments"—a salient fact which the Court's holding seemingly turned on.

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Joel Finnell


Ted Larkin

Hensley v Auto Club Group Ins Co, et al (COA – UNP 10/14/2021; RB #4323)

Michigan Court of Appeals; Docket #353205; Unpublished
Judges Beckering, Shapiro, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Notice and Statute of Limitations for Uninsured Motorist Benefits

In this unanimous unpublished per curiam decision (Swartzle, concurring), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Dana Hensley's third-party action for uninsured motorist benefits against Defendant Auto Club Group Insurance Company ("Auto Club"). The Court of Appeals held that Hensley failed to comply with a provision in his policy with Auto Club, which required that he file a written report of any hit-and-run collision to law enforcement within 24-hours of the collision's occurrence, in order to proceed with a claim for UM benefits under the policy.

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McKinnie, et al v State Farm Mut Auto Ins Co (COA – UNP 10/14/2021; RB #4324)

Michigan Court of Appeals; Docket #353995; Unpublished
Judges Shapiro, Borrello, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
General/Miscellaneous [§3163]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") motion for summary disposition, in which State Farm sought dismissal of Plaintiffs Kelly McKinnie and Dejanae McKinnie's first-party action to recover no-fault PIP benefits. The Court of Appeals held that a question of fact existed as to whether Kelly and Dejanae McKinnie were entitled to no-fault PIP benefits under the former MCL 500.3163, because a question of fact existed as to whether Dennis McKinnie, an out-of-state resident, was a constructive owner of the motor vehicle Kelly and Dejanae were traveling in at the time of the subject crash.

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Estate of Kostich v Monroe Motorsports, Inc Ins Co, et al (UNP – COA 5/27/2021; RB # 4325)

Michigan Court of Appeals; Docket #353446, 354158; Unpublished
Judges Rick, Ronayne Krause, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Evidentiary Issue

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Plaintiff Estate of Kord Kostich's motion seeking to preclude Defendant Monroe Motorsports, Inc.'s ("Monroe Motorsports") accident reconstructionist expert witness, Steven Fenton, from offering his opinion as to how the subject crash involving a Polaris Slingshot auto-cycle occurred. The Court of Appeals held that Fenton was sufficiently qualified to offer expert testimony about traction control and how it played a factor in the subject crash, and that Fenton relied on sufficient facts and data in forming his opinion.

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Munson Med Ctr, et al v Falls Lake Nat'l Ins Co (UNP – COA 10/14/2021; RB # 4326)

Michigan Court of Appeals; Docket #356702; Unpublished
Judges Redford, Kelly, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Cancellation and Rescission of Insurance Policies

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiffs Munson Medical Center and Munson Healthcare Otsego Memorial Hospital's ("Munson," collectively) first-party action against Defendant Falls Lake National Insurance Company ("Falls Lake"). The Court of Appeals held that Falls Lake was entitled to rescind the policy of Dawn Drum, its insured/Munson's patient, because Drum made a material misrepresentation on her original application for automobile insurance.

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Atkinson v Kreilter, et al (UNP – COA 10/21/2021; RB #4327)

Michigan Court of Appeals; Docket #353079, 353080; Unpublished
Judges Shapiro, Borrello, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Civil Judgments and Interest (MCL 600.6013)
Insurance Agents (Duty to Insured)
Sudden Emergency Doctrine
Underinsured Motorist Coverage
Uniform Trade Practices Act (UTPA – MCL 500.2001, Et Seq.)

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed judgments entered by the trial court in favor of Plaintiffs Brook Atkinson, Michael Falecki, and the Estate of Carolyn Manes, in their third-party action to recover underinsured motorist ("UIM") benefits from Defendant American Alternative Insurance Corporation ("AAIC"), following a jury trial. The Court of Appeals reached multiple holdings in its opinion: first, the Court held that AAIC, in its motion for judgment notwithstanding the verdict ("JNOV"), could not argue that the plaintiffs failed to establish that AAIC was contractually liable for paying UIM benefits to them, because AAIC conceded as much during trial. Second, the Court held that, given the specific language of the subject AAIC policy, the sum of any damages found by the jury, plus case evaluation sanctions and penalty interest, could exceed the limits of UIM coverage available under the subject policy. Third, the Court held that, given the evidence in this case, the trial court did not err in ruling, as a matter of law, that the sudden emergency doctrine was not applicable. Fourth, the Court held that the trial court did not err in awarding penalty interest against AAIC under the UTPA—dating back to the filing date of each plaintiff's complaint—because AAIC failed to explain to the plaintiffs what constituted "satisfactory proof of loss" under the policy prior to the filing of each lawsuit. The UTPA—MCL 500.2006(3), specifically— "places the onus on an insurer to provide the insured with an explanation of what is necessary to constitute a satisfactory proof of loss." Since AAIC failed to do so, "any failure by plaintiffs to prove a satisfactory proof of loss was excused" and penalty interest under the UTPA began to accrue on the filing date of each complaint. However, the plaintiffs were not entitled to duplicative statutory prejudgment interest and UTPA penalty interest, and thus the Court of Appeals remanded for modification of the plaintiffs' judgments.

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Fortman v Schneider, et al (UNP – COA 10/21/2021; RB #4328)

Michigan Court of Appeals; Docket #354365, 354953; Unpublished
Judges Ronayne Krause, Cameron, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Judicial Estoppel

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Laura Fortman's third-party action against Defendants Dusty Dean Schneider and Duaine Morin. The Court of Appeals held that the trial court erred in ruling that the underlying action was barred by judicial estoppel in light of comments Fortman made about her injuries in a prior first-party action, which Schneider and Morin argued were at odds with her claims about her injuries in this case. In so holding, the Court observed that (1) there was no evidence that the court presiding over the prior first-party action relied on Fortman's allegedly contrary position, (2) Fortman's claims in the prior first-party action were not wholly inconsistent with her claims in this case, nor was there any indication that any alleged changing of her position was the product of cynical gamesmanship or deliberate manipulation of the courts, and (3) application of the doctrine was not necessary to avoid a miscarriage of justice.

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Citizens Ins Co of America v Likely (UNP – COA 10/21/2021; RB #4329)

Michigan Court of Appeals; Docket #354615; Unpublished
Judges Letica, Servitto, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Injunctive and Equitable Relief in PIP Cases

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Defendant Citizens Insurance Company of America's ("Citizens") declaratory judgment action against Plaintiff Carl Likely. Likely was injured in a motor vehicle collision in 2002 and filed five separate first-party lawsuits against Citizens over the course of the next 18 years. In 2020, Citizens filed the underlying action—in an admitted attempt to avoid future litigation—seeking a declaratory judgment that Likely had fully recovered from the injuries he sustained in the 2002 crash. The Court of Appeals held that Citizens' complaint was insufficient in that it contained only conclusory and unsupported allegations regarding Likely's condition, and failed to state a claim for which relief could be granted. Moreover, the Court of Appeals held that the trial court did not err in denying Citizens' motion to amend its complaint, because Citizens' claim was not ripe—it "rest[ed] on hypothetical and contingent future events—[Likely's] potential need for benefits—which may not occur." In other words, Citizens could not file a declaratory action to prohibit Likely from hypothetically claiming PIP benefits for future treatments that were not even contemplated as of the date of filing.

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Auto Club Group Ins Co v Gov't Employees Ins Co (UNP – COA 10/21/2021; RB #4330)

Michigan Court of Appeals; Docket #354664; Unpublished
Judges Shapiro, Borrello, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Obligations of Admitted Insurers to Pay PIP Benefits on Behalf of Nonresidents Injured in Michigan [§3163(1)]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order in favor of Plaintiff Auto Club Group Insurance Company ("Auto Club"), in Auto Club's priority dispute with Defendant Government Employees Insurance Company's ("GEICO"). The Court of Appeals held that GEICO, a certified insurer under the former MCL 500.3163, was first in priority for payment of out-of-state resident Donald Ray Layman's PIP benefits, despite the fact that Layman's California automobile insurance policy, issued by GEICO, contained a clause which otherwise would have excluded him from coverage for the subject crash. In reaching its holding, the Court of Appeals relied on its prior decision in *Transp Ins Co v Home Ins Co*, 134 Mich App 645 (1984), in which it held "that, when an insurance company has filed a certification under [the former] MCL 500.3163, the insurance company cannot rely on policy exclusions to avoid its obligation to pay its out-of-state insured's benefits."

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Rugg v Divina, et al (UNP – COA 10/21/2021; RB #4331)

Michigan Court of Appeals; Docket #355628; Unpublished
Judges Shapiro, Borrello, and O'Brien; 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(1)**]
Causation Issues [§3135]

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 Delphine Rugg's third-party action against Defendants Delfin Divina and Divina Divina. Rugg alleged that she suffered two injuries as a result of the subject car crash: a torn rotator cuff and cervicalgia. As for her torn rotator cuff, the Court of Appeals held that Rugg failed to present sufficient evidence to create a question of fact as to whether that injury was caused by the subject crash. As for her cervicalgia, the Court held that that injury did not affect her general ability to lead her normal life, and thus did not satisfy the third prong of the test set forth in *McCormick v Carrier*, 487 Mich 180 (2008) for serious impairment of body function.

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LeBlanc v Washtenaw Co Rd Comm (UNP – COA 10/28/2021; RB #4332)

Michigan Court of Appeals; Docket #355628; Unpublished
Judges Beckering, Boonstra, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Notice Requirements Under MCL 224.21

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Christopher LeBlanc's third-party action against Defendant Washtenaw County Road Commission. On remand from the Supreme Court and per the Supreme Court's instruction, the Court of Appeals held that the 120-day notice period set forth in the Governmental Tort Liability Act ("GTLA"), MCL 691.1401 *et seq*—not the 60-day notice period set forth in the County Road Law, MCL 224.1 *et seq*—applies to negligence actions against county road commissioners.

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Mosley v Senters (UNP – COA 10/28/2021; RB # 4333)

Michigan Court of Appeals; Docket #354004; Unpublished
Judges Stephens, Sawyer, and Servitto; 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:
Case Evaluation – Accept/Reject in PIP Cases

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's decision to not award 500.3148 attorney fees to Plaintiff Emmanuel Mosley following a jury trial in Mosley's first-party action against Defendant Integon National Insurance Company ("Integon"), but affirmed the trial court's award of case evaluation sanctions against Mosley. Even though Mosley prevailed on only a fraction of his claim for unpaid no-fault PIP benefits at trial, the Court of Appeals held that he was still entitled to attorney fees under MCL 500.3148 for the portion of the claim he did prevail on. With respect to the trial court's award of case evaluation sanctions, the Court of Appeals held that the trial court did not err in awarding said sanctions even though Integon paid a $61,000 Medicare lien the day before trial, which Mosley argued unfairly reduced the amount of damages he could be awarded and effectively "ensured that [Integon] would be awarded case evaluation sanctions." While the Court of Appeals acknowledged an appeal to Mosley's argument, it noted that this was not the case to consider the utility of imposing a rule to prevent insurers from such legal maneuvering, because the Medicaid lien amount was not actually submitted to the case evaluation panel, nor was it included in the case evaluation panel's award.

Read Full Summary

Mich Spine and Brain Surgeons, PLLC v Esurance Prop and Cas Ins Co (UNP – COA 10/28/2021; RB #4334)

Michigan Court of Appeals; Docket #355581; Unpublished
Judges Shapiro, Borrello, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence; Link to Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Collateral Estoppel and Res Judicata

In this 2-1 per curiam decision (Shapiro concurring, O'Brien dissenting), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Michigan Spine and Brain Surgeons, PLLC's ("Michigan Spine") first-party action against Defendant Esurance Property and Casualty Insurance Company ("Esurance") on the basis of res judicata. The Court of Appeals held that the moment Michigan Spine obtained an assignment from its patient/Esurance's insured, Felicia Jones, it was no longer in privity with Jones, and thus a subsequent judgment against Jones in a separate first-party action between her and Esurance would not bar Michigan Spine's action on the basis of res judicata.

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Mich Head & Spine Institute v Frankenmuth Mut Ins Co (COA – UNP 11/4/2021; RB #4337)

Michigan Court of Appeals; Docket #355521; Unpublished
Judges Rick, Ronayne Krause, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Jurisdiction in PIP Cases

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Michigan Head & Spine Institute's ("Michigan Head & Spine") first-party action against Defendant Frankenmuth Mutual Insurance Company ("Frankenmuth Mutual"). Relying on its prior decision in *Mich Head & Spine Institute PC v Auto-Owners Ins Co*, ___ Mich App ___ (2021), the Court of Appeals held that Michigan Head & Spine could aggregate 24 unrelated claims for unpaid no-fault PIP benefits against Frankenmuth Mutual in order to meet the jurisdictional threshold of $25,000 for Michigan circuit courts.

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Mathis v Auto Owners, et al (COA – PUB 11/9/2021; RB #4339)

Michigan Court of Appeals; Docket #354824; Published
Judges Murray, Markey, and Riordan; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Exception for Parked Vehicles Covered by Workers Comp [§3106(2)]

TOPICAL INDEXING:
Workers Disability Compensation Act (MCL 418.1, Et Seq.)

In this unanimous published per curiam decision, the Court of Appeals affirmed the trial court's order granting Defendant Michigan Property & Casualty Guaranty Association's ("MPCGA") motion for summary disposition. Plaintiff Gary Mathis was injured as he alighted from his parked semi-truck in the course and scope of his employment, and thereafter received worker's compensation benefits from Guaranty Insurance. While Mathis continued to receive treatment for his injuries, Guaranty Insurance became insolvent, and the MPCGA assumed responsibility for his claim. The MPCGA refused to pay Mathis further benefits under his former policy with Guaranty, however, arguing that, pursuant to the Property and Casualty Guaranty Association Act ("the Guaranty Act"), MCL 500.7901 *et seq*, Mathis had to first exhaust all benefits available from any other applicable insurer—i.e. Home-Owners Insurance Company ("Home-Owners"), the insurer of Mathis's employer's truck—before turning to the MPCGA. The Court of Appeals agreed with the MPCGA's argument and held that, since Home-Owners was an applicable insurer, Mathis would have to first exhaust all available benefits under the Home-Owners policy before the MPCGA would become obligated to resume payment of the benefits Mathis had been receiving under the Guaranty Insurance policy. Notably, in determining that Mathis was entitled to no-fault PIP benefits from Home-Owners for this incident, the Court of Appeals concluded that Mathis was not precluded from recovering PIP benefits under MCL 500.3106(2)(a), because that statutory subsection was created to prevent injured persons from obtaining a double recovery under both the no-fault act and the worker's compensation disability act. In this case, however, because of the MPCGA's requirement that an injured person exhaust all other benefits before turning to the MPCGA, Mathis could not recover duplicative no-fault and worker's compensation benefits.

Read Full Summary

Grady, et al v Wambach, et al (COA – PUB 11/9/2021; RB #4342)

Michigan Court of Appeals; Docket #354091; Published
Judges Sawyer, Cameron, and Letica; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion; Link to Dissent

STATUTORY INDEXING:
Lawfully Rendered Treatment [§3157]

TOPICAL INDEXING:
Not Applicable

In this 2-1 published decision authored by Justice Cameron (Sawyer, dissenting), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Mercyland Health Services, PLLC's ("Mercyland") first-party action against Defendant Meemic Insurance Company ("Meemic"). Meemic argued that, because Mercyland's owner and sole practitioner, Dr. Mohammad Abraham, was not licensed to practice medicine in Michigan, Mercyland violated the Michigan Limited Liability Company Act (MLLCA), which requires that all member of a PLLC be licensed to render the same professional services as the corporate entity. Furthermore, Meemic argued, because Mercyland violated the MLLCA, the treatments Dr. Abraham rendered to its patient/Meemic's insured were not "lawfully rendered" for purposes the no-fault act. The Court of Appeals rejected Meemic's arguments, holding that Meemic did not have standing to challenge Mercyland's corporate status under the MLLCA, and that, as a result, it would not be proper for the Court to reach the issue of whether Mercyland's alleged violation of the MLLCA rendered the treatment it provided unlawful for purposes of the no-fault act. The Court reasoned that it would not be proper for it to reach that latter issue because Meemic presented no other argument as to the lawfulness of the treatments rendered other than that regarding Mercyland's corporate form and the MLLCA.

Read Full Summary

Enhance Center for Interventional Spine & Sports v Auto-Owners Ins Co, et al (COA – UNP 11/9/2021; RB #4338)

Michigan Court of Appeals; Docket #354517; Unpublished
Judges Rick, Ronayne Krause, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Collateral Estoppel and Res Judicata

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Enhance Center for Interventional Spine & Sports' ("Enhance") first-party action against Defendant Auto-Owners Insurance Company ("Auto-Owners") on the basis of res judicata. The Court of Appeals held that, because Enhance obtained an assignment from its patient/Auto-Owners' insured, Kelly Johnson, before Johnson's first-party action against Auto-Owners was dismissed, Enhance's separate, subsequent first-party action was not barred by res judicata.

Read Full Summary

Estate of Reid, et al v Council, et al (COA – UNP 11/9/2021; RB #4340)

Michigan Court of Appeals; Docket #355062; Unpublished
Judges Murray, Markey, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") motion for summary disposition, in which State Farm sought dismissal of Plaintiff Estate of Nicole Yvette Reid's ("Plaintiff") first-party action against it. Reid had a policy of no-fault insurance through State Farm, under which she coordinated her medical coverage with her health insurer, Blue Care Network ("BCN"). After Reid was injured in a car crash, she sought medical treatment from providers that were not in her health insurer's network, so her providers requested payment for the treatment they rendered from State Farm. The Court of Appeals held that, based on MCL 500.3109a, the no-fault insurer of an individual with coordinated no-fault and health insurance coverage who chooses to receive treatment from a provider outside her health insurer's network is not required to pay for that treatment unless similar treatments were not available from any provider within the health insurer's network. In this case, Reid never alleged that similar services were not available from a provider within her health insurer's network, and thus State Farm was not required to pay for her treatment.

Read Full Summary

Willis v Mich Auto Ins Placement Facility (COA – UNP 11/18/2021; RB #4345)

Michigan Court of Appeals; Docket #354112; Unpublished
Judges Cavanagh, Shapiro, and Gadola; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Disqualification for Nonresidents [§3113(c)]

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 Kimberly Willis's first-party action against Defendant Michigan Automobile Insurance Placement Facility ("MAIPF"). The Court of Appeals held that a question of fact existed as to whether Willis was an out-of-state resident at the time of the subject collision and whether, therefore, she was barred from receiving no-fault PIP benefits pursuant to MCL 500.3113(c).

Read Full Summary

Zavala v Mich Auto Ins Placement Facility, et al (COA – UNP 11/18/2021; RB #4346)

Michigan Court of Appeals; Docket #354502; Unpublished
Judges Stephens, Sawyer, and Servitto; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Entitlement to PIP Benefits: Arising Out of / Causation Requirement [§3105(1)]
Aggravation of Preexisting Conditions [§3105(1)]
Objective Manifestation Element of Serious Impairment (McCormick Era: 2010 – Present) [§3135(5)**]
Permanent Serious Disfigurement Definition [§3135(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 Arturo Zavala's first-party action against Defendant Trinity Cab Company ("Trinity"), but affirmed the trial court's summary disposition order dismissing Plaintiff Valerie Zavala's third-party action against Trinity. As to Arturo's claim, the Court of Appeals held that a question of fact existed as to whether his aggravation of a pre-existing eye injury was "causally connected" to the subject incident such that he would be entitled to no-fault PIP benefits pursuant to MCL 500.3105(1). As to Valerie's claim, the Court of Appeals held that she failed to present sufficient evidence to create a question of fact as to whether her knee injuries were objectively manifested for purposes of the test for serious impairment of body function set forth in *McCormick v Carrier*, 487 Mich 180 (2010), and that her chipped tooth did not constitute a permanent serious disfigurement.

Read Full Summary

Winfield v State Auto Prop and Cas Ins Co, et al (COA – UNP 11/18/2021; RB #4349)

Michigan Court of Appeals; Docket #355681; Unpublished
Judges Gleicher, Kelly, and Ronayne Krause; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Assignments of Benefits – Validity and Enforceability

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's partial summary disposition order dismissing some of Plaintiff Larcheri Winfield's first-party claims against Defendant State Auto Property and Casualty Insurance Company ("State Auto"). The Court of Appeals held that, because Winfield assigned her right to pursue certain no-fault PIP benefits to various medical providers, and because there was no indication that Winfield retained any power to revoke the assignments, Winfield could not pursue the assigned claims in her own, separate first-party action against State Auto, because she was no longer the real party in interest with respect to those claims.

Read Full Summary

Razouky v Doaks, et al (COA – UNP 11/18/2021; RB #4346)

Michigan Court of Appeals; Docket #354502; Unpublished
Judges Gleicher, Kelly, and Ronayne Krause; 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 Diondre Marcus Doaks's motion for summary disposition, in which Doaks sought dismissal of Plaintiff George Razouky's third-party action against him. The Court of Appeals held that Razouky failed to allege facts sufficient to create a question of fact as to whether Doaks, a police officer acting in the course and scope of his employment at the time of the subject collision, was grossly negligent in causing the subject collision. Notably, the Court of Appeals made it clear that its decision was limited to the gross negligence count of Razouky's complaint and that the other counts contained therein were not at issue on appeal.

Read Full Summary

Hines, et al v Mich Auto Ins Placement Facility, et al (COA – UNP 11/18/2021; RB #4344)

Michigan Court of Appeals; Docket #352079; Unpublished
Judges Stephens, Kelly, and Riordan; 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 reversed the trial court's summary disposition order dismissing Plaintiff Michelle Hines's first-party action against the Michigan Automobile Insurance Placement Facility ("MAIPF"). The Court of Appeals held that a question of fact existed as to whether Hines had permission to take the vehicle she was driving at the time of the subject crash, and whether, therefore, she was eligible for no-fault PIP benefits through the MAIPF.

Read Full Summary

James River Ins Co v Citizens Ins Co of America (COA – UNP 11/18/2021; RB #4348)

Michigan Court of Appeals; Docket #354502; Unpublished
Judges Stephens, Sawyer, and Servitto; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Underinsured Motorist Coverage: Setoffs Applicable to Underinsured Motorist Cases

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order in favor of Defendant Citizens Insurance Company of America ("Citizens") in its dispute with Plaintiff James River Insurance Company ("James River") over which insurer had priority responsibility for payment of Joseph Bolton's underinsured motorist benefits. The Court of Appeals held that Citizens' homeowners' policy was a "true" excess insurance policy, in that it only extended coverage once all other applicable insurance coverage had been exhausted, whereas the James River policy was an excess "other insurance" policy, in that it offered excess coverage when triggered by certain circumstances—e.g. a motor vehicle collision caused by an underinsured driver. Relying on Supreme Court precedent in Bosco v Bauermeister, 456 Mich 279 (1997), the Court of Appeals held that excess "other insurance" policies are primary over "true" excess insurance policies, and thus the James River policy was primary in this case.

Read Full Summary

Hmeidan, et al v State Farm Mut Auto Ins Co, et al (COA – UNP 11/18/2021; RB #4343)

Michigan Court of Appeals; Docket #351670; Unpublished
Judges Borrello, Jansen, and Boonstra; 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:
Cancellation and Rescission of Insurance Policies
Innocent Third-Party Doctrine

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Malek Hmeidan's first-party action against Defendants State Farm Mutual Automobile Insurance Company ("State Farm") and Progressive Michigan Insurance Company ("Progressive"). The Court of Appeals held, first, that even though Hmeidan's mother's policy was rescinded based on fraudulent misrepresentations she made in procuring the policy, a question of fact existed as to whether the equities weighed in favor of rescission of the policy with respect to Hmeidan's claims thereunder, as he was an innocent third party to his mother's fraud. The Court of Appeals held, second, that the former MCL 500.3113(a)—in effect at the time of the subject motorcycle crash on September 1, 2012—applied to this case, not the version which was amended by 2014 PA 489, because the amended version did not apply retroactively. The Court of Appeals held, third, that a question of fact existed as to whether Hmeidan knew that the motorcycle he was driving at the time of the subject crash had been stolen, and, therefore, that a question of fact also existed as to whether Hmeidan's use of the motorcycle constituted an "unlawful taking" under MCL 500.3113(a). Lastly, the Court of Appeals held that the fact that Hmeidan did not have the requisite motorcycle endorsement on his driver's license did not render his taking of the motorcycle an "unlawful" one under MCL 500.3113(a).

Read Full Summary

Vanzandt v Peaks, et al (COA – UNP 11/23/2021; RB #4355)

Michigan Court of Appeals; Docket #354819; Unpublished
Judges Borrello, Jansen, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Plaintiffs in Bankruptcy

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Janice Vanzandt's third-party action against Defendants Brandon Tyrell Peaks and Rock-Way, LLC ("Rock-Way"). The Court of Appeals held that Vanzandt's action was barred by judicial estoppel, because Vanzandt failed to notify the bankruptcy court in a pending Chapter 13 bankruptcy action of her potential claim against the defendants.

Read Full Summary

Titus v Auto-Owners Ins Co, et al (COA – UNP 11/23/2021; RB #4353)

Michigan Court of Appeals; Docket #353581; Unpublished
Judges Rick, Ronayne Krause, and Letica; 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 (Registration and Title Requirements) (MCL 257.201, Et Seq.)

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Marylynn Titus's third-party action against Defendant Mikes Cars, LLC ("Mikes Cars"). At issue in this case was whether Mikes Cars effectively transferred title of a vehicle it sold to Ronald Benfield II, who crashed into Titus immediately upon leaving Mikes Cars' lot in said vehicle. The Court of Appeals held that title did transfer to Benfield prior to the crash, and that summary disposition, therefore, was properly granted in Mikes Cars' favor with respect to Titus's claims against Mikes Cars pursuant to Michigan's owner's liability statute. The Court noted that, under MCL 257.233(9), the operative date for determining when a vehicle's title is transferred is the date of signature on either the application for title or on the assignment of the certificate of title. In this case, there was no dispute that the application for title was signed prior to the motor vehicle crash.

Read Full Summary

Tedder, et al v Geico Indemnity Co, et al (COA – UNP 11/23/2021; RB #4356)

Michigan Court of Appeals; Docket #354910; Unpublished
Judges Murray, Jansen, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Legislative Purpose and Intent
Plaintiffs in Bankruptcy

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Kym Tedder's first-party action against Defendant Geico Indemnity Company ("Geico"). The Court of Appeals held that Tedder lacked standing to bring her claim for unpaid no-fault PIP benefits because the bankruptcy trustee in her pending bankruptcy action was the real party in interest. Central to the Court's holding was Tedder's inability/failure to exempt her first-party claims from her bankruptcy estate.

Read Full Summary

Spectrum Health Hosps, et al v Esurance Prop and Cas Ins Co, et al (COA – UNP 11/23/2021; RB #4351)

Michigan Court of Appeals; Docket #352488, 352944; Unpublished
Judges Rick, O'Brien, and Cameron; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Disqualification for Intentionally Suffered Injury [§3105(4)]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order in favor of Plaintiff Spectrum Health Hospitals ("Spectrum"), in Spectrum's first-party action against Defendant Esurance Property and Casualty Insurance Company ("Esurance"). The Court of Appeals held that reasonable minds could differ as to whether Spectrum's patient/Esurance's insured, Kevin Shea Lindsey, intended to injure himself when he jumped from a moving vehicle at approximately 30-40 mph, such that he would be barred from no-fault PIP benefits under MCL 500.3105.

Read Full Summary

Skwierc, et al v Whisnant, et al (COA – PUB 11/23/2021; RB #4350)

Michigan Court of Appeals; Docket #355681; Published
Judges Gleicher, Kelly, and Ronayne Krause; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion; Link to Concurrence

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

TOPICAL INDEXING:
Not Applicable

In this unanimous published decision authored by Justice Borrello (Boonstra, concurring), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Michigan Head & Spine Institute's ("MHSI") first-party action against Defendant Meemic Insurance Company ("Meemic"). The Court of Appeals held that MHSI was entitled to reimbursement under the no-fault act for an MRI it performed on Meemic's insured's lumbar spine, even though the MRI was ordered by a chiropractor. In so holding, the Court of Appeals concluded that the MRI at issue fell within the definition of "practice of chiropractic" under MCL 333.16401, as of January 1, 2009, and that, as a result, the MRI qualified as an allowable expense under MCL 500.3107b(b).

Read Full Summary

Sabbar, et al v State Farm Mut Auto Ins Co (COA – UNP 11/23/2021; RB #4357)

Michigan Court of Appeals; Docket #355249; Unpublished
Judges Kelly, Stephens, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Evidentiary Issues
Intervention by Service Providers and Third Party Payors in PIP Claims

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order denying EQMD, Inc.'s ("EQMD") motion to intervene in Plaintiff Rafael Sabbar's first-party action against Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). The Court of Appeals held that EQMD, a "nationwide provider of pharmaceutical dispensing solutions for physicians," did not have an interest in Sabbar's claim for unpaid no-fault PIP benefits and was therefore not entitled to intervene in his suit against State Farm.

Read Full Summary

Meemic Ins Co v Estate of Pearce, et al (COA – UNP 11/23/2021; RB #4352)

Michigan Court of Appeals; Docket #352724; Unpublished
Judges Swartzle, Cavanagh, and Gadola; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Cancellation and Rescission of Insurance Policies
Fraud/Misrepresentation

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Meemic Insurance Company's ("Meemic") action for declaratory relief, in which Meemic sought a declaration that Patricia Musser's no-fault insurance policy was void because Musser had committed post-procurement fraud. The Court of Appeals held, first, that the trial court erred in ruling that Meemic could only rescind the policy if it could show that Musser committed fraud in procuring the policy: Meemic could also rescind the policy if Musser committed post-procurement fraud which amounted to a substantial breach of contract. Since a question of fact existed as to whether Musser's alleged fraud did amount to such, the Court of Appeals remanded the case back to the trial court. Secondly, the Court of Appeals held that Meemic did not waive its ability to rescind the policy by notifying Musser that it was cancelling her policy only after filing its action for declaratory relief.

Read Full Summary

Jones, et al v State Farm Mut Auto Ins Co, et al (COA – UNP 11/23/2021; RB #4354)

Michigan Court of Appeals; Docket #353668; Unpublished
Judges Kelly, Stephens, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Allowable Expenses: Reasonable Necessity Requirement [§3107(1)(a)]
Allowable Expenses: Claims by Service Providers [§3107(1)(a)]
Lawfully Rendered Treatment [§3157]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Intervenor-Plaintiff EQMD, Inc.'s ("EQMD") first-party action against State Farm Mutual Automobile Insurance Company ("State Farm"). The Court of Appeals held that EQMD, a "pharmacy management organization," qualified as a pharmaceutical "manufacturer" and/or "wholesale distributor" requiring licensure under the Public Health Code, and that, because EQMD was not so licensed, its services were not lawfully rendered for purposes of the no-fault act. The Court of Appeals held, alternatively, that EQMD's services as a "pharmacy management organization" were not reasonably necessary products, services, or accommodations for the care, recovery, or rehabilitation of injured persons, and therefore not compensable under the no-fault act.

Read Full Summary

Loiola v Citizens Ins Co of America, et al (COA – UNP 12/2/2021; RB #4359)

Michigan Court of Appeals; Docket #348670; Unpublished
Judges Beckering, O'Brien, and Swartzle; 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—on remand from the Supreme Court—affirmed its prior order in which it vacated a judgment entered in favor of Plaintiff Russell Loiola in Loiola's first-party action against Defendant Citizens Insurance Company of America ("Citizens"), and ordered a new trial for various reasons. The Supreme Court vacated part of the Court of Appeals' prior order—in which the Court of Appeals held that Citizens was not required to plead fraud as an affirmative defense with particularity—and remanded to the Court of Appeals for reconsideration of that part of its order in light of a separate panel's holding in *Glasker-Davis v Auvenshire*, 333 Mich App 222 (2020). In *Glasker-Davis*, the Court of Appeals held that a no-fault insurer raising fraud as an affirmative defense must do so with particularity. Thus, in revisiting that issue on remand, the Court of Appeals held that Citizens failed to plead fraud with particularity as an affirmative defense, but ordered that the trial court grant Citizens leave to amend its affirmative defenses.

Read Full Summary

Davis, et al v Nationwide Prop & Cas Ins Co, et al (COA – UNP 12/2/2021; RB #4360)

Michigan Court of Appeals; Docket #355516; Unpublished
Judges Borrello, Jansen, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Dissent

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:
Not Applicable

In this 2-1 unpublished per curiam decision (Borrello, dissenting), the Court of Appeals reversed the trial court's denial of Defendant Beverly Young's motion for summary disposition, in which Young sought dismissal of Plaintiff Kevin Davis's third-party action against her. The Court of Appeals held that Davis failed to satisfy the first and third prongs of the test for establishing a serious impairment of body function set forth in *McCormick v Carrier*, 487 Mich 180, and that Davis failed to show that any of his injuries were caused by the subject motor vehicle collision.

Read Full Summary

LM Gen Ins Co v Hartford Ins Co, et al (COA – UNP 12/16/2021; RB #4361)

Michigan Court of Appeals; Docket #353697; Unpublished
Judges Gleicher, Cavanagh, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Dissent

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

TOPICAL INDEXING:
No-Fault Insurer Claims for Reimbursement

In this 2-1 unpublished per curiam decision (Letica, dissenting), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff LM General Insurance Company's ("LM General") action against Defendant Trumbull Insurance Company ("Trumbull"), in which LM sought reimbursement from Trumbull for no-fault benefits it accidentally paid to Trumbull's insured, despite Trumbull being the highest priority insurer with respect to its insured's claim. The Court of Appeals held that the one-year-back rule, MCL 500.3145(1), did not apply to LM's action for reimbursement from Trumbull.

Read Full Summary

Binns, et al v Pickens, et al (COA – UNP 12/16/2021; RB #4362)

Michigan Court of Appeals; Docket #354503; Unpublished
Judges Cavanagh, Servitto, and Kelly; 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 City of Detroit's (or, "the City") motion for summary disposition, in which the City sought dismissal of Plaintiff Nicole Binns's third-party action against it under the motor vehicle exception to governmental immunity. The Court of Appeals held that the facts did not support application of the doctrine of res ipsa loquitor, and since Binns's allegation that the City's bus driver was negligent in causing her injuries was based entirely on the doctrine of res ipsa loquitor, summary disposition should have been granted in the City's favor.

Read Full Summary

Dodd, et al v Allstate Fire and Cas Ins Co (COA – UNP 12/16/2021; RB #4364)

Michigan Court of Appeals; Docket #355066; Unpublished
Judges Sawyer, Riordan, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Entitlement to Benefits for Out of State Accidents [§3111]
Duplicate Recovery [§3109a]

TOPICAL INDEXING:
Interpretation of Insurance Contracts

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiffs Donna Dodd's and Kelly Oliver's claims for no-fault benefits from Defendant Allstate Fire and Casualty Insurance Company ("Allstate") that were duplicative of benefits they received from their health insurers. The Court of Appeals held that, under the terms of Oliver's no-fault policy, Oliver and Dodd could not "double dip," or receive duplicate payments for the same medical expenses, from both their health insurers and Allstate. Separately, the Court of Appeals held that, under the plain language of MCL 500.3111, Dodd could recover no-fault benefits under Oliver's Allstate policy, because the motorcycle they were traveling on at the time of the subject crash constituted a "vehicle" under that statutory subsection.

Read Full Summary

Garvish v Brown, et al (COA – UNP 12/16/2021; RB #4365)

Michigan Court of Appeals; Docket #355730; Unpublished
Judges Cavanagh, Shapiro, and Gadola; 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)**]
Causation Issues [§3135]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision (Shapiro, concurring), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Galina Garvish's third-party action against Defendant Don Andre Brown. The Court of Appeals held that Garvish failed to present sufficient evidence to create a question of fact as to whether she sustained a serious impairment of body function under *McCormick v Carrier*, 487 Mich 180 (2010). Specifically, the Court of Appeals held that Garvish failed to satisfy the first prong of the *McCormick* test, and failed to establish that any impairments she did have were caused by the subject motor vehicle collision.

Read Full Summary

Chahine v Memberselect Ins Co, et al (COA – UNP 12/16/2021; RB #4366)

Michigan Court of Appeals; Docket #356350; Unpublished
Judges Sawyer, Riordan, and Redford; 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 affirmed the trial court's summary disposition order, in which the trial court determined that Defendant Memberselect Insurance Company ("MIC") was the highest priority insurer for payment of Plaintiff Ali Chahine's no-fault PIP benefits. The Court of Appeals held that Chahine was domiciled at his parents' house in Dearborn, Michigan at the time of the subject incident, and that Chahine's parents' no-fault insurer, MIC, was therefore the highest priority insurer under MCL 500.3114(1).

Read Full Summary

Carter v Progressive Mich Ins Co (COA – UNP 12/16/2021; RB #4367)

Michigan Court of Appeals; Docket #356609; Unpublished
Judges Sawyer, Riordan, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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)**]

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 Drucilla Marie Carter's third-party action seeking uninsured motorist coverage from Defendant Progressive Michigan Insurance Company ("Progressive"). The Court of Appeals held that Carter failed to satisfy the first and third prongs of the test for establishing a serious impairment of body function set forth in McCormick v Carrier, 487 Mich 180 (2010). Specifically, the Court held that Carter failed to establish that she suffered an objectively manifested impairment that was caused by the subject motor vehicle crash, and that she failed to establish that any alleged impairments caused by the crash affected her general ability to lead her normal life.

Read Full Summary

Rush v Allstate Fire and Cas Ins Co (COA – UNP 12/21/2021; RB #4371)

Michigan Court of Appeals; Docket #355242, 355956, and 355960; Unpublished
Judges Boonstra, Gleicher, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Compulsory Insurance Requirements for Owners or Registrants of Motor Vehicles Required to Be Registered [§3101(1)]
Definition of Owner [§3101(2)(h)]
Exception to General Priority for Non-Occupants [§3115(1)]

TOPICAL INDEXING:
Cancellation and Rescission of Insurance Contracts

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Eric Rush's first-party action against Defendant Allstate Fire & Casualty Insurance Company ("Allstate"). The Court of Appeals held that a question of fact existed as to whether Toron and Deshalon Brownlee, who were named insureds on a no-fault insurance policy issued by Allstate, were constructive owners of a vehicle titled and registered in their son's name and which their son was driving when he crashed into Rush, a pedestrian who did not have his own no-fault insurance policy. As a result, the Court held that a question of fact existed as to whether, based on the priority rules set forth in MCL 500.3115, prior to the no-fault reforms passed under 2019 Public Acts 21 and 22, Allstate was higher in the order of priority for payment of Rush's no-fault PIP benefits related to the crash.

Read Full Summary

State Farm Mut Auto Ins Co v Protective Ins Co (COA – UNP 12/21/2021; RB #4372)

Michigan Court of Appeals; Docket #355532; Unpublished
Judges Cavanagh, Servitto, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Exception for Motorcycle Injuries [§3114(5)]
Determination of Involved Vehicle [§3114(5)]
Penalty Attorney Fees Between Insurers [§3148]

TOPICAL INDEXING:
Insurer Equal Priority Reimbursement [No-Fault Insurer Claims for Reimbursement]

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order in favor of Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm"), in State Farm's action for reimbursement from Defendant Protective Insurance Company ("Protective") for half the total amount of no-fault PIP benefits State Farm paid to a motorcyclist, Robert Rader, after Rader was injured in a crash involving two motor vehicles. The Court of Appeals held that a vehicle driven by Protective's insured, which was passively stopped at a red light at the time of the crash, was "involved" in the crash for purposes of MCL 500.3114(5), because Rader's body was thrown against it after Rader first crashed into a separate vehicle, insured by State Farm. Therefore, the Court held that Protective and State Farm were equal priority insurers under MCL 500.3114(5), and that Protective was responsible for half of Rader's PIP benefits.

Read Full Summary

Brown v Ayers, et al (COA – UNP 12/21/2021; RB #4370)

Michigan Court of Appeals; Docket #354730; Unpublished
Judges Cavanagh, Servitto, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
When Claimants Can Receive PIP Benefits Through the Assigned Claims Facility [§3172(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 Defendant Citizens Insurance Company of the Midwest ("Citizens") from Plaintiff Lena Brown's first-party action against both Citizens and Defendant Berkshire Hathaway Homestate Insurance Company ("Berkshire"). The Court of Appeals held that the trial court properly dismissed Citizens—the insurer to which Brown's claim for PIP benefits arising out of the subject motor vehicle collision was assigned under the Michigan Assigned Claims Plan (MACP)—because Berkshire was higher in priority for payment of Brown's benefits. Furthermore, the Court held that, because Brown failed to exercise due diligence in attempting to identify a higher priority insurer before turning to the MACP, the proper course of action for the trial court was to dismiss Citizens altogether, as opposed to ordering Citizens to continue paying Brown's benefits and then seeking reimbursement from the higher priority insurer, as was the Court of Appeals' prescription in a similar, albeit distinguishable, situation in Spencer v Citizens Ins Co, 239 Mich App 291 (2000).

Read Full Summary

Powell, et al v Progressive Mich Ins Co (COA – UNP 12/21/2021; RB #4369)

Michigan Court of Appeals; Docket #352850; Unpublished
Judges Boonstra, Gleicher, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Cancellation and Rescission of Insurance Contracts

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Joshua Powell's first-party action against Defendant Progressive Michigan Insurance Company ("Progressive"). Powell was statutorily entitled to no-fault PIP benefits under his brother's policy with Progressive, but after the subject motor vehicle collision, Progressive rescinded his brother's policy on the basis of fraud and informed Powell there was no valid coverage in effect with Progressive at the time of the collision. Powell then applied for no-fault PIP benefits under the Michigan Assigned Claims Plan (MACP), and had his claim assigned to Farmers Insurance Exchange ("Farmers"). After reaching a settlement in a separate first-party action against Farmers, Powell filed a first-party action against Progressive, seeking payment of additional no-fault PIP benefits that had accrued prior to the settlement and release with Farmers, and arguing that he was entitled to said benefits because Progressive committed actionable fraud in leading him to believe that his brother's policy had been rescinded with respect to his claim thereunder. The Court of Appeals held that Powell failed to present any evidence that Progressive made any fraudulent misrepresentation and, alternatively, that his claim against Progressive was barred by the one-year-back rule.

Read Full Summary

Mickens v Meemic Ins Co, et al (COA – UNP 12/28/2021; RB #4373)

Michigan Court of Appeals; Docket #354694; Unpublished
Judges Borrello, Jansen, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Dissent

STATUTORY INDEXING:
Not Applicable

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

In this 2-1 unpublished per curiam decision (Borrello, dissenting), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Julia Mickens's third-party action against Defendant Suburban Mobility Authority for Regional Transportation ("SMART") on governmental immunity grounds. The majority held that Mickens failed to present any evidence that might create a question of fact as to whether SMART's employee, April Nickerson, was negligent in her operation of the SMART bus that was involved in the subject motor vehicle collision.

Read Full Summary