

2022

October - December

Quarterly Case Summary Report:
A Chronological Anthology of Michigan's 2022
Fourth Quarter No-Fault Appellate Case Summaries

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 fourth quarter (October through December) of 2022. 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 fourth quarter of 2022: [*Ravenell v Auto Club Ins Assoc*](#) and [*Mich Head and Spine Institute v Mid-Century Ins Co*](#).

Ravenell featured an equitable subrogation claim by NGM Insurance Company against Auto Club Insurance Association. After sustaining serious injuries in a car accident, Oliver Ravenell sought PIP benefits from NGM, which insured three vehicles listed on a policy issued to a company for which his wife served as the resident agent. Neither Ravenell nor his wife were listed on the policy as named insureds, and thus NGM eventually realized that it was not in the order of priority for Ravenell's claim, and that the highest priority insurer was ACIA: the insurer of the driver of the other vehicle involved in the crash. NGM proceeded to file an equitable subrogation action against ACIA, but ACIA moved for summary disposition, arguing that NGM was acting as a "mere volunteer" when it paid Ravenell's benefits – "mere volunteers" being unable to pursue such claims. The trial court denied ACIA's motion, but the Court of Appeals reversed. The Supreme Court then vacated the Court of Appeals' reversal and remanded for reconsideration in light of the Supreme Court's holding in [*Esurance Prop & Cas Ins Co v Assigned Claims Plan*](#). On remand, the Court of Appeals affirmed the trial court's denial of ACIA's motion, and held that NGM was not acting as a mere volunteer when it paid Ravenell's benefits. Rather, NGM was "'protecting its own interests' by complying with its perceived obligations under the no-fault act." ACIA applied for leave to the Supreme Court, which the Supreme Court granted, directing the parties to address "the extent to which the reasonableness of an insurer's mistaken belief that it was required to pay a claim is a factor in determining whether the insurer is entitled to equitable subrogation."

Mich Head and Spine featured a dispute over whether an automobile insurance policy could extend personal injury protection coverage to an individual not otherwise covered under MCL 500.3114. The subject policy, issued by Mid-Century Insurance Company, defined a PIP coverage 'insured' as, 'Anyone . . . who sustains bodily injury . . . while 'occupying' a covered 'auto.' " Based on this language, Stacey Krebs filed a claim with Mid-Century after she was injured in a motor vehicle accident while traveling as a passenger in a vehicle owned and operated by Charles Basnaw, the procurer of the Mid-Century policy. Krebs and her medical providers ultimately filed suit against Mid-Century, and Mid-Century moved for summary disposition, arguing that the policy could not be read as expanding PIP coverage to individuals beyond what is statutorily mandated in the Michigan No-Fault Act. The trial court disagreed and denied Mid-Century's motion, but the Court of Appeals reversed, reasoning:

Regardless of the breadth of Mid-Century's policy coverage, the policy does not control whether plaintiffs or Stacey may claim PIP benefits from Mid-Century. As noted, the no-fault act governs the coverages it mandates, while an insurance policy governs optional coverage not required by the no-fault act. Fortson, 506 Mich at 297-298. PIP benefits are mandated by the no-fault act; therefore, entitlement to, and payment of, PIP benefits is governed by statute, not by the insurance contract. Id. at 298. This is embodied in the insurance policy itself, which expressly states that liability for PIP benefits is 'subject to the provisions of [the no-fault act].' Accordingly, Lewis is of no help to plaintiffs or Stacey because Mid-Century's insurance policy mandates that the no-fault act be followed.

Krebs and her providers applied for leave to appeal to the Supreme Court, which the Supreme Court granted, directing the parties to brief:

(1) whether an insurance policy can expand the class of persons eligible to receive personal protection (PIP) benefits beyond that set forth by the no-fault act; (2) if so, whether the insurance policy issued by Mid-Century Insurance Company in this case expanded the class of persons to include intervening plaintiff Stacy Krebs; and (3) whether the intervening plaintiffs [Krebs's medical providers] have standing as third-party beneficiaries to claim PIP benefits under that policy.

Seven Published Decisions from the Michigan Court of Appeals

The Michigan Court of Appeals submitted seven opinions for publication in the fourth quarter of 2022: [*Bauer-Rowley v Humphreys*](#), [*Bakeman v Citizens Ins Co of the Midwest, Encompass Healthcare, PLLC v Citizens Ins Co*](#), [*Wenkel v Farm Bureau Gen Ins Co of Mich, C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*](#), and [*Steanhouse v Mich Auto Ins Placement Facility*](#).

Bauer-Rowley featured a priority dispute between two insurers – Auto-Owners and Farm Bureau – and a dispute over whether it was “frivolous” for the injured person caught in the middle, Breanne Bauer-Rowley, to name Auto-Owners as a defendant in her first amended complaint, by the time she filed which Auto-Owners alleged she should have known that Farm Bureau was the highest priority insurer. Breanne Bauer-Rowley was injured in a car accident, after which she filed a claim for PIP benefits with Auto-Owners – the insurer of the vehicle she was traveling in at the time of her accident. Auto-Owners denied the claim, and Bauer-Rowley turned instead to the MAIPF. The MAIPF refused to assign the claim, however, asserting in a letter to Bauer-Rowley that ‘higher coverage’ was available from Auto-Owners. Bauer-Rowley then filed a complaint against Auto-Owners, and Auto-Owners asserted that the highest priority insurer was actually Farm Bureau, which insured Bauer-Rowley’s “domiciled relative.” Bauer-Rowley proceeded to amend her complaint to add Farm Bureau as a defendant, but left Auto-Owners in the caption, (1) because she did not initially believe that Farm Bureau’s insured

was, in fact, domiciled with her at the time of the accident, and (2) because she was unsure whether the pre- or post-PA 21 of 2019 version of MCL 500.3114 applied to her claim. In its affirmative defenses, Farm Bureau asserted that it was not the highest priority insurer, but by the time Auto-Owners moved for summary disposition, Farm Bureau had conceded the issue of priority. Auto-Owners then moved for summary disposition, as well as an award of attorney fees, arguing that Bauer-Rowley's decision to continue naming it as a defendant in her amended complaint was frivolous. The trial court agreed and awarded attorney fees to Auto-Owners, but the Court of Appeals reversed, stating in its opinion that domicile determinations under MCL 500.3114 are "not always simple[,] and that it was not frivolous for Bauer-Rowley to continue naming Auto-Owners in her amended complaint, given her reasonable confusion about which version of MCL 500.3114 applied and the fact that Farm Bureau initially disputed its status as the highest priority insurer.

Bakeman featured a dispute over whether an MAIPF claimant committed a "fraudulent insurance act" for purposes of MCL 500.3173a(2). After Oliver Bakeman was injured in a car accident and spent six weeks inpatient in the hospital, he was discharged with a prescription for both physical therapy and 12 hours of attendant care per day. Bakeman began his physical therapy at Five Star Comfort Care, and Five Star's owner and operator, Joe Awada, arranged for Bakeman to receive his attendant care from Awada's then-mother-in-law, Lura Watson. For the next two months, Watson would provide eight hours of attendant care per day to Bakeman, but Awada would submit attendant care claim forms to Citizens—the insurer to which the MAIPF assigned Bakeman's claim—which claimed twelve hours of attendant care per day. Citizens paid for Bakeman's attendant care initially, but eventually stopped upon discovering that the information contained in the forms was inaccurate. Bakeman then filed suit against Citizens, and, during his deposition, offered contradictory testimony regarding whether he had signed the attendant claim forms or whether his signature had been forged. Citizens moved for summary disposition, arguing that Bakeman committed a "fraudulent insurance act" for purposes of MCL 500.3173a(2), because he signed the attendant care forms which contained false information. The trial court agreed and granted Citizens' motion, and the Court of Appeals affirmed. In its decision, the Court of Appeals noted, preliminarily, that *if* Bakeman signed the forms—even if he did not know their contents—he committed a "fraudulent insurance act," because "one who signs an agreement . . . is presumed to know the nature of the document and to understand its contents, even if he or she has not read the agreement." Turning then to the issue of whether Bakeman's self-conflicting deposition testimony necessarily created a question of fact as to whether he actually signed the forms, the Court held that it did not, because, when considering all the evidence in the case, no reasonable juror could conclude that Bakeman's signature had been forged, despite his select testimony to the contrary.

Spine Specialists featured a dispute over the retroactivity of “formal denial” tolling under MCL 500.3145. From April 2019 to May 2019, Jeremy Woods received treatment for accident-related injuries from Spine Specialists of Michigan, PC. After receiving said treatment, Woods assigned to Spine Specialists his right to pursue PIP benefits related to his care, and Spine Specialists, in turn, filed a claim with Woods’ no-fault insurer, MemberSelect. MemberSelect denied the claims in August of 2020, after which Spine Specialists filed suit. MemberSelect proceeded to move for summary disposition, arguing that recovery of PIP benefits related to Woods’s treatment from April 2019 to May 2019 was barred by pre-amendment version of the one-year-back rule – before the creation of “formal denial” tolling – and, in response, Spine Specialists argued that the applicable law is that which was in place at the time the “wrong” giving rise to the lawsuit occurred. In this case, Spine Specialists’ argument went, the “wrong” giving rise to the lawsuit was MemberSelect’s denial of the claim, which occurred after the effective date of the 2019 amendments to the No-Fault Act. The trial court agreed with MemberSelect and granted its motion, and the Court of Appeals affirmed, holding that “formal denial” tolling does not apply retroactively to claims which accrued prior to the effective date of the amendments. The operative date for determining the applicable law, then, was not the date of MemberSelect’s denial, but the dates of service for which benefits were being sought.

Encompass Healthcare featured a dispute over whether explanations of benefits (EOBs) constituted “formal denials” for purposes of MCL 500.3145. After being injured in a car accident, Ronald Mannor received treatment from Encompass Healthcare, PLLC, and Encompass submitted bills for said treatment to Citizens Insurance Company, totaling \$921,828.44. Citizens submitted only partial payments of the various charges which comprised the \$921,828.44, with accompanying EOBs detailing why it was not paying Encompass its full charges. More than one year after the charges were incurred, Encompass filed suit against Citizens, and Citizens moved for summary disposition, arguing that Encompass was barred from recovering the balance by the one-year-back rule. Encompass argued, in response, that Citizens never “formally denied” the charges, but the trial court disagreed, ruling that Citizens’ EOBs constituted “formal denials.” The Court of Appeals then reversed the trial court, holding that the EOBs not constitute “formal denials” because they “did not provide the explicit and unequivocal expression of finality required to constitute formal denials,” and that, as a result, the one-year-back rule was tolled through the date Encompass filed its lawsuit.

Wenkel featured a dispute over whether the administrative order issued by the Michigan Supreme Court at the beginning of the COVID-19 pandemic, tolling statutes of limitations, also tolled the one-year-back rule under MCL 500.3145. Dustin Wenkel was injured in a car accident in 2017 and, at some point thereafter, filed an action seeking to recover unpaid PIP benefits from Farm Bureau. On January 24, 2020, the parties stipulated to a dismissal of Wenkel’s action without prejudice, and explicitly agreed that if Wenkel re-filed his action by April 3, 2020, the operative date for purposes of the one-

year back rule would be the filing date of his first complaint. Wenkel did not re-institute litigation by April 3, 2020, however, waiting instead until June 8, 2020, after which Farm Bureau moved for summary disposition arguing that Wenkel's claim was barred by the one-year-back rule. Wenkel argued, in response, that the one-year-back rule and the parties' agreement in the stipulated order of dismissal were tolled by the Supreme Court's administrative order regarding COVID-19. The trial court disagreed and granted Farm Bureau's motion, and the Court of Appeals affirmed, holding (1) that COVID-19 tolling did not apply to the one-year-back rule, and (2) that COVID-19 tolling did not apply to the parties' agreement in the stipulated order of dismissal.

C-Spine featured a dispute over whether a medical provider could sue a No-Fault insurer for unpaid PIP benefits on accounts the provider sold to factoring companies. C-Spine Orthopedics, PLLC provided treatment to Sandra Cruz and Jose Cruz-Muniz after both were injured in a car accident. The Cruzes assigned their rights to pursue PIP benefits related to their treatment to C-Spine, but C-Spine began experiencing cash flow issues at some point thereafter, prompting it to sell the Cruzes' accounts to various factoring companies. As part of the sale of the accounts, C-Spine also assigned to the various factoring companies the rights to pursue benefits that the Cruzes had originally assigned to C-Spine. Later, C-Spine filed suit on the accounts against Progressive and subsequently obtained counter-assignments from the factoring companies, prompting Progressive to move for summary disposition, arguing that, at the time C-Spine filed suit, it had no remaining interest in the Cruzes' debts and was therefore not the real party in interest. The trial court agreed, but the Court of Appeals reversed, holding that, even without the counter-assignments, C-Spine could sue Progressive for PIP benefits related to the treatment it rendered to the Cruzes. The Court noted that MCR 2.201(B)(1) provides that "a person authorized by statute may sue in his or her own name without joining the party for whose benefits the action is brought," and since MCL 500.3112 authorizes providers to assert direct causes of action against No-Fault insurers, C-Spine could sue Progressive even after selling the Cruzes' accounts, and even without naming the factoring companies as parties to the lawsuit.

Steanhouse featured a dispute over whether an uninsured Michigan resident's entitlement to no-fault PIP benefits, arising out of a car accident that occurred in Ohio, was governed by MCL 500.3111 or MCL 500.3172. Markise Steanhouse, a Michigan resident, was injured in a car accident in Ohio, and sought PIP benefits related to the accident from the MAIPF. The MAIPF refused to assign Steanhouse's claim because his accident occurred out of state, and in Steanhouse's resultant first-party action against the MAIPF, the MAIPF moved for summary disposition, arguing that he was ineligible for assignment based on the plain language of MCL 500.3172. Steanhouse argued, in response, that his entitlement to PIP benefits was established by MCL 500.3111, and that to the extent MCL 500.3172 conflicted with MCL 500.3111, the former could not be interpreted to deprive him of rights clearly established by the latter. The trial court agreed with Steanhouse and denied the MAIPF's motion, but the Court of Appeals reversed, holding that the two

statutes could be read harmoniously and that, even if they could not, MCL 500.3172 would apply to Steanhouse's claim because it was the more specific statute. Accordingly, Steanhouse was not entitled to no-fault PIP benefits from the MAIPF for his accident.

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

The Supreme Court and Court of Appeals issued opinions in 31 cases dealing with Michigan's No-Fault Act in the fourth quarter of 2022. Those cases are broken down categorically, below:

1. 22 cases featured disputes over no-fault PIP benefits. Of those:
 - a. One featured a dispute regarding the definition of "owner" in MCL 500.3101:
[Williams v Kelly](#)
 - b. Two featured disputes regarding the "arising out of" requirement in MCL 500.3105:
[LaPointe v Rojo](#)
[Stuth v Home-Owners Ins Co](#)
 - c. One featured a dispute regarding the compensability in No-Fault PIP benefits of various chiropractic and therapy services under MCLs 500.3107 and 500.3107b:
[Nasrallah v Argonaut-Midwest Ins Co](#)
 - d. One featured a dispute over whether MCL 500.3111 or MCL 500.3172 controls in determining whether uninsured Michigan residents are entitled to PIP benefits for injuries occurring outside Michigan:
[Steanhouse v Mich Auto Ins Placement Facility](#)
 - e. One featured a dispute related to the right of service providers to assert direct causes of action against No-Fault Insurers under MCL 500.3112:
[C-Spine Orthopedics, PLLC v Progressive Mich Ins Co](#)

- f. One featured a “payment in good faith” defense under MCL 500.3112:
[*Husinka Group, LLC v Farm Bureau Gen Ins Co of Mich*](#)

- g. Three featured priority disputes under MCL 500.3114 or the former MCL 500.3115:
[*Bauer-Rowley v Humphreys*](#)

[*Bracy v Nichols*](#)

[*Lekli v Farm Bureau Mut Ins Co of Mich*](#)

- h. One featured a dispute regarding the “reasonable proof” requirement of MCL 500.3142:
[*Husinka Group, LLC v Farm Bureau Gen Ins Co of Mich*](#)

- i. One featured a dispute over No-Fault Penalty Interest and Attorney Fees under MCLs 500.3142 and 500.3148:
[*Husinka Group, LLC v Farm Bureau Gen Ins Co of Mich*](#)

- j. Three featured disputes regarding the one-year back rule in MCL 500.3145:
[*Encompass Healthcare, PLLC v Citizens Ins Co*](#)

[*Spine Specialists of Mich, PC v MemberSelect Ins Co*](#)

[*Wenkel v Farm Bureau Gen Ins Co of Mich*](#)

- k. One featured a dispute over whether COVID-19 tolling applied to the one-year back rule in MCL 500.3145:
[*Wenkel v Farm Bureau Gen Ins Co of Mich*](#)

- l. One featured a dispute regarding the one-year notice rule in MCL 500.3145:
[*Morrisette v Indian Harbor Ins Co*](#)

- m. One featured a dispute as to whether EOBs constituted “formal denials” under MCL 500.3145:
[*Encompass Healthcare, PLLC v Citizens Ins Co*](#)

- n. One featured a dispute related to the obligation of a claimant to undergo medical examinations pursuant to MCL 500.3151:
[*Darling v State Farm Mut Auto Ins Co*](#)

- o. Five featured disputes regarding claims for PIP benefits through the MAIPF, under MCL 500.3172:
[*Bakeman v Citizens Ins Co of the Midwest*](#)
[*Lekli v Farm Bureau Mut Ins Co of Mich*](#)
[*Scott v Mich Auto Ins Placement Facility*](#)
[*Steanhouse v Mich Auto Ins Placement Facility*](#)
[*Williams v Kelly*](#)

- p. Two featured disputes over whether claimants had committed “fraudulent insurance acts” under MCL 500.3173:
[*Bakeman v Citizens Ins Co of the Midwest*](#)
[*Scott v Mich Auto Ins Placement Facility*](#)

- q. One featured a PIP case that was submitted to arbitration:
[*Clark v Suburban Mobility Auth for Regional Transp*](#)

- r. One featured a dispute over assignments:
[*Surgeons Choice Med Ctr v Everest Nat'l Ins Co*](#)

- s. Two featured disputes over whether PIP claimants had committed fraud:
[*Bakeman v Citizens Ins Co of the Midwest*](#)
[*Wyoming Chiropractic Health Clinic, PC v Falls Lake Ins Co*](#)

- t. One featured a dispute over discovery sanctions:
[*Burns v Farm Bureau Mut Ins Co of Mich*](#)

- u. Two featured disputes over evidentiary issues:
[*Central Home Health Care Services v Liberty Mut Ins Co*](#)
[*Stuth v Home-Owners Ins Co*](#)

 - v. Two featured disputes over pleadings issues:
[*Bauer-Rowley v Humphreys*](#)
[*Scott v Mich Auto Ins Placement Facility*](#)

 - w. One featured a dispute over whether a medical provider assignee's claim was barred by res judicata:
[*Surgeons Choice Med Ctr v Everest Nat'l Ins Co*](#)

 - x. One featured a dispute over the retroactivity of the 2019 amendments to the No-Fault Act:
[*Spine Specialists of Mich, PC v MemberSelect Ins Co*](#)
2. Ten cases featured claims of automobile negligence and/or for uninsured/underinsured motorist benefits. Of those:
- a. Two featured disputes over whether the plaintiffs suffered "serious impairments of body function" for purposes of MCL 500.3135:
[*Baskin v Namer*](#)
[*Orois v Moore*](#)

 - b. One featured a dispute over causation under MCL 500.3135:
[*Whitney v Grange Ins Co of the Midwest*](#)

 - c. Two featured disputes about comparative negligence:
[*Baskin v Namer*](#)
[*Parraghi v Chodynieski*](#)

- d. Two featured disputes over whether uninsured motor vehicle owners were barred from recovering noneconomic damages under MCL 500.3135:
[*Epps v United Servs Auto Assoc*](#)
[*Whitney v Wilcoxson*](#)

- e. Two featured disputes over the admissibility of certain evidence:
[*Parraghi v Chodynieski*](#)
[*Wood v City of Detroit*](#)

- f. One featured a claim of gross negligence against a government employee:
[*Williams v Kelly*](#)

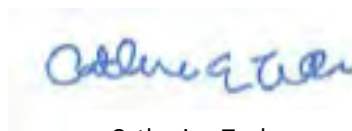
- g. Three featured disputes brought under the “motor vehicle exception” to the Governmental Tort Liability Act:
[*Day v Suburban Mobility Auth for Regional Transp*](#)
[*Williams v Kelly*](#)
[*Wood v City of Detroit*](#)

- h. Three featured disputes over the applicability of the “sudden emergency doctrine”:
[*Baskin v Namer*](#)
[*Day v Suburban Mobility Auth for Regional Transp*](#)
[*Maya v Omega Freight Systems, Inc*](#)

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Stuth v Home-Owners Ins Co, et al (COA - UNP 10/6/2022; RB #4492)

Michigan Court of Appeals; Docket #357244; Unpublished

Judges Kelly, Cameron, and Hood; Per Curiam

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

STATUTORY INDEXING:

[Entitlement to PIP Benefits:](#)

[Arising Out of / Causation Requirement \[§3105\(1\)\]](#)

TOPICAL INDEXING:

[Evidentiary Issues](#)

In this 2-1, unpublished, per curiam decision (Kelly, concurring in part and dissenting in part), the Court of Appeals affirmed in part, and reversed in part, the trial court's denial of Defendant Home-Owners Insurance Company's ("Home-Owners") counterclaim for declaratory relief in Plaintiff John Stuth's first-party action against it. The Court of Appeals affirmed the trial court's finding – following a bench trial – that there was a white van traveling in the opposite direction of Stuth just prior to Stuth losing control of his motorcycle and crashing, but the Court reversed the trial court's ruling that the white van was involved in Stuth's crashing for purposes of MCL 500.3105(1).

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Surgeons Choice Med Ctr v Everest Nat'l Ins Co, et al (COA - UNP 10/6/2022; RB #4491)

Michigan Court of Appeals; Docket #352744; Unpublished

Judges Murray, Fort Hood, 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 vacated the trial court's summary disposition order dismissing Plaintiff Surgeons Choice Medical Center's ("Surgeon's Choice") action for no-fault PIP benefits allegedly owed to its patient/assignor, Tracy Tran, against Defendant Everest National Insurance Company ("Everest"). Applying its holding in Mecosta Co Med Ctr v Metro Group Prop & Cas Ins Co, ___ Mich ___ (2022), the Court of Appeals held that Surgeons Choice was not bound by judgments against Tran's other providers in their separate lawsuits against Everest, because (1) Surgeons Choice obtained its assignment from Tran prior to those judgments being rendered, and (2) Surgeons Choice was not in privity with Tran's other providers.

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Day v Suburban Mobility Auth for Regional Transp, et al (COA - UNP 10/13/2022; RB #4493)

Michigan Court of Appeals; Docket #356848; Unpublished
Judges Ronayne Krause, Jansen, and Swartzle; 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](#)
[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, seeking dismissal of Plaintiff Paula Day's auto negligence action against it. The Court of Appeals held that there was sufficient evidence to create a question of fact as to whether a SMART bus driver, Timothy Michael Martin, acted negligently in rear-ending a streetsweeper which was obscured, to some degree, by a cloud of dust it generated.

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Williams v Kelly, et al (COA - UNP 10/13/2022; RB #4494)

Michigan Court of Appeals; Docket #357934; Unpublished
Judges Swartzle, Cavanagh, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:
[Definition of Owner \[§3101\(2\)\(h\)\]](#)

TOPICAL INDEXING:
[Gross Negligence Exception to Governmental Immunity](#)
[Motor-Vehicle Exception to Governmental Tort Liability Act](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Nekeyia Williams auto negligence action against Defendants Christine Antoinette Kelly and the City of Detroit, but reversed the trial court's summary disposition orders dismissing Williams's first-party action against the Michigan Automobile Insurance Placement Facility ("MAIPF"). With respect to Williams's auto negligence claim against the City of Detroit, the Court held that that claim was properly dismissed because Williams did not plead it under the motor vehicle exception to governmental immunity – she alleged that the City was liable only under theories of owner's liability, respondeat superior, and negligent hiring and retention.

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Scott, et al v Mich Auto Ins Placement Facility, et al (COA - UNP 10/13/2022; RB #4495)

Michigan Court of Appeals; Docket #358882; Unpublished
Judges Swartzle, Cavanagh, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[Fraudulent Insurance Acts \[§3173a\]](#)

TOPICAL INDEXING:

[Issues Regarding Affirmative Defenses](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Orlando Scott's first-party action for no-fault PIP benefits against Defendant Michigan Automobile Insurance Placement Facility ("MAIPF"). Relying on *Loiola by Fried v Citizens Ins Co of America (On Remand)*, unpublished per curiam opinion of the Court of Appeals issued December 2, 2021 (Docket No. 348670), the Court of Appeals, in this case, held that Citizens failed to state with particularity its affirmative defense that Scott had committed a "fraudulent insurance act" for purposes of MCL 500.3173a(2). However, as in *Loiola*, the Court remanded the case to the trial court to allow the MAIPF to amend its affirmative defenses.

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Bracy, et al v Nichols, et al (COA - UNP 10/13/2022; RB #4496)

Michigan Court of Appeals; Docket #359397; Unpublished
Judges Swartzle, Cavanagh, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[General / Miscellaneous \[§3115\]](#)

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 Defendant Farmers Insurance Exchange's ("Farmers") crossclaim – seeking reimbursement for no-fault PIP benefits it paid to Plaintiff Beth Bracy – against Co-Defendant Geico Indemnity Company ("Geico"). Noting that the priority scheme set forth in the former MCL 500.3115(1) applied to this case, the Court of Appeals held that Geico was not in the order of priority for payment of Bracy's PIP benefits with respect to the subject motor vehicle-versus-pedestrian collision, because while Geico insured the vehicle which crashed into Bracy, the vehicle's owner, registrant, and operator, Yolanda Nichols, was not a named insured on the policy.

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Bauer-Rowley, et al v Humphreys, et al (COA - PUB 10/27/2022; RB #4497)

Michigan Court of Appeals; Docket #358846; Published
Judges Shapiro, Gadola, and Yates; Per Curiam
Official Michigan Reporter Citation: Forthcoming; [Link to Opinion](#)

STATUTORY INDEXING:

[Priority Rules Under PAs 21 and 22 of 2019 \[§3114\]](#)

TOPICAL INDEXING:

[Revised Judicature Act -
Miscellaneous Provisions](#)

In this unanimous, published decision authored by Judge Shapiro, the Court of Appeals reversed the trial court's order awarding attorney fees and costs to Defendant Auto-Owners Insurance Company ("Auto-Owners") as a sanction against Plaintiff Breanne Bauer-Rowley for filing a frivolous lawsuit. The Court of Appeals held that, given the facts and circumstances of the case – for instance, the fact that Farm Bureau (ultimately determined to be the highest priority insurer with respect to Bauer-Rowley's claim for no-fault PIP benefits) initially disputed its priority status, as well as the fact that Bauer-Rowley was explicitly told by the Michigan Automobile Insurance Placement Facility ("MAIPF") to seek no-fault PIP benefits from Auto-Owners – the trial court clearly erred in finding that Bauer-Rowley's action against Auto-Owners was frivolous.

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Lekli v Farm Bureau Mut Ins Co of Mich, et al (COA - UNP 10/27/2022; RB #4498)

Michigan Court of Appeals; Docket #350942; Unpublished
Judges Kelly, Servitto, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[Procedures Applicable to Disputes Between Two or More Insurers \[§3172\(3\)\]](#)

TOPICAL INDEXING:

Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals (on remand from the Supreme Court) reversed the trial court's summary disposition order dismissing Plaintiff Syrja Lekli's action against the Michigan Automobile Insurance Placement Facility ("MAIPF"). The Court of Appeals held that the MAIPF should have assigned Lekli's claim under MCL 500.3172(1), because, at the time of his application, there was a dispute between Farm Bureau and Great American over which was higher in priority with respect to his claim for no-fault PIP benefits. Ultimately, it turned out that a different insurer altogether – Hudson Insurance Company ("Hudson") – was highest in priority, but the Court held that the MAIPF should have assigned Lekli's claim nonetheless.

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Baskin v Namer, et al (COA - UNP 10/27/2022; RB #4499)

Michigan Court of Appeals; Docket #358176; Unpublished
Judges Letica, Servitto, and Hood; 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)**]

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

[Causation Issues \[§3135\]](#)

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 Lamar Baskin's auto negligence action against Defendant Ali Mahmood-Musaid Namer, but affirmed the trial court's denial of Namer's motion for summary disposition on the issue of comparative negligence. The Court of Appeals held, first, that the trial court erred in ruling, as a matter of law, that Baskin's injuries were not caused by the subject motor vehicle accident and that Baskin had not suffered an objectively manifested impairment for purposes of MCL 500.3135. The Court of Appeals held, second, that the trial court did not err in finding that a question of fact remained on the issue of comparative negligence.

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Wood v City of Detroit, et al (COA - UNP 11/3/2022; RB #4500)

Michigan Court of Appeals; Docket #353611; Unpublished
Judges Letica, Servitto, and Kelly; Per Curiam

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

STATUTORY INDEXING:

Not Applicable

TOPICAL INDEXING:

[Evidentiary Issues](#)

[Issues Regarding Expert Witnesses](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals (on remand from the Supreme Court) affirmed the trial court's denial of Defendant City of Detroit's motion for summary disposition, seeking dismissal of Plaintiff Bruce Wood's auto negligence action against it. The Court of Appeals held that a question of fact existed as to whether James Derrick Pennington, a bus driver for the City of Detroit, was negligent in his operation of a bus that had a tire fly off of it and strike Wood, injuring him. More specifically, the Court of Appeals held that the trial court did not err in refusing to strike Wood's expert accident reconstructionist's opinion regarding what Pennington would have felt as he drove a bus without a properly affixed tire.

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Epps, et al v United Servs Auto Assoc, et al (COA - UNP 11/3/2022; RB #4501)

Michigan Court of Appeals; Docket #357818; Unpublished
Judges Rick, O'Brien, and Patel; 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\(1\)\]](#)
[Disqualification of Uninsured Owners / Operators for Noneconomic Loss \[§3135\(2\)\]](#)

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 Ophelia Epps's auto negligence action against Defendants Destiny Johnson and Tammy Jones. At the time of the crash, Epps was a resident of Georgia, had registered her vehicle in Michigan, but had purchased a Georgia auto insurance policy. The Court of Appeals held that because Epps registered the vehicle in Michigan, she was also required under MCL 500.3101(1) to insure the vehicle with Michigan no-fault insurance pursuant to MCL 500.3101(1). The Court then held that because Epps failed to maintain the security required by MCL 500.3101(1), she was barred from recovering damages in tort by MCL 500.3135(2)(c).

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Parraghi v Chodyiecki, et al (COA - UNP 11/3/2022; RB #4502)

Michigan Court of Appeals; Docket #358829; Unpublished
Judges Letica, Servitto, and Hood; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

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

TOPICAL INDEXING:

[Evidentiary Issues](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Dylan Parraghi's auto negligence action against Defendant Edward Chodyniecki, arising out of a motor vehicle-versus-ORV collision. The Court of Appeals held, first, that Chodyniecki failed to support his motion for summary disposition on the issue of comparative negligence with admissible documentary evidence. The Court of Appeals held, second, that even if Chodyniecki had supported his motion with admissible evidence, there was still a question of fact on the issue of comparative negligence.

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Clark v Suburban Mobility Auth for Regional Transp, et al (COA - UNP 11/10/2022; RB #4505)

Michigan Court of Appeals; Docket #359204; Unpublished
Judges Murray, Cavanagh, and Cameron; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
[Revised Judicature Act - Arbitration \(MCL 600.5001, Et Seq.\)](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's order granting judgment of an arbitration award in favor of Plaintiff Michael Clark, in Clark's first-party action for no-fault PIP benefits against Defendant Suburban Mobility Authority for Regional Transportation ("SMART"). The Court of Appeals held that there was no basis for reversing the trial court's order because the arbitration award was based on the arbitrator's factual findings regarding Clark's claim for PIP benefits, which are not reviewable by courts.

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Bakeman v Citizens Ins Co of the Midwest, et al (COA - PUB 11/10/2022; RB #4503)

Michigan Court of Appeals; Docket #357195; Published
Judges Rick, O'Brien, and Patel; Per Curiam
Official Michigan Reporter Citation: Forthcoming; [Link to Opinion](#); [Link to Concurrence](#)

STATUTORY INDEXING:
[Fraudulent Insurance Acts \[§3173a\]](#)

TOPICAL INDEXING:
Not Applicable

In this unanimous, published, per curiam decision (Jansen, concurring), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Oliver Bakeman's first-party action for no-fault PIP benefits against Defendant Citizens Insurance Company of the Midwest ("Citizens"). The Court of Appeals held that Bakeman committed a "fraudulent insurance act" for purposes of MCL 500.3173a(2) (currently MCL 500.3173a(4)), by signing attendant care claim forms which were submitted to Citizens on his behalf, and which claimed reimbursement for more attendant care than he had actually received.

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Nasrallah, et al v Argonaut-Midwest Ins Co (COA - UNP 11/10/2022; RB #4506)

Michigan Court of Appeals; Docket #360277; Unpublished
Judges Garrett, O'Brien, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[Allowable Expenses: Claims by Services
Providers \[§3107\(1\)\(a\)\]
General / Miscellaneous \[§3107b\(b\)\]](#)

TOPICAL INDEXING:

[Workers Disability Compensation Act \(MCL
418.1, Et Seq.\)](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Back in Motion Chiropractic, DC, PLLC's ("Back In Motion") first-party action against Defendant Argonaut-Midwest Insurance Company ("AMIC"). The Court of Appeals held that a question of fact existed as to whether various chiropractic and massage therapy services Back In Motion provided to Mariam Baydoun, AMIC's insured, were compensable under the relevant provisions of the No-Fault Act.

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Whitney v Grange Ins Co of the Midwest (COA - UNP 11/10/2022; RB #4504)

Michigan Court of Appeals; Docket #357982; Unpublished
Judges Murray, Cavanagh, and Cameron; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[Causation Issues \[§3135\]](#)

TOPICAL INDEXING:

[Evidentiary Issues
Underinsured Motorist Coverage in General](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's partial summary disposition order in favor of Plaintiff George Whitney, in Whitney's action for underinsured motorist coverage against Defendant Grange Insurance Company of Michigan. The Court of Appeals held that a question of fact existed as to whether Whitney's alleged impairments were caused by the subject motor vehicle collision.

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Encompass Healthcare, PLLC v Citizens Ins Co (COA - PUB 11/17/2022; RB #4507)

Michigan Court of Appeals; Docket #357225; Published
Judges Gleicher, Servitto, and Yates; Authored by Judge Gleicher
Official Michigan Reporter Citation: Forthcoming; [Link to Opinion](#)

STATUTORY INDEXING:

[One-Year-Back Rule Limitation – Tolling Under
2019 Amendments \[§3145\(3\)\]](#)

TOPICAL INDEXING:

Not Applicable

In this unanimous, published, decision authored by Judge Gleicher, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Encompass Healthcare, PLLC's ("Encompass") first-party action seeking unpaid no-fault PIP benefits from Defendant Citizens Insurance Company ("Citizens"). The Court of Appeals held that Citizens' Explanation of Review ("EOR") documents – in which it explained that it was issuing only partial payments on Encompass's claims for allowable expenses PIP benefits – did not constitute "formal denial[s]" of said claims for purposes of MCL 500.3145(3). In so holding, the Court defined "formal denial" to mean an "explicit and unequivocal expression of finality."

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Spine Specialists of Mich, PC v MemberSelect Ins Co (COA - UNP 11/17/2022; RB #4508)

Michigan Court of Appeals; Docket #358296; Unpublished
Judges Riordan, Boonstra, and Gadola; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[One-Year-Back Rule Limitation – Tolling Under
2019 Amendments \[§3145\(3\)\]](#)

TOPICAL INDEXING:

[2019 PA 21 – Retroactivity](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's partial summary disposition order dismissing certain of Plaintiff Spine Specialists of Michigan, PC's ("Spine Specialists") claims for no-fault PIP benefits against Defendant MemberSelect Insurance Company ("MemberSelect"). The Court of Appeals held that the 2019 amendments to the No-Fault Act – specifically, that which added "formal denial" tolling to MCL 500.3145 – do not apply retroactively, and that Spine Specialists' claims, which accrued prior to the effective date of the 2019 amendments and more than one-year prior to the filing date of its complaint, were barred by the applicable, pre-amendment version of MCL 500.3145.

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Morrisette, et al v Indian Harbor Ins Co, et al (COA - UNP 11/17/2022; RB #4509)

Michigan Court of Appeals; Docket #359503; Unpublished
Judges Murray, Cavanagh, and Cameron; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[One-Year-Notice Rule Limitation \[§3145\(1\)\]](#)
[Required Content of Notice / Sufficiency of Notice \[§3145\(1\)\]](#)

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 Enita Morrisette's action for unpaid no-fault PIP benefits from Defendant Indian Harbor Insurance Company ("Indian Harbor"). The Court of Appeals held that Morrisette's claim was barred by MCL 500.3145(1) because she failed to give Indian Harbor notice of her injuries within one year of the accident.

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Darling, et al v State Farm Mut Auto Ins Co (COA - UNP 11/17/2022; RB #4510)

Michigan Court of Appeals; Docket #358267; Unpublished
Judges Garrett, O'Brien, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[Nonattendance As a Basis for PIP Benefit Cutoff \[§3151\]](#)
[Obligation of a Claimant to Submit to Physician Examination \[§3151\]](#)

TOPICAL INDEXING:

Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals vacated the trial court's denial of Defendant State Farm's Mutual Automobile Insurance Company's ("State Farm") motion to dismiss Plaintiff Hannah Darling's action for no-fault PIP benefits. The Court of Appeals held that the trial court abused its discretion by denying State Farm's motion – which was based on Darling's failure to attend insurance medical examinations ("IME(s)") both the Court of Appeals (in a prior order) and the trial court ordered her to attend – without first considering the factors set forth in *Vicencio v Ramirez*, 211 Mich App 501 (1995). However, rather than remanding for an order granting State Farm's motion to dismiss, the Court of Appeals remanded with instructions to the trial court that it conduct a *Vicencio* analysis and determine the appropriate sanction for Darling's discovery violations.

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Wenkel v Farm Bureau Gen Ins Co of Mich (COA - PUB 12/1/2022; RB #4511)

Michigan Court of Appeals; Docket #358526; Published
Judges Hood, Jansen, and Kelly; Per Curiam
Official Michigan Reporter Citation: Forthcoming; [Link to Opinion](#)

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
[COVID-19 Tolling and the No-Fault Act](#)

In this unanimous, published, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Dustin Wenkel's action for unpaid no-fault PIP benefits against Farm Bureau General Insurance Company of Michigan ("Farm Bureau"). The Court of Appeals held that the administrative order issued by the Michigan Supreme Court at the beginning of the COVID-19 pandemic – which tolled statutes of limitations for filing civil actions – did not toll the one-year-back rule set forth in MCL 500.3145, nor did it toll an agreement between the parties to toll the one-year-back rule until a specified date.

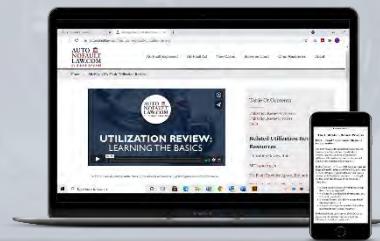
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C-Spine Orthopedics, PLLC v Progressive Mich Ins Co (COA - PUB 12/8/2022; RB #4512)

Michigan Court of Appeals; Docket #358170; Published

Judges Gleicher, Markey, and Patel; Per Curiam

Official Michigan Reporter Citation: Forthcoming; [Link to Opinion](#), [Link to Dissent](#)

STATUTORY INDEXING:

[Statutory Right of Service Providers to Assert Direct Causes of Action Against Insurers \[§3112\]](#)

TOPICAL INDEXING:

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

In this 2-1, published decision authored by Judge Gleicher (Markey, dissenting), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff C-Spine Orthopedics, PLLC's ("C-Spine") action for unpaid no-fault PIP benefits against Defendant Progressive Michigan Insurance Company ("Progressive"). To deal with cash flow issues, C-Spine sold Sandra Cruz's and Jose Cruz-Muniz's account balances to various factoring companies, assigning to the factoring companies the right to pursue payment on the accounts from Progressive, the priority no-fault insurer for the Cruz's claims. The factoring companies later executed counter-assignments, assigning back to C-Spine the right to pursue payment on both accounts. The Court of Appeals held that, pursuant to the counter-assignments, C-Spine could again pursue payment of the unpaid no-fault PIP benefits which comprised the outstanding account balances from Progressive.

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Whitney v Wilcoxson, et al (COA - UNP 12/15/2022; RB #4513)

Michigan Court of Appeals; Docket #360647; Unpublished

Judges Shapiro, Borrello, and Yates; Per Curiam

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

STATUTORY INDEXING:

[Disqualification of Uninsured Owners / Operators for Noneconomic Loss \[§3135\(2\)\]](#)

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 Robert Whitney's auto-negligence action against Defendant Neal Marvin Wilcoxson. The Court of Appeals held that a question of fact existed as to whether Whitney was "operating" his uninsured vehicle at the time Wilcoxson crashed into him, such as would preclude Whitney from recovering noneconomic damages under MCL 500.3135(2)(c).

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Orvis, et al v Moore (COA - UNP 12/22/2022; RB #4516)

Michigan Court of Appeals; Docket #358646; Unpublished
Judges Hood, Swartzle, 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 reversed the trial court's summary disposition order dismissing Plaintiff Michelle Orvis's automobile negligence action against Defendant Thomas Allen Moore. The Court of Appeals held that a question of fact existed as to whether Orvis satisfied the first and third prongs of the test for 'serious impairment of body function' set forth in *McCormick v Carrier*, 487 Mich 180 (2010) – specifically, whether she suffered an objectively manifested impairment as a result of the subject crash, and whether any such impairment affected her general ability to lead her normal life.

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Burns v Farm Bureau Mut Ins Co of Mich, et al (COA - UNP 12/22/2022; RB #4517)

Michigan Court of Appeals; Docket #359647; Unpublished

Judges Hood, Swartzle, and Redford; Per Curiam

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

STATUTORY INDEXING:

Not Applicable

TOPICAL INDEXING:

[Discovery Sanctions in First-Party Cases](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's order dismissing Plaintiff Juan Burns's first-party action for no-fault PIP benefits against Defendant Farm Bureau Mutual Insurance Company of Michigan ("Farm Bureau"). The Court of Appeals held that the trial court did not abuse its discretion by dismissing Burns's action as a sanction for failing to comply with multiple discovery orders.

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Wyoming Chiropractic Health Clinic, PC v Falls Lake Ins Co (COA - UNP 12/22/2022; RB #4518)

Michigan Court of Appeals; Docket #359370; Unpublished

Judges Hood, Swartzle, and Redford; Per Curiam

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

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 affirmed the trial court's denial of Defendant Falls Lake Insurance Company's ("Falls Lake") motion for summary disposition, in which it sought to dismiss Plaintiff Wyoming Chiropractic Health Clinic, PC's ("Wyoming") action for no-fault PIP benefits against it. The Court of Appeals held that a question of fact existed as to whether Betty Austin – Falls Lake's insured/Wyoming's patient – committed actionable fraud when she provided inaccurate answers on her application for no-fault coverage with Falls Lake, such as would allow Falls Lake to rescind her policy and deny Wyoming's claims thereunder.

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Central Home Health Care Services v Liberty Mut Ins Co (COA - UNP 12/22/2022; RB #4519)

Michigan Court of Appeals; Docket #359826; Unpublished
Judges Shapiro, Borrello, and Yates; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
[Evidentiary Issues](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Central Home Health Care Services' ("Central") action for no-fault PIP benefits against Defendant Liberty Mutual Insurance Company ("Liberty Mutual"). The Court of Appeals held that the trial court erred when it ruled, as a matter of law, that Central could not establish that its patient/Liberty Mutual's insured, Sean Smith, was injured in a motor vehicle accident because Smith, himself, was stricken as a witness and not permitted to testify at trial. The trial court was required to consider whether the facts of the accident and the nature and extent of Smith's injuries could have been established by other forms of documentary evidence.

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Maya v Omega Freight Systems, Inc, et al (COA - UNP 12/22/2022; RB #4520)

Michigan Court of Appeals; Docket #360126; Unpublished
Judges Hood, Swartzle, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
[Sudden Emergency Doctrine](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Elaine Maya's automobile negligence action against Defendant Milos Borovnjak. The trial court dismissed Maya's action as a result of her failure to timely respond to Borovnjak's motion for summary disposition, but, notably, the Court of Appeals also held that Maya's action of abruptly stopping in the roadway created a sudden emergency for Borovnjak, who rear-ended Maya's vehicle.

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Steanhouse v Mich Auto Ins Placement Facility, et al (COA - PUB 12/22/2022; RB #4514)

Michigan Court of Appeals; Docket #359576; Published
Judges Cavanagh, Kelly, and Garrett; Authored by Judge Garrett
Official Michigan Reporter Citation: Forthcoming; [Link to Opinion](#)

STATUTORY INDEXING:
[Entitlement to Benefits for Out of State Accidents \[§3111\]](#)
[When Claimants Can Receive PIP Benefits Through the Assigned Claims Facility \[§3172\]](#)

TOPICAL INDEXING:
Not Applicable

In this unanimous, published decision authored by Judge Garrett, the Court of Appeals reversed the trial court's denial of Defendant Michigan Automobile Insurance Placement Facility's ("MAIPF") motion for summary disposition, in which it sought dismissal of Plaintiff Markise Steanhouse's action against it. Steanhouse was injured in a motor vehicle accident in Ohio and sought no-fault PIP benefits through the MAIPF, but the Court of Appeals held that Steanhouse was ineligible for PIP benefits through the MAIPF based on the plain language of MCL 500.3172, or because his accident did not occur in Michigan. In so holding, the Court rejected Steanhouse's two-fold argument that (1) his eligibility for PIP benefits relative to the accident was established by MCL 500.3111, and (2) because MCL 500.3172 conflicts with MCL 500.3111, the former could not be interpreted so as to deprive him of his right to benefits.

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Husinka Group, LLC v Farm Bureau Gen Ins Co of Mich, et al (COA - UNP 12/22/2022; RB #4515)

Michigan Court of Appeals; Docket #357926; Unpublished
Judges Jansen, Servitto, and Gadola; Per Curiam
Official Michigan Reporter Citation: Not Applicable; [Link to Opinion](#)

STATUTORY INDEXING:

[Payment in Good Faith Defense \[§3112\]](#)
[Reasonable Proof Requirement \[§3142\(2\)\]](#)
[General / Miscellaneous \[§3148\]](#)

TOPICAL INDEXING:

[Evidentiary Issues](#)

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order in favor of Plaintiff Husinka Group, LLC ("Husinka"), in Husinka's first-party action seeking to recover unpaid no-fault PIP benefits from Defendant Farm Bureau General Insurance Company of Michigan ("Farm Bureau"). The Court of Appeals vacated, however, the trial court's awards of no-fault penalty interest and attorney fees to Husinka, and remanded for factual findings regarding the appropriateness of such awards. In affirming the trial court's summary disposition order, the Court of Appeals held that Farm Bureau failed to present any evidence to support its affirmative defense that it did not owe any additional benefits to Husinka—a subcontractor, hired by another home health agency, TheraSupport, to provide attendant care services to Roger Taliaferro, an individual catastrophically injured in a motor vehicle accident—because payment for Husinka's services was included in a \$900 per diem Farm Bureau paid to TheraSupport. In vacating the trial court's award of no-fault penalty interest, the Court of Appeals held that a question of fact existed as to whether payment on Husinka's claim was overdue. In vacating the trial court's award of no-fault attorney fees, the Court of Appeals held that the trial court failed to make a factual determination, on the record, regarding the reasonableness of the Husinka's claimed attorney fees.

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LaPointe v Rojo, et al (COA - UNP 12/29/2022; RB #4522)

Michigan Court of Appeals; Docket #359431; Unpublished
 Judges Kelly, Murray, 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 reversed the trial court’s denial of Defendant MemberSelect Insurance Company’s (“MemberSelect”) motion for summary disposition, in which it sought dismissal of Plaintiff Reba LaPointe’s action for no-fault PIP benefits against it. LaPointe was entitled to claim no-fault benefits from MemberSelect for the post-concussive syndrome she developed as a result of a 2019 motor vehicle accident, but the Court held that, under McPherson v McPherson, 493 Mich 294 (2013), LaPointe was not entitled to no-fault PIP benefits for the fractured ankle she sustained as a result from a fall that was caused by her post-concussive syndrome.

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