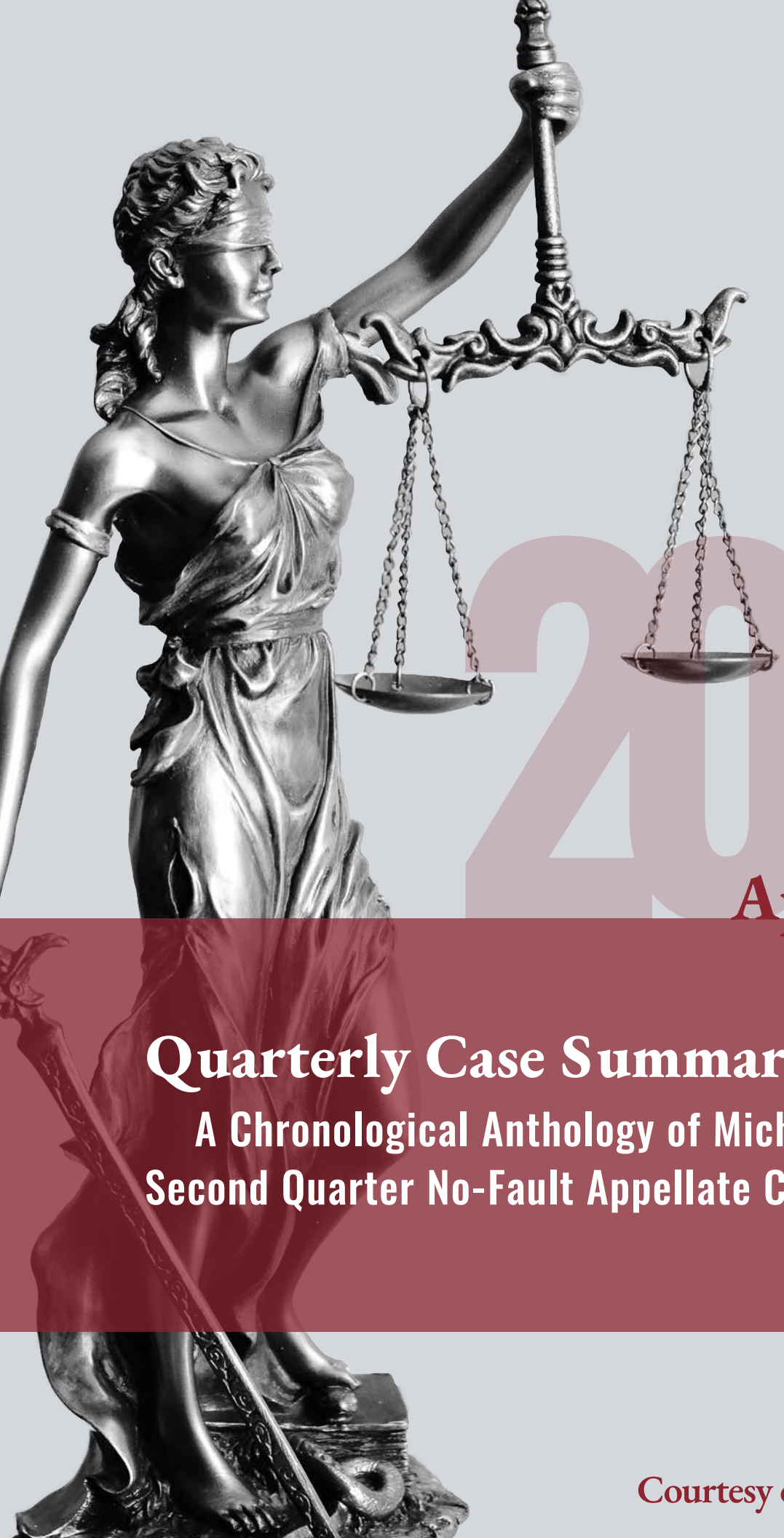

AUTO NOFAULT LAW.COM
BY SINAS DRAMIS

2021

April-June

Quarterly Case Summary Report:

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

Courtesy of AutoNoFaultLaw.com

About AutoNoFaultLaw.com

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

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

The site and its contents are managed by the AutoNoFaultLaw.com Editorial Board, presently consisting of Sinas Dramis Law Firm attorneys, Stephen Sinas, Joel Finnell, and Katie Tucker. The Board is assisted by the hard work and efforts of Sinas Dramis Law Firm clerks, who presently include Ted Larkin, Haley Wehner, and Carey Sheldon.

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 Second Quarterly Report of 2021

In the Michigan Supreme Court

The Supreme Court decided one no-fault case in the second quarter of 2021, ***Bronner v City of Detroit, et al*** (SC 05/27/21– PUB; Docket No 160242). In *Bronner*, the Supreme Court held that an indemnification agreement requiring GFL Environmental USA, Inc. to reimburse the City of Detroit for PIP benefits paid to an injured person was enforceable because it did not conflict with any of the no-fault act's statutory sections or with the legislative purpose of the no-fault act, which the Court characterized as *"to ensure that there is applicable insurance for accidents and that benefits get paid."* Justice Viviano agreed with the result reached by the majority but argued that the indemnification agreement at issue was enforceable because it did not conflict with any of the statutory sections of the no-fault act and that the majority should not have focused on the legislative goals and purpose of the no-fault act. *Bronner* may have greater implications in the future as Courts consider whether other contractual provisions in no-fault insurance policies are enforceable.

During the second quarter of 2021, the Supreme Court granted leave on one no-fault case, ***Griffin v Trumbull Ins Co, et al*** (Docket No 162419). On May 19, 2021, the Supreme Court directed the Clerk to schedule "*argument on the application*" in this case and instructed the parties to file supplemental briefing addressing: *"(1) whether a lower-priority insurer, who was provided timely notice under MCL 500.3145(1), can be held liable for personal protection insurance benefits under the no-fault act if the higher-priority insurer was not identified until after*

the one-year statutory notice period under MCL 500.3145(1) expired; if so, (2) whether the insured must prove that he or she exercised reasonable, due, or some other degree of, diligence in searching for the higher-priority insurer; and, if so, (3) whether the appellant exercised the requisite degree of diligence in searching for the higher-priority insurer." Oral argument has not yet been scheduled by the Court.

In the case of ***Esurance Property & Cas. Ins. Co. v. Mich. Assigned Claims Plan, et al*** (Docket No 160592), the Supreme Court, in an order dated September 23, 2020, directed the Clerk to schedule "argument on the application" and instructed the parties to brief the issue of "*whether a finding that an insurance policy was void ab initio because it was procured by fraud bars a subsequent claim for equitable subrogation for benefits that were paid pursuant to that policy before it was found to be void.*" Oral Argument occurred on April 8, 2021, but no decision had been issued by the end of the second quarter, i.e. June 30, 2021. The opinion is expected to be released by the end of July.

Some Interesting Statistics Regarding the Court of Appeals Decisions

In the second quarter of this year (2021), the Michigan Court of Appeals issued opinions in at least 42 cases. Of those 42 cases, at least 26 involved disputes over no-fault PIP benefits; at least seven cases dealt with the tort threshold for serious impairment of body function; at least nine cases involved issues of fraud or misrepresentation; at least one case dealt with claims for uninsured/underinsured motorist benefits; at least four cases dealt with issues pertaining to the motor vehicle exception to governmental immunity; and at least five cases dealt with various issues related to third-party automobile negligence actions.

The Ongoing Controversy about Fraud and the Court of Appeals holding in *Bahri*

There continues to be unsettled nuances about the extent to which the Court of Appeals decision in ***Bahri v IDS Prop Cas Ins Co*** remains good law following the Supreme Court's decision in ***Meemic Ins Co v Fortson***. In a case decided in January 2021, ***Williams v Farm Bureau Mut Ins Co***, the Court of Appeals held that much of the *Bahri* decision is no longer good law. In contrast, however, in March of 2021, in the case of ***Johnson v Geico Indemnity Co***, the Court of Appeals held that under *Bahri,* a fraud provision could be enforced to bar all claims for PIP benefits for post-procurement acts of fraud. Notably, in so holding, the *Johnson* court did not explain how its holding could be reconciled with the Supreme Court's decision in *Meemic*. Moreover, most recently in the second quarter of 2021, in the 2-1 unpublished opinion in ***Estate of Bernard v Avers, et al***, the Court of Appeals concluded that it was still bound by *Bahri* despite the Supreme Court and Court of Appeals' subsequent holdings in *Meemic* and *Williams*. In so holding, the Court of Appeals noted that "*Meemic itself states that it should not be read 'to suggest that a contractual provision that rescinds a contract because of postprocurement fraud is invalid in all circumstances.'"* The majority held that held that it was still bound to follow Bahri, even though, as the dissent pointed out, "*Meemic 'undermined a portion of Bahri's holding,' and that 'a fair reading of Meemic leads to the inescapable conclusion that when it comes to postprocurement fraud, Bahri's [holding ought no longer be given controlling effect].'"* Accordingly, the issue of when insurers can use fraud provisions in no-fault insurance contracts to bar an injured person from all claims for PIP benefits remains unsettled and will require further guidance and clarification from the Supreme Court.

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Stephen Sinas Catherine Tucker Joel Finnell

VHS of Michigan, Inc v State Farm Mut Auto Ins Co (COA – PUB 4/1/2021; RB #4244)

Michigan Court of Appeals; Docket #352881; Published (after release)
Judges Tukel, Jansen, and Cameron; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Actual Fraud
Fraud/Misrepresentation

In this unanimous per curiam decision published after release, the Court of Appeals reversed the trial court's denial of Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") motion for leave to amend its affirmative defenses to plead fraud with particularity, and remanded for further proceedings. State Farm asserted general fraud defenses in its answer to Plaintiff VHS of Michigan, Inc's ("VHS") complaint, but uncovered considerably more evidence of fraud through discovery, thereafter seeking to amend its affirmative defenses to plead fraud with particularity. The Court of Appeals held that the trial court abused its discretion in denying State Farm's motion, because State Farm did not act with bad faith by waiting to amend its affirmative defenses, and because VHS would not be prejudiced by such an amendment.

Read Full Summary

Physiatry and Rehab Associates v State Farm Mutual Ins Co (COA – UNP 4/1/2021; RB #4243)

Michigan Court of Appeals; Docket #350826; Unpublished
Judges Stephens, Servitto and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition in favor of Defendant State Farm Mutual Automobile Insurance Company ("State Farm") on the issue of whether a medical provider assigned rights by an injured policyholder was barred from bringing a separate suit for benefits on the basis of the injured policyholder's release, collateral estoppel, and res judicata. In its holding, the Court noted that the Michigan Supreme Court has long held that when an assignment of rights occurs after a lawsuit is filed, the assignor may settle or release those claims, precluding any further recovery by the assignee.

Read Full Summary

Talool v Rennalls, et al (COA – UNP 4/8/2021; RB #4256)

Michigan Court of Appeals; Docket #352070; Unpublished
Judges Tukel, Jansen, and Cameron; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Objective Manifestation Element of Serious Impairment (McCormick Era: 2010 - Present) [§3135(7)]
Determining Serious Impairment of Body Function As a Matter of Law (McCormick Era: 2010 – present) [§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 Abdullah Talool's third-party action against Defendant Janice Alice Rennalls. The Court of Appeals held that Talool failed to present sufficient evidence to create a question of fact as to whether he suffered a serious impairment of body function in the subject crash.

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Hahn v Vanduker, et al (COA – UNP 4/15/2021; RB #4252)

Michigan Court of Appeals; Docket #349427; Unpublished
Judges Beckering, Fort Hood, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Case Evaluation – Accept/Reject in PIP Cases
Discovery Sanctions in First-Party Cases
Evidentiary Issues

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the judgment entered in Plaintiff Kathy Hahn's first-party action against Defendant State Farm Mutual Automobile Insurance Company ("State Farm"), the trial court's denial of Hahn's motion for a judgment notwithstanding the verdict ("JNOV"), and the trial court's award of case evaluation sanctions to State Farm. The Court of Appeals issued a lengthy opinion in which it rejected a variety of arguments raised by Hahn regarding evidentiary issues and various trial court rulings.

Read Full Summary

Ahmed v Tokio Marine American Ins Co, et al (COA - PUB 4/22/2021; RB #4253)

Michigan Court of Appeals; Docket #352418; For Publication
Judges Tukel, Jansen, and Cameron; *Authored*
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
§500.3113: Disqualification from PIP Benefit Entitlement [Disqualification for Unlawful Taking and Use of a Vehicle [§3113(a)]]

TOPICAL INDEXING:
Not Applicable

In this unanimous published opinion by Judge Tukel, the Court of Appeals reversed the trial court's denial of Defendant Tokio Marine American Insurance Company's ("Tokio") motion for summary disposition on the issue of whether Plaintiff Mohamed Ahmed was barred by MCL 500.3113(a) from PIP benefits. The Court held that, given the facts of this case, pursuant to the "knew or should have known" language of MCL 500.3113(a), Ahmed was disqualified from benefits. Specifically, the Court held that Ahmed's taking of the rental car was unlawful under MCL 750.414 because the rental agreement did not authorize him to drive it. Furthermore, the Court held that because Ahmed knew the car was rented, he should also have known that the terms of the rental agreement prohibited him from driving it.

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Arrell v Edwards, Jr (UNP – COA 4/22/2021; RB #4257)

Michigan Court of Appeals; Docket #353594; Unpublished
Judges Gleicher, Borrello, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Lisa Lee Arrell's third-party action against Defendant Lloyd G. Edwards, Jr. The Court of Appeals held that a question of fact existed as to whether the injuries Arrell sustained as a result of being rear-ended by Edwards, Jr.'s vehicle affected her general ability to lead her normal life for purposes of the serious impairment of body function test set forth in *McCormick v Carrier*, 487 Mich 180 (2010).

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Saad, et al v Westfield Ins Co, et al (COA - UNP 4/22/2021; RB #4248)

Michigan Court of Appeals; Docket #350557; Unpublished
Judges Tukel, Jansen and Cameron; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
§500.3113: Disqualification from PIP Benefit Entitlement (Misrepresentation / Fraud as a Basis to Rescind Coverage)

TOPICAL INDEXING:
Fraud/Misrepresentation

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court's grant of summary disposition in favor of Defendant Westfield Insurance Company ("Westfield") on the issue of whether Plaintiff Kawthar Saad's claim for PIP benefits was barred by the insurance policy's antifraud clause. In so holding, the Court clarified that the cases of Haydaw, Meemic, Fasho, and Williams have resulted in "significant change" to the law since the time the trial court granted summary disposition to Westfield, and that, when taken together, the cases establish that "unless an insured's fraud results in a substantial breach of the insurance contract, fraud provides a basis for the opposite party to a contract to rescind the contract only if the fraud occurred before the contract was signed and before litigation commenced."

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Davis, et al v Auto Owners Ins Co (COA – PUB 4/22/2021; RB #4258)

Michigan Court of Appeals; Docket #353315; Unpublished
Judges Glecher, Borrello, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Entitlement to PIP Benefits: Arising Out of / Causation Element [§3105(1)]
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 Lee Davis's first-party action against Defendant Home-Owners Insurance Company ("Home-Owners"), and his third-party action against Defendants Teshonb Damian Fore and Renaissance Real Estate Ventures ("Renaissance"). The Court of Appeals held that Davis presented sufficient evidence to create a question of fact—with regard to both his first- and third-party actions—as to whether his injuries were causally related to the subject motor vehicle collision.

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Advanced Surgery Center, LLC v Farm Bureau General Insurance Company of Michigan, et al (COA – UNP 4/22/2021; RB #4251)

Michigan Court of Appeals; Docket #346081; Unpublished
Judges Fort Hood, Servitto, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
§500.3114: Priority Rules for Payment of PIP Benefits
Exception for Occupants [§3114(4)]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's grant of summary disposition in favor of Defendant EAN Holdings, LLC (EAN) regarding the disputed issue of whether EAN or Defendant Farm Bureau General Insurance Company ("Farm Bureau") was the insurer of higher priority in relation to claims for no-fault PIP benefits made by Varanda Byrd, who was treated by, and assigned some of her benefits to, plaintiff Advanced Surgery Center, LLC. In so holding, the Court of Appeals noted that the Michigan Supreme Court's analysis of the same issue in *Turner v Farmers Ins Exch*, Mich; 953 NW2d 204 (2021); *Turner by Sakowski v Farmers Ins Exch*, 327 Mich App 481; 934 NW2d 81 (2019) was controlling, and thus, "[b]ecause EAN was not required to obtain no-fault insurance for the vehicle, it could not have constituted the 'insurer of the owner or registrant of the vehicle occupied' under former MCL 500.3114(4)(a)."

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MemberSelect Ins Co v Flesher, et al (COA – PUB 4/29/2021; RB #4249)

Michigan Court of Appeals; Docket #348571; Published
Judges Boonstra, Riordan, and Redford; *Authored*
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Insurable Interests in Motor Vehicles

In this unanimous published decision by Judge Boonstra, the Court of Appeals affirmed the trial court's denial of Plaintiff MemberSelect Insurance Company's ("MemberSelect") motion for summary disposition in its underlying declaratory action against Defendant Nicholas Fetzer. MemberSelect argued that Fetzer's mother, who insured the vehicle Fetzer owned but never rode in it, did not have an insurable interest in the vehicle, and that her policy was therefore void. The Court of Appeals disagreed, holding that Fetzer did have an insurable interest in the vehicle by virtue of the fact that she was Fetzer's mother, and that, as Fetzer's mother, her interest in her son's physical and financial well-being gave her a sufficient insurable interest in the vehicle.

Read Full Summary

Estate of Bernard v Avers, et al (COA – UNP 4/29/2021; RB #4255)

Michigan Court of Appeals; Docket #348048; Unpublished
Judges Letica, Gleicher, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Partial Concurrence and Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Actual Fraud
Cancellation and Rescission of Insurance Policies

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed in part, reversed in part, and vacated in part the trial court's summary disposition order dismissing Plaintiff Estate of Calvin Bernard's first- and third-party claims against Defendants Grange Insurance Company of Michigan ("Grange"), Janice Marie Avers, and Anchor Bay Packaging Corporation ("Anchor Bay"), and remanded for further proceedings. With respect to the Bernard Estate's first-party claim against Grange, the Court of Appeals held that Bernard had committed fraud in his claims for replacement services, and concluded that it was still bound by *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420 (2014) despite the Supreme Court and Court of Appeals' subsequent, seemingly contradictory holdings in *Meemic Ins Co v Fortson*, 506 Mich 287 (2020) and *Williams v Farm Bureau Mut Ins Co*, ___ Mich App ___ (2021). With respect to the Bernard Estate's third-party claim against Avers and Anchor Bay, the Court of Appeals held that, even though Bernard's policy with Grange was voided *ab initio*, that did not actually mean he failed to maintain the proper security at the time of the collision. Therefore, he was allowed to proceed with his third-party action against those defendants. Additionally, the Court of Appeals held that the Bernard Estate presented sufficient evidence to create a question of fact as to whether Bernard suffered a serious impairment of body function.

Read Full Summary

Smith v Buerkel (COA – UNP 4/29/2021; RB #4254)

Michigan Court of Appeals; Docket #349874, 350274; Unpublished
Judges O'Brien, Stephens, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Determining Serious Impairment of Body Function As a Matter of Law (McCormick Era: 2010 – Present) [§3135(2)]
General Ability / Normal Life Element of Serious Impairment (McCormick Era: 2010 – present) [§3135(5)**]
Trial Procedure Issues [§3135]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the judgment entered in Plaintiff Leon Smith's third-party action against Defendant Patsy Buerkel after a jury trial, as well as the trial court's award of case evaluation sanctions against Buerkel. The Court of Appeals held that the trial court did not err in granting Smith's motion for directed verdict on the issues of whether he suffered a serious impairment of body function and causation, and that the trial court did not err in awarding Smith case evaluation sanctions against Buerkel.

Read Full Summary

Smith, et al v Auto Club Group, et al (COA – UNP 4/29/2021; RB #4250)

Michigan Court of Appeals; Docket #352662; Unpublished
Judges Gleicher, Borrello, and Swartzle; 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 opinion, the Court of Appeals affirmed a final judgment entered in Plaintiff Latrice Smith's first-party action against Defendant Auto Club Group ("Auto Club"). After Smith was injured in a motor vehicle collision, Auto Club sought to rescind her policy by sending her a letter of rescission and refunding her premium through an electronic funds transfer. Smith set the refund aside and did not use the funds, instead filing the underlying action against Auto Club for unpaid no-fault PIP benefits. Auto Club moved for summary disposition, arguing that Smith consented to the rescission because she received the premium refund and did not return it to Auto Club. The Court of Appeals disagreed, holding that reasonable minds could differ on the issue of whether Smith consented to the rescission based on the fact that she did not use the money refunded to her.

Read Full Summary

Salinas v Hayes, et al (COA – UNP 5/6/2021; RB #4259)

Michigan Court of Appeals; Docket #353882; Unpublished
Judges Gleicher, Borrello, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Objective Manifestation Element of Serious Impariment (McCormick Era: 2010 – Present) [§3135(5)**]
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 Fransisco Salinas's third-party action against Defendants Joanne Hayes and Michigan Millers Mutual Insurance Company ("MMMIC"), and remanded for further proceedings. The Court of Appeals held that Salinas presented sufficient evidence to create a question of fact as to whether the subject motor vehicle collision caused him to suffer an objectively manifested impairment, and that the trial court erred in weighing the evidence and disregarding Salinas's experts' testimonies in favor of MMMIC's experts' testimonies on a motion for summary disposition.

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Wilmore-Moody v Zakir, et al (UNP – COA 5/6/2021; RB # 4260)

Michigan Court of Appeals; Docket #352411; Unpublished
Judges Gleicher, Borrello, and Swartzle; 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:
Fraud/Misrepresentation
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 Plaintiff Adora Wilmore-Moody's first-party action against Defendant Everest National Insurance Company ("Everest"), but reversed the trial court's summary disposition order dismissing Wilmore-Moody's third-party action against Defendant Mohammed Zakir. The Court of Appeals held that the trial court was justified in rescinding Wilmore-Moody's automobile insurance policy with Everest based on fraudulent statements Wilmore-Moody made in procuring the policy. The Court of Appeals also held, however, that permitting Everest to rescind the policy ab initio did not "alter the past" and mean that Wilmore-Moody did not actually have insurance at the time of the collision. In other words, she was not actually an uninsured person at the time of the collision for purposes of MCL 500.3135(2)(c), and therefore not barred from pursuing her third-party claim against Zakir.

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Advance Pain Care, PLLC v Trumbull Ins Co (COA – UNP 5/13/2021; RB #4261)

Michigan Court of Appeals; Docket #353991; Unpublished
Judges Kelly, Servitto, and Leticia; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
§500.3112: Payees of PIP Benefits (Service Providers as Payees)

TOPICAL INDEXING:
Assignments of Benefits - Validity and Enforceability

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's summary disposition order in favor of Defendant Trumbull Insurance Company ("Trumbull") on the issue of assignment enforceability. The Court of Appeals held that Plaintiff Advance Pain Care, PLLC ("Advance Pain") failed to properly put Trumbull on notice of its assigned rights by providing only bills for services.

Read Full Summary

Baum v Auto-Owners Ins Co, et al, (COA – UNP 5/20/2021; RB #4262)

Michigan Court of Appeals; Docket #352763; Unpublished
Judges Murray, Kelly, and Stephens; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Work Loss Benefits: Mitigation Requirement [§3107(1)(b)]

TOPICAL INDEXING:
Fraud/Misrepresentation

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff James Baum's first-party action against Defendant Home-Owners Insurance Company ("Home-Owners"). After the subject motor vehicle collision, Baum sought work-loss benefits from Home-Owners, testifying that he was temporarily laid off at the time of the collision. Home-Owners argued that Baum's testimony constituted fraud and justified voidance of the subject policy, highlighting an affidavit from Baum's supervisor in which his supervisor averred that Baum had been permanently laid off at the time of the crash. The Court of Appeals held, however, that a question of fact existed as to whether Baum was ever actually notified of his being permanently laid off, and therefore whether his misrepresentation was made knowingly. The Court affirmed the trial court's summary disposition order in favor of Home-Owners anyways, however, holding that Baum failed to mitigate his damages and seek out new employment despite being cleared to do so.

Read Full Summary

Estate of Woolen, et al v City of Detroit (COA – UNP 5/20/2021; RB #4265)

Michigan Court of Appeals; Docket #351921; Unpublished
Judges Ronayne Krause, Riordan, and O'Brien; 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 City of Detroit's motion for summary disposition, in which the City sought to dismiss Plaintiff Estate of Robert Woolen's third-party action against it. The Court of Appeals held that a question of fact existed as to whether the Woolen Estate's lawsuit implicated the motor vehicle exception to governmental immunity. More specifically, the Court held that a question of fact existed as to whether the City of Detroit's bus driver acted negligently in abruptly braking and changing lanes in order to allegedly avoid hitting a motor vehicle that pulled out in front of him. The Court also held, based on the facts of the case, that a question of fact existed as to whether the "sudden emergency doctrine" barred the Woolen Estate's cause of action.

Read Full Summary

Estate of Baldwin, et al v Estate of Davies, et al (COA – UNP 5/20/2021; RB #4264)

Michigan Court of Appeals; Docket #353852; Unpublished
Judges Tukel, Servitto, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Collateral Estoppel and Res Judicata
Motor Vehicle Code (Definition of Owner) (MCL 257.37) (MCL 257.401a)

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Estate of Lamereo Baldwin's negligence action against Defendants Tom Davies Seamless Gutters ("TDSG") and the Estate of Tom Davies. The Court of Appeals held first that TDSG had no ownership interest in the motor vehicle involved in the collision, as the insurance policy that covered the vehicle had been transferred to a different entity almost a year prior to the collision. Therefore, TDSG could not be sued under the Michigan's owner liability statute, MCL 257.401. The Court of Appeals held second that the Baldwin Estate could not proceed with its negligent entrustment action against the Davies Estate because it had previously sued Farm Bureau, the insurer of the motor vehicle and Davies's new corporation, which was named on the policy covering the vehicle, in a separate negligence action based on the same facts. That case was dismissed after an order of summary disposition was entered in Farm Bureau's favor, and since Farm Bureau was a privy of the Davies Estate and the same issues raised in the instant action could have been raised in the first action against Farm Bureau, the instant action was barred by the doctrine of res judicata.

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Ferndale Rehab Ctr, et al v Allstate Ins Co (COA – UNP 5/20/2021; RB #4266)

Michigan Court of Appeals; Docket #351478; Unpublished
Judges Kelly, Servitto, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable, Link to Opinion

STATUTORY INDEXING:
Fraudulent Insurance Acts [§3173a]

TOPICAL INDEXING:
Fraud/Misrepresentation
Evidentiary Issues

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Ferndale Rehabilitation Center's ("FRC") first-party lawsuit against Defendant Allstate Insurance Company ("Allstate"). The Court of Appeals held that FRC's assignor, Tommie Thomas, committed fraud in his application for no-fault PIP benefits through the Michigan Assigned Claims Plan, and that his claims for benefits—and FRC's claims as his assignee—were therefore barred by MCL 500.3173a.

Read Full Summary

Jones v Suburban Mobility Auth for Regional Transp (COA – UNP 5/20/2021; RB #4267)

Michigan Court of Appeals; Docket #353745; Unpublished
Judges Markey, Kelly, 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

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Suburban Mobility Authority for Regional Transportation's ("SMART") motion for summary disposition, in which SMART sought dismissal of Plaintiff Edward Jones's third-party lawsuit against it on governmental immunity grounds. The Court of Appeals, while noting the general rule that bus drivers are not required to wait until patrons reach their seats before accelerating, held that a question of fact existed as to whether Jones's status as an elderly, physically compromised individual constituted a "special and apparent reason" why SMART's bus driver should have waited until Jones reached his seat before accelerating, and whether, therefore, the bus driver's failure to do so was negligence as a matter of law. Additionally, the Court of Appeals held that a question of fact existed as to whether the bus driver acted negligently by taking her eyes off the road and attending to the operation of the fare machine at the front of the bus while actively driving down the roadway.

Read Full Summary

Collinson v Meemic Ins Co (COA - UNP 5/20/2021; RB #4263)

Michigan Court of Appeals; Docket #351466; Unpublished
Judges Stephens, Servitto, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable, Link to Opinion

STATUTORY INDEXING:
Children as Dependents [§3110(1)]
Dependents in Other Scenarios [§3110(2)]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam opinion, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Michael Collinson's first-party action for survivor's loss benefits after his mother, Janice Collinson, was killed in a fatal car crash. The Court of Appeals held that Collinson, who was 26 years old at the time of Janice Collinson's death, was not physically or mentally incapacitated from earning, and therefore not a conclusively presumed dependent for purposes of the no-fault act. Furthermore, the Court of Appeals held that the facts regarding Plaintiff's inability to maintain employment and earn his own income as they existed at the time of Janice Collinson's death did not support a finding that Michael Collinson was her dependent under MCL 500.3110.

Read Full Summary

Lippett v Cincinnati Ins Co, et al (COA – UNP 5/20/2021; RB #4269)

Michigan Court of Appeals; Docket #352373; Unpublished
Judges Ronayne Krause, Riordan, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
General/Miscellaneous [§500.3105]

TOPICAL INDEXING:
Discovery Sanctions in First-Party Cases

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Denise Darnell Lippett's first-party action against Defendant Cincinnati Insurance Company ("Cincinnati"), affirmed the trial court's summary disposition order dismissing Lippett's uninsured motorist claim against Cincinnati, and affirmed the trial court's grant of Defendant Auto-Owners Insurance Company's ("Auto-Owners") motion to dismiss Lippett's action against Auto-Owners. The Court of Appeals held, with respect to Cincinnati's motion for summary disposition as to Lippett's claims for no-fault PIP benefits, that the trial court erred by ruling that Lippett could only recover for the injuries that she explicitly listed on her original application for benefits after the subject motor vehicle collision, and remanded for further proceedings regarding the evidence that established Lippett may have sustained injuries in addition to those listed on her original application. MCL 500.3105(1) provides that an injured person can recover for any injuries that arise out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle, and there is nothing in the statute that says an injured person can only recover for the injuries she explicitly enumerates in her original application for benefits. With respect to Lippett's uninsured motorist claim against Cincinnati, the Court of Appeals held that the trial court did not err in ruling that Lippett failed to produce sufficient evidence that the other drivers involved in the subject collision were, in fact, uninsured, and that summary disposition for Cincinnati as to Lippett's UM claim was therefore properly granted. With respect to Auto-Owners, the Court of Appeals held that dismissal of Lippett's claim against Auto-Owners was warranted given Lippett's counsel's repeated, willful discovery violations.

Read Full Summary

Lekli v Farm Bureau Ins of Mich, et al (COA – UNP 5/20/2021; RB #4268)

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:
§500.3114 Priority Rules for Payment of PIP Benefits

TOPICAL INDEXING:
Michigan Auto Insurance Placement Facility – MCL 500.3301, Et Seq.

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Syrja Lekli's first-party action against Defendants Great American Insurance Company ("Great American"), Farm Bureau Mutual Insurance Company of Michigan ("Farm Bureau"), and the Michigan Automobile Insurance Placement Facility ("MAIPF"). The Court of Appeals held that Farm Bureau, the insurer of Lekli's personal vehicles, was properly dismissed from the case because Lekli was driving a vehicle owned by his employer, Pergjoni Transport ("Pergjoni"), at the time of the crash, and that the insurer of Pergjoni's vehicle, therefore, was the highest priority insurer pursuant to MCL 500.3114(1). The Court held that Great American was properly dismissed from the case because, although Great American was one of the insurers of Pergioni's vehicle, Great American's policy contained an enforceable trucking or business use exclusion. Notably, Lekli did not pursue benefits from or add the other insurer of Pergioni's vehicle, Hudson Insurance Company ("Hudson"), which presumably would have provided coverage. Furthermore, regarding the MAIPF, the Court of Appeals held that to whatever extent MAIPF should have remained in the case, Lekli's attorney explicitly waived keeping the MAIPF in the case once an insurer of higher priority could be identified, which occurred when the trial court determined Hudson was such an insurer, even though Lekli had not pursued benefits through Hudson.

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Wilson v Titan Ins Co, et al (UNP – COA 5/27/2021; RB #4273)

Michigan Court of Appeals; Docket #353278; Unpublished
Judges Markey, Kelly, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

STATUTORY INDEXING:
Fraudulent Insurance Acts [§3173a(2)]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision (Swartzle, concurring), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Tamika Wilson's first-party action against Defendant Titan Insurance Company ("Titan"). The Court of Appeals held that Wilson was barred from seeking no-fault PIP benefits through the Michigan Assigned Claims Plan ("MACP") for injuries she sustained in the subject motor vehicle collision because she committed a fraudulent insurance act for purposes of MCL 500.3173a(2).

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Schutt v Suburban Mobility Auth for Regional Transp, et al (COA – UNP 5/27/2021; RB #4272)

Michigan Court of Appeals; Docket #347868; Unpublished
Judges Redford, Meter, and O'Brien; 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 Suburban Mobility Authority for Regional Transportation's (SMART) motion for summary disposition, in which SMART sought dismissal of Plaintiff August Schutt's third-party action against it. The Court of Appeals held that there was no evidence that the driver of the SMART bus on which Schutt was injured drove the bus in a negligent or grossly negligent manner merely by accelerating before Schutt sat down and braking for a yellow light.

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Montpetit v Hopkins (COA - UNP 5/27/2021; RB #4274)

Michigan Court of Appeals; Docket #353807; Unpublished
Judges Cameron, Borrello, 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 Darryl Lee Montepetit's third-party action against Defendant Chaz Allen Hopkins. The Court of Appeals held that Montpetit presented sufficient evidence to create a question of fact as to whether he 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 his alleged aggravation of his pre-existing neck and back injuries for which he received Social Security Disability before the subject collision constituted an objectively manifested impairment which further affected his general ability to lead his normal life.

Read Full Summary

Bronner, et al v City of Detroit, et al (SC – PUB 5/27/2021; RB #4271)

Supreme Court of Michigan; Docket #160242; Published
Judges McCormack, Zahra, Viviano, Bernstein, Clement, Cavanagh, and Welch
Official Michigan Reporter Citation: Forthcoming; Link to Opinion; Link to COA Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Legislative Purpose and Intent

In this 7-0 decision (Viviano concurring), the Michigan Supreme Court upheld an indemnification provision in a contract between Defendant City of Detroit ("City of Detroit" or "the City") and Defendant GFL Environmental USA Inc. ("GFL"). At issue in this case was an indemnification agreement between the City of Detroit and GFL, whereby GFL agreed to indemnify the City against any liabilities it incurred as a result of GFL or its employees' negligence. After a GFL garbage truck driver struck a City of Detroit bus and forced the City to have to pay PIP benefits to its passenger who was injured as a result of the collision, the City sought reimbursement of the PIP benefits paid to its injured passenger from GFL pursuant to the indemnification agreement. The Supreme Court held that the indemnification agreement was valid after examining the various appellate cases which address the enforceability of provisions in no-fault insurance contracts pertaining to matters not specifically covered in the no-fault act. Based on the reasoning of those cases, the Supreme Court held that the subject indemnification provision was enforceable because it did not conflict with any of the no-fault act's statutory sections or with the legislative purpose of the no-fault act, which the Court characterized as "to ensure that there is applicable insurance for accidents and that benefits get paid." Justice Viviano agreed with the result reached by the majority but argued that the indemnification agreement at issue was enforceable because it did not conflict with any of the statutory sections of the no-fault act and that the majority should not have focused on the legislative goals and purpose of the no-fault act.

Read Full Summary

LaTarte, et al v Harris (COA – UNP 6/3/2021; RB #4275)

Michigan Court of Appeals; Docket #354486; Unpublished
Judges Shapiro, Jansen, and Beckering ; 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 (Jansen, dissenting), the Court of Appeals affirmed the trial court's denial of Defendant Deshawn Harris's motion for summary disposition, in which Harris sought to dismiss Plaintiff Mary LaTarte's third-party lawsuit on governmental immunity grounds. The Court held that a question of fact existed as to whether Harris, a Saginaw City police officer, acted with gross negligence in causing the subject motor vehicle collision.

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Banks, et al v Williams, et al (UNP – COA 6/10/2021; RB #4276)

Michigan Court of Appeals; Docket #349944; Unpublished
Judges Murray, Kelly, and Stephens; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court's denial of Defendant National Liability & Fire Insurance Company's ("National") motion for summary disposition, in which National sought to dismiss Plaintiff Natalie Banks's first-party action and rescind her commercial automobile insurance policy on the basis of fraud in the policy's procurement. The Court of Appeals held that Banks did, in fact, misrepresent that the covered vehicle's intended purpose was for use in her cosmetic business when she filled out her application for coverage, and that rescission of the policy was therefore warranted.

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Peters v Auto Club Ins Assoc, et al (UNP – COA 6/10/2021; RB #4279)

Michigan Court of Appeals; Docket #349944 Unpublished
Judges Gadola, Sawyer, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Allowable Expenses: Incurred Expense Requirement [§3107(1)(a)]

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 Kara Peters' first-party action against Defendant Auto Club Insurance Association ("Auto Club"). Primarily at issue in this case was a billing statement from Peters's medical providers which indicated an outstanding "insurer balance" of $83,855.20, but an outstanding "patient balance of "$-." The trial court held this billing statement to mean that Peters had not "incurred" any charges for purposes of the no-fault act, because she had not been billed directly. The Court of Appeals reversed the trial court's ruling, holding that Peters "incurred" the charges from her providers at the moment she accepted treatment, "even if payment was expected from an insurer rather than from [Peters]," as was perhaps suggested by the aforementioned billing statement.

Read Full Summary

St John Hosp & Med Ctr, et al v Nationwide Mut Fire Ins Co, et al (COA – UNP 6/10/2021; RB #4277)

Michigan Court of Appeals; Docket #349958; Unpublished
Judges Kelly, Shapiro, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Security for Payment of Benefits; Definitions [§3101]
Priority Rules for Payment of PIP Benefits – Exception for Occupants [§3114(4)]

TOPICAL INDEXING:
Motor Vehicle Code (Registration and Title Requirements) (MCL 257.201, Et Seq.)

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's judgment entered in favor of Defendant/Cross-Plaintiff Nationwide Mutual Fire Insurance Company ("Nationwide") after a jury trial and remanded for entry of judgment of no cause of action in favor of Defendant/Cross-Defendant Home-Owners Insurance Company ("Home-Owners"). A priority dispute arose as to who owned the motor vehicle involved in the subject crash, and therefore whether Nationwide—to whom the Michigan Assigned Claims Plan assigned Plaintiff St. John Hospital and Medical Center's ("St. John") claim for no-fault PIP benefits—or Home-Owners—the insurer of the vehicle's previous owner who, Nationwide argued, failed to properly transfer title to its new, uninsured owner who was driving it at the time of the subject crash—was the highest priority insurer for purposes of MCL 500.3114. The Court of Appeals held that Home-Owners' insured properly transferred title before the subject crash by complying with the requirements of MCL 257.233(9), and that Home-Owners, therefore, fell outside of the no-fault act's priority rules.

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Harmon v Ewing, et al (COA – UNP 6/10/2021; RB #4278)

Michigan Court of Appeals; Docket #350847; Unpublished
Judges Stephens, Sawyer, and Beckering; 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)**]

TOPICAL INDEXING:
Not Applicable

In this 2-1 unpublished per curiam decision (Stephens, dissenting), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Jasmine Harmon's third-party action against Defendants Tomas James Ewing, Thomas E. Mason, and Julia Lynn Everett. The Court of Appeals held that Harmon failed to present sufficient evidence to create a question of fact as to whether she suffered a serious impairment of body function as a result of the crash—specifically, whether she suffered an objectively manifested impairment.

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Auto Club Ins Assoc v Corporate Limousine Inc, et al (COA – UNP 6/17/2021; RB #4280)

Michigan Court of Appeals; Docket #345965; Unpublished
Judges Redford, Borrello, and Tukel; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

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

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's various rulings in favor of Plaintiff Auto Club Insurance Association ("Auto Club") in Auto Club's underlying action against Defendant American Country Insurance Company ("American Country"). American Country insured a motor vehicle that struck and injured a pedestrian, Brian Miller, who subsequently sought PIP benefits through the Michigan Assigned Claims Plan ("MACP"), which in turn assigned his claim to Auto Club. After paying approximately $635,232.15 in PIP benefits to Miller, Auto Club filed its lawsuit against American Country, asserting that American Country was liable to reimburse it for all amounts paid to Miller, plus future amounts incurred by Miller for his collision-related injuries. The trial court issued numerous rulings in favor of Auto Club, all of which were affirmed by the Court of Appeals. Specifically, the Court of Appeals held that Miller was not domiciled at his father's residence on the date of the collision, which would have rendered his father's insurer, Auto Owners Insurance Company ("Auto Owners"), a higher priority insurer than American Country. The Court of Appeals next held that the trial court properly considered the innocent third-party doctrine and balanced the equities between Auto Club and American Country in disallowing American Country from rescinding the policy that covered the subject motor vehicle on the basis of fraud. Lastly, the Court of Appeals held that the trial court did not err in ruling that the doctrine of laches did not operate to bar Auto Club's action against American Country, because even though Auto Club waited five years to file its action, the applicable statute of limitations for insurer reimbursement actions is six years, and the doctrine of laches is simply inapplicable where a complaint is filed within the applicable statute of limitations.

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Hauanio, et al v Smith, et al (COA – UNP 6/17/2021; RB #4282)

Michigan Court of Appeals; Docket #352441 Unpublished
Judges Murray, Fort Hood, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
One-Year-Back Rule Limitation [§3145(1)]
General / Miscellaneous [§3174]

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 Janet Hauanio's first-party action against the Michigan Automobile Insurance Placement Facility ("MAIPF"), as well as the trial court's denial of Hauanio's motion to amend her complaint to substitute Farmers Insurance Exchange ("Farmers") as a party in place of the MAIPF. The Court of Appeals held that Hauanio could not proceed with a direct action against the MAIPF because an injured person claiming benefits through the MAIPF can only sue the MAIPF for PIP benefits directly if it fails to assign his or her claim, and in this case, the MAIPF did not fail to assign Hauanio's claim. Additionally, the Court held that Hauanio could not amend her complaint to substitute Farmers for the MAIPF because MCL 500.3174 requires that an injured person seeking benefits through the MAIPF commence an action against the assignee insurer within 30 days of assignment, and in this case, Hauanio failed to do so.

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Turner v Auto-Owners Ins Co (COA – UNP 6/17/2021; RB #4283)

Michigan Court of Appeals; Docket #352904 Unpublished
Judges Gleicher, Cavanagh, and Leticia; Per Curiam
Official Michigan Reporter Citation: Not Applicable, Link to Opinion

STATUTORY INDEXING:
One-Year Back Rule Limitation [§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 Shanti Turner's first-party no-fault action against Defendant Auto-Owners Insurance Company ("Auto-Owners"). Turner named Auto-Owners as the only defendant in this case, despite the fact that she was actually insured by Home-Owners Insurance Company ("Home-Owners") at the time of the subject motor vehicle collision, and did not seek to amend her complaint to substitute Home-Owners until more than one year after the subject collision. Therefore, the Court of Appeals held that Turner's claims against Home-Owners were barred by the one-year-back rule, and that Turner could not rely on the "so-called misnomer doctrine" in attempting to relate an amendment to her complaint naming the correct entity back to the filing date of her original action.

Read Full Summary

Whitaker v Rigel, et al (COA – UNP 6/17/2021; RB #4285)

Michigan Court of Appeals; Docket #354842: Unpublished
Judges Gleicher, Cavanagh, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
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 Laurie Whitaker's third-party action against Defendants Taylor Rose Rigel and Rodney Wayne Rigel. The Court of Appeals held that Whitaker failed to present sufficient evidence to create a genuine issue of material fact as to whether her back injuries were caused by the subject motor vehicle collision and not merely the result of her pre-existing, degenerative back injuries.

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Estate of Audisho, et al v Everest Nat'l Ins Co (COA – UNP 6/24/2021; RB #4286)

Michigan Court of Appeals; Docket #352391; Unpublished
Judges Kelly, Shapiro, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Cancellation and Recission of Insurance Policies
Fraud/Misrepresentation
Innocent Third Party Doctrine

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Everest National Insurance Company's ("Everest") motion for summary disposition, in which Everest sought dismissal of Plaintiff Estate of Yacoub Audisho, Salima Audisho, and Sky 1 Transport's ("Sky 1") first-party action. The Court of Appeals held that the trial court did not err in concluding that a question of fact existed as to whether Yacoub accepted rescission of his no-fault policy by cashing the refund check Everest sent him after it determined that he had committed fraud in the procurement of his policy. The Court of Appeals further held that a balancing of the equities weighed against allowing Everest to rescind Yacoub's policy with respect to Salima, his wife, an innocent third-party to his alleged fraud. As a result, the Court of Appeals remanded to the trial court to enter an order granting summary disposition to Salima on that issue.

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Breece v Johnson, et al (COA – UNP 6/24/2021; RB #4289)

Michigan Court of Appeals; Docket #353759; Unpublished
Judges Gleicher, Cavanagh, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Allowable Expenses: Reasonable Charge Requirement [§3107(1)(a)]

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

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Citizens Insurance Company of the Midwest's ("Citizens") motion for summary disposition, in which Citizens sought dismissal of Plaintiffs Shaina Breece and Detroit Medical Center's ("DMC") first-party action. The Court of Appeals also affirmed the trial court's denial of DMC's motion for summary disposition, in which DMC asked that the court rule as, a matter of law, that the amounts it charged for the treatment it provided to Breece after the subject motor vehicle collision were reasonable for purposes of the no-fault act. With respect to Citizens's motion, the Court of Appeals held that the trial court did not abuse its discretion in denying Citizens' attempt to rescind the policy Shaina was covered under after discovering that Shaina's mother had committed fraud in its procurement. Shaina was an innocent third-party to the fraud and the trial court did not abuse its discretion in concluding that a balancing of the equities weighed against rescission of the policy with respect to Shaina. Regarding DMC's motion, the Court of Appeals held that a genuine issue of material fact existed as to whether DMC's charges were reasonable, notwithstanding the fact that DMC subjected those charges to an independent audit. The Court reasoned that "[t]he amount determined to be compensable by [the auditing entity] was relevant evidence of reasonableness, but was not dispositive of the issue."

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Buford v Esurance Prop & Cas Ins Co (COA – UNP 6/24/2021; RB #4290)

Michigan Court of Appeals; Docket #354066; Unpublished
Judges Stephens, Kelly, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Evidentiary Issues

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Vivian Buford's first-party action against Defendant Esurance Property & Casualty Insurance Company ("Esurance"). The Court of Appeals held that Buford failed to present sufficient evidence to create a question of fact as to whether her claimed injuries were caused by the subject motor vehicle collision pursuant to MCL 500.3105(1).

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Mich Institute of Pain and Headache, et al v State Farm Mutual Automobile Insurance Company (COA – UNP 6/24/2021; RB #4288)

Michigan Court of Appeals; Docket #353033; Unpublished
Judges Gleicher, Cavanagh, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Allowable Expenses: Incurred Expense Requirement [§3107(1)(a)]

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 Michigan Institute of Pain and Headache, PC's ("Metro Pain Clinic") first-party action against Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). State Farm remitted only partial payment of the total amounts Metro Pain Clinic charged its patient and assignor, Bassam Honeini, for the treatment he received after he was injured in a motor vehicle collision, then argued that Metro Pain Clinic could not pursue the outstanding balance in litigation because Honeini had not "incurred" those charges for purposes of the no-fault act. Essentially, State Farm argued that, because Honeini had not personally suffered any damage or loss by the partial payments—i.e. been sued by Metro Pain Clinic for the outstanding balance—he had no basis, himself, to pursue the outstanding balance from State Farm, and thus neither did Metro Pain Clinic as his assignee. The Court of Appeals disagreed, holding that Honeini "incurred" the full amounts charged by Metro Pain Clinic once he accepted treatment, and that Metro Pain Clinic, as his assignee, could therefore pursue the balance of what was paid and what was charged from State Farm.

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