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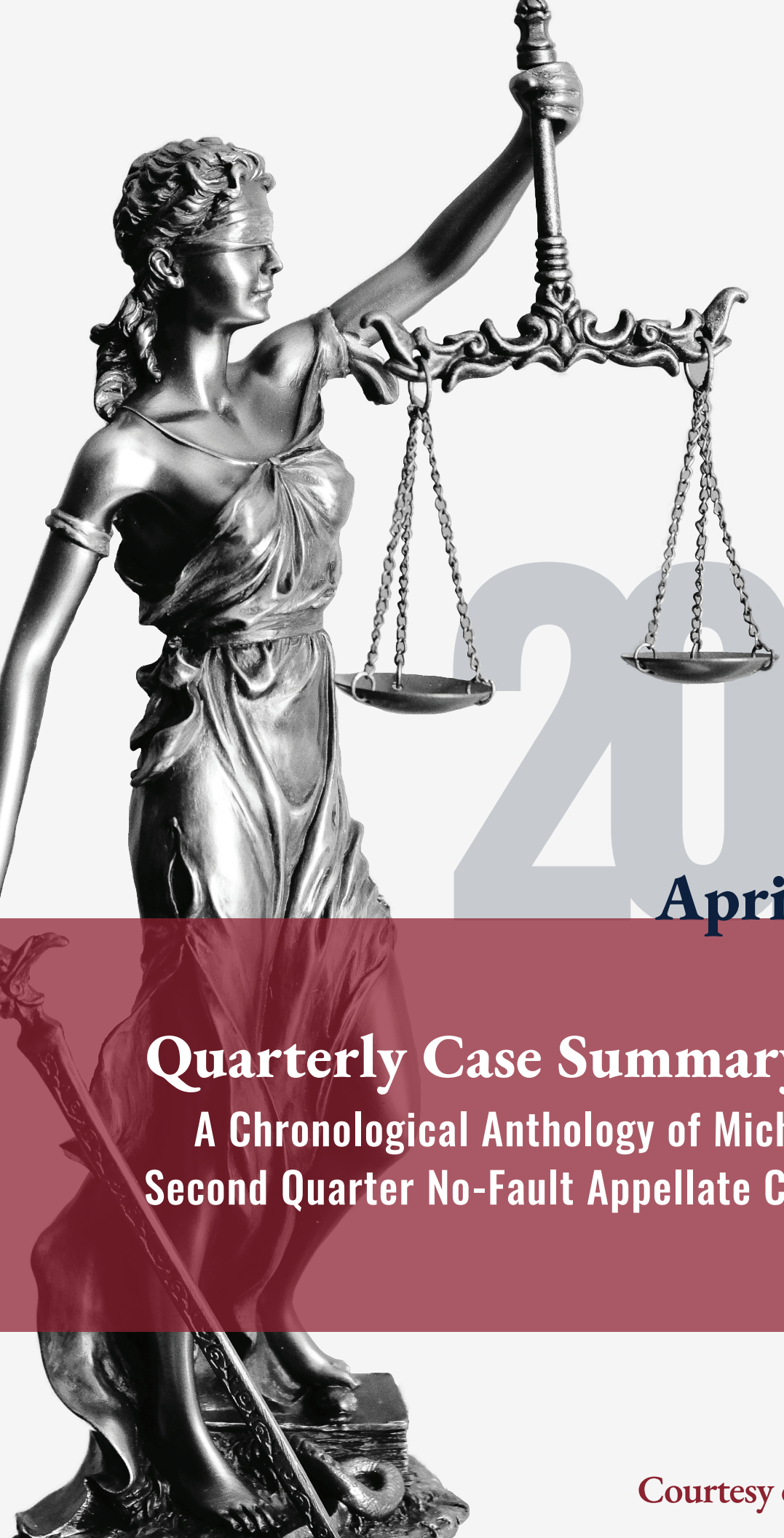

2023

April - June

Quarterly Case Summary Report:

A Chronological Anthology of Michigan's 2023 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 the following individuals from the Sinas Dramis Law Firm: Stephen Sinas, Joel Finnell, Katie Tucker, and Ted Larkin.

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

Editor's Note

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

In the Michigan Supreme Court

The Michigan Supreme Court issued one opinion dealing with the No-Fault Act in the second quarter of 2023, when it decided *Wilmore-Moody v Zakir*. At issue in *Moody* was whether a person becomes retroactively uninsured for purposes of MCL 500.3135(2)(c) whenever her policy is rescinded *ab initio*. The facts and history of *Moody* were as follows: Adora Wilmore-Moody was sitting in a parked car outside her son's school when another driver rear-ended her vehicle, causing her serious injuries. Wilmore-Moody was insured at the time by Everest National Insurance Company ("Everest"), but Everest denied Wilmore-Moody's claim for PIP benefits following the crash, claiming she made a material misrepresentation on her original application for coverage, entitling Everest to rescind her policy ab initio. Wilmore-Moody later filed suit against Everest and the driver who rear-ended her, Mohammad Zakir, and the trial court granted summary disposition in Everest's favor on the issue of rescission. Zakir then moved for summary disposition with respect to Wilmore-Moody's liability claim, arguing that because Wilmore-Moody's policy had now been rescinded ab initio, she was uninsured at the time of the crash for purposes of MCL 500.3135(2)(c). The trial court agreed with Zakir and granted summary disposition in his favor, as well, but the Court of Appeals reversed the trial court on that issue. The Court of Appeals adopted its holding in *Bernard Estate v Avers*, unpublished per curiam opinion of the Court of Appeals, issued April 8, 2021 (Docket No. 348048), in which it was faced with the same issue and held that rescission is an equitable remedy which does not 'alter the past,' or render a person uninsured at a past point in time. The Supreme Court then affirmed the Court of Appeals' conclusion, for two reasons. First, it noted that rescission is a contractual remedy intended to restore the parties to the contract to their pre-contracting status; Zakir was not a party to the contract between Wilmore-Moody and Everest, and thus not allowed to "rely on Everest's chosen contractual remedy to defend against [Wilmore-Moody's] statutory negligence claim." Second, rescission is "a legal fiction available as a contractual remedy," not a "DeLorean time machine;" it does not create an "alternate reality" in which persons like Wilmore-Moody were not, in fact, insured at past points in time.

In addition to decided *Moody*, the Supreme Court issued orders granting mini oral argument in the following cases: *In re Guardianship of Malloy* (on the issue of whether guardianship services were "lawfully rendered" for purposes of MCL 500.3157); *Whitney v Wilcoxson* (on the issue of whether the plaintiff was "operating ... his own vehicle at the time the injury occurred" for purposes of MCL 500.3135(2)(c)); *Childers v Progressive Marathon Ins Co* (on the issue of whether the one-year-back rule applies in situations where recovery is sought against a secondary no-fault insurer after a primary payor

becomes insolvent); *Stuth v Home-Owners Ins Co* (on the issue of whether a motorcyclist's injuries "arose out of the ownership, operation, maintenance or use of a motor vehicle" for purposes of MCL 500.3105(1)); *Williamson v AAA of Mich* (on the issue of whether a single fraudulent submission is grounds for disqualification from all PIP benefits under MCL 500.3173a(4)).

Six Published Decisions from the Michigan Court of Appeals

The Michigan Court of Appeals submitted six opinions for publication in the second quarter of 2023: *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, *Mapp v Progressive Ins Co*, *Stanley v City of Detroit*, *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, *Frankenmuth Mut Ins Co v Sentry Cas Co*, and *Wallace v Suburban Mobility Auth for Regional Transp*.

C-Spine Orthopedics, PLLC v Progressive Mich Ins Co featured a dispute over whether a provider's assignment remained valid even after its patient/assignor's no-fault policy was voided *ab initio*. Benjamin Moore received treatment from C-Spine Orthopedics, PLLC (C-Spine) after being injured in a motor vehicle accident. He assigned his right to pursue PIP benefits related to his treatment to C-Spine, and C-Spine, in turn, sought payment from Moore's no-fault insurer, Progressive Michigan Insurance Company (Progressive). When Progressive refused to pay for Moore's treatment, C-Spine filed suit, and shortly thereafter, Moore filed his own suit against Progressive. Progressive moved for summary disposition in Moore's suit, asserting that Moore had made a material misrepresentation on his original application for coverage which entitled Progressive to rescind his policy. The trial court agreed and granted Progressive's motion, after which Progressive moved for summary disposition in C-Spine's suit. In that motion, Progressive asserted that C-Spine's assignments were no longer valid now that Moore's policy had been voided *ab initio*, and that this case fell outside the scope of *Mecosta Co Med Ctr v Metro Group Prop & Cas Ins Co*, 509 Mich 276 (2022) because *Mecosta* did not deal with rescission. The trial court agreed with Progressive and granted summary disposition in its favor, but the Court of Appeals reversed. The Court of Appeals held that *Mecosta* was controlling even though it didn't deal with rescission, because rescission is merely an equitable remedy that does not affect the provider's rights as they existed at the time it obtained its assignment—the focus of the holding in *Mecosta*.

Mapp v Progressive Ins Co featured a dispute over whether an insurance policy provided broader coverage than that which is required by the No-Fault Act. Delisa Mapp was injured in a motor vehicle accident while traveling as a passenger in a vehicle driven by her ex-husband. At the time of the accident, Delisa and her ex-husband lived together, and their adult daughter, DeAndrea Mapp, lived both at her parents' house and a house she shared with her husband. DeAndrea was insured by Progressive at the time, and Delisa filed a claim for PIP benefits following the accident under DeAndrea's policy. Progressive denied Delisa's claim—asserting that DeAndrea was domiciled with her husband, not her parents, at the time of Delisa's accident—and, in response, Delisa filed suit, alleging that she was still covered under DeAndrea's policy because the policy, by its plain language, covered "resident relatives," not merely "domiciled relatives." Michigan caselaw is clear that while a person can have only one domicile, she can still have multiple residences, and in this case, Delisa asserted that DeAndrea remained a resident of her house even if DeAndrea's domicile was the house she shared with her husband. Progressive moved for summary disposition, asserting that its policy could not be read to provide coverage broader than that which is required by the No-Fault Act. The trial court denied Progressive's motion, ruling that the policy unambiguously extended coverage to "resident relatives," and the Court of Appeals affirmed. The Court of Appeals held that no-fault insurers can offer broader coverage than which is required by the No-Fault Act, and that DeAndrea's policy did so in this case.

Stanley v City of Detroit featured a dispute over whether the highest priority insurer with respect to Sheronda Stanley's claim was identifiable within one-year of her accident. The accident occurred while Stanley was traveling as a passenger in a rental car owned by Executive Car Rental, Inc. (Executive). Stanley reached out to Executive on numerous occasions following the accident to inquire about how to file a claim for PIP benefits, but Executive informed her that its insurance usually did not cover rental car drivers or passengers, who were, instead, typically covered by their own insurance. Stanley eventually filed an application for benefits with the Michigan Automobile Insurance Placement Facility (MAIPF), who assigned her claim to Farmers. When Farmers refused to pay Stanley's benefits, Stanley filed suit against them, USAA Casualty Insurance Company (USAA)—her sister, the rental car driver's no-fault insurer—and Executive. During litigation, Farmers subpoenaed Executive's insurance policy, after which it was discovered that Executive did have no-fault insurance applicable to Stanley's claim, through National Interstate Insurance Company of Hawaii (National). More than a year had elapsed by the time National was identified, but Stanley added them as a defendant, nonetheless. Ultimately, all four defendants moved for summary disposition: Executive asserted that Stanley could not claim PIP benefits from it because it was a rental car

company, not an insurer; National asserted that Stanley's claim was barred by MCL 500.3145(1); USAA asserted that under no circumstances would it be the highest priority insurer; and Farmers asserted that, as the assigned claims insurer, it was not liable for Stanley's claim based on MCL 500.3172(1) and *Griffin v Trumbull Ins Co*, 334 Mich App 1 (2020), in which the Court of Appeals held that a lower priority, assigned claims insurer is only responsible for a claim if the higher priority insurer was not identifiable within one year of the crash—which Farmers argued National was. The trial court denied Executive's motion, "reasoning that a question of fact existed as to whether Executive misrepresented the availability of coverage to [Stanley] which caused a delay of presentation of the claim to National." The trial court then ruled that, "Because National may not have been timely notified, liability would shift to USAA or Farmers, who could seek reimbursement from National [under MCL 500.3172(3)]." On appeal, the trial court's denials of Executive's, National's, and Farmer's motions were all reversed. The Court of Appeals held that Stanley's claim for PIP benefits against Executive failed as a matter of law because Executive was not an insurer (in its analysis, the Court expressed its concern "that this result may incentivize rental car companies to delay notice their insurance providers past the applicable time period in order to defer liability."). The Court then held that Stanley's claim against National was time barred by MCL 500.3145(1). And lastly, the Court held that Stanley's claim against Farmers failed because Stanley did not exercise due diligence in attempting to identify National within one year of the accident, as is required by *Griffin*.

True Care Physical Therapy, PLLC v Auto Club Group Ins Co featured a dispute over whether providers, when faced with denials based on utilization reviews, must exhaust their administrative remedies before filing suit. Rozarta Vukaj was injured in a motor vehicle accident in 2018, and over the next two years, she received physical therapy from True Care Physical Therapy, PLLC (True Care) on more than 137 occasions. Vukaj's insurer, Auto Club Group Insurance Company (Auto Club), paid for Vukaj's physical therapy initially, but eventually stopped after conducting a utilization review. Rather than appeal the findings of the utilization review to DIFS, True Care filed a direct cause of action against Auto Club. Auto Club moved for summary disposition, asserting that True Care was required to exhaust its administrative remedies—i.e., appealing to DIFS—before filing suit. The trial court rejected Auto Club's motion, and the Court of Appeals affirmed, holding that a provider can, under the No-Fault Act, either appeal a utilization review to DIFS or file suit. The Court found MCL 500.3112 unambiguous and containing no requirement that an insurer appeal a utilization review before asserting a direct cause of action against an insurer, focusing on the fact that MCL 500.3157a and the relevant DIFS rules all use the word 'may' when discussing the availability of an administrative

remedy (MCL 500.3157a, for instance, provides, "If an insurer or the association created under section 3104 determines that a physician, hospital, clinic, or other person overutilized . . . the physician, hospital, clinic, or other person may appeal the determination to the department.").

Frankenmuth Mut Ins Co v Sentry Cas Co featured a dispute over whether a commercial truck, registered outside of Michigan but with apportioned registration in other states (including Michigan) through the International Relations Plan (IRP), was "registered" in Michigan for purposes of MCL 500.3114(3). George Cialdella, a truck driver from Michigan, was injured in Indiana while alighting from a commercial truck registered in Illinois. Cialdella maintained no-fault insurance through Frankenmuth Mutual Insurance Company (Frankenmuth), and the commercial truck he was alighting from was covered under an Illinois automobile insurance policy issued by ACE American Insurance Company (ACE) to CHI Logistics, Inc. (CHI). Although the truck was registered in Illinois, CHI had secured proportional registration for the truck in 48 other states, including Michigan, through the IRP. After Cialdella was injured, a dispute arose between Frankenmuth and ACE as to who was primarily responsible for Cialdella's PIP benefits. Frankenmuth ultimately filed a declaratory action against ACE, asserting that the truck's proportional registration through the IRP meant that it was "registered" in Michigan for purposes of MCL 500.3114(3), and that the ACE policy provided for no-fault coverage under these circumstances due to an "out-of-state coverage extension" provision in the policy. ACE moved for summary disposition regarding registration and the "out-of-state coverage extension," but the trial court denied ACE's motion and granted summary disposition in Frankenmuth's favor, instead. The Court of Appeals then reversed the trial court, holding (1) that apportioned registration through the IRP does not mean a foreign vehicle is "registered" in Michigan for purposes of MCL 500.3114(3); (2) that a foreign vehicle with apportioned registration in Michigan through the IRP is not required to maintain Michigan no-fault insurance unless it is driven in Michigan 'for an aggregate of more than 30 days in any calendar year' pursuant to MCL 500.3102(1); and (3) that the plain language "out-of-state coverage extension" in the ACE policy did not provide for Michigan no-fault coverage, just as a similar provision in *Besic v Citizens Ins Co*, 290 Mich App 19 (2010) was deemed not to provide for Michigan no-fault coverage.

Wallace v Suburban Mobility Auth for Regional Transp featured a dispute over whether an injured person, already in litigation, became reinvested with the right to pursue PIP benefits she formerly assigned once she and her providers (who were then time-barred from pursuing the claims, themselves) mutually revoked the assignments. Parie Wallace

was injured while traveling as a passenger on a SMART bus. She received treatment following the accident from numerous providers, and assigned to those providers the right to pursue payment of her medical expenses. Later, Wallace filed suit against SMART in her personal capacity over other unpaid PIP benefits, but her providers failed to pursue the benefits to which they had been assigned within one year of the services being rendered. Wallace and her providers then tried to execute mutual revocations of the assignments, hoping to reinvest Wallace with the right to pursue the formerly assigned benefits in her personal suit, which was filed within one year of the subject services being rendered. SMART moved for summary disposition, arguing that those revocations were invalid and that the providers suit was time barred under the one-year-back rule, but the trial court denied its motion. The Court of Appeals then reversed the trial court, relying on the unpublished decision in *Robinson v Szczotka*, in which it held, 'one must be the real party in interest at the time the lawsuit is filed, and a retroactive, or *nunc pro tunc*, revocation may not be used to correct a factual problem that existed when the lawsuit was filed.'

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

The Supreme Court and Court of Appeals issued opinions in 38 cases dealing with Michigan's No-Fault Act in the first quarter of 2023. Those cases are broken down categorically, below:

1. 29 featured claims for No-Fault PIP benefits, of which:
    a. Three featured disputes over constructive ownership for purposes of MCL 500.3101(1)

        Beaumont Health v Progressive Mich Ins Co

        Mutry v Mich Assigned Claims Plan

    b. Three featured disputes over causation for purposes of MCL 500.3105(1)

        Edison v Allied Gen Ins Co of America

        Flint Region ASC, LLC v Everest Nat'l Ins Co

        Spectrum Health Hospitals v Citizens Ins Co of America

c. Two featured disputes over the "loading/unloading exception" in MCL 500.3106(1)(b)

Djeljaj v American Alternative Ins Corp

Michigan Brain & Spine Surgery Center v American Alternative Ins Corp

d. One featured a dispute over the "incurred" requirement in MCL 500.3107(1)(a)

Lofton v State Farm Mut Auto Ins Co

e. Two featured disputes over whether motor vehicles were "taken unlawfully" for purposes of MCL 500.3113(a)

Allstate Ins Co v Johnson

Cyrus v Lauer

f. One featured a dispute over whether a vehicle with proportional registration in Michigan through the International Relations Plan was "registered" in Michigan for purposes of MCL 500.3114(3)

Frankenmuth Mut Ins Co v Sentry Cas Co

g. Two featured disputes over the applicability of the "one-year-back" rule in MCL 500.3145(2)

Johnson v Falls Lake Nat'l Ins Co

Stanley v City of Detroit

h. One featured a dispute over the applicability of the "formal denial" tolling provision in MCL 500.3145(3)

Spine Specialists of Mich, PC v Esurance Prop and Cas Ins Co

i. Two featured disputes over whether dismissal was an appropriate sanction for failure to attend defense medical examinations pursuant to MCL 500.3153

Alshammam v Home-Owners Ins Co

Willis Jr. v Farmers Ins Exch

j. One featured a dispute over the applicability of MCL 500.3157(7) to injuries sustained prior to the enactment of 2019 PA 21

Farm Bureau Gen Ins Co of Mich v TheraSupport Behavioral Health & Wellness

k. One featured a dispute over whether an injured person exercised due diligence in attempting to identify the highest priority insurer within one-year of the accident for purposes of MCL 500.3172(1)

Stanley v City of Detroit

l. One featured a dispute over whether a no-fault insurer was entitled to reimbursement from another no-fault insurer pursuant to MCL 500.3177(1)

Allstate Ins Co v Johnson

m. Three featured disputes involving the "innocent third-party doctrine"

Nationwide Mut Fire Ins Co v Esurance Prop & Cas Ins Co

Smith v Progressive Marathon Ins Co

Wolverine Mut Ins Co v Van Dyken

n. Two featured disputes over whether patients are reinvested with the right to pursue PIP benefits they previously assigned if, after filing suit, they obtain revocations of the assignments from their providers

Robinson v Szczotka

Wallace v Suburban Mobility Auth for Regional Transp

o. One featured a dispute over whether an insurer could rescind or void a policy based on fraud or misrepresentation(s)

Root v Palmer

p. One featured a dispute over whether a no-fault policy offered broader coverage than what is required by statute

Mapp v Progressive Ins Co

q. One featured a dispute over the validity of assignments

C-Spine Orthopedics, PLLC v Progressive Mich Ins Co

r. One featured a dispute over whether a provider is required to appeal a determination to suspend or cut off PIP benefits following a utilization review to DIFS before filing suit against the insurer

True Care Physical Therapy, PLLC v Auto Club Group Ins Co

s. One featured a dispute overzwhether an insurer could cut off PIP benefits due to its insured's failure to use reasonable efforts to obtain worker's compensation benefits for the same loss

Spectrum Health Hospitals v Citizens Ins Co of America

t. One featured a dispute over a no-fault insurer's liability to pay for medical expenses incurred by its insured (whose policy was coordinated with respect to medical expenses), which the insured's health insurer refused to pay based on the insured's failure to comply with the terms of his health insurance policy

Lofton v State Farm Mut Auto Ins Co

u. One featured a claim by one no-fault insurer against another, the former alleging the latter made an enforceable promise to pay half of an injured person's PIP benefit despite having no statutory obligation to do so

Brockway-Guidry v Auto Club Ins Co

2. Eight featured automobile negligence claims, of which:

a. Three featured disputes over whether injured persons had suffered "serious impairments of body function" for purposes of MCL 500.3135(1)

Cyars-Williams v Skender

Harris v Allstate Fire and Cas Ins Co

Laskos v Maples

b. Two featured disputes over injury causation for purposes of MCL 500.3135(1)

Estate of Harris v Suburban Mobility Auth for Regional Transp

Laskos v Maples

c. One featured a dispute over comparative fault for purposes of MCL 500.3135(2)(b)

Almaswari v Great American Ins Co

d. Two featured disputes over whether an injured person was barred from recovering noneconomic damages in tort pursuant to MCL 500.3135(2)(c)

Alexander v Kubacki

Ong v Lewis

e. One featured a dispute over whether government employees acted negligently for purposes of the "motor vehicle exception" to the Government Tort Liability Act

Laskos v Maples

f. One featured a dispute over the applicability of the "sudden emergency doctrine"

Paul v Farm Bureau Ins Co of Mich

g. One featured a Daubert challenge to a treating physician's opinions in a case

Estate of Harris v Suburban Mobility Auth for Regional Transp

h. One featured a dispute over whether the trial court erred in allowing a witness to testify regarding the contents of a UD-10 traffic crash report

Cyars-Williams v Skender

i. One featured a dispute over whether a check mailed to an injured person by the tortfeasor's insurer constituted an accord and satisfaction of the injured person's tort claim(s)

Fisher v Calcote

3. Two featured claims for uninsured or underinsured motorist coverage, of which:

a. One featured a dispute over penalty interest under the Uniform Trade Practices Act

Paul v Farm Bureau Ins Co of Mich

b. One featured a dispute over whether an injured person was barred from UIM coverage for failing to obtain consent from his insurer before accepting a case evaluation award against a tortfeasor

Mathis v DeHayes

Two Notable Unpublished Opinions in Automobile Negligence Cases

In *Harris v Allstate Fire and Cas Ins Co*, the Court of Appeals offered an instructive analysis regarding the "objectively manifested" prong of the test for "serious impairment of body function," while also making an important, general point about what types of injuries constitute "serious impairments of body function." At issue in the case were cervical spine injuries Tawanda Harris allegedly suffered as a result of a motor vehicle collision. No acute injuries were seen on x-rays or CT scans of Harris's cervical spine following the collision, but her medical records did document "flattening of the cervical lordotic curve, decreased range of motion, and an elevated left shoulder as a result of muscle spasm." The defendant in Harris's resultant automobile negligence action argued that these findings did not satisfy the "objectively manifested" prong of the test for "serious impairment of body function," and that even if Harris did sustain injuries in the collision, they were all "soft tissue in nature" and thus did not meet the threshold set forth in MCL 500.3135. The trial court agreed and granted summary disposition in the defendant's favor, but the Court of Appeals reversed, holding that the above findings—flattening of the cervical lordotic curve, decreased range of motion, and an elevated left shoulder as a result of muscle spasm—do constitute "objective manifestations." The Court then explicitly rejected Defendant's argument that soft tissue injuries do not meet the threshold, stating, "nothing in the case law nor MCL 500.3135 render persistent 'soft tissue' injuries nonrecoverable, and here, plaintiff met her burden of establishing the existence of genuine issues of disputed fact material to a determination of whether she suffered a serious impairment."

In *Laskos v Maples*, the Court of Appeals considered whether a physician's opinion regarding injury causation satisfied the requirements for expert testimony set forth in MRE 702. The opinion at issue was offered by Dr. Rakesh Ramakrishnan, who performed a spinal fusion surgery on Austin Laskos after Laskos was involved in a motor vehicle collision. Following the surgery, Laskos filed an automobile negligence action against the Township that employed the police officer he alleged was responsible for the

collision, and during the course of litigation, Laskos presented an affidavit from Dr. Ramakrishnan, which read, specifically:

> *Based on my education, my training, my clinical examinations, my review of his records before and after the crash, the imaging and the patient history, it is my opinion to a reasonable degree of medical certainty Mr. Laskos sustained injuries to his lower back specifically at the L5-S1 level and his neck at the C3-C4 level and the cause of those injuries is the truck colliding with Mr. Laskos. As such, it is also my opinion that the injuries described herein to Mr. Laskos' neck and back and the medical treatment that I have provided to Mr. Laskos, after the collision, including the surgeries I performed, are all directly related to the truck striking Mr. Laskos.*

The Charter Township of Plymouth moved for summary disposition, arguing that Laskos's injuries were entirely pre-existing degenerative conditions and that Dr. Ramakrishnan's affidavit should be disregarded because it did not comport with the requirements of MRE 702—specifically, because Dr. Ramakrishnan did not cite any medical or scientific principles or literature supporting his opinion regarding causation. The trial court found the Township's arguments unavailing and denied its motion, a ruling the Court of Appeals subsequently affirmed. With respect to Dr. Ramakrishnan's affidavit, the Court of Appeals held that "[t]he Township's challenges go to the weight of Dr. Ramakrishnan's opinion, not its admissibility." This holding is consistent with the Court's holding in another unpublished opinion it released this quarter, *Estate of Harris v Suburban Mobility Auth for Regional Transp*, in which a similar challenge was made to a physician's opinion regarding injury causation. In that case, the Court of Appeals held that the trial court did not err in finding a physician's testimony admissible even though the physician did not "specify the medical literature purportedly supporting his opinion." "It is within a trial court's discretion how to determine reliability," the Court wrote, and it can do so without knowing the specific scientific literature or principles the expert relied on.

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Stephen Sinas Catherine Tucker Joel Finnell Ted Larkin

Paul, et al v Farm Bureau Ins Co of Mich (COA – UNP 4/6/2023; RB #4567)

Michigan Court of Appeals; Docket #359396; Unpublished
Judges Shapiro, Letica, and Feeney; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Sudden Emergency Doctrine
Uniform Trade Practices Act (UTPA – MCL 500.2001, Et Seq.)
Uninsured Motorist Coverage in General [Uninsured Motorist Benefits]

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's ruling in Plaintiffs Jerry Paul and Joanne Paul's action for uninsured motorist ("UM") benefits against Defendant Farm Bureau Insurance Company of Michigan ("Farm Bureau"), in which the trial court refused to give the jury an instruction on the sudden emergency doctrine. The Court of Appeals held that, given the absence of any actual evidence that the unidentified driver who crashed into the Pauls actually encountered a sudden emergency, the trial court did not abuse its discretion in refusing to instruct the jury on the sudden emergency doctrine. The Court of Appeals then reversed the trial court's ruling that the Pauls were not entitled to penalty interest under the Uniform Trade Practices Act ("UTPA"), holding that the trial court erred in determining that UTPA penalty interest was unavailable to the Pauls solely because the Pauls failed to specifically cite to the relevant UTPA statute in their complaint.

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C-Spine Orthopedics, PLLC v Progressive Mich Ins Co, et al (COA – PUB 4/6/2023; RB #4565)

Michigan Court of Appeals; Docket #359681; Published
Judges Gadola, Borrello, and Hood; Authored by Judge Hood
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Assignments of Benefits – Validity and Enforceability
Cancellation and Rescission of Insurance Policies

In this unanimous, published decision authored by Judge Hood, the Court of Appeals reversed the trial court's summary disposition order in which it dismissed Plaintiff C-Spine Orthopedics, PLLC's ("C-Spine") action for No-Fault PIP benefits against Defendant Progressive Michigan Insurance Company ("Progressive"). The Court of Appeals held that C-Spine was not bound by

a judgment against its patient/assignor, Benjamin Moore, in Moore's separate action against Progressive. That judgment resulted in Moore's policy being rescinded and voided *ab initio*, which Progressive argued nullified the assignment C-Spine obtained from Moore, and therefore took this case outside the framework of *Mecosta Co Med Ctr v Metro Group Prop & Cas Ins Co, 509* Mich 276 (2022). The Court of Appeals disagreed, noting that rescission is an equitable remedy and that "[t]he fact that the court in Moore's case granted the equitable remedy of rescission does not affect C-Spine's rights, because C-Spine was not involved in that case"—in other words, *Mecosta* still controlled in this case.

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Robinson v Szczotka, et al (COA – UNP 4/6/2023; RB #4566)

Michigan Court of Appeals; Docket #359646; Unpublished
Judges Kelly, Murray, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Assignments of Benefits – Validity and Enforceability

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 it sought dismissal of Plaintiff Tiffany Shantel Robinson's action for No-Fault PIP benefits that she assigned to her providers before filing suit. The Court of Appeals held that Robinson was not the real party in interest with respect to the assigned benefits at the time she filed suit, and that her suit failed as a result. The Court also held that mutual revocations of the assignments—executed by Robinson and her providers, and which stated that the assignments were revoked *nunc pro tunc*—were effective only as of the date they were executed, and did not operate to retroactively reinvest Robinson with standing to pursue the subject benefits at the time she filed suit.

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Lofton v State Farm Mut Auto Ins Co, et al (COA – UNP 4/13/2023; RB #4568)

Michigan Court of Appeals; Docket #359410; Unpublished
Judges Cavanagh, Boonstra, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Allowable Expenses: Incurred Expense Requirement [§3107(1)(a)]
Coordination with HMO and PPO Coverages [§3109a]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") motion for summary disposition, in which State Farm sought dismissal of Plaintiff Shakhary Lofton's action for No-Fault PIP benefits. The Court of Appeals held that Lofton—whose No-Fault coverage was coordinated with respect to medical expenses—could not pursue balance bills from two of his providers, because (1) the providers were not allowed to balance bill Lofton under their agreements with his health insurer, and thus Lofton did "incur" the charges which comprised the balances, and (2) because Plaintiff did not comply with the procedural requirements of his health insurance policy—i.e., that which required him to receive pre-approval or a referral before receiving various specific treatments—State Farm, as the secondary payor of Plaintiff's medical expenses, was not required to pay for those treatments pursuant to *Tousignant v Allstate Ins Co, 444* Mich 301 (1993). The Court of Appeals also held that State Farm was not required to pay for the charges Lofton incurred for various prescriptions, because there was no evidence that Lofton or his pharmacists billed Lofton's health insurer before seeking payment from State Farm. Thus, Lofton failed to make reasonable efforts to obtain reimbursement for those prescriptions from his health insurance before seeking reimbursement from State Farm, as is required.

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Fisher v Calcote, et al (COA – UNP 4/13/2023; RB #4570)

Michigan Court of Appeals; Docket #360135; Unpublished
Judges Cavanagh, Boonstra, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Accord and Satisfaction

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Erica Fisher's automobile negligence action against Defendants Chakira Lekeish Calcote and Mark Calcote. After Fisher was rear-

ended by Chakira Calcote, the Calcotes' automobile insurer, Progressive, called Fisher to purportedly negotiate a settlement of any bodily injury claims Fisher might have arising out of the accident. After the call, Progressive mailed Fisher a $1,500 check—which Fisher later cashed—accompanied by a document titled, "Advice of Payment[,]" which stated that the $1,500 payment constituted a full and final settlement of Fisher's claims against the Calcotes. Given the language in the "Advice of Payment" document, the Court of Appeals held that the $1,500 payment constituted an accord and satisfaction of Fisher's bodily injury liability claim(s) against the Calcotes, thereby barring Fisher from proceeding with the automobile negligence action.

Read Full Summary

Spine Specialists of Mich, PC v Esurance Prop and Cas Ins Co (COA – UNP 4/20/2023; RB #4571)

Michigan Court of Appeals; Docket #361096; Unpublished
Judges Cavanagh, Boonstra, and Riordan; 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:
Not Applicable

In this unanimous, unpublished, *per curiam* decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Spine Specialists of Michigan, PC's ("Spine Specialists") action for no-fault PIP benefits against Defendant Esurance Property and Casualty Insurance Company. The Court of Appeals held that Spine Specialists' complaint was timely filed because it was filed within one year of the date Esurance formally denied the claims at issue.

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Supreme Court Action

Learn which appellate no-fault cases are pending before the Michigan Supreme Court and the issues at stake in those cases

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Johnson, et al v Falls Lake Nat'l Ins Co, et al (COA – UNP 4/27/2023; RB #4572)

Michigan Court of Appeals; Docket #357422; Unpublished
Judges Jansen, O'Brien, and Hood; 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:
Not Applicable

In this unanimous, unpublished, *per curiam* decision (Hood, concurring), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiffs Great Lakes Pain & Injury Chiropractic Center ("Great Lakes"), Live Well Health, LLC ("Live Well"), and Red Wing Medical Transportation, LLC's ("Red Wings") action for no-fault PIP benefits against Defendant Falls Lake National Insurance Company ("Falls Lake"). The Court of Appeals held, first, that Great Lakes, Live Well, and Red Wings' intervening complaint would not relate back to the filing date of Vivian Johnson's (the providers' patient/assignee) complaint against Falls Lake. The Court of Appeals then held that although the post-amendment version of MCL 500.3145 applied to this case—because the providers obtained their respective assignments after the effective date of the 2019 amendments to the No-Fault Act, June 11, 2019—their claims were barred because they failed to file within one year of the date Falls Lake formally denied coverage.

Read Full Summary

Mapp v Progressive Ins Co, et al (COA – PUB 4/27/2023; RB #4574)

Michigan Court of Appeals; Docket #359889; Published
Judges Kelly, Swartzle, and Feeney; Authored by Judge Feeney
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

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

TOPICAL INDEXING:
Interpretation of Insurance Contracts

In this unanimous, published decision authored by Judge Feeney, the Court of Appeals affirmed the trial court's denial of both Defendant Progressive Insurance Company's ("Progressive") motion for summary disposition and Defendant Farm Bureau Mutual Insurance Company's ("Farm Bureau") motion for summary disposition, both of which argued that the other insurer was higher in priority for payment of Plaintiff Delisa Mapp's no-fault PIP benefits. The Court of Appeals held, first, that the language of the subject Progressive policy could and

did offer broader coverage than what is mandated by the No-Fault Act: specifically, the Court held that the policy extended PIP coverage to "resident relatives" of named insureds, not merely "domiciled relatives," as is required by statute. The Court of Appeals held, second, that a question of fact existed as to whether Mapp's daughter, the named insured on the subject Progressive policy, was, in fact, a "resident" in the same household as Mapp at the time of the subject motor vehicle accident.

Read Full Summary

Cyars-Williams v Skender, et al (COA – UNP 4/27/2023; RB #4573)

Michigan Court of Appeals; Docket #359254; Unpublished
Judges Kelly, Swartzle, and Feeney; 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)**]
Important Body Function Element of Serious Impairment (McCormick Era: 2010 – Present [§3135(5)**]
General Ability / Normal Life Element of Serious Impairment (McCormick Era: 2010 – Present [§3135(5)**]

TOPICAL INDEXING:
Evidentiary Issues

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed a judgment entered in favor of Plaintiff Angell Cyars-Williams following a jury trial in her automobile negligence action against Defendants Thomas Skender and the City of Detroit. The Court of Appeals held, first, that the trial court's decision to allow Cyars-Williams's husband to testify regarding the contents of the UD-10 for the subject motor vehicle crash was harmless error because the defendants failed to show that the contents of the UD-10—and not other admissible evidence—influenced the jury's damages calculation. The Court of Appeals held, second, that the trial court did not err in denying the defendants' motion for a directed verdict on the issue of whether Cyars-Williams's mild traumatic brain injury constituted a serious impairment of body function, because Cyars-Williams presented sufficient evidence to create a question of fact as to all three prongs of the statutory test for a serious impairment of body function.

Read Full Summary

Willis Jr. v Farmers Ins Exch, et al (COA – UNP 4/27/2023; RB #4576)

Michigan Court of Appeals; Docket #360370; Unpublished
Judges Kelly, Swartzle, and Feeney; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Nonattendance As a Basis for PIP Benefit Cutoff [§3151]

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 Arthur Willis Jr.'s action for no-fault PIP benefits against Farmers Insurance Exchange ("Farmer") as a sanction against Willis Jr. For failing to attend a defense medical examinations ("DME"). The Court of Appeals held that the factors set forth in *Vicencio v Ramirez*, 211 Mich App 501 (1995)—factors for determining whether dismissal is an appropriate sanction in a no-fault case—did not weigh in favor of dismissal in this case.

Read Full Summary

Almaswari v Great American Ins Co, et al (COA – UNP 4/27/2023; RB #4577)

Michigan Court of Appeals; Docket #360612; Unpublished |
Judges Kelly, Swartzle, and Feeney; 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:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Mary Lychuk's motion for summary disposition, in which she sought dismissal of Plaintiff Fuad Almaswari's automobile negligence action. The Court of Appeals held that there was no question of fact that Almaswari—who rear-ended Lychuk's vehicle on the highway—was more than 50% at-fault for the collision.

Read Full Summary

Cyrus v Lauer, et al (COA – UNP 4/27/2023; RB #4575)

Michigan Court of Appeals; Docket #359942; Unpublished
Judges Kelly, Swartzle, and Feeney; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Allstate Insurance Company's ("Allstate") motion for summary disposition, in which it sought dismissal of Plaintiff Javell Cyrus's action for no-fault PIP benefits arising out of injuries she sustained while operating a rental car her grandfather rented. The Court of Appeals held that there was no question of fact that Cyrus was disqualified under the unlawfully taken provision set forth MCL 500.3113(a) because she operated the rental car without authority from the rental car company. In this regard, the Court of Appeals found that Cyrus took the vehicle without authority because she knew she was not an added driver to the car rental agreement, and because she did not have a driver's license, which the rental car company required to authorize a person to drive one of its vehicles.

Read Full Summary

Alshammam v Home-Owners Ins Co, et al (COA – UNP 4/27/2023; RB #4578)

Michigan Court of Appeals; Docket #361218; Unpublished
Judges Kelly, Swartzle, and Feeney; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Obligation of Claimant to Submit to Physician Examination [§3151]
Court Orders for Failure to Comply with Section 3151 and 3152 [§3153]

TOPICAL INDEXING:
Equitable Estoppel
Mend the Hold

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Ahmed Alshammam's action for no-fault PIP benefits and underinsured motorist ("UIM") coverage against Defendant Home-Owners Insurance Company ("Home-Owners"). The Court of Appeals held that the trial court did not abuse its discretion in dismissing Alshammam's action as a sanction for failing to comply with its prior order that he attend Home-Owners' defense medical examinations ("DMEs").

Read Full Summary

Alexander v Kubacki, et al (COA – UNP 5/4/2023; RB #4579)

Michigan Court of Appeals; Docket #360100; Unpublished
Judges Shapiro, Redford, and Yates; 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)]
Obligation of Non-Resident Owner / Registrant to Insure a Vehicle [§3102(1)]
Disqualification of Uninsured Owners / Operators for Noneconomic Loss [§3135(2)]

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

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Matthew Alan Kubacki's motion for summary disposition, in which he sought dismissal of Plaintiff Shavon Alexander's automobile negligence action. The Court of Appeals held that Alexander—an Ohio resident who commuted to Michigan for work five days per week in a vehicle that was registered in Georgia and owned by her stepfather, a Georgia resident—was not required to register her vehicle in Michigan for purposes of MCL 500.3101(1), and therefore not barred by MCL 500.3135(2)(c) from pursuing her tort claim for noneconomic loss against Kubacki.

Read Full Summary

Harris v Allstate Fire and Cas Ins Co, et al (COA – UNP 5/18/2023; RB #4581)

Michigan Court of Appeals; Docket #359588; Unpublished
Judges Gleicher, Hood, and Maldonado; 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)**]
Important Body Function Element of Serious Impairment (McCormick Era: 2010 – Present) [§3135(5)**]
General Ability / Normal Life Element of Serious Impairment (McCormick Era: 2010 – Present) [§3135(5)**]

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 Tawanda Harris's automobile negligence action against Defendant Arnold Alson. The Court of Appeals held that Harris presented sufficient evidence to create a question of fact regarding all three prongs of the test for "serious impairment of body function" set forth in MCL 500.3135 and *McCormick v Carrier*, 487 Mich 180 (2010).

Read Full Summary

Farm Bureau Gen Ins Co of Mich v TheraSupport Behavioral Health & Wellness, et al (COA – UNP 5/11/2023; RB #4580)

Michigan Court of Appeals; Docket #361552; Unpublished
Judges O'Brien, Murray, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's order granting a preliminary injunction in favor of Defendant TheraSupport Behavioral Health & Wellness ("TheraSupport"). Plaintiff Farm Bureau General Insurance Company of Michigan filed this action seeking a declaratory judgment that the fee schedule included in the 2019 amendments to the No-Fault Act—MCL 500.3157(7), specifically—applied to the no-fault claim of TheraSupport's patient, Roger Taliaferro, who was catastrophically injured in a motor

vehicle collision in 1988. TheraSupport moved emergently for a preliminary injunction following the Court of Appeals' decision in *Andary v USAA Cas Ins Co*, ___ Mich App ___ (2022), asking the trial court to order that Farm Bureau continue paying its charges related to Taliaferro's treatment without regard for the fee schedule. The trial court granted TheraSupport's motion without holding a hearing, and the Court of Appeals held that any procedural error by the trial court in doing so was harmless given that the dispositive issue was squarely decided by the Court of Appeals in *Andary*, and given that the trial court already knew Farm Bureau's position on that issue full well, it having been fully articulated in Farm Bureau's complaint.

Read Full Summary

Michigan Brain & Spine Surgery Center v American Alternative Ins Corp (COA – UNP 5/18/2023; RB #4582)

Michigan Court of Appeals; Docket #362304; Unpublished
Judges Patel, Cavanagh, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Exception for Loading / Unloading [§3106(1)(b)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Michigan Brain & Spine Surgery Center's ("Michigan Brain & Spine") action for no-fault PIP benefits against Defendant American Alternative Insurance Corporation ("American Alternative"). The Court of Appeals held that Michigan Brain & Spine's patient, Djerdj Djeljaj, was entitled to PIP benefits for the injuries he sustained when paramedics dropped his stretcher while trying to load him into the back of an ambulance. The stretcher constituted "property being lifted onto the vehicle in the loading or unloading process" for purposes of MCL 500.3105(1)(b)—an exception to the No-Fault Act's "parked vehicle exclusion."

Read Full Summary

Djeljaj v American Alternative Ins Corp (COA – UNP 5/18/2023; RB #4583)

Michigan Court of Appeals; Docket #360314; Unpublished
Judges Patel, Cavanagh, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Exception for Loading / Unloading [§3106(1)(b)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Michigan Brain & Spine Surgery Center's ("Michigan Brain & Spine") action for no-fault PIP benefits against Defendant American Alternative Insurance Corporation ("American Alternative"). The Court of Appeals held that Michigan Brain & Spine's patient, Djerdj Djeljaj, was entitled to PIP benefits for the injuries he sustained when paramedics dropped his stretcher while trying to load him into the back of an ambulance. The stretcher constituted "property being lifted onto the vehicle in the loading or unloading process" for purposes of MCL 500.3105(1)(b)—an exception to the No-Fault Act's "parked vehicle exclusion."

Read Full Summary

Mutry v Mich Assigned Claims Plan, et al (COA – UNP 5/18/2023; RB #4584)

Michigan Court of Appeals; Docket #360843; Unpublished
Judges Rick, Shapiro, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Definition of Owner [§3101(2)(h)]
Disqualification for Uninsured Owners or Registrants of Involved Motor Vehicles or Motorcycles [§3113(b)]
Persons Disqualified from Receiving Benefits Through the Assigned Claims Facility [§3173]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Theodore Mutry's action against Defendant, the Michigan Automobile Insurance Placement Facility ("MAIPF"). The Court of Appeals held that a question of fact existed as to whether Theodore Mutry was a constructive owner of the uninsured vehicle in question, such as would bar him from receiving PIP benefits by way of the MAIPF pursuant to MCL 500.3101(3)(l)(i), MCL 500.3113(b), and MCL 500.3173.

Read Full Summary

Spectrum Health Hospitals, et al v Citizens Ins Co of America, et al (COA – UNP 5/18/2023; RB #4585)

Michigan Court of Appeals; Docket #362042; Unpublished
Judges Rick, Shapiro, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Entitlement to PIP Benefits: Arising Out of / Causation Requirement [§3105(1)]
Standards for Deductibility of State and Federal Governmental Benefits [§3109(1)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, *per curiam* decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Spectrum Health Hospitals' ("Spectrum") action for no-fault PIP benefits against Defendant Citizens Insurance Company of America ("Citizens"). The Court of Appeals held, first, that a question of fact existed as to whether injuries sustained by Spectrum's patient, Timothy Wolf, arose out of a motor vehicle accident that occurred in 2018, or whether Wolf's injuries arose out of one of two work-related incidents that occurred in 2019 and 2020, respectively. The Court of Appeals held, second, that Citizens could not refuse to pay Wolf's PIP benefits simply because Wolf failed to use reasonable efforts to obtain workers' compensation benefits.

Read Full Summary

Laskos v Maples, et al (COA – UNP 5/25/2023; RB #4586)

Michigan Court of Appeals; Docket #360350; Unpublished
Judges Rick, Shapiro, and O'Brien; 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)**]
Causation Issues [§3135]

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 Charter Township of Plymouth's ("Plymouth Township" or "the Township") motion for summary disposition, in which it sought dismissal of Plaintiff Austin Laskos's automobile negligence action brought under the "motor vehicle exception" to the Governmental Tort Liability Act. The Court of Appeals held, first, that a question of fact existed

as to whether Jeffery Mark Maples, a police officer for Plymouth Township, acted negligently when his police cruiser crashed into Laskos, a bicyclist. The Court held, second, that a question of fact existed as to whether Laskos's injuries were caused by the collision with Maples's police cruiser or were entirely pre-existing. The Court held, third, that a question of fact existed as to whether Laskos's alleged impairments satisfied the first and third prongs of the test for "serious impairment of body function" under MCL 500.3135 and *McCormick v Carrier*, 487 Mich 180 (2010).

Read Full Summary

Allstate Ins Co v Johnson (COA – UNP 5/25/2023; RB #4588)

Michigan Court of Appeals; Docket #360079; Unpublished
Judges Rick, Shapiro, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Disqualification for Unlawful Taking and Use of a Vehicle [§3113(a)]
PIP Insurer's Right to Reimbursement for Claims Paid Arising out of Uninsured Vehicle Injuries [§3177(1)]

TOPICAL INDEXING:
Not Applicable

In this 2-1, unpublished, *per curiam* decision (O'Brien, dissenting), the Court of Appeals reversed the trial court's summary disposition order in favor of Plaintiff Allstate Insurance Company ("Allstate"), in Allstate's subrogation action against Defendant Dominique Jamia Johnson. The Court of Appeals held, first, that a question of fact existed as to whether Johnson's uninsured vehicle had been unlawfully taken—that is, without her permission—by her boyfriend's father, Melvin Jackson, prior to the subject motor vehicle accident. The Court of Appeals held, second, that since a question of fact existed as to whether Melvin Jackson was barred from PIP benefits by MCL 500.3113(a), a question of fact also existed as to whether Allstate was an "insurer obligated to pay personal protection insurance benefits [to Jackson]" for purposes of MCL 500.3177(1). The Court held, third, that the trial court erred in denying Johnson's motion to amend her answer to assert that her vehicle was not required to be insured pursuant to MCL 500.3101(1).

Read Full Summary

DLT II v Allstate Ins Co, et al (COA – UNP 5/25/2023; RB #4589)

Michigan Court of Appeals; Docket #360502; Unpublished
Judges Markey, Murray, and Feeney; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:

Not Applicable

TOPICAL INDEXING:

2019 PA 21 – Retroactivity

In this unanimous, unpublished, per curiam decision (Feeney, concurring), the Court of Appeals affirmed the trial court's order granting Plaintiff Danny W. Thomason's motion to compel compliance with a consent judgment that he entered into with Defendant Allstate Insurance Company ("Allstate") in 2012. The Court of Appeals held that under *Andary v USAA Cas Ins Co*, ___ Mich App ___ (2022), Allstate could not apply the reimbursement limitations set forth in MCL 500.3157 to Thomason's claim for PIP benefits, which arose out of a motor vehicle accident that occurred in 1995.

Read Full Summary

Stanley, et al v City of Detroit, et al (COA – PUB 5/25/2023; RB #4590)

Michigan Court of Appeals; Docket #361266, 361956; Published
Judges Cameron, Jansen, and Borrello; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:

One-Year Back Rule Limitation [§3145(1)]
Applicability of Limitations to Assigned Claims Cases [§3145]
When Claimants Can Receive PIP Benefits Through the Assigned Claims Plan [§3172(1)]
Reimbursement to Servicing Insurer or ACF [§3172(3)]

TOPICAL INDEXING:

Not Applicable

In this unanimous, published, per curiam decision, the Court of Appeals reversed the trial court's orders denying both Defendant National Interstate Insurance Company of Hawaii's ("National") and Defendant Executive Car Rental, Inc.'s ("Executive") motions for summary disposition, in which they sought dismissal of Sheronda Stanley's no-fault claims against them. The Court of Appeals held, first, that because Executive was a rental car company and not an insurer, it could not be liable for Stanley's PIP benefits even if it failed to disclose information to Stanley regarding the availability of insurance coverage until more than one-year after the subject motor vehicle

accident involving its rental car. The Court of Appeals held, second, that Stanley could not obtain PIP benefits from either National—Executive's insurer and the highest priority insurer with respect to Stanley's claim—or Farmers Insurance Exchange ("Farmers")—the lower priority insurer which was assigned Stanley's claim by the Michigan Automobile Insurance Placement Facility ("MAIPF"). With respect to National, the Court held that Stanley's claims were barred by the one-year-notice and one-year-back rules in MCL 500.3145(1); with respect to Farmers, the Court held that the only way in which Stanley would be entitled to PIP benefits from an assigned claims insurer would be if the highest priority insurer (National) could not be "identified" for purposes of MCL 500.3172(1). In this case, the Court determined that National could have been identified by Stanley had she exercised the due diligence required of her under *Griffin v Trumbull Ins Co*, 334 Mich App 1 (2020).

Read Full Summary

True Care Physical Therapy, PLLC v Auto Club Group Ins Co (COA – PUB 5/25/2023; RB #4587)

Michigan Court of Appeals; Docket #362094; Published
Judges Gleicher, Hood, and Maldonado; Authored by Judge Hood
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Statutory Right of Service Providers to Assert Direct Causes of Action Against Insurers [§3112]
Appealing Utilization Reviews [§3157a]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published decision authored by Judge Hood, the Court of Appeals affirmed the trial court's denial of Defendant Auto Club Group Insurance Company's ("Auto Club") motion for summary disposition, in which it sought dismissal of Plaintiff True Care Physical Therapy, PLLC's ("True Care") action for no-fault PIP benefits. The Court of Appeals held that when an insurer bases a refusal to pay PIP benefits on a utilization review, the affected provider is not required to appeal the utilization review to the Department of Insurance and Financial Services ("DIFS") before filing a direct cause of action against the insurer.

Read Full Summary

Spectrum Health Hospitals, et al v Farmers Ins Exch (COA – UNP 6/8/2023; RB #4591)

Michigan Court of Appeals; Docket #362651; Unpublished
Judges Markey, Murray, and Feeney; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Not Applicable

In this 2-1, unpublished, per curiam decision (Markey, dissenting), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Spectrum Health Hospitals' ("Spectrum") action for no-fault PIP benefits against Defendant Farmers Insurance Exchange ("Farmers"). The Court of Appeals held that a question of fact existed as to whether Spectrum's patient, Linda Lockett (deceased), was a constructive owner of the uninsured motor vehicle she was operating at the time of the subject one-vehicle accident.

Read Full Summary

Ong v Lewis (COA – UNP 6/8/2023; RB #4592)

Michigan Court of Appeals; Docket #361061; Unpublished
Judges Patel, Cavanagh, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this 2-1, unpublished, per curiam decision (Patel, concurring in part, dissenting in part), 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 it sought dismissal of Plaintiff Kevin Ong's automobile negligence action, brought under the motor vehicle exception to governmental immunity. The Court of Appeals held, first, that Ong's actions were the proximate cause of a crash that occurred when a SMART bus, driven by Cheryl Lewis, crashed into a bucket Ong was standing in and operating, which extended out from a municipal bucket truck and, at the time of the crash, was situated above the SMART bus's lane of traffic. The Court of Appeals held, second, that Lewis did not have a heightened duty to notice the bucket when there was no evidence to establish that it was perceivable under the circumstances. The Court of Appeals held, third, that Lewis did not commit negligence prior to the crash as a matter of law. And the Court of Appeals held, fourth, that Ong was more than 50% at fault for the crash as a matter of law.

Read Full Summary

Wolverine Mut Ins Co v Van Dyken, et al (COA – UNP 6/8/2023; RB #4593)

Michigan Court of Appeals; Docket #359339; Unpublished
Judges Gleicher, Markey, and Rick; 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
Innocent Third Party Doctrine

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order in favor of Wolverine Mutual Insurance Company ("Wolverine"), in Wolverine's action seeking a declaratory judgment confirming the rescission of a policy it issued to Mathew Van Dyken. The Court of Appeals held, first, that Wolverine was entitled to rescind Van Dyken's policy based on a material misrepresentation Van Dyken made on his original application for coverage. The Court of Appeals held, second, that it was not appropriate to consider whether Wolverine's decision to rescind Van Dyken's policy was consistent with Wolverine's internal underwriting rules. The Court of Appeals held, third, that Van Dyken's medical providers were not "innocent third parties" to the rescinded contract, such as would require a balancing of the equities in order to determine whether the rescission extended to them.

Read Full Summary

Edison v Allied Gen Ins Co of America, et al (COA – UNP 6/15/2023; RB #4594)

Michigan Court of Appeals; Docket #361090; Unpublished
Judges Redford, O'Brien, and Feeney; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Entitlement to PIP Benefits: Arising Out of / Causation Requirement [§3105(1)]
Work Loss Benefits: Nature of the Benefit [§3107(1)(b)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Felicia Edison's action for no-fault PIP benefits against Defendant Nationwide General Insurance Company ("Nationwide"). Approximately one and a half months after Edison was injured in a motor vehicle accident, she

developed atrial fibrillation unrelated to the accident. The Court of Appeals held that a question of fact existed as to whether Edison's work loss and need for replacement services following her diagnosis of atrial fibriliation were attributable to the injuries she sustained in the accident, or whether they were attributable to her atrial fibrillation—in other words, whether Edison's atrial fibrillation was an "independent superseding disability that extinguished her eligibility for PIP benefits" pursuant to MacDonald v State Farm Mut Ins Co, 419 Mich 146 (1984).

Read Full Summary

Nationwide Mut Fire Ins Co v Esurance Prop & Cas Ins Co, et al (COA – UNP 6/15/2023; RB #4595)

Michigan Court of Appeals; Docket #361298; Unpublished
Judges Riordan, Borrello, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Cancellation and Rescission of Insurance Policies
Innocent Third Party Doctrine
Insurer Assigned Claims Reimbursement

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order in favor of Plaintiff Nationwide Mutual Fire Insurance Company ("Nationwide"), which filed an equitable subrogation against Defendant Esurance Property & Casualty Insurance Company ("Esurance"). The Court of Appeals held that a balancing of the equities under *Bazzi v Sentinel Ins Co*, 502 Mich 390 (2018) weighed in favor of rescinding the subject Esurance no-fault policy with respect to Daniel Moore—a bicyclist who was injured when a motor vehicle insured by Esurance crashed into him, who subsequently applied for PIP benefits through the Michigan Automobile Insurance Placement Facility ("MAIPF") and had his claim assigned to Nationwide.

Read Full Summary

Estate of Harris v Suburban Mobility Auth for Regional Transp (COA – UNP 6/15/2023; RB #4597)

Michigan Court of Appeals; Docket #360312; Unpublished
Judges Swartzle, Cavanagh, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Causation Issues [§3135]

TOPICAL INDEXING:
Issues Regarding Expert Witnesses

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Suburban Mobility Authority for Regional Transportation's ("SMART") motion for summary disposition, in which it sought dismissal of Plaintiff Estate of Terry Harris's automobile negligence action. The Court of Appeals held that the trial court did not abuse its discretion in finding—following a *Daubert* hearing—that Harris's treating doctor's testimony was based on sufficient facts and data for purposes of MRE 702. The Court further held that a question of fact existed as to whether Harris's injuries were caused by the subject motor vehicle crash.

Read Full Summary

Brockway-Guidry v Auto Club Ins Co, et al (COA – UNP 6/15/2023; RB #4596)

Michigan Court of Appeals; Docket #361473; Unpublished
Judges Swartzle, Cavanagh, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Equitable Estoppel

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Progressive Marathon Insurance Company's ("Progressive") motion for summary disposition, in which it sought dismissal of Plaintiff Thalia Ann Brockway-Guidry's action for no-fault PIP benefits. The Court of Appeals held that Progressive was not in the order of priority for payment of Brockway-Guidry's PIP benefits, and that, despite reimbursing Auto Club for half the amount Auto Club initially paid in PIP benefits to Brockway-Guidry, Progressive made no enforceable promise to Defendant Auto Club Group Insurance Company ("Auto Club") that it would pay half of Brockway-Guidry's PIP benefits in perpetuity.

Read Full Summary

Mathis v DeHayes, et al (COA – UNP 6/15/2023; RB #4598)

Michigan Court of Appeals; Docket #360262; Unpublished
Judges Swartzle, Cavanagh, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Exclusions from Underinsured Motorist Coverage

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Allstate Insurance Company's ("Allstate") motion for summary disposition, in which Allstate sought dismissal of Plaintiff Justin Mathis's action for underinsured ("UIM") motorist coverage under his automobile insurance policy. The Court of Appeals held that Mathis was barred from pursuing UIM coverage under his policy because he failed to comply with the policy's requirement that he obtain consent from Allstate before settling with the owner of the vehicle that caused the subject motor vehicle collision.

Read Full Summary

Frankenmuth Mut Ins Co, et al v Sentry Cas Co, et al (COA – PUB 6/22/2023; RB #4599)

Michigan Court of Appeals; Docket #361259; Published
Judges Gleicher, Hood, and Maldonado; Authored by Judge Gleicher
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Compulsory Insurance Requirements for Owners or Registrants of Motor Vehicles Required to Be Registered [§3101(1)]
Obligation of Non-Resident Owner/Registrant to Insure a Vehicle [§3102(1)]
Exception for Employer Provided Vehicles [§3114(3)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published decision authored by Judge Gleicher, the Court of Appeals reversed the trial court's denial of Defendant ACE Property and Casualty Insurance Company's ("ACE") motion for summary disposition, in which it sought dismissal of Plaintiff Frankenmuth Mutual Insurance Company's ("Frankmuth") action for declaratory judgment regarding priority. The Court of Appeals held that a commercial truck, primarily registered outside of Michigan but with apportioned registration in other states—including Michigan—through the International Relations Plan ("IRP"), is not "registered" in Michigan for purposes of MCL 500.3114(3), and is not required to be covered by Michigan no-fault insurance if it is operated in Michigan for less than 30 days in any calendar year.

Read Full Summary

Wallace, et al v Suburban Mobility Auth for Regional Transp, et al (COA – PUB 6/22/2023; RB #4601)

Michigan Court of Appeals; Docket #360537; Published
Judges Markey, Jansen, and Kelly; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Assignments of Benefits—Validity and Enforceability

In this unanimous, published, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Suburban Mobility Authority for Regional Transportation's ("SMART") motion for summary disposition, in which it sought dismissal of Plaintiff Parie Wallace's action for no-fault PIP benefits. The Court of Appeals held (1) that at the time Wallace filed her action, she was not the real party in interest with respect to claims she had assigned to her medical providers, and (2) that Wallace and her providers' attempts to mutually revoke the assignments after Wallace filed suit—which they did because the providers could no longer pursue the claims, themselves, due to the one-year-back rule—did not reinvest Wallace with the right to pursue those claims in her existing suit.

Read Full Summary

Flint Region ASC, LLC, et al v Everest Nat'l Ins Co, et al (COA – UNP 6/22/2023; RB #4600)

Michigan Court of Appeals; Docket #361715; Unpublished
Judges Markey, Jansen, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiffs Flint Region ASC, LLC and Michigan Clinic Neurosurgery, PLLC's ("the plaintiffs") claim for no-fault PIP benefits against Defendant Progressive Marathon Insurance Company ("Progressive"). The Court of Appeals held that the plaintiffs failed to establish that the patient at issue, Kennies Bush, required surgery as a result of a motor vehicle accident that occurred in 2017—at which time he was insured by Progressive—and not solely as a result of a motor vehicle accident that occurred in 2018—at which time he was insured by Everest National Insurance Company ("Everest").

Read Full Summary

Smith, et al v Progressive Marathon Ins Co (COA – UNP 6/29/2023; RB #4604)

Michigan Court of Appeals; Docket #360908; Unpublished
Judges Hood, Cameron, and Garrett; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Wanda Smith's action for no-fault PIP benefits against Defendant Progressive Marathon Insurance Company ("Progressive"). The Court of Appeals held that there were genuine issues of material fact as to whether the equities weighed in favor of rescinding the subject no-fault policy with respect to Wanda Smith, an innocent third-party thereunder.

Read Full Summary

Root, et al v Palmer, et al (COA – UNP 6/29/2023; RB #4603)

Michigan Court of Appeals; Docket #361722; Unpublished
Judges Markey, Jansen, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Therese Root's action for no-fault PIP benefits against Defendant Falls Lake National Insurance Company ("Falls Lake"). The Court of Appeals held that Root committed a material misrepresentation on her original application for coverage, entitling Falls Lake to rescind the policy it issued to her.

Read Full Summary

Beaumont Health v Progressive Mich Ins Co, et al (COA – UNP 6/29/2023; RB #4602)

Michigan Court of Appeals; Docket #362311; Unpublished
Judges Redford, O'Brien, and Feeney; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Definition of Owner [§3101(2)(h)]
Disqualification for Uninsured Owners or Registrants of Involved Motor Vehicles or Motorcycles [§3113(b)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Beaumont Health's ("Beaumont") action for no-fault PIP benefits against Defendant Progressive Michigan Insurance Company ("Progressive"). Beaumont's patient, Riley Holtslander, was involved in a motor vehicle accident while operating an uninsured motorcycle. The Court of Appeals held that Holtslander was a constructive owner of the motorcycle at the time of the accident under MCL 500.3101(3)(l)(i), and thus barred from PIP benefits related to the accident pursuant to MCL 500.3113(b).

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