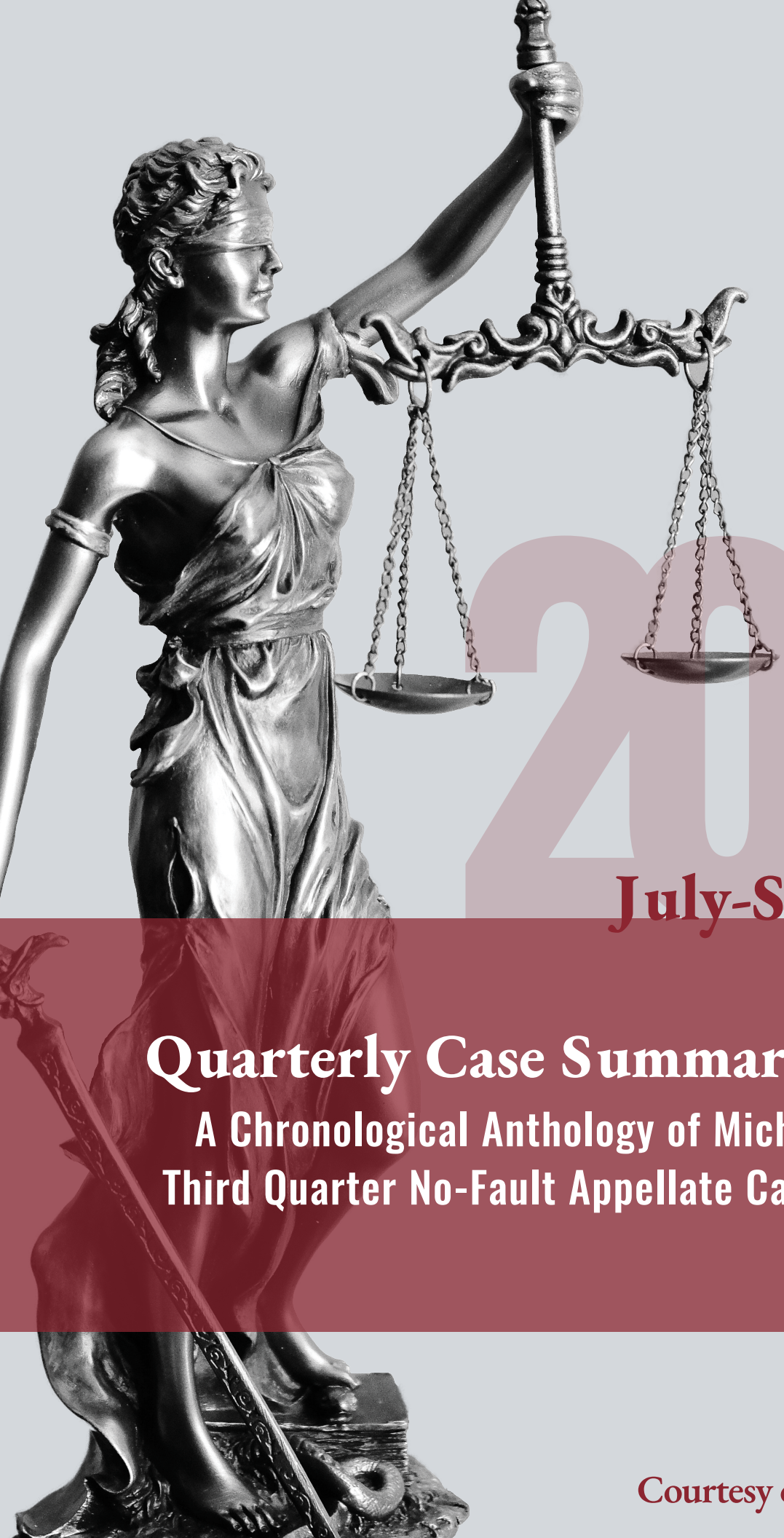

AUTO NOFAULT LAW.COM
BY SINAS DRAMIS

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Quarterly Case Summary Report:

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

Courtesy of AutoNoFaultLaw.com

About AutoNoFaultLaw.com

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

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

The site and its contents are managed by the AutoNoFaultLaw.com Editorial Board, presently consisting of the following individuals from the Sinas Dramis Law Firm: Stephen Sinas, Joel Finnell, Katie Tucker, and Ted Larkin. The Board is assisted by the hard work and efforts of Sinas Dramis Law Firm clerks, who presently include 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 Third Quarterly Report of 2021

In the Michigan Supreme Court

The Supreme Court decided one case in the third quarter of 2021: *Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan, et al* (SC — PUB 7/26/2021; RB #4299). In *Esurance*, the Court considered whether a no-fault insurer could sue the Michigan Assigned Claims Plan under a theory of equitable subrogation for amounts it mistakenly paid in no-fault PIP benefits to an individual injured in a car crash.

Esurance stepped in and promptly paid PIP benefits to Roshaun Edwards after he was injured in a car crash while operating a vehicle purportedly owned by Esurance's insured, Luana Edwards-White. Edwards simultaneously applied for PIP benefits through the MACP after the crash, but the MACP did not assign his claim because Esurance had already begun paying his benefits. Later, Esurance discovered that Edwards-White has misrepresented her ownership of the vehicle on her original application for coverage, and that, as a result, Esurance was not in the order of priority for payment of Edwards's PIP benefits at all. Esurance thereafter filed the underlying equitable subrogation action against the MACP, which action was summarily dismissed by the trial court, and which dismissal was affirmed by the Court of Appeals.

The Supreme Court then reversed the trial court's dismissal of Esurance's action and the Court of Appeals' affirmance of that dismissal, holding that, under the specific facts and circumstances

of this case, Esurance could pursue reimbursement from the MACP under a theory of equitable subrogation. The Court noted that Esurance had conducted itself in the precise manner prescribed by the no-fault act: by "pay[ing] promptly, litigat[ing] later." To preclude Esurance from proceeding with its action, therefore, would be to encourage insurers to delay payment of PIP benefits until *after* resolving priority disputes, which, the Court asserted, would run afoul of the "purpose, logic, and incentive structure of Michigan's no-fault regime."

One Published Opinion from the Michigan Court of Appeals

The Michigan Court of Appeals released one opinion for publication in the third quarter of 2021: *Michigan Head & Spine Institute v Auto-Owners Ins Co, et al* (PUB — COA 9/2/2021; RB #4314). In *Michigan Head & Spine*, the Court of Appeals held that a medical provider could aggregate 39 of its patient assignors' unrelated claims for no-fault PIP benefits in order to meet the $25,000 amount-in-controversy threshold for Michigan circuit court jurisdiction. The Court of Appeals observed that prior Supreme Court and Court of Appeals precedent establishes that, although multiple plaintiffs cannot aggregate separate claims to meet the $25,000 threshold, a single plaintiff can. Michigan Head & Spine Institute PC was a single plaintiff, and thus it could aggregate all its separate, assigned claims against Home-Owners and Auto-Owners in order to meet the $25,000 threshold

Judge Riordan dissented from the majority, arguing that, because provider assignees' claims against no-fault insurers are derivative of their patient assignors' underlying claims, "a single healthcare provider bringing claims against a no-fault insurer for multiple patients is, in essence, bringing 'the separate claims of individual plaintiffs.' " Such a provider should not, therefore, be allowed to aggregate multiple patient assignors' claims in order to meet the $25,000 threshold.

Some Interesting Statistics Regarding the Court of Appeals Decisions

The Court of Appeals issued opinions in 30 cases in the third quarter of 2021. Of those 30 cases, 14 featured disputes over no-fault PIP benefits; 12 dealt with the tort threshold for serious impairment of body function; four involved issues related to fraud or misrepresentation; four dealt with issues pertaining to the motor vehicle exception to governmental immunity; three featured priority disputes between no-fault insurers; two dealt with the parked vehicle exclusions and exceptions under the no-fault act; two dealt with medical provider standing; two featured statutes of limitations issues; one featured a claim for uninsured/underinsured motorist benefits; and one dealt with a claim for PIP benefits through the Michigan Assigned Claims Plan.

Two Noteworthy Opinions Regarding Fraud

Of the four cases involving issues related to fraud or misrepresentation, two featured noteworthy holdings.

The first of the two, *Losinski v Carter, et al* (UNP — COA 7/29/2021; RB #4302), sharply divided a panel consisting of Judges Gleicher, Cavanagh, and Letica. The salient facts in *Losinski* were as follows: Amy Losinski procured a no-fault insurance policy from Progressive in 2011, listing her then-address in Grosse Pointe Woods on her initial application for coverage. She proceeded to move three times between 2013 and 2017, but every time she renewed her policy during that period, she failed to update her address on her declarations page. In 2018, while still ostensibly covered under her policy with Progressive, Losinski was injured in a motor vehicle collision. Progressive denied her subsequent claim for PIP benefits, arguing that she had made a material misrepresentation when she renewed her policy without updating her address, entitling Progressive to deny her claim for benefits in its entirety.

In their majority per curiam opinion, Judges Cavanagh and Letica sided with Progressive. They observed preliminarily that, pursuant to *Meemic Ins Co v Fortson*, 506 Mich 287 (2020), an insurance company can only assert fraud as a defense to its contractual obligations if the subject policy was *obtained* as a result of fraud—i.e. fraud in the procurement of the policy. In this case, the Court held that, although Losinski's policy was not originally obtained as a result of fraud, every time she renewed her policy, she and Progressive were entering into a distinct, new contract. Therefore, every time she renewed her policy, she was actually procuring a new policy, and every time she procured a new policy without updating her address, she was committing a "preprocurement misrepresentation," entitling Progressive to deny her claim in its entirety pursuant to *Meemic*.

Judge Gleicher took special exception with her fellow judges' logic that, by renewing a no-fault policy, an insured is actually procuring a distinct, new policy. She forewarned of the future consequences of their holding, characterizing it as an "invit[ation] [to] no-fault insurers to play the renewal card whenever a misrepresentation is alleged" in order to circumvent *Meemic*.

The second noteworthy opinion regarding fraud was issued in a more straightforward fraud case: *Humphrey v Home-Owners Ins Co* (UNP — COA 8/19/2021; RB #4308). The salient facts of *Humphrey* are as follows: Adeseny Humphrey sought PIP benefits from her mother's no-fault insurer, Home-Owners, after she was injured in a car crash. After Home-Owners denied Humphrey's claim for benefits, she filed the underlying first-party action. During her deposition, Humphrey testified that she had never suffered any pre-existing injuries to the body parts she allegedly injured in the subject crash, an assertion Home-Owners argued was belied by her medical records from before the crash. Home-Owners then filed a motion for summary disposition asserting a common-law fraud defense, which the trial court granted.

The Court of Appeals reversed the trial court's order, holding that this case was governed by the Court of Appeals' prior decision in *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719 (2020)—that an insurance company cannot deny a claim based on fraudulent statements made by an insured after litigation has begun. What makes *Humphrey* noteworthy, though, is the fact that the Court held that *Haydaw*—which featured an insurer basing its denial on a fraud-exclusion provision in a policy—applies equally to situations such as this, in which an insurer asserts a common-law fraud defense in support of its denial:

> *"Although Haydaw involved a fraud-exclusion clause as opposed to a common-law fraud defense, the basic principle—that statements made during lititgation are not made with the intent that the insurer will rely upon them—applies equally to both fraud-based defenses."*

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Smith v Everest Nat'l Ins Co, et al (COA – UNP 7/1/2021; RB #4291)

Michigan Court of Appeals; Docket #353880; Unpublished
Judges Jansen, Kelly, and Ronayne Krause; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Exclusion for Vehicles Considered Parked [§3106(1)]
Exclusion for Parked Vehicles Covered by Workers Comp [§3106(2)]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam opinion, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Terry L. Smith's first-party action against Defendant Everest National Insurance Company ("Everest"). Smith was performing maintenance on a tow truck when it rolled over onto his body and injured him. The Court of Appeals held that a question of fact existed as to whether the tow truck was parked at the time of the accident for purposes of MCL 500.3106, and that summary disposition was therefore…

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Synergy Spine and Orthopedic Surgery Center, LLC, et al v American Country Ins Co (COA – UNP 7/15/2021; RB #4292)

Michigan Court of Appeals; Docket #350549; Unpublished
Judges Riordan, Kelly, and Shapiro; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

STATUTORY INDEXING:
Entitlement to PIP Benefits: Arising Out of / Causation Requirement [§3105(1)]
Allowable Expenses: Causation Requirement [§3107(1)(a)]
Reasonable Proof Requirement [§3142(2)]
General / Miscellaneous [§3142]

TOPICAL INDEXING:
Case Evaluation – Accept/Reject in PIP Cases
Evidentiary Issues

In this unanimous unpublished per curiam decision (Kelly, concurring), the Court of Appeals affirmed the trial court's various rulings before, during, and after trial in Plaintiffs Synergy Spine and Orthopedic Center, LLC and Silver Pine Imaging, LLC's ("Plaintiffs," collectively, or "Plaintiff Synergy" and "Plaintiff Silver Pine," individually) first-party action against Defendant American Country Insurance Company ("American Country"). Specifically, the Court of Appeals held that the trial court did not err by giving a injury instruction regarding the causation requirement under MCLs 500.3105(1) and 500.3107(1)(a) that did not include the "incidental, fortuitous, or but for" language used by the Supreme Court in Thorton v Allstate Ins Co, 425 Mich 643 (1986) to describe that requirement. The Court of Appeals also held…

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Yaghnam v Doe, et al (COA – UNP 7/15/2021; RB #4293)

Michigan Court of Appeals; Docket #353547; Unpublished
Judges Riordan, Kelly, and Shapiro; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Underinsured Motorist Coverage - Notice and Statute of Limitations for Underinsured Motorist Coverage

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Elias Yaghnam's action for uninsured/underinsured motorist benefits against Defendant Michigan Insurance Company ("MIC"). The Court of Appeals held that Yaghnam's claim for UM/UIM benefits was a standard personal injury action, not a breach of contract action. Therefore, the applicable statute of limitations was three years—pursuant to MCL 600.5805(2)—not the six-year statute of limitations for breach of contract actions set forth in MCL 600.5807(9). Since Yaghnam waited three years and one day from the date of the crash to file his lawsuit, his claim was barred. The Court of Appeals further held that, despite his attorney's reference to the possibility of asserting a UM/UIM claim in the future in emails to Michigan Insurance Company, Yaghnam failed to comply with the three-year notice requirement for UM/UIM claims set forth in his policy, and that any amendment to his complaint to include a breach of contract claim would be futile.

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Jagannathan Neurosurgical Institute, PLLC, et al v GEICO Indemnity Co, et al (COA – UNP 7/15/2021; RB #4294)

Michigan Court of Appeals; Docket #353776; Unpublished
Judges Riordan, Kelly, and Shapiro; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Jagannathan Neurosurgical Institute, PLLC's ("Jagannathan") first-party action to recover no-fault PIP benefits from Defendants GEICO Indemnity Company and GEICO General Insurance Company ("GEICO," collectively). The Court of Appeals held that Jagannathan's patient was not an out-of-state resident at the time of the subject collision for purposes of the former MCL 500.3163, and that Jagannathan, therefore, could not recover PIP benefits on the basis of an assignment from GEICO—an authorized Michigan insurer pursuant to MCL 500.3163—which had issued a Florida automobile insurance policy to Jagannathan's patient.

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Estate of Jacobson, et al v Hornbeck, et al (COA – UNP 7/22/2021; RB #4296)

Michigan Court of Appeals; Docket #352976, 353862; Unpublished
Judges Borrello, Servitto, and Stephens; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Judicial Estoppel
Negligence-Duty
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 Defendants Matthew Hornbeck and Samuel Bradley's motion for summary disposition, in which they sought dismissal of Plaintiff Estate of Lake Jacobson's ("Plaintiff") third-party claim against them, then affirmed in part and vacated in part the trial court's denial of Defendant Sakstrup Towing, Inc.'s ("Sakstrup") motion for summary disposition regarding Plaintiff's third-party claim against it. The Court of Appeals first held that the public-duty doctrine shielded police officers Hornbeck and Bradley from liability for choosing not to detain an intoxicated driver who, after crashing his car into a culvert and being questioned by Hornbeck and Bradley, was allowed to get back into his car and drive off, immediately after which he crossed into oncoming traffic and crashed into Lake Jacobson's vehicle, killing Jacobson instantly. The Court of Appeals then vacated the trial court's denial of Sakstrup's motion for summary disposition, holding that the trial court did not employ the proper test for determining whether Sakstrup's tow-truck employee owed a duty to Plaintiff's decedent to (1) adequately inspect the intoxicated driver's crashed vehicle for disabling damage before towing it out of the culvert, and (2) prevent the intoxicated driver from driving off in a disabled vehicle. Lastly, the Court of Appeals upheld the trial court's ruling that judicial estoppel did not operate to bar Plaintiff's claim against Sakstrup because the trial court's finding that genuine issues of material fact existed as to whether Hornbeck and Bradley were the proximate cause of Jacobson's death "was not a finding that the officers 'were the proximate cause.' (emphasis added)"

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Spectrum Health Hosps, et al v Farm Bureau Gen Ins Co of Mich, et al (UNP – COA 7/22/2021; RB #4297)

Michigan Court of Appeals; Docket #353553, 354201; Unpublished
Judges Borrello, Servitto, and Stephens; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

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

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Farm Bureau General Insurance Company of Michigan's ("Farm Bureau") motion for summary disposition, in which Farm Bureau sought dismissal of Plaintiff Spectrum Health Hospitals' ("Spectrum") first-party action against it. As to Farm Bureau's motion for summary disposition, the Court of Appeals held that Spectrum obtained valid assignments from its patient/Farm Bureau's insured, Kevin Schild, after Schild was injured in a motor vehicle collision, and therefore had standing to pursue its first-party action against Farm Bureau. As to Spectrum's motion for attorney fees, the Court of Appeals held that the trial court did not err in denying that motion because Farm Bureau's denial of Spectrum's claims for no-fault PIP benefits was based on legitimate questions…

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Vibra of Southeastern Mich, LLC v Auto-Owners Ins Co, et al (UNP – COA 7/22/2021; RB #4298)

Michigan Court of Appeals; Docket #355287; Unpublished
Judges Riordan, Kelly, and Shapiro; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Dissent

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

TOPICAL INDEXING:
Not Applicable

In this 2-1 unpublished per curiam decision (Riordan, dissenting), the Court of Appeals affirmed the trial court's denial of Defendant Auto-Owners Insurance Company's ("Auto-Owners") motion for summary disposition, in which Auto-Owners sought dismiss of Plaintiff Vibra of Southeastern Michigan, LLC's first-party action against it, as well as the trial court's order granting Vibra's motion for summary disposition. Specifically, the Court of Appeals affirmed the trial court's ruling that Randall Baran, Vibra's patient and Auto-Owners' insured, was entitled to no-fault PIP benefits for injuries he sustained when his vehicle's rear liftgate fell on his head as he unloaded items from the trunk. The Court of Appeals held that Baran was entitled to no-fault PIP benefits under the parked-vehicle exception set forth in MCL 500.3106(1)(b) because…

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Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan, et al (SC – PUB 7/26/2021; RB #4299)

Supreme Court of Michigan; Docket #160592
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:
Insurer Assigned Claims Reimbursement

In this 5-2 decision (Clement and Viviano, dissenting) authored by Justice Zahra, the Michigan Supreme Court reversed the Court of Appeals' affirmance of the trial court's summary disposition order dismissing Plaintiff Esurance Property & Casualty Insurance Company's ("Esurance") equitable subrogation action against Defendant Michigan Assigned Claims Plan ("MACP"). The Supreme Court held that Esurance could seek reimbursement from the MACP under a theory of equitable subrogation for no-fault PIP benefits it paid to Roshaun Edwards after Edwards was injured in a motor vehicle collision, because Esurance was neither in the order of priority for paying Edward's PIP benefits, nor acting as a "mere volunteer" when it promptly, but mistakenly, paid those benefits.

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Greater Lakes Ambulatory Surgical Center, LLC, et al v Meemic Ins Co (UNP – COA 7/29/2021; RB #4300)

Michigan Court of Appeals; Docket #353842; Unpublished
Judges Gadola, Jansen, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Private Contract (Meaning and Intent)

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant Meemic Insurance Company's ("Meemic") motion for summary disposition, in which Meemic sought dismissal of Plaintiff Greater Lakes Ambulatory Surgical Center, LLC's ("Greater Lakes") first-party action against it, and remanded for entry of an order granting summary disposition to Meemic. The Court of Appeals held that Greater Lakes could not proceed with its first-party action against Meemic—which it filed after obtaining an assignment from its patient/Meemic's insured—because Greater Lakes sold the patient's account receivable to a servicing agency while the action was still pending. As a result, Greater Lakes was no longer the real party in interest in the case, and no longer had standing to pursue its first-party claim against Meemic.

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Garza v Reiche, et al (UNP – COA 7/29/2021; RB # 4301)

Michigan Court of Appeals; Docket #354310; Unpublished
Judges Tukel, Sawyer, and Cameron; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Judicial Estoppel

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Sharr Garza's third-party action against Defendant Chase Willard Reiche. The Court of Appeals held that the doctrine of judicial estoppel did not bar Garza's action even though she failed to disclose her negligence claim on her first two amendments to her asset schedule in a separate bankruptcy proceeding.

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Losinski v Carter, Jr, et al (UNP – COA 7/29/2021; RB # 4302)

Michigan Court of Appeals; Docket #355047; Unpublished
Judges Gleicher, Cavanagh, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Partial Concurrence and Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Fraud/Misrepresentation
Silent Fraud

In this 2-1 unpublished per curiam decision (Gleicher, concurring in part and dissenting in part), the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Amy G. Losinski's first-party action against Defendant Progressive Marathon Insurance Company ("Progressive"). The majority held that Progressive was entitled to deny Losinski's claim for no-fault PIP benefits because of a "preprocurement innocent misrepresentation" she made when she renewed her policy with Progressive. Specifically, the majority held that Losinski committed fraud when she renewed her policy without first disclosing to Progressive that she no longer lived at the address she listed on her original application for insurance. The majority squared its holding with Meemic Ins Co v Fortson, 506 Mich 287 (2020) by reasoning that, every time Losinski renewed her policy, a new, distinct contract was formed, and thus, every time she renewed her existing policy, she was actually procuring a new policy. Therefore, her misrepresentation at renewal, according to the majority, " 'related to the inducement or inception of the contract,' " pursuant to Meemic. Justice Gleicher, in her dissent, argued that Losinski's alleged fraud at renewal "could not possibly" be construed as a "misrepresentation in the inducement of the insurance contract," because "an automatic renewal . . . is not equivalent to the formation of a contract." Furthermore, Justice Gleicher argued that the majority's holding would invite "insurers to play the renewal card whenever a misrepresentation is alleged," thereby circumventing Meemic.

Read Full Summary

Wood v City of Detroit, et al (UNP – COA 8/12/2021; RB #4303)

Michigan Court of Appeals; Docket #353611, 353653; Unpublished
Judges Letica, Servitto, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Evidentiary Issues
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 the defendants' (the City of Detroit and seventeen mechanics employed by it) motion for summary disposition, in which the defendants sought dismissal of Plaintiff Bruce T. Wood's third-party action against them. This case was before the Court of Appeals for the second time; the first, the Court held that a question of fact existed as to whether the motor vehicle exception to governmental immunity applied, basing its holding, at least in part, on an affidavit from an accident reconstructionist who opined that the City of Detroit's bus driver's negligence caused Wood's injuries. This time around, the Court of Appeals held that the law-of-the-case doctrine applied and affirmed the Wood I Court's ruling regarding the accident reconstructionist's affidavit. The Court of Appeals next held that Wood's count in his complaint—in which he alleged that the City of Detroit was vicariously liable for its bus driver's negligence pursuant to the doctrine of respondeat superior—was sufficient to plead a count under the statutory motor vehicle exception to governmental immunity. Lastly, the Court of Appeals held that the trial court correctly ruled that a sanction for spoliation was appropriate given the defendants' failure to maintain the maintenance logs for the bus on the date in question, but that the trial court should have…

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Sierra-Burkes v Troy Aggregate Carriers, Inc, et al (UNP – COA 8/12/2021; RB #4304)

Michigan Court of Appeals; Docket #355513; Unpublished
Judges Sawyer, Boonstra, and Rick; 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 Blanca Sierra-Burkes's third-party action against Defendant Troy Aggregate Carriers, Incorporated ("Troy"). The Court of Appeals held that Sierra-Burkes failed to present sufficient evidence to create a question of fact as to whether she suffered an objectively manifested impairment caused by the alleged incident.

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Lekli v Hudson Ins Co (UNP – COA 8/19/2021; RB #4305)

Michigan Court of Appeals; Docket #352981; Unpublished
Judges Letica, Servitto, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
One-Year Notice 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 Syrja Lekli's first-party action against Hudson Insurance Company ("Hudson"). The Court of Appeals held that Lekli's action was barred by MCL 500.3145(1) because he neither filed his action within one year of the subject collision nor properly notified Hudson of his injuries within one year thereof.

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Rokosz v Labean, et al (UNP – COA 8/19/2021; RB #4306)

Michigan Court of Appeals; Docket #353043; Unpublished
Judges Markey, Shapiro, and Gadola; 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:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Sheila Ann Rokosz third-party action against Defendants Derek Joseph Labean, Donald Labean, and Dawn Labean. The Court of Appeals held that Rokosz presented sufficient evidence to create a question of fact as to whether her injuries were caused by the subject collision and whether they constituted a serious impairment of body function pursuant to *McCormick v Carrier*, 487 Mich 180 (2010).

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Balsamo v Corrigan Enterprises, Inc, et al (UNP – COA 8/19/2021; RB #4307)

Michigan Court of Appeals; Docket #354137; Unpublished
Judges Riordan, Markey, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
General/Miscellaneous [§3135]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's denial of Defendants Corrigan Enterprises, Inc. ("Corrigan") and Justin Prall's motion for summary disposition, in which the defendants argued that the no-fault act—MCL 500.3135, specifically—applied to Plaintiff Guiseppe Balsamo's lawsuit, which arose out of an injury Balsamo sustained while unloading construction equipment from a trailer. The Court of Appeals held that Balsamo's lawsuit was, in fact, a third-party tort case which should have been brought under the no-fault act, not a general negligence action.

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Humphrey v Home-Owners Ins Co (UNP – COA 8/19/2021; RB #4308)

Michigan Court of Appeals; Docket #354214; Unpublished
Judges Letica, Servitto, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Adaseny Humphrey's first-party action against Defendant Home-Owners Insurance Company ("Home-Owners") on the basis of fraudulent statements Humphrey made at her deposition. Relying on *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719 (2020), the Court of Appeals held that Home-Owners could not deny Humphrey's claim for no-fault PIP benefits under her mother's policy based on false statements Humphrey made after litigation had begun. Notably, the Court of Appeals explained that it was reaching this holding even though, in this case, Home-Owners was relying on a common law fraud defense, as opposed to a fraud-exclusion defense like that which was at issue in *Haydaw*. In so explaining, the Court iterated "the basic principle—that statements made during litigation are not made with the intent that the insurer will rely upon them—applies equally to both fraud-based defenses."

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Estate of Ousley v Phelps Towing, Inc (UNP – COA 8/26/2021; RB #4309)

Michigan Court of Appeals; Docket #351378; Unpublished
Judges Murray, Jansen, and Stephens; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Evidentiary Issues [§3135]

TOPICAL INDEXING:
Negligence – Duty

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Estate of Oscar Ousley's third-party action against Defendant Phelps Towing, Incorporated ("Phelps"). The Court of Appeals held that the Estate failed to present any evidence that Phelps's tow truck driver acted negligently when he accidentally ran over Ousley.

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Chivis v Cass County Public Transit, et al (UNP – COA 8/26/2021; RB #4310)

Michigan Court of Appeals; Docket #351519; Unpublished
Judges Ronayne Krause, Beckering, and Boonstra; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

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 summary disposition order dismissing Plaintiff Nadageki Chivis's third-party action against Defendant Cass County Public Transit ("CCPT"). The Court of Appeals held that Chivis presented sufficient evidence to create a question of fact as to whether CCPT's bus driver, Linetta Smith, was operating the subject CCPT bus negligently when she ran over Chivis in the road, and whether, therefore, CCPT could be held liable under the motor vehicle exception to governmental immunity.

Read Full Summary

Nickerson v Allstate Ins Co (UNP – COA 8/26/2021; RB #4311)

Michigan Court of Appeals; Docket #352768, 354682; Unpublished
Judges Riordan Krause, Markey, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable, Link to Opinion

STATUTORY INDEXING:
General / Miscellaneous [§3148]
Fraudulent Insurance Acts [§3173a]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Allstate Insurance Company's ("Allstate") motion for summary disposition, in which Allstate sought dismissal of Plaintiff Tracey Nickerson's first-party action against it, as well as the trial court's denial of Nickerson's post-trial motion for attorney fees. In denying Allstate's motion for summary disposition, the Court of Appeals held that a question of fact existed as to whether Nickerson had committed a fraudulent insurance act for purposes of MCL 500.3172, and whether, therefore, her claim for no-fault PIP benefits was barred in its entirety. In denying Nickerson's post-trial motion for attorney fees, the Court of Appeals held that, based on the specific facts and circumstances of this case, Nickerson failed to file her motion within a "reasonable time."

Read Full Summary

Estate of Johnson v Progressive Marathon Ins Co (UNP – COA 8/26/2021; RB #4312)

Michigan Court of Appeals; Docket #353845; Unpublished
Judges Sawyer, Boonstra, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable, Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Progressive Marathon Insurance Company's ("Progressive") motion for summary disposition, in which Progressive sought dismissal of Plaintiff Estate of Derell Darnell Johnson's ("the Estate") first-party action against it. The Court of Appeals held that Progressive failed to conclusively prove that its insureds, Tomeka Roche Lewis and Brandon Lawrence Byers—under whose policy the Estate sought PIP benefits after Johnson was killed in the subject motor vehicle collision—committed fraud, which would have entitled State Farm to rescind their policy and deny the Estate's claim for PIP benefits thereunder.

Read Full Summary

Bronson Health Care Group, Inc, et al v State Farm Fire and Cas Co, et al (UNP – COA 8/26/2021; RB #4313)

Michigan Court of Appeals; Docket #353845; Unpublished
Judges Ronayne Krause, Beckering, 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

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Bronson Health Care Group, Inc.'s ("Bronson") first-party action against Defendant State Farm Fire and Casualty Company ("State Farm"). The Court of Appeals held that a question of fact existed as to whether State Farm complied with MCL 500.3020(1)(b) in cancelling its insured's/Bronson's patient's automobile insurance policy, under which Bronson sought no-fault PIP benefits on the basis of an assignment. Specifically, the Court of Appeals held that a question of fact existed as to whether State Farm mailed written notice of cancellation to the insured's last known address.

Read Full Summary

Mich Head & Spine Institute v Auto-Owners Ins Co, et al (PUB – COA 9/2/2021; RB #4314)

Michigan Court of Appeals; Docket #354765; Published
Judges Riordan, Kelly, and Shapiro; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion; Link to Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Jurisdiction in PIP Cases

In this 2-1 published decision authored by Justice Kelly (Riordan, dissenting), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Michigan Head & Spine Institute PC's ("Michigan Head & Spine") first-party action against Defendants Auto-Owners Insurance Company and Home-Owners Insurance Company ("defendants," collectively). The Court of Appeals held that Michigan Head & Spine could aggregate 39 unrelated claims for unpaid no-fault PIP benefits in order to meet the jurisdictional threshold of $25,000 for Michigan circuit courts.

Read Full Summary

Toduti, et al v Progressive Mich Ins Co, et al (UNP – COA 9/2/2021; RB #4315)

Michigan Court of Appeals; Docket #352716; Unpublished
Judges Letica, Servitto, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Exception for Employer Provided Vehicles [§3114(3)]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order in favor of Defendant Progressive Michigan Insurance Company ("Progressive"), in which the trial court ruled that Defendant Cherokee Insurance Company ("Cherokee") was the highest priority insurer with respect to Plaintiff Florin Toduti's claim for no-fault PIP benefits. The Court of Appeals held that, based on the "economic reality test," Toduti was actually an employee, not an independent contractor, of Universal, Mason & Dixon Intermodal ("Universal), the company which leased and insured the semi-truck Toduti owned and was driving in the course and scope of his duties under his contract with Universal at the time of the subject collision. The Court of Appeals further held that, because of the terms of its long-term lease agreement regarding the truck, Universal was an "owner" of the semi-truck pursuant to MCL 500.3101(2)(h), and, therefore, under MCL 500.3114(3), Univeral's insurer, Cherokee, was highest in priority for Toduti's claims for benefits.

Read Full Summary

Smith, et al v City of Detroit, et al (COA – UNP 9/2/2021; RB #4316)

Michigan Court of Appeals; Docket # 353606; Unpublished
Judges Riordan, Markey, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Entitlement to No-Fault PIP Benefits: Bodily Injury Requirement [§3105(1)]
Entitlement to No-Fault PIP Benefits: Arising Out of / Causation Requirement [§3105(1)]
Causation Issues [§3135]
Objective Manifestation Element of Serious Impairment (McCormick Era: 2010 – Present [§3135(7)]
Serious Impairment of Body Function Definition (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 Jeanine D. Smith's first-party action against Defendant City of Detroit, as well as Smith's third-party action against Defendants Elliott Baum and Natalie Baum. Regarding Smith's first-party action against the City of Detroit, the Court of Appeals held that Smith presented sufficient evidence to create a question of fact as to whether she suffered an accidental bodily injury in the subject crash for purposes of no-fault PIP benefit entitlement under MCL 500.3105(1). Regarding Smith's third-party action against the Baums, the Court of Appeals held that Smith presented sufficient evidence to create a question of fact as to whether the subject crash caused her to suffer a serious impairment of body function.

Read Full Summary

Eagle, et al v Macomb Intermediate School Dist, et al (COA – UNP 9/2/2021; RB #4317)

Michigan Court of Appeals; Docket #354183; Unpublished
Judges Sawyer, Boonstra, and Rick; 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
Evidentiary Issues

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed in part and reversed in part the trial court's summary disposition order dismissing Plaintiff William Eagle's third-party action against Defendant Macomb Intermediate School District ("MISD"). The Court of Appeals held that the motor vehicle exception to governmental immunity applied to this case because Eagle presented sufficient evidence to create a question of fact as to whether he suffered a shoulder injury in the subject school bus versus motor vehicle crash caused by the negligence of MISD's bus driver. The Court also held, however, that Eagle failed to present sufficient evidence to create a question of fact as to whether he suffered a brain injury in the crash.

Read Full Summary

Estate of Ballentine v Salvaggio, et al (COA – UNP 9/16/2021; RB #4318)

Michigan Court of Appeals; Docket #355106; Unpublished
Judges Murray, Kelly, and O'Brien; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Negligence-Duty

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Estate of Mark Ballentine's third-party lawsuit against Defendants Robert Salvaggio, National Mini Storage-KL Avenue, and U-Haul Company of Michigan ("Salvaggio," "National," and "U-Haul, individually; "defendants," collectively). Salvaggio, an employee of National, arrived to work and attempted to park a U-Haul vehicle that had been left outside the gate to the parking lot. In the process, he accidentally ran over Ballentine, who was intoxicated and laying underneath the vehicle. The Court of Appeals held that Salvaggio did not breach his duty to exercise ordinary care in his operation of the U-Haul by not looking underneath the vehicle before moving it.

Read Full Summary

Auto Club Ins Assoc/MemberSelect Ins Co v Farm Bureau General Ins Co of Mich, et al (COA – UNP 9/23/2021; RB #4321)

Michigan Court of Appeals; Docket #353439; Unpublished
Judges Rick, Ronayne Krause, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
General Rule of Priority [§3114(1)]
Named Insured [§3114]
Recoupment Between Equal Priority Insurers [§3115(2)]

TOPICAL INDEXING:
Not Applicable

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's summary disposition order in which the trial court dismissed Plaintiff Auto Club Insurance Association/MemberSelect Insurance Company's ("Auto Club") action against Defendant Farm Bureau General Insurance Company of Michigan ("Farm Bureau") arising out of a priority dispute. The Court of Appeals held that Auto Club and Farm Bureau were equal in priority for payment of Sabreen Shamoon's no-fault PIP benefits, and that Auto Club was therefore entitled to partial recoupment of the benefits it paid to Shamoon pursuant to MCL 500.3115(2). Furthermore, the Court of Appeals held that actions for partial recoupment under MCL 500.3115(2) are not subject to the one-year-back rule as are subrogation actions, but rather to the six-year limitations period set forth in MCL 600.5813.

Read Full Summary

Collier v Montalvo, et al (COA – UNP 9/23/2021; RB #4321)

Michigan Court of Appeals; Docket #353176; Unpublished
Judges Beckering, Shapiro, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Evidentiary Issues
Negligence-Duty

In this unanimous unpublished per curiam decision, the Court of Appeals affirmed a judgment of no cause of action entered after a jury trial in Plaintiff Vicki Collier's third-party action against Defendant Lindsay Montalvo. The Court of Appeals held that the trial court did not err in denying Collier's motion for a directed verdict and JNOV because, given Collier's and Montalvo's conflicting accounts of how the crash happened, there was a question of fact as to whether Montalvo was operating her vehicle negligently at the time of the crash.

Read Full Summary

Downs, et al v State Farm Mutual Automobile Insurance Company, et al (COA – UNP 9/23/2021; RB #4320)

Michigan Court of Appeals; Docket #352522; Unpublished
Judges Cavanagh, Kelly, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Injunctive and Equitable Relief in PIP Cases

In this unanimous unpublished per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") motion for summary disposition seeking dismissal of Intervenor-Plaintiffs Renaissace Chirporactic, PC ("Renaissance"), Centrium Physical Therapy PC ("Centrium"), and Core Healing Body Works, LLC's ("Core Healing") action against it, in which the intervenor-plaintiffs sought reimbursement for the treatments they provided to State Farm's insured, Erika Tyler, after Tyler was injured in a motor vehicle collision. The intervenor-plaintiffs sought reimbursement under a theory of unjust enrichment, but the Court of Appeals held that their lawsuit was merely a first-party action governed by the no-fault act, and that they could not invoke the doctrine of unjust enrichment in order to obtain unpaid PIP benefits from State Farm.

Read Full Summary