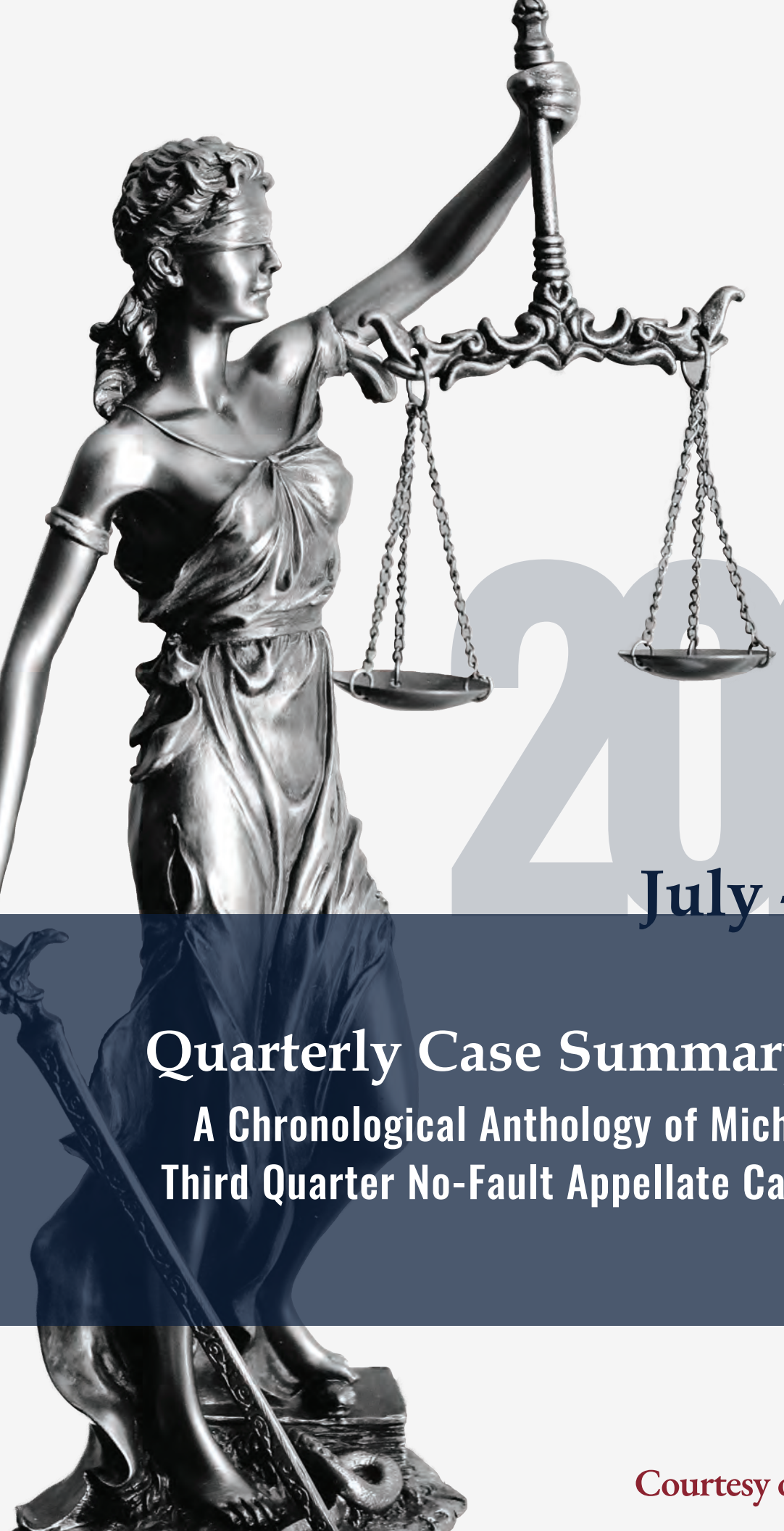


AUTO NOFAULT LAW.COM
BY SINAS DRAMIS

2022

July - September

Quarterly Case Summary Report:

A Chronological Anthology of Michigan's 2022 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 clerk Haley Wehner.

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 third quarter (July through September) of 2022. The following provides an overview of the notable cases and developments this quarter.

Editor's Note

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

Andary, Decided – The Fee-Schedules and Attendant Care Limitations Introduced by 2019 PAs 21 and 22 Cannot be Applied Retroactively, to People Injured Prior to June 11, 2019

On August 25th, the Court of Appeals issued a 2-1, published decision in *Andary v USAA Cas Ins Co*. The Court of Appeals held that two specific 2019 amendments to Michigan's no-fault act—MCL 500.3157(7), which caps medical provider reimbursement for medical services not covered by Medicare at 55 percent of what the provider charged on January 1, 2019, and MCL 500.3157(10), which limits the amount of "family-provided" attendant care that an injured person can receive to 56 hours per week—cannot be applied retroactively, to persons who were injured prior to the amendments' enactment date, June 11, 2019. The Court of Appeals further held that, even if the Legislature had demonstrated retroactive intent in the 2019 amendments, the amendments could not be applied to no-fault insureds such as the plaintiffs in this case, because to do so would substantially impair contracts they entered into with their insurance companies, in violation of the Contracts Clause of the Michigan Constitution.

Ellen Andary and Philip Krueger were both catastrophically injured prior to June 11, 2019—the date on which the Legislature enacted 2019 PA 21 and 2019 PA 22, which significantly amended Michigan's no-fault act. This newly enacted legislation created a fee schedule—codified in MCL 500.3157(7)—governing the amounts medical providers could be reimbursed for the care they provided to auto accident victims, and capping providers' reimbursement for services not payable under the Medicare fee schedule at 55% of what they were charging for the same services on January 1, 2019 (further reduced to 54% starting July 2, 2022, and 52.5% starting July 2, 2023). Additionally, under MCL 500.3157(10), the amendments limited the amount of "family-provided" attendant care that an auto accident victim could receive per week to just 56 hours. Both of these changes had a significant impact on Andary and Krueger, who, after their respective insurers, USAA and Citizens, cut their attendant care benefits by 45% and limited their family-provided attendant care to 56 hours per week, filed suit against USAA and Citizens, arguing that the reimbursement caps and hours limitations did not apply retroactively and, alternatively, that to apply the 2019 amendments retroactively would violate the Contracts Clause of the Michigan Constitution. The trial court disagreed and granted summary disposition in favor of USAA and Citizens.

The Court of Appeals reversed the trial court's summary disposition order, holding, first, that MCL 500.3157(7) and (10) do not apply retroactively because the legislature did not demonstrate an intent that they do so. The Court noted that legislation is presumed to

apply prospectively, only, absent a 'clear, direct, and unequivocal' intent for retroactive application as well. In this case, USAA and Citizens "fail[ed] to identify any language within chapter 31 of the [no-fault act] so indicating, either explicitly or by indication." USAA and Citizens attempted to argue that the inclusion of MCL 500.2111f "demonstrates an intent to retroactively apply the amendments by implication," but the Court found that that "rate-setting provision does not mandate that the limits on benefits provided in MCL 500.3157 shall be applied to persons injured before its effective date. And the claim that it does so by implication is very weak." The Court went on to state:

> *" . . . The statute merely provides that if there are such savings, they must be used to reduce future rates. Whether such savings will occur is not defined by this statute. For these reasons, we conclude that MCL 500.2111f does not 'clearly, directly and unequivocally' demonstrate an intent to apply the new limits retroactively. Davis, 272 Mich App at 155.*
>
> *As stated, defendants do not identify any language within Chapter 31 itself mandating application of benefit reductions to those injured prior to 2019 PA 21's effective date, either explicitly or implicitly. Had the Legislature wished to overcome the presumption against retroactivity, it surely could have expressed its intent plainly, directly and unequivocally, but it did not do so. We will not find legislative intent to apply the new benefit limitations to those injured prior to 2019 PA 21's effective date based solely on a rate-setting provision that does not mandate it."*

The Court further held that even if the Legislature had intended for the 2019 amendments to the no-fault act to apply retroactively, such an application would violate the Contracts Clause of the Michigan Constitution. In so holding, the Court used the following three-part test for analyzing such violations:

> *"(1) whether a change in state law has resulted in a substantial impairment of a contractual relationship; (2) whether the legislative disruption of contract expectancies is necessary to the public good; and (3) whether the means chosen by the legislature to address the public need are reasonable."*

With respect to the first part, the Court found that there would be a substantial impairment of Andary's and Krueger's rights under their respective policies because "retroactive application of the amendments will permanently slash the paid-for insurance benefits that are at the heart of the parties' contract."

> *"In sum, the impairments are more than substantial; they wholly remove numerous duties to be performed by one party to the contract after the other party has fully performed their duties under the contract. Accordingly, we conclude that the impairment of contract is severe."*

With respect to the second and third parts, the Court found that USAA and Citizens failed to explain how retroactive application of the amendments was either necessary to the public good or " 'reasonably related' to the public purpose of lowering no-fault insurance rates."

> *"Defendants do not explain what significant and legitimate public purpose justifies applying the amendments to those injured before the effective date. Nor do they explain how applying the amendments retroactively is 'reasonably related' to the public purpose of lowering no-fault insurance rates. As discussed, the fee schedules and attendant-care cap drastically reduce the previously unlimited PIP benefits, and there has been no demonstration that the rest of 2019 PA 21 would be affected if the amendments are applied prospectively only. The goal of lowering insurance rates is contingent on the lowering of benefits, but because the lowering of premiums is only prospective, it would severely limit the benefits promised in the policies when higher premium rates, reflective of the greater benefits, were charged and paid for. And since the insurers have already been paid for the benefits promised under those policies, retroactive application would permit insurers to retain all the premiums paid prior to the 2019 amendments while allowing them to provide only a fraction of the benefits set out in those policies. Giving a windfall to insurance companies who received premiums for unlimited benefits is not a legitimate public purpose, nor a reasonable means to reform the system."*

Because of the above holdings, the Court then affirmed the trial court's dismissal of Andary's and Krueger's claim that prospective application of the 2019 amendments would violate their constitutional rights. That is to say, "because [the Court's] decision regarding retroactivity provides full relief to the injured plaintiffs, they no longer have any personal interest in whether prospective application of the amendments can survive constitutional scrutiny."

Judge Markey dissented, arguing that, "when MCL 500.2111f(8) is read in conjunction with MCL 500.3157, it becomes amply clear that the Legislature intended that MCL 500.3157 be applied to accidents and injuries arising before June 11, 2019." She further argued that there would be no Contracts Clause violation in applying the 2019 amendments retroactively, because such application "was reasonably related to a significant and legitimate public purpose linked to promoting the public good."

In the Supreme Court

On September 29, 2022, the Michigan Supreme Court issued two important orders in *Andary*. In the first order, the Court denied Citizens and USAA's motion to stay the

precedential effect of the Court of Appeals' opinion. This prompted the Department of Insurance and Financial Services to issue a bulletin a week later, on October 5, 2022, reiterating that MCL 500.3157(7) and MCL 500.3157(10), as amended, effective June 11, 2019, cannot be applied to the claims of persons injured in motor vehicle accidents prior to June 11, 2019.

In the Supreme Court's second order in *Andary*, it granted Citizens' and USAA's application for leave to appeal the Court of Appeals' decision. The parties were instructed to address:

> whether the Court of Appeals erred when it: (1) held that claimants injured before the effective date of 2019 PA 21 are not subject to the limitations on benefits set forth in MCL 500.3157(7) and (10); (2) held that application of the amended statute to such claimants would violate the Contracts Clause of the Michigan Constitution, Const 1963, art 1, § 10; and (3) remanded the case to the circuit court for discovery to determine whether the no-fault amendments, even when applied only prospectively, pass constitutional muster.

The Clerk of the Court was directed to place the case on the March 2023 calendar for argument and submission, and amici who appeared in the Court of Appeals were invited to file briefs amicus curiae.

In addition to these orders in *Andary*, the Supreme Court issued two opinions in the third quarter of 2022: *Champine v Dep't of Transp* and *Griffin v Trumbull Ins Co*.

Champine featured a claim by Plaintiff Norman Champine against the Michigan Department of Transportation (MDOT), after a 20-pound chunk of concrete fell from an overpass he was driving under, smashed through the windshield of his car, and crushed his face. Champine sent two separate notices to MDOT, directly, within 120 days of the accident, and filed a lawsuit against MDOT within two months of the accident. Champine never actually filed notice of his claim with the clerk of the Court of Claims, however, and thus MDOT moved to dismiss his lawsuit for failure to comply with the statutory notice requirements of MCL 691.1404. Specifically, MDOT argued that because Champine did not file a notice, separate from the complaint, "in triplicate with the clerk of the court of claims" within 120 days of the date of injury, his action was barred. The trial court agreed and granted summary disposition in favor of MDOT, and the Court of Appeals affirmed. The Supreme Court then reversed both the trial court and the Court of Appeals, holding that Champine's complaint, in and of itself, satisfied MCL 691.1404. Nothing in the text of the statute, the Court reasoned, suggests that proper notice must

be provided in some form other than a complaint, nor does anything in the text of the statute require "advance notice beyond the filing of the complaint."

Griffin featured a claim for no-fault PIP benefits filed by a motorcyclist, Willie Griffin, after a truck merged into his lane, causing him to crash. After the accident, Griffin filed a claim for no-fault PIP benefits with his insurer, Trumbull Insurance Company, but Trumbull denied his claim, arguing that the insurer of the truck was higher in priority. Griffin retained an attorney and an investigation firm in an attempt to identify the truck driver's insurer, but the firm did just that: identified the truck driver's personal insurer, but not the insurer of the truck, itself, which was owned by the driver's employer. After Griffin filed suit against Trumbull, Trumbull deposed the truck's driver and discovered that the insurer of the truck was Harleysville. Trumbull then moved for summary disposition, arguing that the case should be dismissed because it was not the highest priority insurer and because Griffin failed to exercise reasonable due diligence in attempting to identify the highest priority insurer within one-year of the accident. The importance of the latter argument was the precedent established by *Parks v Detroit Auto Inter-Ins Exch*, 426 Mich 191 (1986) and *Frierson v West American Ins Co*, 261 Mich App 732 (2004), that 'when an insurer that would be liable under one of the exceptions in MCL 500.3114(1) cannot be identified, the general rule applies and the injured party must look to her own insurer for personal protection insurance benefits'). Thus, if Griffin exercised due diligence in attempting to identify the highest priority insurer (Harleysville) but could not do so within one year of the accident, Trumbull would become liable for his claim. The trial court and the Court of Appeals both concluded that Griffin did not exercise due diligence in attempting to identify the highest priority insurer, granting summary disposition in Trumbull's favor. The Supreme Court, however, concluded otherwise, reversing the Court of Appeals and holding that Griffin's actions of "hir[ing] an attorney, tr[ying] to contact the truck driver, hir[ing] a third-party company to look for applicable insurance policies, put[ting] every identifiable insurer on notice, and cooperat[ing] with Trumbull's investigation" satisfied the applicable due diligence standard.

Six Other Published Decisions from the Court of Appeals

In addition to *Andary*, The Michigan Court of Appeals submitted six other opinions for publication in the third quarter of 2022: *Abraham v State Farm Mut Auto Ins Co*, *Holman v Farm Bureau Gen Ins Co of Mich*, *Childers v Progressive Marathon Ins Co*, *MemverSelect Ins Co v Hartford Accident & Indemnity Co*, *Gueye v State Farm Mut Auto Ins Co*, and *Williamson v AAA of Mich*.

Abraham featured a priority dispute between an Enterprise Rent-A-Car company and State Farm, after State Farm's insured, Amber Abraham, was injured while working as a delivery driver for a company called Nexen. At the time of the accident, Abraham was driving a Ford Transit owned by Enterprise, but physically possessed by Nexen for a continuous six-month period through a series of 28-day lease agreements. At the end of every 28-day period, Nexen would keep the Transit—as opposed to returning it to Enterprise—and Enterprise would write a new lease agreement. Nexen did not have any no-fault insurance policy in effect on the date of the accident and Enterprise was self-insured, and thus Abraham proceeded to file a first-party action against State Farm, Enterprise, and Nexen. The trial court granted summary disposition in favor of Enterprise, based on the general rules of priority, but the Court of Appeals reversed. The Court found that both Enterprise and Nexen were owners of the vehicle at the time of the accident for purposes of the No-Fault Act, and that Enterprise, a self-insured entity, was the only "insurer of the furnished vehicle" for purposes of MCL 500.3114(3). In so holding, the Court relied on the definition of 'insurer' for purposes of MCL 500.3114(3), set forth in *Turner v Farmers Ins Exch*, 507 Mich 858 (2021): "one who provides no-fault insurance to an owner or registrant of the vehicle."

Holman featured a negligence action against an insurance agent, Jonathan Heinzman, based on misrepresentations Heinzman allegedly made on an application for no-fault insurance that he submitted to Farm Bureau on Lawrence Holman's behalf. Heinzman and Holman disputed who was responsible for the misrepresentations, which were not discovered until after Holman was injured in a motor vehicle accident and filed a claim for no-fault benefits with Farm Bureau. Farm Bureau argued that if there was a policy, it was entitled to void it *ab initio* because Holman committed fraud in its procurement, and the trial court and Court of Appeals—in *Holman I*—both agreed. This left Holman without no-fault insurance with respect to the accident, and thus he filed a negligence action against Heinzman for negligently contributing false information to an application for insurance coverage. Heinzman argued that Holman's failure to know the contents of the application he signed—the basis of the *Holman I* court's dismissal of his suit against

Farm Bureau—also precluded Holman from filing a negligence action against him, as an agent who allegedly contributed false information to the application. The Court of appeals disagreed, noting that insurance agents have a duty to accurately prepare applications for coverage, and holding that an applicant's signature on an application is not a bar for filing suit against an agent for breaching their duty.

Childers featured a dispute over the applicable limitations period for filing a lawsuit against a lower-priority insurer upon a higher-priority insurer's insolvency. Justin Childers suffered catastrophic injuries in a motor vehicle accident, after which he

received no-fault PIP benefits from American Fellowship Mutual Insurance. American Fellowship became insolvent approximately two years after the accident, at which point the Michigan Property and Casualty Guaranty Association (MPCGA) assumed responsibility for Childers's claim, pursuant to the Michigan Property and Casualty Guaranty Association Act, MCL 500.7901, *et seq*. The MPCGA eventually discovered that Progressive was in the order of priority—below American Fellowship—for payment of Childers's benefits, but Progressive denied Childers's claim and moved for summary disposition in Childers and the MPCGA's resultant first-party action against it, arguing that the action was barred by the one-year-notice rule in MCL 500.3145(1). The Court of Appeals disagreed, holding that, for claims brought against a lower priority insurer by either an individual claimant or the MPCGA in circumstances such as this, the appropriate limitations period would either be the default six-year period set forth in MCL 600.5813, or an alternative one-year period which would only begin to run on the date the higher-priority insurer declares insolvency.

MemberSelect featured a dispute between Michael McGilligan and his personal no-fault insurer, Hartford Accident & Indemnity Company, over McGilligan's claim for PIP benefits related to injuries he sustained when a vehicle he was servicing fell on top of him. At the time of the accident, McGilligan was covered under a commercial auto policy Hartford issued to "Michael McGilligan DBA McGilligan Plumbing and Heating," which included a PIP endorsement purporting to limit PIP coverage only to accidents involving "covered autos." The vehicle that fell on McGilligan was not a "covered auto," and thus Hartford claimed that the policy did not cover McGilligan under the circumstances presented. The Court of Appeals disagreed, holding that McGilligan was entitled to PIP benefits from Hartford based on the plain language of MCL 500.3114(1), and that, to the extent the extra-statutory "covered auto" requirement conflicted with the no-fault act, it was unenforceable. Notably, the Court of Appeals reached its holding in this case while acknowledging that a prior panel more-or-less held the opposite in a factually similar case back in 2008, *Sisk-Rathburn v Farm Bureau Gen Ins Co of Mich*, 279 Mich App 425. The plaintiff in *Sisk-Rathburn* was injured while operating a rental vehicle and sought PIP benefits thereafter under a 'business auto' policy which listed her husband as the named insured. The *Sisk-Rathburn* court concluded that the plaintiff's entitlement under the policy flowed from MCL 500.3114(3), and that, because the policy contained a 'covered auto' exclusion, the plaintiff was barred from PIP benefits thereunder. The Court in this case distinguished its holding from *Sisk-Rathburn* based on *Sisk-Rathburn*'s focus on MCL 500.3114(3), but also expressed its opinion that *Sisk-Rathburn* was incorrectly decided.

Gueye featured an action for underinsured motorist (UIM) coverage brought by Malick Gueye against State Farm, his automobile insurer, after he suffered injuries in a motor vehicle accident. Upon receipt of Gueye demand for no-fault benefits and UIM coverage,

State Farm requested that he undergo both an insurance medical examination (IME) and an examination under oath (EUO). When he failed to attend the former, State Farm denied his claim for PIP benefits, but reiterated its request to Gueye's counsel that he undergo an EUO. Gueye's counsel rejected State Farm's request, stating that a lawsuit would be forthcoming and that an EUO would be duplicative of a deposition which would surely take place in discovery. Gueye eventually filed an action both for PIP benefits and UIM coverage, and State Farm moved for summary disposition, arguing that Gueye's claim for PIP benefits was barred because of his failure to attend the IME, and that Gueye's claim for UIM coverage was barred because of a policy provision providing that an insured must submit to a requested, pre-suit IME or EUO as a condition precedent to filing suit for UIM coverage under the policy. The trial court granted summary disposition to State Farm on both accounts, and the Court of Appeals affirmed the trial court's summary disposition order as to Gueye's claim for UIM coverage. Such coverage, the Court noted, is governed entirely by contract, and thus Gueye's refusal to submit to the requested IME and EUO before filing suit ran afoul of the unambiguous language of the contract. The Court of Appeals reversed the trial court's denial of Gueye's claim for PIP benefits, however, holding that trial courts must consider, on the record, all lesser sanctions set forth in MCL 500.3153 for failing to cooperate with a pre-suit investigation of a claim for no-fault benefits, before it can impose the most severe sanction of dismissal. Moreover, the Court held that trial courts must consider the factors set forth in *Vicencio v Ramirez*, 211 Mich App 501 (1995), which dealt with the appropriateness of dismissal as a sanction for a discovery violation during litigation.

Williamson featured a significant holding regarding the definition of the word "claim" in MCL 500.3173a(4), which disqualifies individuals who knowingly submit false information "in support of a claim to the Michigan Automobile Insurance Placement Facility" from receiving no-fault benefits. Charles Williamson was injured in a motor vehicle accident, after which he applied to the Michigan Automobile Insurance Placement Facility (MAIPF) for no-fault PIP benefits. The MAIPF assigned his claim to AAA, but AAA refused to pay his benefits and thus Williamson filed suit. During discovery, AAA served Williamson's Estate (Williamson died due to unrelated circumstances during litigation) with a set of interrogatories, one or more of which asked if the Estate was claiming attendant care or replacement services. The Estate responded in the affirmative, attaching forms claiming reimbursement for services provided on a range of dates. Some of the dates, however, were subsequent Williamson's death. AAA moved for summary disposition, arguing that Williamson's attendant care and replacement service forms were fraudulent and, therefore, Williamson's entire claim was barred under MCL 500.3173a(4). The trial court agreed and dismissed the Estate's action, but the Court of Appeals reversed. The Court held that the replacement services and attendant care forms were not "claims," as the term "claim" is understood in MCL

500.3173a(4), defining that term, instead, to mean only the initial demand for PIP coverage, itself. The replacement services and attendant care forms in question, then, were mere responses to discovery requests, and under *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719 (2020), a fraudulent statement made after litigation has ensued cannot form the basis of a wholesale denial of PIP coverage.

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

The Supreme Court and Court of Appeals issued opinions in 40 cases dealing with Michigan's No-Fault Act in the third quarter of 2022. Those cases are broken down categorically, below:

1. 26 cases featured disputes over no-fault PIP benefits. Of those:
    a. Seven cases featured attempts by insurers to deny all or part of a claim for no-fault PIP benefits because of alleged fraud

        Cheema v Progressive Marathon Ins Co

        Elzein v American Country Ins Co

        Finn v Marsh

        Jones v Home-Owners Ins Co

        Nelson v Owusu

        Oliver v Esurance Ins Co

        Williamson v AAA of Mich

    b. Four cases featured disputes over causation for purposes of MCL 500.3105

        Garden City Rehab, LLC v Integon Nat'l Ins Co

        Oliver v Esurance Ins Co

        Trent v Bristol West Preferred Ins Co

        Wolverine Mut Ins Co v Kemper

    c. Three cases featured disputes regarding the one-year-notice rule in MCL 500.3145(1)

        Childers v Progressive Marathon Ins Co

        Executive Ambulatory Surgical Ctr v Auto Club Ins Assoc

        Griffin v Trumbull

d. Three cases dealt with the innocent third-party doctrine

Finn v Marsh

Nelson v Owusu

Pioneer State Mut Ins Co v McCallister

e. Two cases featured priority disputes amongst insurers

Abraham v State Farm Mut Auto Ins Co

MemberSelect Ins Co v Hartford Accident & Indemnity Co

f. Two cases dealt with issued related to assignments and/or the rights of assignees and/or assignors

Maple Manor Rehab Center of Novi, Inc v Travelers Cas & Surety Co

Perkins v Suburban Mobility Auth for Regional Transp

g. Two cases featured disputes over the "reasonable charges" requirement of MCL 500.3107(1)(a)

Maple Manor Rehab Center of Novi, Inc v Travelers Cas & Surety Co

Trent v Bristol West Preferred Ins Co

h. Two cases featured a dispute over ownership for purposes of MCL 500.3101

Abraham v State Farm Mut Auto Ins Co

Cheema v Progressive Marathon Ins Co

i. Two cases dealt with sanctions against an insured for failing to appear for insurance medical examinations and/or examinations under oath

Drew v Nationwide Mut Fire Ins Co

Gueye v State Farm Mut Auto Ins Co

j. One case featured a dispute over the incurred requirement of MCL 500.3107(1)(a)

Maple Manor Rehab Center of Novi, Inc v Travelers Cas & Surety Co

k. One case featured a dispute concerning parked vehicle exceptions set forth in MCL 500.3106(1)

Wilson v Citizens Ins Co of the Midwest

l. One case featured a dispute over whether a vehicle had been taken unlawfully for purposes of MCL 500.3113(a)

Criswell v Avis Rent A Car System, LLC

m. One case featured a dispute concerning the requirement in MCL 500.3173a that an insured cooperate with an eligibility determination by the MAIPF

Great Lakes Pain & Injury Chiropractic Ctr v Farm Bureau Mut Ins Co of Mich

n. One case featured an attempt by an insurer to deny a claim for PIP benefits based on an alleged "fraudulent insurance act" pursuant to MCL 500.3173a(4)

Williamson v AAA of Mich

o. One case featured a dispute between as to whether a self-funded ERISA health insurance plan or a no-fault insurance policy was primary for payment of the plaintiff's accident-related medical expenses

Heade v Liberty Mut Ins Co

p. One case featured a dispute over retroactive application of the 2019 amendments to the No-Fault Act

Andary v USAA Cas Ins Co

q. One case featured a claim for PIP against a lower priority insurer, brought after a higher priority insurer became insolvent

Childers v Progressive Marathon Ins Co

r. One case featured a dispute involving the election of remedies doctrine

Cheema v Progressive Marathon Ins Co

s. One case featured a dispute over a no-fault insurer's right to set off work loss benefits by Social Security Disability Insurance

Heade v Liberty Mut Ins Co

t. One case featured a claim for reimbursement by one insurance company against another

MemberSelect Ins Co v Hartford Accident & Indemnity Co

u. One case featured a dispute over the effect of a defend and indemnify promise by an insurer on its insured's ability to sue it for failing to pay its medical provider's charges in full

Flowers v Wilson

v. One case featured a dispute as to an insured's due diligence in identifying the highest priority insurer with respect to his claim

Griffin v Trumbull

2. Nine cases featured miscellaneous third-party disputes. Of those:

a. Five cases featured claims against government entities brought under exceptions to the Governmental Tort Liability Act

Cavill v Mich State Police

Champine v Dep't of Transp

Ferriole v City of Detroit

Holt v Detroit Dep't of Transp

Middleton v Temple

b. One case featured a dispute over comparative fault

Holt v Detroit Dep't of Transp

c. One case featured an allegation that a corporation's negligent operation of a city's streetlights caused a pedestrian-versus-motor vehicle accident

Shami v Ramsey

d. One case featured an auto negligence claim which the plaintiff was barred from pursuing by the Workers Compensation Disability Act

Zubovich v Bell

e. One case featured a dispute over whether voidance of a policy, *ab initio*, retroactively renders a driver uninsured at the time of an accident

Nelson v Owusu

f. One case featured a dispute over the effect a release of the tortfeasor had on his vicariously liable employer

Malone v McRell

3. Four cases featured disputes over uninsured or underinsured motorist coverage

Epler v Force

Gueye v State Farm Mut Auto Ins Co

Jones v Home-Owners Ins Co

White v Richardson

4. One case featured a negligence action against an insurance agent for contributing false information to an application for no-fault insurance

Holman v Farm Bureau Gen Ins Co

5. One case featured a dispute over an insurer's obligation to defend and indemnify its insured's family member

Michigan Pizza Hut, Inc v Home-Owners Ins Co

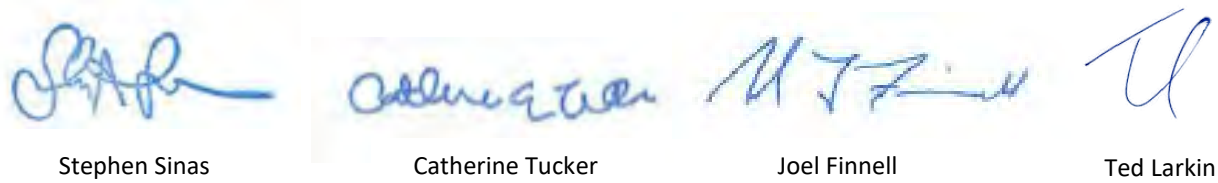
6. One case featured a choice-of-law dispute

White v Richardson

7. One case featured a declaratory action by an insured against his insurance company regarding bodily injury liability coverage under his policy

Payton v Meemic Ins Co

- Editorial Board of AutoNoFaultLaw.com



Stephen Sinas Catherine Tucker Joel Finnell Ted Larkin

Champine v Dep't of Transp (MSC – PUB 7/6/2022; RB #4447)

Michigan Supreme Court; Docket #161683; Published
Before the Entire Bench; Authored by Justice Bernstein
Official Michigan Reporter Citation: Forthcoming; Link to Opinion; Link to Dissent; Link to Court of Appeals Opinion; Link to Court of Appeals Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Court of Claims Litigation

In this 6-1 (Zahra, dissenting) decision authored by Justice Bernstein, the Michigan Supreme Court reversed the Court of Appeals' holding regarding the notice requirements of MCL 691.1404—the "highway exception" to governmental tort liability—and remanded for further proceedings consistent with its opinion. The Supreme Court held that a complaint, filed with the Court of Claims within 120 days of the date of injury, can serve as sufficient 'notice' for purposes of MCL 691.1404. In other words, MCL 691.1404 does not require that a person injured by a highway defect file a separate notice with the Court of Claims before filing his or her complaint, so long as the complaint, itself, satisfies the rest of the statutory requirements.

Read Full Summary

Shami v Ramsey, et al (COA – UNP 7/14/2022; RB #4448)

Michigan Court of Appeals; Docket #356369; Unpublished
Judges Gleicher, Gadola, and Yates; 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 reversed the trial court's denial of Defendant DTE Energy Company's ("DTE") motion for summary disposition, in which DTE sought dismissal of Plaintiff Ryan Shami's third-party action against it. The Court of Appeals held that DTE owed no duty to Shami—a pedestrian, hit by a car at night, at a crosswalk nearby a nonfunctional DTE streetlight—to repair a nonfunctional streetlight, such as would give rise to a negligence action against DTE.

Read Full Summary

Michigan Pizza Hut, Inc, et al v Home-Owners Ins Co (COA – UNP 7/14/2022; RB #4449)

Michigan Court of Appeals; Docket #356737; Unpublished
Judges Borrello, Jansen, and Murray; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Interpretation of Insurance Contracts

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order in favor of Plaintiffs Michigan Pizza Hut, Inc. ("Pizza Hut") and Amerisure Mutual Insurance Company ("Amerisure"), in which the trial court found that Home-Owners was responsible to defend and indemnify Justin Kiry—a Pizza Hut employee who crashed into and injured a motorcyclist while delivering pizzas—under Kiry's mother's auto insurance policy with Home-Owners. The Court of Appeals held that a liability exclusion provision in the subject policy—excluding coverage for "any automobile while used as a public or livery conveyance"—did not apply to the facts of this case.

Read Full Summary

Griffin v Trumbull Ins Co, et al (MSC – PUB 7/15/2022; RB #4450)

Michigan Supreme Court; Docket #162419; Published
Before the Entire Bench; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion; Link to Justice Zahra's dissent; Link to Justice Clement's dissent; Link to COA Opinion

STATUTORY INDEXING:
General Rule of Priority [§3114(1)]
Exception for Motorcycle Injuries [§3114(5)]
Determination of Involved Vehicle

TOPICAL INDEXING:
Not Applicable

In this 4-3 decision authored by Justice Welch (Zahra, Viviano, Clement, dissenting), the Michgan Supreme Court reversed the Court of Appeals' affirmance of the trial court's summary disposition order in favor of Defendant Trumbull Insurance Company ("Trumbull"). The Supreme Court held that Plaintiff Willie Griffin, an injured motorcyclist, exercised sufficient due diligence in attempting to identify the no-fault insurer of the vehicle that hit him before turning to pursing a claim for PIP benefits through the Michigan Assigned Claims Plan.

Read Full Summary

Maple Manor Rehab Center of Novi, Inc, et al v Travelers Cas & Surety Co (COA – UNP 7/21/2022; RB #4451)

Michigan Court of Appeals; Docket #355775; Unpublished
Judges Markey, Boonstra, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:

Allowable Expenses: Reasonable Necessity Requirement [§3107(1)(a)]
Allowable Expenses: Reasonable Charge Requirement [§3107(1)(a)]
Allowable Expenses: Incurred Expense Requirement [§3107(1)(a)]
One-Year Back Rule Limitation [§3145(1)]

TOPICAL INDEXING:

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

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed in part, and reversed in part, the trial court's order granting Plaintiffs Maple Manor Rehab Center of Novi, Inc. ("Maple Manor Rehab") and Maple Manor Neuro Center, Inc.'s ("Maple Manor Neuro") motion for summary disposition, and denying Defendant Travelers Casualty & Surety Company's ("Travelers") motion for summary disposition. The Court of Appeals held, first, that a "hold-harmless agreement" entered into by the plaintiffs and their assignor, James Bourdage, did not render the charges Bourdage incurred for the treatment he received from the plaintiffs "un-incurred," such that the plaintiffs would not be able to seek reimbursement from Travelers pursuant to the assignment they obtained from Bourdage. The Court of Appeals held, second, that the plaintiffs could seek benefits dating back as far as March 4, 2015—even though they were not substituted for Bourdage as the plaintiffs in this case until after September 14, 2018—because Bourdage and Travelers had entered into a prior litigation agreement in which they explicitly agreed that Bourdage could pursue benefits dating back to March 4, 2015. The Court of Appeals held, third, that Maple Manor Neuro, an entity created by Maple Manor Rehab to perform Maple Manor Rehab's billing and accounting, could be a co-assignee of Bourdage's right to pursue PIP benefits related to the treatment he received from Maple Manor Rehab. The Court of Appeals held, fourth, that the trial court erred in granting summary disposition in the plaintiffs' favor on the issue of "reasonable charges," despite evidence that the plaintiffs and Travelers negotiated the rate for Bourdage's care and explicitly agreed on a specific amount. This evidence, alone, did not establish that the agreed upon rate was, in fact, "reasonable"; moreover, the Court held that Travelers did not have sufficient opportunity to address this issue in response the plaintiffs' motion. The Court of Appeals held, fifth, that the trial court did not abuse its discretion by denying Travelers' motion to exclude evidence related to the agreement it entered into with the plaintiffs to pay for Bourdage's care at a negotiated rate, because Travelers failed to offer a compelling basis for why such evidence should be excluded.

Read Full Summary

Wilson v Citizens Ins Co of the Midwest (COA – UNP 7/21/2022; RB #4452)

Michigan Court of Appeals; Docket #356272; Unpublished
Judges Jansen, O'Brien, and Hood; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Exception for Loading / Unloading [§3106(1)(b)]
Exception for Entering Into or Alighting From [§3106(1)(c)]

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 Rosita Ann Wilson's first-party action against Defendant Citizens Insurance Company of the Midwest ("Citizens"). The Court of Appeals held that Wilson was not entitled to no-fault PIP benefits related to the injuries she sustained after slipping in her driveway while attempting to unload a TV from her parked vehicle, because (1) she was not in direct physical contact with the TV at the moment she slipped for purposes of MCL 500.3106(1)(b), and (2) she was not alighting from her vehicle at the moment she slipped for purposes of MCL 500.3106(1)(c).

Read Full Summary

Criswell v Avis Rent A Car System, LLC, et al (COA – UNP 7/28/2022; RB #4454)

Michigan Court of Appeals; Docket #355626; Unpublished
Judges Kelly, Murray, and Borrello; 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 affirmed the trial court's summary disposition order dismissing Plaintiff Lakina Criswell's first-party action against Defendant Avis Rent A Car System, LLC ("Avis"). The Court of Appeals held that under MCL 500.3113(a), Criswell was barred from receiving no-fault PIP benefits related to the subject car accident because she was operating an unlawfully taken Avis rental vehicle at the time of the accident. The vehicle had been rented by her cousin who, after picking up Criswell to go shopping, suddenly claimed that she needed to go to the hospital, prompting Criswell to switch seats with her and assume operation of the vehicle, shortly after which they were involved in the subject accident.

Read Full Summary

Abraham v State Farm Mut Auto Ins Co, et al (COA – PUB 7/28/2022; RB #4453)

Michigan Court of Appeals; Docket #356748; Published
Judges Jansen, O'Brien, and Hood; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Definition of Owner [§3101(2)(h)]
Exception for Employer Provided Vehicles [§3114(3)]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published decision authored by Judge Hood, the Court of Appeals reversed the trial court's order granting summary disposition to Defendant Enterprise Leasing Company of Detroit, LLC ("Enterprise") in a priority dispute between Enterprise and Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). State Farm's insured, Plaintiff Amber Abraham, was injured in a car accident while driving a vehicle in the course and scope of her employment with Nexen Corporation ("Nexen"). Enterprise held legal title to the vehicle but leased it to Nexen over a continuous period of six months, through a series of successive 28-day lease agreements. The Court of Appeals held that based on these specific facts, Enterprise was first in priority for payment of Abraham's no-fault PIP benefits, because Nexen did not have no-fault insurance of its own, and because Enterprise was an "insurer" of the vehicle for purposes of MCL 500.3114(3), based on the definition of "insurer" set forth in *Turner v Farmers Ins Exch*, 507 Mich 858 (2021): "one who provides no-fault insurance to *an owner or registrant of the vehicle.*"

Read Full Summary

Middleton v Temple, et al (COA – UNP 7/28/2022; RB #4455)

Michigan Court of Appeals; Docket #356829; Unpublished
Judges Markey, Boonstra, and Riordan; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendants Kenneth Arthur Temple's and Ogemaw County EMS's motions for summary disposition, seeking dismissal of Plaintiff Denise Ann Middleton's auto negligence action against them. The Court of Appeals held that Middleton failed to present sufficient evidence to create a question of fact as to whether Temple—an EMS driver who Middleton crashed into in an intersection—breached his duty of care as the driver of an authorized emergency vehicle by failing to sufficiently brake before entering the intersection under a red light.

Read Full Summary

Payton v Meemic Ins Co, et al (COA – UNP 7/28/2022; RB #4456)

Michigan Court of Appeals; Docket #357736; Unpublished
Judges Kelly, Murray, and Borrello; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Interpretation of Insurance Contracts

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's order granting summary disposition to Plaintiff Johnny Payton in Payton's declaratory action against Defendant Meemic Insurance Company ("Meemic"), and remanded for entry of an order granting summary disposition in Meemic's favor. The Court of Appeals held that the vehicle Payton was operating when he crashed into a bicyclist was not covered under his automobile insurance policy with Meemic, and thus he did not provide him with bodily injury liability coverage related to the crash.

Read Full Summary

Great Lakes Pain & Injury Chiropractic Ctr, et al v Farm Bureau Mut Ins Co of Mich (COA – UNP 7/28/2022; RB #4457)

Michigan Court of Appeals; Docket #357702; Unpublished
Judges Kelly, Murray, and Borrello; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Requirement that a Claimant Cooperate with the MAIPF's Eligibility Determination [§3173a]
General / Miscellaneous [§3173a]

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff William Jones's first-party action against Defendant Farm Bureau Mutual Insurance Company of Michigan ("Farm Bureau"). The Court of Appeals held that Farm Bureau—the servicing insurer assigned Jones's claim for no-fault PIP benefits related to the subject crash by the Michigan Automobile Insurance Placement Facility (MAIPF)—could not deny Jones's claim based solely on his failure to cooperate with the MAIPF's eligibility determination. MCL 500.3173a(1) only allows a servicing insurer to '*suspend benefits*' until a claimant begins cooperating or resumes cooperating.

Read Full Summary

Ferriole v City of Detroit, et al (COA – UNP 7/28/2022; RB #4458)

Michigan Court of Appeals; Docket #358794; Unpublished
Judges Kelly, Murray, and Borrello; 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
Negligence-Duty

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant City of Detroit's motion for summary disposition, in which the City sought dismissal of the auto negligence action Plaintiff Vanessa Ferriole's brought against it pursuant to the motor vehicle exception governmental immunity. The Court of Appeals held that Casey Schimeck, a City of Detroit police officer, acted with reasonable care under the circumstances when she drove through a red light while responding to an emergency call, which resulted in her police cruiser T-boning Ferriole's vehicle.

Read Full Summary

Holman v Farm Bureau Gen Ins Co, et al (COA – PUB 8/4/2022; RB #4460)

Michigan Court of Appeals; Docket #357473; Published
Judges Shapiro, Rick, and Garrett; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Insurance Agents (Duty to Insured)

In this unanimous, published decision authored by Judge Shapiro, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Lawrence Holman's negligence action against Defendant Jonathan Heinzman, an insurance agent, based on misrepresentations Heinzman allegedly made on an application for no-fault coverage that he executed and submitted to Farm Bureau General Insurance Company ("Farm Bureau") on Holman's behalf. The Court of Appeals held that Holman's action against Heinzman was not barred by collateral estoppel, even though Holman's prior first-party action against Farm Bureau, Holman I, was dismissed as a result of the same misrepresentations. In Holman I, the Court held that Farm Bureau was entitled to rescission of Holman's policy regardless of who was responsible for the misrepresentations, because Holman had a duty to know the contents of the application he signed.

Read Full Summary

Oliver v Esurance Ins Co, et al (COA – UNP 8/11/2022; RB #4461)

Michigan Court of Appeals; Docket #355699, 356886; Unpublished
Judges Sawyer, Shapiro, and Redford; 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:
Fraud/Misrepresentation

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Marian Oliver's first-party action against Defendant Esurance Insurance Company ("Esurance"). The Court of Appeals held that because Oliver's right to no-fault PIP benefits related to the subject accident was statutory, not contractual (she was riding as a passenger in her brother-in-law's vehicle, which was insured by Esurance, at the time), Esurance could not invoke the policy's antifraud provision to deny all Oliver's claims for benefits, even those not implicated by her alleged fraud, to which she would otherwise be statutorily entitled under the no-fault act. The Court of Appeals also held that a question of fact existed as to whether Oliver's injuries were caused by the subject accident for purposes of MCL 500.3105.

Read Full Summary

Zubovich v Buell, et al (COA – UNP 8/11/2022; RB #4462)

Michigan Court of Appeals; Docket #358091; Unpublished
Judges Riordan, Borrello, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Workers Disability Compensation Act (MCL 418.101, Et Seq.)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's denial of Defendant June Louise Buell's motion for summary disposition, in which she sought dismissal of Plaintiff Oleg Zubovich's auto negligence action against her. The Court of Appeals held that Zubovich's action was barred by the Workers Compensation Disability Act (WDCA), MCL 418.101, et seq., because Buell and Zubovich were co-employees, both acting in the course and scope of their employment, at the time Buell struck Zubovich with her vehicle.

Read Full Summary

Elzein v American Country Ins Co (COA – UNP 8/18/2022; RB #4464)

Michigan Court of Appeals; Docket #352187; Unpublished
Judges Sawyer, Letica, and Patel; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Fraud/Misrepresentation

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Moe Elzein's first-party action against Defendant American Country Insurance Company ("ACIC"). Relying on *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719 (2020), the Court of Appeals held that ACIC could not invoke its policy's antifraud provision based on fraudulent statements Elzein made during the course of litigation.

Read Full Summary

Jones v Home-Owners Ins Co, et al (COA – UNP 8/18/2022; RB #4465)

Michigan Court of Appeals; Docket #355118; Unpublished
Judges Riordan, Borrello, and Letica; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Fraud/Misrepresentation
Exclusions from Underinsured Motorist Benefits
Exclusions from Uninsured Motorist Benefits

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 Jonathan Jones's action for unpaid no-fault PIP benefits and uninsured or underinsured motorist benefits against Defendants Home-Owners Insurance Company ("Home-Owners"), American Country Insurance Company ("ACIC"), and Hartford Accident & Indemnity Company ("Hartford"). The Court of Appeals held, first, that the trial court erred by dismissing both Jones's claims based on the respective antifraud provisions in each insurer's policy. The trial court should have first determined which insurer had priority responsibility for payment of Jones's no-fault PIP benefits related to the subject motor vehicle accident, as it was necessary to determine whether his entitlement to PIP benefits was contractual or purely statutory, in which latter case his entitlement to PIP benefits would be unaffected by any contractual antifraud provision.

Read Full Summary

Holt v Detroit Dep't of Transp, et al (COA – UNP 8/18/2022; RB #4466)

Michigan Court of Appeals; Docket #357329; Unpublished
Judges Sawyer, Shapiro, and Redford; 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:
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 summary disposition order dismissing Plaintiff David Holt's automobile negligence action against Defendants Detroit Department of Transportation ("DDOT"), Anthony Reed, and Louise Bechard. The Court of Appeals held that a question of fact existed as to the comparative negligence between Reed, a DDOT bus driver, and Bechard, Holt's husband, in causing the subject motor vehicle collision, in which Holt was injured while traveling as a passenger in a vehicle driven by Bechard.

Read Full Summary

Finn, et al v Marsh, et al (COA – UNP 8/18/2022; RB #4467)

Michigan Court of Appeals; Docket #358501; Unpublished
Judges Gadola, Cavanagh, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
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 Defendant Foremost Insurance Company Grand Rapids Michigan ("Foremost"), in Foremost's no-fault PIP benefit priority dispute with Co-Defendant Auto Club Insurance Company ("Auto Club"). The Court of Appeals held that the trial court did not abuse its discretion in finding that Auto Club could not rescind its no-fault policy with respect to Plaintiff Shaun Finn, an innocent third-party to his son's/Auto Club's insured's fraud in the procurement of the policy.

Read Full Summary

Drew v Nationwide Mut Fire Ins Co (COA – UNP 8/18/2022; RB #4468)

Michigan Court of Appeals; Docket #358546; Unpublished
Judges Gadola, Cavanagh, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Obligation of Claimant to Submit to Physical Examination [§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 order dismissing Plaintiff Mager Drew's first-party action against Defendant Nationwide Mutual Fire Insurance Company ("Nationwide") as a sanction for Drew's failing to appear for two insurance medical examinations (IME). The Court of Appeals held that the trial court erred by dismissing Drew's action without carefully considering both alternative sanctions and the relevant factors for determining whether the sanction of dismissal is appropriate, set forth in prior appellate caselaw, e.g., Vicencio v Ramirez, 211 Mich App 501 (1995). Notably, the Court of Appeals rejected Nationwide's argument that the trial court was not required to evaluate such factors because Drew's violation was statutory, and not merely a discovery violation.

Read Full Summary

Andary, et al v USAA Cas Ins Co (COA – PUB 8/25/2022; RB #4469)

Michigan Court of Appeals; Docket #356487; Published
Judges Markey, Shapiro, and Patel; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion; Link to Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
2019 PA 21 – Retroactivity

In this 2-1, published decision authored by the Judge Shapiro (Markey, dissenting), the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiffs Ellen Andary and Philip Krueger's first-party actions against Defendants USAA Casualty Insurance Company ("USAA") and Citizens Insurance Company of America ("Citizens"). The Court of Appeals held that the 2019 amendments to Michigan's no-fault act—specifically, MCL 500.3157(7), which caps medical provider reimbursement for medical services not covered by Medicare at 55 percent of what the provider charged on January 1, 2019, and MCL 500.3157(10), which limits the amount of "family-provided" attendant care that an injured person can receive to 56 hours per week—cannot be applied retroactively to persons who injured prior to the amendments' enactment, June 11, 2019. Alternatively, the Court of Appeals held that, even if the Legislature had demonstrated retroactive intent in the 2019 amendments, the amendments could not be applied to no-fault insureds such as the plaintiffs in this case, because to do so would substantially impair contracts they entered into with their insurance companies, in violation of the Contracts Clause of the Michigan Constitution.

Read Full Summary

Supreme Court Action

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

Visit Website

Perkins v Suburban Mobility Auth for Regional Transp (COA – UNP 9/1/2022; RB #4470)

Michigan Court of Appeals; Docket #357080; Unpublished
Judges Shapiro, Rick, and Garrett; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Assignments of Benefits – Validity and Enforceability

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's denial of Defendant Suburban Mobility Authority for Regional Transportation's ("SMART") motion or summary disposition seeking dismissal of certain of Plaintiff David Perkins's claims for no-fault PIP benefits. The Court of Appeals held that Perkins and two of his providers, Renew Physical Therapy ("Renew") and Farmbrook Interventional Pain & EMG ("Farmbrook"), could mutually rescind an assignment Perkins executed in favor of Renew and Farmbrook, such as to allow Perkins to pursue the formerly assigned benefits in the underlying action. Notably, the Court of Appeals reached this holding despite the fact that Renew and Farmbrook would have been precluded from pursuing the assigned benefits in a separate action of their own because of the one-year-back rule.

Read Full Summary

Garden City Rehab, LLC v Integon Nat'l Ins Co (COA – UNP 9/15/2022; RB #4474)

Michigan Court of Appeals; Docket #357617; Unpublished
Judges Cavanagh, Garrett, and Yates; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Evidentiary Issues

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Garden City Rehab, LLC's ("Garden City Rehab" or "Garden City") first-party action against Defendant Integon National Insurance Company ("Integon"). The Court of Appeals held that Garden City Rehab failed to present sufficient evidence to create a question of fact as to whether Montana Sams, its patient assignor/Integon's insured, was injured as a result of the subject motor vehicle accident for purposes of MCL 500.3105.

Read Full Summary

Childers, et al v Progressive Marathon Ins Co (COA – PUB 9/15/2022; RB #4471)

Michigan Court of Appeals; Docket #356914, 356915; Published
Judges Cavanagh, Garrett, and Yates; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
General / Miscellaneous [§3114]
One-Year Notice Rule Limitation [§3145(1)]

TOPICAL INDEXING:
Mend the Hold
Michigan Property and Casualty Guaranty Association (MPCGA – MCL 500.7901, Et Seq.)

In this unanimous, published decision authored by Judge Yates, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiffs Justin Childers and the Michigan Property & Casualty Guaranty Association's ("MPCGA") action against Defendant Progressive Marathon Insurance Company ("Progressive"). The Court of Appeals held, first, that the one-year-notice rule does not apply to actions commenced by either no-fault claimants or the MPCGA against lower priority insurers after a higher priority insurer becomes insolvent. Instead, such claims are subject either to a one-year limitations period which begins to run from the date of insolvency, or the default six-year limitations period set forth in MCL 600.5813 (the Court did not officially decide which was proper, noting only that the plaintiffs' suit was timely under both). The Court of Appeals held, second, that Shaina Groulx, the driver and owner of the vehicle Childers was traveling in at the time of the subject motor vehicle accident, was an "insured" under a Progressive policy issued to her brother, with whom she lived at the time. As a result, Progressive was the highest priority insurer under the version of MCL 500.3114(4) in effect on the date of the accident, August 6, 2011 (before entitlement for "domiciled relatives" was created).

Read Full Summary

MemberSelect Ins Co v Hartford Accident & Indemnity Co (COA – PUB 9/15/2022; RB #4472)

Michigan Court of Appeals; Docket #355326; Published
Judges Gleicher, Kelly, and Patel; Per Curiam
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
General / Miscellaneous [§3101]
General / Miscellaneous [§3105]
General / Miscellaneous [§3114]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff MemberSelect Insurance Company's ("MemberSelect") first-party action for reimbursement against Defendant Hartford Accident & Indemnity Company's ("Hartford"). The Court of Appeals held that Michael McGilligan, who was insured under a commercial auto insurance policy he purchased from Hartford, was entitled to no-fault PIP benefits from Hartford even though the policy purported to exclude PIP coverage for accidents not involving a "covered auto." Hartford could not, to quote the Court, "limit its extension of PIP coverage in a manner inconsistent with [MCL 500.3114(1)]."

Read Full Summary

Cavill v Mich State Police, et al (COA – UNP 9/15/2022; RB #4473)

Michigan Court of Appeals; Docket #357006; Unpublished
Judges Murray, O'Brien, and Redford; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion, Link to Concurrence

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Court of Claims Litigations

In this 2-1, unpublished, per curiam decision (Murray, concurring in part, dissenting in part), the Court of Appeals affirmed the trial court's denial of Defendant State of Michigan's ("the State") motion for summary disposition, seeking dismissal of Plaintiff Martha Cavill's auto negligence action against it. The Court of Appeals held that Cavill complied with MCL 600.6431(2)(d)'s requirement that a notice of intention to file a claim against the State contain '[a] signature and verification by the claimant before an officer authorized to administer oaths,' by signing her notice of intent and having her signature notarized by a notary public. MCL 600.6431(2)(d) does not require—as the State argued—that verification be in the form set forth in MCR 1.109(D)(3).

Read Full Summary

Garden City Rehab, LLC v Integon Nat'l Ins Co (COA – UNP 9/15/2022; RB #4474)

Michigan Court of Appeals; Docket #357617; Unpublished
Judges Cavanagh, Garrett, and Yates; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

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

TOPICAL INDEXING:
Evidentiary Issues

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Garden City Rehab, LLC's ("Garden City Rehab" or "Garden City") first-party action against Defendant Integon National Insurance Company ("Integon"). The Court of Appeals held that Garden City Rehab failed to present sufficient evidence to create a question of fact as to whether Montana Sams, its patient assignor/Integon's insured, was injured as a result of the subject motor vehicle accident for purposes of MCL 500.3105.

Read Full Summary

Nelson v Owusu, et al (COA – UNP 9/15/2022; RB #4475)

Michigan Court of Appeals; Docket #358984; Unpublished
Judges Cavanagh, Garrett, and Yates; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Disqualification of Uninsured Owners / Operators for Noneconomic Loss [§3135(2)]

TOPICAL INDEXING:
Fraud/Misrepresentation
Innocent Third Party Doctrine

Plaintiff Latasha Nelson's first-party action against Defendant Progressive Michigan Insurance Company ("Progressive") and third-party auto negligence action against Defendant Kwadwo Owusu. With respect to Nelson's first-party action, the Court of Appeals held that the trial court made an improper credibility determination in deciding Progressive's motion for summary disposition. Specifically, in ruling that the equities weighed in favor of denying Nelson's claim for no-fault PIP benefits related to the subject motor vehicle accident under a now-rescinded policy issued to her then-boyfriend, Christopher Johnstone, the trial court found that Nelson's claimed ignorance of a misrepresentation Johnstone made to Progressive regarding the two's living arrangement was not believable. With respect to Nelson's auto negligence action against Owusu, the Court of Appeals held that rescission of a policy, ab initio, is a remedy in contract and does not actually change the past for purposes of MCL 500.3135(2)(c), such as would render Nelson retroactively uninsured at the time of the accident.

Read Full Summary

Flowers v Wilson, et al (COA – UNP 9/22/2022; RB #4478)

Michigan Court of Appeals; Docket #354436; Unpublished
Judges Ronayne Krause, Jansen, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Concurrence

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

TOPICAL INDEXING:
Not Applicable

In this unanimous, unpublished, per curiam decision (Swartzle, concurring), the Court of Appeals reversed the trial court's denial of Defendant Auto Club Insurance Association's motion for summary disposition, in which it sought dismissal of Plaintiff Tynina Flowers's first-party action against it. The Court of Appeals held that Flowers could not sue Auto Club for her leftover balance with her medical providers—after Auto Club paid only the portions of the providers' charges which it (unilaterally) deemed "reasonable"—because Auto Club promised to indemnify and defend Flowers if her providers sued her for the balance in the future.

Read Full Summary

Gueye v State Farm Mut Auto Ins Co, et al (COA – PUB 9/22/2022; RB #4477)

Michigan Court of Appeals; Docket #358992; Published
Judges Cavanagh, Garrett, and Yates; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Court Orders for Failure to Comply with Section 3151 and Section 3152 [§3153]

TOPICAL INDEXING:
Exclusions from Underinsured Motorist Benefits [Underinsured Motorist Coverage]
Exclusions from Uninsured Motorist Benefits [Uninsured Motorist Benefits]

In this unanimous, published decision authored by Judge Garrett, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Malick Gueye's action for UM/UIM coverage against Defendant State Farm Mutual Automobile Insurance Company ("State Farm"), but remanded for determination of whether the dismissal should be deemed with or without prejudice. The Court of Appeals also reversed the trial court's summary disposition order dismissing Gueye's first-party action for no-fault PIP benefits against State Farm, remanding for further proceedings consistent with its opinion. As to Geuye's claim for UM/UIM coverage, the Court held that Gueye was barred from filing suit for said coverage because of a provision in his policy which required that he submit to a requested insurance medical examination ("IME") or examination under oath ("EUO") prior to filing his complaint. State Farm requested that he undergo both numerous times pre-suit, but Gueye failed to cooperate. As to Gueye's claim for no-fault PIP benefits, however, the Court of Appeals held that the trial court erred by imposing the most severe sanction under MCL 500.3153 based entirely on its "simply yes-or-no finding that [Gueye] did not attend an IME." Dismissal of a no-fault claim in its entirety is but one order a trial court is permitted to enter under MCL 500.3153 as a sanction for failing to comply with a valid IME request. Before entering that most drastic sanction, however, the court must first weigh the applicable factors set forth in *Vicencio v Ramirez*, 211 Mich App 501 (1995), which dealt with the appropriateness of dismissal based on discovery violatons during litigation.

Read Full Summary

White v Richardson, et al (COA – UNP 9/22/2022; RB #4479)

Michigan Court of Appeals; Docket #356307; Unpublished
Judges Ronayne Krause, Jansen, and Swartzle; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Notice and Statute of Limitations for Underinsured Motorist Coverage [Underinsured Motorist Coverage]
Notice and Statute of Limitations for Uninsured Motorist Coverage [Uninsured Motorist Benefits]

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Jonnie White's action for uninsured or underinsured motorist ("UM/UIM") coverage against Defendant Country Preferred Insurance Company ("Country Preferred"). The Court of Appeals held that a policy provision establishing a two-year limitations period for filing an action for UM/UIM coverage thereunder was valid and enforceable, because Illinois law was controlling in this case. Alternatively, the Court held that if Michigan law was controlling in this case, the shortened limitations period would still be enforceable because such provisions only run afoul of Michigan public policy where the contract in question is issued to a Michigan resident. In this case, the Country Preferred policy was issued to an Illinois resident.

Read Full Summary

Malone v McRell, et al (COA – UNP 9/22/2022; RB #4481)

Michigan Court of Appeals; Docket #356416; Unpublished
Judges Swartzle, Ronayne Krause, and Garrett; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Dissent

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Release and Settlements

In this unanimous, unpublished, per curiam decision, the Court of Appeals affirmed the trial court's summary disposition order dismissing Plaintiff Heather Malone's auto negligence action against Defendant Zhetman Brighton, LC ("Zhetman"). The Court of Appeals held that Malone could not proceed with her action against Zhetman—the employer of Conor McRell, who rear-ended Malone while delivering a pizza—because she entered into a settlement agreement releasing her claims against McRell. Since Zhetman was only vicariously liable for Malone's injuries, a release of her claims against McRell operated as a release of her claims against Zhetman, as well.

Read Full Summary

Williamson, et al v AAA of Michigan (COA – PUB 9/22/2022; RB #4476)

Michigan Court of Appeals; Docket #357070; Published
Judges Shapiro, Rich, and Garrett; Authored
Official Michigan Reporter Citation: Forthcoming; Link to Opinion

STATUTORY INDEXING:
Fraudulent Insurance Acts [§3173a]
Persons Disqualified from Receiving Benefits Through the Assigned Claims Facility [§3173]

TOPICAL INDEXING:
Not Applicable

In this unanimous, published decision authored by Judge Garrett, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Estate of Charles Williamson's first-party action against Defendant AAA of Michigan ("AAA"). The Court of Appeals held that AAA could not deny a claim assigned to it by the Michigan Automobile Insurance Placement Facility (MAIPF) based on fraudulent statement offered during litigation, because the term 'fraudulent insurance act' in MCL 500.3173a "applies only to statements offered during the prelitigation insurance claims process and not to those offered during litigation." The specific fraudulent statement(s) at issue were actually replacement service and attendant care forms produced in response to a AAA discovery request.

Read Full Summary

Epler, et al v Force, et al (COA – UNP 9/22/2022; RB #4482)

Michigan Court of Appeals; Docket #357406; Unpublished
Judges Gadola, Cavanagh, and Kelly; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

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

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed in part, and affirmed in part, the trial court's order granting partial summary disposition to Defendant Home-Owners Insurance Company ("Home-Owners") in a lawsuit combining multiple claims for underinsured motorist ("UIM") coverage arising out of a single car crash. The Court of Appeals held that two of the plaintiffs, Dennis Pierson and Gerald VanVleet—both of whom were traveling as passengers in a vehicle driven by Lloyd Pierson at the time of the crash—were entitled to UIM coverage under Lloyd's Home-Owners policy and their own Home-Owners policies—all of which had UIM limits of $250,000 per person/$500,000 per occurrence—because their own policies contained "excess" other-insurance clauses, making UIM coverage under those policies excess over Lloyd's.

Read Full Summary

Trent v Bristol West Preferred Ins Co, et al (COA – UNP 9/22/2022; RB #4483)

Michigan Court of Appeals; Docket #357787; Unpublished
Judges Cavanagh, Garrett, and Yates; 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:
Amount Owed by No-Fault Insurer in Medicaid Reimbursement Cases [Medicaid Benefits]

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's order granting partial summary disposition to Defendant Bristol West Preferred Insurance Company ("Bristol West") in Plaintiff Linda Trent's first-party action against it. The Court of Appeals held that a question of fact existed as to whether Trent's injuries were caused by the subject motor vehicle accident, resolution of which was necessary to determine whether Bristol West or Medicaid was responsible for Trent's medical bills. If the former, Trent would be entitled to no-fault PIP benefits and, therefore, not "medically indigent" for purposes of Medicaid entitlement, in which case Bristol West would have to pay the reasonable charge for Trent's treatment pursuant to the No-Fault Act—it would not be allowed to merely reimburse Trent's providers for the highly discounted amounts they originally accepted from Medicaid.

Read Full Summary

Wolverine Mut Ins Co v Kemper (COA – UNP 9/29/2022; RB #4485)

Michigan Court of Appeals; Docket #356675; Unpublished
Judges Sawyer, Letica, and Patel; 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 in favor of Plaintiff Wolverine Mutual Insurance Company ("Wolverine") in Wolverine's action for declaratory judgment against Defendant Jeffrey Kemper, on the issue of whether injuries Kemper developed after falling out of his car while while attempting to use a transfer board were caused by a 1987 motor vehicle accident which rendered him a quadriplegic. Relying on *McPherson v McPherson*, 493 Mich 294 (2013), the Court of Appeals held that Kemper's injuries did not arise out of the 1987 accident.

Read Full Summary

Cheema, et al v Progressive Marathon Ins Co, et al (on reconsideration)(COA - UNP 9/29/2022 (RB #4484)

Michigan Court of Appeals; Docket #355910; Unpublished
Judges Jansen, Cameron, and Rick; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion; Link to Dissent

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

TOPICAL INDEXING:
Cancellation and Rescission of Insurance Policies
Fraud/Misrepresentation
Injunctive and Equitable Relief in PIP Cases

In this unanimous, unpublished, per curiam decision (Cameron, concurring in part and dissenting in part), the Court of Appeals vacated the trial court's summary disposition order dismissing Plaintiff Harris Cheema's first-party action against Defendants Progressive Marathon Insurance Company ("Progressive") and State Farm Mutual Automobile Insurance Company ("State Farm"). The Court of Appeals held, first, that there must be a balancing of the equities to determine whether Progressive could rescind the policy it issued to Cheema's company, Overland Transportation, LLC ("Overland"), based on a (perhaps innocent) misrepresentation Cheema made on his original application for coverage. The Court of Appeals held, second, that a question of fact existed as to whether a mutual rescission of the Progressive policy occurred by virtue of the fact that Cheema used the refunded premiums to pay Overland's business expenses. The Court of Appeals held, third, that under the circumstances in this case, Progressive was not barred by the election of remedies doctrine from rescinding the policy after first choosing to cancel it. The Court of Appeals held, fourth, that a question of fact existed as to whether Cheema and Overland were co-owners of the vehicle Cheema was driving at the time of his injury, such that—if Progressive properly rescinded the policy it issued to Overland which covered the vehicle—Cheema would have been required to personally maintain no-fault coverage on the vehicle under MCL 500.3101(3)(l).

Read Full Summary

Executive Ambulatory Surgical Ctr, et al v Auto Club Ins Assoc (COA – UNP 9/29/2022; RB #4487)

Michigan Court of Appeals; Docket #358799; Unpublished
Judges Gleicher, Markey, and Patel; 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 denial of Defendant Auto Club Insurance Association's ("Auto Club") motion for summary disposition, in which it sought dismissal of Plaintiffs Executive Ambulatory Surgical Center and Premier Orthopedic Group PC's ("Premier Orthopedic") first-party action against it. The Court of Appeals held that Joseph Closser—who was diagnosed with a shoulder injury four years after a motorcycle-versus-motor vehicle accident—gave Auto Club sufficient notice of his shoulder injury within one year of the accident by reporting 'neck pain' as one of his early symptoms.

Read Full Summary

Heade, et al v Liberty Mut Ins Co, et al (COA – UNP 9/29/2022; RB #4489)

Michigan Court of Appeals; Docket #359422; Unpublished
Judges Gleicher, Markey, and Patel; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Social Security Disability Benefits [§3109(1)]
Coordination with Other Health and Accident Disability Insurance [§500.3109a]

TOPICAL INDEXING:
Employee Retirement Income Security Act (ERISA – 29 USC Section 1001, Et Seq.)

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order dismissing Plaintiff Jasmine Heade's first-party action against Defendant Liberty Mutual Insurance Company ("Liberty Mutual"). The Court of Appeals held, first, that Liberty Mutual was primarily responsible for Jasmine's medical expenses—not Blue Cross Blue Shield ("BCBSM"), which provided Jasmine with health insurance under a self-funded ERISA plan issued to her father by her father's employer. The Court reached its holding based on the fact that both the Liberty Mutual policy and the BCBSM plan contained unambiguous coordination-of-benefits ("COB") clauses. In such cases, Michigan caselaw establishes that the no-fault policy is deemed primary.

Read Full Summary

Pioneer State Mut Ins Co v McCallister, et al (COA – UNP 9/29/2022; RB #4487)

Michigan Court of Appeals; Docket #359077; Unpublished
Judges Cavanagh, Garrett, and Yates; Per Curiam
Official Michigan Reporter Citation: Not Applicable; Link to Opinion

STATUTORY INDEXING:
Not Applicable

TOPICAL INDEXING:
Innocent Third-Party Doctrine

In this unanimous, unpublished, per curiam decision, the Court of Appeals reversed the trial court's summary disposition order in favor of Plaintiff Pioneer State Mutual Insurance Company ("Pioneer"), in Pioneer's action for declaratory judgment against Defendant Nationwide Mutual Fire & Insurance Company ("Nationwide"). After the subject motor vehicle accident, in which Tyler McCallister was injured while traveling as a passenger in a vehicle insured by Pioneer, Pioneer rescinded the policy covering the vehicle upon discovering evidence of fraud committed by its insureds. Pioneer then attempted to deny Tyler McCallister's claim for no-fault PIP benefits related to the accident, but the Court of Appeals held that the equities weighed against rescission of the policy as to McCallister.

Read Full Summary