HEWSON & VAN HELLEMONT, P.C.

# Newsletter

February 2015

## News & Announcements

### 2nd Annual ICLE No-Fault Summit

Hewson & Van Hellemont, P.C. is happy to have several members of our firm participating in the 2nd Annual ICLE No-Fault Summit taking place in April of 2015 at The Inn at St. John's in Plymouth, Michigan. Both Jim Hewson and Diane Hewson will be giving their own lectures on various no-fault topics. Diane, in addition to giving her lecture, is also a member of the event's planning committee and will serve as a moderator and presenter. Details for the event can be found on the ICLE website.

### American Congress of Rehabilitation Medicine Symposium

Our very own Jim Hewson has been invited to participate in a guest panel during the American Congress of Rehabilitation Medicine (ACRM) symposium taking place October 25-30 in Dallas, Texas. The symposium will be on the topic of independent medical evaluations and Mr. Hewson has been invited to provide the view of an insurance defense attorney. More information on the event can be found at www.acrm.org/meetings.

## Recent Successful Decisions

### Antonio Mercado v. State Farm Mutual Automobile Ins. Co., et al.

Wayne County Circuit Court, Judge John A. Murphy, Case No. 14-005115-NI

Plaintiff filed a lawsuit against State Farm seeking personal injury protection benefits under the Michigan No-Fault Act for alleged injuries purportedly arising out of a pedestrian motor vehicle accident occurring on September 27, 2013. Plaintiff's son had an automobile insurance policy with State Farm and Plaintiff sought coverage under that policy as a resident relative.

Plaintiff, however, was a Mexican citizen and was only visiting his son's family in Detroit when the accident occurred. At the time, he was continuing with an approximately twenty year tradition in which he would travel to the United States on a B-2 visa using his Mexican passport to stay with his son for approximately six months. Plaintiff's testimony established that he lived in Mexico with his wife, daughter, and grandchildren when he was not in the United States. He lived in his daughter's home in Mexico and paid rent to her but did not pay rent to his son while he was in the United States. He left all of his belongings in Mexico when he visited the United States and maintained only a Mexican mailing address.

State Farm moved for summary disposition pursuant to MCR 2.116(C)(10) arguing that Plaintiff was not domiciled with his son at the time of the accident and therefore did not qualify for coverage under the No-Fault Act. MCL 500.3114(1) extends no-fault coverage to relatives of policy holders who are domiciled in the same household. State Farm argued that Plaintiff was a Mexican citizen who was only temporarily staying in the United States. He was a registered voter in Mexico, listed his mailing address as his Mexican address, and left all of his belonging in Mexico when he visited the United States. The very terms of his B-2 visa required that he return to Mexico at the end of the designated term. Plaintiff, State Farm argued, was barred from formulating any intent to permanently or indefinitely stay in Michigan by the terms of his B-2 visa. Further, his twenty year tradition of traveling home upon the expiration of his visa established that he was honoring the prohibitions created by the visa and never intended to stay in the United States.

In light of this, State Farm argued that he could not be deemed to have been domiciled in Michigan and therefore could not receive no-fault coverage as a resident relative under his son's policy. The trial court agreed with State Farm and ruled that Plaintiff was not a resident relative of his son at the time of the accident. State Farm's motion for summary disposition was therefore granted and State Farm was dismissed from the case.

**Demand:** $170,000 - $180,000 **Outcome:** State Farm dismissed from case **Credit:** Patrick McGlinn

### *Jose Garcia, et al. v. State Farm Mutual Automobile Ins. Co., et al.*

Wayne County Circuit Court, Judge Maria Oxholm, Case No. 13-000628-NF

Plaintiff Garcia filed an action seeking no-fault benefits in relation to a purported January 12, 2012, motor vehicle accident. Additionally, Intervening Plaintiffs, The Surgical Institute of Michigan, LLC, Tri-County Medical Transportation, and Max Rehab Physical Therapy, LLC, sought benefits on behalf of Plaintiff Garcia for treatment they allegedly rendered to him as medical providers.

State Farm was assigned Plaintiff Garcia's claim through the Michigan Assigned Claims Plan (MACP). In Plaintiff Garcia's Application to the MACP, he claimed that he had incurred various expenses as a result of his alleged injuries. Among these expenses, Plaintiff Garcia listed attendant care and replacement services he received from Dalmar Mangual-Ramos. Plaintiff Garcia submitted forms to the MACP claiming he began receiving attendant care and replacement services from Ms. Mangual-Ramos beginning on the date of his motor vehicle accident. Ms. Mangual-Ramos, however, testified that she did not see Mr. Garcia until approximately two weeks after his motor vehicle accident. Plaintiff Garcia also listed on the same forms that he received services from Ms. Mangual-Ramos throughout all of July and August 2012. This, however, was clearly incorrect as it was later discovered that Mr. Garcia was incarcerated from July 21, 2012, until August 23, 2012.

Under MCL 500.3173a, a person who presents or causes to be presented a statement as part of or in support of a claim to the MACP, knowing that the statement contains false information concerning a fact or thing material to the claim, commits a fraudulent insurance act. Pursuant to MCL 500.3173a(2), a claim that contains or is support by a fraudulent insurance act "is ineligible for payment or benefits under the assigned claims plan.

Defendant State Farm moved for summary disposition arguing that Plaintiff Garcia's act of including false information in his MACP application clearly violated MCL 500.3173a and thus made him ineligible for any recovery of benefits. Additionally, State Farm argued that the Intervening Plaintiffs were similarly ineligible for recovery of any benefits because they stood in the shoes of Plaintiff Garcia pursuant to *Bahri v IDS Property Casualty Insurance Co*, ___ Mich ___; ___ NW2d ___ (2014). Plaintiff Garcia and Intervening Plaintiffs all voluntarily dismissed their claims prior to the scheduled date for oral arguments on State Farm's Motion for Summary Disposition.

**Outcome:** Voluntary Dismissal by Plaintiffs **Credit:** Michael Jolet, Victoria Hyde, Grant Jaskulski

# *Welcome to Our New Associate Attorneys*

## Erin Danne

Erin Danne attended the University of Michigan - Ann Arbor, where she earned a B.A. in Political Science and Psychology. Ms. Danne graduated with *Honors* in 2009. Before law school, she worked in research for the University of Michigan's Department of Psychiatry and Emergency Medicine. She went on to attend law school at Wayne State University. While at Wayne State, she was an Associate Editor for *Wayne Law's Journal of Law in Society*. She was also an active member of the University's Mock Trial program, where she was a two-time finalist.

Ms. Danne worked for a Plaintiff's medical malpractice firm before joining the Hewson & Van Hellemont team. She has also worked at the Wayne County Prosecutor's Office, a Detroit-based legal aid office, and several tri-county civil litigation firms. Ms. Danne was admitted to the State Bar of Michigan in 2014, and joined Hewson & Van Hellemont, P.C. in January 2015. Her primary focus is No-Fault Insurance Defense.

## Alexander Gualdoni

Alex Gualdoni graduated with a Bachelor's Degree in Criminal Justice from Northern Michigan University in 2005. He went to Michigan State College of Law and received his J.D. in 2014. While in law school, Mr. Gualdoni interned in the legal resources department of the Michigan State Police, assisting with the revision and publication of the Michigan Criminal Law and Procedure Manual, 3rd Edition.

From 2005 until 2012, Mr. Gualdoni proudly served as an officer in the Michigan Army National Guard graduating on the Commandant's List from Military Police Officer Basic Course at Fort Leonard Wood, Missouri in 2006. He completed the Maneuver Captain's Career Course at Fort Benning, Georgia in 2011. He served as a military police platoon leader in Baghdad, Iraq in 2006 through 2007 and as an infantry platoon leader, as well as executive officer in Ramadi, Iraq in 2008. Most recently, he served as an infantry company commander in Shir Khan, Afghanistan in 2012. He retired as Captain in 2012. Mr. Gualdoni was admitted into the State Bar of Michigan in 2014. He is also a member of the Oakland County Bar Association and joined Hewson & Van Hellemont in 2015.

## Syeda Fatmi

Syeda Fatmi graduated from York University in Toronto, Ontario where she received her B.A. in Sociology with honors. Ms. Fatmi came to Michigan in 2007 to pursue her legal education. Syeda attended Thomas M. Cooley Law School on an Honors Scholarship and completed her legal education in international law in 2010.

Ms. Fatmi is licensed to practice law in Michigan and New Jersey. In January 2014, she was called to the Ontario Bar by the Law Society of Upper Canada, and is now a Barrister and Solicitor in Ontario, Canada. Ms. Fatmi's experience includes employment-based immigration and investor-based immigration law. She has helped Foreign Nationals obtain their green cards and assisted investors throughout the world with their immigration status. Ms. Fatmi is multilingual in English, Urdu, Hindi and Punjabi.

## David J. Elmore

David Elmore graduated from Central Michigan University in 2007, where he received his Bachelor's Degree in English Language and Literature. After a year of management with a major retailer, David attended Thomas M. Cooley Law School, where he earned his Juris Doctorate. He graduated *cum laude* in 2012.

Mr. Elmore was admitted to the State Bar of Michigan in 2013. Prior to joining Hewson & Van Hellemont, P.C. in 2015, he worked as an associate attorney in East Lansing. His primary focus was business transaction, commercial litigation and estate planning. Mr. Elmore focuses his practice at Hewson & Van Hellemont around Insurance Fraud Defense and First and Third Party Protection No-Fault benefits.

## William F. Rivard, Jr.

William Rivard graduated from Central Michigan University with a Bachelor of Applied Arts in Broadcasting, and a Minor in Journalism, in December of 2009. From there, he received his Juris Doctor from Thomas M. Cooley Law School in May of 2013, and became licensed to practice law that same year.

While in law school, Mr. Rivard worked as a law clerk for Auto-Owners Insurance Company in Lansing. He also worked as a student attorney for the Washtenaw County Public Defender, gaining valuable courtroom experience representing individuals charged with felonies in Circuit Court. Before joining Hewson and Van Hellemont, P.C. in 2015, Mr. Rivard worked for a private firm, representing medical providers and injured persons in No Fault litigation.

## Stephanie Rivera

Stephanie Rivera received a Bachelor of Arts from the University of Michigan Ann Arbor in 2004. After a successful career in the financial and insurance industry, she returned to school and received her J.D. from Thomas M. Cooley Law School Lansing in 2013. She was admitted to the State Bar of Michigan in 2014.

While in law school, Ms. Rivera was treasurer of the Hispanic Law Society. She was a corporate counsel intern for a leading global automotive supplier where she worked on various corporate governance matters including a major bond deal. She was also an extern in the JAG office of the Michigan National Guard where she worked on estate planning documents for members of the military and other government matters. Prior to joining Hewson & Van Hellemont, P.C., she worked for a mid-size broker/dealer where she supervised compliance and regulatory affairs.

## Kristie Sparks

Kristie Sparks graduated from Michigan State University in 2011 where she received her Bachelor of Arts degree in Political Theory and Constitutional Democracy from James Madison College. While at Michigan State, she was a member of the Order of Omega leadership honor society and Kappa Alpha Theta Sorority.

Ms. Sparks attended Wayne State University Law School and received her Juris Doctorate in 2014. During her law school career, Ms. Sparks participated in Wayne Law's Moot Court Program. She also served as a Student Attorney at the Free Legal Aid Clinic, Inc., and was elected as Chairperson of the Board of Directors in 2013. In addition, Ms. Sparks was a student in the Asylum and Immigration Law Clinic where she specialized in various areas of immigration law. Ms. Sparks was admitted to the State Bar of Michigan in 2014. She joined Hewson & Van Hellemont, P.C. in January 2015 and primarily focuses on No-Fault Insurance Defense.

# Recent Opinions

## *State Farm Mutual Automobile Ins. Co v. QBE Ins. Co, et al.*

**Michigan Court of Appeals**

Unpublished Opinion
Docket No. 319709 & 319710
February 19, 2015

**A police vehicle was "involved in" a motor vehicle accident for no-fault purposes after the vehicle it was pursuing struck a motorcycle. Additionally, the innocent third-party rule bars rescission of an insurance policy on the basis of fraud.**

This was a matter that involved consolidated claims disputing priority between three insurers following a police chase that resulted in a motor vehicle accident.

On the date of the accident, Police Officer Richard Anson conducted a traffic stop of a motor vehicle driven by William Johnson. Officer Anson exited his police cruiser but was unable to make contact with Johnson before Johnson fled from the scene. Officer Anson returned to his vehicle and began to pursue Johnson's vehicle. During the chase, Johnson ran a red light and collided with a motorcycle being operated by Martin Bongers, causing injury to Bongers.

At the time of the accident, Michigan Municipal Risk Management Authority (MMRMA) insured the police vehicle. State Farm insured Bongers' personal vehicle, but not his motorcycle. The vehicle operated by Johnson was registered to his girlfriend, Whitney Gray, but was uninsured. QBE insured a 1999 Oldsmobile driven by Gray but the vehicle was actually titled and registered to another individual. QBE was unaware that the vehicle was registered to someone else and listed Gray as the named insured on the policy.

State Farm moved for summary disposition arguing that the police vehicle was "involved in" the accident and MMRMA therefore was the insurer of highest priority. QBE meanwhile also moved for summary disposition, arguing that it was entitled to rescind its policy of insurance provided to Gray because Gray had procured her policy by defrauding QBE. The trial court denied both motions for summary disposition. State Farm and QBE both filed for leave to appeal, which was granted.

Regarding State Farm's claim, the appellate court applied the principles announced in *Turner v Auto Club Ins Ass'n*, 448 Mich 22; 528 NW2s 681 (1995). In light of *Turner*, the court held that Officer Anson's police vehicle was "involved in" the motor vehicle accident and trial court erred in denying State Farm's motion for summary disposition.

The appellate court, however, did not find error in the trial court's decision to deny QBE's motion for summary disposition. The trial court ruled that the "innocent third-party rule" barred rescission of the QBE insurance policy issued to Gray. The innocent third-party rule specifies that insurance policies cannot be rescinded on the basis of fraud when there is a claim involving an innocent third party. QBE argued that the innocent third-party rule was abrogated by *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012). The appellate court disagreed, and held that *Hyten* only allowed for reformation to avoid liability for contractual amounts in excess of statutory minimums. Further, the court held that *Hyten* did not overrule the use of the innocent third-party rule in the context of PIP benefits and an injured third party who was statutorily entitled to such benefits.

Since Bongers's entitlement to PIP benefits was statutory in nature, the appellate court held that he was protected by the innocent third-party rule. Therefore, the trial court's denial of QBE's motion for summary disposition was affirmed.

It is worth noting that this decision appears to contradict *Frost v Progressive Michigan Ins. Co*., No. 316157, 2014 WL 4723810, (Mich. Ct. App. Sept. 23, 2014). The *Frost* court, relying on *Hyten,* held that an insurer could rescind a policy *ab initio* on the ground of fraud in the application for insurance, even if the rescission affected an innocent third party. The court in this instant matter, however, relied on *Hyten* in coming to the opposite conclusion and barred any such rescission. These contradictory interpretations of *Hyten* will likely need to be reconciled by the court in the near future.

## *Bronson Methodist Hospital v. Michigan Assigned Claims Facility*

**Michigan Court of Appeals**

Unpublished Opinion - Docket No. 317864
February 19, 2015

**The MACP failed to prove the owner of a motor vehicle was "obviously ineligible" for benefits and therefore could not deny an application to assign the claim to an insurer.**

Bronson Methodist Hospital treated Cody Esquivel for injuries he sustained during a motor vehicle accident. Mr. Esquivel was airlifted from the scene of the accident but eventually was found to have no serious injuries. He was discharged within 24 hours and the final bill for his treatment was approximately $21,000.00. The hospital staff, however, failed to collect any information regarding Mr. Esquivel's no-fault automobile coverage prior to his discharge. Bronson made several attempts to locate and contact Mr. Esquivel but was ultimately unsuccessful.

Bronson therefore filed an application for benefits with the Michigan Assigned Claims Facility, now the Michigan Assigned Claims Plan (MACP). The MACP denied Bronson's application and Bronson subsequently filed suit against the MACP.

Bronson filed a complaint for declaratory judgment and mandamus requiring the MACP to approve their application and assign the claim to an insurer. Bronson argued that the MACP was statutorily obligated to assign the claim pursuant to MCL 500.3172(1) because no insurance provider could be identified. The MACP filed a motion for summary disposition auguring that Mr. Esquivel, as the registered owner

of the vehicle, either maintained an insurance policy on the vehicle or failed to maintain insurance on the vehicle. In either case, the MACP argued that neither Mr. Esquivel nor Bronson would be entitled to assignment of the claim to an outside insurance company pursuant to MCL 500.3113 and MCL 500.3173. The circuit court agreed with the MACP's analysis that since Mr. Esquivel was the registered owner of the vehicle, he was ineligible for assigned claim benefits. Therefore, the court granted MACP's motion for summary disposition.

The appellate court, however, was less inclined to agree. It noted that the pursuant to MCL 500.3173a, the MACP must make an initial determination of the claimant's eligibility for benefits but can only deny an application if it is an "obviously ineligible claim." If the claim is not obviously ineligible, the MACP must assign the claim to a servicing insurer. Upon assignment, the servicing insurer shall then investigate the claim and may seek to transfer the claim or secure reimbursement from a higher priority insurer if one is identified.

The appellate court agreed with the MACP that if Mr. Esquivel failed to maintain no-fault insurance at the time of the accident he would be barred from receiving PIP benefits from an assigned insurer. Similarly, if Mr. Esquivel had a family member in his household that maintained no-fault insurance at the time of the accident, that insurer would take priority. The appellate court, however, held that the MACP had failed to carry its burden to demonstrate with admissible evidence that either of these scenarios existed and thereby made Bronson "obviously ineligible" to make a claim for benefits.

The question of whether or not Mr. Esquivel had insurance at the time of the accident was the central material fact question of the case. Because the MACP failed to present anything in the record to establish that Mr. Esquivel was actually uninsured, the appellate court held that the circuit court erred in granting the MACP's motion for summary disposition. The matter was remanded for further proceedings consistent with the appellate court's ruling.

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## *Weela Lowell v. Progressive Michigan Ins. Co.*

**Michigan Court of Appeals**

Unpublished Opinion - Docket No. 318709

January 15, 2015

**Plaintiff confronted alleged robbers as they attempted to escape in their vehicle. Plaintiff was dragged to the ground when the vehicle drove away. Plaintiff's injuries that resulted from the movement of the vehicle satisfied the "arising out of" standard of MCL 500.3105(1).**

Plaintiff was investigating the sound of an alarm coming from his garage when he came across two masked men. Upon seeing Plaintiff, the masked men ran from the garage. Plaintiff pursued them to their motor vehicle and punched their windshield as they were getting into the vehicle. The blow to the windshield broke Plaintiff's right hand and right wrist. Plaintiff continued to try and stop the masked men and was holding onto the driver's side mirror of their vehicle as they started to drive away. Plaintiff, who was still holding onto the driver's side mirror, was dragged to the ground as a result of the vehicle's movement. The fall caused injuries to Plaintiff's left hand and ribs.

Plaintiff filed an action for first-party no-fault benefits and Progressive subsequently moved for summary disposition. Progressive argued that Plaintiff was not entitled to PIP benefits under MCL 500.3105(1) because his injuries did not arise out of the operation or use of a motor vehicle as a motor vehicle. The trial court agreed and granted Progressive's motion and Plaintiff subsequently appealed the decision.

The appellate court agreed with the trial court regarding the injuries to Plaintiff's right hand and wrist. The court stated that no reasonable mind could conclude that Plaintiff's act of punching a stationary vehicle arose out of the operation or use of a motor vehicle.

However, the appellate court disagreed with the trial court's decision regarding Plaintiff's other injuries. Plaintiff sustained injuries to his left hand and ribs after the vehicle began moving and he fell. According to the appellate court, the reason that Plaintiff was holding onto the driver's side mirror was irrelevant. The critical question was whether or not there was a relationship between his injury and the use of the vehicle as a motor vehicle. The appellate court held that Plaintiff's left hand and rib injuries were directly related to the fact that the vehicle was in motion and being used for transportation. Therefore, a reasonable juror could have concluded that the operation of the vehicle caused Plaintiff to fall and sustain the injuries to his left hand and wrist. Therefore, the appellate court held that the trial court erred in granting summary disposition to Progressive on the issue of Plaintiff's left hand and rib injuries. The matter was remanded for further proceedings consistent with the judgment.

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## *Antoinne D. Thomas v. 1156729 Ontario Inc., et al.*

**United States District Court**
**Eastern District of Michigan**

Docket No. 13-12283

December 17, 2014

**An unemployed college student had insufficient proof of wages he would have earned in order to support a valid wage loss claim under the no-fault act.**

Plaintiff filed a four-count complaint in the U.S. District Court for the Eastern District of Michigan seeking to recover damages for injuries he sustained in a motor vehicle accident. Plaintiff struck a semi-truck during the accident. The semi-truck was driven by Defendant Danny Myslik and owned by Defendant 1156729 Ontario Inc. The Court had jurisdiction over the case by nature of the fact that defendants were of Canadian citizenship. Plaintiff's claim,

however, remained subject to Michigan's no-fault insurance laws.

One of Plaintiff's four complaints was for wage loss benefits. Defendants moved for partial judgment, arguing that Plaintiff had failed to present sufficient evidence to support his wage loss claim.

Defendant's presented evidence that showed Plaintiff had a sporadic work history and had not worked in several years. Plaintiff held several seasonal jobs in the past but could not present any evidence demonstrating he held any job for more than a few months. Based on employment records, it appeared that Plaintiff had not worked at any point during the five years prior to his motor vehicle accident.

Plaintiff argued that he was pursuing his college education during this time, but records indicated his schooling was also sporadic. He enrolled at Wayne State University in 2004 and Baker College in 2012, but failed to remain enrolled for longer than one year at either school. In 2012, he enrolled at Wayne County Community College and completed one semester before his motor vehicle accident occurred. Plaintiff indicated in his deposition that he had not made a decision regarding enrolling in a second semester at the time his accident occurred.

Defendants moved for partial summary judgment of Plaintiff's wage loss claim under Federal Rule of Civil Procedure 56. The Court, in its opinion on Defendants' motion, noted that MCL 500.3135(3)(c) entitles an individual to "work loss" damages if he or she can show that they had a job and lost income they would have received *but for* a motor vehicle accident. As for unemployed college students, the Court noted the decision of the Michigan Court of Appeals in *Soranno v. Abbas*, No. 296571, 2011 WL 1902077 (Mich. App. May 19, 2011), which held that an unemployed plaintiff injured in a motor vehicle accident seeking to recover work loss damages must provide "specific evidence of wages that would, rather than could, have been earned but for the injuries." (Opinion at 8). Plaintiff, in this matter, was unable to present sufficient probative evidence of future employment. His work history was limited and irregular, he had never worked for more than a few months and there were significant gaps in his employment record. Plaintiff's intentions to find work after school were insufficient to satisfy the substantive requirements of the no-fault act. Therefore, the court granted partial summary judgment in favor of Defendants in relation to Plaintiff's wage loss claim.

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## *Matther Lanter v. Kevin Jay Stephens, et al.*

**Michigan Court of Appeals**

Unpublished Opinion - Docket No. 318709
January 29, 2015

**Plaintiff was the constructive owner of a vehicle despite not satisfying a condition precedent to the agreement to transfer title of the vehicle.**

Plaintiff's mother was the owner of a Chevrolet Impala which she had not used in several months. She agreed to transfer the car's title to Plaintiff provided that Plaintiff pay for necessary repairs to the car and he purchased insurance for it. After Plaintiff and his mother entered into this agreement, Plaintiff began using the vehicle, despite not purchasing insurance for the vehicle. On May 11, 2012, Plaintiff was operating the uninsured vehicle when it stalled in the center lane of a highway. While stalled, the vehicle was struck by a truck driven by Defendant Stephens. Plaintiff suffered extensive damage to his teeth and injuries to his back and hip as a result of the accident.

Plaintiff filed suit against Defendant Stephens arguing he acted negligently. Plaintiff also filed suit against Grand Rapids Transport, the employer of Defendant Stephens, arguing it was vicariously responsible for the actions of Defendant Stephens. After discovery, Defendants moved for summary disposition pursuant to MCR 2.116(C)(10). The Defendants argued that Plaintiff was the constructive owner of the vehicle and therefore was precluded from recovery of damages pursuant to MCL 500.3135(2)(c) because he failed to maintain insurance on the vehicle. The trial court agreed with the Defendants argument and granted their motion.

Plaintiff, on appeal, argued that pursuant to MCL 500.3101(2)(h)(i), he was not the owner of the vehicle at the time of the accident because he never purchased insurance on the vehicle and therefore failed to satisfy one of the conditions precedent to his mother's agreement to transfer the title to him.

The appellate court disagreed, and held that under 500.3101(2)(h)(i) it is inconsequential whether conditions precedent to the agreement to transfer ownership of a vehicle are satisfied. "Instead, the relevant inquiry is whether the agreement itself contemplated that plaintiff would eventually have permanent, exclusive use of the vehicle." (Opinion at 4). Because Plaintiff's agreement with his mother contemplated that he would eventually have permanent and exclusive use of the vehicle, he was the "owner" of the vehicle as the term is used in MCL 500.3101(2)(h)(i). Therefore, he was barred from recovery of damages under MCL 500.3135(2)(c) and the decision of the trial court to grant summary disposition in favor of Defendants was affirmed.

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## *Patmon, et al. v Nationwide Mutual Fire Insurance Company*

**Michigan Court of Appeals**

Unpublished Opinion - Docket No. 318307
December 23, 2014

**A no-fault policy covering relatives by marriage includes coverage for a stepchild of the policy owner even after the death of the stepchild's biological parent.**

Plaintiff was a 39 year-old woman at the time of this case. Her parents divorced when she was very young and her mother married Melvin

Jordan when Plaintiff was approximately five years old. Jordan and Plaintiff's mother remained married for 28 years until Plaintiff's mother passed away in 2009. Plaintiff lived with her mother and Jordan for the majority of the time they were married and continued to live with Jordan after her mother's death. Plaintiff pays Jordan $150.00 a month in rent.

Plaintiff was subsequently involved in a motor vehicle accident and sought to recover first-party benefits as a resident relative under Jordan's Nationwide Insurance policy. Nationwide moved for summary disposition pursuant to MCR 2.116(C)(8) and (10) arguing that the death of Plaintiff's mother terminated her status as Jordan's stepdaughter. Nationwide did not dispute that Plaintiff resided with Jordan but it argued that Plaintiff was not entitled to benefits as a "relative" under Jordan's policy. The policy defined "relative" as someone regularly living in your household and who is related to you by blood, marriage, or adoption. The trial court stated that the death of Plaintiff's mother ended the marriage but it did not terminate Jordan's status as Plaintiff's stepfather. Therefore, the trial court denied Nationwide's motion. Nationwide subsequently filed an interlocutory appeal.

The Michigan Court of Appeals noted the policy language offered no guidance in determining whether the death of the biological parent terminates the "relation...by marriage." Further, the court pointed out that it could not find any Michigan case law which interpreted the phrase "relation...by marriage." The Court, however, looked to a number of similar cases from other states and even a Michigan case that did not involve the no-fault act. In all of these cases, the insurance policy language in question closely resembled the language in Jordan's Nationwide policy. In each case, the courts held that the policy language subsumed a stepparent relationship even when the biological parent passes away. Based on this weight of authority, the Court held that the phrase "related by marriage" encompassed a stepparent relationship even in the absence of the biological parent. Therefore, the trial court's decision to deny Nationwide's motion for summary disposition was affirmed.

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## *Cierra Kurtm, et al. v Home-Owners Ins. Co., et al.*

**Michigan Court of Appeals**

Unpublished Opinion - Docket No. 317565

December 23, 2014

**Plaintiffs injured while inside of an inoperable motor vehicle that was hit by another motor vehicle are entitled to PIP benefits.**

In a matter comprising two consolidated cases, the key issue for the court to decide was which insurer had priority. The relevant event took place on February 19, 2012. On that date, the four Plaintiffs were sitting in a disabled Ford Taurus smoking cigarettes. The Taurus belonged to Ebony Abrams but had not worked in approximately three months. Abrams testified that she had been told her engine was blown but that she had intended to have the engine fixed at some point. Other than the blown engine, the rest of the vehicle remained intact. While the Plaintiffs were seated in the disabled Taurus, a vehicle driven by Linwood Bynes collided with the Taurus and caused injuries to the Plaintiffs. None of the Plaintiffs had their own insurance or lived with a relative or spouse who was insured, therefore State Farm was assigned as the claims carrier for the Plaintiffs.

State Farm argued that since the Taurus was not operational at the time of the accident, it was not being used or occupied "as a motor vehicle" and the Plaintiffs were actually akin to pedestrians and not passengers in a motor vehicle as required for protection under MCL 500.3114(4). State Farm argued that pursuant to MCL 500.3115(1), the insurer of a motor vehicle involved in an accident has first priority to pay PIP benefits to injured persons who are not occupants of a motor vehicle. Auto-Owners was the insurer of Mr. Bynes's vehicle. State Farm moved for summary disposition, arguing that Auto-Owners had priority pursuant to MCL 500.3115(1) since the Plaintiffs were not occupying a motor vehicle at the time they were injured. The trial court granted State Farm's motion and Auto-Owners appealed.

MCL 500.3101(2)(e) defines "motor vehicle" in part as a "vehicle, including a trailer, operated *or designed for operation* upon a public highway by power other than muscular power." (Emphasis added). The appellate court found this language to be plain and unambiguous. According to the court, "[a]lthough the Taurus would not start at the time of the accident, it was clearly a vehicle 'designed for operation' upon a public highway." (Opinion at 5). Besides the blown engine, the vehicle remained intact as designed.

State Farm argued that the court should interpret the term "occupant" in MCL 500.3114(4) in the same manner as it defined "occupying" in MCL 500.3106(1)(c), the parked vehicle exception. The appellate court, however, held that that the two statutory provisions were distinct. MCL 500.3106 expressly required that the parked vehicle be used as a motor vehicle in order for the exception to apply. MCL 500.3114(4), however, does not include similar language and plainly applies to person suffering accidental bodily injuries arising from a motor vehicle accident while an occupant of a motor vehicle.

The court determined that the Plaintiffs were occupants of a motor vehicle for purposes of the no-fault act. Accordingly, they were entitled to PIP benefits from their appointed claims carrier, State Farm, which had priority over Home-Owners. Consequently, the decision of the circuit court granting summary disposition in favor of State Farm was reversed.

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HEWSON & VAN HELLEMONT, P.C.