

News & Announcements

Hewson & Van Hellemont, P.C.'s Biggest Loser Campaign

In the never-ending quest to stay healthy, Hewson & Van Hellemont, P.C. is putting on their very own version of the Biggest Loser. With the help of the Wellness Committee, a 13-week long endeavor has begun, with the winner showing the largest percentage of body weight lost. There has been a huge turnout. Be sure to stay away from those free cookies and delicious cheese bagels everyone!



2015 Mittens for Detroit Drive

HVH participated in the 2015 Mittens for Detroit Drive. The drive went from October 1st through January 31st. We were able to collect over 150 pairs of mittens and gloves for both children and adults. Great job everyone!

Flint Crisis

A sobering reality hit us all when we heard about our family, friends, and neighbors in Flint, Michigan being unable to even drink from their own faucets. The use of water is something that we all take for granted, and the residents of Flint, MI have been dealing with something that is hard to even comprehend. As the news passed over every media outlet, HVH started to gather water. In addition, HVH has donated to the Community Foundation of Greater Flint, an organization dedicated to the medical treatment of the children of Flint. This Organization evaluates the children's exposure to lead, particularly ages 0-6. A great organization founded by Dr. Mona Hanna-Attisha. As this crisis continues, HVH continues to seek opportunities to help in any way possible. A special thanks to everyone who has participated in these efforts. When one of us goes down, the rest stand up.

Upcoming Opportunities

Pancreatic Cancer Walk on Behalf of Dr. Gene Mitchell

On behalf of the HVH Wellness Committee, HVH will be kicking off spring by participating in the Pancreatic Cancer Walk on behalf of our beloved friend, Dr. Gene Mitchell. The event will be held on May 14, 2016 at Ford Field in Detroit. The event is a one mile walk/run.

We are all better people for having been blessed with the opportunity and privilege of knowing and working with Dr. Mitchell. Dr. Mitchell was a not only a great man professionally, but also a friend. His presence will be missed by all of us and by participating in this walk, it helps us honor a man that made such an impact on all of us.

Race for the Place

The Wellness Committee would like to invite you to participate in the "The Race for the Place" that takes place on the MSU campus in East Lansing on Sunday, April 17th. The Race for the Place is the largest annual fundraiser for the MSU Safe Place and allows the program to continue to provide vital services to members of the MSU and greater Lansing communities who experience relationship violence and stalking. This is a family friendly event, which includes events for kids of all ages as well a visit from Sparty.

Welcome to Our New Attorneys

Benjamin Manson

Benjamin Manson graduated with a B.A. in Political Science and Pre-Law from Michigan State University in 2000. He then continued on to obtain his Juris Doctorate from Michigan State in 2003. He was admitted to the State Bar of Michigan in 2003 and to the United States District Court, Eastern District of Michigan in 2005.

While in law school, Mr. Manson was in the inaugural class for the school's Trial Practice Institute. He also served as president of the Jewish Legal Society for two years and participated in the mentor program for incoming students. Mr. Manson was also a recipient of the Ralph M. Freeman Law School Scholarship Award for exhibiting high morals and ethics. While in law school, he held a position in the Wayne County Prosecutor's Office trying criminal cases.

Prior to joining Hewson & Van Hellemont in 2016, Mr. Manson has spent his career aggressively litigating and defending personal injury cases, including first and third party automobile negligence, premises liability, dog bite, general negligence, vicarious liability, contractual disputes and property damage.

Brad Schafer

Brad Schafer went to the University of Michigan-Ann Arbor, where he graduated with a Bachelor's Degree in English. After graduation, Brad worked as an analyst at Human Resources firm before changing career paths and enrolling in law school.

Brad attended the University of Detroit Mercy School of Law. During Law School he first worked as an Insurance Defense Paralegal and later served as Court Clerk to the Honorable Denise Langford Morris at Oakland County Circuit Court for three years.

Brad joined Hewson & Van Hellemont P.C. in 2016, shortly after his admission to the State Bar of Michigan.

Stephen Wezner

Stephen Wezner graduated from The University of Michigan, Ann Arbor in 2002 with a B.S.E. in Engineering.

After a successful career as a Plant Manager, Mr. Wezner decided to make a career change and pursued a Law Degree while also joining a large Insurance company handling Auto Physical damage claims as well as first and third party litigated claims. Mr. Wezner advanced to a Senior Claims Representative while attending Law School at night at the University of Detroit Mercy.

Recent Opinions

Pansy Reid v Michigan Property & Casualty Guaranty Association Michigan Court of Appeals

Unpublished Opinion - Docket No. 323673
January 21, 2016

A false admission on an insurance application is not necessarily a material misrepresentation without bringing forth evidence to establish that the misrepresentation would have led the insurer to reject the insured's application for insurance or to charge a higher premium for the policy.

Pansy Reid was injured in a motor vehicle accident on November 14, 2012. At the time of the accident, Plaintiff lived with her daughter and son-in-law, Melissa and Philip Parham, and she had been living with them for several years. The accident occurred while she was driving a vehicle owned and registered by Philip. When completing applications for insurance in 2008 and 2009, Philip answered "no" when asked if there were "additional licensed residents" in the household or "additional drivers" of the vehicles. It was undisputed that Plaintiff lived with the Parhams when Philip completed these forms and that she was a licensed driver.

Plaintiff subsequently filed suit alleging that Michigan Property & Casualty Guaranty Association (Michigan Property) failed to pay benefits under a no-fault policy. Michigan Property, however, moved for summary disposition arguing that the insurance applications completed by Philip contained material misrepresentations or fraudulent statements that rendered the policy void *ab initio*. The trial court denied the motion and Michigan Property appealed.

The Appellate Court opined that insurance policies are contracts and subject to the same contract construction principles that apply to any other species of contract. Therefore, the common-law defense of fraud, which includes fraudulent misrepresentations, innocent misrepresentations, and silent fraud, is a defense to avoid the policy.

However, to establish a claim of fraudulent misrepresentation, that party alleging fraud must meet six factors, one of which is that the misrepresentation be material. This is proven if communication of the misrepresentation would have had the effect of substantially increasing the chances of loss, leading to a rejection of the risk or the charging of an increased premium. Here, the Appellate Court held that Michigan Property failed to satisfy its initial burden of bringing forth evidence to establish that any present misrepresentation by Philip would have led defendant to reject Philip's application for insurance or to charge a higher premium for the policy. Therefore, a material question of fact remained. The Appellate Court affirmed the trial court's denial of defendant's motion for summary disposition.

Cecilia Peace v State Farm Mutual Automobile Insurance Company and Sherre Solomon Michigan Court of Appeals

Unpublished Opinion - Docket No. 323891
January 21, 2006

MCL 500.3142 does not prevent Plaintiff from filing suit even if he or she fails to first submit proof of his or her personal protection insurance (PIP) claims to State Farm, and a serious impairment of a body function only requires a normal life be affected with no temporal requirement.

Cecilia Peace was injured when Sherre Solomon struck her while she was riding her bicycle on Southfield Road on August 14, 2013. The accident rendered Plaintiff unconscious, and she was hospitalized for two days. Plaintiff testified that prior to the accident she had no ongoing problems with her neck, back, arms, or knee. However, after the accident, Plaintiff sought treatment for recurring pain for these areas. In addition, an MRI showed diffuse disk bulges and palpable left foraminal broad-based disc protrusion. Plaintiff stated she was not able to engage in her usual tasks, such as cleaning, gardening, and

caring for her grandson, for three months following the accident.

While Plaintiff was mostly reimbursed for her medical expenses, Plaintiff filed suit against State Farm seeking PIP benefits for payment of her remaining medical expenses as well as wage loss and replacement services expenses incurred in the three months following her accident. In addition, Plaintiff also claimed that she was entitled to uninsured motorist benefits. The trial court granted State Farm's Motion for Summary Disposition finding no genuine issue of material fact as to whether Plaintiff suffered a threshold injury within the meaning of MCL 500.3135 as required to obtain uninsured motorist benefits under the State Farm policy, and that Plaintiff's claim for PIP benefits must be dismissed because Plaintiff failed to produce evidence that she notified State Farm about the PIP expenses at issue or that State Farm denied her requests for reimbursement. Plaintiff appealed both decisions.

Regarding the PIP benefits issue, the Appellate Court opined that the plain language of MCL 500.3142 does not require an insured to submit proof of loss to an insurer before filing suit. Instead, MCL 500.3142 dictates when PIP benefits will be considered "overdue," it does so for purposes of defining when an insured may be eligible for interest on overdue benefits. Therefore, although a failure to submit reasonable proof of Plaintiff's claims to State Farm may render her unable to collect interest; it does not preclude Plaintiff from bringing a suit for PIP benefits altogether.

Concerning the threshold injury issue, the Appellate Court opined that the question as to an objectively manifested injury of an important body function needs only to affect one's ability to lead his or her pre-incident normal life without express temporal requirements. The Appellate Court considered the evidence brought forward in a light most favorable to Plaintiff. Plaintiff had new chronic pain that led her to seek medical treatment and take pain medication. She had documentable injuries to her cervical spine and her knee as well as nerve root irritation.

Finally, she testified that she was unable to keep up her normal activities for three months following the accident. The Appellate Court found that the trial court erred by concluding as a matter of law that she had not suffered a threshold injury within the meaning of MCL 500.3135.

The decision was reversed and remanded for further proceedings consistent with the opinion of the Appellate Court.

***Michigan Head & Spine Institute
PC v State Farm Mutual
Automobile Insurance Company***
Michigan Court of Appeals

Unpublished Opinion - Docket No. 324245
January 21, 2016

A healthcare provider seeking payment under a no-fault insurance policy stands in privity with an injured party who previously brought a lawsuit against the insurer attempting to claim benefits under the same policy.

On December 15, 2011, Ashford Garley sustained bodily injury in a motor vehicle accident, after which he obtained medical services from several providers, including Michigan Head & Spine Institute PC (MHSI). State Farm believed it paid all bills related to the accident, which left some medical bills unpaid, including bills submitted by MHSI. Garley personally filed suit on August 13, 2012 that resulted in a jury verdict for State Farm. The jury explained, "We think all bills related to the accident have been paid and no more money is owed."

Thereafter, MHSI filed this lawsuit seeking payment of Garley's bills under the no-fault act. State Farm moved for summary disposition under MCR 2.116(C)(7) based on the applicability of res judicata and/or collateral estoppel. State Farm argued that MHSI stood in privity with Garley because MHSI sought no-fault benefits on behalf of Garley and such a claim was precluded because the question of State Farm's liability had been previously litigated in Garley's action against State Farm. The trial court entered summary disposition in favor of State Farm based on the

application of res judicata and collateral estoppel. MHSI appealed as of right.

The Appellate Court explained that Michigan follows a broad approach to the application of res judicata, and it will be applied to bar "not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." The Appellate Court opined that the same group of operative facts underlying Garley's lawsuit give rise to MHSI's claims for payment of MHSI's bills; both cases rest on Garley's entitlement to benefits for payment and medical care. Garley incurred all the medical costs at issue in MHSI's case before he filed his lawsuit in August of 2012. In addition, all of MHSI's medical records pertaining to Garley were introduced into evidence during Garley's trial. The Court noted Garley plainly could have sought payment of MHSI's medical bills during his trial and, if MHSI felt its interests were not being adequately protected, MHSI could have intervened in Garley's lawsuit to protect its rights. The Appellate Court did not address whether collateral estoppel also entitled State Farm to summary disposition. Finally, the Court found that MHSI's rights to due process and statutorily to reimbursement of medical expenses under MCL 500.3112 were not violated because of the shared identify of interests between MHSI and Garley, which ensured that MHSI's rights were adequately protected.

The trial court properly granted State Farm's motion for summary disposition based on the application of res judicata.