

News & Announcements

HEWSON & VAN HELLEMONT, P.C. NOW SERVICING YOUR NEEDS IN FLORIDA!

June 1st marks the opening of our Fort Myers location. The expansion allows HVH to support current clients and add new clients. The office is located at 12800 University Drive, Suite 420 Fort Myers, FL 33907.

Please join us in welcoming Aaron Pruss to the firm as the Managing Partner of the Fort Myers office. We are very excited to have Aaron as a member of the HVH family.

HEWSON & VAN HELLEMONT, P.C.'S PURPLE STRIDE DETROIT WALK 2016



On Saturday, May 14th, HVH employees had the opportunity to help raise awareness and honor those whose lives have been taken by Pancreatic Cancer, including our very own, Dr. Gene Mitchell. This was Detroit's first Purple Stride Pancreatic Cancer event. There was a huge turnout. Multiple teams, including ours - Arteries of Adamkiewicz, filled Ford Field with positive vibes and spread hope and support to families, survivors and those mourning the loss of a loved one. The speeches from survivors and family members were incredibly emotional, yet inspirational. A speaker, during the opening ceremony, stated: "It is in our darkest moments that we see the light." -- A statement that couldn't be truer. The strength the survivors have is undeniable. We know that Dr. Mitchell exuded that same strength. While he was not with us in person, he was with us in spirit.

After the opening ceremony, the teams geared up to walk one mile around Detroit. With our "Wage Hope" banners held high and proud we braved the blustery weather and walked in honor of Dr. Mitchell.

On behalf of the firm, we'd like to thank all who participated and donated their time for this great cause. It was awe-inspiring to see so many people from the firm come together to support the cause and Dr. Mitchell's family during this difficult time of adjustment and mourning.



We look forward to participating again next year! Team bracelets are available for purchase with the proceeds supporting the effort in honor of Dr. Mitchell. If interested contact Rachel Russo at russo@vanhewpcc.com or Michelle Wypiszewski at michellew@vanhewpcc.com

TIGERS OPENING DAY CHARITY DRIVE

Each year, HVH has a special "Detroit Tigers" raffle. Staff can purchase raffle tickets for a chance to attend Opening Day. The proceeds from the raffle go to a local charity. This year we selected Open Hands Food Pantry located in Royal Oak, Michigan. Open Hands helps individuals who are unemployed, senior citizens and children, be free from hunger. In 2015, they provided food for over 13,500 people. For more information about this worthy organization, please visit www.openhandspantry.org

CONGRATULATIONS!!!



Please join us in congratulating Michael Jolet for being the newest board member on the Michigan Defense Trial Counsel. Mr. Jolet has served as the Co-Chair for the Insurance Division for the past year and recently was invited by his peers to serve on the board.



Amber Girbach was the proud recipient of the 2016 MDTC Young Lawyers Golden Gavel Award. The Awards Banquet was held at The Atheneum Suite Hotel in Detroit on May 13, 2016.



Grant Jaskulski presented the No-Fault Law Update "Year in Review" at the 2016 MDTC Annual Meeting and Conference held at Atheneum Suite Hotel in Detroit on May 13, 2016.

(For a copy of the Update send request to gwright@vanhewpc.com)

WELCOME TO OUR NEW ATTORNEYS

Jeffrey Jelinski



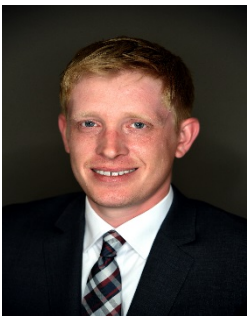
Jeffrey Jelinski graduated in 2003 with a B.A. in Political Science from the University of Michigan. He then continued at the University of Detroit Mercy School of Law obtaining his Juris Doctor in 2006. He was admitted to the State Bar of Michigan the same year.

During his time in law school, Mr. Jelinski served on the Law Review and took part in the school's Moot Court program. He, also, worked as a law clerk for a Plaintiff's personal injury firm and was hired as an attorney after passing the bar. While at that firm, he was able to gain valuable insight into the analysis of first and third party auto related claims.

Prior to joining Hewson & Van Hellemont in April 2016, Mr. Jelinski worked at a defense firm specializing in toxic tort cases. At a prior firm he also handled first party auto claims aggressively defending his client's interests.

Mr. Jelinski's insight on both the Plaintiff and Defendant sides of personal injury cases, allow him to effectively approach, research and defend a litigation matter with a wealth of knowledge and experience.

Jason Church



Jason Church is an experienced trial lawyer and business attorney at Hewson & Van Hellemont's Oak Park, Michigan office. For nearly a decade, Jason has represented insurance industry clients, small businesses and private individuals in a wide range of complex matters across the state. He was recognized as a "Rising Star" by Michigan Super Lawyers in 2013, 2014, 2015 and 2016.

Jason earned his law degree from Wayne State University Law School in 2008, where he was awarded the Board of Governors Scholarship and was a member of the school's national trial advocacy competition team. He is also a 2005 graduate of Michigan State University, where he was a Broad Scholar and member of the Phi Alpha Theta History Honor Society.

Before joining Hewson & Van Hellemont in March 2016, Jason worked as a litigation attorney with one of Michigan's largest law firms, and as a sole practitioner advising small businesses and private individuals. Jason, in 2008, was admitted to both the State Bar of Michigan and to practice in the United States District Court for the Eastern District of Michigan. He is an active member of the Oakland County Bar Association, State Bar of Michigan, and Michigan Defense Trial Counsel.

Aaron Pruss



Mr. Pruss is Board Certified by the Florida Bar in Construction Law. As an expert in this complex area of practice, Mr. Pruss possesses extensive knowledge and experience in all areas of construction law affecting corporate and individual clients, including litigation of construction-related disputes and the drafting and negotiation of contracts for various delivery methods. The contracts include prime construction, design-build, material supply, construction management and design professional contracts as well as sub-contracts for commercial, residential and educational institution projects. Mr. Pruss' broad legal background also includes first-chair litigation of complex civil and commercial disputes and drafting and negotiation of various real estate, property management and commercial contracts. Mr. Pruss is well versed in insurance coverage, general liability and risk management issues, including disaster preparedness and reconstruction, offering counsel and guidance to the clients both before and after a major storm event.

Mr. Pruss is licensed to practice law in both Florida and Michigan and has litigated complex civil and commercial disputes on behalf of corporate and individual clients in State and Federal Courts in both states. Mr. Pruss maintains a singular focus on developing creative and practical solutions to complex legal issues to achieve each client's specific business goals in an effective and efficient manner.

Timothy Kaufmann



Tim Kaufmann recently joined Hewson & Van Hellemont, practicing banking, real estate and bankruptcy law representing Talmer Bank & Trust and a number of equity firms. He also practices in all areas of insurance defense law, including first party automobile defense.

He attended Michigan State University and graduated with a Bachelor of Arts in Political Science Pre-Law and then in 2011 graduated Michigan State University College of Law.

Prior to joining Hewson & Van Hellemont, Mr. Kaufmann practiced in Bloomfield Hills and Farmington Hills, Michigan. He successfully represented banks, insurers, re-insurers, corporations, business owners and individuals in many litigation matters. Mr. Kaufman also advised businesses and business owners in the technology, food service, manufacturing and finance industries on entity formations, acquisitions, joint ventures, transactional matters, employment and general corporate governance issues. His current work focuses on advising clients on litigation, corporate transactions, corporate governance and numerous other legal matters.

Mr. Kaufmann is active in the National Eagle Scout Association and his local Council's Eagle Program. He is a Certified Civil Facilitative Mediator. He also, is a member of the International Chamber of Commerce's Young Arbitrators Forum.

Recent Opinions

21st Century Premier Insurance Company v Barry Zufelt and Nancy Zufelt

Michigan Court of Appeals

For Publication - Docket No. 325657

May 24, 2016

Barry Zufelt made material misrepresentations on his initial insurance application, specifically omitting an accident and total number of points that exceeded the 6 point maximum requirement for eligibility. The insurance policy was subsequently renewed based on the initial application. The misrepresentation led 21st Century Premier Insurance Co. to reject the claims from an accident during the term of the renewed policy.

On June 17, 2012 21st Century Premier Insurance Co. issued Barry Zufelt a six month insurance policy that required less than 6 points for eligibility. Barry had 7 points; however he failed to disclose 3 of the points on the application. By the end of September 2012 some points "dropped off" Barry's record and in December 2012 the policy was automatically renewed for another six months based off the initial application – at this time Barry had 5 points.

In March 2013 Barry was involved in an automobile accident. Both Barry and the driver of the other vehicle, Daniel Novak, sustained injuries, Barry's injuries were severe. Regents provided medical care for his injuries.

Thereafter, Novak sued Barry and Nancy Zufelt for damages arising from the auto accident. Barry and Nancy sought defense and indemnity under the insurance policy. Regents, among other named parties, sought reimbursement of over \$600,000 in medical expenses from 21st Century Premier Insurance Co., who held the Zufelts' auto policy that included PIP benefits under no-fault.

In July 2013 21st Century Premier Insurance Co. sought a judgement declaring that the insurance policy was rescinded and requested the Zufelts to reimburse them for any benefits paid under the policy because Barry was ineligible to be insured at the time the policy was issued. There was no genuine issue of material fact that Barry made false statements in obtaining the insurance policy at issue.

In September 2013 the Zufelts filed a counter complaint seeking no-fault PIP benefits, along with interest and attorney fees from 21st Century Premier Insurance Co.

On November 5, 2014, following oral arguments, the trial court agreed with 21st Century that, under the policy, rescission was proper because Barry provided false information when he obtained the initial policy.

To resolve the remaining matters, the trial court entered a judgement in favor of 21st Century Premier Insurance Co. against Regents in the amount of \$53,673 on December 2, 2014. Regents now appeals by right.

Karen Denise McJimpson v Auto Club Group Insurance Company

Michigan Court of Appeals

For Publication - Docket No. 320671

May 12, 2016

Uninsured motorist coverage requires "direct physical contact," between "the hit and run vehicle" and (1) you or a resident relative, or (2) a motor vehicle which an insured person is occupying." A propelled object from another vehicle does not fulfill the requirement of direct physical contact under this policy.

Ms. McJimpson sustained injuries on April 5, 2012 when a piece of metal from an unidentified 18-wheeler semi-truck struck her car and shattered the windshield. Upon impact Ms. McJimpson slammed on the brakes and sustained numerous cuts and bruises. Eventually, she was

diagnosed with a "SLAP" tear in her left shoulder, strains and sprains in her back and neck and spinal injuries.

Ms. McJimpson submitted a claim for uninsured motorist benefits under the insurance policy from Auto Club Group Insurance Company. The policy allowed benefits under the definition of an "uninsured motor vehicle," that included "a hit-and-run motor vehicle of which the operator and owner are unknown and which makes direct physical contact with: (1) you or a resident relative, or (2) a motor vehicle which an insured person is occupying."

Ms. McJimpson alleged that Auto Club had unlawfully or unreasonably refused or neglected to pay uninsured motorist benefits. Auto Club claimed that the testified facts did not meet the requirements of the uninsured motorist provision because the car was struck by an object and not by the vehicle itself.

On February 18, 2014 the trial court allowed Ms. McJimpson's claims. Auto Club appealed.

On appeal the language in the insurance policy covering uninsured motorist benefits and "direct physical contact" were deemed not ambiguous, and the fact that the unidentified semi-truck never made "direct physical contact" was undisputed. The policy's requirement for "direct" physical contact and not just physical contact narrowed the provision and did not provide for coverage based on the facts of the accident.

**Robert F. Campbell & Home-Owners Insurance Company
Michigan Court of Appeals**

Unpublished Opinion - Docket No. 320775
May 19, 2015

The causal connection between a subsequent medical condition to an initial auto accident is insufficient to recover PIP benefits. The fungal meningitis infection was not the result of the accident or the injuries it caused but was the direct result of intervening negligence of a manufacturer.

In 2009 Mr. Campbell suffered several injuries, including back injuries, as the result of an automobile accident. Home-Owners Insurance Company paid no-fault PIP allowable expenses for the back condition through February 2010. Mr. Campbell then sued for continued PIP benefits through February 2012. Parties settled and Home-Owners paid \$175,000 as a final release from all PIP claims up through and including February 16, 2012.

Mr. Campbell received, in August 2012, an epidural steroid injection in his back for pain management. The steroid was contaminated and Mr. Campbell contracted fungal meningitis. Subsequently, on October 6, 2012, Mr. Campbell required an emergency laminectomy for an epidural abscess. Additional treatments for the meningitis infection, including long-term antifungal therapy, were required. Mr. Campbell sought to recover PIP benefits for the associated costs for the meningitis infection.

Mr. Campbell claimed the infection was directly related to the injuries sustained in the 2009 auto accident. Home-Owners asserted the infection and resulting treatment did not "arise out of" the auto accident and constituted a new injury and not covered under the policy's no-fault provision.

The trial court sided with Mr. Campbell and allowed the claim. Home-

Owners appealed and received a favorable ruling.

The Appeal Court acknowledged that Mr. Campbell suffered a back injury in an auto accident. However, the fungal meningitis infection was not the result of the accident but rather the result of negligence of a third-party manufacturer of the steroid. And the infection was too remote from the accident to be anything but incidental and fortuitous, therefore, constituted a new injury and was not covered under the auto policy with Home-Owners Insurance Company.

**Revive Therapy & State Farm Mutual Insurance Company
Michigan Court of Appeals**

Unpublished Opinion - Docket No. 324378
April 28, 2016

Definition of legally rendered services as required to obtain benefits under the no-fault act. With consideration to various MCL acts that set requirements and standards for massage therapy in Michigan.

Between May and September of 2013, Revive Therapy provided massage therapy services to individuals injured in motor vehicle accidents. State Farm Insurance provided these individuals with no-fault insurance benefits and paid Revive Therapy for the services. State Farm, however, sought reimbursement for the massage therapy services because none of the providers held a valid massage therapist license under MCL 333.17959 and therefore not "lawfully rendered" under MCL 500.3157, and were not reasonably necessary pursuant to MCL 500.3107.

Revive Therapy argued that Michigan, though in 2009 required massage therapists to be licensed did not have a mechanism in place to license massage therapists prior to November 29, 2012 which provided a two year period to obtain the license. Therefore, even though the massage therapists who provided services were not licensed they were within the two year limit that expired on November 29, 2014. Therefore, the services were lawfully rendered and reasonably necessary

pursuant to MCL 500.3107. The trial court ruled in favor of Revive Therapy and granted payment of massage therapy services.

State Farm appealed under MCL 333.17959, with subsequent subsections, that required massage therapists to obtain a license and provided methods to obtain such a license to practice massage therapy in Michigan. The language in the act is plain and unambiguous and required a license to practice massage therapy in Michigan and became effective January 9, 2009. Consequently, the services rendered in 2013 were not lawfully provided therefore, these services were not compensable under the no-fault act.

Thus, the case was decided in favor of State Farm as a matter of law.