HEWSON & VAN HELLEMONT, P.C.

# Newsletter

November 2015

## News & Announcements

### Tara's Walk/Run

Employees of Hewson & Van Hellemont, P.C. proudly formed a team to walk and run in Tara's Walk/Run on October 3, 2015. The event, which was organized by the family of Tara Grant, helps to raise awareness about domestic violence and prevent other families from experiencing the tragedy and loss of a loved one from domestic violence.

### Mittens for Detroit

Hewson & Van Hellemont, P.C. is participating in the Mittens for Detroit hat and mitten drive. Mittens for Detroit helps various Metro Detroit Charities provide mittens and hats to area people in need. Donation boxes have been placed throughout our offices. Donations of new hats, mittens, or gloves may be made from now through January 31, 2016.

## Welcome to Our New Attorneys

### Sydney Terenzi

Sydney Terenzi graduated with Honors from Michigan State University in May of 2012 with a Bachelor's Degree in Political Science - Pre-Law and an additional major in Psychology. Ms. Terenzi then attended Michigan State University College of Law on full scholarship and received her Juris Doctorate in May of 2015. While at MSU Law, Ms. Terenzi was a member of the Women's Law Caucus and Family Law Society. Prior to Ms. Terenzi's role as an Associate Attorney with Hewson and Van Hellemont, P.C, she worked at the firm as a file clerk through high school and college, and then as a law clerk/paralegal throughout law school. Ms. Terenzi was admitted to the State Bar of Michigan in October of 2015 and is thrilled to be continuing her legal career with the firm.

### Corey McPherson

Corey McPherson graduated Magna Cum Laude from Oakland University in 2012 where he earned a Bachelor of Arts with Departmental Honors majoring in Philosophy with a minor in Psychology. Mr. McPherson then attended Michigan State University College of Law, where he graduated Cum Laude in 2015. While in law school, Mr. McPherson was an editor for the College's Journal of Medicine and Law and President of the Family Law Society. Mr. McPherson gained over two years of legal experience while working in several private law offices during his time at Michigan State College of Law. He frequently encountered Plaintiffs' first and third-party claims that gave him invaluable insight into Michigan No-Fault Defense.

### Lauren Wickman

Lauren Wickman graduated from the University of Wisconsin-Madison in 2012, where she received a Bachelor's Degree in History and Political Science. She then attended Michigan State University College of Law where she earned her Juris Doctorate in 2015. While attending law school, Ms. Wickman served as a student attorney in the Plea & Sentencing Clinic. The clinic allowed her to assist the State Appellate Defender's Office represent indigent and incarcerated clients in various courts across the state, including drafting a brief to the Michigan Court of Appeals. In addition, Ms. Wickman served as an extern in the Ionia County, Delta County, and Livingston County Prosecutor's Offices, where she gained invaluable courtroom experience prosecuting misdemeanor and felony crimes.

# Recent Opinions

## *Covenant Medical Center, Inc. v State Farm Insurance*

**Michigan Court of Appeals**

Published Opinion - Docket No. 322108
October 22, 2015

**An insurer cannot discharge its liability to a third party by simply settling with its insured if the insurer already has notice in writing of a third party claim related to the coverage.**

Jack Stockford was injured in a motor vehicle accident in 2011. At the time, he was insured by State Farm. Covenant Medical provided medical services to Stockford for injuries related to the accident. Covenant billed State Farm $43,484.80 for the services, sending bills to State Farm on three different occasions in 2012. State Farm responded to the bills in writing, but did not pay them off. In 2013, Stockford entered into a written agreement with State Farm to release it from all past and present claims related to the motor vehicle accident in exchange for $59,000.00.

Covenant Medical subsequently filed suit alleging that State Farm unreasonably refused to pay the bills for the medical services rendered to Stockford. State Farm, however, moved for summary disposition, arguing that Covenant Medical's claims were barred due to the settlement payments State Farm made to Stockford and the accompanying release he signed. The trial court concluded that Covenant Medical was barred from recovery due to the release and granted State Farm's motion for summary disposition.

On appeal, Covenant Medical argued that since it provided written notice to State Farm regarding the medical services provided, it was entitled to pursue payment of the of the bills along with penalties, interest, and costs. The appellate court agreed, noting that MCL 500.3112 provides that an insurer may make a good faith payment to its insured in exchange for a discharge from all liability if it has not received written notice of any other claims to payment for the same covered service. The plain text of the statute provides that if an insurer has notice in writing of a third party's claim, then the insurer cannot discharge its liability to the third party by simply settling with its insured. As such, the ruling of the trial court was reversed and the matter was remanded for further proceedings.

## *MEEMIC Insurance Company v Michigan Millers Mutual insurance, et al.*

**Michigan Court of Appeals**

Published Opinion - Docket No. 322072
October 27, 2015

**No-fault insurer did not have an obligation to cover a loss related to a motor vehicle that was in storage and specifically not included under a no-fault policy which was meant to cover the vehicles the owner still drove.**

Plaintiff, MEEMIC Insurance, appealed the trial court's order granting summary disposition in favor of Defendant, Home-Owner Insurance.

The controversy in question involved a 1966 Corvette owned by John Putvin. Due to his declining health, Mr. Putvin stored the Corvette in a storage facility in 2012 and 2013. Catherine Eppard and Kevin Byrnes stored personal property at the same storage facility.

In April of 2013, Mr. Putvin's son and a colleague were performing maintenance on the Corvette at the storage facility in order to prepare the vehicle for eventual sale. The two of them were attempting to flush the vehicle's fuel lines when gasoline vapors ignited and caused a fire, which ultimately destroyed more than $125,000 in personal property belonging to Eppard and Byrnes. MEEMIC insured Eppard and Byrnes against their fire losses and compensated them.

Shortly thereafter, MEEMIC filed suit as subrogee of Eppard and Byrnes. After an amendment, MEEMIC's complaint alleged that Home-Owners issued an automobile no-fault policy to Mr. Putvin for coverage of the motor vehicles he continued to drive at the time of the fire. The complaint further alleged that since Mr. Putvin was the owner or registrant of the Corvette involved in the fire, Home-Owners was liable to pay property protection insurance benefits for the loss caused by the fire.

The Court of Appeals did not agree with MEEMIC's argument. The court noted that it was undisputed that Mr. Putvin did not drive or move the Corvette upon a highway during the time in question. As such, he was not required to maintain "security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance" at that time. Further, Mr. Putvin purchased a separate policy from State Farm insuring the Corvette with comprehensive coverage. As such. Home Owners could lawfully exclude the Corvette from coverage under the no-fault policy it issued to Mr. Putvin. Therefore, the trial court's order granting summary disposition in favor of Home Owners was affirmed.

### *Farm Bureau Mutual Insurance v Michelle Wagner, et al.*

**Michigan Court of Appeals**

Unpublished Opinion - Docket No. 322738
November 17, 2015

**Pizza delivery driver was ineligible for coverage under his father's no-fault policy due to a provision in the subject policy which excluded coverage for liability arising out of the use of the vehicle to carry property for a fee.**

Defendant, Connor Lewis, was working as a Pizza Hut delivery driver in May of 2010. He drove a Mazda owned by his father and insured by Farm Bureau. While delivering pizza, Mr. Lewis rear-ended Michelle Wagner's motor vehicle at an intersection.

Michelle and her husband eventually filed suit against Mr. Lewis and his father for damages resulting from the accident. Lewis and his father argued that Farm Bureau, as insurer of the Mazda, was obliged to defend them against claims and indemnify them for damages arising from the motor vehicle accident. Farm Bureau subsequently sought declaratory relief, arguing that it was not obligated to indemnify anyone involved in this accident. Farm Bureau based this conclusion on a specific provision in the insurance policy which excluded coverage for liability for accidents which occurred when a vehicle was "being used to carry persons or property for a fee." The trial court subsequently granted Farm Bureau's motion for summary disposition based on this provision.

On appeal, both defendants argued that the trial court erred in granting summary disposition in favor of Farm Bureau because the relevant policy provision was ambiguous and inapplicable. The appellate court disagreed, noting that it was undisputed that Mr. Lewis was using the vehicle to deliver pizzas at the time of the accident. MCL 500.2118(2)f) specifically permits insurers to limit insurance coverage on the basis of business use. The exclusionary provision in the subject insurance policy was clear and unambiguous. Plaintiff was carrying property for a fee at the time of the accident and was therefore excluded form coverage under the direct language of the policy. Therefore, the decision of the trial court was affirmed.

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### *Farmers Insurance Exchange v Allstate Insurance Co., et al.*

**Michigan Court of Appeals**

Unpublished Opinion - Docket No. 322955
November 17, 2015

**Injured party's subjective intent indicated that she was no longer domiciled with her father and therefore could not receive benefits under his no-fault policy as a resident relative.**

Jessica Peregord sustained serious injuries while she rode in a motor vehicle owned by her boyfriend's grandmother. Ms. Peregord did not own a no-fault insurance policy and therefore sought coverage through the Allstate Insurance policy secured by the vehicle's owner. Allstate denied coverage because it believed Ms. Peregord was a resident relative of her father at the time of the accident and that his no-fault policy through Auto Club Insurance (ACIA) was the higher priority policy. However, ACIA also denied Ms. Peregord's claim after it concluded that Ms. Peregord was not domiciled with her father at the time of the accident. Ms. Peregord subsequently applied for benefits through the Michigan Assigned Claims Facility and her claim was assigned to Farmers Insurance. Farmers thereafter filed suit against Allstate and ACIA seeking reimbursement of the benefits it paid on Ms. Peregord's behalf.

Ms. Peregord's domicile at the time of the accident was the only issue before the trial court. At the time of the accident, Ms. Peregord had been living in a friend's apartment for approximately two months. She changed her mailing address and the address on her driver's license to reflect her new residence. Ms. Peregord lived with her father prior to moving into the apartment. He continued to keep a room for her at his home, however Ms. Peregord did not keep any of her belongings at the house after she moved out. ACIA filed a motion for summary disposition, arguing that the undisputed facts supported that Ms. Peregord was not domiciled with her father at the time of the accident. The trial court agreed with ACIA and granted its motion.

Allstate subsequently appealed the decision, arguing that a factual dispute remained regarding Ms. Peregord's domicile, primarily because she moved back in with her father a month after the accident. The appellate court did not agree with Allstate. Rather, the court held that the vast evidence established that Ms. Peregord intended for the apartment to be her principal place of residence at the time of the accident. As such, the trial court ruled correctly on ACIA's motion and correctly held Allstate responsible for reimbursing Farmers Insurance for benefits it paid on Ms. Peregord's behalf.

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