

APPELLATE COURT HISTORY

MICHIGAN SUPREME COURT:

Binno v Binno, 489 Mich 876; 796 NW2d 49 (4/22/2011) [On applications for leave to appeal and cross-appeal following Court of Appeals rulings that defendants were properly dismissed from litigation seeking to impose liability on them as a result of the plaintiff's drowning death while swimming off of a pontoon boat, the Supreme Court summarily affirmed the Court of Appeals insofar as it had held that no statutory or common law duties had been breached or could constitute the proximate cause of the drowning, while also summarily reversing the holding of the Court of Appeals (on defendant's cross-application) which had found a statutory duty owed on the basis that the pontoon boat had been operated at the time of the incident notwithstanding that it was idle in the water.]

United Services Automobile Association v Michigan Catastrophic Claims Association, 489 Mich 869; 795 NW2d 594 (2011) [Supreme Court vacated Court of Appeals' decision which held that the MCCA is only required to indemnify its member insurers under MCL 500.3104(2) where the insurer paid benefits pursuant to a policy written in Michigan that provided for the required security under MCL 500.3101(1) for a vehicle required to be registered in Michigan and reinstated the trial court's order granting summary disposition in favor of the MCCA on the basis that the MCCA is not required to reimburse an insurer when no statutory assessment was paid to the MCCA on the vehicle insured under the policy and involved in the accident.]

McCormick v Carrier, 487 Mich 180; 795 NW2d 517 (2010) [Amicus curiae participation in case involving interpretation of the No-Fault Insurance Act's "serious impairment of body function" threshold where the Supreme Court establishes a distinctly claimant-favorable standard permitting injured persons to sue for tort damages in automobile negligence cases, overruling *Kreiner v Fischer*,

471 Mich 109 (2004), which previously had established a substantially higher tort threshold.]

Smith v Barrows, 487 Mich 102; 793 NW2d 533 (2010) [In a defamation claim brought by a public official, and over a vigorous dissent, the majority discusses and applies the constitutionally mandated requirement that such a plaintiff prove her case by clear and convincing evidence of actual malice, finding that such evidence was placed in the record as to two of the citizen defendants, but not as to the third, each of whom was engaging in political speech.]

Janson v Sajewski Funeral Home, 486 Mich 934; 782 NW2d 201 (2010) [The Supreme Court entered an order reversing the Court of Appeals and reinstating the circuit court's order granting summary disposition in favor of defendant. The Supreme Court found that the Court of Appeals had failed to adhere to the governing precedent established in *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474 (2008), which renders black ice conditions open and obvious when there are indicia of a potentially hazardous condition present at the time of the plaintiffs fall. Noting the indicia present in this case – that the fall occurred in winter, that temperatures were below freezing at all times, that snow was present around defendant's premises, and that mist and light freezing rain were falling earlier in the day – the Supreme Court held that such wintry conditions by their nature would have alerted an average user of ordinary intelligence to discover the danger upon casual inspection. The Supreme Court further found that no special aspects of the condition existed where the patch of black ice was avoidable and not unreasonably dangerous.]

Robinson v City of Lansing, 486 Mich 1; 782 NW2d 171 (2010) [*Amicus curiae* participation in case involving the statutory “two-inch” rule which limits the liability of municipal entities for injuries sustained as a result of sidewalk discontinuities, in which the Court limited application of the rule to sidewalk adjacent to county highways.]

Myers v Muffler Man Supply Co, oral argument ordered 483 Mich 1002; 764 NW2d 579 (2009), lv den 485 Mich 1015; 775 NW2d 795 (2009), recon den 485 Mich 1120; 779 NW2d 254 (2010) [Plaintiff failed to provide non-speculative evidence to create a question of fact as to whether defendant's removal of a guard from a machine was a proximate cause of plaintiff's injury.]

Moore v Secura Ins, 482 Mich 507; 759 NW2d 833 (2008) [Where the Court reversed the Court of Appeals and circuit court's decisions awarding the plaintiff No Fault attorney fees under MCL 500.3148(1), concluding that the

benefits awarded by the jury were not “overdue” under MCL 500.3142(2) and, regardless, the insurer did not act unreasonably in terminating the plaintiff’s benefits prior to suit.]

Knight Enterprises, Inc v Fairlane Car Wash, Inc, 482 Mich 1006; 756 NW2d 88 (2008) [Where the Court summarily reversed the Court of Appeals, ruling that summary disposition of the plaintiff’s complaint was premature because, under the proper construction of the language of the parties’ Motor Fuel Franchise Agreement, the plaintiff failed to satisfy its burden of proving damages under the agreement.]

Lash v City of Traverse City, 479 Mich 180; 735 NW2d 628 (2007) [*Amicus curiae* participation in case where the Court interpreted the provisions of MCL 15.602 pertaining to residency restrictions on public employees, concluding that the statute had been violated where the permissible mileage restriction had been measured in “road miles” rather than “radial miles”, but holding that a legislative intent to create a private cause of action for its violation against governmental entity employers could not be inferred because governmental immunity would bar such a cause of action and there was no expressed legislative intent to waive that immunity.]

Young v Delcor Associates, Inc, 477 Mich 931; 723 NW2d 459 (2006) [Where the plaintiff, the employee of a subcontractor who was injured on the worksite while in the process of constructing a home, sued the owner/general contractor alleging that he was injured because of an unreasonably dangerous condition on the worksite, and where the Court of Appeals agreed that the contractor liability theory could not proceed because the injury did not occur in a common work area, the Michigan Supreme Court summarily reversed the Court of Appeals ruling on the premises liability claim, holding that it could not proceed against the defendant as the owner of the property because no duties were owed to protect him from the hazards he encountered.]

Allstate Ins Co v Dempsey, 477 Mich 874; 721 NW2d 591 (2006) [Where the claimant was fatally injured when he was struck in the face by the insured, who was allegedly acting in self-defense, the Michigan Supreme Court summarily reversed the Court of Appeals and held that the insurance policy’s intentional/criminal act exclusion applied.]

Reed v Breton, 475 Mich 531; 718 NW2d 770 (2006) [The Michigan Supreme Court held that the presumption of non-liability contained in Michigan’s Dram Shop Act, MCL 436.1801(8), is rebutted upon a showing of clear and

convincing evidence of visible intoxication; post hoc expert opinion evidence of intoxication, alone, is not sufficient to impose liability under the Dram Shop Act.]

Dean v Childs, 474 Mich 914; 705 NW2d 344 (2005) [Following oral argument on the application papers, the Court held that the allegedly negligent activities of the firefighter did not constitute “the proximate cause” of injuries sustained in the fire, adopting the dissenting opinion in the Court of Appeals regarding this issue.]

Rory v Continental Ins Co, 473 Mich 457; 703 NW2d 23 (2005) [In the context of considering a one year contractual limitations period, the Court held that insurance contracts are to be construed as any other contract, according to its unambiguous terms, and without regard to reasonableness or status as an “adhesion contract”.]

Griffith v State Farm Mutual Automobile Ins Co, 472 Mich 521; 472 NW2d 521 (2005) [An insured’s ordinary, everyday food expenses are not expenses that are related to the insured’s injuries sustained in an auto accident, and therefore are not “allowable expenses” which an insurer is required to pay as personal protection insurance benefits.]

In re Hon James Conrad, 472 Mich 1242; 696 NW2d 702 (2005) [Public censure and 180-day suspension imposed against district court magistrate after two arrests for operating a vehicle while under the influence of intoxicating liquor.]

Jarrad v Integon National Ins Co, 472 Mich 207; 696 NW2d 621 (2005) [An employer’s self-funded long-term disability plan constitutes “other health and accident coverage” that is subject to coordination of benefits under the no-fault act.”]

Advocacy Organization for Patients & Providers v ACIA, 472 Mich 91; 693 NW2d 358 (2005) [It is for the trier of fact to determine whether a medical charge, albeit “customary,” is also “reasonable,” for purposes of requiring an insurer to pay the charge under the no-fault act.]

Kreiner v Fischer, 471 Mich 109; 683 NW2d 611 (2004) [Establishing a substantially high no-fault tort threshold for “serious impairment of body function” by requiring that the plaintiff’s injuries so affected his general ability to lead his normal life as to have impacted the overall course or trajectory of his life.]

Proudfoot v State Farm Mutual Ins Co, 469 Mich 476; 673 NW2d 739 (12/23/03), reversing, in part, 254 Mich App 702 (2003) [Where trial of a no-fault insurance dispute resulted in a declaratory finding that \$250,000 in home modification expenses was reasonably necessary for the insured's care, the Supreme Court held that the declaratory finding did not support an order to pay benefits before the expenses were incurred, and did not support imposition of statutory judgment interest, no-fault penalty interest or no-fault attorney fees because no-fault benefits are not due – and thus cannot be “overdue” – if they have yet to be “incurred”.]

Jones v Enertel, Inc, 467 Mich 266; 650 NW2d 334 (2002) [The duty of a municipality to maintain its sidewalks is a statutory duty, and the common law open and obvious danger defense is not applicable to claim alleging a violation of that duty.]

Frazzini v Total Petroleum, Inc, 466 Mich 893; 649 NW2d 74 (2002) [Rejecting employer's appeal, after full briefing and argument, and allowing favorable Court of Appeals decision to stand, 245 Mich App 710; 630 NW2d 640 (2001), which established standard for applying workers' compensation “idiopathic fall” doctrine to a motor vehicle accident caused by diabetic blackout.]

Omelenchuk v City of Warren, 466 Mich 524; 647 NW2d 493 (2002) [Even though the provisions of the Emergency Medical Services Act would have allowed vicarious liability to be imposed on a municipality for the gross negligence of its employees, the municipality was entitled to the immunity afforded to it under the Governmental Tort Immunity Act because it was engaged in the exercise of a governmental function.]

Universal Underwriters Ins Co v Kneeland, 464 Mich 491; 628 NW2d 491 (2001) [Upholding clause in a automobile dealership's “courtesy car agreement” which allocated responsibility for any damage to loaned vehicle to customer as a matter of contract.]

In re Hon Warfield Moore, 464 Mich 98; 626 NW2d 374 (2001) [The Supreme Court rejects in part the sanction recommended by the Judicial Tenure Commission for judge's actions demonstrating a lack of judicial temperament.]

Robinson v City of Detroit, 462 Mich 439; 613 NW2d 307 (2000) [*Amicus curiae* participation in case where the Court defined new parameters for potential municipal liability and immunity for injuries sustained as a result of police

pursuits, as well as defining new parameters regarding immunity for individual governmental employees.]

Perry v Sied, 461 Mich 680; 611 NW2d 516 (2000) [The “power of attorney and undertaking” (PAU) that the insurer filed with the Canadian government, agreeing to policy limits of \$200,000 for accidents occurring in Canada, applied only where suit was brought in Canada, and not where plaintiff brought suit in Michigan.]

Omelenchuk v City of Warren, 461 Mich 567; 609 NW2d 177 (2000) [The Court held that, in medical malpractice suits, the statute of limitations was tolled for the full 182 day “notice period”, even when the defendant did not respond to the notice of intent to sue, thus permitting suit after 154 days.]

Reinhardt v Rolling Green Corp, 459 Mich 972; 593 NW2d 545 (1999) [Upholding dismissal of wrongful death claim on basis that defendant was plaintiff’s employer, as determined by workers’ compensation magistrate and applied via collateral estoppel.]

Ballard v Ypsilanti Township, 457 Mich 564; 577 NW2d 890 (1998); *affirming* 216 Mich App 545; 549 NW2d 885 (1996) [The interplay between governmental immunity and the Recreational Use Act was considered, with the Court concluding that the governmental owner of recreational land retains its statutory governmental immunity and that the Recreational Use Act does not apply to it.]

Rogers v City of Detroit, 457 Mich 125; 579 NW2d 840 (1998) [Police pursuit case involving the death of an innocent bystander, with issues including the scope of the motor vehicle exception to governmental immunity, proximate cause, and “Mary Carter” agreements.]

Thomas v Stubbs, 455 Mich 853; 564 NW2d 463 (1997), reversing 218 Mich App 46; 553 NW2d 634 (1996) [A non-viable fetus expelled from the womb with a temporary heartbeat and respiration is not a person for whose death a medical malpractice cause of action may be pursued against a physician under Michigan’s Wrongful Death Act.]

Orel v Uni-Rak Sales, 454 Mich 564; 563 NW2d 241 (1997) [Property owners are not exposed to premises liability while possession of their property has been temporarily loaned to another.]

People v Tims, 449 Mich 83; 534 NW2d 675 (1995) [Determination of criminal responsibility for involuntary manslaughter premised on causal relationship between conduct and death.]

Weems v Chrysler Corp, 448 Mich 679; 533 NW2d 287 (1995) [Determination of weekly death benefits due partially dependent person under workers' compensation disability act.]

Bahr v Harper Grace Hospitals, 448 Mich 135; 528 NW2d 170 (1995), *reversing* 198 Mich App 31; 497 NW2d 526 (1993) [Reversal of Court of Appeals opinion, and remand for consideration of additional issues, with respect to whether Defendant was deprived of its right to a fair trial.]

Gross v General Motors, 448 Mich 147; 528 NW2d 707 (1995) [Opinion concerning the proper venue in products liability action where the allegations are of design defect.]

Buczowski v Allstate Ins Co, 447 Mich 669; 526 NW2d 589 (1994); *affirming* 198 Mich App 276; 502 NW2d 343 (1993) [Interpretation of intentional/criminal act exclusion calling for objective test of expectation re: intentional firing of weapon at unoccupied car.]

Auto Club Group Ins v Marzonie, 447 Mich 624; 527 NW2d 760 (1994) [Interpretation of "occurrence" coverage provision and intentional act exclusion calling for subjective test of expectation to intentional firing at occupied car but without intent to injure.]

American National Fire Ins Co v Frankenmuth Mutual Ins Co, 445 Mich 91; 516 NW2d 52 (1994); *affirming* 199 Mich App 202; 501 NW2d 237 (1993) [Determination of proper allocation of defense costs between insurers where the decedent was killed when his vehicle collided with a farm combine from which corn was being loaded into the truck, but where the truck was not involved in the accident.]

In re Louis F Simmons, 444 Mich 781; 513 NW2d 425 (1994) [The Supreme Court rejects the recommendation of the Judicial Tenure Commission to publicly censure a trial judge for abuse of contempt power.]

Tousignant v Allstate Ins Co, 444 Mich 301; 506 NW2d 844 (1993) [Insured whose no-fault insurance policy is coordinated with other health and accident coverage and whose primary health plan is an HMO must exhaust benefits

available through the HMO and failure to do so prevents insured from looking to no-fault insurer for non-HMO treatment.]

Clevenger v Allstate Ins Co, 443 Mich 646; 505 NW2d 553 (1993)
[Discussion of continuation of residual liability coverage on vehicle to cover new owner after it has been sold but where the registration had not yet been transferred.]

Dunlap v Sheffield, 442 Mich 195; 500 NW2d 739 (1993) [Three-year statute of limitations expired on three-year anniversary of accident, and not three years from the day after the accident.]

Marzonie v Auto Club Ins Assoc, 441 Mich 522; 495 NW2d 788 (1992)
[Amicus curiae on issue regarding automobile no-fault coverage where injuries were sustained by an occupant of a motor vehicle when he was shot.]

Spaulding v Lesco Int'l Corp, 441 Mich 379; 491 NW2d 208 (1992) [The manufacturer of a simple product, such as an above-ground swimming pool, has no duty to warn of the product's dangers that are open and obvious to the average user.]

Riddle v McLouth Steel Products Corp, 440 Mich 85, 485 NW2d 676 (1992); *reversing* 182 Mich App 259; 451 NW2d 590 (1990) [Premises owner has no duty to warn invitee of open and obvious dangers.]

Donner v Transamerica Ins, 439 Mich 989; 483 NW2d 874 (1992)
[Peremptory reversal of adverse Court of Appeals decision reinstating summary disposition for no-fault insurer in statutory exclusion case concerning operation of owned, uninsured vehicle.]

Woods v City of Warren, 439 Mich 186; 482 NW2d 696 (1992); *reversing* 183 Mich App 656; 455 NW2d 382 (1990) [The "fireman's rule" applies to bar a police officer's lawsuit against a property owner for injuries sustained in the course of duty due to the property owner's negligence.]

Domako v Rowe, 438 Mich 347, 475 NW2d 30 (1991) [Amicus curiae re ability of defense counsel to have ex parte contact with plaintiff's treating physician.]

Wills v State Farm Ins Co, 437 Mich 205; 468 NW2d 511 (1991)
[Availability of no-fault benefits where death occurred as a result of improper parking of vehicle.]

Spalo v A & G Enterprises, 437 Mich 406; 471 NW2d 546 (1991) [Name and retain requirement of dramshop act when the negligent driver AIP is dismissed on the ground that there was no serious impairment.]

Hancock Ins Co v Blue Cross-Blue Shield of Michigan, 437 Mich 368; 471 NW2d 541 (1991) [Coordinated no-fault policy must pay on primary basis even though there is health insurance coverage, when that coverage itself is coordinated with Medicare.]

Frankenmuth Mutual Ins Co v Keeley (On Rehearing), 436 Mich 372, 461 NW2d 666 (1990) [An insurance carrier found guilty of bad faith is not responsible for the payment of excess judgment entered against its insured which are beyond the assets of the insured.]

Nasser v Auto Club Ins Ass'n, 435 Mich 33; 457 NW2d 637 (1990)
[Finding that medical expenses were both reasonable and necessary was prerequisite to conclusion that insured was entitled to reimbursement for same.]

Allstate Ins Co v Freeman, 432 Mich 656, 443 NW2d 734 (1989); *affirming* 160 Mich App 349; 408 NW2d 153 (1987) [Intentional act exclusion applied based on "objective" test of intent/expectation, and it also applied the exclusion to bar coverage for the derivative liability of another insured under the policy.]

Marrocco v Randlett, 431 Mich 700, 433 NW2d 68 (1988) [Mayor entitled to absolute immunity for acts taken within scope of his responsibilities as mayor.]

Ross v Consumers Power (On Rehearing), 420 Mich 567, 363 NW2d 641 (1984) [Examination and redefinition of parameters of governmental immunity as to both governmental agencies and their employees.]

MICHIGAN COURT OF APPEALS:

Price v High Pointe Oil Co, Inc., ___ Mich App ___; ___ NW2d ___ (CA #298460 8/25/2011) [Plaintiff entitled to recover non-economic damages for mental anguish suffered as a result of the destruction of her house.]

Augustine v Allstate Insurance Co, ___ Mich App ___; ___ NW2d ___ (CA #296646 4/26/2011) [Court of Appeals vacates an award of no-fault attorney fees imposed on Allstate, and establishes a new discovery rule giving the defendant insurer access to the plaintiff attorney’s litigation file in order to defend a claim for “reasonable” attorney fees incurred in the course of the no-fault litigation.]

May v Auto Club Insurance Ass’n, ___ Mich App ___; ___ NW2d ___ (CA# 292649 4/26/2011) [Court of Appeals broadly construes the “allowable expenses” provision of the No-Fault Act to permit an accident victim’s conservator to recover fees as being incurred “for an insured person’s care...,” requiring the no-fault insurer to reimburse the conservatorship for such fees. This holding is now being challenged by application for appeal to the Michigan Supreme Court.]

Johnson v Recca, ___ Mich App ___; ___ NW2d ___ (CA #294363 4/5/2011) [The question before the Court of Appeals, and now before the Michigan Supreme Court, is whether Plaintiff’s alleged injuries to her lumbar spine enabled her to pursue a tort recovery for noneconomic and excess economic damages. Regarding Plaintiff’s claim for noneconomic damages, the Court of Appeals reversed the Circuit Court order granting summary disposition in favor of Defendant and directed the Circuit Court to consider all further inquiries into whether Plaintiff suffered a threshold injury using the new standards set forth in *McCormick v Carrier*, 487 Mich 180, 192-194; 795 NW2d 517 (2010). Regarding Plaintiff’s claim for excess economic damages. Court of Appeals permits motor vehicle accident victim to pursue damages for “replacement service” expenses in excess of those covered to a limited extent by first party no-fault insurance benefits, rejecting defendant’s argument that succeeded in the trial court that the statute precludes recovery of such damages. The decision also applied the Supreme Court’s recent “serious impairment of body function” ruling in *McCormick v Carrier* (2010), to allow plaintiff to continue pursuit of her claim for noneconomic damages. Both conclusions are now being challenged by application for appeal to the Michigan Supreme Court.]

Sherry v East Suburban Football League, ___ Mich App ___; ___ NW2d ___ (CA #295792 3/17/2011) [Court held that coaches are held to an ordinary standard of care, rather than a reckless misconduct standard, because coaches can expect to be sued for their carelessness and concluded that holding coaches to an ordinary standard of care does not discourage vigorous participation in recreational activities.]

Copus v MEEMIC Ins Co, ___ Mich App ___; ___ NW2d ___ (CA #295499 2/15/2011) [The Court held that a teacher that works nine months out of a calendar year, but chooses to have her pay evenly allocated over the entire year is entitled to work loss benefits under the No-Fault Act for the entire year even though the teacher would not have worked the entire calendar year.]

Hare v Starr Commonwealth Corp, ___ Mich App ___; ___ NW2d ___ (2011) [Enforcement of an order of the trial court of the State of New York in Michigan which was favorable to our client Frontier Insurance.]

City of Plymouth v McIntosh, ___ Mich App ___; ___ NW2d ___ (2010) [(Participated as counsel for amicus) Where the defendant had been issued a sworn citation for operating a motor vehicle while intoxicated, to which he pled not guilty, the circuit court erred when it vacated his conviction on the basis that it was necessary that a sworn complaint be issued following the not guilty plea before further proceedings could be had, finding that the sworn citation constituted the requisite sworn complaint.]

McGrath v Allstate Insurance Co, ___ Mich App ___; ___ NW2d ___ (CA #289210 11/2/2010) [Plaintiff not entitled to coverage for water loss under homeowner's insurance policy because plaintiff did not "reside" at insured property at time of loss and because plaintiff did not comply with policy requirement that insured notify insurer of change in title, occupancy or use of property.]

Kieta v Thomas M Cooley Law School, 290 Mich App 144; 799 NW2d 579 (2010) [Former law school student's claims against law school arising out of disciplinary proceedings dismissed as moot.]

Besic v Citizens Ins Co, 290 Mich App 19; 800 NW2d 93 (2010) [This case involved a priority dispute between three insurance carriers for payment of PIP benefits to a trucker. The carriers included the insurer of the bob-tail policy, a commercial fleet policy, and the owner-operator's personal auto policy. Based upon the terms of a Michigan PIP endorsement contained in the bob-tail policy, the Court determined that the insurer of the bob-tail policy was responsible for payment of PIP benefits even though the trucker was hauling a load at the time of the accident.]

United Services Automobile Ass'n v Michigan Catastrophic Claims Ass'n, 289 Mich App 24; 795 NW2d 185 (2010) [Court held that the MCCA is only required to indemnify its member insurers under MCL 500.3104(2) where the insurer paid benefits pursuant to a policy written in Michigan that provided for the

required security under MCL 500.3101(1) for a vehicle required to be registered in Michigan.]

American Home Assurance Co v Michigan Catastrophic Claims Ass'n, 288 Mich App 706; 795 NW2d 172 (2010) [Court upholds MCCA's denial of the no-fault insurer's reimbursement claim, where, although total amount of paid personal injury protection benefits easily exceeded the statutory threshold amount of \$375,000, Court regarded the insurer's commercial policyholder as a "third-party" source for reimbursement, since it maintained a \$1,000,000 risk-sharing deductible.]

Mossing v Demlow Products, Inc, 287 Mich App 87; 782 NW2d 780 (2010) [Where the defendant attempted to raise by cross-appeal the denial of its motion for attorney fees and costs, the Court of Appeals had no jurisdiction to consider the issue because the order denying attorney fees had not yet been entered when the cross-appeal was filed.]

Curry v Meijer, Inc, 286 Mich App 586; 780 NW2d 603 (2009) [Where the Michigan Court of Appeals held that a plaintiff seeking to impose liability on a non-manufacturing seller for breach of implied warranty pursuant to MCL 600.2947(6)(a) must establish that the defendant failed to exercise reasonable care.]

Heaton v Great Lakes Superior Walls, 286 Mich App 528; 780 NW2d 618 (2009) [Where the plaintiffs alleged a construction defect, and the case was tried to a jury based on negligence, the defendant appealed the jury verdict claiming that the case should have been tried based on a products liability claim which would have allowed for a sophisticated user defense to plaintiff's construction defect claim. In a two to one decision, the Court of Appeals affirmed the trial court's finding that it was a negligence action rather than a products liability action.]

Fisher v Blankenship, 286 Mich App 54; 286 NW2d 54 (2009) [Court ruled that the plaintiff's tooth injury, which eventually led to an upper dental implant for his top teeth, met both the serious impairment of a body function and permanent serious disfigurement thresholds of the No-Fault Act.]

Janson v Sajewski Funeral Home, Inc, 285 Mich App 396; 775 NW2d 148 (2009) [Considering the status of the open and obvious danger doctrine and falls involving "black ice", the court holds that black ice is not open and obvious as a matter of law, but only where other facts should have alerted a Michigan resident of the likely presence of the hazard.]

Teel v Meredith and Allstate Ins Co, 284 Mich App 660; 774 NW2d 527 (2009), lv den 485 Mich 1134; 780 NW2d 294 (2010) [Michigan does not recognize the tort of spoliation of evidence against a third party whose destruction of evidence allegedly interfered with the plaintiff's prospective civil lawsuit against a tortfeasor.]

Hoover v Michigan Mutual Ins Co, 281 Mich App 617; 761 NW2d 801 (2008) [Conservators of the estate of their developmentally disabled adult child are entitled to recover personal protection insurance (PIP) benefits for various housing and living expenses, as well as services, associated with the care of their adult son. The Court of Appeals remanded the matter, in part, back to the circuit court, however, for a factual determination as to whether the claimed expenses would have been incurred in the course of an ordinary life unmarred by an accident. No-fault benefits are not payable if there is no link between the expenses and the injury. The Court of Appeals affirmed, in part, the circuit court's awarding 100% of the costs associated with a backup generator, television monitoring system, medical alert pendant, elevator inspections and dumpster, as well as attorney fees and penalty interest associated with those claimed expenses.]

Bonkowski v Allstate Ins Co, 281 Mich App 154; 761 NW2d 784 (2008) [The Court of Appeals affirmed the jury's verdict awarding unpaid personal protection insurance (PIP) benefits to compensate an injured insured's father for providing 24-hour attendant care finding that award to be reasonable based upon the evidence presented at trial. The Court of Appeals reversed the circuit court's award of attorney fees to plaintiff finding a legitimate, bona fide factual basis for defendant's decision to challenge plaintiff's claimed amount for attendant care benefits, and the rate of compensation paid to plaintiff by defendant was not unreasonable. The Court of Appeals further ordered that, on remand, the circuit court shall determine whether plaintiff is entitled to case evaluation sanctions. Finally, the Court of Appeals found that the circuit court did not err in refusing to continue the imposition of 12% penalty interest after the entry of judgment and through the satisfaction of judgment.]

Moore v Detroit Entertainment, LLC, 279 Mich App 195; 755 NW2d 686 (2008) [Private security guards, licensed as private security police under MCL 338.1079, et seq, who temporarily detained a casino patron on suspicion of assault acted under color of law for purposes of imposing liability under 42 USC §1983.]

Citizens Ins Co v Secura Ins, 279 Mich App 69; 755 NW2d 563 (2008) [Insurer of vehicle owner does not owe a duty to indemnify the non-owner driver of the vehicle until a jury in the underlying tort action determines that the driver

was driving the vehicle with the owner's permission however, because of the presumption of consent between the owner-mother and the driver-son under MCL 257.401, the insurer of the vehicle owner does owe the driver a duty to defend in the underlying tort action.]

Royce v Chatwell Club Apartments, 276 Mich App 389; 740 NW2d 547 (2007) [The open and obvious doctrine precluded plaintiff's premises liability claim against her landlord regarding the existence of snow and ice on the parking lot, rejecting the claim that the existence of the snow and ice next to a handicap parking space constituted a "special aspect," while also holding that the open and obvious doctrine was inapplicable to plaintiff's statutory claim regarding the landlord's duty to maintain the common areas.]

Hill v City of Warren, 276 Mich App 299; 740 NW2d 706 (2007) [The circuit court had the authority to reconsider its original denial of class certification, and grant plaintiffs' "renewed" motion for class certification following the Supreme Court's affirmance of the court's original denial of class certification, rejecting arguments that the statute of limitations had not been continuously tolled and that the plaintiffs' cause of action had been abrogated by the Michigan Supreme Court during the original appellate proceedings, thus rejecting the argument that the case was less certifiable as a class action than when it was originally filed.]

Moore v Secura Insurance, 276 Mich App 195; 741 NW2d 38 (2007); rev'd 482 Mich 507; 759 NW2d 833 (2008) [Claim for attorney fees under MCL 500.3148 of the No Fault Act. Court held that jury's award of penalty interest evidenced that at least some of the benefits awarded were "overdue" within the meaning of the statute. Court found that attorney fees warranted because insurer acted unreasonably in terminating benefits.]

Rodriguez v ASE Industries, 275 Mich App 8; 738 NW2d 238 (2007) [In this product liability case tried to a jury, and after the jury rejected the plaintiff's contention that defendant's conduct had been "grossly negligent," which finding would have avoided the statutory limitation on noneconomic damages, the trial court was permitted to hold that the "cap" could be avoided upon its holding that the defendant had acted intentionally, with knowledge of the potential for plaintiff's injury.]

Minerva Partners, Ltd v First Passage, LLC, 274 Mich App 207; 731 NW2d 472 (2007) [The issue was when a municipality abandons a road, can an adjacent landowner who enjoyed use of the public easement over the road claim an

interest where another adjacent landowner has title to the land beneath it? The Court of Appeals ruled in favor of First Passage, LLC, and answered “no” to the issue. The Court ruled that where an adjacent landowner holds a fee simple interest in the land beneath a road, it will regain its full rights to the road – free of any public easements – after it is abandoned by the municipality.]

Chase v Terra Nova Industries, 272 Mich App 695; 728 NW2d 895 (2006) [In complex insurance dispute concerning construction of the Great Lakes Crossing Mall arising out of an injury to an employee of sub-contractor hired not by the mall general contractor but, independently, by one of the mall retailers, the Court of Appeals reversed a finding of broad, blanket coverage owed by general contractor's insurer, and held further proceedings were necessary to determine proper scope of the general contractor's insurer's coverage, and whether, in any event, the general contractor and its insurer were joined too late for any liability to be considered.]

David v Sternberg, 272 Mich App 377; 726 NW2d 89 (2006) [A plaintiff cannot avoid the statutory requirements applicable in medical malpractice actions, including the requirement of filing a pre-complaint affidavit of merit, by couching the complaint in terms of mere ordinary negligence.]

City of Lake Angelus v Michigan Aeronautics Comm'n, 260 Mich App 371; 676 NW2d 642 (2004), lv den 471 Mich 866; 683 NW2d 670 (2004) [The Michigan Aeronautics Commission does not have the statutory authority to permit seaplanes to land in, or take-off from, bodies of water in noncompliance with local zoning ordinances which prohibit such activity.]

Calef v West, 252 Mich App 443; 652 NW2d 496 (2002) [Clause in residential lease negating landlord's duty to warn tenant of latent defects in premises existing at inception of lease violates Truth in Renting Act.]

Valeo Switches & Detection Systems, Inc v EMCom, Inc v Citizens Insurance Company, 272 Mich App 309; 725 NW2d 364 (CA #264618 9/26/06) [In this declaratory action seeking a determination of insurance coverage, and as a matter of first impression, the Court of Appeals affirmed the dismissal of the Michigan third-party complaint under MCR 2.116(C)(6) due to a New York declaratory action filed by Citizens which was pending at the time of the third-party complaint and involved the same issues and parties.]

Buck v Thomas M Cooley Law School, 272 Mich App 93; 725 NW2d 485 (2006) [Where plaintiff sought to impose liability on private law school under the Michigan Persons With Disabilities Civil Rights Act, the Court held that there was

no duty “not to misdiagnose” a learning disability, and that the defendant had not failed to reasonably accommodate the plaintiff when it denied her request to drop a class late in the semester.]

Cole v Auto Owners Ins Co, 272 Mich App 50; 723 NW2d 922 (2006) [A bicyclist is not a "pedestrian" as that term is used in the uninsured motorist coverage provision of an automobile insurance policy where the term is unambiguous and its plain and ordinary dictionary definition is "a person who goes or travels on foot."]

Titan Ins Co v North Pointe Ins Co, 270 Mich App 339; 715 NW2d 324 (2006) [Cause of action between two insurers of different priority is a subrogation action and the one-year statute of limitation applies. Judicial or equitable tolling, which would expand the one-year limitation from the date of notice rather than the date of the accident, is not permitted.]

Kopp v Zigich, 268 Mich App 258; 707 NW2d 601 (2005) [In case of first impression, the Court of Appeals concluded that a named defendant could identify the plaintiff’s employer as a potential non-party at fault under Michigan’s tort reform legislation, and ask the jury to apportion fault to that employer.]

Hall v Small, 267 Mich App 330; 705 NW2d 741 (2005) [Court considered issues relating to alleged misrepresentations concerning the condition of a home by a realtor, including allegations of an affirmative failure to disclose the existence of black mold.]

Teufel v Watkins, 267 Mich App 425; 705 NW2d 164 (2005) [Court considered claim arising from slip and fall on ice, and concluded that no claim could be brought against either the defendant landlord, or the defendant snow removal company, holding that the open and obvious danger defense precluded the premises liability claim, and that no duty was owed by the contractor that was separate and distinct from its contractual obligations.]

Reed v Breton, 264 Mich App 363; 691 NW2d 779 (2004) [As matter of first impression, the Court of Appeals considered what evidence was necessary in a dramshop action to rebut the rebuttable presumption of MCL 436.1801(8) that no viable cause of action exists against any retail licensee except the last licensee who furnished alcoholic beverages to the minor or visibly intoxicated person.]

Rory v Continental Ins Co, 262 Mich App 679; 687 NW2d 304 (2004)
[One year limitation period for filing uninsured motorist claim was found to be unenforceable as “unreasonable”.]

Hayley v Allstate Ins Co, 262 Mich App 571; 686 NW2d 273 (2004)
[Insurer was entitled to summary disposition on a claim of injury sustained as a result of toxic mold caused by water damage, where the policy contained an exclusion that applied to both losses caused by mold and losses consisting of mold damage.]

Dean v Childs, 262 Mich App 48; 684 NW2d 894 (2004), *rev'd in part* 474 Mich 914; 705 NW2d 344 (2005) [Where liability was asserted against a township and one of its firefighters, seeking recovery because children died in a fire, the majority held that the firefighting could have constituted the proximate cause of the injuries, while the dissent disagreed. All panel members agreed that the §1983 complaint against the township should be dismissed because of insufficient pleading, and all rejected the argument that the public duty doctrine should preclude suit against the firefighter.]

Frierson v West American Ins Co, 261 Mich App 732; 683 NW2d 695 (2004) [Where plaintiff was a passenger on a motorcycle when she was injured, and no insurer could be identified under the priority provisions and exceptions in the No-Fault Act, MCL 500.3114(5), plaintiff sought benefits from her own insurer and the assigned claims facility. The Court of Appeals found that, when an insurer who would otherwise be liable under one of the exceptions to MCL 500.3114(1) cannot be identified, the general rule applies and the injured party must look to Section 3114(1) rather than the assigned claims facility for the identity of the insurance carrier responsible for payment of the injured parties' PIP benefits.]

Moriarity v Shields, 260 Mich App 566; 678 NW2d 642 (2004) [Where trial court granted an order allowing the issuance of a second summons, and where that order was signed within the life of the original summons, a second summons was properly issued, even though it was not actually issued until after the expiration of the original summons.]

City of Monroe v Jones, 259 Mich App 443; 674 NW2d 703 (2003) [City had no authority to ticket disabled individual for parking in violation of ordinance, rather than violation of Motor Vehicle Code.]

Advocacy Organization for Patients & Providers v Auto Club Ins Ass'n, 257 Mich App 365; 670 NW2d 569 (2003) [Michigan's no-fault law required auto

insurers to pay only “reasonable” medical charges, which might not be the “customary” charge of the medical provider, and the Court of Appeals affirmed the procedures utilized by the insurers to make their reasonableness determination.]

Advanta National Bank v McClarty, 257 Mich App 113; 667 NW2d 880 (2003) [The Michigan Court of Appeals affirmed the trial court’s decision to extinguish Advanta’s lien. The case is presently pending the Michigan Supreme Court on an application for leave to appeal to resolve a perceived conflict in the appellate courts.]

Kreiner v Fischer (On Remand), 256 Mich App 680; 671 NW2d 95, lv gtd, 469 Mich 948; 671 NW2d 55 (2003) [Following summary reversal by Supreme Court, summary disposition for defendant in auto-negligence claim on grounds of no “serious impairment of body function” again is reversed by Court of Appeals due to life impact of injuries--Supreme Court grants defendant’s second appeal, 11/6/03.]

Proudfoot v State Farm Mutual Ins Co, 254 Mich App 702; 658 NW2d 838 (2003) [Trial of no-fault insurance claim for home modification expenses with resulting award of declaratory judgment with penalty interest, judgment interest and attorney fees for plaintiff--upheld on initial appeal, reversed by Supreme Court, 12/23/03.]

Brooks v Mammo, 254 Mich App 486; 657 NW2d 793 (2002) [Where case was remanded to the district court as a result of a mediation that did not exceed the jurisdictional limit of the circuit court, and where trial resulted in a verdict that exceeded the jurisdictional limit of the district court, judgment could not be entered in an amount which exceeded that jurisdictional limit.]

Jones v Enertel, Inc, 254 Mich App 432; 656 NW2d 870 (2002) [Where co-defendant has been granted summary disposition premised on the open and obvious danger doctrine (no duty), the remaining defendant may not name the dismissed defendant as a potential nonparty at fault pursuant to MCL 600.6304, notwithstanding the possibility that its conduct may have been a proximate cause of the plaintiff’s injuries, and notwithstanding the definition of fault set forth in the statute, because not all of the elements of a negligence action against the dismissed party were present.]

Quest Diagnostics v MCI Worldcom, 254 Mich App 372; 656 NW2d 858 (2002) [The economic loss doctrine did not preclude suit against a contractor who

ruptured a water main during construction, allegedly causing economic damage to businesses and residences as a result of the interruption in water service.]

Allstate Ins Co v Muszynski, 253 Mich App 138; 655 NW2d 260 (2002) [Insurance policy exclusion which excludes liability coverage for bodily injury sustained by an insured applies to preclude coverage for liability asserted in wrongful death claim arising from the death of an insured person, even though the personal representative of the estate, and some or all of the heirs of the estate, were not insureds under the policy.]

Kreiner v Fischer, 251 Mich App 513; 651 NW2d 433 (2002) [Discussion of proper role of trial court in determining existence of “threshold injuries” under the no-fault act where there are some areas of disagreement.] *Summarily reversed by Supreme Court and remanded to the Court of Appeals*, 4/10/03.

Armstrong v Township of Ypsilanti, 248 Mich App 573; 640 NW2d 321 (2001) [Affirming the decision of the township board eliminating a position, the Court of Appeals held that the separation of powers doctrine applied only to the “state” and not to townships; that the board had the authority to eliminate a position in the middle of the budget year, with or without the recommendation of the township supervisor; and that the board members were entitled to absolute immunity, regardless of their alleged motivation and purpose.]

Wysocki v Felt, 248 Mich App 346; 639 NW2d 572 (2001) [The Court of Appeals confirmed the constitutionality of tort reform legislation barring any recovery by plaintiffs whose intoxication was at least 50% the cause of their injuries, noting that tort reform legislation generally was intended to effect a shift to personal responsibility. MCL 600.2955a.]

Spect Imaging, Inc v Allstate Ins Co, 246 Mich App 568; 633 NW2d 461 (2001) [The Court of Appeals reverses summary disposition granted to the plaintiff and enunciates the test to be applied by trial courts in determining whether medical services rendered to an insured by a health-care provider, such as SPECT imaging tests for mild traumatic brain injuries, are reasonably necessary services under the Michigan no-fault act so as to require an insurer to pay for such tests.]

Meyer v City of Centerline, 242 Mich App 560; 619 NW2d 182 (2000) [In a case of first impression, the Court of Appeals held that harassment by coworkers taken in retaliation for an employee’s opposition to a violation of the Civil Rights Act, and a supervisor’s failure to take action to prevent the harassment, can constitute an adverse employment action for purposes of a retaliation claim.]

Kefgen v Davidson, 241 Mich App 611; 617 NW2d 351 (2000) [Discussion of privileges available to private citizens who made allegedly defamatory statements at quasi-legislative proceedings, finding that statements made at school board meeting were not entitled to absolute privilege under particular circumstances presented, while agreeing that qualified privilege defeated plaintiff's claims of defamation.]

Sullivan v North River Ins Co, 238 Mich App 433; 606 NW2d 383 (1999) [Discussion of availability of work loss benefits under no-fault law to person who had a work history both before and after the automobile accident, but who was voluntarily unemployed at the time of the accident.]

Hetrick v Friedman, 237 Mich App 264; 602 NW2d 603 (1999) [Arbitration agreement's incorporation of the rules of the American Arbitration Association, which include a provision that a circuit court can enter judgment on an arbitration award, renders the arbitration a "statutory arbitration" and not simply a common law arbitration, and thus the agreement could not be revoked unilaterally.]

Barrow v Pritchard, 235 Mich App 478; 597 NW2d 853 (1999), lv den 461 Mich 966; 607 NW2d 728 (2000) [Under the doctrine of crossover estoppel, and despite some semantic differences between the criminal standard for ineffective assistance of counsel and the civil standard for legal malpractice, a criminal-defense attorney cannot be sued for legal malpractice if a court has previously determined that the plaintiff was not deprived of the effective assistance of counsel by the attorney during the plaintiff's criminal trial.]

American Medical v Allstate Ins Co, 235 Mich App 301; 597 NW2d 244 (1999) [Traditional health insurance with coordinated coverage is primary over coordinated no-fault policy, pursuant to Michigan insurance regulation, even though health insurance is provided by employee benefit plan; ERISA does not preempt Michigan rule as applied to health insurance policy.]

Romska v Opper, 234 Mich App 512; 594 NW2d 853 (1999); [Release entered into between plaintiff and one tortfeasor applied to bar litigation against second tortfeasor based on the inclusive language of release.]

Frazier v Allstate Ins Co, 237 Mich App 172; 585 NW2d 365 (1998) [Entitlement of wage loss benefits as "temporarily unemployed" person under no-fault act narrowed.]

Vitale v Auto Club Ins Assoc, 233 Mich App 539; 593 NW2d 187 (1999)
[Meaning of “employee” in context of priority dispute between insurers.]

Spikes v Banks, 231 Mich App 341; 586 NW2d 106 (1998) [In context of alleged liability of foster parent for sexual abuse taking place in their home, discussion of the parameters of foster parent immunity under the foster parent immunity statute.]

Allstate Ins Co v State Farm Mutual Ins Co, 230 Mich App 434; 584 NW2d 355 (1998) [Policy was void at time of accident because insured had no insurable interest after sale of the vehicle and removal of license plates.]

Engle v Zurich-American, 230 Mich App 105; 583 NW2d 484 (1998)
[Discussion of coverage available under bobtail liability insurance policy.]

Henry v Prusak, 229 Mich App 162; 582 NW2d 193 (1998) [Reversal of default entered against defendant as sanction for the settlement position of his insurance company, based on the holding that the circuit court had no authority to impose such a sanction.]

Hughes v PMG Building, 227 Mich App 1; 574 NW2d 691 (1997) [A general contractor is not liable for injuries sustained by a subcontractor’s employee under the “common work area” exception to non-liability if the employee was injured while working on a unique project away from other workers.]

Marlo Beauty Supply v Farmers Ins, 227 Mich App 309; 575 NW2d 324 (1998) [Issues of liability coverage, including reasonable expectation of insured, and interplay between exclusions and endorsement.]

Allstate Ins Co v Miller (After Remand), 226 Mich App 574; 575 NW2d 11 (1997) [Summary disposition affirmed, applying intentional act exclusion to shooting by insured, notwithstanding claim of mental incapacity and notwithstanding absence of witnesses.]

Allstate Ins Co v Fick, 226 Mich App 197; 572 NW2d 265 (1997)
[Interpretation and broad application of “criminal act” exclusion (issue of first impression).]

Booth v Auto-Owners Ins Co, 224 Mich App 724; 569 NW2d 903 (1997)
[Availability of no-fault benefits for attendant care expenses provided by parents of insured where parents did not bill child for their care.]

Cavalier Manufacturing Co v Employers Ins of Wausau (On Remand), 222 Mich App 89; 564 NW2d 68 (1997) [Intentional act exclusion of policy did not bar coverage for the intentional conduct alleged against the employer so as to avoid the exclusive remedy provision of the workers' compensation act.]

Hammoud v Metropolitan Property & Casualty Ins Co, 222 Mich App 513; 563 NW2d 716 (1997) [Ability of auto insurer to void policy ab initio regarding material misrepresentation, even when the party claiming benefits was not the one making the misrepresentation, as long as that party is not "innocent" regarding the circumstances.]

Bogas (Thompson) v Allstate Ins Co, 221 Mich App 576; 562 NW2d 236 (1997) [Viability of household exclusion in umbrella policy in automobile liability context.]

American States Ins Co v Kesten, 221 Mich App 330; 561 NW2d 486 (1997) [Availability of uninsured motorist benefits where insured was occupying another motor vehicle.]

Funk v Hover Trucking, 221 Mich App 268; 561 NW2d 479 (1997) [Discussion of duties owed to driver delivering goods to defendant's premises, and conclusion that the Uniform Commercial Code did not obviate the duties owed through the common law.]

Tellkamp v Wolverine Mutual Ins Co, 219 Mich App 231; 556 NW2d 504 (1996) ["Trial de novo" clause in uninsured motorists arbitration clause does not violate Michigan Arbitration Act.]

Ballard v Ypsilanti Township, 216 Mich App 545; 549 NW2d 885 (1996) [Governmental immunity applied to bar claims brought under the Recreational Use Act; reversing jury verdict against township.]

Trierweiler v Frankenmuth Mutual Ins Co, 216 Mich App 653; 550 NW2d 577 (1996) [Uninsured motorist benefits issue; reversed summary disposition granting same and secured judgment in favor of insurer.]

Auto Club Ins Assoc v Lozanis, 215 Mich App 415; 546 NW2d 648 (1996) [Minimum limits for uninsured motorists coverage under Ontario law applies to Michigan auto policy where the accident occurred in Ontario.]

Zurich American Ins Co v Amerisure Ins Co, 215 Mich App 526; 547 NW2d 52 (1996) [Questions involving coverage for bobtail liability in context of ICC regulations and lease.]

Michigan Basic Property Ins Co v Wasarovich, 214 Mich App 319; 542 NW2d 367 (1995) [Issue concerning determination of when "occurrence" is present for purposes of liability insurance coverage, with court holding that the existence of an occurrence is to be determined from the perspective of the insured who directly caused the injury.]

Kootsillas v City of Riverview, 214 Mich App 570; 453 NW2d 356 (1995), aff'd 456 Mich 615; 575 NW2d 527 (1998) [The landfill activities of a municipality can constitute a "proprietary function" under the state's governmental immunity act.]

Woodruff v USS Great Lakes Fleet, 210 Mich App 255; 533 NW2d 356 (1995) [Reversal of jury verdict and remand as to damages in admiralty action.]

Davis v Dow Corning, 209 Mich App 287; 530 NW2d 178 (1995) [Ex parte contact with plaintiff's treating physician was held to be permissible in a personal injury case.]

Rogalski v Tavernier, 208 Mich App 302; 527 NW2d 73 (1995) [No imposition of social host liability resulting from provision of alcohol to minor, where plaintiff's injuries were caused by violent conduct of the minor.]

Arnold v Darczy, 208 Mich App 638 (1995) [Reversal of additur awarded by circuit court and remand for reconsideration of appropriate factors.]

Jodway v Kennametal, 207 Mich App 622; 525 NW2d 883 (1994), lv den 441 Mich 863; 490 NW2d 415 (1992) [Issues concerning exercise of limited personal jurisdiction over foreign defendant and sophisticated user defense in product-liability law.]

Hill v GMAC, 207 Mich App 504; 525 NW2d 905 (1995) [Lessor's liability under owners liability act where third party challenged existence of the lease, raising the statute of frauds.]

Froede v Holland Ladder, 207 Mich App 127; 523 NW2d 849 (1994) [Reversal of adverse jury verdict against defendant based on juror qualification and

improper elicitation of expert testimony by plaintiff concerning other accidents involving ladders.]

Jalaba v Borovoy, 206 Mich App 17; 520 NW2d 349 (1994) [Standard of care in podiatric malpractice case as local one.]

Sherman v DeMaria Building Co, 203 Mich App 593; 513 NW2d 187 (1994) [Availability of contractual indemnity in a construction context where indemnity allegedly sought for sole negligence of indemnitee.]

Auto-Owners Ins v Harvey, 219 Mich App 466; 556 NW2d 517 (1996) [Where insured was loading a car onto a trailer which was attached to a truck, meaning of the term “occupant” for purposes of uninsured motorist coverage.]

Century Mutual Ins v League General Ins, 213 Mich App 114; 541 NW2d 272 (1995) [Discussion of when an incident arises out of the use of an automobile in the context of a dog bite.]

McGill v Automobile Insurance Association of Michigan, 207 Mich App 402 (1994) [Issues regarding the obligation of a no-fault insurer to pay only reasonable charges for medical expenses incurred.]

Zulcosky v Farm Bureau Life Ins Co of Mi, 206 Mich App 95; 520 NW2d 366 (1994) [Materiality of insured’s representations concerning traffic citations on application for life insurance.]

Smoltz v Peterson, 204 Mich App 136; 514 NW2d 199 (1994) [Issue concerning insurance company’s responsibility for paying prejudgment interest on that portion of the judgment which exceeded the policy limits of an automobile policy.]

Transamerica Ins v MCCA, 202 Mich App 514; 509 NW2d 540 (1993) [No-fault insurer must individually pay \$250,000 in a given loss before seeking reimbursement from the MCCA and fact that two or more insurers share responsibility on an equal priority basis for a loss does not alter the rule -- MCCA reimbursement is based upon \$250,000 payment by an insurer, not \$250,000 of aggregate payment in a given loss.]

Davis v Wayne County Sheriff, 201 Mich App 572; 507 NW2d 751 (1993) [42 USC §1983 liability against County, with reversal of jury verdict and entry of

judgment notwithstanding the verdict because plaintiff had failed to prove the requisite elements.]

Adams v Perry Furniture Co, 198 Mich App 1; 497 NW2d 514 (1993) [Discussion of sanctions available for discovery abuses, and procedures for determining same; discussion of appellate procedure regarding appeals from post-judgment orders.]

Bahr v Harper Grace Hospitals, 198 Mich App 31; 497 NW2d 526 (1993) [Plaintiff's foundation for expert testimony did not show familiarity with the standard of care in same or similar community and plaintiff's verdict reversed.]

Citizens Ins Co v American Community Ins Co, 197 Mich App 707; 495 NW2d 798 (1993) [Although the statute of limitations for a no-fault insurer's action for reimbursement of benefits against a general medical insurer is six years, the no-fault insurer is subject to a shorter contractual time limitation for claims set forth in the medical insurance policy and no-fault insurer's action was thus, time-barred.]

Mozdy v Lopez, 197 Mich App 356; 494 NW2d 866 (1993) [No personal jurisdiction in Michigan existed over Canadian bar owner whose contacts with Michigan were limited to the placement of advertisements in newspapers.]

Detroit Board of Education v Celotex (On Remand), 196 Mich App 694; 493 NW2d 513 (1992) [School district's action for property damage against suppliers of asbestos materials, based upon health hazards and removal costs, was barred by statute of limitations and a claim of a continuing nuisance was invalid since the defendants did not "control" the sites of alleged nuisance.]

Constantineau v DCI Food Equipment, Inc, 195 Mich App 511, 491 NW2d 262 (1992) [One who enters a business premises as an invitee may change his status to that of a licensee or trespasser if s/he exceeds the scope of the invitation.]

Wilson v League General Ins Co, 195 Mich App 705; 491 NW2d 642 (1992) [No-fault act excludes payment of benefits to a person whose vehicle, involved in the accident, did not have no-fault insurance in effect, even if the vehicle was being driven outside the state and thus may not have been required to have Michigan no-fault insurance.]

Keiser v Allstate Ins Co, 195 Mich App 369; 491 NW2d 581 (1992)
[Availability of mediation sanctions where the final verdict changed after appellate activity.]

Farm Bureau v MIC General, 193 Mich App 317; 483 NW2d 466 (1992)
[In first party no-fault priority dispute, meaning of “occupant” when man threw himself on hood of vehicle and was thus transported and injured.]

State Farm v Fisher, 192 Mich App 371; 481 NW2d 743 (1992) [Whether insured’s conviction of involuntary manslaughter could be used in declaratory action contesting coverage and whether it was determinative of the question of intent regarding intentional act exclusion.]

Rodriguez v Solar of Michigan, Inc, 191 Mich App 483; 478 NW2d 914 (1992) [In dramshop action, the evidence of the driver’s intoxication was relevant, even if intoxication was not a contributing factor to the accident, and recovery under the dramshop act was available to the intoxicated driver’s stepchildren and stepgrandchildren.]

Hooper v Lewis, 191 Mich App 312; 477 NW2d 114 (1991) [Statute of limitations in legal malpractice action began to run when the attorney was relieved from duties of representation by letter received from client.]

Allstate Ins Co v Sentry Ins Co, 191 Mich App 66; 477 NW2d 422 (1991)
[No liability for no-fault benefits to third party where the insured was no longer the registrant of the vehicle at time of the accident.]

Moghis v Citizens Ins Co of America, 187 Mich App 245, 466 NW2d 290 (1990) [Requirement that services actually be provided and expense incurred before no-fault carrier was responsible for payment of same.]

Allstate Ins Co v Miller (On Remand), 185 Mich App 345; 460 NW2d 612 (1990) [Finding of fact regarding mental ability of insured to commit murder and implicate the intentional act exclusion of his homeowners policy.]

Auto-Owners Ins Co v Autodie Corp Employee Benefit Plan, 185 Mich App 472; 463 NW2d 149 (1990) [Coordination of benefits between no fault and health care insurers.]

Michigan Mutual Ins Co v Farm Bureau Ins Group, 183 Mich App 626; 455 NW2d 352 (1990) [Availability of no-fault policies to accident involving passenger of a school bus who was injured after leaving the bus.]

Madison v City of Detroit, 182 Mich App 696; 452 NW2d 883 (1990) [Discussion of the availability of prejudgment interest on a consent judgment which did not provide for same.]

Green v Shell Oil Co, 181 Mich App 439; 450 NW2d 50 (1990) [Discussion of potential liability for third-party criminal assault by employee on the defendant's premises.]

Seebacher v Fitzgerald, Hodgman, 181 Mich App 642; 449 NW2d 673 (1989) [Statute of limitations and discovery rule in legal malpractice case.]

Allstate Ins Co v Tomaszewski 180 Mich App 616, 447 NW2d 849 (1989) [Exclusion for bodily injury sustained by insured person applied to bar coverage for injuries sustained by step-child of named insured.]

Krimmel v Sears, Roebuck & Co, 180 Mich App 672; 447 NW2d 852 (1989) [Court rejects workers' compensation insurer's contention that a statute is unconstitutional for retroactively prohibiting coordination of benefits.]

Loyer Construction v Novi, 179 Mich App 781; 446 NW2d 364 (1989) [Breach of contract claim and question as to whether consulting engineer was party to contract.]

Zapalski v Benton, 178 Mich App 398; 444 NW2d 171 (1989) [When plaintiff failed to post a bond as security for costs, the circuit court could properly dismiss the complaint.]

Upjohn Co v New Hampshire Ins Co, 178 Mich App 706; 444 NW2d 813 (1989) [Coverage issues involving toxic waste leak and the meaning of occurrence, the applicability of the pollution exclusions, and "other insurance" clauses.]

Gardner v Stodgel, 175 Mich App 241; 437 NW2d 276 (1989) [In dramshop action, the allegedly intoxicated individual must be named and retained, even when that person is a family member of the claimant.]

Allstate Ins Co v Miller, 175 Mich App 515; 438 NW2d 638 (1989)
[Discussion of mental capacity of insured as relevant factor in determining applicability of intentional act exclusion.]

Allstate Ins Co v Maloney, 174 Mich App 263, 435 NW2d 448 (1988)
[Intentional act exclusion applied to bar coverage for shooting.]

Roberts v Pinkins 171 Mich App 648, 430 NW2d 808 (1988) [No duty owed by premises owner to maintain vacant property against its use for criminal conduct.]

Wells v Fruehauf Corp, 170 Mich App 326; 428 NW2d 1 (1988) [Affirmed dismissal of complaint when plaintiff failed to file bond as security for costs.]

Harris v Vaillencourt, 170 Mich App 740; 428 NW2d 759 (1988) [Finding that the Recreational Use Act did not apply to limit the liability for injuries resulting from dock owned by a homeowners association.]

Kochoian v Allstate Ins Co, 168 Mich App 1; 423 NW2d 913 (1988)
[Considerations regarding the availability of no-fault work loss benefits when the insured suffered a heart attack three months after the accident.]

Bambino v Dunn, 166 Mich App 723, 420 NW2d 866 (1988) [Social host responsibility is limited to those persons who actually furnishes the alcohol consumed on premises.]

Cobb v Liberty Mutual Ins Co, 164 Mich App 66; 416 NW2d 328 (1987)
[Availability of no-fault benefits where the insured driver was injured while decoupling a tractor from a trailer which had just been delivered to employer.]

McFadden v Allstate Ins Co, 164 Mich App 20; 416 NW2d 364 (1987)
[Availability of no-fault benefits, and their relationship to workers' compensation benefits, where the injury involved a mobile crane.]

Allstate Ins Co v Goldwater, 163 Mich App 646, 415 NW2d 2 (1987) [Term "motorized land vehicle" includes dirt bike and, thus, no coverage was provided under homeowners policy.]

Boggerty v Wilson, 160 Mich App 514; 408 NW2d 809 (1987) [Reversal of judgment under 42 USC §1983 based on plaintiff's failure to prove each of the requisite elements.]

Crawford v Allstate Ins Co, 160 Mich App 182; 407 NW2d 618 (1987)
[Availability of no-fault benefits where the injury occurred while the insured was loading a tractor-trailer.]

Matthews v City of Detroit, 141 Mich App 712; 367 NW2d 440 (1985)
[Application of Recreational Use Act to limit liability of City for injuries sustained in city owned park.]

FEDERAL COURTS:

Warrior Sports, Inc. v. Dickinson Wright, P.L.L.C., 631 F.3d 1367 (Fed. Cir. 2011) [Federal Circuit Court of Appeals holds that complaint alleging state legal malpractice claim fell within federal court's exclusive jurisdiction under 28 U.S.C. 1338 as proof of patent infringement was necessary in order to determine whether plaintiff satisfied proximate cause and injury elements of malpractice claim.]

TMW Enterprises, Inc. v Federal Ins. Co., ___ F.3d ___ (6th Cir. 2010)
[Faulty workmanship property insurance policy exclusion applied to exclude coverage for water infiltration damage, despite insured's contention that ensuing loss provision contained within exclusion reinserted coverage for loss.]

Miller v. Sanilac County, 606 F.3d 240 (6th Cir. 2010) [Where summary judgment was granted to defendant police officer and employing county on federal and state claims arising from traffic stop, conduct taken to effectuate arrest, and subsequent prosecution, the majority affirms summary judgment as to arrest for the ordinance violations but finds question of fact as to probable cause for the criminal violations (as to both claims of false arrest and malicious prosecution), affirms summary judgment as to time spent in cold and use of handcuffs but finds question of fact as to amount of force otherwise used once plaintiff exited vehicle, affirms summary judgment as to testing for both alcohol and drugs in blood, affirms summary judgment as to claims against county because of absence of sufficient evidence of municipal liability, and makes analogous rulings with regard to state claims while finding that no gross negligence claim possible as it was redundant of other claims.]

Buck v. Thomas M. Cooley Law School, 597 F.3d 812 (6th Cir. 3/17/2010)
[The court held that the former student's federal complaint against the defendant law school alleging discrimination and retaliation under the Americans with Disabilities Act was barred by res judicata under Michigan law.]

Brooks v. Rothe, 577 F.3d 701 (6th Cir. 2009) [Where the plaintiff resisted the officer's order to be allowed entry onto the premises to search for drugs, the Court held that she had been lawfully arrested, discussing the lawfulness of the order and the manner in which plaintiff resisted, concluding that plaintiff's conduct constituted obstruction of the officer pursuant to the relevant state statute.]

Janky v. Lake County Convention and Visitors Bureau, 576 F.3d 356 (7th Cir. 2009) [Defendant appealed the jury verdict on damages in this copyright infringement action after the trial court granted plaintiff's motion for summary judgment on copyright infringement. The 7th Circuit vacated the jury award of \$100,000.00 and directed that defendant's motion for summary judgment be granted and that the case be dismissed. The Court agreed with the defendant that the song at issue was, in fact, a joint work and the defendant had a license from the co-writer to use the song in its business.]

Moldowan v. City of Warren, 578 F.3d 351 (6th Cir. 2009) [Where the plaintiff alleged that he was convicted and confined for 12 years prior to being granted a new trial which resulted in his acquittal, the Court considered the viability of his federal and state claims against, *inter alia*, the investigating police officer, finding that a viable claim existed under 42 U.S.C. §1983 premised on allegations that the officer had not disclosed potentially exculpatory statements made to him during his investigation, while dismissing conspiracy claims as having been inadequately pled.]

Shropshire v. Laidlaw Transit, Inc., 550 F.3d 570 (6th Cir. 2008); cert den 130 S.Ct. 110 (2009) [The Michigan closed-head injury provision of the No-Fault Act, M.C.L. 500.3135(2)(a)(ii), is procedural in nature and therefore, where in diversity actions the federal court will apply state substantive law but federal procedural law, plaintiff is not entitled to argue her case to a jury. Rather, plaintiff must produce evidence sufficient to create a genuine issue of material fact as required by F.R.C.P. 56. Where plaintiff failed to produce sufficient evidence, the district court correctly granted defendant's motion for summary judgment.]

Michigan Division-Monument Builders of North America v. Michigan Cemetery Ass'n., 524 F.3d 726 (6th Cir. 2008) [Plaintiffs sued our client claiming violations of the Sherman Anti Trust Act and violations of the State of Michigan Cemetery Act. The Sixth Circuit affirmed the dismissal of the case on summary judgment finding that plaintiffs failed to establish a violation of the Sherman Anti Trust Act and declining pendant jurisdiction over the remaining state claims.]

Skowronek v. American Steamship Co., 505 F.3d 482 (6th Cir. 2007)
[Where the Collective Bargaining Agreement provision at issue provided one maintenance rate for seamen injured on a vessel and a lesser maintenance rate for ill seamen, the Sixth Circuit recognized that this provision was part of the total package of wages and benefits set forth in the Collective Bargaining Agreement and, therefore, determined that the provision regarding maintenance rates was enforceable.]

Draw v. City of Lincoln Park, 491 F.3d 550 (6th Cir. 2007) [Where defendant police officers arrived at scene of an illegal drag race on public streets, but did nothing to stop it, and allegedly encouraged it, no viable claim was asserted under 42 U.S.C. §1983 premised on either their failure to protect the plaintiff's decedent from injury resulting when one of the racers lost control of his vehicle, per opinion in *Jones v Reynolds*, or an alleged "direct injury" claim relying on alleged conspiracy with the drivers of the race cars.]

Lindsey v. Detroit Entertainment, 484 F.3d 824 (6th Cir. 2007)
[Distinguishing *Romanski v. Detroit Entertainment*, 428 F.3d 629 (6th Cir. 2005), the Court held that summary judgment was properly granted to each of the named plaintiffs because it had been their burden to establish the requisites to §1983 liability, including state action, but they had failed to do so when there was no evidence that any of the security guards involved in any of the incidents had been certified under state law such that they could be deemed "state actors". Having so found, the court did not consider plaintiffs' complaint that the district court had denied class certification.]

Citizens Ins. Co. v. MidMichigan Health, 449 F.3d 688 (6th Cir. 2006)
[reversing a ruling of the federal district court, the 6th Circuit Court of Appeals held that the no-fault insurer's ambiguously written "coordination of benefits" clause reasonably contemplated that its coverage would be secondary to employer-provided medical benefits, and thus, since the terms of the employer's ERISA plan did not expressly disavow coverage for medical benefits otherwise payable under no-fault insurance, the ERISA plan was primary in coverage.]

Jones v. Reynolds, 438 F.3d 685 (6th Cir. 2006) [Where defendant police officers arrived at scene of an illegal drag race on public streets, but did nothing to stop it, and allegedly encouraged it, no viable claim was asserted under 42 U.S.C. §1983 premised on their failure to protect the plaintiff's decedent from injury resulting when one of the racers lost control of his vehicle.]

Romanski v. Detroit Entertainment, 428 F.3d 629 (6th Cir. 2005) [The court considered the viability of a cause of action under 42 U.S.C. §1983 against a private company premised on the conduct of its state certified security guards and concluded that the state certification was sufficient to qualify the defendant as a “state actor”. The court also held that the punitive damage award had been constitutionally impermissible, ordering a remittitur.]

Jones v. City of Monroe, 341 F.3d 474 (6th Cir. 2003) [The court affirmed the denial of an injunction that was requested by plaintiff to park for free in a metered parking zone in the City of Monroe claiming that her disability precluded her from parking anywhere else in the City so that she would be close to her appointment.]

Grosse Ile Bridge Co. v. American Steamship Co., 302 F.3d 616 (6th Cir. 2002) [Issues concerning the maritime doctrines of permitting a vessel to proceed toward a closed drawbridge after timely giving a signal for the bridge to open, the posting of a proper lookout onboard ship, the *in extremis* doctrine, and comparative negligence.]

Great West Life & Annuity v. Allstate Ins. Co., 202 F.3d 897 (6th Cir. 2000) [Construing employee benefit plan’s coordination of coverage provision under ERISA as against no-fault insurer’s coverage of the insured’s “dependent”.]

Meridian Mutual Ins. Co. v. Kellman, 197 F.3d 1178 (6th Cir. 1999) [Meaning of “discharge, dispersal, seepage, migration, release or escape” in context of total pollution exclusion of general liability policy and the movement of fumes from a toxic chemical.]

Olsen v. American Steamship Co., 176 F.3d 891 (6th Cir. 1999), *reh and reh en banc den* (1999) [Evidence of physician’s negligence in treating plaintiff is not relevant in Jones Act case where plaintiff sought only direct liability for seaman’s heart attack and not vicarious liability for physician’s medical malpractice.]

Alholm v. American Steamship Co., 144 F.3d 1172 (8th Cir. 1998) [Issues concerning comparative negligence, proximate causation, and improper comments by opposing counsel during admiralty trial.]

Cook v. American Steamship Co., 134 F.3d 771 (6th Cir. 1998) [Affirmance of sanctions imposed against plaintiff’s attorney pursuant to 28 U.S.C. 1927 due to attorney’s unreasonable conduct at trial.]

Monday v. Oullette, 118 F.3d 1099 (6th Cir. 1997) [Plaintiff was unable to maintain a cause of action under 42 U.S.C. §1983 against either the municipality or the police officers who utilized mace to subdue him and transport him to a hospital because of a fear that he was a danger to himself.]

Stack v. Killian, 96 F.3d 159 (6th Cir. 1996) [No constitutional violations resulting from search of plaintiff's premises on complaint of improper treatment of animals, and no civil rights violation resulting from presence of media.]

Nagler v. Gowing, 76 F.3d 379 (6th Cir. 1996) (table) [Issues concerning breach of contract and fraud/misrepresentation.]

Raddatz v. Koselka, 72 F.3d 130 (6th Cir. 1995), affirming 880 F.Supp. 500 (W.D. Mich. 1995), after dismissal, 124 F.3d 199 (6th Cir. 1997) [The *Rooker-Feldman* doctrine applies to deprive a federal court of jurisdiction over the plaintiff's claim which collaterally attacks a prior, unappealed state-court judgment against the plaintiff.]

In re Cleveland Tankers, Inc. (M.V. "Jupiter"), 67 F.3d 1200 (6th Cir. 1995); *cert den* 517 U.S. 1220 (1996) [Addressing standards for determining and apportioning fault between negligent dock owners, unseaworthy vessel moored at dock, and passing freighter.]

Cook v. American Steamship, 53 F.3d 733 (6th Cir. 1995) [Test enunciated for determining the admissibility of an expert's scientific testimony and the standard of review applicable thereto.]

Auto-Owners Ins. Co. v. Thorn Apple Valley, Inc., 31 F.3d 371 (6th Cir. 1994); *cert den* 513 U.S. 1184 (1995) [Establishing federal common law rule under ERISA for determining priority of coverage between self-funded employee benefit plan and private insurer, where both have coordination of benefits provisions.]

Blainey v. American Steamship Co., 990 F.2d 885 (6th Cir. 1993), *cert den* 114 S.Ct. 346 (1993) [Class action of seamen against shipping company dismissed on the basis that their claim for unearned wages for the term of their respective engagements could not extend beyond the point at which they were discharged from the ship, notwithstanding the fact that their shipping "articles" set forth engagements for longer periods of time.]

Wayne County Neighborhood Legal Svcs. v. National Union Fire Ins. Co., 971 F.2d 1 (6th Cir. 1992) [Issues concerning coverage under a directors and officers liability insurance policy.]

Theunissen v. Matthews, 935 F.2d 1454 (6th Cir. 1991) [A personal-injury plaintiff has the burden to make a prima facie showing under federal due-process law and the state's long-arm statute to establish that personal jurisdiction exists over a foreign defendant.]

Allstate Ins. Co. v. Mercier, 913 F.2d 273 (1990) [Jurisdiction of federal courts to hear declaratory actions involving insurance coverage disputes.]

Pattison v. Employers Reinsurance Corp., 900 F.2d 986 (6th Cir. 1990) [Discussion of duty to defend under errors and omissions policy issued to insurance broker.]

Allstate Ins. Co. v. Green, 831 F.2d 145 (1987) [Discussion of intentional act exclusion of homeowners policy in context of premises liability claim arising from a rape; finding that district court had properly exercised its discretion to entertain the declaratory action.]

Allstate Ins. Co. v. Green, 825 F.2d 1061 (6th Cir. 1987) [Jurisdiction of federal courts to hear declaratory actions involving insurance coverage disputes.]

Shepard Claims Service, Inc. v. William Darrah & Associates, 796 F.2d 190 (6th Cir. 1986) [Standards for setting aside default judgment.]

Northwood Apartments v. LaValley, 649 F.2d 401 (6th Cir. 1981), *cert granted and judgment vacated sub nom LaValley v. Northwood Apartments*, 454 U.S. 1118; 71 L.Ed.2d 106; 102 S.Ct. 962 (1981) Tax Injunction Act and theories of abstention barred action under 42 U.S.C. §1983 by property owner against city and tax assessors.]

Allstate Ins. Co. v. Cannon, 644 F.Supp. 31 (E.D. Mi. 1986) [Application of intentional act exclusion of homeowners policy.]