The Journal of Insurance & Indemnity Law

A quarterly publication of the State Bar of Michigan's Insurance and Indemnity Law Section

Volume 19, No. 2 ■ April 2026

This Journal is published by the Insurance and Indemnity Law Section, State Bar of Michigan, Christine Caswell, Journal Editor.

If you have an article idea for the Journal, please contact the editor, Christine Caswell at christine@caswellpllc.com

FROM THE CHAIR

Doug McCray

Happy Springtime to all, and thank you to those who attended our January 29 meeting and mixer at the Hub.

My goals as Chair of the Insurance & Indemnity Section ("IIS") remain to encourage Section membership (currently at around 1,100) and member engagement through our own events and working with other sections, advancing our scholarship, and putting out a top-notch publication.

Our May 20, 2026 event: Environmental Claims in Michigan

The IIS typically conducts two social mixers and two educational programs each year. This year, our first educational program, scheduled for May 20 at the Oak Pointe Country Club in Brighton, will be a joint project with the Environmental Law Section focusing on "Environmental Claims in Michigan." While the details are still being hammered out (thanks to Melissa Hirn and ELS Chair Kyle Konwinski), we anticipate some outstanding presentations by speakers familiar with both environmental and insurance law, and it should be an excellent event. The seminar includes dinner and is free to section members. Specific information is provided in another section of the Spring *Journal*. Those interested can contact our administrator Joan at josullivan3399@gmail.com.

Sponsorship of other sections

In addition to its own programs, the IIS often sponsors programs put on by other sections. Most recently, we sponsored and attended the Young Lawyers Section Annual Summit (thank you to Council members Amy Diviney and Charlotte McCray), and we will be sponsoring the Paralegal/Legal Assistant Section "Day of Education" in the near future.

Benefits for law students and the scholarship competition

The IIS does its best to encourage future lawyers. Section membership is free for current Michigan law students (again, contact Joan). We also conduct a yearly scholarship competition regarding insurance related topics. This year's three topics and other information should be posted online soon. We award a $5,000 scholarship to the law student submitting the best article on an insurance related subject. Depending on the number and quality of submissions, we may award second and third place awards as well. Last year's first and second place submissions, which were exceptionally good, were both published in the Journal. If you know a law student who might be interested (or want more information) please have them contact us.

IIS Journal

We are always looking for submissions to our quarterly Journal. With more than 1,000 members, most of whom are Michigan attorneys who practice insurance law, publication affords authors access to a unique audience. If you are interested in submitting an article, please contact our editor Christine Caswell at christine@caswellpllc.com.

Concluding thoughts

The IIS provides its members with multiple educational, networking, and scholarly opportunities, and we encourage you to take advantage of them. Finally, we are always looking for ways to improve. If you have questions or comments that you think might help make the section better, or have ideas for publication or scholarship topics, please feel free to contact me at doug@mccraylawoffice.com.

Scenes from the YLS Summit

Friday, March 27, 2026

Lovett Hall, Henry Ford Museum in Dearborn

Doug and Charlotte McCray promoting the Insurance & Indemnity Section scholarship at the YLS event

Takura Nyamfukudza at the YLS Annual Summit

The Insurance & Indemnity Section sponsored a booth at the YLS event

INSURANCE AND INDEMNITY 101

Artificial Intelligence versus an Experienced Insurance Attorney

By Rabih Hamawi, CPCU®, CIC, CRM, LIC, MSF
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Don't Confuse AI Search with Legal Advice: Why AI Can't Replace an Experienced Insurance Attorney

In today's digital world, artificial intelligence (AI) tools are everywhere. Many homeowners, business owners, and policyholders turn to AI chatbots for quick answers about insurance coverage, insurance claims, or legal questions about insurance law. While AI can provide helpful general information in limited circumstances, it is not a substitute for legal advice from an experienced insurance attorney. Mistaking AI guidance for professional counsel can lead to costly mistakes when filing insurance claims or dealing with insurers.

This article explains why AI cannot provide legal advice, highlights common pitfalls policyholders face, and offers practical steps to protect your insurance rights.

Why AI Cannot Give Legal Advice

AI tools, including ChatGPT, Bing AI, Google Gemini, Microsoft Copilot, Claude (Anthropic), Perplexity AI, and Grok (xAI), can generate responses based on patterns in data, but they cannot:

- Analyze your personal or commercial insurance policy in detail
- Interpret complex legal language specific to your jurisdiction
- Provide advice tailored to your unique situation
- Represent you in disputes with insurance companies
- Represent you in court when suing an insurance company

Only an experienced insurance attorney can review your policy, evaluate coverage, and guide you on your legal options. Using AI as a sole source of guidance can create misunderstandings or lead to denied claims.

Common AI Misunderstandings About Insurance Coverage

Many policyholders assume AI can fully explain insurance coverage, but it often provides only general information. AI cannot review your specific policy, identify exclusions, or confirm whether a particular loss is covered.

Relying solely on AI can lead to mistakes, such as misunderstanding coverage or missing critical claim requirements. This often causes confusion, such as:

1. **Coverage assumptions** – AI may generalize insurance terms but cannot confirm if your policy includes specific protections.
2. **Policy exclusions** – AI might not detect subtle exclusions in your policy, which insurers can use to limit or deny claims.
3. **Claim procedures** – Filing a claim incorrectly can reduce your reimbursement or void coverage. AI can suggest steps, but these may not match your insurer's requirements.

Example: A homeowner asks AI if flood damage is covered. AI responds based on general knowledge: "Some homeowners insurance includes flood coverage." In reality, most standard policies exclude flood damage, and only a flood policy or endorsement provides coverage.

How Insurance Coverage Appears in Your Policy

Insurance coverage is typically structured as:

- **Declarations Page** – Summarizes your coverages, limits, and deductibles
- **Insuring Agreement** – Explains what your insurer promises to cover
- **Exclusions** – Lists perils not covered
- **Conditions** – Details requirements to maintain coverage (e.g., notice deadlines, documentations, submitting to an examination under oath, etc.)

AI can explain these sections generally, but its explanation should not be construed as legal advice. AI cannot tell you whether your specific incident is covered or whether you have complied with the policy conditions.

How Insurers Often Limit or Deny Coverage

Insurance companies often deny or reduce claims based on:

1. **Policy exclusions** – Damage or events not covered in the policy
2. **Late notice or improper filing** – Missing deadlines or submitting incomplete forms
3. **Documentation gaps** – Lack of evidence proving loss or damage
4. **Policy misinterpretation** – Insurers may argue that your claim falls outside coverage

Relying solely on AI increases the risk of common AI misunderstandings about insurance coverage, which can lead to denied claims.

Practical Mistakes to Avoid When Using AI for Legal Questions

Here are the most common mistakes policyholders make when relying on AI:

1. **Assuming AI is a licensed attorney** – AI cannot represent you or provide legal advice.
2. **Skipping policy review** – Blindly following AI guidance without reading your policy can lead to coverage mistakes and claim denials.
3. **Ignoring deadlines** – AI might not highlight critical timelines in your claim process.
4. **Overlooking exclusions** – AI cannot detect nuanced exclusions that insurers exploit.
5. **Sharing sensitive information** – Inputting policy numbers or personal details into AI tools may compromise privacy.

Tip: Do not Use AI except for basic explanations, and always verify coverage details with an experienced insurance attorney.

About the Author

Rabih Hamawi *is a past chairperson of the Insurance and Indemnity Law Section. He is a principal at the Law Office of Rabih Hamawi, P.C. and focuses on representing policyholders in fire, property damage, and insurance-coverage disputes with insurers and in errors-and-omissions cases against insurance agents. He has extensive expertise in insurance coverage and is a licensed property and casualty, life, accident, and health insurance producer and counselor (LIC). He earned the Chartered Property and Casualty Underwriter (CPCU), Certified Insurance Counselor (CIC), and Certified Risk Manager (CRM) designations. He is a frequent author on insurance and indemnity topics. His email address is* rh@hamawilaw.com.

Gross Negligence and the Ski Area Safety Act

By Ray Abboo

Michigan Court of Appeals Defines the Boundaries of Statutory and Contractual Immunity Under the Ski Area Safety Act (SASA)

In a decision designated for publication, the Michigan Court of Appeals issued an important clarification on January 9, 2026, regarding the scope of statutory and contractual immunity available to ski area operators under the Ski Area Safety Act of 1962 (SASA), MCL 408.321 et seq. In *Swanson v Bittersweet Ski Resort, Inc*, the Court held that SASA does **not** extend immunity to claims alleging common-law gross negligence and that, as a matter of public policy, liability waivers cannot release such claims.

Background and Procedural Posture

The plaintiff, a volunteer ski patroller, sustained serious injuries after falling approximately 20 feet from a ski lift while attempting to load a toboggan. He alleged that the lift operator failed to follow proper loading procedures and failed to stop the lift despite obvious signs of danger. The defendants moved for summary disposition, arguing that the plaintiff's claims were barred by both a signed liability release and the protections afforded by SASA.

After a complex appellate history, including partial reversal and remand from the Michigan Supreme Court, the Court of Appeals was tasked with determining whether SASA or the release barred the plaintiff's remaining common-law claims, including gross negligence.

The Court's Holding

The Court of Appeals drew a clear doctrinal boundary. While reaffirming that SASA and contractual waivers may bar claims for **ordinary negligence** arising from risks inherent to skiing, the Court held that neither SASA nor a release of liability can shield a ski area operator from claims of **gross negligence**.

Relying on long-standing Michigan precedent, the Court reiterated that public policy prohibits parties from contracting away liability for "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Accordingly, even an otherwise valid and broadly worded release cannot bar claims premised on grossly negligent misconduct.

Distinguishing Prior SASA Jurisprudence

The Court carefully distinguished earlier decisions in which SASA immunity applied, including *Anderson v Pine Knob Ski Resort, Inc, Grieb v Alpine Valley Ski Area*, and *Kent v Alpine Valley Ski Area, Inc*. In those cases, the plaintiffs' injuries arose from dangers deemed "obvious and necessary" to the sport of skiing, such as collisions with fixed objects, other skiers, or lift components operating as intended.

By contrast, the *Swanson* Court emphasized that the plaintiff's allegations were not grounded in assumed risks inherent to skiing. Instead, the claimed injuries arose from alleged operational misconduct, namely improper loading procedures and a failure to respond to an emergent safety hazard. Such conduct, the Court held, falls outside the scope of risks the legislature intended skiers to assume under SASA.

Implications for Insurers and Risk Management

Swanson reinforces a critical principle for insurers, ski operators, and defense counsel: risk transfer mechanisms have limits. Statutory immunity and liability waivers remain powerful tools for managing exposure to ordinary negligence claims, but they do not provide absolute protection.

From an insurance and indemnity perspective, the decision underscores the importance of operational discipline. Claims alleging gross negligence will turn less on waiver language and more on evidence of training, supervision, adherence to safety protocols, and real-time decision-making. Documentation, enforcement of procedures, and demonstrable compliance will often determine whether a claim remains within the protective sphere of SASA or crosses into actionable recklessness.

Conclusion

The Court of Appeals' decision in *Swanson* provides guidance on the outer limits of statutory and contractual immunity in Michigan. SASA was enacted to provide ski area operators with some immunity, not blanket protection. Where alleged misconduct reflects a substantial lack of concern for safety, liability exposure persists notwithstanding the statute or a signed release.

About the Author

Ray Abboo *serves as a trial and appellate counsel and is a certified mediator. For questions regarding the litigation or mediation of ski resort and winter sports liability claims, feel free to contact Raed (Ray) Abboo, Esquire at* ray@abboolaw.com.

When Buildings Fall and Coverage Fails

Interpreting the Collapse Exclusion in Property Insurance in both ISO and Non-ISO Policy Form

By Michael S. Hale
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I. Introduction

Few coverage disputes illustrate the gap between policyholder expectations and policy language as starkly as claims involving alleged structural "collapse." To the insured, a building that is cracking, sagging, condemned, or rendered unsafe by engineers has effectively collapsed. Under Michigan law, however, such conditions frequently fall outside coverage.

Michigan courts have adopted one of the narrowest interpretations of "collapse" in the country. Absent express policy language to the contrary, collapse is treated as an **event**, not a **condition**, requiring an actual falling down or caving in of the structure. As a result, claims involving severe structural impairment are routinely denied when the building remains standing.

Few coverage disputes illustrate the gap between policyholder expectations and policy language as starkly as claims involving alleged structural "collapse." To the insured, a building that is cracking, sagging, condemned, or rendered unsafe by engineers has effectively collapsed. Under Michigan law, however, such conditions frequently fall outside coverage.

This article examines the collapse exclusion under Michigan law, the controlling case authority, the evolution of policy language, and practical lessons for lawyers advising insureds, insurers, and real-estate stakeholders.

II. The Collapse Exclusion: Policy Framework

A. Traditional Collapse Exclusions

Historically, property policies excluded loss caused by "collapse," often without defining the term. These exclusions were intended to remove coverage for gradual deterioration, faulty construction, and long-term structural failure—losses viewed as maintenance issues rather than fortuitous events.

Typical exclusionary language provided:

> "We do not insure for loss caused by collapse, except as provided in Additional Coverage."

When undefined, the meaning of "collapse" became the focal point of litigation.

B. The Insured's Expectation v Policy Language

Policyholders often argue that:

- A building that is unsafe or uninhabitable has functionally collapsed;
- Structural integrity has been substantially impaired;
- Imminent collapse should be treated as collapse.

Michigan courts have consistently rejected these arguments unless the policy expressly adopts such standards.

III. Michigan's Controlling Interpretation of "Collapse"

A. Key Case Law & Principles

Joy Tabernacle v State Farm, 616 F App'x 802 (2015) was a significant Michigan insurance case where the 6th Circuit Court of Appeals ruled that a specific collapse extension in Joy Tabernacle Church's policy covered damage from hidden decay and faulty design, overriding general policy exclusions, establishing that specific contract terms prevail over general ones, and affirming coverage for a 1927 church ceiling collapse.

Background:

- In 2012, the 1927-built Joy Tabernacle Church in Flint, Michigan, experienced a partial ceiling collapse.
- State Farm, the insurer, denied coverage citing exclusions for "decay," "cracking," and "defective design" in their policy.

The Legal Issue:

- The core dispute was whether the policy's specific "collapse extension," which covered collapse from hidden decay or defective construction during renovation, applied, or if the general exclusions voided coverage.

The Ruling (6th Circuit, 2015):

- The court found the specific collapse extension overrides general exclusions, a principle of contract interpretation.
- The ruling stated that a collapse inherently involves cracking, and decay can be hidden, making the extension meaningful.
- The decision affirmed that the policy covered the collapse due to hidden decay and defective design, reversing the lower court's decision in favor of State Farm.

Significance:

This case is a key precedent in property insurance law, particularly in Michigan, for interpreting how specific coverage grants interact with broader exclusions, especially concerning "collapse" and "decay."

The Sixth Circuit held that a specific collapse extension overrides general exclusions for cracking and faulty design, as a collapse inherently involves cracking, making the exclusion pointless if applied.

Hani & Ramiz Inc v North Pointe, Mich App No. 316453 (2013) (unpublished) There, the Michigan Court of Appeals found coverage for a collapsed roof due to chemically treated lumber (hidden decay) because the collapse extension covered "building decay that [was] hidden from view," overriding the general exclusion.

- **Specific v General Provisions**: Michigan courts favor specific policy language (like collapse extensions) over general exclusions, especially when the general exclusion would negate the specific coverage.
- **Hidden Decay**: If decay, even if accelerated by construction issues (like treated wood), is hidden and leads to collapse, the collapse extension often provides coverage.
- **Construction Defects**: While general exclusions exist for faulty workmanship, the collapse extension can still apply if a covered cause (like decay) contributes to the collapse, making the exclusion ineffective.

B. Takeaway for Policyholders

If your property collapses, don't assume it's automatically excluded due to construction flaws. Check for specific "collapse extensions" in your policy and look for underlying causes like hidden decay, as Michigan courts often rule in favor of coverage when specific clauses conflict with general exclusions.

IV. Collapse as an Event, Not a Condition

Michigan law treats collapse as a **discrete physical occurrence**, not an evolving structural condition.

Accordingly:

- Sagging roofs are not collapse;
- Bowing walls are not collapse;
- Severe cracking is not collapse;
- Condemnation is not collapse.

This distinction is outcome-determinative in many claims.

V. The "Additional Coverage – Collapse" Endorsement

A. Modern ISO Forms

In response to litigation nationwide, ISO introduced limited affirmative coverage titled **"Additional Coverage – Collapse."**

This coverage:

- Does not restore broad collapse coverage;
- Applies only if collapse is caused by enumerated perils, such as:
  - Hidden decay;
  - Hidden insect or vermin damage;
  - Weight of people or personal property;
  - Weight of rain on a roof;
  - Use of defective materials during construction (under narrow conditions).

B. Michigan Enforcement

Michigan courts strictly enforce these provisions:

- All conditions must be met;
- Exclusions still apply;
- Burden remains on the insured to prove a qualifying cause.

Importantly, many policies still require an **actual collapse**, even under additional coverage provisions.

VI. Common Collapse Claim Scenarios and Outcomes

Scenario	**Michigan Coverage Result**
Severe structural cracking	No collapse
Building condemned	No collapse
Engineer declares unsafe	No collapse
Imminent collapse	No collapse
Actual falling down	Potential coverage
Collapse from hidden decay (policy allowing)	Possible coverage

VII. Practice Implications for Lawyers

A. For Policyholder Counsel

- Review policy language before assuming collapse coverage;
- Distinguish collapse from ensuing loss (where applicable);
- Investigate whether additional collapse coverage exists and applies;
- Consider alternative coverage theories (e.g., specified perils).

B. For Insurer Counsel

- Michigan authority strongly favors narrow interpretation;
- Early summary disposition is often appropriate;
- Engineering reports should focus on physical status, not risk.

C. For Real-Estate and Transactional Lawyers

- Collapse exclusions materially affect property risk allocation;
- Lease provisions and risk-transfer clauses should address structural failures explicitly;
- Buyers should not assume insurance responds to latent structural defects.

VIII. Conclusion

Michigan law draws a bright line: **a building that has not fallen has not collapsed**. Structural distress, no matter how severe, does not trigger coverage unless the policy clearly says otherwise.

For practitioners, the collapse exclusion serves as a reminder that in property insurance, coverage often turns not on how bad the damage looks, but on whether gravity has already prevailed.

About the Author

Michael Hale *is a licensed attorney and licensed insurance producer in Michigan. He has represented numerous insurance agencies in matters before DIFS and also has served as an expert witness in many insurance-related cases.*

LEGISLATIVE UPDATE

Steady progress on Insurance bills to start the year!

By Christopher J. Petrick and Katharine Buehner Smith
Collins Einhorn Farrell PC

The special election to fill the vacant Senate seat is coming up on May 5, which will determine whether the Democrats maintain their slim margin. We are also coming up on what promises to be a very busy election season in Michigan: the Governor, Secretary of State, Attorney General, all 110 state House and 38 state Senate seats, all 13 congressional seats, and two Michigan Supreme Court seats are all up for election.

There's been slow and steady movement on insurance-related bills since our last update. Several bills advanced:

- **HB 5382 –** amends the Insurance Code to alter the deadline for when special purpose financial captives (SPFC) must file a statement of operations with the DIFS director to require that it be filed within 60 days of the end of the SPFC's fiscal year. ***Passed the House (104-2) on 3/4/2026. Referred to the Senate Finance, Insurance, and Consumer Protection Committee on 3/10/2026.***
- **HB 5383 –** amends the Insurance Code to alter the procedure relating to fees for SPFCs, reducing the application fee for a limited certificate of authority to $5,000 and to change the deadline by which it must be paid to within 90 days of the end of the SPFC's fiscal year. ***Passed the House (106-0) on 3/4/2026. Referred to the Senate Finance, Insurance, and Consumer Protection Committee on 3/10/2026.***
- **HB 5384 –** amends the Insurance Code to add that participants through a captive insurance company are allowed to insure risks of their affiliates or controlled unaffiliated businesses, ***Passed the House (104-2) on 3/4/2026. Referred to the Senate Finance, Insurance, and Consumer Protection Committee on 3/10/2026.***
- **HB 5385 –** amends the Insurance Code to alter requirements for forming and maintaining a captive insurance company in Michigan, including worker's compensation coverage, access to financial records, application fee and renewal of certificate, and board meeting requirements. ***Passed the House (104-2) on 3/4/2026. Referred to the Senate Finance, Insurance, and Consumer Protection Committee on 3/10/2026.***
- **HB 5386 –** amends the Insurance Code to require that captive insurance companies file audited financial statements prepared by an independent public accountant with the DIFS director within five months of the end of the company's fiscal year. ***Passed the House (104-2) on 3/4/2026. Referred to the Senate Finance, Insurance, and Consumer Protection Committee on 3/10/2026.***

And a few new bills made their way to the insurance committees:

- **SB 772** – amends the Insurance Code to require that insurers reimburse telehealth visits at the same rate as face-to-face and must use codes applicable to face-to-face contact for purposes of determining coverage and reimbursement rates.
- **SB 782** – amends the Insurance Code to prevent insurers from requiring a person applying for a personal protection policy to list all residents domiciled in the same household. Also prevents insurers from denying coverage for a motor vehicle accident solely because the person was not listed on the insurance application.
- **HB 5478** – amends the Insurance Code to prevent insurers from recovering a payment more than 90 days after paying it, unless the provider was convicted of fraud.
- **HB 5512 and 5513** – amend the Insurance Code to provide specific procedures and timelines for the credentialing process of health care providers.
- **HB 5523** – amends the Insurance Code to require insurers to offer and provide a premium discount for seniors who complete a traffic accident prevent course.
- **HB 5580** – amends the Insurance Code to prohibit insurers from considering dog breed (or mix of breeds) when considering cancellation of coverage, refusal to provide coverage or issue or renew a policy, or in determining the premium or rate.

RECENT OPINIONS

By Eric Cohn
Fahey Schultz Burzych Rhodes PLC

Michigan Supreme Court Decisions

Unlawful operation of a vehicle is distinct from unlawful taking under MCL 500.3113(a)

Swoope v Citizens Insurance C`ompany of the Midwest
MSC No. 166790

Carlonda Swoope was injured in a motor vehicle accident in Detroit on October 27, 2020. The night before the accident, Swoope's friend, Kandice Valentine, drove Swoope to Valentine's home. The next morning, Swoope received a call that her mother was experiencing chest pains and the ambulance was not arriving quickly enough. Without first obtaining Valentine's consent or permission, Swoope took Valentine's car keys and vehicle and drove toward her mother's home. Along the way she was involved in a motor vehicle accident. At the time of the accident, Swoope had neither a valid driver's license nor automobile insurance.

Swoope applied for PIP benefits through the MACP, and her claim was assigned to Citizens Insurance, which denied coverage. Citizens moved for summary disposition, arguing that Swoope's claim was barred by MCL 500.3113(a) because she took the vehicle unlawfully without a reasonable belief that she had permission to use it and because she lacked a valid driver's license. The trial court denied the motion. The Court of Appeals reversed, holding that because "there was no genuine question of fact that plaintiff was unlawfully operating the car," Swoope was not entitled to PIP benefits. The Court of Appeals relied on dicta from *Ahmed v Tokio Marine America Ins Co*, reasoning that Swoope's lack of a valid driver's license rendered her operation of the vehicle unlawful under MCL 257.301(1), which in turn constituted an unlawful taking under MCL 500.3113(a).

The Supreme Court reversed. In a unanimous opinion authored by Justice Bolden, the Court held that the Court of Appeals misinterpreted MCL 500.3113(a) by conflating unlawful *operation* of a vehicle with an unlawful *taking*. Reaffirming *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich* and *Rambin v Allstate Ins Co*, the Court held that when PIP benefit eligibility is challenged under MCL 500.3113(a), the relevant question is whether the motor vehicle had been taken unlawfully, a distinct inquiry from whether the vehicle had been operated unlawfully. The Court explained that "taken unlawfully" focuses on how possession of the vehicle was gained, not how the vehicle was subsequently driven. The fact that Swoope lacked a valid driver's license provided no insight as to whether she had unlawfully gained possession of the vehicle. The Court agreed with *Monaco v Home-Owners Ins Co* and *Ahmed* that the Legislature's 2014 amendments to MCL 500.3113(a) did not change this core inquiry. It further expressly disapproved the *Ahmed* dicta to the extent it suggested otherwise. However, because the Court of Appeals had not adequately considered Citizens' alternative argument—that Swoope's actions in taking Valentine's vehicle without permission constituted an unlawful taking—the Court remanded to the Court of Appeals to address that question.

Takeaway: *Swoope* clarifies what has been an increasingly muddled area of no-fault law. The distinction between "taken unlawfully" and "operated unlawfully" under MCL 500.3113(a) is now firmly established by the Supreme Court. A claimant who drives without a valid license is operating the vehicle unlawfully, but that alone does not mean the vehicle was taken unlawfully. The inquiry into whether a vehicle was "taken unlawfully" focuses on how possession was obtained—whether it was gained contrary to Michigan law—not on how the vehicle was subsequently used or operated. The Court's express disapproval of the *Ahmed* dicta is particularly significant for practitioners, as that language had been cited with increasing frequency to deny PIP benefits to unlicensed drivers. On remand, the Court of Appeals must still address whether Swoope's taking of Valentine's car without consent constituted an unlawful taking, so the final chapter of this case remains unwritten.

Published Court of Appeals Decisions

Injured motorcyclists may recover from lower-priority insurers after higher-priority coverage is exhausted

Mary Free Bed Rehabilitation Hospital v Esurance Property and Casualty Insurance Company

COA Docket No. 370846

Aaron Slade was catastrophically injured when a motorcycle he was riding collided head-on with a vehicle owned and driven by Haley Tanner on November 12, 2020. Slade suffered a severe traumatic brain injury and was eventually transferred to Mary Free Bed Rehabilitation Hospital for inpatient rehabilitative care. Tanner's vehicle was insured by Esurance with a PIP medical-benefits coverage limit of $250,000. Slade's father maintained an insurance policy through USAA with unlimited PIP medical-benefits coverage, which was lower in priority under MCL 500.3114(5)(c). Mary Free Bed's charges exceeded $1.18 million. Esurance paid $113,307.30 before asserting its policy limit had been exhausted. USAA denied Mary Free Bed's demand, arguing that Esurance was higher in priority and had already provided coverage.

The Court of Appeals opinion addressed two issues. First, regarding whether Esurance's policy was capped at $250,000 or should be deemed unlimited, the Court held that although Tanner did not make an "effective selection" of limited coverage under MCL 500.3107c(1) and MCL 500.3107e—because her name merely appearing on the PIP coverage document was insufficient to constitute an electronic signature under the UETA—Esurance was entitled to the rebuttable presumption under MCL 500.3107c(3). Distinguishing *Bronson Healthcare Group, Inc v Esurance Prop and Cas Ins Group*, the Court found that the policy declarations page, supplemental declarations page, payment ledger, and Tanner's own testimony collectively established that the premium paid accurately reflected a $250,000 coverage limit.

Second, and more significantly, the Court addressed a question of first impression: whether an injured motorcyclist may move down the MCL 500.3114(5) priority ladder to claim PIP benefits from a lower-priority insurer after a higher-priority insurer's coverage is exhausted. The Court held yes. The Court reasoned that the plain language of MCL 500.3114(5) directs injured persons to claim benefits "from insurers in the following order of priority" and contains no language limiting a claimant to only the highest-priority insurer. The Court found additional support in MCL 500.3107c(6), which contemplates benefits payable under two or more insurance policies and caps aggregate recovery at the highest available limit under any one policy. The Court noted that the legislature's repeal of the former anti-stacking provision in MCL 500.3115(3) further supported this interpretation. Finally, the Court held that any anti-stacking provision in USAA's policy was void to the extent it conflicted with the no-fault act.

Takeaway: *Mary Free Bed* is one of the more—if not the most—consequential published opinions to emerge from the 2019 no-fault amendments. Before the reforms, the priority analysis began and ended with identifying the highest-priority insurer because all policies provided unlimited benefits. Now that policyholders can limit coverage, this opinion establishes that claimants are not trapped by an inadequate higher-priority policy when a lower-priority policy provides greater coverage. For astute practitioners, this means that identifying all potentially applicable policies across the MCL 500.3114(5) priority ladder is essential, particularly in motorcycle accident cases where catastrophic injuries frequently exceed lower coverage limits. The *Bronson* effective-selection analysis also continues to develop, and the distinction between effective selection under Subsection (1) and the rebuttable presumption under Subsection (3) remains an active area for litigation. But a word to the wise: make sure you are putting all of those insurers on notice of your client's (potential) claims.

Domicile of a homeless individual cannot be assigned by default to a prior address unsupported by the evidence

Copeland v Allstate Insurance Company
COA Docket No. 373748

Kermit Copeland is homeless and has been for approximately 10 to 15 years. About 17 years ago, he briefly lived with his sister, Caver, and her husband at their Judd address for approximately three months. Copeland continues to use the Judd address for mail and on his Michigan identification card because it is the only stable address in his family. But he does not live there, does not keep personal belongings there, and has expressed no intention of returning. In February 2021, Copeland was a passenger in a vehicle involved in a hit-and-run collision. He did not have automobile insurance. The Cavers had several vehicles insured by Auto-Owners Insurance, but their policy did not identify Copeland as a household member.

Copeland filed for PIP benefits through the MACP, and Allstate was assigned as the servicing insurer. Allstate moved for summary disposition, arguing that Copeland was domiciled with the Cavers at the Judd address and that Auto-Owners was therefore the higher-priority insurer. The trial court agreed, applying the *Workman* and *Dairyland* factors but reasoning that under *Grange Ins Co of Mich v Lawrence*—which established that every person has a domicile and can have only one—the Judd address was the only identifiable domicile and therefore must be deemed Copeland's domicile.

The Court of Appeals reversed. The Court conducted a thorough analysis of the *Workman* and *Dairyland* factors, finding that at most four of nine factors supported domicile at the Judd address with two *Workman* factors being ambiguous. The Court found

that Copeland's subjective intent, his failure to reside at the Judd address for over a decade, the absence of any possessions there, the lack of a maintained room, and his lack of dependence on the Cavers all weighed against a finding of domicile. The Court further held that Copeland's affidavit—listing several places he lived after leaving the Judd address and before becoming homeless—supplemented rather than contradicted his deposition testimony and created a genuine issue of material fact regarding domicile.

Notably, Judge Kelly authored a concurrence challenging the premise, derived from *Grange* and the 179-year-old *In re High* decision, that every person must have a domicile. Judge Kelly argued that while a person cannot have more than one domicile, it does not follow that a person must have one. He offered several hypotheticals—a person evicted by court order, a parolee whose parents have died and whose family home has been sold, a person whose domicile is destroyed by natural disaster, and chronically homeless individuals—to demonstrate that insisting on a domicile leads to absurd results. Judge Kelly contended that a person can be domiciled in a nation without being domiciled at a specific location within it.

Takeaway: *Copeland* is an important case for two reasons. First, the majority opinion reinforces that the *Workman*/*Dairyland* framework must be rigorously applied and that a domicile cannot be assigned simply because a court feels it must identify one somewhere. The evidence must actually support the finding. Second, Judge Kelly's concurrence raises a question that the no-fault act is not equipped to address: what happens when a person genuinely has no domicile? Sadly, homelessness remains a persistent reality. This question will inevitably return to the courts, and Judge Kelly's concurrence may serve as an early roadmap for that analysis. For practitioners, *Copeland* underscores the importance of developing the factual record on domicile, including any interim addresses that may have extinguished a prior domicile, rather than relying on the address a claimant lists on official documents.

Unpublished Court of Appeals Decisions

Permission to use a vehicle does not establish legal entitlement for an unlicensed driver under a UM policy exclusion

Cater v Powell et al.
COA Docket No. 370744

Damonte Cater was injured when his vehicle was struck at an intersection by a vehicle driven by Eric Powell. Cater did not have a valid driver's license—and had never held a Michigan driver's license—and did not have automobile insurance. He was driving a vehicle belonging to his girlfriend, Kawana French, who had asked him to pick up her daughter from work. French's vehicle was insured by CURE, and her policy included uninsured motorist coverage. The UM portion of the policy excluded coverage for any insured "[u]sing a vehicle without a reasonable belief that that 'insured' is entitled to do so."

CURE moved for summary disposition, arguing that Cater could not have held a reasonable belief that he was "entitled" to use the vehicle because he was unlicensed. Cater countered that French had given him express permission to drive her vehicle, and permission satisfied the policy's requirement. The trial court granted CURE's motion.

The Court of Appeals affirmed, applying the contractual framework that governs optional UM coverage rather than the no-fault act. Following *Huggins v Bohman*, the Court distinguished between "permission" and "entitlement." Using Black's Law Dictionary, the Court defined "entitle" as "[t]o grant a legal right to or qualify for," and held that while French could authorize Cater to use her vehicle as to her personal ownership rights, she could not grant him the legal right to drive on public roads—that privilege is governed by MCL 257.301(1), not by private permission. Because Cater had never held a driver's license, he could not have held a reasonable belief that he was "entitled" to operate any vehicle.

Takeaway: *Cater* provides an instructive counterpoint to the Supreme Court's decision in *Swoope*. While *Swoope* holds that unlicensed status is irrelevant to the "taken unlawfully" inquiry under the no-fault act's PIP benefit exclusion, *Cater* demonstrates that the same unlicensed status can be dispositive in the contractual context of uninsured motorist coverage. The distinction turns on the source of the right: PIP benefits are statutory, and their availability turns on the statutory text of MCL 500.3113(a); UM benefits are contractual, and their availability turns on the policy language. For practitioners, the lesson is twofold. First, the analytical framework for a no-fault claim differs meaningfully from the framework for an optional coverage claim, even when the underlying facts are identical. Second, an owner's permission to use a vehicle does not necessarily translate into legal "entitlement" to use it.

Lower-priority insurer liable for PIP benefits after higher-priority coverage exhausted in motorcycle accident

Tarhanich v Allstate Property and Casualty Insurance Company
Docket No. 368735

Thomas Tarhanich was operating his motorcycle in Livonia on May 11, 2022, when he collided with a vehicle owned and operated by Mohammad Javid Qurbankhael. As a result of the crash, Tarhanich's right leg was amputated below the knee. He incurred over $50,000 in medical expenses. Qurbankhael's vehicle was insured by MemberSelect with PIP medical-benefits coverage of $50,000, the highest-priority policy under MCL 500.3114(5)(a). Tarhanich also owned a Chevrolet Silverado insured by Allstate with unlimited PIP medical-benefits coverage, which fell lower in the order of priority under MCL 500.3114(5)(c). After MemberSelect's coverage was exhausted, Tarhanich sought PIP benefits from Allstate. Allstate moved for summary disposition, arguing it had no liability because its policy was lower in priority than MemberSelect's.

The trial court granted summary disposition to Allstate, but the Court of Appeals reversed, directly applying the reasoning of *Mary Free Bed Rehab Hosp v Esurance Prop and Cas Co*. The Court held that MCL 500.3114(5) allows an injured motorcyclist to recover PIP medical benefits from a lower-priority insurer after the higher-priority insurer's coverage is exhausted. Quoting *Mary Free Bed*, the Court reiterated that "[t]o deny an injured motorcyclist access to their own unlimited-coverage policy, should a higher-in-priority policy associated with the accident vehicle be capped, runs counter to the spirit of the no-fault act and its 2019 amendments which prioritize personal choice in insurance policies."

Takeaway: *Tarhanich* is a straightforward application of *Mary Free Bed*, but its inclusion here is warranted because it confirms that the priority-stacking framework is being applied immediately and without hesitation. The facts of *Tarhanich* are arguably more sympathetic—a motorcyclist who paid for unlimited coverage on his own vehicle should not be denied access to those benefits simply because the at-fault driver purchased the minimum coverage. Together, *Mary Free Bed* and *Tarhanich* send a clear message: the priority ladder in MCL 500.3114(5) is not a ceiling but a sequence, and claimants are entitled to work their way down it when higher-priority coverage proves inadequate.

Trial court erred in balancing equities for rescission of policy as to innocent third party

Fosmore v Roth et al.
COA Docket No. 372826

Emily Fosmore was a passenger in a vehicle driven by Kali Ann Roth when Roth, after consuming alcohol, drove through a red light at an estimated 80 to 90 miles per hour and collided with two other vehicles. Fosmore did not have her own no-fault insurance but lived with her mother, Jane Fosmore, who had a Progressive policy providing $50,000 in PIP benefits. Jane's application represented that she was the only household member of driving age—an omission of three additional residents, including the plaintiff and her husband. When Fosmore sought benefits, Progressive rescinded the policy based on the material misrepresentation. Fosmore also filed a claim through the MACP, which was assigned to Farmers.

Progressive moved for summary disposition, arguing that the *Pioneer State Mut Ins Co v Wright* equitable factors weighed in favor of rescission as to Fosmore, an innocent third party. The trial court agreed, finding all four applicable factors favored rescission. Farmers filed a countermotion under MCR 2.116(I)(2), which was denied.

The Court of Appeals reversed. On the first *Pioneer* factor—the extent to which the insurer could have uncovered the fraud before the accident—the Court found the trial court improperly concluded that Progressive had "no duty" to discover the misrepresentation, rather than evaluating the extent to which Progressive actually could have done so. Citing *Van Dyke Spinal Rehab Ctr, PLLC v USA Underwriters*, the Court noted that Progressive discovered the misrepresentation less than a month after the claim was filed, suggesting it could have been discovered earlier with due diligence. On the second factor—whether the innocent third party had knowledge of the fraud—the Court held that a person's general awareness of the need for no-fault insurance and knowledge that a relative maintained a policy does not equate to knowledge of fraud in the application. On the third factor—the nature of the innocent third party's conduct—the Court noted that Fosmore was a passenger, had no control over the vehicle's operation, and yelled for Roth to stop before the collision.

Takeaway: *Fosmore* is a useful case for practitioners navigating the ever-evolving post-*Bazzi* rescission landscape. The opinion reinforces that the *Pioneer* factors require individualized analysis and that courts cannot apply them in a conclusory fashion. The first factor, in particular, continues to receive particular focus. Trial courts cannot simply ask whether the insurer had a "duty" to investigate but must evaluate the actual feasibility of discovering the fraud before the accident, including the timing and nature of the misrepresentation. The Court's treatment of the third factor is also noteworthy: a passenger's decision to enter a vehicle with an impaired driver may be relevant, but it does not automatically tilt the equities in favor of rescission, particularly when the passenger attempted to intervene. Finally, while the fourth factor (alternative avenue of recovery through the MACP) continues to favor rescission, the Court's observation that the insurer itself could pursue a fraud claim against the insured is worth remembering.

$9.5 million verdict vacated for failure to prove causation beyond conjecture

Brown v Zurich American Insurance Company
COA Docket No. 370824

On December 3, 2013, Joel Robert Comstock was driving a Ford F-350 pickup truck pulling a 40-foot trailer on Price Road near Westphalia when he passed a garbage truck that Caleb Mitchell Brown, a waste collection worker, was servicing. Comstock crossed a solid yellow center line to pass the stopped garbage truck. Brown, who was standing on or near the shoulder of the road, testified that he saw Comstock's truck pass and turned his head because of water spray, after which he saw "a white flash" and remembered nothing further. Brown's partner, Douglas Reed, did not see or otherwise perceive a collision, but after Comstock's truck passed, he saw Brown lying unconscious on the ground. Comstock testified that he and Brown made eye contact as he passed and that Brown was in a safe position on the shoulder. No physical evidence established that any portion of Comstock's truck or trailer made contact with Brown. Following a jury trial, the trial court entered a judgment in favor of plaintiffs for $9,512,590.35 in damages. Defendants moved for a JNOV, which was denied.

The Court of Appeals, in a 2-1 decision, vacated the judgment and remanded for entry of judgment in favor of defendants. The majority held that plaintiffs failed to establish causation as a matter of law. No witness saw how Brown was injured, Brown himself had amnesia, the accident reconstruction expert could not determine whether contact occurred, and no physical evidence of contact was found. While the majority acknowledged that presumptions of negligence from statutory violations (MCL 257.640 and MCL 257.653b) and presumptions of due care from amnesia (*Knickerbocker v Samson*) may have applied, it held that these presumptions addressed duty and breach, not causation-in-fact. The majority applied *Craig v Oakwood Hospital* and *Skinner v Square D Co*, holding that where multiple plausible explanations exist and the evidence is "without selective application to any 1 of them, they remain conjectures only."

Judge Patel dissented, arguing that sufficient circumstantial evidence supported the jury's finding of causation. She emphasized Reed's testimony that he heard the trailer "rattle," that no other vehicle passed between Comstock's truck and Reed's observation of Brown on the ground, the water spray that caused Brown to turn his head, and the physical injuries Brown sustained. She also raised concern with the majority's conclusion that "Comstock's crossing of the yellow line itself played no causative role" was incorrect because, but for Comstock passing the garbage truck, there would not have been contact.

Takeaway: *Brown* is a sobering reminder that the burden of proving causation-in-fact is distinct from, and cannot be satisfied by, proof of negligence alone. Even where a jury concludes that a defendant acted negligently, the plaintiff must still establish a logical sequence of cause and effect that rises above conjecture. The split panel underscores the difficulty of this inquiry in cases involving amnesia and the absence of eyewitness testimony. Practitioners on both sides of the aisle should pay attention to the majority's careful distinction between presumptions that address duty and breach and the separate requirement of proving causation, as well as to Judge Patel's thorough dissent, which may provide a roadmap for future cases with stronger circumstantial evidence.

Upcoming Event

The Insurance & Indemnity Law Section, in collaboration with the Environmental Law Section, is excited to present our Educational Program - Environmental Claims in Michigan, set for May 20, 2026, at Oak Pointe Country Club in Brighton, Michigan.

This program aims to equip insurance litigators, coverage counsel, and in-house attorneys with a practical, Michigan-centric framework for understanding and litigating environmental contamination claims. The structure of the program is designed to progress from the origins of these claims, to the analysis of coverage disputes, and ultimately to the litigation process in Michigan courts.

Attendance is free. The IIS Council Meeting will be held from 4 to 4:30 pm.