The Journal of Insurance & Indemnity Law

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This Journal is published by the Insurance and Indemnity Law Section,
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Opinions expressed herein are those of the authors or the editor and
do not necessarily reflect the opinions of the section council or the membership.

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



FROM THE CHAIR

Jennifer Serwach

I am honored to serve as the Chair of the Insurance and Indemnity Law Section and grateful for Doug McCray and our former chairs for keeping this great organization running. I am hoping to build on our past successes and hope to hold more programs that attract a larger audience.

The State Bar of Michigan is a vital resource for lawyers, and our section, in particular, is unique in providing a space for attorneys on both sides of the insurance aisle. It has been great to talk to other attorneys who transition to corporate work, government administration, and other practice areas beyond just the typical plaintiff and defendant oriented insurance firms. But the most important thing is providing a place for people to connect and discuss the insurance issues that are affecting them so our events can serve as a central hub to examine the hot topics of our days.



Past Chairs Rabih Hamawi, Doug McCray and Ann-Marie Earls with new Chair Jennifer Serwach.

Our most recent educational topic was chosen because the topic of rescission is core to most cases. A special thank you goes to our speakers, **Harry Awdey** from Sycamore Specialty Underwriters and **Samantha Orvis** from Secrest Wardle, who presented the program titled *Underwriting and Rescissions: From Application to Mediation*. Additionally, very few attorneys have a background in sales and underwriting and only connect with the people in charge of those initial coverage decisions when it is too late. Giving people a perspective into the business side of insurance can help prevent complicated disputes before they arise.



Harry Awdey and Samantha Orvis

Additionally, our section continued to encourage scholarship in Michigan based law schools and held its annual writing contest this year. We are pleased to announce that our 2026 winner is Victoria Hanna. The name may sound familiar as she won the scholarship for 2025 as well. However, the votes were undisputed, and she has written another excellent article that I hope you will enjoy. We also had some other articles with well demonstrated legal topics, and we awarded runner up scholarships thanks to the quality of the submissions. If you know any law clerks or law students, I would highly encourage them to submit articles for next year's scholarship contest as our journal benefits from fresh perspectives.



2026 Scholarship Winners

For our next event, we are looking to hold a social mixer sometime in January or early February. This is a great opportunity to latch onto the people who have a desire to network more as they make their resolutions in the New Year. If you have any preferences or ideas for interesting activities, be sure to reach out and let your voice be heard. We are always looking for ways to serve our members best and provide a wide variety of venues to change up the attendance. Thank you for reading and please be sure to reach out if you have any suggestions.

Jennifer J. Serwach
Chair, Insurance & Indemnity Law Section
State Bar of Michigan

Scenes from the August 13, 2026 Section Meeting & Social at The Yard in Detroit



Chair Doug McCray has his eye on the ball while Charlotte McCray looks on



(L-R) Annie Earls, Elizabeth King, Amy Diviney, Jennifer Serwach and Joe Inwald



(L-R) Charlotte McCray, Doug McCray, Amy Diviney, Joe Inwald, Rabih Hamawi, and John Sier

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2026-2027 Insurance & Indemnity Law Section Council

At the 2026 Annual Meeting, held October 7, the following officers and council members were elected:

OFFICERS (1 year term):

Jennifer Serwach (Chair)
Michael D. Spinazzola (Chair-Elect)
Christopher J. Petrick (Secretary)
Shantinique Brooks (Treasurer)

TWO-YEAR COUNCIL TERMS

Amy L. Diviney
Chelsea Kormos
Alison Krempa Koppin
Anthony Snyder
Elizabeth A. King

If anyone is interested in becoming an IIS council member or on a committee, contact Jennifer Serwach at jjserwach@acg.aaa.com.

When Cyberattacks Walk Through the Front Door

By Michael C. Maschke, Sharon D Nelson, Esq., and John W. Simek

For years, law firms have invested heavily in defending against remote cyberattacks. Firewalls, multifactor authentication, endpoint detection, email security, and employee awareness training have become standard components of modern cybersecurity programs. The underlying assumption has been that attackers would try to gain access through the firm's technology infrastructure. Increasingly, however, cybercriminals are succeeding by exploiting something much simpler: human trust.

Recent reporting from Google, Mandiant, and the FBI describes an extortion group that has moved beyond traditional phishing emails and phone scams. When victims refuse to cooperate with fake IT support calls, members of the group have reportedly appeared in person at offices, posing as technicians and attempting to gain physical access to computers via USB devices. While these tactics may sound like something from a Hollywood movie, they reflect a broader shift in how sophisticated threat actors approach their targets. Cybersecurity is no longer confined to the digital world.

Social Engineering Is Evolving

Most law firms have spent years training employees to recognize suspicious emails. Staff members are encouraged to verify unexpected requests, avoid unknown links, and report questionable attachments. Those efforts have paid dividends, making traditional phishing campaigns less effective than they once were.

Rather than abandoning social engineering, many attackers are adapting. Today's scams increasingly start with a convincing phone call, a request for remote support, or a visitor at the reception desk claiming to be from the firm's IT provider. Criminals know that people are often more willing to trust a friendly voice or a professional-looking visitor than an anonymous email. The technology behind these attacks has not changed dramatically, but the methods of deception continue to evolve.

Physical Security and Cybersecurity Are No Longer Separate

This evolution should prompt law firms to rethink how they define cybersecurity. A visitor requesting access to a workstation may represent just as much risk as a phishing email. Receptionists, legal assistants, attorneys, and office managers all contribute to the firm's security posture because they are often the first people an attacker encounters.

That raises practical questions every firm should consider. Would employees know how to verify that an IT technician was properly scheduled to be on-site? Would anyone question an unexpected request to connect a USB device or perform workstation maintenance? Does the firm require outside vendors to check in through a documented process before accessing systems or offices? These may seem like operational details, but they are increasingly part of cybersecurity controls.

Trust Still Needs Verification

One of the more concerning aspects of these attacks is their speed. According to Google's investigation, attackers sometimes moved from initial contact to data theft in less than an hour, with extortion demands following shortly thereafter. That leaves organizations with very little time to recognize what is happening before sensitive information has already been compromised.

Fortunately, the response does not require expensive new technology. The same principles that make organizations resilient to phishing attacks apply here as well. Verify unexpected requests, confirm identities through trusted channels, escort visitors who need access to sensitive areas, and ensure employees understand that questioning unusual activity is encouraged.

Law firms have made tremendous progress in strengthening their technical cybersecurity defenses over the past decade. The next challenge is recognizing that cybercriminals no longer view the physical office and the digital network as separate environments. Neither should we. The next significant cyber incident may not begin with a malicious email or an exploited vulnerability. It may begin with someone walking through the front door, introducing themselves as "IT support," and hoping no one asks any questions.

About the Authors

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The Meaning of "Causation" in the Insurance Context

By Victoria Hanna, IIS 2026 Scholarship Winner
Cooley Law School, Anticipated Year of Graduation: December 2026

Insurance exists to shift risk from one party to another, but only for the risks the policy covers. That premise generates one of the hardest questions in insurance law: when a loss results from more than one event, which event counts as the *cause* for coverage purposes? Courts have never answered that question with a fixed formula. Instead, they have built a body of causation doctrine that borrows the language of tort law but applies it differently, because insurance disputes are rarely about who is at fault. They are about which of several events the parties intended the policy to respond to.[1]

This article briefly traces the traditional proximate-cause rule (Part I) and the concurrent-cause problem as it developed in California (Part II). It then turns to Michigan: how Michigan courts apply the efficient-cause rule (Part III), what Michigan authority has and has not decided about anti-concurrent-causation clauses (Part IV), and what those rules mean for practitioners handling a multi-cause property loss (Part V). This article argues that Michigan courts should enforce anti-concurrent-causation clauses as written, but only where the insurer shows that the clause unambiguously reaches the causal sequence at issue and that the excluded peril contributed to the loss. That rule respects Michigan's commitment to enforcing clear contracts while preserving the protections Michigan law already gives policyholders.

I. The Traditional Rule: *Causa Proxima, Non Remota, Spectatur*

Insurance causation doctrine begins with the maxim *causa proxima, non remota, spectatur*: the proximate cause, not the remote one, is to be regarded.[2] A loss is rarely traceable to a single event. Rather than tracing a sequence of events back indefinitely, courts identify the dominant, efficient cause and disregard causes that are merely incidental, even where those causes occurred closer in time to the loss.

The doctrine's canonical statement comes from *Leyland Shipping Co. v. Norwich Union Fire Insurance Society*.[3] The *Ikaria*, insured against perils of the sea but not against the consequences of "hostilities or warlike operations," was torpedoed during the First World War. She reached the harbour at Le Havre, was ordered to an outer mooring, and sank after grounding repeatedly with the tide. The House of Lords held that the torpedo, not the sea, caused the loss, so the war exclusion applied. Lord Shaw explained that the proximate cause is not the cause nearest in time, but the one "proximate in efficiency," and he described causation not as a chain but as a net in which several forces converge and the court must identify which one predominates. The U.S. Supreme Court had already adopted the same rule in *Insurance Co. v. Boon*.[4] Notably, the English codification of the rule applies "unless the policy otherwise provides."[5] From the start, the proximate-cause rule was a default that the policy could change.

II. Concurrent Causes and the California Split

The efficient-cause rule is hardest to apply when a covered peril and an excluded peril act together and neither obviously dominates. California illustrates the problem. In *Sabella v. Wisler*, the California Supreme Court read the state's Insurance Code to require that coverage turn on which peril was the efficient, predominant cause.[6] A decade later, in *State Farm Mutual Automobile Insurance Co. v. Partridge*, the court held that a homeowner's policy covered an injury caused when the insured's modified "hair trigger" pistol discharged as his vehicle hit a bump, despite the policy's motor-vehicle exclusion, because the gun modification and the negligent driving were independent concurrent causes and one of them was covered. Some federal courts, including the Ninth Circuit in *Safeco Insurance Co. v. Guyton*, then extended that reasoning to first-party property claims.[7]

The California Supreme Court corrected course in *Garvey v. State Farm Fire & Casualty Co.*, confining *Partridge's* to third-party liability cases. The court recognized that because a covered peril can almost always be found somewhere in the history of a loss, treating any contributing covered cause as sufficient would nullify standard property exclusions.[8]

III. Michigan's Application of the Efficient-Cause Rule

Michigan follows the traditional rule. Absent policy language stating otherwise, Michigan courts apply a proximate-cause standard to decide whether a loss falls within coverage or within an exclusion.[9] Michigan's formulation, stated in *Weissert v. Escanaba* and repeated in *Michigan Sugar Co. v. Employers Mutual Liability Insurance Co. of Wisconsin*, defines proximate cause

as "that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the injury, without which such injury would not have occurred."[10] That definition is not identical to Lord Shaw's efficiency test; it includes an explicit but-for requirement and borrows the language of negligence causation. In practice, however, Michigan courts ask the same question: which event in a sequence was dominant, not which came last.

Ely v. Wolverine Mutual Insurance Co., an unpublished Court of Appeals decision, shows the rule at work.[11] A yacht policy excluded loss from engine overheating. An anchor chain and line had wrapped around the vessel's propeller, making it hard to steer, and the current carried the boat onto a sandbar. Sand and shells drawn into the cooling system clogged the strainers, and the engines overheated. The Court of Appeals affirmed the trial court's finding that the anchor chain and line, not the overheating, was the proximate cause of the loss. As in *Leyland Shipping*, the cause nearest in time did not control.

Two further Michigan rules operate alongside the causation standard, and they pull in different directions. First, exclusions are strictly construed against the insurer, and a genuinely ambiguous exclusion is read in favor of coverage.[12] The insurer also bears the burden of proving that an exclusion applies.[13] Second, unambiguous policy language is enforced as written. Courts may not use the rule of construction against the drafter, or the insured's reasonable expectations, to rewrite clear terms.[14] The result is that an insurer must prove that an excluded peril was the proximate cause of the loss under the policy's language, but where the policy clearly allocates a risk, Michigan courts will enforce that allocation.

IV. Anti-Concurrent-Causation Clauses and Michigan's Position

Insurers responded to the instability described in Part II by drafting anti-concurrent causation (ACC) clauses into property policies. These clauses exclude a loss caused by an excluded peril "regardless of any other cause or event contributing concurrently or in any sequence" to the loss. They are designed to displace the efficient-cause default: under an ACC clause, an excluded peril defeats coverage whether or not it predominates.

Most jurisdictions enforce ACC clauses as written, treating the efficient-cause rule as a default that the parties may vary by clear language.[15] A minority refuse. California is the leading example; its courts hold that an insurer may not contract around the efficient-proximate-cause rule codified in its Insurance Code.[16]

Michigan has addressed ACC language, though not the full question. In *Home-Owners Insurance Co. v. Andriacchi*, a published decision involving a commercial businessowners policy, the Court of Appeals held that an earth-movement exclusion barred coverage for slab damage the insured attributed to a nearby street-construction project. The court's principal holding was that the exclusion for "any earth movement" is unambiguous and reaches movement caused by human activity as well as by nature. It found further support in the policy's ACC lead-in, reasoning that the lead-in makes the exclusion apply "regardless of whether it occurs because of a concurrent event or cause, including a manmade occurrence." The Michigan Supreme Court denied leave to appeal.[17] Federal courts applying Michigan law have since relied on *Andriacchi*.[18]

Andriacchi did not decide whether an ACC clause can defeat coverage where a covered peril, rather than the excluded one, is the efficient proximate cause of the loss. That is the question that divides other jurisdictions, and no Michigan appellate court has squarely answered it. *Andriacchi* also involved a commercial policy, so it says nothing specific about consumer homeowner's policies.

Michigan courts should answer that question by enforcing ACC clauses as written. Three reasons support that result. First, Michigan's efficient-cause rule has always been a default that applies only absent contrary policy language, and the proximate-cause rule was understood that way from its codification.[19] Unlike California, Michigan has no statute that makes the rule mandatory. Second, the Michigan Supreme Court has repeatedly held that unambiguous policy terms must be enforced as written and has rejected the reasonable-expectations doctrine as a basis for rewriting them.[20] Refusing to enforce a clear ACC clause would require exactly the kind of judicial rewriting those cases forbid. Third, enforcement promotes predictability. Insurers price risk based on the exclusions they write, and policyholders and their advisors can only evaluate coverage if clear terms mean what they say.

Enforcement should not, however, be automatic. Michigan courts should require the insurer to establish two things before an ACC clause defeats coverage. The first is that the ACC language unambiguously attaches to the specific exclusion invoked and reaches the sequence of events in the case. Because exclusions are strictly construed and the insurer bears the burden of proving them, an ACC lead-in that is limited to certain exclusions, or whose application to the facts is reasonably disputed, should be read in favor of coverage.[21] The second is that the excluded peril contributed to the loss as a matter of fact. An ACC clause removes the need to show that the excluded peril predominated. It does not remove the need to show that it played a

real causal role. This rule gives effect to the parties' bargain without allowing a minor or speculative excluded cause to erase coverage for a loss driven by a covered peril.

The strongest objection is that ACC clauses operate harshly in consumer homeowner's policies, which insureds rarely negotiate or read. That concern is real, but *Wilkie* makes clear that it is not a basis for judicial rewriting of unambiguous terms. The better remedy lies with the Legislature and with the Department of Insurance and Financial Services, which reviews policy forms.[22] Courts can address harsh results through the tools Michigan law already provides: strict construction, the insurer's burden of proof, and careful attention to whether the clause actually reaches the facts.

V. Practical Implications for Michigan Practitioners

For policyholders, the first question is whether the policy contains ACC language at all, and if so, which exclusions it modifies. Many policies attach the lead-in only to specific exclusions, leaving the ordinary proximate-cause rule in place for the rest. Where no ACC language applies, the *Weissert* standard and *Ely* support the argument that an excluded event near the end of the sequence does not control if a covered event set the loss in motion. Where ACC language does apply, the strongest arguments are interpretive: whether the excluded peril contributed to the loss, whether the clause is ambiguous as applied to the facts, and whether an exception within the exclusion restores coverage. The exclusion in *Andriacchi* itself, for example, preserved coverage for resulting loss by fire or explosion.[23] Because the insurer bears the burden of proving the exclusion, the factual record matters. Expert testimony on the sequence of events is often decisive.

For insurers, *Andriacchi* confirms that a clearly drafted ACC lead-in will generally be enforced in Michigan. The risk lies in drafting and application. A lead-in that does not clearly reach the exclusion at issue, or an exclusion whose scope is reasonably disputed, invites the strict-construction rule. Insurers relying on an ACC clause should still be prepared to prove that the excluded peril contributed to the loss.

Conclusion

Causation in insurance law is not a single test applied uniformly across every policy and jurisdiction. It is a family of related doctrines responding to the same difficulty: real losses rarely have one cause, and policies rarely say which of several causes should control. Michigan applies the efficient-proximate-cause rule by default and, after *Andriacchi*, will generally enforce clear ACC language that displaces it. When a Michigan appellate court confronts the open question, it should hold that an ACC clause may defeat coverage even where a covered peril was the efficient cause, but only where the insurer proves that the clause unambiguously reaches the loss and that the excluded peril contributed to it. That rule honors the policy as written, keeps Michigan consistent with the majority of jurisdictions, and preserves the protections Michigan law already gives policyholders.

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Endnotes

1 See generally Alex L. Parks, *Marine Insurance: Proximate Cause*, 10 J. Mar. L. & Com. 519 (1979).

2 See John Birds, *Bird's Modern Insurance Law* 263 (8th ed. 2010).

3 *Leyland Shipping Co. v. Norwich Union Fire Ins. Soc'y*, [1918] AC 350, 369-70 (HL) (Lord Shaw).

4 *Insurance Co. v. Boon*, 95 U.S. 117, 130 (1877); *Lanasa Fruit Co. v. Universal Ins. Co.*, 302 U.S. 556, 562 (1938).

5 Marine Insurance Act 1906, 6 Edw. 7, c. 41, § 55(1) (UK).

6 Cal. Ins. Code § 532; *Sabella v. Wisler*, 59 Cal. 2d 21, 31-32 (1963).

7 *State Farm Mut. Auto. Ins. Co. v. Partridge*, 10 Cal. 3d 94, 102-05 (1973); *Safeco Ins. Co. v. Guyton*, 692 F.2d 551(9th Cir. 1982).

8 *Garvey v. State Farm Fire & Cas. Co.*, 48 Cal. 3d 395, 402-06, (1989).

9 *Berger v. Travelers Ins. Co.*, 379 Mich. 51, 53 (1967).

10 *Weissert v. Escanaba*, 298 Mich. 443, 452 (1941), quoted in *Michigan Sugar Co. v. Employers Mut. Liab. Ins. Co. of Wis.*, 107 Mich. App. 9, 14 (1981).

11 *Ely v. Wolverine Mut. Ins. Co.*, No. 225584 (Mich. Ct. App. Mar. 1, 2002) (unpublished).

12 *Auto-Owners Ins. Co. v. Churchman*, 440 Mich. 560, 567 (1992); *Fire Ins. Exch. v. Diehl*, 450 Mich. 678, 687 (1996).

13 *Heniser v. Frankenmuth Mut. Ins. Co*., 449 Mich. 155, 161 n.6 (1995).

14 *Wilkie v. Auto-Owners Ins. Co*., 469 Mich. 41, 63 (2003); *Rory v. Continental Ins. Co.,* 473 Mich. 457 (2005); *Klapp v. United Ins. Grp. Agency, Inc.*, 468 Mich. 459 (2003).

15 See, e.g., *Leonard v. Nationwide Mut. Ins. Co*., 499 F.3d 419 (5th Cir. 2007); *JAW The Pointe, L.L.C. v. Lexington Ins. Co.*, 460 S.W.3d 597 (Tex. 2015).

16 *Howell v. State Farm Fire & Cas. Co*., 218 Cal. App. 3d 1446, 1452-59 (1990).

17 *Home-Owners Ins. Co. v. Andriacchi*, 320 Mich. App. 52, 61-62, 70-71, 903 N.W.2d 197, 203, 206-07 (2017), leave denied, No. 156151 (Mich. Mar. 28, 2018).

18 See, e.g., *Arlene's Truck Salvage v. Northfield Ins. Co.*, No. 2:23-cv-11314 (E.D. Mich. Sept. 25, 2024).

19 See *Berger*, 379 Mich. at 53; Marine Insurance Act 1906, § 55(1).

20 See *Wilkie*, 469 Mich. at 63; *Rory*, 473 Mich. 457.

21 See *Churchman*, 440 Mich. at 567; *Heniser*, 449 Mich. at 161 n.6.

22 See MCL 500.2236 (policy form filing and approval).

23 *Andriacchi*, 320 Mich. App. at 62.





LEGISLATIVE UPDATE

The Race to the Ballot Box is On!

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

With November 3 fast approaching, Michigan is heading into an election that will reshape the political landscape in Lansing. The governor, attorney general, secretary of state, a U.S. senator, and all 148 seats in the Michigan Legislature are on the ballot, while the current split between the two chambers means that bipartisan cooperation remains important for bills to move. With lawmakers racing toward the end of the session, there has still been movement on insurance legislation since our June update.

A few bills have advanced:

- **SB 1011 –** amends the Insurance Code to create a small-business health coverage pool. ***Passed the Senate on 06/25/2026 (35-0) and was referred to the House Insurance Committee that same day.***
- **SB 1013 –** amends the Insurance Code to prohibit certain price-optimization practices in property and casualty insurance rating, including adjustments based on a policyholder's willingness to pay that are not actuarially justified. ***Passed the House with amendments on 08/25/2026 (97-7), the Senate concurred on 09/09/2026 (32-2), and the Governor signed it on 09/21/2026. Assigned Public Act 98 of 2026, with immediate effect.***
- **HB 6097 –** amends the Insurance Code to eliminate the current single-risk exposure limit for title insurers. Reported by the House Insurance Committee without amendment on 09/23/2026 and referred to second reading.
- **4703 –** amends the Insurance Code to require health-insurance coverage for group prenatal care services. ***Passed the House on 06/25/2026 (102-4). Referred to the Senate Health Policy Committee on 07/01/2026. Passed the Senate with substitute S-1 on 10/01/2026 (32-4) and returned to the House on 10/06/2026 for consideration of the Senate amendments.***

A few new bills made their way to the Senate Finance, Insurance, and Consumer Protection Committee:

- **SB 1128-1130** – a three-bill property insurance package that would create grants to help certain properties withstand common weather-related risks, require insurers to offer premium discounts under specified circumstances, and require insurers to offer a fortified-roof endorsement.
- **SB 1153** – amends the Insurance Code to prohibit an automobile insurer from denying a claim solely because an insured failed to list every household member on the policy.
- **SB 1154** – amends the Insurance Code to eliminate the requirement that regulators establish a lack of reasonable market competition before determining that an automobile or homeowners insurance rate is excessive. Under the bill, a rate could be deemed excessive if it is unreasonably high for the coverage provided, regardless of the level of competition in the insurance market.

And also, to the House Insurance Committee:

- **HB 6148 –** amends the Insurance Code to require coverage for certain pediatric autoimmune neuropsychiatric disorders.
- **HB 6212 –** amends the Insurance Code to require certain amounts paid by insureds or other parties for prescription drugs to count when calculating an insured's prescription-drug cost sharing under specified conditions.
- **HB 6337 –** amends the Insurance Code to restrict the use of genetic information in certain life-insurance policies.

A couple other bills remain before the insurance committees, but saw some action this quarter:

- **HB 5886-5888 –** the package addressing PIP elections, continuation of coverage selections, and bodily-injury liability limits was on the House Insurance Committee's 09/23/2026 meeting agenda.
- **HB 5478 –** amends the Insurance Code to limit the timeframe for a health insurer to retrieve a payment. The House Insurance Committee considered it on its 09/23/2026 agenda.



NO-FAULT LAW UPDATE

By Eric Cohn
Fahey Schultz Burzych Rhodes PLC

Published Court of Appeals Decisions

When a vehicle's owner neither permitted nor forbade the driver's use, whether the vehicle was "taken unlawfully" under MCL 500.3113(a) turns on whether, from the driver's perspective, the driver had the owner's implied permission.

Pena-Cruz v State Farm Mutual Automobile Insurance Company (On Remand)
COA Docket No. 364284

Tiburcio Pena-Cruz was rear-ended on December 19, 2020, while driving an F-150 owned solely by his wife, Maria, from whom he had lived apart for about two years. Their son, Jonathan, had Maria's permission to use the truck and used it early one morning to drive Tiburcio to work. Because Jonathan was tired, Tiburcio, who was unlicensed, took the vehicle without asking Maria, who later testified she would not have allowed it.

Tiburcio sought PIP benefits from State Farm. State Farm invoked MCL 500.3113(a), which precludes an individual from recovering PIP benefits if willfully operating a vehicle that was taken unlawfully. The trial court found a fact question based on a chain-of-permissive-use theory. The Court of Appeals originally held the taking unlawful under *Swoope I*. The Supreme Court then reversed *Swoope* in 2026, holding that the question is whether the vehicle was *taken* unlawfully, not *operated* unlawfully, and remanded to the Court of Appeals.

On remand, the Court explained that "taken unlawfully" cases have fallen into two categories: express-prohibition cases and express-permission cases. The Court found that this case presented a third: an owner who said nothing either way. Building on *Spectrum Health*'s rule that a taking is unlawful if made without the owner's authority, judged from the driver's perspective, the Court held that in silent-owner cases the question is whether the driver took the vehicle with the owner's implied permission. The Court found that such an inquiry turns on all the circumstances of the taking, including the owner's words or conduct, and on the driver's prior use, such as a habitual course of taking the vehicle with the owner's knowledge and acquiescence.

The Court of Appeals determined that neither side's argument was dispositive. Jonathan's permission mattered only insofar as it bore on Tiburcio's understanding of whether Maria authorized the taking, and Tiburcio's lack of a license was relevant only to the extent it informed that same understanding. The Court also declined to rely on *Landon v Titan Ins Co*, whose "implied consent" analysis was borrowed from the owner's-liability statute. It vacated and remanded for the trial court to apply the new test, expressly offering no view on the outcome.

Takeaway: Owner silence is now its own category in permissive use cases. To prevail, develop the record on the driver's prior use of the vehicle and anything the owner said or did that the driver could reasonably read as permission.

Unpublished Court of Appeals Decisions

A named insured's PIP medical opt-out is ineffective where resident relatives lack qualified health coverage, and the policy then provides unlimited PIP medical coverage to the household

VHS of Michigan, Inc v Farm Bureau General Insurance Company of Michigan
COA Docket No. 371189

In October 2022, a minor child (IL), was struck by a vehicle while crossing the street and airlifted to Detroit Medical Center. She lived with her grandmother, her mother, and her minor uncle. Her mother's Farm Bureau policy opted out of PIP medical coverage under MCL 500.3107d based on her Medicare Parts A and B, but on the verification form she listed only herself; the other household members had Medicaid. DMC sued Farm Bureau and, alternatively, the MAIPF for the payment of medical expenses incurred for the treatment of IL. The trial court held that Audrey's opt-out was effective as to her, that IL was not covered by the policy, and that IL, as a pedestrian, could claim through the assigned claims plan.

The Court of Appeals reversed. Following its published decision in *Northland Radiology, Inc v Allstate Fire & Cas Ins Co* (2026), the Court explained that an effective opt-out requires, among other things, that the named insured's spouse and resident relatives have qualified health coverage or other PIP coverage, with proof provided to the insurer. Medicaid is not "qualified health coverage" under MCL 500.3107d(7)(b). Because Audrey's resident relatives had only Medicaid and no other no-fault coverage, her election was ineffective.

The consequence reached the whole policy. Under MCL 500.3107d(4), a policy without an effective election is deemed to provide unlimited coverage under MCL 500.3107c(1)(d), and under *Northland Radiology* a failed election applies to everyone MCL 500.3107d(5) would reach, including resident relatives, rather than selected individuals. Farm Bureau's policy therefore provided unlimited PIP medical benefits to IL, and the trial court erred in granting Farm Bureau summary disposition and denying it to the MAIPF.

Takeaway: An opt-out is only as good as the household verification behind it. A resident relative on Medicaid can turn an opted-out policy into unlimited PIP coverage for the entire household, so providers and the MAIPF should test every opt-out denial against the full household.

A cancellation notice for nonpayment mailed on the day the premium is due is premature and ineffective under MCL 500.3020(1)(b), leaving the policy in force

Smith v Citizens United Reciprocal Exchange
COA Docket No. 375287

Casey Smith bought a six-month CURE policy in February 2022, payable in installments. His second installment was due April 24, 2022, and he did not pay it. On April 24, CURE mailed a notice cancelling the policy effective May 9 for nonpayment, advising that he could keep the policy by paying before then. He did not pay by May 9. After a June 21 accident, he paid, and the policy was reinstated effective June 23. CURE denied PIP benefits because the policy had been cancelled, and the trial court granted CURE summary disposition.

The Court of Appeals reversed. MCL 500.3020(1)(b) requires at least 10 days' written notice of cancellation, and under *Yang v Everest Nat'l Ins Co*, a notice must be peremptory, explicit, and unconditional; notice sent before nonpayment has occurred is merely conditional and does not satisfy the statute. Because Smith still had the rest of April 24 to pay, a point CURE conceded, nonpayment had not yet occurred when the notice issued. Smith's later failure to pay did not rehabilitate the defective notice; the insured in *Yang* never paid either.

The Court distinguished *Jackson v Doe*, an unpublished 2024 decision upholding a notice mailed the day after a missed payment, where the chance to cure did not make the notice conditional. The dividing line is timing: a notice sent after the due date has passed can be valid, but one sent on or before the due date is not. Because CURE's notice was ineffective, the policy remained in force on the date of the accident.

Takeaway: One day matters in most things we do as lawyers. Cancellation notices for nonpayment should issue only after the payment deadline has fully passed, and coverage counsel should compare the mailing date to the due date in every nonpayment denial.

A rideshare driver whose rental vehicle was used primarily for Uber trips was operating a vehicle "operated in the business of transporting passengers," making the vehicle's insurer responsible under MCL 500.3114(2)

Figueroa v Farmers Insurance Exchange
COA Docket No. 374996

Lenadanielle Figueroa rented a vehicle from Hertz through a Hertz–Uber program for rideshare drivers; the rental agreement included insurance. On October 20, 2023, while logged out of the Uber app, with no passengers, and driving home, Figueroa was struck by a hit-and-run driver. Rather than seek coverage through the rental, she applied through the MACP. Figueroa's claim was assigned to Farmers, which denied after finding false statements in her application. Suit was filed and thereafter Farmers moved for summary disposition, arguing that Hertz's insurer was responsible under MCL 500.3114(2), and the trial court agreed.

The Court of Appeals affirmed. MCL 500.3114(2) provides that an operator or passenger injured in a motor vehicle operated in the business of transporting passengers recovers from the vehicle's insurer. Figueroa argued that her car was not a "transportation network company vehicle" because she was logged out, but the transportation-network-company exception in MCL 500.3114(2)(g) applies only to passengers, so her claim as the operator fell under the subsection's first sentence.

Applying the primary purpose/incidental nature test from *Farmers Ins Exch v AAA of Mich*, as restated in *Smith v Farm Bureau Mut Ins Co of Mich* (2025), the Court asked whether transporting passengers was the vehicle's primary purpose and a primary rather than incidental part of the operator's business. Figueroa's own testimony answered both: she rented the car through the Hertz–Uber program, used the vast majority of its time and miles for Uber, drove about five hours each weekday, and had no other income. The vehicle's insurer was therefore responsible.

Takeaway: For a rideshare driver injured as an operator, the MCL 500.3114(2) analysis looks at how the vehicle is primarily used, not whether the driver was logged into the ride share system when the accident occurs. When a dedicated rideshare rental is involved, look first to the rental vehicle's insurer rather than the MACP.

That a treatment is experimental, off-label, or not FDA-approved does not by itself defeat an allowable-expense claim; the question under MCL 500.3107(1)(a) is whether objective evidence shows it was reasonably necessary

Beaumont Hospital Taylor v State Farm Mutual Automobile Insurance Company
COA Docket No. 375503

In July 2016, an eight-year-old (DK) was struck by a pickup truck while riding his bicycle and suffered a traumatic brain injury. Beginning in 2019 and continuing through November 2022, largely at his mother's urging, he received hyperbaric oxygen therapy (HBOT). HBOT is "off-label" for TBI (i.e., not currently acceptable evidence-based treatment of a TBI) and not FDA-approved for that use; one treating physician refused to order it, and the administering hyperbaric specialist acknowledged it did not meet professional-society criteria and could find no measurable gain once the later rounds were underway. Corewell sued State Farm for nearly $900,000 in HBOT charges for 2021 and 2022, and the trial court granted State Farm summary disposition because the therapy was experimental for TBI.

The Court of Appeals reversed. Under *Krohn v Home-Owners Ins Co*, a treatment is compensable if it is objectively reasonable and necessary for the insured's care, recovery, or rehabilitation; MCL 500.3107(1)(a) does not require general acceptance in the medical community; instead, an experimental treatment need only have objective and verifiable evidence of efficacy. The trial court never performed that analysis. Viewed favorably to Corewell, the record, including testimony about case studies and literature, MRI reports suggesting improvement, and medical records documenting TBI symptoms before and after HBOT, raised a genuine issue of material fact.

The Court added that while a claimant cannot rely solely on subjective reports, *Krohn* does not bar them entirely, and for cognitive and behavioral symptoms of a TBI it is hard to measure benefit without the patient's reports. Importantly, summary disposition for Corewell was equally unwarranted given the contrary evidence: the physician who declined to prescribe, the specialist's doubts, and the treatment's off-label status. Consequently, a question of fact existed and summary disposition was not proper.

Takeaway: "Not FDA-approved" is not a defense on its own. Insurers contesting experimental treatment should build an objective-efficacy record under *Krohn*, while providers should gather literature, imaging, and contemporaneous treatment records showing the treatment's success.

A provider that fully assigned its receivables to factoring companies is not the real party in interest despite statutory standing under MCL 500.3112, but counter-assignments may cure the defect if properly raised within the litigation

Hammock v Farm Bureau Mutual Insurance Company of Michigan (On Remand)
COA Docket No. 363495

C-Spine Orthopedics intervened in Antonio Hammock's PIP suit against Farm Bureau, seeking $450,677.57 for treatment. C-Spine had sold Hammock's accounts to factoring companies under bulk purchase agreements and later obtained counter-assignments. The trial court granted Farm Bureau summary disposition for lack of standing. The Court of Appeals reversed in 2024, but the Supreme Court vacated that decision and remanded for reconsideration in light of *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co* and *Wallace v Suburban Mobility Auth for Regional Transp* (2025).

On remand, the Court held that C-Spine was not the real party in interest when it filed suit. Statutory standing under MCL 500.3112 addresses whether a class of plaintiffs may sue; the real-party-in-interest requirement of MCL 600.2041 and MCR 2.201(B)(1) asks whether this plaintiff owns the claim. C-Spine's agreements did more than assign proceeds: they transferred its legal and equitable rights, title, and interest in the accounts, preserved no litigation authority, and contemplated enforcement by the factoring companies.

The Court agreed, to a limited extent, that counter-assignments can restore real-party-in-interest status, but a defect cannot be cured by unilateral, out-of-court action. The plaintiff must act within the litigation by amending, substituting or joining a party, or otherwise invoking the court's authority under MCR 2.201(B)(2); it is only when that is done that the trial court can decide whether the cure is effective, whether it relates back under MCR 2.118(D), and whether the one-year-back rule of MCL 500.3145 limits recovery. Because the trial court treated the matter solely as one of standing, the Court vacated and remanded.

Takeaway: In provider suits, request the factoring agreements early. A counter-assignment in the file is not a cure until the provider brings it before the court, and that step opens the door to relation-back and one-year-back defenses.