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A. SIGNIFICANT MICHIGAN COURT DECISIONS

1. Supreme Court Decisions

a) No-Fault/PIP Decision

Bazzi v. Sentinel Ins. Co., (Mich. July 18, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/SCT/154442_180_01.pdf

Trial Courts are to Determine Whether Voiding PIP Benefits to Third Parties is Equitable When an Insurance Policy is Void *Ab Initio*

Plaintiff brought an action against insurer seeking PIP benefits under the no-fault act for injuries he received while driving a vehicle leased by his mother. Although plaintiff's mother leased the vehicle in her own name, the vehicle was insured through a commercial policy issued to a limited liability company whose resident agent was plaintiff's sister. The insurer filed a third-party complaint seeking to rescind the policy on the basis that plaintiff's mother and sister had procured the policy through fraud. The trial court granted the insurer default judgment against plaintiff's mother and sister thereby rescinding the policy. The insurer then moved for summary disposition of plaintiff's PIP benefits claim arguing that the policy was void *ab initio* because it had been rescinded for fraud and therefore precluded plaintiff's recovery under the policy. The trial court denied the insurer's motion, concluding that plaintiff had a valid claim for PIP benefits under the innocent-third-party rule. On appeal, the Michigan Supreme Court ruled that a claim to rescind a contract is equitable in nature and therefore in the sound discretion of the trial court. The Michigan Supreme Court held that the trial court must balance the equities to determine whether a party is entitled to the rescission that the party seeks, and should not be granted when the result would be unjust or unequitable. The court further noted that an insured's fraud in an application of insurance does not automatically allow the insurer to rescind the policy with respect to third parties. The court found that in this case even though the policy was void *ab initio* because of the fraud, the trial court should determine whether it is equitable to rescind the policy between the insurer and the plaintiff.

b) Other Significant Decisions

Bailey Ann Marie Noble v. Inn at Watervale, Inc., (Mich. April 6, 2018)
http://publicdocs.courts.mi.gov/SCT/PUBLIC/ORDERS/155380_69_01.pdf

Michigan's Recreational Land Use Act Shields Landowners From Liability During Recreational Activities

Plaintiff's mother brought an action after the minor child was injured on defendant's beachfront property on Lake Michigan. The child stepped on hot coals that were the remnants of a beach fire while she was building sandcastles, throwing stones, and playing in the water. The Michigan Supreme Court held that the district court properly granted summary disposition in favor of the defendant. The court found that the recreational land use act ("RUA") applied to this case. Under the RUA the plaintiff must establish gross negligence or willful and wanton misconduct by an owner, tenant, or lessee in order to bring a cause of action for injuries to a person who is on the land of another without paying the owner, tenant, or lessee of the land valuable consideration for

any outdoor recreational use of the land. Furthermore, the court held that the child's activities fell within the plain meaning of "any other outdoor recreational use."

Bertin v. Mann, (Mich. July 25, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/SCT/155266_64_01.pdf

Inherent Risks in a Recreational Activity are Those That are Reasonably Foreseeable

Plaintiff brought suit against defendant alleging that defendant was negligent in operating a golf cart when defendant hit the plaintiff while the parties were playing a round of golf. The issue before the court is whether getting hit by a golf cart is an inherent risk of golfing. If it is an inherent risk, then the defendant owed a duty only to refrain from reckless misconduct and cannot be held liable for negligent conduct. If getting hit by a golf cart is not an inherent risk, then defendant will be held to the negligence standard of conduct. The court held that inherent risks in a recreational activity are those that are reasonably foreseeable by the participants. Further, the court concluded that foreseeability of the risk is a question of fact. The factual circumstances to be considered to determine foreseeability include, among other things, the general characteristics of the participants, the general rules of the activity, and any regulations prescribed by the venue where the activity is taking place.

Trowell v. Providence Hospital and Medical Centers, Inc., (Mich. July 23, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/SCT/154476_60_01.pdf

Evidentiary Hearings are Improper to Determine Whether Plaintiff's Claims Sound in Medical Malpractice or Ordinary Negligence

At issue was whether plaintiff's claims sounded in medical malpractice or ordinary negligence. If plaintiff's claims sounded in medical malpractice, they would be time barred by the two-year statute of limitations and defendant would be entitled to summary disposition. If plaintiff's claims sounded in ordinary negligence, then plaintiff's claims would not be barred. The Michigan Supreme Court held that a claim sounds in medical malpractice if the conduct on which the claim is based occurred in the context of a professional relationship and the claim raises questions of medical judgment beyond the common knowledge and experience of a jury. The court found that all but one of plaintiff's claims sounded in medical malpractice.

2. Appellate Court Decisions

a) Insurance Coverage Decisions

Woodring v. Phoenix Insurance Company, 324128 (Mich. Ct. App. June 28, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180628_C324128_55_324128.OPN.PDF

Motor Vehicle Maintenance Exception is Still Good Law

Plaintiff brought suit, after slipping and falling at a self-serve car wash, seeking coverage under the No-Fault Act. Plaintiff parked the car but left it running. As she worked her way around to the rear of the car she slipped and fell suffering serious injury. The issue on appeal was whether the casual connection between the plaintiff's injuries and the motor vehicle was sufficient to allow recovery. The court reasoned that because the injury arose out of the maintenance of the vehicle it

is unnecessary to consider whether the vehicle was parked or not. The court held that most forms of vehicle maintenance require the vehicle to be in park. The court found that the maintenance exception is still good law and the there was a sufficient causal connection between the plaintiff's injuries and the maintenance of the motor vehicle.

Meemic Insurance Company v. Louise M. Fortson, 337728 (Mich. Ct. App. May 29, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180529_C337728_33_337728.OPN.PDF

Fraud After the Procurement of an Insurance Policy Does not Make it Void *Ab Initio*

Defendants' son suffered extensive injuries after being thrown off the hood of a vehicle. The injured son received benefits under defendants' no-fault policy with plaintiff. For six years the defendants claimed to have provided around-the-clock attendant care to their son and requested payment from plaintiff for the services. After an investigation, the plaintiff concluded that the defendants had fraudulently represented the attendant-care services they claimed to have provided. The appellate court found that as a matter of law the defendants had committed fraud. Further, the court held that the son is properly considered an innocent third party. The court found that the insurer cannot use the fraud to void the policy *ab initio* because the fraud arose after the policy was procured. The court concluded that there are no grounds for automatic recession of the policy because it would be inequitable to the injured son. Lastly the court found that the parents were not insured persons under the policy when they committed fraud and therefore the fraud-exclusion clause in the policy is inapplicable and cannot be used to void the policy and deny the injured son's claims.

Westfield Ins. Co. v. Jenkins Constr., Inc., 337968 (Mich. Ct. App. September 6, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180906_C337968_41_337968.OPN.PDF

General Contractor not Entitled to Indemnity of Liquidated Damages

A general contractor was retained by a public utility provider to make basin improvements and the general contractor subsequently retained a subcontractor to perform electrical work on the project. A heavy rainstorm, coupled with an electronic safety measure failure, caused the recently-completed basin to overflow, resulting in catastrophic structural damage to the basin. When the general contractor was not paid for its work, it brought suit. The subcontractor hired to complete the electrical work, and its insurer, brought a declaratory action against the general contractor arguing that an indemnity clause protected both parties from obligations to indemnify the general contractor. The court affirmed the lower court's decision in favor of the subcontractor and its insurer. The court reasoned that the general contractor paying liquidated damages to the utility provider does not require the subcontractor's insurer to indemnify the general contractor because liquidated damages are not the same as the "property damage" contemplated by the indemnity clause. Further, as with the subcontractor's insurer, the court held that the subcontractor itself was not obligated to reimburse the general contractor for the liquidated damages it paid to the utility provider.

Rochlani v Aaron, 336651 (Mich. Ct. App. September 4, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180904_C336651_52_336651.OPN.PDF

Materially False Statements Regarding Damage Voids Policy

Homeowner was denied coverage for property damage caused by water pipes freezing and suddenly bursting. The insurer denied the claim based on the homeowner's misrepresentation of material facts, failure to notify the insurer of the damage, and failure to mitigate the loss; all of which were the homeowner's duty under the policy. The court agreed with the insurer that the homeowner voided the policy when she made material false statements regarding prior water damage to her home and thus, the insurer did not breach its contract with the homeowner when it denied her claim.

DKE, Inc. v. Secura Ins. Co., 333497 (Mich. Ct. App. November 6, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20181106_C333497_62_333497.OPN.PDF

Dominion and Control Standard

The appellate court reaffirmed that a wrongdoer must have "complete" dominion and control over the affairs of the plaintiff business in order for the wrongdoer's actions to be imputed to the plaintiff and thereby bar recovery under a policy. The lower court instructed the jury that if they found the wrongdoer had "sufficient" or "requisite" control over the business the wrongdoer's actions would void the policy protections. The appellate court reversed and remanded for new trial.

b) UM/UIM Decisions

Percy Baker v. Edward Darrell Marshall, 335931 (Mich. Ct. App. April 5, 2018)
http://publicdocs.courts.mi.gov/opinions/final/coa/20180405_c335931(45)_rptr_48o-335931-final-i.pdf

Failure to Raise Fraud in a Responsive Pleadings Constitutes a Waiver of the Fraud Defense

Plaintiff sustained injuries when a vehicle driven by defendant ran a red light and broadsided the vehicle in which the plaintiff was a passenger. At the time of the accident plaintiff had a no-fault policy and defendant was an uninsured motorist. Plaintiff submitted a claim for benefits to her insurer but it was denied. Plaintiff filed suit asserting that she was entitled to uninsured motorist benefits and first-party benefits under her policy. Insurer denied allegations that it had wrongfully failed to pay uninsured motorist benefits and asserted numerous affirmative defenses, which did not include an affirmative defense that the policy was void *ab initio* on the basis of fraud. Insurer later moved for summary disposition asserting that plaintiff was not entitled to uninsured motorist benefits because defendant-driver had a valid insurance policy. Insurer asserted that plaintiff had fraudulently misrepresented facts and that the fraud-exclusion clause in her policy applied and barred plaintiff from receiving any coverage. The appellate court held that the fraud defense is an affirmative defense and the failure to raise it in a party's responsive pleadings constitutes a waiver of that defense.

Jeremy Drouillard v. American Alternative Insurance Corporation, 334977 (Mich. Ct. App. February 27, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180227_C334977(35)_RPTR_26o-334977-FINAL-I.PDF

A Hit and Run Vehicle Must Cause an Object to Hit the Insured in Order to Trigger Uninsured Motorist Coverage, Stationary Debris From Uninsured Motorist Not Enough

Plaintiff, an emergency medical technician, was involved in an accident while riding as a passenger in an ambulance driven by his partner. Plaintiff hit debris that was left behind as a result of a pickup truck accelerating to cross an intersection before the ambulance. As a result of the accident, plaintiff suffered injuries to his lumbar spine and was eventually disabled from work. Defendant denied uninsured motorist coverage because there was no uninsured motor vehicle involved in the accident. Defendant moved for summary disposition on this basis, but the trial court rejected defendant's arguments. The appellate court reversed. The court reasoned that reasonable minds could differ as to whether the pickup truck driver knew about the loss of the building materials that had caused the accident. However, summary disposition is appropriate for defendant because the debris was stationary at the time of the accident and therefore is not a hit-and-run situation, precluding plaintiff from uninsured motorist benefits under the insurance policy.

c) No-Fault/PIP Decisions

Bronson Methodist Hospital v. Farm Bureau Mutual Insurance Company of Michigan, 333275 (Mich. Ct. App. March 27, 2018)
http://publicdocs.courts.mi.gov:81/OPINIONS/FINAL/COA/20180327_C333275_51_333275.OPN.PDF

After the Ruling in *Covenant*, Health Care Providers Have no Statutory Standing to Bring Suit Against Insurance Carriers

Plaintiff provided medical services to patients and charged insurer for medical services and products. Included in the products charged to insurer were implant products. Defendant claimed it was policy to pay the wholesale cost of the implant product plus 50%. Plaintiff filed suit seeking the difference between what it billed for the implant products and what defendant paid. Additionally, plaintiff filed a motion for no-fault attorney fees under MCL 500.3148(1) based on its defendant's unreasonable refusal to pay the claim. The trial court granted plaintiff's motion for no-fault attorney fees. While the appeal was pending, the Michigan Supreme Court decided *Covenant.* The Appellate Court held that because of *Covenant*, plaintiff has no statutory standing to bring the suit in the first instance. The court remanded the case for further proceedings, to deal with post *Covenant* issues.

Maurer v. Fremont Insurance Company, 336514(Mich. Ct. App. September 18, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180918_C336514_39_336514.OPN.PDF

An Action for Rescission Begins to Accrue at the Time the Application for Insurance is Submitted

Plaintiff was injured in an automobile accident in 2012. Almost two years after the accident, the insurer advised the insured that the policy was being rescinded retroactive to 2006 and therefore had no obligation to pay for plaintiff's medical expenses or wages lost related to the accident.

Plaintiff sought declaratory judgment arguing that she was entitled to PIP benefits and the insurer filed a counterclaim for rescission. The trial court granted summary disposition in plaintiff's favor determining that the insurer's rescission claim was not filed within the statute of limitations, the appellate court affirmed. The appellate court held that the insurer's claim for rescission accrued at the time the insured submitted the application for insurance. Since the application was submitted in 2006, the insurer had to file by 2012 to comply with the six-year limitations period for material and fraudulent misrepresentation.

Jawad A. Shah MD PC v. State Farm Mutual Automobile Insurance Co., 340370 (Mich. Ct. App. May 8, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180508_C340370(37)_RPTR_63p-340370-FINAL-I.PDF

Anti-Assignment Clauses Prohibiting Assignments After a Loss has Occurred are Unenforceable

Plaintiffs appeal the trial court's order granting summary disposition in favor of defendant and denying plaintiffs' motion for leave to amend their complaint. Plaintiffs sought leave to amend their complaint after the ruling in *Covenant* providing that healthcare providers no longer possess a statutory cause of action against no-fault insurers. Plaintiffs obtained an assignment of rights from the insured to pursue payment of the no-fault benefits for healthcare services provided. The court held the anti-assignment clause in the insurance policy unenforceable to prevent the assignment and against public policy. However, the court concluded that the plaintiffs are only entitled to recover those losses occurring no more than one year prior to the signing of the assignment of benefits.

MIC Gen. Ins. Corp. v. Mich. Mun. Risk Mgmt. Auth., 341766 (Mich. Ct. App. October 18, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20181018_C341766_30_341766.OPN.PDF

No Profit Requirement Under MCL 500.3114(2); Government Hiring of Transportation Services is Government Sponsorship; and Vehicles Similar to Cargo Vans are not "Buses"

A non-profit organization was hired by a county to provide transportation services to elderly or disabled citizens. One of the organization's vehicles was involved in an accident and a passenger was injured. The court examined whether the transportation service is considered a government sponsored transportation program and whether the vehicle at issue was a bus. If both these questions were answered in the affirmative, the defendant would have been exempted from liability. It was determined that because the county government hired the non-profit organization for its services, it was a government sponsored program. The vehicle at issue was a Ford E-350 that could seat 9-10 individuals with a specialized wheelchair lift. The court determined the Ford E-350 is more akin to a cargo van and is therefore a "van" and not a "bus." Lastly, the court ruled that there is no "for-profit" requirement under MCL 500.3114(2), which provides that a passenger, injured in a motor vehicle operated in the business of transporting passengers, is to receive benefits from the insurer of the motor vehicle.

d) Premises Liability Decisions

Schmunk v. Olympia Entertainment, Inc., 334321 (Mich. Ct. App. March 20, 2018)
http://publicdocs.courts.mi.gov:81/OPINIONS/FINAL/COA/20180320_C334321_65_334321.OPN.PDF

The Substance of the Complaint Will Determine the Action and Relief

Plaintiff tripped and fell over a dolly that was being pulled by defendant's employee. The trial court concluded that plaintiff's claim sounded in ordinary negligence and not premises liability, so the open and obvious doctrine did not apply. Defendant argued that trial court erred by denying defendant's motion for directed verdict based on the open and obvious doctrine. The Appellate Court concluded that the plaintiff's complaint alleged that defendant was negligent in conduct, the focus did not involve a condition on the land. Additionally, the court found that the trial court properly denied a motion for summary disposition on whether defendant owed any duty at all to plaintiff. Defendant argued that it owed no duty to protect plaintiff from herself. The court reasoned that defendant's argument is actually about causation and not duty and that the doctrine of pure comparative negligence would distribute responsibility according to the proportionate fault of the parties.

Pugno v. Blue Harvest Farms LLC, 340142 (Mich. Ct. App. September 27, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180927_C340142_40_340142.OPN.PDF

Res Ipsa Loquitor can be Applied to Premises Liability Cases

Plaintiff was injured while inspecting a malfunctioning air compressor on defendant's premises. A stack of pallets unexpectedly fell upon the plaintiff. Plaintiff brought suit alleging negligence and premises liability. Plaintiff argued that defendant's liability was proven based on the theory of *res ipsa loquitor*, the accident was of a kind that does not ordinarily occur in the absence of negligence. Defendant appealed arguing that plaintiff's claim sounded exclusively in premises liability and that *res ipsa loquitor* is inapplicable to premises liability claims. The appellate court agreed with defendant that plaintiff's claim sounded exclusively in premises liability, but the court found that the trial court did not err by allowing plaintiff to proceed on a theory of *res ipsa loquitor*.

Young v. Walton Oil, Inc., 333794 (Mich. Ct. App. February 6, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180206_C333794_26_333794.OPN.PDF

Ice as a Matter of Law is Nearly Invisible and Therefore not Open and Obvious

Plaintiff slipped and fell on ice while walking toward a gas pump at defendant's place of business. The trial court dismissed plaintiff's complaint against the defendant ruling that there was no evidence that defendant had any notice of the icy condition and that the condition was open and obvious. The appellate court vacated the decision and remanded for further proceedings. The appellate court found that the plaintiff created genuine issues of material fact. The court reasoned that since neither the plaintiff nor the defendant could see the ice, the ice was not necessarily open and obvious upon casual inspection. Because ice is nearly invisible, as a matter of law the court concluded one would not expect an average person to be able to discern a nearly invisible thing on casual inspection. Further, the court held the duty of the defendant-owner is to not to casually

inspect the premises but to look for hazards and therefore a reasonable inference is that if defendant-owner claims he inspected the premises just before plaintiff's fall, he did so negligently.

e) Governmental Immunity Decision

Ryan Harston v. County of Eaton, 338981 (Mich. Ct. App. June 7, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180607_C338981_41_338981.OPN.PDF

The Notice Provision in MCL 224.21(3) Governs When Bringing a Claim Against a County Road Commission

Plaintiffs brought suit after a motorist lost control of her minivan after driving through standing water on the roadway. The issue on appeal was whether the notice provision in MCL 224.21(3) in the highway code rather than the notice provision in MCL 691.1404(1) in the governmental tort liability act governs a claim brought against a county road commission. The appellate court held that MCL 224.21(3) applied and that plaintiffs were required to serve notice of defect upon the road commission and county clerk within 60 days. Further, the court determined that the road commission was not required to plead defective notice under MCL 224.21 as an affirmative defense. The court reasoned that governmental immunity is not an affirmative defense, rather, it is a characteristic of government and the plaintiff must plead in avoidance of governmental immunity.

f) Other Significant Decisions

Magley v. M&W Incorporated, 340507 (Mich. Ct. App. July 17, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180717_C340507_32_340507.OPN.PDF

A Defendant Who Wrongfully Exerts Dominion Over Property is Not Shielded from Liability for Conversion on the Basis that the Action was Undertaken in Good Faith on Behalf of a Third-Party

Plaintiff defaulted on his tractor loan and defendant, acting on behalf of the creditor, repossessed the tractor. Plaintiff had attached a tank and sprayer to the tractor, which he owned outright. Defendant failed to return the tank and sprayer to plaintiff and even posted a picture of the tractor with the tank and sprayer on an auction's website. Plaintiff brought suit for conversion and the trial court granted summary disposition in favor of defendant on the theory that if there was any wrongdoing, defendant could not be held liable while acting on the creditor's behalf based on information provided by creditor. The appellate court reversed and remanded, holding that the trial court erred by concluding that defendant could not be held liable when acting as an agent for a third-party. The appellate court reasoned that defendant's mistaken belief that they had a right to the items is not a defense. The court found that questions of fact remained as to whether the items were accessions and whether defendant's conduct was lawful.

Nahshal v. Fremont Insurance Company, 336234 (Mich. Ct. App. June 21, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180621_C336234_51_336234.OPN.PDF

Automatic Reversal Rule Does not Apply to Civil Lawsuits Even When There is an Improper Inquiry Into Religious Beliefs and Opinions

Insurer appealed as of right a judgment awarding plaintiff no-fault PIP benefits for a roll-over automobile accident. During trial, plaintiff's wife was questioned about her religious beliefs and opinions to help bolster her credibility. The appellate court held that the questioning of a witness about religious beliefs or opinions is impermissible, however, in this case the questioning did not warrant automatic reversal. The court held that the automatic-reversal rule does not apply to civil lawsuits and any improper religious belief or opinion testimony should be reviewed for prejudice on appeal. The court reasoned that no reversal was warranted in this case because the jury actually substantially reduced the wife's claims for services rendered to her husband, which indicates that the jury was not swayed by the improper inquiry into religious beliefs or opinions. Therefore, the error was harmless, and reversal not required.

Estate of Ezekiel D. Goodwin v. Northwest Michigan Fair Association, 333963 (Mich. Ct. App. July 3, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180703_C333963_42_333963.OPN.PDF

Parental Immunity Does not Prevent a Jury From Apportioning Fault to a Negligent Parent

The appeal involved a wrongful death action filed by the mother of the deceased child. The 6-year old child was riding his bike on fairground property where he was hit by a truck. Following a jury trial, the court entered a judgment against the defendant in the amount of $1,000,000. Defendant appealed, arguing that the trial court erred by denying their request to name the father of the deceased child as a non-party at fault. The appellate court agreed with the defendant and remanded for a new trial. The appellate court reasoned that the child's father had a duty to supervise his child. The court concluded that a parent can be named as a non-party at fault notwithstanding the parental immunity doctrine. The defendant should have been able to argue the father's fault to the jury and the jury should have been allowed to apportion fault to the father.

Citizens Ins. Co. of Am. v. Sholtey, 337309 (Mich. Ct. App. October 25, 2018)
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20181025_C337309_55_337309.OPN.PDF

Strict Compliance With MCL 500.3020(6) is Required for a Cancellation Notice to be Effective

The insured failed to pay the installments for vehicle insurance he had acquired. As a result, the insurance company sent the insured a one page cancelation notice on December 15, 2011. Approximately one month later the insured's daughter, driving the insured's vehicle, was involved in an accident. The insured made a claim under the policy and the insurance company denied the claim based on its earlier cancellation notice. The court ruled in the insured's favor because the notice sent by the insurance company was ineffective because it did not include the following language, as required by MCL 500.3020(6): "that the insured shall not operate or permit the operation of the vehicle to which notice of cancellation is applicable, or operate any other vehicle, unless the vehicle is insured as required by law."

3. Federal Court Decisions

K.V.G. Properties, Inc. v. Westfield Insurance Company, 900 F.3d 919 (6th Cir. 2018)
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0178p-06.pdf

Tenants' Illegal Activities Can Exclude Coverage Under an Insurance Policy

Plaintiff's tenants got caught growing marijuana in their rental units. Plaintiff's tenants caused substantial damage to the premises before the police caught them. Plaintiff speedily evicted the tenants and sought coverage from its insurers for nearly half a million dollars in related losses. Defendant-insurer denied the claims prompting the lawsuit. The district court granted summary judgment to the insurer reasoning that the damage was excluded by the policy and the Sixth Circuit affirmed. The Sixth Circuit concluded that the plaintiff's tenants engaged in criminal activity and therefore insurance coverage is excluded under the terms of the policy.

Auburn Sales, Inc. v. Cypros Trading & Shipping, Inc., 898 F.3d 710 (6th Cir. 2018)
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0162p-06.pdf

In Order to Prove Intentional Interference Under Michigan Law a Plaintiff Must Show "Intentional" Interference and "Improper" Interference

Plaintiff was a middleman selling Chrysler automotive parts to defendant. Defendant was prosecuted for selling counterfeit automobile parts, causing the manufacturer of the parts to terminate its supply agreement with the plaintiff. Plaintiff brought action against defendant, asserting claims for breach of contract and tortious intentional interference with a business relationship. The Sixth Circuit rejected plaintiff's argument that they need not prove intent as an element of tortious interference.

B. SIGNIFICANT CASES PENDING BEFORE THE MICHIGAN SUPREME COURT

Dye v. Esurance Property & Casualty Ins. Co., 912 N.W.2d 178 (pending)

Is an Owner/Registrant of a Motor Vehicle Entitled to PIP Benefits When no Owner/Registrant Maintains Security for Payment of Benefits Under PIP?

Plaintiff was injured in a motor vehicle accident and sought no-fault PIP benefits. The car plaintiff was driving was titled in his name, but the plaintiff's father had obtained insurance for the vehicle from Esurance. Esurance claims that co-defendant GEICO is the higher priority insurer, but GEICO denies liability. GEICO bases its argument on *Barnes v. Farmers Ins. Exch.*, which held that under MCL 500.3113(b) if none of the owners maintains the requisite coverage, no owner may recover PIP benefits. The trial court granted summary disposition in favor of plaintiff and Esurance against GEICO, but the Court of Appeals reversed. The issue before the court is whether an owner or registrant of a motor vehicle involved in an accident may be entitled to PIP benefits for accidental bodily injury where no owner or registrant of the motor vehicle maintains security for payment of benefits under PIP.

These cases were pending at the time this summary was printed. To confirm whether the Supreme Court has issued a decision in this case, we invite you to visit our website at http://www.rolfeshenry.com.