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Thomas F. Kauza

AREAS OF PRACTICE:

Civil Litigation
First Party No Fault Insurance
Third Party Automobile Negligence
Construction Accidents
Premises Liability
Insurance Coverage
Insurance Redlining Litigation
Product Liability

EDUCATION:

University of Detroit School of Law (J.D., 1978)
The Order of Barristers Award, 1978
Moot Court Board of Directors, University of Detroit Law School, 1977-1978
University of Alaska (M.B.A., 1974)
U.S. Military Academy (West Point) (B.S., 1970)

BAR ADMISSIONS:

State Bar of Michigan, 1978
U.S. District Court for the Eastern District of Mich., 1978
U.S. Court of Appeals for the Sixth Circuit, 1979
U.S. Supreme Court, 1985

EMPLOYMENT:

Shareholder at Harvey Kruse, P.C., 1986-present
Associate Attorney at Harvey Kruse, P.C., 1980-1985
Judicial Attorney for Wayne Circuit Court Judges, 1978-1980

ACKNOWLEDGMENTS:

Martindale Hubbell Rating: AV, 1998

EXPERIENCE:

Successful representation of numerous clients as a trial and appellate attorney for over twenty-five years in circuit courts throughout the state of Michigan, United States District Court for the Eastern District of Michigan, Michigan Court of Appeals, and the United States Court of Appeals for the Sixth Circuit.

Obtained over one hundred dismissals, summary dispositions, and/or successful verdicts.

Obtained successful appellate rulings in cases of substantial importance to Michigan jurisprudence.

Served as mediator/case evaluator for the Wayne County Mediation Tribunal for over nineteen years.

Served as an arbitrator in no fault first party and third party automobile tort liability cases.

Presented numerous seminars to insurer claims personnel in Arizona, Michigan, Minnesota, and Ontario, Canada on Michigan law, First and Third Party No Fault Law, and Construction Law.

Researched and wrote memoranda of law on court cases for proposed opinions as a Judicial Attorney for Wayne County Circuit Court Judges.

REPRESENTATIVE CLIENTS:

Allied Property and Casualty Insurance Company
Amerisure Insurance Companies
AXA Insurance of Canada
Bituminous Insurance Companies
Co-Operators Insurance (Canada)
GMAC Insurance
Lancer Insurance Company
Nationwide Insurance
Royal & SunAlliance Insurance (Canada)

MEMBER:

State Bar of Michigan
Association of Defense Trial Counsel
Association of Graduates of West Point
Our Lady of the Woods Church

MILITARY SERVICE:

Officer, U.S. Army, Tank Automotive Command, International Logistics, 1974-1975
Officer, U.S. Army, 37th Field Artillery, 1970-1974
United States Military Academy (West Point), 1966-1970

REPRESENTATIVE TRIAL & APPELLATE DECISIONS:

Bachman v Progressive Casualty Insurance Co., 135 Mich App 641, 354 NW2d 292 (1984) is significant because it delineated what the "involved in the accident" language meant in the Michigan No Fault Act. The court held that there must be some sort of activity which contributes to the happening of the accident in order for the motor vehicle to be involved in the accident regarding claims for benefits by a person suffering

accidental bodily injury, while not an occupant of a motor vehicle. As such, the passenger of a motorcycle that landed on the Grand Prix insured by Farmers Insurance Exchange did not constitute involvement in the accident between the motorcycle and the Dodge insured by Progressive. There was no activity on the part of the Grand Prix that contributed to the happening of the accident within the meaning of MCL 500.3115(1). Hence, the fact that there was physical contact between the passenger of the motorcycle and the Grand Prix that was passively waiting at the light for it to change did not constitute involvement in the accident between the motorcycle and the Dodge.

Richard Nagy v Farmers Insurance Exchange, et al, 758 F2d 189 (6th Cir, 1985) is significant because it confirmed the insurer's contract right to terminate an insurance agent pursuant to the terms of the insurance agent agreement and MCL 500.1209(3) for switching insurance business under the pretext and alleged justification of complying with the Michigan Essential Insurance Act.

Novak v Nationwide Insurance Co., 235 Mich App 675, 599 NW2d 546 (1999) affirmed the dismissal of the insurance agent's case with respect to wrongful discharge, breach of legitimate expectations, fraudulent and innocent misrepresentation, promissory estoppel, and violations of Federal Fair Housing Act, the Michigan Insurance Code, the agent termination and redlining provisions of MCL 500.1209, and Civil Rights Act. The decision is significant for its holding that the insurer did not violate the anti-redlining provisions of MCL 500.1209 when its termination of the agent was in conformity with MCL 500.1209(5) as the cancellation of the agent's contract did not result in the cancellation or non-renewal of any home or automobile insurance policy. Furthermore, since Nationwide complied with MCL 500.1209(5), the agent was not protected by the provisions of MCL 500.1209(3) and (4)which protect an agent from termination based on geographic location and/or actual or expected loss experience, which provisions were designed to prevent redlining.

Portelli v IR Construction, 218 Mich App 591, 554 NW2d 591 (1996), l***v. den.,*** 456 Mich 919, 573 NW2d 618 (1998) is important because the doctrines of sophisticated user and unreasonably foreseeable misuse were applied in a construction industry setting to bar the worker's claim. The court held that a

product manufacturer that marketed access doors by catalogues only to design professionals or to those involved in the construction industry for wall installation was not liable to the injured worker when the wall access door installed in the ceiling opened and injured the plaintiff seriously. The catalogue also contained ceiling access doors that were designed differently than the wall access doors. Furthermore, since the door was marketed only to industry professionals with a certain mastery and usage of the product, the defendant had no duty to warn the ultimate user.

Rand v Knapp Shoe Stores, 178 Mich App 735, 444 NW2d 156 (1989) held that a business establishment was not liable for injuries sustained by a minor bicyclist in the area immediately beyond the premises of the business notwithstanding that the walkway adjacent to the store was used as a jump ramp into the public alley where the collision between the car and the bicycle occurred. The business only had a duty to keep its premises reasonably safe. Furthermore, the requirements of the doctrine of attractive nuisance as set forth in The Restatement of Torts, 2d, §339 were not met since the business had no notice of the walkway being used as a bicycle jump ramp into the public alley and the blind spot created by the walkway/alley intersection at the corner of the building was not in itself dangerous, but it was the child's use that created the dangerous condition.

United Southern Assurance Co. v Aetna Life & Casualty Insurance Co., 189 Mich App 485, 474 NW2d 131 (1991) is the first case that held that a standing motor vehicle is a parked motor vehicle under the Michigan No Fault Act. No fault property protection insurance benefits were payable pursuant to MCL 500.3121 and MCL 500.3123(1)(a) for damage to the semi-tractor/trailer and its contents where the vehicle was standing on the shoulder of the road off the traveled portion of the highway with its engine running and its headlights, cab lights, marker lights, and emergency flasher lights illuminated, while the driver read a map to ascertain his location. The decision is significant because the Court of Appeals utilized the definition of parked within the Michigan Motor Vehicle Code in construing the term, "parked", in the Michigan No Fault Act. Thus, the standing vehicle was held to be parked in such a manner that did not cause an unreasonable risk of the damage which occurred; thereby, making the insurer of the striking owner's motor vehicle responsible for the payment of property protection benefits to the trucking company.