



## **HARVEY KRUSE, P.C.**

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## **Michael J. Guss**

### **AREAS OF PRACTICE:**

Civil Litigation  
Automobile Negligence  
No-Fault PIP/UM/UIM  
Premises Liability  
Insurance Coverage  
Employment Law/Private/Government  
Dram Shop  
Construction Accidents  
Property Loss/Fire  
Products Liability  
Municipal/Governmental Liability  
Police Misconduct  
Civil Rights, Excessive Force, Constitutional Claims

### **EDUCATION:**

Detroit College of Law—Michigan State University Law School (cum laude, 1989)  
University of Michigan—Dearborn (B.A., with distinction, 1986)

### **BAR ADMISSIONS:**

State Bar of Michigan (1989)  
U.S. District Court for the Eastern District of Michigan (1989)  
U.S. District Court for the Western District of Michigan (2003)  
U.S. Court of Appeals for the Sixth Circuit (2015)

Board of Directors at Harvey Kruse, P.C. (2017-Present)  
Shareholder at Harvey Kruse, P.C. (1997-Present)  
Associate Attorney at Harvey Kruse, P.C. (1990-1997)

### **PROFILE**

Michael leads the Harvey Kruse, P.C., Grand Blanc / Flint office where his practice has been almost entirely in civil defense litigation including trial court and appellate practice.

### **EXPERIENCE:**

At Harvey Kruse, Michael developed his trial and appellate skills in a diverse field of practice, while primarily working for insurance carriers and self-insureds. Michael has litigated cases involving employment law, retaliatory discharge, discharge against public policy, “Whistleblower’s Act”, sexual

harassment, age, gender, race discrimination, handicapper's liability, FMLA liability, product liability, fire and explosion loss, first and third party automobile liability, premises liability, dramshop law, insurance coverage, negligence, indemnity, fraud, misrepresentation, contractual liability, environmental liability, swimming pool liability, over-the-counter drug liability, covenants not to compete, business entity dissolution, business transaction liability, consumer and warranty law, construction and trucking, excessive force, civil rights, and constitutional claims.

Michael has handled regulatory and administrative law situations involving MIOSHA, the MDEQ, the LCC, the MDCR, and the EEOC.

Michael tried two lengthy death cases, one involving an auto accident/products liability claim, and one involving allegations of malpractice in emergency medical services, both to No-Cause jury verdicts.

### ***Appellate Practice***

In addition to trying cases in multiple circuit courts and district courts across the state, Michael has also engaged in a significant appellate court practice. Michael has drafted, contributed to and/or argued appellate cases involving issues of environmental law, swimming pool liability, over-the-counter drug liability, premises liability, first and third-party automobile negligence, excessive force/police misconduct and employment/constitutional.

### ***Alternative Dispute Resolution***

Since Michael was time-eligible, he was selected and has served as a defense case evaluator on the Civil Tort and several Other Case designation panels for Genesee County.

Trusted and respected by his peers and firm's competitor's, Michael has long served as defense arbitrator in tort and contract cases.

### ***Seminar/Client Education***

Michael has composed and drafted seminar treatises and compendiums and presented educational seminars in employment law, premises liability, first and third party Michigan no-fault law, uninsured/underinsured motorist law, scar evaluation, dog bite law, deposition taking and mediation/case evaluation briefing and argument.

**REPRESENTATIVE CLIENTS:**

Amerisure Insurance  
Allied Insurance Company  
American Insurance Companies  
Ashland Inc.  
City of Flint  
Genesee County  
Liberty Mutual Group  
National General Insurance Company  
Nationwide Insurance Companies  
Titan Insurance Company  
Pioneer State Mutual Insurance Company  
MEEMIC  
AAA  
Acuity

**MEMBER:**

State Bar of Michigan  
Genesee County Bar Association

**RECENT RESULTS:**

**MIKE GUSS AND WILLIAM CLOS OBTAIN PARTIAL SUMMARY DISPOSITION IN - *Samuel Bagjett v Genesee County, et al.*** USDC No. 18-cv-10544-JCO-RSW, Judge Terrence G. Berg. In a case where Plaintiff alleges injuries from alleged excessive force at jail versus Deputies and a *Monell* claim versus County, we obtained partial summary disposition of *Monell* claims for Plaintiff's failure to assert such claims via an expert or with sufficient proofs. (The case continues with excessive force allegations.)

**MIKE GUSS AND MERIAM CHOULAGH OBTAIN SUMMARY DISPOSITION IN - *John Doe, as personal representative of the Estate of Jane Doe v. County Medical Care Facility, et al.*** 17-051486-NO, Lapeer County Circuit Court, Hon. Nick O. Holowka. Nursing Home negligence/wrongful death claim alleged versus governmental nursing home. Plaintiff's decedent, a nursing home patient, expired following a feeding/choking incident. We obtained Summary Disposition of the general negligence case. (The claim has been refiled in medical malpractice and an appeal is initiated against a grant of Summary Disposition.)

**MIKE GUSS AND DAVID ROTH OBTAIN SUMMARY DISPOSITION IN - *David Henry v. City of Flint, et al.*** United States District Court, Case No. 2:17-cv-11061-PDB-DRG, Judge Paul D. Borman. We obtained Summary Judgment of excessive force/constitutional claims by Plaintiff

Henry as arising from Henry's arrest at his residence following his neighborhood disturbance. Summary Judgment was granted by Federal Judge Paul D. Borman. The Summary Judgment was partially overturned by the Sixth Circuit Court of Appeals and the case remains pending trial on narrow issues.

**MIKE GUSS AND DAVID ROTH OBTAIN SUMMARY DISPOSITION IN - *Laura Joseph v Edward Rose Associates, LLC***, Genesee County Circuit Court Case No. 19-113526-NO, Judge F. Kay Behm. We prevailed on a motion for Summary Disposition of tenant/Plaintiff's negligence and statutory claims against her landlord Defendant where she fell while traversing a landscape timber. The Court found there was no common area that was reasonably fit for its intended use.

**MIKE GUSS, DAVID ROTH AND MERIAM CHOULAGH OBTAIN SUMMARY DISPOSITION - *Heather Malone v Zhetman Brighton, LC, et al.***, Livingston County Circuit Court, Case No. 19-30275-NI, Judge Matthew J. McGivney. Plaintiff with troubled medical / psychiatric background alleged catastrophic injuries from minor motor vehicle accident against pizza delivery agent and national pizza franchisee. At facilitation Plaintiff settled against the alleged negligent pizza delivery driver. We prevailed on a motion for Summary Disposition asserting that the negligent hiring, training, supervising charges were not supported by fact and that the vicarious liability/*respondeat superior* claims were barred by Plaintiff's settlement with the agent. By the time of the dismissal Plaintiff's PIP Claims exceeded \$300,000.00.

**MIKE GUSS AND WILLIAM CLOS OBTAIN SUMMARY DISPOSITION IN - *Dawn and Michael Sorgatz v Pioneer State Mutual Insurance Co.***, Oakland County Circuit Court, Case No. 18-163945-CK, Judge Cheryl A. Matthews. Jury trial in June 2019 in a case where Plaintiff alleged breach of contract against homeowner's insurance company arising from two basement pipe failures. Litigation ensued after Plaintiffs refused to provide themselves for Examinations Under Oath as requested by carrier. At trial Plaintiffs' case in large part rested upon their allegations against the Defendant carrier's former adjuster/employee who was no longer available. The jury returned a modest verdict for Plaintiff which entitled Defendant to \$30,855.00 in case evaluation sanctions.

**MIKE GUSS AND DAVID ROTH OBTAIN SUMMARY DISPOSITION IN - *James Spitz v Occidental Development, LLC***, Eaton County Circuit Court, Case No. 19-000119-NO, Judge Janice K. Cunningham. Tenant/Plaintiff alleged landlord/defendant failed to a keep safe premises and comply with statutory landlord standards of care when Plaintiff allegedly sustained a fall upon an erosion depression at a sidewalk joint. The Court granted Summary Disposition on all Counts and the case is currently under Appeal.

**MIKE GUSS AND BILL CLOS OBTAIN SUMMARY DISPOSITION IN CONSTRUCTION ACCIDENT IN - *Alfredo Garcia v Atsalis Brothers Painting Co. and Z Contractors, Inc.***, Lapeer County Circuit Court Case No. 17-050920-CZ, Judge Nick O. Holowka. In this case we represented a contractor who specialized in painting structures such as highway overpasses and bridges. This company employed Plaintiff and Plaintiff's brother. We also represented the General Contractor for the concerned project regarding renovating a large highway overpass. Plaintiff and his brother were attempting to exit the work site with the brother driving at high speed in reverse on the shoulder of the expressway whereupon he lost control of the vehicle and it vaulted into the way of an oncoming semi-truck. The collision left the Plaintiff with a spine that had to be fused and a traumatic brain injury. The employer's Workers Compensation carrier had denied Plaintiff Workers Compensation coverage upon the assertion that Plaintiff and his brother were headed to lunch and therefore off the clock. We prevailed upon a motion for Summary Disposition on behalf of the employer alleging immunity by way of the intentional tort provisions of Michigan's Workers Compensation laws even though the Plaintiff had never collected Workers Compensation. We asserted Summary Disposition was appropriate as to the General Contractor upon the basis that the Plaintiff's allegations failed to meet the requisites for the "common workplace" theory of liability. The Defendants' Motions for Summary Disposition were granted on all grounds.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION ON A HOMEOWNERS POLICY FOR ADDITIONAL LOSS BASED UPON THE MEND THE HOLD DOCTRINE AND FAULTY WORKMANSHIP EXCLUSION — *Charles and Dianne McSwain v.***

*Pioneer State Mutual Insurance Company*, Macomb County Circuit Court. Plaintiffs filed suit seeking to obtain additional coverage after a water loss in their residence on a homeowner policy issued by Pioneer State Mutual Insurance Company. The Plaintiffs hired a third-party, Select Restorations, to repair their kitchen after the loss. Pioneer covered all expenses for the initial repair of the kitchen along with related Alternative Living Expenses. Unknown to Pioneer and plaintiffs, Select Restoration cut into the flooring of plaintiffs' kitchen that contained asbestos without taking proper precautions to limit disbursement of asbestos throughout the house. After receiving full payment of their claim, plaintiffs subsequently brought suit against Pioneer and Select Restoration for asbestos abatement through the entire house, ultimately seeking over \$80,000. Plaintiffs settled their case with Select Restoration leaving Pioneer as the sole defendant. Plaintiffs and Pioneer filed for Summary Disposition. Plaintiffs argued that Pioneer was liable for the whole house remediation based upon the "Mend the Hold Doctrine," arguing that since Pioneer agreed to repair the property by removing the asbestos flooring, it was subsequently estopped from denying coverage for whole house remediation. Pioneer argued that the Mend the Hold Doctrine was inapplicable and the claim was excluded by the faulty workmanship exception in the policy. The Court granted Pioneers motion holding that the Mend the Hold Doctrine was inapplicable to this loss, the loss was excluded by the faulty workmanship exclusion and that plaintiffs violated the policy conditions by settling with Select Restoration destroying Pioneer's right to subrogate this claim. The case is pending Plaintiffs' appeal.

**MIKE GUSS OBTAINS AFFIRMANCE OF SUMMARY JUDGMENT FROM THE SIXTH CIRCUIT COURT OF APPEALS IN CIVIL RIGHTS CASE — *Robert Garceau, et. al. v City of Flint, et al., Sixth Circuit Court of Appeals.*** The City of Flint Police Department had an excess of sergeant openings. Thus, its then-Chief of Police, defendant Alvern Lock, provisionally promoted 12 officers until the Department could create and administer a formal promotional exam. Following the provisional-appointments, twelve Caucasian police officers who were promoted to sergeant brought suit under 42 U.S.C. § 1983, claiming reverse race discrimination. After extensive discovery, the district court granted our motion for summary judgment and dismissed plaintiffs' reverse discrimination claims. The plaintiffs then appealed to the Sixth Circuit Court of Appeals. After the briefing,

the Sixth Circuit waived oral argument and issued an opinion affirming the trial court ruling, holding that there was no support in the record that plaintiffs' race motivated Chief Lock's promotional decisions

**MIKE GUSS OBTAINS SUMMARY DISPOSITION IN FEDERAL CIVIL RIGHTS CLAIM** — *Stacy Erwin Oakes v Karen Weaver and City of Flint, United States District Court for the Eastern District of Michigan*. Plaintiff was the Chief Legal Officer of the City of Flint until she was discharged in January 2017. She filed a complaint alleging that she was fired because of the legal positions she took as the CLO, claiming the City violated her First Amendment rights by retaliating against her for her constitutionally protected speech, and that the firing violated Michigan's Whistleblowers' Protection Act, and was contrary to public policy under Michigan law. Specifically, the plaintiff alleged that her various complaints about putting the City at legal or financial risk led to her termination. At the close of discovery, we filed a motion for summary judgment on each count. The Court granted our motion, holding that all of plaintiff's speech fell within the ambit of her official employment duties, and thus, was not protected conduct under the First Amendment. Further, the Court held that plaintiff's claim under the WPA failed as a matter of law because she did not report any actual completed illegal acts and most of her objections did not concern any purported illegality at all. Finally, the Court denied the plaintiff's public policy claim, holding that her supposed reporting of illegal activity was preempted by the WPA and she did not establish any of the limited exceptions.

**MIKE GUSS SECURES MUTUAL DISMISSAL, WITH PREJUDICE, AFTER FIVE DAY JURY TRIAL** — *The Hurley Clinic v Susan Moulton & Susan Moulton v The Hurley Clinic, Genesee County Circuit Court*. Defendant/Counter-Plaintiff is a nurse practitioner who worked for The Hurley Clinic. When her employment contract was set to expire on December 31, 2011, Hurley drafted a proposed Separation Agreement that agreed to waive the Covenant Not to Compete clause in her contract. Rather than executing the Separation Agreement that was provided to her, Defendant/Counter-Plaintiff unilaterally struck out a provision in the contract, signed it, and returned it to Hurley an hour before the deadline. As such, Hurley took the position that the Separation Agreement was void and the Covenant Not to Compete remained in effect. When Hurley discovered that Defendant/Counter-



Plaintiff accepted employment with a competitor roughly a month after her employment with Hurley expired, which was located roughly a quarter to a half-mile from Hurley, Hurley filed suit for Breach of the Covenant Not to Compete and Confidentiality. In response, Defendant/Counter-Plaintiff filed a counterclaim for fraud and breach of contract, primarily alleging that she was not paid correctly over the past 10 years. Thereafter, Defendant/Counter-Plaintiff's new employer terminated her pursuant to Hurley's Covenant Not to Compete. Thus, Hurley attempted to withdraw its lawsuit as the termination effectively stopped the competition. However, Defendant/Counter-Plaintiff refused to dismiss her claims, making a \$300,000 settlement demand up until the date of trial. After a five-day jury trial, Defendant/Counter-Plaintiff accepted an offer of a mutual dismissal, with prejudice, without costs, interest, or attorney fees to either party.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION IN SEVEN-COUNT FEDERAL CIVIL RIGHTS CLAIM — *Timothy Keeler v Hurley Medical Center, et al.***, United States District Court for the Eastern District of Michigan. Plaintiff is a physician's assistant who worked for Hurley Medical Center from 1997 until he was discharged on September 2016. He filed a complaint claiming Hurley violated his First Amendment rights by retaliating against him for his constitutionally protected speech; for engaging in union activities; and for filing the instant lawsuit. Specifically, the plaintiff alleged that he was singled out for discipline and eventually discharged in retaliation for urging Hurley to adopt a policy governing the prescription of narcotic medications, for reporting that his supervisor collected pay for days he did not work, for participating in organizing a union for physician's assistants and nurse practitioners, and for filing the instant lawsuit. He also claimed Hurley violated his procedural due process rights, wrongfully discharged him, and violated the Michigan Whistleblowers' Protection Act. At the close of discovery, we filed a motion for summary judgment on each count, asserting that the evidence clearly showed that plaintiff's rude treatment of patients – and nothing else – was the reason Hurley disciplined and ultimately terminated him, and not because they were motivated to retaliate against him for any of the reasons he alleged. The Court agreed with us and granted our motion for summary judgment as to plaintiff's federal claims and dismissed the plaintiff's state claims without prejudice.



**MICHAEL J. GUSS OBTAINS SUMMARY DISPOSITION IN WRONGFUL DEATH CLAIM AGAINST CONSTRUCTION COMPANY — *Malinda Hayden, as Personal Representative of the Estate of Nathan Hayden v Soil and Materials Engineers, Inc., et. al., Huron County Circuit Court.*** Mr. Hayden was fatally injured at work when he was struck by an errant vehicle while providing traffic control (“flagging”) on a 55-mph roadway in Bad Axe, MI. Following the accident, the estate filed suit, alleging that SME’s conduct falls within the so-called “intentional tort exception” to the exclusive remedy provision of the Michigan Worker’s Disability Compensation Act. After discovery, we filed a motion for summary disposition arguing that plaintiff had failed to present proofs establishing that the decedent’s employer had actual knowledge that an injury was certain to occur and thus, could not avoid application of exclusive remedy defense. After reviewing the briefs and hearing oral argument, the court agreed with our position, granting summary disposition and dismissing all claims made by the plaintiff against our client.

**MICHAEL J. GUSS OBTAINS DISMISSAL IN CONSTRUCTION SITE ACCIDENT CLAIM — *Gierman v L. D’Agostini & Sons, Inc., Oakland County Circuit Court.*** Plaintiff, a construction worker, was electrocuted when an excavator made contact with high voltage wires on the job site. The machinery was operated by a sister corporation of plaintiff’s employer. Thus, we asserted that the plaintiff was barred from suing our client pursuant to the exclusive remedy provision in the Michigan Worker’s Disability Compensation Act. After discussing the matter with the plaintiff’s counsel and asserting the Dual Employer Doctrine as an Affirmative Defense in our responsive pleadings, plaintiff stipulated to a dismissal of all claims, with prejudice.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION IN TRUCKING ACCIDENT CLAIM — *Alice Porter-Ives & Gary Ives v H & M Construction, et. al., Crawford County Circuit Court.*** While in the process of unstrapping cargo from the trailer of her commercial flatbed truck at a construction site, a large duct pipe rolled off the load and struck the plaintiff. Plaintiff filed suit against the general contractor of the project, H & M Construction, asserting that H & M’s Safety Manual required an inspection of the shipment prior to directing the plaintiff to unstrap her load, and had an inspection occurred, the absence of

“blocking” would have been discovered. After discovery, we filed a motion for summary disposition on behalf of H & M, arguing that internal policies and procedures cannot be used to establish a legal duty in a negligence claim and there is no basis, beyond speculation and conjecture, to assert that H & M’s conduct fell short of the requisite standard of care. After reviewing the briefs and hearing oral argument, the court agreed with our position, granting summary disposition and dismissing all claims made by the plaintiff against our client.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION IN CONSTRUCTION SITE ACCIDENT CLAIM — *Jeffrey Jean v Three Rivers Construction*, Saginaw County Circuit Court.** While working for a subcontractor at a construction project at the Ryder Center on SVSU’s campus, plaintiff ascended a ladder, striking his head on a beam that allegedly protruded into the plaintiff’s path of travel. He filed suit, alleging a violation of the common work area doctrine. After discovery, we filed a motion for summary disposition on behalf of the general contractor, Three Rivers Construction, on the basis that there was no proof or evidence that the plaintiff could establish a violation of three of the four requirements required to establish common work area liability. After reviewing the briefs and hearing extensive oral argument, the court agreed with our position, granting summary disposition and dismissing any and all claims made by the plaintiff.

**MIKE GUSS OBTAINS NO CAUSE VERDICT IN NEGLIGENCE TRIAL — *Sarah Perkins vs. Sean Loewen and Fabiano Brothers*, Case No.: 14-102289-NI, Genesee County Circuit Court, Honorable Archie Hayman presiding.** “No Cause” verdict in a four-day auto negligence case. The plaintiff, Sarah Perkins, filed an automobile negligence suit against the defendant, Sean Loewen, and claiming *respondeat superior* liability against Mr. Loewen’s employer, Fabiano Brothers, pertaining to an accident occurring on June 5, 2011. Ms. Perkins claimed injuries to her lumbar spine, consisting of findings on a lumbar spine MRI, taken after the accident, of a bulging disc at L4-L5, and a disc herniation at L5-S1, with left-sided radiculopathy. While there were prior complaints of low back and left-sided pain by this plaintiff in years past, she did not have a prior lumbar MRI for comparison, and the medical records showed infrequent follow-up or treatment for any pre-existing back pain. The plaintiff’s position at trial was that before our accident, while she had some prior medical problems, she was able

to fully function and live a happy life in her capacity as a working single mother. At trial, defendants shattered this clean-cut, allegedly honest presentation by plaintiff. Ms. Perkins was presented on cross-examination with a photograph of her and her daughter at Disney World in May 2015, at the end of the day, smiling ear to ear. She was then questioned as to why she did not disclose during discovery the fact that in the year 2001, she ran into a tree and a carport and was back boarded and taken by ambulance to the hospital complaining of left leg injuries. Before that, in 2000, she was in an automobile accident where she injured her neck and upper back, and she engaged in about seven to eight years of various treatment. Another trial highlight was when plaintiff's employer testified that she had been taking time off to be in physical therapy, where there was no standing prescription for any physical therapy. Ms. Perkins had not treated from our accident since 2012. Of course, there were many other defense highlights, where the cumulative inconsistencies demonstrated the manipulative nature of this plaintiff. The jury found this plaintiff did not sustain a serious impairment and rendered a no cause of action verdict.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION FOR GLOBAL ORANGE DEVELOPMENT, LLC, (DBA BIGGBY COFFEE) IN VICARIOUS LIABILITY LAWSUIT; *Alfred Champagne -v- Global Orange Development, LLC, et. al.*, Ingham County Circuit Court** — Plaintiff filed suit against Global Orange Development, stemming from an automobile accident that occurred on January 29, 2013. Plaintiff asserted that Global Orange was vicarious liability based on the fact that the Global Orange employee had performed a substantial amount of his work for Global Orange from his home-to such an extent that his home was effectively a second work location. At the close of discovery, we filed a Motion for Summary Disposition pursuant to the “going and coming” rule, asserting that any negligence committed by an employee who is operating a vehicle in transit to or from the workplace does not constitute an act committed within the scope of employment, such that liability can be imputed to the employer. We further argued that gratuitous work from home, which is neither expected nor required by the employer, does not transform an employee's home into a “secondary work location.” Such a theory would subject employers to endless claims of worker's compensation and vicarious liability. The Court agreed and granted our motion for summary disposition.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION FOR CITY OF FLINT IN AGE DISCRIMINATION LAWSUIT; *Donna Poplar -v- City of Flint***, Genesee County Circuit Court — In 2011, the City of Flint was facing a financial emergency. Thus, the State of Michigan appointed an Emergency Financial Manager. On the EFM’s first day in office, he discharged the plaintiff, along with six other employees, and replaced them with his own trusted advisors. Three months after she was fired, plaintiff alleges that she received a phone call from one of EFM’s advisors and she was told that she lost her job on the basis that the EFM wanted to place younger African-Americans in positions of leadership. Following the phone call, plaintiff filed a lawsuit for age discrimination, alleging a violation of the ELCRA. Our firm was retained several weeks before trial. After reviewing the deposition testimony, we filed a motion for leave to file a motion for summary disposition, which the court granted. In our dispositive motion, we argued that the alleged phone call constituted inadmissible hearsay as even though the EFM’s advisor was an agent for the city, the statements were outside the course and scope of his alleged agency because he played no role in human resources or personnel-related decision-making. We also argued that plaintiff could not establish a prima facie case of age discrimination because she was not “replaced” and could not establish pretext. The court agreed, and granted our motion for summary disposition, dismissing plaintiff’s case in its entirety.

**MIKE GUSS OBTAINS SUMMARY JUDGMENT FOR THE CITY OF FLINT IN A FEDERAL CIVIL RIGHT CLASS ACTION LAWSUIT; *ROBERT GARCEAU, ET. AL. -V- CITY OF FLINT, ET. AL.***, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN — The City of Flint had a large number of sergeants within the police force decide to retire. The former chief of police, relying upon the Personnel Rules and Regulations, decided to “provisionally” appoint 15 sergeants to temporarily fill the sergeant vacancies until a sergeant’s promotional exam could be created and administered. To compile a listing of the individuals who displayed the greatest potential during their tenure with the Department, the former chief enlisted the help of two captains. When the sergeant’s test was finally created, 65 officers sat for the written exam, but only 9 officers passed and those 9 were made permanent sergeants. Of the remaining 58 officers, 7 plaintiffs failed the exam and 8 plaintiffs neglected to even appear and take the exam.

When the City offered a second examination, 27 officers passed and 26 officers failed. Consequently, the officers with the highest test scores, regardless of their race, including 3 of the plaintiffs, were automatically promoted to “permanent” sergeants. The provisional sergeants who failed the second test or who did not score high enough were all demoted from their provisional sergeant position. Nevertheless, on December 17, 2012, 14 Caucasian officers filed a class-action lawsuit against the City, the former chief, and the African American captain, alleging reverse race discrimination in the provisional promotion process. 5 Officers also alleged retaliatory suspensions after the filing of the lawsuit. After 27 depositions were taken, we filed two extensive Motions for Summary Judgment, one pertaining to plaintiffs’ reverse race discrimination claim and a second pertaining to plaintiffs’ retaliation claims. In a 46-page Opinion and Order, the US District Court granted our Motion for Summary Judgment Regarding Reverse Race Discrimination and partially granted the City’s Motion for Summary Judgment Regarding Retaliation. Only one Plaintiff’s claim of retaliation survived the City’s dispositive motions.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION FOR TITAN INSURANCE COMPANY IN FIRST-PARTY NO-FAULT SUIT SEEKING BENEFITS FOR AN “INNOCENT THIRD-PARTY”;** *RITA FOSTER, ET. AL. -V- TITAN INSURANCE COMPANY, ET. AL.*, Genesee County Circuit Court — In October 2015, Plaintiff, Rita Foster, brought suit against Titan Insurance Company and the Michigan Automobile Insurance Placement Facility, stemming from an automobile collision that occurred on September 5, 2014. Plaintiff sought PIP coverage under an insurance policy that was written issued to Vincent Millender. However, through discovery, it was established that the vehicle was actually owned by Erica Nicole Jett, was garaged at Ms. Jett’s home, and would only be driven by Ms. Jett, all contrary to the application. Accordingly, we filed a Motion for Summary Disposition, arguing that the Court must hold the matter in abeyance pending the outcome of the Court of Appeals decision in *Bazzi v. Sentinel Ins. Co.* (Court of Appeals Docket No. 320518), a case that was directly on point and awaiting decision in the Court of Appeal. The trial court agreed with us, held the matter in abeyance pending the outcome of *Bazzi*, and stated that he would reconsider Titan’s dispositive Motion following the *Bazzi* holding. On June 14th, 2016, the Michigan Court of Appeals issued its Opinion in *Bazzi*, reversing the so-

called “innocent third-party” rule as applied to insurance policies that are procured through misrepresentation in the application. As such, we re-noticed the motion and argued that pursuant to the Bazzi holding, Titan is entitled to declare the policy void ab initio and rescinded, including denying the payment of benefits to any innocent third-parties, including the plaintiff. Following oral argument on the re-noticed hearing, the trial court agreed and dismissed Titan from the case.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION FOR HURLEY MEDICAL CENTER IN SLIP AND FALL; MARVA WILLIAMS -V- HURLEY MEDICAL CENTER,** Genesee County Circuit Court — Plaintiff brought suit against *Hurley Medical Center* stemming from a fall that occurred on Hurley’s premises. As Plaintiff entered the main lobby entrance, due to the weather conditions outside, she shuffled her feet on a rubber backed carpet runner in an effort to dry the soles of her shoes. As she shuffled her feet, each scuff created a small ripple in the mat, causing the mat to ripple and slide out from underneath her. Plaintiff filed suit, asserting that the carpeting must have been wet because it was raining outside and should have been securely fastened to the floor. After discovery, we filed a motion for summary disposition arguing that the accident in question does not create liability as the Plaintiff’s claims are barred by governmental immunity. Alternatively, we argued that the allegedly defective condition was open and obvious and devoid of special aspects, the condition was not caused by Hurley’s active negligence, and Hurley did not have notice of the allegedly defective condition. Following oral argument, the trial court agreed with us and granted summary disposition on all four grounds and dismissed Hurley from the case.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION ON MEDICAL PROVIDER CLAIM; PROCARE INJURY & REHAB CENTERS, LLC, (FOR SHER-RON LUSANE) -V- TITAN INSURANCE COMPANY,** ROYAL OAK DISTRICT COURT — Procure Injury and Rehab Centers filed a lawsuit against Titan Insurance Company alleging entitlement to No-Fault provider expense benefits arising out of Procure’s alleged treatment to Sher-Ron Lusane who was allegedly involved in a motor vehicle collision. After Mr. and Mrs. Lusane’s EUO, we filed a motion for summary disposition against Procure arguing that Mr. Lusane was the “owner” of an



“uninsured motor vehicle” and is excluded from No-fault benefits pursuant to MCL 500.3113(b). Because the underlying injured party is excluded from coverage and barred from bringing a cause of action, Mr. Lusane’s medical service provider, Procure, who stands in the shoes of the injured party, is also excluded from coverage. The trial court agreed with us and granted summary disposition as to all claims by the plaintiff against defendant Titan Insurance Company.

**MIKE GUSS OBTAINS SUMMARY DISPOSITION ON SIX (6) MEDICAL PROVIDER CLAIMS; *RENUÉ THERAPY, LLC, -V- TITAN INSURANCE COMPANY***, Ingham County Circuit Court — Renue Therapy, LLC, filed six (6) separate lawsuits against Titan Insurance Company alleging entitlement to No-Fault Provider expense benefits arising out of Renue’s alleged treatment to numerous patients who were allegedly involved in motor vehicle collisions. After deposing the owner of Renue Therapy and the prescribing physician, we filed a motion for summary disposition on each case, arguing that the treatment performed was not reasonably necessary because the prescribing physician testified that she prescribed physical therapy, to be rendered by a licensed physical therapy facility. However, Renue Therapy’s owner testified that he operates a massage therapy clinic and does not employ a single licensed physical therapist. Each trial court agreed, and all six (6) dispositive motions were granted, dismissing Renue Therapy’s claims in their entirety

**MICHAEL J. GUSS WINS SUMMARY JUDGMENT IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, PURSUANT TO A 27 PAGE WRITTEN OPINION AND ORDER OF THE HON. LAURIE J. MICHELSON — *McLeod v City of Flint, David Bender, Marcus Mahan, et al – U.S. District Court, Eastern District of Michigan, Case No. 13-CV-1287***. The plaintiff, Curtis McLeod, was one of two suspects arrested in Flint after Officer David Bender observed two individuals wearing t-shirts covering their faces, appearing to be involved with criminal mischief, and who ran as soon as they observed police. Officer Bender gave chase and called for back-up, and two suspects, including Mr. McLeod, were eventually arrested. It was discovered during this time frame that murder and robbery had been committed in the apartment where the two suspects were originally observed. One of the two



suspects was later found guilty of the murder, having tested positive for gun powder residue on his hands. Mr. McLeod was held in jail for 18 months on charges of murder and robbery, but he was later released from jail for lack of evidence linking him to the crimes. Plaintiff sued Officer David Bender, Lieutenant Marcus Mahan, who investigated the murder, the City of Flint, and the Genesee County Prosecutor's Office. The City of Flint and the Prosecutor's Office, through separate legal counsel, were dismissed from the case. Michael J. Guss and Anne V. McArdle, representing Officer Bender and Lieutenant Mahan, filed a Motion for Summary Judgment asserting that there was a reasonable belief of probable cause for the arrest and detainment of Mr. McLeod and that qualified governmental immunity applied. The District Court agreed, explaining that there was at least "arguable probable cause to arrest and detain McLeod", and the dismissal of plaintiff's allegations of false imprisonment and violations of 42 USC § 1983 was ordered.

***Ascensio v Huckleberry RR, Genesee County, Michigan.*** Summary Disposition, slip and fall case.

***Bencheck v Integon, Michigan Court of Appeals.*** Appeal win against rogue trial court judge who abused discretion in sanctioning insurance carrier when trying to coerce a settlement.

***State of Michigan v Farmland. Michigan Supreme Court Decision*** reversing trial court and Court of Appeals and upholding the \$1 million property damage limitation on a hazardous substance-hauling truck company.

***Farr v United Producers, Washtenaw County Circuit Court, No. 1-1421-NO, Honorable Timothy P. Connors presiding.*** Prevailed on summary disposition motion in slip and fall case at a farming cooperative facility.

***Klenow v Necho, Saginaw County Circuit Court No.10-010999-NO, Honorable Darnell Jackson presiding/Michigan Court of Appeals No.: 309742.*** Prevailed on Summary Disposition Motion and at the Court of Appeals on Summary Disposition Motion on behalf of landlord, standing for proposition that Landlord does not have possession and control and therefore cannot have liability.

***Miller v American Tower, Roscommon County Circuit Court No. 11-729228-NF, Honorable Michael J. Baumgartner,***

Prevailed in Motion for Summary Disposition on Slip and Fall case at remote radio tower facility that was not regularly plowed or maintained based on open and obvious doctrine.

***Fowler v American Legion, St. Clair County Circuit Court No. 12-000459-NO, Honorable Daniel J. Kelly presiding.*** Summary disposition in trip and fall case, where plaintiff tripped over a rock holding an open door.

***Hoffman v Dresser, Macomb County Circuit Court.*** Prevailed in Motion for Summary Disposition in home explosion case with regard to allegations against a gas service valve.

***Royal Alexander v. City of Flint, Genesee County Circuit Court Case No. 09-92311-CZ, Honorable Joseph J. Farah presiding.*** Prevailed on multiple partial summary dispositions at trial and appellate court levels before minimal settlement on excessive force case.

***Harper v Titan, Genesee County Circuit Court No. 12-97640-NF, Honorable Judith A. Fullerton presiding.*** Prevailed in dismissal of the case based on discovery abuses.

***Jane and Mark Sisk v Officer Brian Osier, case no. 13-659052 - NI, Ogemaw County Circuit Court, the Hon. Michael J. Baumgartner presiding.*** This was an action filed against the defendant police officer asserting gross negligence, false imprisonment, and assault and battery concerning the officer's handling of a single vehicle roll-over accident, and medical care provided to the plaintiff following the accident. The plaintiff asserted she was denied the right to refuse medical treatment, and that the officer's conduct in standing by while the EMS crew allegedly forced medical care upon the plaintiff, subjected the officer to liability. The trial court granted defendant's Motion for Summary Disposition on the state law claims. The trial court told plaintiff she could amend her complaint to add a federal cause of action under 42 USC § 1983, but cautioned plaintiff that unless she had additional evidence to support such a cause of action, that filing an amended complaint could be considered frivolous. Thus far, plaintiff has not filed an amended complaint or an appeal of the trial court's decision.