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ATTORNEYS & COUNSELORS

Anne V. McArdle

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Anne has been practicing law as a multifaceted civil defense litigator since her admission to the Michigan State Bar in November 2000. She is also licensed to practice within the U.S. District Courts, that includes the Eastern and Western Districts of Michigan, and the U.S. Sixth Circuit Court of Appeals. Anne has successfully handled a wide variety of cases at every level of the court system including the Michigan Supreme Court. She has obtained excellent winning results through numerous formats including motions for summary disposition, facilitation, case evaluation, arbitration, appeals, and trial. Rest assured, Anne is dedicated to achieving the results her clients envision, and she takes pride in long-standing client relationships.

Employment

- Shareholder at Harvey Kruse, P.C., (2012-present)
- Associate Attorney at Harvey Kruse, P.C., (2002-2012)
- Associate Attorney at Blake, Kirschner (2000-2002)

Representative Clients

- Integon National/MIC
- Liberty Mutual
- Nationwide Insurance
- AAA Michigan
- Meemic Insurance
- Pioneer State Mutual Insurance Company
- Amerisure Insurance
- City of Flint
- GEICO
- Auto-Owners
- State Auto
- CBOCS Properties (Cracker Barrel)

Areas of Practice

- Insurance Coverage and Defense
- Breach of Contract
- General Negligence
- Premises Liability
- No-Fault First-Party Motor Vehicle Liability
- Third-Party Motor Vehicle Liability Property
- Insurance Litigation
- Employment Law
- Civil Rights
- Appellate Practice

Education

- University of Detroit Mercy School of Law (J.D., 2000)
- Michigan State University (B.A. Business and Pre-Law, 1995)

Bar Admissions

- State Bar of Michigan (2000)
- U.S. District Court, Eastern District of Michigan (2000)
- U.S. District Court, Western District of Michigan (2012)
- U.S. Court of Appeals for the Sixth Circuit (2015)
- Genesee County Bar Association (2001)

Representative Matters

- ***Ilham Khammu v Omega Rehab Services, LLC and Jamal Joka*, Oakland County Circuit Court No. 20-183229-NI, Hon. Jacob James Cunningham.** This is a third-party automobile negligence action arising from a motor vehicle accident occurring on September 12, 2017, wherein Plaintiff Ilham Khammu sustained a threshold injury. There were two involved vehicles in this accident, one operated and owned by James Studinger, and the other, operated by Jamal Joka, and owned by Omega. Ms. Khammu was a passenger in the vehicle of Omega/Mr. Joka. She filed a prior lawsuit against only Mr. Studinger, within the Oakland County Circuit Court, before the Hon. Hala Y. Yarbou, Case No. 2017-161555-NI. In that prior action, Mr. Studinger filed a notice of non-party at fault against Omega/Mr. Joka, yet Plaintiff did not amend pleadings to add Omega/Mr. Joka as parties. Mr. Studinger retained accident reconstruction expert Larry Peterson, and Ms. Khammu retained accident reconstruction expert Timothy Robbins. Mr. Peterson issued a report in the prior case opining that Mr. Joka was at fault for the accident, not Mr. Studinger. Timothy Robbins, on behalf of Ms. Khammu, issued a report criticizing the expert opinions of Larry Peterson, opining instead that Mr. Studinger was at fault. The Plaintiff argued at the arbitration hearing, held before a panel of three arbitrators in the past case, that Mr. Peterson's reporting was impermissible speculation, and that Mr. Studinger was 100 percent at fault. Mr. Studinger said that fault should be apportioned to the non-parties Omega/Mr. Joka. The panel agreed with Ms. Khammu and issued an award of nearly a half-million dollars against only Mr. Studinger. Following the first lawsuit, and on the eve of the statute of limitations expiring, Plaintiff then filed this second lawsuit against Omega/Mr. Joka. She now is relying on the expert opinions of Mr. Peterson to prove that Omega/Mr. Joka are 100 percent at fault. Defendants filed a Motion for Summary Disposition to strike Larry Peterson as Plaintiff's expert, and to find that the second lawsuit should be dismissed as a matter of law. At the hearing on the motion, the trial court applied the legal doctrine of judicial estoppel, to dismiss the case with prejudice, finding that Ms. Khammu successfully and unequivocally asserted a position related to fault apportionment and negligence in the prior proceeding, and she may not now assert a wholly inconsistent position in this subsequent proceeding. The trial court explained that the doctrine of judicial estoppel is designed to prevent "gamesmanship" in litigation by precluding inconsistent results. Ms. Khammu filed a Motion to Reconsider that was denied, and has since filed an Appeal as of Right, that is currently awaiting assignment of a hearing date for oral arguments.
- ***Soriah Ahmed v GEICO and Auto Owners*, Branch County Circuit Court No. 22-10-509 NF, Hon. William O'Grady.** This is a property protection insurance benefits lawsuit arising from a motor vehicle accident occurring on December 22, 2021, that allegedly caused foundational damage to the private residence of Plaintiff Soriah Ahmed. Plaintiff seeks damages close to $100,000.00 for repairs to the home. Plaintiff is the owner of the subject residence, where it is alleged that her 16-year-old daughter was warming up the GEICO insured motor vehicle of her brother, parked just outside of the house, when she accidentally hit the gas instead of the brake and she ran into the corner of the house. Plaintiff claims that GEICO is liable for property protection insurance benefits per MCL 500.3121, and under the applicable automobile insurance policy. Plaintiff also has sued Auto Owners for homeowner's insurance. GEICO retained insurance adjusters Crawford & Co. to go to the home and to inspect, who determined that the damage to the vehicle and to the house does not align, and thus, the motor vehicle could not have caused the foundational damage alleged. Also, a photo was obtained of the house taken from Google Earth years prior, that shows the exact same foundational crack/damage, that is being alleged in the lawsuit. Auto Owners retained engineering expert Nederveld who inspected and who confirmed that the automobile did not cause the damage as alleged to the house. Plaintiff did not retain an engineering expert to rebut Nederveld and had no basis aside from the lay witness testimony of family members living at the home, including the Plaintiff, to refute the findings of Crawford & Co and/or Nederveld. The trial court granted both GEICO and Auto Owners motions for summary disposition and dismissed the case with prejudice. The Plaintiff has filed a Motion for Reconsideration, where the trial court has invited additional briefing from the defendants, but the trial court has not yet issued a ruling.
- **(SIX RELATED CASES) *Lint Chiropractic et al (Julian Tancock) v Amerisure Insurance Company*, Wayne County Circuit Court No. 23-013629-NF (Hon. Adel A. Harb).** In this case, after Amerisure was granted summary disposition in related cases, see below, the Plaintiff voluntarily agreed to an Order granting summary disposition to Amerisure, and dismissing the case with prejudice. No appeal has been taken. ***Lint Chiropractic et al (Micah Johnson) v Amerisure Insurance Company*, Wayne County Circuit Court No. 22-014610-NF (Hon. Brian Sullivan)**. The case was dismissed with prejudice after the trial court granted summary disposition, and no appeal has been taken. ***Lint Chiropractic et al (Antwan***

***Quinney) v Amerisure Insurance Company*, Wayne County Circuit Court No. 22-014612-NF (Hon. Denise Lillard).** The case was dismissed with prejudice after the trial court granted summary disposition, and no appeal has been taken. ***Hoover Physical Therapy et al (Antwan Quinney) v Amerisure Insurance Company*, Washtenaw County Circuit Court No. 22-001373-NF (Hon. Carol Kuhnke).** The case was dismissed with prejudice after the trial court granted summary disposition. Plaintiff filed a Motion for Reconsideration that was denied. Plaintiff has not yet filed an appeal as of right. ***Hoover Physical Therapy et al (Julian Tancock) v Amerisure Insurance Company*, Washtenaw County Circuit Court No. 22-001452-NF (Hon. Julia Owdziej).** The case was dismissed with prejudice after the trial court granted summary disposition. Plaintiff filed a Motion for Reconsideration that was denied. Plaintiff has not yet filed an appeal as of right. ***Hoover Physical Therapy et al (Micah Johnson) v Amerisure Insurance Company*, 15th District Court No. 22-6872-GC (Hon. Joseph F. Burke).** This is the only case the trial court denied the dispositive motion. Defendant has filed an Application for Leave to Appeal to the Washtenaw County Circuit Court, which remains pending. It is expected to be granted because the Washtenaw County Circuit Court, specifically the Hon. Julia Owdziej and the Hon. Carol Kuhnke, have already agreed MCL 500.3145 bars PIP litigation.

The legal issue is the same in each of the above six cases, which involves the interpretation and application of MCL 500.3145. The applicable statute provides that for PIP claims to be brought, proper written notice of injury must be provided to the insurer in compliance with that statute within one year of the accident. If notice is not provided, the PIP claims are considered time barred. The automobile accident in question occurred on December 20, 2021, and there were three passengers of the Amerisure insured motor vehicle. The police responded to the scene, stating in the report that no passengers were taken to the hospital, as they were not claiming injuries, and per the report this was a minor accident. Not one of the three passengers have to date, attempted to claim PIP benefits. Nearly five months after the accident, Amerisure received a phone call from its insured, who advised that there was an accident, but who stated that none of the passengers were injured. There were only two phone calls with the insured. Amerisure obtained a copy of the police report and confirmed that no injuries were reported. When Amerisure did not receive any further communication within one year of the accident, Amerisure closed its file. The first notice of any injury claims did not come until over a year later, when providers of the three passengers began filing the various PIP provider lawsuits for alleged treatment. Amerisure filed six dispositive motions in each of these cases. Amerisure asserts that the two phone calls with the insured, and the police report, do not satisfy the requirements for proper notice stated under MCL 500.3145. The statute requires receipt of "written notice of injury", that must include a description of the "nature of the person's injury". This was not provided to Amerisure, and five circuit court judges agreed.

- ***Joseph Martorano v GEICO*, Jackson County Circuit Court No. 23-000637-NI (Hon. Richard N. LaFlamme).** Plaintiff Joseph Martorano was insured for automobile insurance coverage through a GEICO policy of insurance issued to his parents. He was a passenger in a van along with a total of ten other passengers, when the automobile accident of October 9, 2022 occurred in Jackson County Mich. The driver of the van, Defendant Jeffrey Hilden, told police that his van did not operate well in low gear, and so, his practice was to turn off his headlights when approaching intersections, so that he could see if anyone was coming, and then he would proceed through the intersection, so he did not have shift. This plan failed miserably though, when he ran into another vehicle within the intersection, causing alleged threshold injuries to multiple people in the van, and within the vehicle that he struck. Mr. Hilden is being criminally prosecuted, and a stay was entered in the civil case(s) against him. Ultimately, the insurer of the van tendered its full policy limits to settle the various cases/claims on a pro-rated basis, where Mr. Martorano was paid a settlement, without consent from GEICO, that exceeds the GEICO policy limit for UM/UIM coverage. The GEICO policy was issued in Georgia and had a clause defining an "uninsured motor vehicle" as a motor vehicle "...for which the total available coverage limits of all bodily injury liability and property damage liability insurance policies are less than the damages the insured is legally entitled to recover from this accident." Mr. Martorano claims he was seriously injured, and his damages exceed available insurance limits. Thus, the interpretation of this language was in dispute. Ultimately, after an analysis of the policy language and the policy was provided to counsel for Plaintiff, and under threat of filing a dispositive motion, Plaintiff agreed to voluntarily dismiss the UM/UIM claims without having to file a dispositive motion.
- ***Gill v Budd, et al* Washtenaw County Circuit Court No. 23-000615-NI (Hon. Timothy Connors).** Liberty Mutual was in default for not answering the Complaint before suit was assigned to Ms. McArdle in this UM/UIM cause of action. The action arises from a motor vehicle accident occurring on April 11, 2023. After the lawsuit was assigned, Ms. McArdle

contacted counsel for Plaintiff, and entered a stipulated order to set aside the default. Ms. McArdle then advised counsel of the reasons why UM/UIM benefits would not apply in this case based on the policy language and facts of the case, supplying counsel with a copy of that policy. On further follow up and threat of filing a dispositive motion, the Plaintiff agreed to voluntarily dismiss the lawsuit against Liberty Mutual.

- ***Allan Schwartz Medical Center v State Automobile Mutual Insurance Company*, 15th District Court No. 22-5398-GC (Hon. Joseph F. Burke).** This is a PIP provider lawsuit concerning an invoice claimed for medical services for various dates of service. The insurer, State Automobile Mutual Insurance Company, paid all dates of service claimed through the PIP cut-off date, based on a contract setting forth the rates agreed upon between these parties. When the Plaintiff would not agree to adjust its bill to show that the invoiced dates were already paid, Defendant filed a Partial Motion for Summary Disposition. Defendant asserted that the paid dates of service are barred by prior payment on the basis of MCR 2.116(C)(7). The trial court agreed and granted the dispositive motion, significantly reducing the amount that can be claimed in this lawsuit to below $2,000.00. The plaintiff has not appealed and the parties presently seeking to resolve the remaining nominal balance.
- ***Shumon and Katrina Livingston v Amerisure Insurance Company et al*, Wayne County Circuit Court No. 23-005855-NF (Hon. Edward J. Joseph).** This is a PIP, UM/UIM, and Third-Party Automobile Negligence action arising from an accident that occurred on July 30, 2022. Plaintiffs were passengers in a party bus owned and operated by J-Pod Limos and Gena Gloster, that was involved in an accident with another John Doe vehicle operator. Initially, J-Pod Limos contended that Amerisure was the automobile insurer of the party bus, but Amerisure denied any coverage advising it has properly cancelled the policy of insurance before the date of loss, and thus, would owe no insurance coverage for PIP, UM/UIM, and/or BI liability. When the Livingston's filed a lawsuit, it was filed against Amerisure for UM/UIM only. The Livingston's filed a claim with the Michigan Assigned Claims Plan for PIP, who assigned Defendant Farm Bureau. J-Pod and Ms. Gloster are not represented by counsel. Amerisure filed its Answer to the Livingston's Complaint asserting there was no coverage, and also Amerisure filed a Counter-Complaint against the Livingston's and a Cross-Complaint against the Defendants, asserting, the policy was cancelled and there was no insurance coverage to any of the parties. Amerisure obtained a voluntary dismissal with prejudice from the Livingston's of their Complaint, and Amerisure dismissed its Counter-Complaint. Amerisure then filed a Motion for Summary Disposition regarding its Cross-Complaints, seeking a declaration of no insurance coverage against all other defendants. J Pod Limos and Gena Gloster failed to file an Answer to the Cross-Complaint and thus were in default and unable to defend against the pending motion. The only party to dispute whether the cancellation of the policy was valid, was the assigned claims PIP insurer, Farm Bureau. After two court hearings, the deposition of the representative of J-Pod, and supplemental briefing by the parties, the trial court granted Amerisure's Motion for Summary Disposition, and declared, that the policy was effectively cancelled, and no coverage was owed to any of the parties.
- **(FIVE RELATED CASES DECIDED 2020) *Ida Smith v Amerisure Insurance Co, Makram Haddoun, and Motown Transportation, LLC.*, Wayne County Circuit Court, case no. 18-014213-NI, Hon. Susan L. Hubbard; *Mobile Anesthesiologists of Motor City (Ida Smith) v Amerisure Insurance Co*, Wayne County Circuit Court, case no. 18-014213-NI, Hon. Susan L. Hubbard; *Affectrix, LLC (Ida Smith) v Amerisure Insurance Co*, 15th District Court Washtenaw County, case no. 19-4979-GC, Hon. Joseph F. Burke; *Focus Imaging, LLC (Ida Smith) v Amerisure Insurance Co*, 15th District Court Washtenaw County, case no. 19-0370-GC, Hon. Joseph F. Burke; *Advanced Surgery Center (Ida Smith) v Amerisure Insurance Co*, Oakland County Circuit Court, case no. 19-174088-NF, Hon. D. Langford Morris.** The plaintiff Ida Smith filed No-Fault PIP and Auto Negligence claims, where several medical providers filed their own lawsuits for PIP medical benefits in various Michigan courts. Our office filed a Motion for Summary Disposition in the Ida Smith case seeking dismissal of her PIP action, the intervening medical provider case, and the third-party auto negligence lawsuit. The court granted this motion in its entirety, dismissing the case and all counts with prejudice. In rendering this ruling, the court reviewed a security video obtained by defense counsel that captured the occurrence of the accident. In this video, Ms. Smith exited the medical transportation vehicle she was riding within, and she walked behind the vehicle, which then very slowly backed up making a slight contact with her left arm. Ms. Smith went into the hospital and complained of the accident, and of having pain to her left arm, but no other injuries were identified on exam. Later though, she asserted a rather serious low back injury including disc herniation, where Ms. Smith engaged in various forms of therapy, and she then had surgery to the lumbar spine. The court additionally reviewed evidence

presented of the medical records and history of Ms. Smith, showing she had longstanding low back pain, and various other health conditions, where she was already receiving Social Security Disability benefits as of the happening of the accident. The trial court therefore found that Ms. Smith could not establish proximate causation of any injuries, to satisfy the requisite no-fault standards for first and third-party cases. Plaintiff Smith did not appeal. Defendant then asked all no-fault medical providers to dismiss their PIP cases, where upon refusal, defendant filed motions for summary disposition, asserting no causation of injuries, and also, res judicata based on the Circuit Court ruling in the Smith case. The 15th District Court granted two of the motions, with prejudice, and no appeal has been taken. The remaining provider in the case of Advanced Surgery Center, voluntarily agreed to dismiss its case with prejudice without a hearing.

- ***Eric Antilla v CBOCS Properties, Inc., aka Cracker Barrel*, Michigan Court of Appeals, Appeal Case No. 342924, before the Hon. Boonstra, P.J., Meter, and Fort Hood, JJ, decided May 9, 2019.** This was a premises liability action involving a slip and fall on black ice on a sidewalk/ramp leading into the front entrance of the restaurant. The Bay County Circuit Court granted the defendant's Motion for Summary Disposition, holding that dismissal was proper based on a finding the black ice condition was open and obvious, and that there was a lack of notice of the condition. The plaintiff filed an appeal of this decision to the Michigan Court of Appeals and Oral Argument was heard on May 1, 2019. Thereafter, an Unpublished Opinion was entered on May 9, 2019, where the court AFFIRMED the DISMISSAL of the trial court action.
- ***Eric Antilla v CBOCS Properties, Inc., aka Cracker Barrel*, Bay County Circuit Court, Case No. 17- 3073-NO-JS, Hon. Sheeran.** The plaintiff filed this premises liability suit against the Cracker Barrel in Bay City, after he slipped and fell on black ice on a sidewalk leading into the restaurant in March 2015. Defendant filed a Motion for Summary Disposition seeking dismissal based on the open and obvious doctrine, and lack of notice. The plaintiff was riding as a passenger in his girlfriend's vehicle when they arrived at Cracker Barrel in the early morning hours. He exited the vehicle after they parked near the front doors, took a few steps, then fell. While Mr. Antilla denies a recollection of the fall, his girlfriend testified she saw what happened, and that as she walked toward Mr. Antilla to assist, she could see there was a covering of thin black ice around plaintiff, which she noticed because it was "shiny". She saw ice in other areas as well, describing it as "everywhere". All persons who responded after the fall, observed there was ice around where the plaintiff was laying, who included the store manager, another employee, the EMS, and the Fire Department. As for lack of notice, the weather reporting demonstrated it had recently started to rain and temperatures were hovering at or below freezing. Cracker Barrel performed at least three inspections of the premises before the fall, and did not notice any ice formation, nor were there any reports of ice or injuries. While one employee saw ice forming on the premises on his way into work that morning, he had not yet punched-in for work, and did not have time to salt before the fall. The court ultimately ruled there was no notice to the defendant of the ice condition, thereby granting summary disposition and dismissing the entire action.
- ***Yvonne Corbat v Midland County Agricultural and Horticultural Society, et al*, Michigan Court of Appeals, Appeal Case No. 338753, before the Hon. Stevens, P.J., Sharpiro, Gadola, JJ, decided July 19, 2018.** This was an alleged Bylaw violations and breach of fiduciary duty case brought by a former member of the Board of Directors of the Midland County Fair, when she was not re-elected to her position on the Board. The Defendants filed a Motion for Summary Disposition as to Counts I-III of the Complaint that were dismissed, and another Motion for Summary Disposition as to Count IV of the Complaint, heard after discovery, that was also dismissed. The plaintiff filed an appeal of this decision to the Michigan Court of Appeals and Oral Argument was heard on July 12, 2018. Thereafter, an Unpublished Opinion was entered on July 19, 2018, where the court AFFIRMED the DISMISSAL of the trial court action.
- ***Yvonne Corbat v Midland County Agricultural and Horticultural Society, Margaret Wegner, Tammi Myers, Don Anger, and Roxanne Wheeler*, Midland County Circuit Court.** Plaintiff filed a four- count lawsuit asserting that the defendant Midland County enacted and relied upon bylaws that were in violation of state statutes, specifically the Michigan Local Agricultural or Horticultural Societies Act and the Michigan Nonprofit Corporations Act. She sought declaratory and injunctive relief to force Midland County to stop operating under the existing bylaws, and to revise the bylaws. We filed a motion for partial summary disposition, arguing that the bylaws and applicable statutes do not conflict and the bylaws are lawful. The trial court agreed, and dismissed counts I – III of the complaint, leaving only count IV. After the court dismissed counts I – III, the plaintiff focused on count IV and took 14 depositions and requested the production of voluminous records. The court then dismissed count IV, pursuant to our motion for summary disposition, which was a final order dismissing the entire action.

- ***Jennifer Jochheim v. GEICO*, Ingham County Circuit Court.** Plaintiff Jennifer Jochheim was a student at MSU, who was struck by a vehicle in a pedestrian cross-walk. She sustained injuries to her right side, but most significantly, she alleged permanent serious disfigurement from gravel that was imbedded in her face, and had to undergo multiple dermatological procedures. Ms. Jochheim was not a Michigan resident, as she resided in Chicago, and her vehicle was insured under a policy issued in Illinois through GEICO, an out-of-state insurer. We filed a motion for summary disposition regarding PIP, asserting that the GEICO policy was not a Michigan PIP policy, and was not subject to the exceptions stated under MCL 500.3163 for PIP to apply. The court agreed, stating that since plaintiff was a pedestrian, her injuries in Michigan did not arise from her own ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle, thereby defeating application of MCL 500.3163 per the specific statutory language. Regarding the third-party claims, we filed a concurrence to the motion for summary disposition filed by the third-party tortfeasor, stating that if the tortfeasor does not have liability, then there is no liability for UM/UIM benefits. The court ruled that plaintiff did not establish a serious impairment because she testified there was no effect on her general ability to lead a normal life. The court ruled that plaintiff did not establish permanent serious disfigurement, because plaintiff testified that the scarring was not permanent, and through treatment, she had essentially corrected any facial scarring.
- ***Dale and Connie Freeborg vs. MIC General Insurance Corporation*, Genesee County Circuit Court.** Plaintiffs were involved in a motor vehicle accident and claimed injuries to their back, neck, and knees. We filed motions for summary disposition as to each plaintiff. As to Mr. Freeborg, we argued that his claimed impairments have not objectively manifested themselves in any fashion. When reviewing the medical record compilations and objective studies, all opinions and conclusions merely indicated subjective complaints of pain, degenerative conditions, and osteoarthritis, and no treating physician found any traumatic related impairment. As to Connie Freeborg, we first asked the court to rule that the plaintiff's knee injury was not "caused by" the motor vehicle accident as four healthcare experts, including plaintiff's own primary care physician and orthopedic surgeon, all testified or specifically noted in their medical records that plaintiff's right knee condition was not related to the motor vehicle accident. When the court agreed, we then argued that plaintiff's general ability to lead her normal life had not been affected by any injuries she allegedly sustained in the accident as all her noted activities that have been affected pertained to her knee, which was not related. The court agreed and granted summary disposition as to both plaintiffs.
- ***Lloyd Wilkerson vs. Midland County Agricultural and Horticultural Society d/b/a Midland County Fairgrounds*, Midland County Circuit Court.** Plaintiff was employed as the head of maintenance at the Midland County Fairgrounds and filed an age discrimination claim for violations of the ELCRA after he was terminated. Upon the close of discovery, we filed a motion for summary disposition arguing that plaintiff could not establish a prima facie case of discrimination because he was not "replaced" within the meaning of the law. The court agreed, dismissing plaintiff's complaint. The court first held that there was no direct evidence of discrimination. The court next held that plaintiff was not "replaced" as plaintiff's job was "redefined" and plaintiff's "replacement" did not perform all of the same duties as the plaintiff. Some of plaintiff's duties were outsourced, and the remaining duties were absorbed by the three remaining crew members. Because no employee performed the same tasks as plaintiff, the court held that a younger employee did not replace the plaintiff and he could not establish a prima facie case of age discrimination. The court also held that even if plaintiff could establish a prima facie case of age discrimination, plaintiff could not show that defendant's reasoning for his termination was pretextual.
- ***Sarah Perkins vs. Sean Loewen and Fabiano Brothers*, Case No.: 14-102289-NI, Genesee County Circuit Court, Honorable Archie Hayman presiding.** 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 backboarded 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.

- ***Scott Stevens v MIC Insurance*, case no. 14-102171-NI, Genesee County Circuit Court, the Hon. Joseph J. Farah presiding.** This was a UM/UIM lawsuit filed by the plaintiff against his automobile insurer following a severe roll-over accident, caused by an uninsured drunk driver, where there was a fatality involved. The plaintiff was in the course and scope of his employment when the accident occurred. The UM/UIM policy of insurance contained an exclusion for the business use of a vehicle, and after receipt of a detailed legal analysis prepared by defense counsel, the plaintiff voluntarily agreed to dismiss the Complaint with prejudice, without having to engage in depositions or filing a Motion for Summary Disposition.
- ***Angela Frazier v Tanger Properties Limited Partnership*, case no. 14-27826-NO, Livingston County Circuit Court, the Hon. Michael Hatty presiding.** This is a premises liability action where the plaintiff claims that while shopping with her children she tripped over raised asphalt and broke her ankle, requiring surgery and the placement of four screws, which remain within her ankle. She claimed a disability for six months following the accident. Subsequent to plaintiff's deposition, and a Limited amount of discovery, defense counsel advised plaintiff of the intention to file a Motion for Summary Disposition, and in response, plaintiff settled the case for a rather nominal amount.
- ***McLeod v City of Flint, David Bender*, U.S. District Court, Eastern District of Michigan, Case No. 13-CV-1287.** The plaintiff, Curtis McLeod, was arrested and held in jail for 18 months surrounding the murder and robbery of an African American male in Flint. Mr. McLeod was later released from jail when it was determined there was not enough evidence to prosecute. Plaintiff sued the arresting police officer defendant, David Bender, the detective who conducted the murder investigation, Lieutenant Marcus Mahan, The City of Flint, and the Genesee County Prosecutor's office. The City of Flint and the prosecutor's office were dismissed on the basis of governmental immunity. Defendants Bender and Mahan then filed the instant Motion for Summary Judgment asserting there was probable cause for the arrest and detainment of Mr. McLeod. The District Court agreed, explaining that there was at least "arguable probable cause to arrest and detain McLeod". Thus, qualified immunity applied, warranting the dismissal of allegations of false imprisonment and violations of 42 USC § 1983. Plaintiff filed an appeal to the U.S. Sixth Circuit Court of Appeals, and he filed a state court action in the Genesee County Circuit Court. Through the process of early mediation within the sixth circuit, the cases were all resolved for a nominal sum. Another good result for the City of Flint.
- ***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.
- ***Brenda Woodworth v Murphy Oil, Inc.*, case no. 12-3664-NO, Shiawassee County Circuit Court, the Hon. Gerald Lostracco presiding.** The trial court granted defendant Murphy Oil's Motion for Summary Disposition in this premises liability case on the basis of the defenses of Open and Obvious, Lack of Notice, and Lack of Proximate Cause. The plaintiff alleged to have "slipped" and fell down on black ice, in the evening hours, after purchasing items in the convenience store. She claims that the premises were darkly lit, and that the overhead canopy and drains were defectively maintained by the defendant. The court held that there was no notice, as plaintiff presented no evidence of improperly maintained drains, or of the condition in question having been reported to defendant, or existing a sufficient length of time to impart

constructive notice. The open and obvious doctrine applied, as there were "other indicia" of the alleged black ice that included the weather, piled snow, plaintiff's familiarity with Michigan winters, and the fact that the plaintiff could see moisture and dampness on the concrete before her fall. As for lack of proximate cause, the plaintiff did not see ice, even after she fell, and her clothing was not wet, making her assertions of black ice speculatory. The plaintiff did not appeal.