MICHIGAN DEFENSE
QUARTERLY
Volume 41, No. 4 | 2025

Promoting Excellence in **Civil Litigation**

2025 ROSTER

THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

MICHIGAN CHAPTER

www.MichiganMediators.org

The following attorneys are recognized for

Excellence in the field of Alternative Dispute Resolution


Laura ATHENS
Farmington


Earlene BAGGETT-HAYES


Thomas BEHM
Grand Rapids


Thomas CRANMER
Troy


Fred DILLEY
Grand Rapids


Gene ESSHAKI
St. Clair Shores


James FISHER
Grand Rapids


William GILBRIDE
Troy


Patrick HICKEY
Farmington


Lee HORNBERGER
Traverse City


Richard HURFORD
Troy


Alan KANTER
Birmingham


Paula MANIS
Lansing


Samuel McCARGO
Detroit


Tom McNeill
Birmingham


Paul MONICATTI
Troy


Robert RILEY
Southfield


Timothy SHERIDAN
Grand Rapids


Lee SILVER
Grand Rapids


Katherine SIMPSON
Ann Arbor


Robert WRIGHT
Grand Rapids

Check available dates or schedule appointments online directly with Academy Members - for free.

Visit www.MichiganMediators.org/dateselector

NADN is proud creator of the DRI Neutrals Database
www.DRI.org/neutrals

dri Lawyers Representing Business.™

The National Academy of Distinguished Neutrals is an invitation-only association of the top-rated mediators & arbitrators throughout the US, and proud partner of the national defense and trial bar associations. For more info, visit www.NADN.org/about

Promoting Excellence in Civil Litigation

P.O. Box 66 Grand Ledge, Michigan 48837
Phone: 517-627-3745
mdtc.org • info@mdtc.org

MICHIGAN DEFENSE QUARTERLY

Volume 41, No. 4 | 2025

TABLE OF CONTENTS

Cite this publication as 41-4 Mich Defense Quarterly

Michigan Defense Quarterly is a publication of the MDTC. All inquiries should be directed to Madelyne Lawry, (517) 627-3745.

President's Corner

By: John C. W. Hohmeier, *Scarfone & Geen PC*
jhohmeier@scarfone-geen.com

John Hohmeier assists insurance carriers in investigating and defending fraudulent claims, handling multi-claim cases, and advising on the prospect of civil RICO cases against litigious medical providers. He has consistently been recognized for excellence in the practice of law by Super Lawyers®. He has been named to America's Top 100 Civil Defense Litigators® and Best Lawyers in America® (Civil Defense Litigation and Appellate Practice). He has been featured in Top 100 Lawyers Magazine® and DBusiness Magazine Top Lawyers®.

> The only people for me are the mad ones, the ones who are mad to live, mad to talk, mad to be saved, desirous of everything at the same time, the ones who never yawn or say a commonplace thing, but burn, burn, burn like fabulous yellow roman candles exploding like spiders across the stars... - Jack Kerouac.

Well, there it is, a job...done. I cannot thank all of you enough for allowing me this honor. Truly, thank you. My time here at the MDTC as President is probably best understood and for sure can only be justified by the people who got me here: Mike Jolet (obviously), Madelyne Lawry, Stephen Madej, John Geen, Bob Scarfone, some of the Judges who know who they are, Mary Taormina (who keeps this whole thing afloat), my parents, my wife Danette (you the real GOAT), Jim Gross, David Lanctot, Dave Lankford, Mark Sessi, David Harrison, and the list goes on and on and on...there is not enough space in the Quarterly to name everyone who deserves it.

It goes without saying (even though I will say it) that the remaining board members, Mike Cook, Rick Joppich, incoming President Fred Livingston, and soon-to-be-secretary Regina Burlin all deserve an outstanding ovation as well because there is no doubt that they will carry on the great tradition of this organization. The Amicus Committee is also in great hands with Scot Garrison and David Porter, along with the rest of the amazing authors contributing their talent and time to the Committee as well. Finally, and as everyone can see, Lindsey Peck is also doing a beautiful job with the Quarterly, so all is well with the Michigan Defense Trial Counsel...come check out the annual meeting this June at Soaring Eagle...

A few parting thoughts for the crowd and some senseless jargon...none of it is law-related, but all of it is at the same time...but first, a word from my sponsor...

> Maybe it meant something. Maybe not, in the long run . . . but no explanation, no mix of words or music or memories can touch that sense of knowing that you were there and alive in that corner of time and the world. Whatever it meant. . . .History is hard to know, because of all the hired bulls***, but even without being sure of "history" it seems entirely reasonable to think that every now and then the energy of a whole generation comes to a head in a long fine flash, for reasons that nobody really understands at the time—and which never explain, in retrospect, what actually happened. – Hunter Thompson.

Hunter was talking about all of us and our idealized versions of who we think we should be...the truth, however, is that more likely than not, we are not who we think we are – not "we" as in lawyers, "us" as in people. We as people are but a blink of existence, a minuscule fraction of a timeline that transcends us and everything that we have ever created and destroyed; we are all prisoners, trapped in an unforgiving design that reveals nothing to us until, more often than not, it's too late...We are fallible...far more than we give ourselves credit for, because time and time again it has been proven that we all have an unshakable disposition to allow ourselves to be deceived in all walks of life. We peacock around in various circles claiming to know things, but, more likely than not, all we will ever know of this world is what we bring to it: time and space. So let us all enjoy each other's time and respect each other's space.

We as people are living, breathing, evolving creatures - we grow, we experience new emotions every day, too many in numbers to actually characterize. We learn from our mistakes, and we also repeat old ones; we get high, we get low. We are not what we were and only capable of what we can become - as Homer said a thousand years ago, "we will never be here again." We are constantly adapting to a changing environment, never being able to step into the same ocean twice. We take the bitter with the sweet, we take the good with the bad, we laugh, we smile, we cry, we take things 'with a grain of salt'…we wear masks, have fugazi facades, but we all want one thing: more. More for ourselves, more for our families, more for our friends… just more...we are impossible to identify with any precision. After all, it is not possible to speak intelligibly of something that is always becoming and never is…but what fascinating creatures we are: our journeys generally remaining the same, but the pathways so very, very different from one another.

Thank you, all of you beautiful creatures, for allowing me to be your President for the last year. It has been an incredible experience that only reinforces my faith in humanity. The MDTC membership consists of some of the best people I have ever met – true beauties. Stay golden, Ponyboy. This won't hurt.

E-Discovery Report

By: B. Jay Yelton, III, *Warner Norcross + Judd LLP*
jyelton@wnj.com

Court Held Plaintiff's Request for Production Was Proportional to Needs of the Case

Abbawi v. Henry Ford Health Systems, 2025 WL 36153 (E.D. Mich. Jan. 6, 2025).

In this case, the Court addressed the plaintiff Nagham Abbawi's motion to compel electronic discovery related to her claims of religious discrimination stemming from her refusal to receive a COVID-19 vaccine and the denial of her request for a religious exemption. Abbawi filed an employment discrimination complaint asserting violations under Title VII of the Civil Rights Act and Michigan's Elliott-Larsen Civil Rights Act. Initially, her request for discovery related to this matter was denied by the Court in March 2024 due to its overly broad nature.

After refining her Request for Production No. 8, Abbawi sought specific electronically stored information (ESI), including communications about accommodation requests concerning the vaccine policy from designated individuals involved in the decision-making process. Despite efforts to narrow the scope and limit the request to a specific time frame, the defendant, Henry Ford Health Systems, claimed that Abbawi's requests remained overly broad and disproportionate, emphasizing the significant costs anticipated for processing and reviewing the large volume of data generated. After months of negotiations, Abbawi ultimately filed another motion to compel in September 2024. She argued that the information she sought was crucial to establishing her claims of disparate treatment under Title VII of the Civil Rights Act.

The Court focused on the relevance of the requested ESI to Abbawi's disparate treatment claim. It found that the information sought was relevant to establishing comparisons with other employees whose accommodation requests were granted. The Court emphasized the need for access to information that pertains to the defendant's treatment of similarly situated employees, which is critical for proving discrimination under Title VII.

In weighing the proportionality of the requested discovery against the burden on the defendant, the Court determined that the necessity for the evidence outweighed the costs incurred. The defendant failed to provide sufficient justification for denying the production of ESI, as their objections did not meet the necessary standard to demonstrate that the requests were unduly burdensome.

As a result, the Court granted Abbawi's motion to compel, ordering the defendant to produce the requested ESI. Additionally, the Court directed the defendant to reimburse Abbawi half of the attorneys' fees and costs associated with bringing the motion, ultimately concluding that the defendant's objections lacked merit.

B. Jay Yelton, III

After 30+ years as a litigator and manager of eDiscovery teams, Jay now focuses on serving as discovery mediator and special master where he assists parties to design proportional discovery plans and to resolve discovery disputes. Jay is an Adjunct Professor at Michigan State University College of Law and at Thomas M. Cooley Law School where he teaches eDiscovery. Jay is recognized by *Best Lawyers in America* for eDiscovery, Litigation, and Data Privacy. He serves as Education Director and Chairman Emeritus for the Detroit Chapter of BarBri's eDiscovery Association (Association of Certified eDiscovery Specialists), as a member of the Global Advisory Council for E.D.R.M. and as a member and editor for The Sedona Conference.

Vendor Resource Bank

Members only service
(Must be logged in to the website)

PRACTICE TIPS: When the requesting party narrows the scope of its discovery requests in response to the responding party's objections, rather than continue to oppose any production, the "optics" of the situation should be considered—especially where the revised requests will result in a substantial reduction in potential data volume, there is no other source for the requested information, and where the responding party has significantly greater resources than the requesting party. It's better to incur some additional discovery costs voluntarily than be ordered to incur some additional discovery costs and pay all or part of your opponent's attorney fees.

Court Held that Consent Verification was Sufficient Under ECPA

Sihler v. Microsoft Corp., 2025 WL 104523 (W.D. Wash. Jan. 15, 2025).

In this case, two petitioners, Janet Sihler and Charlene Bavencoff, sought to compel Microsoft Corporation to release certain communications from a Skype account belonging to David Flynn. Flynn provided a declaration consenting to the production of his Skype chats, specifically naming individuals with whom he communicated, indicating that he had made screenshots of those communications. Despite this, Microsoft refused to comply, stating that Flynn's consent was not sufficient under the Electronic Communications Privacy Act (ECPA) because it failed a verification process required by the company.

The petitioners filed a motion to compel Microsoft to act, claiming that Flynn had fully consented to the disclosure of his communications. The court ruled in favor of the petitioners, stating that since Flynn had provided sufficient consent, the matter should not pose issues under ECPA. Microsoft subsequently filed a motion to reconsider this ruling, arguing that there were still unresolved issues regarding verification of Flynn's consent.

The court weighed Microsoft's request against the legal standards for reconsideration, which generally require a showing of clear error or new facts that could not have been previously presented. It found that Microsoft had not responded timely regarding the verification issue, having been aware of it before the petitioners filed their motion but failing to act accordingly. The court criticized Microsoft for not diligently processing Flynn's consent forms or communicating the verification issue much earlier in the proceedings.

Additionally, the court examined the legal meaning of "lawful consent" under the ECPA. It pointed out that the statute does not expressly require that consent be given in a way that conforms with Microsoft's internal procedures. Flynn's repeated declarations, which affirmed his ownership of the Skype account and consent to the release of his communications, were deemed sufficient to meet the ECPA's requirements.

In summary, the court denied Microsoft's motion for reconsideration, emphasizing that it is not mandatory for consent to adhere to a service provider's verification process if the underlying legal ownership and consent are made clear. The court concluded that Flynn, as the account holder, had given valid consent for his communications to be disclosed, and thus ordered Microsoft to comply and produce the requested documents within a specific timeframe.

PRACTICE TIP: Familiarize yourself with the Electronic Communications Privacy Act (ECPA) and its provisions regarding consent. As this case shows, consent does not need to follow a service provider's specific verification process. If verification is a concern, be ready to provide alternatives or additional evidence that demonstrates the legitimacy of consent. When obtaining consent, ensure that it is articulate, clear, and unambiguous, specifying to whom the provider is authorized to provide access to communications.

Court Imposed Limitations on RFPs Seeking Social Media, Employment, and Tax Records

Taylor v. Smith, 2025 WL 372977 (E.D. Mich. Feb. 3, 2025).

In a case involving allegations of fabricated evidence and malicious prosecution, Plaintiff filed suit against Detroit Police Officer Chad Smith, claiming damages related to his wrongful arrest, prosecution, and incarceration for gun-related offenses. Defendant Officer Smith sought to compel Plaintiff to produce various discovery materials, including social media records, tax returns, employment records, and responses to an interrogatory. The Court partially granted the motion, outlining specific limitations on the requested discovery.

Defendant requested access to all of Plaintiff's social media accounts, including private posts and activity logs, arguing they might contain relevant information supporting probable cause for the arrest. Plaintiff opposed this request, contending it amounted to a fishing expedition. The Court ruled that while social media content is generally discoverable, the request was overly broad. Instead, the Court limited discovery to posts and communications related to an individual named Efa Billy, whom Plaintiff had mentioned in recorded prison calls as potentially involved in the incident leading to his arrest. The Court denied broader access to Plaintiff's social media accounts, restricting discovery solely to communications concerning Efa Billy on Facebook.

Regarding employment and tax records, Defendant sought extensive documentation, requesting employment records spanning 15 years before Plaintiff's incarceration and five

years afterward, as well as tax returns covering five years before and after his imprisonment. Plaintiff objected, arguing that his income was not at issue in the case. The Court ruled that Defendant was entitled to some employment records to assess claims of lost vocational opportunities and emotional harm but found the 20-year scope excessive. Instead, the Court limited the production of employment records to the five years before Plaintiff's incarceration and the period following his release. Similarly, the Court found that while tax records could be relevant in assessing alternative income sources, they would not provide a "holistic view" of Plaintiff's lifestyle. Therefore, Plaintiff was ordered to produce tax returns, albeit under more limited parameters.

Additionally, Defendant moved to compel a response to an interrogatory identifying the specific crimes forming the basis of Plaintiff's malicious prosecution claim. Plaintiff failed to respond initially but provided an answer after the motion was filed. Defendant sought attorney fees for the effort required to obtain this response. The Court ruled that while some attorney fees were warranted, many of Defendant's discovery requests had been unreasonably broad. As a result, the Court awarded Defendant one-third of the costs and fees associated with the motion.

The order required the parties to confer on the fee amount within 14 days, with Defendant permitted to file a bill of costs if an agreement was not reached. Finally, the Court provided a 14-day window for objections to the ruling, emphasizing that any objections must be specific and timely to be considered under applicable procedural rules.

PRACTICE TIP: When faced with overly broad discovery requests, the responding party should identify and make a reasonable production of responsive documents instead of merely objecting and refusing to comply at all. By refusing to comply at all, the responding party runs the risk of having to pay the requesting party's fees and costs.

Court Denied Plaintiff's Motion to Add an Additional Custodian to Defendant's Search for Responsive Documents Because Custodian Didn't Possess Unique, Relevant Information

Newman, et al. v. The Associated Press, 2024 WL 4433465 (S.D. Fla Oct. 4, 2024).

In this case, the Court examined whether AP's President and CEO, Daisy Veerasingham, should be added as a document custodian in discovery. The case arose from allegations that AP aided the October 7, 2023, attack on Israel by publishing photographs taken by freelancers allegedly affiliated with Hamas. Plaintiffs sought to include Veerasingham as a custodian, arguing that her presence in AP's privilege log and her involvement in discussions about the controversy indicated she possessed relevant information.

PRACTICE TIP: When faced with overly broad discovery requests, the responding party should identify and make a reasonable production of responsive documents instead of merely objecting and refusing to comply at all. By refusing to comply at all, the responding party runs the risk of having to pay the requesting party's fees and costs.

Plaintiffs pointed to several documents linking Veerasingham to key issues, including: (1) a document referencing her son's role in vetting a freelance photographer accused of Hamas ties; (2) an update she provided to AP's board about responding to Senator Tom Cotton's inquiry into AP's alleged ties to Hamas-linked photographers; (3) emails discussing AP's official response regarding its association with Gaza-based freelancers; and (4) internal communications about reputational risks posed by those relationships.

AP opposed the motion, asserting that Veerasingham had no direct role in sourcing or purchasing the contested photographs and was only informed of developments to protect AP's reputation. The organization contended that her inclusion as a custodian would be unduly burdensome and unnecessary, as the other 20 designated custodians already covered the relevant information.

Applying Federal Rule of Civil Procedure 26(b), the Court emphasized that while discovery is broad, it must also be proportional to the case's needs. It found no evidence that AP's initial custodian selection process was inadequate. Further, it ruled that Plaintiffs failed to show Veerasingham had unique, relevant documents that were not already captured by other custodians. While she was informed of key developments and approved certain decisions, she was not involved in granular decision-making regarding the photographers.

The Court also deemed the request disproportionate, noting that Veerasingham, as CEO of a global non-profit with over a thousand employees, likely possessed vast amounts of unrelated documents. Given Plaintiffs' failure to establish her possession of unique, discoverable materials, the Court declined to impose the burden of searching her records.

Accordingly, the Court denied Plaintiffs' motion to add Veerasingham as a custodian, concluding that the request lacked necessity and proportionality under Rule 26(b).

PRACTICE TIP: To expand discovery to include additional custodians, it is imperative to demonstrate to the court each

custodian's nexus to the claims and defenses at issue and the unique, relevant information each custodian possesses. A court will not pull a custodian's records into the discovery process where the custodian has only a tangential relationship to the case or where the custodian's records are duplicative of what can or has been provided by other custodians.

This case illustrates yet again the importance of cooperation between counsel *prior to* discovery. Parties should take full advantage of "meet and confer" opportunities to discuss discovery broadly and specifically with respect to ESI. It is preferable for counsel to reach an agreement rather than hope for a good result before the court.

Court Required Parties to be Transparent with Respect to Their Search Methodologies

Tremblay v. OpenAI, Inc., 2024 WL 3638421 (N.D. Cal. July 31, 2024).

In this case, the Court resolved disputes over search terms and validation protocols in electronically stored information (ESI) discovery. The key issues involved whether a producing party must disclose its search terms, whether the requesting party should have input in formulating them, and the appropriate method for validating search accuracy.

Plaintiffs argued that the requesting party should have a role in determining search terms, while Defendants contended that courts do not typically grant this right and that such involvement could lead to unnecessary delays and disputes. The Court found a middle ground, ruling that the producing party must disclose its search terms but that the requesting party would not have direct input in shaping them.

Regarding search methodologies, the Court mandated that the ESI protocol include a provision requiring parties to use reasonable and proportional methods for identifying, collecting, reviewing, and producing relevant ESI. Recognizing that different data sets may require different methodologies, the Court also required parties to meet and confer in good faith to resolve any disputes over ESI production.

On the issue of validation, the Court required both parties to disclose their evaluation methods for assessing search effectiveness, including the confidence metric used in sampling. The ESI protocol would require reasonable quality control measures to ensure that productions were neither missing relevant documents nor over-inclusive of irrelevant materials. Producing parties were also required to disclose their "end-to-end recall" rate—showing how many responsive documents were correctly identified—and to meet and confer on validation methods if disputes arose.

Ultimately, the Court's ruling balanced efficiency with transparency, ensuring that discovery remained both fair and proportional while minimizing unnecessary conflicts over methodology.

PRACTICE TIP: This case illustrates yet again the importance of cooperation between counsel *prior to* discovery. Parties should take full advantage of "meet and confer" opportunities to discuss discovery broadly and specifically with respect to ESI. It is preferable for counsel to reach an agreement rather than hope for a good result before the court.

Plaintiff Sanctioned for Failure to Timely and Adequately Preserve Employee's Cell Phone Data

OL Private Counsel, LLC v. Olson, 2024 WL 1973340 (D. Utah May 3, 2024).

In this case, the Court examined whether the failure to preserve cell phone data, including a missing password, constituted spoliation warranting sanctions. The dispute arose when Plaintiff accused Defendant of misappropriating confidential documents and sought discovery of communications stored on the phone of Timothy Akarapanich, a former employee of a related entity. However, Plaintiff could not provide access to the phone's contents because it did not have the password, leading Defendant to argue that Plaintiff had willfully facilitated the loss of key evidence.

Defendant contended that Plaintiff knew Akarapanich retained access to confidential documents via his phone and had met with him in October 2020 to review its contents. During this meeting, Plaintiff allegedly took possession of the phone without obtaining the password and deleted certain data from its cloud storage. Later, at Akarapanich's request, Plaintiff also removed personal and work-related data from the phone. In response, Plaintiff argued that it had not anticipated litigation at the time and merely sought to investigate the unauthorized access of confidential information. Furthermore, Plaintiff asserted that it had no obligation to preserve the phone's data or password because Akarapanich voluntarily deleted cloud-stored materials and that it had already copied and preserved the phone's entire contents.

A forensic review of the phone in 2023 by an ESI vendor, Consilio, revealed that key application data—such as messages from Facebook, Telegram, and Line—was missing. The vendor reported that a full extraction of the phone's content required the password, which remained unavailable. The Court analyzed the issue under Rule 37(e), which governs spoliation of electronically stored information (ESI). It determined that Plain-

tiff had a duty to preserve the phone and its data as early as October 2020, given that litigation was foreseeable once Plaintiff discovered former employees had accessed confidential materials. The Court emphasized that Plaintiff's control over the phone extended to the obligation to preserve its password, as it was essential for accessing relevant evidence.

Rejecting Plaintiff's claim that it had no duty to maintain the cloud data or password, the Court noted that Plaintiff failed to prove the deleted cloud data was duplicative of the phone's contents. Although Defendant sought dismissal as a sanction, the Court found that it was unclear whether the lost ESI could still be restored. Because retrieving the password might resolve the issue, the Court denied Defendant's motion for sanctions without prejudice. It ordered Plaintiff to provide Consilio with the phone, its password, and a full data copy for further review, reinforcing Plaintiff's duty to retrieve and produce the missing access credentials.

PRACTICE TIP: This case serves as an important reminder that when handling ESI, particularly mobile devices and cloud storage, attorneys should: (1) engage forensic experts early to avoid making preservation mistakes that could later be deemed spoliation; (2) **e**nsure full access to any devices they acquire, including obtaining necessary passwords; and (3) preserve cloud-stored data separately, rather than assuming it is redundant. Also, do not forget that the duty to preserve may arise well before the formal commencement of litigation, and often as soon as internal investigation begins.

MDTC
Schedule of Events

Click for more information

2025

MDTC/MAJ 3rd Annual Battle of the Bar
Thursday, August 14, 2025
6:00 – 8:00 p.m. @ Corner Ballpark

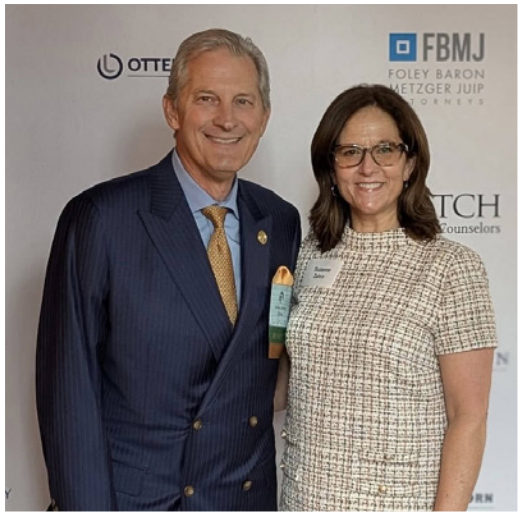
Golf Outing
Friday, September 12, 2025
8:00 a.m. – 3:00 p.m. @ Mystic Creek Golf Course

Winter Meeting
Friday, November 7, 2025
8:00 a.m. – 5:00 p.m. @ Sheraton Detroit Novi Hotel

MDTC
Legal Excellence
Awards 2025

Thank You Sponsors!

Held on Thursday, March 20, 2025
at The Gem Theatre, Detroit



Click to view all photos

Insurance Coverage Report

By: Nathan Scherbarth, *Zausmer, August & Caldwell, P.C.*
nscherbarth@zacfirm.com

***Ware v Meemic Ins Co*, __ Mich App __; __ NW3d __ (2025): Policyholder entitled to uninsured motorist benefits where other vehicle's insurer denied coverage based on failure to provide notice of accident and litigation.**

In *Ware*, Plaintiff was injured when his car was struck by another vehicle. The vehicle that hit Plaintiff was operated by Dustin Schilling, operated by Krystal Schilling, and insured by State Farm. Ware insured his vehicle through Meemic and paid an additional premium for uninsured motorist (UM) coverage.[1]

Because Ware believed the vehicle driven by Dustin Schilling was uninsured, he sued Meemic for UM benefits. However, Meemic later discovered that the Schilling vehicle had been covered by a policy issued by State Farm, which provided bodily injury liability coverage of $250,000 per person/$500,000 per accident.[2] Meemic moved for summary disposition of the UM claim, and Ware responded that State Farm had denied coverage for any liability because the Schillings violated the State Farm policy's terms requiring notice of the accident and litigation.[3] According to Ware, this resulted in Dustin's driving an uninsured motor vehicle as defined by Ware's policy with Meemic.[4] The trial court denied Meemic's motion.

On appeal, Meemic argued that the trial court erred in denying their motion for summary disposition. The Court of Appeals disagreed in a unanimous published opinion, instead agreeing with the trial court that the Schilling's vehicle was "in essence…uninsured."[5] The Court focused on the Meemic policy's definition of "uninsured motor vehicle," which defined it in relevant part as "a motor vehicle…not insured by a bodily injury liability policy or bond that is applicable at the time of the accident[.]"[6] The Court relied heavily on the unpublished *Integon Nat'l Ins Co v Berry*[7], concluding that it was factually indistinguishable and instructive on the issue of the definition of "applicable" coverage at the time of the accident.

Simply put, the Court concluded that there was no bodily injury liability policy that was "applicable" at the time of the accident, because State Farm required a notice process before coverage was actually applicable to the Schillings, and the Schillings failed to complete that process timely.[8] As the Court explained, it does not matter *why* a policy is not applicable, but only that it is in fact not applicable for purposes of the definition of "uninsured motor vehicle."

***Sobesky v Geico Gen'l Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued February 11, 2025 (Docket No. 368710), *lv pending*: Insured failed to establish special relationship that would give rise to duty by agent to advise as to adequacy of coverage.**

Nathan Scherbarth

Nathan S. Scherbarth is a shareholder at Zausmer, P.C. and leads the firm's Appellate and Major Motion Practice Group, appearing frequently in the Michigan Court of Appeals, along with the Michigan Supreme Court and the U.S. Court of Appeals for the Sixth Circuit. Nathan also routinely appears at the trial level, handling critical motions, jury selection issues, and second-chair appellate monitoring of trials in state and federal court.

In *Sobesky*, Plaintiff sought PIP benefits under theories of negligence and misrepresentation. Sobesky was injured in an accident in Michigan. But her automobile insurance policy, purchased while she was residing in California, did not provide PIP coverage required by the no-fault act.[9] She alleged that Geico's agent failed to properly advise her about the nature and extent of coverage under the policy, and that a special relationship was created when Sobesky asked the agent whether she was "safe" to drive with her insurance when she returned to Michigan during the COVID-19 pandemic to visit her sister while she was temporarily laid off from her job in California.[10]

Geico moved for summary disposition, asserting that no special relationship was created and the Geico agent did not owe a duty to advise Sobesky, and that Sobesky was comparatively at fault for failing to procure insurance as Michigan law required. The trial court agreed, dismissing the case in its entirety.[11]

On appeal, Sobesky argued again that under *Harts*,[12] the Geico agent created a special relationship and duty because the agent purportedly misrepresented the adequacy of coverage, Sobesky made "multiple ambiguous requests that required clarification," and because the agent purportedly gave inaccurate advice when they told Sobesky she "was fine" to drive in Michigan when visiting her sister.[13]

The Court of Appeals disagreed, concluding that the undisputed evidence established that Geico did not misrepresent the nature or extent of coverage, Plaintiff did not make any ambiguous request calling for clarification, the agent did not offer unsolicited advice, and the advice given was not inaccurate.[14] As the Court explained, the advice of the agent (based on Sobesky's own testimony), was predicated on Sobesky's explanation that she came from California, with a California policy attached to a California residence, was staying with her sister in Michigan, but intended to go back to California as soon as she was able. And it was immaterial that Sobesky's car was actually registered in Michigan, because there was no evidence that she ever notified the agent of this fact.

Finally, the Court also affirmed dismissal of Sobesky's misrepresentation claims, holding that the claim failed for the same reasons because it was "essentially identical with her claims for negligence based upon errors and omissions," just packaged under a different heading.

In short, the *Harts* special relationship test remains strong, and a plaintiff cannot avoid the *Harts* special relationship test by creatively labeling their claims to avoid its application.

***Meemic Ins Co v Mativa*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2025 (Docket Nos. 366212, 366334), *lv pending*: Intentional acts exclusion bars coverage for claims by bystander injured during bar altercation.**

At the Rogue River Tavern on November 13, 2021, Joel Mativa charged toward Michael McWilliams when he saw McWilliams getting "very close" to Mativa's wife. Mativa placed McWilliams in a headlock, and the two toppled to the ground, landing on a bystander, Tammy Fitzgerald. Fitzgerald sustained fractures to her ankle and required two surgeries.[15] Mativa would later testify that he did not intend to injure McWilliams or Fitzgerald, and only wanted to "create space" between his wife and McWilliams. The Kent County Prosecutor's Office initially authorized an assault charge against Mativa, but the charge was denied or dismissed after McWilliams stated that he did not wish to press charges.[16]

Fitzgerald brought a personal injury lawsuit against Mativa, asserting that he negligently injured her while visibly intoxicated. Mativa's homeowner's insurance provider, Meemic, then brought a complaint for declaratory relief, asserting that its policy did not cover the incident at the tavern because it was not an "occurrence" as defined under the policy, and the incident fell within the policy's intentional acts exclusion.[17]

The trial court declined to reach whether the incident was an "occurrence," but concluded that it fell within the intentional acts exclusion, because "no reasonable minds could differ that the act of putting an individual in a headlock and dragging him or her to the floor could reasonably be expected to cause bodily injury."[18]

The Court of Appeals affirmed, concluding that the exclusion applied because even if Mativa did not intend to hurt McWilliams or anyone else in the tavern, injury could "reasonably be expected" from the insured's act (putting McWilliams in a headlock). As the Court concluded, this is an objective standard apart from the insured's subjective intent, and Mativa's act of placing someone in a headlock and pulling them to the ground could reasonably be expected to cause bodily injury.[19] And the Court concluded that the exclusion applied to Fitzgerald's claims, because the exclusion applies to "bodily injury [that] is different from, or greater than, that which is expected or intended."

Endnotes

1 *Ware v Meemic Ins Co*, __ Mich App __; __ NW3d __ (2025), slip op at 1.
2 *Id.* at 2.
3 *Id.*

4 *Id.*
5 *Id.* at 3.
6 *Id.* at 4.
7 *Integon Nat'l Ins Co v Berry*, unpublished per curiam opinion of the Court of Appeals, issued March 25, 2010 (Docket Nos. 289320, 289366, and 291175).
8 *Ware*, slip op at 6.
9 MCL 500.3101 *et seq*.
10 *Sobesky*, pp 2-3.
11 *Id.*, pp 3-4.
12 *Harts v Farmers Ins Exch*, 461 Mich 1; 597 NW2d 47 (1999).
13 *Sobesky*, pp 5-6.
14 *Id.*, p 6.
15 *Mativa*, p 2.
16 *Id.*
17 *Id.* at pp 2-3.
18 *Id.*, p 3.
19 *Id.*, p 7.

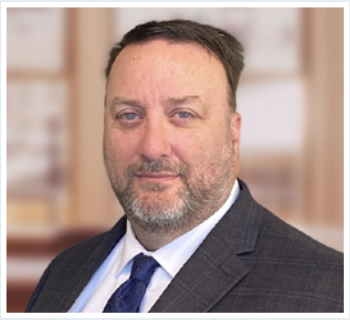
Amicus Report

By: J. Scot Garrison, *Vandeveer Garzia*
and **David Porter,** *Kienbaum Hardy Viviano Pelton & Forrest*
sgarrison@vgpclaw.com | dporter@khvpf.com

MDTC has been asked to file amicus briefs in two cases before the Michigan Supreme Court. The two cases are *Molitoris v Saint Mary Magdalen Catholic Church* (Docket No. 166699) and *Radke v Swenson* (Docket No. 167162). The cases have been scheduled for oral argument on the applications for leave to appeal. In both matters, the Supreme Court has asked the parties to address whether the "Court should adopt the Third Restatement of Torts' reasonable-care standard in lieu of the traditional status-based categories to determine a premises possessor's duty to persons who suffer physical harm caused by a condition on the land[.]" *Radke*, Order of the Supreme Court issued November 8, 2024. The Court has also asked the parties to address if overruling long-standing precedent in this area of the law would comport with stare decisis. The final issue to be addressed in *Radke* is whether the opening in the floor created an unreasonable risk of harm. In *Molitoris*, the Court has asked the parties to address the first two issues identified in *Radke*.

In *Radke*, the Court of Appeals found the plaintiff was a licensee and not an invitee. The plaintiff and the defendant were long-time friends, and the plaintiff had agreed to help install lights on the front porch of the defendant's home, which was under construction. While on the premises, the plaintiff was walking backward through the garage and fell through what was intended to be a stairway to the basement. But the stairs had not yet been installed, nor was there a barrier preventing one from falling through the entry. The Court of Appeals found the defendant owed only a duty to warn of hidden dangers, and the stairwell opening was not a hidden danger. The Court of Appeals affirmed summary disposition in favor of the defendant.

In *Molitoris*, the plaintiff was serving as a volunteer at the defendant church when she slipped and fell while leaving the event. Specifically, the plaintiff slipped on ice as she stepped from the sidewalk to the parking lot, and testified she had been watching where she was walking, but did not see any snow or ice prior to her fall. The Court of Appeals affirmed the trial court's summary disposition in favor of the church, holding the plaintiff as a volunteer was a licensee as a matter of law, and the defendant was thus not required to inspect or to take any affirmative care to provide for the plaintiff's safety. The dissent indicated the differing duties to persons based solely on their status as a trespasser, licensee, or invitee was unfair and "urge[d] the Supreme Court to reconsider Stitt and to join the modern world of premises liability." Both cases are awaiting full briefing and have not yet been scheduled for oral argument on the applications for leave to appeal.



J. Scot Garrison

Scot Garrison is a Partner with the Firm. He practices in the areas of First-Party and Third-Party Auto Negligence, product liability, recreational boating, property loss, and general civil matters. Prior to joining Vandeveer Garzia, Scot was a Judicial Staff Attorney in Oakland County Circuit Court for over twenty-two years, where he gained valuable experience in practically every area of the law. He also serves as an adjunct faculty member at Oakland University and Oakland Community College, where he teaches legal research and writing as part of the paralegal programs. He currently serves as the co-chair for the Amicus Committee for Michigan Defense Trial Counsel.

David Porter

David Porter works in the firm's employment and commercial litigation practice, bringing substantial appellate experience to the group. Before joining KHVPF, Mr. Porter was an Assistant Attorney General at the Michigan Attorney General's Office, handling civil and criminal appeals. He has briefed and argued dozens of appeals in state and federal court, including several involving complex issues of constitutional law in the U.S. Court of Appeals and a case of first impression in the Michigan Supreme Court. He is the recipient of the 2020 Distinguished Brief Award, recognizing outstanding advocacy in the Michigan Supreme Court. Mr. Porter previously served as law clerk to Judge Richard A. Griffin of the U.S. Court of Appeals for the Sixth Circuit and Justice David F. Viviano of the Michigan Supreme Court.

As noted in the previous update from the Amicus Committee, the MDTC filed amicus brief authored by Phil DeRosier and Daniel Ziegler of Dickinson Wright PLLC, in *Stefanski v Saginaw County 911 Communications Center Authority* (No. 166663). The issue therein is whether a person who reports a violation of the common law has participated in protected activity under the Whistleblowers' Protection Act. The Court has heard oral arguments on the application for leave to appeal, and a decision has not yet been released.

Likewise, MDTC has filed an amicus brief authored by Briana Combs of Plunkett Cooney in *Mann v City of Detroit* (No. 166619). In *Mann*, the plaintiff tripped over a metal pole protruding from a sidewalk in the City of Detroit and later sued the City for negligence. The Court has asked whether the City, typically immune from tort claims, is nonetheless subject to suit under the "sidewalk exception" to governmental immunity, MCL 691.1402a. The Court has heard oral argument on the application for leave to appeal, and a decision on the application is currently pending.

The MDTC has previously filed an amicus brief authored by David Porter and Sean Dutton of Kienbaum Hardy Viviano Pelton & Forrest, PLC, in *Abdulla v Auto Club Group* (No. 167532). In *Abdulla*, the Court of Appeals held that the plaintiff, a commercial truck driver who had exclusive use of and dominion over this his semi-truck tractor, was not an "owner" of the tractor because it was titled in the name of a limited liability company. As the plaintiff was not an "owner" under the statute, he was therefore not disqualified from receiving PIP benefits under the Act. The Supreme Court has not yet scheduled the matter for oral argument on the application for leave to appeal.

Michigan Court Rules Update

By: Carlos A. Escurel, *Foley Baron Metzger & Juip, PLLC*
cescurel@fbmjlaw.com

Proposed Amendments

Before determining whether a proposal should be adopted, changed before adoption, or rejected, notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. These matters will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

2022-34-Proposal to amend Court Rules to clarify the process for judicial reviews of referee recommendations in juvenile cases

Rule affected: MCR 3.991
Issued: January 15, 2025
Comment period: Expires May 1, 2025

The proposed amendment would clarify the process for judicial reviews of referee recommendations in juvenile cases by allowing the parties to waive judicial review, limiting a judge's ability to conduct an early review, and requiring a judge to conduct a requested review in all cases within 21 days of the request.

2023-12-Proposal to amend Court Rules to clarify the applicability of MCR 3.602 and the Michigan Uniform Arbitration Act, MCL 691.1681 *et seq.*

Rule affected: MCR 3.602
Issued: January 15, 2025
Comment period: Expires May 1, 2025

The proposed amendment of MCR 3.602(A) would state that, unless otherwise provided by statute, an action or proceeding commenced on or before July 1, 2013, is governed by MCL 691.1681 *et seq.*, and not this rule.

2023-22-Proposal to amend Rules of Professional Conduct to clarify and expand the scope of pro bono service

Rule affected: MRPC 6.1
Issued: January 29, 2025
Comment period: Expires May 1, 2025

The proposed amendments recognize that some lawyers may not be able to provide direct client representation and therefore allow for alternative methods of service such as becoming a member of a local pro bono committee; serving on a board of

Carlos A. Escurel

Carlos is an Associate Principal with the firm. He has defended healthcare professionals and institutions for over 17 years. His primary focus is handling complex medical malpractice claims and premises liability claims. Carlos has experience handling cases involving anesthesiology, emergency medicine, orthopedic surgery, general surgery, cardiology, obstetrics and gynecology, nursing, podiatry, and radiology.

Before joining Foley, Baron, Metzger & Juip, Carlos worked for a Detroit law firm handling medical malpractice claims for nursing homes, physicians and hospitals located in Wayne, Oakland, Macomb, Genesee, and Saginaw counties. Prior to that, he worked for a Livonia law firm defending one of Detroit's largest health systems in medical malpractice and premises liability cases. Carlos also has experience defending physicians in state licensing board matters.

While in law school, Carlos served as Chairperson of the Free Legal Aid Clinic (FLAC) and a Board Member for the Student Trial Advocacy Program (STAP). He also served as a member of the Student Board of Governors for the law school.

Carlos was recognized as a "Rising Star" by Michigan Super Lawyers in 2010, 2011, 2012, 2013, 2014, and 2015.

MDTC Photo Gallery

Click here to view all photos

directors of a legal aid or legal services program; training other lawyers through a structured program; engaging in community legal education programs; advising organizations that provide direct services to low-income individuals; serving on bar association committees; taking part in Law Day activities; acting as a continuing legal education instructor, mediator, or arbitrator; assisting law students in moot court, mock trial, or other practical law school activities; or engaging in other activities to improve the law, the legal system, or the profession.

Adopted Amendments

2023-36-Amendment to Court Rules regarding the period of time for a juvenile to complete the terms of a consent calendar case plan

Rule affected: MCR 3.932
Issued: October 16, 2024
Effective: Immediately

As a housekeeping revision, the amendment of MCR 3.932 aligns the rule with MCL 712A.2f(9)(c) regarding the period of time for a juvenile to complete the terms of a consent calendar case plan.

2021-05-Amendment to Court Rules requiring a judge to take certain steps if the court states at a plea hearing that it will sentence the defendant to a specified term or within a specific range

Rule affected: MCR 6.302
Issued: November 6, 2024
Effective: January 1, 2025

The amendment of MCR 6.302(C) requires a court, that states during a plea hearing that it will sentence the defendant to a specified term or within a specified range, to: (1) inform the defendant that the final sentencing guidelines range may differ from the original preliminary estimate, (2) advise the defendant regarding their right to withdraw the plea pursuant to MCR 6.310(B) if the final sentencing guidelines range as determined at sentencing is different, and (3) provide a numerically quantifiable sentence term or range when providing the preliminary estimate.

2024-06-Amendment to Court Rules prohibiting a court from granting leave to private individual who is bringing a quo warranto action that relates to the offices of electors of President and Vice President of the United States

Rule affected: MCR 3.306
Issued: November 20, 2024
Effective: Immediately

In accordance with MCL 600.4501(2), the amendment of MCR 3.306(B)(3)(b) prohibits a court from granting leave to a private individual who is bringing a quo warranto action that relates to the offices of electors of President and Vice President of the United States.

2022-25-Amendment to Court Rules requiring that an appeal to circuit court be heard by a judge other than the judge that conducted the trial

Rule affected: MCR 7.103
Issued: November 20, 2024
Effective: January 1, 2025

The amendment of MCR 7.103 requires that an appeal to circuit court be heard by a judge other than the judge that conducted the trial.

2022-38-Amendment to Court Rules regarding taxation of costs in the trial courts and throughout the appellate process

Rules affected: MCR 2.625, 7.115, 7.219 and 7.319
Issued: November 20, 2024
Effective: January 1, 2025

The amendments of MCR 2.625, 7.115, 7.219, and 7.319: (1) require courts to stay enforcement of taxed costs while an appeal is pending or until time for filing an appeal has passed, (2) expand the timeframe for filing a bill of costs in the Court of Appeals, (3) incorporate into MCR 7.219 the Court of Appeals internal operating procedure 7.219(B) that allows, upon reversal of a Court of Appeals decision, the new prevailing party to file a new bill of costs in the Court of Appeals, and (4) include in the lists of taxable costs those costs awarded in the lower court in accordance with MCL 600.2445(4).

2022-56-Amendment to Rules of Professional Conduct clarifying that a lawyer can appear in pro per

Rule affected: MRPC 3.7
Issued: November 27, 2024
Effective: January 1, 2025

The amendment of MRPC 3.7 clarifies that in accordance with Const 1963, art 1, § 13, a lawyer can appear in pro per.

2016-10-Amendment to Court Rules clarifying the fees charged for transcripts in probate cases are waivable

Rule affected: MCR 2.002
Issued: December 26, 2024
Effective: January 1, 2025

The amendment of MCR 2.002 clarifies that fees charged for transcripts in probate cases are waivable under the rule as authorized in MCL 600.880d.

Force or Fire? Analysis of Occupant Injury Mechanisms in Fatal Motor Vehicle Crashes with Fire

By: Sridhar Natarajan, M.D., M.S. and Amy Courtney, Ph.D, CAISS
snatarajan@exponent.com | acourtney@exponent.com

Introduction

In a fatal motor vehicle collision (MVC) with fire, associating the cause of death with the overall event may seem clear. Therefore, analysis of all the available evidence may not be completed. However, the complexity of identifying mechanisms of injury in fatal MVCs with fire stems from the potential for antemortem blunt traumatic and antemortem and postmortem thermal injuries, as well as the contributions of toxicology findings. This complexity is particularly apparent when a more detailed understanding is needed to inform insurance compensation decisions, litigation claims, or automotive safety research, for example.

Tragic events like these require objective clarity, which may not be considered during the initial autopsy and investigation. This article is focused on analysis of mechanisms of occupant injuries. Types of information and other areas of investigation that may inform the injury analysis in a given event are discussed. It is highly likely there may be more to a fatal MVC with fire than first impressions indicate, and this information will help identify and describe the relevance of evidence that may inform the injury analyses.

Crash and vehicle factors that increase the risk of acutely fatal blunt traumatic injuries also increase the risk of post-crash fire. Some thermal effects on the body are well established to occur postmortem. Other findings and laboratory measurements are more indicative of whether thermal effects were present in a living (antemortem) individual. The terminal thermal effects identified may obscure blunt traumatic injuries, or, in severe cases, even be mistaken for them. A correct analysis may be informed by understanding the crash event; the involved vehicle and its restraint systems; the location, kinematic response, and biomechanical environment of the deceased occupant; the origin, pattern, and severity of the fire; and/or the totality of the medical forensic autopsy information.

Prevalence of Fatal MVCs with Fire

Various studies have found that 3% to 4% of fatal crashes involving passenger vehicles in the U.S. also have a fire.[1,2] The strongest indicators of whether a fire is likely to result include the severity of the crash, characterized by the crash energy, whether multiple impacts occurred, and whether severe intrusion occurs.[3,4] Each of these crash-related factors also increases the likelihood of blunt traumatic injuries.

Sridhar Natarajan, M.D., M.S.

Exponent
Biomechanics
Principal

Dr. Natarajan is Board Certified by the American Board of Pathology in Anatomic, Clinical and Forensic Pathology. He has been a Chief Medical Examiner for nearly 15 years with involvement in more than 10,000 forensic autopsies that included determining natural and non-natural causes of death and manners of death.

Amy Courtney, Ph.D, CAISS

Exponent
Biomechanics
Senior Manager

Dr. Courtney provides technical expertise in the area of injury biomechanics, including orthopaedic, spine, and traumatic brain injury, blast injury, and ballistics. She addresses issues related to traumatic events, motor vehicle safety, and product safety. Dr. Courtney's ballistics expertise includes the safe operation of small arms and the internal physics, trajectories, and terminal behavior of ammunition. She has been active in research on the material and structural properties of musculoskeletal tissues in normal, aging, and disease conditions for more than 35 years.

Crash and Vehicle Information

If the vehicle's electronic data was preserved, it should be obtained. The newer the vehicle, the more information may be available regarding pre-crash and crash-related vehicle dynamics, as well as restraint use and deployment. If crash forces and/or fire have damaged the housing of the airbag control module (ACM), for example, it may be worth looking into whether the microchips themselves can be extracted and the data obtained with external equipment. In vehicles with more driver assist technology or electronic monitoring, data may also be stored other places on the vehicle or remotely.

To analyze possible biomechanical mechanisms of blunt traumatic injury, an understanding of the number and direction of impacts and the severity of each is helpful. For a crash involving multiple impacts, the timing between the impacts may be relevant to occupant motion after the first impact and their position and subsequent motion for each additional impact.

After a fatal crash, the vehicle often contains valuable evidence that informs an injury analysis. However, if a fire has also occurred, thermal damage may be extensive. Fire suppression efforts may further affect evidence that may have been present. Nevertheless, informative physical evidence may still be present. For example, intrusion of vehicle structures into the occupant space, physically distorted seat and seatback frames, focal deformation to the steering wheel, or steering column collapse due to driver interaction may be observable even after extensive fire damage. Seat belt marks on latch plates or D-rings may be observable. Areas of sparing from the fire, such as seats or parts of the seatback, may also help inform the occupant injury analysis.

Collection of postmortem remains is challenging in these situations, and the condition of remains at the death scene versus those delivered to the coroner or medical examiner may change. In addition to reports generated by law enforcement, a major accident investigation team, and sometimes other state and federal agencies, it is helpful to obtain available scene photographs in their original digital format. It may be helpful to obtain recordings of 911 calls related to the event, which may include verbal descriptions of initial perceptions. It may be helpful to obtain available security camera, body camera, and bystander cell phone video (including from social media) and to consider witness statements and testimony. These may include information about the scene, vehicle, and occupant(s) at times before all of the thermal damage has taken place or before a decedent has been moved. A scene inspection by coroner or medical examiner staff may include photographs while the remains are still within the vehicle and/or immediately after extraction. These materials can provide important information for biomechanical, fire, structural, and medical forensic analyses. The constellations of findings can help ascertain the medical forensic validity as to the mechanism of death, the cause of death, trauma analysis, pathologic disease processes, and the manner of death.

Biomechanical Evaluation

An injury analysis of a fatal MVC with fire will seek to identify potential blunt traumatic injury mechanisms (hypotheses) and then evaluate whether the available evidence supports or refutes them. It is relevant to know whether the deceased was using their lap and shoulder belt properly; whether supplemental restraints deployed; whether forceful contact likely occurred between the individual and some structure, object, or other occupant; and whether the individual was physically entrapped by intrusion into the occupant space. Timing of deployment of passive restraints (e.g., airbags, pretensioners) in the context of the crash sequence may also be relevant to injury risk and potential mechanisms.

Biomechanical evaluation of a fatal MVC with fire may take several forms. Utilizing basic information about the deceased occupant and crash events, the overall likelihood of blunt traumatic injury and/or fatality in a similar event can be evaluated. Medical findings documented in medical records, photos, imaging studies, and the medical examiner file can be used to focus the injury risk analyses. The influence of multiple impacts in an event can be evaluated in series, considering likely occupant orientation after each preceding impact as well as the effectiveness of restraints in subsequent impacts.

More specifically, the kinematics, including direction and extent of movement, and the kinetics (loading on the body) for a similar occupant may be informed by results of relevant crash and sled testing. The resulting loading to specific areas of the body can be compared to federally mandated injury assessment reference values (IARVs)4 and published results of biomechanical testing to evaluate risk of injury.[5-7] Factors that may affect the likelihood of blunt traumatic injury may be identified, such as being unrestrained or improperly restrained; being out of position; and occupant size, age, or reduced tolerance due to medical conditions or interventions.

In addition, there may be biomechanical data available from relevant standardized testing or research-based testing of a similar make and model to the involved vehicle(s). Bespoke testing, utilizing standard test methodology, can be helpful to answer questions or evaluate specific potential biomechanical injury or vehicle damage mechanisms when needed. If there are concerns about whether specific conditions related to the involved vehicle presented an increased risk of injuries in the event, similar analyses can be conducted with alternate conditions or peer vehicles to evaluate whether the outcome would likely have been different.

Fatal MVCs with fire present medical forensic challenges with regard to identifying the extent of blunt trauma that may have occurred during the event. Especially when acutely lethal central nervous system injury is suspected, biomechanical and medical forensic evaluations may provide complementary bases to come to a conclusion to a reasonable degree of certainty.[8]

This is as convenient a place as any to point out that, if there are multiple occupants in a vehicle involved in a fatal MVC with fire, each individual must be analyzed. Results from one individual cannot reasonably be applied to other occupants in the vehicle. As in severe crashes without fire, variations in occupant characteristics, seating location, restraint use, and exposure to loading may result in different blunt traumatic injury patterns and severity.

Medical Forensic Evaluation

A coroner or medical examiner is tasked with determining Cause of Death and Manner of Death. Cause of Death is the injury or injuries that led to the demise; the mechanism of death is the physiologic derailments that ended the individual's life. Contributing events or medical findings should be identified and considered when deemed medically forensically applicable. Manner of Death is a medical legal opinion, typically classified as natural, accident, homicide, suicide, or undetermined, and it is beyond the scope of this article.

Thermal effects of a fatal MVC with fire are often prominent, but a complete, orderly examination of the remains needs to be performed. In a rare case, the medical examiner may uncover evidence of homicide, where the crash and/or fire were intended to hide that evidence. A medical examiner or medical forensic expert may be asked to distinguish between blunt traumatic injuries from the crash event and thermal consequences of the fire. They may also be asked to help evaluate whether a driver-related factor likely contributed to the cause of the crash event, such as being under the influence of a substance or experiencing a medical emergency, for example.

Medical forensic analysis of a decedent in an MVC with fire is largely based on trained pathology observations, including visual, microscopic evaluation, examination and dissection of organ systems, and medical imaging studies (x-ray, CT, etc.). These trained observations are accompanied by toxicology to test for presence of drugs and alcohol. After a fatal MVC with fire, additional laboratory measurements that may be informative include the level of carboxyhemoglobin (COHb) in the blood, which is discussed further below.

In addition to an autopsy report, it may be helpful to obtain the coroner's/medical examiner's file, which may include investigator summaries and hand-written notes of measurements and observations. Autopsy photographs in their original format should be requested; in many jurisdictions, the file materials and autopsy photographs need to be requested separately and may require special permissions and timing. Autopsy photographs often include images of the remains "as received" as well as of the autopsy procedure and findings. Any of these photographs may provide information relevant to the analysis of injury mechanisms for the biomechanical analysis as well as the medical forensic analysis. Sometimes, documentation of findings may be in one source but not another.

Documentation of autopsy findings may be organized into pathologic diagnoses. In the case of MVC with fire involvement the subcategories may list thermal injuries, blunt traumatic injuries, toxicology, carboxyhemoglobin (COHb), and pathologic (pre-existing, chronic, or disease) findings. Formats of autopsy reports as well as summary outlines of findings are variable.

Some reported thermal "injuries" are well-documented postmortem phenomena, including some of the most visually disturbing findings such as charring and pugilistic posturing (boxer pose).

Weights of the remains, including individual organs, are a standard part of an autopsy and may be informative with regard to cause of death or a contributory cause of death. After a fatal MVC with fire, postmortem thermal effects may result in loss of overall length and weight of the remains due to combustion and dehydration, so that the reported values are not consistent with those of the individual when they were living. Thermal effects may also obscure otherwise relevant external findings, such as skin abrasions, lacerations, and seat belt marks.

Death in a fire often occurs a considerable time before the fire is brought under control.[10, 11] It is important to be aware that some reported thermal "injuries" are well-documented postmortem phenomena, including some of the most visually disturbing findings. For example, charring of the body largely occurs after death has taken place. The amount of charring and thermal artifact on a body is not a medical or scientific indicator of the time of death or cause of death. It is unrelated to whether the individual was alive or conscious after the crash event.

After exposure to fire, muscles and tendons cool, dry out, and contract. This shortening of muscles and tendons causes joint flexures, resulting in pugilistic posturing, so called because it resembles a boxer in a ready stance. Pugilistic posturing is a postmortem phenomenon. It is unrelated to perimortem posturing or movement, if any, of the individual. It is unrelated to whether the individual was alive or conscious after the crash event.

In evaluating whether an individual was alive when they were exposed to fire, certain medical forensic findings may be informative. If there are heat-related changes to the lining of the trachea, the individual may have breathed in injuriously hot air. If there is soot in the lower respiratory tract past the mouth and throat, the individual may have breathed in smoke. If there is soot in the esophagus, the individual may have swallowed it. In a body that has charring, there is a risk of postmortem transfer of soot particles to the respiratory mucosa. Techniques at autopsy can minimize or eliminate the postmortem artifact. Widely accepted medical forensic texts contain examples of true effects of heat-related damage and smoke inhalation for comparison.

Quantifying COHb through toxicological analysis of blood collected at autopsy may indicate whether an individual was breathing in smoky air prior to death.[12] There are some general principles for interpretation to be considered in the context of additional incident information. In a fire, carbon monoxide (CO) fumes are generated. Carbon monoxide binds to hemoglobin to form COHb. CO has an affinity to hemoglobin where oxygen attaches that is 200-300 times greater than oxygen. Therefore, it takes only a few breaths of smoke, depending on the CO concentration, to elevate COHb to lethal levels. Lethal levels of COHb are 50-60% in healthy adults, lower in susceptible individuals. COHb levels may reach 10% or more in smokers or individuals exposed to smoky or sooty work environments. The lower threshold for reporting blood levels of COHb varies by jurisdiction and laboratory and may be as high as 10%. Some research suggests that for any postmortem COHb level below 20%, a cause of death other than smoke inhalation should be sought.[13]

Sometimes a question is raised whether low measured COHb levels after a fatal MVC with fire is due to a phenomenon called flash fire or flashover, when a fire suddenly becomes so hot and spreads so fast the individual is unable to breathe. A flashover may happen in closed spaces, including closed or partially vented vehicles, under specific conditions. Experimental studies of flashovers in vehicles indicate that it can take several minutes or longer after a post-MVC fire starts before such conditions are reached, if they are reached at all.13 If this is an issue, a fire expert may be needed to evaluate the fire temperature and chemistry, and whether conditions would likely have been consistent with a flashover at any time during the post-crash fire.

When lethal head or cervical spine blunt trauma are suspected and the head has been exposed to fire, careful evaluation may be needed to determine, if possible, whether any skull fractures are due to blunt trauma or thermal effects. Certain patterns of intracranial hemorrhage in or around the brain are associated with blunt trauma and high head accelerations, while others are known to result from postmortem artifact due to exposure to fire.

Terms such as "flash fire" or "flashover" may be offered as a deus ex machina explanation for low carboxyhemoglobin values that suggest an occupant was not breathing in the smoky environment after an MVC with fire. Flashovers are not common and require a specific stoichiometric mix of fuel, temperature, and oxygen (chemistry) to initiate. If this is an issue, qualified individuals should evaluate whether or not the conditions of the subject fire were likely consistent with a flashover event at any time after the crash.

Acutely lethal central nervous system trauma can be challenging to identify after an MVC with fire. For example, lethal diffuse axonal injury (DAI) caused by a head impact may not be observable in the brain tissue, even under a microscope, as observable pathology takes time to develop and does not progress after the time of death.

Other parts of the medical forensic examination may inform the likelihood of central nervous system trauma. A posterior neck dissection is recommended when blunt force trauma to the head and/or cervical spine is suspected but evidence from the usual anterior autopsy approach is limited or absent. A posterior neck dissection may show concomitant injuries consistent with serious central nervous system blunt trauma, such as cervical spine fractures and/or dislocations, cord compression, and/or muscular hemorrhages. A biomechanical evaluation of the likelihood of serious or worse central nervous system trauma can be a complementary way to evaluate whether a mechanism was likely present in the subject incident.[9]

In addition, scene information may be helpful in determining the likelihood of acutely lethal central nervous system injury or loss of consciousness due to blunt trauma before thermal effects took place. Did any witness detect a pulse, breathing, consciousness, movement, or sound from the decedent after the crash event? Is there reliable evidence that the decedent released their own seat belt buckle or attempted to exit the vehicle? If there was movement, was it consistent with purposeful movement, or was it more consistent with peri-mortem seizure-type activity? If there were breath sounds, were they consistent with regular respiration, or were they more consistent with agonal breathing (the final few breaths in the dying process)?

A careful examination of the thermal pattern on the body compared to evidence in the vehicle may also be informative.

If there are defined areas of sparing on the surface of the body, such as on the back, buttocks, and posterior thighs, that are also consistent with areas on the seat and seatback that are not burned, these are indications that the individual may not have been attempting purposeful movement while the fire was taking place.

Similar care may need to be taken to determine, if possible, whether fractures of bones of the thorax are due to blunt trauma or to thermal effects. Blunt traumatic injuries of the internal organs of the thorax and abdominal regions are likely to be preserved after a fatal MVC with fire, as thermal effects progress from the outside in. Findings such as laceration of the heart or a major blood vessel, or significant quantities of blood in the lungs or abdominal cavity are consistent with acutely lethal blunt trauma. While similar considerations apply to fractures of bones of the extremities, these are rarely acutely fatal, unless a major blood vessel such as a femoral artery is lacerated. However, blunt traumatic fractures of the extremities are relevant to the overall severity of the event.

Less frequently after a fatal MVC with fire, the medical forensic evidence or toxicology results will be consistent with a medical event that precipitated the crash event itself. Findings in organs such as the heart, liver, kidneys or brain may indicate a medical cause or contribution to death. For certain medical events, such as sudden cardiac death, acute pathologic changes in the heart muscle and enzymes typically assessed to inform a diagnosis may not have time to become apparent prior to death. If so indicated, a review of related organ systems and of relevant pre-incident medical records of the individual may be helpful.

Summary

In summary, although a small percentage of fatal motor vehicle crashes involve a fire, these events present significant challenges for analysis. Nevertheless, the worst-case scenario should not be assumed. Initial impressions can be misleading, especially in the setting of obvious thermal effects. Fatal MVCs with fire often involve the potential for blunt trauma and thermal consequences. Analysis of the biomechanical and medical mechanisms of injury in a particular event may be complex and multidisciplinary, but they are worth the effort when it is important to understand what really happened.

Representative Literature

1 K.H. Digges et al., SAE International, 2004-01-0475 (2004).
2 T.A. Fordyce et al., SAE International, 2006-01-0790 (2006).
3 M. Egelhaaf, D. Wolpert, 22nd ESV Conference (NHTSA), Paper No. 11-0315, (2011).
4 A. Viklund et al., Traffic Injury Prevention, 14:823-827 (2013).
5 H.J. Mertz et al., Stapp Car Crash Journal, 2016-22-0018 (2016).
6 J. Yaek et al., SAE International, 2020-01-0518 (2020).
7 C.S. Parenteau, A.C. Courtney, et al., IRCOBI Conference, Paper No. IRC-21-50 (2021).
8 Yoganandan et al., Accidental Injury: Biomechanics and Prevention, 3rd ed., Springer, ISBN 978-1-4939-1731-0 (2015).
9 J.E. Leestma, ed., Chapter 6, Forensic Neuropathology, 2nd ed., Taylor & Francis Group, ISBN 978-0-8493-9167-5 (2009).
10 V.J. DiMaio et al., Forensic Pathology, 3rd ed., CRC Press, ISBN 978-0367251482 (2021).
11 W.U. Spitz, Spitz and Fisher's Medicolegal Investigation of Death, 4th ed., Charles C. Thomas Publisher, Ltd. ISBN 0-398-073444 (2006).
12 D. Dolinak et al., Forensic Pathology Principles and Practice, 2nd ed., Elsevier, ISBN 0-12-219951-0 (2005).
13 Wirthwein, The American Journal of Forensic Medicine and Pathology, 17(2):117-123 (1996).
14 A. Tewarson, Fire Safety Science, 8:1205-1216 (2005).

Legal Malpractice Update

By: James J. Hunter and David C. Anderson, *Collins Einhorn Farrell PC*
james.hunter@ceflawyers.com
david.anderson@ceflawyers.com

Thank you to **Katherine Smith** for your contributions to this article.

Michigan Supreme Court Confirms Attorney's Fees Recoverable as Damages in Legal-Malpractice Claims

Hark Orchids LP v Defendant Attorneys, __ NW3d ___; 2024 WL 5249913 (2024).

Facts

Plaintiff retained defendant attorney and his law firm to represent it in a workers' compensation claim brought by a former employee. During negotiations, the employee informed defendant attorney of her belief that she had additional meritorious claims against plaintiff and would settle those claims in a global settlement of $125,000. Defendant attorney never informed plaintiff of the additional claims or global settlement offer and settled the workers' compensation claim for $35,000.

The employee filed a second action against plaintiff. Plaintiff retained another law firm to defend against the action. Ultimately, plaintiff expended over $312,000 in attorney fees and costs defending against the action.

Plaintiff then brought an action against defendant attorney and his law firm in an attempt to recover attorney fees expended in defense of the employee's second action. Plaintiff alleged that defendant attorney acted negligently by failing to inform it of the employee's threat of additional litigation and global settlement offer.

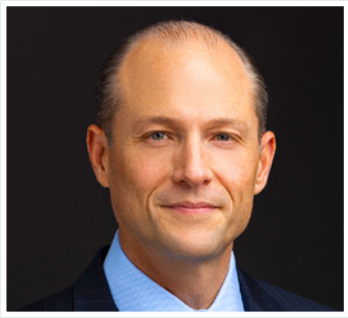
Defendant attorneys filed a motion for summary disposition, arguing that attorney fees incurred in the prior case were not recoverable because plaintiff only alleged that defendant attorney acted negligently. Defendant attorneys contended that the prior litigation exception to the American rule required plaintiff to plead malice, fraud, or similar wrongful conduct to recover attorney fees as damages. The trial court granted the motion. Plaintiff appealed.

The Court of Appeals affirmed. The Court of Appeals determined that Michigan follows the American rule with respect to the payment of attorney fees and costs. Under the rule, attorney fees are not ordinarily recoverable unless a statute, court rule, or common-law exception provides the contrary. The Court examined the prior litigation exception to the American rule, which provides that attorney fees are recoverable when a defendant's wrongful conduct has forced a party to incur legal expenses in a prior litigation with a third party. It explained that the exception is intended to be applied when a party is guilty of malicious, fraudulent, or other wrongful conduct, not simple negligence.

James J. Hunter

Jim is a member of the firm's Professional Liability and Commercial Litigation practice groups. He has extensive experience defending lawyers and other professionals in malpractice claims. Jim's practice also concentrates on representing lawyers and judges in ethics matters.

Before joining the firm, Jim worked on complex litigation and federal white-collar criminal defense. He has experience representing clients in healthcare fraud cases and antitrust investigations. He also served as an Assistant Prosecuting Attorney in Wayne County, Michigan, where he gained valuable trial experience.



David Anderson

David C. Anderson is a share- holder of Collins Einhorn Far- rell PC, and has over 20 years of litigation experience. He has successfully defended a wide variety of professional liability claims, ranging from legal malpractice to claims against accountants, insurance agents, architects and engineers, real estate/title agents and even fine art ap- praisers. He has also successfully defended numerous corporations against product liability claims, including death cases. Over those years, David has gained considerable jury trial and arbitration experience.

Plaintiff argued that the Court should apply the reasoning set forth in two appellate court opinions suggesting that negligence was the appropriate standard under prior litigation exception. See, e.g., *Warren v McLouth Steel Corp*, 111 Mich App 496; 314 NW2d 666 (1981); *Coats v Bussard*, 94 Mich App 558; 288 NW2d 651 (1980). The Court of Appeals found that the cases were decided before 1990 and, thus, were not binding under the Michigan Court Rules. Ultimately, the Court reaffirmed its holdings in *Mieras v DeBona*, 204 Mich App 703; 516 NW2d 154 (1994) and *In re Thomas Estate*, 211 Mich App 594; 536 NW2d 579 (1995) and concluded that plaintiff was required to plead that defendant attorney's conduct was malicious, fraudulent, or similarly wrongful in order to state a claim for attorney fees under the prior litigation exception to the American rule.

Plaintiff then appealed to the Michigan Supreme Court.

Ruling

The Supreme Court reversed the Court of Appeals, holding as a matter of first impression that a client who suffers legal malpractice can recover reasonable and necessary attorney fees that are incurred to correct harms caused by the malpractice, abrogating *Mieras v DeBona*.

The Supreme Court held that attorney fees incurred to mitigate damages caused by malpractice are inherent in the underlying injury in malpractice suits and recoverable in a legal-malpractice action. The Court concluded that this holding is not inconsistent with the American rule to the extent the damages sought seek compensation for fees incurred to correct harms of the alleged malpractice. In the instant case, for example, the plaintiffs had to pursue separate lawsuits. The Court distinguished this category of damages from the fees incurred pursuing the legal-malpractice claim, which are *not* recoverable under the American Rule. A further limitation, the Court noted, is that the fees subject to recovery must be "reasonable and necessary to mitigate the harm from malpractice."

Practice Note

Reasonable and necessary attorney fees incurred by a client in order to correct legal malpractice are valid damages in a legal-malpractice claim. On the other hand, attorney fees incurred prosecuting a legal malpractice claim are not recoverable as damages. Calculating reasonable attorney fees would follow recognized procedures, for example the method set forth in *Woodman v Dep't of Corrections*, 511 Mich 427, 450-452 (2023).

Appellate Practice Report

By: Phillip J. DeRosier, *Dickinson Wright*
pderosier@dickinsonwright.com

Motions for Reconsideration Under Eastern District of Michigan Rule 7.1(h) No Longer Toll the Appeal Deadline

There are a number of reasons why a party facing an adverse decision in federal court might wish to seek reconsideration prior to appealing. But a word of caution is in order: as a recent decision from the United States Court of Appeals for the Sixth Circuit confirms, a motion for reconsideration brought under Eastern District of Michigan Rule 7.1(h) no longer tolls the usual 30-day notice-of-appeal deadline under Federal Rule of Appellate Procedure 4(a)(1)(A). *Miller v. William Beaumont Hosp.*, 121 F.4th 556 (6th Cir. 2024). Instead, a motion seeking reconsideration *must* be brought under Federal Rule of Civil Procedure 59(e) or 60(b).

Overview of Appeal Tolling Provisions under the Federal Rules

The Federal Rules of Appellate Procedure provide for tolling of the usual 30-day appeal period in civil cases upon the filing of certain motions seeking reconsideration of a district court's adverse decision resulting in a final judgment or order, such as:

- Motions "to alter or amend the judgment under Rule 59" (often used to seek reconsideration of a decision made on a motion to dismiss or for summary judgment);
- Motions "for a new trial under Rule 59"; and
- Motions "for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered."

Motions for Reconsideration

For many years, the Sixth Circuit treated motions for reconsideration filed under Eastern District of Michigan Local Rule 7.1 as equivalent to a Rule 59(e) ("motion to alter or amend a judgment") for purposes of Rule 4(a)(4)(A). *See, e.g., Quatrine v. Berghuis*, 751 Fed. App'x 885, 888 (6th Cir. 2018) (recognizing "both [Local Rule 7.1(h) and Rule 59(e)] [as] vehicles for a litigant to ask a court to correct a mistake of law or fact"). But as the Sixth Circuit recently observed in *Miller*, 121 F.4th at 557, Local Rule 7.1 has since been amended (since 2021) to provide that "[p]arties seeking reconsideration of final orders or judgments must file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). The court will not grant reconsideration of such an order or judgment under this rule." E.D. Mich., *Notice of Amendments to Local Rules* 1 (Nov. 10, 2021). Thus, "[t]he Local Rule's amended text now plainly forecloses any continued construal as a Rule 59(e) motion when that motion concerns a final order." *Miller*, 121 F.4th at 558.

Phillip J. DeRosier

Phil DeRosier has more than 20 years' experience representing industry-leading corporations, banks, insurance companies, and individuals in the Michigan Supreme Court, Michigan Court of Appeals, and U.S. Courts of Appeals. Phil has briefed and argued a wide variety of appeals, ranging from commercial contracts to insurance to business torts. He also devotes a significant part of his practice to briefing dispositive motions and working with trial counsel on pre- and post-trial motions, jury instructions, and preserving issues for appeal.

Phil is a past Chair of the Governing Council of the State Bar of Michigan's Appellate Practice Section, and is consistently recognized in Best Lawyers and Michigan Super Lawyers in the area of appellate practice. Phil is co-chair of the Michigan Appellate Bench Bar Conference and a contributing author to the Institute for Continuing Legal Education's *Michigan Appellate Handbook*. Before joining the firm, Phil served as a law clerk for former Michigan Supreme Court Chief Justice Robert P. Young, Jr., and was a staff attorney at the Michigan Court of Appeals.

MDTC Quarterly Archives

Click here

The Sixth Circuit applied that change to devastating effect in *Miller*, where the plaintiff unwittingly filed a motion for reconsideration under Local Rule 7.1(h) from the district court's decision granting summary judgment to the defendant, instead of a motion invoking either Rule 59(e) or 60(b). The Sixth Circuit explained that this meant that the plaintiff's motion for reconsideration "did not alter the thirty-day notice-of-appeal deadline." *Id.* "And because a timely notice of appeal is a jurisdictional requirement," the Court held that it lacked jurisdiction over the plaintiff's appeal from the district court's summary judgment ruling. *Id.*

By contrast, the Sixth Circuit appears to be still willing to construe motions for reconsideration under Western District of Michigan Rule 7.4, which does not contain the same restrictive language as Eastern District of Michigan Rule 7.1(h), as analogous to a motion brought under Rule 59(e) or Rule 60(b). *See, e.g., Barnaby v. Witkowski,* No. 21-1598, 2022 WL 5263832, at *2 (6th Cir. September 26, 2022) (construing *pro se* motion for reconsideration under Western District of Michigan Local Rule 7.4 as brought under Rule 60(b)); *McDonald v. Lasslett*, No. 18-2435, 2019 WL 2592572, at *1 (6th Cir. May 28, 2019) ("The Federal Rules of Civil Procedure do not provide for a 'motion for reconsideration' so courts often construe those filings as Rule 59(e) motions when they are filed within twenty-eight days of judgment, or, if filed later, Rule 60(b) motions."). The better practice, however, would be to expressly designate such a motion as invoking either Rule 59(e) or 60(b).

Conclusion

While motions for reconsideration can be valuable in providing a trial court an opportunity to take a "second look" at a decision entered on a motion to dismiss or for summary judgment, the Sixth Circuit's decision in *Miller* serves as a cautionary tale. A party considering filing such a motion in the Eastern District of Michigan should no longer rely on Local 7.1(h). Instead, the motion should specifically invoke review under either Rule 59(e) or 60(b). And while the Sixth Circuit has thus far not deviated from its historical practice of construing motions for reconsideration filed pursuant to Western District of Michigan Rule 7.4 as a Rule 59(e) or Rule 60(b) motion, parties would be wise to use the same caution when seeking reconsideration in that court.

Leaders of MDTC

Officers

John C.W. Hohmeier, *President*
Frederick V. Livingston, *Vice President*
Richard J. Joppich, *Treasurer*
Michael J. Cook, *Secretary*
Michael J. Jolet, *Immediate Past President*
Madelyne C. Lawry, *Executive Director*

Board

Regina A. Berlin
Sarah E. Cherry
Javon R. David
David F. Hansma
Veronica R. Ibrahim
Thomas D. Isaacs
Shawn Lewis
Stephen Madej
Megan R. Mulder
Lindsey Peck
Edward P. Perdue
Nathan Scherbarth

Regional Chairs

Grand Rapids: Andrew Spica
Lansing: Michael J. Pattwell
Marquette: Jeremy S. Pickens
Saginaw/Flint: Daniel Campbell
SE Michigan: Quendale G. Simmons
Traverse City: Gregory R. Grant
Kalamazoo: Jordan Held

Section Chairs

Appellate Practice
Grant Jaskulski

Appellate Practice
Amanda Waske

Commercial Litigation
David Hansma

Commercial Litigation
Myles J. Baker

Commercial Litigation
Salina Hamilton

General Liability
Anthony Pignotti

Immigration Law
Ahndia Mansoori

In House Counsel
Lee Khachaturian

In House Counsel
Frank Penzato

Insurance Law
Samantha Boyd

Labor and Employment
Nicholas Huguelet

Labor and Employment
Adrienne L. Hayes

Law Practice Management
Fred Fresard

Municipal & Government Liability
Robyn Brooks

Municipal & Government Liability
Matthew J. Zalewski

Professional Liability & Health Care
Kevin Lesperance

Professional Liability & Health Care
Daniel John Ferris

Professional Liability & Health Care
Jack Ottenwess

Trial Practice
Renee T. Townsend

Trial Practice
Randall Juip

Young Lawyers
Brandon M.H. Schumacher

Young Lawyers
Amanda P. Waske

MDTC 2024-2025 Committees

Amicus
Annual Meeting & Summer Conference 2025
Awards
Diversity, Equity & Inclusion
E-Newsletter Committee
Future Planning 2024
Golf Committee
Legal Excellence Awards
Meet The Judges
Membership
Nominating Committee
Past Presidents Society
Public Policy Committee
Quarterly Associate Editors
Quarterly Committee Members
Quarterly Editor
Regional Chair Liaison
Section Chair Liaison
Social Media
Softball
Sponsors (vendors/firm)
Veterans Committee
Winter Meeting 2024
Young Lawyers Section Education

MDTC Welcomes New Members!

William Asimakis, *Clark Hill PLC*
Briana Combs, *Plunkett Cooney*
Charles Hayden, IV, Dawda Counselors at Law
Lindsay Hazen, *Giarmarco, Mullins, & Horton, P.C.*
Julie Kosovec, *Brooks Wilkins Sharkey & Turco, PLLC*
Kevin Mackin, *O'Hagan Meyer*
Margaret Mason, *McDonald Baas, & Livingston, PLLC*
Christopher McDonald, *McDonald Baas & Livingston PLLC*
Jasmine Owens, *Bowman and Brooke LLP*
Patrick Quinn, *Foster Swift Collins & Smith*
Nicholas Raak, *Henn Lesperance PLC*
Adam Salomon, *Dawda Counselors at Law*
Aidan Schurig, *Dawda Counselors at Law*
Daniel Sharkey, *Brooks Wilkins Sharkey & Turco PLLC*
Michelle Thomas, *Dickie, McCamey & Chilcote, P.C.*

MDTC
P.O. Box 66
Grand Ledge, MI 48837

MDTC is an association of Michigan defense attorneys dedicated to representing individuals and corporations in civil litigation. The impact of MDTC is felt through advocacy in amicus briefs often invited by the Michigan Supreme Court and always related to areas of public interest, as well as circulation of knowledge and insight in timely seminars and articles in the well-respected Quarterly publication. Membership in MDTC provides exceptional opportunities for networking not only with fellow lawyers, but also with potential clients and members of the judiciary.