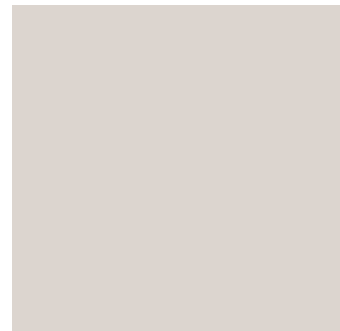


# MICHIGAN DEFENSE QUARTERLY

Volume 42, No. 3 | 2026



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## Article

The Story Behind the Records | Overtrusting Autopilot – Foreseeable Misuse and Liability in Semi-Autonomous Vehicles | The QMSR Transition, New FDA Guidance, and their Impacts on Active Implantable Medical Devices | Building Security Engineering into AV Systems

## Plus

Schedule of Events | Member to Member Services | Welcome New Members

Promoting Excellence in **Civil Litigation**





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MICHIGAN DEFENSE  
**QUARTERLY**

Volume 42, No. 3 | 2026

**Promoting Excellence in Civil Litigation**

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Articles published in the Michigan Defense Quarterly reflect the views of the individual authors. The Quarterly welcomes articles and opinions on any topic that will be of interest to MDTC members in their practices. Although MDTC is an association of lawyers who primarily practice on the defense side, the Quarterly emphasizes analysis over advocacy and favors the expression of a broad range of views, so articles from a plaintiff's perspective are welcome. Author's Guidelines are available from the Co-Editors.

# President's Corner

By: Frederick V. Livingston, MB&L, PLLC  
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Frederick Livingston is known throughout the insurance industry for zealously investigating and litigating against fraud in a wide array of property and casualty claims, whether perpetrated by individuals or corporations.

Frederick focuses his practice on insurance defense litigation, with an emphasis on premise liability matters, automobile negligence cases, workers' compensation, and First-Party No-Fault cases, many of which involve fraud and excessive medical treatment.

He is known for aggressively defending his clients in litigation while always communicating to his clients any obligations that may be owed to an injured party. He has a long history of outstanding successes from successful motion practice that has saved clients millions of dollars along with successfully trying several cases to verdict.

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## Building Momentum: A Future Planning Meeting That Delivered

In my first President's Corner, I shared my vision for this year—fostering community, creating dialogue, expanding opportunities for young attorneys, and continuing our tradition of excellence. I am thrilled to report that on January 16, 2026, the MDTC Future Planning Meeting brought that vision to life in a powerful way. Leaders from across our organization gathered at the Sheraton Detroit Novi Hotel to chart a bold course for MDTC's future, and the energy and ideas that emerged left me more confident than ever that we are headed in the right direction.

Before I share the highlights, let me begin with gratitude. First and foremost, I want to thank our Vice President, **Rik Joppich**, who did a tremendous job of running the meeting. Rik kept the conversation focused, productive, and moving forward while still making space for every voice in the room. And none of it would have been possible without **Kate Pojeta**, who planned everything from start to finish. From the logistics and materials to the follow-up communications and templates, Kate's meticulous preparation ensured the day ran seamlessly. Rik and Kate's combined efforts set the tone for everything that followed.

I also want to thank **Garan Lucow Miller** and the **Kitch Firm** for their generous sponsorship of the meeting. Your continued investment in MDTC makes events like this possible, and we are deeply grateful. I also want to extend a special thank you to **Catherine Duckett**, owner of **Michigan Legal Copy**, for sponsoring the reception. Catherine's company has been a trusted partner to Michigan's insurance defense community for over twenty years, providing outstanding record retrieval and document production services. Her support of our reception allowed attendees to continue the conversations and relationship-building that make MDTC so special, and we sincerely appreciate her generosity.

### A New Era of Educational Programming

The centerpiece of our discussion was a comprehensive plan to dramatically increase MDTC's educational programming. Mike Cook, our Treasurer, put together an outstanding draft outline for two parallel programming tracks that I believe will transform what MDTC offers its members.

The first is a New-Lawyer Bootcamp—a structured program designed to walk newer defense attorneys through the essential skills and knowledge they need to build a successful practice. The bootcamp would cover the full lifecycle of civil litigation, giving participants a foundation they can build on throughout their careers. My vision is that this becomes a signature MDTC program, one that we can refine and repeat to ensure every generation of defense lawyers has the tools and mentorship to thrive.

The second track is a Section Webinar Program that tasks each of our section chairs with organizing and delivering at least one webinar every two years on a topic specific to their area of practice. We have laid out a schedule beginning with Appellate Practice in April 2026 and running through Trial Practice in August 2027.

## Fresh Ideas from Dedicated Members

The meeting featured contributions from Tony Randazzo of Secrest Wardle, who developed a detailed proposal for consistent monthly live and virtual programming. Tony's vision includes deep-dive sessions on topics that matter most to defense practitioners—from claim intake and case theory development, to ESI and e-discovery challenges, to expert witness management, dispositive motions, ADR strategies, and trial skills workshops including mock voir dire exercises. His thoughtfulness and initiative embody exactly the kind of member engagement that makes MDTC exceptional, and I thank him for his contributions.

I also want to recognize Jack Ottenwess and David Ottenwess, who were present for the entire day and brought tremendous energy and ideas to the table. Their willingness to invest a full day into the future of this organization speaks volumes about the caliber of people we have in MDTC. David's experience and Jack's perspective as a newer generation of leadership combined to produce insights that shaped several of the initiatives we discussed, and I am grateful for their dedication.

## Strengthening Our Foundation

We also had candid and productive conversations about membership and financial sustainability. The group discussed forming a Fundraising Task Force to coordinate income-generating initiatives across committees, including sponsorships, vendor relationships, and creative membership strategies. One idea that generated real enthusiasm was offering free or reduced-cost membership to law students—planting seeds now for the next generation of MDTC leaders. We also discussed leveraging our member firms by encouraging higher percentages of attorneys within sponsor firms to become individual members, and exploring ways to have firms host events to reduce venue costs while strengthening the personal connections among our members.

## Leadership That Shows Up

A recurring theme throughout the meeting was the importance of follow-through from our leaders. I was encouraged by the consensus that when section chairs and committee leaders take personal ownership of their programming responsibilities, the results speak for themselves. Rik reinforced this point throughout the day, emphasizing the need to share meeting outcomes with section leaders promptly and hold them accountable for delivering on their commitments. I could not agree more. Leadership is not a title—it is a commitment to action.

## Looking Ahead


As we move forward, I want to remind everyone of some important dates on our calendar. The **Annual Meeting & Summer Conference** is set for Friday, June 12, 2026, at the DoubleTree Hotel in Detroit, where we will continue the momentum with compelling speakers and programming. And we are already planning the **Winter Meeting** for Friday, November 6, 2026, at the Sheraton Detroit Novi Hotel.

The future planning meeting reminded me why I am so proud to serve this organization. The ideas were bold, the discussions were honest, and the commitment from our leaders was unmistakable. MDTC is not standing still—we are building something special together.

*"Alone we can do so little; together we can do so much."*  
– Helen Keller

Thank you for the opportunity to lead, and thank you to every member and sponsor who makes MDTC the premier civil defense organization in Michigan. Let's keep building together.

## MDTC Schedule of Events

[Click for more information](#) 

### 2026

#### Annual Meeting & Summer Conference

Friday, June 12, 2026

9:00 a.m. – 5:30 p.m. @ DoubleTree Hotel, Detroit

#### Defense Network Reception

Friday, June 12, 2026

4:00 p.m.

#### Battle of the Bar

Tuesday, August 18, 2026

#### Golf Outing

Friday, September 11, 2026

#### Winter Meeting

Friday, October 30, 2026

8:00 a.m. – 5:00 p.m. @ Sheraton Detroit Novi Hotel

#### Meet the Judges

Thursday, October 8, 2026



## The Story Behind the Records

**By: Mary Ann Seibold, RN, BSN, MBA, FN, CPC,**  
*Seibold & Associates Consulting Agency*  
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### Medical Case Review

Jone was an 18-year-old male at the time of his motor vehicle accident (MVA). According to medical records and police reports, Jone's vehicle was struck from behind, propelling him into an intersection where he was hit again by a second vehicle. This second impact occurred on the driver's side, causing significant intrusion into the vehicle. Emergency Medical Services (EMS) quickly transported Jone to a Level 1 trauma facility, where he was diagnosed and treated for multiple injuries, including pelvic ring fractures, a ruptured bladder, traumatic brain injury (TBI), a traumatic laceration of the ascending colon, and celiac artery dissection.

Pelvic fractures are typically caused by high-impact trauma and are often accompanied by additional injuries. In Jone's case, these included a bladder rupture (uncommon but associated with pelvic trauma such as sustained in the MVA), a laceration of the ascending colon, and damage to the celiac artery (an important artery for maintaining blood flow to these vital organs). Due to the severity of his injuries, a multidisciplinary team brought Jone to the operating room for stabilization of the pelvic ring and repair of the ruptured bladder and ascending colon.

After spending three weeks in the hospital due to his injuries and multiple complications, Jone was eventually discharged to inpatient rehabilitation, where he would spend the next month. This decision was based on his functional limitations; he required assistance with transfers, dressing, toileting and experienced severe cognitive deficits from the TBI. The TBI impaired memory and attention.

Ten months have passed since the accident. You are now working on behalf of the defense. As you review thousands of pages of records, you begin to notice discrepancies. Within the documentation are several referral notes to neurology, physical and occupational therapy, orthopedic surgeons, and two home health care agencies. You are concerned about the gaps between rehab discharge and home health care, along with inconsistencies in billing.

Fortunately, your office collaborates closely with nurse consultants who apply clinical judgment, billing expertise, and regulatory guidelines to assess medical necessity, injury severity, and care coordination; skills that directly support your legal team's case analysis. Through the nurse consultants' detailed review of the medical records, missing documentation was identified along with unsupported diagnoses, and questionable services.



**Mary Ann Seibold**

*Seibold & Associates Consulting Agency*  
[maryann@seiblnc.com](mailto:maryann@seiblnc.com)

Mary Ann Seibold is the driving force behind Seibold & Associates Consulting Agency, where she brings more than a decade of hands-on healthcare experience to her work. Over the years, she's worn many hats — from caring for patients in the ICU and medical/surgical units to auditing within the insurance industry. These diverse roles have given her a deep understanding of disease processes, injuries, and the complex language of medicine.

Her academic journey began at Andrews University, where she earned her BSN in Nursing, and continued with an MBA in Healthcare Administration from Baker College. Never one to stop learning, Mary Ann has also pursued specialized certifications in Advanced Strangulation Prevention, Forensic Nursing, and as a Certified Professional Coder (CPC).

What sets Mary Ann apart is her ability to balance bigpicture strategy with attention to detail. Whether she's guiding clients through unique cases or managing large medical caseloads, she approaches every challenge with expertise, compassion, and clarity.

Through Seibold & Associates, Mary Ann's mission is simple: to make complex healthcare issues understandable and manageable. If you're curious about how her team can support your firm, she welcomes you to reach out for a conversation.

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# The Story Behind the Records, cont.

## Understanding Their Importance: What Are Medical Records?

Medical records are not merely paperwork; they are legal documents. This documentation supports clinical decisions, interventions, observations made by the healthcare team and patient responses to those interventions. Records should never be altered, deleted, or falsified.

Robust and accurate medical records and coding provide a comprehensive view of injury or intervention dates, actions taken by individuals and medical professionals, decisions (or lack thereof) regarding care, and communication relevant to a person's health. They help establish facts; whether care was sought in a timely manner, whether pain concerns were addressed appropriately, and whether proper medical direction was followed. However, medical records can be misinterpreted if taken out of context or mishandled.

This is where the nursing consultant process (a structured framework built on the nursing assessment, diagnosis, planning, implementation, and evaluation) comes into play. It provides a systematic approach to organizing care both chronologically and logically. A disciplined focus on essential data points, including progress notes, medication logs, operative reports, and discharge summaries, uncover discrepancies between documented care and billed services. Consultant teams can navigate records with precision and purpose.

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In Jone's case, several inconsistencies were noted regarding orders for walking (ambulation), medical equipment issuance, and the dates the home care provider reportedly saw him. Billing records showed that he had received a new manual wheelchair upon discharge from rehab, initially prescribed due to his strict mobility limitations. However, subsequent documentation revealed that during his stay in rehabilitation, Jone progressed from partial weight-bearing during transfers and exclusive wheelchair use, to utilizing forearm crutches. This is an option offering greater stability and better suited for long-term mobility. This transition was attributed to his increased strength, endurance, and overall improvement in mobility.

After his rehabilitation stay, orthopedic physicians confirmed that Jone was ambulatory with the assistance of crutches and a

brace for pelvic ring fracture stabilization.

Further discrepancies emerged in the scheduling and documentation of home health care visits. Records indicated that Jone received home care three times per week, yet some visit dates and times overlapped or conflicted with one another. Additionally, the documentation appeared repetitive, with identical observations and statements seemingly copied and pasted across multiple weeks.

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Medical records may be complex, but they do not have to be impenetrable. Nurse consultants with specialized expertise in clinical documentation, coding, and auditing serve as indispensable partners and allies to legal professionals. They bridge the divide between medicine and law, offering clarity, accuracy, and insight that can significantly influence the outcome of a case.

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## Targeting Medical Value with Exceptional Medical Analyses

Medical records are often the backbone of complex legal cases, whether involving personal injury, medical malpractice, insurance disputes, or fraud investigations. These records are filled with clinical language, coded data, and nuanced documentation that can be difficult to interpret without clinical training.

Nurses hold a unique position within the healthcare system. They frequently serve as intermediaries; coordinating and communicating with the care team at every level. This gives them a distinct perspective when scrutinizing records for severity of illness and intensity of services.

When nurse consultants apply their expertise to legal case analysis, they bring more than clinical knowledge—they bring context. They can identify whether the severity of illness aligns with the intensity of services provided, if documentation supports medical necessity, and care coordination was appropriate and timely. Their ability to translate clinical narratives into actionable legal points can transform a case into a strong one.

Exceptional medical analyses go beyond identifying gaps or inconsistencies. They clarify the trajectory of care, highlight deviations from expected protocols, and illuminate the impact of each decision on patient outcomes. This level of scrutiny helps legal teams build compelling arguments grounded in clinical reality—whether defending a provider's actions or challenging the validity of a claim.

In Jone's case, the nurse consultant initiated the development

of a comprehensive timeline of care and injuries by analyzing the clinical and billing records provided. Using a structured nursing approach, they were able to identify missing documentation and flag inconsistencies throughout the record. This method also allowed them to note discrepancies where different providers recorded conflicting or opposing observations. By mapping out the care chronologically and logically, the consultant provided legal teams with a more clear and precise path through the complex medical records.

### Bridging the Divide: From Complex Charts to Clear Conclusions

Medical records may be complex, but they do not have to be impenetrable. Nurse consultants with specialized expertise in clinical documentation, coding, and auditing serve as indispensable partners and allies to legal professionals. They bridge the divide between medicine and law, offering clarity, accuracy, and insight that can significantly influence the outcome of a

case. Whether interpreting charts, identifying inconsistencies, or validating billing practices, their contributions are vital to navigating the medical dimensions of legal work.

Jone's case exemplifies the profound impact that meticulous medical record analysis plays in uncovering the truth behind complex clinical narratives. From the moment of the initial trauma to rehabilitation and beyond, each phase of care left behind a trail of documentation. Some documentation was clear and concise, while others were conflicting. Through the trained lens of nurse consultants, these records transformed from static entries into dynamic evidence, exposing gaps in care, and billing irregularities. These nurse reviews fortify case analysis and ensure that conclusions are anchored in medical reality. Ultimately, the story behind the records is not just about what was documented; it is about what those documents reveal when examined with precision, experience, and purpose.

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## Legal Malpractice Update

**By: James J. Hunter and David C. Anderson, Collins Einhorn Farrell PC**  
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*Dean Bach v. Law Firm and Lawyer*, unpublished per curiam opinion of the Court of Appeals, issued August 12, 2025 (Docket No. 371106); 2025 WL 2325014.

### Facts

Dean Bach hired defendant lawyer and his law firm (“lawyers”) to represent him in a bankruptcy matter. While the lawyers prepared the bankruptcy filing, Bach was sued by his then business partner. The lawyers represented him in that suit (“underlying suit”) and settled that suit at a facilitation.

Shortly after the settlement agreement was reached in the underlying suit, the lawyers were replaced by successor counsel who sought to overturn the settlement agreement based on fraud. After a two-day evidentiary hearing, the underlying court upheld the settlement agreement after finding that the allegedly fraudulent facts Bach relied on were not relevant to the settlement, and that instead, his fraud claim was “motivated by settlement remorse and is entirely without merit.”

Bach then brought a legal malpractice suit against the lawyers arguing that they failed to adequately represent him, including by failing to file a counterclaim, agreeing to facilitation without conducting discovery, and misunderstanding the facts. Bach also raised issues relating to the terms of the settlement agreement.

The lawyers argued that the claim should be dismissed because the doctrine of collateral estoppel precludes it (as the underlying court held an evidentiary hearing on the matter), that their actions as to settlement and discovery were shielded by the attorney judgment rule, and that Bach couldn’t prove that but for the alleged malpractice, he would have achieved a better result. The trial court granted the lawyers’ motion for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10).

### Ruling

Bach appealed arguing that his claim is not barred by collateral estoppel and that he established a genuine issue of material fact making summary disposition improper. The lawyers provided evidence in their summary disposition motion that they had filed a motion for temporary restraining order, as well as a supplemental brief after the fact, as well as a summary disposition motion on Bach’s behalf in the underlying matter.



**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 Farrell 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 appraisers. 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.

## Legal Malpractice Update, cont.

The court found that evidence showed the lawyers conducted significant investigation before facilitation, even though it wasn't formal discovery. The court also noted that the lawyers didn't *agree* to facilitation, the underlying court ordered the matter to facilitation after the lawyers filed a motion for summary disposition. The court reasoned that this was adequate representation before the facilitation occurred.

The court explained that the only evidence provided by plaintiff in support of his response was a one-page affidavit averring that his complaint was accurate. The court reasoned that this was not sufficient to avoid summary disposition. Accordingly, the Court of Appeals affirmed the trial court decision granting the lawyers summary disposition.

### Practice Note

Settle-and-sue cases, where an underlying plaintiff settles their claim and then sues their lawyer, require more than second-guessing strategic decisions; plaintiffs must show an error that left them with "no other recourse" but to settle. Be sure to discuss the risks and advantages of settling and other possible options with your clients (and then document that conversation).



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## Overtrusting Autopilot – Foreseeable Misuse and Liability in Semi-Autonomous Vehicles

**By: Frederick V. Livingston**, *President of the Michigan Defense Trial Counsel (MDTC) and co-managing partner at McDonald, Baas & Livingston PLLC.*  
[frederick.livingston@mbfirm.com](mailto:frederick.livingston@mbfirm.com)

### Autopilot on Trial: A Landmark Crash Verdict

In August 2025, a federal jury in Florida delivered a verdict in a case arising from a 2019 crash where a Tesla Model S with its “Autopilot” engaged blew through a T-intersection at over 50 mph and struck a parked car – killing one woman and seriously injuring her boyfriend. The driver admitted he was looking at his phone at the time. The jury found Tesla’s Autopilot partially to blame for the tragedy.

#### Verdict at a Glance:

- **Compensatory damages:** \$59 million to the victim’s family and \$70 million to the injured boyfriend
- **Punitive damages:** \$200 million against Tesla
- **Fault split:** 67% driver / 33% Tesla (Tesla covers one-third of compensatory damages and all punitive damages)

Why would a manufacturer be held liable when the driver was clearly negligent? The answer lies in a product liability concept known as the doctrine of *foreseeable misuse*. In this case, the plaintiffs convinced the jury that Tesla’s Autopilot was defectively designed because it failed to prevent or mitigate the very kind of driver error that was bound to happen. Evidence showed the Autopilot system actually detected the parked SUV ahead but didn’t brake – partly because the driver’s foot on the accelerator overrode it. The plaintiffs argued that Autopilot should never have been usable on that non-highway road or at least should have forced the driver’s attention back to the road. They also pointed to Tesla’s marketing – calling the system “Autopilot” and touting its self-driving capabilities – which they claimed lulled drivers into overtrusting the technology. In their view, Tesla *foreseeably* encouraged misuse, setting the stage for exactly this kind of accident.

Tesla, for its part, maintained that the driver’s distraction was the true cause of the crash. The company pointed to warnings (in the manual and on-screen) emphasizing that Autopilot is not an autonomous system and that drivers must keep their hands on the wheel and eyes on the road – it was never meant to be a “chauffeur.” But the jury was not persuaded. By finding a design defect, the jury concluded that



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## Overtrusting Autopilot, cont.

Tesla hadn't done enough to guard against predictable human lapses. The \$200 million punitive damages award underscored the jury's view that Tesla acted with a conscious disregard for safety in the way it designed or marketed Autopilot.

This high-profile trial – the first U.S. jury verdict stemming from a fatal Tesla Autopilot crash – illustrates a broader shift in product liability law. Courts and juries are increasingly holding manufacturers accountable not only for product malfunctions during intended use, but also for harm caused by reasonably foreseeable misuse or user error. In other words, if you know your product is likely to be used in careless or unintended ways, you have a duty to design with those scenarios in mind.

### From Patent Danger to Reasonable Design: A Brief History

For much of the 20th century, courts followed the “patent danger” doctrine exemplified by *Campo v. Scofield*, 301 NY 468; 95 NE2d 802 (1950). If a product's hazard was obvious, the manufacturer had no duty to protect users from it. The rationale was that an ordinary user who can clearly see a risk (say a machine's exposed blade) is expected to avoid it. So, if they get hurt, it's their own fault. Under that old rule, obvious misuse or carelessness by the user completely barred any recovery. This was a harsh doctrine that often left injured consumers with no recourse.

By the 1970s, courts began dismantling that strict approach. In *Micallef v. Miehle Co.*, 39 NY2d 376; 348 NE2d 571 (1976), the New York Court of Appeals rejected the patent danger rule. The court held that manufacturers must use reasonable design care to avoid unreasonable risks of harm, even if a danger is open and obvious. Around the same time, the shift from contributory negligence to comparative negligence meant that an obvious risk would no longer automatically bar a claim – it became just one factor in the jury's apportionment of fault.

This shift set the stage for modern design defect standards. Today, most courts apply one or both of two tests to determine if a product's design is unreasonably dangerous:

- **Consumer Expectations Test:** A design is defective if the product is more dangerous than an ordinary consumer would reasonably expect. (For example, a car that bursts into flames from a minor fender-bender falls below reasonable safety expectations.)
- **Risk-Utility Test (with Reasonable Alternative Design):** A design is defective if its risks outweigh its benefits, considering any reasonable alternative design (RAD) that could have made it safer at reasonable cost. Under this approach, courts weigh the product's utility against factors

like the feasibility and cost of safety improvements and the likelihood and severity of potential harm.

Importantly, both of these tests account for foreseeable misuse or human error. Under the consumer-expectations standard, a product may be deemed defective if it is less safe than a reasonable consumer would expect, and today's consumers reasonably expect products to tolerate a certain amount of careless misuse. Under the risk-utility approach, designing against foreseeable misuse is explicitly part of the equation: if a modest sensor or software tweak could prevent accidents caused by predictable user mistakes, then failing to implement that safety measure could tip the balance toward finding the design defective.

Many jurisdictions allow a plaintiff to prove a design defect under either test (and some allow both simultaneously). Florida, for example, recognizes both standards. In the Tesla Autopilot case, the judge found the claims viable under both: a jury could conclude that Autopilot failed to meet ordinary consumer expectations of safety, and also that feasible alternative designs (such as limiting Autopilot to highway use or adding better driver monitoring) could have reduced the risk. By 2025, the law expects manufacturers to anticipate common user behavior – including lapses and mistakes – and to build in reasonable safeguards.

### Designing for “Foreseeable Misuse”

So what exactly counts as a *foreseeable misuse* in the eyes of the law? Manufacturers don't have to anticipate every bizarre or reckless thing a person might do with their product – there is a line between foreseeable misuse and truly abnormal use. For example, using a loaded pistol as a hammer or trying to demolish a building with a farm tractor would likely be deemed an unforeseeable misuse, outside the product's intended purpose. Such extreme misuse is so abnormal that it breaks the chain of causation and absolves the manufacturer of liability.

On the other hand, many misuses are entirely predictable. People make mistakes or take shortcuts all the time, and if those behaviors are common enough to anticipate, the law increasingly treats them as foreseeable. Using a chair as a stepstool is a classic example. Courts have even allowed recovery for injuries in such scenarios on the grounds that the misuse was not outlandish. As one state supreme court noted, manufacturers can be liable for injuries from foreseeable misuses (like using a chair as a stepstool) if the design fails to account for those risks. In practice, this means a manufacturer may need to provide warnings or safety features to guard against predictable misuses.

## Overtrusting Autopilot, cont.

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In the context of driver-assist systems like Tesla's Autopilot, the "misuse" at issue isn't some wild deviation – it's simply using the product carelessly. Distracted driving is a common and entirely foreseeable behavior, even with advanced driving aids. Legally, a driver's distraction or overreliance on Autopilot is viewed as a foreseeable misuse (negligent use) rather than an abnormal misuse. The driver is still using the product for its intended purpose (driving with Autopilot engaged), just doing so negligently. And if that negligence is reasonably predictable – for example, people tend to let their guard down when a system is marketed as "doing the driving" – then the manufacturer cannot just blame the user. Instead, the product's design may be deemed defective for failing to mitigate that risk.

The Tesla case put this principle into practice. Evidence showed that Autopilot could be engaged on roads where it was not intended to be used (the crash happened on a non-highway road). The plaintiffs argued that Tesla knew Autopilot was unreliable on such roads but failed to "geo-fence" the feature to prevent off-highway use. They also faulted Tesla's weak driver-monitoring system – it relied only on steering wheel torque to detect whether the driver was paying attention. A more effective monitoring setup (for example, a camera-based eye tracker) might have alerted the driver or even slowed the car when he looked away. The plaintiffs offered these as reasonable alternative designs that could have averted the crash by counteracting foreseeable human error.

Tesla's design was found defective because the company failed to include safeguards to address the very behavior it should have expected (drivers getting distracted or over-trusting the system). Recognizing foreseeable misuse does not make the manufacturer automatically 100% liable – it simply brings the manufacturer into the fault equation. The driver's own negligence still counts under comparative fault rules. The Florida verdict reflected this balance: the distracted driver did not get a free pass (he took 67% of the fault), but Tesla also couldn't escape liability just because the driver erred. Foreseeable misuse doctrine says: Yes, the driver was negligent, but that negligence was predictable and the product should have been designed to help prevent the harm. The outcome is a shared-fault scenario, with the manufacturer paying the portion of damages attributable to its design shortcomings.

### Encouraging Overreliance? The Role of Marketing and Design

A modern twist in these cases is the impact of marketing and product messaging. Tesla's very name for its system – Autopilot – came under heavy scrutiny at trial for creating unrealistic consumer expectations. The plaintiffs argued that Tesla's branding and public statements overstated the system's capabilities and encouraged drivers to over-rely on the technology.

In this case, one can imagine the driver assumed Autopilot had things under control while he glanced at his phone – a belief Tesla's marketing may have fostered.

Courtrooms are growing more receptive to these arguments. In the Florida trial, the judge allowed the jury to consider punitive damages based on evidence that Tesla's marketing suggested capabilities beyond what the system could safely deliver – behavior that could be seen as consciously disregarding known risks. The \$200 million punitive award shows how marketing hype can backfire: jurors may treat aggressive sales pitches as evidence of indifference or recklessness when the product fails to live up to its promises.

For defense counsel, this trend serves as a warning: product manuals, advertisements, and public statements can all become plaintiff exhibits. A driver-assist system that is only safe with a vigilant user should not be sold with the suggestion that it will make driving carefree. If a company overpromises and a user over-relies to tragic effect, a jury may well decide that part of the fault lies with the company. In effect, flashy marketing can create a new category of foreseeable misuse – the misuse being that consumers will trust the product more than they safely should.

And indeed, that argument succeeded against Tesla: the plaintiffs tied Tesla's ambitious marketing to the driver's false sense of security, which encouraged the very misuse that led to the crash. This framing shifted the narrative beyond a simple product flaw – it cast Tesla as having actively contributed to the dangerous situation by cultivating consumer complacency. Manufacturers need to align their product's image (as presented in marketing) with its real-world safe capabilities. Otherwise, the marketing department might inadvertently end up writing the script for a plaintiff's closing argument.

### Shared Fault and the Fairness Question

Some observers balk at blaming a company for an accident largely caused by a human driver's negligence, arguing it unfairly rewards the driver's carelessness. But proponents note that manufacturers are better able to absorb and spread accident costs, and since they profit from their products, it is fair to have them share in the cost of failures. Concerns about *moral hazard* – the idea that drivers will be less careful if the company pays – have little practical bite. No one intentionally crashes just because a manufacturer might pay, and drivers still have every incentive to avoid deadly accidents. Moreover, under comparative fault principles, a negligent driver's own recovery is reduced or eliminated even if the manufacturer also shares blame. Foreseeable misuse doctrine simply allows fault to be shared when both the user and the product contributed to an accident. It turns the old all-or-nothing defense ("the

## Overtrusting Autopilot, cont.

user misused it, so the case is dismissed”) into a comparative-fault question of how much each party is to blame. In the Tesla case, for example, the jury allocated 67% fault to the driver and 33% to Tesla – reflecting that the driver’s distraction was the main cause, but Tesla’s design contributed by failing to prevent a foreseeable hazard.

### Automation on the Rise: New Risks, New Questions

The Tesla verdict could be a bellwether for how courts will handle the next generations of vehicle automation. Today’s Autopilot and similar driver-assist systems still rely on an attentive human as the ultimate safety net. But what happens as we progress to Level 3, 4, and eventually fully autonomous Level 5 vehicles – where the car’s AI does most or all of the driving?

Most likely, liability for crashes will shift further onto manufacturers and software developers as human control over driving decreases. If the car is effectively driving itself and a crash happens, it becomes difficult to pin blame on a “negligent driver” because the human isn’t truly in control. The logic applied in the Tesla case suggests that as human responsibility wanes, the manufacturer’s share of blame will wax. At some point – with a fully self-driving Level 5 car – we might even see juries assign 100% of the fault to the vehicle’s maker or software provider, treating what used to be “accidents” as straightforward product failures.

This shift raises some fundamental questions. Will traditional negligence concepts even make sense when the “driver” has no control? We may need to rethink comparative fault when one party in an accident is a machine. If crashes become primarily product liability events, both insurance and litigation strategies will change. Auto insurers might pivot from covering individual drivers to underwriting the vehicles or their manufacturers, then seek reimbursement from the manufacturer after paying a claim. Product liability could end up absorbing a large portion of traditional auto accident litigation.

There is a balance to be struck. If manufacturers face excessive liability for human error, innovation could be chilled. But if companies aren’t held accountable at all, unsafe designs might proliferate and public trust in new technology could suffer. Going forward, we might see incremental legal adjustments in search of that balance. For example, limits on punitive damages in auto-tech cases, or “safe harbor” provisions that shield manufacturers who meet certain safety standards. These ideas are still speculative, but they are already being debated in policy circles.

### Conclusion: Preparing for a New Liability Landscape

The doctrine of foreseeable misuse isn’t brand new – it’s an evolution of product liability principles shaped by technology and human behavior. But applying it to semi-autonomous vehicles is breaking new ground. The Tesla Autopilot verdict underscored a core theme: the law now increasingly expects manufacturers to design products with an eye toward how real people are likely to fail. Instead of treating human error as an unpredictable wildcard that absolves the company of responsibility, courts are treating human fallibility as a given – a factor that must be accounted for in a reasonably safe design.

One commentary after the Tesla trial noted that future cases in this arena will “turn less on whether a driver made a mistake and more on whether the manufacturer did enough to anticipate that mistake.” This doesn’t mean human drivers get a free pass; it means the spotlight widens to scrutinize the choices companies make in engineering and marketing their advanced systems.

For insurance defense attorneys, these trends present both challenges and opportunities. Defending a high-tech product case will demand marshaling technical evidence and expert testimony to show that the manufacturer did account for foreseeable risks (or that the particular misuse was truly beyond what anyone could anticipate). At the same time, if you represent insurers, this shifting fault landscape could create new subrogation opportunities. For instance, insurers might seek to recover payouts from automakers when an automated system is partly to blame for a crash. Mastery of concepts like reasonable alternative design, human-factors engineering, and vehicle event data recorders will become increasingly important in this field.

Defense lawyers will also need to craft arguments that resonate with increasingly tech-savvy jurors. Many jurors today use driver-assist features themselves or have seen news stories about Autopilot crashes.

As long as people are imperfect (and they always will be), the foreseeable misuse doctrine ensures that companies cannot design in a vacuum. Manufacturers are expected to build in buffers for our inevitable mistakes. Just how far that responsibility extends – and how to balance it against individual responsibility – will define the next chapter of both product liability law and auto accident litigation. For those of us in the defense bar, it’s time to buckle up: this journey is just beginning.



## Appellate Practice Report

By: Phillip J. DeRosier, *Dickinson Wright*  
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### Orders Enforcing Agreements to Arbitrate—Final or Not?

Under the Michigan court rules, the Court of Appeals has jurisdiction over an appeal as of right from a “final judgment or final order.” MCR 7.203(A)(1). In a civil case, that usually means the “first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties.” MCR 7.202(6)(a)(i). A recent decision from the Court of Appeals serves as a reminder that orders dismissing a case in state court in favor of the parties’ agreement to arbitrate are not necessarily “final” for purposes of appeal.

In *Nucast, LLC v Livonia Pre Cast LLC*, \_\_\_ Mich App \_\_; \_\_\_ NW3d \_\_; 2025 WL 3209432 (2025), the parties asserted various claims and a counterclaim against each other in a dispute arising out of the plaintiff’s purchase of the defendants’ concrete-business assets out of bankruptcy. After the trial court dismissed the defendants’ counterclaim on summary disposition and denied their motion for summary disposition as to the plaintiff’s complaint, the parties “entered into an arbitration agreement to resolve the now-narrowed-by-the-trial-court dispute.” *Id.*, 2025 WL 3209432, \*2. The trial court entered a stipulated order enforcing the parties’ agreement. Although the order stated that it was “a final order resolving ‘the last pending claim’ and closing the case,” it provided that the dismissal was “without prejudice” and that the parties could file a motion to reopen the case to enter any resulting arbitration award. *Id.*

The defendants appealed, but the Court of Appeals dismissed the appeal for lack of jurisdiction, explaining that because the trial court’s order “dismissed all the remaining claims *without prejudice* . . . it did not ‘resolve the merits’ of those claims, such that they ‘are not barred from being resurrected on that docket at some future date.’” *Id.* (citation omitted; emphasis in original). Indeed, the order “expressly allowed the parties to move to reopen the case for entry of an arbitration award, which is akin to the trial court retaining jurisdiction.” *Id.* And while the order did state that it was “final,” the Court of Appeals reiterated its longstanding caution that “such language is not dispositive and ‘does not control this Court’s jurisdiction.’” *Id.* at \*3 (citation omitted).

So, is an order dismissing a case in favor of arbitration *ever* appealable? It appears the answer is “maybe.” In *Rooyaker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146; 742 NW2d 409 (2007), the Court of Appeals held that an order granting summary disposition and referring claims to arbitration *was* “final” because “there was nothing left for the trial court to decide and it did not state that it was retaining jurisdiction.” *Id.* at 148 n.1. *Nucast* cited *Rooyaker* on the latter point, suggesting that the trial court’s retention of jurisdiction to entertain an order reopen-



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.

## Appellate Practice Report, cont.

ing the case was key to the order's lack of finality. Indeed, the Court of Appeals has even found jurisdiction to exist in a case in which the dismissal in favor of arbitration was "without prejudice," albeit in an unpublished opinion. See *Turner v AutoAlliance Int'l, Inc*, unpublished per curiam opinion of the Court of Appeals, issued Nov 19, 2002; 2002 WL 31934417, \*1 (Docket No. 233185) (holding that although dismissals "without prejudice" are ordinarily not final, the trial court's order granting summary disposition and compelling arbitration of the plaintiff's worker's compensation retaliation claim pursuant to his collective bargaining agreement was a "final judgment" because under MCR 7.202, it was "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties").

One way to distinguish *Nucast* from *Rooyaker* and *Turner* is the fact that the appeal in *Nucast* did not involve the actual compelling of arbitration. On the contrary, the parties *agreed* to arbitrate the remaining claims. What the defendants appealed was the trial court's dismissal of their counterclaim and denial of their motion for summary disposition as to the plaintiff's claims. *Nucast* took issue with that, noting that "[p]arties cannot create a final order by stipulating the dismissal of remaining claims without prejudice after a trial court enters an order denying a motion for summary disposition addressing only some of the parties' claims." *Nucast*, 2025 WL 3209432, \*2 (citation modified).

By contrast, *Rooyaker* and *Turner* both involved challenges to the order compelling arbitration itself. In that situation, a bet-

ter argument can be made for finality. Indeed, that is the same approach that federal courts in the Sixth Circuit follow, holding that orders of dismissal in deference to arbitration under Federal Rule of Civil Procedure 12(b)(6) and orders granting summary judgment and compelling arbitration under Rule 56 are immediately appealable because "[b]oth orders indicate a final decision on the arbitrability issue and leave nothing more for the court to do." *ATAC Corp v Arthur Treacher's Inc*, 280 F3d 1091, 1098 (6th Cir., 2002). The Sixth Circuit has found such dismissals to be final, appealable decisions even if they are entered "without prejudice." See *Howell v Rivergate Toyota, Inc*, 144 Fed Appx 475, 477 (6th Cir. 2005) ("The district court's order dismissed Mr. Howell's action, albeit without prejudice, and the order thus constitutes a final decision.")

So, what is the lesson in all of this? It is important to carefully evaluate any order (or proposed stipulated order) of dismissal in favor of arbitration and determine its effect. If the order dismisses the cases and leaves nothing else for the lower court to do, then it is arguably final for purposes of appeal. But if the order indicates that the trial court is retaining jurisdiction, then the order is most likely interlocutory and thus not immediately appealable—at least not as a matter of right. While the jurisdiction of federal appellate courts is narrowly circumscribed by statute, a party can always ask the Michigan Court of Appeals to exercise its discretion under MCR 7.203(B)(1) to grant leave to appeal from an order that is "not a final judgment appealable as of right."



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## The QMSR Transition, New FDA Guidance, and Their Impacts on Active Implantable Medical Devices

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In the United States, the Food and Drug Administration (FDA) regulates medical devices and classifies them as Class I, Class II, and Class III, which is determined, in part, by their intended use. This coming year on February 2, 2026, FDA will transition the existing Quality System Regulation (QSR) defined in 21 CFR 820 to the Quality Management System Regulation (QMSR).<sup>1</sup> The current good manufacturing practices in the QSR will be amended to align more closely with ISO 13485:2016, “the international consensus standard for Quality Management Systems for medical devices used by many other regulatory authorities around the world.”<sup>2</sup>

The main difference between the existing QSR and upcoming harmonized QMSR is the explicit integration of risk management throughout the regulation. As such, medical device manufacturers should take a risk-based approach throughout the entirety of their quality management system in addition to product design risk management. This type of holistic risk-based approach concerns itself with risks that are inherent to the total product lifecycle, including elements such as management responsibilities, purchasing requirements, and process monitoring, among others. While the QMSR regulation is substantially similar to the existing QSR,<sup>3</sup> manufacturers are expected to consider updating their internal quality systems in response to this transition. Many manufacturers in the United States, especially those marketing medical devices outside the country, may already be in compliance with ISO 13485:2016 in addition to the QSR, but some domestic-only manufacturers may have to make additional changes to comply.

In preparation for this transition, FDA has issued some new guidance documents. This includes one pertaining to premarket approval (PMA) applications entitled “Quality Management System Information for Certain Premarket Submission Reviews,” which was issued as draft guidance in October 2025.<sup>4</sup> This guidance more explicitly communicates the risk management activities expected to be demonstrated by a manufacturer than what is currently described. For example, this draft guidance document contains descriptive language about requirements for the purchasing process, such as:

Establish criteria for evaluation and selection of suppliers for the subject device, based on the supplier’s ability to provide product that meets requirements, based on the supplier performance, based on the effect of the purchased product on the quality of the device, and proportionate to the risk associated with the device.<sup>5</sup>



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## The QMSR Transition, cont.

In general, Class III devices that require a PMA are those that “support or sustain human life, are of substantial importance in preventing impairment of human health, or which present a potential, unreasonable risk of illness or injury.”<sup>6</sup> PMA approval is based on a determination by FDA that sufficient valid scientific evidence is present to provide a reasonable assurance of safety and effectiveness for the device’s intended use. Prior to approving a PMA, FDA conducts a pre-approval inspection to assess the company’s systems, methods, and procedures for the specific device to ensure that the firm’s quality management system is effectively established.<sup>7</sup>

A PMA is needed before certain medical devices can be marketed in the United States and, as such, manufacturers of complex implantable devices, such as neurostimulators and cardiac pacemakers, should consider FDA’s new guidance documents.

Certain medical devices, such as sacral nerve and spinal cord stimulators (SCS), are Class III medical devices that require a PMA. A neurostimulator applies precisely timed electrical pulses at certain locations of nerve tissue to initiate a desired response. An implantable neurostimulator system typically includes an implantable pulse generator (IPG), an electrical lead or leads that electrically connect the IPG to nerve tissue, and devices for patient control and clinician programming and monitoring. The IPG is the “brains” of the system that administers small electrical pulses through the leads and is often referred to as the neurostimulator itself.<sup>8</sup>

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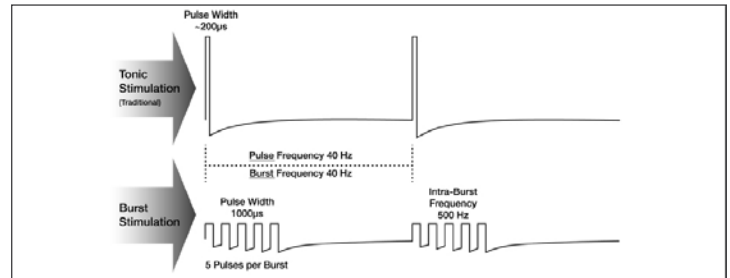
The upcoming QMSR transition will likely have far-reaching effects for manufacturers and regulators alike and is anticipated to allow for quicker access to newly developed medical devices while maintaining FDA’s expectations for an effective quality management system and robust supplier quality programs. Medical device manufacturers should be preparing for this transition by assessing their existing quality and risk management systems to ensure compliance.

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In general, an IPG consists of a hermetically sealed metallic canister that houses electronic circuitry and a battery for purposes of delivering these electric pulses. SCS devices, for example, utilize these electric pulses to treat certain chronic intractable pain of the trunk and limbs and have been the subject of dozens of recent lawsuits.<sup>9</sup> While we discuss SCS devices specifically, the general concepts can be applied to a wide array of cardiac devices and neurostimulators more broadly.

Traditional SCS devices produce *tonic* electrical waveform stimulation where electrical pulses are delivered at a constant

frequency, pulse duration, and amplitude. Other alternate waveforms are often used, such as *burst* stimulation, where groups of pulses are delivered at a higher frequency and lower amplitude than tonic stimulation. These waveforms are typically applied either continuously or cycled, where the waveform is applied at selected on and off time intervals. These two stimulation delivery methods are referred to as continuous mode and cycled mode.



**Examples of SCS waveforms. Tonic stimulation provides a consistent stream of pulses at a set frequency, pulse width, and amplitude. Burst stimulation delivers groups of pulses at a lower amplitude and a higher frequency than tonic stimulation. Bursts of pulses are followed by pulse-free periods.**<sup>10</sup>

A clinician can communicate with and program an IPG via an external device such as a wand, which is placed over the device to establish a wireless link between a computer and the IPG. Parameters, such as the pulse frequency, duration, cycle time, amplitude range, and stimulation type (*e.g.*, tonic or burst), can be stored in the IPG for later use by the patient. A desired therapy pattern is called a program, and multiple programs that contain unique therapy parameters can be stored within a given IPG.

A patient can often communicate with the IPG that is implanted via a specialized software application installed on an external device such as a tablet or their cell phone. Patients can use this application to turn therapy on and off, adjust stimulation strength, and activate or modify programs created by the clinician.

Many implantable medical devices, including pacemakers and neurostimulators, have components that are critical to the functionality of the device that are purchased from external suppliers. These components include items such as sensors and batteries.

Pacemakers and neurostimulators can have sensors to indicate the presence of a large magnetic field. These sensors allow a patient or clinician to temporarily control the device by holding a magnet over the IPG to, for example, turn therapy on or off, trigger a fixed-rate stimulation mode, or initiate controller pairing. Some equipment in home, work, and public environments can generate a magnetic field that is strong enough to

## The QMSR Transition, cont.

activate these internal sensors, so patients should avoid lingering near these sources, such as anti-theft gates, arc welders, and induction furnaces.

The longevity of an IPG battery is dependent on many factors, such as program settings, the electrical impedance between active electrodes, and hours of device use. Battery longevity is a critical parameter that gets characterized by both the battery supplier as well as the medical device company incorporating the battery into their product.


Devices with non-rechargeable batteries will need to have the entire IPG replaced when the battery nears depletion. When this is done, the implanted leads can often remain within the patient and be connected to the new IPG. An IPG is typically designed to transmit a warning signal to clinicians and the patient, called an elective replacement indicator, that indicates the battery is nearing depletion, and an IPG replacement procedure should be scheduled.

In the examples above, both the battery and the sensors are critical components of an active implantable medical device, and, according to FDA's new draft guidance document, the requirements for purchasing and verifying these components would need to be explicitly detailed in the PMA application such that the process for evaluating and selecting the supplier is proportionate to the risk associated with it. While this process may not be substantially different than what manufacturers already provide as part of their purchasing controls in their PMA submission, an additional layer of detail is that under the QMSR, supplier audit reports can now be inspected by FDA.<sup>11</sup> This means the purchasing controls information provided in a PMA application can be checked against the supplier audit reports a manufacturer maintains as part of its documentation to ensure compliance.

The upcoming QMSR transition will likely have far-reaching effects for manufacturers and regulators alike and is anticipated to allow for quicker access to newly developed medical devices while maintaining FDA's expectations for an effective quality management system and robust supplier quality programs.<sup>12</sup> Medical device manufacturers should be preparing for this transition by assessing their existing quality and risk management systems to ensure compliance. It is yet to be seen how FDA's inspection process will differ, but maintaining appropriate levels of documentation to demonstrate their risk-based approaches is critical for medical device manufacturers.

### Endnotes

- 1 When referring to 21 CFR 820 as amended, effective February 2, 2026, FDA uses the term "QMSR."
- 2 <https://www.fda.gov/medical-devices/quality-system-qs-regulation/medical-device-current-good-manufacturing-practices-cgmp/quality-management-system-regulation-final-rule-amending-quality-system-regulation-frequently-asked>
- 3 <https://www.federalregister.gov/documents/2024/02/02/2024-01709/medical-devices-quality-system-regulation-amendments>
- 4 <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/quality-management-system-information-certain-premarket-submission-reviews>
- 5 <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/quality-management-system-information-certain-premarket-submission-reviews>
- 6 <https://www.fda.gov/medical-devices/premarket-submissions-selecting-and-preparing-correct-submission/premarket-approval-pma>
- 7 <https://www.fda.gov/medical-devices/quality-and-compliance-medical-devices/medical-device-premarket-approval-and-post-market-inspections-part-iii-inspectional>
- 8 For general neurostimulator background information, see Krames ES, Peckham ES, Peckham PH, Rezai AR (Eds.). *Neuromodulation: Comprehensive Textbook of Principles, Technologies, and Therapies, 2nd Edition, Volumes 1-3*. Academic Press, 2018. ISBN-13: 978-0128053539.
- 9 [FDA Sued Over Allegedly Defective Spinal Cord Stimulators | Law.com](https://www.law.com/news/2024/02/02/fda-sued-over-allegedly-defective-spinal-cord-stimulators/)
- 10 Figure 3 in Slavin KV, North RB, Deer TR, Staats P, Davis K, Diaz R. Tonic and burst spinal cord stimulation waveforms for the treatment of chronic, intractable pain: study protocol for a randomized controlled trial. *Trials*. 2016 Dec 1;17(1):569. This figure is distributed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>).
- 11 <https://www.fda.gov/medical-devices/quality-system-qs-regulation/medical-device-current-good-manufacturing-practices-cgmp/quality-management-system-regulation-final-rule-amending-quality-system-regulation-frequently-asked>
- 12 <https://www.federalregister.gov/documents/2024/02/02/2024-01709/medical-devices-quality-system-regulation-amendments>



### New Leader

**Laura Canfield** CPCU, Senior Claims Attorney, Secura Insurance Company, In-House Counsel Co-Chair



## Michigan Court Rules Update

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### **Proposed Amendments**

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

#### **2023-23-Proposed Amendments of Rules 3.942 and 3.972 regarding Trial**

Rules affected: MCR 3.942 and 3.972  
Issued: September 3, 2025  
Comment period: Expired January 1, 2026

The proposed amendments of MCR 3.942 and 3.972 would, in delinquency and child protective proceeding bench trials, require the court to make findings of fact and conclusions of law and allow for the equivalent of a directed verdict.

#### **2023-39-Proposed Amendment of Rule 7.215 regarding Opinions, Orders, Judgments, and Final Process for Court of Appeals**

Rule affected: MCR 7.215  
Issued: September 3, 2025  
Comment period: Expired January 1, 2026

The proposed amendment of MCR 7.215 would eliminate the requirement that parties provide copies of unpublished opinions cited in briefs filed in the Court of Appeals.

#### **2020-08-Proposed Amendments to Rules 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105**

Rules affected: MCR 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105  
Issued: September 3, 2025  
Comment period: Expired January 1, 2026

The proposed amendments of MCR 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105 would, subject to an opting-out procedure, clarify the use of electronic service when MiFILE is not available in the court or for the particular case type.



**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.



## **Vendor Resource Bank**

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# Michigan Court Rules Update, cont.

## **2022-34-Proposed Amendment to Rule 3.992 regarding Rehearings; New Trial**

Rule affected: MCR 3.992  
Issued: October 1, 2025  
Comment period: Expired February 1, 2026

The proposed amendment of MCR 3.992 would require courts to consider a motion for postjudgment relief when the underlying order was entered following a referee’s recommendation and before the time for filing for judicial review under MCR 3.991 has elapsed. See MCR 3.991(A)(3).

## **2025-14-Proposed Amendment to Rule 8.115 regarding Courthouse Decorum; Policy Regarding Use of Cell Phones or Other Portable Electronic Communication Devices; Civil Arrests**

Rule affected: MCR 8.115  
Issued: November 19, 2025  
Comment period: Expired December 22, 2025

The proposed amendment of MCR 8.115 would prohibit the civil arrest of a person while attending a court proceeding or having legal business in the courthouse. See MCL 600.1821.

## **2025-03-Proposed Amendment to Rule 1.111 regarding Foreign Language Interpreters**

Rule affected: MCR 1.111  
Issued: November 26, 2025  
Comment period: Expired March 1, 2026

The proposed amendment of MCR 1.111 would expand free foreign language interpretation services to civil cases as suggested by several commenters on the Court’s initial proposal, which was adopted by the Court with some revisions. The initial proposal only contemplated free interpretation services in criminal cases. The Court is now interested in receiving additional comments regarding its proposal to expand free interpretation services to civil cases. Please note that subrule (F)(5), which would be struck under this proposal, reflects the version of subrule (F)(5) adopted by the Court in its initial proposal that becomes effective on January 1, 2026.

## **2022-49-Proposed Amendments to Rule 8.120 and Rule 5 of the Rules for the Board of Law Examiners**

Rules affected: MCR 8.120 and Rule 5 of the Rules for the BLE  
Issued: December 18, 2025  
Comment period: Expires April 1, 2026

The proposed amendment of MCR 8.120 would allow law students and recent law graduates to: (1) staff certain legal programs that provide assistance to indigent persons in civil mat-

ters under the supervision by a member of the state bar and (2) appear on behalf of indigent persons in all Michigan courts. The proposal would also expand the definition of a “recent law graduate” from one year to 15 months. The proposed amendment of BLE Rule 5 would expand the qualifications for a special certificate of qualification to practice law.

Comments on the proposal may be submitted by April 1, 2026 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When submitting a comment, please refer to ADM File No. 2022-49. Your comments and the comments of others will be posted under the chapter affected by this proposal.

## **2024-19-Proposed Amendments to Rules 9.108 and 9.110 regarding Attorney Grievance Commission and Attorney Discipline Board**

Rules affected: MCR 9.108 and 9.110  
Issued: December 18, 2025  
Comment period: Expires April 1, 2026

The proposed amendments of MCR 9.108 and 9.110 would address mid-term member vacancies and would eliminate the 2-full term officer limit for the Attorney Grievance Commission and the Attorney Discipline Board.

Comments on the proposal may be submitted by April 1, 2026 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When submitting a comment, please refer to ADM File No. 2024-19. Your comments and the comments of others will be posted under the chapter affected by this proposal.

## **2025-37-Proposed Amendment to Rule 7.312 regarding Briefs, Responses to Adverse Amicus Briefs, and Appendixes in Calendar Cases and Cases Argued on the Application**

Rule affected: MCR 7.312  
Issued: December 18, 2025  
Comment period: Expires April 1, 2026

The proposed amendment of MCR 7.312 would establish rule-based briefing deadlines in leave granted and Mini – Oral Argument On the Application (MOAA) cases where it appears necessary to appoint counsel for the indigent defendant.

Comments on the proposal may be submitted by April 1, 2026 by clicking on the “Comment on this Proposal” link un-

## Michigan Court Rules Update, cont.

der this proposal on the [Court's Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When submitting a comment, please refer to ADM File No. 2025-37. Your comments and the comments of others will be posted under the chapter affected by this proposal.

### **2019-40-Proposal to adopt Administrative Order No. 2026-X, Proposed Rescission of Administrative Order No. 2012-7, and Proposed Amendments of Rules 2.407 and 8.110**

Rule affected: MCR 2.470 and 8.110  
Issued: December 26, 2025  
Comment period: Expires April 1, 2026

Proposed Administrative Order No. 2026-X would clarify when, from where, and how a judicial officer may participate remotely. A related proposed amendment of MCR 2.407 would strike a reference to Administrative Order No. 2012-7 being suspended, and that administrative order would be rescinded. The proposed amendment of MCR 8.110 would authorize chief judges to require a judge's in-person or remote presence to perform work.

Comments on the proposal may be submitted by April 1, 2026 by clicking on the "Comment on this Proposal" link under this proposal on the [Court's Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When submitting a comment, please refer to ADM File No. 2019-40. Your comments and the comments of others will be posted under the chapter affected by this proposal.

### **2024-08-Proposed Amendment to Canon 3 of the Code of Judicial Conduct**

Rule affected: Rule 3 of CJC  
Issued: December 26, 2025  
Comment period: Expires April 1, 2026

The proposed amendment of Canon 3 would clarify a judge's responsibility to not knowingly allow unauthorized broadcasting, televising, recording, or taking of photographs in or out of the courtroom during sessions of court or recesses between sessions.

Comments on the proposal may be submitted by April 1, 2026 by clicking on the "Comment on this Proposal" link under this proposal on the [Court's Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a com-

ment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When submitting a comment, please refer to ADM File No. 2024-08. Your comments and the comments of others will be posted under the chapter affected by this proposal.

### **Declined Amendments**

2022-34-Proposed Amendment of Rule 3.991 of the Michigan Court Rules regarding Review of Referee Recommendations

Issued: October 1, 2025  
Effective: Immediately

On order of the Court, the proposed amendment of Rule 3.991 of the Michigan Court Rules having been published for comment and an opportunity having been provided for comment in writing and at a public hearing, the Court declines to adopt the proposed amendment.

### **Adopted Amendments**

#### **2023-12-Amendment to Rule 3.602 regarding Arbitration**

Rule affected: MCR 3.602  
Issued: September 26, 2025  
Effective: January 1, 2026

The amendment of MCR 3.602(A) clarifies the applicability of MCR 3.602 and the Michigan Uniform Arbitration Act, MCL 691.1681 et seq.

#### **2023-35-Amendment to Canon 3 of the Michigan Code of Judicial Conduct**

Rule affected: MCJC Canon 3  
Issued: October 1, 2025  
Effective: January 1, 2026

The amendment of MCJC Canon 3 prohibits, in the performance of judicial duties, judges and lawyers from intentionally or recklessly manifesting bias or prejudice and engaging in harassment.

#### **2025-11-Amendments of Rules 2.105, 2.614, 6.610, 7.203, 7.305, 7.308, 7.312, 7.313, and 7.314, Rule 7.1 of the Michigan Continuing Judicial Education Rules, and Rule 15 of the Rules Concerning the State Bar of Michigan**

Rules affected: MCR 2.105, 2.614, 6.610, 7.203, 7.305, 7.308, 7.312, 7.313, and 7.314, Rule 7.1 of MCJER, and Rule 15 of the Rules Concerning the SBM  
Issued: October 1, 2025

# Michigan Court Rules Update, cont.

Effective: Immediately retroactive to January 1, 2024

These amendments update cross-references and make other nonsubstantive revisions to clarify the rules.

## 2025-04-Amendment to Rule 3.613 regarding Change of Name

Rule affected: MCR 3.613  
Issued: November 19, 2025  
Effective: January 1, 2026

The amendment of MCR 3.613 realigns the rule with recent amendments of MCL 711.1 and MCL 711.3 regarding name change proceedings.

## 2023-38-Amendments of Rules 9.110, 9.111, 9.115, 9.117, 9.118, 9.125, 9.128, 9.129, 9.131, 9.201, 9.211, 9.221, 9.224, 9.231, 9.232, 9.233, 9.234, 9.235, 9.236, 9.240, 9.241, 9.242, 9.243, 9.244, 9.245, 9.251, 9.261, and 9.263, and Rules 1.12 and 3.5 of the Michigan Rules of Professional Conduct

Rules affected: MCR 9.110, 9.111, 9.115, 9.117, 9.118, 9.125, 9.128, 9.129, 9.131, 9.201, 9.211, 9.221, 9.224, 9.231, 9.232, 9.233, 9.234, 9.235, 9.236, 9.240, 9.241, 9.242, 9.243, 9.244, 9.245, 9.251, 9.261, and 9.263, Rules 1.12 and 3.5 of MRPC  
Issued: November 19, 2025  
Effective: January 1, 2026

The amendments replace the term “master” or “special master” with the noun “neutral” or add the term “neutral” to a definition.

## 2025-03-Amendment of Rule 1.111 regarding Foreign Language Interpreters

Rule affected: MCR 1.111  
Issued: November 26, 2025  
Effective: January 1, 2026

The amendment of MCR 1.111 prohibits reimbursement for interpretation costs in criminal cases; allows an individual to become a “qualified foreign language interpreter” if they, among other things, have passed the consecutive or simultaneous portion of the oral exam within the last two calendar years; updates the definitions for “interpret,” “certified foreign language interpreter,” and “qualified foreign language interpreter”; and adds a new definition for a “registered interpreter firm.”

## 2021-29-Amendment of Rule 6.201 regarding Discovery

Rule affected: MCR 6.201  
Issued: January 21, 2026  
Effective: May 1, 2026

The amendment of MCR 6.201(B)(2) requires, before providing a police report or interrogation record to the defendant, redaction of certain information and information subject to a protective order under the rule.

## 2025-42-Amendment of Rules 3.207 and 3.613 of the Michigan Court Rules, Rules 612, 703, and 803 of the Michigan Rules of Evidence, and Administrative Order No. 2003-1

Rules affected: MCR 3.207, 3.613; MRE 612, 703, and 803  
Issued: January 28, 2026  
Effective: Immediately

These amendments update cross-references and make other nonsubstantive revisions to clarify the rules.

## Amendments to Local Rules (USDC-Eastern District)

At their regular meeting on December 1, 2025, the Judges of the United States District Court for the Eastern District of Michigan approved amendments to LR 16.3, Alternative Dispute Resolution: General Provisions and LR 83.20, Attorney Admission. These amendments are effective January 1, 2026.

[Additions are indicated by underline, and deletions by strikethrough.]

### LR 16.3: Alternative Dispute Resolution: General Provisions

(a) – (d) [Unchanged]

(e) **Judicial Officers.** District judges, bankruptcy judges, and magistrate judges performing alternative dispute resolution functions, such as serving as mediators or settlement conference judges, act in their capacity as federal judicial officers.

(f) – (h) [Unchanged]

### LR 83.20: Attorney Admission

(a) – (c) [Unchanged]

(d) **Procedure for Admission.**

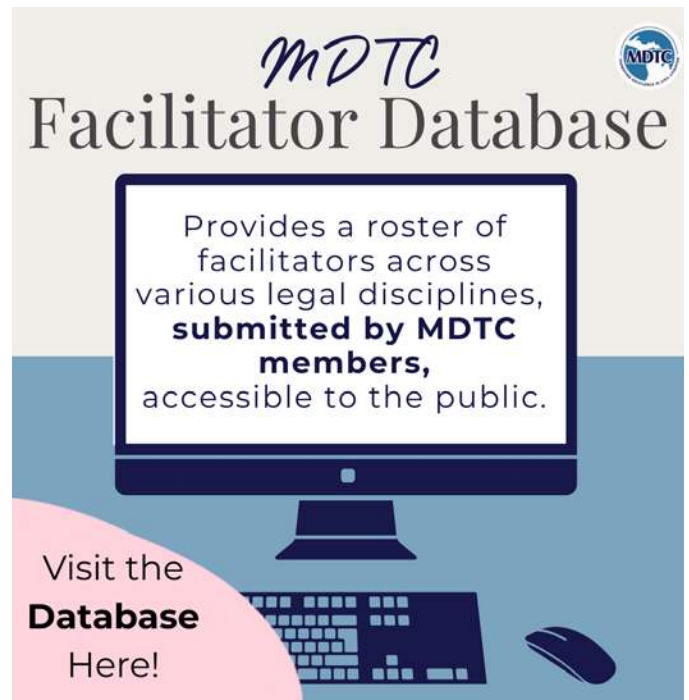
## Michigan Court Rules Update, cont.

(1) – (3) [Unchanged]

(4) If the Court grants the application, the applicant must take the oath of office. ~~An applicant with an office in the district must personally appear to take the oath before a judicial officer. A judicial officer may designate the clerk or a deputy clerk to administer the oath. An applicant without an office in the district may take the oath~~ in person, by telephone, or by videoconference before a judicial officer. The clerk then will issue a certificate of admission. A judicial officer may designate the clerk or a deputy clerk to administer the oath.

(e) – (j) [Unchanged]

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The graphic features the MDTC logo in the top right corner. The main title "MDTC Facilitator Database" is written in a large, serif font. Below the title, a computer monitor displays the text: "Provides a roster of facilitators across various legal disciplines, submitted by MDTC members, accessible to the public." Below the monitor, a keyboard and mouse are depicted. A pink circular callout on the left side of the graphic contains the text: "Visit the Database Here!"

## Thank You to Our Incredible MDTC Future Planning Leaders



Left to right...

Rik Joppich, Frederick Livingston, Mike Cook, Tony Randazzo (back), Adrienne Hayes (front), Cody Ellwanger (front), Jack Ottenwess (back), Aidan Schurig, David Ottenwess



## Building Security Engineering into AV Systems

By: Summer Fowler, M.S  
[sfowler@exponent.com](mailto:sfowler@exponent.com)

### How can the Autonomous Vehicle Cybersecurity Development Lifecycle help AV developers?

In 2022, 19-year-old David Colombo demonstrated that he could [hack into more than 20 electric vehicles worldwide](#), accessing systems such as the stereo and headlights. Since then, other hackers have shown they can override speed controls, bypass keyless entry, and confuse autonomous vehicles with altered road signs.

Hacking like this poses a direct safety threat to AV users and the public: robotaxis could be rerouted to cause urban disruption, sensitive data could be breached, or critical vehicle functions could be disabled remotely. As vehicles become more autonomous and connected, cybersecurity and safety are inseparable, becoming as fundamental to vehicle development as brakes or airbags.

For automakers, [mounting research](#) on attack methods, stricter regulatory demands, and recent AV program suspensions all show how quickly trust can erode when cybersecurity is neglected. To address this, the [Autonomous Vehicle Cybersecurity Development Lifecycle \(AVCDL\)](#) offers a comprehensive, evidence-based framework created by security professionals to position cybersecurity as a native engineering discipline and embed auditable cybersecurity practices throughout the entire AV development process, from concept to decommissioning.

### How are cybersecurity research and regulations evolving?

Regulators are increasingly recognizing cybersecurity risks, scrutinizing how autonomous systems will defend against the growing number and modes of attacks.

Autonomous systems are increasingly defined by their software, relying on sensors and learning models to interpret an uncertain world, with AVs epitomizing both the potential of advanced technologies and their vulnerabilities to bad actors. Attacks on LiDAR point clouds or camera pipelines can [project false objects](#) or "[erase](#)" [pedestrians or other obstacles](#), causing phantom braking or missed detection — hazards that are indistinguishable from hardware faults. Similarly, global navigation satellite system (GNSS) spoofing has long been a vulnerability in maritime and aviation, where attackers [impersonate GNSS signals](#) to confuse or redirect vehicles.

To manage these risks, [NHTSA's cybersecurity guidance](#), Europe's [UNECE R155/R156](#) regulations, and ISO/SAE 21434 treat cybersecurity as a prerequisite, not just a best practice. Gaining market access now depends on auditable cyberse-



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## Building Security Engineering, cont.

curity engineering throughout the vehicle lifecycle. Cybersecurity is also fundamental to the overarching goal of an AV safety case, because any successful cyberattack or cybersecurity failure can directly affect sensing, decision-making, or control functions, turning compromised software into a physical safety hazard.

To credibly claim that an AV is “safe,” vehicle developers must demonstrate that critical systems are protected against cyber threats across their lifecycle, including design, development, deployment, updates, and decommissioning. This means cybersecurity is no longer a box to check — it is part of the connective tissue of every AV safety case and the foundation of trustworthy autonomy.

### What challenges face safety critical AV programs?critical AV programs?

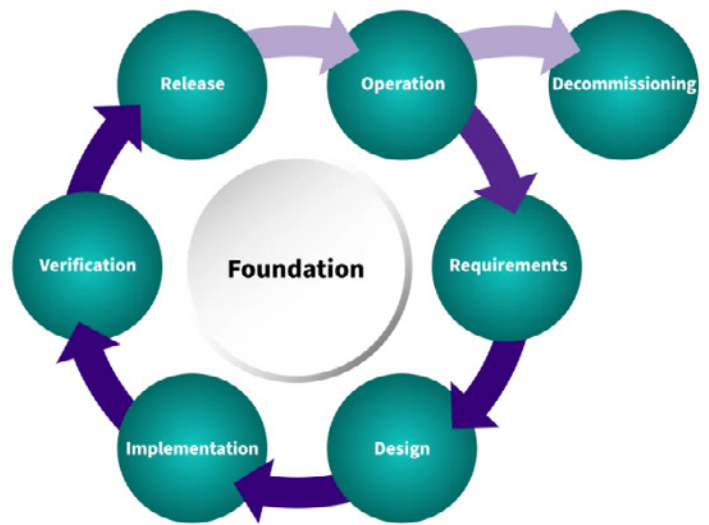
As AVs continue to develop, industry is encountering an expanding attack surface across perception, connectivity, and cloud operations. For hackers, the proliferation of systems offers new territory to probe for opportunities.

- Adversarial sensing and machine learning robustness: Even small perturbations to input data can produce unsafe behaviors. Testing methods for these pathways remain immature.
- Operational governance and recalls: When vulnerabilities demand over-the-air (OTA) patches, companies must balance fast response with validated safety — the “patch velocity versus certification” dilemma (OTA) patch, companies must balance fast response with validated safety — the “patch velocity versus certification” dilemma.
- Regulatory heterogeneity: Global vehicle markets now face divergent cybersecurity requirements that must be reconciled in one engineering pipeline.
- Supplier complexity: Cyber obligations propagate across OEMs, Tier1s, and software vendors. Absent formal agreements, accountability disappears.

### How does the AVCDL address AV cybersecurity challenges?

The AVCDL is a structured process model that details cybersecurity activities, work products, and their mappings to ISO/SAE 21434, ISO 24089 (software update engineering), and UNECE R155/R156. This detailed framework can help AV developers build security into their projects and manage cybersecurity throughout the life of the product instead of adding it on after development work is complete. By aligning evidence with regulatory expectations, it replaces paper safety with verifiable integration.

### The Autonomous Vehicle Cybersecurity Development Lifecycle



*The AVCDL treats cybersecurity as a full lifecycle discipline, creating auditable evidence at every stage of AV development.*

Imagine an AV program with good security design: strong encryption, well-segmented networks, secure boot, and extensive code reviews. Three years after launch, however, a widely used third-party library in the vehicle's connectivity stack is found to have a remotely exploitable vulnerability, and the operations team has also added a remote diagnostic interface in the field without the same rigor as the original design. Because there's no mature lifecycle process for continuous monitoring, patch management, change control, or secure decommissioning, thousands of vehicles are exposed, attackers find the new diagnostic interface, and a purely “post-design” change becomes a path to influence vehicle motion control.

That scenario marks a critical difference between standard development and one that is informed by a framework like the AVCDL: if teams only “build in” cybersecurity during design and implementation, they are at best only secure for a moment in time. Treating cybersecurity as a full-lifecycle discipline (covering supplier changes, updates, incident response, configuration drift, and retirement) keeps the safety case valid as the system, ecosystem, and threat landscape all evolve.

A defining feature of the AVCDL is the use of cybersecurity interface agreements (CIAs) between OEMs, suppliers, and toolchains. CIAs enumerate measurable obligations — software bills of materials, vulnerability response service level agreements (SLAs), update signing, and attestation logs — making every interface testable and auditable. The AVCDL lifecycle forces every security activity to leave some form of evidence.

This approach turns abstract principles into concrete proof. Each artifact — threat models, safety security co-analyses,

## Building Security Engineering, cont.

telemetry retention plans, etc. — binds decisions to evidence across the lifecycle. Security engineering becomes as traceable and certifiable as functional safety itself. security coanalyses, telemetry retention plans, etc. — binds decisions to evidence across the lifecycle.

The AVCDL begins with concept and hazard analysis. From the first concept review, safety and security teams must co-engineer risk models. A joint hazard and threat analysis (HARA + TARA) identifies failures initiated by cyber means — spoofed sensors, corrupted updates, falsified telemetry, etc. — and quantifies their safety impact. The resulting artifact, the “Threat Model and Security Goals,” links directly to safety goals in the AVCDL traceability matrix.

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Executives guiding AV or other safety critical transportation programs can adopt the AVCDL and weave cybersecurity into their programs not only from start to finish but as a guiding principle of ongoing development, updates, and future product generations. These steps can help position organizations to demonstrate, not merely declare, safety through cybersecurity.

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Next, the AVCDL recommends designing the vehicle so that critical systems are separated and only get the access they really need. Security hardware and processes — like special chips that verify the software, secure boot so only trusted code can run, and careful key management — are treated as safety features because they stop unauthorized software from taking over. Sensors can be checked against each other and monitored for unusual behavior so spoofing or jamming can be detected. Strong AV design can also spell out how the vehicle will “fail safely,” such as shrinking its operating conditions or moving to a minimal risk maneuver/stop if something goes wrong. The outputs of this work include a security architecture and combined safety-security plan that aligns with ISO 21434 and current NHTSA guidance.

During implementation and integration, secured development lifecycle controls mirror [NIST’s Secure Software Development Framework \(SSDF\)](#). Continuous integration pipelines are hardened; dependencies are enumerated in signed software bills of materials (SBOMs) so that when a flaw is identified, recall campaigns can be more precise. For ML components, the discipline extends to datasets and models: lineage tracking, version control, end adversarial robustness testing. Emerging SSDFAI practices provide structure. Artifacts include the SecureAI practices provide structure. Artifacts include the SecureDevelopment Plan, SBOMs, a model card, and a threat

robustness report.

Security testing becomes safety evidence during the next phase of verification and validation (V&V). Penetration tests of in-vehicle networks, simulated sensor spoofing, and failed-vehicle networks, simulated sensor spoofing, and failsafe rehearsals verify that cyber events trigger defined safety responses. OTA pipelines are subjected to attestation and roll-back tests. Evidence is consolidated in a V&V report explicitly tracing cybersecurity test results to previously identified safe rehearsals verify that cyber events trigger defined safety responses. OTA pipelines are subjected to attestation and roll-back tests. Evidence is consolidated in a V&V report explicitly tracing cybersecurity test results to previously identified safety hazards. The results of this report can then be used to help remediate those hazards.

Once the AV is operating outside test environments (AKA “in the wild”), software updates still pose serious cybersecurity risks. The AVCDL process complies with UNECE R155/R156 and ISO 24089 and requires operational cybersecurity and software update management systems (CSMS and SUMS). These govern keys, patch orchestration, and fleetwide threat monitoring. Telemetry retention — covering model versions and sensor frames around incidents — underpins both forensics and regulatory reporting. Operational artifacts include CSMS/SUMS audit packets and updatewide threat monitoring. Telemetry retention — covering model versions and sensor frames around incidents — underpins both forensics and regulatory reporting.

Even when an AV has been decommissioned, cybersecurity risks remain. The AVCDL closes the loop with end-of life security: key revocation, data sanitization, and a verified OTA shutdown to prevent orphaned assets from becoming entry points. A formal decommissioning plan ensures security persists beyond vehicle or asset life security: key revocation, data sanitization, and a verified OTA shutdown to prevent orphaned assets from becoming entry points. A formal decommissioning plan ensures security persists beyond vehicle or asset life.



Autonomous vehicles operating in an urban environment

## What should AV leaders do next?

Executives guiding AV or other safety critical transportation programs can adopt the AVCDL and weave cybersecurity into their programs not only from start to finish but as a guiding principle of ongoing development, updates, and future product generations. These steps can help position organizations to demonstrate, not merely declare, safety through cybersecurity. Critical transportation programs can adopt the AVCDL and weave cybersecurity into their programs not only from start to finish but as a guiding principle of ongoing development, updates, and future product generations.

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To credibly claim that an AV is "safe," vehicle developers must demonstrate that critical systems are protected against cyber threats across their lifecycle, including design, development, deployment, updates, and decommissioning. This means cybersecurity is no longer a box to check — it is part of the connective tissue of every AV safety case and the foundation of trustworthy autonomy.

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**Make the lifecycle auditable** Adopt AVCDL or an equivalent framework that binds artifacts to decisions and maps them to global standards (21434, 24089, R155/156). Negotiate supplier CIAs with measurable deliverables — SBOM cadence, vulnerability SLAs, and update attestation proofs.

**Harden perception and positioning (PNT)** Conduct adversarial robustness testing and sensorfusion redundancy. Integrate antispooft techniques and inertial backups to maintain integrity when GNSS is unreliable.

**Institutionalize OTA and incident response.** Run your cybersecurity and software-update programs with the same rigor you'd expect in aviation. Carefully control who can sign and send updates, roll changes out in stages, watch the fleet closely for problems, and follow clear, pre-agreed playbooks when something goes wrong. Track mean time to detect, patch, and validate safety impact.

**Secure the AI supply chain.** Expand SSDF practices to datasets and models — signing, lineage, evaluation for safety critical behaviors. Align assurance expectations with FDA style precedents for medical devices.

In safety critical systems, cybersecurity failures are safety failures. The path forward demands life cycle grade engineering, not afterthought defenses. Leaders need artifacts, metrics, and frameworks that stand up to regulators, auditors, and the court of public trust. The AVCDL offers a pragmatic bridge between engineering reality and regulatory proof, as well as a framework for building a "cybersecurity mindset" — awareness and prioritization of cybersecurity as a continuous consideration that is part of the full AV lifecycle, helping autonomy, and the people it serves, move safely through both physical and digital worlds.

## Executive Summary

Autonomous vehicles exemplify the increasing prevalence of AI-enabled software systems and their interface with people and the physical world. In this context, the potential opportunities to manipulate vehicle systems and exploit vulnerabilities through cyberattacks — with direct impacts on public safety — are increasing. To address these risks and meet growing regulatory demands, the Autonomous Vehicle Cybersecurity Development Lifecycle (AVCDL) provides a comprehensive framework that integrates security engineering into every stage of AV development, positioning cybersecurity as fundamental to safety and essential to trust and the continued progress of AVs and other autonomous systems. The AVCDL supports auditable and compliant processes, providing actionable recommendations for AV leaders to harden systems, manage supply chain risks, and maintain robust cybersecurity from concept through decommissioning.



## Legislative Update

By: **Nathan Scherbarth**, Zausmer  
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### Existential Musings on Coverage

When analyzing insurance coverage matters, it is easy to be consumed by the exercise of parsing words and plain language of the contracts at issue. Insurance coverage is, after all, ultimately largely an exercise in contract interpretation. While we are guided by the words of the policies at issue, it is important not to lose sight of the pragmatic impacts of our analysis. A recent Fourth Circuit opinion by Judge J. Harvie Wilkinson, III, brings that into focus:

What does it matter? A case but a speck in the recesses of interstellar space and in the four-plus billion years since our solar system's birth. What does it matter, this case deserted by both space and time?

To be human is to live in the here and now. This small case extracts courageous meaning from the vast impersonality in which it resides. Its immediacy confounds infinity; its passions light the dark. We have given it our best; the litigants have given it their best. The trial court has done the same. We do not overlook for a moment the tragic passing of the insured but neither can we ignore the contract under South Carolina law that defines the insurer's obligation.<sup>1</sup>

With those musings from a Reagan appointee in mind, on to the review of recent opinions!

***Love v Rudolph*, \_\_ Mich App \_\_; \_\_ NW3d \_\_ (2025): MCL 500.3109a allows for limited exclusions to PIP coverage for certain designated individuals under certain conditions.**

In *Love*, the plaintiff was operating his motorcycle when he was injured in a multi-vehicle accident. The vehicle that allegedly caused the accident was owned by Lashawn Rudolph, who held a no-fault policy with Auto Club. Rudolph had elected not to have unlimited PIP benefits, choosing "Option 4," which included \$250,000 in PIP benefits generally but specifically excluded herself from coverage. Auto Club argued that because Rudolph elected to decline PIP coverage for herself, the plaintiff was thus prohibited from claiming PIP benefits under MCL 500.3114(6).

The Court of Appeals disagreed, holding in a unanimous opinion that while an applicable insurance policy generally becomes excluded from the order of priority if the person named in the policy has elected not to maintain PIP coverage under MCL 500.3107d, an election not to maintain PIP coverage is fundamentally different than an exclusion under MCL 500.3109a. In short, where a limited exclusion to PIP



**Nathan Scherbarth**

Nathan Scherbarth is a shareholder and team leader of the firm's Appellate group. He also practices in the firm's Business & Commercial, Construction, Employment, Eminent Domain, Insurance Defense, Insurance Coverage, and Municipal practice groups.

His extensive appellate experience gives him an advantage when defending his clients both in the trial courts and on appeal. Combining strong written and oral advocacy, legal research acumen, and a pragmatic approach, he knows how to avoid potential pitfalls in any given case and how to anticipate potential changes in the law.

Nathan's clients can count on him to analyze complex legal issues with great attention to detail and to vigorously advocate for their best interests. His extensive appellate experience has taught him to anticipate problems and every counterpoint, enabling him to provide a thorough and strategic defense in the trial court. Moreover, Nathan knows how to preserve the record and what arguments to raise and when so that his clients are protected in the event of an appeal.

## Legislative Update, cont.

coverage is made under MCL 500.3109a (as Rudolph made there), the policy is *not* excluded from the order of priority in MCL 500.3114(5) and (6), and therefore, the plaintiff could claim coverage from Auto Club. Auto Club has filed an application for leave to appeal to the Michigan Supreme Court. Stay tuned.

***Fremont Ins Co v State Farm Mut Auto Ins Co*, \_\_ Mich App \_\_; \_\_ NW3d \_\_ (2025): A parked car that is propelled into a building is not “involved in the accident” for purposes of assigning responsibility for property protection insurance (PPI) benefits.**

In *Fremont*, a Ford Escape owned by Melissa Wells, who was insured by State Farm, was parked in front of a Hungry Howie’s pizzeria. Jeffrey Gibbs fell asleep at the wheel of his Ford Transit and struck the parked Escape. There was no dispute that the Escape was properly parked in a marked space and that the vehicle was not occupied, being entered, or being alighted from when it was struck. The Escape then pushed into the Hungry Howie’s causing relatively extensive property damage. Fremont and Frankenmuth Insurance brought a subrogation action seeking to recoup from State Farm for PPI benefits paid out to the building owner and the pizzeria.

Simply put, the Court of Appeals unanimously concluded that consistent with MCL 500.3125, there was no coverage under the State Farm policy because the vehicle was not “involved in” the accident: “the vehicle was not being used as a motor vehicle at the time of the accident and was merely struck and propelled forward – it was entirely passive.”

***Isovska v Fitzpatrick*, \_\_ Mich App \_\_; \_\_ NW3d \_\_ (2025): Coverage exclusion in policy regarding PIP benefits for injury to named insured invalid as contrary to no-fault act.**

In *Isovska*, the Court of Appeals grappled with “yet another appeal” arising from a claim under the no-fault act, noting that “our records show that last year the largest percentage of civil appeals involved cases filed under the no-fault act.”<sup>2</sup> While the decision addressed several no-fault act issues beyond coverage, it also grappled with a policy coverage exclusion.

A no-fault policy issued by USA Underwriters contained a PIP exclusion for injury to named insured while using a motor vehicle owned by or registered to the named insured if not an insured vehicle, which USA Underwriters sought to apply to bar coverage. The Court of Appeals concluded that this exclusion was invalid, because it “directly contravenes” the clear and plain language of MCL 500.3114(1) which provides that a PIP policy is applicable “to accidental bodily injury to the person named in the policy...”

This decision reiterates and reinforces that while an insurance policy can provide *broader* coverage than what is mandated by the no-fault act (see, e.g., *Mapp v Progressive Ins Co*<sup>3</sup>), a policy cannot restrict coverage such that it provides less than what the no-fault act mandates.

### Endnotes

- 1 *Owners Ins Co v Walsh*, 134 F3d 776, 781-782 (4th Cir 2025).
- 2 This observation is particularly apt given the contents of this column and the substantive nature of most recent Michigan appellate coverage opinions.
- 3 346 Mich App 575; 13 NW3d 643 (2023).

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