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Michigan Chapter Newsletter / October 2023 Edition



Honoring our friend
James F. Hewson
By: Catia Monforton-Farris,
Allstate Insurance

Friday, July 28, 2023, our community lost a prominent supporter of the fraud fighting community. Jim Hewson was well known for his bright mind and infectious laugh.

My relationship with Jim began when I was a child. He once stepped into a case to defend my dad, Rene Monforton. The judge wanted to hold my father in contempt and jail him. Jim advised the court he represented Mr. Monforton. He successfully argued to keep my dad from being jailed.

When I became involved in investigative work, Jim and I developed our own professional relationship. Jim was instrumental in my first major case trial. He was lead counsel in the Allstate V. Broe, et al litigation. After a 3 week trial he successfully convinced a jury the carrier had been defrauded by Timothy Broe and that Mr. Broe was acting outside the scope of his licensure. Allstate received a significant judgment. Jim was successful when the defendant appealed the matter. He again succeeded when the defendant appealed further to the MI Supreme Court.

Jim was a consistent supporter of the IASIU MI Chapter. He's spoken at several fall seminars and Chapter Meetings. He's provided training on deposition preparation, complex case litigation strategy, taking of EUO's and finding the right expert. You may recall his recent presentation provided virtually with his wife, Diane Hewson. We're fortunate to have had the opportunity to learn from him.

Anyone that has spent any time with Jim will certainly recall his infectious laugh. He simply never took things too seriously. He and I shared jokes and stories. I never tired of hearing him tell a story and just laugh and laugh.

Jim was respected by his peers. Admired by all that knew him. The world is a little dimmer without him. He's left a void to all that knew him.

Counsel's Corner

Andary v USAA – Where do we go from here?

By: Christopher P. Endres, Esq. of Anselmi Mierzejewski Ruth & Sowle P.C.

As we all know, the Michigan no-fault amendments that became effective June 11, 2019, have posed a litany of questions for both insurers and insureds. One of the most pressing issues was whether the attendant care provision in MCL 500.3157(10) was to be applied to people injured before June 11, 2019. This section limited the allowable number of weekly hours of in-home attendant care to 56 hours if provided by a relative, someone domiciled in the same household, or someone with whom the injured person had a business or social relationship before the injury. The other issue was whether the “non-Medicare fee schedule” provision of MCL 500.3157(7) was applicable to those claims where the injury took place prior to June 11, 2019. This section provided for a percentage reduction for those services where Medicare does not provide an amount payable.

The Michigan Supreme Court took up these issues in the case of *Andary v USAA Casualty Insurance Company*. The suit was brought by two injured individuals (in addition to Eisenhower Center) alleging that the reformed no-fault act should only be applied prospectively (to those injured in motor vehicle accidents after the effective date of the reform) among a number of other claims. Initially, the circuit court agreed with Defendants and dismissed all of the claims. That decision was appealed to the Michigan Court of Appeals which largely reversed the trial court. In a lengthy opinion issued on July 31, 2023, the Michigan Supreme Court essentially agreed with the Michigan Court of Appeals and held that MCL 500.3157(7) & (10) should be applied prospectively only. So how did the Court arrive at this conclusion?

What the Court found was that there was no express legislative intent to have the amendments apply retroactively. The Court stated that an injured person's “vested contractual right to continuation of those benefits at pre-amendment levels cannot be stripped away or diminished when the Legislature has failed to clearly state its intent to do so.” The Court went on to say that no-fault benefits are both contractual and statutory in nature. The Court found that no-fault benefits are not akin to workers' compensation benefits, which are “purely statutory.” Therefore, workers' compensation benefits cannot be vested rights, unlike no-fault benefits, which can be vested rights. “Accordingly, the PIP benefits under a no-fault insurance policy remain binding post-injury as to the individuals covered by the policy unless clearly and retroactively invalidated by the Legislature.” But when do these rights for no-fault benefits vest?

The Court went on to evaluate what law applies when the rights vest. To answer this question, the Court evaluated long-standing contract principles from both Michigan and the United States Supreme Court. Following this analysis, the Court concluded that an injured person's "rights to PIP benefits under the applicable no-fault insurance policies vested, at the latest, when their injuries occurred and they first became eligible for PIP benefits." "[T]he scope of available PIP benefits under an insurance policy vests at the time of the injury."

Finally, the Court determined that the no-fault amendments apply prospectively only. There was nothing in the language of MCL 500.3157 (the amended version) that "suggests an intent to modify the contractual rights of an injured individual who has uncapped PIP benefits and family-provided attendant care that vested prior to the enactment of the amendments." The Court concluded MCL 500.3157(7) & (10) "do not apply to any insured who was injured while covered by an insurance policy issued before June 11, 2019."

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However, questions remain. Does this only apply to MCL 500.3157(7) & (10)? Does this only apply to people covered under insurance policies? And where do we go from here? The only clear answer is to wait for the Michigan Court of Appeals to clarify some of the issues presented by this opinion.

The information provided in this article is informative only. It is not meant to constitute legal advice or create an attorney-client relationship. For legal issues that arise, please consult a licensed attorney.



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Christopher P. Endres joined Anselmi Mierzejewski Ruth & Sowle P.C. as an Associate Attorney in 2014. Since joining the firm, Mr. Endres has focused his practice in the areas of first and third party no-fault litigation. Mr. Endres graduated with a Bachelor's of Science from Michigan State University in 2002. He went on to obtain his Juris Doctorate from Thomas M. Cooley Law School in 2012, graduating Magna Cum Laude. Throughout law school, he worked for multiple judges in the Oakland County Circuit Court, and was a teaching assistant for Professional Responsibility. Just after law school, Mr. Endres worked in medical malpractice before joining a Plaintiff's firm that practiced almost exclusively in first and third party litigation. Mr. Endres is licensed to practice law in the State of Michigan.



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interested in testing for the exam in person, our Chapter will proctor the

exam for you. For more information, contact Jeanne Strick @

strij3@nationwide.com.



We are looking for YOU to join the board!!!

The MI IASIU Chapter is now accepting nominations for (3) Board of Director positions to be voted on during our Jan/24 Membership Meeting. Please send your notification of interest along with a photo & bio to Steve Penny @ steve.penny@usaa.com. This is a great way for members of the chapter to get further involved and does not take a significant amount of time. Each BOD is required to participate in at least one committee and will need to attend the scheduled board meetings. If you have any questions about the BOD responsibilities, please reach out to anyone of the Officers or current Board Members.

Upcoming Michigan Chapter Events

10/19/23: The Annual Fall Seminar will be held at Schoolcraft College. MCOLES certification available. Registration for this event has been closed.

11/16/23: General Membership meeting and training located at Citizens Insurance in Howell, MI from 9:30 AM – 11:00 AM. Training topic and speaker TBD.

01/18/24: General Membership meeting and training located at AAA Insurance in Dearborn, MI from 9:30 AM – 11:00 AM.

In the month of January, we welcome Bruce Jacobs of LeakingTheTruth.com to present on Behavioral Analysis.

Board elections will take place during this meeting. One vote can be cast per membership company. Your company representative must be present to vote.

03/21/24: General Membership meeting and training located at Meemic Insurance in Auburn Hills, MI from 9:30 AM – 11:00 AM.

In the month of March, we welcome Shelly Lee Griffin of Plunkett Cooney to present on Ethics. This training will meet your IASIU designation(s) ethics requirements for the year 2024.

Upcoming Industry Events

12/7/23 – 12/8/23: Coalition Against Insurance Fraud annual meeting. For more information, visit: www.insurancefraud.org

08/25/24 – 08/28/24: IASIU annual conference in Nashville, TN. For more information, visit: www.iasiu.org

Using and Interpreting Form 4506

By: **Nicholas T. Mouzourakis, CPA, CFE, CFF, CRFAC**, Vice President, **Walworth & Nayh, P.C., CPA's**

Form 4506-T A Useful Tool to Verify Income Tax Filings

Form 4506 (Request for Copy of Tax Return) has predominantly been used as the primary method to obtain federal tax returns directly from the IRS. However, various issues arise when preparing and processing Form 4506 requests as follows:

- The IRS normally takes 2 to 3 months to process requests.
- Form must be mailed to the Internal Revenue Service (often causes delays).
- Rejection notifications are typically received several weeks after submission.
- A fee of \$50 is required for each requested tax return year.

As we are all aware, time is of the essence in handling income verification claims, such as No-Fault work loss and business interruption claims. Enter Form 4506-T (Request for Transcript of Tax Return). An alternative, and arguably, better method to verify the filing of tax returns. There are several advantages to utilizing Form 4506-T as compared to Form 4506:

- The processing of requests typically takes 2 to 3 weeks.
- Forms can be faxed to the IRS, resulting in quicker processing.
- Additional information can be obtained if certain boxes are checked:
 - Account Transcripts (Shows history of income tax filings, federal tax liabilities and refunds, amendments to prior tax returns, etc.)
 - Wage & Income Transcripts (Shows all Forms W-2 and Forms 1099 issued to taxpayers under their Social Security numbers).

One of the only downfalls of using IRS transcripts is they are somewhat cumbersome and not as easily decipherable as actual tax returns. However, the primary information (W-2 wages, self-employment income, etc.) is relatively easy to discern. Furthermore, additional information that can be obtained from Form 4506-T can prove to be very valuable. For instance, Wage & Income Transcripts allows one to confirm if a Form W-2 is legitimate and actually issued by an employer. The Account Transcripts also indicate when (and if) income tax returns were filed with the IRS, and whether the original tax returns were amended.

Form 4506-T is not always a suitable replacement for Form 4506. However, the response time is much shorter, and more information can be obtained through the use of Form 4506-T, which is especially important in income verification claims.



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Over 20 years of experience in Public Accounting and Forensic Accounting, a graduate of University of Michigan-Dearborn. Holds several designations in his field, including Certified Public Accountant (CPA), Certified Fraud Examiner (CFE), Certified in Financial Forensics (CFF) and Certified Forensic Accountant (CRFAC).

Has handled cases involving the evaluation of economic damage claims by individuals and businesses as a result of various circumstances, including, but not limited to, motor vehicle accidents, business interruption claims due to fires, floods, etc., liability, financial motive analysis and personal injuries.

Specialization lies in the determination of work loss benefits and survivors' loss benefits with respect to the complex area of the Michigan No-Fault law. Provides litigation support to attorneys and litigation specialists to assist in the resolution of financial disputes. Frequently listed as an expert witness to offer deposition testimony and live appearances in courts of law.

Presents seminars for clients on a variety of topics, including the determination of economic losses based on the No-Fault statute, indicators of fraudulent documentation, evaluation of income tax records and the financial impact to the industry due to Covid-19.



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The Michigan IASIU Chapter is proud to announce that we were presented with the IASIU Chapter of the Year Award at the IASIU conference that was held in Dallas, TX last month. A special thanks to all of our board members and committee members who work diligently behind the scenes to ensure the success of this strong chapter. An additional thanks to all of our members and vendors for your continued support in our organization.

Pictured is our acting President, Marc Godman of The Hanover Insurance Group, who accepted the award on our behalf. Thank you, Marc!

