



MICHIGAN AUTOMOBILE SUBROGATION: THE NUTS AND BOLTS

PRESENTED BY:
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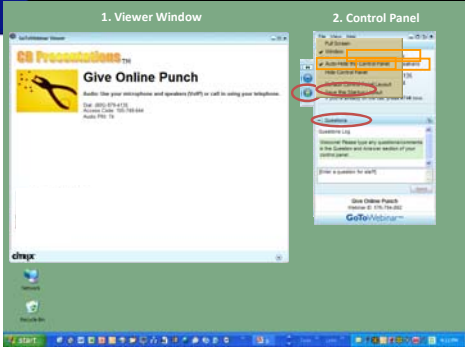

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OVERVIEW


- I. Introduction To Automobile Coverage In Michigan
- II. Subrogation Generally
- III. Personal Injury Protection (PIP)
- IV. Property Protection
- V. Tort Liability
- VI. No-Fault Subrogation And Recovery
- VII. Common Law Subrogation
- VIII. Conclusion – Q & A














PART I: INTRODUCTION TO AUTOMOBILE COVERAGE IN MICHIGAN










REQUIRED COVERAGE

- Personal Injury Protection (PIP) provides benefits for medical expenses and three years of wage loss. M.C.L.A. § 500.3101.
- Property Protection provides coverage for damage caused by the insured vehicle to property of others, up to \$1,000,000 maximum. Damage to vehicles (other than legally parked) is excluded. *Id.*
- Residual Liability provides protection if insured is sued or legally responsible for certain injury or damage. Minimum limits are \$20,000/\$40,000 for bodily injury and \$10,000 for property damage. *Id.*; M.C.L.A. § 257.520.











OPTIONAL COVERAGE



- Collision coverage is available in three forms:
 - **Standard:** Pays for damage to the insured's vehicle regardless of fault. The insured pays the deductible.
 - **Broad:** Pays for damage to the insured's vehicle regardless of fault. The insured pays the deductible only if more than 50% at fault.
 - **Limited:** Pays for damage to the insured's vehicle only if the insured was not more than 50% at fault. The insured pays the deductible.
- Comprehensive coverage pays for damages to insured's vehicle.
- Uninsured/Underinsured Motorist (UM/UIM) coverage pays for what insured would legally be entitled to collect for injuries or damages caused by UM/UIM driver. Minimum limits are \$20,000 per person and \$40,000 per occurrence.








PART II:




SUBROGATION GENERALLY



STATUTORY

- M.C.L.A. § 500.3116:** No-fault insurer has reimbursement rights where the insured recovers on a tort claim involving (a) out of state accidents, (b) uninsured motorists, or (c) intentional injury.
- M.C.L.A. § 500.3127:** Section 3116 also applies to property protection insurers.
- M.C.L.A. § 500.3177:** No-fault insurer can recover benefits and costs from owner or registrant of an uninsured motor vehicle.




COMMON LAW

"Subrogation is of two kinds, namely legal and conventional: legal ["equitable"] subrogation being that which arises by operation of law, and conventional subrogation that which arises by contract." Tel-Twelve Shopping Center v. Sterling Garrett Const. Co., 191 N.W.2d 484 (Mich. Ct. App. 1971).










PART III:

PERSONAL INJURY PROTECTION (PIP)










WHEN PAYABLE, GENERALLY

M.C.L.A. § 500.3105



- *"(1) Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.*
- *(2) Personal protection insurance benefits are due under this chapter without regard to fault."*
- **Bodily Injury That Is:**
 - **Accidental**
 - **Arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.**




WHEN PAYABLE, OUT-OF-STATE ACCIDENTS – M.C.L.A. § 500.3111

- *“Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state if the accident occurs within the U.S., its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant of a vehicle involved in the accident whose owner or registrant was insured under a personal protection insurance policy or has provided security approved by the secretary of state under subsection (4) of § 3101.”*
 - U.S., Canada, or U.S. territories and possessions (Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, and Northern Mariana Islands)
 - Named Insured, Spouse or Resident Relative
 - Occupant of Insured Vehicle



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WHEN PAYABLE, PARKED MOTOR VEHICLES - M.C.L.A. § 500.3106(1)

- **Accidental bodily injury is not considered to arise out of ownership, operation, maintenance or use of a parked vehicle unless:**
 - Vehicle was reasonably parked;
 - Injury was a result of physical contact with equipment permanently mounted on the vehicle or property lifted onto or lowered from the vehicle while loading and unloading; and/or
 - Injury was sustained while occupying, entering into, or alighting from the vehicle.

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WHEN PAYABLE, PARKED MOTOR VEHICLES - M.C.L.A. § 500.3106(2)

- **Exceptions To The Exceptions:**
 - Accidental bodily injury does not arise out of ownership, operation, maintenance or use of a parked vehicle and workers' compensation is available to an employee who sustains injury in scope of employment while:
 - (a) Loading, unloading, or doing mechanical work, unless injury involved use or operation of another vehicle.*
 - (b) Entering into or alighting from vehicle, unless:
 - (i) Doing so immediately after vehicle became disabled, or
 - (ii) The injury involved use or operation of another vehicle.*

**Does not include motor vehicle being loaded on, unloaded from, or secured to a motor vehicle as cargo (exception to the exceptions to the exceptions!)*




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WHEN PAYABLE, PERSONS NOT ENTITLED - M.C.L.A. § 500.3113




- A person is not entitled to PIP benefits where at the time of the accident any of the following circumstances existed:
 - The person was using an unlawfully taken vehicle.
 - The person was the owner or registrant of uninsured motor vehicle involved in the accident.
 - The person was not a Michigan resident, was occupying a motor vehicle not registered in Michigan, and was not insured by an insurer which has filed a certification with the Secretary of State.








BENEFITS PAYABLE, M.C.L.A. §§ 500.3107 AND 3108




- Medical Expenses
 - No Time Limit
 - No “Limits”
- Wage Loss
 - Three Years
 - Reduced By 15%
 - Monthly Maximum of \$5,282
- Replacement Services
 - Maximum of \$20.00 Per Day
- Survivor's Loss
 - Three Years of Lost Economic Contribution (Not Including Services)
 - Maximum of \$20.00 Per Day
 - Monthly Maximum of \$5,282








OFFSETS


- “Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury under this chapter.” M.C.L.A. § 500.3109
 - Workers’ Compensation
 - Mandatory








OFFSETS

- *“An insurer providing personal protection insurance benefits under this chapter may offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. Any deductibles and exclusions offered under this section are subject to prior approval by the commissioner and shall apply only to benefits payable to the person named in the policy, the spouse of the insured, and any relative of either domiciled in the same household.” M.C.L.A. § 500.3109a.*
 - Health And Accident Coverage
 - Discretionary
 - Applies Only To Named Insured, Spouse, or Resident Relative





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PRIORITY

M.C.L.A. § 500.3114

- Occupants Generally
 - Insurer of Injured Person
 - Insurer of Spouse and/or Resident Relative
- Occupants of Vehicles in Business of Transporting Passengers
 - Insurer of The Vehicle (Some Exceptions)
- Occupants of Employer-Owned Vehicles
 - Insurer of The Vehicle (Applies To Employee, Spouse, and Resident Relatives)
- If None Apply:
 - Insurer of Owner or Registrant of Vehicle
 - Insurer of Operator of The Vehicle







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PRIORITY

- Non-Occupants Of Vehicles - M.C.L.A. § 500.3115(1):
 - Own Insurer
 - Insurer of Spouse and/or Resident Relative
 - Insurers of Owners or Registrants of Involved Vehicles
 - Insurers of Operators of Involved Vehicles
- Operators Or Passengers Of Motorcycles - M.C.L.A. § 500.3114(5):
 - Insurer of Owner or Registrant of Involved Motor Vehicle
 - Insurer or Operator of Motor Vehicle
 - Insurer of Owner or Registrant of Motorcycle
- Out-Of-State Accidents:
 - Rules of § 3114(1) Apply To Determine Priority. See LaMotte v. Millers, 475 N.W.2d 13 (Mich. 1991).







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PART IV:


PROPERTY PROTECTION






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PROPERTY PROTECTION

GENERALLY, M.C.L.A. § 500.3121




- Insurer is liable to pay benefits for accidental damage to tangible property arising out of ownership, operation, maintenance or use of a motor vehicle.
- Payable without regard to fault.
- Damage is "accidental" unless suffered or caused intentionally by the claimant.
- Does not include damage to property that occurs within the business of repairing, servicing, or otherwise maintaining motor vehicles.
- Damage Includes:
 - Physical Injury
 - Destruction
 - Loss of Use
- Lesser of reasonable repair costs or replacement costs less depreciation and, if applicable, the value of loss of use.
- Limit of \$1,000,000






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EXCLUSIONS

M.C.L.A. § 500.3123



- Damage to the following kinds of property is excluded:
 - Vehicles And Their Contents (Unless Reasonably Parked)
 - Property owned by a named insured, their spouse or a resident relative, if any was the owner, registrant, or operator of a vehicle involved in the accident out of which the damage arose.
 - Property damage arising out of accidents that occur outside of Michigan.
 - Damage to utility transmission lines, wires, or cables arising from failure of a municipality, utility company, or cable television company to comply with regulations.



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PRIORITY

M.C.L.A. § 500.3125

- A person suffering accidental property damage shall claim property protection insurance benefits from insurers in the following order of priority:
 1. Insurers of owners or registrants of vehicles involved in the accident; and
 2. Insurers of operators of vehicles involved in the accident.









PART V:

TORT LIABILITY










TORT LIABILITY

M.C.L.A. § 500.3135(1) AND (2)

- *"A person remains subject to tort liability for non-economic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement."*
 - Threshold Injuries Only
 - Comparative Fault Applies
 - No Damages For Uninsured Claimants
- NOTE: No Geographical Limitation



TORT LIABILITY

M.C.L.A. § 500.3135(3)

- *"Tort liability arising from the ownership, maintenance, or use of a motor vehicle within this state of a motor vehicle with respect to which the security required by § 3101 was in effect is abolished, except as to:"*
 - Intentionally Caused Harm To Persons Or Property
 - Damages For Certain Non-Economic Loss (See Below)
 - Work Loss, Expenses And Survivor's Loss In Excess Of PIP Limits
 - Damages For Economic Loss In Excess Of Those Provided Under § 3163(4) (Certain PIP Coverage For Out-Of-State Residents)
- **NOTE:**
 - Only Tort Liability Abolished
 - Must Arise Out Of Ownership, Maintenance, Or Use Of A Motor Vehicle
 - Only Applies To Ownership, Etc., Within This State





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TORT LIABILITY

M.C.L.A. § 500.3135(3)(E)

- Commonly Known As "Mini-Tort"
- Liability is not abolished for damage to a motor vehicle up to \$1,000.00, to the extent that the damages are not covered by insurance.
- Damages are assessed on the basis of comparative fault.
- Must be commenced in small claims.
- If either party removes the action to a higher court and does not prevail, the court may assess costs.
- Decision of the court is not *res judicata* in any proceeding to determine any other liability arising from the circumstances that gave rise to the action.
- Damages shall not be assessed if the damaged motor vehicle was being operated without required insurance in effect.





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PART VI:


NO-FAULT SUBROGATION

AND RECOVERY





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PIP REMIBURSEMENT

M.C.L.A. § 500.3116(1) AND (2)

- “(1) A subtraction from personal protection insurance benefits shall not be made because of the value of a claim in tort based on the same accidental bodily injury.”
 - General Bar To Offset For Value Of Tort Claim
- “(2) A subtraction from or reimbursement for personal protection insurance benefits paid or payable under this chapter shall be made only if recovery is realized upon a tort claim arising from an accident occurring outside this state, a tort claim brought within this state against the owner or operator with respect to which the security required by § 3101(3) and (4) was not in effect, or a tort claim brought within this state based on intentionally caused harm to persons or property...”
 - Subtraction from or reimbursement for PIP benefits only where tort recovery involving out-of-state accident, uninsured motorist, or intentional harm.

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PIP REMIBURSEMENT

M.C.L.A. § 500.3116(2) CONT...

- “...and shall be made only to the extent that the recovery realized by the claimant is for damages for which the claimant has received or would otherwise be entitled to receive personal protection insurance benefits...”
 - Subtraction or reimbursement only to the extent that the insured recovers “like-kind” benefits.
- “A subtraction shall be made only to the extent of the recovery, exclusive of reasonable attorneys’ fees and other reasonable expenses incurred in effecting the recovery.”
 - Subtraction is capped at amount of recovery less a costs and fees.
- “If personal protection insurance benefits have already been received, the claimant shall repay to the insurers out of the recovery a sum equal to the benefits received, but not more than the recovery exclusive of reasonable attorneys’ fees and other reasonable expenses incurred in effecting the recovery. The insurer shall have a lien on the recovery to this extent.”
 - Insured must reimburse PIP already paid.
 - Reimbursement is capped amount of recovery less a costs and fees.

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PIP REIMBURSEMENT


M.C.L.A. § 500.3116(4)

- “A subtraction or reimbursement shall not be due the claimant’s insurer from that portion of recovery and recovery to the extent that recovery is realized for non-economic loss as provided in § 3135(1) and (2)(b) or for allowable expenses, work loss, and survivor’s loss as defined in §§ 3107 to 3110 in excess of the amount recovered by the claimant from his or her insurer.”
 - No Reimbursement From Non-Economic Loss Portion Recovery
 - No Reimbursement From Recovery For Losses In Excess Of PIP





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PIP REIMBURSEMENT, INDEMNIFICATION

- M.C.L.A § 500.3116(3)
 - “A personal protection insurer with a right of reimbursement under subsection (1), if suffering loss from inability to collect reimbursement out of a payment received by a claimant upon a tort claim is entitled to indemnity from a person who, with notice of the insurer's interest, made the payment to the claimant without making the claimant and the insurer joint payees as their interests may appear or without obtaining the insurer's consent to a different method of payment.”
 - Insurer is entitled to indemnity from anyone who had knowledge of the lien and paid the insured without either making the insurer a joint payee or obtaining the insurer's consent.






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PIP REIMBURSEMENT PROBLEM: THE CRAFTY SETTLEMENT

- Situation: Insured has an offer of settlement from tortfeasor. However, PIP has a valid lien which, if honored, will not leave as much money as Insured wants. Third Party wants to settle the claim, but refuses to offer more money, and does not want to tender funds without resolving the liens due to risk of indemnification exposure.
- Solution: Insured and tortfeasor know that PIP cannot be reimbursed from recovery for certain losses, so to cut out the lien, they do as follows. Insured files suit against tortfeasor, seeking only non-economic damages. Insured and tortfeasor settle the case and execute a release which allocates the settlement solely to non-economic damages. They seek and receive a court order approving the settlement and the allocation.






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PIP REIMBURSEMENT PROBLEM: THE CRAFTY SETTLEMENT

- Michigan courts routinely uphold these kinds of “questionable” settlements to the detriment of no-fault insurers. See *State Farm v. Soo Line Railroad*, 307 N.W.2d 434 (Mich. Ct. App. 1981); *Bonsall v. American Motorists*, 311 N.W.2d 824 (Mich. Ct. App. 1981); *Allstate Ins. Co. v. Jewell*, 452 N.W.2d 896 (Mich. Ct. App. 1990).
- What to do?
 - Be sure everyone is on notice.
 - Be sure YOU are on notice.
 - Consider intervention or independent litigation.
 - Stay vigilant and proactive.
- **IMPORTANT NOTE**: An action by an insurer for reimbursement or indemnity under § 3116 must be brought within one year from the date the insured receives payment.



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UNINSURED MOTORISTS

M.C.L.A. § 500.3177

- “An insurer obligated to pay personal protection benefits for accidental bodily injury to a person arising out of the ownership, maintenance, or use of an uninsured motor vehicle as a motor vehicle may recover such benefits paid and appropriate loss adjustment costs incurred from the owner or registrant of the uninsured motor vehicle or from his or her estate...”
 - Statutory Recovery Right
 - Includes Costs
 - Failure To Pay Within 30 Days Of Judgment Is A Ground For Suspension Of License And Registration
 - Without Regard To Fault. *See Auto-Owners Ins. Co. V. Biddis*, 309 N.W.2d 192 (Mich. Ct. App. 1981).










RECOUPMENT BETWEEN

INSURERS – M.C.L.A. § 500.3115(2)

- When two or more insurers are in the same order of priority, an insurer who pays benefits is entitled to partial recoupment from the other insurer(s).
 - Includes Expense Of Processing The Claim
 - Six-Year Statute Of Limitations. *See Titan Ins. Co. v. Farmers Ins. Exch.*, 615 N.W.2d 774 (Mich. Ct. App. 2000).




PROPERTY PROTECTION

M.C.L.A. § 500.3127



- Recoupment provisions of § 3115(2) apply to property protection insurers.
- Reimbursement and indemnification provisions of § 3116 apply to property protection insurers.
- No Reference To § 3177....








PART VII: COMMON LAW SUBROGATION






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COMMON LAW SUBROGATION

- *State Auto Ins. Companies v. Velazquez*, 703 N.W.2d 233 (Mich. Ct. App. 2005).
 - **FACTS:** State Auto paid PIP to its insured as a result of an accident involving a self-insured, out-of-state auto owner, and brought subrogation suit to recover said benefits from the tortfeasor. However, State Auto's insured had already brought and settled his claim for non-economic and economic damages in excess of PIP.
 - The insurer's right of subrogation accrued upon payment of PIP benefits to its insured.
 - The insured had a right to recover medical expenses and lost wages so, therefore, the insured as his subrogee also possessed that right.
 - Because the insurer had paid PIP benefits before the release was executed, it was already subrogated at that point and the insured no longer had the ability to sign away the insurer's rights.






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COMMON LAW SUBROGATION

- *State Farm Mut. Auto. Ins. Co. v. Wyant*, 398 N.W.2d 517 (Mich. Ct. App. 1986).
 - **FACTS:** Insurer which had paid no-fault benefits to child who was injured when she fell off of hayride wagon brought against driver of tractor.
 - **HELD:** Section 3116 states unequivocally and unambiguously the "only" circumstances in which an insurer may seek reimbursement for personal protection insurance benefits "paid or payable."
 - Because there was no out-of-state accident, uninsured motor vehicle, or intentional injury, the carrier did not have a right of subrogation.
 - Appears To Be The Prevailing View






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COMMON LAW SUBROGATION

- *Steinmann v. Dillon*, 258 Mich. App. 149 (2003).
 - **FACTS:** Medical insurer intervened in insured's action against negligent driver, asserting subrogation claim for recovery of medical expenses.
 - **HELD:**
 - "A subrogee stands in the shoes of the subrogor and acquires no greater rights than those possessed by the subrogor."
 - "The Michigan No-Fault Act, M.C.L.A. § 500.3103 *et seq.*, bars recovery of medical expenses from third-party tortfeasors arising out of the ownership, maintenance, or use of a motor vehicle."
 - If the subrogee cannot recover medical expenses or wage loss from the tortfeasor, then the subrogated insurer cannot recover those losses from the insured's third-party recovery.







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COMMON LAW SUBROGATION


- **Made Whole**
 - Carrier has no right of subrogation where the insured's loss exceeds his recovery from his insurer and the tortfeasor, after deducting attorney's fees and costs. *Washtenaw Mut. Fire Ins. Co. v. Budd*, 175 N.W. 231 (Mich. 1919).
- **Common Fund**
 - Insurer who benefits from a fund created by an insured's attorney must pay a proportionate share of costs and fees. *Foremost Life Ins. Co. v. Waters*, 337 N.W.2d 29 (Mich. App. 1982).









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COMMON LAW SUBROGATION: COORDINATION OF BENEFITS

- M.C.L. § 500.3109a allows no-fault carriers to offset or exclude where other health or accident coverage exists.
- Not Mandatory Or Automatic (Except Workers' Compensation)
- No-Fault Carrier's "Excess" Status Is Not A Given
- Everything Hinges On The Policies









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COMMON LAW SUBROGATION COORDINATION OF BENEFITS (COB)

- If...
 - Both Policies Are Coordinated – Health Carrier Is Primary. *Federal Kemper Ins. Co. v. Health Ins. Admin., Inc.*, 424 Mich. 537 (1986).
 - Neither Policy Is Coordinated – Insured Can Double-Recover. *Haefele v. Meijer, Inc.*, 165 Mich. App. 485 (1987).
 - Only Health Policy Is Coordinated – No-Fault Carrier Is Primary. *Smith v. Physicians Health Plan, Inc.*, 444 Mich. 743 (1994).








COMMON LAW SUBROGATION COORDINATION OF BENEFITS - ERISA

- For self-funded Plans with Coordination of Benefits (COB) clauses, ERISA M.C.L.A. § 500.3109a does not apply. *Auto Club Ins. Assoc. v. Health & Welfare Plans, Inc.*, 961 F.2d 588 (6th Cir. 1992). So...
 - When a no-fault insurance policy and a self-funded ERISA Plan both contain COB clauses, the terms of the ERISA Plan must be given full effect, and the no-fault is primary. *Glover*, 676 F.Supp.2d 602.
 - If the ERISA Plan is not self-funded, then the usual priority rules apply. *Glover*, at 614.











COMMON LAW SUBROGATION COORDINATION OF BENEFITS - ERISA



- In *Glover*, both COB and reimbursement were at issue. The Plan did not have COB language, but it did have reimbursement language. The court held that the Plan must be reimbursed by the beneficiary, but also that the no-fault carrier had to then pay the beneficiary for the money reimbursed to the Plan. So:
 - Plan Pays Benefits
 - Beneficiary Makes Claim For PIP
 - Beneficiary Reimburses Plan
 - PIP Reimburses Beneficiary
- In practice, the PIP carrier will often simply pay the ERISA Plan directly. If there is a dispute, one of the parties will typically file an action for declaratory judgment.









COMMON LAW SUBROGATION
COB – WORKERS' COMPENSATION

- Unfortunately for employers and workers' compensation carriers...
 - PIP benefits are automatically offset for workers' compensation benefits by statute.
 - No Reimbursement From PIP Carrier
 - No Reimbursement From Employee




STATUTES OF LIMITATIONS

- Personal Injury and Property Damage – 3 Years. M.C.L.A. § 600.5805
- Products Liability – 3 Years. M.C.L.A. § 600.5805(9)
- Contracts – 6 Years. M.C.L.A. § 600.5807
- Reimbursement Under M.C.L.A. § 500.3116 – 1 Year









PART VIII:
CONCLUSION – Q & A



MICHIGAN AUTOMOBILE SUBROGATION: THE NUTS AND BOLTS

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