Michigan Supreme Court Rules That Straddle Policies Must Stagger Tort Liability Policy Limits

By Elizabeth A. Favaro

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Since Michigan's No-Fault Act became law in 1973, the state's appellate courts have regularly identified several of its purposes: to ensure coverage following an automobile accident without regard to fault,[1] to minimize no-fault litigation,[2] and to contain premium costs for policyholders.[3] Michigan is one of a dozen states with a no-fault system, but the reality of Michigan's system is somewhat unique, as it is arguably so dysfunctional that litigants and lawyers on both sides of the "v" have reason to criticize it. Among other things, claimants and their lawyers have complained about high premiums (contrary to one of the law's purposes),[4] delayed claims processing by insurance companies, and small recoveries compared to legal fees. Insurance companies and their assigned lawyers have complained about fraud and abuse by claimants, high health care costs, and attorney-driven treatment.

In an effort to address these and other criticisms, the Michigan legislature passed sweeping changes to the No-Fault Act on June 11, 2019. The bulk of the changes affected first-party personal injury protection claims, such as the levels of coverage policyholders can purchase,[5] claims handling procedures, and the amounts medical providers can legally charge. There were also changes with respect to third-party tort liability claims. Among other things,[6] the new law increased the default policy limits for tort liability from $20,000 for one person in any one accident and $40,000 for two or more persons in any one accident to $250,000 for one person in any one accident and $500,000 for two or more persons in any one accident.[7]

While these and other changes to the law were branded as "reform," the new legislation remains rife with confusion, including the timing of when these new default tort liability policy limits were actually to take effect. On that issue, the language in the amended statute states:

> [A]n automobile liability or motor vehicle liability policy that insures against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle must not be *delivered or issued for delivery* in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to all of the following limits:
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> (a) *Before July 2, 2020*, a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident, and *after July 1, 2020*, a limit, exclusive of interest and costs, of not less than $250,000.00 because of bodily injury to or death of 1 person in any 1 accident.
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> (b) *Before July 2, 2020* and subject to the limit for 1 person in subdivision (a), a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1

TIP: Michigan insurers must adhere to the No-Fault Act by communicating policy options, identifying straddle policies, setting appropriate reserves, and seeking legal counsel to manage liability.

accident, and *after July 1, 2020*, and subject to the limit for 1 person in subdivision (a), a limit of not less than $500,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident.[8]

These provisions beg an important question for so-called "straddle policies," which are policies issued and delivered before July 2, 2020, but whose terms extend beyond that date: Are the increased policy limits automatic, as of the statute's effective date of July 11, 2019, or do the increased policy limits apply only to policies issued and delivered after July 1, 2020?

The Michigan Court of Appeals decided this question in 2023 by holding that the increased limits applied only to policies issued or delivered after July 1, 2020.[9] But after two years of what seemed to be settled law, the Michigan Supreme Court reversed course, ruling that the amended act's increased tort liability policy limits *do* apply to *all* policies issued after the amended No-Fault Act's effective date of July 11, 2019, that provide coverage beyond July 1, 2020.

In *Bonter v. Progressive Marathon Insurance Co.*, Michigan's high court determined that the new minimum tort liability limits of $250,000/$500,000 automatically kick in beginning on July 11, 2019.[10] In other words, Michigan now requires that "straddle" auto insurance policies also provide staggered coverage such that any part of the coverage period predating the increased policy limit effective date may have the lower limits, but policies with terms extending beyond July 1, 2020, must include the higher limits for the remainder of the coverage period.

The *Bonter* ruling is noteworthy for several reasons, not the least of which is the unusual way the court issued the decision—via an order on an application for leave to appeal, with the support of only three of seven justices. But perhaps more noteworthy, this decision stands to have a major impact on policyholders, claimants, and auto insurance companies. The impact is economic, obviously, but it also creates some uncertainty, particularly given some of the other changes to the No-Fault Act, which imposes more potential liability on individuals driving on Michigan roads than ever before. And then there is the increased administrative burden for insurance companies, both with respect to underwriting policies and as it relates to adjusting tort liability claims.

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Bonter Case Background

The context within which the Michigan Supreme Court made this ruling was a case involving an auto insurance policy issued and delivered to Michigan resident Taylon Williams by Progressive Marathon Insurance Company on June 19, 2020, with an effective date of June 20, 2020. The policy's end date was December 20, 2020, so it was issued and delivered before the date by which the increased tort liability limits were to take effect under the new statute, but its terms extended beyond that date. The policy included the tort liability limits required before the No-Fault Act was amended: $20,000/$40,000. On July 6, 2020, Williams asked Progressive to change the policy from insuring a 2014 Jeep Grand Cherokee to a 2017 Dodge Charger. Progressive complied and later sent an "auto insurance coverage summary" confirming that, among other things, the tort liability limits remained at $20,000/$40,000.[11]

On July 25, 2020, while driving the 2017 Dodge Charger, Williams was involved in a head-on collision with two other individuals, one of whom was Cody Bonter. Progressive offered Bonter and the other injured individual the $20,000/$40,000 liability limits, but the offer was rejected. A lawsuit followed in which the injured parties sought a declaration that Progressive was liable up to the new statutory tort liability policy limits of $250,000/$500,000. The trial court found in the plaintiffs' favor, largely on the basis that the July 6, 2020, vehicle change and the "auto insurance coverage summary" provided to Williams after that date constituted the delivery of or issuance for delivery of a new policy, triggering the increased $250,000/$500,000 tort liability limits.[12]

The Michigan Court of Appeals reversed. It relied on its prior decision involving substantially the same facts, *Progressive Marathon Insurance Co. v. Pena*,[13] which, as a published decision, the appellate court found was "controlling under the rule of stare decisis."[14] As in *Bonter*, *Pena* also involved a "straddle" policy issued by Progressive—the effective dates were March 11, 2020, to September 11, 2020, and it had the pre-No-Fault amendment $20,000/$40,000 tort liability limits.

The Michigan Court of Appeals in *Pena* rejected the argument that the limits automatically increased to $250,000/$500,000 on July 2, 2020. According to the court's interpretation of the statutory language, "it is clear that the Legislature did not intend for the increased minimums to apply automatically to policies that had been delivered prior to July 2, 2020."[15] Rather, the court stated that the increased limits applied only to "policies delivered or issued for delivery after July 1, 2020," and explained that the dictionary definitions of "delivered" and "issued" "can

encompass both a policy that was previously delivered and left in the insured's possession and a policy that was sent out or distributed to an insured for delivery."[16] Because the policy in *Pena* was delivered approximately four months before July 2, 2020, the policy limits—even for auto accidents that occurred after this date—could remain at $20,000/$40,000.

According to the Michigan Court of Appeals, the analysis in *Pena*, applied to the facts in *Bonter*, "effectively resolves the parties' dispute over whether the applicable policy limits automatically increased on July 2, 2020—*Pena* held that they do not."[17] The court further found that Progressive delivered or issued for delivery the policy before July 2, 2020, and that the vehicle change and subsequent provision of the "auto insurance coverage summary" to Williams on July 6, 2020, was simply a change to the preexisting policy and, therefore, of no moment.[18]

Michigan Supreme Court's Order

The *Bonter* plaintiffs filed an application for leave to appeal to the Michigan Supreme Court, which agreed to hear oral argument on the application.[19] In so doing, it ordered the parties to brief[20] whether:

> (1) automobile policies delivered or issued for delivery prior to July 2, 2020, that insure against loss "resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle," are subject to heightened liability coverage limits effective after July 1, 2020. See MCL 500.3009(1)(a), (b); and (2) the July 6, 2020 change in defendant Williams' vehicles, coupled with defendant Progressive Marathon Insurance Company's sending of the "auto insurance coverage summary" to Williams, constituted the delivery or issuance of an insurance policy that triggered the statutory conditions to impose the heightened liability coverage limits.[21]

In lieu of granting leave to appeal, the Michigan Supreme Court entered an order reversing the Court of Appeals, holding that because the policy Progressive issued "did not incorporate liability limits of at least $250,000/$500,000 for the coverage period beginning July 2, 2020, through the policy's end date of December 20, 2020," it "failed to comply with the minimum requirements of the no-fault act."[22] The Michigan Supreme Court concluded that the Court of Appeals' interpretation of the statute was "contrary to [its] plain language and organization."[23] It went on to state that,

> [h]ad the Legislature intended to require the coverage levels in Subsections (1)(a) and (1)(b) to apply only in policies delivered or issued for delivery after July 1, 2020, it would have used different language to express that intention. . . . Instead, Subsection (1) of MCL 500.3009 requires that a policy may not be delivered or issued for delivery unless it provides *all* of the minimum liability coverage prescribed in Subsections (1)(a) and (1)(b), while Subsections (1)(a) and (1)(b) specify what coverage level is to be provided and differentiate between the required coverage level before July 2, 2020, and after July 1, 2020.[24]

In so holding, the Michigan Supreme Court not only overruled *Pena*, but it also departed from guidance issued by the Department of Insurance and Financial Services (DIFS) website, which had long posed the following question and answer:

> [Question:] When does Section 3009 requiring a change in Bodily Injury limits become effective? Does it go in effect for new policies written and existing policies renewing after July 1, 2020, or does it go in effect for all policies on that date?
>
> [Answer:] The new BI limits did not automatically apply on July 2, 2020. They become effective for policies that are issued or renewed after July 1, 2020.[25]

As the dissent pointed out, "Progressive complied with [this] clear guidance."[26] Staggered policies, the dissent explained, were "never contemplated by the DIFS, nor did the DIFS appear to contemplate that insurers would need to terminate all policies on July 1, 2020, and issue new policies after that date."[27] And yet, here we are. Straddle policies issued before July 2, 2020, must now also provide staggered coverage, with significantly higher tort liability policy limits for claims arising after this date.

All people driving on Michigan roads now face more potential liability than they faced before the amendment.

Impact of *Bonter*

The decision in *Bonter* is, indeed, a staggering result. There is a temptation to question the propriety of disrupting an apparently settled issue, particularly given that Progressive and other insurance carriers relied on *Pena* and the DIFS guidance for at least two years before learning that they had to change course. While the general rule in Michigan is that

statutory provisions apply prospectively, not retroactively,[28] it is not uncommon for the Michigan Supreme Court to overrule case law far older than *Pena*, even retroactively, when it concludes that an issue was wrongly decided.[29]

It is also tempting to question the manner in which this major shift in the interpretation of the amendment to the default tort liability limits provision of the No-Fault Act occurred. Again, this ruling came in the form of an order reversing the Michigan Court of Appeals in lieu of granting leave to appeal. This in and of itself is not unusual, as entering a final decision is one of several actions Michigan's high court may take when an application for leave to appeal is filed.[30] What is unusual, however, is that the decision was made by only three out of seven Michigan Supreme Court justices; two justices took no part in the decision, and two dissented. But it has long been the law in Michigan that "[f]our justices constitute a quorum and a decision rendered by a majority of that quorum not only disposes of the case but is binding on the lower courts."[31] Perhaps as a signal that this decision would have resulted regardless, reconsideration was denied on September 17, 2025.[32] Six of the seven justices participated in the reconsideration decision with no dissent.[33]

As procedurally appropriate as the decision may have been, its substantive merit remains under scrutiny due to the widespread impact that it will have on multiple stakeholders. *All* people driving on Michigan roads now face more potential liability than they faced before the amendment. This is due not only to the increased tort liability policy limits, but also to new post-amendment liability for personal injury protection benefits by at-fault drivers when the benefits sought by the injured individual exceed the coverage limits selected by that individual.[34] At a time when Michigan state court dockets are clogged with no-fault litigation, it is easy to see why people injured in an auto accident may be worried: More potential liability by adverse drivers could result in less or delayed access to post-accident medical care while claims are litigated.

For insurance companies, the financial impact cannot be overstated. As the dissent in *Bonter* noted, Progressive and other carriers that issued "straddle" policies must "provide limits more than 12 times higher than what was contracted for without an increased premium."[35] That reduction in revenue will have to be made up somewhere, and the most likely place is through increased premiums for policyholders.[36]

There are also administrative burdens that this decision places on insurance companies. Those that choose to increase premiums to balance out the unexpected increase in tort liability will have to make underwriting adjustments. Claims adjusters and others making coverage determinations will have to insert an extra step into their analysis to confirm that the policy includes the increased tort liability limits for any accident that occurs after July 1, 2020, and, if a "straddle" policy doesn't, set reserves at the higher policy limits. As a practical matter, most claims arising under "straddle" policies should have been filed by now, as the statute of limitations for tort claims resulting in bodily injury is three years.[37] But injury claims arising from auto accidents can surface many years after an accident has occurred due to various laws, such as the disability statute extending the limitations period for minors,[38] among others.

Insurers writing policies in Michigan need to be mindful of the statute as a whole and take steps not only to follow it to the letter, but also to properly adjust claims and plan for future claims arising under "straddle" policies.

Practical Guidance

It is important to note that the increased tort liability limits are the default; the statute does permit policyholders to select lower limits of not less than $50,000/$100,000 if they meet certain statutory requirements, such as the completion of a DIFS-issued form.[39] Among other things, the form must "[s]tate, in a conspicuous manner, the risks of choosing liability limits lower than" the $250,000/$500,000 limits, and policyholders must acknowledge on the form that they understand "the risks of choosing the lower liability limits."[40]

Going forward, insurers writing policies in Michigan need to be mindful of the statute as a whole and take steps not only to follow it to the letter, but also to properly adjust claims and plan for future claims arising under "straddle" policies. This includes:

- **Following the statute's requirements for communicating with policyholders.** As it relates to the

new tort liability policy limits, insurance companies are required to explain and offer the options available under the statute to policyholders and new applicants, along with the corresponding premium price for each option.[41]

- **Identifying "straddle" policies under which future claims may arise.** Most auto insurance policies in Michigan provide for either six- or 12-month coverage periods. So, it's not necessarily that companies will be faced with a host of claims from new accidents in 2026 and beyond that are governed by policies delivered or issued for delivery before the effective date of the increased tort liability policy limits. But companies that are on notice of claims for accidents that have occurred since July 2020 should consider auditing those claims to identify elements that could trigger coverage down the line, such as accidents involving injured children.

- **Setting appropriate reserves.** For insurance companies offering tort liability coverage, the increase in tort liability policy limits is just one area under the No-Fault Act imposing additional potential liability beyond what existed pre-amendment. Because of the increase in liability for personal injury protection benefits when the benefits sought exceed the coverage selected by the injured individual, reserves must now be based in part upon an analysis of the potential exposure for medical expenses.

- **Asking questions and seeking counsel.** The Michigan No-Fault Act is complex and, in some ways, counterintuitive. Insurance companies writing policies in Michigan should invest in training and develop relationships with local coverage attorneys. Coverage defenses are some of the only protections insurance companies have in no-fault litigation, so exploring avenues to avoid coverage has the potential to save them money. Policyholders would do well to consult with counsel too, in order to ensure that they are selecting appropriate coverage levels from the start and not over-buying insurance products they don't want, while balancing the increased exposure they now face when driving on Michigan roads. Claimants injured in accidents need attorneys also to avoid leaving money on the table when negotiating with insurance companies. ◄

Notes

1. Davey v. Detroit Auto. Inter-Ins. Exch., 322 N.W.2d 541, 545 (Mich. 1982).

2. *E.g.*, Lewis v. Detroit Auto. Inter-Ins. Exch., 393 N.W.2d 167, 171 (Mich. 1986), *overruled on other grounds by*, Devillers v. Auto Club Ins. Ass'n, 702 N.W.2d 539 (Mich. 2005).

3. O'Donnell v. State Farm Mut. Auto. Ins. Co., 273 N.W.2d 829, 837 (Mich. 1979).

4. Michigan's premiums are among the highest in the country, with one publication placing Michigan in the top five most expensive states for auto insurance. Mark Rosanes, *The Top 10 Most Expensive States for Car Insurance*, Ins. Bus. (Apr. 23, 2024), https://www.insurancebusinessmag.com/us/guides/the-top-10-most-expensive-states-for-car-insurance-486233.aspx.

5. The pre-amendment statute called for unlimited, lifetime medical expenses; now, policyholders can choose their coverage levels within certain parameters, such as the type of health insurance they have. *See* Mich. Comp. Laws § 500.3107c.

6. In addition to the amendment at issue in this article, the statute governing third-party tort claims was amended to allow recovery from the adverse driver's personal injury protection benefits that exceed the limits the injured party chose in their personal policy. *See id.* § 500.3135(3)(c).

7. *Id.* § 500.3009(1)(a), (b).

8. *Id.* (emphasis added).

9. Progressive Marathon Ins. Co. v. Pena, 5 N.W.3d 367 (Mich. Ct. App. 2023).

10. 21 N.W.3d 908 (Mich. 2025).

11. The details of the trial court's decision come from the Michigan Court of Appeals opinion. Bonter v. Progressive Marathon Ins. Co., No. 360411, 2023 WL 5313061, at *1 (Mich. Ct. App. Aug. 17, 2023).

12. *Id.*

13. 5 N.W.3d 367.

14. *Bonter*, 2023 WL 5313061, at *2 (citing Michigan's Court Rule governing the precedential effect of published decisions, MCR 7.215(J)(1)).

15. *Pena*, 5 N.W.3d at 371.

16. *Id.* at 370, 372.

17. *Bonter*, 2023 WL 5313061, at *2.

18. *Id.* at *3.

19. Michigan practitioners refer to this as "mini oral argument on application" or MOAA. This procedure allows the Michigan Supreme Court to "explore the issues in a case without the full briefing and submission that apply to a grant of leave to appeal." Mich. Sup. Ct. Internal Operating Procedure 7.305(G)(1). The granting of a MOAA requires a majority vote, just like granting leave to appeal. There is nothing to suggest that any justice dissented or did not participate in the decision to allow for MOAA in *Bonter*.

20. The court also invited amicus curiae to file briefs, which were filed by four different organizations: the Michigan Association for Justice, the Coalition Protecting No-Fault, the Michigan Defense Trial Counsel, and the Insurance Alliance of Michigan.

21. Bonter v. Progressive Marathon Ins. Co., 9 N.W.3d 351 (Mich. 2024).

22. Bonter v. Progressive Marathon Ins. Co., 21 N.W.3d 908, 909 (Mich. 2025).

23. *Id.*

24. *Id.*

25. *Id.* at 916 (Zahra, J., dissenting).

26. *Id.*

27. *Id.*

28. Buhl v. City of Oak Park, 968 N.W.2d 348, 352 (Mich. 2021).

29. *E.g.*, Devillers v. Auto Club Ins. Ass'n, 702 N.W.2d 539 (Mich. 2005) (retroactively overruling 19-year-old legal precedent); County of Wayne v. Hathcock, 684 N.W.2d 765 (Mich. 2004) (retroactively overruling 23-year-old legal precedent); Gladych v. New Family Homes, Inc., 664 N.W.2d 705 (Mich. 2003) (retroactively overruling 32-year-old legal precedent).

30. MCR 7.305(I)(1).

31. Negri v. Slotkin, 244 N.W.2d 98, 99 (Mich. 1976).

32. Bonter v. Progressive Marathon Ins. Co., 25 N.W.3d 125 (Mich. 2025).

33. *Id.*

34. Mich. Comp. Laws § 500.3135(3)(c). This liability attaches even if the injured person does not sustain a so-called threshold injury that has historically been required for third-party tort liability claims because the threshold injury requirement applies to only "tort liability for noneconomic loss." *Id.* § 500.3135(1).

35. Bonter v. Progressive Marathon Ins. Co., 21 N.W.3d 908, 916 (Mich. 2025) (Zahra, J., dissenting). At the same time, the dissent explained that because the policy predated July 2, 2020, the policyholder also obtained the benefit of unlimited personal injury protection benefits, which was the law before the statute was amended. As the dissent aptly stated: "Williams bears no burden by adhering to the $20,000/40,000 liability limits that he purchased." *Id.*

36. Even before the timing issue addressed in this article became clear, one subrogation attorney predicted the same thing: "In essence, the new legislation offers artificial savings by offering less of a bad thing and mandating that insurance companies charge less, no matter how much the coverage costs them. The new bill is also likely to raise liability premiums and chase even more insurance companies out of the Michigan market." Gary L. Wickert, *Historic Changes to Michigan No-Fault Law Effective July 1, 2020*, Matthiesen Wickert & Lehrer (Apr. 14, 2020), https://www.mwl-law.com/historic-changes-to-michigan-no-fault-law-effective-july-1-2020/.

37. Mich. Comp. Laws § 600.5805(2).

38. *Id.* § 600.5851(1).

39. *See id.* § 500.3009(5). The DIFS form is available at https://www.michigan.gov/difs/-/media/Project/Websites/difs/Form/Insurance/Insurance/Choice_of_BI_Liability_Coverage_Limits.pdf.

40. Mich. Comp. Laws § 500.3009(7)(a), (c).

41. *Id.* § 500.3009(6).