

CRAIN'S DETROIT BUSINESS

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Courtroom collisions: No-fault lawsuits flood Oakland County courts

CHAD LIVENGOOD  

- The number of auto insurance lawsuits in Oakland County rose 295 percent between 2016 and 2018
- Wayne County's docket decreased 30 percent as more cases shifted to Oakland, Macomb
- Legal uncertainty for medical providers suing for payments fueling "absolute chaos" in no-fault system



Larry Peplin for Crain's Detroit Business

MORE IN CRAIN'S FORUM

In this month's Crain's Forum, we take a deep look at why lawsuits tied to Michigan's no-fault auto insurance system have nearly quadrupled in Oakland County, and hear from people on many sides of the debate on how best to fix the system that has left Michigan with the most expensive auto insurance in the country:

[Courtroom collisions: No-fault lawsuits flood Oakland County courts](#)

[Tricia Kinley: 'Broken' no-fault system desperately needs reform](#)

[Terry Sabo: Hold auto insurers accountable for high rates](#)

[Joshua Rivera and Patrick Cooney: Curb medical costs, non-driving factors for rate-setting](#)

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On a Saturday evening in May 2017, Avoryanna Harper was a helmetless 21-year-old passenger on a motorcycle that hit a stopped SUV in a head-on crash in Cadillac.

She landed 48 feet away. Bleeding in multiple parts of her brain left lasting cognitive and emotional damage that affected her ability to perform basic functions, according to court records.

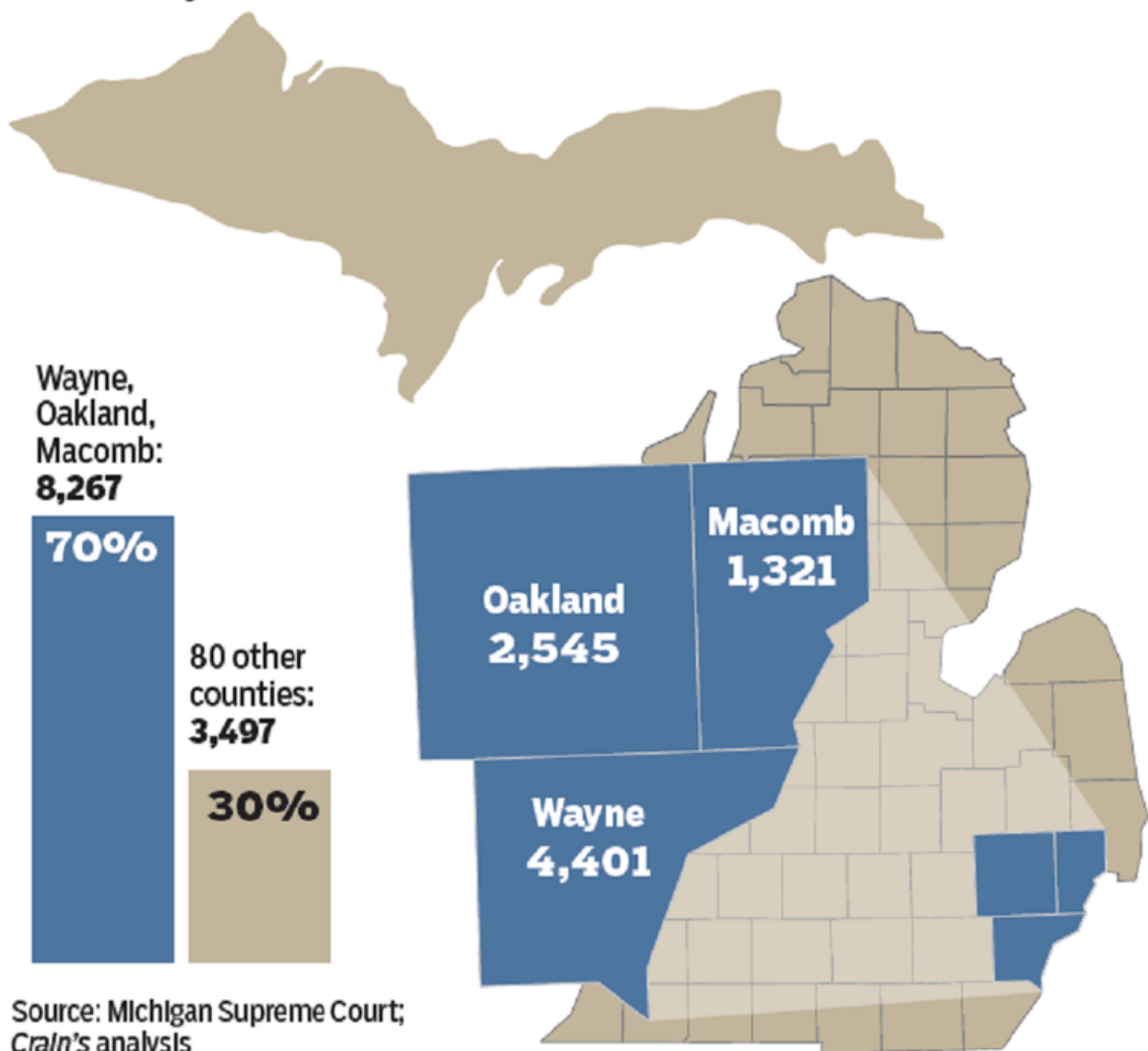
Under Michigan's no-fault auto insurance law, the insurance company for the Ford Explorer that the motorcycle collided with is responsible for paying for Harper's lifelong medical care.

But the SUV driver's carrier, USAA Casualty Insurance Co., stopped paying for around-the-clock attendant care for Harper in September 2017, according to a lawsuit filed in Oakland County Circuit Court on behalf of Harper's mother, the woman's conservator.

The lawsuit seeking up to \$40 per hour in attendant care coverage for Harper's lifelong care is one of 2,545 no-fault auto insurance lawsuits that flooded the Oakland County Circuit Court docket last year — nearly quadruple the number of first-party claims brought against insurers in 2016, when 644 suits were filed, records show.

Dubious distinction

The tri-county area leads the state in the number of no-fault suits.



The Harper lawsuit and hundreds of other claims brought in Oakland County last year underscore how increasingly disorderly Michigan's auto no-fault system has become as medical providers and injured drivers jump to different courts in search of favorable rulings and insurers seek new ways to mitigate their losses.

Michigan's no-fault law allows injured drivers and their medical providers to sue in any county where an insurance carrier sells policies, often making Oakland, Macomb and Wayne counties the courts of choice for complicated no-fault cases like Harper's – a Lake

City woman injured in west Michigan's Wexford County and currently residing at the Origami Brain Injury Rehabilitation Center in Grand Rapids.

"I'm seeing more and more instances where the insurance company is saying, 'We're not going to pay this benefit or we're going to pay less than what's being billed' without any reason," said attorney Nick Andrews, a partner at Liss, Seder & Andrews P.C. in Bloomfield Hills who is representing Harper's mother in the lawsuit, which goes to trial on Monday. "Maybe they're hopeful that people will just go away."

"(Insurers will) try anything that they think will stick," said attorney Jarrod Anthony, a partner at Anthony Paulovich & Worrall PLLC in Dearborn who represents medical providers. "There's a new argument probably every few months."

Michigan's unique no-fault law, which was originally designed to limit litigation and ensure a driver's medical bills get paid in a timely fashion, has become awash in legal battles. Between 2008 and 2018, the number of first-party no-fault lawsuits nearly doubled from 6,035 to 11,764. Seven out of 10 of the 2018 lawsuits were filed in Macomb, Oakland and Wayne counties.

As no-fault lawsuits have piled up in Oakland County Circuit Court the past two years — a 295 percent increase between 2016 and 2018 — state lawmakers have remained at loggerheads over how to overhaul a multibillion-dollar industry that is a financial safety net for critically injured motorists like Harper but also the most expensive insurance system in America for 7 million Michigan drivers.

"All of it goes to show that this is a system in absolute chaos, which is why the costs are continuing to go up across the state and reform is needed," said Dave Massaron, interim chief financial officer for the City of Detroit and Mayor Mike Duggan's point man on auto insurance reform.



Fergs Illustration

OAKLAND COUNTY LAWSUITS

State Farm Mutual Auto Insurance Co., which has more than 1 million auto no-fault policies, was sued 440 times in Oakland County Circuit Court in 2018 in first-party lawsuits seeking payment of personal injury protection benefits under Michigan’s no-fault auto insurance lawsuit.

The number of first-party auto insurance lawsuits in Oakland County more than quadrupled between 2016 and 2018 following a Michigan Supreme Court ruling that made it more difficult for medical providers to get standing to sue insurers.

| 2018 Oakland County no-fault lawsuits | Total lawsuits against insurer |
|---------------------------------------|--------------------------------|
| State Farm Mutual Auto Insurance Co. | 440 |
| Progressive Casualty Insurance Co. | 312 |

| | |
|---------------------------------------|-----|
| Allstate Fire & Casualty Insurance | 238 |
| Farm Bureau General Insurance Co. | 179 |
| Auto Club Group Insurance Co. (AAA) | 172 |
| Liberty Mutual Insurance Co. | 131 |
| Citizens Insurance Company of America | 128 |
| USAA Casualty Insurance Co. | 97 |
| Meemic Insurance Co. | 78 |
| Farmers Insurance Exchange | 75 |
| Geico Insurance | 66 |
| Nationwide Property & Casualty | 64 |
| Esurance Insurance Services Inc. | 53 |
| Auto-Owners Insurance | 45 |
| National General Insurance | 29 |
| Westfield Insurance Co. | 27 |
| Frankenmuth Mutual Insurance Co. | 25 |
| Amerisure Mutual Insurance Co. | 22 |
| Safeco Insurance Company of Illinois | 20 |
| Titan Insurance Co. | 20 |
| Hanover Mutual Insurance | 20 |
| Integon Insurance Co. | 20 |
| Amerisure Mutual Insurance Co. | 15 |
| Steadfast Insurance Co. | 15 |
| Grange Insurance Co. | 8 |

Lawsuits shift to suburbs

To understand why Oakland County has seen a spike in lawsuits, you have to look north.

Less than two weeks after Harper's accident, the Michigan Supreme Court made a major ruling in a no-fault lawsuit involving Covenant Medical Center in Saginaw and State Farm Mutual Insurance Co.

The Supreme Court's ruling hindered the right of medical providers to leapfrog over their patients and sue an insurer for non-payment or underpayment of services of an injured

motorist.

Personal injury attorneys say the ruling caused them to start filing more no-fault lawsuits in Oakland and Macomb counties instead of predominantly in Wayne County, which experienced a 30 percent decline in no-fault cases between 2016 and 2018. The total increase in cases in Oakland County (1,901) between 2016 and 2018 is nearly identical to the decline in lawsuits filed in Wayne County (1,926).

Most judges in Wayne County interpreted the Covenant decision strictly and began dismissing lawsuits from medical providers en masse, Anthony said.

But several judges in Oakland and Macomb counties took a different view on the procedures providers have to go through to get legal standing to sue, causing personal injury attorneys to take more cases north of Eight Mile Road.

The number of no-fault lawsuits filed in Oakland County skyrocketed from 644 to 1,085 in 2017 and 2,545 in 2018, while Macomb County's docket grew by 64 percent during that time, court records show.

"There was a big shift at that point in time," Anthony said after the Covenant decision.

A Crain's analysis of the 2,545 first-party auto insurance lawsuits filed in Oakland County last year shows 56 percent of them were brought by 25 medical providers that included neurosurgeons, orthopedic surgeons, spine and back specialists, pain management and rehabilitation clinics.

In Oakland County, Dearborn-based Advanced Surgery Center was the most frequent litigant last year, filing at least 155 lawsuits against 32 different auto insurance companies (more lawsuits than were filed in 61 rural Michigan counties combined last year), a Crain's analysis of court records shows. Representatives for Advanced Surgery Center did not return phone messages.

Another frequent litigant in Oakland County's courts last year was Flint neurosurgeon Jawad Shah, who filed 30 lawsuits against 14 different auto insurance companies, records show.

One of Shah's multiple lawsuits against State Farm challenged how the insurer baked clauses into its plans that disallowed injured motorists from assigning their no-fault benefits to their doctors or medical providers, which gave them the right to sue for

payment. The clauses were quietly added to no-fault policies while State Farm was battling Covenant all the way to the Supreme Court, according to multiple plaintiffs' lawyers.

"They tried to get rid of provider work altogether," said Anthony, whose law firm works for orthopedic surgeons, MRI clinics, physical therapists and anesthesiologists.

A Michigan Court of Appeals panel ruled last year that State Farm's "anti-assignment clause" was unenforceable, overturning a Genesee County judge.

But even with the Court of Appeals decision, which has been appealed to the Supreme Court, some plaintiffs' attorneys are choosing to stay out of Wayne County given the legal uncertainty that the spate of court rulings has created, Anthony said.

Andrews, who litigates primarily for attendant care benefits for quadriplegics and brain-injured motorists, said the Oakland County bench is a preferred court venue for the kinds of complicated cases he takes on.

"What I've found, at least in Oakland County, is the judges seem to understand the issues — they give you a fair shake, a pretty fair read," Andrews said.

But insurance industry representatives contend there's been a change in business models for plaintiffs' attorneys.

"The reality may be that these personal injury lawyers are starting to tap out what they can go after in Wayne County," said Tricia Kinley, executive director of the Insurance Alliance of Michigan, the industry's lobbying arm. "At some point, you start moving into different markets."

Kinley called the spike in no-fault lawsuits in Oakland and Macomb counties "shocking in a way, but also not surprising."

"It's a really unfortunate indictment on the system that is just really, really weakening every single day," she said.

'Unjustified' halting of benefits

Defenders of the law contend the lawsuits from providers are triggered by the business tactics of auto insurers that operate with little state oversight and regulation.

Mendelson Kornblum Orthopedic & Spine Specialists, a orthopedic surgical center with offices in Livonia and Warren, takes auto insurance companies to court after the carriers'

doctors – known as independent medical examiners or IMEs – rule their patient can't medically get better, according to the clinic's attorney.

"They file a lot of lawsuits because there are so many IMEs that are just unjustified," said Bruce Pazner, a Grosse Pointe Park attorney who represents the Mendelson clinic, which filed at least 56 lawsuits in Oakland County last year.

Pazner said the Legislature needs to create stronger regulatory oversight of doctors who perform independent medical exams "who make the same opinion over and over again" in favor of the insurance company paying them.

Insurance industry executives have argued that medical providers, in conjunction with personal injury attorneys, order unnecessary tests and rehab services that inflate the cost of care because there are no lifetime limits for personal injury protection benefits under Michigan's no-fault law.

"The reality is, the more litigation we have, that just drives up premiums because that's just an additional cost added into the system," Kinley said.

But not all unpaid medical bills end up in litigation. Outside metro Detroit, many smaller providers such as chiropractors will cut off care for patients when auto insurance companies start denying claims for continued treatment, Anthony said.

"The insurance companies typically get a windfall on that because a lot of the providers won't fight them," Anthony said.

Ian Vedder, co-owner of Soteria Home Health LLC, an attendant care agency based in Grand Blanc, said it's not uncommon for insurance companies to send payment checks that are 50 percent to 70 percent of what he billed for nurse aides to provide in-home care for injured motorists who can't walk, bathe or feed themselves.

"To sit there and say the providers can bill whatever they want is a completely false narrative," Vedder said. "I can bill whatever I want. But that doesn't mean they're going to pay whatever I want."

"What are my options? Either A, litigate it or B, accept it," he added.

In most cases, Vedder said, he eats his losses and prepares for the next insurance adjuster to come through his door.

"It's absolutely miserable to try to deal with an adjuster," he said.

MEDICAL PROVIDER LAWSUITS

About 56 percent of the 2,545 first-party no-fault auto insurance lawsuits filed in Oakland County Circuit Court last year were from 25 different medical providers seeking reimbursement for services rendered. Advanced Surgery Center in downtown Dearborn filed the most lawsuits with 155 suits against 32 different auto insurance companies – more lawsuits than were filed in 61 rural Michigan counties combined.

| Top 25 Plaintiffs in Oakland County no-fault lawsuits in 2018 | Number of lawsuits |
|---|--------------------|
| Advanced Surgery Center | 155 |
| Mercyland Health Services | 99 |
| Greater Lakes Ambulatory Surgical Center | 94 |
| Michigan Spine & Brain Surgeon | 90 |
| Northland Radiology | 80 |
| Physiatry & Rehab Associates | 80 |
| Michigan Pain Management | 79 |
| Meds Direct Pharmacy | 77 |
| Michigan Head & Spine Institute | 76 |
| ZMC Pharmacy | 74 |
| Mendelson Orthopedics | 56 |
| Dearborn Pain Specialists | 55 |
| Detroit Medical Center | 49 |
| Associated Surgical Center | 44 |
| Southeast Michigan Surgical Hospital | 41 |
| Spine Specialists of Michigan | 38 |
| Integrative Neurology | 34 |
| Executive Ambulatory Surgical | 31 |
| Jawad A. Shah, MD | 30 |
| Michigan Institute of Pain and Headache | 29 |
| Michigan Ambulatory Surgical Center | 27 |
| Nextgen Pain Associates & Rehabilitation | 26 |
| Michigan Orthopedic Trauma Specialists | 16 |
| Special Tree Rehabilitation | 24 |
| Surgical Center of Southfield | 18 |

Sources: Oakland County Circuit Court records; Crain's analysis

Unprompt payments

There are an untold number of cases of severely injured motorists or providers waiting years for a court ruling on whether the insurance company has to pay a claim.

Harper's case goes to trial on Monday in Oakland County Circuit Court as her Bloomfield Hills attorney intends to ask a jury for \$179,921 in back pay for Harper's mother's attendant care — plus 12 percent interest and "actual attorney fees," according to court records.

The brain-injured woman's doctor at Mary Free Bed Rehabilitation Hospital in Grand Rapids prescribed 24-hour-a-day attendant care for everything from assisting the woman with taking medication to "novel problem solving, managing daily schedule and concerns with safety, judgment and impulsivity," according to court records.

Andrews said he is pursuing attendant-care hourly rates between \$25 and \$40 an hour, based on a medical expert's opinion of Harper's needs.

At the low end, the attendant care cost for Harper could cost \$219,000 per year. At the high end, it could top \$350,000.

If the case is successful, Harper's lifelong medical care will be paid out of the Michigan Catastrophic Claims Association's **\$20 billion fund** once they exceed a \$580,000 cap that goes into effect July 1.

The MCCA is an entity created to pay out the most expensive auto insurance claims after an insurer pays up to a cap set by regulators. Last week, the MCCA **raised its annual per-vehicle assessment fee** to \$220, citing rising medical claims that are dominated by attendant care costs.

Andrews filed the lawsuit on March 29, 2018. On Nov. 20, USAA made a payment of \$77,109 for more than 6,400 hours of attendant care between September 2017 and November 2018 at a rate of \$12 per hour, court records show.

The payment, which is significantly less than the rate Harper's attorney is seeking, came 18 months after she barely survived the motorcycle crash in Cadillac.

A spokesman for USAA declined to comment, citing the ongoing litigation.

"The system was designed for prompt payment — and we've seen anything but that," Andrews said.