



# no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

07.13.10

## Supreme Court Strikes Down Rules Banning Insurance “Scoring”

By Thomas J. Azoni

In a 4-3 decision, the Michigan Supreme Court sided with the insurance industry, striking down administrative rules preventing the practice of “insurance credit scoring” in assessing automobile and homeowners insurance policy discounts in the case of *Insurance Institute of Michigan, et al v Commissioner, Financial & Insurance Services, Department of Labor & Economic Growth*.

The practice of discounting premiums paid by insureds with high credit scores began with enabling legislation in 1997. Following a statewide study of such practices, however, the Insurance Commission published its findings in 2002, known as the Fitzgerald Report, which ultimately led to the banning of insurance scoring through the adoption of administrative rules.

The majority opinion struck down those administrative rules prohibiting scoring based on a finding that the Insurance Commissioner exceeded her authority by attempting to prohibit a practice that is specifically permitted under the Michigan Insurance Code. The Court noted that MCL 500.2110(a) allows insurers to “establish and maintain a premium discount plan utilizing factors in addition to...” those specifically enumerated in the Act.

In rejecting the assertion that such plans are inherently discriminatory, the Court viewed favorably an affidavit from Morrall Claramunt, Executive Vice-President and Secretary of Frankenmuth Mutual Insurance Company, in which he described a direct correlation between insurance scores and risk. Similar evidence was supplied by other carriers such as Progressive, Hastings Mutual and Citizens Insurance Company pointing to the undeniable fact that persons who do not protect their credit rating are also not likely to protect themselves and others when driving a car, or maintaining a house.

### SECRET WARDLE NOTES:

The Supreme Court adopts here a common sense approach to the pricing of insurance policies based on valid empirical data correlating the relationship between one’s credit score and one’s insurance risk. The evidence suggests persons having a tendency toward risky behavior in one area of their life, will often carry over the same trait in other areas of their life, such as motor vehicle operation, or home ownership.

## CONTINUED...

The Court recognized that insurance companies may offer discounts for a variety of factors they believe will reduce the risk of loss. They may, for example, reduce premiums for persons having fire extinguishers or smoke detectors in their home, or for having anti-lock brakes on their car. Credit scoring is simply another device for attracting persons who either already are, or are incentivized to become, a lower insurance risk. As the majority stated, "There is little difference between providing a discount for anti-lock brakes, for example, and providing a discount based on high insurance scores."

In addition, the Court rejected the assertion of the minority that credit scores are unreliable and inaccurate. The Court found the studies propounded by the minority to be inconclusive at best, and found instead that most errors in credit reports are minor ones, such as a misspelled street name, having no impact on assessing one's credit worthiness.

## CONTACT US

### **Farmington Hills**

30903 Northwestern Highway, P.O. Box 3040  
Farmington Hills, MI 48333-3040  
Tel: 248-851-9500 Fax: 248-851-2158

### **Mt. Clemens**

94 Macomb Place, Mt. Clemens, MI 48043-5651  
Tel: 586-465-7180 Fax: 586-465-0673

### **Lansing**

6639 Centurion Drive, Ste. 130, Lansing, MI 48917  
Tel: 517-886-1224 Fax: 517-886-9284

### **Grand Rapids**

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546  
Tel: 616-285-0143 Fax: 616-285-0145

[www.secrestwardle.com](http://www.secrestwardle.com)

SECRET  
**SW**  
WARDLE

Copyright 2010 Secrest, Wardle, Lynch, Hampton,  
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

## CONTRIBUTORS

### **Motor Vehicle Litigation Practice Group Chairs**

Thomas J. Azoni  
John H. Cowley, Jr.

### **Editor**

Bonny Craft

We welcome your questions and comments.

## OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newslines, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at [swsublications@secrestwardle.com](mailto:swsublications@secrestwardle.com) or 248-539-2850.

### **Other newsletters include:**

**Benchmarks** – Navigating the hazards of legal malpractice  
**Blueprints** – Mapping legal solutions for the construction industry  
**Boundaries** – A guide for property owners and insurers in a litigious society  
**Community Watch** – Breaking developments in governmental litigation  
**Contingencies** – A guide for dealing with catastrophic property loss  
**Fair Use** – Protecting ideas in a competitive world  
**In the Margin** – Charting legal trends affecting businesses  
**Industry Line** – Managing the hazards of environmental toxic tort litigation  
**Landowner's Alert** – Defense strategies for property owners and managers  
**On the Beat** – Responding to litigation affecting law enforcement  
**On the Job** – Tracking developments in employment law  
**Safeguards** – Helping insurers protect their clients  
**Standards** – A guide to avoiding risks for professionals  
**State of the Art** – Exploring the changing face of product liability  
**Structures** – A framework for defending architects and engineers  
**Vital Signs** – Diagnosing the changing state of medical malpractice and nursing home liability