

Supreme Court of Florida.
Ruben FLORES, Petitioner,
v.
ALLSTATE **INSURANCE** COMPANY, Respondent.
No. SC00-2281.
May 23, 2002.

Insured brought action against **automobile insurer** to recover personal injury protection (PIP) and uninsured motorist (UM) benefits. The Circuit Court, Hillsborough County, James S. Moody, Jr., J., entered judgment in favor of the **insurer**. **Insured** appealed. The District Court of Appeal, Green, J., [772 So.2d 4](#), affirmed and certified question of great public importance. On review, the Supreme Court, Pariente, J., held as a matter of first impression that fraud in connection with claim for PIP benefits did not void the UM coverage.

Quashed and remanded.

Wells, C.J., concurred in the result only and file opinion in which Shaw and Quince, JJ., concurred.

Supreme Court of Florida.
Carole M. SIEGLE, Petitioner,
v.
PROGRESSIVE CONSUMERS **INSURANCE** COMPANY, Respondent.
No. SC01-1219.
May 23, 2002.

Insured filed complaint against **automobile insurer** to recover diminished market value of her vehicle, which was repaired following an accident. The Seventeenth Judicial Circuit Court, Broward County, Miette K. Burnstein, J., dismissed complaint. **Insured** appealed. The District Court of Appeal, Stevenson, J., [788 So.2d 355](#), affirmed and certified question of great public importance. On review, the Supreme Court, Lewis, J., held that policy did not cover diminished value of satisfactorily repaired car.

Approved.

Pariante, J., concurred in the result only.

819 So.2d 34

Supreme Court of Alabama.
William D. HICKS and Donna Hicks
v.
Charles Ray DUNN, Jr.
1001014.
Oct. 12, 2001.

Driver and passenger who were injured entering restaurant parking lot brought action against driver of vehicle that struck them alleging negligence and wantonness. The Walker Circuit Court, No. CV-95-039, Hugh Beard, J., entered judgment as a matter of law (JML) for defendant driver on wantonness claim, and subsequently entered judgment on jury verdict for injured driver and passenger on negligence claim. Injured driver and passenger appealed. The Supreme Court, Lyons, J., held that: (1) injured driver and passenger could appeal JML on wantonness claim, and (2) substantial evidence existed from which jury could have found that defendant driver was reckless or consciously disregarded rights or safety of others, so as to justify submission of wantonness claim to jury.

Supreme Court of Alabama.
BILL HEARD CHEVROLET COMPANY and Mayflower National Life **Insurance** Company
v.
James E. THOMAS and Dorothy L. Dixon.
1000584.
Oct. 19, 2001.

In car buyer's action against seller, employee, finance company, and **insurer**, the Circuit Court, Russell County, No. CV-95-47, Albert L. Johnson, J., certified class action. **Insurer** and seller petitioned for writ of mandamus. The Supreme Court, [771 So.2d 459](#), granted petition, and ordered trial court to vacate its class-certification orders. On remand, the Circuit Court certified the class action. Seller and **insurer** appealed. The Supreme Court, Stuart, J., held that the trial court was required to conduct a formal evidentiary hearing and allow defendants adequate opportunity to contest the proposed class-certification order, and to identify elements of each claim for a class action and provide a written rigorous analysis of how the class action rule was satisfied.

801 A.2d 516

Supreme Court of Pennsylvania.

Sid BURSTEIN and Doreen Burstein, H/W, Appellees,
v.
PRUDENTIAL PROPERTY AND CASUALTY **INSURANCE** COMPANY, Appellant.
Argued Jan. 29, 2001.
Decided July 17, 2002.

Insureds petitioned for review of arbitrators' decision partially upholding an exclusion of underinsured motorist (UIM) coverage under their personal policy for bodily injury while using a company car. The Philadelphia County Court of Common Pleas, Civil Division, No. 3893 May Term 1995, Mary D. Colins, J., invalidated the exclusion as to both named **insureds**. **Insurer** appealed. The Superior Court, No. 2619 Philadelphia 1997, Schiller, J., [1999 PA Super 285, 742 A.2d 684](#), affirmed. Allocatur was granted. The Supreme Court, No. 18 EAP 2000, Zappala, C.J., held that exclusion of UIM coverage for injuries while using a regularly used, non-owned car comported with public policy.

2002 WL 1614080 (Mich.) **ALFONSO E. ROGERS, Personal Representative of the Estate of Daimon Ja'Von Rogers, Deceased, Plaintiff-Appellee,**
v.
J.B. HUNT TRANSPORT, INC., Defendant-Appellant
and
WESLEY HOWARD CRENSHAW, Defendant.
No. 118766
Supreme Court of Michigan.
FILED JULY 23, 2002

Dykema, Gossett, P.L.L.C. (by Joseph H. Hickey, Kathleen McCree Lewis, and Kevin M. Zielke) [39577 Woodward Avenue, Suite 300, Bloomfield Hills, MI 48304- 2820] [248.203.0700] or [313.568.6800], for the defendant-appellant.

Amicus Curiae: Adams & Hicks, P.L.C. (by Steven A. Hicks) [504 S. Creyts Road, Suite C, Lansing, MI 48917] [517.323.2100], for the Michigan Trial Lawyers Association.

BEFORE THE ENTIRE COURT

WEAVER, J.

In this wrongful death action, we address whether a default entered against an employee that conclusively determined the employee's negligence for the purpose of the employee's personal liability is also a proper foundation for an order holding his employer vicariously liable. The Court of Appeals held that it was, thereby extending the effect of the default to the employer and precluding the employer from contesting its vicarious liability. We reverse the decision of the Court of Appeals and remand to the circuit court.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.
2002 WL 1934111

Court of Appeals of Maryland.
Stacey SMITH,
v.
Diana M. BORELLO.
No. 13 Sept. Term, 2001.
Aug. 22, 2002.

Motorist, who was involved in vehicular accident with driver whereby motorist suffered miscarriage and lost her baby, brought negligence action in the Circuit Court for Baltimore City against driver, alleging that, as a result of driver's negligence, motorist sustained serious bodily injuries and the loss of her unborn child and that she suffered pecuniary loss, mental anguish, severe emotional distress, and emotional pain

and suffering. Since driver was a New Jersey resident, driver removed the case to the United States District Court for the District of Maryland where, in due course, motorist and the alleged father of motorist's unborn child filed an amended complaint. The District Court found driver negligent and returned a verdict in motorist's favor in the amount of \$14,382. Motorist appealed to the Court of Appeals for the Fourth Circuit, which certified question to the Maryland Court of Appeals. The Court of Appeals, Wilner, J., held that, as matter of first impression, pregnant woman who sustains personal injury as the result of a defendant's tortious conduct and who, as part of that injury, suffers the loss of the fetus may recover, in her own action for personal injuries, for any demonstrable emotional distress that accompanies and is attributable to the loss of the fetus.

Certified question answered.

648 N.W.2d 591 466 Mich. 588

Supreme Court of Michigan.

Peter CRUZ, Jr., Plaintiff-Appellee,

v.

STATE FARM MUTUAL **AUTOMOBILE INSURANCE** COMPANY, Defendant-Appellant.

Docket No. 117505.

Calendar No. 2.

Argued Dec. 4, 2001.

Decided July 17, 2002.

Insured filed claim against **automobile insurer** for no-fault benefits and uninsured motorist (UM) benefits. After **insurer** denied claims based on **insured's** failure to submit to examination under oath (EUO) and **insured** unilaterally proceeded to arbitration which resulted in award in favor of **insured**, **insured** brought suit to confirm award and recover no-fault benefits. The Kent Circuit Court, Paul J. Sullivan, J., granted summary disposition to **insurer**. **Insured** appealed. The Court of Appeals, McDonald, P.J., [241 Mich.App. 159, 614 N.W.2d 689](#), affirmed in part and reversed in part. Leave to appeal was granted. The Supreme Court, Taylor, J., held that: (1) policy provision requiring **insured** to submit to EUO was invalid as a condition precedent to pay no-fault benefits, but (2) EUO provisions are only precluded when they clash with the rules the legislature has established for no-fault **insurance**.

Affirmed.

79 S.W.3d 361 349 Ark. 550

Supreme Court of Arkansas.

Deidra M. CHAVERS, Individually and as Personal Representative of the Estate of James Chavers

v.

GENERAL MOTORS CORPORATION; AlliedSignal, Inc.; and Ford Motor Company.

No. 01-1410.

July 5, 2002.

Estate of self-described "shade tree" mechanic who performed brake jobs on his own vehicles and those of relatives and friends sued three manufacturers of asbestos-containing friction products, alleging that exposure to manufacturers' products caused mechanic's mesothelioma. The Hempstead Circuit Court, Duncan M. Culpepper, J., granted summary judgment to manufacturers. Estate appealed. The Court of Appeals certified case to Supreme Court as a matter involving issue of first impression. The Supreme Court, Donald L. Corbin, J., held that: (1) plaintiff in asbestos exposure case must prove the following elements: plaintiff was exposed to a particular asbestos-containing product made by defendant, with sufficient frequency and regularity, in proximity to where plaintiff actually worked, such that it is probable that the exposure to defendant's product caused plaintiff's injuries; (2) estate could not recover against two manufacturers because it produced no evidence regarding specific products made by those manufacturers and used by mechanic and no evidence that the particular products he used contained asbestos; and (3) evidence that mechanic had been exposed on one occasion to a specific asbestos-containing product made by third manufacturer was insufficient to satisfy the "frequency and regularity" requirement.

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2002 WL 1934111
Court of Appeals of Maryland.
Stacey SMITH,
v.
Diana M. BORELLO.
No. 13 Sept. Term, 2001.
Aug. 22, 2002.

Motorist, who was involved in vehicular accident with driver whereby motorist suffered miscarriage and lost her baby, brought negligence action in the Circuit Court for Baltimore City against driver, alleging that, as a result of driver's negligence, motorist sustained serious bodily injuries and the loss of her unborn child and that she suffered pecuniary loss, mental anguish, severe emotional distress, and emotional pain and suffering. Since driver was a New Jersey resident, driver removed the case to the United States District Court for the District of Maryland where, in due course, motorist and the alleged father of motorist's unborn child filed an amended complaint. The District Court found driver negligent and returned a verdict in motorist's favor in the amount of \$14,382. Motorist appealed to the Court of Appeals for the Fourth Circuit, which certified question to the Maryland Court of Appeals. The Court of Appeals, Wilner, J., held that, as matter of first impression, pregnant woman who sustains personal injury as the result of a defendant's tortious conduct and who, as part of that injury, suffers the loss of the fetus may recover, in her own action for personal injuries, for any demonstrable emotional distress that accompanies and is attributable to the loss of the fetus.

Certified question answered.

Supreme Court of Michigan.
Martin A. NOWELL, Plaintiff-Appellee,
v.
TITAN INSURANCE COMPANY, Defendant-Appellant.
Docket No. 119013.
Calendar No. 4.
Argued March 13, 2002.
Decided July 9, 2002.

Automobile accident victim brought action against driver's **automobile** liability **insurer** to establish that the policy had not been cancelled before the accident. The District Court entered summary disposition in favor of victim. **Insurer** appealed. The Court of Appeals affirmed in unpublished opinion. **Insurer's** application for leave to appeal was granted. The Supreme Court, Taylor, J., held that: (1) statute permitting **insurer** to cancel policy at any time by mailing to the **insured** a not less than 10 days' written notice of cancellation does not require actual notice to or receipt by the **insured** as a condition for cancellation, overruling [Gooden, 11 Mich.App. 695, 162 N.W.2d 147](#), [Phillips, 69 Mich.App. 512, 245 N.W.2d 114](#), [Lemaster, 99 Mich.App. 325, 298 N.W.2d 19](#), [Crenshaw, 160 Mich.App. 34, 408 N.W.2d 100](#), [American States Ins. Co., 193 Mich.App. 248, 484 N.W.2d 1](#), and (2) mailing of a notice of cancellation must be reasonably calculated to be delivered so as to arrive at the **insured's** address at least ten days before the date specified for cancellation.

Reversed and remanded.

Marilyn J. Kelly, J., concurred in part, dissented in part, and filed opinion.

648 N.W.2d 137

Supreme Court of Iowa.
Shelley A. HORAK, Administrator of the Estate of Leticia B. Morales, and
Antonia Ramona Holguin, Francisco Holguin Morales, and Marc Anthony Abney,
Appellees,
v.
ARGOSY GAMING CO. d/b/a Belle Casino of Sioux City, Iowa, Appellant.
No. 99-1941.
July 17, 2002.

Children of patron who died in single vehicle collision sued riverboat casino under dram shop statute. The District Court, Woodbury County, Dewie J. Gaul, J., entered judgment on jury verdict against casino and awarded children \$1,250,000 for past and future loss of parental consortium. Casino appealed. The Court of Appeals, Neuman, J., held that:(1) federal preemption principles did not preclude children's action under Dramshop Act; (2) substantial circumstantial evidence supported finding that casino employees sold and served patron drinks and knew, or reasonably should have known, of her inebriated state when they did so; (3) whether casino's actions were proximate cause of single vehicle accident in which patron was killed was question for jury; (4) excluding evidence that patron was naked from waist down when found at scene of accident was not abuse of discretion; (5) proximate cause instructions did not warrant reversal; (6) evidence supported finding as to children's loss of parental consortium; and (7) children's recovery was properly based on patron's life expectancy.

Affirmed.

