

# Negligence Law Section

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### **“Court of Appeals to Insurers: \$250,000/\$500,000 does not equal \$50,000/\$100,000”**

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What is the state-mandated minimum amount of auto liability insurance coverage? This is a common question across the country that should be easy to answer. And before July 2020, the answer for Michigan was relatively straightforward: \$20,000 per person/\$40,000 per person.

The answer to this question matters not only to the insurance buying public, but also to practitioners, even those dealing with insurance policies containing higher limits. Why? Because there have always been exclusions in auto insurance policies that permit an insurer to reduce its stated coverage to the state-mandated minimum. The most common situations involve intentionally caused injury, failure to cooperate, and intra-familial “step-downs” i.e., where one family member brings a liability claim against another family member.

Yet Michigan’s auto insurance overhaul known as Public Act 21/22 complicated the matter by creating what can best be called a default/drop-down paradigm for auto liability insurance coverage. Under MCL 500.3009, any auto liability policy issued in Michigan after July 1, 2020, must contain the default limit of \$250,000/\$500,000. Subsection (5) permits insureds to select coverage as low as \$50,000/\$100,000, but only if insurers follow specific rules, including obtaining from the insured a specific choice-of-coverage form in accordance with subsection (7). Under subsection (8), failure of the insured to make an “effective choice under subsection (5)” requires the insurer to provide coverage in the default amount of \$250,000/\$500,000.

Since 2020, some insurers have been arguing the state-mandated liability coverage is not \$250,000/\$500,000 but \$50,000/\$100,000. But that argument has now been dealt its final blow by the Michigan Court of Appeals. Earlier this year, in *State Farm v. Estate of Fortin*, \_\_\_ Mich. App. \_\_\_ (2024), the Court of Appeals held that for an automobile insurance policy delivered Michigan to contain liability coverage of less than \$250,000/\$500,000 the choice-of-coverage form must be completed contemporaneously with the issuance of the policy.

Then, on June 20, 2024, the Court of Appeals issued an ever more consequential published decision in *Progressive Marathon Ins. Co. v. Espinoza-Solis*, \_\_\_ Mich. App. \_\_\_ (2024). The case involved an insured’s alleged failure to cooperate. Progressive sought a declaration that, as result of that noncooperation, the per-person auto liability coverage should be reduced from the stated

\$250,000 to \$50,000. The Court of Appeals rejected that argument and held that auto liability insurance coverage could not be reduced to lower than \$250,000/\$500,000 unless there was a completed choice-of-coverage form. As the Court stated: “We hold that the statutorily required minimum residual liability insurance for policies issued after July 1, 2020, is \$250,000 per person and \$500,000 per accident, pursuant to MCL 500.3009(1)(a) and (b), unless the proper steps are followed to exercise the option of selecting a lower coverage amount under MCL 500.3009(5).”

*Espinoza-Solis* applies beyond non-cooperations cases. Its holding applies anytime an insurer seeks to invoke an exclusion that reduces coverage to the state-mandated minimum. Unless the insurer can produce a choice-of-coverage form completed contemporaneously with the issuance of the policy, the insurer cannot reduce coverage to less than \$250,000/\$500,000.

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