

STATE OF MICHIGAN
SUPREME COURT

FERN WILLER,

Plaintiff-Appellee,

V

Supreme Court Docket No. 133596

Court of Appeals Docket No. 273805

Wayne County Circuit Court No. 2006-607259 -NF

Hon. Cynthia D. Stephens

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DEFENDANT-APPELLANT'S SUPPLEMENTAL
BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

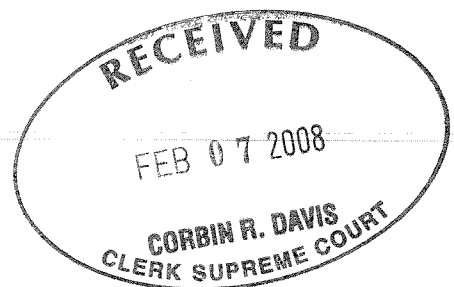


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STATEMENT OF FACTS

As acknowledged in Defendant-Appellant's Application for Leave to Appeal, the facts giving rise to this matter are not in dispute. On March 10, 2005, Plaintiff-Appellee Fern Willer was standing outside of her automobile insured with Defendant-Appellant Titan Insurance Company, cleaning the ice and snow from her windshield. As she was doing so, she slipped and fell on the snow and ice surrounding her vehicle. **There is no genuine issue of material fact regarding how the incident occurred.**

Because the facts giving rise to this cause of action are undisputed, the primary issue in this case is the application of those facts to the statutory text of the Michigan No-Fault Insurance Act, MCL 500.3101 *et. seq.* As this Court observed in *Putkamer v TransAmerica Ins. Corp.*, 454 Mich 626, 563 NW2d 683 (1997):

“[W]here there is no dispute about the facts, the issue of whether an injury arose out of use of a vehicle is a legal issue for a court to decide and not a factual one for a jury.” *Putkamer*, 454 Mich at 631, 563 NW2d 683 (1997).

See also *Wills v State Farm*, 437 Mich 205, 468 NW2d 511 (1991); *Krueger v Lumbermen's Mutual Casualty & Home Insurance Company*, 112 Mich App 511, 316 NW2d 474 (1982). In the case under consideration, the causal nexus between the slip and fall incident and Plaintiff-Appellee's ownership, operation, maintenance or use of her motor vehicle as a motor vehicle is, at best, incidental, fortuitous, or 'but for,' which is legally insufficient to give rise to a claim for no-fault insurance benefits. Accordingly, the Lower Court erred when it denied Defendant-Appellant's Motion for Summary Disposition.

I. BECAUSE PLAINTIFF-APPELLEE'S SLIP AND FALL COULD JUST AS EASILY HAVE OCCURRED ANYWHERE ELSE, THE CAUSAL RELATIONSHIP BETWEEN HER SLIP AND FALL ON ICE AND HER OWNERSHIP, OPERATION, MAINTENANCE OR USE OF HER MOTOR VEHICLE AS A MOTOR VEHICLE IS, AT BEST, INCIDENTAL, FORTUITOUS, OR "BUT FOR."

This Court's seminal decision in *Thornton v Allstate*, 425 Mich 643, 391 NW2d 320 (1986) marks that first time that this Court had an opportunity to discern the boundaries of no-fault coverage under MCL 500.3105(1). This section of the No-Fault Insurance Act, which is essentially a broad grant of coverage, provides that:

"Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter."

In *Thornton*, plaintiff (who worked as a taxi driver) picked up a passenger in his taxi. As plaintiff pulled away from the curb, the passenger pulled a pistol and shot plaintiff in the neck. As a result of this incident, plaintiff was left completely paralyzed.

Plaintiff filed a claim for no-fault benefits with Allstate Insurance Company, the insurer of the taxi cab he was operating at the time of this incident. Allstate denied the claim on the basis that plaintiff's injuries did not arise out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. Rather, his injuries arose out of the armed robbery perpetrated by the passenger.

In determining that defendant insurer was not obligated to provide no-fault benefits, this Court compared the statutory language of the No-Fault Insurance Act with the Court of Appeals' interpretation of a similar (though not identical) phrase found in an insurance liability contract in *Kangas v Aetna Casualty & Surety Company*, 64 Mich App 1, 235 NW2d 42 (1975). After reviewing decisions from both the Court of Appeals and other state courts, this Court concluded:

“In drafting MCL 500.3105(1), the Legislature limited no-fault PIP benefits to injuries arising out of the ‘use of a motor vehicle *as a motor vehicle*.’ In our view, this language shows that the Legislature was aware of the causation dispute and chose to provide coverage only where the causal connection between the injury and the use of a motor vehicle as a motor vehicle is more than incidental, fortuitous, or ‘but for.’ The involvement of the car in the injury should be directly related to its character as a motor vehicle. Miller v Auto-Owners [411 Mich 633, 309 NW2d 544 (1981)]. Therefore, the first consideration under MCL 500.3105(1) must be the relationship between the injury and the vehicular use of a motor vehicle. Without a relation that is more than ‘but for,’ incidental or fortuitous, there can be no recovery of PIP benefits.

The connection in this case between the debilitating injury suffered by Mr. Thornton and the use of the taxi cab as a motor vehicle is no more than incidental, fortuitous, or ‘but for.’ The motor vehicle was not the instrumentality of the injuries. Cf. Gajewski v Auto-Owners Insurance Company, 414 Mich 968, 326 NW2d 825 (1982). The motor vehicle here was merely the situs of the armed robbery – the injury could have occurred whether or not Mr. Thornton used a motor vehicle as a motor vehicle. [Citations omitted] The relation between the functional character of the motor vehicle and Mr. Thornton’s injury was not direct – indeed, the relationship is at most incidental.” Thornton, 391 NW2d at 327-328 (italics in original, emphasis added).

Since Thornton was decided, there have been numerous decisions both from this Court and the Court of Appeals which have ruled that where the causal relationship between an injury and the ownership, operation, maintenance or use of a motor vehicle is simply incidental, fortuitous or “but for,” a no-fault insurer is not obligated to provide PIP benefits.

For example, both this Court and the Court of Appeals have consistently ruled that injuries arising out of an assault and battery, while the Claimant is occupying a motor vehicle, are not compensable under the No-Fault Insurance Act. See *e.g.*, Morosini v Citizens Insurance Company, 461 Mich 303, 602 NW2d 828 (1999) (plaintiff assaulted following a minor traffic accident – not compensable); Bourne v Farmers Insurance Exchange, 449 Mich 193, 534 NW2d

4919 (1995) (plaintiff injured during a carjacking incident – no coverage as vehicle was simply the situs of the injury and there was an insufficient causal connection between the injury and the use of the vehicle); Marzoni v ACIA, 441 Mich 522, 495 NW2d 788 (1992) (plaintiff shot while occupying a car – court rules that involvement of the car was fortuitous and incidental); Mueller v ACIA, 203 Mich App 86, 512 NW2d 46 (1993) (occupant of a pick-up truck was accidentally struck by a bullet intended for a deer – no coverage as relationship between the injury and the motor vehicle as a motor vehicle was merely incidental and fortuitous); Kennedy v ACIA, 215 Mich App 264, 544 NW2d 750 (1996) (plaintiff injured when struck by an unknown object while a passenger in a motor vehicle – no coverage due to insufficient causal connection between the functional use of the vehicle and plaintiff’s injury).

The same analysis has been applied to cases involving slip and falls. See e.g., Daubenspeck v ACIA, 179 Mich App 453, 446 NW2d 292 (1989); Rajhel v ACIA, 145 Mich App 593, 378 NW2d 486 (1985); King v Aetna, 118 Mich App 648, 325 NW2d 528 (1982); and Block v Citizens, 111 Mich App 106, 314 NW2d 536 (1982), all of which were discussed at some length in Defendant-Appellant’s Application for Leave to Appeal. Defendant-Appellant will not burden this Court with a repeat analysis of the holdings in those cases. **However, during the hearing on Plaintiff-Appellant’s Motion for Summary Disposition held on July 14, 2006, the Lower Court completely misread the facts and circumstances involved in *Daubenspeck*, *supra*.** On page 4 of the hearing transcript, the Court stated:

“Just a question. Mr. Daubenspeck or Miss Daubenspeck, whomever it was, pumped the gas. Puts the pump back up. And then proceeds to walk back into the gas station. Ergo, they’re just walking somewhere, not in any contact with the car.

This plaintiff is scraping the ice and snow off the vehicle so she can drive the vehicle so she falls. Do you see any difference

there?” *Transcript of July 14, 2006, pp4-5, attached as Exhibit 4 to Defendant-Appellant’s Application for Leave to Appeal.*

In fact, the Lower Court was apparently eluding to the factual circumstances in *Rajhel, supra*, *King, supra*, or *Block, supra*, all of which involve a plaintiff who was walking between his or her vehicle and some other destination when he or she slipped and fell on snow or ice. **In Daubenspeck, supra, plaintiff was in the process of “maintaining” his automobile (refueling it) when he slipped and fell on ice.** As stated by the Court of Appeals in *Daubenspeck*:

“The facts are undisputed. Plaintiff stopped at a self-service gas station on February 7, 1986. After he finished pumping his gas, **but before he replaced his gas cap**, plaintiff slipped and fell on ice between his car and the gas pump. This suit followed defendant’s refusal to pay personal protection insurance benefits for plaintiff’s resultant injuries.

* * *

In this case, plaintiff contends that refueling constitutes maintenance of an automobile and that he is entitled to benefits under MCL 500.3105(1) because he was injured in the course of such maintenance. Defendant asserts that the requisite causal connection between plaintiff’s injuries and the maintenance of his vehicle is lacking on these facts. The trial court, in granting summary disposition in favor of defendant, concluded that plaintiff’s injuries arose from his slip and fall and that their connection to the vehicle was merely fortuitous. **We agree with the Trial Court.**

* * *

Similarly, in this case, even assuming that the act of refueling constitute maintenance, the connection between the act of pumping gas and plaintiff’s slip and fall was merely incidental, fortuitous, or ‘but for.’ **Plaintiff was injured by losing his footing on a patch of ice, an injury which could ‘just as well have occurred elsewhere.’** . . . *Daubenspeck*, 446 NW2d at 293-204 (emphasis added).

Clearly, the factual circumstances in *Daubenspeck, supra* are analogous to the factual circumstances in this case and, just as in *Daubenspeck*, the causal nexus between Plaintiff-Appellee’s injuries in this case and her ownership, operation, maintenance or use of a motor

vehicle as a motor vehicle, is simply incidental, fortuitous or “but for.” The injury suffered by Plaintiff-Appellee could “just as well have occurred elsewhere.” See *Rajhel, supra*.

At this juncture, a discussion of this Court’s decision in *Putkamer, supra* is in order. This decision concerned the application of the “arising out of” requirement in the context of a **parked** motor vehicle. Section 3106 of the Michigan No-Fault Insurance Act sets forth what is commonly referred to as the “parked vehicle” exclusion, along with three statutory exceptions to the exclusion. This part of the No-Fault Insurance Act provides:

- “(1) Accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked vehicle as a motor vehicle unless any of the following occur:
 - (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
 - (b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.
 - (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.”

In *Putkamer*, plaintiff slipped and fell on ice while entering her vehicle, thereby coming within one of the three statutory exceptions to the parked vehicle exclusion – MCL 500.3106(1)(c).

This Court noted that after plaintiff had opened the door of her parked vehicle, she lifted her right leg into the vehicle, shifted her weight to her left leg, and slipped on the ice while stepping into the vehicle. Under these circumstances, this Court had no problem concluding that because plaintiff’s injuries fell squarely within one of the three statutory exceptions to the parked vehicle

exclusion, the causal relationship between the injuries suffered by the plaintiff, while entering into her own automobile, and the ownership, operation, maintenance or use of a parked motor vehicle as a motor vehicle, was more than incidental, fortuitous or “but for.”¹

In *Putkamer, supra*, this Court went to some lengths to distinguish between injuries which occur in the context of one of the three statutory exceptions to the parked vehicle exclusion, and those injuries which occur in the context of the judicially-created “maintenance exception” to the parked vehicle exclusion. In this regard, this Court discussed, and cited with approval, the Court of Appeals’ analysis in *Daubenspeck, supra* and *Rajhel, supra*. As noted by this Court:

“The Court of Appeals relied on three of its previous decisions in affirming the Circuit Court’s decision to grant summary disposition to defendant: *Daubenspeck, Rajhel, and Block*. In *Daubenspeck* and *Rajhel*, each plaintiff was injured while maintaining the vehicle when the plaintiff slipped and fell. Daubenspeck slipped and fell while refueling his automobile . . . and Rajhel slipped and fell on ice while walking away from her disabled car and toward a tow truck she had called In each case, the Court of Appeals denied recovery under subsection 3105(1) because there was not the requisite causal connection. These cases are distinguishable from the instant one, because they involve maintenance of a vehicle under subsection 3105(1) and these involve the entering exception under subsection 3106(1) (c). In these cases, the plaintiffs were not entering into or alighting from the vehicles when the slip and fall occurred. Neither of these cases supports the proposition that the causal connection between an injury that results from slipping on ice while stepping into a parked motor vehicle and the use of the parked motor vehicle is merely incidental.

In *Block*, . . . the plaintiff slipped and fell on ice while returning to her vehicle, but before she reached it. The Court of Appeals concluded that the plaintiff could not establish the requisite causal connection between the slip and fall and the use of her parked motor vehicle under section 3106. . . . This is the proper result

¹ In *McKenzie v ACIA*, 458 Mich 214, 580 NW2d 424 (1998), this Court took the analysis one step further and noted that because the injury occurred while plaintiff was entering her vehicle, with the intent to travel, the injury was closely related to the transportation function of the vehicle, and therefore compensable under the No-Fault Act.

because the plaintiff was either entering into or alighting from her vehicle at the time of the injury, unlike the instant case. This case does not support the Court of Appeals' decision here, because the facts of the instant case are distinguishable." *Putkamer*, 563 NW2d at 689, ftnt. 11 (emphasis added).

Simply stated, injuries which occur within the context of one of the three statutory exceptions to the parked vehicle exclusion found in MCL 500.3106 are more likely (though not always – see *McKenzie, supra*) going to be compensable under the No-Fault Insurance Act.² However, in cases that do not fall within one of the three statutory exceptions to the parked vehicle exclusion set forth in MCL 500.3106(1), an injury will not be compensable if the causal nexus between the injury and the ownership, maintenance, or use of the motor vehicle as a motor vehicle is incidental, fortuitous or “but for.” This is precisely what the Michigan Court of Appeals held in *Daubenspeck, supra*, under nearly identical facts, and the *Daubenspeck* analysis is completely consistent with the “arising out of” analysis enunciated by this Court in *Thornton, supra* and its progeny. The analysis might be different if Plaintiff-Appellee in this case had slit her wrist on the windshield wiper blade while scraping the windshield. However, the fact of the matter is that Plaintiff-Appellee fell while standing along side her automobile and not while entering into, alighting from, or occupying her automobile. Therefore, because her motor vehicle was simply the situs of her injury, and the fact that her injury had nothing to do with the functional character of her motor vehicle as a motor vehicle, the causal nexus between her injury and her ownership, operation or maintenance or use of her motor vehicle as a motor vehicle is, at best, incidental, fortuitous, or “but for,” and legally insufficient to give rise to a claim for no-fault insurance benefits.

² Again, in *McKenzie, supra*, this Court ruled that even if an injury occurs within one of the three statutory exceptions to the parked vehicle exclusion, the Claimant must show that the injury occurred in connection with the transportational function of the motor vehicle, and that it was more than incidental, fortuitous or “but for.”

II. PLAINTIFF-APPELLEE'S ATTEMPT TO IMPORT TORT CONCEPTS INTO THIS CLAIM FOR NO-FAULT BENEFITS IS MISPLACED; UNDER PLAINTIFF-APPELLEE'S THEORY, ANY INJURY THAT IS REMOTELY CONNECTED WITH THE OWNERSHIP, OPERATION, MAINTENANCE OR USE OF A MOTOR VEHICLE WOULD BE COMPENSABLE.

In her Reply to Defendant-Appellant's Application for Leave to Appeal, Plaintiff-Appellee refers to MCL 257.709(1), the part of the Motor Vehicle Code that deals with "obstructed views" on windshields. Plaintiff-Appellee also references this Court's decision from 1947 in *Paquette v Consumers Power*, 316 Mich 501, 425 NW2d 599 (1947) in support of its argument that because Plaintiff-Appellee had a statutory duty to clear her windshield, she should receive no-fault benefits if injured in the act of doing so.

This argument is easily dispensed with when one considers the factual circumstances in *Daubenspeck, supra*. To recap, the plaintiff in *Daubenspeck* was injured when he slipped and fell on ice while in the act of refueling his automobile. It goes without saying that there exists a common law duty to keep one's motor vehicle properly refueled. Otherwise, the vehicle would run out of gas, stall on a roadway, and present a hazard to other motorists using the roadway. This is consistent with the general duty to exercise reasonably and ordinary care in the use and operation of one's automobile. See, e.g., *Hazen v. Rockefeller*, 303 Mich 536, 6 NW2d 770 (1942). Obviously, the duty to refuel an automobile is similar to a duty to keep one's windshield clear of snow and ice and, in both instances, not all injuries which arise from compliance with such duties are compensable under the No-Fault Insurance Act. The Legislature did not intend to provide No Fault benefits for all injuries occurring in or around a motor vehicle. *Denning v. Farm Bureau Ins. Group*, 130 Mich App 777, 344 NW2d 368 (1984). The No Fault Act is designed to compensate solely for injuries arising out of the ownership, operation, maintenance

or use of a motor vehicle *as a motor vehicle*. Plaintiff-Appellee's argument is wholly without merit.

III. PALINTIFF-APPELLEE'S INVOCATION OF THE DOCTRINES OF STARE DECISIS AND LEGISLATIVE ACQUIESCENCE TO SUPPORT ITS CONTENTION THAT THIS COURT'S DECISION IN MILLER V AUTO-OWNERS, 411 MICH 633, 309 NW2d 544 (1981) REMAINS GOOD LAW, COMPLETELY IGNORES THIS COURT'S RECENT JURISPRUDENCE REGARDING THE PROPER APPLICATION OF CLEAR AND UNAMBIGUOUS STATUTORY LANGUAGE.

In its Reply to Defendant-Appellant's Application for Leave to Appeal, Plaintiff-Appellee argues that under the doctrines of *stare decisis* and/or legislative acquiescence, this Court's decision in *Miller, supra* should remain intact, notwithstanding the fact that it may have been "wrongly decided." In so arguing, Plaintiff-Appellee completely ignores this Court's Jurisprudence regarding proper application of these doctrines.

This Court's recent decision in *Rowland v Washtenaw County Road Commission*, 477 Mich 197, 731 NW2d 41 (2007) drives this point home. In *Rowland*, this Court noted that the defective highway exception to the governmental immunity statute, MCL 691.1402(1) contains a 120 day notice provision. The Court also noted that in two of its earlier decisions, *Hobbs v Department of State Highways*, 398 Mich 90, 247 NW2d 752 (1976) and *Brown v Manistee County Road Commission*, 452 Mich 354, 550 NW2d 215 (1996), this Court had engrafted a requirement that the defendant needed to show "actual prejudice," brought about by plaintiff's failure to comply with the notice provision, before the notice provision could be applied to bar plaintiff's claim. After reviewing the proper application of the doctrines of *stare decisis* and legislative acquiescence, this Court concluded that both *Hobbs* and *Brown* were wrongly decided and should, therefore, be overruled. In so ruling, this Court observed:

“In determining whether to overrule a prior case, this Court first considers whether the earlier case was wrongly decided. Robinson v Detroit, 462 Mich 439, 463-468, 613 NW2d 307 (2000). As we have previously explained, we are persuaded that Hobbs and Brown were wrongly decided. Robinson next instructs that if a case was wrongly decided, the Court should then examine reliance interests: whether the prior decision defies ‘practical workability;’ whether the prior decision has become so embedded, so fundamental to everyone’s expectations that to change it would produce not just readjustments, but practical, real-world dislocations; whether changes in the law or facts no longer justify the prior decision; and whether the prior decision misread or misconstrued a statute. Robinson, supra at 464-467, 613 NW2d 307.

* * *

Robinson also held that any statutory reliance analysis had to be considered in light of the plain language of the statute. We stated:

‘Further, it is well to recall in discussing reliance, when dealing with an area of the law that is statutory . . . , that it is to the words of the statute itself that a citizen first looks for guidance in directing his actions. This is the essence of the rule of law: to know in advance what the rules of society are. Thus, if the words of the statute are clear, the actor should be able to expect, that is, rely, that they will be carried out by all in society, including the courts. In fact, should a court confound those legitimate citizen expectations by misread or misconstruing a statute, it is that Court itself that has disrupted the reliance interest. When that happens, a subsequent Court, rather than holding to the distorted reading because of the doctrine of *stare decisis*, should overrule the Court’s misconstruction. The reason for this is that the Court in distorting the statute was engaged in a form of judicial usurpation that runs counter to the bedrock principle of American constitutionalism, *i.e.*, that the law making power is reposed in the people as reflected in the work of the Legislature, and, absent a constitutional violation, the Courts have no legitimacy in overruling or nullifying the people’s representatives. Moreover, not only does such a compromising by a Court of the citizen’s ability to rely on a statute have no constitutional warrant, it can gain no higher pedigree as later courts repeat the error. [Robinson, supra at 467-468, 613 NW2d 307.]

This language from Robinson fully supports overruling Hobbs and Brown because this Court in those cases confounded legitimate citizen expectations by misreading and misconstruing a statute. Accordingly, it was this Court in Hobbs and Brown that disrupted the citizen's reliance interest that statutes mean what they say. We refuse to perpetuate the error of Hobbs and Brown.

MCL 691.1404 is straight forward, clear and unambiguous, and not constitutionally suspect. Accordingly, we conclude that it must be enforced as written." Rowland, 731 NW2d at 52-54.

The same analysis should be applied by this Court when considering the clear and unambiguous statutory language set forth in MCL 500.3105(1), MCL 500.3106(1), and this Court's misinterpretation of the otherwise clear and unambiguous statutory language in Miller, *supra*.

CONCLUSION AND RELIEF REQUESTED

Given the undisputed facts of this case, there exists no genuine issue of material fact regarding the causal nexus between Plaintiff-Appellee's claimed injuries and the slip and fall on ice that she suffered while in the act of maintaining her automobile. Given the well-established case law which has developed since this Court's decision in *Thornton, supra*, it is apparent that the causal nexus between Plaintiff-Appellee's slip and fall on ice, and the ownership, operation, maintenance or use of a motor vehicle *as a motor vehicle* is, at best, merely incidental, fortuitous, or "but for." As indicated above, the motor vehicle itself was not the instrumentality of Plaintiff-Appellee's injury. In this regard the Court of Appeals' decision in *Daubenspeck, supra*, is directly on point, and the Lower Court erred when it misconstrued the holding in *Daubenspeck*.

In the event this Court disagrees with Defendant-Appellant's assertion that the causal nexus between Plaintiff-Appellee's injuries and her ownership, operation, maintenance or use of a motor vehicle *as a motor vehicle* was incidental, fortuitous, or "but for," there still remains the issue of whether or not injuries suffered while maintaining an automobile are compensable under the No-Fault Insurance Act. For the reasons set forth in Defendant-Appellant's Application for Leave to Appeal and in this Supplemental Brief, it is clear that this Court's decision in *Miller, supra*, flies in the face of the clear and unambiguous statutory language utilized in MCL 500.3105(1) and MCL 500.3106(1). The time is appropriate for this Court to re-examine the continuing viability of *Miller, supra*.

Given these considerations, Defendant-Appellant Titan Insurance Company respectfully

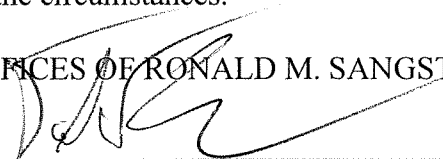
requests that this Honorable Court order any of the following:

1. In lieu of granting leave to appeal, this Court issue an Opinion and Order reversing the decision of the Wayne County Circuit Court and remand this matter back to the Wayne

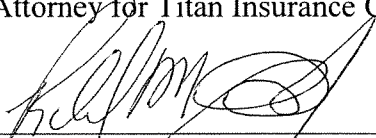
County Circuit Court with instructions to enter an Order granting Defendant-Appellant's Motion for Summary Disposition, together with such other relief from this Court as it may deem warranted under the circumstances.

2. That after considering Defendant-Appellant's Application for Leave to Appeal, Defendant-Appellant's Supplemental Brief in Support of Application for Leave to Appeal, and hearing oral argument, this Court grant its Application for Leave to Appeal and, after full briefing and further oral argument, particularly with regard to the possible overruling of this Court's decision in *Miller, supra*, issue an Opinion and Order reversing the decision of the Wayne County Circuit Court and remanding this matter back to the Wayne County Circuit Court with instructions to enter an Order granting Defendant-Appellant's Motion for Summary Disposition, together with such other relief from this Court as it may deem warranted under the circumstances.

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Dated: February 7, 2008