STATE OF MICHIGAN
IN THE SUPREME COURT

JOHN GOINGS, SR.

Plaintiff-Appellee

Supreme Court No. _____

Court of Appeals No. 366074

Trial Court No. 22-005110-NI

—v—

BOBBIE GIACOMANTONIO-SNOW

Defendant-Appellant

BOBBIE GIACOMANTONIO-SNOW'S APPLICATION FOR LEAVE TO APPEAL

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JURISDICTIONAL STATEMENT

The Court of Appeals issued a decision reversing the judgment of the trial court on July 18, 2024. Because Defendant filed an application for leave to appeal that decision within 42 days, this Court has jurisdiction under MCR 7.303 and MCR 7.305.

QUESTIONS PRESENTED

1. Did the trial court correctly hold, even if he was a nonresident of Michigan, Plaintiff's tort recovery is barred under MCL 500.3135(2)(c) for violating MCL 500.3102(1), as recognized by numerous Court of Appeals decisions, including *McGhee v Helsel*, 262 Mich App 221; 686 NW2d 6 (2004)?

   Appellant Bobbie Giacomantonio-Snow answers: Yes
   Appellee John Goings answers: No
   The Trial Court answered: Yes
   The Court of Appeals answered: No
   This Court should answer: Yes.

2. Alternatively, where Plaintiff worked 50-60 hours per week in Michigan, had a girlfriend (who he later married) and child in Michigan where he frequently stayed, was Plaintiff a dual-resident of Ohio and Michigan at the time of the subject accident, and therefore barred from tort recovery under MCL 500.3135(2)(c) for failing to insure his car under MCL 500.3101(1)?

   Appellant Bobbie Giacomantonio-Snow answers: Yes
   Appellee John Goings answers: No
   The Trial Court and Court of Appeals held reasonable minds could differ on whether Plaintiff resided in Michigan.

INTRODUCTION AND REASONS FOR GRANTING LEAVE

On September 22, 2021, Bobbie Giacomantonio-Snow ("Defendant") and John Goings ("Plaintiff") were each driving onto Telegraph Road via West 8 Mile Road. As the parties approached the "yield" sign preceding Telegraph Road, Defendant was pushed into Plaintiff's rear by a hit-and-run vehicle.

At the time, Plaintiff was travelling from his then-girlfriend's home in Warren, MI to take his dog to a local dog groomer. Although Plaintiff claims his only residence at the time was in Toledo, OH with his mother and son, the undisputed facts reveal he was a dual resident of Michigan and Ohio. Plaintiff worked 50-60 hours per week at the Chrysler plant in Sterling Heights, MI. He had another child with his Warren-based girlfriend (they were married by the time of Plaintiff's deposition), where he also spent multiple nights per week.

Plaintiff did not insure his 2012 Jeep Grand Cherokee with Michigan No-Fault insurance. Rather, he purchased insurance in Ohio, which carried only $5,000 in medical payments coverage. After quickly exhausted this coverage, Plaintiff sued Defendant Snow not only for his alleged pain and suffering, but also for all damages for wage loss and medical bills accumulated through his attorney-referred Michigan providers.

The trial court correctly held Plaintiff's tort claim was barred by operation of MCL 500.3135(2)(c), which prevents tort recovery for failure to have in effect the security required under MCL 500.3101(1). Even if we treat Plaintiff as a nonresident of Michigan, his obligation to maintain the security described in §3101(1) still exists under MCL 500.3102(1), which requires nonresidents to maintain "*security for the payment of benefits pursuant to this chapter*" when they drive in Michigan more than 30 days in aggregate in any calendar year. Likewise, if we treat Plaintiff as a dual resident of Michigan and Ohio, his obligation to maintain no-fault insurance

arises under §3101(1) because, as a Michigan resident, he was required to register, and therefore insure his vehicle in Michigan.

In a published opinion, the Court of Appeals refused to apply §3135(2)(c) where the obligation to maintain no-fault insurance arises under §3102(1). *Goings v Giacomantonio-Snow*, ___ Mich App ___ (2024) (Docket No. 366074) **(Exhibit 1)** The Court of Appeals also held Plaintiff's residency was a question of fact, even though the undisputed facts revealed Plaintiff regularly commuted between Ohio and Michigan and had part of his family in Michigan where he regularly spent the night.

§3135 in tandem with §§3101 and 3102 provide partial tort immunity for motorists paying into Michigan's no-fault system. The corollary under §3135(2)(c) is apparent— failing to pay into the system prevents recovery in tort for expenses that would have been covered from one's own insurer had they paid into the system. The Court of Appeals created a loophole for Plaintiff and motorists like him to avoid paying in to Michigan's no-fault system. The lower court's opinion stems from §3135(2)(c)'s reference to §3101(1). In turn, §3101(1) requires no-fault insurance on vehicles required to be registered in Michigan. But §3101(1) also defines what no-fault insurance is — security for the payment of first party benefits, residual liability coverage, and property protection coverage. And the obligation to purchase that "security" also arises under §3102. Hence, a violation of either §3102 or §3101(1) triggers §3135(2)(c). This Court should grant leave to appeal and clarify a bright line rule— that failure to pay into the no-fault system, when required to, bars one's tort claim in the event of a motor vehicle accident.

Alternatively, Plaintiff was required to register his vehicle and thus required to purchase insurance under §3101(1) as a dual resident of Michigan and Ohio. To their credit, the Court of Appeals correctly observed, "residence" refers to any place of abode or dwelling, even if

temporary. *Id* slip op at 7. Plaintiff tried manufacturing a question of fact on his residency through evidence showing his residency in Ohio and his conclusory insistence that his only residence was in Ohio. But none of this refuted Plaintiff's residency in Michigan and, if anything, underscores how one can reside in multiple places.

No matter how one dices Plaintiff's living situation or how the No-Fault Act's various sections work in tandem with each other, Plaintiff's failure to maintain no-fault insurance bars his claim against Defendant Giacomantonio-Snow. The Court of Appeals erred by reversing the trial court and this Court should reinstate the trial court's judgment.

FACTUAL BACKGROUND

This is a third-party automobile negligence action by Plaintiff/Appellee John Goings against the Defendant/Appellant Bobbie Giacomantonio-Snow. The subject accident occurred on September 22, 2021 at the intersection of 8 Mile and Telegraph Roads in Southfield, MI. **(Exhibit 2- Police Report)** Because Plaintiff Goings failed to maintain no-fault insurance (which should have paid his first-party medical expenses, work loss, and replacement services) he is suing Defendant for all of his alleged economic and noneconomic damages.

At the time of the accident, Plaintiff lived with his mother and his son in Toledo, OH. **(Exhibit 3- Plaintiff's Deposition, p. 9, 10)** However, Plaintiff worked as a driver at the DaimlerChrysler Sterling Heights, MI assembly plant and had worked there since 2011. **(Id., p. 27, 44).** He was a member of the UAW Local 1700 Union. **(Id.)** Plaintiff worked 50 to 60 hours per week, causing him to drive into and stay in Michigan regularly. (**Id., p. 33)** Plaintiff also had his tax-returns prepared by an accountant located in Novi, MI. (**Id., p. 34)**

Plaintiff didn't merely commute between Toledo and Michigan every workday. Rather, Plaintiff frequently spent nights at his then-girlfriend's home in Warren, Michigan. (**Id., 13; Exhibit 4- Affidavit of John Goings.)** Plaintiff and Chantele Goings were married in July 2022. **(Exhibit 3, p. 12)** As of Plaintiff's deposition on September 28, 2022, (barely over one year after the accident) he and Chantele had a one-year-old daughter, a four-year-old daughter by Chantele, and a seven-year-old son by Plaintiff. **(Id., p. 13-14)**

On the date of the accident, Plaintiff was travelling from the home in Warren, MI to take his dog to a local groomer. (**Id., p. 50-51).** Plaintiff returned to the Warren home immediately after the accident and Chantele drove him to the emergency room at St. John Ascension Hospital. **(Id., p. 45).** Plaintiff had his car repaired at Greenfield Collision in Detroit. **(Id. p. 52-53)** Plaintiff

testified he was having difficulty driving after the accident and that Chantele would sometimes drive him between Toledo and Michigan. **(Id. p. 43)** There were also times when Plaintiff simply could not make the trip down to Toledo. **(Id. 43-44)**

At the direction of his prior attorney, Plaintiff sought treatment for his alleged injuries with Michigan-based doctors, namely Northland Radiology (Southfield, MI) and Spine Specialists of Michigan (Bingham Farms, MI). **(Id., p. 37-38).** He attended physical therapy at ACE Physical Therapy in Warren, MI. **(Id. p. 56-57).**

Plaintiff owned the 2012 Jeep Grand Cherokee involved in the accident. **(Exhibit 3, p. 2)** Plaintiff insured the Jeep with Progressive in the state of Ohio, and that policy carried only $5,000 in medical payments coverage. **(Exhibit 5- Progressive Declarations Page)** The policy did not include Michigan no-fault coverages or otherwise explain that Plaintiff opted out of that coverage through MCL 500.3107d or MCL 500.3109a(2). Despite never purchasing no-fault insurance in violation of Michigan law, Plaintiff believes Ms. Giacomantonio-Snow— who paid into the no-fault system— should pay not only his alleged noneconomic damages, but all of his wage loss and medical bills from the Michigan-based doctors his prior attorney sent him to.

PROCEDURAL HISTORY

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10) and MCL 500.3135(2)(c), arguing Plaintiff's tort claim was barred as either a resident or nonresident of Michigan. As a resident, Plaintiff violated MCL 500.3101(1) by failing to obtain No-Fault insurance when his vehicle required a Michigan registration. Alternatively, as a nonresident, Plaintiff violated MCL 500.3102(1), which incorporates the security described in MCL 500.3101(1), and requires said insurance when driving in Michigan more than 30 days per year in aggregate.

The trial court agreed and granted Defendant's motion for summary disposition on April 4, 2023. **(Exhibit 6- 4/4/2023 order)** The lower court relied on *McGhee v Helsel*, 262 Mich App 221; 686 NW2d 6 (2004), which clarifies that a violation of §3102(1) can bar a plaintiff's tort claim under §3135(2)(c).

Plaintiff filed a motion for reconsideration on April 17, 2023. In sum, Plaintiff argued *McGhee* supports his argument that a non-resident can recover in tort even with a violation of §3102(1). As will be explained in greater detail *infra*, the Court of Appeals in *McGhee* found in favor of the plaintiff because she had not exceeded the 30-day period under §3102(1). The corollary is that McGhee's tort claim would have been barred under §3135(2)(c) if she had violated the 30-day period. As such, the trial court properly denied Plaintiff's motion for reconsideration on April 24, 2023. **(Exhibit 7)**

Plaintiff filed a claim of appeal with the Court of Appeals on May 10, 2023. Coincidentally, the Court of Appeals issued an unpublished decision on a similar case shortly after the trial court ruled on the instant case. See *Alexander v Kubacki*, unpublished per curiam decision of the Court of Appeals, issued May 4, 2023 (Docket no. 360100). **(Exhibit 8)** Unsurprisingly, Plaintiff relied

heavily on *Alexander* and urged the Court of Appeals to issue a similar ruling. On July 18, 2024, the Court of Appeals issued a published decision in line with *Alexander*, holding that a violation of MCL 500.3102(1) is not fatal to Plaintiff's tort claim because MCL 500.3135(2)(c) refers only to the security required under §3101(1). *Goings v Giacomantonio-Snow*, ___ Mich App ___ (2024) (Docket No. 366074) **(Exhibit 1)** The Court of Appeals also held reasonable minds might differ on whether Plaintiff was a resident or nonresident of Michigan, precluding alternative grounds for summary disposition on that basis. This application for leave to appeal followed.

STANDARD OF REVIEW

The Court reviews a decision on a motion for summary disposition under the *de-novo* standard. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The *de-novo* standard directs the Court to review the evidence "with fresh eyes" and without deference to the lower court. *Buchanan v City Council of Flint,* 231 Mich App 536, 542 n 3; 586 NW2d 573 (1998).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden,* 461 Mich at 120. The moving party bears the initial burden of establishing the absence of a factual dispute. *Id.* The moving party may satisfy the burden by (1) negating an essential element of the claim, or (2) showing that the evidence is insufficient to establish an essential element of the claim. *Lowrey v LMPS*, 500 Mich 1, 7; 890 NW2d 344 (2016). If the moving party carries the burden, the burden shifts to the non-moving party to establish the existence of a factual dispute. *Id.* A pledge to produce evidence at trial won't suffice—after the close of discovery, the summary-disposition stage is "the put up or shut up" stage of the litigation. *Pena v Ingham Cnty Road Comm'n*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

LEGAL ARGUMENT

I. STATUTORY FRAMEWORK

MCL 500.3135(2)(c) states as follows:

"Sec. 3135

(2) For a cause of action for damages under subsection (1) or (3)(d), all of the following apply:

(c) Damages must not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle **the security required** by section 3101(1) at the time the injury occurred." MCL 500.3135(2)(c).

In turn, MCL 500.3101(1) states:

"(1) Except as provided in sections 3107d and 3109a, the owner or registrant of a motor vehicle required to be registered in this state shall maintain **security for payment of benefits under personal protection insurance and property protection insurance** as required under this chapter, and residual liability insurance. Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway." MCL 500.3101(1).

§3101(1) is the gateway to the rest of the No-Fault Act (Chapter 31 of the Insurance Code) because it defines what no-fault insurance is— security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. See *Husted v Dobbs*, 459 Mich 500 at 507; 591 NW2d 642 (1999) (noting that 3101(1) "sets out the requirement for insurance to cover such residual liability[.]" See also *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 605-608; 648 NW2d 591 (2002) (KELLY, J. CONCURRING): "[T]he act mandates that every owner or registrant of a motor vehicle purchase personal injury protection insurance as long as the vehicle is driven. MCL 500.3101(1)." See also *Andary v USAA Cas Ins Co*, 512 Mich 207 at 332; 1 NW3d 186 (2023) (VIVIANO, J. CONCURRING IN PART): "Every automobile insurance policy must include PIP benefits. MCL 500.3101(1)."

§3101(1) was amended effective June 11, 2019 to account for new options to decline unlimited medical coverage. This is why §3101(1) now begins with "[e]xcept as provided in sections 3107d and 3109a[.]" Which is to say, unless an insured opts-out of medical benefits under either sections 3107d or 3109a, every no-fault insurance policy must include first-party PIP coverage, property protection insurance, and residual liability insurance.

Because of the substantive change to §3101(1), the re-writing of section 3101(2), and reorganization of 3101(3), Chapter 31's numerous references to "section 3101" had to be changed to "section 3101(1)" to reference the specific subsection of 3101 that defines "security." This included §3135(2)(c):[1]

> (c) Damages ~~shall~~ **MUST** not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle the security required by section ~~3101~~ **3101(1)** at the time the injury occurred.

§3135(4)(e) (the "minitort" law) included a similar amendment:[2]

> (e) Damages ~~shall~~ **MUST** not be assessed if the damaged motor vehicle was being operated at the time of the damage without the security required by section ~~3101.~~**3101(1).**

[1] Source: Senate Concurred bill. See https://www.legislature.mi.gov/documents/2019-2020/billconcurred/Senate/htm/2019-SCB-0001.htm

[2] *Id.*

Finally, §3135(3)'s general abolishment of tort liability was likewise amended:[3]

> (3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section ~~3101~~ **3101(1)** was in effect is abolished except as to:

MCL 500.3102(1) requires nonresidents to purchase the same insurance when driving in Michigan over an aggregate 30 days per year:

> (1) A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter." MCL 500.3102(1).

In *Gersten v Blackwell*, 111 Mich App 418; 314 NW2d 645 (1981), the Court of Appeals observed that §3102(1) was enacted in light of Michigan's tourist industry: "[T]he Legislature carved out an exception to the requirement that those who travel our highways must purchase no-fault insurance. Nonresidents are not required to purchase no-fault insurance if they operate their vehicles in this state for less than 30 days." *Id* at 424.

Where §3101(1) describes what no-fault insurance is, the obligation to purchase that security arises under §3101(1) itself and other sections of the Act. Namely, MCL 500.3102(1) states a nonresident shall not operate a motor vehicle in Michigan more than 30 days in any calendar year "unless he or she continuously maintains security for the payment of benefits pursuant to this chapter." §3102(1) refers to the "security for payment of benefits" which is defined by §3101(1) to include payment for first-party benefits, among other coverages.

[3] *Id.*

II. COURT OF APPEALS PRECEDENT

Until recently, the Court of Appeals interpreted a violation of either §3101(1) or §3102(1) as sufficient to bar one's tort claim under §3135(2)(c). For example, in *McGhee v Helsel*, 262 Mich App 221; 686 NW2d 6 (2004), the plaintiff was undisputedly an Indiana resident traveling through Michigan in her uninsured car. *Id* at 222-223. The plaintiff had not driven her car in Michigan for more than an aggregate 30 days per year. *Id* at 225. The trial court dismissed plaintiff's tort claim, finding that §3135(2)(c) generally barred an uninsured nonresident's tort claim. *Id* at 223. Notably, the trial court didn't reference a violation of either §3101 or §3102. *Id.* Rather, the trial court broadly held "the Legislature designed the no-fault act to protect those who avail themselves of the system, and it would be irrational to allow an uninsured nonresident motorist to recover noneconomic damages while the no-fault act at the same time precludes an uninsured resident motorist from recovery of such damages." *Id*.

In reversing, the Court of Appeals began its analysis with §3135(2)(c) which, at the time, referred to failure to purchase the security required by section "3101." Accordingly, the court set out to determine whether plaintiff had "'the security required by section 3101.'" *Id* at 225. From this premise, *McGhee* recognized "[t]he **security required** by §3101 of the no-fault act is as follows:

> The owner or registrant of a motor vehicle *required to be registered in this state* shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." M.C.L. § 500.3101(1) (emphasis added). Because plaintiff's vehicle was not required to be registered in Michigan, M.C.L. § 500.3101 did not require plaintiff to carry no-fault automobile insurance. **Under M.C.L. § 500.3102(1), a nonresident owner or registrant of a motor vehicle not registered in Michigan must maintain security if the vehicle is operated in Michigan for an aggregate of more than thirty days** in any calendar year. Plaintiff did not exceed this thirty-day period. Thus, M.C.L. § 500.3135(2)(c) does not apply in this case and does not preclude plaintiff from recovering noneconomic damages." *Id*.

Under *McGhee*, the "security required" for purposes of §3135(2)(c) was delineated in §3101. And one must purchase this "security" when *either* the vehicle was required to be registered in Michigan *or* when a nonresident drives in Michigan more than 30 aggregate days per year. Therefore, if McGhee drove her vehicle in Michigan more than an aggregate 30 days per year before the accident, her tort claim would have been barred under the *McGhee* framework.

Although involving a claim for first-party no-fault benefits, *Dahlmann v Geico Gen Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued March 22, 2016 (Docket No. 324698) is also instructive. **(Exhibit 9)** In that case, the court discussed the statutory interplay regarding "nonresidents, registration, and no-fault benefits." *Id* slip op at 3. The court began with §3101(1), which requires No-Fault insurance on a vehicle required to be registered in Michigan. *Id.* Next, the court recognized that §3102(1) requires a nonresident owner to maintain security for payment of No-Fault benefits "even though he or she is exempt from registration. MCL 500.3102(1)." *Id*. In its very next breath, the court recognized that "[i]n order to ensure fairness in and discourage abuse of the no-fault system, the Legislature enacted provisions that punish noncompliance with the no-fault act. In addition to other sanctions, if an owner or registrant does not maintain the security required under the no-fault act, the owner or registrant will not be "entitled" to collect PIP benefits from a Michigan no-fault insurer "for accidental bodily injury" involving the owner or registrant's vehicle MCL 500.3113(b). **Likewise, the owner or registrant cannot obtain an award of noneconomic damages for his or her injuries that would otherwise meet the no-fault thresholds. See MCL 500.3135(2)(c)**." *Id* emphasis added.

In *Bundles v Merkel Ins of Canada,* unpublished per curiam opinion of the Court of Appeals, issued September 21, 2004 (Docket no. 248843) **(Exhibit 10)**, the Court of Appeals

interpreted MCL 500.3113(b), which states a person is not entitled to first-party no-fault benefits if "[t]he person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which **the security required** by section 3101 or 3103 was not in effect." *Id* slip op at 2 (emphasis added). The Court of Appeals held the plaintiff truck-driver was a constructive "owner"[4] of the vehicle in question, and therefore was required to insure the vehicle under §3101. In a footnote, the court also noted the truck's nonresident titleholder, Glory Transport, was required to insure the car under §3102:

> "Defendant ACIA also points out an alternative source for the requirement that the truck be insured. The no-fault act itself forbids a nonresident owner, here Glory Transport, from operating a motor vehicle, or allowing one to be operated, in this state for an aggregate of more than thirty days in any calendar year unless he or she continuously maintains security for the payment of the benefits pursuant to this chapter. MCL 500.3102(1). Accordingly, under this section as well, the truck was required to be insured because there is no dispute that it was operated in Michigan for more than thirty days in one year. Therefore, this section as well establishes that the truck was required to be insured. See *McGhee v. Helsel,* 262 Mich.App 221, 224-225; ___ NW2d ___ (2004) (**looking at language similar to MCL 500.3113(b) in MCL 500.3135(2)(c), which precludes suit for noneconomic damages where a party did not have the statutorily required insurance, and stating that MCL 500.3102 provides a basis on which insurance is required**)."
>
> *Id* at n. 2 (emphasis added)

Bundles recognized *McGhee's* ruling that §3102(1) requires one to purchase the security described in §3101 **and that failure to comply with §3102 bars one's tort claim under §3135(2)(c).**

In yet another decision, the Court of Appeals affirmed the trial court's denial of plaintiff's motion for reconsideration on whether violation of §3102(1) triggered §3135(2)(c). In *Singh v Barylski*, unpublished per curiam opinion of the Court of Appeals, issued August 13, 2020 (Docket

[4] An "owner" of a vehicle under Michigan law includes the titleholder and one having use of the vehicle for a period greater than 30 days, otherwise known as a constructive owner. See MCL 500.3101(3)(l).

No. 350184) **(Exhibit 11)**, defendant filed two motions for summary disposition. The first argued plaintiff— a nonresident— drove his semi-truck in Michigan more than 30 days per year, which required him to maintain no-fault insurance under §3102(1). Defendant argued plaintiff's violation of §3102(1) barred his tort claim under §3135(2)(c). The second motion argued plaintiff failed to prove a serious impairment of an important body function. Plaintiff didn't respond to the first motion and the trial court granted both motions. Plaintiff moved for reconsideration, having finally located an insurance policy applicable to the semi-truck, but the trial court denied reconsideration because the evidence of insurance could have been presented in response to the initial motion for summary disposition.

The Court of Appeals affirmed, and notably absent from the opinion is any mention of how a nonresident's tort claim survives when they fail to maintain insurance under §3102(1). Rather, the Court of Appeals noted plaintiff's motion for reconsideration only contained a letter from Auto-Owners instructing plaintiff to obtain coverage through the insurer of his personal vehicles. Accordingly, the court held: "plaintiff did not present the insurance policies that covered the respective tractor, trailer, and his personal vehicles to allow for an analysis of the availability of Michigan no-fault coverage, plaintiff failed to demonstrate entitlement to relief on reconsideration." *Id* slip op at 7. Once again, the Court of Appeals instructed that a violation of §3102(1) triggers the exclusion under §3135(2)(c).

III. IN LIGHT OF CONTRADICTORY COURT OF APPEALS PRECEDENT, THIS COURT SHOULD GRANT LEAVE TO APPEAL AND ORDER THAT VIOLATION OF MCL 500.3102(1) BARS PLAINTIFF'S CLAIM UNDER MCL 500.3135(2)(c)

Here, the Court of Appeals issued a published opinion at odds with *McGhee, supra*. In doing so, the lower court refused to follow *McGhee's* analysis of §3102(1) because it was, in the court's view, obitur dictum. This Court has defined obiter dictum as ""1. An incidental remark or

opinion. 2. A judicial opinion in a matter related but not essential to a case." *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 437; 751 NW2d 8 (2008). In *Allison,* this Court considered whether a footnote in a Court of Appeals' decision was dictum or not. The footnote in question was note 1 in *Teufel v Watkins*, 267 Mich App 425; 705 NW2d 164 (2005) (Overruled in *Allison*, supra), which considered whether MCL 554.139 required a defendant to remove snow and ice from a premises, thus saving a plaintiff's claim from the open and obvious doctrine. *Id* at 437. This Court held: "The language in the *Teufel* footnote was not dictum; rather, the footnote addressed an **alternative argument** raised by the plaintiff regarding the applicability of MCL 554.139 and was, therefore, necessary to the disposition of the case. Thus, the language in the footnote constituted a rule of law, and the Court of Appeals was obligated to follow this rule under MCR 7.215(J)(1)." *Id* (Emphasis added).

McGhee's analysis of §3102(1) was not dicta because it was considering **alternative grounds** from which the trial court could have based its ruling. Indeed, the trial court in *McGhee* didn't specify whether plaintiff's claim was barred for violation of §3101(1) or §3102(1). The Court of Appeals in *McGhee* stated the applicable law under §§3101(1) and 3102(1) and, finding neither were violated, held that §3135(2)(c) did not apply. It follows that "an issue that is intentionally addressed and decided is not dictum if the issue is germane to the controversy in the case, even if the issue was not necessarily decisive of the controversy in the case." See *Griswold Properties, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007). And as this Court recognized in *Allison, supra*, a statement constitutes binding precedent if its language creates a "rule of law," which is not merely dictum. *Allison*, 481 Mich 419 at 438. The rule of law from *McGhee* is that a nonresident's tort claim is barred under §§3135(2)(c) and 3102(1) *only if* they operated their vehicle in Michigan over 30 aggregate days per year. The Court of Appeals should

have issued a decision consistent with *McGhee* under the "first-out rule;" MCR 7.215(J)(1).

This Court has yet to decide a case examining the interplay between §§3102(1) and 3135(2)(c). However, this Court has examined how §§ 3101(1) and 3102(1) interact with the no-fault order of priority statute under MCL 500.3114. The first such case is *Parks v DAIIE*, 426 Mich 191; 393 NW2d 833 (1986). In *Parks*, the plaintiff was injured while unloading a trailer owned by his employer, Roadway Express. *Id* at 196. Roadway Express owned and self-insured the trailer,[5] which was registered in Tennessee and had been operated in Michigan for three days. *Id* at 196-197. The plaintiff filed suit against Roadway Express (self-insured) and his personal insurer, DAIIE. Plaintiff looked to Roadway Express for benefits under MCL 500.3114(3), which, at the time, stated:

> "(3) An *employee,* his or her spouse, or a relative of either domiciled in the same household, *who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits* to which the employee is entitled *from the insurer of the furnished vehicle.*" *Id* at 202 (emphasis in original)

Roadway Express argued the trailer wasn't required to be insured under §3101(1) or §3102(1) because it didn't require a Michigan registration and hadn't been operated in Michigan more than 30 days. Roadway Express argued the trailer wasn't subject to the No-Fault Act's security requirements to begin with, and as such, they were not liable under §3114(3). This Court agreed, relying in part on two older and factually similar Court of Appeals decisions holding insurers are not liable under §3114 if neither §3101(1) or §3102(1) apply to the vehicle in question.[6] In sum, this Court's decision in *Parks* had four key takeaways:

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[5] The definition of "motor vehicle" includes a trailer. See MCL 500.3101(3)(i). Further, a trailer is a "motor vehicle" with an identity separate from the semi-truck to which it is attached. See *Citizens Ins Co of America v Roadway Express, Inc*, 135 Mich App 465, 470-471; 354 NW2d 385 (1984).

[6] See *Covington v Interstate System*, 88 Mich App 492; 277 NW2d 4 (1970) and *Citizens Ins Co v Roadway Express, Inc*, 135 Mich App 465; 354 NW2d 385 (1984).

(1) §§3101(1) and 3102(1) subjects only vehicles required to be registered in Michigan or driven in Michigan over 30 days to the mandatory security requirements;

(2) the No-Fault Act, as a whole, was intended to provide adequate and prompt relief to persons injured in automobile accidents;

(3) to accomplish this intention, the general rule under §3114(1) is that persons look to their own insurance policies for coverage unless an exception applies under §3114(2) or (3);

(4) the exception to 3114(1) contained in §3114(3) does not apply if the employer's vehicle was not required to be insured under §3101(1) or 3102(2).

Id at 206-207.

More recently, this Court addressed a similar situation in *Turner v Farmers Ins Exchange*, 507 Mich 858; 953 NW2d 204 (2021). In that case, this Court discussed how §§3101(1) and 3102(1) interacted with MCL 500.3114(4). *Turner* involved an order-of-priority dispute between Farmers Insurance, who was assigned plaintiff's claim under the Michigan Assigned Claims Plan. (See generally MCL 500.3171 et seq.) The plaintiff was driving a car she rented through Enterprise, which was self-insured through EAN Holdings. Farmers argued EAN was liable for plaintiff's PIP benefits under the former version of MCL 500.3114(4) as the insurer of the owner or registrant of the vehicle occupied. Before the 2019 No-Fault amendments, §3114(4) stated:

> "(4) Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
> (a) The insurer of the owner or registrant of the vehicle occupied.
> (b) The insurer of the operator of the vehicle occupied."

In *Turner*, this Court followed *Parks* to hold Enterprise wasn't liable under §3114(4) because the subject rental vehicle didn't have to be insured under either §3101(1) or §3102(1)—it wasn't required to be registered in Michigan and hadn't been operated in Michigan over 30 days.

But *Turner*'s conclusion stems from a more thorough discussion of how these three statutes interact under the doctrine of *noscitur a sociis*[7] and *in pari materia*.[8] This began with *Turner's* reference to footnote 3 in *Parks*, which observed "we read the phrase 'owner or registrant of the vehicle occupied' within subsection 4 to be part of the more complete requirement stated in §3101(1): 'The owner or registrant of a motor vehicle *required to be registered in this state*'" *Parks*, 426 Mich at n 3. Following *Parks,* this Court in *Turner* held the security provisions of §3101(1) and §3102(1) were implicitly incorporated within §3114(4) when the no-fault act is considered as a whole. *Turner*, 953 NW2d at 206. More specifically, this Court held in *Turner*:

> "[C]onsistent with *Parks*, the word "insurer" as used in MCL 500.3114(3) and former MCL 500.3114(4)(a) refers to the no-fault insurer contemplated by MCL 500.3101(1) and MCL 500.3102(1). That is, the word "insurer" as used in MCL 500.3114(3) and former MCL 500.3114(4)(a) refers *only* to a particular insurer that has agreed to provide no-fault insurance to an owner or registrant as required by MCL 500.3101(1) or MCL 500.3102(1)."
>
> *Id.* (emphasis in original).

The Court of Appeals in the instant case and *Alexander, supra* refused to read §3135(2)(c) and §3102(1) *in pari materia*, reasoning that this doctrine is inapplicable when the statute under examination —here, 3135(2)(c)— is unambiguous. §3114(3) and former §3114(4) are not ambiguous, even when applied to the facts of *Parks* and *Turner*. The former refers to the insurer of the furnished vehicle and the latter referred to the insurer of the owner or registrant of the vehicle occupied. Yet this Court employed *noscitur a sociis* and *in pari materia* to determine how these

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[7] This canon of statutory interpretation means "it is known from its associates." "[The] doctrine stands for the principle [of interpretation] that a word or phrase is given meaning by its context or setting. Although a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context. *Sweatt v Dept of Corrections*, 468 Mich 172, 180; 661 NW2d 201 (2003) (internal citations and quotation marks omitted).

[8] The *in pari materia* doctrine is a principal of statutory construction whereby "[s]tatutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law. *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015).

order-of-priority statutes operated against the backdrop of §3101(1) and §3102(1). In *Parks,* this Court read §3102(1) and §3114(3) together by examining "the no-fault act and other relevant statutory provisions[.] Our task throughout is to give expression to the underlying legislative purpose by harmonizing different provisions of the statute, and by construing statutes in pari materia to give the fullest effect to each provision." *Parks*, 426 Mich at 199 [emphasis supplied]. Former Justice Cavanagh repeatedly described §3114(1) and (3) as unambiguous in his dissenting opinion. *Id* at 211-214 (CAVANAGH, J. DISSENTING). And in *Turner*, this Court applied *in pari materia* and *noscitur a sociis* by holding "the word 'insurer' as used in MCL 500.3114(3) and former MCL 500.3114(4)(a) refers *only* to a particular insurer that has agreed to provide no-fault insurance to an owner or registrant as required by MCL 500.3101(1) or MCL 500.3102(1)" *Turner*, 953 NW2d at 206.

This Court should apply the same analysis and interpret §3135(2)(c) together with §3102(1). As Defendant argued to the Court of Appeals, §3101(1) describes what the "security" is for purposes of the entire No-Fault Act, and the obligation to maintain that security arises under either §3101(1) itself when a car must be registered in Michigan or under §3102(1) when a nonresident drives in Michigan more than 30 days. As such, a violation of either §3101(1) or 3102(1) triggers §3135(2)(c), which refers to the security defined by §3101(1).

Following 2019 PA 21 and 2019 PA 22, we know §3101(1) was substantially amended to account for ways in which motorists can opt-out of unlimited medical expense coverage. Before amendment, §3101(2) defined various terms used through the rest of the Act. §3102(2) was completely re-written to clarify all policies must include PIP, property protection, and residual liability insurance unless the insured opts-out of medical benefits under MCL 500.3107d. The definitions formerly contained in §3101(2) were incorporated into §3101(3). Consequently,

Chapter 31's various references to "the security required by §3101" were amended to "the security required by §3101(1)" to specifically reference the subsection of 3101 that defines "security." This legislative clarification and reorganization should not upend the analysis set forth in *McGhee, supra*, which read §3135(2)(c) together with §3102(1).

Reading §3102(1) together with §3135(2)(c) fulfills the underlying purpose of the No-Fault Act— substantial abolishment of tort liability conditioned on motorists participating in the no-fault system by paying for the security described in §3101. See *Citizens Ins Co of America v Tuttle*, 411 Mich 536, 546-547; 309 NW2d 174 (1981). As noted earlier in *Gersten, supra*, §3102(1) exempts nonresidents from the no-fault system, *unless* they operate a vehicle in Michigan more than 30 days. *Gersten*, 111 Mich App at 424. After driving in Michigan more than 30 days, however, nonresident motorists become subject to the Act.

This was showcased shortly after the No-Fault Act took effect in *Berrien County Road Com'n v Jones*, 119 Mich App 315; 326 NW2d 495 (1982). Here, the defendant's truck (registered in Indiana) ran into plaintiff's road grader. Neither vehicle was required to maintain no-fault insurance under §3101(1). However, Defendant's insurer voluntarily provided Michigan no-fault coverages, which defendant argued, granted him tort immunity under §3135. At the time, MCL 500.3135(2) provided tort immunity as follows:

> " '* * * tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the *security required by section 3101(3) and (4)* was in effect is abolished.'" *Id* at 317 (emphasis in original)

The plaintiff argued §3135(2) didn't apply because defendant's vehicle was not required to be registered under §3101(1) and, therefore, not subject to the no-fault system. The Court of Appeals disagreed, noting an absurd result would follow if motorists were denied the substantial tort immunity from the Act simply because the vehicle's owner "had done more in meeting the

objectives of the laws of this state than he had to." Critically, the court also held "§ 3102 *requires* defendants' compliance with the security requirements of no-fault after a 30-day period." *Id* at 318 (emphasis in original). In other words, §3102(1) requires nonresidents to pay into the system that provides immunity from auto-related tort claims.

Under *Berrien County*, nonresident motorists must maintain insurance under §3102(1) to get the benefit of tort immunity under §3135(3). This means if Plaintiff Goings caused an accident, but maintained insurance under §3102(1) as he should have, he would get tort protection under §3135(3). As the *Berrien County* court noted, "the Legislature in drafting § 3135(2) did not include reference to § 3101(1) in carving out the immunity from tort liability for those who had the required security." *Id* at 318. As of June 11, 2019, however, §3135(3) *does* reference §3101(1). Now, because of the Court of Appeals' resort to myopic textualism in the instant case, nonresidents who comply with §3102(1) arguably no longer have tort immunity under §3135(3) because their obligation to maintain insurance didn't arise under §3101(1). Accordingly, this Court should "right the ship" by reading §§3135(2)(c) together with §3102(1), and hold Plaintiff's failure to maintain insurance under §3102(1) bars his tort claim under §3135(2)(c).

IV. ALTERNATIVELY, THIS COURT SHOULD REVERSE THE COURT OF APPEALS' RULING REGARDING PLAINTIFF'S STATUS AS A MICHIGAN RESIDENT BECAUSE THERE IS NO GENUINE ISSUE OF MATERIAL FACT REGARDING HIS RESIDENCY IN MICHIGAN AT THE TIME OF THE ACCIDENT

The Court of Appeals correctly rejected Plaintiff's reliance on Michigan's Income Tax Act (MCL 206.18), which defines a resident as an individual domiciled in Michigan. "Residence" the Court of Appeals noted, is distinguishable from 'domicile" because one can have multiple residences but only one domicile. *Goings,* ___ Mich App ___ slip op at 7 (citing *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 500; 835 NW2d 363 (2013)). The undisputed facts regarding

Plaintiff's living situation at the time of the accident are as follows:

- At the time of the accident, Plaintiff worked 50-60 hours per week as a driver at the DaimlerChrysler Sterling Heights assembly plant and had done so since 2011. **(Exhibit 3- Plaintiff's Deposition, p. 27, 44).**

- Plaintiff was a member of the UAW Local 1700 Union. **(Id.)**

- Plaintiff had his tax-returns prepared by an accountant located in Novi, MI. (**Id., p. 34)**

- Plaintiff regularly stayed at his then-girlfriend's house in Warren, MI:

Q. Okay. And do you split your time between Toledo and Warren?
A. Yes.
Q. Okay. How often are you in Toledo?
A. A couple times throughout the week, 'cause I have my son that still stays in Toledo, Ohio, and I have a daughter with my wife staying in Warren, Michigan. Stewart Avenue. That address. **(Id. p. 13)**

- Plaintiff's summary disposition affidavit further delineated how often he spent the night at his then-girlfriend's home:

5. In both 2020 and 2021, I spent 50% or less of my time in the State of Michigan, spending occasional weekday nights (as many as two) in Sterling Heights, Michigan, but otherwise, spending all my nights in Toledo, Ohio.

(**Id., 13; Exhibit 4- Affidavit of John Goings.)**

- Plaintiff and Chantele Goings married in July 2022. **(Exhibit 3, p. 12)**

- As of Plaintiff's deposition on September 28, 2022, he and Chantele had a one-year-old daughter, a four-year-old daughter by Chantele, and a seven-year-old son by Plaintiff. **(Id., p. 13-14)**

- On the date of the accident, Plaintiff was travelling from his then-girlfriend's house in Warren, MI to a dog groomer. (**Id., p. 50-51).**

- Plaintiff returned to the Warren home immediately after the accident and his wife drove him to the emergency room at St. John Ascension Hospital. **(Id., p. 45).**

- Plaintiff had his car repaired at Greenfield Collision in Detroit. **(Id. p. 52-53)**

- Plaintiff testified that he was having difficulty driving after the accident and that his wife would sometimes drive him between Toledo and Michigan. **(Id. p. 43)** There were also times when Plaintiff simply could not make the trip down to Toledo. **(Id. 43-44)**

- At the direction of his prior attorney, Plaintiff sought treatment for his alleged injuries with Michigan-based doctors, namely Northland Radiology (Southfield, MI) and Spine Specialists of Michigan (Bingham Farms, MI). **(Id., p. 37).** He attended physical therapy at ACE Physical Therapy in Warren, MI. **(Id. p. 56-57).**

While one's *legal residence* was often equated with domicile (particularly in cases before *Grange* was decided), to "reside" somewhere otherwise means "**being physically present in a place and actually staying there**. In this sense the term means merely residence, that is, personal residence, and it does not mean legal residence or domicile." *Weaver v Giffels,* 317 Mich App 671, 685; 895 NW2d 555 (2016) quoting *Kubiak v Steen*, 51 Mich App 408, 414; 215 NW2d 195 (1974) (citing 77 CJS "Reside," pp. 285–286). Plaintiff's presence in Michigan was hardly transient and belies the notion that he was *only* an Ohio resident. Rather, Plaintiff also resided in Michigan by working 50-60 hours per week in Sterling Heights and staying multiple nights per week at his soon-to-be wife's home in Warren. As this Court noted in *Grange* " 'any place of abode or dwelling place' however temporary it might have been, was said to constitute a residence. A person's domicile was his legal residence or home in contemplation of law.'" *Grange,* 494 Mich 475 at 494 (quoting *Gluc v Klein,* 226 Mich 175, 177–178, 197 NW 691 (1924)). Thus, while Plaintiff may have resided with his mother and other child in Ohio, and may have even established domicile there, this does not foreclose the fact he also resided in Michigan with his other child and wife-to-be.

The Court of Appeals held summary disposition was inappropriate as to Plaintiff's residence due to genuine issues of material fact. A ruling like this begs the question, what *fact* is in dispute for purposes of MCR 2.116(C)(10)? Summary disposition is appropriate under (C)(10)

when the material facts are not in dispute, which is precisely the case here. To be sure, Plaintiff appears to be an Ohio resident based on all of the evidence. And although Plaintiff vociferously contends he is *only* a resident of Ohio and nowhere else, this contention, in and of itself, does not create an issue of fact regarding residence, particularly where the undisputed facts also reveal had had an abode or dwelling place in Michigan. The mere statement of a nonmovant's conclusions, unsupported by the evidence, is insufficient to create a genuine issue of fact. Again, Plaintiff drove into Michigan regularly for work and spent nights at his girlfriend's home in Warren, whom he had a child with at the time of the accident and later married. In point of fact, on the date of the accident (a Wednesday) Plaintiff was driving his own dog from his girlfriend's home to a dog groomer in Michigan. This hardly speaks to only transient or occasional visits to Michigan, as Plaintiff contends.

As a Michigan resident, Plaintiff was required to register his vehicle under the Motor Vehicle code. For purposes of §3101(1), A vehicle is "required to be registered" under MCL 257.216(1), which states [e]very motor vehicle, recreational vehicle, trailer, semitrailer, and pole trailer, when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act[.]" Nonresident owners of vehicles operated in Michigan are exempt from the registration requirement under MCL 257.243(1), so long as out-of-state registration is valid and on display. Therefore, if Plaintiff is a resident of Michigan, he must comply with §3101(1) and MCL 257.216(1), and failure to do so bars his tort claim under §3135(2)(c).

CONCLUSION AND RELIEF REQUESTED

For the reasons discussed above, Defendant Giacomantonio-Snow respectfully requests that the Court peremptorily reverse the decision of the Court of Appeals and reinstate the decision of the Trial Court. Alternatively, Defendant requests that the Court grant leave to appeal the decision of the Court of Appeals.

Respectfully submitted,

KRAMER, CORBETT,
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August 28, 2024

WORD COUNT STATEMENT OF COMPLIANCE

In accordance with MCR 7.212(B)(3), made applicable by MCR 7.312(A), I certify that this application complies with the word-count limitation in MCR 7.212(B)(1). According to my word-processing system, this application contains 7,430 countable words.

Respectfully submitted,

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HARDING & DOMBROWSKI

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August 28, 2024

STATE OF MICHIGAN
IN THE SUPREME COURT

JOHN GOINGS, SR.

Plaintiff-Appellee

Supreme Court No. _____

Court of Appeals No. 366074

Trial Court No. 22-005110-NI

—v—

BOBBIE GIACOMANTONIO-SNOW

Defendant-Appellant

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DEFENDANT-APPELLANT'S INDEX OF EXHIBITS

Exhibit No.	Exhibit Title
1	***Goings v Giacomantonio-Snow,*** **___ Mich App ___ (2024) (Docket No. 366074)**
2	**Police Report**
3	**Deposition of John Goings**
4	**Affidavit of John Goings**

5	**Progressive Insurance Declarations Page**
6	**Order Granting Defendant's Motion for Summary Disposition**
7	**Opinion and Order Denying Plaintiff's Motion for Reconsideration**
8	***Alexander v Kubacki*, unpublished per curiam decision of the Court of Appeals, issued May 4, 2023 (Docket no. 360100)**
9	***Dahlmann v Geico Gen Ins Co* unpublished per curiam opinion of the Court of Appeals, issued March 22, 2016 (Docket No. 324698)**
10	***Bundles v Markel Ins Co of Canada* unpublished per curiam opinion of the Court of Appeals, issued September 21, 2004 (Docket no. 248843)**
11	***Singh v Barylski*, unpublished per curiam opinion of the Court of Appeals, issued August 13, 2020 (Docket No. 350184)**

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument, including exhibits was served upon all parties to the above cause or each of the attorneys of record herein at their respective addresses disclosed on the pleadings on August 28, 2024 by:

☐ U.S. Mail
☐ Fax
☐ Certified Mail
☐ Overnight Courier
☐ Federal Ex / UPS
☐ E-Mail
☐ Hand Delivery
☒E-filing

/s/Briana L. Lake
Briana L. Lake

Exhibit 1

STATE OF MICHIGAN

COURT OF APPEALS

JOHN GOINGS, SR.,

Plaintiff-Appellant,

v

BOBBIE JEAN GIACOMANTONIO-SNOW,

Defendant-Appellee.

FOR PUBLICATION
July 18, 2024
9:10 a.m.

No. 366074
Wayne Circuit Court
LC No. 22-005110-NI

Before: YATES, P.J., and BORRELLO and GARRETT, JJ.

GARRETT, J.

This case requires us to interpret provisions of Michigan's no-fault act, MCL 500.3101 *et seq*., to determine whether a driver may recover damages for injuries he sustained in an auto accident in Michigan if the driver's vehicle was registered and insured in another state at the time of the accident. The trial court granted summary disposition to defendant, Bobbie Jean Giacomantonio-Snow, under MCR 2.116(C)(10) on the ground that plaintiff, John Goings, Sr., cannot be awarded damages because he failed to maintain Michigan no-fault insurance on a vehicle he drove in Michigan for more than 30 days during the year. Goings asserted that, although he spent significant time in Michigan, he was a resident of Ohio who registered and insured his vehicle in that state. Because we hold that MCL 500.3135(2)(c) does not bar Goings from recovering noneconomic damages under these circumstances, and because there remains a genuine issue of material fact regarding Goings's place of residency, we reverse and remand for further proceedings.

I. BACKGROUND

Goings sustained injuries when Giacomantonio-Snow's sport utility vehicle (SUV) hit the rear end of Goings's SUV on September 22, 2021. The collision occurred when Goings was on a ramp from Eight Mile Road yielding to traffic so that he could enter southbound Telegraph Road. The parties presented conflicting evidence about Goings's place of residence at the time of the accident. Evidence showed that Goings maintained a home with his mother and his 7-year-old child in Toledo, Ohio, and other evidence showed that Goings regularly worked at a job in Sterling Heights, Michigan and that he spent some nights with his girlfriend in Warren, Michigan. The

parties agreed, however, that Goings's SUV was registered in Ohio and that he had an Ohio auto insurance policy.

Goings filed an insurance claim for his injuries and damage to his vehicle, and he then filed this action against Giacomantonio-Snow for negligent driving and asked the trial court to award him noneconomic damages. After discovery, Giacomantonio-Snow moved for summary disposition under MCR 2.116(C)(10) and argued that Goings's claim was barred by MCL 500.3135(2)(c), which prohibits a driver from receiving tort damages if the driver does not have Michigan no-fault insurance as required by MCL 500.3101(1). According to Giacomantonio-Snow, Goings could not recover tort damages because he was an uninsured Michigan resident in violation of MCL 500.3101(1), or because he violated MCL 500.3102(1) by operating his vehicle in Michigan for more than 30 days in 2021 without maintaining Michigan no-fault insurance on his vehicle.

In response, Goings argued that he was not a Michigan resident at the time of the accident as contemplated in MCL 500.3101(1) and that, therefore, MCL 500.3135(2)(c) did not bar him from recovering damages for Giacomantonio-Snow's negligent driving. Goings maintained that MCL 500.3135(2)(c) applied only to Michigan residents, and only referenced violations of MCL 500.3101(1), so he could not be barred from receiving tort damages even if he failed to obtain Michigan no-fault insurance under the nonresident provision, MCL 500.3102(1).

The trial court granted summary disposition to Giacomantonio-Snow and ruled that, regardless of whether Goings resided in Michigan or in Ohio, he could not recover tort damages in Michigan because he violated MCL 500.3102(1) by driving his vehicle in Michigan for more than 30 days without carrying Michigan no-fault insurance.

II. LEGAL ANALYSIS

A. STANDARDS OF REVIEW

We review de novo both the interpretation of statutes and a trial court's decision on a motion for summary disposition. *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494; 948 NW2d 452 (2019). Accordingly, we review both matters independently, without deferring to the trial court's reasoning or conclusions. *Millar v Constr Code Auth*, 501 Mich 233, 237; 912 NW2d 521 (2018).

When deciding a motion under MCR 2.116(C)(10), a court "must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *El-Khalil v Oakwood Healthcare Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). If the moving party submits evidence that negates an essential element of the claim or shows that evidence is insufficient to establish an essential element of the claim, the burden shifts to the nonmoving party to show that there remains a genuine issue of material fact for trial. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7; 890 NW2d 344 (2016). Summary disposition under MCR 2.116(C)(10) should only be granted if there is no "issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160.

As discussed, resolution of this appeal also requires us to interpret provisions of Michigan's no-fault act. "The primary goal of statutory interpretation is to give effect to the intent of the Legislature," and "[t]he most reliable evidence of legislative intent is the plain language of the statute." *Le Gassick*, 330 Mich App at 495 (citation omitted). "If the language of the statute is clear and unambiguous, it is presumed that the Legislature intended the meaning plainly expressed in the statute." *Id*.

B. APPLICABILITY OF MCL 500.3135(2)(C)

"Michigan's no-fault insurance system is a comprehensive scheme of compensation designed to provide sure and speedy recovery of certain economic losses resulting from motor vehicle accidents." *Bazzi v Sentinel Ins Co*, 502 Mich 390, 398; 919 NW2d 20 (2018). To that end, our Legislature requires most Michigan drivers to maintain no-fault insurance and bars tort liability for harm caused by the operation of a motor vehicle except in certain enumerated circumstances. *Wilmore-Moody v Zakir*, 511 Mich 76, 83; 999 NW2d 1 (2023). The exception in this case is that a person may recover damages in a tort action if the defendant's use of a motor vehicle caused serious impairment of a body function. *Id*. at 83-84, citing MCL 500.3135(1). However, not every Michigan driver is entitled to recover noneconomic damages for those injuries under our no-fault laws.

As discussed, Giacomantonio-Snow argued, and the trial court agreed, that Goings was barred from recovering tort damages for his injuries under MCL 500.3135(2)(c), which states that "[d]amages must not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle the security required by section 3101(1) at the time the injury occurred." In turn, MCL 500.3101(1) provides that "[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." Goings argued that he did not violate section 3101(1) because he was a nonresident at the time of the accident and, therefore, was not required to register his vehicle in Michigan. The trial court did not decide whether Goings was a resident or a nonresident of Michigan, but instead ruled that his tort action was barred by MCL 500.3135(2)(c) because he failed to comply with MCL 500.3102(1), which provides:

> A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter.

The trial court concluded that, although it is not mentioned in MCL 500.3135(2)(c), a violation of MCL 500.3102(1) triggers the bar on tort damages under MCL 500.3135(2)(c). We hold that this ruling was legally erroneous and we agree with Goings that the trial court should not have summarily dismissed his claim in favor of Giacomantonio-Snow.

The Legislature's intent to bar certain plaintiffs from recovering tort damages is evidenced by the plain language of MCL 500.3135(2)(c) itself. The statute explicitly states that tort damages must not be awarded to a plaintiff who failed to maintain Michigan no-fault insurance under one

specific no-fault provision, MCL 500.3101(1), which requires the owner of a vehicle that must be registered in Michigan to maintain Michigan no-fault insurance. In drafting MCL 500.3135(2)(c), the Legislature chose to reference a single statutory section to trigger the bar on the recovery of tort damages, and chose not to reference any other statutory section to trigger that bar. It would violate fundamental principles of statutory interpretation and alter the plain legislative intent to read into the statute an additional prohibition on the recovery of damages by citing a statutory section not set forth in the unambiguous language of MCL 500.3135(2)(c).

If the Legislature intended to bar tort claims by nonresident vehicle owners who failed to obtain Michigan no-fault insurance after driving in the state for more than 30 days in a year, it could have named section 3102(1) as a bar to damages as well as section 3101(1), but it chose not to do so. Accordingly, a plain reading of the statute leads to one conclusion—that tort damages are barred if the vehicle owner was required to register the vehicle in Michigan and failed to maintain no-fault insurance, but does not bar the recovery of damages by an insured nonresident owner of a vehicle registered in another state, even if the owner should have obtained Michigan no-fault insurance under section 3102(1) for driving in Michigan for a total of more than 30 days in a year.

We disagree with the trial court's reliance on *McGhee v Helsel*, 262 Mich App 221; 686 NW2d 6 (2004), to support its conclusion that a nonresident owner who violates MCL 500.3102(1) is barred from recovering tort damages pursuant to MCL 500.3135(2)(c). In *McGhee*, the plaintiff, Ellen McGhee, sustained injuries in an auto accident in Michigan that involved another driver, Bill Helsel, who had Michigan no-fault insurance. *Id*. at 222-223. McGhee resided in Indiana at the time of the accident and her vehicle was also registered in Indiana. *Id*. at 222. However, unlike Goings in this case, McGhee had no insurance on her vehicle issued in Michigan or in any other state. *Id*. at 223. McGhee filed a claim against Helsel under MCL 500.3135(1) and maintained that Helsel's negligent driving caused her injuries that resulted in serious impairment of a body function. *Id*. The trial court dismissed McGhee's claim for noneconomic damages because it ruled that, if an uninsured resident in Michigan is barred from recovering damages in a tort action, it would defy logic to allow an uninsured nonresident to recover those damages. *Id*.

This Court reversed the trial court's grant of summary disposition to Helsel and reasoned that the unambiguous language of MCL 500.3135(1) stated that McGhee was only barred from recovering damages if she did not have insurance as required by section 3101(1). *Id*. at 224-225. McGhee did not need to register her vehicle in Michigan under section 3101(1), so she did not need to maintain a Michigan no-fault insurance policy. *Id*. at 225. This Court also observed that, under MCL 500.3102(1), McGhee did not drive in Michigan for more than 30 days in a calendar year. *Id*. The *McGhee* Court concluded that MCL 500.3135(2)(c) did not bar McGhee from recovering noneconomic damages in a negligence case against Helsel. *Id*. Although this Court recognized the incongruity of allowing an uninsured nonresident to recover damages under Michigan's no-fault act while barring uninsured Michigan residents from doing so, the Court nonetheless ruled that the plain language of MCL 500.3135(2)(c) led to this result. *Id*. at 226-227.

Although the *McGhee* Court cited MCL 500.3102(1) in its opinion and observed that it did not apply to the factual circumstances of the case, it is not binding authority on the question before us. The Court's reference to section 3102(1) was not necessary to its resolution of the appeal and was, therefore, nonbinding dicta. *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551,

557-558; 741 NW2d 549 (2007). It is well-settled that not all statements in a published decision are binding rules of law if they are made in the course of rendering a decision, but not directly necessary to that decision. *Auto-Owners Ins Co v All Star Lawn Specialists Plus, Inc*, 497 Mich 13, 21 n 15; 857 NW2d 520 (2014).

Were we to rule otherwise regarding this Court's observation in *McGhee*, which is the reading urged by Giacomantonio-Snow, it would also violate well-established rules of statutory construction. An unambiguous statute must be read and applied as written and we must presume the Legislature intended the meaning it plainly expressed. *Le Gassick*, 330 Mich App at 495. For these reasons, *McGhee* does not control whether a violation of section 3102(1) invokes the bar on tort damages in MCL 500.3135(2)(c), and the trial court erred by granting summary disposition to Giacomantonio-Snow on this ground.

Giacomantonio-Snow asks us to credit this Court's reference to *McGhee* in an unpublished opinion from this Court, *Bundles v Markel Ins Co of Canada*, unpublished per curiam opinion of the Court of Appeals, issued September 21, 2004 (Docket No. 248843).[1] We decline to do so because *Bundles* did not did not involve the statute at issue here, MCL 500.3135(2)(c), and instead addressed a claim for first-party personal injury protection (PIP) benefits under a different provision, MCL 500.3113(b). *Id*., unpub op at 1-3. We are also unpersuaded by Giacomantonio-Snow's reliance on *Dahlmann v Geico Gen Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued March 22, 2016 (Docket Nos. 324698 and 325225), because, again, the case addressed the plaintiff's entitlement to PIP benefits and did not address whether a violation of MCL 500.3102(1) bars the recovery of noneconomic damages under MCL 500.3135(2)(c). *Id*., unpub op at 2, 4-6. We do not find these cases persuasive because they are also distinguishable from the facts of this case.

We find more persuasive this Court's opinion in *Alexander v Kubacki*, unpublished per curiam opinion of the Court of Appeals, issued May 4, 2023 (Docket No. 360100), in which this Court addressed the same questions raised in this appeal. In *Alexander*, the plaintiff, Shavon Alexander, lived in Ohio but commuted to Michigan for work using a vehicle owned by her father, who registered and insured the car in his home state of Georgia. *Id*., unpub op at 1-2. Alexander sustained injuries in a motor vehicle accident while driving in Michigan, and filed a negligence claim against the other driver, defendant Matthew Kubacki. *Id*. The trial court denied Kubacki's motion for summary disposition and Kubacki appealed. *Id*.

Kubacki argued that Alexander had no right to recover tort damages under MCL 500.3135(2)(c) because, as a nonresident constructive owner of the vehicle, she violated section 3102(1) by driving the vehicle in Michigan for more than 30 days in a calendar year without maintaining Michigan no-fault insurance. *Id*., unpub op at 2. This Court disagreed and held that the plain language of MCL 500.3135(2)(c) bars the recovery of tort damages if the owner violated

[1] "Although MCR 7.215(C)(1) provides that unpublished opinions are not binding under the rule of stare decisis, a court may nonetheless consider such opinions for their instructive or persuasive value." *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017).

section 3101(1), but makes no reference to section 3102(1) and, therefore, a violation of section 3102(1) would not implicate the bar on damages in MCL 500.3135(2)(c). *Id*., unpub op at 3.

This Court also rejected Kubacki's argument that this Court should read MCL 500.3135(2)(c) to prohibit the recovery of noneconomic damages if the driver violated either section 3101(1) or section 3102(1) because the provisions relate to the same subject and share a common purpose under the doctrine of *in pari materia*. *Id*., unpub op at 3-4. As this Court aptly observed, that interpretive doctrine applies only when a statute is ambiguous and MCL 500.3135(2)(c) unambiguously bars damages only if the plaintiff failed to comply with section 3101(1). *Id*.[2]

Similar to Kubacki's argument, Giacomantonio-Snow asserts that the failure to maintain no-fault insurance should bar the award of noneconomic damages under MCL 500.3135(2)(c), regardless of whether the obligation arose as a Michigan resident under section 3101(1), or a nonresident under section 3102(1). As previously noted, however, MCL 500.3135(2)(c) unequivocally states that the bar to the recovery of damages applies only if the plaintiff failed to maintain no-fault insurance under section 3101(1), and we will not read language into an unambiguous statute or add provisions when the statute is clear. *Id*., unpub op at 4. We agree with the *Alexander* Court that under the plain, unambiguous language of the statute, only a violation of MCL 500.3101(1) triggers MCL 500.3135(2)(c)'s bar on the recovery of noneconomic damages. *Id*. For these reasons, we hold that the trial court erred by granting summary disposition to Giacomantonio-Snow on the ground that Goings is barred from an award of noneconomic damages for violating MCL 500.3102(1).

C. RESIDENCY

The parties disagree about whether Goings arguably violated MCL 500.3101(1), which would bar his recovery of tort damages for his injuries under MCL 500.3135(2)(c) if he was required to register his SUV in Michigan and also maintain no-fault insurance. Goings argues that he did not need to register his vehicle in Michigan under provisions of Motor Vehicle Code, MCL 257.1 *et seq*. because, when the accident occurred, he was a nonresident under MCL 257.216(1)(a) and MCL 257.243(1), and he did not continuously operate his SUV in Michigan for a period exceeding 90 days under MCL 257.243(4) ("A nonresident owner of a pleasure vehicle otherwise subject to registration under this act shall not operate the vehicle for a period exceeding 90 days without securing registration in this state."). Giacomantonio-Snow contends that, to the contrary, Goings was required to register his vehicle in Michigan and maintain insurance under MCL 500.3101(1) because he was a resident of Michigan when the accident occurred.

We hold that there remains a genuine issue of material fact about whether Goings was a Michigan resident at the time of the accident. Although Goings asserts that, under MCL

[2] The *Alexander* Court also ruled, as we do, that, "to the degree [*McGhee*] can be read as indicating that MCL 500.3135(2)(c) would apply had there been a violation of MCL 500.3102(1) it would be nonbinding dicta as that issue was not necessary to the resolution of the appeal." *Alexander*, unpub op at 4 n 6.

206.18(1)(a) of the Income Tax Act of 1967, he was not "domiciled" in Michigan, our courts have consistently defined "domicile" and "residence" differently for purposes of the no-fault act. *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 500; 835 NW2d 363 (2013). No provision of the no-fault act defines "domicile," but our courts have defined it to mean "the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Id*. at 493. By contrast, our courts define a residence as any place of abode or dwelling place, even if temporary. *Id*. at 494. Those definitions lead to the necessary conclusion that "a person may have only one domicile, but more than one residence." *Id*.

In the trial court, the parties presented ample evidence to support each of their positions on Goings's residency at the time of the accident. Evidence showed that Goings worked in Michigan for 50 to 60 hours a week, but that he maintained a home in Ohio where his minor son lived and attended school. Goings paid Ohio state taxes and was registered to vote in Ohio, but he also spent nights at his girlfriend's house in Michigan. Even Goings himself gave conflicting statements about whether he spent most of each week in Ohio or Michigan before the accident. Because reasonable minds might differ on the issue of whether Goings was a resident or nonresident of Michigan for purposes of MCL 500.3101(1) which, in turn, could bar his claim for damages under MCL 500.3135(2)(c), the trial court erred by granting summary disposition to Giacomantonio-Snow. *El-Khalil*, 504 Mich at 160. When a genuine issue of material fact exists, the claim should not be dismissed under MCR 2.116(C)(10).

We reverse the trial court's grant of summary disposition to Giacomantonio-Snow, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kristina Robinson Garrett
/s/ Christopher P. Yates
/s/ Stephen L. Borrello

Exhibit 2

Authority: 1949 PA 300, Sec.257.622
Compliance: Required MSP UD-10E
Penalty: $100 and/or 90 days (Rev 01/2016)

External # 01205309 | Crash ID 1205309

File Class 93001
Incident # 210034086
Reviewer PANSKI (05360)

STATE OF MICHIGAN TRAFFIC CRASH REPORT

ORI MI6375100 | Department Name SOUTHFIELD PD

Crash Date	Crash Time	No. of Units	Crash Type	Special Circumstances	Special Checks
09/22/2021	15:15	02	Rear End	• None; Fleeing Police; Hit and Run; Unknown; School Bus; Animal	Fatal; Non-Traffic Area; ORV/Snowmobile

County	Traffic Control	Relation to Roadway	Weather	Area
63 - Oakland	Yield Sign	On Road	Rain	NON-FRWY Curved roadway

City/Twsp	Contributing Circumstances 1st	2nd	Light	Road Surface Condition	Total Lanes	Speed Limit	Posted
91 - Southfield	None		Daylight	Wet	1	45	Yes

Work Zone (if applicable): Type | Workers Present | Activity | Location

LOCATION

Prefix	Primary Road Name	Road Type	Suffix	Divided Roadway
	TELEGRAPH	RD		

Distance / Direction: 10 FT N | Trafficway: 01-Not physically divided

Prefix	Intersecting Road Name	Road Type	Suffix	Divided Roadway
W	EIGHT MILE	RD		

Unit Number	Unit Known	State	Driver License Number	Date of Birth (Age)	License Type	Endorsements	Sex	Race	Total Occupants	Hazardous Action
01	Yes	MI	G255095385706	09/11/1968 (53)	• Operator; Chauffer; Moped	Cycle; Farm; Recreation	F	W	01	Unable to stop in assured cl

Unit Type	Driver Information	Driver is Owner	Injury	Position	Restraint
M	BOBBIE JEAN GIACOMANTONIO-SNOW 12459 INKSTER RD TAYLOR MI 48180-6220 (734) 626-2343	No	O	Front-Left	Shoulder and lap belt

Driver Condition at Time of Crash 1st	2nd	Driver Distracted By	Ejected	Trapped	Airbag Deployed
Appeared Normal		Not Distracted	No	No	Not Deployed

Hospital	Ambulance
NONE	NONE

Alcohol Suspected	Contributing Factor	Alcohol Test Type	Alcohol Test Results	Interlock Device
No	No	Breath; Blood; Urine; Field; PBT; Refused; • Not Offered	Pending; Test Results:	No

Drug Suspected	Contributing Factor	Drug Test Type	Drug Test Results	Citation Issued
No	No	Blood; Urine; Field; Refused; • Not Offered	Pending; Test Results:	• Hazardous; Other: 21SO04812

Vehicle Registration	State	Vehicle Description	Year	Make	Model	Color
CHU2992	MI		2016	FORD	EDGE	RED

VIN	Vehicle Type	Special Vehicles	Private Trailer Type	Vehicle Defect
2FMPK3J87GBB61609	Passenger Car, SUV, Van	Not Applicable		

Automation System(s) in Vehicle	Automation System Level in Vehicle	Automation System Level Engaged at Time of Crash
0-No	00-No Automation	00-No Automation

Insurance Company	Insurance Policy #	Towed By	Towed To
AAA	AUT700595879		

Location of Greatest Damage	First Impact	Extent of Damage (Power Unit and/or Trailers)	Vehicle Direction	Vehicle Use	Action Prior
01	01	Minor Damage	S	Private	Going Straight Ahead

Sequence of Events (* indicates MOST harmful event): First: * 17-Motor veh in transport | Second | Third | Fourth

PASSENGERS

Passenger Information	Date of Birth (Age)	Sex	Position	Restraint

Injury | Ejected | Trapped | Airbag Deployed

Hospital | Ambulance

Passenger Information | Date of Birth (Age) | Sex | Position | Restraint

Injury | Ejected | Trapped | Airbag Deployed

Hospital | Ambulance

Passenger Information | Date of Birth (Age) | Sex | Position | Restraint

Injury | Ejected | Trapped | Airbag Deployed

Hospital | Ambulance

Carrier Information | USDOT | MC | MPSC

Driver's CDL Type | Endorsements: H P T / N S X | CDL Exempt: Farm; Other

GVWR/GCWR	Vehicle Configuration	Cargo Body Type	Medical Card	Hazardous Material	ID #	Class #
10,000 lbs. or Less; 10,001 - 26,000 lbs.; Greater than 26,000 lbs.				Placard; Cargo Spill		

OWNERS

Owner Information: GEORGE WALTER SNOW
12459 INKSTER RD
TAYLOR MI 48180-6220

Owner Information

Damaged Property	Public	Owner & Phone

Unit Number	Unit Known	State	Driver License Number	Date of Birth (Age)	License Type	Endorsements	Sex	Race	Total Occupants	Hazardous Action
02	Yes	MI	G900000076625	02/05/1991 (30)	• Operator, Chauffer, Moped	Cycle, Farm, Recreation	M	B	01	None

Unit Type	Driver Information	Driver is Owner	Injury	Position	Restraint
M	JOHN GOINGS SR 4220 LOWE RD TOLEDO OH 43612-1615 (419) 320-1248	Yes	O	Front-Left	Shoulder and lap belt

Driver Condition at Time of Crash 1st	2nd	Driver Distracted By	Ejected	Trapped	Airbag Deployed
Appeared Normal		Not Distracted	No	No	Not Deployed

Hospital	Ambulance
NONE	NONE

Alcohol Suspected	Contributing Factor	Alcohol Test Type	Alcohol Test Results	Interlock Device
No	No	Breath, Blood, Urine, Field, PBT, Refused, • Not Offered	Pending, Test Results:	No

Drug Suspected	Contributing Factor	Drug Test Type	Drug Test Results	Citation Issued
No	No	Blood, Urine, Field, Refused, • Not Offered	Pending, Test Results:	Hazardous, Other

Vehicle Registration	State	Vehicle Description	Year	Make	Model	Color
JHW3527	OH		2012	JEEP	GRAND	SILVER

VIN	Vehicle Type	Special Vehicles	Private Trailer Type	Vehicle Defect
1C4RJFCG4CC220440	Passenger Car, SUV, Van	Not Applicable		

Automation System(s) in Vehicle	Automation System Level in Vehicle	Automation System Level Engaged at Time of Crash
0-No	00-No Automation	00-No Automation

Insurance Company	Insurance Policy #	Towed By	Towed To
PROGRESSIVE	926731697		

Location of Greatest Damage	First Impact	Extent of Damage (Power Unit and/or Trailers)	Vehicle Direction	Vehicle Use	Action Prior
06	06	Minor Damage	S	Private	Slowing/Stopping on Roadway

Sequence of Events (★indicates MOST harmful event)	First	Second	Third	Fourth
	* 17-Motor veh in transport			

PASSENGERS

Passenger Information	Date of Birth (Age)	Sex	Position	Restraint	Injury	Ejected	Trapped	Airbag Deployed	Hospital	Ambulance

Carrier Information	USDOT	MC	MPSC	Driver's CDL Type	Endorsements (H P T N S X)	CDL Exempt (Farm, Other)

GVWR/GCWR (10,000 lbs. or Less / 10,001 - 26,000 lbs. / Greater than 26,000 lbs.)	Vehicle Configuration	Cargo Body Type	Medical Card	Hazardous Material (Placard, Cargo Spill)	ID #	Class #

OWNERS

Owner Information	Owner Information
JOHN GOINGS SR 4220 LOWE RD TOLEDO OH 43612-1615 (419) 320-1248	

Witness Information	Witness Information
Age:	Age:

Investigated at Scene	Reported Date (Time)	1st Investigator Name (Badge)	2nd Investigator Name (Badge)	Photos
No	09/22/2021 (15:15)	A. KORKIS (12)		

Narrative

Both Units were traveling from west 8 Mile Road onto south Telegraph Road. Unit 2 began to yield to on coming traffic and was struck (rear end) by Unit 1 causing damage.

Diagram

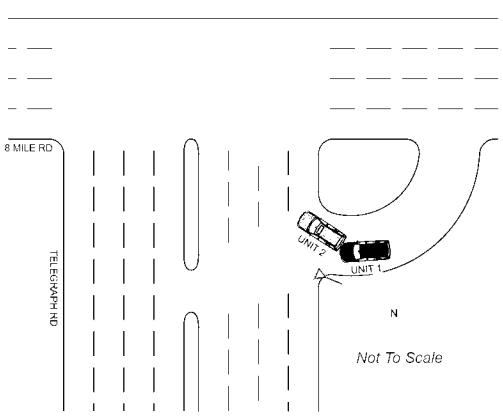

Exhibit 3

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

_____

JOHN GOINGS,

Plaintiff,

v. CT NO. 22-005110-NI

BOBBIE GIACOMANTONIO-SNOW,

Defendant.

_____

VIDEOCONFERENCE DEPOSITION OF

JOHN GOINGS, SR.

DATE: Wednesday, September 28, 2022

TIME: 10:08 a.m.

LOCATION: Remote Proceeding

Mount Clemens, MI 48043

REPORTED BY: Qiuana Glover, Notary Public

JOB NO.: 5504221

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF JOHN GOINGS:

BRADLEY M. PERI, ESQUIRE (by videoconference)
Goodman & Acker
17000 West 10 Mile Road
Southfield, MI 48075
bperi@goodmanacker.com

ON BEHALF OF DEFENDANT BOBBIE GIACOMANTONIO-SNOW:

SARAH GALE-BARBANTINI, ESQUIRE (by videoconference)
Kramer Corbett Harding & Dombrowski
150 West Jefferson Avenue, Suite 1500
Detroit, MI 48226
sbgale-barbantini@acg.aaa.com

JAMES FRISCH, ESQUIRE (by videoconference)
Kramer Corbett Harding & Dombrowski
101 North Main Street, Suite 460
Ann Arbor, MI 48104
jfrischiii@acg.aaa.com

I N D E X

E X H I B I T S

NO.	DESCRIPTION	PAGE

(None marked.)

P R O C E E D I N G S

THE REPORTER: Good morning. My name is Qiuana Glover; I am the reporter assigned by Veritext to take the record of this proceeding. We are now on the record at 10:08 a.m.

This is the deposition of John Goings of Case No. 22-005110, dash, N as in Nancy, I as in ice cream, on today, Wednesday, September 28th, via Zoom.

I am a notary authorized to take acknowledgments and administer oaths in Michigan. Parties agree that I will swear in the witness remotely.

Additionally, absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording of this proceeding:

- is intended for all uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded by stenographic means; and
- shall constitute written stipulation of such.

At this time will everyone in attendance please identify yourself for the record.

MR. PERI: Good morning.

MS. GALE-BARBANTINI: Good morning.

MR. PERI: Go ahead, Sarah. You can go first.

MS. GALE-BARBANTINI: Oh. You're such a gentleman, as always. Good morning. Sarah Gale-Barbantini on behalf of defendant, Ms. Giacomantonio-Snow.

MR. PERI: Good morning. Bradley Peri on behalf of John Goings.

MR. FRISCH: Good morning. James Frisch on behalf of the defendant.

MR. GOINGS: My name is John Goings.

THE REPORTER: Thank you. Hearing no objection, I will now swear in the witness.

Mr. Goings, can you please raise your right hand.

WHEREUPON,

JOHN GOINGS, SR.,

called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE REPORTER: Thank you. You may put

your hand down.

Counsel, go ahead whenever you are ready.

MS. GALE-BARBANTINI: All right. Thank you very much, Ms. Glover.

EXAMINATION

BY MS. GALE-BARBANTINI:

Q Mr. Goings, you can hear me; correct?

A Yes.

Q All right. If at any point you can't hear me, just give me a heads-up; all right?

A Okay.

Q Okay. Let the record reflect that this is the deposition of John Goings. This deposition is taken pursuant to notice and for all purposes allowed under the Michigan Court Rules. My name is Sarah Gale-Barbantini, and I am the attorney representing Ms. Giacomantonio-Snow, the defendant in this matter.

Mr. Goings, could you please state your full name for the record and spell your last name.

A John Goings, Sr. Last name Goings. G-O-I-N-G-S.

Q And, Mr. Goings, you are represented today by counsel; correct?

A Yes.

MS. GALE-BARBANTINI: Counsel, would you like to state your appearance for the record.

MR. PERI: Good morning. Bradley M. Peri on behalf of John Goings.

BY MS. GALE-BARBANTINI:

Q All right. Mr. Goings, have you ever been deposed before?

A Like what's going on right now?

Q Yes.

A Never.

Q Okay. So Ms. Glover, our court reporter, gave us a few ground rules. I'm going to lay out a few more.

First of all, a deposition is merely a series of questions that are answered under oath. For Ms. Glover to hear us and specifically your responses, they must be audible. We cannot shake our heads, shrug our shoulders, talk with our hands, or mumble.

Also, as Ms. Glover indicated, only one of us can speak at a time. The reason for this is we want to have a clear and accurate record of your side of the story and all of your answers that you give me today. Even if you think you know where I'm going with a question, please allow me to finish the question first, and I'll do my best to try to do the

same with your answers. Is that fair?

A Yes.

Q If at any time you do not understand a question, please tell me. I acknowledge that a question can make sense in my head, but when it comes out of my mouth, it can sound like complete gibberish. So if you need me to clarify a question, it's 100 percent okay to say Sarah, I don't understand your question. Can you try again? Okay?

A Yes.

Q All right. Also, if you answer a question, we're going to assume, one, you understood what I asked and two, you're telling me the truth; okay?

A Yes.

Q All right. Have you ever been known by any other name?

A No.

Q Okay. And what is your current address?

A 346 Conrad Avenue, Toledo, Ohio 43607.

Q And when did you move to that address?

A I think about a few years now.

Q Okay. Were you at that address before the accident that we're here to talk about today, which occurred on September 22, 2021?

A No.

Q Okay. Where were you living on September 22, 2021?
A 4220 Lowe Road, Toledo, Ohio.
Q And how long had you lived at the Lowe Road address?
A About three or four years.
Q Okay. And before the Lowe Road address, where did you live?
A Prior I was staying in Sterling Heights, Michigan.
Q Okay. Do you recall the address or the cross streets?
A I think it was -- don't recall. I think it was Cambridge Apartment. I don't recall the exact address. Something -- I think 16 Half Mile Road.
Q Okay. And did anyone live with you when you were living at the Lowe Road address?
A Yes. My son, John Going, Jr.
Q And how old is John Going, Jr.?
A Seven.
Q Anyone else besides you son?
A That's it.
Q Okay. Does he live with you currently?
A Yes.
Q Okay. Anyone else live with you currently?

A That's it. Just me -- it's him and my mom.
Q Okay. What's your mom's name?
A Lenora Ellison.
Q And how long have you and your mom been living together?
A About three years or so now.
Q Okay. So she was living with you on September 22, 2021?
A Repeat that question again.
Q Was your mom living with you on September 22, 2021?
A Yes.
Q Okay. Right. And do you have a valid driver's license?
A Yes.
Q What state is that license issued in?
A Ohio.
Q And can you give a copy of the front and back of that license to your lawyer?
A Yes.
Q Excellent. We won't have you hold it up to the screen and have us try to go through the driver's license numbers, because that's torture, so. All right. Besides your Ohio driver's license, do you have any other driver's licenses?

A No.
Q And is that just a commercial driver's license or just a run-of-the-mill driver's license?
A It's a commercial driver's license as well.
Q Okay. Do you drive commercially?
A No.
Q Why do you have a commercial driver's license?
A I had one at the time -- at the time, but I'm not -- I haven't been driving a commercial vehicle in a while.
Q Okay. When's the last time you drove a commercial vehicle?
A I don't recall that.
Q Okay. Would it be in the last five years, more than five years ago?
A Within the last five years or so.
Q Okay. What is your birthdate?
A 2/5/91.
MS. GALE-BARBANTINI: And we're going to briefly go off the record, Ms. Glover.
(Off the record.)
MS. GALE-BARBANTINI: Let the record reflect that the deponent provided his full Social Security Number, the last four digits of which are

5543.

BY MS. GALE-BARBANTINI:

Q Thank you very much, Mr. Goings. All right. Mr. Goings, where were you born?

A Toledo, Ohio.

Q Are you married?

A Yes. I am now.

Q Okay. When did you get married?

A July 9th. This year.

Q Okay. And what is your spouse's name?

A Chantel Goings.

Q And is that spelled C-H-A-N-T-E-L-L-E?

A C-H-A-N-T-E-L.

Q Okay. Thank you very much for spelling that for us. And does Mrs. Goings live with you, your mom, and your son?

A No.

Q Where does she live?

A 23627 Stewart Avenue, Warren, Michigan 48089.

Q Is that storer like S-T-O-R-E-R?

A Stewart. S-T-E-W-A-R-T.

Q Excellent. Thank you so much. And that's in Warren, Michigan, you said?

A Yes.

Q Okay. And do you split your time between Toledo and Warren?
A Yes.
Q Okay. How often are you in Toledo?
A A couple times throughout the week, 'cause I have my son that still stays in Toledo, Ohio, and I have a daughter with my wife staying in Warren, Michigan. Stewart Avenue. That address.
Q Okay. And does your son go to school down in Toledo?
A Yes.
Q Okay. And how old is your daughter?
A One years old.
Q And what is her name?
A Aalia Goings.
Q Okay. And besides your marriage to Chantel, have you ever been married any other time?
A No.
Q Okay. Besides Aalia and John, Jr., do you have any other children?
A No. Just my -- my stepdaughter.
Q Okay. What's your stepdaughter's name?
A Amara Joyce.
Q And how old is Amara?
A She's, what, four years old.

Q Okay. You guys are busy.
A Yes.
Q I was about to say. Seven, four, and one. God bless you.
All right. So do you own any motor vehicles?
A Yes.
Q What motor vehicles do you own?
A A 2012 Grand Cherokee and a 2013 Street Glide Harley-Davidson motorcycle.
Q Okay. And were you operating the Grand Cherokee on September 22, 2021?
A Yes.
Q Okay. Who was the insurance company for the Grand Cherokee?
A Progressive.
Q And what Progressive insuring the Grand Cherokee on September 22, 2021?
A Yes.
Q Okay. So besides the September 22, 2021, accident, have you been in any other car accidents?
A Yes. About ten years ago, I was involved in a car accident.
Q So that would be approximately 2012?
A Yeah. About around that time.

Q Okay. Can you tell me a bit about that car accident?
A I was hit. I was hit by someone and had to have surgery. I had to have a bicep tendon surgery and a nerve damage surgery.
Q Okay. Where did the 2021 accident occur?
A Toledo, Ohio.
Q And where did you have surgery?
A UT Medical College.
Q And you said you had your bicep tear addressed?
A Yes. Bicep tendon and nerve damage surgery on my left arm, the shoulder.
Q Okay. Any other injuries that you sustained in that 2012 accident?
A No. Not that I recall right now. Just those two that I had those surgeries on.
Q Okay. And any other car accidents besides the one in 2021?
A No.
Q Okay. Have you had any car accidents after the September 22, 2021, accident?
A Yes.
Q Okay. Can you tell me about that accident?
A I was -- I was hit.

Q Okay. What year did it occur?
A This year.
Q So 2022?
A Yes.
Q Okay. Where did the accident occur?
A In March in Toledo, Ohio. Around March, I recall.
Q Okay. And you're doing a good job. I think this is an important point. If you don't exactly remember something, it's okay to tell me that you don't remember or you don't recall.
I may ask you a couple follow-up questions, but at the end of the day, if you don't remember, that's fine. And if you aren't 100 percent sure, just be sure to let us know. But do your best not to guess. Is that okay?
A Yes.
Q All right. So you had another accident in March of 2022 in Toledo, Ohio; correct?
A Yes.
Q So you said you were hit. Was it sideswipe, rear-end?
A Sideswipe.
Q What vehicle were you driving?
A 2012 Grand Cherokee.

Q Okay. And did you have any injuries in the 2022 accident?

A I went to the -- I followed with the -- at the hospital, the UT Medical College emergency room. I followed up.

Q Okay. And did you recall feeling any pain or discomfort after the 2022 accident?

A Yes.

Q Okay. Can you describe any pain or discomfort you experienced after the 2022 accident for me?

A I can't recall. I was just in a lot of pain.

Q Okay. Do you recall if you broke any bones?

A No broken bones.

Q Okay. Did you have any X-rays or CAT scans, MRIs performed after March 2022 that you're aware of?

A At the emergency room, when I went out there, I got sideswiped, they had an X-ray.

Q Okay. Did you go to follow up with any other doctors besides University of Toledo Medical College emergency room?

A Just with the UT Medical College, I followed up.

Q Okay. Did you follow up with any doctors

that you were treating with because of your 2021 accident?

A Yes.

Q Okay. Are any of your doctors that you were treating with because of your 2021 accident giving you any assistance with regard to any injuries that you sustained in your 2022 accident?

A Can you repeat that question again?

Q Absolutely. So you're seeing some doctors because you were in an accident in 2021; correct?

A Yes.

Q Okay. Did you go to any of those doctors because you had any pain or discomfort from the 2022 accident?

A Yes. Yes --

Q Yeah. Sometimes, I start sounding too much like a lawyer, and you've got to be like, talk like a human instead. It's 100 percent fine to let me know that; okay?

A All right.

Q So after the 2022 accident, you said you don't recall any specific injuries. Did you just have like, pain all over your body?

A Yes. I felt pain in my body.

Q All right. Do you recall it being worse in

any place in particular? Was it just consistently painful all over after the 2022 accident?

A Consistent.

Q Okay. All right. Besides the accident in 2012 and 2022 and 2021, have you been in any other car accidents?

A No.

Q Okay. Have you ever made a Social Security Disability claim?

A No.

Q Have you ever made a workers' compensation claim?

A No.

Q Have you ever filed for unemployment before or after September 22, 2021?

A No.

Q Okay. You didn't apply for any COVID unemployment assistance?

A No.

Q Okay. Did you make an insurance claim with Progressive relative to your 2022 accident?

A Repeat that one more time.

Q Yeah. Did you make any insurance claim with Progressive because of your 2022 accident?

A Yes. I have a claim with the '22 accident.

Yes.

Q Okay. And is that claim for damage to your vehicle?

A Yes.

Q Did you also make a claim for bodily injury?

A Yes.

Q Okay. So you made a claim for both?

A Yes.

Q Okay. Thank you. And then with regard to the 2021 accident, did you make a claim for both injury to your vehicle and injury to yourself?

A Yes.

Q Okay. Have you ever been a party to a lawsuit besides the one that we're involved in that brings us here today?

A No.

Q Okay. Have you ever been in the military?

A No.

Q Have you ever been convicted of a felony?

MR. PERI: I may have an objection for relevance.

MS. GALE-BARBANTINI: That's fine.

BY MS. GALE-BARBANTINI:

Q You can answer the question, sir.

A Say it again.

Q Have you ever been convicted of a felony?
A No.
Q Have you ever been convicted of a crime involving theft or dishonesty?
A No.
MR. PERI: Same objection.
Q All right. Got to make sure Brad gets in there so he can make his record. Was that a no?
A No.
Q Is that no, it was not a no, or no?
MR. PERI: No, he was not convicted of a crime involving fraud, deceit, and dishonesty.
BY MS. GALE-BARBANTINI:
Q Okay. Excellent. Sometimes, I listen to that and I'm like, we're going to clarify that record right there. All right. And another ground rule that I think is really important. So anybody that you talk to at Brad's office, I don't get to know about what happened in those conversations. I can know that you talked to him, but I can't know what you said; okay?
A Yes.
Q And when I say the term "talking," that also includes writing things out or emails; okay?
A Yes.
Q So without telling me about anything that

you have said to Brad or anyone in his office, have you ever given a written or oral statement about the September 22, 2021, accident?

A No.

Q Okay. Did you give a statement to your insurance company Progressive?

A Yes. I gave them a -- a statement after making my statement to make a claim. But no. Outside of Brad, no.

Q Okay. Did you talk to the police?

MR. PERI: And, John, she's more just asking anybody outside of me.

MS. GALE-BARBANTINI: Yes.

MR. PERI: So have you given a statement to, you know, an insurance company or anybody else besides myself or somebody from my office?

THE WITNESS: No --

BY MS. GALE-BARBANTINI:

Q Yeah. And if it's somebody with Brad or his office, I don't get to know about it.

A No --

Q Okay. So you talked to the insurance company. Did you talk to the police at the scene?

A Yes. I told them I -- showed them my

driver's license and insurance.

Q Okay. So when you talked to your insurance company about the September 22, 2021, accident, what did you tell them?

A I explained to them what happened.

Q Okay. Can you describe for me what happened?

A I was -- recall I was coming off -- was it the 8 Mile ramp, if I recall right. Coming on the Telegraph. I was trying to get on Telegraph. I had to yield at the stop. And that's when the lady rear-ended me. I was at a complete stop.

Q It was garbled at the end. Were you at a complete -- did you say you were at a complete stop?

A Yes. Trying to yield to -- I think it's Telegraph.

Q Okay. And you said you were rear-ended?

A Yes.

Q Okay. And then what did you tell the police? Same thing?

A Yes. I then got out and tried to exchange information with the driver. And said she had insurance. And she kept saying we have to get off of this ramp, 'cause we're going to back up traffic.

I said, you don't leave the scene, you know.

You have exchange information, call the police right here. And that's when she gets in her car and takes off and leaves.

Q Okay.

A And when she leaves the scene, I call the police. And the police say, you at least have got to get her license plate. That's when I just catch up to her and get her license plate, since she finally stopped. And so we can pull in at the nearest plaza.

Q Okay. So she moved her car to a parking lot?

A Yeah. She left the scene and went up -- a little up further down the street into the nearest, you know, parking lot you can pull into in a plaza.

Q Okay. And was your car drivable?

A Yes. I was on the phone with the cops. And they told me I have to come back to the scene where she hit me. They told me where to go to. I was some kind of like, factory. CMC or CMU or something like that. And I told them that's where I was going, and that's where the police were going to be at to make the police report.

Q Okay.

A Further -- when she left -- she left the scene, I guess considered in a different district.

Q Okay. All right. How far did you go in school, Mr. Goings?

A I graduated high school 2009 and had some college.

Q Where did you graduate from high school?

A Rogers High School.

Q Is that in Toledo?

A Yes.

Q And where did you complete some college?

A Owens Community College.

Q Is that Owens?

A Owens. O-W-E-N-S Community College.

Q Excellent. Where is that located?

A I think it's -- I think it might be considered Perrysburg, Ohio. I'm not for sure. I think it's considered Perrysburg, Ohio.

Q Okay. And what kind of classes did you complete at Owens Community College?

A Went to the construction classes.

Q Anything else?

A That's it.

Q Okay. Do you have any other licenses, degrees, or certifications besides your high school degree?

A No.

Q Okay. So you don't have like a certification in construction?
A No.
Q Okay. When was the last time you attended school?
A Just the college. That was -- I can't recall that. That's two years ago. It was college.
Q Okay. Was that shortly after you graduated high school?
A Yes.
Q Okay. So approximately ten years ago? Would that be fair?
A Yes.
Q Okay. What do you currently do for a living?
A I work for Chrysler Sterling Heights Assembly Plant.
Q So if I heard that correctly, you work for the plant for Chrysler in Sterling Heights?
A Yes. Sterling Heights Assembly Plant.
Q Okay. What's your job there?
A A driver there.
Q Okay. Are you union?
A Yes.
Q What union?

A Union. I'm in Local 1700. Not -- can't recall the exact union. Just in a union.
Q Okay. Is it UAW?
A Yes. UAW.
Q Okay. What's your supervisor's name?
A Last I checked, it was -- what's his name? Give me a minute. Paul Randall. I'm not for sure if he's still the supervisor or not, 'cause I haven't been to work in a while.
Q Okay. And that's Randall, R-A-N-D --
A Paul Randall.
Q Okay. Is it R-A-N-D-A-L-L? Does that sound right?
A Yes. Not sure technically how to spell his last name, but Paul Randall is my supervisor.
Q When is the last time you went to work?
A It was -- I can't recall. I think it was the day before the accident.
Q Which one, the March or September?
A '21.
Q Okay. So you haven't been to work since approximately 9/20/2021?
A Yes.
Q Are you still employed there? Do you still have a job?

A Yes.
Q Okay. What's the reason you haven't returned to work?
A I just recently had another surgery. I'm still on medical leave. I just -- they just put me on extended disability leave. I just had another surgery, a serious nerve surgery on my elbow on September 6. About to get ready to start therapy for that.
Q Okay. So who is your long-term disability carrier? Do you know?
A Sedgwick was taking over, but I don't know who is going to be paying me now, since I'm on extended disability. So I'm on disability now. But it -- it was through Sedgwick.
Q Sedgwick?
A Yes.
Q Okay. Did you also get short-term disability?
A Yeah. That's what I was on, medical leave through Sedgwick. But since I'm going to medical, I don't know who is going to be paying me now at this -- filled out information that's sent --
Q Okay. What are your duties as a driver?
A Say that again.

Q What are your duties as a driver at the --
A Can you explain that? You're saying duty as a driver as in where?
Q At Chrysler.
A My job is to drive the cars off the -- the line to outsiders. Sometimes, I work in a yard to move the vehicles around and bring them in. I sometimes do tows within the plant or outside.
Q Okay. And what about -- well, actually, let's rewind. So you got in this accident on September 22, 2021; correct?
A Yes.
Q What injuries do you claim you sustained in that accident?
A I can't recall. I have multiple injuries -- injuries.
Q All right. So let's go through them. Want to start at the head and work our way down? Do you have a head injury?
A Head injury, back injury, back injury, shoulder injury, and elbow injury.
Q So I have head, neck, back, shoulder, and elbow; is that correct?
A Yes.
Q Am I missing anything?

A Not that I can think of right now. Just what I explained to you.

Q Okay. So when you talk about having a head injury, how was your head injured? And you can just put this in your own words. Don't worry about using fancy doctor talk.

A Can you explain that? Can you repeat that question again?

Q Yeah. How was your head injured in the September 22, 2021 accident?

A Well, I was rear-ended, and my neck, you know, snapped back, you know, within the -- the accident.

Q Okay. So your neck snapped back?

A Yes.

Q What about your head? Do you have headaches? Do you have --

A Yes.

Q Did you hit your head on anything?

A I had headaches.

Q Okay. Did your head hit anything inside the vehicle?

A Not that I can recall. I can't recall.

Q Okay. This is a slightly odd question, but do you remember if you lost consciousness?

A Consciousness? No.
Q Okay. So you didn't lose consciousness?
A No.
Q Did your airbags deploy?
A No.
Q Okay. And you said your neck snapped back and forth?
A Yeah. Yes.
Q Okay. Now, tell me about your back.
A Back was in a lot of pain.
Q All right. And you mentioned shoulder. Were both your shoulders injured or just one?
A My left shoulder.
Q Okay. And is that also the shoulder that you had issues with back in 2012?
A Yes.
Q How was your left shoulder injured?
A From -- can you repeat the question? From when?
Q Yeah. How was your left shoulder injured in the 2021 accident?
A From -- you know, from getting rear-ended.
Q Okay. I get that it was rear-ended, but I'm trying to figure out, like, how your body moved in the car and how the pain came around; okay?

A You know, I -- I was jerked when I got rear-ended, so.

Q Okay. Did your left shoulder hit anything in the vehicle?

A I can't recall. I just recall just getting rear-ended and getting snapped forward hard and quick from getting rear-ended.

Q Okay. And when you said elbow, did you mean your left elbow?

A Yes. Left arm. All -- my all -- you know, just rear-ended. I got hit, and I -- I got rear-ended and hit. My -- my neck snapped. My body went forward when I got hit.

Q Okay. Were you wearing a seat belt?

A Yes.

Q Okay. Did any part of your body hit the steering wheel, if you recall?

A Yes. My whole front body just hit the steering wheel. Front body and my shoulder.

Q Okay. So you're saying that your chest and your shoulder hit the steering wheel?

A Yes.

Q Okay. And did your elbow hit the door, any part of the vehicle that you recall?

A Just recall just getting -- just -- and

getting hit and getting snapped forward to the --

Q Okay. All right. How many hours a week were you working at Chrysler?

A An average of at least 50 to 60 hours. I mean, I worked a lot of overtime.

Q Okay. What was your hourly rate?

A Around 30 something. I can't recall the exact hourly pay.

Q And then did you get paid time and a half for overtime?

A Yes.

Q Okay. Do you recall how much you made in a year?

A I can't recall that.

Q Okay. Did you file tax returns?

A Yes.

Q Okay. That information would be in your tax returns?

A Yes.

Q Okay. Did you use an accountant or did you do it by yourself?

A Accountant.

Q Okay. What's the name of the accountant that you used?

A Superb. Superb Taxes.

Q And where are they located?
A I think it's -- I think it's considered in Novi, Michigan.
Q And you don't recall the specific accountant who you worked with?
A Tammy.
Q Tammy?
A Name was Tammy. I can't recall her last name. If I'm not -- if I'm not mistaken, it's in Novi. Novi, Michigan, I think.
Q Okay. Has any doctor restricted you from working since September 22, 2021?
A Yes.
Q What doctor?
A Dr. -- I can't pronounce his last name, but Krpichak. Krpichak.
Q Krpichak?
A Krpichak. I can't pronounce his last name.
Q We can call him Dr. K. Is that fair?
A Yeah. Dr. K.
Q Yeah. Dr. K. All right. And where does Dr. K practice?
A Northland Radiology.
Q Okay. And after the September 22, 2021, accident, did you go to the ER?

A Say that one -- repeat that question one more time.

Q No problem. After the September 22, 2021, accident, did you go to the ER?

A Yes.

Q What ER?

A I think it's St. John's Ascension.

Q Okay. And when you went to the ER, what did they do for you?

A They did X-rays and -- did X-rays and just basically treated me for, you know, typical, I guess, auto accidents.

Q Okay. Do you recall if they told --

A Say that again.

Q Do you recall if they told you if you had any injuries?

A I guess they considered it like, normal car injuries or like, whiplash or something -- I guess it was considered it. And told me to follow up with my doctor.

Q Okay. And did you get any medicine at the ER?

A Yes. I can't recall what it was.

Q Do you remember if it was like, a pain medication, a muscle relaxer, or --

A I can't recall what it was.
Q Okay. Do you have a primary care doctor?
A Yes.
Q Who is your primary care doctor?
A Irshad Hussian. I-R-S-H-A-D. Last name Hussian, H-U-S-S-I-A-N.
Q And where is Dr. Hussian located?
A In Rossburg, Ohio, at Rossburg Family Practice -- I guess they consider it a little clinic now.
Q Okay. Did you follow up with Dr. Hussian after the accident in 2021?
A Yes. I followed up with him --
Q When did you go see Dr. Hussian?
A I think it was a few days prior -- a few days prior after the injury.
Q Okay. And what did Dr. Hussian do for you?
A He referred -- well, he treated me at the time for what was going on. I can't recall what -- like, I treated with.
Q So when you say he treated you at the time for what was going on, what was going on?
A I explained on that -- you know, I got in a car accident.
Q Okay. So what kind of pain, discomfort were

you having? Can you describe it for me?
A I felt my whole body aching.
Q Okay.
A Explained to him, you know, what -- what happened, what was going on.
Q Okay. And that was whole body aching?
A Yes.
Q Okay. Anything else that you recall?
A And after that, that's when I had previous -- previous attorney before, Brad, that you know -- that's how I got referred to Northland Radiology and Michigan Spine Specialist.
Q Okay. Who was your attorney?
A I -- I couldn't recall his name. It was at -- I couldn't recall his name.
Q Okay. But it's not Brad?
A It wasn't -- it wasn't Brad. It -- it wasn't Brad at the time.
Q Okay. And it wasn't anyone at his office?
A No.
Q Okay. You have no clue what office that attorney worked at?
A I can recall that I told Brad all that information --
Q Okay. When did you do -- oh.

A Then after -- that's why after, I was seeing my doctor. That's when I found an attorney, and he told me where to go in Northland Radiology and Michigan Spine Specialist Institute. That's how that came about. I would do my treatment at Northland Radiology.

Q Okay. So your prior attorney recommended Northland Radiology?

A Yes. And Michigan Spine Specialists. I think it's Dr. Radden.

Q Okay. Is there any reason why you didn't want to treat with doctors down in Ohio?

A I -- I eventually went back for a second opinion. I did go back for a second opinion.

Q With who?

A UT Medical College with doctors David Sohn and Mustapha. So doctors and surgeons who did my surgery.

Q Okay. Why did you go for a second opinion with the doctors who did your surgery? And I'm assuming the surgery you're talking about is the one in 2012; is that right?

A Yes.

Q Okay. Why did you go back to them?

A Felt like I needed a second opinion.

Q Why did you feel you needed a second opinion?
A I had my right for a second opinion.
Q I know you have a right. I'm just asking you why.
MR. PERI: Just asking why you went to the doctor for a second opinion.
BY MS. GALE-BARBANTINI:
Q Yeah. That's it. It's no big deal. Just asking.
A They did my previous surgeries in the past, and I felt, you know, more comfortable with them.
Q Okay. So you felt more comfortable with what they were telling you?
A Yes. More comfortable.
Q Okay. All right. So you reached out to an attorney yourself, or did an attorney reach out to you?
A Myself.
Q Okay. And you reach out to an attorney after you saw Dr. Hussian?
A Yes.
Q Okay. Did you have an attorney after your 2012 accident?
A For this year?

Q No.

MR. PERI: No. The one back in 2012. The previous crash.

BY MS. GALE-BARBANTINI:

Q Yeah. Did you have an attorney for that crash?

A Yes.

Q Okay. Did you file a lawsuit because of the 2012 accident?

A That I can't recall when about -- I can't recall --

Q Okay. And do you have an attorney for your 2022 accident?

A Yes.

Q Okay. Is that Brad?

A No.

Q Oh. You have a different lawyer for your 2022 accident?

A Yes.

Q Okay. Is it someone within Brad's office?

A No.

MR. PERI: Sarah, it's Toledo.

THE WITNESS: Toledo. Toledo.

BY MS. GALE-BARBANTINI:

Q It's in Toledo? Okay. All right. So Dr. K

is the doctor that restricted you from work; correct?
A Yes.
Q Any other doctors restrict you from work?
A No. Just Dr. K.
Q Okay. So your doctors back at UT Medical College, they have not restricted you from work?
A They did my -- they're the ones that did the surgeries and gave me a script for physical therapy.
Q Okay. So did the doctors at UT -- did they give you an work restrictions after your surgery on September 6th?
A Has been going through everything through Dr. K.
Q Okay. So your doctors at University of Toledo didn't think your surgery meant you had to not go to work?
A They just treated me for what needed to be done, and following up and doing everything with Dr. K. Dr. K has been the one that's been taking me off of work.
Q Okay. Have you been off of work since September of 2021?
A Yes.
Q Okay. So what about your accident injuries would make it difficult for you to do your job?

A Repeat that question one more time.
Q Yep. What is it about injuries that you got in September of 2021 -- what about them would make it hard for you to do your job as a driver at Chrysler?
A I just -- I just had another recent surgery, September 6, so.
Q I understand that you just had surgery, but I'm asking: What about before September the 6th, what about before the surgery made it hard for you to do your job?
A Can you repeat that -- I'm not understanding that question.
Q Okay. So I get that you had a surgery, and I get that having the surgery makes it hard to do your job; fair?
A Yes.
Q Okay. But I'm asking is: Back in September of 2021, what about your injuries at that time made it hard for you to do your job?
A I couldn't do my -- my daily life functions as much.
Q Okay. So when you're talking about not being able to do your daily functions, what couldn't you do?
A Harder for -- hard to sleep. You know, sit

down, standing. And hard to, you know, tend to my kids.

Q Okay. Were you able to drive a car after September 22, 2021?

A It's hard.

Q Okay. But it was hard, but could you do it?

A It was hard, but I could do it the best I could, you know. I've got to get around the best I can.

Q Okay. So were you able to drive between Toledo and Michigan after September 22, 2021?

A Sometimes, I could. But if I couldn't then, you know, my wife will take me.

Q Okay. So how often was your wife making the drive down to Toledo instead of you?

A All depending. It all depends.

Q Okay. Would you say she was driving 50 percent of the time, less than 50 percent of the time?

A It all depends. Like I said, she -- she has a job too, so.

Q Okay. Did you ever miss getting down to Toledo during the week because you couldn't drive after September 22, 2021?

A Yes. There was times that, you know, I

couldn't do it, and I just couldn't get there.

Q Okay. You know, we're talking about a year time period. How often were you unable to get down to Toledo?

A I can't roughly explain that.

Q Okay. Would you not be able to make it a couple times a month?

A It all depends on how much help I got.

Q Okay. I'm trying to get sort of an idea of what that means for the record. So when you say it depends, over the course of a year, you know, were you making it to Toledo at least once a month?

A Sometimes once a month or a couple of times. You know, it all depends.

Q Okay. On average, how many times a month were you able to make it down to Toledo?

A Not sure.

Q Okay. Besides your job at Chrysler, do you have any other employment?

A No.

Q Okay. How long have you been working at Chrysler?

A Since January 12, 2011.

Q Okay. And what was your first position at Chrysler?

A Production worker.
Q Okay. And then you've moved up to driver?
A Yes.
Q Okay. Have you ever had to take a medical exam for your employment at Chrysler?
A No.
Q Okay. Did you have to take time off in 2012 after your first accident?
A Back in 2012, yes.
Q Yeah. Do you recall how long you took off?
A I'm not for sure. Don't recall.
Q Did you have to go on long-term medical?
A Yes.
Q Okay. Did you drive yourself to the St. John Hospital ER after the September 22, 2021, accident?
A Well, my wife -- she was my girlfriend at the time. She -- she drove me there.
Q Okay. So did she come pick you up?
A She drove me there.
Q Okay. Was she in the car with you when the accident occurred?
A No.
Q Okay. So did she come to the scene and pick you up and take you to the ER?

A No.
Q Okay. Did you drive home before going to the ER?
A I drove to her house, and she took me to the -- the ER.
Q Okay. So your vehicle was drivable after the accident?
A Yes.
Q So besides the prior surgery that you had in 2012, do you have any other pre-existing conditions that affected you prior to the accident in 2021?
A I don't recall other than what I -- I've stated to you already.
Q Okay. So you don't have like asthma, anything like that?
A Yes. I have asthma.
Q Okay. Anything else like asthma that you've had for a while?
A Nothing other than what I've stated to you, so.
Q Okay. And then did you treat with Dr. Hussian for your asthma?
A Yes.
Q Okay. And did you have to go to the hospital or were you hospitalized at all in the two

years prior to the 2021 accident?

A I don't recall.

Q Okay. So you don't remember going to the ER or having to go to the hospital between 2019 and 2021?

A Don't recall.

Q Okay. Now, we talked about car accidents, and you mentioned one in 2012 and one in 2022 in addition to the one in 2021. Besides those car accidents, have you had any slips and falls or work-related accidents?

A No. No.

Q Okay. And have you had any slips and falls or non-auto-related accidents since September 22, 2021?

A No.

Q Okay. Besides for your surgery at UT Medical College back in 2012, had you ever been hospitalized prior to the accident in 2021?

A Not that I recall.

Q Okay. Were you born in a hospital?

A Yes, ma'am.

Q All right. So besides being born and getting your elbow operated on, you've never had to be in the hospital?

A No.

Q Okay. Have you ever had to go to the ER for your asthma?
A Not that I recall.
Q Do you have health insurance?
A Yes.
Q Who is your health insurer?
A Medical Mutual. I think it's SuperMed.
Q Is that through work?
A Yes.
Q Okay. And you're still insured today?
A Yes.
Q Okay. This is probably more of a question for Brad.

MS. GALE-BARBANTINI: Brad, do you know of any health insurance liens?

MR. PERI: That's what I'm trying to figure out.

MS. GALE-BARBANTINI: Okay. All right. You'll just keep me updated on that?

MR. PERI: Yeah.

MS. GALE-BARBANTINI: All right. Thank you.

BY MS. GALE-BARBANTINI:
Q Prior to the September 2021 accident, did you ever treat with a psychologist?

A Not that I recall.
Q Okay. Prior to the September '21 accident, did you ever treat with a psychiatrist?
A Not that I recall -- can recall.
Q Okay. Prior to the September 2021 accident, had you ever treated with a physical therapist?
A Say it -- repeat that question one more time.
Q No problem. And thanks for calling me out for reading from an outline. So prior to the September 2021 accident, had you ever treated with a physical therapist?
A Not that I recall.
Q Did you treat with a physical therapist after your 2012 surgery?
A Yes.
Q Okay. Would that have been with -- do you remember where that physical therapist worked out of?
A Saying the 2012?
Q Yeah.
A That was in UT Medical College. I did physical therapy there.
Q Okay. All right. How about a chiropractor? Have you ever treated with a chiropractor before 2021?
A Not that I recall.

Q Did you ever treat with a neurologist prior to 2021?
A Not that I recall.
Q Okay. And you've only had the one surgery in 2012 --
A Yeah --
Q -- before 2021?
A The two.
Q You had two surgeries? Yes. That I just stated already.
A Okay. So I'm talking about before 2021, not after.
MR. PERI: Yeah. Back in 2012, he testified that he had two surgeries.
THE WITNESS: Yes. That's what I'm --
BY MS. GALE-BARBANTINI:
Q Okay. So you had two surgeries. And that's the nerve and the bicep?
A Yes.
Q All right. Any other surgeries? No tonsils removed --
A No.
Q -- none of that? Okay. Did you have any neck or back pain because of your 2012 accident?
A I can't recall.

Q Okay. So where were you coming from when you were on Telegraph in the 2021 accident?

A She was my girlfriend. I was -- my girlfriend was -- my wife now -- from her address that I stated already on --

Q So you left her house?

A Yes. On Stewart.

Q Okay. And where were you going?

A I was on the way to the groomer's. Dog groomer's -- I had my -- I had my dog in the car, on the way to the dog groomer's.

Q Okay. What kind of dog do you have?

A American Bully.

Q And was the dog okay after the accident?

A I took her to the -- the nearest hospital or vet I could get in, and they -- and they treated her at the time then.

Q Okay. You're telling a dog person that a dog was in a car during a car accident. I'm going to go there. But aside from your dog, no one else was in the car with you?

A No.

Q Okay. Were there any cars in front of you when the accident occurred?

A Not -- cannot recall. I know I was -- I

was -- I stopped to get onto the -- you know, Telegraph, so.

Q Okay. So your car didn't hit any other vehicles --

A No.

Q -- besides the one that rear-ended you; correct?

A It didn't. No.

Q Do you recall if there were any witnesses to the accident?

A I mean, there were -- there were cars ahead of us, but she had left the scene, so.

Q Okay. Was your vehicle -- how much damage was done to your vehicle, if you know?

A I don't know how to answer that. I mean, I know Brad had all that information.

Q Okay. So did you have to pay a deductible to get your car repaired?

A Yes.

Q Okay. And then insurance covered the rest?

A Yes.

Q And where did you get your car repaired?

A I can't recall that shop. It was -- I can't --

MR. PERI: I think it was Greenfield

Collision.

THE WITNESS: Yeah. That's what it was: Greenfield Collision.

BY MS. GALE-BARBANTINI:

Q All right. And how long was your car out to be repaired, if you recall?

A I think about a week or so, if I'm not mistaken.

Q Were you on any medications at the time of the September 2021 accident?

A No.

Q You're not taking anything for your asthma?

A No.

Q You weren't taking anything for your shoulder or your elbow?

A I take my -- inhaler when needed.

Q What did you say?

A My -- I just take my inhaler when needed.

Q Okay. And you weren't taking anything for your shoulder or your elbow?

A No.

Q Okay. What time did the accident occur, if you recall?

A I can't recall the time.

Q All right. Was it during the daytime?

A It was during the daytime. It was raining outside.
Q Okay. Were the roads slick?
A Yes.
Q Okay. Do you need to wear glasses when driving?
A No.
Q Were you on the phone at any time immediately before the car accident, using Bluetooth?
A Say that again.
Q Were you on the phone immediately before the car accident occurred?
A I had my AirPod in my ear.
Q Okay. Were you on the phone at the time? Listening to music?
A No.
Q Okay. Just had your AirPods in?
A Yeah.
Q Okay. Were they the noise cancelling kind?
A Yes.
Q Okay. Was there anything mechanically wrong with your vehicle right before the September 2021 accident?
A No.
Q Did you ever use a transportation service to

get around after the accident?

A No.

Q Okay. Who was driving you around to get to your appointments? Was it you?

A Yes. And then -- and my wife.

Q Okay. So you said that you --

A I think -- I know a few times -- Northland Radiology -- Northland Radiology sent someone to come pick me up from my appointments as well, too.

Q Okay.

A Yeah. Northland Radiology.

Q Anyone else besides Northland Radiology sent anyone to pick you up?

A Just -- just them.

Q Okay. And let's see. So you go to the ER. You leave. You go to see your doctor in Toledo, and then you go to see Northland Radiology; correct?

A Yes.

Q Did you see any other doctors in between that time?

A I explained to you already in Michigan Spine Institute, Dr. Radden.

Q Okay. Did you see Dr. Radden before you saw Dr. K or after?

A After.

Q Okay. And so I want to make sure I got the timeline right. So it's St. John's.
A Yes.
Q Then it's Hussian.
A Yes.
Q Then it's Dr. K. Then it's Radden.
A Yes. Correct.
Q Any other doctors?
A No.
Q When did you go back to UT Medical College for a second opinion?
A I can't recall that time, the approximate day.
Q Okay. Was it like, within the last six months?
A Within the last six months. Yes. Around like -- within the last six months. Yes.
Q Okay. And besides UT Medical College, did any other doctor say you needed surgery?
A No.
Q Just UT Medical College?
A Yes.
Q Okay. And did you do any physical therapy?
A Yes.
Q Where did you do physical therapy?

A ACE Physical Therapy.
Q Where?
A ACE Physical Therapy.
Q ACE? A-C-E?
A Yes.
Q Where are they located?
A I think it's on Hoover Street.
Q In Toledo?
A In -- it's in Warren, Michigan.
Q All right. In Warren?
A Yes.
Q Who referred you to them?
A I had to call my insurance. It was limited through a certain -- they were mentioned on my insurance, so -- I have a list of providers I can choose from, so.
Q Okay. So that's your health insurance?
A Yes.
Q Okay. And when did you start physical therapy?
A That I'm not for sure when I started, 'cause I don't know the exact date when I started.
Q Okay. Was it before or after your surgery in this year?
A Day after the surgery.

Q All right. So you didn't do any physical therapy before September of this year?

A Yes, I did with my shoulder. They did do my shoulder, but now, the issue is I'm going to need it again for the surgery I just had September 6th. And I don't know if the insurance is going to cover it or not, 'cause I know the doctor that did it, Mustapha and UTMC in Toledo gave me a script. But I don't know how that's going to get taken care of, so.

Q Okay.

A I'm supposed to go tomorrow. We're going back to the -- back to my physical therapy from after I had my shoulder surgery. I'm going back to them again.

But the thing is, I don't know if they're going to cover it or what's -- how that's going to go about. 'Cause I don't -- I don't know if I'm limited to so many therapies per year or -- I'm not for sure. I'm -- I guess I won't find out until tomorrow.

Q Okay. Now, when did you start physical therapy before you had surgery? When did that start?

A Say that again.

Q So you started physical therapy before you had surgery this September; correct?

A I did the therapy after I had my surgery.

Q Okay. What I'm trying to say is: So you go to the ER. You go to see your doctors, and one of your doctors sends you to physical therapy; right?

A Yes.

Q Which doctor sent you to physical therapy?

A Dr. K.

Q Dr. K. All right. When did you start physical therapy when Dr. K prescribed it?

A That -- that I can't recall.

Q Okay. Was it within like, a couple months after the accident?

A Yes.

A Somewhere around that time. I can't recall. And he gave me a script and where to go to.

Q Okay. And where did you go to?

A I think it was called Aquatic or something --

Q Aquatic Solutions?

A I think so. Yes.

Q Okay. How many days a week were you going to Aquatic Solutions?

A About two, three times.

Q Okay. And what would you do there?

A It's whatever, you know, they had me work on at the time.

Q Do you recall what they were having you focus on, like, what part of your body?

A Working on my -- my back and -- my back and shoulder.

Q And that's your left shoulder?

A Yes.

Q Okay. And so how long were you going to Aquatic Therapy?

A I was going for a few weeks, because at that time at Northland Radiology, they were giving me those injections in my neck -- neck and back.

Q How many injections have you had?

A They -- I think I've had about three procedures or so. I got to the point where I said, you know, enough is enough. And that's when I went to, you know, second opinions at, you know, UTMC in Toledo, Ohio.

Q Okay. What did UTMC tell you about the injections?

A Some time -- you know, they took some time. They work and they don't, you know. So I said, I'm not getting no relief from any of them.

Q Okay. So the injections never worked?

A No. No.

Q Okay. And you said that you had like, two

or three injections?

A Yes --

Q And were they in your shoulder?

A They tried like, different areas in my -- you know, trying to figure -- trying to get the pain, you know -- they -- they move from my -- the mid, the bottom, my neck, and -- no relief.

Q Okay. Do you recall if they were cortisone steroids or epidural? What do you remember?

A Some epidural and something else I can't recall.

Q All right.

A You know -- before I had my surgery, they tried the cortisone shot that didn't work. And then, you know, he said hey, if that's not working, you're not getting no relief, then hey --

Q Okay. Now, so how are you feeling right before your March '22 accident?

A Rough.

Q Okay. So you didn't feel any better?

A It was rough.

Q Okay. So your pain had been consistent from September to March?

A Yes.

Q Okay. And you had no improvement from

physical therapy or any treatment?

A Rough. That's what -- that's what led to the cortisone shot, the surgery. And then, you know, Dr. K ordered a nerve study test. And that's when I found out I have nerve damage.

Q Okay. So can you describe -- so did your pain get better or worse after the March 2022 accident?

A It just -- it just flared my pain up, and --

Q Did your pain get worse?

A It flared my pain up. I don't know how to describe it, but it just flared my pain up more.

Q So when you say flare, you're meaning your pain got worse after March 2022?

A Yes.

Q Okay. After March of 2022, did you need to go to the doctor more often?

A No. Just still, you know, doing my follow-ups with Dr. K in Northland Radiology.

Q Okay. So your doctor appointment stayed the same?

A Yeah. Yes.

Q And did you have any injections after March of 2022?

A I cannot recall, 'cause I don't -- I don't

know when the exact date I had that shoulder surgery, but they said he tried a cortisone, and that didn't work. And that's when I had the surgery. So I don't recall the dates on that.

Q What I'm trying to figure out is when you got your first injection. Was it before or after your accident in March of 2022?

MR. PERI: Was it lower back or left shoulder?

THE WITNESS: Yeah. That's what --

BY MS. GALE-BARBANTINI:

Q Any injection. I'm trying to figure -- yeah.

A Yeah. That's why I got confused. That --

Q Yeah. It's all good. This is why we're just trying to figure everything out.

MS. GALE-BARBANTINI: And thanks, Brad.

BY MS. GALE-BARBANTINI:

Q So did you have any injections before March of 2022?

A Yeah. That's when we were doing the injections like I explained to you in my different areas of my back and neck.

Q All right. So did you have all your injections prior to March of 2022?

A So I had my injections in there at Northland Radiology, and that's when I said I'm not getting no relief. And that's when I told you I went to UTMC. Went to UTMC second opinion and --

Q Okay. I'm trying to figure out where the March 2022 accident fits in that timeline. That's what I'm trying to do. And if you don't remember where it fits in, that's fine.

A Yeah. That's what I'm saying. I don't.

Q Okay. You have no recollection?

A No.

Q Okay. Did you ever have a nerve study before Dr. K ordered one?

A It was back in 2012, around that time when I had that prior surgery before, about ten years or so ago. That's it.

MS. GALE-BARBANTINI: Okay. All right. I'm going to take a brief break to just look at a couple things, if you don't mind. Five minutes.

MR. PERI: Yeah.

MS. GALE-BARBANTINI: All right. Excellent. Thanks.

THE REPORTER: All right. We are off the record here at 11:25.

(Off the record.)

THE REPORTER: We are back on the record here at 11:32 a.m.

Counsel.

BY MS. GALE-BARBANTINI:

Q Okay. All right. Mr. Goings, can you hear me?

A Yes.

Q Okay. So we've done a lot of talking today, and I've asked a lot of questions. But besides not being able to go back to work since September of 2021, what are other activities, hobbies that you were able to do before September 2021 that you can't do now?

A I used to take my kids out and playing. Riding my motorcycle, you know. Doing, you know, activities with my -- my fiancee. And it's hard to do any of that. I can't really do too much of any of that. It's rough to take my daughter -- my one-year-old daughter up and -- you know. Rough on my kids, you know.

Q So when is the last time you took out your motorcycle?

A I can't recall.

Q Did you try to take it out in the last year?

A No.

Q So when you talk about it's rough doing

stuff with your kids, what stuff is hard for you to do with your children?

A Like, sometimes, when it comes to my daughter or son, like picking them up. Or you know, sometimes, like, playing, doing certain activities. That's what I mean by that.

Q Okay. When you say certain activities, what type of activities do you mean?

A Playing or like going to -- you know, like sport events or -- I can't -- it's rough.

Q Okay. And then you mentioned activities with your wife. What things could you no longer do with your wife because of the September 2021 accident?

A Like, we used to go, you know, do stuff like, random places or -- you know. Some entertainment spots. And it's -- it's rough.

Q So when you say entertainment spots, is that like going to the movies? What are we talking about?

A It could be like a variety of -- you know, a lot of things. It's just -- ever since, I haven't been doing too much.

Q Okay. You also need to realize that I'm boring, and I don't get out much, so that's why I'm asking for the specificity here. That's like going to the movies, going bowling. Like, what were things

that you guys used to do?

A Kind of stuff like that, you know.

Q Okay. Do you guys travel?

A We do stuff -- things with the kids, you know. Or we do some things with the kids, you know. It was kind of -- it's kind of rough.

Q Okay. Have you taken any vacations since September 2021?

A No vacation besides, you know -- like I said, I just recently got married, you know, July 9th. And that was already planned before, you know, ahead of time, so.

Q Okay. Where did you guys get married?

A We got married in Jamaica.

Q Okay. How long were you in Jamaica?

A One week.

Q Okay. Did you stay there for a honeymoon?

A If that's what you would call it, 'cause we were out there for a week.

Q Okay. And you flew there?

A Yes.

Q Okay. Have you had any other trips to visit family, go to like, Cedar Point? I don't know. You tell me.

A No.

Q No? Okay. So just traveling between Ohio and Michigan and going to Jamaica?

A Mainly, yes.

Q Okay. Is there any other way that your life has been affected by the accident that we have in September 2021 that we haven't discussed?

A Not other than what I've already stated.

MS. GALE-BARBANTINI: Okay. All right. Well, then I have no further questions, Brad. Do you have anything you want to add?

MR. PERI: Yeah. I just have a couple follow-up questions. I want to get you out of here, Mr. Goings.

EXAMINATION

BY MR. PERI:

Q All right, Mr. Goings. So going back to the date of the crash on September 21, 2022, you testified that you were at a complete stop; is that correct?

A Yes.

Q And when you were at that complete stop, were you hanging onto the steering wheel at the time of the impact?

A Yes.

Q Okay. And as you indicated, you said the impact jerked you around while you were also hanging

onto the steering wheel?

A Yes.

Q And in regards to the March 2022 crash, obviously, you had left shoulder pain, left elbow pain, neck pain, and back pain leading up to that crash; is that correct?

A Yes. Yes.

Q And at the time of that March 2022 crash, were you already treating with the University of Toledo, Dr. Sohn?

A Yes.

Q And I'm looking at the records, and it indicates that you started treating there at roughly about February of 2022. Is that what you recall?

A Yes.

Q And on that first treatment day, he would have given you a cortisone injection into your left shoulder?

A Yes --

Q And that was all done before the March 2022 crash; correct?

A Yes. Correct.

Q And under your Progressive insurance policy, do you recall what type of medical coverage you had?

A I can't recall that.

Q And from your knowledge, has that been exhausted?

A Yes. It's clearly been exhausted.

Q And your health insurance is through your employer, as you testified; correct?

A Yes. That's what I kind of explained earlier. It's like, I don't even know how I'm going to be able to get -- you know, start therapy for my elbow tomorrow or not.

I don't know. I don't know if -- if the insurance is going to pay for it or not. I'm -- I'm not for sure yet, so that's my next, you know, dilemma in question here -- so I don't know how that's going to go about.

Q And then in regards to this crash, you've had two surgeries, one on your left shoulder and the one in your left elbow; is that correct?

A Yes.

Q And that was all done at the University of Toledo?

A Yes.

Q And in regards to your testimony, do you believe those injuries are a result of your September 22, 2021, crash?

A Yes.

MR. PERI: All right. That's all the questions that I have for you, Mr. Goings.

THE WITNESS: Thank you.

EXAMINATION

BY MS. GALE-BARBANTINI:

Q I have one follow-up question, Mr. Goings. When you said you had the nerve surgery in 2012 -- is that right?

A Yes. Roughly around that time.

Q Okay. Where was that nerve surgery?

A Left elbow.

MS. GALE-BARBANTINI: Thank you. I have no further questions.

MR. PERI: You're all set, Mr. Goings.

THE WITNESS: Okay.

THE REPORTER: Okay.

MS. GALE-BARBANTINI: All right. Thank you so much.

MR. PERI: No problem.

THE REPORTER: And, Counsel, are we ordering? Attorney Peri, are you ordering?

MR. PERI: Yeah. Can I just have a mini E-Tran, please? Or a PDF. Whatever you send it as.

THE REPORTER: Okay. So you want it to

be mini.

MR. PERI: Yes, please.

THE REPORTER: Okay. All right. And then, Counsel, Barbantini, you're ordering; correct?

MS. GALE-BARBANTINI: Yeah.

THE REPORTER: Anything specifically?

MS. GALE-BARBANTINI: I want it all, Ms. Glover.

THE REPORTER: Right. And let's go ahead and go off the record here. We are off the record at 11:40 a.m.

(Whereupon, at 11:40 a.m., the proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, QIUANA GLOVER, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

QIUANA GLOVER
Notary Public in and for the
State of Michigan

CERTIFICATE OF TRANSCRIBER

I, CHRISTIAN HARTSELLE, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

CHRISTIAN HARTSELLE

Michigan Court Rules

Chapter 2: Civil Procedure

Subchapter 2.300 Discovery Rule 2.306

(f) Certification and Transcription; Filing; Copies.

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Exhibit 4

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOHN GOINGS, SR,

Plaintiff,

Case No. 22-005110-NI
Hon.: Kathleen M. McCarthy

vs.

BOBBIE JEAN GIACOMANTONIO-SNOW,

Defendant.

_____/

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Sbgale-barbantini@acg.aaa.com

_____/

AFFIDAVIT OF JOHN GOINGS

STATE OF OHIO)
) SS
COUNTY OF LUCAS)

My name is John Goings.

1. I was born in Toledo, Ohio and resided there for the three years leading up to this crash and have continued to live there since, with my minor son, of whom I have primary custody.

2. I have an Ohio driver's license.

3. In both 2020 and 2021, I filed Ohio state taxes.

4. In both 2020 and 2021, I did not file Michigan state taxes.

5. In both 2020 and 2021, I spent 50% or less of my time in the State of Michigan, spending occasional weekday nights (as many as two) in Sterling Heights, Michigan, but otherwise, spending all my nights in Toledo, Ohio.

6. At all relevant periods, including the time of the crash, all of my personal effects were kept at my home in Toledo, Ohio.

7. At all relevant periods, including the time of the crash, I did not own any real property in the State of Michigan.

8. At all relevant periods, including the time of the crash, I was not a lessee of any real property in the State of Michigan.

9. At all relevant periods, including the time of the crash, I was registered to vote in the State of Ohio.

10. At all relevant periods, including the time of the crash, I maintained a Toledo, Ohio-area phone number.

11. At all relevant periods, including the time of the crash, I have had an Ohio Driver's License, G900000076625.

12. At all relevant periods, including the time of the crash, I owned the subject 2012 Jeep Grand Cherokee.

13. At all relevant periods, including the time of the crash, the subject Jeep Grand Cherokee was registered in the State of Ohio.

14. At all relevant periods, including the time of the crash, the 2013 Jeep Grand Cherokee had an Ohio license plate bearing the identification: JHW3527.

15. At the time of the crash the subject 2012 Jeep Grand Cherokee was insured with Progressive Specialty Insurance, an Ohio policy.

Further affiant say not.

John Goings
JOHN GOINGS

Dated: March 21, 2023

Subscribed to and sworn before me this
21st day of March, 2023

BKwalker

Notary Public

Bonnie K Walker
Notary Public, Oakland County, MI
Acting in Oakland County, MI
My Commission Expires December 30, 2023

Exhibit 5

MCGUIRE GROUP INS
6387 MONROE ST
SYLVANIA, OH 43560

PROGRESSIVE AUTO

Policy Number: 926731697
Underwritten by:
Progressive Specialty Insurance Co
September 10, 2021
Policy Period: Jan 12, 2021 - Jan 12, 2022

1-419-885-4600
MCGUIRE GROUP INS
Contact your agent for personalized service.

progressiveagent.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-274-4499
To report a claim.

JOHN GOINGS
4220 LOWE RD
TOLEDO, OH 43612

Auto Insurance Coverage Summary

This is your Declarations Page
Your policy information has changed

Your coverage began on January 12, 2021 at 12:01 a.m. This policy expires on January 12, 2022 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy contract is form 9611A OH (02/16). The contract is modified by forms 4884 (10/08) and A229 OH (11/17).

Policy changes effective September 10, 2021

Changes requested on:	Sep 10, 2021 08:46 p.m.
Requested by:	Your lienholder
Premium change:	$0.00
Changes:	The lienholder information for Byrider Sales of Indiana has changed.

The changes take effect as of the date and time requested shown above.

Drivers and household residents

John Goings
Additional information: Named insured

Outline of coverage

General policy coverage	Limits	Deductible	Premium
Uninsured/Underinsured Motorist Bodily Injury	$25,000 each person/$50,000 each accident		$36
Total general policy coverage			**$36**

Continued

2012 JEEP GRAND CHEROKEE 4 DOOR WAGON
VIN: **1C4RJFCG4CC220440**
Garaging ZIP Code: 43612
Primary use of the vehicle: Commute
Length of vehicle ownership when policy started or vehicle added: Less than 1 month

	Limits	Deductible	Premium
Liability To Others			$1,165
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Medical Payments	$5,000 each person		79
Comprehensive	Actual Cash Value	$500	113
Collision	Actual Cash Value	$500	674
Rental Reimbursement	up to $40 each day/maximum 30 days		85
Total premium for 2012 JEEP			**$2,116**
Total 12 month policy premium			**$2,152.00**

Premium discounts

Policy	
926731697	Multi-Policy, Electronic Funds Transfer (EFT), Home Owner, Continuous Insurance: Gold and Paperless

Lienholder information

Vehicle	Lienholder
2012 JEEP GRAND CHEROKEE 1C4RJFCG4CC220440	Byrider Sales of Indiana Carmel, IN 46082

Company officers

President

Secretary

Exhibit 6

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOHN GOINGS, SR.

Plaintiff,

CT NO: 22-005110-NI
HON. KATHLEEN M. McCARTHY

-vs-

BOBBIE GIACOMANTONIO-SNOW,

Defendant.
_____/

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NICOLE M. McCARTHY (P74913)
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_____/

ORDER GRANTING DEFENDANT, BOBBIE GIACOMANTONIO-SNOW'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

At a session of said Court, held in the City of Detroit, County of Wayne, and State of Michigan, on:

4/4/2023

PRESENT: Hon. JUDGE KATHLEEN M. MCCARTHY
Circuit Court Judge

This matter having come before the Court upon Defendant, BOBBIE GIACOMANTONIO-SNOW's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10) as to Plaintiff, JOHN GOINGS, SR.'s claims for damages under MCL 500.3135, and oral arguments given on April 3, 2023:

IT IS HEREBY ORDERED, for the reasons this Court placed on the record, that Defendant, BOBBIE GIACOMANTONIO-SNOW's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10) is GRANTED, and Plaintiff's claims against Defendant are DISMISSED with prejudice.

THIS IS A FINAL ORDER AND IT CLOSES THE CASE.

IT IS SO ORDERED.

/s/ Kathleen M. McCarthy 4/4/2023
Circuit Court Judge

Submitted by:

/s/ Sarah B. Gale-Barbantini
KRAMER, CORBETT,
HARDING & DOMBROWSKI
SARAH B. GALE-BARBANTINI (P76321)
Attorney for Defendant, Bobbie Giaomantonio-Snow

Exhibit 7

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

John Goings, Sr.,

Plaintiff,

Case No. 22-005110-NI

-v-

Hon. Kathleen M. McCarthy

Bobbie Giacomantonio-Snow,

Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan, on this: 4/24/2023

PRESENT: Hon. Kathleen M. McCarthy
Circuit Court Judge

This matter is before the Court on the "Plaintiff's Motion for Reconsideration Pursuant to MCR 2.118(F)(3) of Defendant's Motion for Summary Disposition" filed by John Goings ("Plaintiff") on April 17, 2022. Plaintiff is asking the Court to reconsider its April 4, 2023, "Order Granting Defendant, Bobbie Giacomantonio-Snow's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10)."

On August 27, 2021, Plaintiff John Goings filed the instant lawsuit against Defendant Giacomantonio-Snow ("Defendant") seeking no-fault benefits from a

motor vehicle accident that occurred on September 21, 2021. Plaintiff drove a 2012 Jeep Grand Cherokee licensed, registered and insured in the State of Ohio when he got into the motor vehicle accident with Defendant.

A Motion for Summary Disposition was filed by Defendant on February 3, 2023, arguing that Defendant failed to carry the required No-Fault insurance under MCL 500.3101 and thus is barred from recovering tort damages under MCL 500.3135. Plaintiff filed a response on March 21, 2023, arguing that as an insured out of state resident, Plaintiff Goings was not required to insure his vehicle containing no-fault insurance coverage. In their response they included an affidavit from Plaintiff where he states various reasons as to why he should be considered an out of state resident. Oral argument was heard on April 3, 2023, and the Court determined on the record that minimally there was a question of fact as to whether or not Plaintiff was an out-of-state resident. However, the Court found that Plaintiff was required to carry No-Fault insurance pursuant to MCL 500.3102(1) as he was present in the State of Michigan more than an aggregate of 30 overnights in the calendar year and relied on *McGhee v. Helsel*, 262 Mich. App. 221; 686 NW2d 6 (2004). The Court entered an Order on April 4, 2023, granting Defendant's Motion. Plaintiff then timely filed this Motion two weeks later.

Plaintiff moved for reconsideration arguing that MCL 257.216(1)(a) did not require Plaintiff to register his vehicle with the State of Michigan.

MCL 257.216(1)(a) provides:

> (1): Every motor vehicle, recreational vehicle, trailer, semitrailer, and pole trailer, when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act except the following:
>
> (a): A vehicle driven or moved on a street or highway in conformance with the provisions of this act relating to manufacturers, transporters, dealers, or nonresidents.

MCL 257.216(1)(a) indicates that titling and registration of vehicles is not required for **non-residents**. However, MCL 500.3102(1) specifically addresses non-residents and the requirement to insure any vehicle **"operated in this state for an aggregate of more than 30 days in any calendar year."**

Plaintiff also moved to reconsider on the grounds that the Court of Appeals in *McGhee v. Helsel* supports Plaintiff Goings' argument that as an insured non-resident, he is entitled to recover economic and non-economic damages from Defendant. The Court in *McGhee*, however, only determined that the non-resident was entitled to recover due to them being below the 30-day threshold in MCL 500.3102(1) and thus not requiring No-Fault insurance under the aforementioned statute. Here, the briefings and exhibits presented by both sides indicate that Plaintiff spent significantly more than 30 days in Michigan. Accordingly, he needed to have No-Fault insurance pursuant to MCL 500.3102(1) so as to recover economic and non-economic damages.

The Court has reviewed Plaintiff's Motion for Relief and the entirety of the record before it. The Court is dispensing with oral arguments on this motion. MCR 2.119(E)(3). It is the opinion of the Court that this Motion for Relief presents the same issues ruled on by the Court. The Court is not persuaded that refusal to take this action would be inconsistent with substantial justice. Absent a showing that refusal to take this action would be inconsistent with substantial justice, an alleged error in a ruling or order is not ground for vacating, modifying, or otherwise disturbing an Order. MCR 2.613(A).

IT IS ORDERED that Plaintiff Goings' Motion for Reconsideration is hereby **DENIED**.

This Order resolves the last pending claim and closes the case.

SO ORDERED.

DATED: 4/24/2023

/s/ Kathleen M. McCarthy 4/24/2023

Hon. Kathleen M. McCarthy
Circuit Court Judge

Exhibit 8

STATE OF MICHIGAN

COURT OF APPEALS

SHAVON ALEXANDER,

Plaintiff-Appellee,

v

MATTHEW ALAN KUBACKI,

Defendant-Appellant,

and

BURKE E. PORTER MACHINERY COMPANY,

Defendant.

UNPUBLISHED
May 4, 2023

No. 360100
Macomb Circuit Court
LC No. 2020-004166-NI

Before: SHAPIRO, P.J., and REDFORD and YATES, JJ.

PER CURIAM.

In this third-party no-fault action, defendant Matthew Alan Kubacki[1] appeals by leave granted[2] the trial court's order denying his motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). For the reasons stated in this opinion, we affirm.

I. BACKGROUND

On October 17, 2019, plaintiff Shavon Alexander and defendant were involved in a motor vehicle accident on I-75. Plaintiff was driving a 2007 Lincoln; defendant was operating a 2017 Ford. Plaintiff alleges that defendant's negligent acts caused the accident.

Plaintiff has worked in Monroe, Michigan as a full-time letter carrier for the United States Postal Service since 2013. In April 2019, plaintiff injured her ankle while working and did not

[1] "Defendant" as used in this opinion refers to Kubacki.

[2] *Alexander v Kubacki*, unpublished order of the Court of Appeals, entered June 9, 2022 (Docket No. 360100).

return to work until September 6, 2019. The parties agree that plaintiff moved to Toledo, Ohio, in July 2019, after previously residing in Monroe. Plaintiff testified that she drove the Lincoln during her daily commute from Ohio to Michigan from September 6, 2019, until the accident on October 17, 2019. The Lincoln that plaintiff drove was titled to her stepfather, Kent Comer, and registered to Comer at his residence in Georgia. The vehicle also had a Georgia license plate and was insured by a Georgia insurance policy. Plaintiff testified that she had exclusive use of the vehicle for years preceding the accident.

Plaintiff brought a third-party action against defendant, alleging that she sustained a serious impairment of body function in the accident. Plaintiff also alleged that defendant's employer, Burke E. Porter Machinery Company, was vicariously liable for his negligence.

After discovery, defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff's claim for noneconomic damages was barred under MCL 500.3135(2)(c) because she did not maintain Michigan no-fault insurance on the Lincoln.[3] In response, plaintiff asserted that, as a nonresident owner of the vehicle, she was not required to obtain Michigan no-fault insurance or register the vehicle in Michigan. After hearing oral argument, the trial court denied defendant's motion for summary disposition, concluding that there were material questions of fact precluding summary disposition.

II. ANALYSIS

Defendant argues that there is no genuine issue of fact regarding whether plaintiff's claim is barred under MCL 500.3135(2)(c) because plaintiff failed to register her vehicle in Michigan and obtain Michigan no-fault insurance. We disagree.[4]

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[3] Given that defendant claims only that plaintiff is barred from seeking noneconomic damages it would seem that the motion sought only partial summary disposition. However, the parties have referred to the motion before us as one for summary disposition. Whether that is a misnomer or plaintiff has not made a claim for excess economic losses, MCL 500.3135(3)(c), is not clear to us from the record.

[4] A trial court's decision on a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). "Summary disposition under MCR 2.116(C)(10) is proper if there is no genuine issue about any material fact and the moving party is entitled to judgment . . . as a matter of law." *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Questions of statutory interpretation are reviewed de novo. *Mich Muni Liability & Prop Pool v Muskegon Co Bd of Co Rd Comm'rs*, 235 Mich App 183, 189; 597 NW2d 187 (1999). The goal when interpreting statutes is to discern the Legislature's intent, the most reliable indicator of which is the statute's language. *Dep't of Transp v Outfront Media, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 357533); slip op at 4.

MCL 500.3135(2)(c) states that for claims of tort liability for noneconomic loss, "[d]amages must not be assessed in favor of a party who was operating his or her own vehicle at the time of the injury and did not have in effect for that motor vehicle the security *required by section 3101(1)* at the time the injury occurred." (Emphasis added). "Section 3101(1)" refers to MCL 500.3101(1), which states that "the owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance." In other words, if a vehicle is required to be registered in Michigan, then the vehicle's owner or registrant must maintain no-fault insurance pursuant to MCL 500.3101(1).

Despite MCL 500.3135(2)(c)'s clear reference to MCL 500.3101(1), defendant argues that plaintiff's failure to comply with a different statute, MCL 500.3102(1), also triggers MCL 500.3135(2)(c)'s bar against noneconomic damages. MCL 500.3102(1) imposes a no-fault insurance requirement not based on registration requirements but on how often an out-of-state vehicle is operated in Michigan. MCL 500.3102(1) provides in full:

> A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter.

There is no dispute that plaintiff qualifies as a nonresident constructive owner of the Lincoln and that the vehicle was not insured by a Michigan no-fault policy. While the parties disagree whether plaintiff drove the vehicle in Michigan for more than 30 days in 2019 as a nonresident, resolution of that issues is not necessary in this case.[5] As plaintiff argues, even if she violated MCL 500.3102(1), this would not implicate MCL 500.3135(2)(c), which is premised on the party not maintaining no-fault insurance as "required by [MCL 500.3101(1)] . . . ." MCL 500.3135(2)(c).

In arguing that violation of MCL 500.3102(1) should also negate recovery of noneconomic damages under MCL 500.3135(2)(c), defendant relies on the doctrine of *in pari materia*. See *Progressive Marathon Ins Co v Pena*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 358849); slip op at 4 ("[W]hen this Court construes two statutes that arguably relate to the same subject or share a common purpose, the statutes are *in pari materia* and must be read together as one law.") (quotation marks and citation omitted). That is, defendant contends that because MCL 500.3135(2)(c)'s bar on damages applies to those who fail to maintain no-fault insurance as required by MCL 500.3101(1), we should conclude that the Legislature also intended for MCL 500.3135(2)(c) to apply to those who fail to maintain no-fault insurance as required by MCL 500.3102(1). "However, the interpretive aid of the doctrine of *in pari materia* can only be utilized in a situation where the section of the statute under examination is itself ambiguous." *In re Indiana*

[5] The trial court denied summary disposition on the basis that there was a material question of fact as to how many days plaintiff drove the vehicle in Michigan in 2019. However, we may affirm a trial court when it reaches the correct result for different reasons. *Sabbagh v Hamilton Psychological Servs*, PLC, 329 Mich App 324, 345; 941 NW2d 685 (2019).

Mich Power Co, 297 Mich App 332, 343; 824 NW2d 246 (2012) (quotation marks and citation omitted). Here, MCL 500.3135(2)(c) is not ambiguous. It unequivocally applies only if the party failed to maintain no-fault insurance as required by MCL 500.3101(1). We may not read language into an unambiguous statute, *Wilmington Savings Fund Society, FSB v Clare*, 323 Mich App 678, 689; 919 NW2d 420 (2018), and we cannot insert a provision into a statute on the basis that it would have been wise of the Legislature to do so, *In re Jayuga Estate*, 312 Mich App 706, 712; 881 NW2d 487 (2015).[6]

Applying the unambiguous language of the statute, application of MCL 500.3135(2)(c) is limited to vehicles that fail to carry insurance as required by MCL 500.3101(1), and so we need not resolve whether plaintiff was required to maintain no-fault insurance under MCL 500.3102(1). Instead, this appeal turns solely on whether plaintiff's vehicle was "required to be registered in this state" such that the lack of Michigan no-fault insurance on the vehicle violated MCL 500.3101(1), and in turn, triggered MCL 500.3135(2)(c)'s bar on noneconomic damages.

Under the Michigan Vehicle Code (MVC), MCL 257.1 *et seq*., "every motor vehicle . . . when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act." MCL 257.216(1). But, nonresidents who own a motor vehicle registered in another state are generally exempt from Michigan registration requirements pursuant to MCL 257.243(1), which provides:

> A nonresident owner, except as otherwise provided in this section, owning any foreign vehicle of a type otherwise subject to registration under this act may operate or permit the operation of the vehicle within this state without registering the vehicle in, or paying any fees to, this state if the vehicle at all times when operated in this state is duly registered in, and displays upon it a valid registration certificate and registration plate or plates issued for the vehicle in the place of residence of the owner.

Plaintiff argues that her vehicle was exempt from Michigan registration under this statute because her stepfather, i.e., "a nonresident owner" of the vehicle, permitted her to operate the

---

[6] Defendant argues that in *McGhee v Helsel*, 262 Mich App 221; 686 NW2d 6 (2004), this Court determined that a violation of MCL 500.3102(1) negated tort recovery under MCL 500.3135(2)(c). In that case, however, the plaintiff did not exceed the thirty-day period described in MCL 500.3102(1). *Id*. at 225. Thus, to the degree that opinion can be read as indicating that MCL 500.3135(2)(c) would apply had there been a violation of MCL 500.3102(1) it would be nonbinding dicta as that issue was not necessary to the resolution of the appeal. *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 557-558; 741 NW2d 549 (2007) ("It is a well-settled rule that statements concerning a principle of law not essential to determination of the case are obiter dictum and lack the force of an adjudication" and are "not binding on this Court."). Moreover, the *McGhee* Court discussed the fact that under the plain language of MCL 500.3135(2) "it is financially safer to drive an uninsured out-of-state vehicle in Michigan than it is to drive an uninsured vehicle in Michigan." *McGhee*, 262 Mich App at 227. It noted that such a result, though arguably distasteful, was "not an absurd result and it does not give us license to avoid applying the unambiguous language of the no-fault act." *Id*.

vehicle in Michigan and at all times the vehicle displayed a Georgia license plate and was registered in Georgia, i.e., her stepfather's place of residence. Defendant, on the other hand, argues that plaintiff is the applicable owner of the vehicle for purposes of MCL 257.243(1) and that she failed to comply with this statute because the vehicle was not registered in Ohio and did not have an Ohio license plate.

Defendant fails to persuasively explain, however, why plaintiff is the only vehicle owner who may comply with MCL 257.243(1). A vehicle may have more than one owner under the MVC. See *Laskowski v State Farm Mut Auto Ins Co*, 171 Mich App 317, 321; 429 NW2d 887 (1988). Plaintiff's stepfather is the titled owner of the vehicle, MCL 257.37(b), and plaintiff is considered a constructive owner because she had exclusive use of the vehicle for a period greater than 30 days, MCL 257.37(a). MCL 257.243(1) recognizes that a vehicle may have more than one owner by referring to "a nonresident owner" that may permit operation of a vehicle in Michigan. See *Kilian v TCF Nat'l Bank*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 358761); slip op at 4-5 ("[T]he word 'a' is an indefinite article" and "has general application," as opposed to "the word 'the' that refers to a specific thing.") (quotation marks and citation omitted). Accordingly, we conclude that MCL 257.243(1) is not limited to any particular owner.

While plaintiff does not satisfy MCL 257.243(1), her stepfather does under a straightforward application of the statute. Again, he is "a nonresident owner" of the vehicle who has permitted operation of the vehicle in Michigan. The remaining requirements are that the vehicle be "duly registered in, and displays upon it a valid registration certificate and registration plate or plates issued for the vehicle in the place *of residence of the owner*." MCL 257.243(1) (emphasis added). "The owner" refers back to whatever particular "nonresident owner" of the vehicle that the statute is being applied to. With respect to plaintiff's stepfather, the vehicle complied with MCL 257.243(1)'s remaining requirements because it had a Georgia license plate and was registered in Georgia. Thus, plaintiff's vehicle was generally exempt from registration under MCL 257.243(1).

Defendant nonetheless maintains that plaintiff was required to register the vehicle in Michigan under MCL 257.243(4), which provides that "[a] nonresident owner of a pleasure vehicle otherwise subject to registration under this act shall not operate the vehicle for a period exceeding 90 days without securing registration in this state." We will assume without deciding for purposes of this appeal that plaintiff's vehicle constitutes a "pleasure vehicle." However, we conclude that there is insufficient evidence to establish that plaintiff used the vehicle in Michigan for a period exceeding 90 days while she was a nonresident. The parties agree that plaintiff became a nonresident when she moved to Ohio in July 2019. She began commuting five days per week to her job at the post office in Michigan on September 6, 2019, after being on leave because of a work injury. While plaintiff had continuous use of the vehicle and testified that she drove the vehicle to and from work in Michigan from September 2019 until the accident in October 2019, it is undisputed that this period was less than 90 days.

Recognizing this, defendant argues that the days when plaintiff drove the vehicle in Michigan earlier in 2019—while she was a Michigan resident—should count toward the 90-day registration requirement under MCL 257.243(4). This argument is unpersuasive. Again, MCL 257.243(4)'s registration requirement applies when a "nonresident owner . . . operate[s] the vehicle for a period exceeding 90 days . . . ." When plaintiff lived in Michigan in the beginning

of 2019, she simply was not a "nonresident owner" of the vehicle, and this statute has no application regarding this time period.

Defendant also argues that because plaintiff sometimes drove to Michigan for reasons other than work, e.g., medical appointments and family visits, that those days should be counted toward the 90 days regardless of when they occurred. This argument is premised on defendant's interpretation that "a period exceeding 90 days" as used in MCL 257.243(4) does not require operation of the vehicle in Michigan over a single continuous 90-day period but only that the nonresident owner use the vehicle in Michigan for 90 days total, even if those days are not continuous. We disagree. The term "period" in reference to time generally refers to a continuous period. *NLRB v Hudson Motor Car Co*, 136 F2d 385, 387 (CA 6, 1943). That the Legislature intended this meaning of "a period" in MCL 257.243(4) is demonstrated by another provision of the MVC:

> (12) The secretary of state, upon determining after an examination that an applicant is mentally and physically qualified to receive a license, may issue the applicant a temporary driver's permit. The temporary driver's permit entitles the applicant, while having the permit in his or her immediate possession, to operate a motor vehicle upon the highway *for a period not exceeding 60 days* before the secretary of state has issued the applicant an operator's or chauffeur's license. The secretary of state may establish a longer duration for the validity of a temporary driver's permit if necessary to accommodate the process of obtaining a background check that is required for an applicant by federal law. [MCL 257.310 (emphasis added).]

The phrase "a period not exceeding 60 days" in MCL 257.310(12) is substantially similar to the phrase "for a period exceeding 90 days" used in MCL 257.243(4). Yet no one would seriously argue that MCL 257.310(12) means that someone may use a temporary driver's permit for a total of 60 days, regardless of when those days occur. Rather, the temporary driver's permit plainly allows the applicant to operate vehicles in Michigan over the course of a continuous 60-day period from issuance. Applying this common-sense interpretation to MCL 257.243(4), the registration requirement applies when a nonresident owner operates a "pleasure vehicle" in Michigan for a continuous 90-day period.[7] We find no basis to conclude that the Legislature intended that "a period exceeding 90 days" could occur over many discontinuous months or years.

In sum, MCL 500.3135(2)(c) applies if the party seeking noneconomic damages failed to maintain no-fault insurance as required by MCL 500.3101(1), which applies only if the vehicle

[7] This is consistent with the analysis in *Tienda v Integon Nat'l Ins Co*, 300 Mich App 605, 620 n 3; 834 NW2d 908 (2013), which explained, in construing MCL 500.3102(2), that "for people who travel to Michigan for, as here, three to four months out of each year for agricultural work or other reasons, they must carry no-fault insurance coverage as a matter of law . . . ." While not necessary to our decision, it seems more likely that the requirement nonresidents register their vehicle in Michigan after 90 days was directed toward out-of-state residents who spend the summer at a Michigan cottage rather than those who commute five days per week across the Michigan-Ohio border for employment, but whose vehicle remains garaged in Ohio.

was required to be registered in Michigan. Plaintiff, an Ohio resident, was generally exempt from registration under MCL 257.243(1), and defendant has not established that plaintiff was required to register the vehicle under MCL 257.243(4) or any other statutory provision. Therefore, we affirm the trial court's decision to deny defendant's motion for summary disposition.

Affirmed. Plaintiff may tax costs as the prevailing party. MCR 7.219(A).

/s/ Douglas B. Shapiro
/s/ James Robert Redford
/s/ Christopher P. Yates

Exhibit 9

STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE DAHLMANN,

Plaintiff-Appellant/Cross-Appellee,

v

GEICO GENERAL INSURANCE COMPANY, d/b/a GEICO CASUALTY COMPANY,

Defendant-Appellee/Cross-Appellant,

and

FRANKENMUTH MUTUAL INSURANCE COMPANY,

Defendant/Cross-Appellee.

UNPUBLISHED
March 22, 2016

No. 324698
Ottawa Circuit Court
LC No. 13-003393-NF

MICHELLE DAHLMANN,

Plaintiff-Appellant,

v

GEICO GENERAL INSURANCE COMPANY, d/b/a GEICO CASUALTY COMPANY,

Defendant-Appellee,

and

FRANKENMUTH MUTUAL INSURANCE COMPANY,

Defendant.

No. 325225
Ottawa Circuit Court
LC No. 13-003393-NF

Before: BECKERING, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

These consolidated appeals[1] arise from a dispute over the payment of no-fault personal protection insurance benefits (PIP benefits) to plaintiff, Michelle Dahlmann. In its cross-appeal in Docket No. 324698, defendant, Geico General Insurance Company, argues that the trial court erred when it determined that it had to pay PIP benefits to Dahlmann. Geico maintains that, even though it insured Dahlmann's motor vehicle, it did not issue her an automobile insurance policy under Michigan's no-fault law and it was otherwise not obligated to pay her no-fault benefits under Michigan law; rather, it states, Frankenmuth Mutual Insurance Company was alone obligated to pay Dahlmann PIP benefits as the insurer of the driver of the motor vehicle that struck her. In her appeal in Docket No. 324698, Dahlmann argues that the trial court erred when it determined that Geico's refusal to pay PIP benefits was not unreasonable and, on that basis, refused to order Geico to pay Dahlmann's attorney fees. In Docket No. 325225, Dahlmann appeals the trial court's decision to exclude certain deposition costs and judgment interest from the award of taxable costs. On appeal, we conclude that the trial court erred when it determined that Geico had to pay Michigan no-fault benefits to Dahlmann. Because the undisputed evidence established that Dahlmann was domiciled in this state, we hold that Geico was not obligated under Michigan law to pay her no-fault benefits.[2] Accordingly, we reverse and remand for entry of summary disposition in Geico's favor.

I. BASIC FACTS

Dahlmann testified at her deposition that she lived in Michigan until she moved to Virginia in 2009. Although she lived in Virginia, Dahlmann renewed her Michigan driver's license in 2011. In 2012, she lived in an apartment in Virginia with her husband and children. Her husband was a sailor in the navy and his duty station was in Norfolk. The navy deployed him to sea in July 2012, but, for operational security, the navy did not provide them with exact begin and end dates of his deployment. She was told that it would last seven to nine months.

The lease on her apartment in Virginia had gone month-to-month in 2012. She decided to leave the apartment and moved her family's furniture and most of their belongings into a storage unit in Virginia. She also cancelled her internet and stopped paying rent, thus terminating their lease. Then, at the end of 2012, Dahlmann packed up her van and took her three children to visit family; she first visited her mother-in-law in Thomson, Georgia, then her mother in Atlanta, Georgia, and then her sister in Casper, Wyoming. After visiting with her sister, she drove to Lansing, Michigan to visit additional family. She arrived around January 13, 2013.

Shortly after arriving in Lansing, she used her power of attorney to rent an apartment in her husband's name. She rented the apartment because she knew she would be in Michigan for at least a couple of weeks and, until her husband returned and got his new orders, they were at a

[1] See *Dahlmann v Geico General Ins Co*, unpublished order of the Court of Appeals, entered February 3, 2015 (Docket Nos. 324698 & 325225).

[2] Because the parties have framed the issue as whether Geico had an obligation to pay Dahlmann benefits under Michigan's no-fault law, we have limited our analysis accordingly.

standstill. She did not worry about the year-long lease because she claimed she could sublease the apartment to her brother and thought that military families are able to break a lease without penalty under certain circumstances. She did not have furniture or anything they could use to live at the apartment long term. She agreed that she intended to stay in the apartment until she learned where her husband would be assigned.

A few days later, Dahlmann was injured in an incident involving a motor vehicle. She was stopped at a traffic light when another driver, later identified as Gregory Romig, got out of his vehicle and walked up to her van. In an apparent incident of road rage, he started punching her door and window. He damaged her door's frame and Dahlmann called 911. Romig then returned to his vehicle and Dahlmann got out of her van to take a photo of his license plate. Romig attempted to drive away and struck Dahlmann.

Dahlmann insured her van with a policy from Geico, which it issued when she still lived in Virginia. Dahlmann informed Geico that she believed it was obligated to provide her with PIP benefits under Michigan's no-fault act, but Geico refused to pay. In June 2013, Geico sent Dahlmann's lawyer a letter stating that it disclaimed any liability under its policy because Dahlmann had become a resident of Michigan and did not have a Michigan no-fault policy.

In July 2013, Dahlmann sued Geico for breach of contract, for violating Michigan's no-fault act, and for declaratory relief concerning the application of Michigan's no-fault act. In September 2013, Dahlmann amended her complaint to state a claim for no-fault benefits against Frankenmuth as Romig's no-fault insurer. Although it was Frankenmuth's position that Geico had to pay PIP benefits to Dahlmann, it accepted responsibility for paying Dahlmann's claims in October 2013, subject to its right of recovery.

In March 2014, Geico moved for summary disposition. It argued that the undisputed evidence showed that its automobile insurance policy did not include no-fault benefits under Michigan law. In addition, although Geico conceded that it had filed a certificate of no-fault coverage under MCL 500.3163, it argued that MCL 500.3163 did not apply because Dahlmann's van was not involved in the accident at issue and Dahlmann was not an "out-of-state resident" when the accident occurred.

Dahlmann argued that the trial court should deny Geico's motion and grant summary disposition in her favor under MCR 2.116(I)(2). Specifically, she argued that Geico was estopped from arguing that it had no obligation to provide PIP benefits under MCL 500.3163 because it did not assert that ground when it originally denied Dahlmann's claim. Rather, it maintained that Dahlmann had to purchase a Michigan no-fault policy because she was in Michigan for 30 days. See MCL 500.3102(1). Under the "mend the hold" doctrine, Dahlmann stated, Geico was estopped from asserting any additional grounds for denying her claim. Dahlmann additionally argued, along with Frankenmuth, that the evidence showed that Dahlmann was not a resident of Michigan.

In May 2014, the trial court issued an opinion and order denying Geico's motion for summary disposition and granting summary disposition in Dahlmann's favor. The court determined that the undisputed evidence showed that there was an "active link" between Dahlmann's vehicle and "the injury in the chain of circumstances leading to the injury." It also

stated that the undisputed evidence showed that Dahlmann was not a resident of Michigan at the time of the accident. It reasoned that there was no evidence that Dahlmann intended to change her domicile to the apartment in Lansing. Because one's domicile remains the same until changed, it concluded that Dahlmann was still domiciled in Virginia. Thus, the trial court determined that MCL 500.3163 applied and Geico was legally obligated to pay PIP benefits to Dahlmann.

In June 2014, Dahlmann moved for an order compelling Geico to pay her attorney's fees and penalty interest. The trial court found that Geico's position was not unreasonable and determined that Dahlmann was not entitled to attorney fees. The trial court entered an order denying Dahlmann's motion later that same month.

In October 2014, the trial court entered a final order closing the case. It ordered Geico to reimburse Frankenmuth for the PIP benefits that Frankenmuth paid on Dahlmann's behalf. It also ordered Geico to pay penalty interest on the benefits that were the subject of the litigation. Dahlmann then appealed the trial court's denial of attorney fees in this Court in November 2014 and Geico cross-appealed the trial court's grant of summary disposition in Dahlmann's favor.

In November 2014, after Dahlmann submitted a bill of costs to the trial court, Geico objected that the bill included expenses for two depositions that could not be taxed because they were not filed with any clerk's office. It also objected to the inclusion of judgment interest because Dahlmann did not obtain a money judgment. The trial court ultimately denied Dahlmann's request for the costs associated with the depositions and denied her request for judgment interest. Dahlmann then appealed that decision in this Court as well.

II. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

On appeal, we shall first address Geico's claim that the trial court erred when it denied its motion for summary disposition. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Roberts v Salmi*, 308 Mich App 605, 612; 866 NW2d 460 (2014). This Court also reviews de novo whether the trial court properly selected, interpreted, and applied the relevant statutes. *New Products Corp v Harbor Shores BHBT Land Dev, LLC*, 308 Mich App 638, 644; 866 NW2d 850 (2014).

B. NONRESIDENTS, REGISTRATION, AND NO-FAULT BENEFITS

Generally, every motor vehicle that is driven on a street or highway in Michigan must be registered. MCL 257.216. However, persons who are nonresidents of Michigan may be exempt from the registration requirement. MCL 257.216(a); see also MCL 257.34 (defining nonresident to mean "every person who is not a resident of this state"). A nonresident may operate or permit the operation of a motor vehicle in this state "if the vehicle at all times when operated in this state is duly registered in, and displays upon it a valid registration certificate and registration plate or plates issued for the vehicle in the place of residence of the owner." MCL 257.243(1).

If a motor vehicle must be registered in this state, the owner or registrant must "maintain security for payment of benefits under personal protection insurance [PIP benefits], property protection insurance, and residual liability insurance" during that period when "the motor vehicle is driven or moved on a highway." MCL 500.3101(1). Hence, a nonresident who is exempt from registering his or her motor vehicle does not normally have to maintain security for the payment of Michigan no-fault benefits. Nevertheless, if the nonresident "owner or registrant of a motor vehicle or motorcycle not registered in this state" operates or permits the operation of the motor vehicle or motorcycle "for an aggregate of more than 30 days in any calendar year," the owner or registrant must maintain security for the payment of Michigan no-fault benefits, even though he or she is exempt from registration. MCL 500.3102(1). Accordingly, every resident of Michigan who owns a motor vehicle that is driven on Michigan's highways must register the vehicle and insure the vehicle with a Michigan no-fault policy. A nonresident does not have to register his or her vehicle in Michigan in order to drive it on Michigan's highways and does not have to insure his or her motor vehicle with a Michigan no-fault policy, if he or she drives the vehicle on Michigan's highways for not more than 30 aggregate days in any calendar year and otherwise displays a valid registration and plate from his or her state of residence.

In order to ensure fairness in and discourage abuse of the no-fault system, the Legislature enacted provisions that punish noncompliance with the no-fault act. In addition to other sanctions, if an owner or registrant does not maintain the security required under the no-fault act, the owner or registrant will not be "entitled" to collect PIP benefits from a Michigan no-fault insurer "for accidental bodily injury" involving the owner or registrant's vehicle MCL 500.3113(b). Likewise, the owner or registrant cannot obtain an award of noneconomic damages for his or her injuries that would otherwise meet the no-fault thresholds. See MCL 500.3135(2)(c).

Although a nonresident of Michigan does not have to purchase a Michigan no-fault policy in order to drive in Michigan, the nonresident's insurer may still be required to pay its nonresident insured the PIP benefits required under Michigan's no-fault act for injuries arising in Michigan:

> An insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system under this act. [MCL 500.3163(1).]

In the present case, it is undisputed that Dahlmann insured her van with an automobile liability insurance policy issued by Geico to her in Virginia and that her policy's terms did not include Michigan no-fault benefits. It is also undisputed that she was a resident of Virginia at the time Geico issued the policy and that Geico had filed the written certification required under MCL 500.3163(1). Consequently, if Dahlmann was an "out-of-state resident" at the time of her accident in Michigan, Geico might be liable to pay her Michigan no-fault benefits under MCL 500.3163(1). On the other hand, if Dahlmann had become a resident of Michigan before her

accident, Geico would have no obligation under MCL 500.3163(1) to pay her PIP benefits. See *Tienda v Integon Nat'l Ins Co*, 300 Mich App 605, 613; 834 NW2d 908 (2013).

C. RESIDENCY AND DOMICILE

1. THE LAW

On appeal, the parties dispute whether Dahlmann was a resident of Michigan, but do so under the assumption that the Legislature used the term residence in the no-fault act as though it were synonymous with the term domicile. In *Tienda*, 300 Mich App at 615, this Court relied on our Supreme Court's statement in *Workman v DAIIE*, 404 Mich 477, 495; 274 NW2d 373 (1979), for the proposition that the terms residence and domicile were essentially synonymous under the no-fault act. However, after the decision in *Tienda*, our Supreme Court emphasized that courts must be careful to distinguish and apply the differences between the terms residence and domicile when construing the no-fault act. See *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 500-501; 835 NW2d 363 (2013). It also clarified that *Workman* should not be understood for the proposition that these terms should invariably be treated as synonymous. *Id.* at 498-501.

The Court in *Grange* explained that Michigan courts have long treated the term domicile to mean something more permanent than mere residency. "For over 165 years, Michigan courts have defined 'domicile' to mean the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Id.* at 493 (quotation marks and citation omitted). Moreover, every person must have one and only one national domicile. *Id.* at 493-494. By contrast, a residence is any place of abode or dwelling, however temporary it might be. *Id.* at 494. The Court stated that the Legislature might use the term residence as the equivalent of domicile, but warned that domicile can never be equated with residence. *Id.* at 499.

> For purposes of distinguishing "domicile" from "residence," this Court has explained that "domicile is acquired by the combination of residence and the intention to reside in a given place. . . . If the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short, will establish a domicile." The traditional common-law inquiry into a person's "domicile," then, is generally a question of intent, but also considers all the facts and circumstances taken together. [*Id.* at 494-495 (citations omitted).]

The Court also emphasized that, in relevant part, a person's domicile remains the same until affirmatively changed by that person. *Id.* at 502.

In *Tienda*, this Court had to determine whether an itinerant agricultural worker was a resident of Michigan. *Tienda*, 300 Mich App at 607. The insurer issued the worker a policy in North Carolina, but had—as is the case here—filed the certificate required under MCL 500.3163(1). *Id.* at 609-610. Accordingly, if the worker was not an out-of-state resident at the time of the accident, the insurer could not be obligated to pay PIP benefits under MCL 500.3163. *Id.* at 613-614.

In considering the issue, the Court in *Tienda* assumed that the phrase "out-of-state resident," as used in MCL 500.3163(1), meant a person who is domiciled in a state other than Michigan. *Id.* at 613-615. The Court also did not consider whether the itinerant worker could have retained an earlier domicile in a different state, despite having vacated his residence in that state. Because the Court in *Tienda* operated on the assumption that the Legislature used the phrase "out-of-state" resident as synonymous with domiciled in a state other than Michigan for purposes of the no-fault act without analyzing the statute and our Supreme Court later reiterated in *Grange* that the Legislature's use of those terms might differ depending on the context, we shall briefly consider whether the phrase "out-of-state resident," as used in MCL 500.3163(1), properly means a person domiciled in a state other than Michigan.

The Legislature required insurers who are authorized to transact automobile liability insurance in this state to certify "that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance" will be "subject to the personal and property protection insurance system set forth in [the no-fault] act." MCL 500.3163(1). It is evident that the Legislature wanted to obligate insurers who are authorized to issue Michigan no-fault policies to pay no-fault benefits arising from accidents in this state even when the insurer issued the policy to an insured residing in another state. Under typical circumstances, a person would not purchase an automobile insurance policy from an insurer in a different state unless he or she had his or her domicile in the state where the policy was issued. Moreover, as already explained, our Legislature has exempted a nonresident from registering his or her motor vehicle in Michigan and from maintaining the security required under MCL 500.3101(1), unless the nonresident operates his or her vehicle in this state for an aggregate of more than 30 days in any calendar year. See MCL 257.216(a); MCL 257.243(1); MCL 500.3102(1). Although it is possible for a person to aggregate more than 30 days of travel in Michigan without ever residing in this state, it is unlikely. It is more likely that a person will reach the 30 day aggregate limit during periods of stays in Michigan; that is, this requirement appears to contemplate that a person can reside in Michigan for an aggregate of less than 30 days without becoming a resident of Michigan. Because these provisions each concern the rights and obligations of nonresidents under Michigan's vehicle code and no-fault act, and the no-fault act specifically refers to the registration requirements, the provisions should be read as a harmonious whole. See *Fradco, Inc v Dept of Treasury*, 495 Mich 104, 115; 845 NW2d 81 (2014). When read in this way, it appears that the Legislature used the terms "nonresident" and "out-of-state resident" in the Michigan vehicle code and no-fault act to mean a person who is not domiciled in the state of Michigan, as opposed to a person who is merely not residing in this state. Therefore, we must next determine whether Dahlmann was domiciled in Michigan at the time of her injury; if she was not domiciled in Michigan at the time, then she qualified as an "out-of-state resident" within the meaning of MCL 500.3163(1).

2. APPLYING THE LAW

The place of a person's domicile is normally a question of fact, but if the "material facts are not in dispute," the issue is one of law for the court. *Grange*, 494 Mich at 490. A person's domicile is not just the place where the person happens to reside at a given moment; it is that "place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Id.* at 493 (quotation marks and

citation omitted). The legal meaning of domicile is, however, flexible and must be viewed "within the context of the numerous factual settings possible." *Workman*, 404 Mich at 496 (quotation marks and citation omitted).

In *Workman*, for purposes of determining whether persons were domiciled in the same household, our Supreme Court set out a variety of relevant factors:

> (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household"; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; [and] (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household[.] [*Workman*, 404 Mich at 496-497 (citations omitted).]

"[N]o one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others." *Id.* at 496.

Michigan courts also consider the factors set forth in *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983). See *Grange*, 494 Mich at 497-498 n 41 ("The *Workman-Dairyland* multifactored framework comprises the one now commonly employed by Michigan courts when a question of fact exists as to where a person is domiciled."). In *Dairyland*, the Court considered the "particular problems posed by young people departing from the parents' home and establishing new domiciles as part of the normal transition to adulthood and independence." *Dairyland*, 123 Mich App at 681. The Court determined that five additional factors are relevant to determining when a young person has established a domicile apart from his or her parents:

> Other relevant indicia of domicile include such factors as whether the claimant continues to use his parents' home as his mailing address, whether he maintains some possessions with his parents, whether he uses his parents' address on his driver's license or other documents, whether a room is maintained for the claimant at the parents' home, and whether the claimant is dependent upon the parents for support. [*Id.* at 682.]

Every person has a domicile from birth; thereafter, a person may replace his or her current domicile by choosing another. *Grange*, 494 Mich at 501-502. However, "every person must have a domicile until a new domicile is determined" and "[t]ypically, . . . an adult acquires a new domicile by choosing one of his or her choice, which makes the question of intent a preeminent concern in determining an adult's domicile." *Id.* at 502.

In this case, it is undisputed that Dahlmann was domiciled in Virginia before she embarked on her journey across the United States; the only question is whether she chose to establish a new domicile in Michigan just before the accident at issue. Dahlmann's intent—as revealed by her actions and testimony—is therefore preeminent in determining whether she established a new domicile. *Id.* Dahlmann admitted at her deposition that she no longer had a

physical residence in Virginia. She vacated her apartment in Virginia, placed the majority of her personal property in storage, cancelled a utility, and left Virginia to travel across the country and visit with family. This testimony established that Dahlmann intended to change her domicile from her previous residence, but does not by itself establish that she had in fact changed her domicile to a particular location. There is further no evidence that Dahlmann intended to change her domicile, even on a temporary basis, to any of the locations she visited in Georgia or Washington. However, once she arrived in Lansing, Michigan, there is evidence that Dahlmann intended to adopt a new domicile, at least for an indefinite period, in Michigan.

The evidence showed that Dahlmann stayed with friends for a while, but then used her power of attorney to act on her husband's behalf and entered into a year-long lease for an apartment. Although she denied that she intended to permanently move to Michigan, Dahlmann agreed that she planned on staying in the apartment until her husband's deployment ended and he received his new assignment. She further indicated that the stay could be for weeks. Because Dahlmann no longer had a physical residence in Virginia when she entered into the lease in Lansing, her acquisition of a physical residence in Lansing along with the intent to stay there for the time being was sufficient to effect a change in domicile. See *Workman*, 404 Mich at 496 (stating that a person's subjective intent to reside in a particular place for an indefinite length of time is a factor). That Dahlmann anticipated changing her residence and domicile again in the near future did not alter the fact that she had changed her domicile to her new apartment for the interim period.

The undisputed facts demonstrated that Dahlmann had established her domicile in Lansing, Michigan just before her accident. As such, she was not an "out-of-state resident" and MCL 500.3163 did not apply. Consequently, the trial court erred when it applied MCL 500.3163 to require Geico to provide Dahlmann with Michigan no-fault benefits. The trial court should have granted Geico's motion for summary disposition.

D. MEND THE HOLD

On appeal, Dahlmann also argues that Geico should be estopped from relying on alternative bases for denying Dahlmann's request for benefits under the "mend the hold" doctrine. This Court reviews de novo whether the trial court properly applied Michigan's common law. *New Products Corp*, 308 Mich App at 644.

Our Supreme Court has stated that, under certain circumstances, an insurer should be estopped from asserting a defense to an action on the policy that the insurer did not earlier assert:

> This court has many times held, and it must be accepted as the settled law of this state, that, when a loss under an insurance policy has occurred and payment refused for reasons stated, good faith requires that the company shall fully apprise the insured of all the defenses it intends to rely upon, and its failure to do so is, in legal effect, a waiver, and estops it from maintaining any defenses to an action on the policy other than those of which it has thus given notice. [*Smith v Grange Mut Fire Ins Co of Michigan*, 234 Mich 119, 122-123; 208 NW 145 (1926).]

There is some question as to whether and how this doctrine should be applied in modern practice. See, e.g., *Harbor Ins Co v Continental Bank Corp*, 922 F2d 357, 362-365 (CA 7, 1990) (discussing the origin, convoluted history, and application of the doctrine) Nevertheless, it appears that—under Michigan practice—this doctrine is equitable in nature and applies when it would be unfair to allow an insurer to assert an additional ground for denial after inducing the insured to rely on a different ground for denial to the insured's detriment. See *Reimold v Farmers Mut Ins Co*, 162 Mich 69, 73; 127 NW 17 (1910) (applying the doctrine where the plaintiff relied on the insurer's assertions in good faith and at his great expense; under the circumstances, the insurer had a duty to promptly repudiate the policy when "knowledge of these claimed breaches of the policy came to them"). Moreover, an insurer may assert a new ground for denial on the basis of newly discovered information, if asserted early enough to avoid prejudicing the insured; as our Supreme Court stated in the *Smith* case, "a different question would be presented" had the insurer asserted its new defense earlier in the proceedings. *Smith*, 234 Mich at 122.

Geico did not initially deny Dahlmann's application for benefits on the ground that Dahlmann was not an "out-of-state" resident under MCL 500.3163(1). Nevertheless, it had early on asserted that it had no obligation under Michigan law to provide Dahlmann with Michigan no-fault benefits and continued to assert that throughout the litigation. Geico also never conceded that this case involved a priority dispute between two insurers; rather, it was a coverage dispute between Geico and Dahlmann.

Even though it asserted a different statutory ground for the denial once it learned that she had not resided in Michigan for more than 30 days, Geico consistently stated that Dahlmann's decision to stay in Michigan for a period of time without complying with Michigan's no-fault act relieved it of any obligation to pay her benefits under Michigan law. Further, Geico asserted its position that Dahlmann was not an "out-of-state resident" early enough in the dispute to enable Dahlmann to take a responsive position. Geico's assertion of an alternate ground for denying Dahlmann's claim was not inequitable under these facts.

III. CONCLUSION

Under the undisputed facts, Dahlmann had become domiciled in Michigan by the time she was injured and was not, as such, an "out-of-state resident" for purposes of MCL 500.3163. Because Dahlmann was not an "out-of-state resident", the trial court erred when it determined that Geico was obligated to pay Michigan no-fault benefits to Dahlmann under MCL 500.3163. The trial court should have granted Geico's motion for summary disposition and dismissed Dahlmann's claims against Geico. For these reasons, in Docket No. 324698, we reverse the trial court's decision, vacate its opinion and order granting summary disposition in Dahlmann's favor, and vacate its order compelling Geico to reimburse Frankenmuth and pay costs and interest. Given our resolution of this issue, we decline to consider the additional issues raised in Docket No. 324698 and the issues raised in Docket No. 325225. In Docket No. 325225, we vacate the trial court's order compelling Geico to pay Dahlmann's costs as a prevailing party. Finally, we remand this case to the trial court for entry of an order granting Geico's motion for summary disposition and for further proceedings consistent with this opinion.

Reversed, vacated, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, Geico may tax its costs. MCR 7.219(A).

/s/ Jane M. Beckering
/s/ Michael J. Kelly

Exhibit 10

STATE OF MICHIGAN

COURT OF APPEALS

HERMAN BUNDLES,

Plaintiff-Appellant/Cross Appellee,

v

MARKEL INSURANCE COMPANY OF CANADA,

Defendant/Cross Plaintiff-Appellee/Cross Appellant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Defendant/Cross Defendant-Appellee/Cross Appellee.

UNPUBLISHED
September 21, 2004

No. 248843
Oakland Circuit Court
LC No. 2001-036449-NF

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

In this action, plaintiff seeks to recover first-party no-fault benefits, i.e., personal protection insurance (PIP) benefits from defendant insurance companies. Plaintiff appeals from the trial court's order granting summary disposition to defendants Markel Insurance Company of Canada (Markel) and Auto Club Insurance Association (ACIA). Cross-appellant Markel appeals the trial court's order granting cross-defendant ACIA's motion for summary disposition. We affirm.

I

Plaintiff was injured when the tractor-trailer he was driving was struck in the rear by another tractor-trailer. At the time, plaintiff, a Michigan resident, was hauling freight in Kentucky as a truck driver for Glory Transportation Services (Glory Transport), a Canadian corporation. Glory Transport was the title holder of the truck, which was registered in Ontario, Canada. At the time of the accident, plaintiff and Glory Transport had a lease/purchase agreement on the truck where plaintiff made weekly payments. Glory Transport maintained an insurance policy on the truck through Markel. Markel is not an admitted insurer under Michigan law, and the policy does not provide no-fault coverage. Plaintiff owned another vehicle which

was insured by ACIA. Plaintiff filed claims with both Markel and ACIA for PIP benefits. Both companies paid some benefits before denying coverage. Plaintiff then brought this action against both insurers seeking PIP benefits. And Markel filed a cross-claim against ACIA arguing that ACIA must reimburse Markel for the benefits it had paid to plaintiff. Defendants filed motions for summary disposition under MCR 2.116(C) (8) and (10) as to plaintiff's claim, and ACIA filed a similar motion as to Markel's cross-complaint. The trial court granted all the summary disposition motions in favor of the movant.

II

We review de novo a trial court's decision on a motion for summary disposition. *Koenig v City of South Haven*, 460 Mich 667, 674; 597 NW2d 99 (1999).

> MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. The motion must be granted if no factual development could justify the plaintiff's claim for relief. [*Id*., quoting *Spiek v Dep't of Transportation*, 456 Mich 331, 337 572 NW2d 201 (1998).]

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. [*Id*., quoting *Quinto v Cross & Peters Co*, 451 Mich 358,362; 547 NW2d 314 (1996) (citations omitted).]

A

Plaintiff argues first that the trial court erred in holding that MCL 500.3113(b) precludes his claim for PIP benefits. We disagree.

MCL 500.3113(b) reads:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> * * *
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

The no-fault act itself defines "owner" for purposes of the statute:

> (g) "Owner" means any of the following:

> (i) A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days.
>
> (ii) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.
>
> (iii) A person who has the immediate right of possession of a motor vehicle under an installment sale contract. [MCL 500.3101(2)(g).]

Plaintiff concedes that he was an owner, as defined in the statute, of the truck he was driving at the time of the accident. But plaintiff asserts that under the statute, Glory Transport, as the holder of the truck's legal title, was also an owner. Plaintiff argues that while he was "an owner" of the truck, he was not "the owner" of the truck, and concludes that because MCL 500.3113(b) only precludes "*the* owner" from receiving no-fault benefits, a designation which he did not have, he is not precluded from receiving benefits under the statute.

This Court was presented with this precise argument in *Ardt v Titan Ins Co*, 233 Mich App 685, 691-692; 593 NW2d 215 (1999), and addressed it as follows:

> Plaintiffs extend their argument against Robert's ownership of the truck by emphasizing that MCL 500.3113(b); MSA 24.13113(b) states that it is "the owner" of an uninsured motor vehicle who comes under the exclusion, arguing that the use of the definite article indicates the legislative intention to exclude only the primary owner. We disagree. This Court has specifically identified multiple owners of a motor vehicle for purposes of MCL 500.3101(2)(g); MSA 24.13101(2)(g). *Integral Ins Co v Maersk Container Service Co, Inc*, 206 Mich App 325, 332; 520 NW2d 656 (1994). Further, in reading this state's statutory language, "[e]very word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number." MCL 8.3b; MSA 2.212(2). Had the Legislature intended the exclusionary effect of MCL 500.3113(b); MSA 24.13113(b) to apply to only a single primary owner for each vehicle, it would have had to indicate that intention more clearly than by use of the definite article in this instance. We hold that where an uninsured motor vehicle involved in an accident has more than one owner, all the owners come under the statutory exclusion for personal protection insurance benefits.

Therefore, because plaintiff was an owner of the truck, he is statutorily precluded from receiving PIP benefits.[1] Accordingly, his claim for such benefits against Markel and ACIA cannot be sustained.

---

[1] *Ardt* is controlling and binding on this panel under MCR 7.215(J)(1), and we decline plaintiff's (continued…)

ACIA's liability to Markel is premised on Markel's theory that ACIA is obligated to pay benefits and that MCL 500.3113(b) does not preclude this obligation. Therefore, Markel's issue on cross-appeal is essentially the same as plaintiff's argument in this regard. Because we have determined that plaintiff is precluded from receiving PIP benefits, Markel's cross-claim against ACIA for recoupment must fail.

B

Plaintiff argues alternatively that the truck was not required to be insured under a no-fault policy because it was not required to be registered in Michigan and that, therefore, MCL 500.3113(b) does not preclude liability as it is inapplicable. Again, we disagree.

MCL 500.3101 mandates that "[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." Because plaintiff was an owner of the truck under MCL 500.3101(2)(g), the only question is whether the truck was required to be registered in this state.

The answer to this question is found in MCL 257.216:

> Every motor vehicle, pickup camper, trailer coach, trailer, semitrailer, and pole trailer, when driven or moved upon a highway, is subject to the registration and certificate of title provisions of this act . . . .

Plaintiff points to an exception to this requirement found in MCL 257.216(a) for "[a] vehicle driven or moved upon a highway in conformance with the provisions of this act relating to manufacturers, transporters, dealers, or nonresidents," and argues that because Glory Transport, a non-resident, is the title holder of the vehicle, this section applies and exempts the truck from the registration requirement, and ultimately the requirement that it be insured by a no-fault policy. However, like the no-fault act, the motor vehicle code also defines an "owner" in a fashion that contemplates multiple owners. MCL 257.37(a); *Basgall v Kovach*, 156 Mich App 323, 327; 401 NW2d 638 (1986). An owner is "[a]ny person, firm, association, or corporation renting a motor vehicle or having exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days." MCL 257.37(a). Thus, as contemplated under the motor vehicle code, there is no question that plaintiff was an "owner." Accordingly, because plaintiff was a resident owner, MCL 257.217 requires that the truck be registered in Michigan, and MCL 500.3101 requires it to be insured by a no-fault policy. The failure to have that policy in place triggers the preclusions found in MCL 500.3113(b).[2]

(…continued)

request to revisit this issue via the procedures set forth in MCR 7.215(J)(3).

[2] Defendant ACIA also points out an alternative source for the requirement that the truck be insured. The no-fault act itself forbids a nonresident owner, here Glory Transport, from operating a motor vehicle, or allowing one to be operated, in this state for an aggregate of more than thirty days in any calendar year unless he or she continuously maintains security for the payment of the benefits pursuant to this chapter. MCL 500.3102(1). Accordingly, under this section as well, the truck was required to be insured because there is no dispute that it was

(continued…)

C

Plaintiff's next argument is that Markel had a duty to pay no-fault benefits based on the policy on the truck. Plaintiff concedes that Markel is not an admitted insurer in Michigan and that the truck's insurance policy did not include no-fault coverage. However, plaintiff argues that under the principles of waiver and estoppel, Markel should have been ordered by the trial court to pay benefits. We disagree.

The general rule is that "waiver and estoppel are not available where their application would result in broadening the coverage of a policy, such that it would 'cover a loss it never covered by its terms . . . [and] create a liability contrary to the express provisions of the contract the parties did make.'" *Smit v State Farm Mut Automobile Ins Co*, 207 Mich App 674, 680; 525 NW2d 528 (1994), quoting *Ruddock v Detroit Life Ins Co*, 209 Mich 638, 654; 177 NW 242 (1920). This general rule and limitation on the application of waiver and estoppel are subject to two exceptions. The *Smit* panel observed that in *Lee v Evergreen Regency Cooperative*, 151 Mich App 281; 390 NW2d 183 (1986), this Court recognized two classes of cases in which estoppel or waiver was applied to bring within coverage risks not covered by policy terms:

> The first class involves companies which have rejected claims of coverage and declined to defend their insureds in the underlying litigation. In these instances, the Court has held that the insurance company cannot later raise issues that were or should have been raised in the underlying litigation. *Morrill v Gallagher*, 370 Mich 578; 122 NW2d 687 (1963); *Dickenson [Dickinson] v Homerich*, 248 Mich 634; 227 NW 696 (1929). These cases are closely akin to the principle behind collateral estoppel . . . .
>
> The second class of cases allowing the limits of a policy to be expanded by estoppel or waiver despite the holding of *Ruddock* involves instances where the inequity of forcing the insurer to pay on a risk for which it never collected premiums is outweighed by the inequity suffered by the insured because of the insurance company's actions. [*Smit*, supra at 680-681, quoting *Lee, supra* at 286-287.]

Here, the first class does not apply because there has been no third-party action against plaintiff that Markel has refused to defend. Rather, plaintiff argues that his situation falls within the second class. He asserts that the inequity of not being able to recover PIP benefits is greater than the inequity of forcing Markel to pay such benefits, even though the benefits were not provided for in the policy.

(…continued)

operated in Michigan for more than thirty days in one year. Therefore, this section as well establishes that the truck was required to be insured. See *McGhee v Helsel*, 262 Mich App 221, 224-225; ___ NW2d ___ (2004) (looking at language similar to MCL 500.3113(b) in MCL 500.3135(2)(c), which precludes suit for noneconomic damages where a party did not have the statutorily required insurance, and stating that MCL 500.3102 provides a basis on which insurance is required).

Our courts have only recognized two scenarios that would fall within the second exception class: (1) a situation where an insurance company misrepresented the terms of the policy to the insured, or (2) where the insurance company defended the insured without reserving the right to deny coverage. *Kirschner v Process Design Assoc, Inc*, 459 Mich 587, 594-595; 592 NW2d 707 (1999), citing as examples *Smit, supra*, and *Lee, supra.* In this case, plaintiff does not fall within either of these two recognized scenarios. Markel has not defended plaintiff in a third-party action and there is no allegation that Markel ever misrepresented the terms of the policy to the insured. Rather, plaintiff argues that Markel was aware that much of Glory Transport's business was done in Michigan and that therefore it should have sold Glory Transport a policy that included Michigan no-fault coverage. But there is no suggestion that Markel represented in any way, either to Glory Transport or plaintiff, that no-fault benefits were included in the policy.

Moreover, even if the exception was expanded to include the scenario presented here, ultimately we are required to weigh the inequity of forcing the insurer to pay on a risk for which it never collected premiums against the inequity suffered by the insured because of the insurance company's actions. *Smit*, supra at 681. While plaintiff's predicament is certainly unfortunate, we fail to see how this inequity was caused by the insurance company's actions. Rather, Markel simply sold a policy of insurance to Glory Transport. There is no evidence of misrepresentation to any party by Markel or of any other wrongdoing. Plaintiff's predicament was caused, rather, by plaintiff's failure to inquire whether Markel's insurance policy provided no-fault benefits. We, therefore, conclude that the greater inequity here would be to require Markel to pay on a risk for which it never collected premiums.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Donald S. Owens

Exhibit 11

STATE OF MICHIGAN

COURT OF APPEALS

TALWINDER SINGH,

Plaintiff-Appellant,

v

JEFFREY NATHAN BARYLSKI,

Defendant-Appellee.

UNPUBLISHED
August 13, 2020

No. 350184
Monroe Circuit Court
LC No. 18-141413-NI

Before: MARKEY, P.J., and K. F. KELLY and TUKEL, JJ.

PER CURIAM.

In this action for no-fault benefits, plaintiff appeals as of right the trial court's orders granting summary disposition in favor of defendant and denying plaintiff's motion for reconsideration. Finding no errors warranting reversal, we affirm. This appeal is decided without oral argument, MCR 7.214(E)(1)(b).

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff resided in Ohio with his wife and two daughters. At the time of the accident, plaintiff worked for a trucking company known as Three Star Transportation (Three Star) and had an Ohio commercial driver's license. Plaintiff owned and registered his own tractor-trailer in Ohio, but had a lease relationship with Three Star and was paid by the trip.

On April 16, 2018, plaintiff was travelling on I-75 northbound at a rate of 64-65 miles per hour (mph) when his trailer was struck suddenly from behind and items in the cab of the truck fell to the floor. Plaintiff and defendant, also a tractor-trailer driver, pulled over to the side of the road. The police and an ambulance came to the scene, but neither man left the scene in the ambulance. Plaintiff was bleeding from the back of his head, and he received treatment at the scene. Plaintiff's truck and the trailer were damaged in the accident and had to be repaired.

Three days after the accident, plaintiff sought treatment from his primary care physician for neck, shoulder, and back pain. The doctor prescribed painkillers and advised plaintiff to go to the hospital for an x-ray, but he did not because of a lack of insurance. His employer sent him to an attorney, and plaintiff was referred to other doctors. At the time of his deposition, plaintiff had

not taken any painkillers for over a year. Additionally, he did not have the recommended surgery or injections and had not seen a doctor in over six months. However, after the accident, plaintiff hired someone to mow his lawn, and his doctor instructed him "not to pick up something heavy." Plaintiff had a gym membership and went "every now and then." A doctor did not recommend that plaintiff stop or reduce his driving, but plaintiff reduced his trips because he "cannot drive long." Plaintiff wore a back brace that was given to him by his doctor. After the accident, his hands felt numb, and he experienced buzzing in his ears when he slept. At his deposition, plaintiff was asked about cargo, bobtail, and semitruck insurance, but he merely stated that the information was in the truck.

When asked to compare his life before and after the accident, plaintiff testified that he "cannot pick up my kids and play with them," cannot lift heavy weights, and had to hire someone to do his lawn work. Plaintiff clarified that he played with his children, but could not pick them up. He also argued with his wife about performing household chores, such as mowing the lawn and doing laundry, because he preferred to rest. After driving for four hours, plaintiff experienced "stabbing" back pain, and he wore a neck brace.

Plaintiff did not work for 2 ½ months after the accident. Although he earned the same rate of pay, plaintiff drove less trips. Previously, plaintiff left on a Monday, traveled to 48 states, and returned on Friday or Saturday. Now, he took two trips a week and traveled from Cincinnati to Michigan. However, since the accident, he had also travelled to Windsor (Canada), Kentucky, and Indiana. Plaintiff's "home terminal" was in Michigan, and he drove his truck into Michigan more than 30 days a year. Plaintiff did not know if the truck had no-fault insurance coverage because "my company is the one who provided me the cargo insurance and the insurance." At the time of the accident, plaintiff had three personal vehicles that were insured with Nationwide.

Defendant filed two separate motions seeking partial summary disposition pursuant to MCR 2.116(C)(10). First, defendant asserted that plaintiff could not recover non-economic damages because of the failure to obtain no-fault insurance. In the second motion, defendant claimed that plaintiff could not demonstrate the threshold standard to support a serious impairment of an important body function. Defendant submitted medical records that demonstrated plaintiff suffered a disc protrusion, but there was no nerve root impingement and no identified causal correlation between the protrusion and the accident. Plaintiff did not file a brief in opposition to the motion for summary disposition pertaining to the lack of no-fault insurance. However, plaintiff opposed the motion for summary disposition addressing the threshold injury, contending that sufficient evidence was presented to submit the issue to a jury. In addition to deposition testimony, plaintiff submitted an affidavit wherein he opined that he had the "most knowledge" regarding his "change in life" as a result of the accident. The affidavit further provided:

> 5. In comparing my life before and after the car crash, I had no troubles with a regular sleeping pattern. However, since the car crash, I have suffered from nightmares and sweating during my sleep cycle. This was not existent prior to the car crash.
>
> 6. Prior to the car crash, I was able to consistently show up for my employment and my performance was above average. However, since the subject car crash, I was unable to drive a commercial semi-truck long distances and as such, lost out

> on a significant amount of income, specifically, over $22,500.00 in business income. This effected [sic] my financial security and increased stress and anxiety as bill [sic] began to pile up.
>
> 7. Prior to the car crash, I was able to play both an active and physical role in my children's lives. However, since the car crash – and due to my continued neck and back pain – I have been unable to play a more intimate role with my children. Since the crash, they are missing parental support from their father. A role I am no longer able to sufficiently provide since the car crash.
>
> 8. That, due to the above mentioned – I can attest to the truth and fact that I have experienced physical conditions which affected my general ability to lead a normal life. This is due to the car crash I was involved in on April 16, 2018.

At the hearing on the dispositive motions, plaintiff's counsel acknowledged that a response to the dispositive motion addressing non-economic damages for failure to secure Michigan no-fault insurance was not filed, and he conceded that issue. Accordingly, the trial court granted that motion. Although the trial court concluded that plaintiff demonstrated an injury, it also found that plaintiff did not demonstrate a serious impairment of important body function that affected his ability to lead a normal life when comparing plaintiff's activities and lifestyle before and after the accident.

Plaintiff moved for reconsideration, alleging that the trial court erred in holding that the threshold injury was not established because a factual conflict was presented regarding the nature and extent of his injuries that was contingent on the credibility of witnesses. Second, plaintiff alleged that the trial court committed palpable error by dismissing his non-economic damage claim for failing to secure a no-fault policy of insurance because he recently learned that a Michigan no-fault insurance policy through Auto-Owners was in effect that covered the "commercial motor vehicle driven by [plaintiff] at the time of the accident, a fact unknown" when the trial court ruled on the summary disposition motions. However, the trial court denied the motion for reconsideration, concluding that plaintiff merely presented facts and legal theory that could have been submitted before the hearing and did not demonstrate a palpable error regarding the threshold injury.

II. APPLICABLE REVIEW STANDARDS

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Bennett v Russell*, 322 Mich App 638, 642; 913 NW2d 364 (2018). Summary disposition is appropriate pursuant to MCR 2.116(C)(10) where there is "no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). When reviewing a motion for summary disposition challenged under MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(4), (G)(5); *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 68; 919 NW2d 439 (2018).

The documentation offered in support of and in opposition to the dispositive motion must be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999).

"The affidavits must be made on the basis of personal knowledge and must set forth with particularity such facts as would be admissible as evidence to establish or deny the grounds stated in the motion." *SSC Assoc Ltd Partnership v Gen Retirement Sys*, 192 Mich App 360, 364; 480 NW2d 275 (1991). Mere conclusory allegations that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "A party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact." *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995). When the opposing party provides mere conclusions without supporting its position with underlying foundation, summary disposition in favor of the moving party is proper. See *Rose v National Auction Group*, 466 Mich 453, 470; 646 NW2d 455 (2002). Further, a party may not contrive a factual issue by asserting the contrary in an affidavit after providing damaging testimony in a deposition, and a trial court does not err by disregarding a contradictory affidavit. *Kaufman & Payton PC v Nikkila*, 200 Mich App 250, 257; 503 NW2d 728 (1993).

This Court reviews the trial court's decision addressing a motion for reconsideration for an abuse of discretion. *K & W Wholesale, LLC v Dep't of Treasury*, 318 Mich App 605, 611; 899 NW2d 432 (2017). An abuse of discretion occurs when the decision falls outside the range of reasonable and principled outcomes. *Frankenmuth Ins Co v Poll*, 311 Mich App 442, 445; 875 NW2d 250 (2015).

III. THRESHOLD INJURY

First, plaintiff contends that the trial court improperly granted summary disposition when the issue of serious impairment presented a factual issue for resolution by a jury. We disagree.

"A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). "Serious impairment of body function" is defined as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). The question whether an injured party has suffered a serious impairment presents a question of law for the court if there is no factual dispute surrounding the nature and extent of the person's injuries or any factual dispute is immaterial to determining whether the standard was met. MCL 500.3135(2)(a); *McCormick v Carrier*, 487 Mich 180, 190-191; 795 NW2d 517 (2010).

The plain and unambiguous language of the statute contains three requirements that are necessary to establish a serious impairment of body function: "(1) an objectively manifested impairment (2) of an important body function that (3) affects the person's general ability to lead his or her normal life." *McCormick*, 487 Mich at 195. "Objectively manifested" is "an impairment that is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function." *Id*. at 196. The term "impairment" relates to the impact of damage that arises from an injury. *Id*. at 197. Therefore, when addressing "impairment," the focus is not on the injuries, but on how the injuries affected a particular body function. *Id*. A plaintiff must introduce evidence demonstrating a physical basis for his subjective complaints of pain and suffering, and this showing generally, but not always, requires medical

documentation. *Id*. at 198. Important body function refers to a function of significance and will vary depending on the person. *Id*. at 199. Therefore, the inquiry regarding an important body function is "an inherently subjective inquiry that must be decided on a case-by-case basis, because what may seem to be a trivial body function for most people may be subjectively important to some, depending on the relationship of that function to the person's life." *Id*.

The phrase "affect the person's ability to lead his or her normal life" means "to have an influence on some of the person's capacity to live in his or her normal manner of living." *Id*. at 202. This is a subjective, fact specific inquiry to be resolved on a case-by-case basis. *Id*. "Determining the effect or influence that the impairment has had on a plaintiff's ability to lead a normal life necessarily requires a comparison of the plaintiff's life before and after the accident." *Id*. The ability to lead a normal life only need be affected, not destroyed. *Id*. There is no temporal requirement on the length of the impact on the ability to lead a normal life. *Id*. at 203.

As noted, the *McCormick* Court established that to demonstrate a serious impairment of body function, a party had to demonstrate an objectively manifested impairment of an important body function that affects a person's general ability to lead his normal life. An objective manifestation requires evidence of actual symptoms or conditions that someone other than the injured person would observe or perceive. Although we conclude that plaintiff arguably presented an objective manifestation of an important body function because the MRI revealed disc protrusions at C3-C4 and L1-L2, this evidence was insufficient to present a factual question for the jury. The *McCormick* Court noted that impairment relates to damages arising from an injury, and this showing generally must be established with medical documentation. In the present case, plaintiff demonstrated a disc protrusion in the MRIs, but did not establish through medical documentation that it caused him pain and required him to work less hours. Rather, plaintiff presented a subjective opinion of his injuries and did not present a medical opinion that work restrictions were necessary. There also must be an effect on the person's ability to lead his normal life which means an influence on some aspect of the person's capacity to live in a normal manner. *McCormick*, 487 Mich at 202. Again, in his deposition, plaintiff reported that he worked less hours, he did not pick up his children, and he did less housework. Physically, he testified that his hands went numb and he heard buzzing in his ears when he went to sleep. However, plaintiff had not treated with any physician since it was recommended that he have surgery and there was no recent documentary evidence to support his claims; again, there were no work and physical restrictions placed on plaintiff by a physician to mirror his claim of impairment.

To seemingly avoid the import of his deposition testimony, plaintiff submitted an affidavit that he experienced nightmares and sweating during sleep, he could no longer enjoy an "intimate" relationship with his children because of his neck and back injuries, and he worked fewer hours, creating financial stress, and therefore, his physical conditions affected his general ability to lead a normal life. In his deposition, plaintiff was asked about his ability to sleep, and he merely cited a buzzing during sleep, not nightmares and sweating. Further, in his deposition, he merely cited an inability to pick up his children, not a lack of an intimate relationship. Irrespective of whether the difference between the deposition testimony and the affidavit can be deemed a contradiction as opposed to a supplementation, the trial court did not err in granting summary disposition because plaintiff failed to present objective evidence of an impairment that affected his general ability to lead a normal life. The affidavit did not contain particular facts and a foundation to support the threshold, *SSC Assoc Ltd Partnership*, 192 Mich App at 364, but contained conclusory statements

that were devoid of detail, *Quinto*, 451 Mich at 362, and the affidavit lacked foundational facts, see *Rose*, 466 Mich at 470. Specifically, plaintiff did not delineate the frequency and duration of his nightmares and sweating such that it could be deemed to impact his ability to lead a normal life. Further, he concluded that the conditions were correlated to the accident without any medical foundation or opinion. Although plaintiff's affidavit also concluded that he did not have an "intimate" relationship with his children because of the accident, he did not set forth underlying facts to support that statement. In his deposition, plaintiff merely stated that he could not pick them up. However, a medical foundation or doctor imposed lifting restriction did not support that conclusion. Finally, although it was undisputed that plaintiff worked fewer hours and that he attributed it to pain from the accident, plaintiff did not present any evidence that he was restricted to working part-time as a result of the accident. Indeed, plaintiff had not been to the doctor since surgery was recommended at least six months prior to his deposition. Under the circumstances, the trial court correctly concluded that plaintiff failed to meet the serious impairment threshold to warrant a submission of the issue to a jury.

IV. RECONSIDERATION

Plaintiff further asserts that the trial court improperly denied his motion for reconsideration by failing to consider that he recently uncovered evidence of a Michigan no-fault insurance policy and that his medical evidence established a factual issue regarding injury. Again, we disagree.

The trial court does not abuse its discretion by denying a motion for reconsideration premised on facts or legal theory that could have been pled or argued before the trial court's original order. *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 738; 405 NW2d 157 (1987). The trial court also properly denies a motion for reconsideration if the evidence could have been produced, with reasonable diligence, at the time of the court's initial ruling. *C D Barnes Assocs v Star Heaven LLC*, 300 Mich App 389, 425; 834 NW2d 878 (2013).

Specifically, plaintiff contends that the trial court erred by summarily denying his request for reconsideration without analyzing whether plaintiff exercised reasonable diligence in securing evidence of a no-fault policy. The accident occurred on April 16, 2018, and plaintiff sought medical treatment in June 2018. Plaintiff's complaint was filed on October 9, 2018. Plaintiff's deposition was taken on April 5, 2019, during which plaintiff asserted that any insurance information was "in the truck." On May 21, 2019, defendant moved for summary disposition of the claim for noneconomic damages for the failure to secure a Michigan no-fault policy. In light of the above, the trial court did not err in denying the motion for reconsideration. First, the information regarding insurance was available at the time the motion for summary disposition was filed, but it was not presented and argued after defendant moved for summary disposition. In light of the procedural history and information availability, plaintiff cannot demonstrate that the trial court improperly failed to exercise discretion and, in turn, grant the motion for reconsideration.

More importantly, with the motion for reconsideration, plaintiff did not attach a Michigan no-fault policy of insurance. Rather, Auto-Owners as the insurance company for Three Star wrote plaintiff's counsel and concluded that insurance coverage was not available through Three Star. Rather, the representative for Auto-Owners opined that plaintiff would have to pursue any automotive insurance benefits from his personal vehicle insurer, Nationwide. Thus, to date,

plaintiff has never presented a Michigan no-fault policy of insurance secured by himself or his employer that would afford him coverage.

Furthermore, this accident did not involve a car. Rather, the accident involved two tractor-trailers. The insurance coverage varies for the "rig" versus the trailer. "Generally, a 'bobtail' policy is a policy that insures the tractor and driver of a rig when it is operated without cargo or a trailer." *Integral Ins Co v Maersk Container Serv Co, Inc*, 206 Mich App 325, 331; 520 NW2d 656 (1994); see also *Besic v Citizens Ins Co*, 290 Mich App 19, 22 n 1; 800 NW2d 93 (2010). "The tractor and trailer are two separate motor vehicles within the meaning of the no-fault act." *Jasinski v Nat'l Indemnity Ins Co*, 151 Mich App 812, 819; 391 NW2d 500 (1986). Because plaintiff did not present the insurance policies that covered the respective tractor, trailer, and his personal vehicles to allow for an analysis of the availability of Michigan no-fault coverage, plaintiff failed to demonstrate entitlement to relief on reconsideration.

Affirmed.

/s/ Jane E. Markey
/s/ Kirsten Frank Kelly
/s/ Jonathan Tukel