

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**DOMESTIC LINEN SUPPLY AND LAUNDRY  
COMPANY, DOMESTIC LINEN SUPPLY COMPANY,  
INC., DOMESTIC LINEN SUPPLY CO., INC.,  
DOMESTIC LINEN SUPPLY CO., INC., DOMESTIC  
LINEN SUPPLY CO., INC., DOMESTIC LINEN SUPPLY  
CO. INC. OF VIRGINIA, and DOMESTIC LINEN  
SUPPLY COMPANY, INC.,**

**Plaintiffs,**

**v**

**Case No. 2023-204059-CB  
Hon. Michael Warren**

**ARTHUR J. GALLAGHER & CO. f/k/a LSG  
INSURANCE PARTNERS, INC., MICHAEL  
TOTIN, JAY SCHREIBMAN, and TRAVELERS  
PROPERTY CASUALTY COMPANY OF AMERICA,**

**Defendants.**

---

**OPINION AND ORDER REGARDING  
DEFENDANT TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA'S  
MOTION FOR SUMMARY DISPOSITION**

**At a session of said Court, held in the  
County of Oakland County, State of Michigan  
May 28, 2025**

**PRESENT: HON. MICHAEL WARREN**

---

## OPINION

### **I Overview**

The claims in this matter arise out of contracts for insurance entered into on February 1, 2015 and during three successive years (i.e., there are four consecutive policies, for 2015, 2016, 2017 and 2018). The Plaintiffs acknowledge that Arthur J. Gallagher & Co (“Gallagher”) and LSG Insurance Partners, Inc. (“LSG”) are separate entities, and that LSG was the Plaintiffs’ agent, and not Travelers Property Casualty Company of America (“Travelers”), at the time the policies were issued. [Motion, p 4; Response, p 3.] The Plaintiffs allege that LSG provided the Plaintiffs with the maximum available coverage rather than the statutory minimums that the Plaintiffs requested. [Response, pp 3-4.] All allegations in the First Amended Complaint stem from this premise.

Before the Court is Travelers’ Motion for Summary Disposition under MCR 2.116(C)(8) and (10). Oral argument is dispensed as it would not assist the Court in its decision-making process.<sup>1</sup>

---

<sup>1</sup> MCR 2.119(E)(3) provides courts with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court’s Scheduling Order clearly and unambiguously set the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties’ positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties have received the process due.

At stake is whether Travelers is entitled to summary disposition regarding the Plaintiffs' claims pursuant to MCR 2.116(C)(10)? Because there are no genuine issues of material fact regarding the claims, the answer is "yes," and summary disposition is granted on this basis as to each Count of the Complaint.

## **II Background**

The background and relationship between the parties is largely agreed upon. LSG acted as insurance agent for the Plaintiffs in procuring insurance. Gallagher later acquired LSG. Insurance agents Totin and Schreibman (once with LSG) are now agents for Gallagher. At issue in this matter is uninsured and underinsured motorist coverages for California, Illinois, and Pennsylvania. The coverage requirements vary from state to state, which requires a supplemental form to discern whether an applicant wants the minimum required limit or available higher limits and deductibles. [Response, p 4.]

The Plaintiffs' agent, Mark Colton, testified that he signed each election form as completed and dated by LSG, and relied upon LSG to accurately complete the forms. [Response, p 4.] Colton testified that he did not review the forms. [Motion, p 4 and Exhibit 2, pp 41-42, 55, 63, 69-70, 93, 120.] Colton further testified that he never read any of the insurance policies provided to him but relied completely upon LSG. [Motion, p 7, and Exhibit 2, pp 161-162.]

### **California Application**

The application for coverage in California requested \$2,000,000 by handwritten notation on the first page of the document. [Motion, Exhibit 3.] The first page also indicates that the policy will automatically include Uninsured Motorists Coverage unless the coverage is denied completely. [*Id.*] The supplement checks a box on the second page to delete bodily injury Uninsured Motorists Coverage entirely. [*Id.*] The Application refers the insured to the policy for prevailing coverage provisions.

### **Illinois Application**

The Illinois application is two pages in total. There is a checkmark on the first page to select the underinsured motorists coverage in an amount equal to the bodily injury liability limit. [Motion, Exhibit 4.] The box to reject the insurance is not marked and is located directly above the agent's signature line. [*Id.*]

### **Pennsylvania Application**

As with other applications, the Plaintiffs had the option to reject coverages with the box to do so located directly above the signature line, but the necessary signatures for rejection do not appear on the application. [Motion, Exhibit 5.]

### III Standards of Review

#### A MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360 (1991).

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep’t of Transportation*, 456 Mich 331, 337 (1998).

**B**  
**MCR 2.116(C)(10)**

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Accordingly, “[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion.” *Maiden v Rozwood*, 461 Mich 109, 119-120 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 358. The moving party “must specifically identify the issues” as to which it “believes there is no genuine issue” of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden “then shifts to the opposing party to establish that a genuine issue of disputed fact exists.” *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000)

(concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116[C][10]).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion. *Maiden*, 461 Mich at 121-120 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120 (1999). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows 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. *Quinto*, 451 Mich at 362-363.

**IV**  
**Summary Disposition as to**  
**Count I - Breach of Contract**

**A**  
**Allegations**

The Plaintiffs make the following allegations in their First Amended Complaint as to Travelers' breach of contract:

34. The parties entered into contracts for the design, procurement and administration of insurance policies consistent with Plaintiffs' stated requirements, including LSG's obligation to act as Plaintiffs' agent, advising, procuring and administering coverages based upon Plaintiffs' desires and objectives. Plaintiffs are informed and believe that each Defendant is in possession of copies of each of the parties' "Contracts."

35. The parties' contracts obligated Defendants to prepare documents and otherwise arrange and administer insurance coverages consistent with Plaintiffs' requirements and objectives.

36. Plaintiffs fully performed as required by each of the parties' contracts and otherwise cooperated with Defendants in all facets of the parties' relationship, always with the expectation that each Defendant would perform as required pursuant to each of the parties' Contracts.

37. Defendants unilaterally breached the Contract as described throughout this Complaint, causing Plaintiffs to suffer damages which are completely compensable in this action as demanded.

[First Amended Complaint, pp 6-7.]

## **B Law**

A claim for breach of contract lies when the following elements are established: “(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *Thomas v Leja*, 187 Mich App 418, 422 (1991). A plaintiff may recover in a breach of contract action when it proves that the defendant’s breach was the proximate cause of the harm the plaintiff suffered. *Chelsea Inv Group LLC v City of Chelsea*, 288 Mich App 239, 254 (2010).

## **C Analysis**

In the First Amended Complaint, the Plaintiffs allege that they received more coverage than desired, which caused higher deductibles and possibly higher premiums following accidents. The Plaintiffs allege that the coverages in place are a breach of the Defendants’ duty to provide the requested coverage. There are no allegations whatsoever that relate in any way to the handling of claims after the policies were issued, which arguments are raised for the first time in the Response to the Motion for Summary Disposition. The allegations contained in the First Amended Complaint would not put any of the Defendants on notice that there were allegations relative to the handling of claims after the insurance policies were in force. The Plaintiffs have not sought to amend their First Amended Complaint to add those allegations. Any claims regarding a breach

of guidelines or handling of claims were not brought in the First Amended Complaint and are not considered here.

Travelers argues that any claims relating to the alleged improper coverage are negated by the acceptance of the insurance policies and the Plaintiffs' failure to read and review those insurance policies. The applications were completed and signed by the Plaintiffs' agent, who admitted to signing the documents and not reading them. Travelers argues that because the insurance policies contain an integration/merger clause, i.e., the applications are superseded by the policies once they were issued, it is not liable.

In fact, the policies include an integration clause that provides "This policy contains all agreements between you and us concerning the issuance afforded." This integration clause supersedes the application and extinguishes any claim based on the application as opposed to the actual policy issued. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 414 (2002) (a title commitment containing different terms than the title insurance policy was abrogated by the integration clause in the insurance policy and the insurance policy controls); *Wierengo v American Fire Ins Co*, 98 Mich 621 (1894) (when a contract is "received and accepted without objection, he must be held bound by its terms, unless these terms are waived by the insured. In addition, "It is well established than an insured is obligated to read his or her policy and raise any questions about the coverage within a reasonable time after the policy is issued." *Casey v Auto Owners Ins Co*, 273 Mich App 388, 394-395 (2006). "Consistent with this obligation, if the insured has not read the policy, he or she is nevertheless charged with knowledge of the terms and conditions of

the insurance policy.” *Id.* In the instant case, the coverages were issued and merged, and the Plaintiffs did not object in a reasonable time. In short, they cannot sustain a breach of contract claim.

However, the Plaintiffs First Amended Complaint infers that contracts separate from the insurance policies exist and specifically relate to the insurance policy coverages to be put in place. The Defendants’ Motion alleges the only contracts between the parties are the insurance policies themselves, which contain an integration clause. Despite the First Amended Complaint, the Plaintiffs failed to provide any evidence of any additional contracts binding the parties.

In further response, the Plaintiffs present an Expert Report from Michael S. Hale [Response, Exhibit 5.] The expert’s opinion relates primarily to LSG, but it does opine that “Travelers violated the implied promise in the contract to not act upon incomplete, or ambiguous election forms for UIM for California, which could not from (*sic*) a reasonable underwriting standpoint show the intent of the insured. Travelers listed its own limits on the policy which were inconsistent with that of Domestic’s intention, resulting in a breach of contract.” [Response, Exhibit 5, ¶ 30.] However, those statements are inconsistent with the Plaintiffs’ testimony and contains factual assertions that are not supported by the record. The Plaintiffs have provided no evidence to support, and outside of the expert report do not suggest, that Travelers was privy to the Plaintiffs’ intent outside of the forms submitted to Travelers. In fact, the Plaintiffs’ deposition testimony admits that it knew that Travelers would act on the elections made by the Plaintiffs in the applications.

[Reply Brief, and Motion, Exhibit 2, pp 126.]. In addition, the expert based his opinions on the assertion that Travelers guessed at policy limits. [Response, Exhibit 5, ¶ 31.] However, the evidence before the Court belies that argument. The application Travelers received had a handwritten limit of \$2,000,000, in addition to an indication to reject the coverage, which document was signed by the Plaintiffs' agent. [Motion, Exhibit 3.] The Plaintiffs had signed many other applications for other states with the same \$2,000,000 election. [Motion, Exhibits 3-5, 17.] The application also indicates that the coverage will not be rejected unless it is completely rejected on the application. The application also indicates that the insured should refer to its policy. The Traveler's agent testified that the policy had already been issued when this application was received and reviewed, so that the limits were already in place. [Response, Exhibit 5, ¶ 66.] The Plaintiffs have provided no evidence that Travelers guessed as to the policy limits, and the conclusory statements made by the expert in the report cannot stand alone. An expert opinion must be based on evidence, not speculation or conjecture. MRE 703. See also *Edry v Adelman*, 486 Mich 634, 639-641 (2010); *Phillips v Deihm*, 213 Mich App 389, 402 (1995).

Based on the foregoing, summary disposition in favor of Travelers as to the Plaintiffs' breach of contract pursuant to MCR 2.116(C)(10) is granted because there are no genuine issues of material fact.

**V**  
**Summary Disposition as to**  
**Count II - Misrepresentation**

**A**  
**Allegations**

The Plaintiffs make the following allegations in their First Amended Complaint as to Travelers' misrepresentations to the Plaintiffs:

39. Defendants induced Plaintiffs to engage their services and to purchase insurance policies with the expectation that those services and policies would be provided according to Plaintiffs' stated desires, goals and objectives, as is more fully described throughout this Complaint.

40. Defendants presented Plaintiffs with policies, contracts and other complicated insurance documents which Defendants represented were drafted, prepared and completed in accordance with Plaintiffs' stated desires, goals and objectives.

41. Plaintiffs accepted and executed each of the insurance policies, contracts and other documents at issue at Defendants' direction, and in reasonable reliance upon Defendants' assurances and representations that each document was completed in accordance with Plaintiffs' stated desires, goals and objectives.

42. Defendants' representations were false when made to Plaintiffs, as is more fully discussed throughout this Complaint.

43. Plaintiffs have suffered damages and other harm as alleged throughout this Complaint, as a result of Defendants' fraudulent misrepresentations.

[First Amended Complaint, pp 7-8.]

## **B Law**

“As a general rule, actionable fraud consists of the following elements: (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage.” *M&D, Inc. v McConkey*, 231 Mich App 22, 27 (1998).

## **C Analysis**

Travelers argues that there can be no misrepresentation claim because Mark Colton testified that Travelers made no false representations to the Plaintiffs. [Motion, p 13, and Exhibit 2, pp 182-183.] Travelers further argues that there can be no fraud where the knowledge regarding truthfulness of the representation is available and the defendant did not prohibit the plaintiff from accessing it, relying upon *Bev Smith, Inc v Atwell*, 301 Mich App 670, 688 (1992), and other cases. The Plaintiffs made no responses to these arguments.

“Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute.” The Plaintiffs failed to respond to Traveler’s Motion and did not present any documentary evidence

establishing the existence of a material factual dispute regarding this issue. In so doing, the Plaintiffs failed to meet their burden. *INXS V LLC v Kathelene's Compassionate Adult Day Care*, unpublished, per curiam opinion of the Court of Appeals, issued February 29, 2024 (Docket No. 365939).

Based on the foregoing, summary disposition pursuant to MCR 2.116(C)(10) is granted in favor of Travelers as to the Plaintiffs' misrepresentation claims because there are no genuine issues of material fact.

**VI**  
**Summary Disposition as to**  
**Count III - Breach of Fiduciary Duty**

**A**  
**Allegations**

The Plaintiffs make the following allegations in their First Amended Complaint as to Travelers' breach of fiduciary duties to the Plaintiffs:

45. By virtue of these parties' dealings as described throughout this Complaint, Defendants undertook fiduciary obligations to Plaintiffs including the obligation to advise, procure and administer insurance coverages for Plaintiffs based upon Plaintiffs' desires, goals and objectives.

46. Defendants breached their fiduciary duties to Plaintiffs by failing to advise, procure and administer insurance coverages for Plaintiffs based upon Plaintiffs' desires, goals and objectives, and otherwise by acting wrongfully as described throughout this Complaint.

47. Plaintiffs have suffered continuing damages and other harms as alleged throughout this Complaint, as a result of Defendants' conduct.

[First Amended Complaint, pp 8--9.]

## **B Law**

“To establish a claim for breach of fiduciary duty, a plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages caused by the breach of duty.” *Highfield Beach at Lake Michigan v Sanderson*, 331 Mich App 636, 666 (2020). “A fiduciary owes a duty of good faith to his principal and is not permitted to act for himself at his principal’s expense during the course of his agency.” *Central Cartage Co v Fewless*, 232 Mich App 517, 524-25 (citations omitted).

## **C Analysis**

The Defendants argue that “the relationship between an insurance company and its insured ‘is not fiduciary in nature’ and does not create any such duty.” [Motion, p 15, relying upon *Crossley v Allstate Ins Co*, 155 Mich App 694, 697 (1986).] The Plaintiffs did not respond to this argument or offer any form of rebuttal. To the extent that the Plaintiffs’ Expert Report by Michael S. Hale attempts to create such a duty, it cannot do so. Whether a duty exists is a question of law, and must be rooted in statutes, rules, principles and precedents that make up that law. *Moning v Alfonso*, 400 Mich 425, 460-61 (1977). The Plaintiffs’ expert cannot create a legal duty through his report that does not otherwise exist. Because the Plaintiffs have failed to cite any authority to support their argument, the argument is deemed abandoned. See, e.g., *Mitcham v City of Detroit*, 355 Mich 182, 203

(1959); *Houghton v Keller*, 256 Mich App 336, 339-340 (2003); *People v Odom*, 327 Mich App 297, 311 (2019). Michigan jurisprudence is clear that an argument must be supported by citation to appropriate authority and analysis otherwise the argument is abandoned. See, e.g., *Houghton*, 256 Mich App at 339-340 (a party “may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority” (citations omitted)). Conclusion without authority is insufficient to warrant dispositive relief or even to bring an issue before the Court for review, especially where, as here, the Plaintiff bears the ultimate burden of proof. *Mitcham*, 355 Mich at 203 (“It is not enough . . . to simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for authority either to sustain or reject his position”); *Wilson v Taylor*, 457 Mich 232, 243 (1998) (“A mere statement without authority is insufficient to bring an issue before this Court”). “Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute.” *Walters v Nadell*, 481 Mich 377, 388 (2008). The Plaintiffs have failed to support their arguments with any documentary evidence or legal support. Accordingly, their argument is deemed abandoned.

Based on the foregoing, summary disposition pursuant to MCR 2.116(C)(10) is granted in favor of Travelers as to the Plaintiffs’ breach of fiduciary duty claims because there are no genuine issues of material fact.

**VII**  
**Summary Disposition as to**  
**Count IV - Negligence**

**A**  
**Allegations**

The Plaintiffs make the following allegations in their First Amended Complaint as to Travelers' negligence as to the Plaintiffs:

45. By virtue of these parties' dealings as described throughout this Complaint, Defendants undertook fiduciary obligations to Plaintiffs including the obligation to advise, procure and administer insurance coverages for Plaintiffs based upon Plaintiffs' desires, goals and objectives.

46. Defendants breached their fiduciary duties to Plaintiffs by failing to advise, procure and administer insurance coverages for Plaintiffs based upon Plaintiffs' desires, goals and objectives, and otherwise by acting wrongfully as described throughout this Complaint.

47. Plaintiffs have suffered continuing damages and other harms as alleged throughout this Complaint, as a result of Defendants' conduct.

[First Amended Complaint, pp 8--9.]

**B**  
**Law**

To establish negligence, a plaintiff must prove: (1) a duty owed to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6 (2000). "Whether a duty is owed is a question of law." *Becker-Witt v Bd of Examiners of Social Workers*, 256 Mich App 359, 364 (2004) (citation omitted). There can be no liability

if defendant owed plaintiffs no duty. *Fultz v Union-Commercial Assoc*, 470 Mich 460, 463, 469 (2004).

## C Analysis

Travelers argues that the relationship between an insurer and insured is a contractual one and claims regarding discharging their duties are not actionable in tort. *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401, 422-23 (1980).

In response, the Plaintiffs argue that “[d]uty’ comprehends whether the defendant is under any obligation to the plaintiff and the existence of an insurance policy does not insulate the insurer from negligent conduct that could foreseeably damage the policyholder. Duty arises from a defendant’s obligation to adhere to a standard of care to avoid causing harm and is evaluated according to what a reasonably prudent person would do under similar circumstances.” [Response, p 10.] However, the Plaintiffs do not provide any authority for these arguments. The Plaintiffs rely upon *Buczowski v McKay*, 441 Mich 96 (1992), but the duty involved in *Buczowski* did not involve insurance agents or policies, but rather a retailer’s duty to protect a member of the general public from a shooter. It has no applicability to this matter. Likewise, *Friedman v Dozorc*, 412 Mich 1, 22 (1981), the only other case upon which the Plaintiffs rely, is inapplicable because it involved an attorney’s duty to protect from frivolous litigation. Finally, the Plaintiffs rely upon the expert reports to create a duty upon which they can base their negligence claim. As described above, whether a duty exists is a question of law, and must be rooted in

statutes, rules, principles and precedents that make up that law. *Moning*, 400 Mich at 460-61. The Plaintiffs' expert cannot create a legal duty through his report that does not otherwise exist.

Because the Plaintiffs have failed to cite any authority to support their argument, the argument is deemed abandoned. See, e.g., *Mitcham*, 355 Mich at 203; *Houghton*, 256 Mich App at 339-340; *Odom*, 327 Mich App at 311. The conclusory statements made by the Plaintiffs in the Brief and the conclusory statements made by the expert in its Report are not sufficient.

Based on the foregoing, summary disposition pursuant to MCR 2.116(C)(10) is granted in favor of Travelers as to the Plaintiffs' negligence claims because there are no genuine issues of material fact.

**VIII**  
**Summary Disposition as to**  
**Counts V, VI, and VII - Indemnity**

**A**  
**Law**

Michigan law recognizes three sources of a right to indemnity: the common law, an implied contract, and an express contract. *Langley v Harris Corp*, 413 Mich 592 (1982). The right can only be enforced where the liability arises vicariously or by operation of law from the acts of the party from whom indemnity is sought. *Id.* at 601. Finally, common

law indemnity is only available to a party that can plead and prove freedom from personal fault or active negligence. *Id.* at 597.

## **B Analysis**

The Defendants have argued that there are no claims asserted against the Plaintiffs for which Travelers would need to indemnify them. The Defendants further argue that for the Plaintiffs to be entitled to indemnification, they themselves must be free from any negligence.

The Plaintiffs failed to respond to Traveler's Motion on this issue and did not present any documentary evidence establishing the existence of a material factual dispute regarding this issue. In so doing, the Plaintiffs failed to meet their burden. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *INXS V LLC*, unpub opin. Further, both of the Plaintiffs' experts' reports have attributed some level of negligence to the Plaintiffs themselves. [Response, Exhibit 5, ¶ 21; Exhibit 6, ¶ 7.]

Based on the foregoing, summary disposition pursuant to MCR 2.116(C)(10) is granted in favor of Travelers as to each of the Plaintiffs' indemnity claims because there are no genuine issues of material fact.

**IX**  
**Summary Disposition as to**  
**Count VIII - Contribution**

**A**  
**Law**

MCL 600.2925a controls contribution claims because there is no right to contribution at common law. *Miller v Riverwood Recreation Ctr*, 215 Mich App 561, 564 (1996). A party claiming contribution must show: (1) a joint liability among the parties; and (2) payment by one party of a disproportionate share of that liability. *Downie v Kent Products*, 420 Mich 197, 217-18 (1984).

**B**  
**Analysis**

The Defendants argue that there is no underlying liability for which the Plaintiffs and Travelers are joint tortfeasors. Accordingly, there can be no claim for contribution. The Plaintiffs have failed to respond to this argument or present any evidence as to a joint liability for which a contribution claim could be sought.

Because the Plaintiffs failed to respond to Traveler's Motion on this issue and did not present any documentary evidence establishing the existence of a material factual dispute regarding this issue, the Plaintiffs failed to meet their burden. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *INXS V*, unpub opin.

Based on the foregoing, summary disposition pursuant to MCR 2.116(C)(10) is granted in favor of Travelers as to the Plaintiffs' contribution claims because there are no genuine issues of material fact.

**X**  
**Summary Disposition as to**  
**Count IX - Unjust Enrichment**

**A**  
**Law**

"The elements of a claim for unjust enrichment are: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Barber v SMH (US), Inc.*, 202 Mich App 366, 375 (1993) (citation omitted). In other words, the law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff's expense. *Morris Pumps v Centerline Piping Inc*, 273 Mich App 187, 195 (2006).

Our Court of Appeals has summarized unjust enrichment as follows:

"The essential elements of a quasi contractual obligation, upon which recovery may be had, are the receipt of a benefit by a defendant from a plaintiff, which benefit it is inequitable that the defendant retain." *MEEMIC* [v *Morris*, 460 Mich 180,] 198 [(1999)], quoting *Moll v Wayne Co*, 332 Mich 274, 278-279 (1952). Thus, in order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Barber v SMH (US), Inc*, 202 Mich App 366, 375 (1993). In other words, the law will imply a

contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff's expense.

[*Morris Pumps*, 273 Mich App at 195-196.]

The doctrine of unjust enrichment does not apply “when an express contract already addresses the pertinent subject matter.” *Liggett Restaurants Group, Inc v City of Pontiac*, 260 Mich App 127, 137 (2003). See also *Landstar Express America, Inc v Nexteer Auto Corp*, 319 Mich App 192, 202-203 (2017) (dismissal was proper as there was an express contract covering the same subject matter as the equitable claims); *Hudson v Mathers*, 283 Mich App 91, 98 (2009) (a “contract may not be implied under a theory of unjust enrichment” when the parties have “an express contract in place”); *King v Ford Motor Credit Co*, 257 Mich App 303, 327 (2003) (“a contract will not be implied under the doctrine of unjust enrichment where a written agreement governs the parties’ transaction”).

## **B Analysis**

The Defendants argue that there is an express contract between the parties and that no other contracts exist. The Defendants further argue that the Plaintiffs have failed to articulate any benefit that the Plaintiffs conferred upon Travelers for which an inequity resulted. The Plaintiffs have failed to respond to this argument or provide any evidence of benefits conferred or inequity felt by the Plaintiffs.

The Plaintiffs failed to respond to Traveler's Motion on this issue and did not present any documentary evidence establishing the existence of a material factual dispute

regarding this issue. In so doing, the Plaintiffs failed to meet their burden. “Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute.” *INXS V LLC*, unpub opin.

Based on the foregoing, summary disposition pursuant to MCR 2.116(C)(10) is granted in favor of Travelers as to the Plaintiffs’ unjust enrichment claims because there are no genuine issues of material fact.

**ORDER**

In light of the foregoing Opinion,

Defendant’s Motion for Summary Disposition pursuant to MCR 2.116(C)(10) as to all Counts is GRANTED.

THIS RESOLVES THE LAST PENDING CLAIM AND CLOSES THIS CASE.

/s/ Michael Warren

---

**HON. MICHAEL WARREN  
CIRCUIT COURT JUDGE**

