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**STATE OF MICHIGAN**
**IN THE SUPREME COURT**

CARLONDA NAISHE SWOOPE,

Plaintiff-Appellant

vs.

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellee.

Supreme Court No. 166790

Court of Appeals No. 364924
Wayne County Circuit Court
Case No. 21-011402

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## APPENDIX TO DEFENDANT-APPELLEE'S SUPPLEMENTAL BRIEF (MOAA)



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| | | |
|---|---|---|
| | • *Mull v Citizens Ins Co*, unpublished opinion of the Court of Appeals, issued Feb. 17, 2022, *4 (Docket No. 354725)<br><br>• *Davis v Metlife Ins Co*, unpublished opinion of the Court of Appeals, issued Jan. 19, 2023, *6 (Docket Nos. 359313, 360265)<br><br>• *Criswell v Avis Rent a Car Sys*, unpublished opinion of the Court of Appeals, issued July 28, 2022, at *3 (Docket No. 355626)<br><br>• *Amos v Progressive*, unpublished opinion per curiam of the Court of Appeals, issued July 13, 2023 (Docket No. 360091)<br><br>• *Pena-Cruz v State Farm Mut Automobile Ins Co*, unpublished opinion of the Court of Appeals, issued Mar. 14, 2024, *15-16 (Docket No. 364284)<br><br>• *Witt v Smithson*, an unpublished opinion of the Court of Appeals issued Jan. 16, 2025 (Docket No. 367792)<br><br>• *VHS of Mich, Inc v Allstate Ins Co*, unpublished opinion of the Court of Appeals, issued Dec. 6, 2024 (Docket No. 368369) | |
| **I** | Introduced Bill | 188-190 |
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# EXHIBIT A

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# STATE OF MICHIGAN

# COURT OF APPEALS

CARLONDA NAISHE SWOOPE,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellant.

UNPUBLISHED
December 14, 2023
APPROVED FOR PUBLICATION
January 25, 2024
9:20 a.m.

No. 364924
Wayne Circuit Court
LC No. 21-011402-NF

Before: LETICA, P.J., and O'BRIEN and CAMERON, JJ.

CAMERON, J.

In this interlocutory appeal arising under Michigan's no-fault act, MCL 500.3101 *et seq.*, defendant, Citizens Insurance Company of the Midwest, appeals by leave granted[1] the order denying its motion for summary disposition under MCR 2.116(C)(10) (no genuine question of fact).[2] We reverse and remand for further proceedings consistent with this opinion.

## I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Plaintiff, Carlonda Naishe Swoope, was injured in an October 27, 2020 automobile accident. Plaintiff was driving a car owned by a friend. At the time of the accident, she did not have a valid driver's license. Neither plaintiff, nor the car's owner, maintained an automobile insurance policy. As a result, plaintiff sought personal protection insurance (PIP) benefits for her

[1] *Swoope v Citizens Ins Co*, unpublished order of the Court of Appeals, entered March 24, 2023 (Docket No. 364924).

[2] Defendant also moved for summary disposition under MCR 2.116(C)(8) (failure to state a claim), but it is apparent from the order that the trial court denied summary disposition under subsection (C)(10).

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injuries through the Michigan Assigned Claims Plain (MACP). MACP assigned plaintiff's claim to defendant.

Defendant denied coverage and plaintiff filed the instant complaint seeking payment for PIP benefits. Thereafter, defendant moved for summary disposition, arguing there was no genuine question of fact that plaintiff was unlawfully operating the car. The trial court denied the motion. Defendant moved for reconsideration, but that motion was denied. This appeal followed.

## II. UNLAWFUL OPERATION

Defendant argues the trial court erred in denying its motion for summary disposition under MCR 2.116(C)(10) because there was no genuine question of fact plaintiff was unlawfully operating the car, and therefore was not entitled to PIP benefits under the no-fault act. We agree.

### A. STANDARD OF REVIEW

A (C)(10) motion for summary disposition "tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In evaluating these motions, "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion." *Id*. (citation omitted). If the movant satisfies this burden,

> The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).]

This case also involves issues of statutory interpretation, which we review de novo. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009).

> The paramount rule of statutory interpretation is that we are to effect the intent of the Legislature. To do so, we begin with the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written. In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory. [*Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001) (citations omitted).]

### B. LAW AND ANALYSIS

Under the no-fault act, automobile insurers are required to provide PIP benefits for certain injuries related to motor vehicle accidents. *Kemp v Farm Bureau Gen Ins Co of Mich*, 500 Mich 245, 252; 901 NW2d 534 (2017). "The no-fault act's initial scope of coverage for PIP benefits is

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set forth in MCL 500.3105(1) . . . ." *Id*. This statute states that insurers are "liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." MCL 500.3105(1). But, "[t]he no-fault act permits an insurer to avoid coverage of PIP benefits under certain enumerated circumstances." *Meemic Ins Co v Fortson*, 506 Mich 287, 303; 954 NW2d 115 (2020). MCL 500.3113(a) articulates one of these circumstances:

> 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:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. [MCL 500.3113(a).]

In *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1, 10; 972 NW2d 860 (2021), this Court set forth a three-prong test to evaluate claims under MCL 500.3113(a). *Ahmed* held that "the disqualification applies to any person (1) willingly operating or willingly using a motor vehicle or motorcycle that (2) was unlawfully taken by someone, and (3) the person seeking benefits knew or should have known that the motor vehicle was taken unlawfully." *Id*. (quotation marks omitted). This "should have known" standard requires a person to determine whether they have permission to take a vehicle "because a person may not simply take what he knows to be another's property without taking any steps to determine if the owner authorized the taking." *Id*. at 27. Indeed, "the mere assumption or supposition that it must be permissible to take a third party's property, without more, does not satisfy the 'should have known' standard of MCL 500.3113(a)." *Id*.

"[A]ny violation of the criminal law that leads to a taking of a motor vehicle will constitute an 'unlawful taking' for purposes of MCL 500.3113(a)." *Id*. at 11 n 5. Violations of criminal law include certain provisions of the Michigan Vehicle Code, MCL 257.1 *et seq*. For example, MCL 257.301 concerns the legality of operating a vehicle without a valid driver's license. It states, in part: "[A]n individual shall not drive a motor vehicle on a highway in this state unless that individual has a valid operator's or chauffeur's license with the appropriate group designation and indorsements for the type or class of vehicle being driven or towed." MCL 257.301(1). Violations of this statute are considered "unlawful" for purposes of MCL 500.3113(a) because there are related criminal penalties. See MCL 257.901; see also *Ahmed*, 337 Mich App at 20 n 8 ("Violation of [MCL 257.301 and MCL 257.310e(4)] was 'unlawful' . . . because there are associated criminal penalties.").

Defendant's motion for summary disposition focused on the second and third prong of the *Ahmed* test.[3] It moved for summary disposition, in part, because plaintiff admitted she did not have a valid driver's license at the time of the accident. In support of this assertion, defendant

[3] On appeal, the parties agree the first prong—whether plaintiff operated the vehicle willingly—is not at issue.

attached plaintiff's deposition testimony in which she admitted she did not have a valid license. This information satisfied the second prong because operating a vehicle without a valid license is unlawful for purposes of MCL 500.3113(a).

This evidence also satisfied the third prong, whether plaintiff knew or should have known the motor vehicle was taken unlawfully. Plaintiff testified she knew her license was suspended when she took the vehicle and therefore she should have understood that driving the vehicle without a valid license was unlawful. See, e.g., *Ahmed*, 337 Mich App at 26-27 (drivers should know their driving status). Plaintiff also admitted during her deposition that the vehicle's owner did not give her permission to drive the car. As noted above, the "should have known" standard is only satisfied if the plaintiff took any steps to determine whether "the owner authorized the taking." *Id*. at 27. By plaintiff's own admission, she failed to take any steps to ensure the taking was authorized. Accordingly, defendant satisfied its preliminary burden to demonstrate that there existed no genuine question of fact for a jury to resolve.

The burden then shifted to plaintiff to demonstrate a genuine question of material fact to be resolved at trial. Although plaintiff presented some documentary evidence in support of her response to the motion for summary disposition, none of this evidence showed she had a valid driver's license at the time of the accident. Moreover, she offered no evidence showing the vehicle's owner authorized her use of the vehicle. She, therefore, failed to meet her burden as the nonmoving party. *Quinto*, 451 Mich at 362-363. Summary disposition should have been granted on this basis, and the trial court erred when it concluded otherwise.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron
/s/ Anica Letica
/s/ Colleen A. O'Brien



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# EXHIBIT B

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CARLONDA NAISHE SWOOPE,
Plaintiff,
vs. Case No. 21-011402-NF
Hon. Dana Margaret Hathaway
CITIZENS INSURANCE COMPANY OF THE MIDWEST,
Defendant.
/

DEPOSITION OF: CARLONDA NAISHE SWOOPE
DATE: Thursday, March 31, 2022
TIME: 1:05 P.M.
LOCATION: Hall Makled, P.C.
23756 Michigan Avenue
Dearborn, Michigan
REPORTER: Lory Helland, CER-#3778
Certified Reporter

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APPEARANCES:

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I N D E X

WITNESS PAGE
CARLONDA NAISHE SWOOPE
Examination by Ms. Duenas 7

E X H I B I T S

NUMBER IDENTIFICATION PAGE

None offered.

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Dearborn, Michigan
Thursday, March 31, 2022
1:05 P.M.
* * *

COURT REPORTER: Before I swear in the deponent, I would like to confirm that all parties agree to allow me to administer the oath to the deponent over the phone. If there is an objection, please state it now.

(No objections.)

CARLONDA NAISHE SWOOPE

having been first duly sworn, was examined and testified as follows:

MS. DUENAS: Let the record reflect that this is the deposition of -- how do you pronounce your first name? Is it Carlonda Swoope?

THE WITNESS: Yes, Carlonda Swoope.

MS. DUENAS: -- of Carlonda Swoope, taken pursuant to Notice and to be used for all purposes under the Michigan Court Rules and the Michigan Rules of Evidence.

Ms. Swoope, my name is Arminia Duenas. I represent Citizens Insurance company, which is an insurance company that's been assigned by the State of Michigan to handle the No-Fault PIP benefits related

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to this October 27th, 2020, motor vehicle accident.
Have you ever taken a deposition before?
THE WITNESS: Yes.
MS. DUENAS: When was that?
THE WITNESS: When was that?
MR. MAKLED: She had a dep, Arminia, in her bodily injury case.
MS. DUENAS: Okay, for third party.
Is that the only deposition you've ever had, Ms. Swoope?
THE WITNESS: Yes.
MS. DUENAS: So I'm just going to put a couple of the guidelines on so it's just fresh in our minds.
If your answer is "yes", try to say "yes". If it's "no", please say "no".
If you say "uh huh" or "uh uh", one of us will stop you and try to make sure that it's known for the record if that was a "yes" or a "no" because the court reporter is taking down everything that you're saying, and she cannot make a determination as to what your meaning is. So we want to make sure when you answer a question "yes" or "no", and obviously, not all of your answers are going to be "yes" or "no", but when they are, we want there to be a clear "yes" or a



clear "no".
Everything has to be verbal. So if you gesture in any way we have to verbalize it for the record, because -- although we're on Zoom, it's not being recorded in a, you know, a CD to be taken to court if this had to go to trial, you know, to that effect.
If you don't understand what I'm asking you, just let me know. I'll rephrase it. I'm really -- this is just a discovery dep. I'm just trying to get some information as to your prior medical history and you're limitations and all of that.
So that's pretty much it -- oh, one last thing, with the State of Michigan, there was a completion of an application, and with that completion of an application for the State of Michigan, the only thing that they require is that there be only truthful information, truthful answers.
I know that you're under oath, but it's very important to know that if there -- if it's determined that there was a material misrepresentation in your statement and/or a false statement, a motion can be filed. So I like to give people notice of that because it's pretty significant when it comes to



assigned claims.
Okay?
THE WITNESS: Okay.
E X A M I N A T I O N
BY MS. DUENAS:
Q. Please state your full name for the record and spell your last name, please?
A. Carlonda Naishe Swoope, S-W-O-O-P-E.
Q. Have you been known by any other names?
A. No.
Q. So never married; is that correct?
A. No.
Q. What's your date of birth?
A. [redacted]
Q. How old are you?
A. 33.
Q. And what -- are you a U.S. citizen?
A. Yes.
Q. Were you born in the United States?
A. Yes.
Q. What state were you born in?
A. Michigan.
Q. Have you lived in Michigan your entire life?
A. Yes.
Q. Do you have any restrictions related to driving?



A. Yes.
Q. Are they restrictions given by a doctor?
A. No.
Q. Is it because you don't have a driver's license?
A. Yes.
Q. Have you ever owned a driver's license?
A. Yes.
Q. And what happened to your driver's license?
A. It got revoked because I had tickets to pay and I didn't pay them.
Q. And at that time of this October 27th, 2020, accident, were you driving on a revoked license?
A. Yes. It was suspended, I'm sorry.
Q. I'm sorry, suspended?
A. Yeah.
Q. How long has your driver's license been suspended?
A. I'm not sure.
Q. Has it been years?
A. Yes.
Q. And when you were -- you were driving the vehicle at the time of this accident; is that correct?
A. Yes.
Q. And you knew at the time of the accident that you did not have a valid driver's license; is that correct?
A. Yes.

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Q. And you asked to borrow someone's vehicle; is that correct?
A. I didn't ask, I just got the car because I had a family emergency. My mom needed to go to the hospital. So I was trying to hurry up to get to her.
Q. So how did you get the keys to the vehicle?
A. I just took them.
Q. So are you living with someone that has a vehicle?
A. No.
Q. So where were you when you took the keys to this vehicle?
A. I was at my friend's house in Westland.
Q. What type of vehicle was it?
A. A Saturn Vue.
Q. And whose vehicle -- who's the owner of the vehicle?
A. Kandice Valentine.
Q. You said Kandice Valentine is your friend; is that correct?
A. Yes.
Q. So you're at Kandice's house at the time of the accident -- on the date of accident. What were you doing at Kandice's house in Westland?
A. We were -- I just spent the night over her house and I left that morning to go take care of my mother.

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Q. How did you get over to the house?
A. She picked me up.
Q. And then tell me how -- so you're there the day before, which would be October 26th; is that correct?
A. Yes.
Q. And you spend the night, and at what point and what time do you take the vehicle?
A. I can't recall exactly what time, but I know it was during the morning, late morning. My mother called me and told me her chest was hurting, and the ambulance wasn't coming fast enough. So I tried to get there as fast as possible.
Q. Okay. Sorry, I thought I was going to --
So have you ever used this vehicle that you -- that's involved in this accident before this date?
A. No.
Q. Never at any point?
A. No.
Q. And you didn't ask for permission to use the vehicle?
A. No.
Q. So is it fair to say you had no permission to operate this vehicle at the time that you were operating it?
A. Correct.
Q. So prior to beginning this deposition, we talked about

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what type of PIP benefits are being alleged in this accident, and you're not making a wage loss claim; is that correct?
A. Correct.
Q. And you're not making a replacement care claim, which is like someone coming in and cleaning your house or doing household chores; is that correct?
A. Correct.
Q. And you're not making an attendant care claim; is that correct?
A. What's that?
Q. Well, that's like nursing, helping you in and out of the shower, getting dressed.
A. That's correct.
Q. This is purely for medical billing, correct?
A. Yes.
Q. Now, I don't see it on you, that's why I'm asking. I'm also on Zoom. Are you wearing a brace to any part of your body?
A. Not right now, no.
Q. Was there a doctor that prescribed a brace after this accident?
A. Yes.
Q. And what doctor prescribed the brace?
A. Dr. Shukr.

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Q. Where does Dr. Shukr work out of?
A. Pain Management, Michigan Pain. It's on Woodward.
Q. Let me just -- I'm going to pull up your -- the witness list that I have just so that -- is it Dearborn Pain Specialists?
A. Excuse me?
Q. Or is it -- let's see. This will help me. I'm going to move right to the -- Dr. Shukr. Oh, Shukr, S-H-U-K-R?
A. Yes.
Q. That's Dearborn Pain Specialists. So Dr. Mustafa Mohamad Shukr?
A. Yes.
Q. From Dearborn Pain Specialists, prescribed what type of brace?
A. A back brace, but his -- he has two locations. I go to the one on Woodward.
Q. Have you ever gone to the one in Dearborn?
A. No.
Q. Are you still getting treatment from Dearborn Pain Specialists?
A. Yes.
Q. When's the last time you received treatment?
A. Last month. I had an appointment today, but I had to reschedule because of the deposition.

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Q. And what type of treatment are you getting from Dearborn Pain Specialists?
A. I get back shots.
Q. How often do you get injections to your back?
A. Once a month, but I haven't been getting them because I was supposed to get nerve surgery, but I've been scared to get it. So I've just been prolonging.
Q. When you say "nerve surgery", do you mean that they're going in to burn a nerve?
A. Yes.
Q. And that's to your back?
A. Yes. Back and neck.
Q. Back and neck?
A. Yes.
Q. Now, do you know if anybody at Dearborn Pain Specialists actually ordered your prior medical records and reviewed them before making any type of recommendations with regard to surgery?
A. I believe so.
Q. Did you have any neck or back pain before this accident?
A. No.
Q. And so you're saying that Dr. Shukr prescribed a back brace, but you're not wearing that today, correct?
A. Correct.

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Q. Did he prescribe any other braces to any other parts of your body outside your back?
A. No.
Q. Now, I don't see a cane in the room. Have you been prescribed a cane for any purpose, any reason after this accident?
A. No.
Q. Are you a smoker?
A. No.
Q. Are you a medical marijuana holder, a cardholder?
A. No.
Q. Do you smoke marijuana?
A. No.
Q. What's your current address?
A. 14109 Riverview Street. I just moved there last April. At the accident, it was 4722 Trumbull Street.
Q. So you say last April, April 2021, correct?
A. Yes.
Q. And are you living with anyone?
A. Just my two children.
Q. And your two children, is one named Lauren; is that correct?
A. Yes.
Q. How old is Lauren?
A. 16.

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Q. And is it Drayton?
A. Yes.
Q. How old is Drayton?
A. 12.
Q. Now, I have that you also live with your mother; is that correct, or no?
A. I did.
Q. So did you live with your mother when you lived on Trumbull?
A. Yes.
Q. So from the time of this accident -- how long did you live at 4722 Trumbull in Detroit, Michigan?
A. So I got my house in April, but I didn't move out until maybe June, July, maybe.
Q. But at the time of this accident of October 27th, 2020, you were living at 4722 Trumbull Street, Detroit, Michigan, correct?
A. Yes.
Q. And you were living with your mother and your son and your daughter, correct?
A. Yes.
Q. Anybody else you were living with at that time?
A. No.
Q. Okay.
And how long had you lived on Trumbull

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Street in that address, or at that address?
A. Maybe three years.
Q. Is that a house or an apartment?
A. It's a townhome.
Q. Townhome?
Is that townhome subsidized by Section 8 or the State of Michigan in any way?
A. Yes.
Q. And is that in your mother's name?
A. Yes.
Q. And when you moved out in April but fully moved out in June or July, the house that you're in now at the 14109 Riverview Street, is that also a Section 8 housing?
A. No.
Q. Are you subsidized in any way from the State of Michigan for that particular address?
A. No.
Q. And is that a house or a townhouse?
A. It's a townhouse, yes.
Q. At the time of the October 27th, 2020, accident, were you working?
A. No.
Q. And you're not currently working, correct?
A. Yes.



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Q. And are you receiving Social Security Disability?
A. No.
Q. How are you paying your bills?
A. I know said I -- I said I worked, yes. I worked.
Q. Oh, you do work? You're currently working?
A. Yes.
Q. I'm sorry. I missed that completely. Where are you working? I'm sorry. Where are you working?
A. I work at Amazon.
Q. How long have you worked at Amazon?
A. Since November.
Q. Of last year or the year before?
A. Of last year.
Q. And what do you do there?
A. Just move the little, small package. They have me -- what is it called when you get like --
Q. Restricted?
A. Yeah, I have restrictions, yes.
Q. What type of restrictions do you have?
A. They give me four extra breaks, and I don't lift anything over 20 pounds. Just small packages that I move and scan. I scan it on a robot.
Q. So they hired you after this accident knowing that you had these restrictions?
A. Yes.

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Q. Were there any letters or anything, to your knowledge, from your doctors that were generated and created for Amazon to say that you could work there?
A. Yes.
Q. What doctor did that?
A. Shukr.
Q. He wrote a letter to Amazon that said that you could work?
A. Yes.
Q. But within those parameters and restrictions, correct?
A. Yes.
Q. And do you work full time?
A. Yes.
Q. And what is full time at Amazon?
A. 10 hours.
Q. Per day?
A. Yes.
Q. That's full time. How many days do you work?
A. Four -- four days.
Q. That's good. Four days at 10 hours per day?
A. It's long.
Q. Yeah, but then you get the three days off, which is nice.
So you moved out of your mom's house. Your mom did not move with you, correct?

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A. Correct.
Q. And you're only living with your children, there's nobody else in that household, correct?
A. Correct.
Q. And at the time of this accident, which is October 27th, 2020, did your mom own a vehicle?
A. No.
Q. Did you own a vehicle at that time?
A. No.
Q. So there was nobody in the household that had a vehicle or used a vehicle on a regular basis; is that fair to say?
A. Correct.
Q. And you've never been married. So you don't have a spouse that has a policy, correct?
A. Correct.
Q. And I know these are going to sound odd, these questions, like, it's kind of obvious, but I need to ask them so that we have it on the record and that there's no question about it.
So no relative with a motor vehicle?
A. No.
Q. And then you did not have -- to your knowledge, you weren't listed on a personal automobile policy, correct, at the time of the accident?

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A. Correct.
Q. Did you have health insurance at the time of the October 27th, 2020, accident?
A. Yes.
Q. And what type of health insurance did you have?
A. Molina.
Q. Is that through the State of Michigan?
A. Yes.
Q. Now, at the time of the accident, were you working at all?
A. No.
Q. Prior to this accident, when was the last time you had worked?
A. I can't remember.
Q. Was it like three -- was it more than three years?
A. No. It was shorter than that. It was probably maybe a year.
Q. Why did you stop working?
A. It just wasn't for me anymore.
Q. The job wasn't?
A. Yes.
Q. What type of work did you do?
A. Waitress/dancer.
Q. Where was that at?
A. BT's, Dearborn.

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Q. What is that?
A. BT's, Dearborn and Tycoon, they're owned by the same people.
Q. At the time of the October 27th, 2020, accident, did you have a primary care physician, a doctor that you would go to if you needed to get a physical or if you had a cold?
A. No.
Q. And you said that you don't have a driver's license, but did you have a state identification card at the time of the accident?
A. Yes.
Q. Do you know if it was the same number as your prior driver's license number because sometimes they just transfer it over?
A. I believe it was the same thing.
Q. We're going to go off the record just to confirm your social security number. So we're off the record currently. What is your social security number?
(Off the record 1:27 P.M.)
(Back on the record 1:27 P.M.)
CONTINUING BY MS. DUENAS:
Q. We'll go back on the record. The last four digits of the social security number is [redacted]. Have you ever used a different social security number?



A. No.
Q. We talked about you have a son and a daughter. Are those your only children?
A. Yes.
Q. Are you left-handed or right-handed?
A. Right.
Q. Do you have any pre-existing medical conditions for which you treat on a regular basis?
A. Just asthma, But that's, you know, here or there. If I need a breathing treatment or something.
Q. I was going to ask, do you have -- are you hospitalized ever for breathing treatments?
A. No. Just when I was a kid.
Q. And so have you ever been diagnosed with high cholesterol?
A. No.
Q. How about high blood pressure?
A. No.
Q. How about diabetes?
A. No.
Q. Have you ever told a doctor prior to this October 27th, 2020, accident that you had anxiety or depression?
A. No.
Q. At the time of the October 27th, 2020, accident, were



you being prescribed any type of medication for any reason?
A. No.
Q. As you sit here today, are you being prescribed any type of medication?
A. Yes.
Q. And what type of medication or tions are you being prescribed?
A. Lidocaine, Norco 7.5 and naproxen and tizanidine or something like that. I can't say the name, but it's T-I-Z-A-N-D-I-N-E (sic), I believe.
Q. And what's that for?
A. For -- for the pain to -- the inflammation.
Q. And then you said Norco; is that correct?
A. Yes.
Q. And that's for pain as well?
A. Yes.
Q. And then you gave another. Is it lidocaine? Is that a patch or a cream?
A. A patch.
Q. And then what was the other last one?
A. Naproxen.
Q. And what is that for, to your knowledge?
A. Inflammation also, I believe.
Q. How often do you take the naproxen?



A. Maybe every other day, depending on if I'm in pain or not.
Q. So is the naproxen as needed?
A. Yes.
Q. And then the -- the other medication for -- that you're taking for -- it's the T-I-Z-A-N-D-I-N-E. What is -- how often are you taking that, is that as needed as well?
A. Yes.
Q. And then the Norco, do you take that pain medication every day?
A. Not every day. Just when I need it. Like, before I start my day, if I feel bad getting out of bed or something like that.
Q. So are all the medications that you're being prescribed after the accident taken as needed on a daily basis when you determine that you need it or if you don't need it?
A. Yes.
Q. And then is that the same with the patch?
A. Yes.
Q. And who's prescribing it?
A. Shukr.
Q. Is that the only doctor that you're currently receiving treatment from?

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A. Yes.
Q. How long has that been the only doctor you're receiving treatment from?
A. For it to be the only doctor, it's been since January.
Q. Of this year or last year?
A. Of this year. I was seeing the physical therapy doctor also for a year.
Q. Is that for Care (sic) Physical Therapy?
A. Yes.
Q. And how long were you getting treatment from -- it's specifically identified as Care Physical Therapy, correct?
A. Yes. Up until January.
Q. Was it right after the accident in October? Was it November to January or how long were you getting treatment there?
A. Yeah. It was like right after the accident, it was November to -- this year in January.
Q. How often were you going?
A. Three times a week.
Q. So to be clear, you're going three times a week from November 2020 to January 2022?
A. Yes.
Q. Did you ever get a bill?
A. No.

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Q. Did you think that the bills were being paid?
A. Yes.
Q. Is that because you never received a bill? Did you ever have any conversations with anybody in the office regarding any billing?
A. No. I didn't know anything.
Q. Three times a week. So was that Monday, Wednesday, Friday or when would you go?
A. Monday, Wednesday, Thursday. If I missed a day, then I'll make it up on a Friday or something like that.
Q. And how would you get there?
A. Their transportation.
Q. Now, the transportation, did you think that was part of the bill for the Care Physical Therapy or did you think that was a separate bill?
A. I thought it was part of the bill.
Q. Was there ever a conversation that you had with anybody regarding payment for the transportation company?
A. No.
Q. And did you schedule the transportation or did Care Physical Therapy schedule it?
A. Care Physical Therapy scheduled it.
Q. So three times a week, and it never went down from three times a week to two times a week, it was just always three times?
A. Yes.
Q. And to what parts of your body did you get the physical therapy?
A. My back and my neck.
Q. And when the transportation company would pick you up, did they have other people in the vehicle as well going to Care Physical Therapy?
A. Sometimes.
Q. Did you ever have to, when you'd get in the car, be driven to someone else's house before -- to pick up someone before you would go to physical therapy?
A. Yes.
Q. Did you have to sign any paperwork related to the transportation?
A. Not that I can recall.
Q. Did you sign any paperwork as far as Care Physical Therapy that was called -- and I don't, you know, you may remember, you may not remember -- sometimes they give you a form called an assignment. Do you know if you signed any paperwork with regard to Care Physical Therapy that was identified or labeled as an assignment?
A. I'm not sure.
Q. Okay. That makes sense to me. They're fairly --

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they're getting -- they're more common now, but it's fairly new to have that go on.
So -- so just getting back to your prior medical history, have to ask for -- all these questions specifically. Prior to this accident, had you ever received physical therapy?
A. No.
Q. Prior to this accident, had you ever told the doctor that you had back pain for any reason?
A. No.
Q. Prior to this October 27th, 2020, accident, did you ever tell anybody you had neck pain?
A. No.
Q. How about shoulder pain, be it left or right, before this accident?
A. No.
Q. How about pain in your hip, be it left or right side?
A. No.
Q. Had you ever gone to a chiropractor for any reason before this October 27th, 2020, accident?
A. No.
Q. Did you get -- at any point in your life ever have an image, before this accident, be it x-ray, MRI, or CT Scan, an image of any kind before this accident?
A. I've had an x-ray before.



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Q. To what part of your body, if you recall?
A. My chest to check and see if I had pneumonia, I believe.
Q. Did you get pneumonia a lot due to your asthma when you were younger or was it just one time?
A. One time.
Q. And that was just to check. Were you diagnosed with pneumonia?
A. Yes. I had a little bit of pneumonia in my lungs.
Q. Had you ever been hospitalized for any reason outside of childbirth before this accident?
A. No.
Q. Had you ever been diagnosed with a broken bone before this accident?
A. No.
Q. Had you ever received any type of pain injections before this accident?
A. No.
Q. And had any doctor at any point identified you as disabled before the accident for any reason?
A. No.
Q. Did you have any psychological conditions for which you received treatment, be it depression, anxiety, bipolar, schizophrenia, anything like that before the accident?

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A. No.
Q. Have you ever had any type of injury resulting from domestic violence?
A. No.
Q. Have you ever been shot by a gun?
A. No.
Q. Have you ever been stabbed?
A. No.
Q. Had you ever had any issues with your foot, either left or right, before this accident?
A. No.
Q. It sounds like before this accident you didn't get a lot of -- you didn't have a lot of medical treatment; is that fair to say?
MR. MAKLED: Object to form and foundation.
MS. DUENAS: Sure.
CONTINUING BY MS. DUENAS:
Q. It doesn't look like you were treating -- or you had any type of injuries before this accident that you treated for; is that correct?
A. Excuse me. Say that again, I'm sorry.
Q. Sure.
Because I can't ask you every question under the sun. I'm trying to get an understanding of your medical history. It looks like it's fairly, you

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know, unremarkable, but I want to know, have you ever received treatment for any type of injury or medical condition before this accident?
A. No.
Q. How about thyroid? Did you ever have an issue with your thyroid?
A. No.
Q. Because I think I saw -- and I just want to -- I thought I saw an enlarged thyroid. Have you ever gotten treatment for an enlarged thyroid?
A. When I went for my MRI after the accident, they told me that I had one. So yeah.
Q. But that wasn't something that you had issues with or you were getting treatment with before; is that correct?
A. No, correct.
Q. Have you ever been in the military?
A. No.
Q. Have you ever applied for Social Security Disability?
A. No.
Q. Have you ever been convicted of a crime of dishonesty?
A. No.
Q. How about untruthfulness?
A. No.
Q. How about theft?

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A. No.
Q. Are you a felon?
A. No.
Q. Have you ever had a slip and/or fall that resulted in injury?
A. No.
Q. Have you ever been injured at work and made a workers' compensation claim?
A. No.
Q. Have you been involved in any other motor vehicle accidents outside of the one for which you're here today?
A. No.
Q. Did you graduate from high school?
A. I have my GED.
Q. And did you take any college courses?
A. No, but I took some other classes. Training.
Q. Do you have a license to do any type of work?
A. No.
Q. What's the title of -- your job title at Amazon?
A. I guess it would be sorter.
Q. And you're not required to drive a truck or deliver anything, are you, for Amazon?
A. No.
Q. Do you file taxes yearly?

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A. Yes.
Q. Do you recall how the motor vehicle happened for which we're here today?
A. Yes.
Q. And I keep saying it was October 27th, 2020; is that correct?
A. Yes.
Q. And did you have anybody in the vehicle with you at the time of the accident?
A. No.
Q. And what time of day was it?
A. Late morning.
Q. And we talked about this earlier. You were operating a Saturn, correct?
A. Yes.
Q. And that was the 2008 Saturn owned by Kandice Valentine. Kandice being spelled K-A-N-D-I-C-E, Valentine, correct?
A. Yes.
Q. How long has Kandice Valentine been a friend of yours?
A. Maybe about four years.
Q. And was it dark out or light out?
A. Light.
Q. How long had you been on the road before this accident occurred?

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A. Maybe about 15, 20 minutes.
Q. And where did the accident occur?
A. 75 and Trumbull.
Q. Just tell me what happened on this day. How did the accident occur?
A. I was in the right lane and the truck was in the left lane and then it just started turning and it ran into me. It started turning right and it ran into me. It kept going, but eventually, it stopped.
Q. So you're in the right lane, the truck is to your left?
A. Yes.
Q. So does the truck -- you said the truck driver turned into you, meaning turned into and struck the left side of the vehicle you were driving?
A. Yes.
Q. You said that you were driving to pick up your mother; is that correct?
A. Yes.
Q. To take her to the hospital?
A. Yes.
Q. And Ms. Valentine's house is noted to be on 1918 Eagle Court, Westland, Michigan. Is that where you were at?
A. Yes.
Q. And then from Westland, you were driving to Detroit on Trumbull to pick up your mother?
A. Yes.
Q. Did you have your seat belt on?
A. Yes.
Q. When the accident occurred, was it one impact or multiple impacts to the vehicle?
A. It was one.
Q. After the truck driver strikes the left side of the car, what do you do?
A. Panic. I just sat there.
Q. Do you get out of the vehicle?
A. Yes, because the guy didn't want to give me his insurance. I just checked my car and everything.
Q. So you're physically able to get out of the vehicle. Did you walk over to the other person to try to get his information?
A. Yes.
Q. Did you call the police at all?
A. Yes.
Q. And did the police ever arrive to the scene?
A. Yes.
Q. And when they arrived, was the truck driver still there?
A. Yes.
Q. Did you ask for an ambulance to come to pick you up?

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A. No, I didn't.
Q. Did the police officer ask you if you needed an ambulance?
A. Yes.
Q. And you declined at that point?
A. Correct.
Q. Did you -- was the car that you were in, that Saturn, drivable after this accident?
A. No.
Q. Was it towed from the scene --
A. Yes.
Q. -- to your knowledge?
Do you know if your mom ever made it to the hospital on this day?
A. Well, that was why I didn't get an ambulance because I wanted to get to her and we went together in a Uber.
Q. So at the scene of the accident, did you call an Uber?
A. Yes.
Q. And the Uber picked you up and then you drove to your mom's house; is that correct?
A. Yes.
Q. And then picked up your mom and drove her to the hospital; is that correct?
A. Yes.
Q. What hospital?



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A. Harper.
Q. Now when you were driving your mom to the hospital, did you also get checked out at the hospital?
A. Yes.
Q. And were you treated and admitted or treated and released?
A. Treated and released.
Q. Now, I keep seeing something like you stopped and grabbed things for your children at Burger King on your way to your mother's house. Does that make any sense to you?
A. Yes.
Q. What happened there?
A. That's how I got on 75 and Trumbull. I was getting them food to give to my mom. They were at my mom's house.
Q. And then all of you were going to go to the hospital, you and your children and your mother, or no?
A. No, just me and my mother. My daughter was old enough to watch.
Q. And then -- so you pick her up. You both go to Harper Hospital. You're evaluated. Now were you bleeding from any part of your body after this accident?
A. No.
Q. Did you have any cuts at any part -- to any part of

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your body from this accident?
A. No.
Q. Did you lose consciousness at all?
A. No, not that I can remember.
Q. Are you being treated for a closed-head injury of any kind?
A. No.
Q. Any allegations of memory loss or confusion after this accident?
A. No.
Q. And was your car upon impact pushed into anything, meaning a sign, a curb, another vehicle, anything like that?
A. I don't think so.
Q. So when the police come, do you give a statement to the police officer?
A. Yes.
Q. And you're walking and talking after the accident; is that correct?
A. I was in my vehicle.
Q. So but you never got out of your vehicle?
A. Yes, I did.
Q. So to be clear, did you give a statement to the police officer, the police officer walk up to your window and then take a statement through the car window?

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A. Yes.
Q. And then after that, the police was done with taking down statements. You get an Uber that comes to drive you and your mom to Harper Hospital?
A. Yes.
Q. And do you know if this car was totaled or repaired?
A. She never repaired it.
Q. Did you take any photos of the vehicle?
A. I have a video.
Q. And when was the video taken?
A. Right afterwards.
Q. The same day?
A. Yes.
Q. And did you take that video?
A. Yes.
Q. And does your -- did you give it to your attorney?
THE WITNESS: Do you have it?
(Witness conferred with her attorney)
THE WITNESS: Yes.
CONTINUING BY MS. DUENAS:
Q. Now, are you saying that you received injuries from this accident?
A. Yes.
Q. What type of injuries did you receive from this accident?

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A. Neck and back pain.
Q. Okay.
A. I can't stand for longs amount of time. I have a aching pain constantly. It comes and goes.
Q. So I have neck and back and aching pain. Anything else?
A. No.
Q. Were you contacted by any doctor or facility trying to schedule treatment, appointments after this accident?
A. No.
Q. Were you solicited by anybody after this motor vehicle accident?
A. No.
Q. So no one called you up and said, "Hey, we've made an appointment for you to go somewhere for treatment"; is that correct?
A. Correct.
Q. And you said you're -- so when you go to Harper Hospital, do you tell them that you have neck and back pain?
A. Yes.
Q. Any other pain that you indicated, if you can recall?
A. No.
Q. Do you know if there were any images taken, x-rays, CT Scans or MRIs?

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A. They just gave me a x-ray.
Q. Of your back or your neck, which one?
A. Of my back.
Q. And then you were treated and released, correct?
A. Yes.
Q. Was your mom also treated and released?
A. Yes.
Q. Now were you given any type of prescriptions when you left the emergency room?
A. I think they gave me Motrin.
Q. Who's the next -- where do you go next for treatment?
A. I caught -- We Care Physical Therapy.
Q. What is it?
A. We --
Q. Oh, We Care Physical Therapy?
A. Uh huh.
Q. How did you find out about We Care Physical Therapy?
A. I looked it up, just was looking up.
Q. What did you type in to look up physical therapy for We Care?
A. Good physical therapist.
Q. You typed in "good physical therapist", and We Care Physical Therapy came up?
A. Yeah.
Q. I'm going to try that.

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A. Yeah, maybe because it was of the area I was in, I was close to Southfield and it was right there.
Q. There are -- pick a stone up and throw it, you'll hit a physical therapist in Southfield.
So no one recommended We Care, it's something you Googled and found for yourself?
A. Yes.
Q. Did you get any type of relief from the treatment that was provided at We Care Physical Therapy?
A. Yes.
Q. What type of relief did you receive from We Care?
A. My back became a little bit stronger, even though I still get pain, but it became more manageable to deal with.
Q. Why did you stop treatment with them? Because I see -- you know, in January of 2020? 2022? Why did you stop treatment?
A. Because I had to work.
Q. Okay.
Do you know if there are any bills outstanding due but owed to We Care Physical Therapy?
A. Yes.
Q. And do you know how much is outstanding due and owed?
A. No, I don't.
Q. Did you ever get a bill from We Care Physical Therapy?

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A. No.
Q. How do you know there's a bill outstanding due and owed?
MR. MAKLED: I have a bill, Arminia, that I'll be sending to you.
MS. DUENAS: Okay.
CONTINUING BY MS. DUENAS:
Q. So is that something that you found out after you -- or before you filed the lawsuit?
A. Yes.
Q. Now, is your attorney also the attorney for your third party?
A. Yes.
Q. So you go to We Care Physical Therapy, you went there for over a year, correct? Three times a week for a year?
A. Yes.
Q. The first time you find out about owing anything is when you filed your lawsuit and you start to look into it, correct? Because there's no bills being sent to your house?
A. Correct.
Q. What do you think of that? What's your -- and I'm just asking your opinion. What's your opinion on a doctor that lets you treat somewhere for over a year

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and then just lets the bill escalate and escalate? Do you have an opinion about that?
A. No, no.
Q. No? Is that normal to you, because I can't go to my doctor without paying a $25 co-pay, but, you know, is that normal to you?
A. No.
Q. That's why you didn't know that there was a bill that was piling up, correct?
A. Correct.
Q. Okay.
And when you found out that there was a bill that was due and owed by We Care Physical Therapy, did that make you upset?
A. Yeah, yes.
Q. Because would you have liked to have known that there was an issue with payment at some point?
A. Yes.
Q. Do you know if We Care Physical Therapy ever sent any of your bills to your personal health insurance for consideration of payment? Do you know that, if that happened?
A. No.
Q. So do you know if -- and you may not know, but do you know if there is a lien of any kind? And what I mean



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is, did any of your doctors or any facilities for which they've provided treatment on a regular basis send any of your bills to your Molina or Medicaid health insurance? Do you know if that happened?
A. No.
Q. So I see We Care Physical Therapy and then the Dearborn Pain Specialists. How did you get to Dearborn Pain Specialists?
A. Same -- their transportation. I would go there after I left therapy.
Q. No, I mean how did you start going to Dearborn Pain Specialists? How did you find out about them?
A. I was recommended by We Care.
Q. Do you know if We Care has any type of ownership interest in Dearborn Pain Specialists?
A. No, I don't believe so.
Q. Did they schedule appointments with Dearborn Pain Specialists on your behalf?
A. No. I did.
Q. And so did you also schedule your own appointments at We Care Physical Therapy?
A. Yes.
Q. So this is what it sounds like. The same time that you're going to We Care Physical Therapy -- because you would only go to Dearborn Pain Specialists

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once a month, right?
A. Yes.
Q. You would make sure that the time that you were going to physical therapy is also one of the times that you would go to the Dearborn Pain Specialists, correct?
A. Yes.
Q. And again, I think we talked about this, but I just want to make it clear for the record if I didn't. Do you know if there's a bill that's outstanding due and owed by Dearborn Pain Specialists?
A. Yes.
Q. And you know that there is a bill for Dearborn Pain Specialists? Do you know how much it is?
A. No.
Q. Again, that's -- they never sent a bill to you, did they?
A. No.
Q. So as far as you know, it could be $100, it could be 60,000. You wouldn't know that because you've never actually received a bill before this litigation, right?
A. Right.
Q. And again, that doesn't seem odd to you? Now, knowing that? Is that weird to you, knowing now that they've never sent a bill and some of these bills weren't

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paid? Does that seem odd to you?
A. Yes.
Q. All right.
So I also see that -- so is Harper Hospital, was it only for -- you only went once for the emergency, the day of the accident?
A. Yes.
Q. And Dearborn Pain Specialists, you are still going to Dr. Shukr once a month, correct?
A. Yes.
Q. And he's providing prescriptions for medications. Does he do that every month or does he do that every three months?
A. Every month.
Q. So you have to go to Dearborn Pain Specialists in order to get your prescriptions refilled, correct?
A. Yes.
Q. And We Care no longer -- or were no longer getting physical therapy there. I see that you went to Focus Imaging at some point; is that correct?
A. Yes.
Q. For MRIs?
A. Yes.
Q. Who prescribed that?
A. Pain Management.

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Q. Is that Dr. Shukr?
A. Yes.
Q. It seemed like to me -- and just correct me if I'm wrong -- you go to Focused (sic) Imaging and you get a lot of films at one time?
A. Yes.
Q. So let's talk about what type of MRIs were -- did you get, and were they all on one day?
A. Yes.
Q. Go ahead.
A. I just know that they scanned my upper body and my back, I believe. I'm not sure exactly what it's called.
Q. So I see the -- an MRI of your neck?
A. Yes.
Q. And was it -- how long were you at -- it looks like it was Focused Imaging. So were you picked up and taken to Focused Imaging as well?
A. Yes.
Q. Again, did anybody talk to you about having to pay for that transportation?
A. No.
Q. And did you sign anything with regard to the transportation?
A. I can't recall.

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Q. And did you order the transportation or did Focus Image (sic) order it for you when you made your appointment?
A. The Pain Management ordered it, I believe.
Q. So that would be Dearborn Pain Specialists?
A. Yes.
Q. Again, do you know if they have any type of ownership interest in Focused Imaging?
A. No.
Q. No, you do not know?
A. I don't know.
Q. When Dr. Shukr ordered these MRIs, did he say, "I'm ordering MRIs, you can go anywhere you want", or did he order the MRIs and said that you have an appointment to go to Focused Imaging or that we will schedule the MRIs at Focused Imaging?
A. I can't recall.
Q. So I see that it's an MRI of the neck, the MRI of the lower and upper back, the thoracic and lumbar spine; is that correct?
A. Yes.
Q. And then is that it? Are those the only MRIs that were taken on that day?
A. Yes.
Q. Were there MRIs taken to any other part of your body

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at any other time after this accident?
A. No.
Q. Do you know if any of those MRIs indicated that you had a disc bulge or herniation? Did you talk to your doctors about it?
A. Yes. I can't remember exactly what they said, but I know they had said I had tears in my neck and in my back.
Q. Tears in your neck and your back?
A. Yes.
Q. We got you at the ER. We have -- we talked about physical therapy. Have you gone to any other locations for physical therapy outside of We Care Physical Therapy?
A. No.
Q. Any other pain management facilities outside of Dearborn Pain Specialists?
A. No.
Q. We got the focal imaging because we talked about the three MRIs, and those were the only MRIs that were taken after the emergency room, correct?
A. Correct.
Q. We talked about the various transportation companies and -- now, I see that you're doing -- are you doing urine tests every time you go to Dearborn Pain

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Specialists or do you do it every other -- when does that happen?
A. Every time.
Q. Every time, every month?
A. Yes.
Q. Have you ever indicated to Dr. Shukr or anybody at Dearborn Pain Specialists that you had a drug problem at any time?
A. No.
Q. So I'm not quite understanding. Do you know why you have to take a drug screen every time you go there? Has that ever been explained?
A. No.
Q. Because it seems to me that you're being prescribed medication, but you're taking them as needed, correct?
A. Yes.
Q. So they're not always going to be in your system. Have they ever talked to you about a time when they've done a drug screen and they've noticed that you're -- the medications that have been prescribed are not in your system? Have you ever had a conversation like that to any of the doctors?
A. No.
Q. Why do you think you have to take a drug screen every time you go?

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A. To see if it's in my system. I'm not sure.
Q. But it seems like if it's in your system, you're not -- you don't know if it's being -- and it looks like it's a couple of -- so are you doing the urine, meaning at Dearborn Pain Specialists, after you see the doctor, whatever? Is it normal for you to give a urine sample --
A. Yeah, they --
Q. -- to them?
A. -- as soon as I walk in, they give me a cup.
Q. Are they doing any type of blood draws or anything?
A. No.
Q. Again, have you been -- have you received any billing from any type of drug testing facility saying that there's bills that are due and owed?
A. No.
Q. So would you -- would you think that the drug test or the urine test is going to be screened by the doctor at Dearborn Pain Specialists or do you think that that's going to be sent out somewhere; do you know?
A. I'm not sure.
Q. Now, we talked about all of the facilities and doctors that I have on my witness list. Are there any other doctors or facilities that you're getting treatment

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with or you receive treatment at that we haven't discussed?
A. No.
Q. And you know that at some point you were sent to a doctor on behalf of the insurance company; is that correct?
A. Yes, yes, yes.
Q. And you appeared for that, correct?
A. Yes.
Q. Now, do you know if the insurance company said based on this doctor's evaluation of you that the treatment was no longer reasonable? Do you remember getting a letter like that?
A. Yes.
Q. And you continued to treat after?
A. Yes.
Q. And -- and you knew that at that point after treating, that the insurance company was not going to consider payment after they denied your bills due to this report, correct?
A. Yes.
Q. Did you have any conversations with any of your doctors regarding that report?
A. No.
Q. All right.

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And do you know -- and you said that you don't need, you can take care of cleaning your house yourself, correct?
A. Yes.
Q. And you can get dressed by yourself and take your own shower?
A. Yes.
Q. Okay.
MS. DUENAS: That's all I have.
MR. MAKLED: All right. Thanks, Arminia.
MS. DUENAS: Thank you very much. Thank you. I will take a copy and a mini.
COURT REPORTER: Electronic?
MS. DUENAS: Yes.
COURT REPORTER: Dan, would you like to order a copy?
MR. MAKLED: I'll take the same.
(Deposition concluded at 2:11 P.M.)
- - -

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STATE OF MICHIGAN )
COUNTY OF OAKLAND )

Certificate of Notary Public

I certify that this transcript is a complete, true, and correct record of the testimony of the witness held in this case.

I also certify that prior to taking this deposition, the witness was duly sworn or affirmed to tell the truth.

I further certify that I am not a relative or an employee of or an attorney for a party; and that I am not financially interested, directly or indirectly, in the matter.

In witness whereof, I have hereunto set my hand this 8th day of April, 2022, at Rochester Hills, Michigan, County of Oakland, State of Michigan.

Lory A. Helland

LORY A. HELLAND, CER-#3778
Notary Public, Oakland County, Michigan
My Commission Expires: 02/15/26



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# EXHIBIT C

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CAROLINDA NAISHE SWOOPE,

Plaintiff,

vs.

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant.

Case No. 21-011402 -NF
Hon. Dana Margaret Hathaway

Daniel B. Makled (P78777)
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Yvonne@cmplaw.com

## NOTICE OF HEARING

PLEASE TAKE NOTICE that *Defendant's Motion For Summary Disposition for Nonpermissive Use* will be brought on for hearing before the Honorable Dana Margaret Hathaway on ***a date and time to be set by the court*** or as soon thereafter as counsel may be heard.

Respectfully submitted,
CONLIN, McKENNEY & PHILBRICK, P.C.
Attorneys for Defendant CICM

By: */s/Arminia Duenas*
Arminia Duenas (P67090)
350 S. Main Street, Suite 400
Ann Arbor, MI 48104-2131
(734) 761-9000

Dated: June 28, 2022

**PROOF OF SERVICE**

The undersigned certifies that she served a copy of the attached documents to be served upon the parties and/or attorneys of record for all parties at their respective business addresses on **June 28, 2022** via:

☐ Overnight Mail ☒ **E-File & Serve**

*/s/Yvonne M. Rush*
Yvonne M. Rush

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CAROLINDA NAISHE SWOOPE,

Plaintiff,

vs.

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant.

Case No. 21-011402 -NF
Hon. Dana Margaret Hathaway

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**DEFENDANT CITIZENS INSURANCE COMPANY OF THE MIDWEST'S MOTION FOR SUMMARY DISPOSITION**

NOW COMES Defendant CITIZENS INSURANCE COMPANY OF THE MIDWEST ("Defendant") by and through its attorneys, CONLIN, McKENNEY & PHILBRICK, P.C., and for its Motion for Summary Disposition states as follows:

1. The accident giving rise to this claim that occurred on or about October 27, 2020, in which Plaintiff Carolinda Swoope ("Plaintiff") alleges she was involved in a vehicle accident that occurred on Trumbull Avenue and Fisher Service Drive in Detroit, Michigan (the "Accident"), and claims to have suffered injuries in the Accident and made claims for No-Fault personal protection insurance ("PIP") benefits.

2. Citizens Insurance Company of the Midwest ("Defendant") is the servicing insurer for the PIP claim by assignment through the Michigan Automobile Insurance Placement Facility (MAIPF), because Plaintiff alleged there was not a policy of no-fault insurance identified that



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would cover the subject accident.

3. On September 2, 2021, Plaintiff filed a complaint alleging that Defendant failed to pay medically necessary, reasonable, and related no-fault PIP benefits and has demanded replacement services, attendant care and medical expenses for the excessive amounts of treatment after this accident. **(Exhibit A, Complaint)**

4. MCL 500.3113(a) states as follows:

> 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. (a) The person was willingly operating or willing using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have know that the motor vehicle or motorcycle was taken unlawfully.

5. In this case, MCL 500.3113(a) bars Plaintiff from obtaining PIP benefits because she took the vehicle unlawfully and did not reasonably believe that she had permission to use the car.

6. Plaintiff violated the MCL 500.3113 when she took Ms. Kandice Valentine's 2008 Saturn Vue, VIN: 3GSCL33P385691872 ("Vehicle") "unlawfully" without the owner's consent, permission, or authorization to take and/or use the Vehicle.

7. In this case, the deposition of Plaintiff was recently conducted, and she testified that unequivocally that she never operated Ms. Valentine's Vehicle prior to the date of the accident and that she did not ask permission to operate the Vehicle on the date of the accident. **(Exhibit B, Plaintiff Deposition).**

8. Plaintiff also testified that she did not have a valid driver's license, and therefore did not have a reason to believe that she was permitted to legally operate any vehicle let alone Ms. Valentine's Vehicle on the date of the accident. **(Exhibit B, Plaintiff's Deposition, pg. 8 lines 8-25)**

9. In her Application for Benefits, Plaintiff made misrepresentations as to her requesting permission to operate Ms. Valentine's vehicle. Plaintiff testified multiple times that



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she did not ask permission to operate the Vehicle, which makes her use of the Vehicle "unlawful taking". **(Exhibit C, Application of Benefits with Fraud Warning)**

10. Additionally, Plaintiff was provided with the *Fraud Warning* multiple times when applying for No-Fault benefits through MAIPF as follows:

> *A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part or in support of a claim to the Michigan Assigned Claims Plan maintained by the Michigan Automobile Insurance Placement Facility for payment or any other benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511.* ***A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.*** **(Exhibit C, Application For Benefits with Fraud Warning)**

11. MCL 500.3173a provides that, in the context of Assigned Claims Facility (ACF) no-fault claims, the no-fault claim becomes ineligible for payment of benefits if a person presents or causes to be presented an oral or written statement containing false information concerning a fact or thing material to the claim.

12. Discovery in this matter clearly establishes that Plaintiff has made significant misrepresentations and provided false statements concerning a fact or thing material to her claim. **(Exhibit C, Application For Benefits with Fraud Warning)**

13. Plaintiff indicated in the Application for Personal Injury Protection Benefits, paragraph 42(g), that she asked permission to use the Vehicle, "yes" and (k) that she had permission to operate the Vehicle, "yes", which are significant misrepresentations and false information concerning her claim. **(Exhibit C, Application For Benefits with Fraud Warning)**

14. A motion under MCR 2.116(C)(8) tests the legal sufficiency of a clam by the pleadings alone, unsupported by any other documentary evidence Simko v. Blake, 448 Mich 648, 654, 532 NW2d (1995). A motion for summary disposition should be granted when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v. Dept of Corrections,* 439 Mich 158, 163 (1992).



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15. A motion under MCR 2.116(C)(10) tests the factual sufficiency of the Complaint. In evaluating a motion brought under MCR 12.116(C)(10), a court considers pleadings, depositions, admissions and documentary evidence filed or submitted in the action, in a light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109 (1999). A trial court may grant the motion brought under MCR 2.116(C)(10) if there is no genuine issue with respect to any material facts, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446 (1999). However, "[a] litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10)." *Maiden,* 461 Mich at 121. The reviewing court should evaluate the motion by "considering the substantively admissible evidence actually proffered in opposition to the motion." *Id.* However, a mere promise to provide evidence to support a claim is insufficient. *Id.*

16. This Court should grant Defendant's summary disposition based on the clear wording of MCL 500.3173a and MCL 500.3113 and rule, as a matter of law, that Plaintiff's claim is ineligible for no-fault PIP payments or benefits because she took the vehicle unlawfully, did not reasonably believe that she had permission to use the vehicle and she made false statements made on her Application for Benefits. **(Exhibit D, Proposed Order)**

WHEREFORE Defendant CITIZENS INSURANCE COMPANY OF THE MIDWEST, respectfully requests this Honorable Court enter an Order granting summary disposition and dismiss Plaintiff's no-fault PIP claims with prejudice and award attorney's fees and costs for the defense of this frivolous matter.



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Respectfully submitted,

CONLIN, McKENNEY & PHILBRICK, P.C.
Attorneys for Defendant CICM

*By: /s/Arminia Duenas*
Arminia Duenas (P67090)
350 S. Main Street, Suite 400
Ann Arbor, MI 48104-213
(734) 761-9000

Dated: June 28, 2022

**PROOF OF SERVICE**

The undersigned certifies that she served a copy of the attached documents to be served upon the parties and/or attorneys of record for all parties at their respective business addresses on **June 28, 2022** via:

☐ Hand Delivery ☐ Facsimile
☐ Overnight Mail ☒ **E-File & Serve**

*/s/Yvonne M. Rush*
Yvonne M. Rush

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CAROLINDA NAISHE SWOOPE,

Plaintiff,

vs.

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant.

Case No. 21-011402 -NF
Hon. Dana Margaret Hathaway

Daniel B. Makled (P78777)
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Yvonne@cmplaw.com

**BRIEF IN SUPPORT OF DEFENDANT CITIZENS INSURANCE COMPANY OF THE MIDWEST'S MOTION TFOR SUMMARY DISPOSITION**

NOW COMES Defendant CITIZENS INSURANCE COMPANY OF THE MIDWEST ("Defendant") by and through its attorneys, CONLIN, McKENNEY & PHILBRICK, P.C., and hereby submits its BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION, to wit:

## FACTUAL SUMMARY

This Motion is for summary disposition as to the claims of Plaintiff, against Defendant, named assignee of the MACP. Plaintiff submitted an Application for Benefits alleging that she became injured following an October 27, 2020, vehicle accident during which she was operating a 2008 Saturn Vue ("Vehicle") owned by her friend, Ms. Kandice Valentine in which she unlawfully took without a reasonable belief that she had permission to use the Vehicle. (**Exhibit C, Application for Benefits with Fraud Warnings**) In addition, Plaintiff indicated in her

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Application of Benefits that she had permission to operate the uninsured Vehicle, which is a clear false statement and misrepresentation. (**Exhibit C, Application for Benefits with Fraud Warnings**)

Dismissal of Plaintiff's claim in this matter is appropriate on the basis that she unlawfully took and operated the Vehicle, *she lacked permission of the owner to take or operate the Vehicle*, disqualifying her under MCL 500.3113(a), she did not have a driver's license, which also supports that fact that she did not have a reasonable belief that she was legally permitted to operate the vehicle, and she made false statements and misrepresentations in her Application for Benefits as to permissive use. (**Exhibit C, Application for Benefits with Fraud Warnings**) Plaintiff testified that she did not ask permission to use the Vehicle and took same unlawfully, which disqualified her under MCL 500.3113(a) for no-fault PIP benefits related to the subject accident. Due to same, Plaintiff does not have a valid claim for no-fault PIP benefits, and her no-fault PIP claims that arise out of her operation of the Vehicle on October 27, 2020, must be dismissed with prejudice pursuant to MCL 500.3113(a) and MCL 500.3173a(4).

## STANDARD OF REVIEW

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone, unsupported by any other documentary evidence. *Simko v Blake*, 448 Mich 648, 654, 532 NW2d 842 (1995). A motion for summary disposition should be granted when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dept of Corrections*, 439 Mich 158, 163 (1992).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the Complaint. In evaluating a motion brought under MCR 2.116(C)(10), a court considers pleadings, depositions, admissions and documentary evidence filed in the action or submitted in a light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109 (1999). A trial court may grant the motion brought under MCR 2.116(C)(10) if there is no genuine issue with respect to any material



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facts, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446 (1999). However, "[a] litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10)." *Maiden,* 461 Mich at 121. The reviewing court should evaluate the motion by "considering the substantively admissible evidence actually proffered in opposition to the motion." *Id.* However, a mere promise to provide evidence to support a claim is insufficient. *Id.*

## LAW AND ANALYSIS

### 1. Michigan Law Provides that Statutes Must Be Interpreted as Written.

The primary goal of statutory construction is to give effect to the Legislature's intent. *Briggs Tax Serv, LLC v Detroit Public Schools,* 485 Mich 69, 76; 780 NW2d 753 (2010). The court should begin with a review of the statutory language. *Id.* If the statutory language is clear and unambiguous, the court must then presume that the Legislature intended the clear meaning expressed in the statute. *Id.* Judicial construction of an unambiguous statute is neither required nor permitted. *In re MCI Telecom Complaint,* 460 Mich 396, 411, 596 NW2d 164 (1999); see also *Frankenmuth Mut Ins Co v Marlette Homes, Inc,* 456 Mich 511, 515; 573 NW2d 611 (1998).

The primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp,* 471 Mich 540, 548-549; 685 NW2d 275 (2004). The words contained in a statute provide courts with the most reliable evidence of the Legislature's intent. *Id.* at 549. In ascertaining legislative intent, Michigan courts are mandated to give effect to every word, phrase, and clause in the statute. *Id.* Courts must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. *Id.*

A court should consider the plain meaning of a statute's words and their "placement and purpose in the statutory scheme." *Sun Valley Foods Co v Ward,* 460 Mich 230, 237; 596 NW2d



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119 (1999). "Where the language used has been subject to judicial interpretation, the legislature is presumed to have used particular words in the sense in which they have been interpreted." *People v Powell*, 280 Mich 699, 703; 274 NW 372 (1937); see also *People v Wright,* 432 Mich 84, 92, 437 NW2d 603 (1989).

In this case, MCL 500.3173a(4) is a clearly written statute. The intent of the Legislature is clear from the wording of the statute. There is no doubt that the Legislature intended to provide a strong penalty for abuse of the assigned claim plan provisions contained in Michigan's No-Fault Act. There is nothing unclear or ambiguous about the statute.

**2. MCL 500.3173a Bars A Person's Claim When That Person Submits False Information In Support of a Claim Made Through the Assigned Claims Plan.**

The Legislature has clearly spoken in MCL 500.3173a(4). There is no question that the statute was written to combat the growing fraud prevalent in Michigan No-Fault Claims. The strong wording of MCL 500.3173a was meant to eliminate claims when the person making the claim submits false information in support of the claim.

MCL 500.3173a(4) provides:

> (4) A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

The clear wording of MCL 500.3173a(4) establishes strict penalties to be enforced against those who make applications for assigned claim benefits and then proceed to submit false information in support of the claim.

MCL 500.3173a(4) contains a criminal fraud provision and contains a provision that makes the claim ineligible for any payment or benefit. The threshold determination for MCL 500.3173a is whether the person presents or causes to be presented an oral or written statement



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knowing that the statement contains false information material to the claim. *See* MCL 500.3173a(4). Once it is determined that such false information is presented, the statute provides for criminal penalties and provides for a penalty to the entirety of the claim. *See* MCL 500.3173a(4).

MCL 500.3173a(4) mandates that those who present false information in support of a claim have committed a fraudulent insurance act. Specifically, MCL 500.3173a(4) indicates that false statements made in assigned claimed plan claims amount to fraudulent insurance acts under MCL 500.4503 and are subject to criminal penalties and fines under MCL 500.4511.

Secondly, MCL 500.3173a(4) indicates that the person's claim becomes ineligible for payment or benefits under the assigned claims plan once it is determined that false information is submitted in support of the claim:

> A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

The clear wording of the statute is that when it is determined that the claim either "contains" or "is supported by" a fraudulent insurance act, i.e. false information material to the claim, the claim is no longer payable. This Court should note that MCL 500.3173a(4) makes the "claim" become ineligible for any "payment." *See* MCL 500.3173a(4) MCL 500.3173a(4) also makes the "claim" ineligible for any "benefits." *See* MCL 500.3173a(4).

MCL 500.3173a(4) deems a claim ineligible upon evidence that false information was supplied for benefits. The clear wording of the statute is that such a claim that was eligible through the ACF becomes ineligible as a penalty for making the fraudulent presentation of information. MCL 500.3173a(4) also establishes that such false statements constitute criminal insurance fraud.

Based on the clear wording of MCL 500.3173a(4), the statute is an expression of the Legislature's power to strip away the assigned claim plan insurance coverage by making the



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claim ineligible when a person abuses the system. MCL 500.3173a(4) is a clear mandate by the Legislature against those who would abuse the no-fault act and produce false statements in support of an assigned claim, which makes such conduct criminal and a complete bar to further claims through the assigned claims plan.

The use of the term "claim" as being ineligible for "payment" or "benefits" was intended by the Legislature to show that the overall "claim" supported by fraudulent information would not be payable for any future "payment" and was not eligible for any future "benefit."

This Court should note that the use of the word "claim" is a direct reference to MCL 500.3172(1), which provides that a person who is entitled to a "claim" may apply for a claim through the assigned claims plan and obtain "benefits." The wording of MCL 500.3172(1) clearly contemplates that the larger claim can be made to obtain benefits.

In MCL 500.3173a(4), the Legislature utilizes language similar to MCL 500.3172(1), and clearly intends that a "benefit" is a smaller subset of a "claim." This Court should note the use of the plural benefits as the intent to eliminate more than one benefit. Therefore, MCL 500.3172a(4) does not intend to eliminate only the fraudulent benefit but intends to make the entire claim ineligible for any benefits.

There is no question that the Legislature intended that, upon the showing of submission of false information, MCL 500.3172a(4) would make a person's no-fault PIP claim ineligible for any payment or any benefits and would effectively bar the claim.

### 3. MCL 500.3113(a) Bars a Person's Recovery for No-Fault PIP Benefits if that Person is Operating a Vehicle Through an Unlawful Taking

MCL 500.3113(a) states:

> 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: (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

In addition, MCL 500.3173 confirms that a person disqualified pursuant to the unlawful



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taking statute is also disqualified from benefits under the Assigned Claims Plan. "A person who because of a limitation or exclusion in sections 3105 to 3116 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury is also disqualified from receiving benefits under the assigned claims plan." MCL 500.3173.

The Michigan Supreme Court recently analyzed the two above-cited unlawful takings statutes into context of the Michigan No-Fault Act's disqualification of "unlawful takers" and specifically found that both MCL 750.413 and MCL 750.414 triggered the disqualification in MCL 500.3113(a). Specifically, the Supreme Court in *Spectrum Health v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503 (2012), held that the phrase "taking unlawfully" in MCL 500.3113(a) applies to anyone, including a family member, who takes a vehicle without the authority of the owner, regardless of whether the person intended to steal it. *Id.*

**4. Plaintiff is Barred from No-Fault PIP benefits because She did not have Permission to Operate the Vehicle, Was Not Legally Permitted to Operate the Vehicle and Provided False Statements and Misrepresentations in Her Application for Benefits**

In this case, Plaintiff, admitted in her Application for Benefits, that in order to use the vehicle she required permission. Specifically, Plaintiff answered "yes" to the question of whether she had permission to drive the accident vehicle. **(Exhibit C, Application of Benefits with Fraud Warnings, paragraph 42 (g) and (k))** However, her responses to questions 42(g) and 42(k) were false statements and misrepresentations, because Plaintiff testified that she did not have any conversation or contact with Ms. Valentine regarding using the vehicle prior to her illegal taking of same on the date of the accident. She had **not been given permission to use the Vehicle** on the day of the Accident.

Q. And you asked to borrow someone's vehicle; is that correct?
A. **I didn't ask**, I just got the car because I had a family emergency. My mom needed to go to the hospital. So I was trying to hurry up to get to her.



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**(Exhibit B, Plaintiff's Deposition, pg. 9, lines 1-6)**

Although, Plaintiff indicated that she took the Vehicle due to an emergency with her mother, it is simply **untrue**:

- An ambulance was **not** called for her mother.
- Plaintiff grabbed the keys to the Vehicle, did not request permission to operate the Vehicle, and **drove to Burger King on the way to her mother's house**. **(Exhibit B, Plaintiff's Deposition, pg. 37, line 8-16)**
- Further, after the accident, Plaintiff **ordered an Uber** to pick her up from the scene of the accident and drive to her mother's house. **(Exhibit B, Plaintiff's Deposition, pg. 39, lines 2-5)**
- Both she and her mother were **treated and released on the date of the accident. (Exhibit B, Plaintiff's Deposition, pg. 41, lines 4-7)**

There was clearly **no** emergency, and even if it was, there is no "emergency" exception to the "permissive use" and "lawful taking" requirement. Plaintiff was aware that she had other legal options, such as calling an ambulance for her mother or ordering an Uber, prior to taking the Vehicle.

A taking of a vehicle does **not** have to be larcenous to qualify as "unlawful," and the statute providing that personal protection insurance benefits for bodily injury in automobile accident are not available if the person **using** the vehicle had taken the vehicle unlawfully applies to any person who takes a vehicle without the owner's authority, regardless of whether that person had the intent to steal the vehicle. MCL 500.3113(a).

Besides testifying she did not request or receive permission to use the Vehicle, Plaintiff testified that she **never operated the vehicle prior to the date of the accident**, and therefore had no reasonable expectation that she could operate the Vehicle.

So have you ever used this vehicle that
you -- that's involved in this accident before this



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16 date?
17 A. **No.**
18 Q. Never at any point?
19 A. **No.**
20 Q. And you didn't ask for permission to use the vehicle?
21 A. **No.**
22 Q. So is it fair to say you had no permission to operate
23 this vehicle at the time that you were operating it?
24 A. **Correct.**

**(Exhibit B, Plaintiff's Deposition, pg. 10, lines 14-24)**

Plaintiff also stated in her Application for Benefits that she never operated the vehicle prior to the date of the accident but had permission or had obtained permission prior to using the Vehicle. **(Exhibit C, Application for Benefits with Fraud Warnings, paragraph 42 (g) and (k))** It is likely that Plaintiff, as have many before her, misrepresented her permissive use in her Application for Benefits in an effort to avoid immediate rejection of her application. But the undisputed facts discovered through appropriate investigation directly contradict her responses on her application. Plaintiff clearly testifies she never received permission and additionally had no reasonable belief she was permitted, or otherwise authorized to take the Vehicle. The Application for Benefits was also signed by Plaintiff with the attestation that the information contained is true and accurate and with the fraud warning that false statements contained therein (or otherwise submitted as part of or in support of a claim for benefits) constitutes a fraudulent insurance act and makes the claim ineligible for benefits. **(Exhibit C, Application for Benefits with Fraud Warnings)** Her testimony contradicts her prior statement. **(Exhibit B, Plaintiff's Deposition, pg. 9, lines 1-6)**

7 Q. So how did you get the keys to the vehicle?
8 A. **I just took them.**

**(Exhibit B, Plaintiff's Deposition, pg. 9, lines 7-8)**

Furthermore, Plaintiff did not have a valid driver's license on the date of the accident and had no expectation to legally be able to operate the vehicle on the date of loss: At the time of the subject accident, Plaintiff did not have a valid driver's license and had not had a Michigan driver's license for the years prior to the accident. **(Exhibit B, Plaintiff's Deposition, pg. 8,**



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**lines 4-25)**

Plaintiff had no reasonable expectation that she could legally operate the vehicle because she was not permitted to operate the Vehicle by the State of Michigan, as she had no driver's license at the time of the subject accident.

Q. Is it because you don't have a driver's license?
A. **Yes.**
Q. Have you ever owned a driver's license?
A. Yes.
Q. And what happened to your driver's license?
A. It got revoked because I had tickets to pay and I didn't pay them.
Q. And at that time of this October 27th, 2020, accident, were you driving on a revoked license?
A. **Yes. It was suspended, I'm sorry.**
Q. I'm sorry, suspended?
A. **Yeah**.
Q. How long has your driver's license been suspended?
A. I'm not sure.
Q. Has it been years?
A. **Yes.**
Q. And when you were -- you were driving the vehicle at the time of this accident; is that correct?
A. **Yes.**
Q. And you knew at the time of the accident that you did not have a valid driver's license; is that correct?
A. **Yes.**

**(Exhibit B, Plaintiff's Deposition, pg. 8, lines 4-25)**

In addition to Plaintiff taking the Vehicle unlawfully, as a matter of law, she could not reasonably believe that she was entitled to use the Vehicle when she knew that she was unable to legally operate the vehicle. Plaintiff was not a licensed driver at the time of the subject accident and there was no good reason here to believe she entitled to take the Vehicle without permission when it was illegal for her to drive on any Michigan road. Furthermore, if it were driven on a road when it was uninsured and was involved in an Accident and the occupants were injured in the accident, and a claim made to the MACP, such as the case here, then Ms. Valentine would be the person ultimately responsible for all amounts paid under the MACP claims.

If the evidence is viewed in the light most favorable to Plaintiff (meaning her statements



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are presumed to be true), these statements establish that Plaintiff never operated the Vehicle prior to the subject accident and never asked permission to operate the vehicle on the date of the accident. Plaintiff violated the law by illegally taking Ms. Valentine's Vehicle and is disqualified from benefits pursuant to MCL 500.3113.

## CONCLUSION

Taking all evidence together, on October 27, 2020, Plaintiff unlawfully took a vehicle that did not belong to her without permission from the owner of the Vehicle and did not have reasonable belief she was legally permitted to operate the Vehicle without a valid Michigan driver's license. Plaintiff's taking of the Vehicle was unlawful and she made misrepresentations and false statements in her Application for Benefits, and as a result she is disqualified from receiving no-fault PIP benefits and Defendant is entitled to summary disposition.

WHEREFORE Defendant CITIZENS INSURANCE COMPANY OF THE MIDWEST, respectfully requests this Honorable Court enter an Order granting summary disposition and dismiss Plaintiff's no-fault PIP claims with prejudice and award attorney's fees and costs for the defense of this frivolous matter.

Respectfully submitted,

CONLIN, McKENNEY & PHILBRICK, P.C.
Attorneys for Defendant CICM

*By: /s/Arminia Duenas*
Arminia Duenas (P67090)
350 S. Main Street, Suite 400
Ann Arbor, MI 48104-213
(734) 761-9000

Dated: June 28, 2022

**PROOF OF SERVICE**

The undersigned certifies that she served a copy of the attached documents to be served upon the parties and/or attorneys of record for all parties at their respective business addresses on **June 28, 2022** via:

☐ Hand Delivery ☐ Facsimile
☐ Overnight Mail ☒ **E-File & Serve**

*/s/Yvonne M. Rush*
Yvonne M. Rush



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# EXHIBIT A

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Approved, SCAO

Original - Court
1st Copy- Defendant

2nd Copy - Plaintiff
3rd Copy -Return

| STATE OF MICHIGAN<br>THIRD JUDICIAL CIRCUIT<br>WAYNE COUNTY | SUMMONS | CASE NO.<br>21-011402-NF<br>Hon.Dana Margaret Hathaway |
|---|---|---|

Court address : 2 Woodward Ave., Detroit MI 48226

Court telephone no.: 313-224-2444

| Plaintiff's name(s), address(es), and telephone no(s)<br>Swoope, Carlonda Naishe | v | Defendant's name(s), address(es), and telephone no(s).<br>Citizens Insurance Company of the Midwest |
|---|---|---|
| Plaintiff's attorney, bar no., address, and telephone no<br>Daniel B. Makled 78777<br>23756 Michigan Ave Ste 300<br>Dearborn, MI 48124-1853 | | |

**Instructions:** Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

**Domestic Relations Case**

☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.

☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

**Civil Case**

☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035

☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).

☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court,

where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk. **SUMMONS**

**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

| Issue date | Expiration date* | Court clerk |
|---|---|---|
| 9/2/2021 | 12/2/2021 | Laverne Chapman |

Cathy M. Garrett- Wayne County Clerk.

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (9/19) **SUMMONS** MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105

THIRD JUDICIAL CIRCUIT OF MICHIGAN

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**SUMMONS**
Case No.: 21-011402-NF

## PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

## CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ **OFFICER CERTIFICATE** OR ☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

☐ I served personally a copy of the summons and complaint.

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____
List all documents served with the Summons and Complaint

_____

_____ on the defendant(s):

| Defendant's name | Complete address(es) of service | Day, date, time |
|---|---|---|
| | | |
| | | |

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

| Defendant's name | Complete address(es) of service | Day, date, time |
|---|---|---|
| | | |
| | | |

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

| Service fee $ | Miles traveled $ | Fee $ | |
|---|---|---|---|
| Incorrect address fee $ | Miles traveled $ | Fee $ | **Total fee** $ |

_____
Signature

_____
Name (type or print)

_____
Title

Subscribed and sworn to before me on _____ (Date), _____ County, Michigan.

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of _____

## ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ (Attachments)

_____ on _____ (Day, date, time)

_____ on behalf of _____

Signature

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21-011402-NF FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 9/2/2021 12:03 PM Laverne Chapman

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CARLONDA NAISHE SWOOPE

Plaintiff, Case No. 21- NF
Hon.

v.

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant.

DANIEL B. MAKLED (P78777)
HALL MAKLED, P.C.
Attorneys for Plaintiff
23756 Michigan Avenue, Suite 300
Dearborn, Michigan 48124
(313) 582-7930 / F: (313) 582-7962
dmakled@hallmakled.com

## PLAINTIFF'S COMPLAINT

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in Wayne County Circuit Court, where it was given docket number 21-002954-NI and was assigned to Judge Dana M. Hathaway.

/s/ DANIEL B. MAKLED

**NOW COMES,** Plaintiff, CARLONDA NAISHE SWOOPE, by and through her attorneys, HALL MAKLED, P.C., by DANIEL MAKLED, and for her Complaint against the above-named Defendant CITZENS INSURANCE COMPANY OF THE MIDWEST states as follows:

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## COMMON ALLEGATIONS

1. Plaintiff, Carlonda Naishe Swoope, at all relevant times, was a resident of Detroit, County of Wayne, State of Michigan.
2. Defendant, CITZENS INSURANCE COMPANY OF THE MIDWEST, is an insurance company, licensed to write insurance and conduct business in the State of Michigan, and that Defendant conducts business in Wayne County, Michigan.
3. The amount in controversy exceeds $25,000.00 exclusive of interest and costs and is otherwise within the jurisdiction of that Honorable Court.
4. On or about October 27th, 2020 Plaintiff, Carlonda Naishe Swoope, was the driver of a 2008 Saturn VUE, bearing Michigan license plate number EFT4389, which she was driving in a prudent and careful manner near Trumbull and Fisher in the City of Detroit, County of Wayne, State of Michigan.
5. On or about October 27th, 2020, Dylan James Clark was the driver of a 2017 FTL Truck which motor vehicle was being driven by Dylan James Clark in a careless, reckless, and negligent manner near Trumbull and Fisher in the City of Detroit, County of Wayne, State of Michigan, when said Defendant did strike the car of the Plaintiff, causing her injuries.
6. That as a result of said collision, Plaintiff, Carlonda Naishe Swoope, did suffer, and will continue to experience for an indefinite time into the future, severe and excruciating pain and suffering, humiliation and embarrassment, loss of earnings, and loss of her natural enjoyments of life, due to his injuries which include but are not limited to injuries to his neck, back, legs, arms, loss of consciousness, post-traumatic stress disorder, severe headaches, traumatic brain injury, among others, all of which constitute a serious impairment of body function and/or serious, permanent disfigurement.



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**COUNT I**
**CLAIM FOR FIRST PARTY BENEFITS AS TO**
**DEFENDANT, CITZENS INSURANCE COMPANY OF THE MIDWEST**

7. Plaintiff hereby adopts and incorporates by reference each and every allegation contained in paragraphs 1 through 6 of that Complaint as if more specifically set forth herein word for word and paragraph by paragraph.

8. Prior to and including October 27th, 2020, Defendant, CITZENS INSURANCE COMPANY OF THE MIDWEST, issued a policy of no-fault insurance, which policy continued in effect during all times relevant and pertinent to the issues for that Court. Claim Number 46-21004095 was assigned by Defendant and Plaintiff is entitled to benefits under that policy.

9. On October 27th, 2020, Plaintiff was involved in a motor vehicle accident which took place in the City of Detroit, State of Michigan. The collision caused her accidental bodily injuries within the meaning of Defendant's policy and the statutory provision of MCL 500.3105.

10. As a result of the collision, Plaintiff has incurred:

    a. Reasonable and necessary expenses for care, recovery, or rehabilitation, pursuant to MCL 500.3107(1)(a);

    b. Reasonable and necessary replacement services pursuant to MCL 500.310(1)(c); and

    c. Other personal protection benefits in accordance with the applicable no-fault provisions

11. Reasonable proof for full payment of all personal protection insurance benefits has been or will be supplied but Defendant has refused to pay or is expected to refuse to pay in the future.

12. Defendant has unreasonably refused to pay or has unreasonably delayed making proper payments to Plaintiff contrary to MCL 500.3142 and .3148 and continues to do so.



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13. That in the event it should be determined that Plaintiff was suffering from any pre-existing conditions on the day and date of the incidents set forth in that Complaint, then, and in such event, it is averred that the aforementioned accident exacerbated, precipitated and aggravated any such pre-existing conditions, and Defendant is responsible for all no-fault benefits arising therefrom.

14. Defendant insurance company has wrongfully withheld payment of allowable expenses forcing Plaintiff, Carlonda Naishe Swoope, to incur other expenses connected with the subject matter of that action, all of which expenses have been needlessly placed upon Plaintiff by the wrongful actions of Defendant. As such, Plaintiff is entitled to obtain from Defendant interest, costs and a reasonable attorney fee pursuant to the provisions of the no-fault statute.

15. Defendant has had sufficient information to pay all claims, and did not do so within the statutory 30 day time period, set forth under the Michigan No-Fault Act. Therefore, Plaintiff is entitled to attorney fees, costs and interest due to that breach. Plaintiff only seeks no-fault benefits that are past due and presently owed, and that Complaint does not seek future no-fault benefits.

WHEREFORE, Plaintiff, Carlonda Naishe Swoope, respectfully requests that judgement be entered in his favor against Defendants, CITZENS INSURANCE COMPANY OF THE MIDWEST, in an amount in excess of $25,000.00 that is fair, just and reasonable, and which sums include all past-due and presently-owed No-Fault benefits together with interest, costs and no-fault attorney fees. This Complaint does not seek future no-fault benefits past the date that that lawsuit resolves by settlement or trial.



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Respectfully submitted:

HALL MAKLED, P.C.
Attorneys for Plaintiff

/s/ Daniel B. Makled
Daniel B. Makled (P78777)
HALL MAKLED, P.C.
Attorney for Plaintiff

Dated: September 2nd, 20201



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# EXHIBIT

# B

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CARLONDA NAISHE SWOOPE,

Plaintiff,

vs. Case No. 21-011402-NF

Hon. Dana Margaret Hathaway

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant.

/

DEPOSITION OF: CARLONDA NAISHE SWOOPE
DATE: Thursday, March 31, 2022
TIME: 1:05 P.M.
LOCATION: Hall Makled, P.C.
23756 Michigan Avenue
Dearborn, Michigan
REPORTER: Lory Helland, CER-#3778
Certified Reporter



APPEARANCES:

DANIEL B. MAKLET P78777
Hall Makled, P.C.
23756 Michigan Avenue
Suite 300
Dearborn, Michigan 48124
313-582-7930
dmakled@hallmakled.com
Appearing on behalf of the Plaintiff.

ARMINIA DUENAS P67090
Conlin, McKenney & Philbrick, P.C.
350 South Main Street
Suite 400
Ann Arbor, Michigan 48104
734-997-2159
aduenas@cmplaw.com
Appearing on behalf of the Defendant.



I N D E X

WITNESS PAGE

CARLONDA NAISHE SWOOPE

Examination by Ms. Duenas 7

E X H I B I T S

NUMBER IDENTIFICATION PAGE

None offered.



Dearborn, Michigan
Thursday, March 31, 2022
1:05 P.M.

* * *

COURT REPORTER: Before I swear in the deponent, I would like to confirm that all parties agree to allow me to administer the oath to the deponent over the phone. If there is an objection, please state it now.

(No objections.)

CARLONDA NAISHE SWOOPE

having been first duly sworn, was examined and testified as follows:

MS. DUENAS: Let the record reflect that this is the deposition of -- how do you pronounce your first name? Is it Carlonda Swoope?

THE WITNESS: Yes, Carlonda Swoope.

MS. DUENAS: -- of Carlonda Swoope, taken pursuant to Notice and to be used for all purposes under the Michigan Court Rules and the Michigan Rules of Evidence.

Ms. Swoope, my name is Arminia Duenas. I represent Citizens Insurance company, which is an insurance company that's been assigned by the State of Michigan to handle the No-Fault PIP benefits related

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to this October 27th, 2020, motor vehicle accident.
Have you ever taken a deposition before?
THE WITNESS: Yes.
MS. DUENAS: When was that?
THE WITNESS: When was that?
MR. MAKLED: She had a dep, Arminia, in her bodily injury case.
MS. DUENAS: Okay, for third party.
Is that the only deposition you've ever had, Ms. Swoope?
THE WITNESS: Yes.
MS. DUENAS: So I'm just going to put a couple of the guidelines on so it's just fresh in our minds.
If your answer is "yes", try to say "yes". If it's "no", please say "no".
If you say "uh huh" or "uh uh", one of us will stop you and try to make sure that it's known for the record if that was a "yes" or a "no" because the court reporter is taking down everything that you're saying, and she cannot make a determination as to what your meaning is. So we want to make sure when you answer a question "yes" or "no", and obviously, not all of your answers are going to be "yes" or "no", but when they are, we want there to be a clear "yes" or a

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clear "no".
Everything has to be verbal. So if you gesture in any way we have to verbalize it for the record, because -- although we're on Zoom, it's not being recorded in a, you know, a CD to be taken to court if this had to go to trial, you know, to that effect.
If you don't understand what I'm asking you, just let me know. I'll rephrase it. I'm really -- this is just a discovery dep. I'm just trying to get some information as to your prior medical history and you're limitations and all of that.
So that's pretty much it -- oh, one last thing, with the State of Michigan, there was a completion of an application, and with that completion of an application for the State of Michigan, the only thing that they require is that there be only truthful information, truthful answers.
I know that you're under oath, but it's very important to know that if there -- if it's determined that there was a material misrepresentation in your statement and/or a false statement, a motion can be filed. So I like to give people notice of that because it's pretty significant when it comes to

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assigned claims.
Okay?
THE WITNESS: Okay.
EXAMINATION
BY MS. DUENAS:
Q. Please state your full name for the record and spell your last name, please?
A. Carlonda Naishe Swoope, S-W-O-O-P-E.
Q. Have you been known by any other names?
A. No.
Q. So never married; is that correct?
A. No.
Q. What's your date of birth?
A. [redacted]
Q. How old are you?
A. 33.
Q. And what -- are you a U.S. citizen?
A. Yes.
Q. Were you born in the United States?
A. Yes.
Q. What state were you born in?
A. Michigan.
Q. Have you lived in Michigan your entire life?
A. Yes.
Q. Do you have any restrictions related to driving?

Page 8

A. Yes.
Q. Are they restrictions given by a doctor?
A. No.
Q. Is it because you don't have a driver's license?
A. Yes.
Q. Have you ever owned a driver's license?
A. Yes.
Q. And what happened to your driver's license?
A. It got revoked because I had tickets to pay and I didn't pay them.
Q. And at that time of this October 27th, 2020, accident, were you driving on a revoked license?
A. Yes. It was suspended, I'm sorry.
Q. I'm sorry, suspended?
A. Yeah.
Q. How long has your driver's license been suspended?
A. I'm not sure.
Q. Has it been years?
A. Yes.
Q. And when you were -- you were driving the vehicle at the time of this accident; is that correct?
A. Yes.
Q. And you knew at the time of the accident that you did not have a valid driver's license; is that correct?
A. Yes.



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Q. And you asked to borrow someone's vehicle; is that correct?
A. I didn't ask, I just got the car because I had a family emergency. My mom needed to go to the hospital. So I was trying to hurry up to get to her.
Q. So how did you get the keys to the vehicle?
A. I just took them.
Q. So are you living with someone that has a vehicle?
A. No.
Q. So where were you when you took the keys to this vehicle?
A. I was at my friend's house in Westland.
Q. What type of vehicle was it?
A. A Saturn Vue.
Q. And whose vehicle -- who's the owner of the vehicle?
A. Kandice Valentine.
Q. You said Kandice Valentine is your friend; is that correct?
A. Yes.
Q. So you're at Kandice's house at the time of the accident -- on the date of accident. What were you doing at Kandice's house in Westland?
A. We were -- I just spent the night over her house and I left that morning to go take care of my mother.

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Q. How did you get over to the house?
A. She picked me up.
Q. And then tell me how -- so you're there the day before, which would be October 26th; is that correct?
A. Yes.
Q. And you spend the night, and at what point and what time do you take the vehicle?
A. I can't recall exactly what time, but I know it was during the morning, late morning. My mother called me and told me her chest was hurting, and the ambulance wasn't coming fast enough. So I tried to get there as fast as possible.
Q. Okay. Sorry, I thought I was going to --
So have you ever used this vehicle that you -- that's involved in this accident before this date?
A. No.
Q. Never at any point?
A. No.
Q. And you didn't ask for permission to use the vehicle?
A. No.
Q. So is it fair to say you had no permission to operate this vehicle at the time that you were operating it?
A. Correct.
Q. So prior to beginning this deposition, we talked about

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what type of PIP benefits are being alleged in this accident, and you're not making a wage loss claim; is that correct?
A. Correct.
Q. And you're not making a replacement care claim, which is like someone coming in and cleaning your house or doing household chores; is that correct?
A. Correct.
Q. And you're not making an attendant care claim; is that correct?
A. What's that?
Q. Well, that's like nursing, helping you in and out of the shower, getting dressed.
A. That's correct.
Q. This is purely for medical billing, correct?
A. Yes.
Q. Now, I don't see it on you, that's why I'm asking. I'm also on Zoom. Are you wearing a brace to any part of your body?
A. Not right now, no.
Q. Was there a doctor that prescribed a brace after this accident?
A. Yes.
Q. And what doctor prescribed the brace?
A. Dr. Shukr.

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Q. Where does Dr. Shukr work out of?
A. Pain Management, Michigan Pain. It's on Woodward.
Q. Let me just -- I'm going to pull up your -- the witness list that I have just so that -- is it Dearborn Pain Specialists?
A. Excuse me?
Q. Or is it -- let's see. This will help me. I'm going to move right to the -- Dr. Shukr. Oh, Shukr, S-H-U-K-R?
A. Yes.
Q. That's Dearborn Pain Specialists. So Dr. Mustafa Mohamad Shukr?
A. Yes.
Q. From Dearborn Pain Specialists, prescribed what type of brace?
A. A back brace, but his -- he has two locations. I go to the one on Woodward.
Q. Have you ever gone to the one in Dearborn?
A. No.
Q. Are you still getting treatment from Dearborn Pain Specialists?
A. Yes.
Q. When's the last time you received treatment?
A. Last month. I had an appointment today, but I had to reschedule because of the deposition.



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Q. And what type of treatment are you getting from Dearborn Pain Specialists?
A. I get back shots.
Q. How often do you get injections to your back?
A. Once a month, but I haven't been getting them because I was supposed to get nerve surgery, but I've been scared to get it. So I've just been prolonging.
Q. When you say "nerve surgery", do you mean that they're going in to burn a nerve?
A. Yes.
Q. And that's to your back?
A. Yes. Back and neck.
Q. Back and neck?
A. Yes.
Q. Now, do you know if anybody at Dearborn Pain Specialists actually ordered your prior medical records and reviewed them before making any type of recommendations with regard to surgery?
A. I believe so.
Q. Did you have any neck or back pain before this accident?
A. No.
Q. And so you're saying that Dr. Shukr prescribed a back brace, but you're not wearing that today, correct?
A. Correct.

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Q. Did he prescribe any other braces to any other parts of your body outside your back?
A. No.
Q. Now, I don't see a cane in the room. Have you been prescribed a cane for any purpose, any reason after this accident?
A. No.
Q. Are you a smoker?
A. No.
Q. Are you a medical marijuana holder, a cardholder?
A. No.
Q. Do you smoke marijuana?
A. No.
Q. What's your current address?
A. 14109 Riverview Street. I just moved there last April. At the accident, it was 4722 Trumbull Street.
Q. So you say last April, April 2021, correct?
A. Yes.
Q. And are you living with anyone?
A. Just my two children.
Q. And your two children, is one named Lauren; is that correct?
A. Yes.
Q. How old is Lauren?
A. 16.

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Q. And is it Drayton?
A. Yes.
Q. How old is Drayton?
A. 12.
Q. Now, I have that you also live with your mother; is that correct, or no?
A. I did.
Q. So did you live with your mother when you lived on Trumbull?
A. Yes.
Q. So from the time of this accident -- how long did you live at 4722 Trumbull in Detroit, Michigan?
A. So I got my house in April, but I didn't move out until maybe June, July, maybe.
Q. But at the time of this accident of October 27th, 2020, you were living at 4722 Trumbull Street, Detroit, Michigan, correct?
A. Yes.
Q. And you were living with your mother and your son and your daughter, correct?
A. Yes.
Q. Anybody else you were living with at that time?
A. No.
Q. Okay.
And how long had you lived on Trumbull

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Street in that address, or at that address?
A. Maybe three years.
Q. Is that a house or an apartment?
A. It's a townhome.
Q. Townhome?
Is that townhome subsidized by Section 8 or the State of Michigan in any way?
A. Yes.
Q. And is that in your mother's name?
A. Yes.
Q. And when you moved out in April but fully moved out in June or July, the house that you're in now at the 14109 Riverview Street, is that also a Section 8 housing?
A. No.
Q. Are you subsidized in any way from the State of Michigan for that particular address?
A. No.
Q. And is that a house or a townhouse?
A. It's a townhouse, yes.
Q. At the time of the October 27th, 2020, accident, were you working?
A. No.
Q. And you're not currently working, correct?
A. Yes.



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Q. And are you receiving Social Security Disability?
A. No.
Q. How are you paying your bills?
A. I know said I -- I said I worked, yes. I worked.
Q. Oh, you do work? You're currently working?
A. Yes.
Q. I'm sorry. I missed that completely. Where are you working? I'm sorry. Where are you working?
A. I work at Amazon.
Q. How long have you worked at Amazon?
A. Since November.
Q. Of last year or the year before?
A. Of last year.
Q. And what do you do there?
A. Just move the little, small package. They have me -- what is it called when you get like --
Q. Restricted?
A. Yeah, I have restrictions, yes.
Q. What type of restrictions do you have?
A. They give me four extra breaks, and I don't lift anything over 20 pounds. Just small packages that I move and scan. I scan it on a robot.
Q. So they hired you after this accident knowing that you had these restrictions?
A. Yes.

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Q. Were there any letters or anything, to your knowledge, from your doctors that were generated and created for Amazon to say that you could work there?
A. Yes.
Q. What doctor did that?
A. Shukr.
Q. He wrote a letter to Amazon that said that you could work?
A. Yes.
Q. But within those parameters and restrictions, correct?
A. Yes.
Q. And do you work full time?
A. Yes.
Q. And what is full time at Amazon?
A. 10 hours.
Q. Per day?
A. Yes.
Q. That's full time. How many days do you work?
A. Four -- four days.
Q. That's good. Four days at 10 hours per day?
A. It's long.
Q. Yeah, but then you get the three days off, which is nice.
So you moved out of your mom's house. Your mom did not move with you, correct?

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A. Correct.
Q. And you're only living with your children, there's nobody else in that household, correct?
A. Correct.
Q. And at the time of this accident, which is October 27th, 2020, did your mom own a vehicle?
A. No.
Q. Did you own a vehicle at that time?
A. No.
Q. So there was nobody in the household that had a vehicle or used a vehicle on a regular basis; is that fair to say?
A. Correct.
Q. And you've never been married. So you don't have a spouse that has a policy, correct?
A. Correct.
Q. And I know these are going to sound odd, these questions, like, it's kind of obvious, but I need to ask them so that we have it on the record and that there's no question about it.
So no relative with a motor vehicle?
A. No.
Q. And then you did not have -- to your knowledge, you weren't listed on a personal automobile policy, correct, at the time of the accident?

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A. Correct.
Q. Did you have health insurance at the time of the October 27th, 2020, accident?
A. Yes.
Q. And what type of health insurance did you have?
A. Molina.
Q. Is that through the State of Michigan?
A. Yes.
Q. Now, at the time of the accident, were you working at all?
A. No.
Q. Prior to this accident, when was the last time you had worked?
A. I can't remember.
Q. Was it like three -- was it more than three years?
A. No. It was shorter than that. It was probably maybe a year.
Q. Why did you stop working?
A. It just wasn't for me anymore.
Q. The job wasn't?
A. Yes.
Q. What type of work did you do?
A. Waitress/dancer.
Q. Where was that at?
A. BT's, Dearborn.



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Q. What is that?
A. BT's, Dearborn and Tycoon, they're owned by the same people.
Q. At the time of the October 27th, 2020, accident, did you have a primary care physician, a doctor that you would go to if you needed to get a physical or if you had a cold?
A. No.
Q. And you said that you don't have a driver's license, but did you have a state identification card at the time of the accident?
A. Yes.
Q. Do you know if it was the same number as your prior driver's license number because sometimes they just transfer it over?
A. I believe it was the same thing.
Q. We're going to go off the record just to confirm your social security number. So we're off the record currently. What is your social security number?
(Off the record 1:27 P.M.)
(Back on the record 1:27 P.M.)
CONTINUING BY MS. DUENAS:
Q. We'll go back on the record. The last four digits of the social security number is [redacted] Have you ever used a different social security number?

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A. No.
Q. We talked about you have a son and a daughter. Are those your only children?
A. Yes.
Q. Are you left-handed or right-handed?
A. Right.
Q. Do you have any pre-existing medical conditions for which you treat on a regular basis?
A. Just asthma, But that's, you know, here or there. If I need a breathing treatment or something.
Q. I was going to ask, do you have -- are you hospitalized ever for breathing treatments?
A. No. Just when I was a kid.
Q. And so have you ever been diagnosed with high cholesterol?
A. No.
Q. How about high blood pressure?
A. No.
Q. How about diabetes?
A. No.
Q. Have you ever told a doctor prior to this October 27th, 2020, accident that you had anxiety or depression?
A. No.
Q. At the time of the October 27th, 2020, accident, were

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you being prescribed any type of medication for any reason?
A. No.
Q. As you sit here today, are you being prescribed any type of medication?
A. Yes.
Q. And what type of medication or tions are you being prescribed?
A. Lidocaine, Norco 7.5 and naproxen and tizanidine or something like that. I can't say the name, but it's T-I-Z-A-N-D-I-N-E (sic), I believe.
Q. And what's that for?
A. For -- for the pain to -- the inflammation.
Q. And then you said Norco; is that correct?
A. Yes.
Q. And that's for pain as well?
A. Yes.
Q. And then you gave another. Is it lidocaine? Is that a patch or a cream?
A. A patch.
Q. And then what was the other last one?
A. Naproxen.
Q. And what is that for, to your knowledge?
A. Inflammation also, I believe.
Q. How often do you take the naproxen?

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A. Maybe every other day, depending on if I'm in pain or not.
Q. So is the naproxen as needed?
A. Yes.
Q. And then the -- the other medication for -- that you're taking for -- it's the T-I-Z-A-N-D-I-N-E. What is -- how often are you taking that, is that as needed as well?
A. Yes.
Q. And then the Norco, do you take that pain medication every day?
A. Not every day. Just when I need it. Like, before I start my day, if I feel bad getting out of bed or something like that.
Q. So are all the medications that you're being prescribed after the accident taken as needed on a daily basis when you determine that you need it or if you don't need it?
A. Yes.
Q. And then is that the same with the patch?
A. Yes.
Q. And who's prescribing it?
A. Shukr.
Q. Is that the only doctor that you're currently receiving treatment from?



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A. Yes.
Q. How long has that been the only doctor you're receiving treatment from?
A. For it to be the only doctor, it's been since January.
Q. Of this year or last year?
A. Of this year. I was seeing the physical therapy doctor also for a year.
Q. Is that for Care (sic) Physical Therapy?
A. Yes.
Q. And how long were you getting treatment from -- it's specifically identified as Care Physical Therapy, correct?
A. Yes. Up until January.
Q. Was it right after the accident in October? Was it November to January or how long were you getting treatment there?
A. Yeah. It was like right after the accident, it was November to -- this year in January.
Q. How often were you going?
A. Three times a week.
Q. So to be clear, you're going three times a week from November 2020 to January 2022?
A. Yes.
Q. Did you ever get a bill?
A. No.

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Q. Did you think that the bills were being paid?
A. Yes.
Q. Is that because you never received a bill? Did you ever have any conversations with anybody in the office regarding any billing?
A. No. I didn't know anything.
Q. Three times a week. So was that Monday, Wednesday, Friday or when would you go?
A. Monday, Wednesday, Thursday. If I missed a day, then I'll make it up on a Friday or something like that.
Q. And how would you get there?
A. Their transportation.
Q. Now, the transportation, did you think that was part of the bill for the Care Physical Therapy or did you think that was a separate bill?
A. I thought it was part of the bill.
Q. Was there ever a conversation that you had with anybody regarding payment for the transportation company?
A. No.
Q. And did you schedule the transportation or did Care Physical Therapy schedule it?
A. Care Physical Therapy scheduled it.
Q. So three times a week, and it never went down from three times a week to two times a week, it was just always three times?
A. Yes.
Q. And to what parts of your body did you get the physical therapy?
A. My back and my neck.
Q. And when the transportation company would pick you up, did they have other people in the vehicle as well going to Care Physical Therapy?
A. Sometimes.
Q. Did you ever have to, when you'd get in the car, be driven to someone else's house before -- to pick up someone before you would go to physical therapy?
A. Yes.
Q. Did you have to sign any paperwork related to the transportation?
A. Not that I can recall.
Q. Did you sign any paperwork as far as Care Physical Therapy that was called -- and I don't, you know, you may remember, you may not remember -- sometimes they give you a form called an assignment. Do you know if you signed any paperwork with regard to Care Physical Therapy that was identified or labeled as an assignment?
A. I'm not sure.
Q. Okay. That makes sense to me. They're fairly --

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they're getting -- they're more common now, but it's fairly new to have that go on.
So -- so just getting back to your prior medical history, have to ask for -- all these questions specifically. Prior to this accident, had you ever received physical therapy?
A. No.
Q. Prior to this accident, had you ever told the doctor that you had back pain for any reason?
A. No.
Q. Prior to this October 27th, 2020, accident, did you ever tell anybody you had neck pain?
A. No.
Q. How about shoulder pain, be it left or right, before this accident?
A. No.
Q. How about pain in your hip, be it left or right side?
A. No.
Q. Had you ever gone to a chiropractor for any reason before this October 27th, 2020, accident?
A. No.
Q. Did you get -- at any point in your life ever have an image, before this accident, be it x-ray, MRI, or CT Scan, an image of any kind before this accident?
A. I've had an x-ray before.



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Q. To what part of your body, if you recall?
A. My chest to check and see if I had pneumonia, I believe.
Q. Did you get pneumonia a lot due to your asthma when you were younger or was it just one time?
A. One time.
Q. And that was just to check. Were you diagnosed with pneumonia?
A. Yes. I had a little bit of pneumonia in my lungs.
Q. Had you ever been hospitalized for any reason outside of childbirth before this accident?
A. No.
Q. Had you ever been diagnosed with a broken bone before this accident?
A. No.
Q. Had you ever received any type of pain injections before this accident?
A. No.
Q. And had any doctor at any point identified you as disabled before the accident for any reason?
A. No.
Q. Did you have any psychological conditions for which you received treatment, be it depression, anxiety, bipolar, schizophrenia, anything like that before the accident?

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A. No.
Q. Have you ever had any type of injury resulting from domestic violence?
A. No.
Q. Have you ever been shot by a gun?
A. No.
Q. Have you ever been stabbed?
A. No.
Q. Had you ever had any issues with your foot, either left or right, before this accident?
A. No.
Q. It sounds like before this accident you didn't get a lot of -- you didn't have a lot of medical treatment; is that fair to say?
MR. MAKLED: Object to form and foundation.
MS. DUENAS: Sure.
CONTINUING BY MS. DUENAS:
Q. It doesn't look like you were treating -- or you had any type of injuries before this accident that you treated for; is that correct?
A. Excuse me. Say that again, I'm sorry.
Q. Sure.
Because I can't ask you every question under the sun. I'm trying to get an understanding of your medical history. It looks like it's fairly, you

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know, unremarkable, but I want to know, have you ever received treatment for any type of injury or medical condition before this accident?
A. No.
Q. How about thyroid? Did you ever have an issue with your thyroid?
A. No.
Q. Because I think I saw -- and I just want to -- I thought I saw an enlarged thyroid. Have you ever gotten treatment for an enlarged thyroid?
A. When I went for my MRI after the accident, they told me that I had one. So yeah.
Q. But that wasn't something that you had issues with or you were getting treatment with before; is that correct?
A. No, correct.
Q. Have you ever been in the military?
A. No.
Q. Have you ever applied for Social Security Disability?
A. No.
Q. Have you ever been convicted of a crime of dishonesty?
A. No.
Q. How about untruthfulness?
A. No.
Q. How about theft?

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A. No.
Q. Are you a felon?
A. No.
Q. Have you ever had a slip and/or fall that resulted in injury?
A. No.
Q. Have you ever been injured at work and made a workers' compensation claim?
A. No.
Q. Have you been involved in any other motor vehicle accidents outside of the one for which you're here today?
A. No.
Q. Did you graduate from high school?
A. I have my GED.
Q. And did you take any college courses?
A. No, but I took some other classes. Training.
Q. Do you have a license to do any type of work?
A. No.
Q. What's the title of -- your job title at Amazon?
A. I guess it would be sorter.
Q. And you're not required to drive a truck or deliver anything, are you, for Amazon?
A. No.
Q. Do you file taxes yearly?



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A. Yes.
Q. Do you recall how the motor vehicle happened for which we're here today?
A. Yes.
Q. And I keep saying it was October 27th, 2020; is that correct?
A. Yes.
Q. And did you have anybody in the vehicle with you at the time of the accident?
A. No.
Q. And what time of day was it?
A. Late morning.
Q. And we talked about this earlier. You were operating a Saturn, correct?
A. Yes.
Q. And that was the 2008 Saturn owned by Kandice Valentine. Kandice being spelled K-A-N-D-I-C-E, Valentine, correct?
A. Yes.
Q. How long has Kandice Valentine been a friend of yours?
A. Maybe about four years.
Q. And was it dark out or light out?
A. Light.
Q. How long had you been on the road before this accident occurred?

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A. Maybe about 15, 20 minutes.
Q. And where did the accident occur?
A. 75 and Trumbull.
Q. Just tell me what happened on this day. How did the accident occur?
A. I was in the right lane and the truck was in the left lane and then it just started turning and it ran into me. It started turning right and it ran into me. It kept going, but eventually, it stopped.
Q. So you're in the right lane, the truck is to your left?
A. Yes.
Q. So does the truck -- you said the truck driver turned into you, meaning turned into and struck the left side of the vehicle you were driving?
A. Yes.
Q. You said that you were driving to pick up your mother; is that correct?
A. Yes.
Q. To take her to the hospital?
A. Yes.
Q. And Ms. Valentine's house is noted to be on 1918 Eagle Court, Westland, Michigan. Is that where you were at?
A. Yes.
Q. And then from Westland, you were driving to Detroit on

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Trumbull to pick up your mother?
A. Yes.
Q. Did you have your seat belt on?
A. Yes.
Q. When the accident occurred, was it one impact or multiple impacts to the vehicle?
A. It was one.
Q. After the truck driver strikes the left side of the car, what do you do?
A. Panic. I just sat there.
Q. Do you get out of the vehicle?
A. Yes, because the guy didn't want to give me his insurance. I just checked my car and everything.
Q. So you're physically able to get out of the vehicle. Did you walk over to the other person to try to get his information?
A. Yes.
Q. Did you call the police at all?
A. Yes.
Q. And did the police ever arrive to the scene?
A. Yes.
Q. And when they arrived, was the truck driver still there?
A. Yes.
Q. Did you ask for an ambulance to come to pick you up?

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A. No, I didn't.
Q. Did the police officer ask you if you needed an ambulance?
A. Yes.
Q. And you declined at that point?
A. Correct.
Q. Did you -- was the car that you were in, that Saturn, drivable after this accident?
A. No.
Q. Was it towed from the scene --
A. Yes.
Q. -- to your knowledge?
Do you know if your mom ever made it to the hospital on this day?
A. Well, that was why I didn't get an ambulance because I wanted to get to her and we went together in a Uber.
Q. So at the scene of the accident, did you call an Uber?
A. Yes.
Q. And the Uber picked you up and then you drove to your mom's house; is that correct?
A. Yes.
Q. And then picked up your mom and drove her to the hospital; is that correct?
A. Yes.
Q. What hospital?



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A. Harper.
Q. Now when you were driving your mom to the hospital, did you also get checked out at the hospital?
A. Yes.
Q. And were you treated and admitted or treated and released?
A. Treated and released.
Q. Now, I keep seeing something like you stopped and grabbed things for your children at Burger King on your way to your mother's house. Does that make any sense to you?
A. Yes.
Q. What happened there?
A. That's how I got on 75 and Trumbull. I was getting them food to give to my mom. They were at my mom's house.
Q. And then all of you were going to go to the hospital, you and your children and your mother, or no?
A. No, just me and my mother. My daughter was old enough to watch.
Q. And then -- so you pick her up. You both go to Harper Hospital. You're evaluated. Now were you bleeding from any part of your body after this accident?
A. No.
Q. Did you have any cuts at any part -- to any part of

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your body from this accident?
A. No.
Q. Did you lose consciousness at all?
A. No, not that I can remember.
Q. Are you being treated for a closed-head injury of any kind?
A. No.
Q. Any allegations of memory loss or confusion after this accident?
A. No.
Q. And was your car upon impact pushed into anything, meaning a sign, a curb, another vehicle, anything like that?
A. I don't think so.
Q. So when the police come, do you give a statement to the police officer?
A. Yes.
Q. And you're walking and talking after the accident; is that correct?
A. I was in my vehicle.
Q. So but you never got out of your vehicle?
A. Yes, I did.
Q. So to be clear, did you give a statement to the police officer, the police officer walk up to your window and then take a statement through the car window?

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A. Yes.
Q. And then after that, the police was done with taking down statements. You get an Uber that comes to drive you and your mom to Harper Hospital?
A. Yes.
Q. And do you know if this car was totaled or repaired?
A. She never repaired it.
Q. Did you take any photos of the vehicle?
A. I have a video.
Q. And when was the video taken?
A. Right afterwards.
Q. The same day?
A. Yes.
Q. And did you take that video?
A. Yes.
Q. And does your -- did you give it to your attorney?
THE WITNESS: Do you have it?
(Witness conferred with her attorney)
THE WITNESS: Yes.
CONTINUING BY MS. DUENAS:
Q. Now, are you saying that you received injuries from this accident?
A. Yes.
Q. What type of injuries did you receive from this accident?

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A. Neck and back pain.
Q. Okay.
A. I can't stand for longs amount of time. I have a aching pain constantly. It comes and goes.
Q. So I have neck and back and aching pain. Anything else?
A. No.
Q. Were you contacted by any doctor or facility trying to schedule treatment, appointments after this accident?
A. No.
Q. Were you solicited by anybody after this motor vehicle accident?
A. No.
Q. So no one called you up and said, "Hey, we've made an appointment for you to go somewhere for treatment"; is that correct?
A. Correct.
Q. And you said you're -- so when you go to Harper Hospital, do you tell them that you have neck and back pain?
A. Yes.
Q. Any other pain that you indicated, if you can recall?
A. No.
Q. Do you know if there were any images taken, x-rays, CT Scans or MRIs?



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A. They just gave me a x-ray.
Q. Of your back or your neck, which one?
A. Of my back.
Q. And then you were treated and released, correct?
A. Yes.
Q. Was your mom also treated and released?
A. Yes.
Q. Now were you given any type of prescriptions when you left the emergency room?
A. I think they gave me Motrin.
Q. Who's the next -- where do you go next for treatment?
A. I caught -- We Care Physical Therapy.
Q. What is it?
A. We --
Q. Oh, We Care Physical Therapy?
A. Uh huh.
Q. How did you find out about We Care Physical Therapy?
A. I looked it up, just was looking up.
Q. What did you type in to look up physical therapy for We Care?
A. Good physical therapist.
Q. You typed in "good physical therapist", and We Care Physical Therapy came up?
A. Yeah.
Q. I'm going to try that.

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A. Yeah, maybe because it was of the area I was in, I was close to Southfield and it was right there.
Q. There are -- pick a stone up and throw it, you'll hit a physical therapist in Southfield.
So no one recommended We Care, it's something you Googled and found for yourself?
A. Yes.
Q. Did you get any type of relief from the treatment that was provided at We Care Physical Therapy?
A. Yes.
Q. What type of relief did you receive from We Care?
A. My back became a little bit stronger, even though I still get pain, but it became more manageable to deal with.
Q. Why did you stop treatment with them? Because I see -- you know, in January of 2020? 2022? Why did you stop treatment?
A. Because I had to work.
Q. Okay.
Do you know if there are any bills outstanding due but owed to We Care Physical Therapy?
A. Yes.
Q. And do you know how much is outstanding due and owed?
A. No, I don't.
Q. Did you ever get a bill from We Care Physical Therapy?

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A. No.
Q. How do you know there's a bill outstanding due and owed?
MR. MAKLED: I have a bill, Arminia, that I'll be sending to you.
MS. DUENAS: Okay.
CONTINUING BY MS. DUENAS:
Q. So is that something that you found out after you -- or before you filed the lawsuit?
A. Yes.
Q. Now, is your attorney also the attorney for your third party?
A. Yes.
Q. So you go to We Care Physical Therapy, you went there for over a year, correct? Three times a week for a year?
A. Yes.
Q. The first time you find out about owing anything is when you filed your lawsuit and you start to look into it, correct? Because there's no bills being sent to your house?
A. Correct.
Q. What do you think of that? What's your -- and I'm just asking your opinion. What's your opinion on a doctor that lets you treat somewhere for over a year

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and then just lets the bill escalate and escalate? Do you have an opinion about that?
A. No, no.
Q. No? Is that normal to you, because I can't go to my doctor without paying a $25 co-pay, but, you know, is that normal to you?
A. No.
Q. That's why you didn't know that there was a bill that was piling up, correct?
A. Correct.
Q. Okay.
And when you found out that there was a bill that was due and owed by We Care Physical Therapy, did that make you upset?
A. Yeah, yes.
Q. Because would you have liked to have known that there was an issue with payment at some point?
A. Yes.
Q. Do you know if We Care Physical Therapy ever sent any of your bills to your personal health insurance for consideration of payment? Do you know that, if that happened?
A. No.
Q. So do you know if -- and you may not know, but do you know if there is a lien of any kind? And what I mean



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is, did any of your doctors or any facilities for which they've provided treatment on a regular basis send any of your bills to your Molina or Medicaid health insurance? Do you know if that happened?
A. No.
Q. So I see We Care Physical Therapy and then the Dearborn Pain Specialists. How did you get to Dearborn Pain Specialists?
A. Same -- their transportation. I would go there after I left therapy.
Q. No, I mean how did you start going to Dearborn Pain Specialists? How did you find out about them?
A. I was recommended by We Care.
Q. Do you know if We Care has any type of ownership interest in Dearborn Pain Specialists?
A. No, I don't believe so.
Q. Did they schedule appointments with Dearborn Pain Specialists on your behalf?
A. No. I did.
Q. And so did you also schedule your own appointments at We Care Physical Therapy?
A. Yes.
Q. So this is what it sounds like. The same time that you're going to We Care Physical Therapy -- because you would only go to Dearborn Pain Specialists

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once a month, right?
A. Yes.
Q. You would make sure that the time that you were going to physical therapy is also one of the times that you would go to the Dearborn Pain Specialists, correct?
A. Yes.
Q. And again, I think we talked about this, but I just want to make it clear for the record if I didn't. Do you know if there's a bill that's outstanding due and owed by Dearborn Pain Specialists?
A. Yes.
Q. And you know that there is a bill for Dearborn Pain Specialists? Do you know how much it is?
A. No.
Q. Again, that's -- they never sent a bill to you, did they?
A. No.
Q. So as far as you know, it could be $100, it could be 60,000. You wouldn't know that because you've never actually received a bill before this litigation, right?
A. Right.
Q. And again, that doesn't seem odd to you? Now, knowing that? Is that weird to you, knowing now that they've never sent a bill and some of these bills weren't

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paid? Does that seem odd to you?
A. Yes.
Q. All right.
So I also see that -- so is Harper Hospital, was it only for -- you only went once for the emergency, the day of the accident?
A. Yes.
Q. And Dearborn Pain Specialists, you are still going to Dr. Shukr once a month, correct?
A. Yes.
Q. And he's providing prescriptions for medications. Does he do that every month or does he do that every three months?
A. Every month.
Q. So you have to go to Dearborn Pain Specialists in order to get your prescriptions refilled, correct?
A. Yes.
Q. And We Care no longer -- or were no longer getting physical therapy there. I see that you went to Focus Imaging at some point; is that correct?
A. Yes.
Q. For MRIs?
A. Yes.
Q. Who prescribed that?
A. Pain Management.

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Q. Is that Dr. Shukr?
A. Yes.
Q. It seemed like to me -- and just correct me if I'm wrong -- you go to Focused (sic) Imaging and you get a lot of films at one time?
A. Yes.
Q. So let's talk about what type of MRIs were -- did you get, and were they all on one day?
A. Yes.
Q. Go ahead.
A. I just know that they scanned my upper body and my back, I believe. I'm not sure exactly what it's called.
Q. So I see the -- an MRI of your neck?
A. Yes.
Q. And was it -- how long were you at -- it looks like it was Focused Imaging. So were you picked up and taken to Focused Imaging as well?
A. Yes.
Q. Again, did anybody talk to you about having to pay for that transportation?
A. No.
Q. And did you sign anything with regard to the transportation?
A. I can't recall.



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Q. And did you order the transportation or did Focus Image (sic) order it for you when you made your appointment?
A. The Pain Management ordered it, I believe.
Q. So that would be Dearborn Pain Specialists?
A. Yes.
Q. Again, do you know if they have any type of ownership interest in Focused Imaging?
A. No.
Q. No, you do not know?
A. I don't know.
Q. When Dr. Shukr ordered these MRIs, did he say, "I'm ordering MRIs, you can go anywhere you want", or did he order the MRIs and said that you have an appointment to go to Focused Imaging or that we will schedule the MRIs at Focused Imaging?
A. I can't recall.
Q. So I see that it's an MRI of the neck, the MRI of the lower and upper back, the thoracic and lumbar spine; is that correct?
A. Yes.
Q. And then is that it? Are those the only MRIs that were taken on that day?
A. Yes.
Q. Were there MRIs taken to any other part of your body

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at any other time after this accident?
A. No.
Q. Do you know if any of those MRIs indicated that you had a disc bulge or herniation? Did you talk to your doctors about it?
A. Yes. I can't remember exactly what they said, but I know they had said I had tears in my neck and in my back.
Q. Tears in your neck and your back?
A. Yes.
Q. We got you at the ER. We have -- we talked about physical therapy. Have you gone to any other locations for physical therapy outside of We Care Physical Therapy?
A. No.
Q. Any other pain management facilities outside of Dearborn Pain Specialists?
A. No.
Q. We got the focal imaging because we talked about the three MRIs, and those were the only MRIs that were taken after the emergency room, correct?
A. Correct.
Q. We talked about the various transportation companies and -- now, I see that you're doing -- are you doing urine tests every time you go to Dearborn Pain

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Specialists or do you do it every other -- when does that happen?
A. Every time.
Q. Every time, every month?
A. Yes.
Q. Have you ever indicated to Dr. Shukr or anybody at Dearborn Pain Specialists that you had a drug problem at any time?
A. No.
Q. So I'm not quite understanding. Do you know why you have to take a drug screen every time you go there? Has that ever been explained?
A. No.
Q. Because it seems to me that you're being prescribed medication, but you're taking them as needed, correct?
A. Yes.
Q. So they're not always going to be in your system. Have they ever talked to you about a time when they've done a drug screen and they've noticed that you're -- the medications that have been prescribed are not in your system? Have you ever had a conversation like that to any of the doctors?
A. No.
Q. Why do you think you have to take a drug screen every time you go?

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A. To see if it's in my system. I'm not sure.
Q. But it seems like if it's in your system, you're not -- you don't know if it's being -- and it looks like it's a couple of -- so are you doing the urine, meaning at Dearborn Pain Specialists, after you see the doctor, whatever? Is it normal for you to give a urine sample --
A. Yeah, they --
Q. -- to them?
A. -- as soon as I walk in, they give me a cup.
Q. Are they doing any type of blood draws or anything?
A. No.
Q. Again, have you been -- have you received any billing from any type of drug testing facility saying that there's bills that are due and owed?
A. No.
Q. So would you -- would you think that the drug test or the urine test is going to be screened by the doctor at Dearborn Pain Specialists or do you think that that's going to be sent out somewhere; do you know?
A. I'm not sure.
Q. Now, we talked about all of the facilities and doctors that I have on my witness list. Are there any other doctors or facilities that you're getting treatment



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with or you receive treatment at that we haven't discussed?
A. No.
Q. And you know that at some point you were sent to a doctor on behalf of the insurance company; is that correct?
A. Yes, yes, yes.
Q. And you appeared for that, correct?
A. Yes.
Q. Now, do you know if the insurance company said based on this doctor's evaluation of you that the treatment was no longer reasonable? Do you remember getting a letter like that?
A. Yes.
Q. And you continued to treat after?
A. Yes.
Q. And -- and you knew that at that point after treating, that the insurance company was not going to consider payment after they denied your bills due to this report, correct?
A. Yes.
Q. Did you have any conversations with any of your doctors regarding that report?
A. No.
Q. All right.

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And do you know -- and you said that you don't need, you can take care of cleaning your house yourself, correct?
A. Yes.
Q. And you can get dressed by yourself and take your own shower?
A. Yes.
Q. Okay.
MS. DUENAS: That's all I have.
MR. MAKLED: All right. Thanks, Arminia.
MS. DUENAS: Thank you very much. Thank you. I will take a copy and a mini.
COURT REPORTER: Electronic?
MS. DUENAS: Yes.
COURT REPORTER: Dan, would you like to order a copy?
MR. MAKLED: I'll take the same.
(Deposition concluded at 2:11 P.M.)
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STATE OF MICHIGAN )
COUNTY OF OAKLAND )

Certificate of Notary Public

I certify that this transcript is a complete, true, and correct record of the testimony of the witness held in this case.

I also certify that prior to taking this deposition, the witness was duly sworn or affirmed to tell the truth.

I further certify that I am not a relative or an employee of or an attorney for a party; and that I am not financially interested, directly or indirectly, in the matter.

In witness whereof, I have hereunto set my hand this 8th day of April, 2022, at Rochester Hills, Michigan, County of Oakland, State of Michigan.

Lory A Helland

LORY A. HELLAND, CSR-#3778
Notary Public, Oakland County, Michigan
My Commission Expires: 02/15/26



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# EXHIBIT C

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# APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

Michigan Automobile Insurance Placement Facility
PO Box 532318 | Livonia, MI 48153-2318 | Phone: 734-464-8111 | Fax: 734 744-8552
www.michacp.org

**Please note, "you" referenced throughout this application is defined as the injured person applying for benefits.**
This application must be completed, signed and received no later than one (1) year from the date of accident. Incomplete or illegible applications will be returned without assignment to a servicing insurer. Please also submit a copy of the police report, EMS run form and/or any other documentation. All information will be reviewed, however, please note, additional information may be required. **Please be advised, applications made to the Michigan Automobile Insurance Placement Facility should be submitted as soon as possible to expedite the initial determination of an injured person's eligibility for benefits.**

## Injured Person Information

1. Name of Injured Person: First Name: Carlonda Middle Name: Naish'e Last Name: Sweeper Suffix:
2. Date of Birth: [redacted]
3. List any and all names you have previously or currently go by:
4. Social Security #:
5. Injured Person's Current Address: Street: 4722 Trumbull St Apt #: City: Detroit State: Mich Zip Code: 48208
6. Injured Person's Address at the Time of the Accident: Street: 4722 Trumbull St Apt #: City: Detroit State: Mich Zip Code: 48208
7. Home Phone #:
8. Work Phone #:
9. Cell Phone #:
10. Email Address:

11.a. Marital Status: ☐ Married ☐ Separated ☐ Divorced ☑ Never Married ☐ Widowed
b. If "married" or "separated" please provide:
Spouse Name Spouse Address Check here if spouse address is same as injured person's ☐

12. Date of Accident: 10 / 27 / 2020
13. Injured Person's Driver's License # and State or State ID #: [redacted]
14. At the time of the accident, were you a Michigan resident? ☑ Yes ☐ No
a. If no, list state:
15. At the time of the accident, did you have any auto insurance? ☐ Yes ☑ No
a. If yes, list Name of Automobile Insurance Company & Policy Number

## Accident Information

16. Accident Location: Street: Trumbull And I-75 City: Det State: Mich Zip Code: 48208
17. Provide a full description of how the accident occurred. Note: If you require additional space, please attach a separate sheet with details as part of this application.
Driver was in the ~~right~~ left lane I was in right At a red light He then started to turn right running into me.
18. Was a police report made? ☑ Yes ☑ No
a. If yes, list name of police department, police report number and date made:
19. What was your position at the time of the accident? ☑ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Other
a. If you answered "Passenger", where were you seated in the vehicle? ☐ Passenger Front Seat ☐ Driver Side Back Seat ☐ Middle Back Seat ☐ Passenger Back Seat ☐ Other
20. Was the vehicle a motorcycle? ☐ Yes ☑ No If you answered "Yes" please provide the following:
a. List the name of the owner of the motorcycle:
b. Was the motorcycle insured at the time of the accident? ☐ Yes ☐ No c. Motorcycle Vin #
d. If the motorcycle was insured and you were the owner of the motorcycle, please attach a copy of your proof of motorcycle insurance.
21. Were you contacted by a doctor's office or other person about this claim? ☐ Doctor ☐ Other ☒ None
a. If you answered "Doctor", please provide:
Name of Doctor Address Phone Number
b. If you answered "Other", please provide:
Name Address Phone Number



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# APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

## Injury Information

22. Are you claiming injuries from the accident? ☑ Yes ☐ No a. If yes, describe your injuries:

Back and Neck Pain

23. Were you treated and/or transported by an ambulance/EMS or by any other way to a hospital after the accident? ☑ Yes ☑ No

a. If yes, please provide:

EMS/Ambulance/Person Name | Address | Phone Number

24. Were you treated in a hospital after the accident? ☑ Yes ☐ No a. If yes, what type of treatment did you receive? ☐ In-Patient ☑ Out-Patient

b. If yes, please provide:

Hospital Name: Harper Hospital | Address: 3990 John St Detroit MI 48201 | Phone Number: 313-745-8040

*Note: If you were treated at more than 1 hospital, attach a separate sheet with contact information as part of this application.*

25. Are you currently or were you treated by a doctor after the accident? ☑ Yes ☐ No

a. If yes, please provide:

Doctor Name: Dearborn Pain Spe 1081 | Address: 13530 Michigan Ave Suite 245 | Phone Number: 313-789-8663

b. Name of person who referred you to this doctor: _____

*Note: If you were treated at more than 1 doctor, attach a separate sheet with contact information as part of this application.*

26. Before this accident happened, did you have any of the same injuries as you listed in question 22? ☐ Yes ☑ No

a. If yes, describe which injuries and the doctors/pharmacies you treated with:

Injuries

Doctors/Pharmacy Name | Address | Phone Number | How long were you treating?

*Note: If you sought treatment from more than 1 doctor/pharmacy, attach a separate sheet with contact information as part of this application.*

27. Please list any medical conditions you had and/or medications you were taking at any time before this accident. None

a. If so, please provide the name, address, phone number(s) and length of treatment:

Doctors/Pharmacy Name | Address | Phone Number | How long were you treating?

*Note: If you sought treatment from more than 1 doctor/pharmacy, attach a separate sheet with contact information as part of this application.*

28. Do you have a primary care doctor? ☐ Yes ☑ No a. If yes, please provide:

Doctors Name | Address | Phone Number

29. Have you received any medical bills from this accident? ☐ Yes ☑ No

30. Do you expect to receive medical bills from this accident? ☑ Yes ☐ No

31. Did you apply for social security disability benefits at any time before or after this accident? ☐ Yes ☑ No

31b. If yes, please provide all of the dates of your application(s):

## Medical Insurance

32. Do you have any kind of health insurance? ☑ Yes ☐ No a. If yes, please provide:

Name of Health Insurance Co.: Molina | Address | Phone Number: 888-898-7969

Policy or Plan Number: 0068265953 Member Number: _____ Group Number: _____

33. Are you a Medicare Beneficiary? ☑ Yes ☑ No a. If yes, what is your Medicare #: _____



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# APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

## Employment Information

34. Were you employed at the time of the accident? ☐ Yes ☒ No a. If yes, provide the following information; if no, skip to question 42.

| Name, Address and Phone Number of Your Employer | Job Title | Average weekly income at the time of the accident | List the dates of your employment: From | To |
|---|---|---|---|---|
| N/A | | $ N/A | | |

*Note: If you were employed by more than 1 employer, attach a separate sheet with contact information as part of this application.*

35. Have you missed any work because of your injuries? ☐ Yes ☒ No a. If yes, what is the first date you missed work? _____

36. Do you have a note from a doctor ordering you to stay home from work? ☐ Yes ☐ No a. If yes, please provide:
Doctors Name Address Phone Number

37. Have you returned to work? ☐ Yes ☒ No
a. If yes, what date did you return to work? _____

38. If not yet returned, have you been given a return date? ☐ Yes ☐ No
a. If yes, return to work date: N/A

39. Were you on the job at the time of the accident? ☐ Yes ☒ No
a. If yes, are you eligible for any benefits under workers compensation? ☐ Yes ☐ No

40. How did you normally get to work before to this accident? I.E. Public Transportation, motor vehicle, etc.
family member / N/A

41. Are you eligible for any benefits under any other wage or salary continuation plan? ☐ Yes ☒ No

## Entitlement Information-Note that question 42 refers to the involved motor vehicle you were in, getting into or out of, or were struck by as a pedestrian or if applicable, the motorcycle you were on at the time of the accident.

42. Was there damage to the vehicle you were occupying or struck by? ☐ Yes ☐ No ☐ Unknown If yes, describe the damage to the vehicle:
right side is totaled

a. Was the vehicle towed? ☐ Yes ☒ No If yes, please provide: Name of Towing Company Address Phone Number

b. Was the vehicle repaired? ☐ Yes ☒ No If yes, please provide: Name of Repair Company Address Phone Number

c. Do you know the current location of the involved vehicle? ☒ Yes ☐ No If yes, please provide: Location of Vehicle Address Phone Number
Trombly and I-75

*Note: If you were struck by more than 1 vehicle as a pedestrian, attach separate sheet with contact information as part of this application.*

d. Did you use the motor vehicle/motorcycle at any time before the date of the accident? ☐ Yes ☒ No ☐ Unknown

e. How often did you use the vehicle/motorcycle?
☐ Daily ☐ Once a Week ☐ Two or More Times Per Week ☐ Less than Once Per Month ☐ Rarely ☒ Other, please explain Never

f. Did you have access to a set of keys to the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

g. Have you ever had to ask permission to use the vehicle/motorcycle? ☒ Yes ☐ No ☐ Unknown

h. Have you ever been denied permission to use the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

i. Did you ever put gas in the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

j. Did you ever pay money toward the purchase or the maintenance of the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

k. Did you have permission to use the vehicle/motorcycle on the date of the accident? ☒ Yes ☐ No ☐ Unknown If Yes, from who? _____

43. List the name of the owner of the vehicle (Note, if you were on a motorcycle, please provide the following information about the vehicle involved in your accident):
First Name Middle Name Last Name
Kourtnie Valentine

Owner's Address and Phone Number
I Dont Know it

a. List the Name of the Registrant of Vehicle involved in the accident if different than the owner: First Name Middle Name Last Name

Registrant's Address and Phone Number I Dont Know

b. Vehicle Involved:

| Year | Make | Model | Vehicle Identification Number (VIN) | Plate Number | State the Vehicle is Registered In |
|---|---|---|---|---|---|
| 2008 | Saturn | Vue | 3GSCL33P38S691872 | EAT 4381 | Michigan |

c. Did the owner and/or registrant of this vehicle have any automobile insurance on the date of the accident? ☐ Yes ☒ No If yes:
Name of Insurance Company : None Policy #: _____
How did you confirm if the owner/registrant did or did not have insurance? Asked

d. If not you, list the name of the driver of the vehicle: First Name Middle Name Last Name

e. Did the driver have automobile insurance in effect on the date of the accident? ☐ Yes ☒ No If yes:
Name of Insurance Company : None Policy #: No
How did you confirm if the driver did or did not have insurance? _____
f. How many people were in the vehicle? _____
Please list all passengers in this vehicle at the time of the automobile accident:

| Name | Address | Phone Number | Passenger's Insurance Company (if any) | Insurance Policy # |
|---|---|---|---|---|
| | None | | | |

*Note: If more than 5 passengers, attach separate sheet with the above information as part of this application.*

44. Were there witnesses to the accident? ☐ Yes ☒ No If yes, please provide:

| Witness Name | Address | Phone Number |
|---|---|---|
| | | |
| Witness Name | Address | Phone Number |
| | | |

*Note: If more than 2 witnesses, attach separate sheet with contact information as part of this application.*

## Entitlement Information *(continued)*

45. List all the people who lived in your home at the time of the auto accident and their relationship to you:

| Name | Relationship |
|---|---|
| Rhonda Swoope | Mom |
| Drayton Swoope | Son |
| Laiven Swoope | Daughter |

*If more than 3, attach separate sheet with information as part of this application.*

46. Describe all motor vehicles owned by you, your spouse (even if you are separated) or any relative living in your home on the date of the accident: If none, check here: ☑

| Owner/Relationship | Year, Make & Model of Vehicle | Vehicle Identification Number | Plate Number | Insurance Co & Policy Number |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

*Note: If more than 3, attach separate sheet with contact information as part of this application.*

47. Have you ever made a claim for benefits (i.e. payment of medical bills) due to an injury that was caused by an automobile accident? ☐ Yes ☑ No
a. If yes, please provide:
Name of Insurance Company _____ Claim Number _____

48. Are you filing this claim with the Michigan Automobile Insurance Placement Facility because there is a dispute between two or more insurance companies concerning their obligation to provide you with insurance coverage? ☐ Yes ☒ No
a. If yes, please provide documentation of the dispute and the following:
Name of Insurance Company _____ Phone Number _____ Claim Number _____
Name of Insurance Company _____ Phone Number _____ Claim Number _____

49. Please document what actions you have taken to determine that there is no other auto insurance coverage. This question should be completed to expedite the claims process (attach additional sheet(s) if needed and any supporting documentation).
I asked the owner of the car, they said they didn't have ins.





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# APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

Please note, if the top two boxes below are not acknowledged and the application is not signed and dated, the application will be considered incomplete and will be returned to the injured person or the preparer for further completion.

☐ I have reviewed the application in its entirety and attest that the information contained therein is true and accurate. If I am a medical provider and am submitting this application on behalf of the injured person, I attest that I have knowledge of the information provided, have thoroughly investigated and verified all documented information and have knowledge that all the information documented is true and accurate.

☐ I acknowledge I have read the following fraud warning:

**FRAUD WARNING**

A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan Automobile Insurance Placement Facility for payment or any other benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 of the insurance code that is subject to the penalties imposed under section 4511. **A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the Assigned Claims Plan.**

☐ I understand that if benefits are paid to me or for my benefit, the owner of the involved, uninsured vehicle will be financially responsible for reimbursement of all no fault benefits paid and costs associated with this claim pursuant to the Michigan No Fault Act.

☐ If I provided an email address, I understand that future correspondence and information regarding this claim may be exchanged via the email contact provided.

| Signature of Injured Person or Representative | Printed Name of Injured Person or Representative | Date: |
|---|---|---|
| X [signature] | X Orlando Swope | 11/11/2020 |
| **Signature of Preparer (if different than above)** | **Printed Name of Preparer (if different than above)** | **Date:** |
| X [signature] | X Haircare Pt | 11/11/2020 |

Who prepared this application? ☐ Injured Person ☐ Attorney ☒ Third Party Biller
☐ Parent ☐ Legal Guardian

Preparer Name and Company:
We Care PT (Haircare

Address: 17220 W. 12 mile Rd Ste 140

City: Southfield State: MI Zip Code: 48076

Phone Number: 313 948 5354

WeCaretherapyLLC@Gmail.com.

If the preparer is a medical provider: Do you have an assignment of benefits?

☐ Yes ☐ No If Yes, please attach.

Michigan Assigned Claims Plan
c/o Michigan Automobile Insurance Placement Facility
PO Box 532318
Livonia, MI 48153-2318
www.michacp.org Phone: 734-464-8111
Email: info@michacp.org
Fax: 734 744-8552



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# EXHIBIT D

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CAROLINDA NAISHE SWOOPE,

Plaintiff,

vs.

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant.

Case No. 21-011402 -NF
Hon. Dana Margaret Hathaway

---

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Yvonne@cmplaw.com

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**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE**

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

_____

Hon. Dana Margaret Hathaway
CIRCUIT COURT JUDGE

This matter having come before the Court on Defendant Citizens Insurance Company of the Midwest's motion for summary disposition and the Court being otherwise fully advised in the premises,

**IT IS HEREBY ORDERED** that Defendant Citizens Insurance Company of the Midwest's Motion for Summary Disposition is granted with prejudice.

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**IT IS FURTHER ORDERED** that due to Plaintiff's unlawful taking of the vehicle she operated on the date of the accident,Plaintiff's claim for personal injury protections benefits (no-fault PIP benefits) regarding an October 27, 2020 motor vehicle accident is ineligible for benefits. As such, Plaintiff, and any and all providers claiming by or through her have no standing to submit, pursue or receive no-fault PIP benefits from Defendant for the October 27, 2020 motor vehicle accident.

This is a final order, resolves all issues and **closes the case**.

IT IS SO ORDERED.

Hon. Dana Margaret Hathaway
CIRCUIT COURT JUDGE



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# EXHIBIT D

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CAROLONDA NAISHE SWOOPE,

Plaintiff,

vs.

CITIZENS INSURANCE COMPANY
OF THE MIDWEST,

Defendant.

Case No. 21-011402 -NF
Hon. Dana Margaret Hathaway

Daniel B. Makled (P78777)
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Attorneys for Plaintiff
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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY DISPOSITION**

NOW COMES Plaintiff, CARLONDA SWOOPE, by and through her attorneys, HALL MAKLED, P.C., and for her Response to Defendants Motion for Summary Disposition states as follows:

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## I. TO ESTABLISH THAT PLAINTIFF TOOK THE VEHICLE "UNLAWFULLY" DEFENDANT MUST SHOW AN UNLAWFUL TAKING FROM THE OWNER'S PERSPECTIVE NOT THE DRIVER'S PERSPECTIVE. DEFENDANT HAS NOT DONE THAT AND THUS ITS ARGUMENT FAILS AS A MATTER OF LAW.

First, Defendant is correct that there is no "emergency" exception to the "permissive use" and "lawful taking requirement". Thus, Defendant's mentioning of Burger King, Uber, driving her mother to the hospital, etc. is irrelevant and is meant to potentially distort the Court's view of the Plaintiff. It also does not matter whether the Plaintiff was licensed or ever drove the vehicle before the subject date. This is more irrelevant information provided to the Court to distort the Court's view of the Plaintiff. The only proper inquiry is whether the Plaintiff took the vehicle "lawfully". Plaintiff's position is that she did take the vehicle lawfully. Defendant's position is obviously that Plaintiff took the vehicle "unlawfully". An examination of this issue is set forth below.

MCL 500.3113(a) states as follows:

> **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:**
>
> **(a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully and the person knew or should have known that the motor vehicle was taken unlawfully.**

The proper inquiry is whether the vehicle was unlawfully taken from the ***driver's perspective, not the owner's perspective***. *Spectrum v. Farm Bureau Mut. Ins. Co. of Michigan*, 492 Mich 503, 522; 821 NW2d 117 (2012). In the case at bar, the driver, Carlonda Swoope, testified that the vehicle she drove belonged to Kandice Valentine, her friend of 4 years, for the purpose of a medical emergency related to her mother. (**Exhibit A** – Carlonda Swoope). A jury may reasonably conclude that under these circumstances



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Ms. Swoope believed at all times that she had implied permission to drive the vehicle on the subject date. Therefore, Defendant's motion is without merit and must be denied.

This is supported by caselaw. To illustrate, in *Landon v. Titan Ins. Co.*, 251 Mich. App. 633, 651 NW2d 93 (2002), the court held that the trial court erred in determining that the driver was not entitled to personal injury protection benefits as the driver was entitled to a common law presumption that she had permission to drive the owner's car. *Landon* relied upon *Fout v Dietz*, 401 Mich. 403, 405; 258 N.W.2d 53; (1977) which held that the "operation of a motor vehicle by one who is not a member of the family of the owner gives rise to a rebuttable common-law presumption that the operator was driving the vehicle with the express or implied consent of the owner." *Landon*, supra at 647. In so holding, the court in *Landon* determined that a question of material fact existed as to whether the driver had a reasonable basis for believing she would have the owner's permission to drive the owner's car. *Id* at 651.

Defendant's reliance upon *Spectrum Health Hosps. v. Farm Bureau Mut. Ins. Co. of Michigan,* 492 Mich 503; 821 NW2d 17 (2012) is misplaced and easily distinguishable from the case at bar. In *Spectrum*, the court stated, "[t]o determine whether the end user in Spectrum Health unlawfully took the vehicle, we consider the undisputed facts of this case: **the vehicle's owner expressly told the end user that he was not allowed to drive the vehicle.** Therefore, we conclude that the Court of Appeals erred by affirming the circuit court's grant of summary disposition to Spectrum Health because MCL 500.3113(a) precludes the claimant from receiving PIP benefits in this case." *Spectrum*, supra at 510. (**emphasis added**) That is a far cry from the case at bar. In our case there is nothing in this record to show that Ms. Valentine ever expressly told Ms. Swoope that





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she was not allowed to drive the vehicle. Therefore, according to *Spectrum*, since there was no statement from Valentine telling Ms. Swoope that she was not allowed to drive the vehicle, Defendant's motion must be summarily denied.

Another case directly on point is *Rambin v. Allstate Ins. Co.*, 495 Mich 316; 852 NW2d 34 (2014), In *Rambin*, the court held as follows;

> Unlike *Spectrum Health*, ***the present case does not involve the taking of a vehicle against the express prohibition of the vehicle owner.*** Rather, plaintiff presented evidence that, in his view, showed that the person who granted him permission to take the motorcycle on which he was injured was the rightful owner. Against this background, we examine whether MCL 750.414, which makes it a misdemeanor to take or use a vehicle without authority of its owner, is a strict liability crime for purposes of applying MCL 500.3113(a). We hold that MCL 750.414 is not a strict liability crime and that it contains a mens rea element that the taker must intend to take a vehicle "without authority." Accordingly, we affirm the Court of Appeals' decision in so far as it holds that plaintiff is entitled to PIP benefits if the evidence establishes he did not know the motorcycle he had taken was stolen. Rambin, supra at 320.

*Rambin* requires a showing of knowingly taking without authority or knowingly using without authority. *Id.* at 332. Likewise, here, since Ms. Valentine did not knowingly use the vehicle without authority, Defendant's motion must be denied.

## II. PLAINTIFF PROVIDED TRUE STATEMENTS IN HER APPLICATION FOR BENEFITS AND IN HER DEPOSITION.

No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless the misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make the contract. *Oade v. Jackson Nat'l Life Ins. Co.*, 465 Mich. 244, (2001). An insurer may deny coverage under an insurance contract where that insurance policy was procured by the policy holder's fraudulent "misrepresentation material to the risk and hazard" attendant in the policy. *Keys v. Pace*, 358 Mich 74, 82-



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83; 99 NW2d 547 (1959). Whether a misrepresentation was material and whether it was relied on are generally questions of fact for the jury. *Bergen v. Baker*, 264 Mich App 376, 388-389; 691 NW2d 770 (2004).

In this case Plaintiff's "mens rea" or belief was that she was certainly permitted to use the vehicle of her friend of 4 years for a medical emergency related to her mother. This is not uncommon and in fact it is very likely for a jury to agree with this notion. Turning now to question 43K of the Application the which asked "did you have permission to use the vehicle on the date of the accident? Ms. Swoope checked YES, because of course, her "mens rea" or belief was that she had permission given the circumstances. When the same question asks "If Yes, from who?" Ms. Swoope left that blank. She did not lie, for example, and say that Ms. Valentine gave her permission. (**Exhibit B** – Application for Benefits). So, the question was understood as implicit versus explicit permission to use the vehicle as *Ms. Swoope believed* (this is the proper inquiry as a matter of law).

When then asked during her deposition whether Ms. Valentine gave her *explicit* permission to use the vehicle Ms. Swoope testified truthfully and said no. Had the Application asked whether the owner provided explicit permission to use the vehicle and Ms. Valentine said yes then we would have a misrepresentation/fraud issue here. But that is not the case.





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## III. CONCLUSION

Defendant's entire premise for its motion is its allegation that Ms. Valentine made false statements in support of her claim by falsely representing that she had permission to use the vehicle. **However, Defendant did not procure a statement from Ms. Valentine indicating she had ever told Ms. Swoope that she was not allowed to use her vehicle.** Therefore, the common-law presumption that Ms. Swoope was using the vehicle with the express or implied consent of the owner was unrebutted. Defendant's motion lacks any arguable merit. At the very least, a question of fact exists as to whether Ms. Swoope made any knowingly materially false statements in support of her claim. This question of fact renders summary disposition to be inappropriate.

**WHEREFORE**, Plaintiff, CARLONDA SWOOPE, respectfully requests that this court deny Defendants' Motion for Summary Disposition.

Respectfully submitted,

**HALL MAKLED, P.C.**

*/s/Daniel B. Makled*
DANIEL B. MAKLED (P78777)
Attorney for Plaintiff

Dated: October 4th, 2022

**Proof of Service**

I hereby certify that on October 4th, 2022, I electronically filed the foregoing papers with the Clerk of the Court using the Electronic Filing System which will send notification of such filing to all attorneys of record.

*/s/ Daniel B. Makled*
Daniel B. Makled



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# EXHIBIT A

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A. Yes.
Q. Do you recall how the motor vehicle happened for which we're here today?
A. Yes.
Q. And I keep saying it was October 27th, 2020; is that correct?
A. Yes.
Q. And did you have anybody in the vehicle with you at the time of the accident?
A. No.
Q. And what time of day was it?
A. Late morning.
Q. And we talked about this earlier. You were operating a Saturn, correct?
A. Yes.
Q. And that was the 2008 Saturn owned by Kandice Valentine. Kandice being spelled K-A-N-D-I-C-E, Valentine, correct?
A. Yes.
Q. How long has Kandice Valentine been a friend of yours?
A. Maybe about four years.
Q. And was it dark out or light out?
A. Light.
Q. How long had you been on the road before this accident occurred?

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A. Maybe about 15, 20 minutes.
Q. And where did the accident occur?
A. 75 and Trumbull.
Q. Just tell me what happened on this day. How did the accident occur?
A. I was in the right lane and the truck was in the left lane and then it just started turning and it ran into me. It started turning right and it ran into me. It kept going, but eventually, it stopped.
Q. So you're in the right lane, the truck is to your left?
A. Yes.
Q. So does the truck -- you said the truck driver turned into you, meaning turned into and struck the left side of the vehicle you were driving?
A. Yes.
Q. You said that you were driving to pick up your mother; is that correct?
A. Yes.
Q. To take her to the hospital?
A. Yes.
Q. And Ms. Valentine's house is noted to be on 1918 Eagle Court, Westland, Michigan. Is that where you were at?
A. Yes.
Q. And then from Westland, you were driving to Detroit on

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Trumbull to pick up your mother?
A. Yes.
Q. Did you have your seat belt on?
A. Yes.
Q. When the accident occurred, was it one impact or multiple impacts to the vehicle?
A. It was one.
Q. After the truck driver strikes the left side of the car, what do you do?
A. Panic. I just sat there.
Q. Do you get out of the vehicle?
A. Yes, because the guy didn't want to give me his insurance. I just checked my car and everything.
Q. So you're physically able to get out of the vehicle. Did you walk over to the other person to try to get his information?
A. Yes.
Q. Did you call the police at all?
A. Yes.
Q. And did the police ever arrive to the scene?
A. Yes.
Q. And when they arrived, was the truck driver still there?
A. Yes.
Q. Did you ask for an ambulance to come to pick you up?

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A. No, I didn't.
Q. Did the police officer ask you if you needed an ambulance?
A. Yes.
Q. And you declined at that point?
A. Correct.
Q. Did you -- was the car that you were in, that Saturn, drivable after this accident?
A. No.
Q. Was it towed from the scene --
A. Yes.
Q. -- to your knowledge?
Do you know if your mom ever made it to the hospital on this day?
A. Well, that was why I didn't get an ambulance because I wanted to get to her and we went together in a Uber.
Q. So at the scene of the accident, did you call an Uber?
A. Yes.
Q. And the Uber picked you up and then you drove to your mom's house; is that correct?
A. Yes.
Q. And then picked up your mom and drove her to the hospital; is that correct?
A. Yes.
Q. What hospital?



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# EXHIBIT B

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Document received by the MI Wayne Ind Circuit Court.

## APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

### Employment Information

34. Were you employed at the time of the accident? ☐ Yes ☒ No a. If yes, provide the following information; If no, skip to question 42.

| Name, Address and Phone Number of Your Employer | Job Title | Average weekly income at the time of the accident | List the dates of your employment: From | To |
|---|---|---|---|---|
| N/A | | $ N/A. | | |

*Note: If you were employed by more than 1 employer, attach a separate sheet with contact information as part of this application.*

35. Have you missed any work because of your injuries? ☐ Yes ☒ No a. If yes, what is the first date you missed work? _____

36. Do you have a note from a doctor ordering you to stay home from work? ☐ Yes ☐ No a. If yes, please provide:
Doctors Name Address Phone Number

37. Have you returned to work? ☐ Yes ☒ No
a. If yes, what date did you return to work? _____

38. If not yet returned, have you been given a return date? ☐ Yes ☐ No
a. If yes, return to work date: N/A.

39. Were you on the job at the time of the accident? ☐ Yes ☒ No
a. If yes, are you eligible for any benefits under workers compensation? ☐ Yes ☐ No

40. How did you normally get to work before to this accident? I.E. Public Transportation, motor vehicle, etc.
family member / N/A

41. Are you eligible for any benefits under any other wage or salary continuation plan? ☐ Yes ☒ No

### Entitlement Information-Note that question 42 refers to the involved motor vehicle you were in, getting into or out of, or were struck by as a pedestrian or if applicable, the motorcycle you were on at the time of the accident.

42. Was there damage to the vehicle you were occupying or struck by? ☐ Yes ☐ No ☐ Unknown If yes, describe the damage to the vehicle:
right side is totaled

a. Was the vehicle towed? ☐ Yes ☒ No If yes, please provide: Name of Towing Company Address Phone Number

b. Was the vehicle repaired? ☐ Yes ☒ No If yes, please provide: Name of Repair Company Address Phone Number

c. Do you know the current location of the involved vehicle? ☒ Yes ☐ No If yes, please provide: Location of Vehicle Address Phone Number
Trumbull and I-75

*Note: If you were struck by more than 1 vehicle as a pedestrian, attach separate sheet with contact information as part of this application.*

d. Did you use the motor vehicle/motorcycle at any time before the date of the accident? ☐ Yes ☒ No ☐ Unknown

e. How often did you use the vehicle/motorcycle?
☐ Daily ☐ Once a Week ☐ Two or More Times Per Week ☐ Less than Once Per Month ☐ Rarely ☒ Other, please explain Never

f. Did you have access to a set of keys to the vehicle/motorcycle? ☒ Yes ☐ No ☐ Unknown

g. Have you ever had to ask permission to use the vehicle/motorcycle? ☒ Yes ☐ No ☐ Unknown

h. Have you ever been denied permission to use the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

i. Did you ever put gas in the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

j. Did you ever pay money toward the purchase or the maintenance of the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

k. Did you have permission to use the vehicle/motorcycle on the date of the accident? ☒ Yes ☐ No ☐ Unknown If Yes, from who? _____

43. List the name of the owner of the vehicle (Note, if you were on a motorcycle, please provide the following information about the vehicle involved in your accident):
First Name Middle Name Last Name
Candice Valentine

Owner's Address and Phone Number
I Dont know it

a. List the Name of the Registrant of Vehicle involved in the accident if different than the owner: First Name Middle Name Last Name

Registrant's Address and Phone Number I Dont know.

b. Vehicle Involved:

| Year | Make | Model | Vehicle Identification Number (VIN) | Plate Number | State the Vehicle is Registered In |
|---|---|---|---|---|---|
| 2008 | Saturn | Vue | 3GSCL33P38S691872 | EFT 4389 | Michigan |

c. Did the owner and/or registrant of this vehicle have any automobile insurance on the date of the accident? ☐ Yes ☒ No If yes:
Name of Insurance Company : None Policy #: _____
How did you confirm if the owner/registrant did or did not have insurance? Asked

d. If not you, list the name of the driver of the vehicle: First Name Middle Name Last Name





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# EXHIBIT E

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Cathy M. Garrett

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| STATE OF MICHIGAN<br>THIRD JUDICIAL CIRCUIT<br>WAYNE COUNTY | REQUEST FOR HEARING ON A MOTION<br>(PRAECIPE)<br>ORDER/ADJOURNMENT | CASE NO.<br>21-011402-NF |
|---|---|---|

2 Woodward Ave., Detroit MI 48226 | Courtroom 1007 CAYMC | Court Telephone No. 313-224-2444

| Plaintiff name and address | | Defendant name and address |
|---|---|---|
| Carlonda Naishe Swoope | v | Citizens Insurance Company of the Midwest |
| **Plaintiff's attorney, bar no., address, and telephone no.**<br>Daniel B. Makled, P-78777<br>23756 Michigan Ave Ste 300<br>Dearborn, MI 48124-1853<br>(313) 582-7930 | | **Defendant's attorney, bar no., address, and telephone no.**<br>Arminia Duenas, P-67090<br>350 S Main St Ste 400<br>Ann Arbor, MI 48104-2131<br>(734) 761-9000 |

List additional attorneys on other side

1. Motion Title: Defendant's Motion for Summary Disposition for Nonpermissive Use

2. Moving Party: Defendant Telephone No. (734) 761-9000

3. Please place on the motion calendar for:

21-011402-NF
FILED IN MY OFFICE
WAYNE COUNTY CLERK
8/18/2022 8:25:03AM
CATHY M. GARRETT
/s/ Korey Pearson

| Judge Dana Margaret Hathaway | Bar No. 68588 | Date: 10/14/2022 | Time: 8:30 AM |
|---|---|---|---|

Adj. To:_____ Adj. To:_____ Adj. To:_____

The motion will be decided [X] without oral argument [ ] with oral argument as indicated above; re-notice with time and Zoom info.

Comment

4. I certify that I have had personal contact with **Plaintiff Counsel** on **8/10/2022** regarding concurrence in the relief sought in this motion and that concurrence has been denied or that I have made responsible and diligent attempts to contact counsel requesting concurrence with motion.

Date: **8/10/2022** Attorney: **Arminia Duenas** Bar No. **67090**

**ORDER/ADJOURNMENT**

Pursuant to MCR 2.119(E)(3), the Court may dispense with oral argument, IT IS ORDERED THAT THIS MOTION IS:

[ ] ORAL ARGUMENT IS ORDERED via ZOOM on _____ at _____am/pm

[X] DENIED [ ] TAKEN UNDER ADVISEMENT [ ] A written or oral decision will be rendered by _____

[ ] GRANTED [ ] GRANTED IN PART / DENIED IN PART [ ] DISMISSED [ ] IT IS FURTHER ORDERED

Whether Plaintiff had permission to use the vehicle is a question of fact for the trier of fact.

Date 10/24/2022

/s/ Dana Margaret Hathaway
**THIRD CIRCUIT COURT JUDGE**

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# EXHIBIT F

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

CAROLINDA NAISHE SWOOPE,

Plaintiff-Appellee,

vs.

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellant.

COA No. 364924

Wayne County Circuit Court
LC No. 21-011402 -NF

Lower Court Judge
Hon. Dana Margaret Hathaway

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ADuenas@cmplaw.com

# DEFENDANT-APPELLANT CITIZENS INSURANCE COMPANY OF THE MIDWEST'S BRIEF ON APPEAL

***ORAL ARGUMENT REQUESTED***

CONLIN, McKENNEY & PHILBRICK, P.C.

By: */s/Arminia Duenas*
Arminia Duenas (P67090)
Attorney for Defendant -Appellant
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aduenas@cmplaw.com

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| *Joseph Davis, Sr. v. MetLife Insurance Co and MAIPC,* Unpublished per curiam of the Court of Appeals issued January 19, 2023 [Docket No. 359313] | EXHIBIT J |


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## JURISDICTIONAL STATEMENT

Defendant/ Appellant Citizens Insurance Company Of The Midwest (referred to as "CICM"), appeals via leave granted regarding two (2) orders entered by the Wayne County Circuit Court: (1) an October 24, 2022 Order Regarding Motion for Summary Disposition that made a determination of Plaintiff/ Appellee Carlonda Naishe Swoope's nonpermissive use of a vehicle at the time of the October 27, 2020 motor vehicle accident and (2) the January 23, 2023 Order Denying CICM's Motion for Reconsideration regarding the Court's ruling regarding the Motion for Summary Disposition.

Appellate jurisdiction is vested in this Court by virtue of MCR 7.203(B)(1), which provides that the Michigan Court of Appeal may grant leave to appeal from a judgment or order of the circuit court which is not a final judgment appealable of right. The Application for Leave to Appeal was filed within 21 days of entry of the January 23, 2022 Opinion and Order denying CICM's Motion for reconsideration of its Motion for Summary Disposition. On March 24, 2023, the Michigan Court of Appeals granted the Application for Leave to Appeal pursuant to MCR 7.203, MCR 7.204 and MCR 7.205 and jurisdiction is vested with the Court.

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## STATEMENT OF QUESTIONS PRESENTED

WHETHER THE TRIAL COURT ERRED WHEN IT RULED THAT WHETHER PLAINTIFF/ APPELLEE CAROLINA NAISHE SWOOPE HAD PERMISSION TO USE THE VEHICLE AT THE TIME OF THE ACCIDENT IS A QUESTION OF FACT FOR THE TRIER OF FACT WHEN MS. SWOOPE TESTIFIED THAT SHE NEVER USED THE VEHICLE AND HAS NEVER ASKED PERMISSION TO OPERATE THE VEHICLE

Defendant/ Appellant Citizens Insurance Company of the Midwest answers: "**YES**".

Plaintiff/ Appellee Carolinda Naishe Swoope answers: "**NO**".

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## STATEMENT OF FACTS

This case arises from a claim for Michigan No-Fault Personal Injury Protections (PIP) benefits filed by Plaintiff/ Appellee Carlonda Naishe Swoope ("Plaintiff/ Appellee Carlonda Swoope") related to injuries alleged sustained from an October 27, 2020 motor vehicle accident. On November 11, 2020, Plaintiff/ Appellee Carlonda Swoope completed an Application of Benefits and submitted it to the Michigan Automobile Insurance Placement Facility for assignment of PIP benefits related to the accident. (Exhibit A, AOB)

In her Application for Benefits, Plaintiff/ Appellee Carlonda Swoope made material misrepresentations as to her requesting permission to operate Ms. Kandice Valentine's ("Ms. Valentine") vehicle. She indicated in her Application for Benefits that she had permission to operate the vehicle. Specifically, Plaintiff answered "yes" to the question of whether she had permission to drive the accident vehicle in paragraph 42(k). (Exhibit A, AOB) This matter was assigned to Citizens Insurance Company of the Midwest ("CICM") based on the martial misrepresentation and false statement that she had permission to operate the vehicle at the time of the subject accident.

Plaintiff/ Appellee Carlonda Swoope testified multiple times that she did not ask permission to operate the vehicle, which makes her use of the vehicle an "unlawful taking". Plaintiff/ Appellee Carlonda Swoope testified that she did not have any conversation or contact with Ms. Valentine the owner of the vehicle on the date of the subject accident, regarding the use or operation of the vehicle prior to her unlawful and unauthorized taking of same on the date of the accident. (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 9, lines 1-6)

Besides testifying she did not request or receive permission to use the vehicle, Plaintiff/ Appellee Carlonda Swoope testified that she never asked permission to operate and had never

operated the vehicle *prior* to the date of the accident, and therefore had no reasonable expectation that she could operate the vehicle. (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 10, lines 14-24)

Plaintiff/ Appellee Carlonda Swoope, made material misrepresentations and false statement as to her permissive use of the vehicle in her Application for Benefits to avoid immediate rejection of her application. She clearly testified that she never received permission and additionally had no reasonable belief she was permitted, or otherwise authorized to take the vehicle. The Application for Benefits was also signed by Plaintiff/ Appellee Carlonda Swoope with the attestation that the information contained is true and accurate and with the fraud warning that false statements contained therein (or otherwise submitted as part of or in support of a claim for benefits) constitutes a fraudulent insurance act and makes the claim ineligible for benefits. (Exhibit A, AOB) (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 9, lines 1-6)

On June 28, 2022, CICM filed its motion for summary disposition arguing that due to Plaintiff/ Appellee Carlonda Swoope's material misrepresentations and false statement in her Application for Benefits in violation of MCL 500.3173a(4) and her unlawful taking of the vehicle owned by Ms. Valentine in violation of MCL 300.3113(a), she was ineligible for no-fault PIP benefit related to the subject accident. (Exhibit C, CICM'S Motion for Summary Disposition)

At issue here is MCL 500.3113(a), because the trial court did not address the issue of material misrepresentation and false statements made in the Application for Benefits. MCL 300.3113(a) bars recovery for PIP benefits if, at the time of the accident, "[t]he person was willingly operating or willingly using a motor vehicle that was taken unlawfully, and the person knew or should have known that the motor vehicle was taken unlawfully." For no-fault insurance benefits to be barred under MCL 500.3113(a), Plaintiff/ Appellee Carlonda Swoope must have (1)



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willingly operated or used Ms. Valentine's vehicle, (2) taken Ms. Valentine's vehicle unlawfully, and (3) known or should have known that Ms. Valentine's vehicle was taken unlawfully.

Plaintiff/ Appellee Carlonda Swoope testified that she willingly operated Ms. Valentine's vehicle without asking permission on the date of the accident and because she did ask for or have permission from owner of the vehicle, Plaintiff/ Appellee Carlonda Swoope knew or should have known that Ms. Valentine's vehicle was taken unlawfully. Plaintiff/ Appellee Carlonda Swoope indicated that she took Ms. Valentine's vehicle due to a family "emergency". (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 9, lines 1-6) Even though there is no exception under MCL 500.3113(a) for emergencies, CICM addressed the alleged emergency in its Motion for Summary Disposition. There is absolutely no evidence to support her "emergency" allegation, as neither she nor her mother called for an ambulance and Plaintiff/ Appellee Carlonda Swoope drove to and stopped at Burger King on the way to the "emergency".

On October 4, 2022, Plaintiff/ Appellee Carlonda Swoope filed her response to CIMC's motion and indicated that she did not knowingly use the vehicle without authority, and therefore it was not an unlawful taking of Ms. Valentine's vehicle. (Exhibit D, Response to CICM's Motion) Plaintiff/ Appellee Carlonda Swoope indicated that she had implied permission to drive the vehicle on the subject date because of the alleged "family emergency" and the fact that Ms. Valentine did not specifically indicate that she could not drive the vehicle and that she was entitled to a common law presumption that she had permission to drive the owner's vehicle.

On October 24, 2022, the Court denied CICM's motion indicating "Whether Plaintiff had permission to use the vehicle is a question of fact for the trier of fact." (Exhibit E, October 24, 2022 Order) The trial Court failed to address the material misrepresentations and false statements made by Plaintiff/ Appellee Carlonda Swoope in her Application for Benefits in violation of



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MCL 500.3173a(4) in the October 24, 2022 Order.

On November 11, 2022, CICM filed a motion for reconsideration addressing the material misrepresentations and false statements made by Plaintiff/ Appellee Carlonda Swoope in her Application for Benefits in violation of MCL 500.3173a(4) and the fact that no reasonable juror could conclude that Plaintiff/ Appellee Carlonda Swoope did not know she took the vehicle without authority, because, by her own statement Plaintiff/ Appellee Carlonda Swoope she did have permission and could not reasonably believe she had authority because she has never asked permission to use the vehicle. (Exhibit F, Motion for Reconsideration)

On January 23, 2023, despite not addressing the material misrepresentations and false statements made by Plaintiff/ Appellee Carlonda Swoope in her Application for Benefits in violation of MCL500.3173a(4) and the fact that Plaintiff/ Appellee Carlonda Swoope testified that she did not have authority or permission to take Ms. Valentine's vehicle, the trial court denied CICM's motion for reconsideration. (Exhibit G, January 23, 2023 Order) The trial court indicated that CICM did not demonstrate a palpable error by which the court was misled, or that a different disposition of the motion must result from correction of the error". (Exhibit G, January 23, 2023 Order) (Exhibit H, Register of Actions)

On March 24, 2023, the Michigan Court of Appeals granted leave to appeal to CICM. (Exhibit I, Order Granting Leave to Appeal)

CICM now files its Appellant brief on leave granted.

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## LAW AND ARGUMENT

### I. THE TRIAL COURT ERRED WHEN DENYING CICM'S MOTION FOR SUMMARY DISPOSITION INDICATING THE QUESTION OF WHETHER PLAINTIFF HAD PERMISSION TO USE THE VEHICLE IS A QUESTION OF FACT FOR THE TRIER OF FACT WHEN PLAINTIFF/ APPELLEE CARLONDA SWOOPE TESTIFIED THAT SHE NEVER ASKED PERMISSION FROM THE OWNER TO USE THE VEHICLE AND DID NOT HAVE AUTHORITY TO OPERATE THE VEHICLE ON THE DATE OF THE ACCIDENT AND WHEN DISREGARDING PLAINTIFF/APPELLEE CARLONDA SWOOPE'S MARTIAL MISREPRESENTATIONS AND FALSE STATEMENTS IN HER APPLICATION FOR BENEFITS.

### A. Standard of Review

A trial court's ruling on a motion for summary disposition presents a question of law subject to de novo review. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). Initially, the moving party must support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). Once satisfied, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id.* "If the moving party properly supports his or her motion, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists." *Martha Redmond v Theresa Heller*, 332 Mich App 415, 438; 957 NW2d 357 (2020). "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." *Id*. (quotation marks and citation omitted). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific

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facts showing that a genuine issue of material fact exists." *Lowrey v. LMPS & LMPJ, Inc,* 500 Mich 1, 7;890 NW2d 344 (2016), quoting *Elena Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (quotation marks omitted). "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Lowrey*, 500 Mich at 7, quoting *Quinto*, 451 Mich at 363 (quotation marks omitted). This Court's "review is limited to the evidence that had been presented to the circuit court at the time the motion was decided." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009).

**B. Plaintiff/ Appellee Carlonda Swoope is Barred from recovery of No-Fault PIP pursuant to MCL 500.3113(a) Because She Was Operating a Vehicle Through An Unlawful Taking**

MCL 500.3113(a) bars a person's recovery for no-fault PIP benefits if that person is operating a vehicle through an unlawful taking. Specifically, MCL 500.3113(a), bars recovery for PIP benefits if, at the time of the accident, "[t]he person was willingly operating or willingly using a motor vehicle that was taken unlawfully, and the person knew or should have known that the motor vehicle was taken unlawfully."

In addition, MCL 500.3173 confirms that a person disqualified pursuant to the unlawful taking statute is also disqualified from benefits under the Assigned Claims Plan. "A person who because of a limitation or exclusion in sections 3105 to 3116 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury is also disqualified from receiving benefits under the assigned claims plan." MCL 500.3173. The Michigan Supreme Court in *Spectrum Health v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503 (2012), held that the phrase "taking unlawfully" in MCL 500.3113(a) applies to anyone, including a family member, who takes a vehicle without the authority of the owner, regardless of



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whether the person intended to steal it. *Id.*

"Because a taking does not have to be larcenous to be unlawful, the phrase 'taken unlawfully' in MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner." *Id*. at 518. The relevant inquiry into the determination of an unlawful taking is whether the taking was "without authority."

For no-fault PIP benefits to be barred under MCL 500.3113(a), Plaintiff/ Appellee Carlonda Swoope must have (1) willingly operated or used Ms. Valentine's vehicle, (2) taken Ms. Valentine's vehicle unlawfully, and (3) known or should have known that Ms. Valentine's vehicle was taken unlawfully.

***1. Plaintiff/ Appellee Carlonda Swoope Willingly Operated Ms. Valentine's vehicle.***

This first element is not in dispute in this case, as Plaintiff/ Appellee Carlonda Swoope testified that she was willingly operating Ms. Valentine's vehicle. (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 9, lines 1-6)

***2. Plaintiff/ Appellee Carlonda Swoope took Ms. Valentine's vehicle unlawfully.***

Plaintiff/ Appellee Carlonda Swoope testified that she did ask to use Ms. Valentine's vehicle, nor did she have any conversation or contact with Ms. Valentine regarding using the vehicle prior to her unlawful taking of same on the date of the accident. She had not been given permission to use the vehicle on the day of the accident.

Q. And you asked to borrow someone's vehicle; is that correct?

A. I didn't ask, I just got the car because I had a family emergency. My mom needed to go to the hospital. So I was trying to hurry up to get to her.

(Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 9, lines 1-6)



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Besides testifying she did not request or receive permission to use Ms. Valentine's vehicle, Plaintiff/ Appellee Carlonda Swoope testified that she never operated the vehicle prior to the date of the accident, and therefore had no reasonable expectation that she took the vehicle with authority.

| | | |
|---|---|---|
| 14 | Q | ---So have you ever used this vehicle that |
| 15 | | you -- that's involved in this accident before this |
| 16 | | date? |
| 17 | A. | No. |
| 18 | Q. | Never at any point? |
| 19 | A. | No. |
| 20 | Q. | And you didn't ask for permission to use the vehicle? |
| 21 | A. | No. |
| 22 | Q. | So is it fair to say you had no permission to operate |
| 23 | | this vehicle at the time that you were operating it? |
| 24 | A. | Correct. |

(Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 10, lines 14-24)

There is no question of fact that Plaintiff/ Appellee Carlonda Swoope's taking of Ms. Valentine's vehicle on the date of the subject accident was without authority. Plaintiff/ Appellee Carlonda Swoope testified that she took the keys to Ms. Valentine's vehicle and drove off.

| | | |
|---|---|---|
| 7 | Q. | So how did you get the keys to the vehicle? |
| 8 | A. | I just took them. |

(Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 9, lines 7-8)

The Court of Appeals in Joseph *Davis, Sr. v. Metlife Insurance and Michigan Automobile Insurance Placement Facility, No. 359313, unpublished decision, January 19, 2023* agreed with the trial court that there was no question of fact that plaintiff Davis's taking of Edwards's vehicle was without authority. Plaintiff Davis took the keys to Edwards's vehicle and drove off. When asked whether he had permission to operate Edwards's vehicle at the time of the accident, plaintiff Davis stated, "No, not that day I didn't." (Exhibit J, *Davis v. Metlife Insurance Company*, no. 359313, January 19, 2023) There is nothing in the record to support that plaintiff Davis had



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permission to take and use the vehicle, and reasonable minds could not differ that his taking of the vehicle on the night of the accident was without authority and was, therefore, an unlawful taking. (Exhibit J, *Davis v. Metlife Insurance Company*, no. 359313, January 19, 2023)

In this case is similar to in *Joseph Davis, Sr. v. Metlife Insurance and Michigan Automobile Insurance Placement Facility*, because Plaintiff/ Appellee Carlonda Swoope testified that she did not ask permission, have any conversation or contact with Ms. Valentine prior to willfully grabbing the keys to the vehicle and driving away. Similarly, to *Joseph Davis, Sr. v. Metlife Insurance and Michigan Automobile Insurance Placement Facility,* Plaintiff/ Appellee Carlonda Swoope took the keys to Ms. Valentine's Vehicle without authority and drove off. Plaintiff/ Appellee Carlonda Swoope specifically testified that she had **not been given permission to use the Vehicle** on the day of the Accident.

> Q. And you asked to borrow someone's vehicle; is that correct?
> A. **I didn't ask**, I just got the car because I had a family emergency. My mom needed to go to the hospital. So I was trying to hurry up to get to her.
> **(**Exhibit B**,** Plaintiff/ Appellee Carlonda Swoope**,** pg. 9, lines 1-6)

MCL 500.3113(a) does not require a vehicle to be taken against the express prohibition of the vehicle's owner. In *Spectrum*, the Court considered "whether a person injured while driving a motor vehicle that the person had taken contrary to the express prohibition of the owner may avail himself or herself of" no-fault insurance benefits. *Spectrum*, 492 Mich at 508. However, the Court did not establish a requirement that a vehicle owner must expressly prohibit the use of the vehicle for a taking to be unlawful under MCL 500.3113(a).

Due to the fact Plaintiff/ Appellee Carlonda Swoope did not have authority to operate or permission to take and use Ms. Valentine's Vehicle, reasonable minds could not differ that her

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taking of the vehicle on the night of the accident was without authority and was, therefore, an unlawful taking. (Exhibit J, *Davis v. Metlife Insurance Company*, no. 359313, January 19, 2023, pg. 6)

This case is similar to *Davis v. Metlife,* because Plaintiff/ Appellee Carlonda did not ask permission and simply grabbed the keys and drove off in Ms. Valentine's vehicle. Specifically, when asked whether she had permission to operate Ms. Valentine's vehicle at the time of the accident, Plaintiff/ Appellee Carlonda Swoope stated "No". When asked whether she if she ever used the vehicle at any point before the accident, Plaintiff/ Appellee Carlonda Swoope stated "No". When asked if was fair to say that she had no permission to operate this vehicle at the time of the accident, Plaintiff/ Appellee Carlonda Swoope stated "Correct". There is absolutely nothing in the record to support that Plaintiff/ Appellee Carlonda Swoope had permission to take and use the vehicle, and reasonable minds could not differ that her taking of the vehicle on the day of the accident was without authority and was, therefore an unlawful taking.

***3. Plaintiff/ Appellee Carlonda Swoope knew or should have known that the vehicle was without authority and was an unlawful taking.***

The third element of MCL 500.3113(a) requires looking at Plaintiff/ Appellee Carlonda Swoope's state of mind whether she "knew or should have known" that the vehicle was taken without authority. By her own testimony, Plaintiff/ Appellee Carlonda Swoope did not have permission to take the vehicle, and so she knew that her taking of the vehicle was unauthorized. Plaintiff/ Appellee Carlonda Swoope indicated that she took Ms. Valentine's vehicle with implied permission to drive the vehicle due to a family emergency. (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 9, lines 1-6) Even though no exception under MCL 500.3113(a) for emergencies exists, CICM addressed the alleged emergency in its Motion for Summary Disposition.



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CICM holds that there is no evidence that any "emergency" existed on the date of the subject accident. Neither Plaintiff/ Appellee Carlonda Swoope nor her mother called for an ambulance for the alleged "emergency". In fact, on the way to the alleged family "emergency" Plaintiff/ Appellee Carlonda Swoope stopped at Burger King to get food. She would have the court belief that she was in such a hurry that she could not ask Ms. Valentine for permission and authority to operate her vehicle, but she had time to stop for Burger King. There is absolutely no evidence to support her "emergency" allegation and Plaintiff/ Appellee Carlonda Swoope' testimony and actions on the date of the accident, do not support evidence no emergency.

- An ambulance was **not** called for her mother.
- Plaintiff/ Appellee Carlonda Swoope grabbed the keys to the vehicle, did not request permission to operate the vehicle, and immediately drove to Burger King to pick up food. (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 37, line 8-16)
- Further, after the accident, Plaintiff/ Appellee Carlonda Swoope ordered an Uber to pick her up from the scene of the accident and drive to her mother's house. (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 39, lines 2-5)

There was clearly **no** emergency, and even if it was, there is no "emergency" exception to the "permissive use" and "lawful taking" requirement. Plaintiff/ Appellee Carlonda Swoope was aware that she had other legal options, such as calling an ambulance for her mother or ordering an Uber, prior to taking the vehicle.

Plaintiff/ Appellee Carlonda Swoope also indicated in her response to CICM's motion that it was not an unlawful taking because Ms. Valentine did not expressly prohibit her from taking the vehicle on the date of the accident or at any time. Due to the fact Plaintiff/ Appellee Carlonda Swoope, in the 4 years of knowing Ms. Valentine, had never asked for permission to operate the vehicle before the date of the accident and never used the vehicle before the date of the accident,

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there would have been no reason or occasion for Ms. Valentine to expressly prohibit Plaintiff/ Appellee Carlonda Swoope from taking or using of her vehicle. Further, MCL 500.3113(a) does not require a vehicle to be taken against the express prohibition of the vehicle's owner. In *Spectrum*, the Court considered "whether a person injured while driving a motor vehicle that the person had taken contrary to the express prohibition of the owner may avail himself or herself of" no-fault insurance benefits. *Spectrum*, 492 Mich at 508. However, the Court did not establish a requirement that a vehicle owner must expressly prohibit the use of the vehicle for a taking to be unlawful under MCL 500.3113(a).

It would have been unreasonable for any court to hold that an individual must expressly prohibit everyone and anyone from taking their vehicle to be an unlawful taking. Such a requirement would be counter to Michigan law, public policy and common sense.

CICM acknowledges that there is a difference between unlawful taking and driving a vehicle unlawfully. However, the fact that Plaintiff/ Appellee Carlonda Swoope did not have a valid driver's license and was not permitted to legally operate Ms. Valintine's vehicle also speaks to her state of mind.

The Court of Appeals in *Joseph Davis, Sr. v. Metlife Insurance and Michigan Automobile Insurance Placement Facility, No. 359313, unpublished decision, January 19, 2023,* agreed with the trial court that plaintiff Davis knee that he took the vehicle without authority. By his own statement, plaintiff Davis did not have permission to take the vehicle, and so he knew that his taking of the vehicle was unauthorized. The Court of Appeals further held that reasonable minds could not disagree that plaintiff Davis knew or should have known that he was using the vehicle unlawfully because he did not have authority to operate the vehicle and without authorization the



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vehicle was taken unlawfully. (Exhibit J, *Davis v. Metlife Insurance Company*, no. 359313, January 19, 2023, pg. 6)

This case is similar to *Joseph Davis, Sr. v. Metlife Insurance and Michigan Automobile Insurance Placement Facility, No. 359313, unpublished decision, January 19, 2023*, Plaintiff/ Appellee Carlonda Swoope knowingly took Ms. Valentine's vehicle without authorization, and so the requirement in MCL 500. 3113(a) that "the person knew or should have known that the motor vehicle was taken unlawfully" is also satisfied. Specifically, the Michigan Courts have indicated that if an individual does not ask permission to operate a vehicle and operates the vehicle without permission it is an unlawful taking and knew or should have known that the motor vehicle was taken unlawfully.

Plaintiff/ Appellee Carlonda Swoope had no reasonable expectation that she could legally operate Ms. Valentine's vehicle because she was not permitted to operate any vehicle by the State of Michigan, as she had a suspended driver's license at the time of the subject accident.

Q. Is it because you don't have a driver's license?
A. Yes.
Q. Have you ever owned a driver's license?
A. Yes.
Q. And what happened to your driver's license?
A. It got revoked because I had tickets to pay and I didn't pay them.
Q. And at that time of this October 27th, 2020, accident, were you driving on a revoked license?
A. Yes. It was suspended, I'm sorry.
Q. I'm sorry, suspended?
A. Yeah.
Q. How long has your driver's license been suspended?
A. I'm not sure.
Q. Has it been years?
A. Yes.
Q. And when you were -- you were driving the vehicle at the time of this accident; is that correct?
A. Yes.
Q. And you knew at the time of the accident that you did



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24 not have a valid driver's license; is that correct?
25 A. Yes.
(Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 8, lines 4-25)

In addition to Plaintiff/ Appellee Carlonda Swoope taking the vehicle without permission or authority, as a matter of law, she could not reasonably believe that she was entitled to use the vehicle when she knew that she was unable to legally operate the vehicle. Plaintiff/ Appellee Carlonda Swoope was not a licensed driver at the time of the subject accident and there was no good reason here to believe she entitled to take the vehicle without permission when it was illegal for her to drive on any Michigan road.

If the evidence is viewed in the light most favorable to Plaintiff/ Appellee Carlonda Swoope (meaning her statements are presumed to be true), these statements establish that Plaintiff/ Appellee Carlonda Swoope knew or should have known that she was using the vehicle unlawfully because she took it without authorization, and so the requirement in MCL 500.3113 that "the person knew or should have known that the motor vehicle…was taken unlawfully" is satisfied. Applying these factors to the record here, it is apparent that the trial court reversibly erred. The question of whether Plaintiff/ Appellee Carlonda Swoope had permission to use the vehicle is clearly not a question of fact for the trier of fact, because Plaintiff/ Appellee Carlonda Swoope testified multiple times that she did not ask permission, did not have permission to operate the vehicle at the time of the accident and did not have authority to operate the vehicle. Plaintiff/ Appellee Carlonda Swoope's testimony leaves no genuine issue of fact for a jury to consider. Consequently, under MCL 500.3113(a), Plaintiff/ Appellee Carlonda Swoope is not eligible for PIP benefits. The trial court's decision, therefore, must be reversed.

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### C. Plaintiff/ Appellee Carlonda Swoope Is Ineligible and Barred from No-Fault PIP Benefits Pursuant to MCL 500.3173a(4) Because She Admitted She Provided False Statements and Material Misrepresentations In Her Application for Benefits

The Legislature has clearly spoken in MCL 500.3173a(4). There is no question that the statute was written to combat the growing fraud prevalent in Michigan No-Fault Claims. The strong wording of MCL 500.3173a was meant to eliminate claims when the person making the claim submits false information in support of the claim.

MCL 500.3173a(4) provides:

> (4) A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

The clear wording of MCL 500.3173a(4) establishes strict penalties to be enforced against those who make applications for assigned claim benefits and then proceed to submit false information in support of the claim.

MCL 500.3173a(4) contains a criminal fraud provision and contains a provision that makes the claim ineligible for any payment or benefit. The threshold determination for MCL 500.3173a is whether the person presents or causes to be presented an oral or written statement knowing that the statement contains false information material to the claim. *See* MCL 500.3173a(4). Once it is determined that such false information is presented, the statute provides for criminal penalties and provides for a penalty to the entirety of the claim. *See* MCL 500.3173a(4).

MCL 500.3173a(4) mandates that those who present false information in support of a claim have committed a fraudulent insurance act. Specifically, MCL 500.3173a(4) indicates that false statements made in assigned claimed plan claims amount to fraudulent insurance acts under MCL



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500.4503 and are subject to criminal penalties and fines under MCL 500.4511.

Secondly, MCL 500.3173a(4) indicates that the person's claim becomes ineligible for payment or benefits under the assigned claims plan once it is determined that false information is submitted in support of the claim:

> A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

The clear wording of the statute is that when it is determined that the claim either "contains" or "is supported by" a fraudulent insurance act, i.e. false information material to the claim, the claim is no longer payable. This Court should note that MCL 500.3173a(4) makes the "claim" become ineligible for any "payment." *See* MCL 500.3173a(4) MCL 500.3173a(4) also makes the "claim" ineligible for any "benefits." *See* MCL 500.3173a(4).

MCL 500.3173a(4) deems a claim ineligible upon evidence that false information was supplied for benefits. The clear wording of the statute is that such a claim that was eligible through the ACF becomes ineligible as a penalty for making the fraudulent presentation of information. MCL 500.3173a(4) also establishes that such false statements constitute criminal insurance fraud.

Based on the clear wording of MCL 500.3173a(4), the statute is an expression of the Legislature's power to strip away the assigned claim plan insurance coverage by making the claim ineligible when a person abuses the system. MCL 500.3173a(4) is a clear mandate by the Legislature against those who would abuse the no-fault act and produce false statements in support of an assigned claim, which makes such conduct criminal and a complete bar to further claims through the assigned claims plan.

The use of the term "claim" as being ineligible for "payment" or "benefits" was intended by the Legislature to show that the overall "claim" supported by fraudulent information would not be payable for any future "payment" and was not eligible for any future "benefit."



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This Court should note that the use of the word "claim" is a direct reference to MCL 500.3172(1), which provides that a person who is entitled to a "claim" may apply for a claim through the assigned claims plan and obtain "benefits." The wording of MCL 500.3172(1) clearly contemplates that the larger claim can be made to obtain benefits.

In MCL 500.3173a(4), the Legislature utilizes language similar to MCL 500.3172(1), and clearly intends that a "benefit" is a smaller subset of a "claim." This Court should note the use of the plural benefits as the intent to eliminate more than one benefit. Therefore, MCL 500.3173a(4) does not intend to eliminate only the fraudulent benefit but intends to make the entire claim ineligible for any benefits.

There is no question that the Legislature intended that, upon the showing of submission of false information, MCL 500.3173a(4) would make a person's no-fault PIP claim ineligible for any payment or any benefits and would effectively bar the claim.

In this case, Plaintiff/ Appellee Carlonda Swoope, answered "yes" to the question of whether she had permission to drive the accident vehicle. (Exhibit A, AOB, paragraph 42 (g) and (k)) However, her responses to questions 42(g) and 42(k) were false statements and material misrepresentations, because Plaintiff/ Appellee Carlonda Swoope testified that she did not ask permission and did not have permission from Ms. Valentine to operate or use her vehicle prior to her unlawful and unauthorized taking on the date of the accident. (Exhibit B, Plaintiff/ Appellee Carlonda Swoope Dep, pg. 10, lines 14-24) On the day of the Accident and she grabbed the keys and drove the vehicle without authority.

The Application for Benefits was also signed by Plaintiff/ Appellee Carlonda Swoope with the attestation that the information contained was true and accurate and with the fraud warning that false statements contained therein (or otherwise submitted as part of or in support of a claim

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for benefits) constitutes a fraudulent insurance act and makes Plaintiff/ Appellee Carlonda Swoope's claim ineligible for benefits. (Exhibit A, AOB)

Plaintiff/ Appellee Carlonda Swoope's taking of the vehicle was unlawful and she made material misrepresentations and false statements in her Application for Benefits, and as a result she is disqualified and barred from receiving no-fault PIP benefits pursuant to MCL 500.3173a(4).

## RELIEF REQUESTED

WHEREFORE, Defendant/ Appellant Citizens Insurance Company of The Midwest ("CICM") prays that this Honorable Court (1) reverse the trial court's orders denying its motion for summary disposition regarding nonpermissive use and unlawful taking, (2) grant summary disposition to CICM, and (3) grant any other relief to which CICM is entitled in law and equity.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned certifies that on May 12, 2023, the undersigned electronically filed a copy of the Defendant / Appellant's Appeal Brief in the above-captioned matter by filing into the Court of Appeals e-filing website, and that same is being served upon counsel of record by enclosing the document in a properly addressed envelope with sufficient first-class postage prepaid thereon and depositing same in the U.S. Mail at Ann Arbor, Michigan.



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**MCR 7,212(B)(3) Statement Regarding Number of Countable Words**

According to the word count of the word-processing system used to prepare the brief, the elements corresponding to MCR 7.212(C) contain 6,646 words.

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# EXHIBIT G

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STATE OF MICHIGAN

IN THE COURT OF APPEALS

CAROLINDA NAISHE SWOOPE,

Plaintiff / Appellee

vs.

CITIZENS INSURANCE COMPANY
OF THE MIDWEST

Defendant / Appellant.

COA No. 364924
LC No. 21-011402-NF
(Wayne Circuit Court)

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**PLAINTIFF-APPELLEE'S BRIEF ON APPEAL**

*****ORAL ARGUMENT REQUESTED*****

**INDEX OF EXHIBITS / EXHIBITS A-C**

**PROOF OF SERVICE**

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Dated: May 27th, 2023

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## COUNTER-STATEMENT OF APPELLATE JURISDICTION

Plaintiff-Appellee acknowledges that this Court has jurisdiction over this appeal pursuant to MCR 7.203(B)(1).

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## COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. **WHETHER THE TRIAL COURT ERRED IN DENYING CITIZEN'S MOTION FOR SUMMARY DISPOSTION WHERE THERE WAS A QUESTION OF FACT ON THE THIRD ELEMENT OF MCL 500.3113(a) WHICH REQUIRES LOOKING AT THE MENTAL STATE OF THE TAKER OF A VEHICLE AND WHETHER THEY HAD REASONABLE BELIEF THEY COULD TAKE A VEHICLE IN A SITUATION LIKE THE ONE AT A BAR WHERE MS. SWOOPE'S MOTHER WAS HAVING A MEDICAL EMERGENCY AND NEEDED TO GET TO THE HOSPITAL.**

The Plaintiff-Appellee answers "No."

The Defendant-Appellant answers "Yes."

The Trial Court answers "No."

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## INDEX OF EXHIBITS


| | | |
|---|---|---|
| Exhibit A | = | Application for Benefits |
| Exhibit B | = | Carlonda Swoope Transcript |
| Exhibit C | = | *Joseph Davis v MAIPF* |

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## COUNTER-STATEMENT OF FACTS

This case arises from a claim for Michigan No-Fault Personal Injury Protection (PIP) benefits filed by Plaintiff/Appellee Carlonda Naishe Swoope ("Ms. Swoope") related to injuries she sustained in an October 27, 2020 motor vehicle accident. On November 11, 2020 Ms. Swoope completed an Application for Benefits to the Michigan Automobile Insurance Placement Facility for assignment of benefits related to the accident. This matter was assigned to Citizens Insurance Company of the Midwest ("Citizens").

In her Application for Benefits, Ms. Swoope, in response to question 42(k) answered "yes" to the question of whether she had permission to operate the vehicle. In its Statement of Facts Citizens leaves out the follow-up question to 42(k) which asks "If Yes, from who?_____". Ms. Swoope left the follow up question blank in her Application for Benefits. (**Exhibit A** – Application for Benefits). As will be seen in more detail below Ms. Swoope believed she had implied permission to use her friend's vehicle due to a medical emergency her mother was having.

Ms. Swoope did indeed testify that she did not have explicit permission to use the vehicle. She testified that she was sleeping over her friend of four (4) years, Kandice Valentine's house and that the following morning she woke up to a notification that her mother was having a medical emergency. (**Exhibit B** – Ms. Swoope, pp. 9, 33) Ms. Swoope testified that her mother was in the care and custody of her children while the emergency was ocurring. (**Exhibit B** – p. 37). On the way to her mother Ms. Swoope quickly went through a fast-food drive-through, Burger King, to bring her children food. (**Exhibit B** – p. 37). Ms. Swoope was going to be at the Emergency Room at Harper Hospital with her mother for an extended time and did not want to leave her children without food. (**Exhibit B** - p. 37).

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Between the time Ms. Swoope picked up Burger King for her children and the time she was en-route to her mother's house the subject accident occurred. Ms. Swoope was injured in the accident. She declined going in the ambulance because her mother was still home waiting to go to the hospital. (**Exhibit B** – p. 36). Ms. Swoope took an Uber from the scene of the accident to her mother's house. (**Exhibit B** – p. 36). The Uber then took Ms. Swoope and her mother to Harper Hospital in Detroit, Michigan where they were both evaluated. (**Exhibit B** – p. 36)

Citizens filed its motion for summary disposition accusing Ms. Swoope of making material misrepresentations and false statements in her Application for Benefits. However, the trial court correctly denied the motion while reasoning that "Whether Plaintiff had permission to use the vehicle is a question of fact for the trier of fact."

## LAW AND ARGUMENT

### I. THE COURT PROPERLY DENIED CITIZEN'S MOTION FOR SUMMARY DISPOSITION BECAUSE REASONABLE MINDS CAN DIFFER ON THE THIRD ELEMENT OF MCL 500.3113(a).

At issue in this case is MCL 500.3113(a), which bars recovery for PIP benefits if, at the time of the accident, "[t]he person was willingly operating or willingly using a motor vehicle that was taken unlawfully, and the person knew or should have known that the motor vehicle was taken unlawfully." For no-fault insurance benefits to be barred under MCL 500.3113(a), Ms. Swoope must have (1) willingly operated or used Valentine's vehicle, (2) taken Valentine's vehicle unlawfully, and (3) known or should have known that Valentine's vehicle was taken unlawfully.

The first and second elements are not in dispute in this case.

The third element of MCL 500.3133(a) requires looking at Ms. Swoope's state of mind and whether she "knew or should have known" that the vehicle was taken without authority. Under



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the facts of this case reasonable jurors could conclude that Ms. Swoope did not know that she took the vehicle without authority.

In *Spectrum Health v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503 (2012) the Michgian Supreme Court cited with approval[1] Justice Markman's concurring opinion in *Farmers Insurance Exchange v Young*, 489 Mich 909, 909; 796 NW2d 470 (2011). In that opinion, Justice Markman explained that the lack of a driver's license is not relevant to whether the individual unlawfully took the vehicle:

> **[MCL 500.3113(a)] is focused on the authority of the owner of the vehicle, not the State of Michigan. That is, for the purposes of § 3113(a), a vehicle may be "unlawfully taken" where it is taken without the authority of its owner, not where a person has taken the vehicle without a valid driver's license, the requisite insurance, or in violation of some other provision of the Motor Vehicle Code.**

Ms. Swoope's lack of a driver's license has no impact on the unlawful taking issue. In his concurring opinion in *Farmers* Justice Markman also explained that different considerations, ***such as an emergency***, may attach when considering whether a person reasonably believed that they were entitled to take and use the vehicle.[2] *Id*. p. 471.

This case is different than *Joseph Davis, Sr v MetLife Insurance and Michigan Automobile Insurance Placement Facility*, No. 359313, unpublished decision, January 19, 2023. (**Exhibit C** – *Joseph Davis v MAIPF*). In that case the third element of MCL 500.3113(a) which requires looking at the state of mind of the taker was not at issue like it is in this case. In *Joseph*, there was

[1] 492 Mich 503, n. 25 ("The 'authority' referred to in the joyriding statutes is obviously the authority of the owner of the vehicle. Accordingly, for purposes of MCL 500.3113(a), a vehicle is "unlawfully taken" if it is taken without the authority of its owner. See *Farmers Ins Exch v Young*, 489 Mich 909; 796 N. W.2d 470 (2011) (Markman, J., concurring).")

[2] *Plumb* also properly recognized that once an "unlawful taking" has been established, the "next step in [the] analysis is to determine whether [the claimant] 'reasonably believed that ... she was entitled to take and use the vehicle.' " 282 Mich.App. at 427, 766 N.W.2d 878. The statute makes clear that at this stage the determinative question is whether a claimant's belief was "reasonable." Whether the use was "legal" will often be a highly relevant factor in making this determination, but may not control in every case. For instance, different considerations might attach in an emergency; in such a circumstance, the illegal operation of a vehicle may not always, "as a matter of law," *id*. at 431, 766 N.W.2d 878, preclude a finding of a "reasonable belief" to use the vehicle under § 3113(a), as it did in *Plumb.*



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no emergency and the plaintiff took the vehicle when he "…became impatient while waiting for Edwards to return to her home to drive him to the store." *Id*. at 1.

In this case there is a question of fact precluding summary disposition on the issue of Ms. Swoope's state of mind when she took the vehicle and whether she reasonably believed she could take the vehicle under the particular circumstances.

Ms. Swoope and the owner of the subject vehicle, Ms. Valentine, had been friends for "about four years" at the time this incident occurred. Ms. Swoope testified that the night before she was spending the night at Ms. Valentine's house. Ms. Swoope testified that "…I left that morning to go take care of my mother". Ms. Swoope testified that she "...got the car because I had a family emergency. My mom needed to go to the hospital. So, I was trying to hurry up to get to her." She further testified that "…My mother called me and told me her chest was hurting, and the ambulance was not coming fast enough. So, I tried to get there as fast as possible." (**Exhibit B** – p. 10).

Citizens' brief argues there could not have possibly been an emergency because Ms. Swoope stopped at Burger King on the way to her mother's house. What Citizens' fails to mention is that Ms. Swoope testified that her children were at her mother's house. Ms. Swoope was getting fast food for her children who would be left alone with the oldest daughter while Ms. Swoope would be away with her mom at the hospital emergency room for an extended time. Ms. Swoope did not stop for fine dining on the way to her mother. She stopped at a fast-food drive-through restaurant to bring her children food and then planned to immediately leave to Harper Hospital with her mother. In fact, it would be irresponsible for Ms. Valentine to not bring food to her children while knowing they were going to be left for an extended period of time.



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Citizens' argues that Ms. Valentine could have chosen other options such as calling an ambulance for her mother or ordering an Uber for her mother. In fact, the options do not end there. There could be a plethora of other options that a person who is perceiving an emergency does not think of in the heat of the moment. The salient factor however is that the *state of mind of Ms. Valentine was an emergency state of mind when she took the vehicle*.

A jury may well hear the testimony and evidence and agree with Citizens' take. Other jurors may see it in a different light. For example, other jurors may believe it to be reasonable to take keys from a friend of four years to tend to a mother's medical emergency when a notoriously delayed Detroit ambulance is not coming fast enough.

The point is the issue remains a question for the jury. Citizens wanted the trial court to improperly take this fact issue away from the trier of fact. The trial court did not err in precluding summary disposition because there does exist a question of fact.

## II. PLAINTIFF PROVIDED TRUE STATEMENTS IN HER APPLICATION FOR BENEFITS AND IN HER DEPOSITION.

No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless the misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make the contract. *Oade v. Jackson Nat'l Life Ins. Co.,* 465 Mich. 244, (2001). An insurer may deny coverage under an insurance contract where that insurance policy was procured by the policy holder's fraudulent "misrepresentation material to the risk and hazard" attendant in the policy. *Keys v. Pace*, 358 Mich 74, 82-83; 99 NW2d 547 (1959). Whether a misrepresentation was material and whether it was relied on are generally questions of fact for the jury. *Bergen v. Baker*, 264 Mich App 376, 388-389; 691 NW2d 770 (2004).

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In this case Ms. Swoope's "mens rea" or belief was that she was certainly permitted to use the vehicle of her friend of 4 years for a medical emergency related to her mother. This is not uncommon and in fact it is very likely for a jury to agree with this notion. Turning now to question 42(k) of the Application which asked "did you have permission to use the vehicle on the date of the accident? Ms. Swoope checked YES, because of course, her "mens rea" or belief was that she had *implied* permission given the circumstances. When the same question asks "If Yes, from who?" **Ms. Swoope left that blank. She did not lie, for example, and say that Ms. Valentine gave her permission.** (**Exhibit B** – Application for Benefits). So, the question was understood as implicit versus explicit permission to use the vehicle as *Ms. Swoope believed* (this is the proper inquiry as a matter of law).

When then asked during her deposition whether Ms. Valentine gave her *explicit* permission to use the vehicle Ms. Swoope testified truthfully and said no. Had the Application asked whether the owner provided explicit permission to use the vehicle and Ms. Swoope said yes then we would have a misrepresentation/fraud issue here. But that is not the case.

## III. CONCLUSION

WHEREFORE, Plaintiff-Appellee, Carlonda Naishe Swoope, respectfully requests that the Court of Appeals affirm the trial courts denial of Citizen's Motion for Summary Disposition.

Respectfully submitted,

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Dated: May 27th, 2023



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**PROOF OF SERVICE**

The undersigned certifies that the above document was served upon counsel of record herein at their business addresses as set forth in the caption of these pleadings this 27th day of May 2023 by *Electronic File and Serve*

*/s/ Daniel B. Makled*
Daniel B. Makled

**CERTIFICATE OF WORD COUNT COMPLIANCE**

1. This Brief on Appeal of Plaintiff / Appellee complies with the word count limitation of MCR 7.305 and MCR 7.212(B)(1) because:

X This Brief on Appeal contains 2,497 words.

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*If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.*

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# STATE OF MICHIGAN

# COURT OF APPEALS

JOSEPH MULL,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellant.

UNPUBLISHED
February 17, 2022

No. 354725
Wayne Circuit Court
LC No. 19-006045-NF

Before: RICK, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals by leave granted[1] the order denying its motion for summary disposition in this first-party no-fault action. We reverse and remand for entry of an order granting defendant's motion for summary disposition.

## I. BACKGROUND

Plaintiff sustained injuries when he was involved in a motor vehicle accident while driving a motorcycle owned by his girlfriend, Melissa Dutz. Defendant argues plaintiff's admission he did not have permission from Dutz to use the motorcycle on the day of the accident precludes him from collecting benefits under Michigan's no-fault act, MCL 500.3101 *et seq*.

Plaintiff filed a complaint and jury demand against defendant, as insurer of the vehicle plaintiff hit, seeking personal injury protection benefits. Defendant originally moved for summary disposition in lieu of an answer under MCR 2.116(C)(8) and (C)(10), arguing plaintiff was not entitled to no-fault benefits if he was willingly operating a motorcycle without permission. Plaintiff argued he was never explicitly told by Dutz not to operate the vehicle; thus, a question of fact remained as to whether plaintiff had permission to operate the motorcycle. The trial court

[1] *Mull v Citizens Ins Co of the Midwest*, unpublished order of the Court of Appeals, entered December 10, 2020 (Docket No. 354725).

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denied defendant's motion for summary disposition, directing the parties to conduct discovery to confirm whether a genuine issue of material fact existed.

After discovery, defendant renewed its motion for summary disposition under MCR 2.116(C)(8) and (C)(10), again arguing the no-fault act precludes a person from collecting benefits if the vehicle was operated without permission from the owner. Plaintiff argued genuine issues of material fact existed regarding whether plaintiff knowingly took the motorcycle without permission. The trial court again denied defendant's motion, stating nothing more than "[t]here is a question of fact as to whether Plaintiff's use of the motorcycle was lawful."

## II. ANALYSIS

An order denying a motion for summary disposition is reviewed de novo. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). This Court considers "affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in a light most favorable to the party opposing the motion" in its review under MCR 2.116(C)(10).[2] *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013) (quotation marks and citation omitted). Summary disposition is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison*, 481 Mich at 425. Questions of statutory interpretation are also reviewed de novo on appeal. *Rambin v Allstate Ins Co*, 495 Mich 316, 325; 852 NW2d 34 (2014).

At issue is whether plaintiff's use of the motorcycle was unlawful under MCL 500.3113(a). As it did in the trial court, defendant argues plaintiff acted unlawfully when taking the motorcycle, and is precluded from collecting certain benefits under the no-fault statute. Specifically, defendant argues that MCL 500.3113(a) precludes relief to plaintiff. That statute states:

> 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:
>
> (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

The Supreme Court has concluded that "[t]he plain meaning of the phrase 'taken unlawfully' readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law." *Spectrum Health Hosps v Farm Bureau Mut Ins of Mich*, 492 Mich

[2] Although defendant moved for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10), the trial court relied on documents beyond the pleadings; thus "we construe the motion as having been granted pursuant to MCR 2.116(C)(10)." *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012).

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503, 517; 821 NW2d 117 (2012). Defendant argues plaintiff took the motorcycle unlawfully under the terms of the "joyriding" statutes, MCL 750.413 and MCL 750.414. MCL 750.413 states:

> Any person who shall, wilfully and without authority, take possession of and drive or take away, and any person who shall assist in or be a party to such taking possession, driving or taking away of any motor vehicle, belonging to another, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 5 years.

MCL 750.414 states, in relevant part:

> Any person who takes or uses without authority any motor vehicle without intent to steal the same, or who is a party to such unauthorized taking or using, is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $1,500.00.

"[B]oth joyriding statutes make it unlawful to take any motor vehicle without authority, effectively defining an unlawful taking of a vehicle as that which is unauthorized." *Spectrum Health*, 492 Mich at 518. "Because a taking does not have to be larcenous to qualify as unlawful, the phrase 'taken unlawfully' in MCL 500.3113(a) applies to anyone who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it." *Spectrum Health*, 492 Mich at 518.

There is no genuine issue of material fact that plaintiff's use of the motorcycle was "unauthorized" because he did not receive permission from Dutz to use the motorcycle. Plaintiff testified he knew Dutz would not allow him to ride the motorcycle, even if he asked. As indicated by our Supreme Court, "[b]ecause a taking does not have to be larcenous to be unlawful, the phrase 'taken unlawfully' in MCL 500.3113(a) applies to anyone who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it." *Spectrum Health*, 492 Mich at 518.[3] Although plaintiff argues he did not intend to steal the motorcycle and Dutz never reported the motorcycle to the police as missing, this argument is based on an incorrect understanding of the term "unlawful" in this context.[4]

---

[3] An amendment to the no-fault statute changed some of the language in this statute. MCL 500.3113(a) previously stated a person was precluded from collecting personal protection insurance benefits if "[t]he person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle." The amended version, "2014 PA 489[,] made substantive changes to MCL 500.3113(a), eliminating the Safe Harbor provision, and imposing instead a scienter requirement." *Ahmed v Tokio Marine American Ins Co*, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 352418); slip op at 12. This new standard made it easier for insurance companies to disqualify a plaintiff from receiving benefits. *Ahmed*, ___ Mich App at ___; slip op at 13. Actual knowledge that a plaintiff took a vehicle without authority is not required. *Id*.

[4] Although plaintiff admits to driving the motorcycle without a valid license, "the unlawful operation or use of a motor vehicle is irrelevant with respect to examining the 'taken unlawfully'

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Next, analyzing MCL 500.3113(a) requires looking at plaintiff's state of mind and whether he "knew or should have known" that he did not have authority to use the motorcycle, which "examines the legality of the taking from the driver's perspective." *Spectrum Health*, 492 Mich at 522. Examining plaintiff's deposition testimony and statements from his recorded interview, no reasonable juror could conclude other than that plaintiff knew, or should have known, that he did not have Dutz's authority to use the motorcycle. Plaintiff admitted he did not ask Dutz for permission to use the motorcycle on the day of the accident because he knew she would say no. Plaintiff acknowledged in a recorded interview with one of defendant's representatives that he took the motorcycle from Dutz's garage and without Dutz's permission on the day of the accident:

> *Q*. OK. Now does [Dutz] keep the motorcycle with her at her residence or do you take it with you back and forth?
>
> *A*. No, she keeps it at her residence and I took it like a bad boy. I wasn't supposed to take it.
>
> *Q*. Oh. It wasn't stolen, right?
>
> *A*. No, no. Taken…
>
> *Q*. She didn't report it.
>
> *A*. No, no, no. It's taken without her knowledge or permission.

Plaintiff's main argument is, because Dutz never explicitly told plaintiff he was not allowed to use the motorcycle, he cannot be precluded from recovery under the statute. Although this argument may have had merit under the previous version of the statute, it fails under the current "knew or should have known" standard. *Ahmed*, ___ Mich App ___; slip op at 12. Under the applicable statute, the evidence presented reveals no genuine issue of material fact that plaintiff at least should have known he did not have authority to use the motorcycle. Plaintiff and Dutz testified plaintiff's poor health precluded him from driving the motorcycle, and had not used the motorcycle in many years. Plaintiff admitted he did not have permission to use the motorcycle, and Dutz confirmed that fact. To that point, plaintiff considered himself a "bad boy" for using the motorcycle without Dutz's permission. The undisputed material facts presented to the trial court, considered in the light most favorable to plaintiff, show plaintiff knew or should have known he was operating the motorcycle unlawfully.

Thus, the motorcycle was taken unlawfully by plaintiff, and plaintiff knew the motorcycle was taken unlawfully, leaving no genuine issue of material fact for a jury to consider. No reasonable juror could conclude plaintiff did not know he took the motorcycle without authority. The trial court erred in finding a genuine issue of material fact existed under MCR 2.116(C)(10).

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phrase in MCL 500.3113(a)." *Monaco v Home Owners Ins Co*, 317 Mich App 738, 748-749; 896 NW2d 32 (2016).

Reversed and remanded for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction. Having prevailed in full, defendant may tax costs.

/s/ Michelle M. Rick
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro

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# STATE OF MICHIGAN

# COURT OF APPEALS

JOSEPH DAVIS, SR.,

Plaintiff,

and

VHS OF MICHIGAN, INC., doing business as DETROIT MEDICAL CENTER,

Intervening Plaintiff-Appellant,

v

METLIFE INSURANCE COMPANY and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants-Appellees.

UNPUBLISHED
January 19, 2023

No. 359313
Wayne Circuit Court
LC No. 21-007401-NF

JOSEPH DAVIS, SR.,

Plaintiff-Appellant,

and

VHS OF MICHIGAN, INC., doing business as DETROIT MEDICAL CENTER,

Intervening Plaintiff,

v

No. 360265
Wayne Circuit Court

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METLIFE INSURANCE COMPANY and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

LC No. 21-007401-NF

Defendants-Appellees.

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Before: CAVANAGH, P.J., and O'BRIEN and Rick, JJ.

PER CURIAM.

In Docket No. 359313, intervening plaintiff, VHS of Michigan, Inc., doing business as Detroit Medical Center, appeals as of right the order granting summary disposition in favor of defendants, MetLife Insurance Company (defendant MetLife) and Michigan Automobile Insurance Placement Facility (defendant MAIPF). In Docket No. 360265, plaintiff, Joseph Davis Sr. (plaintiff Davis), appeals by delayed leave granted the same order granting summary disposition in favor of defendants. We affirm.

## I. BACKGROUND

Plaintiff Davis sustained injuries when he was involved in a motor vehicle accident while driving a vehicle owned by his girlfriend, Regina Edwards. Plaintiff Davis received medical treatment for his injuries at intervening plaintiff's facility.

Defendant MetLife insured Edwards's vehicle. As part of its investigation into plaintiff Davis's eligibility for no-fault insurance coverage, defendant MetLife requested that plaintiff Davis participate in an examination under oath (EUO). Plaintiff Davis stated during the EUO that at the time of the accident in June 2020 he lived with his mother and his stepfather. He did not have a driver's license and had not owned a vehicle for 10 years. Plaintiff Davis stated that he would drive Edwards's vehicle once per week before the accident occurred. On the day of the accident, plaintiff Davis became impatient while waiting for Edwards to return to her home to drive him to the store. Plaintiff Davis took the keys for Edwards's vehicle from a table in Edwards's house and "went to do what [he] had to do." Plaintiff Davis stated that Edwards called him and asked where he had taken her vehicle. According to plaintiff Davis, he and Edwards argued and Edwards "was mad and upset that I took the car." The accident occurred when plaintiff Davis was on his way to return the vehicle to Edwards. In response to the question whether he had permission to operate Edwards's vehicle at the time of the accident, plaintiff Davis replied, "No, not that day I didn't."

Defendant MetLife denied plaintiff Davis's claim for no-fault insurance benefits under MCL 500.3113(a) because it determined that at the time of the accident plaintiff Davis was willingly operating a motor vehicle that was taken unlawfully. Defendant MetLife also denied the claim because other insurance coverage was reportedly available to plaintiff Davis through relatives in his household. Defendant MAIPF also denied plaintiff Davis's claim for no-fault insurance benefits on the ground that plaintiff Davis had no-fault insurance benefits through relatives in his household.

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Plaintiff Davis filed a complaint alleging breach of contract for MetLife's unreasonable refusal to pay personal protection insurance (PIP) benefits and for MAIPF's failure to appoint an insurer to immediately pay no-fault insurance benefits owed to him. Intervening plaintiff also filed a complaint alleging that it was entitled to reimbursement for all reasonable charges incurred for the services and products provided for plaintiff Davis's care, recovery, or rehabilitation arising out of the subject accident.

Defendant MAIPF filed an answer to plaintiff Davis's and intervening plaintiff's complaints, denying that it unreasonably refused payment of no-fault insurance benefits. Defendant MetLife moved for summary disposition under MCR 2.116(C)(8) and (10) in lieu of answering the complaints, arguing that plaintiff Davis was not entitled to no-fault benefits because there was no genuine issue of material fact that plaintiff Davis took and operated Edwards's vehicle unlawfully at the time of the subject accident. Defendant MAIPF concurred with defendant MetLife's motion. In response to the motion, intervening plaintiff and plaintiff Davis asserted that a question of fact existed regarding whether plaintiff Davis was "prohibited" from taking Edwards's vehicle on the date of the accident.

The trial court, after a hearing, granted defendants' motion for summary disposition and dismissed plaintiffs' claims. The court found that there was no evidence that plaintiff Davis had Edwards's permission to use the vehicle on the date of the accident. The court concluded that under MCL 500.3113(a), plaintiff Davis was disqualified from receiving PIP benefits because he willingly operated a vehicle that was unlawfully taken, and he knew or should have known that the vehicle was unlawfully taken.[1]

## II. STANDARD OF REVIEW

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Powell-Murphy v Revitalizing Auto Communities Environmental Response Trust*, 333 Mich App 234, 242; 964 NW2d 50 (2020) (citation omitted). Although the trial court did not specify the grounds for granting defendant MetLife's motion for summary disposition, it relied on documentary evidence to support its decision. Accordingly, MCR 2.116(C)(10) is the appropriate basis for review. *BC Tile & Marble, Inc v Multi Bldg Co, Inc*, 288 Mich App 576, 582; 794 NW2d

[1] The trial court denied plaintiff Davis's motion for reconsideration, which asserted that the trial court granted defendants' motion without any development of facts regarding whether plaintiff Davis took Edwards's vehicle unlawfully. Plaintiff Davis asserted that the appropriate question when determining whether the vehicle was taken unlawfully was not whether plaintiff Davis had permission to take the vehicle but, rather, whether plaintiff Davis committed a criminal act when he took the vehicle. Plaintiff attached to his motion an affidavit signed by Edwards and an affidavit signed by himself. Any reliance that intervening plaintiff or plaintiff Davis place on the affidavits in support of their arguments on appeal is misplaced because the affidavits were not signed until November 2, 2021, which was after the hearing on defendants' motion for summary disposition. The affidavits were not presented to the trial court until November 24, 2021, which was after the court had entered the November 5, 2021 order granting summary disposition in favor of defendants.

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76 (2010). The trial court granted summary disposition in favor of defendant MAIPF under MCR 2.116(I)(2). Because defendant MAIPF concurred in defendant MetLife's motion for summary disposition, in analyzing the trial court's decision to grant summary disposition under MCR 2.116(I)(2), we will utilize the standard of review that applies to a motion under MCR 2.116(C)(10).

A trial court may properly grant a motion for summary disposition under MCR 2.116(C)(10) "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). "If the moving party properly supports his or her motion, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists." *Redmond v Heller*, 332 Mich App 415, 438; 957 NW2d 357 (2020). "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." *Id*. (quotation marks and citation omitted). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Lowrey*, 500 Mich at 7, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (quotation marks omitted). "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Lowrey*, 500 Mich at 7, quoting *Quinto*, 451 Mich at 363 (quotation marks omitted). This Court's "review is limited to the evidence that had been presented to the circuit court at the time the motion was decided." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009).

## III. ANALYSIS

Plaintiff Davis and intervening plaintiff argue that the trial court erred by granting summary disposition in favor of defendants because a genuine issue of material fact remained regarding whether plaintiff Davis unlawfully took Edwards's vehicle.

At issue here is MCL 500.3113(a), which bars recovery for PIP benefits if, at the time of the accident, "[t]he person was willingly operating or willingly using a motor vehicle that was taken unlawfully, and the person knew or should have known that the motor vehicle was taken unlawfully." For no-fault insurance benefits to be barred under MCL 500.3113(a), plaintiff Davis must have (1) willingly operated or used Edwards's vehicle, (2) taken Edwards's vehicle unlawfully, and (3) known or should have known that Edwards's vehicle was taken unlawfully. The first element is not in dispute in this case.

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Regarding the second element, in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 516-517; 821 NW2d 117 (2012), the Court interpreted the phrase "taken unlawfully"[2] in the context of MCL 500.3113(a):

> In determining the Legislature's intended meaning of the phrase "taken unlawfully," we must accord the phrase its plain and ordinary meaning, and we may consult dictionary definitions because the no-fault act does not define the phrase. The word "unlawful" commonly means "not lawful; contrary to law; illegal," and the word "take" is commonly understood as "to get into one's hands or possession by voluntary action." When the words are considered together, the plain meaning of the phrase "taken unlawfully" readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law. [Citations omitted.]

The *Spectrum* Court went on to explain two examples of a taking "contrary to Michigan law":

> The Michigan Penal Code contains several statutes that prohibit "takings," including two that prohibit "joyriding," MCL 750.413 and MCL 750.414. MCL 750.413 states that "[a]ny person who shall, wilfully and without authority, take possession of and drive or take away . . . any motor vehicle, belonging to another, shall be guilty of a felony . . . ." Similarly, MCL 750.414 provides in pertinent part that "[a]ny person who takes or uses without authority any motor vehicle without intent to steal the same, or who is a party to such unauthorized taking or using, is guilty of a misdemeanor . . . ." Thus, both joyriding statutes make it unlawful to take any motor vehicle without authority, effectively defining an unlawful taking of a vehicle as that which is unauthorized. [*Id*. at 517-518 (citations omitted).]

"Because a taking does not have to be larcenous to be unlawful, the phrase 'taken unlawfully' in MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner." *Id*. at 518. Thus, "any person who takes a vehicle contrary to a provision of the Michigan Penal Code—including MCL 750.413 and MCL 750.414, informally known as the 'joyriding' statutes—has taken the vehicle unlawfully within the meaning of MCL 500.3113(a)." *Id*. at 537. See also *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1, 10-11; 972 NW2d 860 (2021) (stating that "[a]s used in MCL 500.3113(a), the word 'unlawfully' means contrary to the criminal law, for example, any violation of the Michigan Penal Code."). The relevant inquiry into the determination of an unlawful taking is whether the taking was "without authority."

[2] While the operative language in MCL 500.3113(a)—"taken unlawfully"—has not changed since *Spectrum*, other parts of that statute have changed. When *Spectrum* was decided, MCL 500.3113(a) stated that a person was not entitled to PIP benefits if the person "was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle."

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MCL 500.3113(a) "examines the legality of the taking from the *driver's* perspective . . . . ." *Id.* at 522.

We agree with the trial court that there was no question of fact that plaintiff Davis's taking of Edwards's vehicle was without authority. Plaintiff Davis took the keys to Edwards's vehicle and drove off. When asked whether he had permission to operate Edwards's vehicle at the time of the accident, plaintiff Davis stated, "No, not that day I didn't." There is nothing in the record to support that plaintiff Davis had permission to take and use the vehicle, and reasonable minds could not differ that his taking of the vehicle on the night of the accident was without authority and was, therefore, an unlawful taking.[3]

The third element of MCL 500.3113(a) requires looking at plaintiff Davis's state of mind and whether he "knew or should have known" that the vehicle was taken without authority. Under the facts of this case, no reasonable juror could conclude that plaintiff Davis did not know that he took the vehicle without authority. By his own statement, plaintiff Davis did not have permission to take the vehicle, and so he knew that his taking of the vehicle was unauthorized. Reasonable minds could not disagree that plaintiff Davis knew or should have known that he was using the vehicle unlawfully—since he was the one who knowingly took it without authorization, and so the requirement in MCL 500.3113(a) that "the person knew or should have known that the motor vehicle . . . was taken unlawfully" is satisfied.

Accordingly, the evidence, viewed in the light most favorable to plaintiffs, showed that the vehicle was taken unlawfully by plaintiff Davis, and that plaintiff Davis knew the vehicle was taken unlawfully, leaving no genuine issue of fact for a jury to consider. Consequently, under MCL 500.3113(a), plaintiff Davis is not eligible for PIP benefits, and the trial court did not err by granting summary disposition in favor of defendant MetLife.

Finally, plaintiff Davis and intervening plaintiff are barred from recovering no-fault insurance benefits through defendant MAIPF under MCL 500.3173. MCL 500.3173 provides:

> A person who because of a limitation or exclusion in sections 3105 to 3116 . . . is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury is also disqualified from receiving benefits under the assigned claims plan.

Because, under MCL 500.3173, an individual who is disqualified from receiving no-fault insurance benefits under an insurance policy pursuant to MCL 500.3113 is also disqualified from receiving no-fault insurance benefits under the assigned claims plan, neither plaintiff Davis, nor

---

[3] Contrary to plaintiff Davis's and intervening plaintiff's assertions, MCL 500.3113(a) does not require a vehicle to be taken against the express prohibition of the vehicle's owner. In *Spectrum*, the Court considered "whether a person injured while driving a motor vehicle that the person had taken contrary to the express prohibition of the owner may avail himself or herself of" no-fault insurance benefits. *Spectrum*, 492 Mich at 508. However, the Court did not establish a requirement that a vehicle owner must expressly prohibit the use of the vehicle for a taking to be unlawful under MCL 500.3113(a).

intervening plaintiff, can recover no-fault insurance benefits through defendant MAIPF. Thus, the trial court also did not err by granting summary disposition in favor of defendant MAIPF.

Affirmed. Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Mark J. Cavanagh
/s/ Colleen A. O'Brien
/s/ Michelle M. Rick

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# STATE OF MICHIGAN

# COURT OF APPEALS

LAKINA CRISWELL,

Plaintiff-Appellant,

v

AVIS RENT A CAR SYSTEM, LLC, and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants-Appellees.

UNPUBLISHED
July 28, 2022

No. 355626
Wayne Circuit Court
LC No. 19-007669-NF

Before: M. J. KELLY, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right the final order granting defendant, Avis Rent a Car System, LLC's, motion for summary disposition under MCR 2.116(C)(10).[1] We affirm.

## I. FACTUAL BACKGROUND

This case arises out of an automobile accident. Plaintiff's cousin, Pandora Hamilton, was driving a vehicle she rented from defendant, and had picked plaintiff up to go shopping. As they were driving, Hamilton told plaintiff she was feeling sick and needed to go "to the ER because she said her [blood] pressure was up." They switched seats and plaintiff began driving Hamilton to the hospital. During the journey, plaintiff was involved in a collision with another vehicle. Plaintiff requested defendant pay personal protection insurance (PIP) benefits to her, but defendant refused because plaintiff was not a party to, nor was she an authorized driver on, the rental agreement.

Plaintiff filed a complaint alleging breach of contract for defendant's unreasonable refusal to pay PIP benefits. After discovery, defendant moved the trial court for summary disposition

[1] Defendant, the Michigan Automobile Insurance Placement Facility (MAIPF), was previously dismissed from the action.

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pursuant to MCR 2.116(C)(10), arguing that plaintiff was precluded from obtaining PIP benefits by MCL 500.3113(a), because she unlawfully operated the rental vehicle without defendant's authority or permission. The trial court, after a hearing, granted defendant's motion for summary disposition and dismissed plaintiff's claim for PIP benefits, holding that plaintiff "was an unauthorized driver of the . . . rental vehicle such that her use and operation of the rental vehicle constituted an unlawful taking pursuant to MCL 500.3113(a) and the . . . Rental Agreement thereby disqualifying Plaintiff from recovering [PIP] benefits against [defendant]." This appeal followed.

## II. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny summary disposition. *Varela v Spanski*, 329 Mich App 58, 68; 941 NW2d 60 (2019). The de novo standard of review means we review the issues independently, without deference to the trial court's decision. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009) (citation omitted).

A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) when the evidence, viewed in the light most favorable to the nonmoving party, shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The moving party can satisfy its burden of showing there is no genuine issue of material fact by: (1) submitting evidence that negates an essential element of the nonmoving party's claim or (2) demonstrating that the nonmoving party's evidence cannot establish an essential element of the nonmoving party's claim or defense. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). Once the moving party meets that burden, the burden shifts to the nonmoving party to submit evidence establishing there is a genuine issue of material fact. *Id*. at 362, citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

## III. LAW AND ANALYSIS

Plaintiff argues the trial court erred in granting defendant's motion for summary disposition because she did not unlawfully take the rental vehicle.

The Michigan no-fault provides in relevant part:

> A person is not entitled to be paid [PIP] benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. [MCL 500.3113(a)]

As can be seen, MCL 500.3113(a) has three elements: (1) plaintiff was willingly operating the rental vehicle; (2) the rental vehicle was taken unlawfully; and (3) plaintiff knew, or should have known, that the motor vehicle was taken unlawfully.

"Unlawfully" means "contrary to Michigan law," *Spectrum Health Hosps v Farm Bureau Mut Ins Co*, 492 Mich 503, 516-517; 821 NW2d 117 (2012), meaning that "any person who takes a vehicle contrary to a provision of the Michigan Penal Code . . . has taken the vehicle unlawfully

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for purposes of MCL 500.3113(a)." *Spectrum*, 492 Mich at 509. Put another way, "[b]ecause a taking does not have to be larcenous to be unlawful, the phrase 'taken unlawfully' in MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner." *Id*., at 518.

> "[T]ake" means to get something into one's hands or possession through a voluntary act. This would necessarily involve either a transfer of possession or control of an object from one person to another or the gaining of possession or control of an unattended object that is not in anyone's control or possession. [*Henry Ford Health Sys v Esurance Ins Co*, 288 Mich App 593, 600; 808 NW2d 1 (2010) (internal citation omitted).]

The trial court properly granted summary disposition to defendant because, under MCL 500.3113(a), the undisputed material facts show that plaintiff was not entitled to PIP benefits as an unauthorized driver. First, plaintiff willingly operated the rental vehicle. MCL 500.3113(a). Plaintiff testified that she "suggested" driving because of Hamilton's condition. There is no evidence plaintiff was coerced or forced into driving the vehicle; rather the record indicates she voluntarily drove the vehicle.

Second, the rental vehicle was taken unlawfully. MCL 500.3113(a). As noted above, "take" means "to get something into one's hands or possession through voluntary act," *Henry Ford*, 288 Mich App at 600, and requires one to gain "possession or control of an object" from another person. *Id*. Likewise, "the phrase 'taken unlawfully' in MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner," regardless of whether that taking is larcenous. *Spectrum*, 492 Mich at 518. Here, plaintiff had possession and control of the vehicle because she was driving the vehicle. As the trial court stated, the owner of the vehicle was defendant, not Hamilton, and defendant did not give plaintiff express or implied authority to drive the vehicle. This conclusion is further supported by the language in the rental agreement, which expressly states that no "additional drivers are allowed without prior written consent." Therefore, it is irrefutable that plaintiff took the rental vehicle unlawfully.

Third, evidence shows that plaintiff knew, or should have known, the vehicle was taken unlawfully. MCL 500.3113(a). Plaintiff testified she knew it was a rental vehicle because Hamilton's vehicle had been in the repair shop. Therefore, plaintiff reasonably knew, or should have known, that driving the rental vehicle would be unlawful.

In seeking to avoid this conclusion, plaintiff argues that, unlike in *Spectrum*, 492 Mich at 516-517, she did not knowingly take the vehicle because she did not know that it was unlawful to do so under the exigent circumstances she was facing at the time. However, plaintiff does not cite any authority establishing an "exigent circumstances" exception to MCL 500.3113(a), and the Supreme Court has clearly stated that "MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner." *Spectrum*, 492 Mich at 518. In addition, as discussed above, plaintiff's testimony establishes that she knew she lacked authority to drive the rental car.

Plaintiff also seeks to distinguish *Spectrum* on the basis that unlike in *Spectrum*, there were no express statements to plaintiff that she could not drive Hamilton's rental vehicle. However, plaintiff's argument ignores that there is no requirement for the vehicle owner to make an *express*

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statement regarding plaintiff's authority or lack thereof. Instead, "MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner." *Spectrum*, 492 Mich at 518. Additionally, plaintiff operates on the assumption that this grant of authority would have had to come from Hamilton, but fails to recognize that it is the authority of the owner (defendant) not the renter (Hamilton) that matters.[2]

Plaintiff also contends that because she was not a party to the rental contract and was never given a copy of the contract to read, defendant somehow authorized her to drive its rental vehicle. Aside from the fact this argument is largely unsupported, plaintiff's position, if anything, provides additional support for the conclusion that she was not a party to the rental contract, and therefore had no authority to drive the rental vehicle. In addition, a rental agreement provision excluding additional drivers can serve as an express prohibition against taking a vehicle for the purposes of MCL 500.3113(a).

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Stephen L. Borrello

[2] Plaintiff relies on *Rambin v Allstate Ins Co*, 495 Mich 316; 852 NW2d 34 (2014), superseded by statute as stated in *Ahmed v Tokio Marine Am Ins Co*, 337 Mich App 1, 25; 972 NW2d 860 (2021), to argue that the circumstances justified her driving the rental vehicle. However, in addition to the fact that *Rambin* was superseded by statute, plaintiff's argument is belied by the fact she did not have authority from defendant to drive the rental vehicle. Indeed, plaintiff testified that she knew the vehicle was a rental and not one owned by Hamilton.

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# STATE OF MICHIGAN

# COURT OF APPEALS

OMAR AKEEM AMOS,

Plaintiff-Appellee,

and

MICHIGAN HEAD & SPINE INSTITUTE, P.C., and ASCENSION ST. JOHN HOSPITAL,

Intervening Plaintiffs-Appellees,

v

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant-Appellant,

and

FARMERS INSURANCE EXCHANGE and USAA CASUALTY INSURANCE COMPANY,

Defendants.

UNPUBLISHED
July 13, 2023

No. 360091
Wayne Circuit Court
LC No. 20-012063-NF

OMAR AKEEM AMOS,

Plaintiff-Appellee,

and

MICHIGAN HEAD & SPINE INSTITUTE, P.C., and ASCENSION ST. JOHN HOSPITAL,

Intervening Plaintiffs-Appellees,

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v

No. 360098
Wayne Circuit Court
LC No. 20-012063-NF

PROGRESSIVE MARATHON INSURANCE COMPANY and FARMERS INSURANCE EXCHANGE,

Defendants,

and

USAA CASUALTY INSURANCE COMPANY,

Defendant-Appellant.

---

Before: RICK, P.J., and SHAPIRO and LETICA, JJ.

PER CURIAM.

In these consolidated interlocutory appeals, in Docket No. 360091, defendant Progressive Marathon Insurance Company appeals by leave granted the trial court's order denying its motion for summary disposition. In Docket No. 360098, USAA Casualty Insurance Company also appeals by leave granted and challenges the order denying Progressive's motion for summary disposition, which USAA had adopted. We affirm.

## I. BACKGROUND

On the evening of May 24, 2020, plaintiff Omar Amos took a bus to the home of his mother, Venus Amos, in Detroit. Venus was asleep when Omar arrived. Venus owned two vehicles, a 2011 Dodge Ram, insured by Progressive, and a Ford Edge, insured by USAA. Venus had left the keys to the Dodge Ram sitting out that evening. Omar testified that after entering Venus's house he saw the keys to the Dodge Ram and took them. It is undisputed that Venus did not give Omar express permission to drive her vehicle that night. Omar was driving the pickup truck on 8 Mile Road in Warren when he lost control and crashed into a light pole and a building. Omar was taken to Ascension St. John Hospital, which is an intervening plaintiff in this case. Venus woke up at approximately 9:00 a.m. the morning after the accident, and she discovered the truck was not parked in the driveway where she had left it and her keys were gone. Shortly after, Omar called Venus from the hospital and told her about the accident and that he was about to have surgery. Physicians employed by intervening plaintiff Michigan Head & Spine Institute (MHSI) performed spinal surgery on Omar's neck and upper back.

Venus filed a police report in which she reported the truck as stolen. She testified that she did so only because Progressive agents told her to, and she either withdrew her complaint with the Detroit Police Department or declined to press criminal charges against Omar. Progressive initially treated Venus's claim as a theft claim, but changed the type of claim to a collision after Venus informed Progressive she would not seek charges against Omar.

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Omar sought personal protection insurance (PIP) benefits from Progressive, and Progressive denied the claim. Omar brought suit against Progressive, and the operative complaint also names USAA and Farmers Insurance Exchange[1] as defendants. MHSI also filed a complaint against Progressive, USAA, and Farmers, alleging that they were liable to reimburse MHSI for the services it provided to Omar arising from the accident.

Progressive moved for summary disposition under MCR 2.116(C)(10) (no question of material fact), arguing that Omar was ineligible for benefits under the no-fault act pursuant to MCL 500.3113(a) because Omar had unlawfully taken Venus's vehicle the night of the accident by taking it without Venus's permission. Progressive also argued that Omar unlawfully took Venus's vehicle by illegally driving it while unlicensed, in violation of MCL 257.301(1), and in violation of Michigan's operating under the influence statute, MCL 257.625. USAA also moved for summary disposition of Omar and MHSI's claims, adopting Progressive's arguments.[2] Omar and MHSI argued in response that MCL 500.3113(a) did not bar their claims because Omar had previously driven Venus's truck and she had never denied him permission to do so.

After hearing oral argument, the trial court denied Progressive's and USAA's summary disposition motions on the record. The court ruled that there was a question of fact whether Omar's taking of the vehicle was unlawful for the reasons stated by Omar and MHSI. The trial court denied both Progressive and USAA's motions for reconsideration.[3]

## II. ANALYSIS

Progressive and USAA argue that the trial court erred when it denied their motions for summary disposition because there is no question of material fact that Omar unlawfully took Venus's vehicle and his claim for PIP benefits is barred by MCL 500.3113(a). We disagree.[4]

---

[1] Omar applied for PIP benefits through the Michigan Automobile Insurance Placement Facility (MAIPF), and the MAIPF assigned his claim to Farmers Insurance Exchange.

[2] Farmers filed a response to Progressive's summary disposition, which also concurred with Progressive's arguments.

[3] Following the denial of Progressive's motion for reconsideration, the trial court entered a stipulated order allowing Ascension to intervene in this case.

[4] We review de novo a trial court's decision on a motion for summary disposition. See *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion brought pursuant to MCR 2.116(C)(10) tests the factual sufficiency of a claim and is properly granted when the proffered evidence fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012). A genuine issue of material fact exists when the record leaves open issues of fact over which reasonable minds may differ. *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018). A court "considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in a light most favorable to the party opposing the motion." *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013).

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MCL 500.3113(a) provides:

> 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:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. [MCL 500.3113(a).]

In *Priesman v Meridian Mut Ins Co*, 441 Mich 60; 490 NW2d 314 (1992), a plurality of the Supreme Court held that a fourteen-year-old son did not lose his statutory right to PIP benefits under MCL 500.3113(a) by taking his mother's automobile without her permission while she slept. The Court determined that the Legislature did not intend for MCL 500.3113(a) to preclude recovery of benefits in family "joyriding" situations:

> Legislators generally are also parents and sometimes grandparents. Some may have had experience with children, grandchildren, nephews, nieces, and children of friends who have used a family vehicle without permission. Some may have themselves driven a family vehicle without permission. [*Id*. at 68.]

The Court was therefore not persuaded that the "evil" with which Legislature was concerned with in enacting MCL 500.3113 was

> teenagers who "joyride" in their parents' automobiles, especially automobiles covered by no-fault insurance, [considering] that countless persons would be entitled, under the legislation they were drafting, to no-fault benefits without regard to whether they are obliged to purchase no-fault insurance or, if obliged to insure, do in fact do so. [*Id*.]

20 years later, however, in a 4-3 decision, the Supreme Court overruled *Priesman* and its progeny in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503; 821 NW2d 117 (2012). In that case, the Court determined that the "the family-joyriding exception is not supported by the text of MCL 500.3113(a)." *Id*. at 533. The Court held "that the use of the phrase 'a person' in MCL 500.3113(a) clearly and plainly includes a family member who has taken a vehicle unlawfully, thereby precluding that person from receiving PIP benefits." *Id*. at 509. The Court also held "that any person who takes a vehicle contrary to a provision of the Michigan Penal Code—including MCL 750.413 and MCL 750.414, informally known as the 'joyriding' statutes—has taken the vehicle unlawfully for purposes of MCL 500.3113(a)." *Id*. Michigan's joyriding statutes, MCL 750.413 and MCL 750.414, both deem it unlawful to take a motor vehicle without authority. *Id*. at 518. "Because a taking does not have to be larcenous to qualify as unlawful, the phrase 'taken unlawfully' in MCL 500.3113(a) applies to anyone who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it." *Id*.

*Spectrum Health* involved consolidated cases. In *Spectrum Health*, a son was expressly forbidden by his father from driving the father's vehicle. The father allowed the son's girlfriend to drive the vehicle but also instructed her that the son was not allowed to drive the vehicle.

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Nonetheless, the girlfriend gave the son the car keys and he later crashed the vehicle into a tree. *Id*. at 512. In the other case, *Progressive Marathon Ins Co v DeYoung*, a wife had expressly prohibited her husband from driving vehicles owned by the wife given the husband's multiple drunk-driving convictions. Despite these "standing instructions," the husband used the vehicle while intoxicated and crashed the vehicle. *Id*. at 513. Applying its holdings in that case, the *Spectrum Health* Court held that both claimants were barred by MCL 500.3113(a) from recovering PIP benefits because they had been expressly prohibited from driving the respective vehicle. See *id*. at 524-525, 537-538.

Relying on *Spectrum Health*, Progressive and USAA argue that Omar unlawfully took Venus's vehicle contrary to MCL 750.413 and MCL 750.414.[5] There is no dispute in this case that Omar was willingly using the vehicle. The question is whether did so unlawfully, i.e., without authority, and whether he knew or should or have known that it was unlawful.

Omar argues that this case is materially distinguishable from the other family joyriding cases because, unlike the two claimants in *Spectrum Health* for instance, he was not expressly prohibited from using the vehicle. The insurers argue that this is irrelevant because Omar had not obtained express permission from his mother to use the vehicle on the night in question. However, no Michigan court has held that a family vehicle is necessarily taken without authority if a family member uses the vehicle without obtaining express permission. Even though the "family joyriding exception" has been overruled, it remains true that the permissibility of one family member borrowing a vehicle from another is based on the nuances of the particular familial relationship and those relationships, while not dispositive, are highly relevant to the question of implied authority and the driver's understanding . It is not for courts to declare that families may not allow use of a vehicle through implied permission based on the circumstances. The statute's language does not require that a family member obtain express permission each and every time before using another family member's vehicle. Moreover, it is not enough that a family member may have known that they did not have permission. The Legislature could have stated that the driver merely needed to know that he was taking the vehicle "without permission." Instead, it required knowledge that the act was "unlawful." MCL 500.3113(a). It is clear that if an unrelated person takes someone else's vehicle without permission they would know that doing so is unlawful. And the same is true when a person uses a rental vehicle that they have not rented and as to which the rental company has not granted express permission. However, it is not always true in the case of a family member who could reasonably conclude that using a family member's car without explicit permission would be acceptable to the owner. Accordingly, when there has not been an express prohibition by the vehicle's owner, whether there was "authority" to use the vehicle will necessarily turn on the circumstances of each case and generally require a factual determination.

[5] In relevant part, MCL 750.413 provides that "[a]ny person who shall, wilfully and without authority, take possession of and drive or take away . . . any motor vehicle, belonging to another, shall be guilty of a felony . . . ." MCL 750.414 similarly provides, in relevant part, that "[a]ny person who takes or uses without authority any motor vehicle without intent to steal the same . . . is guilty of a misdemeanor . . . ."

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In this case, Omar testified that he had used his mother's vehicle multiple times and that on each occasion he had asked for permission before doing so. Omar believed that he did need Venus's permission to use the vehicle, but there was never a time when he asked for permission and she denied the request. Further, the record is unclear whether Venus ever expressed any policy regarding the vehicle to Omar, and MCL 500.3113(a) "examines the legality of a taking from the *driver*'s perspective[.]" *Spectrum Health*, 492 Mich at 522. From Omar's perspective, his mother had granted him permission to use the vehicle every time he had asked to do so. When he arrived at his mother's home on May 24, 2020, she was sleeping and therefore he could not ask for her permission without waking her. In that sense, this case presents the question whether Omar should have awoken his sleeping mother to ask for permission to use the vehicle, or whether considering the circumstances and his history with the vehicle, he reasonably believed that he had implied permission to do so. Resolution of familial situations such as this is plainly a matter best left to a jury.

Progressive and USAA argue that a driver may not assume they had permission to use a vehicle under the "should have known" standard as articulated in *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1; 972 NW2d 860 (2021). In that case, the plaintiff was injured while driving his wife's rental car and sought PIP benefits from the defendant. *Id*. at 4-5. Because the plaintiff was an unlicensed driver, he was expressly forbidden by the rental car agreement from driving the car. *Id*. Thus, the plaintiff was expressly unauthorized to drive the car by the vehicle's owner, i.e., the rental car company, but he did not have actual knowledge that he lacked authority. *Id*. This Court concluded that,

> [u]nder the "should have known" standard, plaintiff was obligated to determine the scope of the authorization that the owner, Meade Lexus, had set under the rental agreement for a nonparty such as himself to take and drive the car. Stated another way, plaintiff knew that his wife, who was the party to the contractual agreement with Meade Lexus, was not the owner of the car and that any authority to use the car could only be based on the terms set by the owner. Thus, before simply driving off, plaintiff was obligated to learn the terms of the rental agreement; he "should have known" the terms because a person may not simply take what he knows to be another's property without taking any steps to determine if the owner authorized the taking. The mere assumption or supposition that it must be permissible to take a third party's property, *without more*, does not satisfy the "should have known" standard of MCL 500.3113(a). [*Id*. at 26 (emphasis added).]

*Ahmed* is materially distinguishable on the ground that there was a legally binding document that, in effect, expressly prohibited the plaintiff from operating the vehicle. As discussed, Omar was not expressly prohibited from driving his mother vehicle's and there was certainly no document he could consult to determine whether she would deny permission on any particular occasion. And his mother was the owner of the vehicle, not a "third party" like the renter in *Ahmed*. Further, Omar's use of the vehicle was based on more than a "mere assumption." *Id*. That decision was informed by his history with the vehicle, including that he each time he had asked to use the vehicle his mother said yes. Progressive and USAA's attempt to import isolated statements from *Ahmed*—decided in the context of rental car agreements—and import them to the present case is unpersuasive. Indeed, the insurers' reliance on *Ahmed* in this manner is simply a different way of arguing that a plaintiff must obtain express permission each time they use a family

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member's vehicle. For the reasons discussed, this position is untenable and it ignores the reality that families often do not articulate hard-and-fast rules that must be followed in all circumstances.

We acknowledge that there are some inconsistencies in Omar and Venus's testimony and that the record allows for reasonable inferences that can be drawn against them. However, at this stage we must view the evidence in a light most favorable to Omar as the nonmoving party. Doing so, we conclude that reasonable minds could differ whether the vehicle was taken unlawfully and whether Omar knew or should have known that the taking was unlawful.

Progressive and USAA alternatively argue that Omar unlawfully took Venus's vehicle by driving while unlicensed in violation of MCL 257.301(1), and in violation of Michigan's operating under the influence statute, MCL 257.625.[6] However, this Court's decision in *Monaco v Home-Owners Ins Co*, 317 Mich App 738; 896 NW2d 32 (2016), makes clear that MCL 500.3113(a) only prohibits PIP benefits on the basis of an unlawful *taking* of a vehicle and not when one unlawfully *operates* the vehicle of another.

*Monaco* involved a situation where the injured claimant, who was 15 years old, had a permit to drive that would only authorize her to drive if accompanied. She instead drove a family vehicle unaccompanied and was injured. *Id*. at 741-742. Her mother initially testified that the claimant took the car without permission, but then changed her testimony and stated that she had given her daughter permission to take the car. *Id*. at 743. The insurer argued that MCL 500.3113(a) barred recovery of PIP benefits because it was unlawful for the mother the give the daughter permission to drive under the Michigan Vehicle Code (MVC), MCL 257.1 *et seq*. *Id*. at 749. This Court disagreed, observing that

> [t]he distinction between unlawfully taking a motor vehicle and unlawfully using a vehicle was recognized in *Rambin v Allstate Ins Co*, 495 Mich 316, 331; 852 NW2d 34 (2014), wherein the Supreme Court stated that "the unlawful use of a vehicle . . . is not relevant under the unlawful taking language in MCL 500.3113." And this Court has observed that, with respect to the language in MCL 500.3113(a), "[c]learly, the terms 'take' and 'use' are not interchangeable or even synonymous; obtaining possession of an object is very different from employing that object or putting it into service." *Amerisure Ins Co v Plumb*, 282 Mich App 417, 428; 766 NW2d 878 (2009), abrogated in part on other grounds by Rambin, 495 Mich. at 323-324 n 7. [*Monaco*, 317 Mich App at 749.]

Accordingly, this Court held that although it was undisputed that the daughter's use of the vehicle violated the MVC, those violations had no bearing on the daughter's authority to take the vehicle and therefore did not implicate MCL 500.3113(a). *Id*. at 749-750.

Applying *Monaco* to the instant case, that Omar had a suspended license and was intoxicated is not relevant to whether the *taking* of the vehicle was unlawful. While Omar's *use* of the vehicle may have been unlawful, that is distinct from an unlawful taking. Accordingly, Progressive and USAA's argument that Omar's violations of the MVC render the taking of the

[6] Omar's blood alcohol level when taken at the hospital was above the legal limit.

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vehicle per se unlawful is without merit. We acknowledge that the *Ahmed* Court expressed disagreement with *Monaco* and contemplated the need for a conflict panel regarding that decision. See *Ahmed*, 337 Mich App at 19 n 8. However, we do not share those concerns. In *Spectrum Health*, the Supreme Court stated that "the term 'unlawful' can only refer to the Michigan Penal Code[.]" *Spectrum Health*, 492 Mich at 517 n 22. The Supreme Court further explained that a vehicle is taken unlawfully "if it is taken without the authority of its owner." *Id*. at 518 n 25. Accordingly, this Court's holding in *Monaco* that the unlawful use or operation of a vehicle under the MVC has no bearing on the phrase "taken unlawfully" as used in MCL 500.3113(a) appears to be a straightforward application of the Supreme Court's statements in *Spectrum*.[7]

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michelle M. Rick
/s/ Douglas B. Shapiro

[7] Although *Monaco*, 317 Mich App 738, was decided under the previous version of MCL 500.3113(a), the current statute does not lend itself to the *Ahmed* Court's interpretation that driving the vehicle of another in contravention of the MVC constitutes an unlawful taking. There is nothing from the text of 2014 PA 489 to indicate that the Legislature intended to expand the definition of "taken unlawfully" to include using the vehicle of another in violation of the MVC.

*If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.*

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# STATE OF MICHIGAN

# COURT OF APPEALS

OMAR AKEEM AMOS,

Plaintiff-Appellee,

and

MICHIGAN HEAD & SPINE INSTITUTE, P.C., and ASCENSION ST. JOHN HOSPITAL,

Intervening Plaintiffs-Appellees,

v

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant-Appellant,

and

FARMERS INSURANCE EXCHANGE and USAA CASUALTY INSURANCE COMPANY,

Defendants.

UNPUBLISHED
July 13, 2023

No. 360091
Wayne Circuit Court
LC No. 20-012063-NF

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OMAR AKEEM AMOS,

Plaintiff-Appellee,

and

MICHIGAN HEAD & SPINE INSTITUTE, P.C., and ASCENSION ST. JOHN HOSPITAL,

Intervening Plaintiffs-Appellees,

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v

No. 360098
Wayne Circuit Court
LC No. 20-012063-NF

PROGRESSIVE MARATHON INSURANCE COMPANY and FARMERS INSURANCE EXCHANGE,

Defendants,

and

USAA CASUALTY INSURANCE COMPANY,

Defendant-Appellant.

---

Before: RICK, P.J., and SHAPIRO and LETICA, JJ.

LETICA, J. (*dissenting*).

I respectfully dissent. The circuit court erred when it denied Progressive and USAA's motions for summary disposition and subsequent motions for reconsideration because there was no genuine issue of material fact on this record that plaintiff Omar Amos (Omar)[1] was willfully operating a motor vehicle he unlawfully took from his mother Venus and that he knew or should have known he took it unlawfully.

## I. FACTUAL BACKGROUND[2]

On Sunday May 24, 2020, the day before Memorial Day, Venus went to bed at about 8:30 p.m. Thirty-two-year-old Omar recalled taking the 8-Mile Grand River bus to Venus's house[3] as the sun was setting.[4] By 10:12 p.m., a crash involving Venus's vehicle was reported to police. Omar, whose driver's license had been suspended for years, had been driving Venus's vehicle.

---

[1] To distinguish plaintiff Omar Amos from his mother Venus Amos (Venus), I refer to them by their first names.

[2] I agree with the majority's recitation of the procedural background and its standard of review.

[3] Omar testified that he spent his time equally between the homes of his mother and the mother of his child. Earlier, however, Omar told a Progressive employee that he did not often stay at Venus's home, perhaps "once every two weeks or something like that." In deciding a motion for summary disposition under MCR 2.116(C)(10), this Court views conflicting evidence "in the light most favorable to the nonmoving party." *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1, 7-8; 972 NW2d 860 (2021) (quotation marks and citation omitted).

[4] Although no additional information was provided about when Omar arrived on the bus or when the sun set, governmental records reflect sunset occurred at 8:56 p.m. <https://gml.noaa.gov/grad/solcalc/sunrise.html> (accessed July 5, 2023). See MRE 201.

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Omar rear-ended a vehicle stopped for a red light, jumped a curb, and toppled a light pole before striking a building. Two additional adult occupants in Venus's vehicle, Omar's female acquaintance and her brother, fled after the crash. The acquaintance's brother returned to the scene and was transported to the hospital. Omar was seriously injured and subsequent hospital testing showed that he was positive for tetrahydrocannabinol (THC) and had a 0.171 blood-alcohol level, twice the legal limit.

During Venus's subsequent deposition, she testified she purchased that vehicle in February 2018. Venus had two sets of keys, which she typically kept in her bag or in a safe place, usually her bedroom dresser. But, on the date of the accident, Venus felt unwell and she could have put the keys anywhere. During Omar's deposition, Omar testified that he did not have keys to Venus's vehicle and that if he wanted to take and use it, he had to get the keys from Venus. Omar told a Progressive employee that he saw Venus's keys on the table on the night of the accident and took them.

Before the accident, Omar did not keep count of the number of times he had driven Venus's vehicle, but it was "[n]ot that many." When offered the option of choosing whether he had driven the vehicle once or twice or "a handful of times" or on a "regular basis," Omar responded: "I'll just go with a handful."[5] When asked why he was permitted to use the car on those occasions, Omar responded "the main number one reason" was "to spend some time with [his] son."[6]

Omar also testified that "before using" Venus's vehicle, he had to ask her for permission to do so. And when questioned about whether he had to ask for permission "each time" he "wanted to take and use" Venus's vehicle, Omar answered: "Absolutely. Yes." Omar further testified that there was never a time he took Venus's vehicle without asking Venus for permission. Yet, on the night of the accident, Omar frankly acknowledged that he did not seek Venus's permission to use her vehicle. Instead, he took the keys to Venus's vehicle from Venus's home while Venus slept, and drove off without her permission. Due to the accident, Omar could not recall the exact time he drove off in Venus's vehicle.

Venus confirmed Omar's understanding of when Omar could use her vehicle. When asked if it was "fair to say that if Omar wanted to borrow and use [Venus's vehicle] . . . he had to come and ask for [her] permission," Venus answered: "Yes." And Venus confirmed that Omar asked for her permission on those handful of occasions that he used her vehicle before the accident. Venus also confirmed that on the day of the accident Omar did not ask for permission before taking her vehicle because she was asleep. Finally, when asked if "Omar ever discussed with [Venus] that he knew he should not have taken" her vehicle, Venus testified that he had and that Omar "told [Venus] he was sorry for doing that."

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[5] During an earlier telephone call with Progressive's representative, when offered the choice between "one to two" or "five or more times," Omar thought it was "one or two." See footnote 2.

[6] At Omar's deposition, he testified that his son was four; however, Omar did not provide a birthdate for the child. Because Omar's deposition was taken eight months after the accident, it is unclear whether the child was three or four years old when the accident occurred.

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## II. APPLICABLE LAW

As the majority recognizes, in pertinent part, MCL 500.3113 provides:

> A person is not entitled to be paid personal protection insurance [(PIP)] benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. [MCL 500.3113(a).]

Our Supreme Court has held that "any person who takes a vehicle contrary to a provision of the Michigan Penal Code—including MCL 750.413 and MCL 750.414, informally known as the 'joyriding' statutes—has taken the vehicle unlawfully within the meaning of MCL 500.3113(a)." *Spectrum Health Hosps v Farm Bureau Mut Ins Co*, 492 Mich 503, 537; 821 NW2d 117 (2012). Both joyriding statutes prohibit the taking of a motor vehicle without the authority of the owner. MCL 750.413; MCL 750.414. The term "authority' in the context of the joyriding statutes means "the 'right to control, command or determine.' " *Rambin v Allstate Ins Co*, 495 Mich 316, 332; 852 NW2d 34 (2014), quoting *Random House Webster's Dictionary* (1996), superseded by statute as recognized by *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1, 25; 972 NW2d 860 (2021). In relevant part, MCL 750.413 provides that "[a]ny person who shall, wilfully and without authority, take possession of and drive or take away . . . any motor vehicle, belonging to another, shall be guilty of a felony . . . ." MCL 750.414 similarly provides, in relevant part, that "[a]ny person who takes or uses without authority any motor vehicle without intent to steal the same . . . is guilty of a misdemeanor . . . ." Although MCL 750.414 "prohibits the unauthorized use or taking of a motor vehicle, it does not require a showing that the perpetrator intended to permanently deprive the owner of the vehicle." *Rambin*, 495 Mich at 329.

After *Rambin*, the Legislature amended MCL 500.3113(a). 2014 PA 489. The original version of the statute contained a safe harbor provision for one who unlawfully took a vehicle but "reasonably believed that he or she was entitled to take and use the vehicle." 1986 PA 93. In *Ahmed*, this Court concluded that MCL 500.3113(a), as amended, eliminated the safe harbor provision contained in the former version of the statute. *Ahmed*, 337 Mich App at 23. Under the new standard, it is no longer sufficient for a person seeking PIP benefits to show he lacked actual knowledge that he did not have authority from the owner to take the vehicle. *Id*. at 25. For purposes of applying MCL 500.3113(a), a person has unlawfully taken a vehicle under MCL 750.414 if the person did not take steps to determine whether the owner had granted him authority to take the vehicle.[7] *Id*. at 26-27.

[7] 2014 PA 489 only amended the scienter requirement for MCL 750.414 as it relates to litigation concerning the application of MCL 500.3113(a), and the legislation did not amend the mens rea necessary to prove a violation of MCL 750.414 in criminal cases. *Ahmed*, 337 Mich App at 26 n 12.

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In *Ahmed*, the plaintiff was injured while driving a rental car and sought PIP benefits from the defendant. *Ahmed*, 337 Mich App at 4-5. The car was rented by the plaintiff's wife, who gave the plaintiff permission to drive the vehicle. *Id*. The plaintiff was not licensed to drive when the accident occurred. *Id*. at 5. Under the express terms of the contract, which the plaintiff never read, unlicensed drivers were expressly forbidden from driving the car. *Id*. Thus, the plaintiff was expressly not authorized to drive the car by the vehicle's owner, the rental car company, but he did not have actual knowledge that he lacked authority. *Id*. This Court concluded that, under the "should have known" standard, the plaintiff was obligated to learn the terms of the contract and could not merely assume he was permitted to take the car. *Id*. at 26-27. This Court explained that "[t]he mere assumption or supposition that it must be permissible to take a third party's property, without more, does not satisfy the 'should have known' standard of MCL 500.3113(a)." *Id*. at 27.

## III. ANALYSIS

In this case, the undisputed facts show that 32-year-old Omar, whose license to drive had been suspended for years,[8] was prohibited from taking Venus's vehicle on the day of the accident without her permission and that he knew or should have known his taking was prohibited.

Venus owned the vehicle, having purchased it in February 2018. Omar did not have keys to Venus's vehicle, and, if he wanted to take and use it, he had to get the keys from Venus. Despite knowing that Omar's license was suspended, Venus let Omar use her vehicle on a "handful" of occasions over 2-1/4 years to spend time with his young son.

Omar testified that "before using" Venus's vehicle, he had to ask her for permission. And, when asked whether he had to request permission "*each time*" he "wanted to take and use" Venus's vehicle, Omar answered: "*Absolutely. Yes.*"[9] (Emphasis added). Except for the night of the accident, Omar never took Venus's vehicle without asking Venus for permission. That night, Omar did not ask Venus for permission. Instead, he took the keys to Venus's vehicle from Venus's home while Venus slept and drove off. Because MCL 500.3113(a) "examines the legality of a taking from the *driver*'s perspective," *Spectrum Health*, 492 Mich at 522, this ends the inquiry of

[8] It is a crime for a vehicle owner to "knowingly permit . . . [her vehicle] . . . to be operated on a highway or other place open to the general public or generally accessible to motor vehicles . . . within this state by a person whose license . . . is suspended . . ., except as permitted under" the Motor Vehicle Code, MCL 257.1 *et seq*. See MCL 257.904(2). The penalty for that offense depends on the number of prior convictions for the same offense and whether it causes another person to suffer a serious impairment of body function or death. See MCL 257.904(3) and (7).

[9] Although the majority posits "that families often do not articulate hard-and-fast rules that must be followed in all circumstances," this family had a hard-and-fast rule in place. More specifically, Omar had to ask Venus for permission to use her vehicle and she had to give Omar express permission before he could drive her vehicle.

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whether Omar unlawfully took Venus's vehicle without authority and whether he knew or should have known that he took it unlawfully.

In any event, Venus confirmed Omar correctly understood the condition under which he could use her vehicle. "[I]f Omar wanted to borrow and use" her vehicle, "he had to come and ask for [her] permission." And, in fact, Omar had asked Venus for her permission on those handful of occasions that he had used her vehicle before the accident. On the night of the accident, however, Omar did not ask Venus for permission before he took her vehicle because she was asleep. Finally, when she and Omar discussed that "he knew he should not have taken" her vehicle, Omar "told [Venus] he was sorry for doing that." In other words, Omar apologized to Venus for failing to obtain her approval to use her vehicle because he knew he should not have taken it before securing her permission.

Appellees,[10] however, argue that there was no unlawful taking in this case given Omar and Venus's subsequent affidavits and Venus's deposition testimony that she would have allowed Omar to take the vehicle that night if he had asked. In Omar's affidavit, he averred: "On the date of the accident, I was of the belief I had permission to use my mother's vehicle." In Venus's affidavit, she averred:

> 4. That Omar normally requested permission when using my vehicle. However, I did not require him to obtain permission before taking or using my vehicle.
>
> 5. . . . If Omar would have asked to use the vehicle I would have granted him permission to use my vehicle on May 24, 2020.

Because these affidavits directly conflicted with Omar and Venus's deposition testimony, namely, that Omar had to request permission from Venus before he used her vehicle, they cannot create a genuine issue of material fact. See *Dykes v William Beaumont Hosp*, 246 Mich App 471, 479-482; 633 NW2d 440 (2001) (It is well-established that a party may not create a question of fact by making assertions in an affidavit that are contrary to prior deposition testimony.).

Appellees also point to Venus's deposition testimony as demonstrating that Venus would have permitted Omar to take the vehicle that night if he had asked to do so. It is true that, during Venus's deposition, MSHI's attorney asked Venus whether, absent "psychic foreknowledge of this accident," she "would . . . have given [Omar] permission to use [her vehicle,]" if he had "woken [her] up that evening and asked to use" it. It is also true that Venus answered affirmatively.[11] Later, however, Progressive's counsel followed up on Venus's response, and Venus, who

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[10] Appellees collectively refers to Omar and the service providers seeking recovery of PIP benefits.

[11] It appears that Venus was unaware that Omar was drinking or using marijuana before the accident. At Omar's deposition, Omar himself denied drinking alcohol or smoking marijuana on the day of the accident. After the accident, however, hospital test results showed that Omar was positive for THC and had a 0.17 blood-alcohol level, more than two times the legal limit.

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recognized that Omar's driver's license was suspended,[12] further explained that she allowed Omar to take her vehicle "to go see his little boy." Venus then clarified that she would not have allowed Omar to take her car for any other reason.[13]

Regardless, before our Supreme Court's decision in *Spectrum*, 492 Mich at 523, an owner's statement after the accident that he or she would have given consent and allowed the driver to take the vehicle was one factor in determining whether there was an unlawful taking under MCL 500.3113(a). *Landon v Titan Ins Co*, 251 Mich App 633, 649; 651 NW2d 93 (2002). When *Landon* was decided, whether a vehicle owner had authorized a taking was determined by applying the test for whether consent had been given under the vehicle owner's liability statute, MCL 257.401, which presumes the owner gave his or her consent to the driver. *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 623-626; 499 NW2d 423 (1993), overruled by *Spectrum*, 492 Mich at 523. In *Spectrum*, our Supreme Court overruled *Bronson*, narrowing the circumstances under which a person can claim to have lawfully taken a vehicle and eliminating the presumption of consent for purposes of MCL 500.3113(a). *Spectrum*, 492 Mich at 523. Thus, even under the previous, more forgiving standard for determining the lawfulness of a taking, Venus's after-the-fact consent would not be dispositive in this case. Under the current version of MCL 500.3113(a), one runs afoul of MCL 750.414 when he takes a motor vehicle and knows or should have known that "the owner prohibited the taking." *Ahmed*, 337 Mich App at 25-26. And, again, the lawfulness of the taking is determined by whether the person was prohibited from taking the vehicle when the taking actually occurred. *Id*. at 13-15. In this case, Omar was prohibited from taking Venus's vehicle without obtaining her prior assent.

In denying appellants' motions for summary disposition, the trial court judge expressed his concern that Omar would be left without PIP benefits despite his serious injuries and explained that if the judge's child took his vehicle without his knowledge while he slept, he would be upset, but that it would not necessarily mean that he would not have permitted his child to take the vehicle. The trial court's hypothetical failed to recognize that the deposition testimony in this case established that this parent and adult "child" had a mutual understanding that this adult "child" was not permitted to take the car without asking this parent for permission, which this adult "child" failed to obtain, especially considering this adult "child's" status as a suspended driver.[14]

The majority seems to suggest that absent an express written agreement prohibiting driving altogether in a familial setting, permission is a fluid concept and an after-the-fact approval suffices. Doing so ignores Venus and Omar's straightforward deposition testimony. On this record, there is no dispute that Omar did not actually have Venus's permission to take her vehicle. Omar

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[12] See footnote 8.

[13] Venus went to sleep around 8:30 p.m. and the vehicle crash was reported by 10:12 p.m. Omar was traveling on 8 Mile Road, a route he typically took to his son's home. The shortest distance between Venus's home and the home where Omar's child lived was over seventeen miles and required approximately thirty minutes to reach via vehicle. Omar's adult passengers were not deposed, and therefore, provided no additional information about whether Omar actually visited his three- or four-year-old son that night.

[14] See footnote 8.

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unequivocally testified that he knew he needed his mother's prior permission before taking her vehicle, the same permission he had secured on those rare occasions when he had asked to use her vehicle over the course of more than two years. Nor could Omar simply assume that he had permission to take a vehicle from its owner. *Ahmed*, 337 Mich App at 27. And, even if Omar had assumed that Venus would have granted permission had he asked, the facts are that Omar knew that he needed Venus's permission to drive her vehicle each and every time and that he knew he took her vehicle without her permission while she was sleeping. Omar even apologized to Venus after they discussed that he should not have taken her vehicle without permission. Accordingly, Omar unlawfully took Venus's vehicle contrary to the joyriding statutes and was willingly operating it when the accident occurred, meaning Omar is barred from recovering PIP benefits pursuant to MCL 500.3113(a).

For these reasons, the trial court erred when it denied appellants' motions for summary disposition and reconsideration. I would reverse and remand to the circuit court with instructions to enter an order granting appellants' motions for summary disposition.

/s/ Anica Letica

*If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.*

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# STATE OF MICHIGAN

# COURT OF APPEALS

TIBURCIO PENA-CRUZ and JONATHAN PENA-GARCIA,

Plaintiffs-Appellees,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

and

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY and JOHN DOE INSURANCE COMPANY,

Defendants.

UNPUBLISHED
March 14, 2024

No. 364284
Wayne Circuit Court
LC No. 21-014679-NF

Before: O'BRIEN, P.J., and BORRELLO and HOOD, JJ.

PER CURIAM.

Defendant-appellant, State Farm Mutual Automobile Insurance Company, appeals by leave granted[1] the trial court's order denying State Farm's motion for summary disposition, in which State Farm argued that plaintiff Tiburcio Pena-Cruz was barred by MCL 500.3113(a) from recovering no-fault benefits.[2] That statute bars a person from receiving no-fault benefits if, at the time of the accident, they were using a vehicle that "was unlawfully taken," and the person

[1] *Pena-Cruz v State Farm Mut Automobile Ins Co*, unpublished order of the Court of Appeals, issued May 17, 2023 (Docket No. 364284).

[2] The claims by the other plaintiff—Jonathan Pena-Garcia—against State Farm were dismissed with prejudice in a stipulated order.

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claiming the benefits knew or should have known that the vehicle was unlawfully taken. MCL 500.3113(a). The dispute on appeal is whether the F-150 truck that Tiburcio was driving at the time of the accident "was taken unlawfully" in the context of MCL 500.3113(a). The trial court held that this issue presented a question of fact to be resolved at trial. On the basis of recently published caselaw, we disagree, and accordingly reverse and remand for the trial court to enter an order granting State Farm's motion for summary disposition.

## I. BACKGROUND

On December 19, 2020, plaintiffs were involved in a serious car accident. Tiburcio was driving, and his son, Jonathan Pena-Garcia, was a passenger. According to the traffic report of the accident, Tiburcio was stopped on the roadway because of an accident in front of him. The driver of a second vehicle failed to see Tiburcio stopped and consequently rear-ended him. As a result of the accident, Tiburcio had to be airlifted to the hospital.

At the time of the accident, Tiburcio was driving an F-150 owned by his wife, Maria Garcia-Lopez. Despite being married, the two were not living together at the time of the accident; Tiburcio testified that on December 19, 2020, he was living alone. He explained that he and Maria "were having problems for about two years" and "decided to separate to see if [they could] fix stuff." Tiburcio estimated that, as of the date of the accident, he and Maria had not lived together for two years.

Maria purchased the F-150 involved in the accident on March 7, 2020. Tiburcio confirmed that Maria purchased the F-150 after they were no longer living together.

Maria confirmed that she owned the Ford F-150 involved in the accident, and said that it was titled and registered to only her. When asked whether the F-150 was insured on the date of the accident, Maria testified that it was not because she had cancelled the insurance shortly before the December 19, 2020 accident.[3] When asked who else had access to the F-150, Maria's answer was somewhat unclear; she said that Jonathan "didn't have access" to the F-150 but "sometimes when Jonathan would ask for it, which he would rarely do," she would "let him drive it." But in the next sentence she seemed to say that the first time Jonathan drove the F-150 was on the day of the accident—December 19, 2020. When asked whether she gave Jonathan permission to drive the F-150 on December 19, Maria said, "Yes." But she denied giving Tiburcio permission to drive the F-150 on December 19, and she confirmed that Tiburcio had never driven the F-150 prior to December 19, 2020. When asked if she would have let Tiburcio drive the F-150, she said, "Well, no, he doesn't have a license."

Maria's testimony about why she let Jonathan take the F-150 on the date of the accident is also unclear, but she seemingly testified that she allowed Jonathan to use the F-150 that day while she used another car that she owned to drive to work. But Jonathan testified that the only vehicle Maria kept at her address on the date of the accident was the F-150 and that Maria primarily drove the F-150, and he denied seeing Maria drive any other vehicles around the time of the accident.

[3] In an October 2, 2020 letter sent by State Farm to Maria, State Farm confirmed that Maria's insurance policy for her F-150 was canceled per her request, effective September 2, 2020.

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Regardless, Jonathan confirmed Maria's testimony that he (Jonathan) rarely used the F-150; when asked if he "ever drove" the F-150," Jonathan said, "No."

With respect to the circumstances surrounding how Tiburcio came to be driving Maria's F-150 on December 19, 2020, Jonathan testified that he was living with his mother, Maria, at that time. Jonathan said that, on the day of the accident, he picked Tiburcio up from his house and, together, they were heading to work when the accident happened. Jonathan testified that, at the time of the accident, Tiburcio was driving the F-150 owned by Maria.

Tiburcio likewise testified that the accident occurred while he was going to work. Tiburcio explained that someone named Francisco usually drove him to work because Tiburcio did not have a license, but on the day of the accident, Francisco was unable to take Tiburcio to work. Usually, when that happened, Tiburcio would ask his daughter for a ride to work, but Tiburcio's daughter was also unavailable that day. Tiburcio therefore turned to Jonathan for a ride to work on the day of the accident. But when Jonathan arrived at Tiburcio's house in the early morning, Jonathan told Tiburcio that he was tired. So, according to Tiburcio, "it just made sense for [Tiburcio] to drive." Tiburcio testified that he was not licensed to drive because "[he] didn't drive." Nevertheless, Tiburcio took the F-150 and drove it.

Tiburcio said that he knew Maria was the owner of the F-150. But when asked details about Maria's purchase of the vehicle, Tiburcio said that he did not "have any information" about that. Likewise, when asked whether the F-150 was insured, Tiburcio said that he "did not have any information regarding the pickup." And when asked whether the F-150 was ever garaged anywhere other than at Maria's address, Tiburcio again said that he had "no information regarding that." According to Tiburcio, the day of the accident was the first time that he drove the F-150. When asked whether he had to ask permission to drive the F-150, Tiburcio testified, "So, no. No, I didn't ask for permission. As I've been saying, he came here to pick me up, my son, and he was tired so it just—it was easy for me to just drive to work then." Tiburcio testified that even when he was living with Maria, he did not have keys to any vehicles; only house keys.

Tiburcio estimated that the accident occurred "just past 5 o'clock in the morning." He said that it was still dark, but the roads were in normal condition—"no snow, there was nothing like that." According to Tiburcio, the accident occurred after he came to a stop for a truck that was in the road; while Tiburcio was waiting for the truck to clear the road, another car rear-ended him.

On October 25, 2021, after State Farm failed to pay Tiburcio's no-fault benefits, Tiburcio filed the instant action seeking those benefits.

On September 21, 2022,[4] State Farm moved for summary disposition, arguing that Tiburcio's claim for no-fault benefits was barred by MCL 500.3113(a). That statute bars a person from collecting no-fault benefits if the person was willingly using a motor vehicle that was taken unlawfully, and the person knew or should have known that the vehicle was unlawfully taken. State Farm argued that Tiburcio took the F-150 unlawfully because the vehicle was owned by Maria, Tiburcio never received Maria's permission to drive it, and Tiburcio had no reason to

[4] The cutoff for discovery was September 5, 2022.

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believe that Maria would allow Tiburcio to drive the F-150 in light of the fact that Tiburcio did not have a driver's license and had never used the F-150 before. State Farm acknowledged that Jonathan had asked Tiburcio to drive before the accident, but argued that this could not save Tiburcio's claim for benefits because our Supreme Court had rejected a "chain of permissive use" exception to MCL 500.3113(a). Thus, the fact that Jonathan gave Tiburcio permission to drive Maria's F-150 did not make Tiburcio's taking of Maria's vehicle lawful because the relevant inquiry was whether Tiburcio took the motor vehicle without *Maria's* permission. State Farm further argued that Tiburcio knew or should have known that his taking of the F-150 was unlawful for the same reasons he took the F-150 unlawfully in the first place—he knew that the vehicle belonged to Maria, he had never received Maria's permission to use the vehicle, and he had reason to believe that Maria would not allow him to drive the motor vehicle because he did not have a driver's license and Maria had never allowed Tiburcio to drive the motor vehicle.

In response, Tiburcio argued that the Supreme Court had not rejected the "chain of permissive use" theory in its entirety; rather, according to Tiburcio, the Supreme Court only held that an intermediate user of a motor vehicle did not have the authority to permit a third person to use the vehicle *if* the owner of the vehicle had expressly prohibited such use by the third person. Plaintiff believed that, otherwise, the "chain of permissive use" theory survived, and plaintiff contended that "a clear chain of permissive use exists" in this case. In support of this assertion, plaintiff relied on the fact that Jonathan had permission to use the F-150, that Jonathan allowed Tiburcio to use the F-150, and that Maria never expressly prohibited Tiburcio from driving the F-150.

The trial court held a hearing on State Farm's motion on October 26, 2022. The parties argued in line with their briefs, after which the trial court delivered its ruling from the bench. After recounting the relevant facts and law, the trial court concluded that there was a question of fact whether Tiburcio unlawfully took the F-150. The trial court reasoned that the "chain or permissive use" theory was still viable because our Supreme Court "did not rule that an intermediate use of a motor vehicle may never validly grant another permission to take and use a vehicle, rather, the intermediary user cannot contradict or overcome an owner's expressed instructions that the end-user may not take or use the vehicle." And the trial court noted both that a chain of permissive use existed in this case (Jonathan had permission to use the F-150, and Jonathan allowed Tiburcio to drive the vehicle) and that Maria never said that Tiburcio was not permitted to use the F-150 (either directly to Tiburcio himself or to Jonathan). The court accordingly concluded that a question of fact remained as to whether Tiburcio unlawfully took the F-150 and whether he knew or should have known that he had unlawfully taken the F-150.

The day after the hearing, the trial court entered an order denying State Farm's motion for summary disposition "for the reasons stated on the record." This appeal followed.

## II. STANDARD OF REVIEW

A grant or denial of summary disposition is reviewed de novo. *McMaster v DTE Energy Co*, 509 Mich 423, 431; 984 NW2d 91 (2022). State Farm moved for summary disposition under MCR 2.116(C)(10). Summary disposition under MCR 2.116(C)(10) is proper when "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." "A genuine issue of material fact exists when the record, giving the

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benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Zaher v Miotke*, 300 Mich App 132, 139-140; 832 NW2d 266 (2013).

The initial burden in a motion under MCR 2.116(C)(10) rests with the moving party, who can satisfy its burden by either (1) submitting "affirmative evidence that negates an essential element of the nonmoving party's claim" or (2) demonstrating "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (quotation marks and citation omitted). In response to a properly supported motion under MCR 2.116(C)(10), the nonmoving party cannot "rest on mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial." *Campbell v Kovich*, 273 Mich App 227, 229; 731 NW2d 112 (2006).

## III. ANALYSIS

The statute at issue in this case is MCL 500.3113(a), which currently provides:

> 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:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

The parties' central dispute in this case is the legal effect of certain facts. It is undisputed that Tiburcio took Maria's F-150 without her express permission or authority, Tiburcio made no effort to determine whether Maria (whom Tiburcio knew owned the F-150) authorized his taking of the F-150 despite it being Tiburcio's first time driving that vehicle, and he took the F-150 knowing that it would be illegal for him to drive because he did not have a license. The parties dispute whether, under these facts, Tiburcio is barred by MCL 500.3113(a) from receiving PIP benefits. Very recently, this Court in *Swoope v Citizens Ins Co of the Midwest*, ___ Mich App ___, ___; ___ NW2d ___ (2024) ruled that, under materially identical facts, a user of a motor vehicle was indeed barred by MCL 500.3113(a) from receiving PIP benefits. *Swoope* effectively resolved several questions surrounding MCL 500.3113(a) that had been left open following this Court's 2021 opinion in *Ahmed v Tokio Marine Am Ins Co*, 337 Mich App 1; 972 NW2d 860 (2021). To explain the holding in *Swoope*, this opinion will walk through the various interpretations and applications of MCL 500.3113(a) that led to *Swoope*.

### A. PRE-*SWOOPE* CASELAW

Our Supreme Court first addressed the currently-accepted interpretation of the phrase "taken unlawfully" as used in MCL 500.3113(a)[5] in *Spectrum Health Hosps v Farm Bureau Mut*

[5] When *Spectrum Health* was decided, MCL 500.3113(a) stated:

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*Ins Co of Michigan*, 492 Mich 503; 821 NW2d 117 (2012). There, the Court explained the phrase's meaning as follows:

> In determining the Legislature's intended meaning of the phrase "taken unlawfully," we must accord the phrase its plain and ordinary meaning, and we may consult dictionary definitions because the no-fault act does not define the phrase. The word "unlawful" commonly means "not lawful; contrary to law; illegal," and the word "take" is commonly understood as "to get into one's hands or possession by voluntary action." When the words are considered together, the plain meaning of the phrase "taken unlawfully" readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law. [*Spectrum Health*, 492 Mich at 516-517 (citations omitted).]

As examples of statutes that could be violated to establish an unlawful taking under MCL 500.3113(a), our Supreme Court pointed to MCL 750.413 and MCL 750.414, which it referred to as the "joyriding statutes." *Spectrum Health*, 492 Mich at 517. The Court explained that these "joyriding statutes make it unlawful to take any motor vehicle without authority, effectively defining an unlawful taking of a vehicle as that which is unauthorized." *Id*. at 517-518. The *Spectrum Health* Court added that "a taking does not have to be larcenous to be unlawful," so "the phrase 'taken unlawfully' in MCL 500.3113(a) applies to anyone who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it." *Id*. at 518.

With this understanding of MCL 500.3113(a) in mind, the *Spectrum Health* Court addressed two judicially-created exceptions to the statute (i.e., situations in which a person could take a vehicle unlawfully but not be barred by MCL 500.3113(a) from receiving PIP benefits) that had developed over the years—the chain-of-permissive-use theory and the "family joyriding" exception.

The chain-of-permissive-use theory originated in *Bronson Methodist Hosp v Forshee*, 198 Mich App 617; 499 NW2d 423 (1993), overruled in part by *Spectrum Health*, 492 Mich 503. In *Bronson*, the injured claimant, Mark Forshee, was injured while driving a car owned by Stanley Pefley. *Id*. at 620-621. Stanley had originally entrusted the vehicle to his son, Thomas Pefley, and specifically forbade Forshee from driving the vehicle. *Id*. at 625. Through the course of several events, Thomas was arrested and entrusted the car to his friend, William Morrow, and Morrow in turn entrusted the vehicle to Forshee. *Id*. at 620-621. Relying on a broad understanding

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> 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:
>
> (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle. [MCL 500.3113(a) as amended by 1986 PA 93.]

Despite significant differences between the current statute and the statute analyzed by the *Spectrum Health* Court, both versions use the phrase "taken unlawfully."

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of "consent" as used in the owner's liability statute, MCL 257.401, and developed through caselaw interpreting that statute, *Bronson* concluded that "when an owner loans his vehicle to another, it is foreseeable that the borrower may thereafter lend the vehicle to a third party and such further borrowing of the vehicle by the third party is, by implication, with the consent of the owner." *Bronson*, 198 Mich App at 625. The *Bronson* Court summarized:

> Mark Forshee's use of the vehicle at the time of the accident was with the owner's consent inasmuch as the owner, Stanley Pefley, entrusted the vehicle to his son, Thomas, who in turn entrusted the vehicle to Morrow, who finally entrusted it to Forshee. Given this unbroken chain of permissive use, we cannot say that Forshee's taking of the automobile was unlawful. [*Id*.]

In *Spectrum Health*, our Supreme Court held "that the *Bronson* Court's 'chain of permissive use' theory is inconsistent with the statutory language of the no-fault act." *Spectrum Health*, 492 Mich at 521. The Court explained that the *Bronson* Court erred by failing to consider the language of MCL 500.3113(a) when purportedly interpreting it. *Spectrum Health*, 492 Mich at 521. MCL 500.3113(a) uses the phrase "taken unlawfully," which "does not appear in the owner's liability statute that *Bronson* considered analogous." *Spectrum Health*, 492 Mich at 521. The owner's liability statute also had broader considerations than MCL 500.3113(a); the owner's liability statute considers an owner's consent *and* knowledge, "which is much broader than the focus in MCL 500.3113(a) on whether the taking was unlawful." *Spectrum Health*, 492 Mich at 521. Lastly, the owner's liability statute considered "*an owner's* express or implied consent or knowledge," whereas MCL 500.3113(a) "examines the legality of the taking from the *driver's* perspective—a perspective that the owner's liability statute lacks." *Spectrum Health*, 492 Mich at 522. On the basis of these considerations, as well as caselaw suggesting that "consent" under the owner's liability statute was more limited than articulated in *Bronson*, see *id*. at 522-523, our Supreme Court "overrule[d] *Bronson* to the extent it is inconsistent with the plain meaning of MCL 500.3113(a)," *Spectrum Health*, 492 Mich at 523. The Court explained that the relevant consideration when addressing whether a taking is unlawful within the meaning of MCL 500.3113(a) "is whether the taking was 'without authority' within the meaning of MCL 750.413 or MCL 750.414." *Spectrum Health*, 492 Mich at 523.[6]

*Spectrum Health* then turned to the family-joyriding exception to MCL 500.3113(a). The Court explained that this exception was first announced by the Supreme Court in a plurality opinion in *Priesman v Meridian Mut Ins Co*, 441 Mich 60, 64; 490 NW2d 314 (1992) (opinion by LEVIN, J.), overruled in part by *Spectrum Health*, 492 Mich 503, and later adopted by the Court of

[6] In the case before the *Spectrum Health* Court, the plaintiff had been given permission to use a car by an intermediate user, but it was undisputed that the plaintiff knew that the owner had expressly prohibited the plaintiff from using the vehicle. *Id*. at 524. The Court held that, given the undisputed fact that the plaintiff "took the vehicle *contrary to the express prohibition of the vehicle's owner*," the plaintiff unlawfully took the vehicle within the meaning of MCL 750.414, and was thus precluded by MCL 500.3113(a) from receiving PIP benefits. *Spectrum Health*, 492 Mich at 524.

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Appeals in *Butterworth Hosp v Farm Bureau Ins Co*, 225 Mich App 244, 249; 570 NW2d 304 (1997), overruled in part by *Spectrum Health*, 492 Mich 503. As articulated in *Butterworth*, the family-joyriding exception provided that MCL 500.3113(a) "does not apply to cases where the person taking the vehicle unlawfully is a family member doing so without the intent to steal but, instead, doing so for joyriding purposes." *Butterworth*, 225 Mich App at 249. In overruling this exception, the *Spectrum Health* Court explained that there was "absolutely no textual basis" for the exception in MCL 500.3113(a). *Spectrum Health*, 492 Mich at 534-535.[7]

Our Supreme Court next had occasion to address MCL 500.3113(a) in *Rambin v Allstate Ins Co*, 495 Mich 316, 319; 852 NW2d 34 (2014), although that case focused on "the meaning of MCL 750.414, the misdemeanor joyriding statute, in the context of MCL 500.3113(a) . . . ." Specifically, the Court in *Rambin* addressed whether MCL 750.414 was a strict liability crime, and it held that it was not—MCL 750.414 "contains a *mens rea* element that the taker must intend to take a vehicle 'without authority.' " *Rambin*, 495 Mich at 320.

The facts of *Rambin* are unusual. The plaintiff was injured while riding a motorcycle owned by Scott Herzog. *Id*. at 321. But the plaintiff had never met Herzog; Herzog's motorcycle was stolen on August 4, 2009, and the plaintiff testified that a person named Andre Smith loaned Herzog's motorcycle to the plaintiff. *Id*. at 322-323. According to the plaintiff, on August 22, 2009, he met Smith at a house, and Smith "handed plaintiff the keys to the motorcycle and told him that he could use the motorcycle for the club ride." *Id*. at 323.

The broad question before the Supreme Court in *Rambin* was whether the plaintiff had unlawfully taken the motorcycle within the meaning of MCL 500.3113(a). This in turn required the Court to consider whether the plaintiff violated MCL 750.414, which prohibited a person from taking another's vehicle "without authority." While the plaintiff plainly lacked Herzog's permission to take Herzog's motorcycle, the plaintiff claimed that "he did not knowingly lack authority to take the motorcycle because he believed that the person who gave him access to the motorcycle was the rightful and legal owner of it." *Rambin*, 495 Mich at 326-327.

*Rambin* concluded that the plaintiff's defense was a viable one. According to our Supreme Court, MCL 750.414 "requires a showing of knowingly taking without authority or knowingly using without authority." *Rambin*, 495 Mich at 332. The Court explained that MCL 750.414's use of the words "authority," "take," and "use" "all contemplate voluntary and knowing conduct on the part of the accused." *Rambin*, 495 Mich at 332. And because a taking must involve voluntary and *knowing* conduct, "[f]or a person to take personal property without the authority of the actual owner, there must be some evidence to support the proposition that the person from

[7] *Spectrum Health* was a consolidated case, with the plaintiff in the *Spectrum Health* case receiving benefits under the chain-of-permissive-use theory, and the plaintiff in the other case (*Progressive*) receiving benefits under the family-joyriding exception. See *Spectrum Health*, 492 Mich at 511-514. The plaintiff in the *Progressive* case was not only told by the owner that he was expressly prohibited from using the vehicle he was using at the time of the crash, but the plaintiff was listed as an excluded driver on the policy for that vehicle. *Id*. at 513.

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whom he or she received the property did not have the right to control or command the property." *Id*. Applying this rule to the case before it, the *Rambin* Court explained:

> [The] plaintiff may present evidence to establish that he did not run afoul of MCL 750.414, and thus did not unlawfully take the motorcycle under MCL 500.3113, because he did not knowingly lack authority to take the motorcycle because he believed that he had authority to do so. Stated differently, plaintiff's argument that he did not unlawfully take the motorcycle under MCL 500.3113 is subject to the criminal statute that prohibits an unlawful taking, MCL 750.414, under which plaintiff may present evidence to show that he did not knowingly take the motorcycle without the owner's authority. [*Rambin*, 495 Mich at 333-334.]

Following *Spectrum Health* and *Rambin*, this Court addressed MCL 500.3113(a)'s use of the phrase "taken unlawfully" in *Monaco v Home-Owners Ins Co*, 317 Mich App 738, 741; 896 NW2d 32 (2016). There, this Court addressed "the legal question whether a person injured in a motor vehicle accident is barred from recovering PIP benefits under MCL 500.3113(a)—which generally precludes coverage when a person used a vehicle that he or she had 'taken unlawfully'—when the owner of the vehicle permitted, gave consent to, or otherwise authorized the injured person to take and use the vehicle, but the injured person used the vehicle in violation of the law with the owner's knowledge." *Monaco*, 317 Mich App at 741. In *Monaco*, the plaintiff's 15-year-old daughter, Alison, was injured while driving a car owned by the plaintiff and "customarily driven by plaintiff's partner." *Id*. at 741-742. While Alison had her learner's permit, she was only allowed to drive "if accompanied by a licensed parent, guardian, or 21-year old, and she was not so accompanied when the accident occurred." *Id*. at 742. It was disputed whether Alison took the plaintiff's vehicle with the plaintiff's permission, so the case went to trial, and the jury concluded that the insurer "had failed to meet its burden of showing that Alison took the car without permission[.]" *Id*. at 743-744. On appeal, the insurer did not challenge the jury's factual determination that the insurer "failed to satisfy its burden of showing that Alison took the car without permission," and instead only challenged whether Alison's illegal use of the car barred her recovery of PIP benefits under MCL 500.3113(a). *Monaco*, 317 Mich App at 746. This Court held that Alison's unlawful use of the motor vehicle did not render the taking (which was lawful because it was done with the owner's permission) unlawful, explaining that "the unlawful operation or use of a motor vehicle is simply not a concern in the context of analyzing whether the vehicle was taken unlawfully." *Id*. at 749.

This Court addressed MCL 500.3113(a) again five years later in *Ahmed*, 337 Mich App 1. In that case, the plaintiff was injured while driving a car rented by his wife. *Id*. at 5. As part of the rental agreement, the plaintiff's wife agreed that only "Authorized Drivers" could operate the rental vehicle, and an individual needed a valid driver's license to be considered an "Authorized Driver." *Id*. The plaintiff did not have a driver's license, however, and, even though he was with his wife when she rented the vehicle, he never read the rental agreement. *Id*. Nevertheless, this Court held that the plaintiff took the vehicle unlawfully in violation of MCL 750.414. *Id*.

For its analysis, *Ahmed* began by recognizing that MCL 500.3113(a) had been amended by 2014 PA 489 since *Spectrum Health* was decided, and that the 2014 amendment "broadened" the statute. *Ahmed*, 337 Mich App at 10. According to *Ahmed*, in its current state, MCL 500.3113(a) disqualifies from receiving PIP benefits "any person (1) willingly operating or willingly using a

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motor vehicle or motorcycle that (2) was unlawfully taken by someone, and (3) the person seeking benefits knew or should have known that the motor vehicle was taken unlawfully." *Ahmed*, 337 Mich App at 10 (quotation marks omitted). But *Ahmed* observed that, despite the amendment to MCL 500.3113(a), the statute continued to use the phrase "taken unlawfully," so it was presumed that the meaning of the phrase as used in the statute continued to be the same. *Ahmed*, 337 Mich App at 10.

*Ahmed* thus reiterated our Supreme Court's construction of the phrase "taken unlawfully" as explained in both *Spectrum Health*, 492 Mich at 516-522, and *Rambin*, 495 Mich at 323 n 7. *Ahmed*, 337 Mich App at 10-11. In a footnote, however, *Ahmed* opined that *Spectrum Health* did not limit "taken unlawfully" as used in MCL 500.3113(a) to only the joyriding statutes, MCL 750.413 and MCL 750.414. *Ahmed*, 337 Mich App at 11 n 5. *Ahmed* opined that, rather, *Spectrum Health*'s reference to the joyriding statutes was in reference "to the particular illegality" at issue in that case. *Id*. And according to *Ahmed*, "The Michigan Vehicle Code defines criminal offenses as well, and violations of its provisions also constitute illegal conduct." *Id*.

This footnote was arguably dicta, however, because *Ahmed* analyzed the taking in the case before it under MCL 750.414. In doing so, *Ahmed* recognized how our Supreme Court interpreted that statute in *Rambin*, 495 Mich at 332-334. See *Ahmed*, 337 Mich App at 12-13. Next, applying the three-part test it formulated earlier in the opinion, *Ahmed* held that there was "no question" that the first element was satisfied—the plaintiff "was 'willingly using' and 'willingly operating' the car"—and there was "no question that the plaintiff's use and operation of the car was without the authority of . . . the owner, because the rental agreement prohibited an unlicensed person from driving it." *Id*. at 13. *Ahmed* was then left to "determine whether these facts amounted to an unlawful 'taking' " in violation of MCL 500.3113(a). *Ahmed*, 337 Mich App at 13. *Ahmed* readily concluded they did, explaining that the plaintiff took the car in violation of the rental agreement when he drove it to his work on the day of the accident, and thus he took the car without authority. *Id*. at 13-14. See also *id*. at 15 ("He took the car by driving it to the gas station where he worked."). *Ahmed* noted that, while the requirements in MCL 500.3113(a) that a person "take" and "operate" a vehicle "are separate, meaning that each must be established, there is no requirement in the statute that different facts established each of the elements." *Ahmed*, 337 Mich App at 14. The *Ahmed* panel summarized the holding from this portion of its opinion as follows:

> [T]he owner of the car[] placed restrictions in the rental agreement, under which only a licensed driver was authorized to use, operate, or drive the car. Plaintiff's acts of driving the car to work and driving it again after work until his involvement in the accident constituted use, operation, and driving of the car and thus were outside the authorization of the owner. Such acts constituted an "unlawful taking" of the car because they constituted possession of it contrary to the owner's authorization. [*Id*. at 15.]

*Ahmed* next addressed the defendant's argument that the plaintiff's taking of the car was unlawful because he did not have a license and it was thus unlawful for plaintiff to drive. *Id*. at 15-16. The plaintiff countered that *Monaco* distinguished between an unlawful taking and unlawful use, and that the latter could not be used to establish the former. *Id*. at 16. *Ahmed* explained that *Monaco*'s holding was a narrow one: "in *Monaco*, the analysis was short and straightforward—the taking was with the owner's permission, and therefore Alison did not have

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the *mens rea* of taking the car contrary to the owner's authorization." *Id*. at 18. Despite this cabining of *Monaco*'s holding, *Ahmed* never held that the plaintiff's taking in the case before it was unlawful because it amounted to a violation of the Michigan Vehicle Code.

Nevertheless, in a footnote, the *Ahmed* panel opined that a violation of the Michigan Vehicle Code could be relevant to determining whether a taking of a vehicle was "unlawful," and *Ahmed* expressed misgivings about *Monaco*'s supposed failure to consider whether Alison's taking of the vehicle in that case was unlawful because she did so in knowing violation of the Michigan Vehicle Code. *Id*. at 20 n 8. *Ahmed* observed that it was illegal for Alison to drive the plaintiff's car in *Monaco*, so her taking of the car by driving it would constitute an "unlawful taking" because (1) to do so would amount to a violation of the Michigan Vehicle Code and (2) there were "associated criminal penalties" with such a violation. *Id*. at 20 n 8. *Ahmed* believed that *Monaco*'s analysis was incomplete because "had *Monaco* considered the question from Alison's perspective, it should have concluded that her driving of the car constituted a taking and that the taking was unlawful because it was illegal under the Michigan Motor Vehicle Code for Alison to drive alone." *Id*. at 20 n 8. But *Ahmed* noted that its disagreement was ultimately irrelevant because it read *Monaco*'s holding as a narrow one, applying only to "the situation in which a car owner tells a person whom the owner knows to be unlicensed under the circumstances that the person nevertheless may drive the car." *Id*. at 20 n 8.

Despite its misgivings about *Monaco*, *Ahmed* distinguished the case before it from *Monaco* by explaining that the owner in *Ahmed* had expressly prohibited the plaintiff's taking of the car in the rental agreement. *Id*. at 21. And having already established that plaintiff's taking of the car was unlawful, see *id*. at 15, "[t]he only additional issue . . . in determining whether MCL 500.3113(a) bars recovery [was] analyzing whether plaintiff 'knew or should have known' that the motor vehicle was taken unlawfully," *Ahmed*, 337 Mich App at 21. *Ahmed* began by recognizing that our Supreme Court in *Spectrum Health* and *Rambin* never had occasion to consider the significance of this requirement because it was added by 2014 PA 489 after *Rambin* was decided. See *Ahmed*, 337 Mich App at 21-22. Thus, *Ahmed* believed that it was required to "first address whether and how the amendment altered the standard set forth in *Rambin*." *Id*. at 22.

In pertinent part, *Ahmed* held that 2014 PA 489 added a scienter requirement to MCL 500.3113(a), which in turn changed the requirement for finding a violation of MCL 750.414 in the context of MCL 500.3113(a). To explain this holding, *Ahmed* began by addressing the significance of the change in MCL 500.3113(a)'s language since *Rambin*. When *Rambin* was decided, MCL 500.3113(a) had a "safe harbor" provision that provided a person would not be excluded from receiving PIP benefits even if the person unlawfully took the motor vehicle or motorcycle if "the person reasonably believed that he or she was entitled to take and use the vehicle." MCL 500.3113(a), as amended by 1986 PA 93. After *Rambin* was decided, our Legislature in 2014 PA 489 eliminated the safe-harbor provision of MCL 500.3113(a), so that the statute now includes the "knew or should have known" language. See MCL 500.3113(a) (stating that a person is not entitled to PIP benefits if "[t]he person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, *and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully*.") (Emphasis added.) *Ahmed* opined that this new language imposed "a scienter requirement," and that this "new scienter standard is . . . significantly more restrictive than was the safe-harbor provision." *Ahmed*, 337 Mich App at 23.

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*Ahmed* further opined that, because 2014 PA 489 added a scienter requirement to MCL 500.3113(a), "the amendment . . . modified the scienter requirement under that statute if a violation of MCL 750.414 is at issue." *Ahmed*, 337 Mich App at 24. To explain why, *Ahmed* first noted that, based on *Spectrum Health* and *Rambin*, MCL 500.3113(a) and MCL 750.414 were *in pari materia*, so they must be read together. *Ahmed*, 337 Mich App at 24. *Ahmed* elaborated that if the statutes are read together, then the Legislature's adding a scienter requirement to MCL 500.3113(a) in 2014 PA 489 necessarily meant that the Legislature also "amended *Rambin*'s scienter standard involving MCL 750.414 in cases in which disqualification from eligibility for benefits under MCL 500.3113(a) is at issue." *Ahmed*, 337 Mich App at 25. Otherwise, according to *Ahmed*, "it would be as if 2014 PA 489 had worked no change in the safe-harbor provision or the scienter requirement." *Id*. *Ahmed* accordingly held that, when disqualification of PIP benefits under MCL 500.3113(a) is at issue, a person acts unlawfully under MCL 750.414 if the person takes a motor vehicle or motorcycle and either knows or should have known that the taking had not been authorized by the vehicle or motorcycle owner. *Ahmed*, 337 Mich App at 25-26.[8]

*Ahmed* illustrated how this new rule was different in practice from the rule in *Rambin*. The plaintiff in *Ahmed* lacked actual knowledge that he was prohibited from driving the car because he was unaware of the terms of the rental agreement. *Id*. at 26. Under *Rambin*, this would have meant that the plaintiff's taking was not unlawful "because plaintiff did not knowingly take the car without the owner's authority" *Id*., citing *Rambin*, 495 Mich at 332. But, as *Ahmed* explained,

> the "should have known" language imposes a more restrictive standard. Plaintiff knew that the car was rented; he knew that there was a written rental agreement; and, of course, the law requires him to know his driving status, i.e., whether or not he is a licensed driver, because only a licensed driver may drive. MCL 257.301. Under the "should have known" standard, plaintiff was obligated to determine the scope of the authorization that the owner, Meade Lexus, had set under the rental agreement for a nonparty such as himself to take and drive the car. Stated another way, plaintiff knew that his wife, who was the party to the contractual agreement with Meade Lexus, was not the owner of the car and that any authority to use the car could only be based on the terms set by the owner. Thus, before simply driving off, plaintiff was obligated to learn the terms of the rental agreement; he "should have known" the terms because a person may not simply take what he knows to be another's property without taking any steps to determine if the owner authorized the taking. The mere assumption or supposition that it must be permissible to take a third party's property, without more, does not satisfy the "should have known" standard of MCL 500.3113(a). [*Ahmed*, 337 Mich App at 26-27.]

[8] Tiburcio argues on appeal that this portion of *Ahmed* was wrongly decided, and offers a plausible explanation for why. Yet the *Ahmed* panel's interpretation is also plausible, and as a published decision, *Ahmed* has precedential effect under the rule of stare decisis, MCR 7.215(C), and we are bound to follow it, MCR 7.215(J)(1).

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*Ahmed* accordingly held that the plaintiff was barred by MCL 500.3113(a) from recovering PIP benefits because the defendant "fully satisfied the standards of MCL 500.3113(a) as they relate to MCL 750.414 in establishing an unlawful taking." *Ahmed*, 337 Mich App at 27.

*Ahmed* thus made several relevant statements (in arguable dicta) that opened the door about the relevance of certain pieces of evidence, in effect laying the groundwork for the parties' disputes in this case. First, *Ahmed* opined that the phrase "taken unlawfully" as used in MCL 500.3113(a) was not limited to violations of the Michigan Penal Code; rather, pursuant to *Spectrum Health*, it encompassed any taking " 'contrary to Michigan law.' " *Ahmed*, 337 Mich App at 11, quoting *Spectrum Health*, 492 Mich at 517. *Ahmed* accordingly believed that "any violation of the criminal law that leads to a taking of a motor vehicle will constitute an 'unlawful taking' for purposes of MCL 500.3113(a)," including a violation of the Michigan Vehicle Code. *Ahmed*, 337 Mich App at 11 n 5. Second, *Ahmed* opined that, while there is a distinction between the unlawful "taking" and the unlawful "use" of a motor vehicle when an owner has given express permission for the person to take the motor vehicle (as in *Monaco*), a person could also "take" a motor vehicle by driving it, such that (at least when an owner has not expressly authorized the use or taking of the motor vehicle) driving the motor vehicle could constitute a taking. See *id*. at 14-15.[9] With this understanding of what constitutes a taking, *Ahmed* opined that if a person is legally not allowed to drive a motor vehicle pursuant to the Michigan Vehicle Code, but that person takes a vehicle anyway by driving it (which, again, would only be in situations where the person does not have the owner's express permission to take the vehicle), then the taking would be unlawful because it would be illegal under the Michigan Vehicle Code for the person to drive. *Id*. at 20 n 8.

### B. *SWOOPE*

Following *Ahmed*, it was an open question whether courts were required to follow *Ahmed*'s arguable dicta on these issues. That open question was resolved in the very recently published opinion, *Swoope*. In *Swoope*, the plaintiff was involved in a car accident while driving a car owned by her friend. *Swoope*, ___ Mich App at ___; slip op at 1. The plaintiff did not ask her friend to use the car, and at the time of the accident, the plaintiff did not have a valid driver's license. *Id*. at ___; slip op at 1, 4. On appeal, *Swoope* adopted the (arguable) dicta from *Ahmed* in its entirety. First, *Swoope* held that a taking in violation of any criminal law, including a violation of the Michigan Vehicle Code if the violation has criminal penalties, constituted an "unlawful taking" for purposes of MCL 500.3113(a). *Swoope*, ___ Mich App at ___; slip op at 3. Second, *Swoope* implicitly adopted *Ahmed*'s conceptualization of a "taking" when the owner has not given their express permission to be "driving" the vehicle. See *id*. at ___; slip op at 3-4.

[9] It seems doubtful that this portion of *Ahmed* is dicta. *Ahmed* plainly held that the plaintiff in that case "took the car by driving it to the gas station where he worked." *Id*. at 15. Thus, it is clear that *Ahmed* held that driving a car *can* constitute a taking, although *Ahmed* did not plainly limit this analysis to situations in which the owner had not expressly authorized the use or taking of the owner's vehicle. Yet that would seemingly be the only plausible reading of *Ahmed* in light of *Monaco*'s untouched holdings.

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With these holdings, application of *Ahmed*'s three-part test was straightforward. See *Ahmed*, 337 Mich App at 10 ("[U]nder current law, the disqualification applies to any person (1) "willingly operating or willingly using a motor vehicle or motorcycle" that (2) was unlawfully taken by someone, and (3) the person seeking benefits "knew or should have known" that the motor vehicle was taken unlawfully."). First, it was uncontested that the plaintiff had willingly operated the vehicle. *Swoope*, ___ Mich App at ___ n 3; slip op at 3 n 3. As to the second prong, the plaintiff in *Swoope* admitted that she did not have a license and drove the vehicle anyways, which *Swoope* held "satisfied the second prong because operating a vehicle without a valid license is unlawful for purposes of MCL 500.3113(a)." *Id*. at ___; slip op at 3-4. *Swoope* held that the third prong was also satisfied because (1) the plaintiff knew that she did not have a license and therefore should have understood that her driving the vehicle was unlawful, (2) the plaintiff admitted that she did not have the vehicle's owner's permission to drive the car, and (3) the plaintiff failed to take any steps to determine whether the owner authorized the taking. *Id*. at ___; slip op at 4.

This, according to *Swoope*, shifted the burden back to the plaintiff to demonstrate a material fact for trial. *Id*. at ___; slip op at 4. *Swoope* held that the plaintiff failed to satisfy that burden because none of her evidence "showed that she had a valid driver's license at the time of the accident" or that "the vehicle's owner authorized [the plaintiff's] use of the vehicle." *Id*. at ___; slip op at 4. *Swoope* thus held that the defendant in that case had satisfied its burden, the plaintiff had failed to rebut the same, and accordingly the defendant was entitled to summary disposition. *Id*. at ___; slip op at 4.

### C. APPLICATION OF *SWOOPE*

*Swoope* plainly resolves this case. There is no question that Tiburcio willingly operated or willingly used Maria's F-150, so the first prong from *Ahmed* is satisfied. As to the second and third prongs, Tiburcio did not have a valid driver's license, he knew he did not have a valid driver's, and he took Maria's F-150 anyway without her permission and without taking any steps to ensure that his taking of the F-150 was authorized.

Because Tiburcio did not have Maria's permission, this case is unlike *Monaco* and is more like *Ahmed* and *Swoope*; that is, Tiburcio "took" the F-150 when he drove it. That "taking" was unlawful—and therefore satisfied the second prong from *Ahmed*—"because operating a vehicle without a valid license is unlawful for purposes of MCL 500.3113(a)." *Id*. at ___; slip op at 4.[10]

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[10] As explained by *Swoope*;

> MCL 257.301 concerns the legality of operating a vehicle without a valid driver's license. It states, in part: "[A]n individual shall not drive a motor vehicle on a highway in this state unless that individual has a valid operator's or chauffeur's license with the appropriate group designation and indorsements for the type or class of vehicle being driven or towed." MCL 257.301(1). Violations of this statute are considered "unlawful" for purposes of MCL 500.3113(a) because there are related criminal penalties. See MCL 257.901; see also *Ahmed*, 337 Mich App at

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Turning to the third prong, Tiburcio knew or should have known that this taking was unlawful because (1) Tiburcio knew that he did not have a valid license, (2) he should have understood that driving without a valid license was unlawful, (3) he admitted that he did not have Maria's permission to drive the F-150, and (4) he failed to take any steps to ensure that his taking of the F-150 was authorized. In accordance with *Swoope* and *Ahmed*, these facts sufficiently satisfied the third prong from *Ahmed*. See *Swoope*, ___ Mich App at ___; slip op at 4.

The parties did not have the benefit of *Swoope* at the time of their briefings, but Tiburcio raises several arguments that were rejected by *Swoope*. We briefly address them.

Tiburcio contends that, based on *Spectrum Health*, only violations of the Michigan Penal Code can constitute an "unlawful taking" under MCL 500.3113(a). Both *Ahmed* and *Swoope* rejected this argument, however. Moreover, contrary to Tiburcio's suggestion, *Spectrum Health* plainly did not limit MCL 500.3113(a) to violations of the Michigan Penal Code, nor is it readily apparent that the Court could have done so, considering that the text of MCL 500.3113(a) applies to all "unlawful takings," not only to "takings in violation of the Michigan Penal Code."

Tiburcio also repeatedly argues on appeal that the fact he had no license when he took the F-150 is of no consequence because that only rendered his *use* of the F-150 illegal. First, to the extent that Tiburcio relies on *Spectrum Health*, *Rambin*, and *Monaco* in support of this argument, those cases are distinguishable. In *Spectrum Health*, the drivers of the motor vehicle were expressly prohibited from using them, so it was irrelevant whether they had a valid license. In *Rambin*, the driver believed that he had express permission from the owner, so (again) it was irrelevant whether he had a valid license. Likewise, in *Monaco*, Alison had express permission from the plaintiff to use the plaintiff's car, so once again it was irrelevant whether Alison could legally drive alone. Only in *Ahmed* (and now *Swoope*) was the driver neither explicitly permitted nor explicitly prohibited (from the driver's perspective) from taking the vehicle. This bleeds into the second problem with this argument—Tiburcio does not dispute *Ahmed*'s conceptualization that, generally speaking, when one does not have permission to use a vehicle, he or she effectuates a "taking" of the vehicle by driving it. *Ahmed* continued to recognize the distinction between unlawfully taking a vehicle and unlawfully using a vehicle, but simply noted that there was no requirement that "taking" the vehicle and "using" or "operating" the vehicle be discrete acts. *Ahmed*, 337 Mich App at 14.

Lastly, Tiburcio emphasizes that express permission is not required for a taking to be lawful. While this is true, no court has held otherwise. Rather, every court considering an owner's lack of express permission merely considered it as one factor in determining whether the person's taking of the vehicle was unlawful. For instance, *Swoope* did not hold that the plaintiff's taking of the vehicle was unlawful solely because she lacked the owner's express permission; rather, that was merely one factor that the Court considered. And that fact was clearly necessary for *Swoope*

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> 20 n 8 ("Violation of [MCL 257.301 and MCL 257.310e(4)] was 'unlawful' . . . because there are associated criminal penalties."). [*Swoope*, ___ Mich App at ___; slip op at 3.]

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to reach the conclusion that it did—if the driver in *Swoope* had the owner's express permission to use the vehicle, then under *Monaco*, the driver's taking of the vehicle was not unlawful.[11]

## IV. CONCLUSION

For the reasons explained, we conclude that there is no question of material fact that Tiburcio is barred by MCL 500.3113(a) from receiving PIP benefits, and the trial court should have granted State Farm's motion for summary disposition on this issue. The trial court's order denying State Farm's motion for summary disposition is accordingly reversed, and the trial court on remand shall enter an order granting State Farm's motion for summary disposition.

Reversed and remanded for the trial court to enter an order granting State Farm's motion for summary disposition. We do not retain jurisdiction.

/s/ Colleen A. O'Brien
/s/ Stephen L. Borrello
/s/ Noah P. Hood

[11] Tiburcio also argues that he may have lawfully taken the F-150 because, when he took it from Jonathan, it would have appeared to Tiburcio that Jonathan had the "right to control or command" the F-150. This argument is, at best, incomplete. The argument is reminiscent of the chain-of-permissive-use theory, and it is unclear to what extent, if any, that theory survived *Spectrum Health*. But to any extent that the chain-of-permissive-use theory did survive *Spectrum Health*, it only survived to the extent that an intermediate user's allowing the driver to take the vehicle would suggest to the driver (because the inquiry is viewed from *the driver's* perspective) that he or she was taking the vehicle with the *owner's* (or perceived owner's) permission. See *Spectrum Health*, 492 Mich at 518; *Rambin*, 495 Mich at 332-333. See also *Spectrum Health*, 492 Mich at 523 (explaining that "[w]hat is relevant" to determining whether a vehicle was taken in violation of the joyriding statutes "is whether the taking was 'without authority' within the meaning of MCL 750.413 or MCL 750.414"); *Farmers*, 489 Mich at 909 (MARKMAN, J., concurring) (opining that the lawfulness of a taking depends on whether it was done with the owner's authorization). Unlike in *Rambin*, Tiburcio knew that the person he was receiving the F-150 from was not the vehicle's owner; it is uncontested that Tiburcio knew the F-150 was owned by Maria, not Jonathan. Thus, the pertinent inquiry is whether Tiburcio would have understood that, when Jonathan authorized Tiburcio to take the F-150, the taking was also with Maria's authorization. On this point, Tiburcio offers no explanation as to how or why Tiburcio would have understood that he was taking the vehicle with Maria's authorization when he took it from Jonathan.

*If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.*

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# STATE OF MICHIGAN

# COURT OF APPEALS

MARC WITT,

Plaintiff-Appellee,

v

SHAWN MICHAEL SMITHSON and SHAWN MARIE BOGGESS,

Defendants,

and

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant.

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January 16, 2025
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No. 367792
Macomb Circuit Court
LC No. 2022-002613-NF

Before: RIORDAN, P.J., and O'BRIEN and GARRETT, JJ.

PER CURIAM.

In this action to recover no-fault benefits, defendant-appellant, Auto-Owners Insurance Company, appeals by leave granted[1] the trial court's orders denying Auto-Owners' motions for summary disposition and reconsideration. We affirm.

## I. BACKGROUND

This case arises out of a July 11, 2021 collision between a motorcycle driven by plaintiff and a motor vehicle driven by defendant Shawn Michael Smithson. The motor vehicle was owned by defendant Shawn Marie Boggess and insured by Auto-Owners. Plaintiff's significant other, Cheryl Vaughn, owned the motorcycle that plaintiff was using, but plaintiff testified that he considered the motorcycle his own. It is undisputed that plaintiff primarily used the motorcycle,

[1] See *Witt v Smithson*, unpublished order of the Court of Appeals, entered February 15, 2024 (Docket No. 367792).

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that Vaughn allowed plaintiff to use the motorcycle, and that plaintiff did not need Vaughn's permission to use the motorcycle. It is also undisputed that plaintiff did not have a license when the accident occurred, that he had not had a license for years, and that Vaughn knew that plaintiff did not have his license but allowed him to use the motorcycle anyway.

Plaintiff suffered injuries as a result of the collision and brought suit against Auto-Owners to recover unpaid no-fault benefits. As relevant to this appeal, Auto-Owners moved for summary disposition under MCR 2.116(C)(10), arguing that MCL 500.3113(a) barred plaintiff from collecting no-fault benefits. That statute precludes a person who willingly operates a motorcycle that was taken unlawfully from collecting no-fault benefits if the person knows or should know that the motorcycle was taken unlawfully. MCL 500.3113(a). Auto-Owners contended that this statute precluded plaintiff's claim for benefits because plaintiff unlawfully took Vaughn's motorcycle when he drove the motorcycle without a license in violation of Michigan law, and that plaintiff knew or should have known that the taking was unlawful because he knew that he was unlicensed.

In response, plaintiff argued that, regardless of whether his *use* of the motorcycle was unlawful, he did not unlawfully take the motorcycle because he took it with Vaughn's permission. Auto-Owners replied that the taking could not have been lawful because plaintiff was not legally allowed to operate the motorcycle. This meant, according to Auto-Owners, that when plaintiff drove off with the motorcycle, he necessarily took it unlawfully. Auto-Owners added that it was unlawful under MCL 257.904(2) for Vaughn to allow someone without a license like plaintiff to "operate" her motorcycle, which made it unlawful for plaintiff to take the motorcycle.

Denying Auto-Owners' motion, the trial court explained that plaintiff did not unlawfully take the motorcycle because he had Vaughn's permission to take it. Auto-Owners filed a motion asking the trial court to reconsider this ruling, but the court denied the motion.

This appeal followed.

## II. MOTION FOR SUMMARY DISPOSITION

On appeal, Auto-Owners principally challenges the trial court's decision denying Auto-Owners' motion for summary disposition under MCR 2.116(C)(10). A trial court's decision on a motion for summary disposition is reviewed de novo. *McCormick v Carrier*, 487 Mich 180, 188; 795 NW2d 517 (2010). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). When evaluating a motion under this subrule, the reviewing court is to consider "the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Douglas v Allstate Ins Co*, 492 Mich 241, 256; 821 NW2d 472 (2012) (quotation marks and citation omitted). A trial court should grant summary disposition under MCR 2.116(C)(10) "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007).

Auto-Owners' argument in its motion for summary disposition centered around MCL 500.3113(a), which provides:

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> 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:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

Our Supreme Court in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 517; 821 NW2d 117 (2012), explained that "the plain meaning of the phrase 'taken unlawfully' readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law."[2]

In *Monaco v Home-Owners Ins Co*, 317 Mich App 738, 741; 896 NW2d 32 (2016), this Court addressed whether a vehicle could be "taken unlawfully" for purposes of MCL 500.3113(a) "when the owner of the vehicle permitted, gave consent to, or otherwise authorized the injured person to take and use the vehicle, but the injured person used the vehicle in violation of the law with the owner's knowledge." The issue in *Monaco* arose after the plaintiff's 15-year-old daughter, Alison, was injured while driving a car owned by the plaintiff. *Id*. at 741-742. Alison had her learner's permit, so she was only allowed to drive "if accompanied by a licensed parent, guardian, or 21-year old, and she was not so accompanied when the accident occurred." *Id*. at 742. It was initially disputed whether Alison took the plaintiff's vehicle with the plaintiff's permission, so the case went to trial, and the jury concluded that the insurer "had failed to meet its burden of showing that Alison took the car without permission[.]" *Id*. at 743-744. On appeal, the insurer did not challenge the jury's factual determination that the insurer "failed to satisfy its burden of showing that Alison took the car without permission," and instead only challenged whether Alison's illegal use of the car barred her recovery of PIP benefits under MCL 500.3113(a). *Monaco*, 317 Mich App at 746. This Court held that Alison's unlawful use of the motor vehicle did not render the taking (which was lawful because it was done with the owner's permission) unlawful, explaining that "the unlawful operation or use of a motor vehicle is simply not a concern in the context of analyzing whether the vehicle was taken unlawfully." *Id*. at 749.

*Monaco* controls the outcome of this case. It is undisputed that Vaughn owned the motorcycle involved in the collision and allowed plaintiff to take it. This means that plaintiff's taking of the motorcycle was not unlawful, even if his subsequent use of the motorcycle was. See *VHS of Mich, Inc v State Farm Mut Auto Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365479); slip op at 5-6 (explaining that there is no unlawful taking for purposes of MCL 500.3113(a) when an owner voluntarily transfers a vehicle to another, even if the other's subsequent use of the vehicle is "not authorized by the owner or if otherwise unlawful").

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[2] MCL 500.3113(a) was amended in 2019, but the statute continues to use the phrase "taken unlawfully," which "has the same meaning under the present version as it had under the old version." *Ahmed v Tokio Marine Am Ins Co*, 337 Mich App 1, 10; 972 NW2d 860 (2021).

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This Court's recent opinion in *Swoope v Citizens Ins Co of the Midwest*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 364924), does not require a different result. The driver in *Swoope* "admitted during her deposition that the vehicle's owner did not give her permission to drive the car" and "failed to take any steps to ensure the taking was authorized." *Id*. at ___; slip op at 4.[3] This Court concluded that these admissions by the driver, combined with the fact that the driver was not legally allowed to drive the owner's vehicle, required concluding that the driver's taking of the owner's vehicle was unlawful. *Id*. at ___; slip op at 3-4. While this case is similar to *Swoope* in that plaintiff here was not legally allowed to drive the motorcycle, this case is distinguishable from *Swoope* in that plaintiff took the motorcycle with Vaughn's permission.[4] See *VHS of Mich, Inc*, ___ Mich App at ___; slip op at 9-10 (distinguishing *Swoope* on the basis that the driver in that case took the vehicle without the owner's permission).

Nor is a different result required by this Court's decision in *Ahmed*. The car involved in the collision in *Ahmed* was rented by the plaintiff's wife, and as part of the rental agreement, the wife agreed that only "Authorized Drivers" could operate the rental car. *Ahmed*, 337 Mich App at 5. To be an "Authorized Driver," a person had to be licensed, and the plaintiff driving the rental car at the time of the collision was unlicensed. *Id*. This Court held that, under these facts, the taking of the car was unlawful because the owner of the car—the rental company—explicitly denied unlicensed drivers like the plaintiff permission to use the car, and the plaintiff knew or should have known this because it was stated in the rental agreement. *Id*. at 26-27. While *Ahmed* heavily criticized *Monaco*, it recognized that *Monaco* controls when "a car owner tells a person whom the owner knows to be unlicensed under the circumstances that the person nevertheless may drive the car." *Ahmed*, 337 Mich App at 20 n 8. That is, *Ahmed* recognized that *Monaco* controls in cases like this one.[5]

Auto-Owners contends that, even under *Monaco*'s reasoning, plaintiff's taking of the vehicle in this case was unlawful because it was not permitted by MCL 257.904(2). That statute provides:

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[3] This Court's recent statement in *Bradley v Westfield Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365828); slip op at 12, that "[t]he facts of *Swoope* cannot be meaningfully distinguished from the facts of *Monaco*" is puzzling. The *Bradley* Court apparently misread *Swoope*, because *Bradley* stated that the vehicle in *Swoope* "was operated with the owner's permission," *id*., which is clearly incorrect, see *Swoope*, ___ Mich App at ___; slip op at 4.

[4] For the same reason, this case is distinguishable from this Court's unpublished opinion in *Pena-Cruz v State Farm Mutual Auto Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2024 (Docket No. 364284), p 14, which Auto-Owners cites on appeal.

[5] Auto-Owners contends that the instant case is like this Court's unpublished opinion in *Cyrus v Lauer*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2023 (Docket No. 359942), but that is incorrect. *Cyrus* was controlled by *Ahmed* because it involved a rental car, and the rental agreement stated that unlicensed drivers like the plaintiff were not allowed to use the rented vehicle. *Id*. at 1. In other words, the owner of the car in *Cyrus* did not give the plaintiff permission to take the car.

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> A person shall not knowingly permit a motor vehicle owned by the person to be operated on a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under this act. [MCL 257.904(2).]

Auto-Owners contends that this statute made it illegal for Vaughn to allow plaintiff to "take" Vaughn's motorcycle because it made it illegal for Vaughn to allow plaintiff to "operate" her motorcycle, and "operate" under the Michigan Vehicle Code means "[b]eing in actual physical control of a vehicle." MCL 257.35a(a). This argument is incorrect insofar as MCL 257.904(2) does not speak to whether Vaughn could allow plaintiff to "take" the motorcycle; the statute only made it illegal for Vaughn to allow plaintiff to "operate" the motorcycle. As this Court has recognized, there is a distinction between "taking" a vehicle and "operating" one. See *Ahmed*, 337 Mich App at 14 (explaining that "it is possible to possess or 'take' a car without 'operating' or driving it"). In other words, "operating" a vehicle is not synonymous with "taking" a vehicle. Compare *Spectrum Health*, 492 Mich at 517 ("[T]he word 'take' is commonly understood as 'to get into one's hands or possession by voluntary action.' ) with MCL 257.35a(a) (defining the word "operate" as "[b]eing in actual physical control of a vehicle."). Auto-Owners' argument attempting to use the words interchangeably is unpersuasive.

Auto-Owners more generally argues that the permission of the owner of a vehicle should not matter at all when analyzing MCL 500.3113(a) because the statute says nothing about whether a taking must be with the vehicle owner's permission. That is true but unpersuasive. A vehicle owner's permission is relevant under MCL 500.3113(a) because the statute concerns whether a vehicle was "taken unlawfully," and whether a vehicle was "taken unlawfully" concerns whether the vehicle was taken "without the authority of the owner." *Spectrum Health*, 492 Mich at 518.

## III. MOTION FOR RECONSIDERATION

Auto-Owners alternatively argues that the trial court erred by denying Auto-Owners' motion for reconsideration. We disagree.

A trial court's decision on a motion for reconsideration is reviewed for an abuse of discretion. *Tripp v Baker*, 346 Mich App 257, 274; 12 NW3d 45 (2023). A trial court abuses its discretion if its decision falls outside the range of reasonable and principled outcomes. *Id*.

In its motion for reconsideration, Auto-Owners contended that the trial court misapplied *Ahmed* and *Monaco* to conclude that plaintiff did not unlawfully take the motorcycle for purposes of MCL 500.3113(a). Auto-Owners additionally argued that Vaughn and plaintiff engaged in fraud because Vaughn acted as a strawman purchaser/owner of the motorcycle for plaintiff, as both Vaughn and plaintiff knew that plaintiff was not legally permitted to own the motorcycle. Auto-Owners further argued that plaintiff was a statutory owner of the motorcycle and, as such, needed to be insured when riding the motorcycle or he was precluded from recovering no-fault benefits.

Denying this motion, the court opined that it correctly applied *Ahmed* and *Monaco*. It further stated:

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> Inasmuch as defendant Auto-Owners' prior motion for summary disposition did not raise arguments regarding fraud and a straw man purchase, the *Opinion and Order* dated June 20, 2023 could not have possibly erred in failing to address those arguments. Defendant Auto-Owners may not raise these arguments for the first time in a motion for reconsideration. [Citation omitted.]

MCR 2.119(F)(3) provides:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Under this rule, "a trial court has discretion on a motion for reconsideration to decline to consider new legal theories or evidence that could have been presented when the motion was initially decided." *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012).

Auto-Owners contends that the trial court erred to the extent it stated that, as a matter of law, Auto-Owners could not raise new arguments in a motion for reconsideration. It is true that the court's statement that "Auto-Owners may not raise these arguments for the first time in a motion for reconsideration" was overly broad, but before it made that statement, the court sensibly reasoned that it "could not have possibly erred in failing to address" arguments that were not raised in Auto-Owners' motion for summary disposition. This statement clearly demonstrates that the court was not inclined to consider Auto-Owners' new arguments. It is thus clear that, regardless of some of the phrasing it used, the trial court chose not to consider Auto-Owners' new arguments, and that decision was not an abuse of discretion. See *id*.

Auto-Owners alternatively contends that it did not actually raise any new arguments in its motion for reconsideration, and that the arguments were actually just more-developed versions of the arguments it raised in its motion for summary disposition, such that this Court can address the more-developed arguments on appeal. We disagree. Auto-Owners' motion for summary disposition that is the subject of this appeal addressed solely whether MCL 500.3113(a) precluded plaintiff from collecting no-fault benefits because he unlawfully took the motorcycle. This argument is plainly distinct from Auto-Owners' strawman and statutory-owner arguments.[6] Whether plaintiff and Vaughn engaged in fraud, and whether plaintiff is precluded from collecting

[6] Auto-Owners argued in its motion for reconsideration and continues to argue on appeal that, based on the prior version of MCL 500.3113(a) and the interpretation of the amended version of the statute in *Ahmed* and similar cases, the Legislature intended that someone who illegally "uses" a vehicle be disqualified from receiving no-fault benefits. This argument appears related to Auto-Owners' MCL 500.3113(a) argument, but, as explained earlier in this opinion, *Monaco* clearly rejects this argument, and *Monaco* is controlling under the facts of this case, as *Ahmed* itself recognized.

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benefits because he was a statutory owner of the motorcycle without proper insurance, are not merely more developed or sophisticated arguments related to MCL 500.3113(a). Rather, they are wholly new arguments raised for the first time in Auto-Owners' motion for reconsideration. For that reason, the arguments are unpreserved, and we decline to consider them. See *Vushaj v Farm Bureau Gen Ins Co of Michigan*, 284 Mich App 513, 519; 773 NW2d 758 (2009).[7]

Affirmed.

/s/ Michael J. Riordan
/s/ Colleen A. O'Brien
/s/ Kristina Robinson Garrett

[7] To be clear, neither the trial court's refusal to consider these arguments in its denial of Auto-Owners' motion for reconsideration nor this Court's refusal to consider the arguments on appeal constitutes a ruling on the merits. Auto-Owners is free to raise these arguments later in the proceedings on remand if it so desires.

*If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.*

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# STATE OF MICHIGAN

# COURT OF APPEALS

VHS OF MICHIGAN, INC., doing business as DETROIT MEDICAL CENTER,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant,

and

USAA CASUALTY INSURANCE COMPANY and USAA GENERAL INDEMNITY COMPANY,

Defendants.

UNPUBLISHED
December 06, 2024
11:56 AM

No. 368369
Wayne Circuit Court
LC No. 22-011038-NF

Before: FEENEY, P.J., and O'BRIEN and WALLACE, JJ.

PER CURIAM.

In this action to recover personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., defendant[1] appeals by leave granted[2] the order denying its motion for

[1] Defendants USAA Casualty Insurance Company and USAA General Indemnity Company were dismissed from this case by stipulation and are not parties to this appeal. Accordingly, throughout this opinion, the term "defendant" refers solely to defendant-appellant, Allstate Insurance Company, unless otherwise stated.

[2] On March 8, 2024, this Court granted defendant's application for leave to appeal. See *VHS of Mich Inc v Allstate Insurance Company*, unpublished order of the Court of Appeals, entered March 8, 2024 (Docket No. 368369).

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summary disposition and granting summary disposition in favor of plaintiff, and the subsequent order denying its motion for reconsideration. We affirm.

This case arises out of a motor vehicle accident on December 17, 2021, on Greenfield Road in Detroit, Michigan. Henry Ford's mother, Toya Jackson, owned a Chevrolet Corvette. Jackson lived in Georgia, but she visited Michigan often. When Jackson left Michigan, she would store the vehicle with Ford, giving him the keys for the sole purpose of starting the car during the winter. Ford was not supposed to operate the vehicle without Jackson's permission, and it was an unspoken rule that he needed to ask for permission to drive the vehicle. In November 2021, Jackson visited Michigan for Thanksgiving. Upon her departure, she gave possession of the vehicle and its keys to Ford. Jackson expressly told Ford that he was not allowed to operate the Corvette because she had cancelled the car's insurance in anticipation of it sitting idle during the winter. Ford, without obtaining Jackson's permission, drove the vehicle on December 17, 2021, and crashed it. He sustained injuries and subsequently obtained treatment from plaintiff.

Plaintiff filed a complaint against defendant to recover no-fault benefits, asserting a claim for breach of statutory duties based on defendant's refusal to pay for the charges associated with Ford's treatment. Defendant thereafter filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that Ford operated the Corvette without Jackson's permission, which rendered his use unlawful under MCL 500.3113(a) and disqualified him and plaintiff from receiving no-fault benefits. Plaintiff responded that Ford obtained lawful possession of the vehicle and additionally requested that the trial court render judgment in favor of plaintiff under MCR 2.116(I)(2). Defendant filed a reply, emphasizing that Ford did not have permission to operate Jackson's vehicle on the date of the accident. The trial court disagreed, denying defendant's motion, and rendering judgment in favor of plaintiff. It held that there was a distinction between use without authority, and taking without authority, and that Ford did not unlawfully take the vehicle under the meaning of MCL 500.3113(a). Defendant then filed a motion for reconsideration, which the trial court also denied.

Defendant argues that the trial court erred in denying its motion for summary disposition, granting plaintiff summary disposition, and denying its motion for reconsideration because Ford's operation of Jackson's vehicle was an unlawful taking under MCL 500.3113(a), thus disqualifying him and plaintiff from recovering no-fault benefits. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Cantina Enterprises II Inc v Prop-Owners Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 363105); slip op at 3. A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim, and is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might disagree." *Green v Pontiac Pub Library*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 363459); slip op at 5. On review, "this Court considers the parties' documentary evidence in the light most favorable to the party opposing the motion." *Cantina Enterprises*, ___ Mich App at ___; slip op at 3. Review is limited to the evidence presented to the trial court at the time the motion was decided. *Cleveland v Hath*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 363321); slip op at 6.

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This Court reviews a trial court's decision on a motion for reconsideration for an abuse of discretion. *Tripp v Baker*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 360960); slip op at 7. "A trial court abuses its discretion if it chooses an outcome outside the range of principled outcomes." *Id*. (quotation marks and citation omitted). Issues of statutory interpretation are reviewed de novo. *City of Wayne v Miller*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 364138); slip op at 2.

Statutory interpretation is required to determine whether Ford's actions qualify as an unlawful taking under MCL 500.3113(a). " 'The primary goal of statutory interpretation is to give effect to the intent of the Legislature. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted.' " *Bailey v Antrim Co*, 341 Mich App 411, 421; 990 NW2d 372 (2022) (citation omitted).

MCL 500.3113 enumerates certain circumstances under which an insurer may avoid coverage of no-fault benefits. See *Ahmed v Tokio Marine Am Ins Co*, 337 Mich App 1, 9; 972 NW2d 860 (2021). The relevant provision of MCL 500.3113 states:

> 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:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was *taken unlawfully*, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. MCL 500.3113(a). [Emphasis added.]

This statutory exclusion "applies to any person (1) willingly operating or willingly using a motor vehicle or motorcycle that (2) was unlawfully taken by someone, and (3) the person seeking benefits knew or should have known that the motor vehicle was taken unlawfully." *Ahmed*, 337 Mich App at 10 (quotation marks omitted). "The first level of inquiry when applying MCL 500.3113(a) always concerns whether the taking of a vehicle was unlawful, and if the taking was lawful, the inquiry ends because the statute is inapplicable." *Id*. at 19 (quotation marks and citation omitted).

The statutory phrase at issue, "taken unlawfully," has been defined by the Michigan Supreme Court in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 517; 821 NW2d 117 (2012), which determined that "the plain meaning of the phrase 'taken unlawfully' readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law."[3]

[3] MCL 500.3113(a) was amended in 2019, however this Court has recognized that "taken unlawfully," the term at issue, bears the same meaning under the current statute as it did prior to the amendment. See *VHS of Mich, Inc v State Farm Mut Auto Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365479); slip op at 4, quoting *Ahmed*, 337 Mich App at 10.

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Defendant contends that Ford gained possession of Jackson's vehicle contrary to the misdemeanor joyriding statute, MCL 750.414, which provides: "Any person who takes or uses without authority any motor vehicle without intent to steal the same, or who is a party to such unauthorized taking or using, is guilty of a misdemeanor . . . ." This statute "make[s] it unlawful to take any motor vehicle without authority, effectively defining an unlawful taking of a vehicle as that which is unauthorized." *Spectrum Health*, 492 Mich at 517-518. To be unlawful, a taking need not be larcenous. *Id*. at 518.

Importantly, there is a distinction between the terms "take" and "use," which was recognized in *Spectrum Health*, and has been repeatedly recognized since. In a footnote, the *Spectrum Health* Court explained:

> MCL 750.414 contains disjunctive prohibitions: it prohibits someone from "tak[ing]" a motor vehicle "without authority" and, alternatively, it prohibits someone from "us[ing]" a motor vehicle "without authority." Thus, it is possible to violate MCL 750.414 without unlawfully taking the vehicle and, as a result, not all violations of MCL 750.414 necessarily constitute unlawful takings within the meaning of MCL 500.3113(a). [*Spectrum Health*, 492 Mich at 517 n 24.]

In *Rambin v Allstate Ins Co*, 495 Mich 316, 331; 852 NW2d 34 (2014), the Court noted that "the unlawful use of a vehicle under MCL 750.414 is not relevant under the unlawful taking language in MCL 500.3113[.]" The *Rambin* Court defined the term "take" to mean "to get into one's hands or possession by voluntary action," while the term "use" meant "to employ for some purpose." *Id*. at 332 (quotation marks and citations omitted).

In light of these Supreme Court cases, this Court has continued to recognize the distinction between "take" and "use," as it pertains to the application of MCL 500.3113(a). This Court noted the distinction in *Monaco v Home-Owners Ins Co*, 317 Mich App 738, 749; 896 NW2d 32 (2016). Accordingly, it reasoned that "the unlawful operation or use of a motor vehicle is irrelevant with respect to examining the 'taken unlawfully' phrase in MCL 500.3113(a)[.]" *Id*. at 748-749. Similarly, *Ahmed*, 337 Mich App at 13, noted that an unlawful "taking" requires getting an object "into one's hands or possession by voluntary action." (Quotation marks and citation omitted.)

This Court further expanded on this distinction in *VHS of Mich, Inc v State Farm Mut Auto Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365479). There, the Court reasoned that "mere *use* of [a] vehicle that is unlawful but that is unconnected to attaining possession does not satisfy the definition of 'taken unlawfully' for the purposes of MCL 500.3113(a)[.]" *Id*. at ___; slip op at 4. "Accordingly, there must be a nexus between the unlawful act and the attainment of possession." *Id*.

As plaintiff pointed out in supplemental authority filed with this Court, *VHS* involved the principle that is at issue in this case. Further, the factual circumstances in *VHS* are similar to those involved here: Dantzler, a street mechanic working out of his home, was given a vehicle and its keys for the purposes of making repairs. Later, despite having consumed alcohol and not having a valid license, he agreed to take neighborhood children for a ride in the vehicle, and crashed it.

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*VHS*, ___ Mich App at ___; slip op at 1.[4] The Court analyzed whether, after the vehicle had come into Dantzler's possession, his subsequent unlawful use of the vehicle by driving intoxicated and unlicensed constituted an unlawful taking under MCL 500.3113(a). *Id*. at ___; slip op at 5. The Court concluded that there was no unlawful taking under these circumstances, because the unlawful acts had no nexus "to the manner in which Dantzler gained possession of the [vehicle]." *Id*. at ___; slip op at 7. In making this determination, the Court announced the following rule:

> [T]he pertinent question in determining whether there was an unlawful taking under MCL 500.3113(a) is whether there was a voluntary transfer of possession of the vehicle, even if for a temporary period of time, and not whether the subsequent use of the vehicle by the person seeking PIP benefits exceeded the scope of the use authorized by the owner. . . . *When possession has been transferred voluntarily, even if temporarily, there has been no "taking."* Thus, in those circumstances, a person's subsequent use, even if not authorized by the owner or if otherwise unlawful, does not constitute an unlawful taking under MCL 500.3113(a) because there is no nexus between that unlawful conduct and how the person gained possession of the vehicle. [*Id*. at ___ (emphasis added); slip op at 7.]

The rule articulated in *VHS* is largely dispositive of the issue in this case. Here, there is no question that possession was transferred to Ford voluntarily, as supported by deposition testimony from both Jackson and Ford. In fact, Jackson specifically stated that Ford was in possession of the vehicle with her blessing, despite her restriction on his use of the vehicle. Because the Corvette's possession was voluntarily transferred from Jackson to Ford, there was no taking under MCL 500.3113(a), and it is immaterial that Ford's subsequent use of the vehicle by driving it without permission exceeded Jackson's authorized scope of use. See *VHS*, ___ Mich App at ___; slip op at 7.

Defendant's argument that such a result is inconsistent with this Court's holding in *Ahmed* is unpersuasive. As the *VHS* Court explained, the applicable rule is consistent with *Ahmed*, because the facts are distinguishable. See *VHS*, ___ Mich App at ___; slip op at 7. In *Ahmed*, the vehicle owner expressly prohibited the plaintiff from *taking* the involved vehicle, and the plaintiff "took voluntary action to gain possession of the vehicle" before driving it contrary to the owner's authorization. *VHS*, ___ Mich App at ___; slip op at 7. Like *VHS*, the key distinction here is that there is no evidence to suggest that Ford's "taking of possession of the [vehicle] when it was left with him by [Jackson], was somehow unauthorized or unlawful." *Id*. at ___; slip op at 8.

Defendant also contends that plaintiff's argument improperly relies on cases such as *State Farm Mut Auto Ins Co v Hawkeye-Security Ins Co*, 115 Mich App 675; 321 NW2d 769 (1982), and *Landon v Titan Ins Co*, 251 Mich App 633; 651 NW2d 93 (2002), to demonstrate that an unlawful taking does not occur when an individual uses a vehicle beyond the purpose for which possession was given. We note, however, that *VHS* relied on these very same cases to articulate

[4] It was also determined that the involved vehicle was stolen, however, this fact does not bear on the particular issue in this case. *VHS*, ___ Mich App at ___; slip op at 1.

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the rule that there is no taking where possession is voluntarily transferred. *VHS*, ___ Mich App at ___; slip op at 7. Accordingly, defendant's attempted distinctions are unpersuasive.

Finally, this Court agrees with plaintiff's assessment that the anticipated actions of an insurer have no bearing on the applicability of exclusions under MCL 500.3113(a). Thus, any consequence to Jackson as a result of the trial court's ruling does not require reversal.

Affirmed. Plaintiff may tax costs.

/s/ Kathleen A. Feeney
/s/ Colleen A. O'Brien
/s/ Randy J. Wallace

# EXHIBIT I

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# SENATE BILL No. 1140

November 12, 2014, Introduced by Senator SMITH and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled

"The insurance code of 1956,"

by amending section 3113 (MCL 500.3113), as amended by 1986 PA 93.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

Sec. 3113. 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:

(a) The person was using a motor vehicle or motorcycle ~~which he or she had~~ **THAT WAS** taken unlawfully, unless the person reasonably believed that he or she **OR THE DRIVER** was entitled to ~~take and~~ use the **MOTOR** vehicle **OR MOTORCYCLE**.

(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the

SENATE BILL No. 1140

security required by section 3101 or 3103 was not in effect.

(c) The person was not a resident of this state, was an occupant of a motor vehicle or motorcycle not registered in this state, and **THE MOTOR VEHICLE OR MOTORCYCLE** was not insured by an insurer ~~which~~ **THAT** has filed a certification in compliance with section 3163.

**(D) THE PERSON WAS OPERATING A MOTOR VEHICLE OR MOTORCYCLE AS TO WHICH HE OR SHE WAS NAMED AS AN EXCLUDED OPERATOR AS ALLOWED UNDER SECTION 3009(2).**

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# EXHIBIT J

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**HOUSE SUBSTITUTE FOR**

**SENATE BILL NO. 1140**

A bill to amend 1956 PA 218, entitled

"The insurance code of 1956,"

by amending sections 3113 and 3114 (MCL 500.3113 and 500.3114), section 3113 as amended by 1986 PA 93 and section 3114 as amended by 2002 PA 38.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

Sec. 3113. 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:

(a) The person was **WILLINGLY OPERATING OR WILLINGLY** using a motor vehicle or motorcycle ~~which he or she had~~ **THAT WAS** taken unlawfully, ~~unless~~ **AND** the person ~~reasonably believed that he or she was entitled to take and use the vehicle.~~**KNEW OR SHOULD HAVE**

**KNOWN THAT THE MOTOR VEHICLE OR MOTORCYCLE WAS TAKEN UNLAWFULLY.**

(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.

(c) The person was not a resident of this state, was an occupant of a motor vehicle or motorcycle not registered in this state, and **THE MOTOR VEHICLE OR MOTORCYCLE** was not insured by an insurer ~~which~~ **THAT** has filed a certification in compliance with section 3163.

**(D) THE PERSON WAS OPERATING A MOTOR VEHICLE OR MOTORCYCLE AS TO WHICH HE OR SHE WAS NAMED AS AN EXCLUDED OPERATOR AS ALLOWED UNDER SECTION 3009(2).**

Sec. 3114. (1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motorcycle accident. ~~When~~ **IF** personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and is not entitled to



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recoupment from the other insurer.

(2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection does not apply to a passenger in **ANY OF** the following, unless ~~that~~ **THE** passenger is not entitled to personal protection insurance benefits under any other policy:

(a) A school bus, as defined by the department of education, providing transportation not prohibited by law.

(b) A bus operated by a common carrier of passengers certified by the department of transportation.

(c) A bus operating under a government sponsored transportation program.

(d) A bus operated by or providing service to a nonprofit organization.

(e) A taxicab insured as prescribed in section 3101 or 3102.

(f) A bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point.

**(G) A MOTOR VEHICLE INSURED UNDER SECTION 3101 OR 3102 WHILE THE VEHICLE IS BEING OPERATED BY A TRANSPORTATION NETWORK COMPANY DRIVER IN CONNECTION WITH A TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK.**

(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



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the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

(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.

(5) A person suffering accidental bodily injury arising from a motor vehicle accident ~~which~~ **THAT** shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

(6) If 2 or more insurers are in the same order of priority to provide personal protection insurance benefits under subsection (5), an insurer paying benefits due is entitled to partial

recoupment from the other insurers in the same order of priority, ~~together with~~ **AND** a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among all of the insurers.

**(7) AS USED IN THIS SECTION:**

**(A) "TRANSPORTATION NETWORK COMPANY" MEANS A PERSON OPERATING IN THIS STATE THAT USES A DIGITAL NETWORK TO CONNECT RIDERS TO TRANSPORTATION NETWORK COMPANY DRIVERS FOR THE PURPOSE OF PROVIDING TRANSPORTATION. TRANSPORTATION NETWORK COMPANY DOES NOT INCLUDE TAXI SERVICE, TRANSPORTATION SERVICE ARRANGED THROUGH A TRANSPORTATION BROKER, A RIDESHARING ARRANGEMENT, OR A TRANSPORTATION SERVICE USING FIXED ROUTES AT REGULAR INTERVALS.**

**(B) "TRANSPORTATION NETWORK COMPANY DRIVER" MEANS AN INDIVIDUAL WHO USES HIS OR HER PERSONAL VEHICLE TO PROVIDE TRANSPORTATION SERVICES FOR RIDERS THAT ARE MATCHED TO THE INDIVIDUAL THROUGH A TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK, REGARDLESS OF WHETHER THE INDIVIDUAL IS EMPLOYED BY A TRANSPORTATION NETWORK COMPANY.**



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