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STATE OF MICHIGAN
IN THE SUPREME COURT

JOSEPH CANTY,	MSC: 167772
Plaintiff-Appellant,	COA: 365327 TC: 21-004799-NI
-v-	
MICHAEL MASON,	
Defendant-Appellee,	

Defendant-Appellant Michael Mason's Appendix to the Application

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Attorneys for Michael Mason

Dated: December 16, 2024

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ATTACHMENT 1

21-004799-NI FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 2/23/2023 12:18 PM Moira Hartwell

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

JOSEPH CANTY,

Plaintiff,

Case No. 21-004799-NI
Honorable Kathleen M. Mccarthy

v.

MICHAEL MASON,

Defendant.
_____/

Erik J. Stone (P55304)
Eric M. Noga (P83611)
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Attorney for Defendant
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_____/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION

At a session of court held in the courthouse
in Detroit, Michigan, on 2/23/2023
Present: Honorable Kathleen M. Mccarthy
Circuit Court Judge

This matter having come before the Court on Motion of the Plaintiff, oral arguments being heard and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the Defendant's Motion is GRANTED IN PART and DENIED IN PART for the reasons stated on the record;

IT IS FURTHER ORDERED Plaintiff may claim all allowable expenses through this third party suit;

IT IS FURTHER ORDERED The Personal Injury Protection fee schedule does not apply to this third-party auto negligence cause of action.

IT IS FURTHER ORDERED Allowable expense claims are limited to "…reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation.", as under MCL 500.3107(1)(a).

IT IS SO ORDERED

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE THE CASE.

Date: 2/23/2023

/s/ Kathleen M. McCarthy 2/23/2023
HON. KATHLEEN M. MCCARTHY

Approved as to form; notice of entry waived:

APPLEBAUM & STONE, PLC

/s/ Eric M. Noga
ERIK J. STONE (P55304)
ERIC M. NOGA (P83611)
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Dated: February 23, 2022

KRAMER CORBETT HARDING & DOMBROWSKI

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ATTACHMENT 2

Register of Actions

Case No. 21-004799-NI

Party Information

Defendant	**Mason, Michael Chester**	**Attorneys** **Angela Esseily** *Retained* (313) 237-5636(W)
Plaintiff	**Canty, Joseph William**	**Erik J. Stone** *Retained* (248) 233-5050(W)

Events & Orders of the Court

	OTHER EVENTS AND HEARINGS
04/15/2021	**Complaint, Filed**
04/15/2021	**Service Review Scheduled**
04/15/2021	**Status Conference Scheduled**
04/15/2021	~~Case Filing Fee - Paid~~
05/11/2021	~~Service of Complaint, filed~~
05/11/2021	~~Proof of Service, Filed~~
05/25/2021	~~Proof of Service, Filed~~
05/25/2021	~~Jury Demand Filed & Fee Paid~~
05/25/2021	~~Answer to Complaint, Filed~~
06/14/2021	~~Answer to Affirmative Defenses, Filed~~
06/14/2021	~~Reliance on Jury Demand, Filed~~
06/14/2021	~~Proof of Service, Filed~~
07/15/2021	**Status Conference** (8:00 AM) (Judicial Officer Popke, Lita Masini) Result: Reviewed by Court
07/15/2021	~~Status Conference Scheduling Order, Signed and Filed~~
07/16/2021	~~Proof of Service, Filed~~
07/16/2021	~~Proof of Service, Filed~~
08/23/2021	**Case Reassigned**
09/20/2021	~~Proof of Service, Filed~~
09/20/2021	~~Proof of Service, Filed~~
09/20/2021	~~Miscellaneous Pleadings, Filed~~
09/20/2021	~~Miscellaneous Pleadings, Filed~~
09/20/2021	~~Proof of Service, Filed~~
09/20/2021	~~Proof of Service, Filed~~
09/20/2021	~~Notice of Taking Deposition, Filed~~
09/20/2021	~~Witness List, Filed~~
11/11/2021	~~Proof of Service, Filed~~
11/15/2021	~~Order Adjourning Mediation and Settlement Conference, S/F~~
11/15/2021	~~Notice of Taking Deposition, Filed~~
11/15/2021	~~Proof of Service, Filed~~
11/16/2021	~~Proof of Service, Filed~~
11/16/2021	~~Notice of Taking Deposition, Filed~~
12/09/2021	~~Witness List, Filed~~
12/09/2021	~~Proof of Service, Filed~~
12/20/2021	~~Proof of Service, Filed~~
12/20/2021	~~Witness List, Filed~~
01/25/2022	~~Notice of Taking Deposition, Filed~~
01/25/2022	~~Proof of Service, Filed~~
04/20/2022	**Case Evaluation - General Civil**
05/18/2022	**Case Evaluation - No Acceptance**
06/06/2022	**Settlement Conference** (9:00 AM) (Judicial Officer McCarthy, Kathleen M.) ~~Parties Present~~ *03/01/2022 Reset by Court to 06/01/2022* *06/01/2022 Reset by Court to 06/06/2022* Result: Held
10/04/2022	**Settlement Conference** (9:00 AM) (Judicial Officer McCarthy, Kathleen M.) Result: Held
10/04/2022	**Case Scheduled for Trial** (Judicial Officer: McCarthy, Kathleen M.)
10/05/2022	~~Order for Miscellaneous Action, Signed and Filed~~
10/25/2022	~~Motion for Summary Judgment/Disposition, Filed~~
10/25/2022	~~Proof of Service, Filed~~
11/07/2022	~~Praecipe, Filed~~ (Judicial Officer: McCarthy, Kathleen M.)
11/08/2022	~~Notice of Hearing, Filed~~
11/08/2022	~~Proof of Service, Filed~~
12/19/2022	~~Proof of Service, Filed~~
12/19/2022	~~Answer to Motion, Filed~~
01/03/2023	~~Reply to Brief, Filed~~
01/03/2023	~~Proof of Service, Filed~~

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01/04/2023	**Motion Hearing** (10:00 AM) (Judicial Officer McCarthy, Kathleen M.)
	Result: Held
01/04/2023	**Notice of Presentment**
01/04/2023	**Objection to 7-Day Order, Filed**
01/04/2023	**Proof of Service, Filed**
01/04/2023	**Notice of Hearing, Filed**
01/04/2023	**Motion Granted in Part/Denied in Part, Order to Follow** (Judicial Officer: McCarthy, Kathleen M.)
01/04/2023	**Proof of Service, Filed**
01/05/2023	**Proof of Service, Filed**
01/05/2023	**Notice of Hearing, Filed**
02/02/2023	**Praecipe, Filed** (Judicial Officer: McCarthy, Kathleen M.)
02/02/2023	**Praecipe, Filed** (Judicial Officer: McCarthy, Kathleen M.)
02/02/2023	**Notice of Hearing, Filed**
02/02/2023	**Proof of Service, Filed**
02/03/2023	**Reply to Brief, Filed**
02/03/2023	**Proof of Service, Filed**
02/03/2023	**Proof of Service, Filed**
02/07/2023	**Final Pre-Trial Conference** (9:00 AM) (Judicial Officer McCarthy, Kathleen M.)
	Result: Held
02/07/2023	**Motion Hearing** (9:00 AM) (Judicial Officer McCarthy, Kathleen M.)
	Result: Held
02/07/2023	**Motion Granted, Order to Follow** (Judicial Officer: McCarthy, Kathleen M.)
02/10/2023	**Motion for Stay of Proceedings, Filed**
02/10/2023	**Proof of Service, Filed**
02/10/2023	**Praecipe, Filed** (Judicial Officer: McCarthy, Kathleen M.)
02/10/2023	**Proof of Service, Filed**
02/10/2023	**Notice of Hearing, Filed**
02/14/2023	**Proof of Service, Filed**
02/14/2023	**Objection, Filed**
02/15/2023	**Witness List, Filed**
02/15/2023	**Proof of Service, Filed**
02/15/2023	**Proof of Service, Filed**
02/15/2023	**Notice of Hearing, Filed**
02/21/2023	**Answer to Motion, Filed**
02/21/2023	**Proof of Service, Filed**
02/21/2023	**Answer to Motion, Filed**
02/21/2023	**Proof of Service, Filed**
02/21/2023	**Motion in Limine, Filed**
02/21/2023	**Proof of Service, Filed**
02/21/2023	**Miscellaneous Pleadings, Filed**
02/22/2023	**Praecipe, Filed** (Judicial Officer: McCarthy, Kathleen M.)
02/22/2023	**Proof of Service, Filed**
02/22/2023	**Proof of Service, Filed**
02/23/2023	**Motion Hearing** (9:30 AM) (Judicial Officer McCarthy, Kathleen M.)
	Result: Held
02/23/2023	**Order Adjourning Trial, Signed and Filed**
02/23/2023	**Order Granting in Part/Denying in Part, Signed and Filed**
02/23/2023	**Proof of Service, Filed**
02/23/2023	**Proof of Service, Filed**
02/23/2023	**Proof of Service, Filed**
02/23/2023	**Notice of Hearing, Filed**
02/28/2023	*CANCELED* **Motion Hearing** (10:00 AM) (Judicial Officer McCarthy, Kathleen M.)
	Case Disposed/Order Previously Entered
03/06/2023	**Trial** (8:30 AM) (Judicial Officer McCarthy, Kathleen M.)
03/06/2023	**Motion Hearing** (9:00 AM) (Judicial Officer McCarthy, Kathleen M.)

Financial Information

	Plaintiff Canty, Joseph William			
	Total Financial Assessment			320.00
	Total Payments and Credits			320.00
	Balance Due as of 03/02/2023			**0.00**
04/15/2021	Transaction Assessment			175.00
04/15/2021	eFiling	Receipt # 2021-29974	Applebaum & Stone, PLC	(175.00)
05/26/2021	Transaction Assessment			85.00
05/26/2021	eFiling	Receipt # 2021-40545	Kramer, Corbett, Harding & Dombrowski	(85.00)
10/26/2022	Transaction Assessment			20.00
10/26/2022	eFiling	Receipt # 2022-76838	Kramer, Corbett, Harding & Dombrowski	(20.00)
02/10/2023	Transaction Assessment			20.00
02/10/2023	eFiling	Receipt # 2023-09947	Kramer, Corbett, Harding & Dombrowski	(20.00)
02/22/2023	Transaction Assessment			20.00
02/22/2023	eFiling	Receipt # 2023-11988	Kramer, Corbett, Harding & Dombrowski	(20.00)

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ATTACHMENT 3

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STATE OF MICHIGAN

IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WILLIAM CANTY,

Plaintiff,

-vs-

MICHAEL CHESTER MASON,

Defendant.
_____/

Case No. 21-004799-NI

Honorable Kathleen McCarthy

DEFENDANT'S MOTION FOR PAYMENT OF MEDICAL BILLS

BEFORE THE HONORABLE Kathleen McCarthy,

Third Circuit Court, Civil Division

Detroit, Michigan on

Wednesday, January 4, 2023

APPEARANCES:

On Behalf of Plaintiff: **ERIK J. STONE** (P-55304)
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Southfield, MI 48076
(248) 233-5050

On Behalf of Defendant: **ANGELA ESSEILY** (P-81816)
P.O. Box 8084
Royal Oak, MI 48068
(313) 237-5636

REPORTED BY: SHELEE BEARD, CSR 5493
Official Court Reporter

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I N D E X

WITNESSES: **PAGE**

None

E X H I B I T S:

	INTRODUCED PAGE	**ADMITTED PAGE**
None Offered		

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Mason Appendix 011

Detroit, Michigan

Wednesday, January 4, 2023

- - -

THE COURT: We're on the record on case number 2021-004799-NI.

Counsel for Plaintiff, your appearance, please.

MR. STONE: Erik Stone appearing on behalf of the Plaintiff.

THE COURT: Counsel for Defendant.

MS. ESSEILY: Angela Esseily appearing on behalf of Defendant.

THE COURT: Okay. So Defendant has filed a motion in this third party auto neg case because the Plaintiff in this case opted out of first party benefits.

In opting out of first party, he opted out of first party benefits, period. He then began treating with various providers and has not submitted the bill to Medicare.

Defendant maintains that all of these providers, except Medicare and ultimately in their final response indicate that Plaintiff does have a duty to mitigate.

Anything else for the record, Counsel

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for Defendant?

MS. ESSEILY: Yes, Judge, if I could just briefly.

I know you've read through all the briefs and gotten through everything. But I just want to emphasize that it has been ruled in the Court of Appeals that the duty to mitigate is not something that needs to be abrogated. It doesn't have to be written out into the law.

THE COURT: Common law duty.

MS. ESSEILY: Yeah. And the person wronged cannot recover for any damages as it relates to the failure to mitigate.

Additionally, even if this Court dos not find that mitigation is pertinent here, which I believe it absolutely is, at the end of the day, the Plaintiff must comply with 3135(C) which requires them to limit the pricing based on 3107 and 3157.

THE COURT: Okay. So those are two different issues.

MS. ESSEILY: Yes.

THE COURT: So let's break them down.

I agree with you that Plaintiff has a duty to mitigate. The whole purpose of the

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insurance reform in allowing someone to opt out was to guarantee that they had underlying insurance and/or that they were a qualified Medicare or Medicaid recipient.

And so even if it doesn't plainly state in the statute, it would defy common sense to indicate you have to have insurance or you have to have Medicare but you don't have to bill them.

Anything to add on that issue, Mr. Stone?

MR. STONE: Yes. I could like to counter the point --

THE COURT: Sure.

MR. STONE: That Medicare is not responsible for any no-fault or any damages arising out of an automobile motor vehicle accident.

I don't know who, I've even provided the Court rejections from Medicare on this saying they're not paying it because it arose out of a motor vehicle accident. Medicare is not responsible for this, Your Honor. You cannot --

THE COURT: I know your argument. And your argument is that if you're -- I don't know that's the case if you opt out because the

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insurance information that one of you provided, I think it was Ms. Esseily, clearly anticipated that Medicare costs were going to go up with this new opt out in auto insurance.

MR. STONE: But we provided this Court with documentation that it's been rejected by Medicare. That proves my point.

THE COURT: Okay. Hold on. I didn't see that.

MR. STONE: Lucid's billing which is 24,000 has been rejected by Medicare.

THE COURT: Only, what exhibit that is?

MR. STONE: I can't tell.

THE COURT: Hold on, don't over talk him. I just want to see what he's talking about first.

MS. ESSEILY: I apologize.

MR. STONE: And if I could continue my argument with regards to the Medicare.

THE COURT: Well, I think it makes a difference. I think you have to submit them to Medicare. And if Medicare rejects, then Medicare rejects. I think that's a different argument.

But I think you have an obligation to

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submit to his, either health insurance or Medicare with anticipated with the opt out.

MR. STONE: But if you don't, under the No-Fault law, you don't have to treat with anyone. You don't have to treat with Medicare. You don't have to treat with Medicaid. You could treat in Saudi Arabia if you wanted. Okay.

Why is there -- why would you be putting a bigger protection on someone who is not at fault, who opted out of no-fault? No fault does not even apply here. The word --

THE COURT: Because it's anticipated to be qualified to opt out, otherwise prior to the changes, you had to.

MR. STONE: But you don't have to go to someone who treats Medicare.

THE COURT: Well, in this case they did. And if they did, they have to submit them to Medicare.

MR. STONE: And only one of the places did, treats Medicare.

THE COURT: Go ahead and make a record. I'm not going to argue the point. Go ahead and make a record.

MR. STONE: Well, I'd like to know

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what your ruling is first, Your Honor.

THE COURT: My ruling is that you have, there's a common law duty to mitigate. You have an obligation to mitigate that the changes in the No-Fault law anticipated you could only opt out if you had qualified health insurance or you were a Medicare recipient.

Obviously that anticipation was that your health insurance or Medicare was going to be primary. And so that is my ruling.

You have a duty to mitigate. You must submit all of your bills in good faith to Medicare in this case.

MR. STONE: May I clarify?

What if the provider does accept or bill Medicare?

THE COURT: That's a secondary issue that Ms. Esseily, is it Esseily?

MS. ESSEILY: Esseily.

THE COURT: And her second argument is that he is then subject to a Medicare fee schedule; correct, that's your second argument, Ms. Esseily?

MS. ESSEILY: Yes, Judge. You'd still be required to submit the bills based on the

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statute of limitations, 3107, 3157.

THE COURT: In that case I disagree with you on that second part because I don't see anywhere in the statute that does require, as Mr. Stone said, to treat with a Medicare provider, unfortunately. It seems like it's a loophole in this new statute.

But I don't see any cases or anything in the statute that indicates that requirement.

So I have to deny that request. I think he has -- I'm ruling that it's granted in part and denied in part. He has to submit all of these bills in good faith to Medicare for payment. And anything above and beyond is the responsibility of the insurance company.

MR. STONE: Your Honor, may I make one other point here?

The ruling logically doesn't make sense because the provider in this case, if the person had, if Mr. Canty had no-fault insurance, would be getting the fee schedule and this hospital case would be 2 to 300 times the point of Medicare.

Since if he opts out and the provider now only gets Medicare rates. So yes, your ruling

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on the second part is correct. It shouldn't be capped at Medicare. But the provider now, is getting less, way less because you're allowing the bill -- You're not allowing the bill.

MS. ESSEILY: Judge, if I may reply?

THE COURT: I'm not sure what you just said, so you'll have to go through that. You have like four different providers. You got a provider that --

MR. STONE: Right. Let's say it's no-fault, Your Honor. And the Medicare bills, he goes to Medicare, he bills Medicare because all right, the provider bills Medicare, they get a fee schedule. No-fault would pay him two and a half times Medicare, 200 percent of Medicare.

We go to the third party case. That bill now is not 200 times Medicare. That's just the Medicare bill. So the provided is getting jobbed because there's no no-fault insurance. And that is fine but that isn't what they opted out of no-fault for.

They opted out to have their no-fault reduced, not the amount of damages or where they can go reduce. They opted out to have their -

THE COURT: You're arguing two

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different points. One is the person paying for no-fault. And again, they can only opt out if they have a qualified insurance.

And secondly, these providers that accept Medicare have already agreed to accept those reduced rates because they work under a Medicare fee agreement.

So I disagree with you.

MR. STONE: Okay. Then if Medicare rejects and in this case the other providers do not, have never billed, they're not associated with Medicare, those bills are still in then.

THE COURT: Right. You have to submit them if they accept Medicare. And then if anything, if they reject or anything over and above is subject to the third party case.

It doesn't make sense to me, honestly. But that's so far what the statute says. I imagine there'll be an amendment down the line. But that's how I view it.

MR. STONE: Thank you for your time today, Your Honor.

MS. ESSEILY: If I can just add one more thing --

THE COURT: Sure.

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MS. ESSEILY: For the record.

THE COURT: Sure.

MS. ESSEILY: To his reply, I mean, I think it should be noted that 3135(3)(c) 3107 and 3110 as allowable expenses and I think it goes, saying that it would lead to 3157. And I understand the Judge's point that this is, it's not necessarily mentioned in 3135(3)(c), however, I think it needs to be noted.

Additionally, even if, I mean in the case of Lucid's bill because he did note it, I just want to make it clear for the record.

My understanding is the Lucid bill was denied because they did not, they did not provide complete information for it to be completely processed through Medicare. It wasn't denied because they don't accept it.

And then lastly --

THE COURT: That was my point about saying that they have to be submitted in good faith. I agree with you, if there's something that's missing, that needs to be provided to get Medicare to pay for it. That is required on the Plaintiff to do that.

I don't know how you're going to word

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that in an order. That's why I said good faith submission with responding to them if they say there's a defect for something that can be easily cured.

You know, that gets into a Toussaint argument. I mean, you have kind of the same issue.

MS. ESSEILY: So I guess, just to clarify too for the order, I can, as far as the mitigation issue, that is granted. And then as far as the duty to submit these bills to Medicare, it's just in good faith.

Is that how you would like it worded?

THE COURT: I guess.

MS. ESSEILY: I just want to make sure that I'm not wording --

THE COURT: I was hoping that you're going to sound more eloquent than I was.

MS. ESSEILY: I know, I need to write it.

THE COURT: You work with that. Granted in part and denied in part because I don't think he has an obligation to treat with Medicare providers. I don't see that anywhere in the statute.

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MS. ESSEILY: Okay. And --

THE COURT: Appeal me. And then you'll get the Court of Appeals to decide this issue. I don't know.

MS. ESSEILY: I guess, Judge, I just want to clarify, my argument wasn't necessarily that he had to treat with Medicare.

THE COURT: Object to the fee schedule, yes.

MS. ESSEILY: Okay.

THE COURT: That's where I disagreed with you, that it's not subject to the fee, it's subject to the auto neg fee schedules. But it's not subject to the Medicare fee schedule if the provider isn't a Medicare recipient, isn't a Medicare provider, I mean.

MS. ESSEILY: Okay. But it would still be subject to the fee schedule based on 3107. Okay.

THE COURT: You're muted, Mr. Stone.

MR. STONE: What would be subject to the fee schedule?

THE COURT: Anything after the treatment date of the changes. Is there a fee schedule after June of 2019 or 2020?

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MR. STONE: And what about the excess that Medicare, that's beyond Medicare?

THE COURT: Right. Then that is the responsibility of the insurance company. That's what I've indicated.

But on Medicare, people that submit the Medicare, there should be any, they're agreeing to the Medicare rate so I don't know how there would be anything in excess. But -

MR. STONE: Well, the bills -- well, okay. They don't have to agree to the Medicare rates, that's the thing.

THE COURT: If they're a Medicare provider, they do. That's the contract that they signed up to accept Medicare.

MS. ESSEILY: At the end of the day, the providers were aware there was Medicare and they continued to treat. They could have --

THE COURT: Okay. I don't want to go back and forth. You have my ruling. Please submit an order.

MS. ESSEILY: Thank you, Judge.

THE COURT: All right.

Have a great day, guys.

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MS. ESSEILY: Thank you.

You as well.

THE COURT: Thanks.

- - -

(Whereupon proceedings concluded.)

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S T E N O G R A P H E R ' S C E R T I F I C A T E

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, **Shelee Beard**, CSR-5493, Certified Court Reporter in and for the Third Circuit Court, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 16 inclusive, was reduced to typewritten form by means of Computer-Assisted Transcription and comprise a true and accurate transcript of the proceedings in the above-entitled matter, on Wednesday, January 4, **2023.**

Shelee Beard

SHELEE BEARD, CSR-5493
Certified Court Reporter
Third Circuit Court
921 CAYMC
Detroit, MI 48226

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ATTACHMENT 4

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WILLIAM CANTY,

Plaintiff, Case No. 21-004799-NI

vs.

MICHAEL CHESTER MASON,

Defendant.

ZOOM Proceedings taken in the above-entitled matter before **HONORABLE KATHLEEN McCARTHY**, Third Judicial Circuit Court Judge, Detroit, Michigan, on February 7, 2023.

APPEARANCES:

On behalf of Plaintiff: MR. ERIK STONE (P55304)
26777 Central Pk. Blvd #300
Southfield, MI 48076

On behalf of Defendant: MS. ANGELA ESSEILY (P81816)
P.O. Box 8084
Royal Oak, MI 48068

Shelee Beard, CSR-5493
Official Court Reporter

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Detroit, Michigan

February 7, 2023

- - -

THE COURT: I'm on the record on case number 2021-004799-NI. Counsel for Plaintiff, your appearance.

MR. STONE: Erik Stone appearing on behalf of plaintiff.

THE COURT: Counsel for Defense.

MS. ESSEILY: Angela Esseily appearing on behalf of defendant.

THE COURT: I know there's an issue regarding the hearing; it was a motion for summary. I had made a ruling. There's a dispute about the 7 day orders. Frankly, that got me researching this issue a little bit more, and I believe my ruling is incorrect. So in looking at this issue further because Medicare and Medicaid are exempt from the no fault statute, there is no duty to mitigate. Medicare is normally rejected if there's an auto accident because it's exempt under the federal court. So Mr. Stone, I believe, argued that and is correct in that ruling.

This is a third party case. Was there

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a -- There wasn't a first party because he opted out.

MR. STONE: Correct.

THE COURT: Under the third party case he just has to show what ever was charged by his providers was reasonable and necessary.

MS. ESSEILY: Judge if I could make a clear record on this based on the previous -- I mean, we were only here to clarify this order. It's still defendant's position the legislature intent was very clear here. They even quantified there would be increase in payment Medicare and Medicaid would be making on these no fault cases. At the end of the day, the whole point of the opt out was for the intent that people can take a deduction. He didn't have to do this opt out, and he chose to do it anyway. To penalize everyone around hundred him, we believe that's not the intent. He opted out the first party benefits here. There need to be a duty to mitigate based off that --

THE COURT: Here's your problem; if it had been a qualified health insurance plan, I agree with you, but Medicare is not a qualified health insurance plan, and the federal law has

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specifically exempted it. So you can disagree with me; I'm not going to argue with you. I have a right to revisit my opinions on my own motions; I have chosen to do that. And I found my previous ruling is in error, and there is no duty to mitigate. He couldn't even collect Medicare. If a bill went to Medicare, he had a duty to inform them that this was an auto accident. It's an affirmative duty so they can lien the file to the extent they paid for Medicare. His only duty is to make sure the bills are reasonable and necessary.

MS. ESSEILY: Judge, if you could allow me to make a full record for purposes of appeal. Plaintiff made a decision to accept a discounted rate by opting out of allowable expense coverage based on Medicaid part A and B coverage. I know this is going to be redundant, but the opt out as the legislature addresses would shift cost of certain medical expenses. Because plaintiff chose not to rely on the no fault system, he cannot just throw up his hand and assume alleged tortfeasor will absorb the cost.

The court of appeals previously ruled that you would still be able to mitigate despite

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it not be a codified -- it doesn't have to be codified in No-Fault Act, but there would still be a duty. That was in Bazzi V Citizens. Plaintiff can't just rack up medical cost and assume payment from an alleged tortfeasor when there could have been -- could have been a way to minimize those damages.

In this case, despite receiving an EOB denying claims from his auto carrier which is Liberty, they continue to bill and bill and bill without any intentional recourse. There was actually no attempt to mitigate. We have a bill that's been racked up with Northland nearly $200,000. Plaintiff's allegations that the right of plaintiff to treat wherever he wants, or the notion to treat no matter that benefits the tortfeasor entirely is missing the point. The duty to mitigate is not to benefit the tortfeasor rather to prevent needless accumulation of economic loss that could otherwise be avoided.

As far as the second issue relating to 3135 argument despite plaintiff's claiming no obligation to submit these bills, the legislature predicated opt out in insurance that the insureds had other means of coverage. I'm repeating that

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over and over. I think it worthy to be noted. If your Honor does not believe there's a duty to mitigate, I would like your Honor to still consider that the No-Fault Act has to be read as a whole and as such 3135 refers to a potential claimant allowable expenses. Plaintiff should still have those limits listed in 3107 to 3110, allowable expenses also includes. Allowable expenses means as well the fee schedule that was also written out in the statute 3157 subsection 2 of the statute

The plaintiff made the decision to disregard submissions to Medicare despite the election and despite asking over and over again, recover of allowable expenses should still be required to be mitigated. And there was a failure to do so here.

THE COURT: Thank you. You've made your record. I will add to my ruling that he is subject to the fee schedule under 3157. It specifically references Medicare. I don't know the dates of service of ur client. Go ahead.

MR. STONE: In the third party case he's not limited to fee schedule, that's only in the first party. That needs be clarified because

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that was Ms. Esseily's intention. She believed the fee schedule applies to all bills in the third-party case. The statute says anything but not limited to. There is no limit on third party. As far as him having a duty to mitigate, he opted out. This tortfeasor could very well have $50,000 policy. And then he would be stuck with all the automobile bills, or the accident bill, or the medical bills.

MS. ESSEILY: Your Honor, to Mr. Stone's point, if that were the case, plaintiff would have likely submitted all those bills to Medicare. As far as my 3157 argument, 3135 refers to allowable expenses. I believe that plaintiff would be subject to the fee schedule pursuant to the No-Fault Act that is provided. I understand this is a third-party case, but the legislature didn't abandon the notion of allowable expenses. It didn't abandon the way that it was intended to be, or the way it was written in the no-fault act. In fact, they refer, to -- If there was no intent for a third party and to base it off of the No-Fault Act, they would have never referred to allowable expenses.

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MR. STONE: One more thing, your Honor, if I may. If this were the case, we have a fee schedule that's 200 percent on. Therefore if you bill Medicare you would get Medicare rates where the fee scheduled is a heck of a lot more than Medicare rates. We went through Medicare to get an amount when no fault is 200 times that amount.

THE COURT: That's my point. What 3157 says she wants a fee schedule, then it's probably the same as what they're billing.

MR. STONE: The fee schedule is nowhere mentioned in 3135. There's no referenced statute that fee schedule applies in the third party case. This gentleman had a severe knee injury and went to Canada to have it operated on.

THE COURT: Hold on a second. 500.3157 says charges for treatment or training for injured person. It doesn't say it's limited to first-party cases.

MR. STONE: 3135 is the statute under the first party. Once you opt out, there's no PIP benefits. The fee schedule can't apply because there's no PIP benefits. That's the whole point of opting out.

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THE COURT: Give me a second. I've got to read 3135. Thank you. I just reviewed 500.3135. Again, I agree with plaintiff's position there's nothing in the statute that indicates that the fee schedule 3157 would apply on a third-party claim.

MS. ESSEILY: Your Honor, If I can just briefly respond to that, the -- I'm not arguing 3157 isn't noted in the statute. I don't think it necessarily makes sense to read 3135(3)(c) on its own. The entire No-Fault Act has to be read. It still says damages are allowable expenses and references 3157. It's not completely abandoning the notion that still following the No-Fault Act and still following the 3157 which is how we're now considering payments of bills. I don't think that was the legislature's intent.

THE COURT: I believe their intent was to help people of lower means to have affordable car insurance. People of lower means are identified by either being on Medicare, which means they're retired, and/or Medicaid, which means they're income eligible. In looking at the automobile code in conjunction with this makes perfect sense to me that this does not apply.

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The law is clear that Medicare is a separate government policy that does not get invoked when there's an auto policy in place.

That's my ruling. He obviously has an obligation to make sure his bills are reasonable and necessary. That's where we're at. I need an order, Mr. Stone, from you today indicating that the Court has revisited the issue on its own motion. And that's my ruling. And then you two have a final settlement conference, correct?

MS. ESSEILY: Yes. In considering the ruling, respectfully, your Honor --

THE COURT: It's not personal to me.

MS. ESSEILY: We're likely going to file a motion for reconsideration. I know the trial is less than a month. I -- my client may want to even appeal this. I think it's a good idea to adjourn the trial concerning the facts of bills. We have to be sure what bills should be included at trial. I think we'll benefit interest of judicial economy.

THE COURT: What is the amount of the policy in this case?

MS. ESSEILY: 250,000.

THE COURT: What are the amount of

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bills? Mr. Stone has a point; if the whole policy is used up paying medical providers then the client doesn't get anything for pain and suffering.

MS. ESSEILY: Your Honor, if reasonable and customary still applies, we can have some discussion about exactly what's been paid out on bill. It's a decent policy.

MR. STONE: Your Honor, that's to be determined by a jury.

THE COURT: Okay. Sure.

MR. STONE: For this bill I believe he should get 10,000 versus --

THE COURT: What are at amount of him current bills?

MR. STONE: I don't know. They're pretty extensive.

MS. ESSEILY: I think they're over 200.

MR. STONE: 250.

THE COURT: You're indicating you'll leave it to the jury to apportion.

MR. STONE: Correct.

THE COURT: That is the hazard of somebody not taking PIP coverage.

MR. STONE: Correct.

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MS. ESSEILY: Your Honor, what ever happens with this ruling maybe it's prevalent to see what happens before trial on this ruling in general.

THE COURT: You're free to file a motion for reconsideration. I need to know whether you filing an appeal. If it's filed, I'll cancel the trial. If it's not filed, I'm proceeding with the trial.

MS. ESSEILY: Okay.

THE COURT: All right.

(Whereupon proceedings concluded.)

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STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

R E P O R T E R' S C E R T I F I C A T E

I, Shelee Beard, CSR-5493, do hereby certify that I have transcribed the **VIDEO** proceedings had in the above-entitled matter at the time and place hereinbefore set forth and that the foregoing is a true and correct transcript of proceedings.

/s/ Shelee Beard

Shelee D. Beard, CSR-5493
921 Coleman A. Young Municipal Center
Detroit, MI 48226
stenobeard@ymail.com

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ATTACHMENT 5

Approved, SCAO | Original - Court; 1st Copy- Defendant | 2nd Copy - Plaintiff; 3rd Copy -Return

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	SUMMONS	CASE NO. 21-004799-NI Hon.Lita Masini Popke

Court address : 2 Woodward Ave., Detroit MI 48226 | Court telephone no.: 313-224-2953

Plaintiff's name(s), address(es), and telephone no(s)		Defendant's name(s), address(es), and telephone no(s).
Canty, Joseph William	v	Mason, Michael Chester
Plaintiff's attorney, bar no., address, and telephone no Erik J. Stone 55304 26777 Central Park Blvd Ste 300 Southfield, MI 48076-4172		

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
4/15/2021	7/15/2021	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

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APPLEBAUM & STONE, PLC

STATE OF MICHIGAN
IN THE CIRCUIT COUNTY FOR THE COUNTY OF WAYNE
CIVIL DIVISION

JOSEPH WILLIAM CANTY,

Plaintiff,

v.

MICHAEL CHESTER MASON,

Defendant.
_____/

Case No. 21- -NI
Hon.

Erik J. Stone (P55304)
Eric M. Noga (P83611)
APPLEBAUM & STONE, PLC
Attorney for Plaintiff
26777 Central Park Boulevard, Suite 300
Southfield, Michigan 48076
(248) 233-5050 Fax: (248) 359-8550
enoga@applebaumstone.com
estone@applebaumstone.com
_____/

There is no other pending or resolved civil action arising out of the occurrence alleged in the Complaint.

COMPLAINT

NOW COMES Plaintiff, JOSEPH WILLIAM CANTY, by and through their undersigned counsel, and for their Complaint against Defendant, MICHAEL CHESTER MASON, and their agents, servants, representatives, or employees, either real or ostensible, and hereby respectfully represents unto this Honorable Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, JOSEPH WILLIAM CANTY ("Plaintiff"), is a resident of Detroit, Wayne County, Michigan.

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2. Upon information and belief, Defendant, MICHAEL CHESTER MASON ("Michael Mason"), is a resident of Canton Township, Wayne County, Michigan.

3. The amount of controversy regarding Plaintiff's claims exceeds Twenty-Five Thousand Dollars ($25,000.00) and it is properly placed within this Court.

4. This Court has the power to declare the rights and other legal relations of an interested party seeking a declaratory judgment in a case of actual controversy within its jurisdiction.

5. This Court has jurisdiction over Plaintiff's claims since this Court would have jurisdiction of an action on the same claim or claims in which Plaintiff sought relief other than a declaratory judgment.

6. A declaratory judgment may be necessary to guide Plaintiff's future conduct in order to preserve their legal rights and, therefore, a case of actual controversy exists between Plaintiff and Defendant.

7. Plaintiff has standing, having suffered an actual or imminent invasion of a legally protected interest, which may be redressed by this Court.

8. Plaintiff has suffered, and continues to suffer, dire and imminent financial hardship by Defendant's wrongful acts.

9. Plaintiff is without an adequate remedy at law under the Michigan No-Fault Act.

10. All conditions precedent to recovery have been performed and/or have occurred.

11. Declaratory and/or equitable relief is sought.

GENERAL ALLEGATIONS

12. Plaintiff re-alleges and reincorporates by reference each of the preceding paragraphs as though fully set forth herein.

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13. On or about February 15, 2021, at approximately 6:35 a.m., Plaintiff was the owner and operator of a 2015 Chevrolet Malibu LT sedan four door motor vehicle bearing Michigan registration 0095K8.

14. At that time, Michael Mason was the owner and operator of a 2018 Lincoln Navigator Reserve Four Door Wagon Sport Utility motor vehicle bearing Michigan registration EFJ6900.

15. At that time, Plaintiff's vehicle was travelling in the 2nd to right lane on northbound Telegraph Road, north of the intersection with Schoolcraft Road, located in Redford Township, Wayne County, Michigan.

16. At that time and place, Michael Mason was travelling northbound on Telegraph Road, north of the intersection with Schoolcraft Road, in the right curb lane.

17. There were icy conditions on the roadway at the time Plaintiff and Michael Mason were travelling.

18. Plaintiff was not speeding or driving recklessly or negligently.

19. As Plaintiff travelled northbound on Schoolcraft Road, their vehicle hit a patch of ice and began to skid.

20. Michael Mason was travelling at speed too fast for the roadway conditions and was not maintaining an assured clear distance from Plaintiff's vehicle.

21. Michael Mason hit the same ice patch that Plaintiff's vehicle did, having not paid attention to the roadway or Plaintiff's vehicle.

22. Michael Mason's vehicle skidded until it struck the rear-end of Plaintiff's vehicle with substantial force.

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23. Plaintiff was improperly held at fault for the motor vehicle accident and did not lose control of their vehicle as the police reported Plaintiff did.

24. Michael Mason was at fault for the motor vehicle accident.

25. As a direct and proximate result of the motor vehicle accident and the negligence of Michael Mason, Plaintiff sustained accidental bodily injuries and required reasonable and necessary medical treatment, services, or accommodations.

COUNT TWO – AUTOMOBILE NEGLIGENCE AGAINST DEFENDANT MICHAEL CHESTER MASON

26. Plaintiff re-alleges and reincorporates by reference each of the preceding paragraphs as though fully set forth herein.

27. On the date and time aforesaid, Defendant Michael Mason owed duties to Plaintiff to operate said motor vehicle with reasonable care and caution under the Motor Vehicle Code of the State of Michigan, Ordinances of Redford Township, and the common law in such cases made and provided.

28. Defendant Michael Mason breached said duties owed to Plaintiff in at least one or more of the following particulars, so far as it is presently known:

a. operated said vehicle without having it under constant control.
b. failed to make proper observation and failed to observe the presence of other users of the road and/or failed to take timely or proper action on such observation as was made in order to avoid a collision.
c. operated said vehicle in a careless and heedless manner, without due regard for the rights and safety of others, particularly Plaintiff herein, and operated said vehicle without due care and circumspection and at a speed and in a manner so as to endanger or be likely to endanger persons and property in violation of Michigan Statute.

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d. failed to maintain the horn, brakes and other equipment of the motor vehicle in good working order as required by Michigan Statute, and/or failed to sound the horn of the vehicle or to apply the brakes when, in sufficient time to take such action, they saw or should have seen that it was necessary to avoid a collision.

e. failed to use ordinary care in the operation of a motor vehicle.

f. operated said vehicle in a reckless manner.

g. operated said vehicle while intoxicated and/or under the influence of intoxicating liquor with driving ability impaired in violation of Michigan Statute.

h. operated said vehicle at a speed in excess of the legal rate of speed posted or otherwise provided.

i. overtook and struck the rear of said vehicle proceeding in the same direction as it was lawfully [slowing down, stopped, proceeding} on said highway.

j. operated said vehicle at a careless and imprudent rate of speed greater than was reasonable and proper, having no due regard to the traffic, surface and width of said highway and of other conditions then existing, and operated the aforesaid vehicle at a speed greater than would permit it to be brought to a stop within the assured clear distance ahead, and failed to bring the vehicle to a stop within the assured clear distance ahead, in violation of Michigan Statute.

k. failed, upon approaching an open intersection, to yield the right-of-way to another vehicle simultaneously entering an open intersection from the right, in violation of Michigan Statute.

l. failed, upon approaching an open intersection, to yield the right-of-way to another vehicle which had already entered the intersection from a different highway, in violation of Michigan Statute.

m. failed, upon approaching an intersection where there was a sign bearing the message "yield right of way," to stop or slow to a reasonable speed and to yield the right-of-way to all traffic on the intersecting street which was so close as to constitute an immediate hazard, in violation of Michigan Statute.

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n. failed to obey the red light of the traffic control signal facing the vehicle, and failed to come to a stop before entering the intersection, and failed to remain standing until green was shown alone, in violation of Michigan Statute.

o. operated said vehicle on the left half of the highway in violation of Michigan Statute.

p. failed to approach for a right turn as close as practical to the right-hand curb or edge of the roadway and/or failed to make a right turn from the lane as close as practical to the right-hand curb or edge of the roadway in violation of Michigan Statute.

q. failed to observe traffic signals and/or signs placed on said highway, and failed to obey said traffic signals and/or signs.

r. failed to give any signal by hand, arm, mechanical or electrical means to signal or warn others that Defendant was going to [move his/her vehicle from one lane to another on the highway][turn right/left], in violation of Michigan Statute.

s. failed to drive the vehicle as nearly as practicable entirely within a single lane.

t. operated said vehicle from one lane to another lane of traffic without first ascertaining that such movement could be made safely.

u. failed to remain at the scene of a personal injury accident, provide information and give or offer assistance to the injured, in violation of Michigan Statute.

v. intending to turn left, did not yield the right-of-way to Plaintiff's vehicle, which was closely approaching from the opposite direction, in violation of Michigan Statute.

w. before turning left, did not ascertain that such movement could be made safely and did not give a warning signal to other drivers, in violation of Michigan Statute.

x. failed, upon approaching an intersection where there was a sign bearing the message "stop," to stop and yield the right-of-way to all traffic on the intersecting street, which was so close as to constitute an immediate hazard.

y. failed to obey the flashing red light of the traffic control signal facing Defendant, and failed to come to a stop before entering the intersection, and failed to remain stopped until all traffic on the intersecting street, which was so close as to constitute an immediate hazard, had passed.

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z. driving said vehicle upon the highway or other places open to the general public without lighted lamps and illuminating devices as required under the conditions then and there existing in violation of Michigan Statute.

aa. in other ways that may become known through discovery.

29. Plaintiff sustained personal injuries as a direct and proximate result of the negligence of Defendant Michael Mason.

30. As a direct result and proximate result of the negligence of Defendant Michael Mason, and/or their agents, servants and/or employees, either real or ostensible, Plaintiff has:

a. sustained severe bodily injuries which were painful disabling and necessitated medical care.

b. suffered shock and emotional damage.

c. sustained possible aggravation of pre-existing conditions and/or reactivation of dormant conditions.

d. was and/or may continue to be unable to attend to his usual affairs and daily activities including, but not limited to, household chores, and personal needs.

e. was and/or may continue to be unable to render services as formerly including, but not limited to, household chores, and personal needs.

f. suffered from a loss of enjoyment of life and/or was and may continue to be hampered in the enjoyment of the normal pursuit of life.

g. sustained injuries that are or may be permanent to the degree that Plaintiff suffered a loss in ability to earn money as before and may have impaired earning capacity in the future.

h. may continue to have pain and suffering in the future and impairment and disabilities as well as permanency.

i. suffered mental anguish.

j. suffered fright.

k. suffered from embarrassment and humiliation.

l. sustained any and all hedonic damages, both past and future.

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m. sustained injuries that are or may be permanent and may continue to have said damages in the future.

n. suffered excess economic damages, wage loss, and replacement services.

o. sustained damages that are past and future; and/or

p. sustained any other damages which are applicable, and which are recoverable pursuant to statute, case law, and Michigan Court Rules.

31. As a direct and proximate result of the negligence of Defendant Michael Mason and the resulting injuries to Plaintiff, they have sustained a serious impairment of a bodily function as an objectively manifested impairment of an important body function that affects a person's ability to lead their normal life, and/or a permanent, serious disfigurement and/or a serious neurological defect (closed-head injury).

32. In addition to aforementioned injuries sustained by Plaintiff as a direct and proximate result of their motor vehicle accident, Plaintiff required reasonable and necessary medical treatment with health care providers.

33. Defendant Michael Mason is liable to reimburse Plaintiff's claims for unpaid medical expenses incurred as a proximate result of their negligent motor vehicle operation.

34. Plaintiff has incurred unpaid medical expenses arising from medical treatment provided for their accidental bodily injuries arising from the use, operation, maintenance, or ownership of a motor vehicle as a motor vehicle.

35. Defendant Michael Mason is obligated to reimburse Plaintiff for unpaid medical expenses arising from their negligent motor vehicle operation.

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36. Defendant Michael Mason has unreasonably and unlawfully refused and/or neglected to compensate Plaintiff for their bodily injuries sustained as a result of Defendant's negligent motor vehicle operation or reimburse them for unpaid medical expenses.

37. Demand for payment and proof in support of the same has been made, but Defendant Michael Mason has refused or neglected to reimburse Plaintiff for medical expenses incurred as a result of Defendant's negligent motor vehicle operation.

38. More than thirty (30) days has passed since supplying Defendant Michael Mason with the documentation.

39. Defendant Michael Mason has failed, refused, or neglected, to reimburse Plaintiff for their medical expenses incurred as a result of receiving reasonable and necessary medical treatment.

40. Defendant Michael Mason owes Plaintiff reimbursement for medical expenses incurred as a result of Defendant's negligent motor vehicle operation.

41. Defendant Michael Mason's violation of their duties and obligations owed to Plaintiff has proximately caused Plaintiff to sustain damages.

42. Plaintiff is eligible and entitled to the relief requested herein.

WHEREFORE, Plaintiff prays for damages in their favor, and against Defendant Michael Mason, whatever amount Plaintiff is found to be entitled, together with interest, costs, actual attorneys' fees, and any other such just and equitable relief deemed reasonable and necessary.

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Respectfully submitted,

APPLEBAUM & STONE, PLC

BY: */s/ Erik J. Stone*

Erik J. Stone (P55304)
Eric M. Noga (P83611)
Attorneys for Plaintiff
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Southfield, Michigan 48076
(248) 233-5050 Fax: (248) 359-8550
enoga@applebaumstone.com
estone@applebaumstone.com

Dated: April 15, 2021

APPLEBAUM & STONE, PLC

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ATTACHMENT 6

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WILLIAM CANTY,

Plaintiff,

CT NO: 21-004799-NI
HON. KATHLEEN M. MCCARTHY

-vs-

MICHAEL CHESTER MASON,

Defendant.
_____/

PROOF OF SERVICE
The Undersigned certifies that the forgoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on this 25th day of October 2022.

☐ US Mail ☐ Fax
☐ Hand Delivered ☐ UPS
☐ Fed.Express ☒ E-Filed
☐ Other

Signature *Kellie F. Klingel*

APPLEBAUM & STONE, PLC
ERIK J. STONE (P55304)
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KRAMER, CORBETT,
HARDING & DOMBROWSKI
BY: ANGELA ESSEILY (P81816)
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CHESTER MASON
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_____/

DEFENDANT MICHAEL MASON'S PARTIAL MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

NOW COMES Defendant MICHAEL CHESTER MASON, by and through his Attorneys, KRAMER, CORBETT, HARDING & DOMBROWSKI, and for his Motion for Summary Disposition, states as follows:

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1. Plaintiff filed his third-party Complaint against Defendant Michael Mason on April 15, 2021, alleging both parties were involved in a motor vehicle accident on February 15, 2021.
2. Defendant filed his response to Plaintiff's Complaint on May 25, 2021.
3. Defendant filed his Affirmative Defenses on May 25, 2021, more specifically Paragraph 30, Paragraph 31, and Paragraph 33 of Defendant's Affirmative Defenses. (**Exhibit A**, Answer and Affirmative Defenses).
4. Through the course of discovery, pursuant to this Court's scheduling order and the Michigan Court Rules, it was discovered Plaintiff had an auto insurance Policy with Liberty Mutual. (**Exhibit B,** Policy and Declaration Page).
5. Plaintiff's Liberty Mutual Policy at the time of the subject collision was a Medicare Opt Out pursuant to MCL 500.3107d, which excluded Allowable Expense Coverage to Plaintiff in the event of any alleged injuries sustained as a result of a motor vehicle accident. (**Exhibit B**).
6. Given the requirements to hold Medicare Part A and B in order to qualify for an opt out, Plaintiff had the duty to attempt to mitigate damages by submitting all bills to Medicare prior to making claims against the third-party Defendant.
7. Plaintiff is also a Veteran, who regularly treated with the Veteran's Hospital whenever he required medical attention.
8. However, following this subject collision, Plaintiff chose to seize treatment with the Veteran's Hospital as it relates to the subject collision, and instead began treating with popular no-fault providers such as Northland Radiology, Lucid Neurology, Pioneer Labs, and US Rehab & Health Services.

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9. Despite the Plaintiff and Providers being aware, or becoming aware of Plaintiff's lack of PIP coverage, Plaintiff continued to rack up bills with these providers. (**Exhibit C,** Explanations of Review from Liberty Mutual).

10. Plaintiff was aware of the limitations under his auto insurance policy with Liberty Mutual. (**Exhibit D**, Liberty Mutual Coverage Documentation).

11. Despite being aware of these limitations, Plaintiff chose to treat with Providers that did not accept Medicare and continues to treat with these same providers.

12. Even if this Court finds Plaintiff does not have a duty to mitigate damages or submit his allowable expenses to Medicare, Plaintiff is still limited to recovery for allowable expenses pursuant to the Michigan No-Fault Act.

13. Specifically, Plaintiff is limited to payment of allowable expense limits pursuant to MCL 500.3107 to MCL 500.3110.

14. Consequently, Plaintiff's is limited to payment of allowable expense limits pursuant to MCL 500. 3157.

15. Additionally, Plaintiff's providers would be subject to payment based on the Medicare fee schedule even if MCL 500.3157 was not relevant.

WHEREFORE, Defendant MICHAEL MASON requests this Honorable Court Grant his Motion for Partial Summary Disposition.

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Respectfully submitted,

HOM, CORBETT, KRAMER,
HARDING & DOMBROWSKI

/s/Angela Esseily

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Attorney for Defendants Meemic Insurance Company
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aesseily@acg.aaa.com

DATED: October 25, 2022

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WILLIAM CANTY,

Plaintiff,

CT NO: 21-004799-NI
HON. KATHLEEN M. MCCARTHY

-vs-

MICHAEL CHESTER MASON,

Defendant.
_____/

PROOF OF SERVICE
The Undersigned certifies that the forgoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on this 25th day of OCTOBER 2022.

☐ US Mail ☐ Fax
☐ Hand Delivered ☐ UPS
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☐ Other

Signature *Kellie F. Klingel*

APPLEBAUM & STONE, PLC
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KRAMER, CORBETT,
HARDING & DOMBROWSKI
BY: ANGELA ESSEILY (P81816)
Attorney for Defendant MICHAEL
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_____/

DEFENDANT'S BRIEF IN SUPPORT OF HIS PARTIAL MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

NOW COMES Defendant Michael Chester Mason, by and through is Attorneys KRAMER, CORBETT, HARDING & DOMBROWSKI, and for his Partial Motion for Summary Disposition, states as follows:

I. FACTS

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Plaintiff alleges he was injured in a motor vehicle accident on February 15, 2021. The subject collision involved Plaintiff improperly changed lanes, striking Defendant's vehicle (Exhibit A, Police Report). Plaintiff now seeks payment for alleged economic damages sustained against the innocent driver.

Plaintiff alleges is a Medicare Part A and B recipient who opted out of Allowable Expense coverage through is auto insurer, Liberty Mutual Insurance Company, pursuant to MCL 500.3107d. Prior to the motor vehicle accident, Plaintiff solely treated at the Veteran's Affair Medical Center anytime he needed to seek treatment with a doctor for any reason. Despite his normal route of treating with the medical center, Plaintiff testified he did not seek treatment with the VA for injuries allegedly sustained as a result of the motor vehicle accident. Rather, after the accident occurred, Plaintiff sought treatment with a slew of popular no-fault providers. The Providers submitted their bills to Liberty Mutual and quickly began receiving EOBs from Liberty denying the claim due to no allowable expense coverage based on the Plaintiff's Medicare Opt-out. Despite this information and knowledge, Plaintiff continued treating with these providers and the providers continued to treat him. Once more, Plaintiff and his providers continued to rack up his medical bills without pause, even while knowing the Providers do not accept Medicare.

II. STANDARD OF REVIEW

A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for a claim. "A court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party." *Healing Place at North Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51, 56; 744 NW2d 174 (2007); MCR 2.116(C)(5). "Summary disposition is appropriate if there is no genuine issue regarding

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any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

In *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999), the Court stated, "[t]he court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial." A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim, *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999), and thus, the reviewing court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

III. ARGUMENT

A. Plaintiff and His Providers Failed to Mitigate Damages Despite an Obligation to Do So.

Section 3107d of the No-Fault Act allows for complete opt of Allowable Expense Coverage when the insured is a Medicare Part A and B recipient. Contractually, Plaintiff has opted out Allowable Expense Coverage, and chose the specific coverage of Medicare which has obligated Plaintiff to seek payment of any bills incurred from Medicare. (**Exhibit** Section 3107d reads in relevant part:

> i. For an insurance policy that provides the security required under section 3101(1) and is issued or renewed after July 1, 2020, the applicant or named insured may, in a way required under section 3107e and on a form approved by the director, elect to not maintain coverage for personal protection insurance benefits payable under section 3107(1)(a) if the applicant or named insured is a qualified person, and if the applicant's or named insured's spouse and any relative of either that resides in the same household have qualified health coverage or have coverage for benefits payable under section 3107(1)(a) from an insurer that provides the security required by section 3101(1).

The legislature specifically enumerated a section of the statute addressing potential insureds with other health coverage, including Medicare Part A and B. ***Only when*** a potential

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insured has the proper coverage does the No-Fault Act allow for an opt-out of Allowable Expense Coverage. Defendant anticipates Plaintiff will allege that no portion of the statute requires Plaintiff and/or his Providers to submit bills to Medicare first. However, it is Defendant's position the legislature would not go so far as to require coverage in order to allow a person to opt out of Allowable Expense coverage.

Additionally, despite Plaintiff being well aware of his lack of coverage, he begins treating with popular No-Fault Providers such as Northland Radiology and Lucid Neurology. Prior to this accident Mr. Canty consistently treated at the VA for all medical treatment. He even sought treatment with the VA following the accident; however, only exclusively treated with the no-Fault Providers following that initial treatment. (**Exhibit D**, Plaintiff's Deposition, 43:14-18).

Despite Explanation of Review from Plaintiff's Auto Insurance Carrier, Liberty Mutual, which laid out denials due to no PIP coverage, Plaintiff's providers continued to treat Plaintiff and rack up their bills. Plaintiff continued to treat with these providers without question or concern of how his medical bills would be paid. **(Exhibit C**, Liberty Mutual EOBs).

B. Even if This Court Finds Plaintiff Had No Duty to Mitigate, Plaintiff is Still Limited to Recovery Under Section 3107 and 3157 Based on the Language in Section 3135(c)(3).

Section 3135(c)(3) of the No-Fault Act reads in relevant part:

> (3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101(1) was in effect is abolished except as to:
>
> ***
>
> (c) Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110, including all future allowable expenses and work loss, in excess of any applicable limit under section 3107c or the daily, monthly, and 3-year limitations contained in those sections, or without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d or if an exclusion under section 3109a(2) applies. The party liable for damages is entitled to an exemption reducing his or her liability by the

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amount of taxes that would have been payable on account of income the injured person would have received if he or she had not been injured.

The legislature specifically limits recovering of damages based on what is considered "allowable expenses" pursuant to Sections 3107 to 3110. Allowable expense limits are to be paid if they are **reasonable charges** for reasonably necessary products, services, and accommodations. Consequently, given Plaintiff's own policy of insurance, being Medicare Part A and B, Plaintiff's allowable expenses would only be required to be paid at the Medicare rates provided per CMS. Given, Plaintiff's anticipated insistence this is a regular tort action, the Court is directed to look to

To consider what a reasonable charge is, this Court is directed to MCL 500.3157 of the No-Fault Act. Again, given Section 3135(c)(3)'s reference to allowable expenses pursuant to 3107, it is reasonable to conclude charges would only be payable pursuant to what is reasonable and customary, or what the reasonable amount charged is, as defined by the No-Fault Act. MCL 500.3157 states in relevant part:

(1) Subject to subsections (2) to (14), a physician, hospital, clinic, or other person that lawfully renders treatment to an injured person for an accidental bodily injury covered by personal protection insurance, or a person that provides rehabilitative occupational training following the injury, may charge a reasonable amount for the treatment or training. The charge must not exceed the amount the person customarily charges for like treatment or training in cases that do not involve insurance.

(2) Subject to subsections (3) to (14), a physician, hospital, clinic, or other person that renders treatment or rehabilitative occupational training to an injured person for an accidental bodily injury covered by personal protection insurance is not eligible for payment or reimbursement under this chapter for more than the following:

(a) For treatment or training rendered after July 1, 2021 and before July 2, 2022, 200% of the amount payable to the person for the treatment or training under Medicare.

(b) For treatment or training rendered after July 1, 2022 and before July 2, 2023, 195% of the amount payable to the person for the treatment or training under Medicare.

Based on the readings of 3107 and 3135, Plaintiff cannot just claim its provider's full bills and expect payment be made based on whatever the Provider has decided to bill in that instance. By the plain reading of Section 3135(c)(3) of the statute, Plaintiff's bills incurred are

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considered allowable expenses as defined by the Michigan No-Fault Act, which is only payable at a reasonable customary rate, or in the alternative what would have been paid by Medicare considering the contract between Plaintiff and his health insurer.

WHEREFORE, for the aforementioned reasons, Defendant request this Honorable Court Grant his Motion for Partial Summary Disposition.

Respectfully submitted,

HOM, CORBETT, KRAMER,
HARDING & DOMBROWSKI

/s/Angela Esseily

Angela Esseily (P81816)
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DATED: October 25, 2022

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EXHIBIT A

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WILLIAM CANTY,

Plaintiff,

CT NO: 21-004799-NI
HON. LITA MASINI POPKE

-vs-

MICHAEL CHESTER MASON,

Defendant.
_____/

PROOF OF SERVICE
The Undersigned certifies that the forgoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on this 25th day of May 2021.

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☐ Hand Delivered ☐ UPS
☐ Fed Express ☒ E-Filed
☐ Other

Signature *s/ Kellie T. Klingel*

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_____/

DEFENDANT'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

NOW COMES Defendant, MICHAEL CHESTER MASON, by and through his attorneys, KRAMER, CORBETT, HARDING & DOMBROWSKI, and in answer to Plaintiff's Complaint says as follows:

PARTIES, JURISDICTION AND VENUE

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1. Answering paragraph 1, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

2. Answering paragraph 2, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

3. Answering paragraph 3, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

4. Answering paragraph 4, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

5. Answering paragraph 5, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

6. Answering paragraph 6, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

7. Answering paragraph 7, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

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8. Answering paragraph 8, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

9. Answering paragraph 9, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

10. Answering paragraph 10, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

11. Answering paragraph 11, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

GENERAL ALLEGATIONS

12. Defendant repeats and realleges each and every answer contained in paragraphs 1 through 11 of PARTIES, JURISDICTION AND VENUE as if set forth word for word and paragraph by paragraph.

13. Answering paragraph 13, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

14. Answering paragraph 14, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

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15. Answering paragraph 15, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

16. Answering paragraph 16, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

17. Answering paragraph 17, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

18. Answering paragraph 18, Defendant denies the allegations contained therein since they are untrue.

19. Answering paragraph 19, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

20. Answering paragraph 20, Defendant denies the allegations contained therein since they are untrue.

21. Answering paragraph 21, Defendant denies the allegations contained therein since they are untrue.

22. Answering paragraph 22, Defendant denies the allegations contained therein since they are untrue.

23. Answering paragraph 23, Defendant denies the allegations contained therein since they are untrue.

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24. Answering paragraph 24, Defendant denies the allegations contained therein since they are untrue.

25. Answering paragraph 25, Defendant denies the allegations contained therein since they are untrue.

COUNT I - COUNT TWO (SIC) AUTOMOBILE NEGLIGENCE AGAINST DEFENDANT MICHAEL CHESTER MASON

26. Defendant repeats and realleges each and every answer contained in paragraphs 1 through 11 of PARTIES, JURISDICTION AND VENUE and paragraphs 13 through 25 of GENERAL ALLEGATIONS as if set forth word for word and paragraph by paragraph.

27. Answering paragraph 27, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

28. Answering paragraph 28, Defendant denies the allegations contained therein since they are untrue.

29. Answering paragraph 29, Defendant denies the allegations contained therein since they are untrue.

30. Answering paragraph 30, Defendant denies the allegations contained therein since they are untrue.

31. Answering paragraph 31, Defendant denies the allegations contained therein since they are untrue.

32. Answering paragraph 32, Defendant denies the allegations contained therein since they are untrue.

33. Answering paragraph 33, Defendant denies the allegations contained therein since they are untrue.

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34. Answering paragraph 34, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

35. Answering paragraph 35, Defendant denies the allegations contained therein since they are untrue.

36. Answering paragraph 36, Defendant denies the allegations contained therein since they are untrue.

37. Answering paragraph 37, Defendant denies the allegations contained therein since they are untrue.

38. Answering paragraph 38, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

39. Answering paragraph 39, Defendant neither admits nor denies the allegations contained therein, since he is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, leaves Plaintiff to his proofs.

40. Answering paragraph 40, Defendant denies the allegations contained therein since they are untrue.

41. Answering paragraph 41, Defendant denies the allegations contained therein since they are untrue.

42. Answering paragraph 42, Defendant denies the allegations contained therein since they are untrue.

WHEREFORE, Defendant prays for a judgment of no cause for action or, in the alternative, that this cause be dismissed together with costs and attorney fees.

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KRAMER, CORBETT,
HARDING & DOMBROWSKI

/s/ Angela Esseily
ANGELA ESSEILY (P81816)
Attorney for Defendant MICHAEL CHESTER MASON
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aesseily@acg.aaa.com

DATED: May 25, 2021

AFFIRMATIVE DEFENSES

Defendant, MICHAEL CHESTER MASON, through his attorneys, KRAMER, CORBETT, HARDING & DOMBROWSKI, hereby avers by way of Affirmative Defenses as follows:

1. Plaintiff's claims are barred for the reason that the process issued herein is insufficient. MCR 2.116(C)(2).

2. Plaintiff's claims are barred by improper service of process, as there was no service of the Summons or Complaint upon the Defendant. MCR 2.116(C)(3).

3. Plaintiff has failed to state a claim upon which relief can be granted. MCR 2.116(C)(8).

4. Plaintiff's claims are barred for the reason that, except as to the amount of damages, there is no genuine issue as to any material fact, and Defendant is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10) .

5. That Plaintiff failed to use ordinary care to mitigate his damages and may not be compensated for damages which resulted from failure to use such care.

6. That Plaintiff's claims are barred, in whole or in part, by the doctrine(s) of res judicata and/or collateral estoppel.

7. That the benefits claimed by Plaintiff in his action, are not past due, pursuant to MCL 500.3142(1), as such losses have not yet accrued.

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8. That Plaintiff's claims are based upon an assignment of a right to benefits payable in the future and are therefore invalid pursuant to MCL 500.3143.

9. Plaintiff's claims, in whole or in part, are fraudulent or so excessive as to have no reasonable foundation, entitling Defendant to an award representing an attorney fee for the cost of defending this action pursuant to MCL 500.3148(2).

10. That Plaintiff's benefits are not past due, nor did Defendant unreasonably delay or refuse to pay such benefits as there existed a reasonable question of entitlement and/or a reasonable question of law such that Plaintiff is not entitled to an attorney fee pursuant to MCL 500.3148(1).

11. That Plaintiff's claims for benefits are not causally related to any injuries allegedly sustained as a result of the accident complained of by Plaintiff.

12. Plaintiff's claim for personal protection insurance benefits represents unreasonable, unnecessary and/or excessive charges contrary to the Michigan No-Fault Act and the policy provisions. MCL 500.3107 and MCL 500.3157.

13. Plaintiff's entitlement to personal protection insurance benefits under the alleged policy of insurance with Defendant is in dispute, in whole or in part, on the basis that the Plaintiff's claim for allowable expenses is for unreasonable or excessive charges, or were incurred for products and services which were not reasonably necessary or otherwise not causally related to injuries allegedly sustained as a result of the automobile accident complained of by Plaintiff.

14. That Plaintiff and/or those acting in concert with him have misrepresented material facts in connection with the procurement of the policy at issue and/or his claims under said policy, thereby voiding the policy and any applicable coverage there under.

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15. That Defendant has complied with all of the applicable statutes and insurance policy provisions in the handling and processing of Plaintiff's claims.

16. That any damages allegedly sustained by Plaintiff were a proximate result of Plaintiff own negligence and/or comparative negligence.

17. That any damages allegedly sustained by Plaintiff were a proximate result of the actions and/or negligence of persons and/or parties not under the control or jurisdiction of Defendant.

18. That any damages recovered by Plaintiff must be reduced in proportion to the fault attributable to him.

19. That any damages claimed by Plaintiff were not a proximate result of the accident at issue herein.

20. That Plaintiff created a sudden emergency thereby denying Defendant an assured clear distance ahead in which to stop.

21. At the time and place alleged Defendant was confronted with a sudden emergency situation not of his own making, and for which Defendant has no liability, in response to which they acted as a reasonable and prudent person would have done under like or similar circumstances.

22. Plaintiff has not suffered death, serious impairment of body function or permanent, serious disfigurement as required by MCL 500.3135 to recover damages in this action.

23. That Plaintiff's claims for economic loss are barred, in whole or in part, by the Michigan No-Fault Act, MCL 500.3135.

24. To the extent Plaintiff is found to have sustained work loss damages in excess of the limits provided for in MCL 500.3107(1)(b), Defendant is entitled to the deduction set forth in MCL 500.3135(3)(c).

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25. Defendant is entitled to all relief and set-offs permitted by the Tort Reform Act, being PA 1986, No. 178; MCL 600.6301 et seq.

26. That Plaintiff is barred from recovering damages because he is more than fifty percent (50%) at fault with regard to the accident herein.

27. That Plaintiff is barred from recovering non-economic damages herein because at the time of the accident in which the injury occurred he was operating his own vehicle which did not have in effect for that motor vehicle security required by Section 3101 of the No Fault Act.

28. Plaintiff is barred from recovering any damages herein because at the time of the accident Plaintiff had an impaired ability to function due to the influence of intoxicating liquor or a controlled substance, and as a result of that impaired ability, Plaintiff fifty percent (50%) or more the cause of the accident or event that resulted in death or injury.

29. Plaintiff has a greater percentage of negligence than Defendant because Plaintiff had the last clear chance to avoid the accident.

30. Plaintiff has failed to provide proof that all PIP has been exhausted.

31. PIP coverage has not been exhausted and as such, any claim for economic damages are barred.

32. Plaintiff holds unlimited PIP coverage, and consequently cannot claim economic damages and/or excess medical.

33. Plaintiff's claim for excess medical is not ripe.

Defendant reserves the right to assert any other Affirmative Defenses, which may become apparent as a result of discovery proceedings.

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KRAMER, CORBETT,
HARDING & DOMBROWSKI

/s/ Angela Esseily
ANGELA ESSEILY (P81816)
Attorney for Defendant MICHAEL CHESTER MASON
150 West Jefferson; Suite 1500
Detroit, Michigan 48226
313-237-5636 / 313-237-5732 (Fax)
aesseily@acg.aaa.com

DATED: May 25, 2021

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EXHIBIT B

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Policy Declarations

A summary of your auto insurance coverage

Liberty Mutual INSURANCE

Reason for this notice:

- Cancellation Non-Payment

Effective date of this change: 03/18/2021

QUESTIONS ABOUT YOUR POLICY?
By Phone
For Service:
1-800-225-7014

Liberty Mutual
PO Box 958416
Lake Mary, FL 32795-9959

Policy Declarations

INSURANCE INFORMATION

Named Insured:	Joseph Canty
Policy Number:	AOV-243-684347-40 0 4
Policy Period:	08/25/2020-03/18/2021 12:01 AM standard time at the address of the Named Insured as stated below.
Mailing Address:	23600 W 7 Mile Rd Apt D210 Apt D210 Detroit MI 48219-5610

Premium Adjustment from 03/18/2021 to 03/18/2021

VEH 1 [redacted]

Total Adjustment [redacted]

Total Adjustment Includes: MCCA and Auto Theft Fee Adjustment Of [redacted]

Assessment Recoupments: $1.00

Total Annual Policy Premium : [redacted]

Your discounts and benefits have been applied. Includes state sales tax and local surcharge where applicable.

Endorsements - Changes to Your Policy

Amendment of Policy Provisions - Michigan AS2281 07 20
Automobile Amendatory Endorsement AS3742 05 16
Amendatory Endorsement AS3905MI 10 17
Personal Injury Protection Coverage - Michigan AS2141 07 20
Amendment of Policy Definitions AS3647 03 10
Property Protection Coverage - Michigan PP 05 91 11 94
Nuclear, Bio-Chemical & Mold Exclusion Endorsement AS3660 03 10
Split Liability Limits PP 03 09 04 86
Coverage For Damage To Your Auto Exclusion Endorsement PP 13 01 12 99
Mutual Holding Company 2340e

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Liberty Mutual INSURANCE

LibertyGuard Auto Policy Declaration provided and underwritten by
Liberty Mutual Personal Insurance Company, Boston, MA.

This policy, including endorsements listed above,
is countersigned by:

Authorized Representative

President

Secretary

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Questions about your Policy?
Call 1-800-225-7014

Policy Number:
AOV-243-684347-40 0 4

Report a Claim:
1-800-2CLAIMS

Liberty Mutual INSURANCE

ACTION REQUIRED:
PLEASE REVIEW AND KEEP FOR YOUR RECORDS.

Policy Declarations

Total Annual Costs:* [redacted]

(Including Recoupments)

Save an estimated $24 annually by switching to Paid-in-Full

Policy Declarations

Bill Frequency: Monthly Installment Fee Per Payment: $2.00
*Total Annual policy premium above does not include installment fees.

All eligible discounts and benefits have been applied. Includes state sales tax and local surcharge where applicable.

Insurance Information

Named Insured:	Joseph Canty	Policy Number:	AOV-243-684347-40 0 4
Mailing Address:	23600 W 7 Mile Rd Apt D210 Apt D210 Detroit MI 48219-5610	Policy Period:	Coverage begins at the later of: (1) 12:01 AM on 08/25/2020, or (2) The time that the application for insurance is submitted and the policy is bound. No coverage is provided prior to the policy being bound. Coverage will expire at 12:01 AM on 08/25/2021
		Declarations Effective:	08/25/2020
		Affinity Affiliation:	Public Service Credit Union

Vehicles Covered by Your Auto Policy

	YEAR	MAKE	MODEL	VEHICLE ID NUMBER
1	2015	CHEVROLET	MALIBU	1G11C5SLXFF342067

Driver Information

	NAME	STATE	NAME	STATE
1	Joseph Canty	MI		

To ensure proper coverage, please contact us to add drivers not listed above.

DISCOUNTS AND BENEFITS SECTION

Your discounts and benefits have been applied to your Total Annual Policy Premium.

Policy Discounts

- Early Shopper Discount
- Claims Free Discount
- Good Payer Discount
- Military Discount
- Multi-Policy Discount
- Paperless Discount
- Preferred Payment Discount
- Violation Free Discount

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Want to Add a Coverage?
Call 1-800-225-7014 to talk to your agent about the availability of this coverage and whether it meets your needs.

Policy Number:
AOV-243-684347-40 0 4

Report a Claim:
1-800-2CLAIMS

Liberty Mutual INSURANCE

DISCOUNTS AND BENEFITS SECTION continued

Policy Benefits

Accident Forgiveness:
This policy is not eligible for Accident Forgiveness

New Car Replacement:
New Car Replacement is not included with this policy

Coverage Information

Your total annual policy premium for all covered vehicles is shown below. A premium is shown for each type of coverage you have purchased for each vehicle. Where no premium is shown, you have not purchased the indicated coverage for that vehicle.

COVERAGE	LIMITS	PREMIUM PER VEHICLE
		VEH 1 2015 CHEVROL MALIBU
A. Liability		
Bodily Injury	$ 50,000 Each Person	[redacted]
	$ 100,000 Each Accident	
Property Damage	$ 50,000 Each Accident	
C. Uninsured Motorists Has Been Rejected		
Personal Injury Protection (PIP)		
No PIP Medical		
$500 Deductible		
Work Loss Exclusion Applies		
Add'l Property Damage Liability Cov - $3,000		
Property Protection Coverage $1,000,000		
Annual Premium Per Vehicle:		
Total Annual Policy Premium: [redacted]		

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Mason Appendix 081 P.844

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Coverage Information continued

Programs Required by State Law

	VEH 1
MI Catastrophic Claims Association Deficit	$0.00
MI Auto Theft Prevention Authority	$1.00

Total Programs Required by State Law: $1.00

Total Annual Policy Costs (including Recoupments) [redacted]

Additional Coverages and Products Available*

We've reviewed your policy and have identified additional optional coverages and products that can add valuable protection. Talk to your agent about purchasing the following coverages and products and whether they meet your needs.

- Multi-Policy Discounts: Having more than one insurance policy with Liberty Mutual can save you time and money. Learn more about how you can bundle your auto, home, renters, condo, or umbrella insurance.

*These optional coverages are subject to policy provisions, limitations, and exclusions. Daily limits or a deductible may apply. For a complete explanation, please consult your agent today.

Financial Stability Score: 414

Policy Forms and Endorsements: The following forms and endorsements are applicable to your policy.

Amendment of Policy Provisions - Michigan AS2281 07 20
Amendatory Endorsement AS3905MI 10 17
Amendment of Policy Definitions AS3647 03 10
Nuclear, Bio-Chemical & Mold Exclusion Endorsement AS3660 03 10
Coverage For Damage To Your Auto Exclusion Endorsement PP 13 01 12 99
Automobile Amendatory Endorsement AS3742 05 16
Personal Injury Protection Coverage - Michigan AS2141 07 20
Property Protection Coverage - Michigan PP 05 91 11 94
Split Liability Limits PP 03 09 04 86
Mutual Holding Company 2340e

Special State Provisions

YOU HAVE QUALIFIED FOR THE FOLLOWING POTENTIAL SAVINGS BASED ON YOUR PERSONAL INJURY PROTECTION SELECTION(S):

$13.00 for the selected PIP Deductible

WARNING

ONE OR MORE OF THE INSUREDS UNDER THIS POLICY HAVE BEEN EXCLUDED FROM PERSONAL INJURY PROTECTION BENEFITS BASED ON THE AVAILABILITY OF QUALIFIED HEALTH COVERAGE. IF YOUR AVAILABLE QUALIFIED HEALTH COVERAGE CHANGES YOU MUST ADVISE US WITHIN 30 DAYS. YOU MUST OBTAIN COVERAGE FOR PERSONAL INJURY PROTECTION MEDICAL BENEFITS FOR SUCH PERSON(S) WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE TERMINATION OF QUALIFIED HEALTH COVERAGE OR THE PERSON(S) WILL NOT BE ENTITLED TO ANY PIP MEDICAL BENEFITS UNDER THIS POLICY AS PER MCL 500.3107d(6) AND MCL 500.3109a(2)(d)(i).

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Mason Appendix 082 P.845

LibertyGuard Auto Policy Declaration provided and underwritten by Liberty Mutual Personal Insurance Company (a stock insurance company), Boston, MA.

President

Secretary

This policy, including endorsements listed above, is countersigned by:

Authorized Representative

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Liberty Mutual INSURANCE

LibertyGuard Auto Policy

Please read your policy and each endorsement carefully.

To serve you best...

Liberty Mutual has over 300 offices throughout the United States. Please contact your service office shown on your Declarations Page to report losses, or for any changes or questions about your insurance. Payments should be sent to the office indicated on your bill.

THIS POLICY IS NONASSESSABLE

Liberty Mutual Insurance Group

AUTO 3422 Ed. 6-94 R1

[redacted]

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Liberty Mutual INSURANCE

LIBERTYGUARD AUTO POLICY
QUICK REFERENCE
DECLARATIONS PAGE

Your Name and Address
Your Auto or Trailer
Policy Period
Coverages and Amounts of Insurance

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*These conditions apply only if Liberty Mutual Fire Insurance Company is shown in the Declarations as the insurer.

[redacted]

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Liberty Mutual INSURANCE

AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we agree with you as follows:

DEFINITIONS

A. Throughout this policy, "you" and "your" refer to:

1. The "named insured" shown in the Declarations; and
2. The spouse if a resident of the same household.

B. "We," "us" and "our" refer to the Company providing this insurance.

C. For purposes of this policy, a private passenger type auto shall be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are in quotation marks when used.

D. "Bodily injury" means bodily harm, sickness or disease, including death that results.

E. "Business" includes trade, profession or occupation.

F. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

G. "Occupying" means in, upon, getting in, on, out or off.

H. "Property damage" means physical injury to, destruction of or loss of use of tangible property.

I. "Trailer" means a vehicle designed to be pulled by a:

1. Private passenger auto; or
2. Pickup or van.

It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.

J. "Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles on the date you become the owner:

a. a private passenger auto; or

b. a pickup or van that:

(1) has a Gross Vehicle Weight of less than 10,000 lbs.; and

(2) is not used for the delivery or transportation of goods and materials unless such use is:

(a) incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or

(b) for farming or ranching.

This provision (J.2.) applies only if:

a. you acquire the vehicle during the policy period;

b. you ask us to insure it within 30 days after you become the owner; and

c. with respect to a pickup or van, no other insurance policy provides coverage for that vehicle.

If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if you wish to add or continue Coverage for Damage to Your Auto.

If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations.

3. Any "trailer" you own.

4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
   a. breakdown;
   b. repair;
   c. servicing;
   d. loss; or
   e. destruction.

This provision (J.4.) does not apply to Coverage for Damage to Your Auto.

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Liberty Mutual INSURANCE

PART A - LIABILITY COVERAGE

INSURING AGREEMENT

A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include pre-judgment interest awarded against the "insured." We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

B. "Insured" as used in this Part means:

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer."
2. Any person using "your covered auto."
3. For "your covered auto," any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer," other than "your covered auto," any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer."

SUPPLEMENTARY PAYMENTS

In addition to our limit of liability, we will pay on behalf of an "insured":

1. Up to $250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to $50 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.
5. Other reasonable expenses incurred at our request.

EXCLUSIONS

A. We do not provide Liability Coverage for any "insured":

1. Who intentionally causes "bodily injury" or "property damage."
2. For "property damage" to property owned or being transported by that "insured."
3. For "property damage" to property:
   a. rented to;
   b. used by; or
   c. in the care of;
   that "insured."
   This exclusion (A.3.) does not apply to "property damage" to a residence or private garage.
4. For "bodily injury" to an employee of that "insured" during the course of employment. This exclusion (A.4.) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This exclusion (A.5.) does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the "business" of:
   a. selling; d. storing; or
   b. repairing; e. parking;
   c. servicing;
   vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion (A.6.) does not apply to the ownership, maintenance or use of "your covered auto" by:
   a. you;
   b. any "family member;" or
   c. any partner, agent or employee of you or any "family member."
7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" (other than farming or ranching) not described in exclusion A.6.
   This exclusion (A.7.) does not apply to

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the maintenance or use of a:

a. Private passenger auto;

b. Pickup or van that:

(1) You own; or

(2) You do not own while used as a temporary substitute for "your covered auto" which is out of normal use because of its:

a. breakdown; d. loss; or
b. repair; e. destruction; or
c. servicing;

c. "Trailer" used with a vehicle described in a. or b. above.

8. Using a vehicle without a reasonable belief that that "insured" is entitled to do so.

9. For "bodily injury" or "property damage" for which that "insured:"

a. is an insured under a nuclear energy liability policy; or

b. would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

a. American Nuclear Insurers;

b. Mutual Atomic Energy Liability Underwriters; or

c. Nuclear Insurance Association of Canada.

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

1. Any vehicle which:

a. Has fewer than four wheels; or

b. Is designed mainly for use off public roads.

This exclusion (B.1.) does not apply:

a. While such vehicle is being used by an "insured" in a medical emergency; or

b. To any "trailer."

2. Any vehicle, other than "your covered auto," which is:

a. owned by you; or

b. furnished or available for your regular use.

3. Any vehicle, other than "your covered auto," which is:

a. owned by any "family member;" or

b. furnished or available for the regular use of any "family member."

However, this exclusion (B.3.) does not apply to you while you are maintaining or "occupying" any vehicle which is:

a. owned by a "family member;" or

b. furnished or available for the regular use of a "family member."

4. Any vehicle, located inside a facility designed for racing, for the purpose of:

a. Competing in; or

b. Practicing or preparing for;

any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:

1. "Insureds;"
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

B. We will apply the limit of liability to provide any separate limits required by law for bodily injury and property damage liability. However, this provision (B.) will not change our total limit of liability.

C. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:

1. Part B or Part C of this policy; or
2. Any Underinsured Motorists Coverage provided by this policy.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which "your covered auto" is principally garaged, we will interpret your policy for that accident as follows:

A. If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for "bodily injury" or "property damage" higher than the limit shown in the Declarations, your policy will provide the higher specified limit.

2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

B. No one will be entitled to duplicate payments for the same elements of loss.

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Liberty Mutual INSURANCE

FINANCIAL RESPONSIBILITY

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

OTHER INSURANCE

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

PART B - MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

A. We will pay reasonable expenses incurred for necessary medical and funeral services because of "bodily injury:"

1. Caused by accident; and
2. Sustained by an "insured."

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

B. "Insured" as used in this Part means:

1. You or any "family member:"
   a. while "occupying;" or
   b. as a pedestrian when struck by;

   a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying" "your covered auto."

EXCLUSIONS

We do not provide Medical Payments Coverage for any "insured" for "bodily injury:"

1. Sustained while "occupying" any motorized vehicle having fewer than four wheels.
2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (2.) does not apply to a share-the-expense car pool.
3. Sustained while "occupying" any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury."
5. Sustained while "occupying," or when struck by, any vehicle (other than "your covered auto") which is:
   a. owned by you; or
   b. furnished or available for your regular use.
6. Sustained while "occupying," or when struck by, any vehicle (other than "your covered auto") which is:
   a. owned by any "family member;" or
   b. furnished or available for the regular use of any "family member."

   However, this exclusion (6.) does not apply to you.
7. Sustained while "occupying" a vehicle without a reasonable belief that that "insured" is entitled to do so.
8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured." This exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:
   a. private passenger auto;
   b. pickup or van that you own; or
   c. "trailer" used with a vehicle described in a. or b. above.
9. Caused by or as a consequence of:
   a. discharge of a nuclear weapon (even if accidental);
   b. war (declared or undeclared);
   c. civil war;
   d. insurrection; or
   e. rebellion or revolution.
10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
    a. nuclear reaction;
    b. radiation; or
    c. radioactive contamination.
11. Sustained while "occupying" any vehicle located inside a facility designed for racing, for the purpose of:
    a. competing in; or
    b. practicing or preparing for;

    any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

1. "Insureds;"

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2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part A or Part C of this policy; or
2. Any Underinsured Motorists Coverage provided by this policy.

OTHER INSURANCE

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

PART C - UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury:"
1. Sustained by an "insured;" and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle."

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

B. "Insured" as used in this Part means:
1. You or any "family member."
2. Any other person "occupying" "your covered auto."
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

C. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:
1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
   a. you or any "family member;"
   b. a vehicle which you or any "family member" are "occupying;" or
   c. "your covered auto."
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
   a. denies coverage; or
   b. is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:
1. Owned by or furnished or available for the regular use of you or any "family member."
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:
1. By an "insured" while "occupying," or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
2. By any "family member" while "occupying," or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.

B. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured:"
1. If that "insured" or the legal

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representative settles the "bodily injury" claim without our consent.

2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (B.2.) does not apply to a share-the-expense car pool.
3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so.

C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
1. Workers' compensation law; or
2. Disability benefits law.

D. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:
1. "Insureds;"
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part A or Part B of this policy; or
2. Any Underinsured Motorists Coverage provided by this policy.

C. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

D. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
1. Workers' compensation law; or
2. Disability benefits law.

OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.
2. Any insurance we provide with respect to a vehicle you do not own shall be excess over any collectible insurance providing coverage on a primary basis.
3. If the coverage under this policy is provided:
   a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.
   b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

ARBITRATION

A. If we and an "insured" do not agree:
1. Whether that "insured" is legally entitled to recover damages; or
2. As to the amount of damages which are recoverable by that "insured;"

from the owner or operator of an "uninsured motor vehicle," then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.

Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

B. Each party will:
1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:
1. Whether the "insured" is legally entitled to recover damages; and
2. The amount of damages. This applies only if the amount does not exceed the

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minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto," including their equipment, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non-owned auto" results from the same "collision," only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:

1. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. "Collision" only if the Declarations indicate that Collision Coverage is provide d for that auto.

If there is a loss to a "non-owned auto," we will provide the broadest coverage applicable to any "your covered auto" shown in the Declarations.

B. "Collision" means the upset of "your covered auto" or a "non-owned auto" or their impact with another vehicle or object.

Loss caused by the following is considered other than "collision:"

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail. Water or flood;
7. Malicious mischief or vandalism
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

If breakage of glass is caused by a "collision," you may elect to have it considered a loss caused by "collision."

C. "Non-owned auto" means:

1. Any private passenger auto, pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member;" or
2. Any auto or "trailer" you do not own while used as a temporary substitute for "your covered auto" which is out of normal use because of its:
   a. breakdown;
   b. repair;
   c. servicing;
   d. loss; or
   e. destruction.

TRANSPORTATION EXPENSES

In addition, we will pay, without application of a deductible, up to $15 per day, to a maximum of $450, for:

1. Temporary transportation expenses incurred by you in the event of a loss to "your covered auto." We will pay for such expenses if the loss is caused by:
   a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
   b. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.
2. Loss of use expenses for which you become legally responsible in the event of loss to a "non-owned auto." We will pay for loss of use expenses if the loss is caused by:
   a. Other than "collision" only if the Delcarations indicate that Other Than Collision Coverage is provided for any "your covered auto."
   b. "Collision" only if the Declarations indicate that Collision Coverage is provided for any "your covered auto."

If the loss is caused by a total theft of "your covered auto" or a "non-owned auto," we will pay only expenses incurred during the period:

1. Beginning 48 hours after the theft; and
2. Ending when "your covered auto" or the "non-owned auto" is returned to use or we pay for its loss.

If the loss is caused by other than theft of a "your covered auto" or a "non-owned auto," we will pay only expenses beginning when the auto is withdrawn from use for more than 24 hours.

Our payment will be limited to that period of time reasonably required to repair or replace the "your covered auto" or the "non-owned auto."

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Liberty Mutual INSURANCE

EXCLUSIONS

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This exclusion (1.) does not apply to a share-the-expense car pool.
2. Damage due and confined to:
   a. wear and tear;
   b. freezing;
   c. mechanical or electrical breakdown or failure; or
   d. road damage to tires.

   This exclusion (2.) does not apply if the damage results from the total theft of "your covered auto" or any "non-owned auto."
3. Loss due to or as a consequence of:
   a. radioactive contamination;
   b. discharge of any nuclear weapon (even if accidental);
   c. war (declared or undeclared);
   d. civil war;
   e. insurrection; or
   f. rebellion or revolution.
4. Loss to:
   a. Any electronic equipment designed for the reproduction of sound, including, but not limited to:
      (1) radios and stereos;
      (2) tape decks; or
      (3) compact disc players;
   b. Any other electronic equipment that receives or transmits audio, visual or data signals, including, but not limited to:
      (1) citizens band radios;
      (2) telephones;
      (3) two-way mobile radios;
      (4) scanning monitor receivers;
      (5) television monitor receivers;
      (6) video cassette recorders;
      (7) audio cassette recorders; or
      (8) personal computers;
   c. tapes, records, discs, or other media used with equipment described in a. or b.; or
   d. any other accessories used with equipment described in a. or b.

   This exclusion (4.) does not apply to:
   a. equipment designed solely for the reproduction of sound and accessories used with such equipment, provided:
      (1) The equipment is permanently installed in "your covered auto" or any "non-owned auto;" or
      (2) The equipment is:
         (a) Removable from a housing unit which is permanently installed in the auto;
         (b) Designed to be solely operated by use of the power from the auto's electrical system; and
         (c) In or upon "your covered auto" or any "non-owned auto;"

         at the time of the loss.
   b. any other electronic equipment that is:
      (1) necessary for the normal operation of the auto or the monitoring of the auto's operating systems; or
      (2) an integral part of the same unit housing any sound reproducing equipment described in a. and permanently installed in the opening of the dash or console of "your covered auto" or any "non-owned auto" normally used by the manufacturer for installation of a radio.
5. A total loss to "your covered auto" or any "non-owned auto" due to destruction or confiscation by governmental or civil authorities.

   This exclusion (5.) does not apply to the interests of Loss Payees in "your covered auto."
6. Loss to a camper body or "trailer" you own which is not shown in the Declarations. This exclusion (6.) does not apply to a camper body or "trailer" you:
   a. acquire during the policy period; and
   b. ask us to insure within 30 days after you become the owner.
7. Loss to any "non-owned auto" when used by you or any "family member" without a reasonable belief that you or that "family member" are entitled to do so.
8. Loss to:
   a. awnings or cabanas; or
   b. equipment designed to create additional living facilities.
9. Loss to equipment designed or used for the detection or location of radar or laser.

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10. Loss to any custom furnishings or equipment in or upon any pickup or van. Custom furnishings or equipment include but are not limited to:
    a. special carpeting and insulation, furniture or bars;
    b. facilities for cooking and sleeping;
    c. height-extending roofs; or
    d. custom murals, paintings or other decals or graphics.
11. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in the "business" of:
    a. selling; d. storing; or
    b. repairing; e. parking;
    c. servicing;

    vehicles designed for use on public highways. This includes road testing and delivery.
12. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in any "business" not described in exclusion 11. This exclusion (12.) does not apply to the maintenance or use by you or any "family member" of a "non-owned auto" which is a private passenger auto or "trailer."
13. Loss to "your covered auto" or any "non-owned auto," located inside a facility designed for racing, for the purpose of:
    a. competing in; or
    b. practicing or preparing for;

    any prearranged or organized racing or speed contest.
14. Loss to, or loss of use of, a "non-owned auto" rented by:
    a. you; or
    b. any "family member;"

    if a rental vehicle company is precluded from recovering such loss or loss of use, from you or that "family member," pursuant to the provisions of any applicable rental agreement or state law.

LIMIT OF LIABILITY

A. Our limit of liability for loss will be the lesser of the:
1. Actual cash value of the stolen or damaged property;
2. Amount necessary to repair or replace the property with other property of like kind and quality.

However, the most we will pay for loss to any "non-owned auto" which is a trailer is $500.

B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.

C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

PAYMENT OF LOSS

We may pay for loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:
1. You; or
2. The address shown in this policy.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a "non-owned auto" shall be excess over any other collectible source of recovery including, but not limited to:
1. Any coverage provided by the owner of the "non-owned auto;"
2. Any other applicable physical damage insurance;
3. Any other source of recovery applicable to the loss.

APPRAISAL

A. If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

B. We do not waive any of our rights under this policy by agreeing to an appraisal.

PART E - DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

A. We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

B. A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
3. Submit, as often as we reasonably require:
   a. to physical exams by physicians we select. We will pay for these exams.
   b. to examination under oath and subscribe the same.
4. Authorize us to obtain:
   a. medical reports; and
   b. other pertinent records.
5. Submit a proof of loss when required by us.

C. A person seeking Uninsured Motorists Coverage must also:

1. Promptly notify the police if a hit-and-run driver is involved.
2. Promptly send us copies of the legal papers if a suit is brought.

D. A person seeking Coverage for Damage to Your Auto must also:

1. Take reasonable steps after loss to protect "your covered auto" or any "non-owned auto" and their equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if "your covered auto" or any "non-owned auto" is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F - GENERAL PROVISIONS

BANKRUPTCY

Bankruptcy or insolvency of the "insured" shall not relieve us of any obligations under this policy.

CHANGES

A. This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.

B. If there is a change to the information used to develop the policy premium, we may adjust your premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:

1. The number, type or use classification of insured vehicles;
2. Operators using insured vehicles;
3. The place of principal garaging of insured vehicles;
4. Coverage, deductible or limits.

If a change resulting from A. or B. requires a premium adjustment, we will make the premium adjustment in accordance with our manual rules.

C. If we make a change which broadens coverage under this edition of your policy without additional premium charge, that change will automatically apply to your policy as of the date we implement the change in your state. This paragraph (C.) does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

1. A subsequent edition of your policy; or
2. An Amendatory Endorsement.

FRAUD

We do not provide coverage for any "insured" who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

LEGAL ACTION AGAINST US

A. No legal action may be brought against us until there has been full compliance with all

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Liberty Mutual. INSURANCE

the terms of this policy. In addition, under Part A, no legal action may be brought against us until:

1. We agree in writing that the "insured" has an obligation to pay; or
2. The amount of that obligation has been finally determined by judgment after trial.

B. No person or organization has any right under this policy to bring us into any action to determine the liability of an "insured."

OUR RIGHT TO RECOVER PAYMENT

A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights in this paragraph (A.) do not apply under Part D, against any person using "your covered auto" with a reasonable belief that that person is entitled to do so.

B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

POLICY PERIOD AND TERRITORY

A. This policy applies only to accidents and losses which occur:

1. During the policy period as shown in the Declarations; and
2. Within the policy territory.

B. The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada.

This policy also applies to loss to, or accidents involving, "your covered auto" while being transported between their ports.

TERMINATION

A. Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
   a. returning this policy to us; or
   b. giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
   a. at least 10 days notice:
      (1) if cancellation is for nonpayment of premium; or
      (2) if notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or
   b. at least 20 days notice in all other cases.
3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:
   a. for nonpayment of premium; or
   b. if your driver's license or that of:
      (1) any driver who lives with you; or
      (2) any driver who customarily uses "your covered auto;"

   has been suspended or revoked. This must have occurred:
      (1) during the policy period; or
      (2) since the last anniversary of the original effective date if the policy period is other than 1 year; or
   c. if the policy was obtained through material misrepresentation.

B. Nonrenewal. If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 20 days before the end of the policy period. If the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
2. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

C. Automatic Termination. If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on "your covered auto," any similar insurance provided by

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this policy will terminate as to that auto on the effective date of the other insurance.

D. Other Termination Provisions.

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
2. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered auto."

B. Coverage will only be provided until the end of the policy period.

TWO OR MORE AUTO POLICIES

If this policy and any other auto insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

***MUTUAL POLICY CONDITIONS**

You are a member of the Liberty Mutual Fire Insurance Company while this policy is in force. Membership entitles you to vote in person or by proxy at meetings of the company. The Annual Meeting is in Boston, Massachusetts, on the second Wednesday in April each year at 11 o'clock in the morning.

Also, as a member, you will receive any dividends declared on this policy by the Directors.

This policy is classified in Dividend Class IV-Automobile.

This policy has been signed by our President and Secretary at Boston, Massachusetts, and countersigned on the Declarations Page by an authorized representative.

*These conditions apply only if Liberty Mutual Fire Insurance Company is shown in the Declarations as the insurer.

PRESIDENT

SECRETARY

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POLICY NUMBER:

Liberty Mutual INSURANCE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF POLICY PROVISIONS - MICHIGAN

PERSONAL AUTO
AS 2281 07 20

I. Definitions

The following are added to the **Definitions** Section:

K. Throughout the policy, "minimum limits" refers to the following limits of liability as required by Michigan law, to be provided under a policy of automobile liability insurance:

1. $50,000 for each person, subject to $100,000 for each accident, with respect to "bodily injury"; and

2. $10,000 for each accident with respect to "property damage".

L. "Personal vehicle sharing program" means a legal entity qualified to do "business" in this state and engaged in the "business" of facilitating the sharing of private passenger motor vehicles for noncommercial use by individuals within this state. Private passenger motor vehicle as it relates to "personal vehicle sharing program" means a four wheel passenger or station wagon type motor vehicle insured under an automobile liability insurance policy covering any individuals residing in your household.

M. "Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

II. Part A - Liability Coverage

SCHEDULE

☐	Additional Property Damage Liability Coverage applies.

Part **A** is amended as follows:

A. Paragraph **A.** of the **Insuring Agreement** is replaced by the following:

INSURING AGREEMENT

We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

B. Item **B.2.** of the Insuring Agreement is replaced by the following:

2. Any person using "your covered auto" with your express or implied permission. The actual use must be within the scope of that permission.

C. The following is added to Item **B.** of the Insuring Agreement:

However, for the purposes of this coverage, "insured" does not mean any person who is using "your covered auto" under a "personal vehicle sharing program".

D. The following paragraph is added to the **Supplementary Payments** Provision:

We will pay on behalf of an "insured":

6. Prejudgment interest awarded against the "insured" on that part of the judgment we pay.

E. Exclusion **A.1.** is replaced by the following:

We do not provide Liability Coverage for any "insured":

1. Who intentionally causes "bodily injury" or "property damage" to the extent that the limits of liability for this coverage exceed the minimum limits of liability required by the Michigan Financial Responsibility Act.

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F. Exclusion **A.5.** is replaced by the following:

We do not provide Liability Coverage for any "insured":

5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes but is not limited to any period of time a vehicle is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This Exclusion (**A.5.**) does not apply:

a. To a share-the-expense car pool; or

b. To the ownership or operation of a vehicle while it is being used for volunteer or charitable purposes; or

c. When reimbursement for normal operating expenses is received.

G. Exclusion **B.4.** is replaced by the following:

We do not provide Liability Coverage for the ownership, maintenance or use of:

4. Any vehicle while it is:

a. Operating on a surface designed or used for racing, except for an organized and controlled event that is not a speed, performance, stunt or demolition event;

b. Participating in a high performance driving or racing instruction course or school; or

c. Preparing for, practicing for, used in, or competing in any prearranged or organized:

(1) race activity; or

(2) speed, performance, stunt, or demolition contest or exhibition

This Exclusion (**B.4.**) only applies to the extent that the limits of liability for this coverage exceed the "minimum limits" required by the Michigan Financial Responsibility Act.

H. The following exclusion is added with respect to vehicles subject to Section 500.3101 of the Michigan Insurance Code:

We do not provide Liability Coverage for any "insured" for damage to a motor vehicle as a result of an auto accident occurring in Michigan.

I. The following provision is added:

ADDITIONAL PROPERTY DAMAGE LIABILITY COVERAGE

If the Schedule or the Declarations indicates that Additional Property Damage Liability Coverage applies, we will pay:

1. Up to $3,000 for damage to a motor vehicle for which an "insured" becomes legally responsible because of an auto accident occurring in Michigan and arising out of the use of "your covered auto". This coverage applies only if "your covered auto" is subject to Section 500.3101 of the Michigan Insurance Code.

2. Only to the extent that there is no insurance available, except for the insurance provided by this endorsement, to pay for the damage to the motor vehicle for which the "insured" is legally responsible.

J. The Other Insurance section is replaced by the following:

OTHER INSURANCE

If there is other applicable liability insurance available any insurance we provide shall be excess over any other applicable liability insurance. If more than one policy applies on an excess basis, we will bear our proportionate share with other collectible liability insurance. However, we will share on a pro rata basis with other valid and collectible insurance of the same type that is purchased by you to apply on a primary basis. Our share will be the proportionate amount that this insurance bears to the total amount of all applicable limits.

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III. Part B - Medical Payments Coverage

Part **B** is amended as follows:

A. Item **A.** of the Insuring Agreement is replaced by the following:

A. We will pay "usual and customary charges" incurred for necessary medical and funeral services because of "bodily injury":

1. Caused by accident; and

2. Sustained by an "insured".

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

B. Item **B.2.** of the Insuring Agreement is replaced by the following:

2. Any other person while occupying your covered auto with your express or implied permission. The actual occupation must be within the scope of that permission.

3. Any other person while occupying, as a guest, an automobile not owned by you or a family member, while being operated by you or a family member.

C. The following is added to Item **B.** of the Insuring Agreement:

However, for the purposes of this coverage, "insured" does not mean any person who is "occupying" or using "your covered auto" under a "personal vehicle sharing program".

D. The following item is added to the Insuring Agreement:

"Usual and customary charges" as used in this Part means:

The lowest of the following:

1. The charge billed by the medical provider for covered treatment;

2. The eightieth percentile charge for that covered treatment in the geozip area where the provider is located, as determined through the use of a FAIRHealth or similar database;

3. The amount authorized by a state or by another law or regulation; or

4. The amount authorized by a written PPN or PPO agreement to which the Medical Provider is a party.

The "insured" shall not be responsible for payment of any reduction applied by us. If a medical provider disputes an amount paid by us, we will be responsible for resolving such disputes.

E. Exclusion **2.** is replaced by the following:

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle. This Exclusion (2.) does not apply:

a. To a share-the-expense car pool; or

b. While "your covered auto" is being used for volunteer or charitable purposes; or

c. When reimbursement for normal operating expenses is received.

F. Exclusion **11.** is replaced by the following:

11. Sustained while "occupying" any vehicle while it is:

a. operating on a surface designed or used for racing except for an organized and controlled event that is not a speed, performance, stunt or demolition event;

b. participating in a high performance driving or racing instruction course or school; or

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c. preparing for, practicing for, used in, or competing in any prearranged or organized:

(1) race activity; or

(2) speed, performance, stunt, or demolition contest or exhibition.

G. The Other Insurance section is replaced by the following:

OTHER INSURANCE

If there is other applicable auto medical payments insurance available any insurance we provide shall be excess over any other applicable auto medical payments insurance. If more than one policy applies on an excess basis, we will bear our proportionate share with other collectible auto medical payments insurance.

IV. Part C - Uninsured Motorists Coverage

A. The following is added to Part A of the Insuring Agreement:

You are not forbidden from filing a lawsuit against us within the statute of limitations to have any dispute settled by a court of proper jurisdiction if you believe that we have not appropriately responded to your requests concerning such proceedings.

B. Item **B.2.** of the Insuring Agreement is replaced by the following:

2. Any other person "occupying":

a. "Your covered auto" with your express or implied permission. The actual occupation must be within the scope of that permission; or

b. Any other auto operated by you.

C. The following is added to Item **B.** of the Insuring Agreement:

However, for the purposes of this coverage, "insured" does not mean any person who is occupying or using "your covered auto" under a "personal vehicle sharing program".

D. Paragraph **3.** of the definition of "uninsured motor vehicle" of Part **C** is replaced by the following:

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or causes an object to hit

a. You or any "family member";

b. A vehicle which you or any "family member" are "occupying"; or

c. "Your covered auto".

If there is no direct physical contact with the hit-and-run vehicle the facts of the accident must be proved. We will only accept competent evidence other than the testimony of a person making a claim under this or any similar coverage.

E. The following is added to Exclusion **B.1**:

You are not forbidden from filing a lawsuit against us within the statute of limitations to have any dispute settled by a court of proper jurisdiction if you believe that we have not appropriately responded to your requests concerning such proceedings.

F. Exclusion **B.2.** is replaced by the following:

We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":

2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle. This Exclusion (**B.2.**) does not apply:

a. To a share-the-expense car pool; or

b. While "your covered auto" is being used for volunteer or charitable purposes; or

c. When reimbursement for normal operating expenses is received.

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G. The following exclusion is added to item B.

4. While using any vehicle while it is:

a. operating on a surface designed or used for racing except for an organized and controlled event that is not a speed, performance, stunt or demolition event;

b. participating in a high performance driving or racing instruction course or school; or

c. preparing for, practicing for, used in, or competing in any prearranged or organized:

(1) race activity; or

(2) speed, performance, stunt, or demolition contest or exhibition.

H. The Other Insurance section is replaced by the following:

OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this Part of the policy:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.

2. Any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any collectible insurance

3. If the coverage under this policy is provided:

a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.

b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

V. **Part D - Coverage for Damage to Your Auto**

Part D is amended as follows:

A. Exclusion 1. is replaced by the following:

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" or any "non-owned auto" is being used by any person who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle. This Exclusion (1.) does not apply:

a. To a share-the-expense car pool; or

b. While "your covered auto" or any "non-owned auto" is being used for volunteer or charitable purposes; or

c. When reimbursement for normal operating expenses is received.

B. Exclusion 13. is replaced by the following:

13. Loss to "your covered auto" or any "non-owned auto" while it is:

a. operating on a surface designed or used for racing. This does not apply to an organized and controlled event that is not a speed, performance, stunt or demolition event;

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b. participating in a high performance driving or racing instruction course or school; or

c. preparing for, practicing for, used in, or competing in any prearranged or organized:

(1) race activity; or

(2) speed, performance, stunt, or demolition contest or exhibition.

C. The following Exclusion is added:

15. Loss to "your covered auto" or "non-owned auto" while being used in a "personal vehicle sharing program".

D. Item **A.** of the Limit of Liability is replaced by the following:

A. At our option, our limit of liability for loss will be the lowest of:

1. The actual cash value of the stolen or damaged property;

2. **a.** The amount necessary to repair or replace the property;

b. Determination of the cost of repair or replacement will be based upon one of the following:

(1) the cost of repair or replacement agreed upon by you and us;

(2) a competitive bid approved by us; or

(3) an estimate written based upon the prevailing competitive price. You agree with us that we may include in the estimate parts furnished by the original vehicle manufacturer or parts from other sources including non-original equipment manufacturers. The prevailing competitive price means prices charged by a majority of the repair market in the area where the vehicle is to be repaired as determined by us; or

3. The limit of liability shown in the Declarations.

However, the most we will pay for loss to any "non-owned auto" which is a "trailer" is $500.

VI. Part E - Duties After An Accident Or Loss

The following is added to Paragraph **A.** of Part E:

Notice to our authorized representative is any considered notice to us. Failure to give any notice required by this policy shall not invalidate any claim made by a person seeking coverage if it shall be shown not to have been reasonably possible to give such notice promptly and that notice was given as soon as was reasonably possible.

VII. Part F - General Provisions

Part F is amended as follows:

A. Items **A.** and **B.** of the Changes provision are replaced by the following:

A. This policy, your Declarations page and endorsements issued by us to this policy contain all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.

B. The premium for your policy is based on information we have received from you or other sources. You agree to cooperate with us in determining if this information is correct and complete and you will notify us if it changes. If this information is incorrect, incomplete, or changes, we will adjust your premium during the policy term or take other appropriate action based upon the corrected, completed or changed information. Changes during the policy term that will result in a premium increase or decrease during the policy term

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include, but are not limited to, changes in:

1. The number, type or use classification of insured vehicles;
2. Operators using insured vehicles, including newly licensed "family member" drivers and any household members that have licenses.
3. The location where your vehicle is principally garaged.
4. Customized equipment or parts.
5. The persons who regularly operate a covered auto.

You also agree to disclose all licensed drivers residing in your household.

B. The **Fraud** provision is replaced by the following:

FRAUD

This policy was issued in reliance upon the information provided on your application. Any changes we make at your request to this policy after inception will be made in reliance upon information you provide. We may rescind this policy if you or an "insured" have concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, at the time application was made, at the time changes were requested, or any time during the policy period.

We may deny coverage for an accident or loss if you or an "insured" have concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

We may deny coverage for fraud or material misrepresentation even after the occurrence of an accident or loss. This means we will not be liable for any claims or damages which would otherwise be covered. If we make a payment, we may request that you reimburse us. If so requested, you must reimburse us for any payments we may have already made.

C. Section **A.1** of the **Legal Action Against Us** Provision is revised as follows:

1. We agree in writing that the "insured" has an obligation to pay. You are not forbidden from filing a lawsuit against us within the statute of limitations to have any dispute settled by a court of proper jurisdiction if you believe that we have not appropriately responded to your requests concerning such proceedings; or

D. The following is added to the **Our Right To Recover Payment** Provision with respect to Uninsured Motorists Coverage:

OUR RIGHT TO RECOVER PAYMENT

We shall be entitled to recovery under Paragraph **B.** only after the person has been fully compensated for damages by another party.

E. The **Termination** Provision is replaced by the following:

TERMINATION

A. Cancellation

This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by giving us notice of the date cancellation is to take effect. You must notify us no later than the day you want cancellation to occur.
2. We may cancel by mailing to the named insured shown in the Declarations at the address last known by us or our agent:
   a. At least 10 days notice by first class mail, if cancellation is for nonpayment of premium; or
   b. At least 20 days notice by first class mail, if notice is mailed during the first 55 days this policy is in effect and this is not a renewal or continuation policy; or

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c. At least 30 days notice by certified mail, return receipt requested, in all other cases.

3. After this policy is in effect for 55 days, or if this is a renewal or continuation policy, we will cancel only:

a. For nonpayment of premium; or

b. If during the first 55 days after the original issuance of this policy, we determine that the risk is unacceptable to us; or

c. If your driver's license or that of:

(1) Any driver who lives with you; or

(2) Any driver who customarily uses "your covered auto";

has been suspended or revoked and the suspension or revocation has become final. This must have occurred:

(1) During the policy period; or

(2) Since the last anniversary of the original effective date if the policy period is other than 1 year.

d. For material misrepresentation or fraud by you with respect to any material fact in obtaining, changing, renewing this policy or with submitting any claim.

B. **Nonrenewal**

If we decide not to renew or continue this policy, we will mail notice, by first class mail, to the named insured shown in the Declarations at the address last known to us or our agent. Notice will be mailed at least 30 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.

2. 6 months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.

3. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

C. **Other Termination Provisions**

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.

2. If this policy is cancelled, you may be entitled to a premium refund. If you cancel, the refund will be computed in accordance with Michigan Law. However, making or offering to make the refund is not a condition of cancellation.

3. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

Paragraph **A.1** is added to the following:

1. The spouse is considered to be a resident of the household when there is a legitimate marital covenant, shared economic and non-economic burdens, and legitimate reasons for the spouses to be staying in another home or location; and

F. The following provisions are added:

DUTY TO REPORT CHANGES

You must promptly report to us all changes, including additions and deletions, in policy information. Further, you must report to us certain changes no later than 30 days after the change occurs. These are changes to:

1. your residence address;

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2. operators using insured vehicles, including newly licensed "family member" drivers and any household members that have licenses;
3. the location where your vehicle is principally garaged;
4. the persons who regularly operate a covered auto;
5. the driver's license or operator's permit status of you, a relative, or a resident of your household.

STORAGE COSTS

If you give us your consent, we may move the damaged property, at our expense, to reduce storage costs during the claims process. If you do not give us your consent, we will pay only the storage costs which would have resulted if we had moved the damaged property.

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AUTOMOBILE AMENDATORY ENDORSEMENT

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I. DEFINITIONS

The **Definitions** section is revised as follows:

A. The definition of "Your Covered Auto" is replaced with the following:

"Your Covered Auto" means:

1. Any vehicle shown in the Declarations.
2. A "newly acquired auto".
3. Any "trailer" you own.
4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
   a. Breakdown;
   b. Repair;
   c. Servicing;
   d. Loss; or
   e. Destruction.

This provision (4.) does not apply to Coverage For Damage To Your Auto.

B. The definition of "Newly Acquired Auto" is added as follows:

"Newly acquired auto":

1. "Newly acquired auto" means any of the following types of vehicles you become the owner of during the policy period:
   a. A private passenger auto; or
   b. A pickup or van, for which no other insurance policy provides coverage, that:
      (1) Has a Gross Vehicle Weight of less than 10,000 lbs.; and
      (2) Is not used for the delivery or transportation of goods and materials unless such use is:
         (a) Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
         (b) For farming or ranching.

   For this definition to apply to a "newly acquired auto", which is in addition to the vehicles listed in the Declarations, we must insure all other vehicles owned by you.
2. Coverage for a "newly acquired auto" is provided as described below. If you ask us to insure a "newly acquired auto" after a specified time period described below has elapsed, any coverage we provide for a "newly acquired auto" will begin at the time you request the coverage.
   a. For any coverage provided in this policy except Coverage For Damage To Your Auto, a "newly acquired auto" will have the broadest coverage we now provide for any vehicle shown in the Declarations. Coverage begins on the date you become the owner.

      However, for this coverage to apply to a "newly acquired auto" that is in addition to any vehicle shown in the Declarations, you must ask us to insure it within 30 days after you become the owner.

      If a "newly acquired auto" replaces a vehicle shown in the Declarations, coverage is provided for this vehicle without your having to ask us to insure it.
   b. Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:
      (1) 30 days after you become the owner if the Declarations indicate that Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.
      (2) Five days after you become the owner if the Declarations do not indicate that Collision Coverage applies to at least one auto. If you comply with the 5 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", a Collision deductible of $500 will apply.

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c. Other Than Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

(1) 30 days after you become the owner if the Declarations indicate that Other Than Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.

(2) Five days after you become the owner if the Declarations do not indicate that Other Than Collision Coverage applies to at least one auto. If you comply with the 5 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", an Other Than Collision deductible of $500 will apply.

II. **PART B - MEDICAL PAYMENTS COVERAGE**

Part B is revised as follows:

A. The following are added to the Insuring Agreement:

"Reasonable Expenses" means services or supplies provided by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by us or someone on our behalf, are:

1. Required to identify or treat an injury caused by an accident covered by this policy;
2. Consistent with symptoms, diagnosis, and treatment of the covered person's injury and appropriately documented in the covered person's medical records;
3. Provided in accordance with recognized standards of care for the covered person's injury at the time the charge is incurred;
4. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
5. Not primarily for the convenience of the covered person, or his or her physician, hospital, or other health care provider;
6. The most appropriate supply or level of service that can be safely provided to the covered person; and
7. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.
8. Reasonable in terms of the charge for the service or supply provided.

However, "reasonable expenses" do not include expenses for any of the following:

1. Nutritional supplements or over-the-counter drugs unless prescribed by a licensed physician;
2. Experimental services or supplies, which means services or supplies that we determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed.
3. Inpatient services or supplies provided to the covered person when these could safely have been provided to the covered person as an outpatient.

"Reasonable" - When applied to the charge for the service or supply provided means the least of:

1. The actual charge;
2. The charge negotiated with a provider; or
3. The charge determined by us based on a methodology using a database designed to reflect amounts charged by providers of medical services or supplies within the same or similar geographic region in which you receive your medical services or supplies. The database will reflect (a) service charge data regardless of the provider's specialty and (b) in the case of new procedures, services or supplies, or existing procedures, services or supplies for which there is little or no charge data, a comparison to commonly used procedures, services or supplies.

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II. PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

A. Paragraph **A.** of the **Insuring Agreement** is replaced by the following:

INSURING AGREEMENT

A. We will pay for direct and accidental loss to "your covered auto" or any "non owned auto", including their equipment, subject to **Customized Equipment Coverage**, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non owned auto" results from the same collision, only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:

1. Other than **collision** only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. **Collision** only if the Declarations indicate that Collision Coverage is provided for that auto.

If there is a loss to a "non owned auto" we will provide the broadest coverage applicable to any "your covered auto" shown in the Declarations.

B. The following **Customized Equipment Coverage** provision is added under **Part D:**

CUSTOMIZED EQUIPMENT COVERAGE

A. We will pay up to $500 for theft or damage to "customized equipment" if the loss is caused by:

1. Other than **collision** only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. **Collision** only if the Declarations indicate that Collision Coverage is provided for that auto.

Payments shall be reduced by the applicable deductible. However, only one deductible will be applied for any one loss. If you or the owner of a "non owned auto" keeps salvaged material, payments will also be reduced by the salvage value. In no way shall this coverage increase the limit of liability for "your covered auto" or any "non owned auto".

B. "Customized equipment" means any parts, equipment and accessories including devices, extensions, furnishings, fixtures, finishings, and other alterations that:

1. are permanently installed or attached by bolts or brackets;
2. are removable from a housing unit that is permanently installed inside the auto;
3. are permanently bonded to the vehicle by an adhesive or welding procedure; or
4. change the appearance or performance of the vehicle including but not limited to any additions or alterations to the chassis, engine, exterior or interior of the auto.

This includes but is not limited to ground effects, specialty rims, performance tires, specialty paint or dye, roll bars, running boards, spoilers, special interior or exterior lighting, roof/trunk racks, and high performance engine components. However, such parts, equipment and accessories that were installed by the automobile manufacturer or licensed auto dealer are not considered "customized equipment". This also includes any electronic equipment that is not necessary for the normal operation of the auto or the monitoring of the auto's operating system that is used solely for the reproduction of recorded material or used for transmitting or receiving audio, visual or data signals. However, such parts, equipment and accessories that were installed by the automobile manufacturer or licensed auto dealer or in a location the automobile manufacturer intended for such equipment, are not considered "customized equipment".

C. If you have purchased additional coverage for "customized equipment" we will pay up to the amount of coverage you have purchased in addition to the $500 limit provided by the policy. This additional coverage must be shown in the Declarations.

D. The most we will pay for parts, equipment and accessories that are:

a. not installed by the auto manufacturer or dealer and

b. permanently installed in or upon the auto is the actual cash value

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of the vehicle not including such parts, equipment and accessories.

C. The **Transportation Expenses** provision is replaced by the following:

TRANSPORTATION EXPENSES

In addition, we will pay up to $30 per day to a maximum of 30 days for any temporary transportation expenses incurred by you. This applies in the event of the theft of your covered auto.

We will pay only transportation expenses incurred during the period:

1. Beginning 48 hours after the theft; and
2. Ending when your covered auto is returned to use or we pay for its loss.

D. Exclusion **4.** is replaced by the following:

4. We will not pay for loss to equipment that is not permanently installed in or upon "your covered auto" or any "non owned auto". This consists of any equipment that is either designed for the reproduction of sound or receives or transmits audio, visual or data signals. This includes but is not limited to:
   a. radios and stereos;
   b. tape decks;
   c. compact disc players and burners;
   d. digital video disc (DVD) players and burners;
   e. citizens band radios;
   f. scanning monitor receivers;
   g. television monitor receivers;
   h. global positioning system (GPS) receivers and/or components;
   i. video cassette players and recorders;
   j. audio cassette recorders; or
   k. personal computers, which includes laptops, desktops, and personal digital assistants (PDA) or any other handheld device.

   All accessories used with the above or similar equipment are also excluded.

F. Exclusion **15.** is added as follows:

15. We will not pay for loss to "customized coverage" in excess of what is provided under Customized Equipment Coverage unless additional coverage has been purchased by endorsement and is shown in the Declarations.

G. Exclusion **16.** is added as follows:

16. We will not pay for loss to tapes, records, discs or other media used with any sound reproducing or other electronic equipment.

H. Paragraph B of the **Limit of Liability** provision of **Part D** is added as follows:

B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss. In this case, the actual cash value consists of the value of the vehicle not including any "customized equipment".

IV. PART E - DUTIES AFTER AN ACCIDENT OR LOSS

Part E is amended as follows:

A. Paragraph **B.** of **Part E** is replaced by the following:

B. A person seeking any coverage must:
   1. Cooperate with us in the investigation, settlement or defense of any claim or suit. This includes, but is not limited to, allowing us to inspect damage to a vehicle covered by this policy.
   2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
   3. Submit, as often as we reasonably require, within 30 days of our request:
      a. To physical and mental exams by physicians we select under terms we require. We will pay for these exams.
      b. To interviews and recorded statements without the need for us to conduct an examination under oath.
      c. To examination under oath and subscribe the same.
   4. Authorize us to obtain, within 30 days of our request:
      a. Medical reports; and
      b. Other pertinent records, including but not limited to, information contained in or transmitted by any device located in or on the motor vehicle.
   5. Submit a proof of loss when required by us within 30 days of our request.

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AMENDATORY ENDORSEMENT

It is agreed that the policy is amended as follows:

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

The following is added to the Exclusions:

We will not pay for damage resulting from a "collision" involving "your covered auto" or attached "trailer" if at the time of the accident "your covered auto" was operated by a driver residing in your household longer than 90 days and not listed on your policy.

This exclusion does not apply if the driver operating "your covered auto":

1. Became:
   a. a resident of your household;
   b. a guest temporarily staying as a resident of your household; or
   c. a licensed driver;

   no more than 90 days prior to the loss;
2. Was listed as an insured or rated driver under another automobile insurance policy; or
3. Was operating "your covered auto":
   a. For the purpose of obtaining emergency medical treatment for a passenger in "your covered auto"; or
   b. Because all other licensed drivers in "your covered auto" were intoxicated and the driver was not legally intoxicated. Coverage will not apply unless a police accident report is obtained at the scene of the accident or, if a police accident report is not available at the scene of the accident, as soon as possible afterwards.

All other provisions of the policy apply.

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POLICY NUMBER:

Liberty Mutual INSURANCE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL INJURY PROTECTION COVERAGE - MICHIGAN **AS 2141 07 20**

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

SCHEDULE

Benefits	**Limit Of Liability**
Medical Expenses	per person
Funeral Expenses	Up to << PIP.FUNERAL.EXP >> per person
Work Loss	Up to << PIP.WORK.LOSS >> * for any 30 day period
Replacement Services	<< PIP.REPL.SERV >> per day maximum
Survivor's loss consisting of income loss and replacement services	Up to << LOSS >> * for any 30 day period subject to a << MAX >> per day maximum for replacement services

*Or whatever amount is established under the Michigan Insurance Code for accidents occurring on or after the date of the change in the maximum.

The following options apply as indicated in your Policy Declarations or by an X in the box below:

COORDINATION OF BENEFITS

☐ Coordination of medical expenses (excluding Medicare or Medicaid benefits provided by the Federal Government) applies to you or any "family member".

☐ Coordination of work loss applies to you or any "family member".

REJECTION OF MEDICAL EXPENSES

Medical Expenses Coverage does not apply to you or any "family member".

REJECTION OF WORK LOSS

☐ Work loss does not apply to an "insured" age 60 or older who has signed a form rejecting the work loss benefit.

DEDUCTIBLE

☐ A deductible of $ applies to you or any "family member".

EXCESS ATTENDANT CARE

☐ Excess Attendant Care Coverage Limit $ per person/per accident.

QUALIFIED HEALTH COVERAGE APPLICABLE TO THE $250,000 LIMIT FOR MEDICAL EXPENSES

☐ Qualified Health Coverage applies to individuals.

I. Definitions

The Definitions Section is amended as follows:

A. The definition of "your covered auto" is replaced by the following:

"Your covered auto" means an "auto":

1. For which you are required to maintain security under the Michigan Insurance Code; and
2. To which the bodily injury liability coverage of this policy applies.

B. The following definitions are added:

1. "Auto" means a motor vehicle or trailer operated or designed for use on public roads. It does not include:
   a. A motorcycle or moped;
   b. A farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan Vehicle Code; or
   c. A vehicle operated by muscular power or with fewer than three wheels.
2. "Auto accident" means a loss involving the ownership, operation, maintenance, or use of an "auto" as an "auto" regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.

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C. "Insured" as used in this endorsement means:

1. You or any "family member" injured in an "auto accident", or
2. Anyone else injured in an "auto accident" who is a **resident** of Michigan and is entitled to Michigan no-fault benefits as a named insured, named insured's spouse or "family member" under another policy:
   a. While "occupying" "your covered auto";
   b. While "occupying" any other "auto";
      (1) Which is operated by you or any "family member"; and
      (2) To which Part **A** of this policy applies.
3. Anyone else injured in an "auto accident" while "occupying" a motorcycle if the accident involves "your covered auto".

However, for the purposes of this coverage, "insured" does not mean any person who is "occupying" or using "your covered auto" under a "personal vehicle sharing program".

D. "Medical expenses" means all reasonable fees for reasonably necessary products and services and accommodations for a covered person's care, recovery, or rehabilitation.

E. "Medical Provider" means a person licensed, certified, or registered under Section 550.52(d) of the Michigan Prudent Purchaser Act.

F. **"Qualified health coverage"** means either of the following:

1. Other health or accident coverage in which:
   a. Such coverage does not exclude or limit coverage for "bodily injury" sustained in an "auto accident"; and
   b. The annual deductible for such coverage is $6,000 or less per individual or the amount as annually adjusted by the Director of the Department of Insurance and Financial Services; or
2. Coverage provided under Parts A and B of Medicare.

G. "Reside", "resides" or "residing" means to currently live in a place permanently or for any extended period of time as a primary and legal domicile.

H. "Usual and customary charges" as used in this endorsement means:

The lowest of the following:

1. The charge billed by the medical provider for covered treatment;
2. The eightieth percentile charge for that covered treatment in the geozip area where the provider is located, as determined through the use of a FAIRHealth or similar database;
3. The amount authorized by a state or by another law or regulation; or
4. The amount authorized by a written PPN or PPO agreement to which the "Medical Provider" is a party.

The "insured" shall not be responsible for payment of any reduction applied by us. If a medical provider disputes an amount paid by us, we will be responsible for resolving such disputes.

II. **Personal Injury Protection Coverage**

INSURING AGREEMENT

A. We will pay personal injury protection benefits to or for an "insured" who sustains "bodily injury". The "bodily injury" must:

1. Be caused by accident; and
2. Result from the ownership, maintenance or use of an "auto" as an "auto".

B. These benefits are subject to the provisions of the Michigan Insurance Code. Subject to the limits shown in the Schedule or your Policy Declarations, personal injury protection benefits consist of the following:

1. **"Medical Expenses"**

   "Usual and customary charges" incurred for reasonable and necessary services rendered for an "insured's":

   a. Care;
   b. Recovery; or
   c. Rehabilitation.

   This includes attendant care.

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Only semi-private room charges will be paid unless special or intensive care is required.

2. **Funeral Expenses**

   Reasonable expenses, up to the scheduled limits, for professional funeral and burial services.

3. **Work Loss**

   Up to 85% of an "insured's" actual loss of income from work. We will pay a higher percentage if the "insured" gives us reasonable proof that net income is more than 85% of gross income. The most we will pay in any 30 day period for this benefit is the amount shown in the Schedule or your Policy Declarations unless another amount is established by law. Any income an "insured" earns during the 30 day period is included in determining the income benefit we will pay. This benefit is payable for loss sustained during the 3 years after the accident. It does not apply after an "insured" dies. We will prorate this benefit for any period less than 30 days.

4. **Replacement Services**

   Reasonable expenses for obtaining services to replace those an "insured" would have done:

   a. Without pay; and

   b. For the benefit of that "insured" or that "insured's" dependents.

   This benefit is payable for loss sustained during the 3 years after the accident. It does not apply after an "insured" dies.

5. **Survivor's Loss**

   a. Income Loss

   The contributions a deceased "insured's" spouse and dependents would have received as dependents, if the "insured" had not died. The contributions must be tangible things of economic value, not including services.

   b. Replacement Services

   Reasonable expenses incurred for obtaining services to replace those a deceased "insured" would have done for that "insured's" spouse and dependents.

   The most we will pay in any 30 day period for the total of these benefits is the amount shown in the Schedule or your Policy Declarations unless another amount is established by law. These benefits are payable for loss sustained during the 3 years after the accident. A deceased "insured's" spouse must have either:

   a. **Resided** with; or

   b. Been dependent on;

   the "insured" at the time of death. The benefits end for a spouse at remarriage or death.

   Any other person who was dependent upon the deceased "insured" at the time of death qualifies for benefits if, and as long as that dependent is:

   a. Under age 18; or

   b. Physically or mentally unable to earn a living; or

   c. In a full time formal program of academic or vocational education or training.

6. **Coordination of Benefits**

   a. If coordination of medical expenses is applicable as shown in the schedule and you do not have other medical insurance applicable to the "bodily injury" at the time of the accident, any amount payable for medical expenses or work loss shall be subject to a $500 penalty deductible per accident.

   b. If coordination of work loss is applicable as shown in the schedule and you do not have other disability insurance applicable to the "bodily injury" at the time of the accident, any amount payable for medical expenses or work loss shall be subject to a $500 penalty deductible per accident.

   c. If **6.a.** and **6.b.** are applicable as shown in the schedule and you do not have other medical or disability insurance applicable to

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the "bodily injury" at the time of the accident, any amount payable for medical expenses or work loss shall be subject to a $500 penalty deductible per accident. This $500 penalty deductible is in addition to the personal injury protection deductible you elect as shown in your Policy Declarations.

EXCLUSIONS

A. We do not provide Personal Injury Protection Coverage for "bodily injury":

1. To any "insured" who intentionally caused the "bodily injury".
2. Sustained by any "insured" using an "auto" which that "insured" had taken unlawfully. This Exclusion (**A.2.**) does not apply if the "insured" had a reasonable belief that he or she was entitled to use the "auto".
3. Sustained by any person while not "occupying" an "auto" if the accident takes place outside Michigan. However, this Exclusion (**A.3.**) does not apply to:
   a. You;
   b. Any "family member".
4. To you while "occupying", or struck by while not "occupying", any "auto":
   a. Owned or registered by you; and
   b. Which is not "your covered auto".
5. Sustained by the owner or registrant of an "auto" involved in the accident and for which the security required under the Michigan Insurance Code is not in effect.
6. Sustained by any "family member" entitled to Michigan no-fault benefits as a named insured under another policy providing similar coverage except while an operator or passenger of a motorcycle involved in the accident.
7. Sustained while "occupying", or struck by while not "occupying", an "auto" (other than "your covered auto") if:
   a. Operated by you or any "family member"; and
   b. The owner or registrant has the security required under the Michigan Insurance Code.

   This Exclusion (**A.7.**) does not apply to:
   a. You;
   b. Any "family member".
8. Sustained while "occupying" an "auto" located for use as a residence or premises.
9. Sustained while "occupying" a public auto for which the security required under the Michigan Insurance Code is in effect. This Exclusion (**A.9.**) does not apply to "bodily injury" to you or a "family member" while a passenger in a:
   a. School bus;
   b. Certified common carrier;
   c. Bus operated under government sponsored transportation program;
   d. Bus operated by or servicing a non-profit organization;
   e. Bus operated by a watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point; or
   f. Taxicab; or
   g. a transportation network platform vehicle.
   h. Motor vehicle insured under a policy for which the person named on the policy has elected not to maintain personal injury protection coverage or to which exclusion related to "qualified health coverage" applies under such policy.
10. Sustained by you or any "family member" while "occupying" an "auto" which is owned or registered by:
    a. Your employer;
    b. Any "family member's" employer;

    for which the security required under the Michigan Insurance Code is in effect.

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11. Sustained by any person other than you or any "family member" while "occupying" an "auto" other than "your covered auto":

    a. For which the owner or registrant is not required to provide security under the Michigan Insurance Code; and

    b. Which is being operated by you or a "family member" outside Michigan.

    This Exclusion (**A.11.**) does not apply to:

    a. You or any "family member"; or

    b. Medical or funeral expense benefits.

12. Arising out of the ownership, operation, maintenance or use of a parked "auto". This Exclusion (**A.12.**) does not apply if:

    a. The "auto" was parked in such a way as to cause unreasonable risk of the "bodily injury"; or

    b. The "bodily injury" resulted from physical contact with:

        (1) Equipment permanently mounted on the "auto" while the equipment was being used; or

        (2) Property being lifted onto or lowered from the "auto"; or

    c. The "bodily injury" was sustained while "occupying" the "auto".

    However, Exceptions **b.** and **c.** to this Exclusion (**A.12.**) do not apply to any employee that has Michigan workers' disability compensation benefits available and who sustains "bodily injury" in the course of employment while loading, unloading, or doing mechanical work on an auto, unless the injury arises from the use or operation of another vehicle.

13. Sustained in an "auto accident" by you or any "family member" while an operator or passenger of a motorcycle, if the owner, registrant or operator of the "auto" has provided security for that "auto" as required under the Michigan Insurance Code.

14. Sustained while "occupying" any vehicle while it is:

    a. operating on a surface designed or used for racing except for an organized and controlled event that is not a speed, performance, stunt or demolition event;

    b. participating in a high performance driving or racing instruction course or school; or

    c. preparing for, practicing for, used in, or competing in any prearranged or organized:

        (1) race activity; or

        (2) speed, performance, stunt, or demolition contest or exhibition.

15. Caused by the actual, alleged or threatened presence, growth, proliferation or spread of "fungi" or bacteria.

16. Sustained while "occupying your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time while it is being used by any person who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle. This exclusion (**A.16.**) does not apply to a share-the-expense car pool.

17. Sustained in an "auto accident" by you, a "family member" or any other person while operating an "auto" or "motorcycle" in a manner that results in a felony driving conviction.

    This exclusion applies even if:

    c. such "bodily injury" is of a different kind or degree than intended or reasonably expected; or

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d. such "bodily injury" is sustained by a different person than intended or reasonably expected.

18. Sustained by anyone who is not a **resident** of Michigan unless, at the time of the accident, such person is the owner of a motor vehicle which is registered in Michigan and for which the security required under the Michigan Insurance Code is in effect.

B. We do not provide Personal Injury Protection Coverage for:

1. Medical expenses for you or any "family member":

a. to the extent that similar benefits are paid or payable in accordance with prescribed guidelines of any "medical provider" or accident coverage provider, under any other insurance, service, benefit or reimbursement plan. This includes but is not limited to any:

(1) individual, blanket or group accident disability or hospitalization insurance;

(2) medical or surgical reimbursement plan;

(3) automobile no-fault benefits or medical expense benefits, or premises insurance affording medical expense benefits;

(4) HMOs, PPOs, or other medical plans, excluding Medicare or Medicaid benefits provided by the Federal Government; and

b. If Coordination of Benefits for medical expenses is indicated in the Schedule or your Policy Declarations.

2. Work loss for you or any "family member":

a. to the extent that similar benefits are paid or payable in accordance with prescribed guidelines of any "medical provider" or accident coverage provider, under any other insurance, service, benefit or reimbursement plan. This includes any valid and collectible:

(1) individual, blanket or group accident or disability insurance;

(2) salary or wage continuation program, including sick pay programs;

(3) workers' compensation law, or similar disability law, or any state or federal government laws, except Social Security Retirement Benefits; and

b. If Coordination of Benefits for work loss is indicated in the Schedule or your Policy Declarations.

3. Work loss for an "insured" age 60 or older if:

a. Rejection of Work Loss is indicated in the Schedule or your Policy Declarations; and

b. That "insured" has signed a form rejecting the work loss benefit.

4. Medical expenses for you if you:

a. are covered under **qualified health coverage** as defined in Paragraph **E.1.** of the Definitions section; and

b. if the Policy Declarations indicate that you:

(1) have **qualified health coverage**; and

(2) are excluded from Personal Injury Protection Medical coverage.

5. Medical expenses for any **family member** if such person:

a. is covered under **qualified health coverage** as defined in Paragraph **E.1.** or **E.2.** of the Definitions section; and

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b. if the Policy Declarations indicate that you:

(1) have **qualified health coverage**; and

(2) are excluded from Personal Injury Protection Medical coverage.

6. Medical expenses for you or any **family member** if:

a. rejection of medical expenses is indicated in your Policy Declarations; and

b. the named insured has signed a form rejecting coverage for medical expenses.

LIMIT OF LIABILITY

A. The limits of liability shown in the Schedule or your Policy Declarations for Personal Injury Protection Coverage are the most we will pay for each "insured" injured in any one accident, regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in your Policy Declarations;
4. Vehicles involved in the accident; or
5. Insurers providing no-fault benefits.

Any amount payable under this insurance shall be reduced by:

a. Any amounts paid, payable or required to be provided by state or federal law except any amounts paid, payable or required to be provided by Medicare, or Medicaid provided that the benefits:

(1) Serve the same purpose as personal injury protection benefits paid or payable to an "insured" under this policy; and

(2) Are provided or required to be provided as a result of the same accident for which this insurance is payable. However, this insurance shall not be reduced by any amount of workers' compensation benefits if workers' compensation benefits that are required to be provided are not available to an "insured".

b. Any deductible you elect. However, the deductible applies only to you and any "family member".

B. Excess Attendant Care

If Excess Attendant Care is indicated in your Policy Declarations, we will pay up to the limits shown in your Policy Declarations. The Excess Attendant Care Coverage limit shown in your Policy Declarations is in addition to the Limit Of Liability shown in your Policy Declarations for medical expenses.

III. Part E - Duties After An Accident Or Loss

Part E is amended as follows:

A. Duties **B.1.** and **B.5.** are replaced by the following:

A person seeking coverage must:

1. Cooperate with us in the investigation or settlement of any claim.
2. Submit a written proof of claim when required by us.

B. Duty **B.2.** does not apply.

C. The following duty is added:

A person seeking coverage must promptly send us copies of the legal papers if a suit is brought.

D. Paragraph B.3.b. does not apply.

IV. Part F - General Provisions

Part F is amended as follows:

A. The **Legal Action Against Us** Provision is replaced by the following:

LEGAL ACTION AGAINST US

No legal action may be brought against us until there has been full compliance with the terms of this coverage. In addition, no legal action may be brought against us after one year from the date of accident causing the injury unless:

1. Written notice of the injury has been given to us within one year from the date of the accident; or

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2. We have already paid any personal injury protection benefits for the injury.

If either **1.** or **2.** apply, you may bring action against us. Action must be brought within one year from the date the most recent medical or funeral expense or work or survivor's loss was incurred.

The commencement of an action and the recovery of benefits is tolled from the date of a specific claim for payment of personal injury protection benefits until the date we formally deny the claim. Such tolling does not apply if the person claiming the benefits fails to pursue the claim with reasonable diligence.

No one may recover benefits for any portion of the loss incurred more than one year before the date on which the action was begun.

B. The **Our Right To Recover Payment** Provision is amended as follows:

OUR RIGHT TO RECOVER PAYMENT

1. Paragraph **A.** of the provision is replaced by the following:

   If we make a payment under this coverage and the person to or for whom payment was made has a right to recover damages from the owner or operator of a motor vehicle, and that owner or operator is an uninsured motorist, we shall be subrogated to that right. That person shall do:

   1. Whatever is necessary to enable us to exercise our rights; and
   2. Nothing after loss to prejudice them.

2. The following is added to Paragraph **B.** of the provision:

Our right is subject to any applicable limitations stated in the Michigan Insurance Code.

C. The following provisions are added:

DUPLICATION OF BENEFITS

No one will be entitled to duplicate payments for the same elements of loss under this coverage regardless of the number of:

1. Vehicles covered; or
2. Insurers (including self-insurers) providing coverage in accordance with the Michigan Insurance Code or any other similar law.

If there is any other insurance plan providing coverage for expenses or loss covered under Personal Injury Protection Coordination of Benefits or primary Benefits, the coverage provided under this Personal Injury Protection Coordination of Benefits or Primary Benefits shall be coordinated with the coverage available under all such policies and plans so that up to, but no more than, one hundred percent (100%) of any such expenses or loss shall be recoverable under this and all such policies and plans combined.

An "insured" who sustains "bodily injury" resulting from an "auto accident" which shows evidence of the involvement of an "auto" while an operator or passenger of a motorcycle shall claim insurance benefits in the following order of priority:

1. The insurer of the owner or registrant of the "auto" involved in the accident.
2. The insurer of the operator of the "auto" involved in the accident.
3. The "auto" insurer of the operator of the motorcycle involved in the accident.
4. The "auto" insurer of the owner or registrant of the motorcycle involved in the accident.

If personal injury protection benefits are payable under two or more policies in the same order of priority, the benefits are only payable up to an aggregate coverage limit that equals the highest available coverage limit under any one of the policies.

Other Insurance

If Medical Expenses are payable under two or more policies, benefits are only payable up to an aggregate coverage

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limit that equals the highest available coverage limit under any one of the policies.

If an "insured" is a named insured under this Policy and that "insured" is insured as a "family member" under another policy providing similar coverage, Medical Expenses benefits for such named insured are only payable up to the Limit Of Liability shown in your Policy Declarations for each person under this Policy.

PREMIUM RECOMPUTATION

The Michigan Insurance Code places certain limitations on a person's right to sue for damages. The premium for this policy reflects these limitations. A court from which there is no appeal can declare any of these limitations unenforceable. If this occurs, we will have the right to recompute the premium. You can choose to delete any coverage as the result of the court's decision. If you do, we will compute any refund of premium on a pro rata basis.

Qualified Health Coverage Ineligibility

The named insured shall notify us when "qualified health coverage" has been terminated for you or any "family member" if your Policy Declarations indicates that coverage for medical expenses is excluded for you or any "family member". In such case, the named insured shall obtain coverage for personal injury protection benefits within 30 days after the effective date of the termination of "qualified health coverage".

If it is determined that:

1. The named insured did not have a "qualified health coverage" as defined in Paragraph **D.1.** of the Definitions section; or
2. Any "family member" did not have "qualified health coverage" as defined in Paragraph **D.1.** or **D.2.** of the Definitions section;

in effect at the time an accident occurred which resulted in "bodily injury" to that named insured, "family member" after the 30-day period in which the "qualified health coverage" has elapsed and the named insured did not obtain personal injury protection coverage within such period, such injured person is not entitled to medical expenses benefits under this Policy.

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AMENDMENT OF POLICY DEFINITIONS - MICHIGAN

THIS ENDORSEMENT CHANGES YOUR POLICY - PLEASE READ IT CAREFULLY

THIS ENDORSEMENT SUPERCEDES ALL OTHER ENDORSEMENTS WHICH HAVE BEEN MADE PART OF YOUR POLICY AND REFERENCE THESE SAME PROVISIONS.

It is agreed that item **A.** under the **DEFINITIONS** provisions of the contract is deleted and replaced with the following:

A. Throughout this policy, "you" and "your" refer to:
1. the "named insured" shown in the declarations, and the spouse of the "named insured," if a resident of the same household; or
2. the partner in a civil union, registered domestic partnership or other similar union or partnership, with the "named insured" shown in the Declarations, if a resident of the same household.

Section **2.** above, only applies if the civil union, registered domestic partnership or other similar union or partnership is validly entered into under the law of any state, territory or possession of the United States of America, any territory or province of Canada, or the equivalent of a state or province of any other country.

The spouse or partner is considered a resident of the household when there is a legitimate marital covenant or lawfully recognized partnership, shared economic and non-economic burdens, and legitimate reasons for the spouse or partner to be staying in another home or location.

It is further agreed that paragraph **A.** of the **TRANSFER OF YOUR INTEREST IN THIS POLICY** is deleted and replaced with the following:

A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

1. the surviving spouse or partner in a civil union, registered domestic partnership or other similar union or partnership. Coverage applies to the spouse or partner in a civil union, registered domestic partnership or other similar union or partnership as if a named insured shown in the declarations; and
2. the legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered auto."

All other terms and conditions of this policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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PROPERTY PROTECTION COVERAGE - MICHIGAN

With respect to coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

SCHEDULE

Benefit	Limit of Liability
Property Protection Coverage	$1,000,000

I. DEFINITIONS

The Definitions section is amended as follows:

A. The definition of "your covered auto" is replaced by the following:

"Your covered auto" means an "auto":

1. Which you own;
2. For which you are required to maintain security under the Michigan Insurance Code; and
3. To which the property damage liability coverage of this policy applies.

B. The following definition is added:

"Auto" means a motor vehicle or trailer operated or designed for use on public roads. However, "auto" does not include:

1. A motorcycle or moped;
2. A farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan Vehicle Code; or
3. A vehicle operated by muscular power or with fewer than three wheels.

C. "Insured" as used in this endorsement means:

1. You or any "family member" for the ownership, maintenance or use of any "auto". This applies only if Part **A** of this policy applies to that "auto".
2. Any person using "your covered auto" which is owned by you.

II. PROPERTY PROTECTION COVERAGE

INSURING AGREEMENT

We will pay, for an "insured", "property damage":

1. Caused by an accident; and
2. Resulting from the ownership, maintenance or use of an "auto" as an "auto".

This coverage is subject to the provisions of the Michigan Insurance Code. Property protection benefits apply only to accidents which happen in Michigan.

EXCLUSIONS

We do not provide Property Protection Coverage for "property damage":

1. Intentionally caused by any claimant.
2. To the property of any "insured" using "your covered auto" without your expressed or implied consent.
3. To "your covered auto" or its contents.
4. To any vehicle which is not "your covered auto" or its contents. This exclusion (4.) does not apply if the vehicle was:
   a. Damaged by "your covered auto"; and
   b. Parked in such a way as not to cause unreasonable risk of the "property damage".
5. To property owned by either:
   a. You; or
   b. Any "family member";
   if you or any "family member" were the:
   a. Owner;
   b. Operator; or
   c. Registrant;
   of an "auto" involved in the accident which caused the "property damage".
6. Resulting from an accident involving an "auto" not owned by, but used by:
   a. You; or
   b. Any "family member";
   to the extent the owner or registrant has the security required under the Michigan Insurance Code.
7. To any property while an "auto" is located for use as a residence or premises.
8. Occurring within the course of the business of:
   a. Repairing;
   b. Servicing; or
   c. Otherwise maintaining;
   motor vehicles.

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Liberty Mutual INSURANCE

LIMIT OF LIABILITY

Our maximum limit of liability for property protection insurance for all "property damage" resulting from any one auto accident is $1,000,000. This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Vehicles involved in the accident; or
5. Insurers providing property protection insurance.

However, we will pay the lesser of:

1. Reasonable repair costs; or
2. Replacement costs minus depreciation.

We will also pay, where applicable, the value of loss of use.

III. **PART E - DUTIES AFTER AN ACCIDENT OR LOSS**

Part E is amended as follows:

A. Duty **B.1.** is replaced by the following:

A person seeking coverage must cooperate with us in the investigation or settlement of any claim.

B. The following duties are added:

A person seeking payment must:

1. Take reasonable steps after an accident, at our expense, to protect the damaged property. Any "property damage" due to failure to protect the property will not be paid under this insurance.
2. Permit us to inspect and appraise the damaged property before its repair or disposal.

IV. **PART F - GENERAL PROVISIONS**

Part F is amended as follows:

A. The Legal Action Against Us provision is replaced by the following:

LEGAL ACTION AGAINST US

No legal action may be brought against us until there has been full compliance with the terms of this coverage. In addition, no legal action may be brought against us later than one year from the date of the accident causing the "property damage".

B. The Our Right to Recover Payment provision is amended as follows:

OUR RIGHT TO RECOVER PAYMENT

1. Paragraph **A.** of the provision does not apply.
2. The following is added to Paragraph **B.**:

   Our right is subject to any applicable limitations stated in the Michigan Insurance Code.

C. The following provisions are added:

DUPLICATION OF BENEFITS

No one will be entitled to duplicate payments for the same elements of loss under this coverage regardless of the number of:

1. Vehicles covered; or
2. Insurers (including self-insurers) providing security in accordance with the Michigan Insurance Code or any other similar law.

PREMIUM RECOMPUTATION

The Michigan Insurance Code places certain limitations on a person's right to sue for damages. The premium for the policy reflects these limitations. A court from which there is no appeal can declare any of these limitations unenforceable. If this occurs, we will have the right to recompute the premium. You may choose to delete any coverage as the result of the court's decision. In that event, we will compute any refund of premium on a pro rata basis.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

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Liberty Mutual INSURANCE

NUCLEAR, BIOLOGICAL, CHEMICAL & MOLD EXCLUSION ENDORSEMENT **AS 3660 03 10**

THIS EXCLUSION APPLIES TO ALL COVERAGES PROVIDED BY THIS POLICY INCLUDING ANY AND ALL ENDORSEMENTS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

We **do not** provide coverage for loss, damage, injury, liability, cost or expense, due to or as a consequence of, whether controlled or uncontrolled or however caused:

a. Nuclear exposure, reaction or explosion including resulting fire, smoke, radiation or contamination; and/or

b. Biological or chemical attack or exposure to biological or chemical agents, or combination of such agents, including resulting contamination or pollution.

We **do not** provide coverage for loss, damage, injury, liability, cost or expense arising out of or aggravated by, in whole or in part, "mold, fungus, wet rot, dry rot, bacteria or virus."

"Mold, fungus, wet rot, dry rot, bacteria or virus" means any type or form of fungus, rot, virus or bacteria. This includes mold, mildew and any mycotoxins, other microbes, spores, scents or byproducts produced or released by mold, mildew, fungus, rot, bacteria, or virus.

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Liberty Mutual INSURANCE

SPLIT LIABILITY LIMITS

PP 03 09 04 86

SCHEDULE

Bodily Injury Liability	**$**	**each person**
	$	**each accident**
Property Damage Liability	**$**	**each accident**

The first paragraph of the Limit of Liability provision in Part A is replaced by the following:

LIMIT OF LIABILITY

The limit of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one auto accident. Subject to this limit for each person, the limit of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for "bodily injury" resulting from any one auto accident. The limit of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" resulting from any one auto accident. This is the most we will pay regardless of the number of:

1. "Insureds;"
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

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Liberty Mutual INSURANCE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION ENDORSEMENT

PERSONAL AUTO
PP 13 01 12 99

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

I. Definitions

The following definition is added:

"Diminution in value" means the actual or perceived loss in market or resale value which results from a direct and accidental loss.

II. Part D - Coverage For Damage To Your Auto

The following exclusion is added:

We will not pay for:

Loss to "your covered auto" or any "non-owned auto" due to "diminution in value".

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

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Notice of Membership in Liberty Mutual Holding Company Inc.

While this policy is in effect, the named insured first named in the Declarations is a member of Liberty Mutual Holding Company Inc. and is entitled to vote either in person or by proxy at any and all meetings of the members of said company. The Annual Meeting of Liberty Mutual Holding Company Inc. is in Boston, Massachusetts, on the second Wednesday in April each year at ten o'clock in the morning.

The named insured first named in the Declarations shall participate in the distribution of any dividends declared by us for this Policy. The amount of such Named Insured's participation is determined by the decision of our Board of Directors in compliance with any laws that apply.

Any provisions in the policy relating to:

1. Membership in Liberty Mutual Insurance Company or Liberty Mutual Fire Insurance Company; or
2. Entitlement to dividends as a member of Liberty Mutual Insurance Company or Liberty Mutual Fire Insurance Company

are deleted and replaced by the preceding paragraphs.

2340e

[redacted]

EXHIBIT C

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Explanation of Review
*** * * * THIS IS NOT A BILL * * * ***

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Insurance Co

LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
PO BOX 5014
SCRANTON, PA 18505-5014

Bill: L01-N474-200376

Provider

PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient

CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 **Type:** LA **Specialty (1):** CL
Specialty (2): CL

Claim Number: 0447867440001
DOI/DOL: 02-15-2021
CR Date / BR Date: 01-03-2022 01-05-2022

Rendering Provider: PIONEER LAB HOUSTON, LP
External ID: 1347510
Invoice No: 10520Z73950

Policyholder/Insured: JOSEPH CANTY
Policyholder/Insured Address: 23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Bill Details

Dates of Service: 02-26-2021 to 06-17-2021
Post Date: 01-14-2022

Reviewer: SD HJ
Pay Auth: 99
Client Type of Bill: 48
Adjuster: n1542319
CR Seq: 0520220103000008705024308033

Bill ICD Version: 10

Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
Dx B: Z02.89 ENCOUNTER FOR OTHER ADMINISTRATIVE EXAMINATIONS
Dx C: G89.21 CHRONIC PAIN DUE TO TRAUMA

Line	Date	POS	Rev./Proc. Code	Dx.	Charges	Units	BR	Description	UR	ADJ	PPO/NEG	CPY/DED	POLICY	Explanation Code(s) Allow.
1	02-26-2021	81	80349	BC	325.00	1	325.00	CANNABINOIDS NATURAL						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 1 DOS: 02-26-2021 Reviewed: 01-07-2022														
2	02-26-2021	81	80369	BC	250.00	1	250.00	SKELETAL MUSCLE RELAXANT						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 2 DOS: 02-26-2021 Reviewed: 01-07-2022														
3	02-26-2021	81	80373	BC	375.00	1	375.00	DRUG SCREENING TRAMADOL						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 3 DOS: 02-26-2021 Reviewed: 01-07-2022														
4	02-26-2021	81	82575	A	150.00	1	150.00	CREATININE CLEARANCE TES						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 4 DOS: 02-26-2021 Reviewed: 01-07-2022														
5	02-26-2021	81	83986-59	BC	100.00	1	100.00	ASSAY PH BODY FLUID NOS						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 5 DOS: 02-26-2021 Reviewed: 01-07-2022														
6	02-26-2021	81	80307	A	1,000.00	1	1,000.00	DRUG TEST PRSMV CHEM ANL						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 6 DOS: 02-26-2021 Reviewed: 01-07-2022														

IF PAYMENT IS DUE, CHECK WILL BE SENT UNDER SEPARATE COVER. APPEALS MUST BE SUBMITTED IN WRITING WITH COPY OF THIS EOR AND SUPPORTING DOCUMENTATION TO

PO BOX 5014, SCRANTON, PA 18505-5014. FOR QUESTIONS CALL: 888-288-7218

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DCN Number: 20220105 0520220103000008705024308033

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Explanation of Review
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Insurance Co

LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
PO BOX 5014
SCRANTON, PA 18505-5014

Bill: L01-N474-200376

Provider

PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient

CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 **Type:** LA **Specialty (1):** CL
Specialty (2): CL

Rendering Provider: PIONEER LAB HOUSTON, LP
External ID: 1347510
Invoice No: 10520Z73950

Claim Number: 0447867440001
DOI/DOL: 02-15-2021
CR Date / BR Date: 01-03-2022 01-05-2022

Policyholder/Insured: JOSEPH CANTY
Policyholder/Insured Address: 23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Bill Details

Dates of Service: 02-26-2021 to 06-17-2021
Post Date: 01-14-2022

Reviewer: SD HJ
Pay Auth: 99
Client Type of Bill: 48
Adjuster: n1542319
CR Seq: 052022010300000870502430803 3

Bill ICD Version: 10

Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
Dx B: Z02.89 ENCOUNTER FOR OTHER ADMINISTRATIVE EXAMINATIONS
Dx C: G89.21 CHRONIC PAIN DUE TO TRAUMA

Line	Date	POS	Rev./Proc. Code	Dx.	Units	Description					Explanation Code(s)
				Charges	BR	UR	ADJ	PPO/NEG	CPY/DED	POLICY	Allow.
7	02-26-2021	81	80323	BC	1	ALKALOIDS NOS					224, B41
				200.00	200.00						0.00
Duplicate Reference ID: N474-197523 Line 7 DOS: 02-26-2021 Reviewed: 01-07-2022											
8	02-26-2021	81	80324	BC	1	DRUG SCREEN AMPHETAMINES					224, B41
				300.00	300.00						0.00
Duplicate Reference ID: N474-197523 Line 8 DOS: 02-26-2021 Reviewed: 01-07-2022											
9	02-26-2021	81	80345	BC	1	DRUG SCREENING BARBITURA					224, B41
				162.50	162.50						0.00
Duplicate Reference ID: N474-197523 Line 9 DOS: 02-26-2021 Reviewed: 01-07-2022											
10	02-26-2021	81	80346	BC	1	BENZODIAZEPINES1 12					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 10 DOS: 02-26-2021 Reviewed: 01-07-2022											
11	02-26-2021	81	80348	BC	1	DRUG SCREENING BUPRENORP					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 11 DOS: 02-26-2021 Reviewed: 01-07-2022											
12	03-25-2021	81	80349	BC	1	CANNABINOIDS NATURAL					975, B41
				350.00	306.00		44.00				0.00
13	03-25-2021	81	80369	BC	1	SKELETAL MUSCLE RELAXANT					224, B41
				250.00	250.00						0.00
Duplicate Reference ID: N474-197523 Line 13 DOS: 03-25-2021 Reviewed: 01-07-2022											

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LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
PO BOX 5014
SCRANTON, PA 18505-5014

Bill: L01-N474-200376

Provider

PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient

CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 **Type:** LA **Specialty (1):** CL
Specialty (2): CL

Rendering Provider: PIONEER LAB HOUSTON, LP
External ID: 1347510
Invoice No: 10520Z73950

Claim Number: 0447867440001
DOI/DOL: 02-15-2021
CR Date / BR Date: 01-03-2022 01-05-2022

Policyholder/Insured: JOSEPH CANTY
Policyholder/Insured Address: 23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Bill Details

Dates of Service: 02-26-2021 to 06-17-2021
Post Date: 01-14-2022

Reviewer: SD HJ
Pay Auth: 99
Client Type of Bill: 48
Adjuster: n1542319
CR Seq: 052022010300000870502430803 3

Bill ICD Version: 10

Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
Dx B: Z02.89 ENCOUNTER FOR OTHER ADMINISTRATIVE EXAMINATIONS
Dx C: G89.21 CHRONIC PAIN DUE TO TRAUMA

Line	Date	POS	Rev./Proc. Code	Dx.	Charges	Units	BR	Description	UR	ADJ	PPO/NEG	CPY/DED	POLICY	Explanation Code(s) Allow.
14	03-25-2021	81	80373	BC	375.00	1	375.00	DRUG SCREENING TRAMADOL						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 14 DOS: 03-25-2021 Reviewed: 01-07-2022														
15	03-25-2021	81	82575	A	150.00	1	150.00	CREATININE CLEARANCE TES						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 15 DOS: 03-25-2021 Reviewed: 01-07-2022														
16	03-25-2021	81	83986-59	BC	100.00	1	100.00	ASSAY PH BODY FLUID NOS						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 16 DOS: 03-25-2021 Reviewed: 01-07-2022														
17	03-25-2021	81	80307	A	1,000.00	1	1,000.00	DRUG TEST PRSMV CHEM ANL						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 17 DOS: 03-25-2021 Reviewed: 01-07-2022														
18	03-25-2021	81	80323	BC	200.00	1	200.00	ALKALOIDS NOS						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 18 DOS: 03-25-2021 Reviewed: 01-07-2022														
19	03-25-2021	81	80324	BC	300.00	1	300.00	DRUG SCREEN AMPHETAMINES						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 19 DOS: 03-25-2021 Reviewed: 01-07-2022														
20	03-25-2021	81	80345	BC	162.50	1	162.50	DRUG SCREENING BARBITURA						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 20 DOS: 03-25-2021 Reviewed: 01-07-2022														

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LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
PO BOX 5014
SCRANTON, PA 18505-5014

Bill: L01-N474-200376

Provider

PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient

CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 **Type:** LA **Specialty (1):** CL
Specialty (2): CL

Rendering Provider: PIONEER LAB HOUSTON, LP
External ID: 1347510
Invoice No: 10520Z73950

Claim Number: 0447867440001
DOI/DOL: 02-15-2021
CR Date / BR Date: 01-03-2022 01-05-2022

Policyholder/Insured: JOSEPH CANTY
Policyholder/Insured Address: 23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Bill Details

Dates of Service: 02-26-2021 to 06-17-2021
Post Date: 01-14-2022

Reviewer: SD HJ
Pay Auth: 99
Client Type of Bill: 48
Adjuster: n1542319
CR Seq: 052022010300000870502430803 3

Bill ICD Version: 10

Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
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Line	Date	POS	Rev./Proc. Code	Dx.	Units	Description					Explanation Code(s)
				Charges	BR	UR	ADJ	PPO/NEG	CPY/DED	POLICY	Allow.
21	03-25-2021	81	80346	BC	1	BENZODIAZEPINES1 12					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 21 DOS: 03-25-2021 Reviewed: 01-07-2022											
22	03-25-2021	81	80348	BC	1	DRUG SCREENING BUPRENORP					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 22 DOS: 03-25-2021 Reviewed: 01-07-2022											
23	05-06-2021	81	80349	ABC	1	CANNABINOIDS NATURAL					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 29 DOS: 05-06-2021 Reviewed: 01-07-2022											
24	05-06-2021	81	80369	ABC	1	SKELETAL MUSCLE RELAXANT					224, B41
				250.00	250.00						0.00
Duplicate Reference ID: N474-197523 Line 30 DOS: 05-06-2021 Reviewed: 01-07-2022											
25	05-06-2021	81	80373	ABC	1	DRUG SCREENING TRAMADOL					224, B41
				375.00	375.00						0.00
Duplicate Reference ID: N474-197523 Line 31 DOS: 05-06-2021 Reviewed: 01-07-2022											
26	05-06-2021	81	80307	ABC	1	DRUG TEST PRSMV CHEM ANL					224, B41
				1,000.00	1,000.00						0.00
Duplicate Reference ID: N474-197523 Line 23 DOS: 05-06-2021 Reviewed: 01-07-2022											
27	05-06-2021	81	80323	ABC	1	ALKALOIDS NOS					224, B41
				200.00	200.00						0.00
Duplicate Reference ID: N474-197523 Line 24 DOS: 05-06-2021 Reviewed: 01-07-2022											

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Insurance Co LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
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SCRANTON, PA 18505-5014

Bill: L01-N474-200376

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PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient
CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 **Type:** LA **Specialty (1):** CL
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Bill ICD Version: 10
Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
Dx B: Z02.89 ENCOUNTER FOR OTHER ADMINISTRATIVE EXAMINATIONS
Dx C: G89.21 CHRONIC PAIN DUE TO TRAUMA

Line	Date	POS	Rev./Proc. Code	Dx.	Units	Description					Explanation Code(s)
				Charges	BR	UR	ADJ	PPO/NEG	CPY/DED	POLICY	Allow.
28	05-06-2021	81	80324	ABC	1	DRUG SCREEN AMPHETAMINES					224, B41
				300.00	300.00						0.00
Duplicate Reference ID: N474-197523 Line 25 DOS: 05-06-2021 Reviewed: 01-07-2022											
29	05-06-2021	81	80345	ABC	1	DRUG SCREENING BARBITURA					224, B41
				162.50	162.50						0.00
Duplicate Reference ID: N474-197523 Line 26 DOS: 05-06-2021 Reviewed: 01-07-2022											
30	05-06-2021	81	80346	ABC	1	BENZODIAZEPINES1 12					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 27 DOS: 05-06-2021 Reviewed: 01-07-2022											
31	05-06-2021	81	80348	ABC	1	DRUG SCREENING BUPRENORP					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 28 DOS: 05-06-2021 Reviewed: 01-07-2022											
32	05-06-2021	81	82575	ABC	1	CREATININE CLEARANCE TES					224, B41
				150.00	150.00						0.00
Duplicate Reference ID: N474-197523 Line 32 DOS: 05-06-2021 Reviewed: 01-07-2022											
33	05-06-2021	81	83986-QW	ABC	1	ASSAY PH BODY FLUID NOS					224, B41
				100.00	100.00						0.00
Duplicate Reference ID: N474-197523 Line 33 DOS: 05-06-2021 Reviewed: 01-07-2022											
34	06-03-2021	81	80349	ABC	1	CANNABINOIDS NATURAL					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 40 DOS: 06-03-2021 Reviewed: 01-07-2022											

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DCN Number: 20220105 052022010300000870 5024308033

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RECEIVED by MCOA 9/29/2023 11:38:34 AM

Explanation of Review
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Insurance Co

LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
PO BOX 5014
SCRANTON, PA 18505-5014

Bill: L01-N474-200376

Provider

PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient

CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 **Type:** LA **Specialty (1):** CL
Specialty (2): CL

Rendering Provider: PIONEER LAB HOUSTON, LP
External ID: 1347510
Invoice No: 10520Z73950

Claim Number: 0447867440001
DOI/DOL: 02-15-2021
CR Date / BR Date: 01-03-2022 01-05-2022

Policyholder/Insured: JOSEPH CANTY
Policyholder/Insured Address: 23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Bill Details

Dates of Service: 02-26-2021 to 06-17-2021
Post Date: 01-14-2022

Reviewer: SD HJ
Pay Auth: 99
Client Type of Bill: 48
Adjuster: n1542319
CR Seq: 052022010300000870502430803 3

Bill ICD Version: 10

Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
Dx B: Z02.89 ENCOUNTER FOR OTHER ADMINISTRATIVE EXAMINATIONS
Dx C: G89.21 CHRONIC PAIN DUE TO TRAUMA

Line	Date	POS	Rev./Proc. Code	Dx.	Charges	Units	BR	Description	UR	ADJ	PPO/NEG	CPY/DED	POLICY	Explanation Code(s) Allow.
35	06-03-2021	81	80369	ABC	250.00	1	250.00	SKELETAL MUSCLE RELAXANT						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 41 DOS: 06-03-2021 Reviewed: 01-07-2022														
36	06-03-2021	81	80373	ABC	375.00	1	375.00	DRUG SCREENING TRAMADOL						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 42 DOS: 06-03-2021 Reviewed: 01-07-2022														
37	06-03-2021	81	82575	ABC	150.00	1	150.00	CREATININE CLEARANCE TES						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 43 DOS: 06-03-2021 Reviewed: 01-07-2022														
38	06-03-2021	81	83986-QW-59	ABC	100.00	1	91.75	ASSAY PH BODY FLUID NOS		8.25				975, B41 0.00
39	06-03-2021	81	80307	ABC	1,000.00	1	1,000.00	DRUG TEST PRSMV CHEM ANL						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 34 DOS: 06-03-2021 Reviewed: 01-07-2022														
40	06-03-2021	81	80323	ABC	200.00	1	200.00	ALKALOIDS NOS						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 35 DOS: 06-03-2021 Reviewed: 01-07-2022														
41	06-03-2021	81	80324	ABC	300.00	1	300.00	DRUG SCREEN AMPHETAMINES						224, B41 0.00
Duplicate Reference ID: N474-197523 Line 36 DOS: 06-03-2021 Reviewed: 01-07-2022														

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Insurance Co

LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
PO BOX 5014
SCRANTON, PA 18505-5014

Bill: L01-N474-200376

Provider

PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient

CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 **Type:** LA **Specialty (1):** CL
Specialty (2): CL

Rendering Provider: PIONEER LAB HOUSTON, LP
External ID: 1347510
Invoice No: 10520Z73950

Claim Number: 0447867440001
DOI/DOL: 02-15-2021
CR Date / BR Date: 01-03-2022 01-05-2022

Policyholder/Insured: JOSEPH CANTY
Policyholder/Insured Address: 23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Bill Details

Dates of Service: 02-26-2021 to 06-17-2021
Post Date: 01-14-2022

Reviewer: SD HJ
Pay Auth: 99
Client Type of Bill: 48
Adjuster: n1542319
CR Seq: 052022010300000870502430803 3

Bill ICD Version: 10

Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
Dx B: Z02.89 ENCOUNTER FOR OTHER ADMINISTRATIVE EXAMINATIONS
Dx C: G89.21 CHRONIC PAIN DUE TO TRAUMA

Line	Date	POS	Rev./Proc. Code	Dx.	Units	Description					Explanation Code(s)
				Charges	BR	UR	ADJ	PPO/NEG	CPY/DED	POLICY	Allow.
42	06-03-2021	81	80345	ABC	1	DRUG SCREENING BARBITURA					224, B41
				162.50	162.50						0.00
Duplicate Reference ID: N474-197523 Line 37 DOS: 06-03-2021 Reviewed: 01-07-2022											
43	06-03-2021	81	80346	ABC	1	BENZODIAZEPINES1 12					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 38 DOS: 06-03-2021 Reviewed: 01-07-2022											
44	06-03-2021	81	80348	ABC	1	DRUG SCREENING BUPRENORP					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 39 DOS: 06-03-2021 Reviewed: 01-07-2022											
45	06-17-2021	81	80349	ABC	1	CANNABINOIDS NATURAL					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 45 DOS: 06-17-2021 Reviewed: 01-07-2022											
46	06-17-2021	81	80369	ABC	1	SKELETAL MUSCLE RELAXANT					224, B41
				250.00	250.00						0.00
Duplicate Reference ID: N474-197523 Line 46 DOS: 06-17-2021 Reviewed: 01-07-2022											
47	06-17-2021	81	80373	ABC	1	DRUG SCREENING TRAMADOL					224, B41
				375.00	375.00						0.00
Duplicate Reference ID: N474-197523 Line 47 DOS: 06-17-2021 Reviewed: 01-07-2022											
48	06-17-2021	81	82575	ABC	1	CREATININE CLEARANCE TES					224, B41
				150.00	150.00						0.00
Duplicate Reference ID: N474-197523 Line 48 DOS: 06-17-2021 Reviewed: 01-07-2022											

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Insurance Co

LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
PO BOX 5014
SCRANTON, PA 18505-5014

Bill: L01-N474-200376

Provider

PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient

CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 **Type:** LA **Specialty (1):** CL
Specialty (2): CL

Rendering Provider: PIONEER LAB HOUSTON, LP
External ID: 1347510
Invoice No: 10520Z73950

Claim Number: 0447867440001
DOI/DOL: 02-15-2021
CR Date / BR Date: 01-03-2022 01-05-2022

Policyholder/Insured: JOSEPH CANTY
Policyholder/Insured Address: 23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Bill Details

Dates of Service: 02-26-2021 to 06-17-2021
Post Date: 01-14-2022

Reviewer: SD HJ
Pay Auth: 99
Client Type of Bill: 48
Adjuster: n1542319
CR Seq: 052022010300000870502430803 3

Bill ICD Version: 10

Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
Dx B: Z02.89 ENCOUNTER FOR OTHER ADMINISTRATIVE EXAMINATIONS
Dx C: G89.21 CHRONIC PAIN DUE TO TRAUMA

Line	Date	POS	Rev./Proc. Code	Dx.	Units	Description					Explanation Code(s)
				Charges	BR	UR	ADJ	PPO/NEG	CPY/DED	POLICY	Allow.
49	06-17-2021	81	83986-QW-59	ABC	1	ASSAY PH BODY FLUID NOS					975, B41
				100.00	91.75		8.25				0.00
50	06-17-2021	81	80307	ABC	1	DRUG TEST PRSMV CHEM ANL					224, B41
				1,000.00	1,000.00						0.00
Duplicate Reference ID: N474-197523 Line 50 DOS: 06-17-2021 Reviewed: 01-07-2022											
51	06-17-2021	81	80323	ABC	1	ALKALOIDS NOS					224, B41
				200.00	200.00						0.00
Duplicate Reference ID: N474-197523 Line 51 DOS: 06-17-2021 Reviewed: 01-07-2022											
52	06-17-2021	81	80324	ABC	1	DRUG SCREEN AMPHETAMINES					224, B41
				300.00	300.00						0.00
Duplicate Reference ID: N474-197523 Line 52 DOS: 06-17-2021 Reviewed: 01-07-2022											
53	06-17-2021	81	80345	ABC	1	DRUG SCREENING BARBITURA					224, B41
				162.50	162.50						0.00
Duplicate Reference ID: N474-197523 Line 53 DOS: 06-17-2021 Reviewed: 01-07-2022											
54	06-17-2021	81	80346	ABC	1	BENZODIAZEPINES1 12					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 54 DOS: 06-17-2021 Reviewed: 01-07-2022											
55	06-17-2021	81	80348	ABC	1	DRUG SCREENING BUPRENORP					224, B41
				325.00	325.00						0.00
Duplicate Reference ID: N474-197523 Line 55 DOS: 06-17-2021 Reviewed: 01-07-2022											

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Insurance Co

LIBERTY MUTUAL | SAFECO - MI -
Insurance Co: LIBERTY MUTUAL PERSONAL INS CO
PO BOX 5014
SCRANTON, PA 18505-5014

Bill: L01-N474-200376

Provider

PIONEER LAB HOUSTON
1650 W BAKER RD STE B
BAYTOWN, TX 77521-2284

Patient

CANTY, JOSEPH
23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Tax ID: 471677831 Type: LA Specialty (1): CL
Specialty (2): CL

Rendering Provider: PIONEER LAB HOUSTON, LP
External ID: 1347510
Invoice No: 10520Z73950

Claim Number: 0447867440001
DOI/DOL: 02-15-2021
CR Date / BR Date: 01-03-2022 01-05-2022

Policyholder/Insured: JOSEPH CANTY
Policyholder/Insured Address: 23600 W 7 MILE RD APT D210
DETROIT, MI 48219-5610

Bill Details

Dates of Service: 02-26-2021 to 06-17-2021
Post Date: 01-14-2022

Reviewer: SD HJ
Pay Auth: 99
Client Type of Bill: 48
Adjuster: n1542319

CR Seq: 052022010300000870502430803 3

Bill ICD Version: 10

Dx A: Z79.899 OTHER LONG TERM (CURRENT) DRUG THERAPY
Dx B: Z02.89 ENCOUNTER FOR OTHER ADMINISTRATIVE EXAMINATIONS
Dx C: G89.21 CHRONIC PAIN DUE TO TRAUMA

Line	Date	POS	Rev./Proc. Code	Dx.	Charges	Units	BR	Description	UR	ADJ	PPO/NEG	CPY/DED	Explanation Code(s) POLICY	Allow.

Totals

Total Charges:	17,587.50
Bill Review Reductions:	17,527.00
Bill Review Allowance:	60.50
Adjuster Reductions:	60.50
Recommended Allowance:	0.00

Messages

224 A CHARGE WAS MADE FOR A DUPLICATE PROCEDURE AND OR SUPPLY.

975 THIS LINE ITEM WAS REVIEWED USING THE FAIR HEALTH CHARGE BENCHMARK DATABASE MODULE BASED ON THE PROVIDER GEOGRAPHIC AREA.

B41 PAYMENT OF YOUR BILL IS DENIED BECAUSE THERE IS NO FIRST PARTY MEDICAL COVERAGE ON THE POLICY.

Notes

* Unless otherwise noted, this bill has been reviewed according to rules and guidelines established under the Michigan Insurance Code Chapter 500, section 500.3157 for dates of service on or after 7 2 2021. Unless otherwise noted, bill review reductions for dates prior to 7 2 2021 are in accordance with PPO contract guidelines, or negotiated contract guidelines, or due to charges exceeding amounts that would appear reasonable for the provider's geographical region, and or policy limits.

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EXHIBIT D

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FORM C

Michigan Selection of Personal Injury Protection (PIP) Medical Coverage

Liberty Mutual INSURANCE

AGENCY:	APPLICANT/NAMED INSURED: Joseph Canty	
	INSURANCE COMPANY: Liberty Mutual Personal Insurance Company	
	POLICY/QUOTE NO.: AOV-243-684347-40	EFFECTIVE DATE: 08/25/2020

READ THIS ENTIRE FORM CAREFULLY

THE PURPOSE OF THIS FORM

The purpose of this form is to explain the choice you have regarding your **Personal Injury Protection (PIP) medical** coverage and to assist you in making that choice. Read this form carefully because the choice you make will have financial consequences.

Personal Injury Protection (PIP) Medical Coverage Explained

Personal Injury Protection (PIP) pays allowable expenses for your care, recovery, rehabilitation, wage loss and replacement services. PIP coverage also includes some funeral expense benefits and survivor's benefits which are paid to your dependents if injuries from an auto accident result in your death. This form allows you to select the level of **PIP medical** coverage you want included with your auto policy.

This form is divided into three sections, which are described below.

- Section A will review your **PIP medical** coverage options and the risks and benefits of each option.
- Section B will ask you to choose ONE coverage option.
- Section C will ask you to certify your choice and acknowledge the information within this form.

NOTICE

You must choose the level of **PIP medical** coverage you wish to have under your auto policy. If you do not make a selection from the options listed:

- Your policy will be issued with unlimited **PIP medical** coverage; AND
- You will be charged the appropriate premium for this coverage.

Definitions

The terms in bold letters throughout this form are defined below for informational purposes only and are not intended to limit or expand coverage that may be available in a particular policy.

Applicant means a person who has submitted an application for insurance but is not yet insured under a policy.

Attendant care means services to assist an injured person with tasks they would normally do for themselves (e.g., eating, bathing, dressing, grooming, and medication administration). It may also involve supervision or other types of support.

Excess attendant care means additional coverage purchased for **attendant care** above the **PIP medical** coverage limit selected for your policy.

Michigan Assigned Claims Plan is a program that may pay benefits to people injured in an accident involving a motor vehicle when there is no applicable auto insurance policy.

Named insured means the individual(s) named in an insurance policy.

Personal Injury Protection (PIP) Medical is coverage under an auto insurance policy issued in Michigan that pays allowable expenses for medical care, recovery, rehabilitation, and some funeral expenses.

Qualified health coverage means either of the following:

- Health and accident coverage that does not exclude or limit coverage for injuries related to auto accidents and has an annual individual deductible of $6,000 or less; OR

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Mason Appendix 139

Liberty Mutual INSURANCE

- Coverage under both Medicare Parts A and B.

Medicaid and health care sharing ministries are examples of coverages that are NOT considered **qualified health coverage**.

Family member means a person related to you by blood, marriage, civil union, domestic partnership or adoption who is a resident of your household. This includes a ward or foster child who is a resident of your household.

Section A: Your PIP Medical Choices and the Risks and Benefits of Each

Option 1: Unlimited Coverage

This option provides the most coverage. It will pay for **all** allowable expenses for your care, recovery, and rehabilitation if you are injured in an auto accident.

Risks	The premiums for this option are higher than premiums for other options.
Benefits	**PIP medical** will cover costs that may not be covered by health insurance, such as rehabilitation and **attendant care**. This choice will significantly limit the risk that you will have out-of-pocket costs for your care.

Option 2: Limited Coverage of $500,000 or Option 3: Limited Coverage of $250,000

If you choose one of these limits, this amount is the most your auto insurance company will pay per person per accident for an injured person's expenses under **PIP medical** coverage.

Risks	Limited **PIP medical** coverages may not be enough to cover your medical expenses. If your **PIP medical** limit is reached, you may need to rely on other health coverage, which may not cover all medical, rehabilitation or **attendant care** costs. If you do not have other health coverage, you may be personally responsible for paying these expenses. NOTE: Your insurance company must offer **excess attendant care** coverage, which you may purchase for an additional premium. Check with your agent or company for additional information.
Benefits	Lower coverage limits have less expensive premiums than plans with higher or unlimited **PIP medical** coverage. Up to the limit chosen, **PIP medical** will cover the cost of products and services that may not be covered by health insurance, such as rehabilitation and **attendant care**.

Option 4: Limited Coverage of $250,000, with some or all persons excluded from **PIP medical**

This option is only available if you choose the $250,000 **PIP medical** limit.

- A **named insured** who wishes to exclude **PIP medical** must have **qualified health coverage** that is not Medicare.
- Any **family member** who wishes to exclude **PIP medical** must have **qualified health coverage**.

Anyone who is excluded **will** have no **PIP medical** coverage. Anyone who is not excluded will have $250,000 in **PIP medical** coverage.

Risks	ANYONE YOU EXCLUDE WILL NOT HAVE **PIP MEDICAL** COVERAGE. In addition: • Persons relying on **qualified health coverage** to pay for auto accident injuries should be aware that, unlike auto insurance, health insurance stops paying when the policy ends or is canceled. • If any excluded person loses **qualified health coverage**, you must notify your insurer within 30 days of loss of coverage.

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Mason Appendix 140

Liberty Mutual INSURANCE

Section A (Continued)

	• Within 30 days of losing **qualified health coverage**, if an excluded person is injured in an auto accident, coverage will be provided by the **Michigan Assigned Claims Plan** up to $2,000,000 if they have no other **qualified health coverage** or **PIP medical** coverage. • A person who has not obtained **qualified health coverage** or **PIP medical** coverage within 30 days of the loss of coverage will not be entitled to any **PIP medical** benefits. NOTE: Your insurance company must offer **excess attendant care**, which you may purchase for an additional premium. This coverage is only available to those who are not excluded from **PIP medical** coverage. Check with your agent or company for additional information.
Benefits	You will pay a reduced premium because you will not be charged a premium for **PIP medical** coverage for anyone who is excluded.

Option 5: Limited Coverage of $50,000

If you choose this limit, $50,000 is the most your auto insurance company will pay per person per accident for an injured person's expenses under **PIP medical** coverage.

You may select this option if:

- The **applicant** or **named insured** is enrolled in Medicaid; AND
- All **family members** have one of the following:
  - **a)** **qualified health coverage;**
  - **b)** Medicaid enrollment, or
  - **c)** coverage under another auto policy with **PIP medical** coverage.

Risks	Limited **PIP medical** coverages may not be enough to cover the cost of your medical care. If your **PIP medical** limit is reached, you may need to rely on other health coverage, which may not cover all medical, rehabilitation or **attendant care** costs. If you do not have other health coverage, you may be personally responsible for paying these expenses. NOTE: Your insurance company must offer **excess attendant care** coverage, which you may purchase for an additional premium. Check with your agent or company for additional information.
Benefits	Lower coverage limits have less expensive premiums than plans with higher or unlimited **PIP medical** coverage. Up to the limit chosen, **PIP medical** will cover the cost of products and services that may not be covered by health insurance, such as rehabilitation and **attendant care**.

Option 6: No **PIP medical** coverage for anyone covered by this policy

You may select this option if:

- The **applicant** or **named insured** has coverage under both Medicare Parts A and B, AND
- All **family members** covered by the policy have **qualified health coverage** or are covered under another auto policy with **PIP medical** coverage.

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FORM C

Liberty Mutual INSURANCE

Section A (Continued)

Risks	NO **PIP MEDICAL** COVERAGE WILL BE PROVIDED UNDER YOUR POLICY. You and any other persons covered by this policy will not have **PIP medical** coverage. You and those persons may have to rely on other health coverage to pay for medical expenses resulting from an auto accident, which may not cover all products and services that **PIP medical** provides. • Persons relying on **qualified health coverage** to pay for auto accident injuries should be aware that, unlike auto insurance, health insurance stops paying when the policy ends or is canceled. • If anyone covered by the policy loses **qualified health coverage**, you must notify your insurer within 30 days of loss of the coverage. • Within the 30 days of losing **qualified health coverage**, if anyone covered by the policy is injured in an auto accident, coverage will be provided by the **Michigan Assigned Claims Plan** up to $2,000,000 if they have no other **qualified health coverage** or **PIP medical** coverage. • A person who has not obtained **qualified health coverage** or **PIP medical** coverage within 30 days of the loss of coverage will not be entitled to any **PIP medical** benefits.
Benefits	You will pay a reduced premium because your policy will not be charged a premium for **PIP medical** coverage.

Section B: PIP Medical Coverage Options and Certification

Make your selection carefully because the choice you make will have financial consequences. If you choose more than one option, your insurer will provide you with the option that has the highest level of benefits and will charge the appropriate premium for that option.

If not already marked, please indicate your PIP Medical Coverage selection:

☐ Option 1: Unlimited coverage **OR**

☐ Option 2: $500,000 per person per accident **OR**

☐ Option 3: $250,000 per person per accident **OR**

☐ Option 4: $250,000 per person per accident with exclusions **OR**

By selecting Option 4, you certify that one or both of the following are true:

- A **named insured** who is excluding **PIP medical** has **qualified health coverage** that is not Medicare.
- Any **family member** who is excluding **PIP medical** has **qualified health coverage.**

Full Name of Excluded Named Insured(s) and/or Family Member(s)	Date of Birth

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FORM C

Liberty Mutual INSURANCE

Section B (Continued)

Full Name of Excluded Named Insured(s) and/or Family Member(s)	Date of Birth

☐ Option 5: $50,000 per person per accident **OR**

By selecting Option 5, you certify that both of the following are true:

- The **applicant** or **named insured** is enrolled in Medicaid; AND
- All **family members** have **qualified health coverage**, is enrolled in Medicaid, or are covered under another auto policy with **PIP medical** coverage.

☒ Option 6: No **PIP medical** coverage.

By selecting Option 6, you certify that both of the following are true:

- The **applicant** or **named insured** has coverage under both Medicare Parts A and B; AND
- All **family members** have **qualified health coverage** or are covered under another auto policy with **PIP medical** coverage.

Section C: Certification

You must initial each line and sign and date this form.

J.C. (Initial) — I have read this form. I understand the **PIP medical** options available to me and the benefits and risks associated with those options.

J.C. (Initial) — I have made a coverage selection and I understand that the selection I have made applies to me and any other person claiming benefits under this policy.

J.C. (Initial) — I understand that if I have not made a selection my policy will be issued with unlimited **PIP medical** coverage and I will be charged the premium for this option.

J.C. (Initial) — I understand that if I have chosen Option 4 or Option 6, I must notify my insurer within 30 days if a person who has **qualified health coverage** loses their **qualified health coverage**. A person who has not obtained **qualified health coverage** or **PIP medical** coverage within 30 days of the loss of coverage will not be entitled to any **PIP medical** benefits.

e-Signed by Joseph Canty on 2020-08-28

Signature of Applicant/Named Insured — Date

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ATTACHMENT 7

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

JOSEPH CANTY,

Plaintiff,

Case No. 21-004799-NI
Honorable Kathleen M. McCarthy

v.

MICHAEL MASON,

Defendant.
_____/

Erik J. Stone (P55304)
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_____/

PLAINTIFF'S AMENDED RESPONSE TO DEFENDANT MICHAEL MASON'S PARTIAL MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

NOW COMES Plaintiff JOSEPH CANTY, by and through his attorneys, APPLEBAUM & STONE, PLC, and for his Amended Response To Defendant Michael Mason's Partial Motion For Summary Disposition Pursuant To MCR 2.116(C)(10), states as follows:

1. Admitted.

2. Neither Admitted nor Denied. Plaintiff leaves Defendant to his proofs.

3. Neither Admitted nor Denied. Plaintiff leaves Defendant to his proofs. By way of further response, Plaintiff states that Defendant's affirmative defenses 30 and 31 cannot apply to this matter, as Plaintiff opted out of PIP coverage and may therefore seek allowable expenses "without limit." MCL 500.3135(3)(c)

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4. Admitted.

5. Admitted. By way of further response, Plaintiff states that he seeks "Damages for allowable expenses… …**without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d**…" MCL 500.3135(3)(c) through tort.

6. Denied. The requirement for PIP coverage opt-out under MCL 500.3107d(1) is "qualified health coverage." Medicare is considered "qualified health coverage" as under MCL 500.3107d(7)(b)(ii), but Medicare coverage is not a prerequisite to opt out. Further, Defendant has fabricated whole cloth any duty for Plaintiff to mitigate damages. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers in a manner that benefits the tortfeasor who injured them. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers who accept his medical insurance, even if it is Medicare. A motor vehicle accident victim may even choose to pay out of pocket for medical treatment. The only applicable law regarding this matter is MCL 500.3135(3)(c), which specifically grants *greater* ability to recover allowable expenses if a motor vehicle accident victim 'opts out' of PIP coverage: "Damages for allowable expenses… …**without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d**…" MCL 500.3135(3)(c).

7. Plaintiff objects to this claim as irrelevant to the instant matter. Nevertheless, Plaintiff Admits.

8. Plaintiff objects to this claim as irrelevant to the instant matter. Nevertheless, Plaintiff Admits. By way of further response, Plaintiff states that Defendant has fabricated whole cloth any duty for Plaintiff to mitigate damages. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers in a manner that benefits the

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tortfeasor who injured them. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers who accept his medical insurance, even if it is Medicare. A motor vehicle accident victim may even choose to pay out of pocket for medical treatment. The only applicable law regarding this matter is MCL 500.3135(3)(c), which specifically grants *greater* ability to recover allowable expenses if a motor vehicle accident victim 'opts out' of PIP coverage: "Damages for allowable expenses… …**without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d**…" MCL 500.3135(3)(c).

9. Plaintiff objects to this claim as irrelevant to the instant matter. No no-fault PIP benefits have been sought in this matter. Defendant has fabricated whole cloth any duty for Plaintiff to mitigate damages. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers in a manner that benefits the tortfeasor who injured them. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers who accept his medical insurance, even if it is Medicare. A motor vehicle accident victim may even choose to pay out of pocket for medical treatment. The only applicable law regarding this matter is MCL 500.3135(3)(c), which specifically grants *greater* ability to recover allowable expenses if a motor vehicle accident victim 'opts out' of PIP coverage: "Damages for allowable expenses… …**without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d**…" MCL 500.3135(3)(c). Nevertheless, Plaintiff Admits that he treated with the listed providers.

10. Neither Admitted nor Denied. Plaintiff leaves Defendant to its proofs. By way of further explanation, Plaintiff objects to this claim as irrelevant to the instant matter. No no-fault PIP benefits have been sought in this matter.

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11. Plaintiff objects to this claim as irrelevant to the instant matter. Nevertheless, Plaintiff Admits. By way of further response, Plaintiff states that Defendant has fabricated whole cloth any duty for Plaintiff to mitigate damages. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers in a manner that benefits the tortfeasor who injured them. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers who accept his medical insurance, even if it is Medicare. A motor vehicle accident victim may even choose to pay out of pocket for medical treatment. The only applicable law regarding this matter is MCL 500.3135(3)(c), which specifically grants *greater* ability to recover allowable expenses if a motor vehicle accident victim 'opts out' of PIP coverage: "Damages for allowable expenses… …**without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d**…" MCL 500.3135(3)(c).

12. Denied. Plaintiff states that he is permitted to see "Damages for allowable expenses… …***without limit*** **for allowable expenses if an election to not maintain that coverage was made under section 3107d**…" MCL 500.3135(3)(c) through tort.

13. Denied. Sections MCL 500.3107 – MCL 500.3110 apply to Personal Injury Protection benefits through no-fault. No no-fault PIP benefits have been sought in this matter against Defendant.

14. Denied. MCL 500.3157 limits apply only to "…an accidental bodily injury **covered by personal protection insurance**…" No no-fault PIP benefits have been sought in this matter against Defendant.

15. Denied. Plaintiff's providers do not accept Medicare. Defendant has fabricated whole cloth any duty for Plaintiff to mitigate damages. No statute or case law imposes a requirement upon a

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motor vehicle accident victim to seek treatment from medical providers in a manner that benefits the tortfeasor who injured them. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers who accept his medical insurance, even if it is Medicare. A motor vehicle accident victim may even choose to pay out of pocket for medical treatment. The only applicable law regarding this matter is MCL 500.3135(3)(c), which specifically grants *greater* ability to recover allowable expenses if a motor vehicle accident victim 'opts out' of PIP coverage: "Damages for allowable expenses… …**without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d**…" MCL 500.3135(3)(c).

WHEREFORE, Plaintiff Joseph Canty respectfully requests that this Honorable Court DENY Defendant Michael Mason's Partial Motion For Summary Disposition Pursuant To MCR 2.116(C)(10) in its entirety.

Respectfully Submitted,

APPLEBAUM & STONE, PLC

BY: /s/ Eric M. Noga

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Dated: December 16, 2022

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

JOSEPH CANTY,

Plaintiff,

Case No. 21-004799-NI
Honorable Kathleen M. McCarthy

v.

MICHAEL MASON,

Defendant.
_____/

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PLAINTIFF'S BRIEF IN SUPPORT OF HIS RESPONSE TO DEFENDANT MICHAEL MASON'S PARTIAL MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

NOW COMES Plaintiff JOSEPH CANTY, by and through his attorneys, APPLEBAUM & STONE, PLC, and for his Brief In Support Of His Response To Defendant Michael Mason's Partial Motion For Summary Disposition Pursuant To MCR 2.116(C)(10), states as follows:

I. INTRODUCTION AND FACTS

Defendant's Motion is premised upon a fabricated requirement which has never been a part of Michigan law. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers in a manner that benefits the tortfeasor who injured them.

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Plaintiff was injured in February 15, 2021 motor vehicle accident caused by Defendant Mason's negligent operation of a motor vehicle. Plaintiff sought treatment for his injuries with multiple medical providers, including Northland Radiology, Lucid Neurology, Pioneer Labs, and US Rehab & Health Services.

Plaintiff opted out of personal injury protection benefits under his Liberty Mutual auto policy. Plaintiff now seeks payment of outstanding medical billing as allowable expenses through his tort claim against Defendant, as under MCL 500.3135(3)(c).

II. STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. In deciding on it, the trial court must give the benefit of reasonable doubt to the nonmoving party. It determines whether a record might be developed which would leave open an issue upon which reasonable minds could differ. *Hutchinson v Allegan Co Bd of Road Comm'rs (On Remand)*, 192 Mich App 472, 480-481; 481 NW2d 807 (1992). A motion for summary judgment grounded on absence of genuine fact issue must set forth with particularity such facts as would be admissible in evidence, not mere opinion, conclusionary denials, unsworn averments, or inadmissible hearsay. *Remes v. Duby*, 87 Mich. App. 534, 274 N.W.2d 64 (1978). Hearsay evidence is insufficient to support motion for summary judgment. *Jones v. Shek*, 48 Mich. App. 530, 210 N.W.2d 808 (1973)

All reasonable inferences are drawn in favor of the nonmoving party. *Perez v KFC Nat'l Management Co, Inc*, 183 Mich App 265, 267-268; 454 NW2d 145 (1990), citing *Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987).

"A genuine issue of material facts exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds

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might differ." *West v GMC*, 469 Mich. 177, 183; 665 N.W.2d 468 (2003). "This Court is liberal in finding genuine issues of material fact." *Jimkoski v Shupe*, 282 Mich App 1, 5; 763 NW2d 1 (2008). A Court "…may not resolve factual disputes or determine credibility in ruling on a summary disposition motion." *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004). "The court is not permitted to assess credibility, or to determine facts on a motion for summary judgment." *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994)

III. LAW AND ARGUMENT

a. Medicare Coverage Is Not A Requirement To Opt Out Of PIP Coverage Under MCL 500.3107d.

"…the applicant or named insured may… …elect to not maintain coverage for personal protection insurance benefits… …if the applicant or named insured… …have qualified health coverage…" MCL 500.3107d(1)

The requirement for PIP coverage opt-out under MCL 500.3107d(1) is "qualified health coverage." While Medicare is considered "qualified health coverage" as under MCL 500.3107d(7)(b)(ii), Medicare coverage is not a *prerequisite* to opt out.

Plaintiff's qualified healthcare coverage in this matter is in fact Medicare, but places no additional requirements upon Plaintiff.

b. MCL 500.3135 places no restriction on a motor vehicle accident victim's choice of medical provider and/or the means by which Plaintiff must seek payment for the same, aside from the affirmative ability to seek allowable expenses through tort without limit if the victim opted out of PIP coverage.

"…tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101(1) was in effect is abolished except as to: […] Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110, including all future allowable expenses and work loss, in excess of any

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applicable limit under section 3107c or the daily, monthly, and 3-year limitations contained in those sections, or **without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d** or if an exclusion under section 3109a(2) applies." MCL 500.3135(3), (3)(c) (**emphasis added**)

Defendant has fabricated whole cloth any duty for Plaintiff to mitigate damages. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers in a manner that benefits the tortfeasor who injured them. No statute or case law imposes a requirement upon a motor vehicle accident victim to seek treatment from medical providers who accept his medical insurance, even if it is Medicare. A motor vehicle accident victim may even choose to pay out of pocket for medical treatment. The only applicable published law regarding this issue is MCL 500.3135(3)(c), which specifically grants *greater* ability to recover allowable expenses if a motor vehicle accident victim 'opts out' of PIP coverage: "Damages for allowable expenses… …**without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d**…" MCL 500.3135(3)(c).

WHEREFORE, Plaintiff Joseph Canty respectfully requests that this Honorable Court DENY Defendant Michael Mason's Partial Motion For Summary Disposition Pursuant To MCR 2.116(C)(10) in its entirety.

Respectfully Submitted,

APPLEBAUM & STONE, PLC

BY: /s/ Eric M. Noga

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ATTACHMENT 8

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WILLIAM CANTY,

Plaintiff,

CT NO: 21-004799-NI
HON. KATHLEEN M. MCCARTHY

-vs-

MICHAEL CHESTER MASON,

Defendant.

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DEFENDANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY DISPOSITION

Plaintiff incorrectly states "Medicare coverage is not a prerequisite to opt out" under MCL 500.3107d. In fact, §3107d allows only "qualified persons" to opt out of allowable expense coverage. A "qualified person" under §3107d is "a person who has qualified health coverage under subdivision (b)(ii)." See MCL 500.3107d(7)(c). Subsection (b)(ii) refers to "[c]overage under parts A and B of the federal Medicare program established under subchapter XVIII of the social security act, 42 USC 1395 to 1395lll." Therefore, Plaintiff must have Medicare to opt out under 3107d. Next, Plaintiff contends his provides do not accept Medicare, yet Northland Radiology, US Health and Rehab, and Zynex all accept Medicare. **(Exhibit E)**

Plaintiff believes the phrase "without limit" means he has no duty to mitigate his economic damages. This is a nonstarter because Plaintiff interprets two words in §3135(3)(c) in isolation and without any consideration of §3135's subsections, or the rest of the No-Fault Act. In *Bak v Citizens*

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Ins Co of America, 199 Mich App 730 (1993), plaintiff recovered from her injuries 17 months after her auto accident, but her employer could not re-hire her. She filed a PIP lawsuit for the entire 3-year wage loss period, despite making no effort to find another job. The Court of Appeals held, "[b]ecause the no-fault act did not specifically abrogate the common-law principle of mitigation, the defense remains available." *Id* at 738. *Bak* dealt with mitigation in the context of a wage loss claim, but its rationale applies to allowable expenses—particularly in this new era of No-Fault Reform—where Medicare recipients, like Plaintiff, can opt out of allowable expense coverage.

The *Bak* ruling follows the doctrine of *in pari materia*[1]. As the *Bak* court noted, "[s]tatutes must be interpreted as a whole. Whenever possible, one section of a statute should be read in harmony with the remainder." *Bak*, 199 Mich App 730 at 739. The Court focused on MCL 500.3107(1)(a), which requires insurers to pay allowable expenses for "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, *or rehabilitation."* *Id*. (emphasis in original). Since the goal §3107(1)(a) is *rehabilitation* of accident victims, the very next provision for work loss (3107(1)(b)) should be read "in harmony" to also encourage rehabilitation. *Id*. The *Bak* Court held excusing the duty of mitigation would set the goals of 3107(1)(a) at odds with §3107(1)(b).

Whether a statute preempts or modifies the common law is necessarily a question of legislative intent. *Bazzi v Sentinel Ins* Co, 502 Mich 390, 400 (2018). "Legislative amendment of the common law has not been lightly presumed by Michigan appellate courts." *Id*. §3135(3)(c) left the duty to mitigate damages intact. Considering §3135(3)(c) with its other subsections and

[1] "Statutes that relate to the same subject or that share a common purpose are *in pari materia* and must be read together as one law, even if they contain no reference to one another and were enacted on different dates." *Walters v Leech*, 279 Mich App 707, 709–710 (2008).

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the rest of the No-Fault Act, it becomes clear that the Legislature intended Medicare, *not* tortfeasors, absorb the cost of allowable expenses where a claimant opted out under §3107d.

§3135(3)(c) states tort liability is abolished except as to "[d]amages for allowable expenses, work loss, and survivor's loss **as defined in sections 3107 to 3110**, including all future allowable expenses and work loss, **in excess of any applicable limit under section 3107c** or the daily, monthly, and 3-year limitations contained in those sections, **or without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d** or if an exclusion under section 3109a(2) applies." Under the last antecedent rule, the descriptive clause "in excess of any **applicable limit** under section 3107c or the daily, monthly, and 3-year limitations contained in those sections" modifies the noun "allowable expenses." Therefore, if a plaintiff elected an allowable expense cap under §3107c,[2] they may recover, in tort, allowable expenses incurred after exhausting their **applicable limits** under 3107c. 3135(3)(c) continues to account for Medicare recipients opting out of allowable expense coverage, stating that these types of claimants can recover allowable expenses "**without limit**" because they are not subject to any **applicable limit** under 3107c. Thus, where a plaintiff has allowable expense coverage up to a certain 3107c limit, they must exhaust that **applicable limit** before claiming allowable expenses in tort. But there is no such "**applicable limit**" for a plaintiff to exhaust when they opted out under 3107d, hence the phrase "**without limit**." This does not enable Medicare claimants to accumulate bills, *without billing Medicare*, to inflate their damages in a lawsuit. Rather, "without limit" recognizes that there is no underlying allowable expense limit to exhaust. Both the House and Senate analyses of the No-Fault Reform package demonstrate an intent for Medicare, not

[2] Under §3107c, a person may elect allowable expense coverage of up to $50,000, $250,000, $500,000, or unlimited.

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tortfeasors, to absorb the cost of allowable expenses.[3] To opt out of allowable expense coverage, one must have qualified health coverage which, by definition, cannot exclude coverage for automobile accident related injuries. This indicates a claimant must *actually use* their qualified health coverage rather than claiming the entire expense in tort.

"Mitigation of damages is a legal doctrine that seeks to minimize the economic harm arising from wrongdoing." *Morris v Clawson Tank Co*, 459 Mich 256, 263 (1998). "Where one person has committed a tort, breach of contract, or other legal wrong against another, it is incumbent upon the latter to use such means as are reasonable under the circumstances to avoid or minimize the damages. The person wronged **cannot recover for any item of damage which could thus have been avoided**." *Id* at 263-264 (emphasis added). Whether a party's efforts to mitigate were reasonable is often a question of fact. *Id* at 270. But here, Plaintiff made **no effort** to mitigate his allowable expense damages. This Court may now decide the issue as a matter of law where there is no genuine issue of fat regarding Plaintiff's total failure to mitigate damages. See *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 525 (2009) ("A question of fact exists when reasonable minds can differ on the conclusions to be drawn from the evidence."). **As such, the Court should dismiss all claims for allowable expenses where Plaintiff never bothered to bill Medicare.**

Plaintiff contends he has a "greater ability" under §3135(3)(c) to recover allowable expenses and that he is not required to "seek treatment from medical providers in a manner that benefits the tortfeasor who injured them." This notion misses the point because the duty to mitigate

[3] The House summarized the option of "No PIP Coverage." Per the House, "No PIP Coverage provided that the policyholder has qualified health coverage ... [which] would mean health or accident coverage that does not exclude or limit coverage for injuries related to motor vehicle accidents ***including*** Medicaid and Medicare coverage." (**Exhibit F- House Fiscal Summary**). "Some of the costs faced by those in accidents who did not have unlimited coverage **would shift to other insurers**, including their current primary insurer (whether that is commercial insurance, ***Medicare***, or Medicaid)." **Exhibit G- Senate Bill Analysis)**

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is not about conferring some sort of benefit to the tortfeasor. It *is* about ensuring a claimant, like Plaintiff, does not needlessly accumulate avoidable economic loss.[4] Moreover, **Plaintiff's medical providers accept Medicare.** If they or Plaintiff had bothered to bill Medicare, Plaintiff would have no liability for "balance bills" and the providers' recovery from Plaintiff would be limited to deductible and coinsurance amounts. See 42 CFR 416.30; 42 CFR 412.604(d).

Otherwise Plaintiff's allowable expense claims are limited to reasonable amounts under §3107 and the Fee Schedule caps under §3157. Compare §3135(3)(c) with its next subsection, §3135(3)(d), which states that tort liability is abolished except as to "[d]amages for **economic loss** by a nonresident." Because nonresidents are not entitled to first party allowable expense benefits (MCL 500.3113(c), their claims fall under §3135(3)(d), which describes the claim as one for "economic damages" rather than "allowable expenses" Accordingly, a nonresident's claim for medical bills (economic damages) is not limited by §3107. Contrast this with §3135(3)(c), which use the term "allowable expenses," a direct reference to §3107, which defines allowable expenses as **"**reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." To say Plaintiff's claims for allowable expenses are not limited by 3107 renders meaningless §3135(3)(c) and sets the goals of 3107 at odds with 3135. And by enacting the "Fee Schedules" under §3157(2), the Legislature defined what a "reasonable charge" is for an allowable expense.[5] Plaintiff must mitigate his damages and his claims for allowable expenses are otherwise limited by 3107's policy of reasonableness and 3157's Fee Schedules, which provide maximum payments for services payable under Medicare.

[4] "The principle of mitigation is a thread permeating the entire jurisprudence. It is not solely a 'breach of contract' or 'commercial' doctrine; it is part of the much broader principle of 'avoidable consequences.'" *Shiffer v Bd of Ed of Gibralter School Dist*, 393 Mich 190, 197 (1974).

[5] That amount, for dates of service between July 2, 2021 and July 1, 2022, is 200% of the amount payable under Medicare.

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Respectfully Submitted,

/s/*Brandon L. Wykoff*
BRANDON L. WYKOFF (P81624)
ANGELA ESSEILY (P81816)
Attorneys for Michael Chester Mason

Dated December 30, 2022

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause or each of the attorneys of record herein at their respective addresses disclosed on the pleadings on December 30, 2022 by:

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

/s/ *Brandon L. Wykoff*
Brandon L. Wykoff (P81624)

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Exhibit E

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- Cofinity (PPOM)
- Community Choice (CareSource)
- Coventry Cares (Aetna Better Health)
- First Health
- Genesee County Health Plan

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- Great West now Part of Cigna
- HAP
- HAP HMO and PPO
- Health Plus Commercial, Partners & Seniors
- Humana Gold Choice
- Medicare
- Medicare Plus Blue
- Medicare Advantage
- Medicaid
- Meridian Health Plan
- Midwest Health Plan
- Molina – Molina Advantage
- PHCS
- Priority Health HMO, PPO & Priority Medicare
- Travelers Medicare
- United Health Care Community Plan



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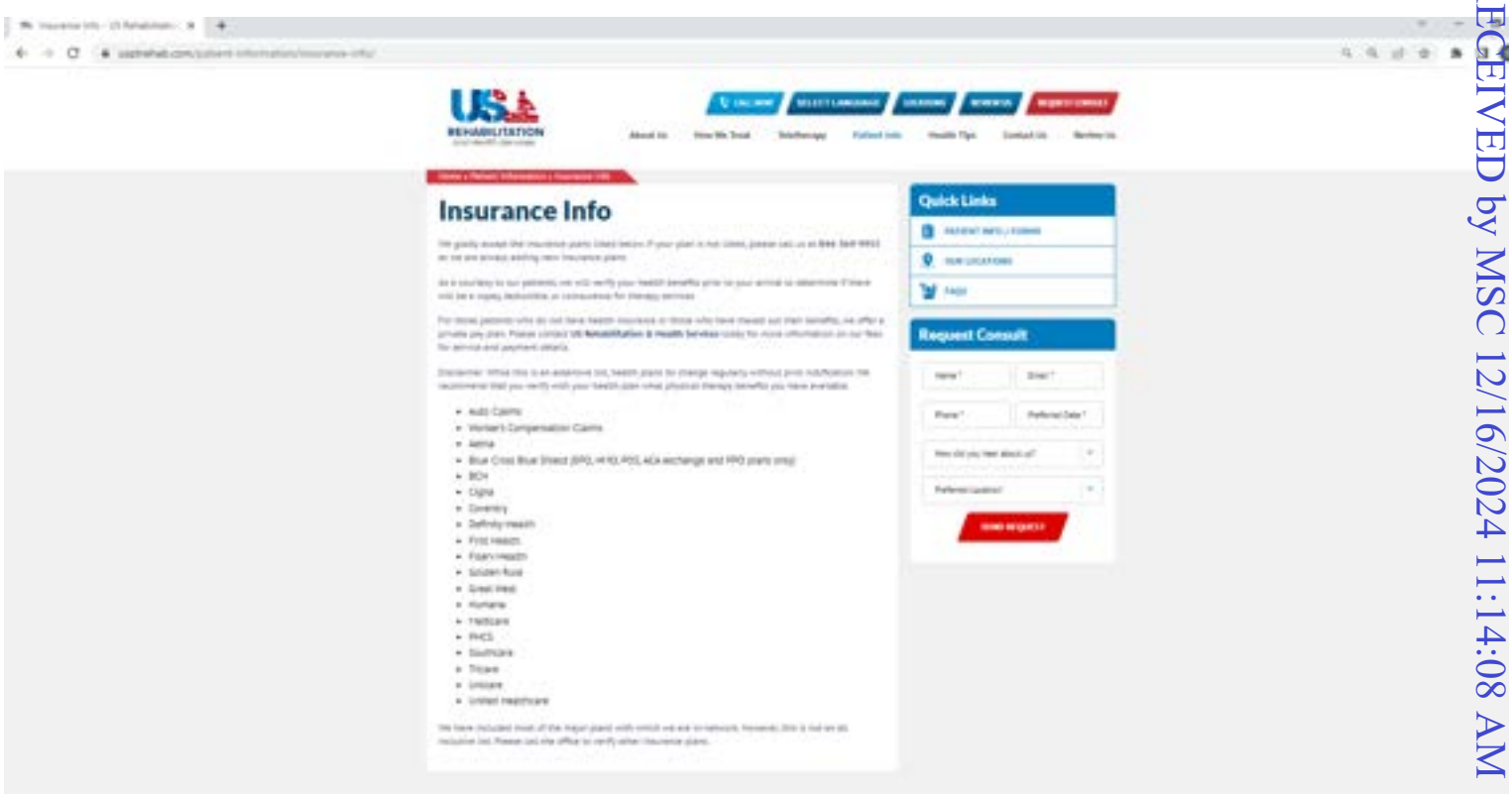

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Medicare.gov

Menu

Back to search results

Zynex Medical Inc

Charges the Medicare-approved amount (accepts assignment)

LOCATION

9655 Maroon Cir
Englewood, CO 80112-5914

3.56 miles from 80112

PHONE NUMBER

(800) 495-6670

Next steps for choosing a supplier

Contact the supplier to confirm what equipment they have in stock and:

- They carry the product you need
- Whether they agree to accept the Medicare-approved amount as full payment (so you'll pay less out-of-pocket)
- General information

Have your prescription and any notes from your doctor ready when you call.

Feedback

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Equipment Location

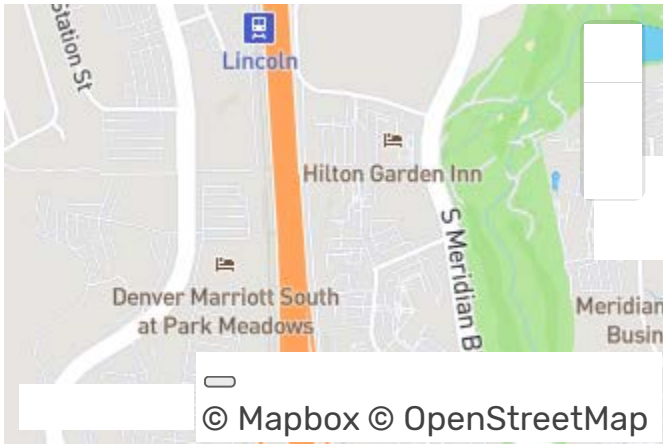
EQUIPMENT

This supplier is licensed to carry the following equipment. Contact the supplier to confirm which products are currently in stock.

Other equipment this supplier carries

- Heat & Cold Applications
- Neuromuscular Elect Stimulators (NMES)/Supplies
- Neurostimulators and/or Supplies
- Orthoses: Off-The-Shelf
- (TENS) Transcutaneous Electrical Nerve Stimulators and/or Supplies
- Traction Equipment

LOCATIONS



Zynex Medical Inc
9655 Maroon Cir
Englewood, CO 80112-5914
(800) 495-6670

Get Directions

3.56 Miles Away

About Medicare | Medicare Glossary

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A federal government website managed and paid for by the U.S. Centers for Medicare & Medicaid Services. If you have additional questions, please call 1-800-Medicare (1-800-633-4227). TTY users can call 1-877-486-2048.

Medicare.gov

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Feedback

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Not sure what type of provider you need?
Learn more about the types of providers.

Welcome

Doctors & clinicians

Hospitals

Welcome!

You can use this tool to find and compare different types of Medicare providers (like physicians, hospitals, nursing homes, and others). Use our maps and filters to help you identify providers that are right for you.

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https://www.medicare.gov/care-compare/ 1/4

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- Nursing homes including rehab services
- Home health services
- Hospice care
- Inpatient rehabilitation facilities
- Long-term care hospitals
- Dialysis facilities

~~Find out what's new~~

Looking for medical supplies and equipment?

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About this tool

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Resources & information

Check out important things to consider when choosing a provider.



Info for health care providers

Find out how to keep your information up-to-date in our

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tools.

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HOUSE FISCAL AGENCY

NO-FAULT AUTOMOBILE INSURANCE REFORM

House Bill 4397 (H-1) as passed by the House

Sponsor: Rep. Jason Sheppard

Committee: Insurance [Discharged]

Complete to 5-14-19

SUMMARY:

House Bill 4397 would amend the Insurance Code to make substantial changes to Michigan's no-fault automobile insurance system, including creating new personal injury protection (PIP) coverage options on auto insurance plans, mandating certain premium reductions, creating fee schedules for medical expenses when treating injuries from automobile accidents, creating new guidelines and restrictions for insurers in regard to producing policies and setting rates, mandating an annual audit for the Michigan Catastrophic Claims Association (MCCA), requiring the Department of Insurance and Financial Services (DIFS) to provide new information to the public, and creating the Automobile Insurance Fraud Task Force and the Automobile Insurance Fraud Fund.

~~PIP Coverage Revisions~~

Automobile insurance policies issued six months after the effective date of the bill would have to offer the following options for PIP benefits:

A. A PIP coverage limit consisting of a $50,000 limit for any PIP benefits and an additional $200,000 for medically necessary emergency treatment.

B. A PIP coverage limit of $250,000 for any PIP benefits.

C. A PIP coverage limit of $500,000 for any PIP benefits.

D. Unlimited PIP coverage.

The coverage limits above are per person per loss occurrence.

Insurers would also have to offer a rider that would provide coverage for attendant care in excess of the limits in options A, B, and C above.

One more option could be made available after the effective date of the bill, but an insurer would not be required to provide it:

E. No PIP coverage, provided that the policyholder has ***qualified health coverage*** and can present documentation proving that this is the case.

Qualified health coverage would mean health or accident coverage that does not exclude or limit coverage for injuries related to motor vehicle accidents, including Medicaid and Medicare coverage. The

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bill refers to a person who has qualified health coverage as a ***qualified person***.

A policyholder who lost his or her health coverage while a policy under option E above was in effect would have 14 days to notify his or her insurer and, if he or she did so, could choose one of the other PIP coverage options. During those 14 days, the policyholder could still claim benefits under his or her assigned plan in the case of an accident. If after the 14 days the policyholder has failed to notify his or her insurer, however, the policyholder could no longer claim benefits under the former policy even in the case of an accident.

If a policyholder renewed a policy without indicating a desired level of coverage, but paid the premium, the amount paid would be presumed to reflect the level of coverage desired. If no amount was paid, however, then option A above would be automatically applied.

For those who remained on unlimited PIP coverage plans, House Bill 4397 would adjust the amount that an insurer would pay before MCCA coverage began as follows:

- $530,000 for policies issued or renewed between July 1, 2013, and June 30, 2015.
- $545,000 for policies issued or renewed between July 1, 2015, and June 30, 2017.
- $555,000 for policies issued or renewed between July 1, 2017, and June 30, 2019.
- $580,000 for policies issued or renewed between July 1, 2019, and June 30, 2021.
- Beginning July 1, 2021, this $580,000 amount would be increased biennially by the lesser of 6% or the Consumer Price Index and rounded to the nearest $5,000.

In calculating membership premiums, MCCA could only charge its members for policies that continued to provide unlimited PIP coverage. After the effective date of the bill, MCCA would not have liability for ultimate loss under policies with limited PIP coverage.

For one year after the effective date of the bill, an insurer could not refuse to insure or continue to insure, limit available coverage, charge a reinstatement fee for, or increase the auto insurance premiums of an eligible person applying for auto insurance solely because the person previously failed to maintain auto insurance for a vehicle the person owned.

~~Coverage Selection/Election Forms~~

The director of DIFS would have to approve forms for use by policyholders or applicants for insurance to select a PIP coverage level or elect to not maintain PIP coverage.

The form for making a coverage selection would have to include a conspicuous statement of the coverage levels available, and of the benefits and risks associated with each option, and provide a way for the person to indicate that he or she has read the form and understands the options, a way to indicate his or her selection, and a requirement that he or she sign the form.

The form for a ***qualified person*** to elect not to maintain PIP coverage would have to include, in addition to the above, a requirement that the applicant certify whether he or she is a qualified person; a conspicuous disclosure that a qualified person is not obligated to purchase PIP coverage but may choose to do so; a notice that, if the policyholder ceases to have qualified health coverage while holding the policy, he or she has 14 days to notify the insurer before being excluded from PIP coverage benefits; and a way for a qualified person to mark the form to elect not to maintain the coverage.

A form described above would be delivered to an applicant or policyholder electronically, by personal delivery, or by first-class mail, postage prepaid. A person could make his or her selection or election

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electronically, on paper, or by giving verbal instructions that the form be marked and signed in the person's behalf.

Mandated Premium Rate Reductions

Within six months after the effective date of the bill, insurers that offer auto insurance in Michigan would have to file premium rates for PIP coverage that would be effective between six months and eighteen months after the bill's effective date. The premium rates filed—along with any subsequent premium rates effective before five years and six months after the bill's effective date—would have to result, as nearly as practicable, in an average reduction per vehicle from the premium PIP coverage rates that were in effect for the insurer on May 1, 2019, as follows:

- An 80% or greater reduction for policies with a PIP coverage limit consisting of a $50,000 limit for any PIP benefits and an additional $200,000 for medically necessary emergency treatment (described as option A above).
- A 60% or greater reduction for policies with a PIP coverage limit of $250,000 for any PIP benefits (described as option B above).
- A 30% or greater reduction for policies with a PIP coverage limit of $500,000 for any PIP benefits (described as option C above).
- A 10% or greater reduction for policies with unlimited PIP coverage (described as option D above).

Policies for which an election was made to not maintain PIP coverage would have to result in no premium charge for PIP coverage for policies effective within five years and six months after the bill's effective date.

The director of DIFS would have to review premium rates filed by insurers and disapprove filings that do not comply with the mandated reductions. If the director disapproved a filing, the insurer would be required to submit a revised premium rate filing to the director within 15 days. The revised filing would be subject to review in the same manner. An insurer could not issue or renew a policy that did not match the approved premium rates listed above between six months and five years and six months after the effective date of the bill.

For the purpose of calculating premium rates under the above provisions, the premium would include the catastrophic claims assessment imposed under the Insurance Code.

Rates and Plan Filings

The Insurance Code currently prohibits insurers from establishing or maintaining rates or rating factors for auto insurance based on sex or marital status. The bill would further prohibit setting or maintaining rates or rating classifications based on a ***non-driving factor***.

> A ***non-driving factor*** would mean any factor for which there is no rational correlation between the factor and insurance losses. The director of DIFS would be responsible for promulgating rules to establish non-driving factors. After the bill's effective date, an insurer could not use a factor in those rules to establish a rate.

The bill would require auto insurance manuals or plans filed with the director of DIFS to remain on file for a waiting period of 90 days before becoming effective. The director could not extend this waiting period, and the period would apply regardless of whether the director required supporting information from the insurer.

Further, the bill would provide that any filing must specify that the insurer will not refuse to insure, refuse to continue to insure, or limit the amount of coverage available based on the location of the risk, a practice known as redlining, and the bill would prohibit insurers from engaging in redlining.

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Provider Reimbursement Limits

The bill would limit reimbursement to medical providers providing treatment, products, services, or accommodations (hereafter "treatment") to the amount payable for that treatment under the administrative rules governing worker's compensation health services or schedules of maximum fees developed under those rules, as in effect on the effective date of the bill. If a treatment was not covered by the rules or schedule, the provider would not be eligible for reimbursement that exceeded the average amount the provider received over the previous calendar year for providing that treatment in cases not involving PIP. The director of DIFS would have to review any changes to those rules or schedules and, if the director determined that they were reasonable and appropriate for assuring affordable automobile insurance in the state, issue an order applying the changes to these provisions.

Reimbursement for attendant care rendered in the injured person's home by his or her relative or housemate or a person with whom he or she had a social or business relationship would be limited to 56 hours per week. However, an insurer could contract to pay benefits for attendant care for more than the 56-hour limitation.

A neurological rehabilitation clinic would not be entitled to payment or reimbursement for services rendered unless the clinic were accredited by the Commission on Accreditation of Rehabilitation Facilities or a similar organization recognized by the director of DIFS. This restriction would not apply to a clinic that was in the process of becoming accredited when the bill took effect, unless the clinic still was not accredited three years of more after beginning the accreditation process.

The above limitations would apply to a treatment rendered after the bill's effective date, regardless of when the accident happened, and regardless of whether indemnification for the charge is being made by the MCCA. However, the above limitations would not apply to emergency medical services (EMS) rendered by an ambulance operation as defined in the Public Health Code.

Utilization Review

A medical provider providing treatment for an injury covered by PIP after the bill's effective date would be considered to have agreed to submit necessary records and other information concerning the treatment for ***utilization review*** and to comply with any decision by DIFS. Any submitted proprietary information or sensitive personally identifying information regarding a patient would be exempt from disclosure under the Freedom of Information Act (FOIA).

> ***Utilization review*** would mean the initial evaluation by an insurer or MCCA of the appropriateness, based on medically accepted standards, of the level and the quality of treatment, products, services, or accommodations provided under PIP.

DIFS would have to promulgate rules to do the following:

- Establish criteria or standards for utilization review that identify, based on medically accepted standards, utilization of care under PIP above the usual range of utilization for that care.
- Provide utilization review procedures, including procedures for all of the following:
  - Acquiring necessary and relevant records, medical bills, and other information.
  - Allowing an insurer to request an explanation for treatment provided, and requiring a provider to explain the necessity or indication for that treatment. (The bill would allow an insurer or MCCA to require a provider to explain the necessity or indication for treatment that is not usually associated with the diagnosis or condition for which the patient is being treated or that has a greater frequency or duration.)

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- Appealing determinations. (The bill would allow a provider to appeal to DIFS is an insurer or MCCA determined that the provider improperly overutilized or otherwise rendered a treatment that was inappropriate or inappropriately expensive.)

A medical provider that knowingly submitted false or misleading records or information to an insurer, MCCA, or DIFS would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to $1,000, or both.

Michigan Automobile Insurance Placement Facility (MAIPF)

The Michigan Automobile Insurance Placement Facility (MAIPF) currently makes an initial determination of PIP claimants' eligibility for benefits under the assigned claims plan and denies obviously ineligible claims with a written notice of the denial and the reasoning behind it.

The bill would require a person entitled to claim PIP benefits to file a completed application on a claim form provided by MAIPF and provide reasonable proof of loss. MAIPF or an insurer assigned to administer a claim on its behalf would have to specify in writing what materials constitute a reasonable proof of loss within 60 days after MAIPF's receipt of the application. MAIPF or the insurer acting on its behalf would not have to pay an interest penalty in connection with a claim for any period of time during which the claim was reasonably in dispute. MAIPF and the insurer would only be required to provide PIP benefits up to the PIP coverage limit chosen on the claimant's insurance policy.

The bill would also require a claimant or person acting on the claimant's behalf to cooperate with MAIPF in determining the claim's eligibility and the settlement or defense of any claim or suit, including submitting to examination under oath and any mental or physical examinations required by relevant sections of the Insurance Code. A person would be rebuttably presumed to have cooperated if the person did all of the following:

- Submitted a PIP claim under the assigned claims plan on a complete MAIPF application form in accordance with the plan.
- Provided reasonable proof of loss under the plan.
- Submitted to any required examination under oath. (The bill would require that the person be given at least 21 days' notice of an examination and that the examination be held in a place reasonably convenient for the person, with accommodation for any reasonable request to reschedule its date, time, or place.)

MAIPF would have to suspend benefits to a claimant under the assigned claims plan if the claimant or person making a claim on the claimant's behalf failed to cooperate with MAIPF as described above. The suspension would not be a denial of benefits and would last only as long as the claimant's noncooperation.

MAIPF could perform its functions and duties under these provisions and the assigned claims plan directly or through an insurer assigned by MAIPF to administer a claim on its behalf. Assignment of a claim to an insurer would not be a determination of eligibility, and an assigned claim could be later denied if found to be ineligible. An insurer assigned a claim, or another person authorized to act on behalf of the assigned claims plan, could expressly bring an action on behalf of MAIPF for reimbursement and indemnification of the claim. MAIPF could also contract with other persons for all or a portion of the goods and services necessary for operating and maintaining the assigned claims plan.

Currently, an action to enforce rights to indemnity or reimbursement against a third party cannot be commenced more than the later of two years after the assignment of the claim to the insurer or one year after the date of the last payment to the claimant. The bill would allow commencement of a claim within one year after the date the responsible third party was identified.

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The bill would also expressly allow MAIPF to make a written agreement with the owner or registrant of an uninsured vehicle, or his or her estate, permitting payment in installments of a judgment against them for costs related to an accident involving that vehicle. (Under current law and installment agreement would be made with the Secretary of State.) The bill would specify that the owner or registrant or his or her estate is responsible for any expenses or fees for the suspension, revocation, or reinstatement of a motor vehicle registration or license.

The bill would require the Secretary of State to provide information on auto insurance policies issued in the state—including the name of the insured and the insurer, the insured's address, the vehicle identification number for each vehicle listed on the policy, and the policy number—to MAIPF as required for MAIPF to comply with the bill. Such information would not be subject to FOIA. MAIPF could use the information only to administer the assigned claims plan and could not disclose the information to any person, except to administer the plan or to comply with a court order in connection with a fraud investigation or prosecution.

PIP Claim Priority

The Insurance Code currently includes a chain of priority for who pays out benefits to an individual who suffers accidental bodily harm in a motor vehicle accident. The bill would stipulate that holders of policies with no PIP coverage can only collect benefits on other policies according to the same chain of priority allowed for those with policies that do contain PIP coverage or, if the chain of priority is exhausted, under an assigned claims plan. If PIP benefits were payable under two or more insurance policies in the same order of priority, then the benefits would only be payable up to an aggregate coverage limit for both or all of the policies that equals the highest available coverage limit under any one of the policies.

Tort Liability and Other Actions

The bill would modify the grounds on which a nonresident may pursue tort liability in the case of an accident. The nonresident would now need to have suffered death, serious impairment of body function, or permanent serious disfigurement to recover damages for economic loss.

The bill would allow a health care provider to make a claim and assert a direct cause of action against an insurer or under the assigned claims plan to recover overdue benefits payable for treatment provided to an injured person.

The bill would also provide that, for PIP benefits, payment for a treatment is not overdue if the bill for the treatment was not provided to the insurer within 90 days after the treatment was rendered.

Currently, with some exceptions, a legal action to recover PIP benefits must be taken within one year after the accident took place. Under the bill, that time period would be tolled from the date the claimant made a specific claim for PIP benefits until his or her insurer formally denied the claim. However, the tolling of the time period not apply if the claimant failed to pursue his or her claim with reasonable diligence.

An attorney advising or representing an injured person concerning PIP benefits from could not claim, file, or serve a lien for payment of any fees for their services unless all of the following conditions were met:

- A payment for the claim was authorized under the Insurance Code.
- A payment for the claim was overdue under the Insurance Code.
- The attorney notified the resident agent of the insurer in writing that the payment for the claim was overdue.
- Within 30 days after the insurer received the notice, it did not either provide reasonable proof that the insurer was not responsible for the payment or take remedial action.

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If an action involved several claims, then the court would have to reduce the attorney's fee in the proportion that the number of claims that were not determined to have been unreasonably refused or delayed bears to the total number of claims presented in the action.

If an attorney claimed, filed, served, or enforced a lien as prohibited above, the insurer or other person aggrieved by the lien could recover court costs and reasonable attorney fees related to their opposition to the lien.

Currently, the Insurance Code allows the court to award an insurer a reasonable amount against a claimant as an attorney fee for the insurer's attorney in defending against a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation. The bill would also allow such an award in defending against either the following:

- A claim for benefits for a treatment that was not medically necessary or that was for an excessive amount.

- A claim for which the client was solicited by the attorney in violation of the law of this state or its rules of professional conduct.

In a dispute over the payment of allowable expenses for attendant care or nursing services, the bill would allow attorney fees to be rewarded in relation to expenses recovered for the 12 months preceding the date the insurer was notified of the dispute, including any future payments ordered after the judgment was entered.

The bill would prohibit a court from awarding fees to an attorney in an action concerning PIP benefits if the attorney or a person related to the attorney turned out to have a direct or indirect financial interest in the person that provided the treatment, product, service, rehabilitative occupational training, or accommodation that the benefits would have paid for.

Michigan Catastrophic Claims Association (MCCA)

Beginning July 1, 2019, and for every third year afterward, the bill would require the director of DIFS to engage one or more independent actuaries to audit MCCA for the previous three years. The audit would have to be conducted using sound actuarial principles consistent with those of the Casualty Actuarial Society. By September 1, 2019, and every third year thereafter, the director would have to provide a report of the audit to the legislature. MCCA would be required to provide any records necessary or requested by the director for the audit.

If the audit showed that the assets of MCCA exceeded 120% of its liabilities, then the director would have to order MCCA to rebate the excess to its members, provided that doing so does not threaten MCCA's ongoing ability to provide reimbursements for PIP benefits. MCCA could request a hearing to review the order by filing a written request with the director within 30 days after receiving the order. Insurers would be required to pass the rebate along to their insured customers in a manner and time determined by the director. (Any rebate attributable to a historic vehicle would have to be equal to 20% of the rebate for an ordinary car.)

The bill would also require MCCA to submit an annual consumer statement to the Senate and House committees with jurisdiction over insurance matters by September 1 of each year. The statement would also have to be posted on the MCCA website. The statement would have to be written in a manner intended for the general public and would have to contain information specified by the bill concerning such things as the MCCA's assets, liabilities, claims history, revenue projections, mortality assumptions, cost-containment measures, and the like.

By September 1 of each year, MCCA would also have to provide a report to the Senate and House committees with jurisdiction over insurance matters an annual report containing all of the following:

- An executive summary.

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- A discussion of the mortality assumptions used by MCCA in making cost projections.
- An evaluation of the accuracy of MCCA's actuarial assumptions over the preceding five years.
- The annual consumer statement itself.
- Anything else MCCA determined necessary to advise the legislature about its operations.

Automobile Insurance Task Force and Automobile Insurance Fraud Fund

The bill would add Chapter 63 to the Insurance Code to create the Automobile Insurance Task Force in the Department of State Police (MSP). The task force would consist of the following members:

- Five officers of MSP, appointed by the MSP director.
- One MSP employee, appointed by the MSP director.
- One representative of MCCA, appointed by the MCCA Board.
- One employee of MAIPF who is involved in the operation of the assigned claims plan created under section 3171, appointed by MAIPF.
- One employee of the Department of the Attorney General, appointed by the attorney general.

Members of the task force would perform their duties under the direction of the MSP director. Members would serve at the pleasure of the person who appointed them. Vacancies would be filled in the same manner as the original appointment.

The task force would have to do the following:

- Receive records from the Anti-Fraud Unit created in DIFS by Executive Order No. 2018-9.[1] (This unit would be required to transfer its records of claims and investigations of auto insurance fraud within 60 days after the effective date of the bill, and would then be dissolved.)
- Collect and maintain claims of automobile insurance fraud.
- Investigate claims of automobile insurance fraud.
- Maintain records of its investigations.
- Pursue the criminal or civil prosecution of persons who commit automobile insurance fraud.

The task force could also share records of its investigations with other law enforcement agencies and state departments and agencies, review their records to assist in its investigation and enforcement activities, and conduct outreach and coordination efforts with them to promote investigation and prosecution of automobile insurance fraud. The task force could also do anything else it determined necessary to investigate and prosecute automobile insurance fraud.

Automobile insurers would have to report to the task force data regarding automobile insurance fraud by medical providers, attorneys, or other persons. DIFS would have to cooperate with the task force and upon request provide all available statistics on automobile fraud and unfair claims practices.

Beginning July 1 of the year after the bill's effective date, the task force would have to prepare and publish an annual report on its efforts to prevent automobile insurance fraud by medical providers, attorneys, or other persons, unfair claims practices of insurance companies, and cost savings that have resulted from those

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efforts. The report would be submitted to the director of DIFS and the standing committees of both houses with primary jurisdiction over insurance issues. The report would have to detail automobile insurance fraud and unfair claims practices for the previous year, assess their impact on rates charged for automobile insurance, evaluate their impact on the citizens of this state and on costs incurred by those citizens, and outline any expenditures made by the task force. The director would have to cooperate in developing the report as requested by the task force and make available to the task force records and statistics concerning automobile insurance fraud and unfair claims practices.

The bill would also create the Automobile Insurance Fraud Fund within the state treasury. The state treasurer could receive assets from any source for deposit into the fund, would direct the fund's investment, and would credit to the fund interest and earnings from its investments. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund.

Until five years after the bill's effective date, MSP would disburse money from the fund, upon appropriation, to MSP, DIFS, MCCA, MAIPF, and the Department of the Attorney General, in proportion to the number of officers, employees, or representatives each has on the task force, for the operation of the task force. Beginning five years after the bill's effective date, MSP would expend money from the fund, upon appropriation, for the operation of the task force.

Department of Insurance and Financial Services (DIFS) Website

The bill would require DIFS to update its website with a page that does all of the following:

- Informs a visitor that it may be able to assist a person who believes that an auto insurer is not performing as obligated by an insurance policy, such as not paying benefits or not making timely payments.
- Advises the person of rights under Chapter 20 of the Insurance Code that relate to auto insurers and the payment of insurance benefits.
- Allows the person to submit a ticket informing DIFS of his or her problems with an auto insurer.
- Allows the person to submit—either electronically or on paper—any documentation to support the facts of his or her case.
- Explains the steps that DIFS will take and that may be taken after the person submits a ticket.
- Anything else that the director of DIFS determines to be important as it relates to the above.

DIFS would also have to maintain a page that advises consumers about the changes made to auto insurance in Michigan by HB 4397, including how to shop competitively for insurance and whatever else the director considers important.

The DIFS site would also have to include a page that allows people to report insurance fraud and unfair settlement and claims practices.

Civil Fines

Currently, section 150 of the Insurance Code allows the director of DIFS to order payment of a civil fine for a violation of the act for which no other penalty is specified. The fines are in an amount of up to $500 for each violation of the act a person is found to have committed, or up to $2,500 for each violation the person committed knowingly, to a total limit of $50,000 per order of the director. Violation of a cease and desist order can be subject to a civil fine of $10,000 for each violation.

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The bill would allow the director to order civil fines for violation of the Insurance Code's insurance fraud provisions. Those fines could be ordered in addition to, rather than instead of, payment of a penalty or restitution. The fines would be credited to the Automobile Insurance Fraud Fund, as would any civil fines ordered for violating a cease and desist order relating to insurance fraud. (Civil fines under section 150 are otherwise credited to the general fund.)

MCL 500.150 et seq.

FISCAL IMPACT:

State Revenues

Domestic (in-state) and foreign (out-of-state) insurers pay an insurance premiums tax under the corporate income tax, the base of which is 1.25% of gross direct premiums written in Michigan. Foreign insurers also pay a retaliatory assessment to the extent that the policies written would be more expensive in the state in which they're incorporated.

Because of the mandated decreases in PIP premium costs (depending on the level of coverage chosen), it is expected that auto insurance policy premiums will decline and therefore reduce revenue from the premiums tax paid by insurance companies. Unfortunately, there is no way to know in advance which levels of coverage will be chosen by drivers, and what the overall impacts will be on total auto insurance policy premiums paid. However, using information provided by DIFS, HFA calculations suggest that total auto insurance policy premiums would decline by roughly 30%.

Based on this estimate, revenue from the insurance company premiums tax would decline by about $26.0 million, the entire impact of which would be borne by the state's General Fund.

To the extent that the number of drivers opting for reduced PIP coverage increases, the revenue decline would grow larger. At the upper bound, if all drivers opted out of PIP coverage, the revenue loss would likely exceed $35.0 million.

Medicaid

The state Medicaid program costs would increase to the extent that the bill would shift health care costs from private automobile insurers to Medicaid. HFA's estimates indicate that this bill would increase state costs by $2.5 million in the first year and would steadily grow to approximately $72.0 million in annual state costs within 10 years. The annual cost growth would slow thereafter.

The primary Medicaid cost driver from the bill would be the added cost as more individuals receive Medicaid-funded long-term care services instead of private automobile insurance-funded long-term care services. Medicaid is a joint state/federal health care program where the federal government provides reimbursement funding for part of the total program cost. The current federal Medicaid match rate is 64.45%, meaning the state has to pay for 35.55% of the program's cost.

There are three primary benefits PIP covers that commercial health insurance does not: long-term nursing home services, home help (or attendant) services, and loss of income from injury. Medicaid, however, does cover long-term nursing home services and attendant care services, so this estimate assumes that 75% of Medicaid beneficiaries would select a capped PIP limit or would select no PIP coverage, as Medicaid would be considered a "qualified health coverage" under the bill. Therefore, a catastrophic injury to a Medicaid beneficiary would be covered by Medicaid after the limit is exhausted. Any injury costs to a Medicaid beneficiary that selected no PIP coverage would be covered by Medicaid. The new state Medicaid costs for these acute health care costs would range from $2.5 million GF/GP in the first year and would increase to $14.0 million GF/GP within 10 years.

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The other, more significant, Medicaid cost from the bill would be the added costs to Medicaid long-term care and home- and community-based services. Medicaid would be responsible for chronic nursing home and attendant care costs for both of the following: 1) Medicaid beneficiaries who selected either a capped PIP limit or no PIP coverage and 2) individuals who selected either a capped PIP limit or no PIP coverage and have both exhausted any long-term care benefits provided through commercial insurance or Medicare, and have spent down their financial resources to become Medicaid-eligible. These added, annual costs for long-term care services would not have an immediate impact on the state, but would increase to approximately $8.0 million GF/GP annually within two years and would increase to $58.0 million GF/GP within 10 years as the number of affected individuals grows. The percentage of non-Medicaid-eligible individuals who would select a capped PIP, or no PIP, is unknown, so this estimate assumes a mid-point of 50%, meaning that the ~~actual impact may be greater or less than this estimate,~~ depending on the extent to which that population chooses a capped plan.

Department of Insurance and Financial Services (DIFS)

House Bill 4397 would have significant fiscal implications for DIFS, including cost increases of indeterminate magnitude. The net fiscal impact is presently indeterminate, as it is unclear whether costs for implementing the bill's provisions would be sufficiently offset by existing revenues and present departmental appropriations.

The bill would lead to an additional departmental administrative burden associated with the following: rulemaking authority, rate submission review, document creation and form approval, oversight of the MCCA rebate process, review of reimbursement schedules for medical treatment, and other miscellaneous responsibilities. The department would have authority to promulgate rules delineating non-driving factors that could no longer be used to establish auto insurance rates and to establish criteria and standards for utilization review. It is unclear whether additional staff would be required to fulfill these responsibilities.

DIFS would likely experience indeterminate cost increases for information technology (IT) costs associated with creating and maintaining functionality on the department's webpage that would be required under the bill. IT costs related to the bill would be dependent on a variety of factors and are presently intermediate.

Beginning July 1, 2019, and every third year thereafter, the bill would require DIFS to engage with independent actuaries to examine the affairs and records of the MCCA. Costs associated with the required actuarial examinations would be variable and would presumably be contractually determined between the vendor and the department.

The bill would dissolve the Anti-Fraud Unit created within DIFS by Executive Order 2018-9, after the unit transfers any records to the Automobile Insurance Fraud Task Force created under the bill. Funding has not ~~yet been appropriated for the unit~~, but the Executive Budget Recommendation for Fiscal Year 2019-20 includes approximately $500,000 in funding and authorization for 6.0 FTE positions for the unit.

Department of State Police (MSP)

House Bill 4397 would create the Automobile Insurance Fraud Task Force within MSP. Generally speaking, the purpose of the task force would be to collect and investigate claims of automobile insurance fraud and to pursue prosecution of individuals who commit automobile insurance fraud.

The bill would designate MSP as the administrator of the Automobile Insurance Fraud Fund and would require the proportional distribution of funds to MSP, DIFS, MCCA, MAIPF, and the Department of the Attorney General for operation of the Automobile Insurance Fraud Task Force for five years after the effective date of the bill. After five years, MSP would expend money for the operation of the task force. The task force would be required to submit an annual report to the legislature detailing auto insurance fraud, assessing the impact of fraud and unfair claims practices on rates, and outlining task force expenditures. Costs for MSP's responsibilities under the bill are presently indeterminate.

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Department of Corrections and State and Local Courts

For Corrections and the Judiciary, House Bill 4397 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of offenders who would be assigned civil fines and/or convicted of misdemeanors.

Under the bill, an individual who supplies false information to the Secretary of State or who issues or uses an altered, fraudulent, or counterfeit certificate of insurance would be guilty of a misdemeanor. Also, a physician, hospital, clinic, or other person or institution that knowingly submits false or misleading records or other information to an insurer, MCCA, or DIFS would be guilty of a misdemeanor. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision, and how the costs are financed, vary by jurisdiction. An increase in misdemeanor convictions would mean an increase in penal fine revenues. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

For insurance fraud and for violations of the law for which a specific penalty is not listed, the director of DIFS could order payment of civil fines. In some instances, civil fine revenue would be paid to the state and credited to the general fund. In other instances specified in the bill, civil fine revenue would be credited to the Automobile Insurance Fraud Fund created under the bill.

Any fiscal impact on the judiciary and local court systems would depend on how the bill affected caseloads and related administrative costs.

Legislative Analyst: Nick Kelly

Fiscal Analysts: Jim Stansell

Kevin Koorstra

Marcus Coffin

Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

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[1] https://www.michigan.gov/documents/snyder/EO_2018-9_632697_7.pdf

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Exhibit G

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Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 1 (Substitute H-3 as passed by the House)
Sponsor: Senator Aric Nesbitt
Senate Committee: Insurance and Banking
House Committee: Select Committee on Reducing Car Insurance Rates

CONTENT

The bill would amend the Insurance Code to do the following:

-- Require all automobile insurance policies offered in the State to include benefits for personal injury protection (PIP), property protection insurance, and residual liability insurance.
-- Allow an insured person to select, beginning July 1, 2020, one of four PIP coverage levels: 1) $50,000, if the person were enrolled in Medicaid, or if the person's spouse and any resident relative had qualified health insurance, Medicaid, or insurance that provided PIP benefits, 2) $250,000; 3) $500,000; or 4) unlimited.
-- Allow a qualified person to elect not to maintain coverage for PIP benefits, for insurance policies issued on or after the bill's effective date, if the person's spouse and any resident relative had qualified health insurance or PIP coverage, and provide the definition of a "qualified person".
-- Require any premium rates filed by an insurer for PIP coverage under automobile insurance policies effective before July 1, 2028, to result, as nearly as practicable, in an average reduction per vehicle from the premium rates for PIP coverage that were in effect for the insurer on May 1, 2019, as follows: 1) an average 45% of greater reduction per vehicle for policies with a $50,000 PIP coverage limit, 2) an average 35% or greater reduction per vehicle for policies with a $250,000 PIP coverage limit, 3) an average 20% or greater reduction per vehicle for policies with a $500,000 PIP coverage limit, and 4) an average 10% or greater reduction per vehicle for policies with unlimited PIP coverage.
-- Require the Director of the Department of Insurance and Financial Services (DIFS) to review a filing submitted by an insurer, and disapprove a rate filing that the Director determined did not result in the premium reductions required by the bill.
-- Require an insurer to submit a revised premium rate filing to the Director within 15 days after the Director disapproved a filing.
-- Require an insurer to file, before July 1, 2020, premium rates for PIP coverage for automobile insurance policies effective after July 1, 2020.
-- Allow an insurer to apply to the Director for approval to file rates that would result in a lower premium reduction level or an exemption from the bill's requirements, and require the Director to approve the application under certain circumstances.
-- Prohibit an insurer from establishing or maintaining rates or rating classification for automobile insurance based on home ownership, educational level attained, occupation, the postal zone in which the insured resided, and credit score.
-- Require a rate filing to specify that the insurer would not refuse to insure, refuse to continue to insure, or limit the amount of coverage available because of the location of the risk, and that the insurer recognized those practices to constitute redlining.
-- Specify that the Michigan Catastrophic Claims Association (MCCA) would not have liability for a loss under PIP coverage for a motor vehicle accident policy to which the $50,000, $250,000, and $500,000 PIP coverage limits applied after July 1, 2020.

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-- Require the Director to order the MCCA to issue a rebate, if the actuarial examination showed that the MCCA's assets exceeded 120% of its liabilities.
-- Require the MCCA to prepare and submit to the Legislature and post on its website, by September 1 of each year, an annual consumer statement containing certain information.
-- Require the MCCA's plan of operation to provide for procedures for a refund to MCCA members, for distribution to insureds, and require the procedures to provide for a distribution of a refund attributable to a historic vehicle equal to 20% of the refund for a car that was not a historic vehicle.
-- Require a person entitled to claim PIP benefits through the assigned claims plan to file a completed application on a claim form provided by the Michigan Automobile Insurance Placement Facility (MAIPF) and provide reasonable proof of loss to the MAIPF.
-- Require the MAIPF to review a claim for PIP benefits under the assigned claims plans, make an initial determination of a claimant's eligibility for benefits, and deny a claim it determined was ineligible.
-- Specify that the MAIPF would be required to provide PIP benefits only up to $250,000; or $2.0 million, if the person were entitled to claim benefits under the assigned claims plan.
-- Specify that a medical provider would not be eligible for reimbursement for certain services for more than certain specified amounts.
-- Require a medical provider to submit necessary records and other information concerning treatment, products, services, or accommodations provided for utilization review.
-- Require DIFS to promulgate rules to establish criteria or standards for utilization review.
-- Specify that an insurer would be required to pay attendant care only up to 56 hours per week if the care were provided by the injured person's relative, a person domiciled in the injured person's household, or a person with whom the injured person had a business or social relationship before the injury.
-- Allow an insurer to contract to pay benefits for attendant care for more than the 56-hour limitation.
-- Reduce from 67% to 55% the amount of revenue derived from a regulatory fee that could be used for the regulation of financial conduct of people regulated under the Director's authority and for the regulation of people regulated under the Director's authority engaged in the business of health care and health insurance in the State.
-- Require DIFS to maintain on its website a page that, among other things, advised that the Department could assist a person who believed that an automobile insurer was not paying benefits, not making timely payments, or otherwise not performing as it was obligated to do under a policy; and a page that advised consumers about the changes to automobile insurance made by the bill.
-- Modify certain liability coverage limits for an automobile liability or motor vehicle liability policy that insured against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle.
-- Require the Director to engage one or more independent actuaries to examine the MCCA's affairs and records, beginning July 1, 2022, and every third year after that.
-- Require an insurer to offer to an applicant or named insured that selected a PIP coverage limit an exclusion related to other health or accident coverage, if certain conditions applied.
-- Increase, from $1,000 to $3,000, the threshold for which tort liability arising from the ownership, maintenance, or use within the State of a motor vehicle would apply to damages to a motor vehicle, to the extent the damage were not covered by insurance.

The bill also would enact Chapter 31A (Managed Care) of the Code to do the following:

-- Allow an automobile insurer to offer a managed care option that provided for allowable expenses, if certain conditions were met.
-- Require an automobile insurer that offered a managed care option also to offer PIP benefits that were not subject to the managed care option.
-- Require a managed care option to provide for all of the following: 1) that PIP benefits would be primary and would not be coordinated with other health and accident coverage, 2) that PIP benefits would have to be exhausted by the individual claiming benefits under the

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managed care option before he or she could seek benefits from another health or accident coverage provider, and 3) that deductibles, copays, or other similar sanctions would not be assessed or collected for the individual claiming IPP benefits under the managed care option.

Additionally, the bill would enact Chapter 63 (Anti-Fraud Unit) of the Code to do the following:

-- Establish an anti-fraud unit as a criminal justice agency within DIFS.
-- Allow the anti-fraud unit to conduct criminal background checks on applicants for licenses and current licensees, collect and maintain claims of criminal and fraudulent activities in the insurance industry and investigate claims of criminal and fraudulent activity in the insurance market, among other things.
-- Allow the Director to share and receive certain documents, materials, or information.
-- Require the anti-fraud unit to prepare and publish to the Legislature, beginning July 1 of the year after the bill's effective date, a report on the anti-fraud unit's efforts to prevent automobile fraud.

Section 3112, which the bill would amend, would apply to products, services, or accommodations provided after the bill's effective date. The bill also states that Section 3135, which the bill would amend, is intended to codify and give full effect to the opinion of the Michigan Supreme Court in *McCormick v. Carrier*, 487 Mich 180 (2010).

MCL 500.150 et al. Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Medicaid Costs

Enactment of the proposed bill would lead to a gradual increase in Medicaid costs that would depend on the availability of and public interest in unlimited PIP coverage. The bill would mandate that unlimited PIP coverage be available so an indeterminate number of individuals would opt to maintain unlimited coverage.

At present, individuals with automobile insurance in Michigan have unlimited coverage for medical and other costs tied to automobile accidents. If the legislation were enacted, people would have the requirement to purchase limited coverage with the option to purchase unlimited coverage. Some of the costs faced by those in accidents who did not have unlimited coverage would shift to other insurers, including their current primary insurer (whether that is commercial insurance, Medicare, or Medicaid). In many severe injury cases (in which the accident victim became dependent on long-term care) costs would shift to Medicaid as most people do not have long term care coverage beyond the limited coverage provided to Medicare recipients.

The bill would create four levels of PIP coverage, including unlimited, $500,000, $250,000, and a $50,000 option available only to those enrolled in Medicaid. Individuals who were eligible for Medicare or other qualified health coverage could opt out of PIP coverage entirely.

Because of the uncertainty about the interest in unlimited PIP coverage, it is difficult to provide a precise estimate of the potential increase in Medicaid costs. Based on the available data and the assumptions outlined below, the Senate Fiscal Agency (SFA) projects costs similar to those projected in the previous analysis of Senate Bill 1: that enactment of the legislation would cause Medicaid costs to increase gradually over a ten-year period by $70.0 million General Fund/General Purpose (GF/GP). In other words, Medicaid costs ten years after enactment would be $70.0 million GF/GP greater, which equates to about a 1.3% increase over a ten-year period, or a 0.13% per year increase in the State share of Medicaid spending. This figure would depend on the interest in unlimited PIP coverage. If more people purchased unlimited PIP coverage, Medicaid costs would be lower. If there were less interest in unlimited PIP coverage, then the increase in Medicaid costs would be greater.

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The SFA notes that costs would grow gradually year to year and the rate of growth would slowly decline to the point that, after ten years, the post ten-year annual cost growth would be less than $3.0 million GF/GP per year. This long-term annual cost increase would be about 0.05% of overall State Medicaid costs.

This estimate is slightly higher than the estimate included in the SFA analysis of Senate Bill 1 (S-1) and House Bill 4397 (H-1) but that is largely due to the effective date being three months before the start of FY 2020-21, so the original estimate was updated for anticipated medical inflation.

The complete opt-out option for Medicare recipients would lead to an indeterminate number of Medicare-eligible individuals completely opting out. While Medicare-eligible individuals who completely opted out would be fully covered for hospital, pharmaceutical, and physician services, they would have limited coverage for long-term care (up to 100 days under certain circumstances) and attendant care, so those costs would be shifted to Medicaid for those Medicare recipients who were injured in accidents, required long term or attendant care, and spent down to Medicaid eligibility.

Similarly, Medicaid recipients who opted for the $50,000 coverage level and required extensive care after automobile accidents would see their medical costs shifted from automobile insurance and the MCCA to Medicaid. Over time, the largest component of this cost shift would be nursing home and attendant care.

Other individuals could choose $250,000, $500,000, or unlimited PIP coverage. If individuals who chose $250,000 or $500,000 in coverage faced large costs from auto accidents, in particular long-term care and attendant care costs, many of them would end up spending down to Medicaid eligibility and that would lead to a cost shift as well.

There were multiple assumptions made in the derivation of this estimate. The SFA used MCCA data from 2017 to model expenditures for cases going back 40 years. To provide the most useful comparison, the SFA made its estimates in 2021 dollars as the legislation would take effect on July 1, 2020, three months before the start of FY 2020-21. The SFA used age and insurance provider data to model the insurance status of the population currently receiving MCCA services. The SFA assumed that Medicaid nursing home and pharmaceutical costs would be similar to MCCA costs for those services, but that Medicaid attendant care, hospital, and physician care costs would be two-thirds of MCCA costs. The SFA assumed 3.0% medical inflation in order to update the cost estimate from the 2017 data.

Insurance Premiums Tax Revenue

The reduction in the cost of insurance also would reduce the tax base for the 1.25% insurance premium tax. The exact reduction in revenue would depend on the change in the cost of insurance itself, which would depend partially on the PIP options selected.

The SFA estimates that the longer-term reduction in revenue would be in the range of $15.0 million to $20.0 million per year.

Department of Insurance and Financial Services

The bill would have an unknown, but likely negative, fiscal impact on the Department of Insurance and Financial Services.

The additional responsibilities that would be assigned to DIFS by the bill likely would result in increased administrative costs for the Department. It is possible that additional FTEs could be

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required to perform some of these responsibilities, but this would depend on current distribution of duties among existing staff, as well as the volume of information processing, records management, and appeals-related activity generated by the bill. The cost of an additional FTE is estimated at $120,000 per year. Some responsibilities described in the bill likely would be sufficiently funded by existing appropriations.

The bill would require DIFS to engage at least one independent actuary to examine the MCCA's records and affairs every three years, beginning in July 2022. This cost likely would total less than $100,000 per engagement.

The bill also would establish the anti-fraud unit within the Department to prevent and investigate criminal and fraudulent activities in the insurance industry, as established under Executive Order 2018-9. Under that authority, the anti-fraud unit would work with the Department of State Police to have full access to criminal justice information and criminal justice information systems and to conduct criminal background check on applicants for licenses and current licensees, collect and maintain claims of criminal and fraudulent activities, investigate claims of criminal and fraudulent activity, maintain records of investigations, share records of investigations of with other criminal justice agencies, review information from other agencies and work with those agencies to promote investigation and prosecution of criminal and fraudulent activities in the insurance market, and prepare an annual report to the Legislature.

As for the annual costs of operating the anti-fraud unit, appropriations for this unit were first proposed for fiscal year 2019-20. The Governor, the Senate Appropriations Committee, and the House Appropriations Committee recommendations each proposed an appropriation of 6.0 FTEs and $499,300 in restricted funding for its operations and administration. The cost of criminal history background checks under the bill would be assumed as part of the standard cost of operations of the Department of State Police's Criminal Justice Information Systems budget. Other existing entities that could work toward the objectives of the anti-fraud unit could include the Consumer Protection Practice Bureau, the Department of Attorney General's Health Care Fraud Division and the Department of State Police's Fraud Investigation Unit.

Department of Corrections

The bill specifies that a physician, hospital, clinic, or other person or institution that knowingly submitted false or misleading records or other information to an insurer, the MCCA, or the Department would commit a fraudulent insurance act. A person who commits a fraudulent insurance act is guilty of a felony punishable by imprisonment for up to four years, a maximum fine of $50,000, or both.

This proposed offense would have a negative, but likely minor, fiscal impact on the State and local government. More felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately $3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to the State is approximately $3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Date Completed: 5-24-19

Fiscal Analyst: Steve Angelotti
Joe Carrasco,
Elizabeth Raczkowski

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ATTACHMENT 9

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

JOSEPH CANTY,

Plaintiff,

Case No. 21-004799-NI
Honorable Kathleen McCarthy

v.

MICHAEL MASON,

Defendant.
_____/

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Eric M. Noga (P83611)
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PLAINTIFF'S OBJECTION TO PROPOSED "ORDER GRANTING IN PART DEFENDANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION" UNDER MCR 2.602(B)(3)

NOW COMES the Plaintiff, JOSEPH CANTY, by and through his attorneys, APPLEBAUM & STONE, PLC, and for his Objection To Proposed "Order Granting In Part Defendant's Motion For Partial Summary Disposition" Under MCR 2.602(B)(3), states as follows:

1. Plaintiff filed this matter on April 15 2021, seeking automotive negligence damages against Defendants caused by a motor vehicle accident which occurred February 15, 2021.

2. Plaintiff sought pain and suffering damages as under MCL 500.3135 as well as allowable expenses, including medical expenses, as under MCL 500.3135(c)(3).

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3. Defendant brought before this Court a Motion for Partial Summary Disposition regarding Plaintiff's allowable expense claim which was filed on or around October 27, 2022.

4. Oral argument was heard on January 4, 2023, and the Motion was decided on the record.

5. At Oral Argument, Defendant's Motion was Granted in part and Denied in part.

6. At Oral Argument, the Court held the following:

   a. That Plaintiff had no duty to seek treatment with medical providers that participate in Medicare;

   b. That, should Plaintiff treat with a medical provider who does participate in Medicare, that provider is required to make good faith effort to obtain remittance through Medicare;

   c. That any medical billing which is which is submitted in good faith effort to Medicare and then denied may be claimed in this matter; and

   d. That Plaintiff may claim medical bills from medical providers that do not participate in Medicare in this matter.

7. In summation, the Court held that Plaintiff had no duty to mitigate damages, but that any Medicare participating medical provider was required to make good faith effort to submit it's billing to Medicare, and then have it denied, to be included in this action.

8. Defendant submitted a proposed Order granting their motion under the 7-day rule MCR 2.602(B)(3) (**Exhibit 1**).

9. Plaintiff objects to the language in the proposed Order submitted by Defendant as completely inconsistent with the Court's ruling at Oral argument.

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10. Defendant's proposed Order states: "…that Plaintiff, who opted out of allowable expense benefits under MCL 500.3107d, is required to make reasonable efforts to mitigate his damages for allowable expense claims arising under MCL 500.3135(3)(c).

11. At oral argument, the Court specifically denied that Plaintiff had any duty to mitigate damages, with the sole exception that any of his Medicare participating providers were required to make good faith effort to obtain payment through Medicare before they could be claimed in this matter.

12. Such exception is directed at Plaintiff's *providers* and not the Plaintiff himself.

13. Defendant's proposed Order further states: "…that Plaintiff's current claims for allowable expenses arising under MCL 500.3135(3)(c) are dismissed because Plaintiff made no reasonable efforts to mitigate his damages in connection to those claims;"

14. At oral argument, the Court stated only that Plaintiff's *medical providers which are Medicare participants* are required to make good faith effort to obtain payment through Medicare, and that bills submitted to Medicare could not be claimed in this matter unless they were then denied by Medicare.

15. Defendants proposed Order instead dismisses all of Plaintiff's allowable expense claims.

16. Defendant's proposed Order further states that, "…in the event Plaintiff mitigates his damages for allowable expense claims, Plaintiff's recovery for such claims is limited by MCL 500.3107(1)(a) and MCL 500.3157."

17. At oral argument, the Court specifically denied that allowable expense claims made under MCL 500.3135(3)(c) are subject to the MCL 500.3157 personal injury protection fee schedule.

18. Plaintiff submits the attached Proposed Order Granting in Part and Denying in Part Defendant's Motion (**Exhibit 2**) in correction of these errors.

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WHEREFORE Plaintiff, Joseph Canty respectfully requests that this Honorable Court:

1) Schedule a hearing on his Objection To Proposed "Order Granting In Part Defendant's Motion For Partial Summary Disposition" Under MCR 2.602(B)(3); or in the alternative,

2) Enter the Proposed Order attached as Plaintiff's **Exhibit 2**.

Respectfully submitted,

APPLEBAUM & STONE, PLC

BY: /s/ Eric M. Noga

ERIK J. STONE (P55304)
ERIC M. NOGA (P83611)
Attorney for Plaintiff
26777 Central Park Blvd – Suite 300
Southfield, Michigan 48076
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estone@applebaumstone.com
enoga@applebaumstone.com

Dated: January 4, 2023

BRIEF IN SUPPORT

Plaintiff, JOSEPH CANTY, by and through his attorneys, APPLEBAUM & STONE, PLC, relies on the facts and law as stated in his Objection, MCR 2.602, and 42 CFR §489.2.

WHEREFORE Plaintiff, Joseph Canty respectfully requests that this Honorable Court:

1) Schedule a hearing on his Objection To Proposed "Order Granting In Part Defendant's Motion For Partial Summary Disposition" Under MCR 2.602(B)(3); or in the alternative,

2) Enter the Proposed Order attached as Plaintiff's **Exhibit 2**.

Respectfully submitted,

APPLEBAUM & STONE, PLC

APPLEBAUM & STONE, PLC
Attorneys at Law
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Mason Appendix 197

BY: /s/ Eric M. Noga

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Dated: January 4, 2023

APPLEBAUM & STONE, PLC
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ATTACHMENT 10

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WILLIAM CANTY,

Plaintiff,

-vs-

MICHAEL CHESTER MASON,

Defendant.
_____/

CT NO: 21-004799-NI
HON. KATHLEEN M. MCCARTHY

PROOF OF SERVICE
The Undersigned certifies that the forgoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on this _3rd day of February 2023.

☐ US Mail ☐ Fax
☐ Hand Delivered ☐ UPS
☐ Fed.Express ☒ E-Filed
☐ Other

Signature___*/s/ Kellie T. Klingel*_____

APPLEBAUM & STONE, PLC
ERIK J. STONE (P55304)
Attorney for Plaintiff
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estone@applebaumstone.com

KRAMER, CORBETT,
HARDING & DOMBROWSKI
BY: ANGELA ESSEILY (P81816)
Attorney for Defendant Michael Chester Mason
PO Box 8084
Royal Oak, Michigan 48068-8084
313-237-5636 / 313-237-5732 (Fax)
aesseily@acg.aaa.com
_____/

DEFENDANT'S RESPONSE TO PLAINTIFF OBJECTION TO THE ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY IN PART, AND DENYING IN PART

NOW COMES Defendant, MICHAEL C. MASON, by and through his Attorneys, KRAMER, CORBETT, HARDING & DOMBROWSKI, and for his response to Plaintiff's Objection to the Order Regarding Defendant's Motion for Summary Disposition, states as follows:

1. Defendant neither admits nor denies, leaves Plaintiff to his proofs.

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2. Defendant neither admits nor denies as to what Plaintiff is seeking; however, Defendant denies Plaintiff can fully seek damages such as allowable expenses, from Defendant without submitting claims to Medicare first in an effort mitigation of damages.
3. Defendant admits only that it brought a Motion for Partial Summary Disposition regarding Plaintiff's allowable expense claims.
4. Defendant admits only that oral arguments were heard on January 4, 2023 and the Motion was decided on the record.
5. Defendant admits that his Motion was granted in part and denied in part.
6. Defendant admits in part and denies in part. Defendant admits that the Motion was Granted in Part and Denied in Part; however, Defendant further states and denies, that it was denied as to the issue of mitigation.
    a. Defendant admits the Court ruled Plaintiff was not required to seek treatment with a provider that participates in Medicare. However, as Defense Counsel noted on the record, this was not the crux of Defendant's claim; rather Defendant argued that Plaintiff can treat with whomever he wished; however, he must submit all bills to Medicare in an effort to mitigate;
    b. Defendant denies as to Plaintiff's specific recitation that only Medicare physicians must submit to Medicare. Defendant did not make this distinction in his argument. Rather, it was intended that all bills be submitted and failure to submit ***all bills***

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results in a failure to mitigate and an unnecessary ambiguity. Defense counsel clarified on the record that pursuant to the doctrine of mitigation, Plaintiff has a duty to mitigate, which means submitting ***all*** bills to Medicare. And failure to submit these bills is a failure to mitigate. Consequently, the Plaintiff is barred from recovering for any item of damage which could have been avoided. Namely, all bills that were not submitted to Medicare. The Defendant further requested that if the Plaintiff did mitigate, they would still be limited to recovery pursuant to MCL 500.3107 and MCL 500. 3157.

c. Defendant admits in part and denies in part. Defendant agrees that The Court did rule that bills which were submitted to Medicare, in good faith and then denied could be claimed against the "tortfeasor;" however; based on the Court's ruling, Plaintiff and his provider failed to submit any bills in good faith. It is worth noting, submitting a bill and failing to provide all the information required by Medicare, despite Medicare's request to do so, is not a good faith submission.

d. Defendant admits in part and denies in part. Defendant believes the Courts ruling was that all bills must be properly submitted to Medicare in an effort to mitigate and it must do so in good faith. Failure to do so bars Plaintiff from claiming any bills not submitted. Defendant admits there is no requirement to seek treatment with a Medicare Provider; rather, all bills must be submitted to Medicare regardless.

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7. Defendant denies. The Court in this matter unequivocally ruled the Plaintiff and his providers had a duty to submit all allowable expenses to Medicare, in good faith, and failure to do so bars Plaintiff from claiming these bills against the Defendant.

The Court ruled all bills need to be submitted to Medicare, in good faith, in an effort to mitigate damages. And failure to submit all medical bills results in dismissal of all bills not submitted in good faith.

8. Defendant denies. Upon review of the Court Record, Defendant has agreed to omit the fourth paragraph in the Order which reads:

IT IS FURTHER ORDERED that, in the event Plaintiff mitigates his damages for allowable expense claims, Plaintiff's recovery for such claims is limited by MCL 500.3107(1)(a) and MCL 500.3157.

Defendant does believe there is a clarification required wherein the Court holds:

> THE COURT "That's where I disagreed with you, that it's not subject to the fee, it's subject to the auto neg fee schedules. But it's not subject to the Medicare fee schedule if the provider isn't a Medicare recipient, isn't a Medicare provider, I mean.
>
> MS ESSEILY "Okay. But it would still be subject to the fee scheduled based on 3017. Okay.
>
> MR. STONE "What would be subject to the fee schedule?
>
> THE COURT "Anything after the treatment date of the changes. Is there a fee schedule after June of 2019 or 2020.

(**Exhibit A,** Motion Hearing Transcript, p. 14).

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Defendant does not believe this last part was misinterpreted based on Mr. Stone's question as to what would be subject to the fee schedule. The Court makes reference to the "auto neg fee schedule," which to the best of Defendant's knowledge is the fee schedule provided pursuant to MCL 500.3107 and MCL 500.3157. Defendant believes the Order shall stay the same as provided in **Exhibit B,** Modified Proposed Order.

WHEREFORE, Defendant respectfully requests this Court enter the Order provided herein, as **Exhibit B.**

Respectfully submitted,

HOM, CORBETT, KRAMER,
HARDING & DOMBROWSKI

/s/Angela Esseily

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DATED: February 3, 2023

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WILLIAM CANTY,

Plaintiff,

-vs-

MICHAEL CHESTER MASON,

Defendant.
_____/

CT NO: 21-004799-NI
HON. KATHLEEN M. MCCARTHY

PROOF OF SERVICE
The Undersigned certifies that the forgoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on this _3rd day of February 2022.

☐ US Mail ☐ Fax
☐ Hand Delivered ☐ UPS
☐ Fed.Express ☒ E-Filed
☐ Other

Signature___*/s/ Kellie T. Klingel*_____

APPLEBAUM & STONE, PLC
ERIK J. STONE (P55304)
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KRAMER, CORBETT,
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_____/

BRIEF IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTION TO DEFENDANT'S PROPOSED ORDER

NOW COMES Defendant, Michael Mason, by and through his attorneys, KRAMER, CORBETT, HARDING & DOMBROWSKI, and for his response to Plaintiff's Objection to Defendant's Proposed Order Granting in Part and Denying in Part Defendannt's Motion for Summary Disposition, states as follows:

I. Defendant's Arguments

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In Defendant's Motion and Reply to Plaintiff's Response, Defendant's request for relief was that this Honorable Court Grant his Motion in two parts. First, it is Defendant's position, and the law historically supports, that Plaintiff was required to submit all medical bills to Medicare in an effort to mitigate damages. As the Michigan Supreme Court previously held in *Morris*, failure to mitigate, when damages could have been avoided, bars the person "wronged" from recovering those damages. *Morris v Clawson Tank Co.,* 459 Mich 256, 263-264 (1998).

The Defendant's argument was that Plaintiff's allowable expense claim would still be limited to a reasonable amount under Section 3107 of the No-Fault act and the Fee Schedule caps provided in Section 3157 of the No-Fault Act.

Upon review of the record and further review of the transcript, it is Defendant's position the Court Granted Defendant's Mitigation argument in its entirety. More specifically to the extent that all bills must be submitted to Medicare in an effort to mitigate damages, and failure to do so bars Plaintiff and his providers from claiming those bills against the Defendant in this matter. (**Exhibit A**, p. 4). As far as the bills that can be claimed against Mr. Mason, after submission to Medicare, it is Defendant's position that Plaintiff is still subjected to the fee schedule outline in subsection (2) of Section 3157 of the No-Fault Act which states, in relevant part:

> (2) Subject to subsections (3) to (14), a physician, hospital, clinic, or other person that renders treatment or rehabilitative occupational training to an injured person for an accidental bodily injury covered by personal protection insurance is not eligible for payment or reimbursement under this chapter for more than the following:
>
> (a) For treatment or training rendered after July 1, 2021 and before July 2, 2022, 200% of the amount payable to the person for the treatment or training under Medicare.
>
> (b) For treatment or training rendered after July 1, 2022 and before July 2, 2023, 195% of the amount payable to the person for the treatment or training under Medicare.
>
> (c) For treatment or training rendered after July 1, 2023, 190% of the amount payable to the person for the treatment or training under Medicare.

WHEREFORE, Defendant respectfully requests this Honorable Court:

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(1) Enter the Order attached as Defendant's Exhibit B in his Response to Plaintiff's Objection;

Respectfully submitted,

HOM, CORBETT, KRAMER,
HARDING & DOMBROWSKI

/s/Angela Esseily

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DATED: February 3, 2023

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ATTACHMENT 11

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Court of Appeals, State of Michigan

ORDER

Joseph Canty v Michael Chester Mason

Docket No. 365327

LC No. 21-004799-NI

Thomas C. Cameron
Presiding Judge

Kirsten Frank Kelly

Noah P. Hood
Judges

The application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

August 28, 2023
Date

Chief Clerk

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ATTACHMENT 12

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 CANTY,

Plaintiff-Appellee,

v

MICHAEL CHESTER MASON,

Defendant-Appellant.

FOR PUBLICATION
October 04, 2024
1:14 PM

No. 365327
Wayne Circuit Court
LC No. 21-004799-NI

Before: MARKEY, P.J., and SWARTZLE and MARIANI, JJ.

PER CURIAM.

In 2019, the Michigan Legislature made sweeping changes to the no-fault act, MCL 500.3101 *et seq.*, through the enactment of 2019 PA 21 and 2019 PA 22. This appeal requires us to construe the interplay between several statutory provisions that were subject to amendment. Plaintiff, Joseph Canty, seeks to recover medical expenses incurred to treat injuries allegedly sustained in a motor-vehicle accident involving defendant, Michael Chester Mason. In pursuing the action, Canty is relying on the tort exception found in MCL 500.3135(3)(c), allowing recovery of "allowable expenses" by persons who elect not to maintain personal protection insurance (PIP) coverage under their automobile insurance policies. Canty was permitted to make that election because he has Medicare coverage; however, it was not used to pay for any of his accident-related medical expenses. Mason moved for partial summary disposition under MCR 2.116(C)(10), arguing that Canty's medical expenses had to be reasonable under MCL 500.3107(1)(a), that Canty had a duty to mitigate his damages by employing his Medicare coverage to pay the medical bills, and that the no-fault fee schedules in MCL 500.3157 apply to a suit brought under MCL 500.3135(3)(c). The trial court granted in part and denied in part Mason's motion for summary disposition. The court concluded that Canty's allowable medical expenses had to be reasonable, that he had no duty to mitigate damages by using his Medicare coverage, and that the fee schedules were inapplicable. Mason appeals by leave granted. We affirm in part and reverse in part.

I. BACKGROUND

This case arose out of an automobile accident that occurred in February 2021. Canty filed a complaint against Mason, alleging that Mason negligently caused the accident by, in part,

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traveling too fast for conditions and failing to maintain proper distance, which resulted in Mason's vehicle skidding and rear-ending Canty's car. Canty alleged that he sustained physical injuries in the accident and, as a result, incurred medical expenses for treatment rendered by healthcare providers. Canty asserted that he had a statutory right to recover those expenses from Mason under MCL 500.3135(3)(c), which provides, in pertinent part:

> (3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101(1) was in effect is abolished except as to:
>
> * * *
>
> (c) Damages for allowable expenses, work loss, and survivor's loss *as defined in sections 3107 to 3110*, including all future allowable expenses and work loss, in excess of any applicable limit under section 3107c or the daily, monthly, and 3-year limitations contained in those sections, *or without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d* or if an exclusion under section 3109a(2) applies. . . . . [Emphasis added.[1]]

Canty was covered by an automobile insurance policy; however, he had "elect[ed] to not maintain coverage for [PIP] benefits payable under section 3107(1)(a)." MCL 500.3107d(1).[2] He was able to do so because he otherwise had "qualified health coverage," MCL 500.3107d(1), in the form of "parts A and B of the federal Medicare program," MCL 500.3107d(7)(b)(*ii*). We note that "[b]enefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the [PIP] benefits otherwise payable for the injury under this chapter." MCL 500.3109(1). Additionally, relevant to this case and appeal, MCL 500.3157 contains fee schedules that limit a medical provider's reimbursement amount.

Subsequently, Mason moved for partial summary disposition under MCR 2.116(C)(10). He argued that the "without limit" nomenclature used in MCL 500.3135(3)(c) does not mean that there are no limits on Canty's recovery of allowable expenses.[3] Rather, the medical charges had to be reasonable and incurred for reasonably necessary services so as to be in compliance with the definition of "allowable expenses" in MCL 500.3107(1)(a), which provision is incorporated by express reference in MCL 500.3135(3)(c). Further, Mason contended that Canty and his healthcare providers had a duty to mitigate damages by utilizing Canty's Medicare coverage,

---

[1] We note that Canty also alleged a claim for noneconomic damages, asserting that he suffered a serious impairment of body function as a result of the accident. See MCL 500.3135(1) and (5).

[2] MCL 500.3107(1)(a) provides that PIP benefits are payable for, in part, "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."

[3] Mason posited that the phrase "without limit" in MCL 500.3135(3)(c) simply references the fact that there is no PIP coverage limit to exhaust before seeking damages from a tortfeasor, and not that an injured party is entitled to unlimited expenses from the tortfeasor.

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which was not done. Mason maintained that Canty treated with many providers who accepted Medicare, yet Medicare was not billed for the services, nor were Medicare rates charged for the care and treatment. Mason asked the trial court to dismiss all claims for which Canty did not attempt to bill Medicare. He additionally argued that any recovery of allowable expenses is subject to the fee schedules in MCL 500.3157. In response, on the issue of mitigation, Canty argued that MCL 500.3135(3)(c) did not restrict his choice of medical providers, nor did it require him to submit claims to Medicare for purposes of his cause of action. Moreover, according to Canty, MCL 500.3135(3)(c) allows recovery "without limit" and does not reference or otherwise incorporate MCL 500.3157, thereby excluding application of the fee schedules.

Eventually, at a hearing to settle an order regarding a ruling made by the trial court from the bench on Mason's motion for summary disposition, the court entertained further argument on the motion and partially altered its prior ruling, which we need not explore. The trial court now ruled that Canty had no duty to mitigate damages or expenses "because Medicare and Medicaid are exempt from the no fault statute." The court further determined that Canty had to show that the charges by his medical providers were reasonable and necessary under MCL 500.3107(1)(a)'s definition of "allowable expenses." Thus, the charges and expenses were not without some limit. But the trial court also found that the fee schedules in MCL 500.3157 do not apply to Canty's action brought under MCL 500.3135(3)(c). The court entered an order granting in part and denying in part Mason's motion for summary disposition. Mason appeals by leave granted. *Canty v Mason*, unpublished order of the Court of Appeals, entered August 28, 2023 (Docket No. 365327).

II. ANALYSIS

A. STANDARD OF REVIEW

We review de novo a trial court's ruling on a motion for summary disposition. *Champine v Dep't of Transp*, 509 Mich 447, 452; 983 NW2d 741 (2022). This Court also reviews de novo issues of statutory construction. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). De novo review "means that we review the issues independently, with no required deference to the trial court." *People v Beck*, 504 Mich 605, 618; 939 NW2d 213 (2019).

B. SUMMARY DISPOSITION PRINCIPLES – MCR 2.116(C)(10)

In *Anderson v Transdev Servs, Inc*, 341 Mich App 501, 506-507; 991 NW2d 230 (2022), this Court recited the principles that govern the analysis of a motion brought pursuant to MCR 2.116(C)(10):

> MCR 2.116(C)(10) provides that summary disposition is appropriate when, "[e]xcept as to the amount of damages, 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 motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a party's action. "Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required . . . when judgment is sought based on subrule (C)(10)," MCR 2.116(G)(3)(b), and such evidence, along with the pleadings, must be considered by the court when ruling on

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the (C)(10) motion, MCR 2.116(G)(5). "When a motion under subrule (C)(10) is made and supported . . ., an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4).

A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. 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. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). Like the trial court's inquiry, when an appellate court reviews a motion for summary disposition, it makes all legitimate inferences in favor of the nonmoving party. Speculation is insufficient to create an issue of fact. A court may only consider substantively admissible evidence actually proffered by the parties when ruling on the motion. [Quotation marks, citations, and brackets omitted.]

C. RULES OF STATUTORY CONSTRUCTION

With respect to the rules of statutory interpretation, this Court in *Slis v Michigan*, 332 Mich App 312, 335-336; 956 NW2d 569 (2020), observed:

This Court's role in construing statutory language is to discern and ascertain the intent of the Legislature, which may reasonably be inferred from the words in the statute. We must focus our analysis on the express language of the statute because it offers the most reliable evidence of legislative intent. When statutory language is clear and unambiguous, we must apply the statute as written. A court is not permitted to read anything into an unambiguous statute that is not within the manifest intent of the Legislature. Furthermore, this Court may not rewrite the plain statutory language or substitute its own policy decisions for those decisions already made by the Legislature.

Judicial construction of a statute is only permitted when statutory language is ambiguous. A statute is ambiguous when an irreconcilable conflict exists between statutory provisions or when a statute is equally susceptible to more than one meaning. When faced with two alternative reasonable interpretations of a word in a statute, we should give effect to the interpretation that more faithfully advances the legislative purpose behind the statute. [Quotation marks and citations omitted.]

D. DISCUSSION AND RESOLUTION

Abiding by the plain and unambiguous language of the various statutory provisions implicated in this case and the uncontroverted caselaw on mitigation of damages, we conclude that

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resolution of this appeal is fairly straightforward. With respect to MCL 500.3135(3)(c), an injured person with standard PIP coverage under a no-fault insurance policy *and* an injured person who elected not to maintain such coverage and instead had a qualified-health-coverage (QHC) plan can both recover damages in a traditional tort action for "allowable expenses" as defined in MCL 500.3107 to MCL 500.3110. A distinction between these two individuals is that the person carrying PIP coverage under a no-fault policy is limited to recovering only amounts in "excess of" certain statutory limitations on the payment of PIP benefits, but recovery of allowable expenses by a person who elected not to maintain PIP coverage is "without limit." MCL 500.3135(3)(c). We conclude that the "without limit" language of MCL 500.3135(3)(c) cannot be construed to mean that there are no parameters whatsoever on the amount of recovery. Rather, the "without limit" phrase, when read in context, simply means that the recovery of allowable expenses does not solely encompass amounts in excess of the statutory limitations, as is the case with respect to a party pursuing a tort action after no more PIP benefits are available under a no-fault policy because the statutory limitations on coverage were met or exhausted. In other words, a person in Canty's shoes who elected not to have PIP coverage through an auto insurance policy can recover *dollar one* in allowable expenses from the tortfeasor.[4] The "without limit" terminology in MCL 500.3135(3)(c) cannot be viewed in a vacuum, and the grammatical structure of Subsection (3)(c) supports our interpretation of the provision.

Furthermore, under MCL 500.3135(3)(c), the "allowable expenses" available to Canty, if successful in his tort action, are those defined in MCL 500.3107 to MCL 500.3110. And, as noted earlier, under MCL 500.3107(1)(a), "allowable expenses" are defined as "reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."[5] We therefore conclude that the trial court properly ruled that MCL 500.3107(1)(a) limits any recovery by Canty under MCL 500.3135(3)(c) to those expenses that were reasonable and that were for reasonably necessary services.[6]

The next issue posed in this case is whether the fee schedules in MCL 500.3157 apply to a tort action under MCL 500.3135(3)(c). MCL 500.3135(3)(c), while referencing and incorporating MCL 500.3107 to MCL 500.3110, makes no express mention of MCL 500.3157. But the introductory or prefatory language of MCL 500.3107(1) states that the provisions found within the statute, which includes the definition of "allowable expenses," are "[s]ubject to the exceptions and limitations in this chapter[.]" And that chapter is Chapter 31 of the Insurance Code of 1956, MCL 500.100 *et seq*. Chapter 31 encompasses MCL 500.3157; therefore, MCL 500.3135(3)(c), by incorporating MCL 500.3107, necessarily also incorporates the fee schedules in MCL 500.3157,

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[4] This proposition is subject to our holding regarding the duty to mitigate damages.

[5] Our Supreme Court has "recognized that the plain language of this provision imposes four requirements that a . . . claimant must prove before recovering benefits for allowable expenses: (1) the expense must be for an injured person's care, recovery, or rehabilitation, (2) the expense must be reasonably necessary, (3) the expense must be incurred, and (4) the charge must be reasonable." *Douglas v Allstate Ins Co*, 492 Mich 241, 259; 821 NW2d 472 (2012).

[6] There are additional qualifiers, criteria, and exceptions in MCL 500.3107 to MCL 500.3110 for purposes of identifying allowable expenses that are recoverable under MCL 500.3135(3)(c).

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making them applicable to this case. Accordingly, the trial court erred by ruling that the fee schedules cannot be applied to limit Canty's recovery.

Our concurring-dissenting colleague disagrees with our analysis and resolution of the issue concerning the fee schedules in MCL 500.3157. He argues that the Legislature did not expressly identify MCL 500.3157 in the language of the tort-damages provision, MCL 500.3135(3)(c); therefore, we should not construe MCL 500.3135(3)(c) as if the Legislature had done so. We respectfully disagree. The Legislature is presumed to be aware of and to have considered existing statutes when enacting new laws. See *Milne v Robinson*, 513 Mich 1, 18; 6 NW3d 40 (2024). We must thus assume that when the Legislature crafted MCL 500.3135(3)(c), which expressly references MCL 500.3107, it knew quite well that MCL 500.3107 placed restrictions on the amount of recoverable allowable expenses through limitations and exceptions found in Chapter 31, including the fee schedules. Effectively, the Legislature did indeed identify MCL 500.3157 as a statutory provision that is to be considered for purposes of setting tort damages under MCL 500.3135(3)(c).

The concurrence/dissent asserts that our interpretation disregards the legislatively-chosen range specifically targeted in MCL 500.3135(3)(c), i.e., MCL 500.3107 to MCL 500.3110, improperly expanding the range to incorporate all of Chapter 31, which the Legislature could have stated outright in MCL 500.3135(3)(c) had that been its intent. We again disagree. First, for the reasons discussed above, we conclude that if MCL 500.3157 is not taken into consideration, the plain and unambiguous language of MCL 500.3107(1) referencing Chapter 31, as incorporated by MCL 500.3135(3)(c), is not being honored and is, instead, rendered surplusage and nugatory. See *Empire Iron Mining Partnership v Tilden Twp*, 337 Mich App 579, 586; 977 NW2d 128 (2021) (in construing statutory language, every word should be given meaning, and we must avoid an interpretation that would render any part of a statute surplusage or nugatory). Moreover, folding Chapter 31 into the definition of "allowable expenses" does not implicate each and every provision in Chapter 31, but only those few that would restrict or limit the amount of allowable expenses, such as MCL 500.3157.

The concurrence/dissent also contends that the prefatory language of MCL 500.3107(1) that references Chapter 31 pertains to the availability of insurance or PIP benefits, while MCL 500.3135(3)(c) concerns the availability of tort damages. Therefore, the prefatory language is inapplicable in relation to MCL 500.3135(3)(c). But the same can be said with respect to the definition of "allowable expenses" in MCL 500.3107(1)(a): it regards the availability of insurance or PIP benefits, yet there is no dispute, and the concurrence/dissent agrees, that it also sets the parameters of tort damages available under MCL 500.3135(3)(c).[7]

[7] We recognize that MCL 500.3107(1) limits the recovery of *PIP benefits* on the basis of any pertinent provisions in Chapter 31, but the prefatory language also necessarily places a limit on the calculation of recoverable *allowable expenses*. The recovery of PIP benefits encompasses the recovery of compensation to pay for allowable expenses; the two are inextricably intertwined. If an expense is not an allowable expense, one cannot recover PIP benefits in relation to that expense. We do not believe that there is a relevant distinction between PIP benefits and allowable expenses

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The final question concerns mitigation of damages, which requires us to also consider the impact of the setoff language in MCL 500.3109(1). "Mitigation of damages is a legal doctrine that seeks to minimize the economic harm arising from wrongdoing." *Morris v Clawson Tank Co*, 459 Mich 256, 263; 587 NW2d 253 (1998). It is incumbent on a person who has been harmed by the commission of a tort to use such means that are reasonable under the circumstances to minimize or mitigate the amount of damages. *Id.* A person wronged by a tortfeasor is not entitled to recover for any item of damage that could have been avoided. *Id.* at 263-264.

This Court had held that because the no-fault act does not specifically abrogate the common-law principle that a plaintiff is obligated in a tort action to mitigate his or her damages, the defense remains viable. *Lee v Detroit Med Ctr*, 285 Mich App 51, 67; 775 NW2d 326 (2009); *Bak v Citizens Ins Co of America*, 199 Mich App 730, 737-738; 503 NW2d 94 (1993).[8] Moreover, and importantly, MCL 500.3135(3)(c) carves out an exception to the abolishment of tort liability arising from the ownership, maintenance, or use of a motor vehicle. Consequently, Canty's lawsuit *is a true tort action.* Thus, the doctrine of mitigation of damages is applicable.

We reject the trial court's finding or suggestion that Medicare benefits cannot be taken into consideration on the issue of mitigation of damages because such benefits were not available to cover Canty's medical expenses given that the case arises out of the no-fault act and Medicare is exempt from the act. In *John Hancock Prop & Cas Ins Cos v Blue Cross & Blue Shield of Mich*, 437 Mich 368, 373; 471 NW2d 541 (1991), the Michigan Supreme Court, citing 42 USC 1395y(b)(2)(A) (Medicare secondary payer), which is part of the Omnibus Reconciliation Act of 1980, stated:

> A federal statute provides that Medicare benefits are not payable where the medical expense is covered under an automobile insurance policy or plan or under no-fault insurance. The federal statute thus allocates to automobile insurers the primary burden of paying the medical expense, arising out of automobile accidents, of persons covered by the Medicare program.

In this case, Canty did not have PIP coverage for allowable medical expenses through an automobile insurance policy or no-fault insurance plan because he had healthcare coverage under parts A and B of Medicare, as expressly permitted by the Legislature under MCL 500.3107d(1) and (7)(b)(*ii*). The trial court's ruling circumvents the legislative goal of allowing motorists to opt out of PIP coverage where they have QHC through Medicare, leaving the motorist without any medical coverage for injuries sustained in a motor-vehicle accident. Accordingly, federal law did

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for purposes of employing Chapter 31 in relation to calculating damages under MCL 500.3135(3)(c).

[8] The Supreme Court in *Marquis v Hartford Accident & Indemnity*, 444 Mich 638, 651; 513 NW2d 799 (1994), voiced its approval of the *Bak* decision on the mitigation-of-damages issue in the context of the no-fault act.

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not prohibit Canty from receiving Medicare benefits for medical expenses incurred as a result of the accident.

Furthermore, MCL 500.3135(3)(c) incorporates MCL 500.3109(1), which, as quoted earlier, provides that "[b]enefits provided *or required to be provided* under the laws of any state *or the federal government* shall be subtracted from . . . benefits otherwise payable for the injury under this chapter." (Emphasis added.) In general, Medicare healthcare benefits constitute benefits provided under the laws of the federal government. See 42 USC 1395 *et seq.* And Canty has Medicare coverage. Apparently, no Medicare benefits have been provided to or on behalf of Canty in relation to medical expenses incurred as a result of the accident. Therefore, the question becomes whether Medicare benefits would have been *required to be provided* to him or his providers had any of the pertinent medical bills been submitted to Medicare for payment. And to that extent, Mason is entitled to a setoff under MCL 500.3109(1) for purposes of any damage calculation on a finding of liability. We would also reach that same conclusion solely under common-law mitigation principles because the failure to seek payment from Medicare would not have been reasonable as a matter of law if the medical provider accepted Medicare.[9]

III. CONCLUSION

We conclude (1) that any damages recoverable by Canty under MCL 500.3135(3)(c) must constitute "allowable expenses" under MCL 500.3107 to MCL 500.3110, (2) that the fee schedules in MCL 500.3157 apply to Canty's action, (3) that common-law, mitigation-of-damages principles are also applicable, (4) that under either MCL 500.3109(1) or common-law mitigation principles, Mason is entitled to a setoff for medical expenses that would have been covered by Medicare, and (5) that, if necessary, the trier of fact must resolve whether any incurred expenses for services rendered by providers who did not accept Medicare were reasonably incurred for purposes of mitigating damages. With these guideposts in place, Mason is free to renew his motion for summary disposition should he be so inclined.

We affirm in part and reverse and remand in part for further proceedings consistent with this opinion. We do not retain jurisdiction. We decline to tax costs under MCR 7.219.

/s/ Jane E. Markey
/s/ Brock A. Swartzle

[9] We wish to make clear that if Canty received pertinent medical services and treatment from a provider who did not accept Medicare, those expenses might still be recoverable. In that situation, the issue to be resolved by the trier of fact in relation to mitigation would concern whether it was reasonable under all of the surrounding circumstances for Canty to see a provider who did not accept Medicare.

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ATTACHMENT 13

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 CANTY,

Plaintiff-Appellee,

v

MICHAEL CHESTER MASON,

Defendant-Appellant.

FOR PUBLICATION
October 04, 2024
1:18 PM

No. 365327
Wayne Circuit Court
LC No. 21-004799-NI

Before: MARKEY, P.J., and SWARTZLE and MARIANI, JJ.

MARIANI, J. (*concurring in part and dissenting in part*).

I agree with the majority's conclusions that (1) per MCL 500.3135(3)(c)'s incorporation of the "allowable expenses" definition in MCL 500.3107(1)(a), Canty's tort-damages claim for medical expenses comprises "reasonable charges incurred for reasonably necessary products, services and accommodations"; and (2) the trial court erred by concluding that no duty to mitigate applies his claim. I respectfully disagree, however, with the majority's conclusion that the fee schedule set forth in MCL 500.3157 applies to a tort-damages claim under MCL 500.3135(3)(c).

As the majority aptly explains, Canty's tort-damages claim is proceeding under MCL 500.3135(3)(c), which preserves from abolition by the no-fault act third-party tort liability for certain damages—namely, as relevant here, "[d]amages for allowable expenses . . . as defined in sections 3107 to 3110[.]" The Legislature thus expressly identified a discrete range of statutory provisions to define the scope of these available tort damages; MCL 500.3157 is not within it, nor does that provision itself say otherwise. Of course, the Legislature could have expressly identified MCL 500.3157 to help define the scope of these damages, as it did with the other handful of statutory sections it designated for the task. The Legislature chose not to, however, and I do not believe MCL 500.3135(3)(c) should be read as if it had.

The majority grounds its conclusion otherwise on MCL 500.3107, which is one of the provisions expressly identified in MCL 500.3135(3)(c). Section 3107 contains a subsection specifically defining the term "allowable expenses," and I certainly agree that, when the Legislature said "[d]amages for allowable expenses . . . as defined in section[] 3107," it meant to adopt that specific definition to help delineate the scope of tort damages preserved via MCL

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500.3135(3)(c). But I do not see in the statutory language an intent to apply MCL 500.3157 to those tort damages as well. The majority finds such intent in Section 3107's general prefatory language, which states, "Subject to the exceptions and limitations in this chapter, and subject to chapter 31A, personal protection insurance benefits are payable for the following"—with the section then proceeding to provide specific definitions of various things, including allowable expenses. "[T]his chapter" is Chapter 31 of the Insurance Code, which spans all of MCL 500.3101 through MCL 500.3179. The majority reasons that, because MCL 500.3157 is among "the exceptions and limitations in" Chapter 31, it is a part of what MCL 500.3135(3)(c) incorporated when referring to Section 3107—a conclusion that presumably would hold for any other potentially relevant "exceptions and limitations" in Chapter 31 as well.

I struggle to square this reading with Section 3135(3)(c)'s plain language. As noted, the Legislature, in Section 3135(3)(c), expressly chose to designate a narrow and specific range of statutory provisions within Chapter 31—Sections 3107 to 3110—to define the scope of available tort damages. The majority's interpretation of Section 3107, however, effectively reads that designated range out of the statute. Rather than being defined by the specific sections of Chapter 31 that the Legislature expressly identified, tort damages under MCL 500.3135(3)(c) are instead defined—and limited—by every potentially applicable provision in Chapter 31. That reading strikes me as at odds with MCL 500.3135(3)(c)'s plain language, and leaves the Legislature's specifically chosen range of provisions without due meaning or effect.

Nor, in my view, do MCL 500.3107's own plain terms require that reading. Instead, I read "[s]ubject to the exceptions and limitations in this chapter" not to define allowable expenses per se—and thus be a part of what MCL 500.3135(3)(c) means when it speaks of those expenses "as defined by section[] 3107"—but instead to attach to and modify the language that immediately follows it: "personal protection insurance benefits are payable for the following." In other words, Section 3107's prefatory language, by its own terms, helps define what insurance benefits are payable, making clear that the payability of those benefits is subject to the exceptions and limitations of the rest of Chapter 31.[1] MCL 500.3135(3)(c), however, pertains not to the payability of insurance benefits, but to liability for tort damages—a distinction that is at the core of MCL 500.3135(3)(c), and that places that subsection to the side of what MCL 500.3107's prefatory language is addressing. In my view, MCL 500.3107's prefatory language certainly has meaning—just, by its plain terms, for something distinct (the payability of insurance benefits) from what MCL 500.3135(3)(c) specifically addresses and defines (available tort damages).

Correspondingly, in MCL 500.3135(3)(c), the Legislature did not simply say that the tort damages available for allowable expenses are "as defined in this chapter," or are the same as what are payable for insurance benefits under Chapter 31, or something to that effect. Instead, it was much more targeted and precise, carving out from Chapter 31 a discrete and expressly circumscribed range of provisions to mark the bounds of allowable expenses that can be pursued

[1] And this makes good sense, given that the payability of benefits is what Chapter 31 largely deals with—including MCL 500.3157, which speaks in terms of payment for treatment of injuries "covered by personal protection insurance."

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as tort damages. MCL 500.3157 is not among those legislatively chosen provisions, and I would not read it into them.[2]

In sum, I would conclude that MCL 500.3135(3)(c) does not incorporate MCL 500.3157's fee schedule into its defined scope of available tort damages, as that reading, in my view, best reflects and effectuates the plain terms of the relevant statutory provisions. Accordingly, I respectfully dissent from the majority in that regard.

/s/ Philip P. Mariani

[2] Furthermore, that the scope of available tort damages may, as a result, be different than the scope of payable insurance benefits does not strike me as interpretively odd or concerning, given the fundamental difference in character between tort damages and insurance benefits (and with it, the different policy judgments that the Legislature may have brought to bear on them—that, for instance, it could strike the right cost-savings balance by imposing a fee schedule on the benefits that can be recovered via first-party claims but not on the tort damages that can be pursued via third-party lawsuits).

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