STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

FATHER AND SONS, INC.,
d/b/a BERKLY MARATHON,

Plaintiff,

v.

Case No. 26-223897-CB
Honorable Victoria Valentine

LP LIQUIDATING, LLC, formerly known as LEONARDO'S PRODUCE LLC, and CHRISTIAN MORA, Jointly and severally,

Defendants.

KEVIN A. MCNULTY (P30476)
Attorney for Plaintiff
1975 Royal Avenue
Berkley, MI 48072
Phone: (248) 860-2075
Email: realtormcnulty@att.net

DAVID T. BOWEN (P69682)
RICHARD A. MARRERO (P81078)
Bowen, Radabaugh & Milton, P.C.
Attorneys for Defendants
100 East Big Beaver Road, Suite 350
Troy, MI 48083
Phone: (248) 641-7594 / Fax: (248) 641-8219
Email: dtbowen@brmattorneys.com

AMENDED (WITHOUT ORAL ARGUMENT)
OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY DISPOSITION

At a session of said Court held on the
30th day of October 2026 in the County
of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter concerns property damage allegedly caused when Defendant Christian Mora, within the course of his employment with Defendant Leonardo's Produce LLC n/k/a LP Liquating LLC, drove a box truck into Plaintiff Father and Sons, Inc., d/b/a Berkley Marathon's gas-station canopy. Plaintiff seeks damages for negligent operation and negligent training and supervision.

Defendants Mora and LP Liquidating LLC move for summary disposition under MCR 2.116(C)(8) and (10), asserting that MCL 500.3135(3) of Michigan's No-Fault Act bars those tort

claims because the truck carried the required no-fault security. Plaintiff seeks summary disposition in its favor, relying on the vehicle-repair business exclusion in MCL 500.3121(1).

The Court has reviewed the Court record and the parties' submissions but waives oral arguments. For the reasons below, Defendants' motion is GRANTED under MCR 2.116(C)(10), and Plaintiff's cross-motion is DENIED.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed its Complaint on June 17, 2026. Although it does not identify a specific cause, it alleges that on January 9, 2025, Defendant Mora operated a 2022 Ford F-650 box truck within the course and scope of his employment with Leonardo's Produce. Mora allegedly disregarded posted height restrictions and "operated the vehicle carelessly, recklessly and collided with the canopy."[2] Plaintiff alleges negligent driving, negligent training and supervision, and successor liability against LP Liquidating, formerly known as Leonardo's Produce LLC. It seeks $105,629.42 in property damages.[3]

The police report describes accidental damage to the canopy's southwest corner and identifies Michigan Millers Mutual Insurance Company and a policy number for the truck.[4] Defendants expressly assert that the truck carried Michigan automobile insurance on the accident date.

---

[1] Under MCL 600.8031(2)(g) business court jurisdiction includes actions involving commercial real property, while MCL 600.8031(3)(l) excludes motor vehicle insurance coverage disputes. As pleaded, this action seeks damages from a driver and his employer for negligent injury to Plaintiff's gas-station canopy; it does not seek insurance benefits or a declaration of coverage against an insurer. The Court addresses the no-fault act as a defense to the pleaded tort claims, not as a claim adjudicating an insurer's coverage obligations. On that basis, the Court retains the action on the Business Court docket. This determination does not address assignment of a different action seeking property protection insurance benefits.

[2] Defendants' Motion, Exhibit A: Complaint ¶ 7.

[3] Defendants' Motion, Exhibit A: Complaint ¶¶ 3–12.

[4] Defendants' Motion, Exhibit B: Police Report, p 4; Defendants' Brief, p 10 n 1.

Plaintiff does not dispute the truck's insured status. Instead, it argues that purchasing fuel constitutes servicing or maintaining the truck within the servicing-business exclusion set forth in MCL 500.3121(1).

II. STANDARD OF REVIEW

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. The Court accepts well-pleaded factual allegations as true and considers only the pleadings. *Maiden v Rozwood*, 461 Mich 109, 119–120 (1999). The motion may be granted only when the claim is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 119 (quotation marks and citation omitted).

A motion under MCR 2.116(C)(10) tests a claim's factual sufficiency. The Court considers the submitted evidence in the light most favorable to the party opposing the particular motion. *Maiden*, 461 Mich at 120. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.* The moving party must first support the asserted grounds; a failure to respond does not itself establish entitlement to judgment. MCR 2.116(G)(3)–(4). Once the motion is properly supported, the opposing party must identify specific facts establishing a genuine issue for trial. MCR 2.116(G)(4).

Because the Court considers the submitted police report, it resolves the motions under MCR 2.116(C)(10).

III. ANALYSIS

A. Statutory Tort Immunity

Defendants contend that Michigan's No-Fault Act abolishes tort liability for Plaintiff's alleged property damage.

MCL 500.3135(3) provides, in pertinent part:

> 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. . .

The statute then identifies the circumstances in which tort liability remains. Its application therefore requires consideration of the source of the alleged liability, whether the required security was in effect, and whether an exception applies.

In *Citizens Ins Co of America v Tuttle*, 411 Mich 536, 542 (1981), the Michigan Supreme Court explained that the provision abolishes "only such liability as arises out of the defendant's ownership, maintenance or use of a motor vehicle." It does not abolish tort liability of a non-motorist tortfeasor. *Id.* at 545–546.

Here, the alleged liability arises directly from Mora's operation of the insured truck. The truck was being driven when it struck the canopy. The negligent-training, supervision, and successor-liability allegations likewise seek recovery for the damage caused by that operation.[5]

Although the Complaint characterizes Mora's driving as careless and reckless, it alleges an accidental collision; it does not allege that Mora intentionally damaged the canopy. The allegations therefore do not invoke the exception for intentionally caused harm under MCL 500.3135(3)(a). Nor does the record present another applicable exception for the canopy damage sought here.

The police report[6] identifies an automobile insurer and a policy number for the truck, and Plaintiff does not dispute Defendants' position that the required security was in effect on the accident date. Plaintiff instead contends that the servicing-business exclusion in MCL 500.3121(1) permits its negligence claims. The Court addresses that contention below.

---

[5] Defendants' Motion, Exhibit A: Complaint ¶¶ 5–8, 12.
[6] Defendants' Motion, Exhibit B: Police Report, p 4.

B. Property Protection Benefits

A claim for property protection insurance (PPI) benefits under the No-Fault Act must be asserted against the appropriate insurer under MCL 500.3121(1) and MCL 500.3125. The driver or owner of a motor vehicle is not the proper defendant to a claim for those statutory benefits. MCL 500.3121(1) provides:

> Under property protection insurance an *insurer* is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125, and 3127. However, accidental damage to tangible property does not include accidental damage to tangible property, other than the insured motor vehicle, that occurs within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles. (Emphasis added).

MCL 500.3125 directs a person suffering accidental property damage to claim property protection benefits from the insurers identified in its order of priority.

In *Matti Awdish, Inc v Williams*, 117 Mich App 270, 275–276 (1982), a vehicle struck the plaintiffs' store, and the plaintiffs sued the driver for negligent operation. In addressing the claim for statutory property protection benefits, the Court explained that "the insurer, and not the insured, is the proper party defendant to the action." *Id*. at 275. Plaintiff's Complaint asserts negligence claims against Mora and LP Liquidating, rather than a claim for property protection benefits against an insurer. The Court therefore considers whether Plaintiff's reliance on the servicing-business exclusion, set forth in the second sentence of MCL 500.3121(1) permits those negligence claims to proceed despite MCL 500.3135(3).

C. The Servicing Business Exclusion

Plaintiff relies on the second sentence of MCL 500.3121(1), arguing that the purchasing of diesel fuel constitutes servicing or maintaining the truck. Even assuming that the collision falls within that exclusion, Plaintiff's conclusion does not follow. The exclusion addresses the insurer's

obligation to pay property protection benefits. It does not revive an otherwise abolished tort claim against the vehicle's owner or driver under MCL 500.3135(3).

The Court must read the provisions together. "A statute must be read in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained." *Bush v Shabahang*, 484 Mich 156, 167 (2009). MCL 500.3121(1) first imposes an obligation on an insurer to pay property protection benefits for specified accidental damage. Its second sentence excludes damage occurring within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles. Both sentences concern the scope of the insurer's statutory obligation.

MCL 500.3135(3) separately addresses tort liability. It abolishes liability arising from the ownership, maintenance, or use of a motor vehicle for which the required security was in effect, subject to specified exceptions. It does not state that this protection disappears whenever the insurer is not obligated to pay for a particular loss. Nor does MCL 500.3121(1) state that a coverage exclusion restores liability against the vehicle's owner or driver. Reading the provisions together gives effect to both: the servicing-business exclusion limits the insurer's obligation, while MCL 500.3135(3) governs whether these Defendants remain subject to tort liability.

Defendants cite *Hastings Mut Ins Co v Grange Ins Co of Michigan*, 319 Mich App 579, 586 (2017), which states that the exclusion "applies only to vehicle-repair businesses." They also cite *Universal Underwriters Ins Group v Auto Club Ins Ass'n,* 256 Mich App 541, 545 (2003), which explains that the exclusion "does not require a causal connection between the maintenance work and the property damage." Those decisions concern the scope of property protection coverage. Neither decides whether the exclusion restores tort liability against a negligent insured motorist. The Court resolves that question from the language of MCL 500.3121(1) and MCL 500.3135(3). *Allied Prop & Cas Ins Co v Pioneer State Mut Ins Co*, 272 Mich App 444, 449

(2006), further supports this distinction. In explaining the servicing-business exclusion, the Court stated that the exclusion "necessarily shifts liability to the business enterprise for coverage." *Allied* involved a homeowner's insurer that paid the property loss and sought reimbursement from the vehicle's no-fault insurer. Its discussion concerns allocation of insurance coverage; it does not hold that the exclusion restores tort liability against an insured vehicle owner or driver. Thus, *Allied* is consistent with treating the exclusion as a limitation on the insurer's obligation under MCL 500.3121(1), rather than an additional exception to the abolition of tort liability under MCL 500.3135(3).

The Court therefore need not decide whether purchasing diesel fuel constitutes servicing or whether this collision occurred within the course of such a business. Assuming both propositions in Plaintiff's favor establishes, at most, that the loss is excluded from property protection coverage. It does not establish an exception to the abolition of Defendants' tort liability.

Here, Plaintiff seeks recovery for canopy damage arising from Mora's operation of the truck and LP Liquidating's alleged failure to train and supervise him concerning that operation. Plaintiff identifies no applicable statutory exception permitting those negligence claims. Its reliance on the servicing-business exclusion therefore lacks merit, and Defendants are entitled to summary disposition under MCR 2.116(C)(10).

The Court recognizes that this interpretation may leave Plaintiff to seek payment under applicable property coverage or, absent such coverage, bear the loss. The record does not establish whether another insurer will compensate Plaintiff. That potential consequence does not supply a statutory basis for reviving tort liability abolished by MCL 500.3135(3).

D. A PPI Claim and Leave to Amend

Defendants argue that any amendment to add a PPI claim against the appropriate insurer would be untimely. Although Plaintiff has not sought amendment, MCR 2.116(I)(5) requires an opportunity to amend following summary disposition under subrule (C)(8) or (10), unless the evidence shows that amendment would not be justified.

MCL 500.3145(5) provides that a PPI action "may not be commenced later than 1 year after the accident." As the Michigan Supreme Court explained, "The Legislature has decreed that property damage claims must be brought within one year of the accident." *Secura Ins Co v Auto-Owners Ins Co*, 461 Mich 382, 387 (2000).

The accident occurred on January 9, 2025. The one-year period therefore expired on January 9, 2026, before Plaintiff filed this action on June 17, 2026. The record identifies no basis for tolling the limitation period or otherwise treating a proposed PPI claim as timely. Amendment to add that claim would therefore be futile on the record presented. This determination concerns leave to amend; it does not adjudicate the nonparty insurer's coverage obligations. The limitation period governing PPI benefits is separate from the statutory immunity that defeats the tort claims against Defendants.

IV. CONCLUSION AND ORDER

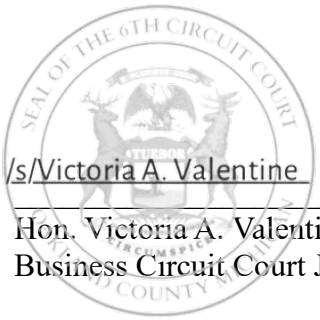
For the above stated reasons,

IT IS ORDERED that Defendants LP Liquidating LLC and Christian Mora's Motion for Summary Disposition is GRANTED under MCR 2.116(C)(10). Plaintiff's claims against Defendants are DISMISSED WITH PREJUDICE. A separate ruling under MCR 2.116(C)(8) is unnecessary.

IT IS FURTHER ORDERED that Plaintiff's Cross-Motion for Summary Disposition is DENIED.

Amendment to add a claim for property protection insurance benefits is not justified for the reasons stated above.

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



Date: 10/30/26

/s/Victoria A. Valentine

Hon. Victoria A. Valentine
Business Circuit Court Judge