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STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPLICATION FOR LEAVE TO APPEAL

MCKENNA L. FROWNFELTER,
Plaintiff-Appellant

-vs-

SC: 168356
COA: 366118
Oakland CC: 2020-184089-NF

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,
Defendant-Appellee/Third-Party Plaintiff-Appellee,
and

PROGRESSIVE MICHIGAN INDSURANCE COMPANY, FARMERS INSURANCE COMPANY, And AUTO-OWNERS INSURANCE COMPANY,
Third-Party Defendants/Appellees

MCKENNA FROWNFELTER
Plaintiff-Appellant

-vs-

SC: 168357
COA: 366120
OCCC Case No. 22-192235-NI

COREY FROWNFELTER, AUTO-OWNERS INSURANCE COMPANY, and ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY
Defendants-Appellees

_____/

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EXHIBIT A

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STATE OF MICHIGAN

COURT OF APPEALS

MCKENNA FROWNFELTER,

Plaintiff-Appellant,

v

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellee,

and

PROGRESSIVE MICHIGAN INSURANCE COMPANY, FARMERS INSURANCE COMPANY, and AUTO-OWNERS INSURANCE COMPANY,

Third-Party Defendants-Appellees.

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No. 366118
Oakland Circuit Court
LC No. 2020-184089-NF

MCKENNA FROWNFELTER,

Plaintiff-Appellant,

v

COREY FROWNFELTER, AUTO-OWNERS INSURANCE COMPANY, and ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendants-Appellees.

No. 366120
Oakland Circuit Court
LC No. 2022-192235-NI

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Before: LETICA, P.J., and GARRETT and FEENEY, JJ.

PER CURIAM.

In Docket No. 366118, plaintiff, McKenna Frownfelter, appeals as of right from the trial court's April 24, 2023 final order granting judgment in her favor, against defendant, third-party plaintiff Esurance Property and Casualty Insurance Company (Esurance), and third-party defendants Progressive Michigan Insurance Company (Progressive), Farmers Insurance Company (Farmers), and Auto-Owners Insurance Company (Auto-Owners). In Docket No. 366120, plaintiff appeals as of right from the trial court's April 24, 2023 final order granting judgment in her favor against defendants Corey Frownfelter (Frownfelter), Auto-Owners, and Esurance.[1]

In Docket No. 366118, plaintiff challenges the trial court's earlier order entered denying Esurance's motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact and moving part entitled to judgment as a matter of law). In Docket No. 366120, plaintiff also challenges the trial court's earlier order denying her motion for summary disposition under MCR 2.116(C)(10), and the denial of her motion for reconsideration. The appeals were consolidated "to advance the efficient administration of the appellate process." *Frownfelter v Esurance*, unpublished order of the Court of Appeals, entered March 20, 2024 (Docket Nos. 366118; 366120).

In Docket No. 366118, plaintiff argues: (1) the trial court erred when it determined as a matter of law she was domiciled with Frownfelter at the time of her motor vehicle accident, and (2) the custody order regarding Frownfelter and plaintiff's mother, Stephanie Lawrence (Lawrence), did not establish plaintiff's domicile at the time of the accident. In Docket No. 366120, plaintiff argues: (1) she was not a "resident" of Frownfelter's home under the terms of the Esurance's insurance policy, and (2) the term "resident" in Esurance's policy was ambiguous. We disagree and affirm.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

This matter involves a car accident in which plaintiff was injured. Plaintiff's parents, Lawrence and Frownfelter divorced in 2011, when plaintiff was seven years old. The judgment of divorce awarded joint physical custody and determined plaintiff and her brother Hunter Frownfelter (Hunter) were to reside with each parent 50% of the time. Despite the judgment of divorce determining Hunter and plaintiff were to split their time equally between Lawrence and

[1] Although these are both consent judgments, plaintiff preserved her right to appeal and challenge the trial court's decisions in earlier summary disposition motions. See *Sandoval v Farmers Ins Exchange*, ___ Mich App ___; ____ NW3d ____ (2024) (Docket Nos. 361166, 361176), abrogated by *Jaber v P & P Hospitality, LLC*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 363572); slip op at 1.

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Frownfelter, plaintiff spent 75% of her time at Lawrence's house and 25% of her time at Frownfelter's house at the time of the accident.

On January 7, 2020, plaintiff spent the night at Frownfelter's house. On January 8, 2020, Hunter was driving himself and plaintiff to school and hit a patch of ice causing Frownfelter's car to slide off the road and crash into a tree. Plaintiff was severely injured and required emergency back surgery. Plaintiff filed a first-party complaint against Esurance, arguing Esurance violated the no-fault act, MCL 500.3101 *et seq.*, and breached the terms of its insurance policy when it delayed payment of plaintiff's insurance benefits. Esurance filed a third-party complaint against Progressive, Farmers, and Auto-Owners, arguing it was entitled to reimbursement.[2]

In the third-party action against the other insurers, Esurance moved for summary disposition under MCR 2.116(C)(10), arguing on the date of the accident plaintiff was domiciled with Lawrence, making Lawrence's insurance provider, Auto-Owners, a higher priority insurer.[3] Esurance argued the parties' custody order did not control plaintiff's domicile because plaintiff spent most of her time at Lawrence's house. The trial court cited to *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 512 n 78; 835 NW2d 363 (2013), in which our Supreme Court recognized the rare occurrence of the necessity of determining domicile by referring to a custody order in situations where the order grants parents joint physical custody and creates an equal division of physical custody. In such an event, plaintiff's domicile alternated with each parent. Finding the footnote applicable, the trial court determined plaintiff was domiciled with Frownfelter at the time of the accident.

Plaintiff, in the tort action against her father as owner of the vehicle involved, moved for summary disposition against Esurance under MCR 2.116(C)(10), arguing an exclusionary provision reducing the coverage limits in the insurance policy did not apply to her because she was not a resident of Frownfelter's household. The trial court referred to its earlier ruling regarding plaintiff's domicile, finding that because plaintiff was domiciled with Frownfelter, she was a resident of his household. Plaintiff moved for reconsideration, which the trial court denied. This appeal followed.

II. MINOR DOMICILE

Plaintiff argues the trial court erred when it found she was domiciled with Frownfelter at the time of the accident. We disagree.

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[2] Plaintiff's mother was insured under a no-fault policy issued by Auto-Owners. Plaintiff's father was insured under policies issued by the remaining insurance companies.

[3] Plaintiff initially filed a response to the motion which did not take a position and merely stated that the other briefs sufficiently set forth the facts and law necessary for the trial court to determine which insurer was first in the order of priority to pay benefits. But at oral argument on the motion, after the trial court rejected Auto-Owners' motion for summary disposition based upon a different issue, plaintiff argued against the Esurance motion and took the position that she was domiciled with her mother at the time of the accident.

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A. STANDARD OF REVIEW

Plaintiff challenges the trial court's denial of Esurance's motion for summary disposition under MCR 2.116(C)(10), which declared plaintiff domiciled with Frownfelter on the day of the accident.

> This Court reviews de novo a decision to grant or deny a motion for summary disposition. Summary disposition under MCR 2.116(C)(10) is appropriately granted where no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. A domicile determination is generally a question of fact; however, where the underlying material facts are not in dispute, the determination of domicile is a question of law for the circuit court. [This Court] likewise review[s] de novo issues of statutory interpretation. [*Grange*, 494 Mich at 489-490.]

"Questions of statutory interpretation, construction, and application are reviewed de novo." *Johnson v Johnson*, 329 Mich App 110, 118; 940 NW2d 807 (2019). "[T]he interpretation of a contract is a question of law reviewed de novo on appeal. . . ." *Lueck v Lueck*, 328 Mich App 399, 404; 937 NW2d 729 (2019) (quotation marks and citation omitted; alterations in original).

B. ANALYSIS

"Michigan's no-fault act generally abolishes tort liability arising from the ownership, maintenance, or use of a motor vehicle." *Grange*, 494 Mich at 490. "Instead, insurance companies are required to provide first party insurance benefits for accidental bodily injury arising out of the use of a motor vehicle, which are commonly referred to as personal protection insurance (PIP) benefits." *Id.* MCL 500.3114(1) "provides the general rule for determining which Michigan insurer is liable to provide PIP benefits." *Grange*, 494 Mich at 490. The statute states, in pertinent part:

> [A] personal protection insurance policy described in section [MCL 500.3101(1)] applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. [MCL 500.3114(1).]

The parties dispute whether plaintiff, who was a relative of the insured Frownfelter, was domiciled in Lawrence's or Frownfelter's household when the accident occurred.

MCL 500.3114(1) does not define the word "domicile." Our Supreme Court has explained, "domicile is acquired by the combination of residence and the intention to reside in a given place . . . . If the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short, will establish a domicile." *Grange*, 494 Mich at 495 (quotation marks and citation omitted; alteration in original). "The traditional common-law inquiry into a person's 'domicile,' then, is generally a question of intent, but also considers all the facts and circumstances taken together." *Id.*

To determine domicile, our Supreme Court articulated a multifactor test, in which "no one factor is determinative." *Grange*, 494 Mich at 497. Those factors are not particularly relevant

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here as we are dealing with a minor. "Instead, the child's domicile is determined by reference to the domicile of his or her parents." *Id.* at 503. But, of course, this cannot control where the parents are divorced and maintain separate domiciles.

"The inquiry into a child's domicile becomes more complicated when the child's parents are divorced." *Id.* at 504. "Under our common law . . . a child's domicile upon the divorce of [her] parents and entry of a custody order is established by operation of law consistent with the terms of the custody order." *Id.* at 505. Our Supreme Court emphasized:

> Just as a person does not have two domiciles, a person likewise does not have a domicile set by operation of law for some purposes and perhaps a different domicile for other purposes—such as for consideration under the no-fault act or any other statute that uses the term "domicile." [*Id.*]

Our Supreme Court held: "[I]n the instance where a child's parents are divorced, the family court's custody order entered pursuant to the Child Custody Act[4] establishes the child's domicile by operation of law and is determinative of the child's domicile for purposes of the no-fault act . . . ." *Id.* at 510 (footnote added). Stated differently, "courts presiding over an insurance coverage dispute involving the minor child of divorced parents must treat a custody order as conclusive evidence of a child's domicile." *Id.* at 511. "Where a court order sets a child's custody or domicile by operation of law, the factual circumstances or the parents' or child's intentions are irrelevant to the domicile determination." *Id.* "Rather, the appropriate analysis is focused on the terms of the custody order." *Id.*

Our Supreme Court acknowledged the distinction between physical custody and legal custody. "Physical custody pertains to where the child shall physically 'reside,' whereas legal custody is understood to mean decision-making authority as to important decisions affecting the child's welfare." *Id.* As a result, "the relevant consideration is which parent has *physical custody* under the terms of the [custody] order" because "the focus under our common law with respect to domicile mostly concerns a question of location . . . ." *Id.* at 511-512.

Our Supreme Court recognized "that determining domicile by reference to a custody order may appear to lead to a perplexing result where the order grants each parent joint physical custody . . . *and* creates an equal 50/50 division of physical custody." *Id.* at 512 n 78. "[A]n award of joint physical custody alone does not automatically create this potentially perplexing situation because although an order may award joint physical custody, it may also establish that one parent has *primary* physical custody." *Id.* "Alternatively, the details of the physical custody division may reveal that one parent has physical custody of the child more often than the other parent despite the joint physical custody arrangement" *Id.* This issue arises only in the "very rare event that a custody order awards joint physical custody *and* grants both parents an equal amount of time to

[4] MCL 722.21 *et seq.*

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exercise physical custody . . . ." *Id.* Indeed, the child custody statute[5] does not "require that the child reside with each parent for an *equal* amount of time to constitute joint physical custody." *Id.*

Our Supreme Court held: "In the unusual event that a custody order *does* grant an equal division of physical custody, and only in this instance, then the child's domicile would alternate between the parents so as to be the same as that of the parent with whom he is living at the time." *Id.* In other words, "the child's domicile [would be] with the parent who has physical custody as established by the custody order at the specific time of the incident at issue." *Id.*

This Court applied *Grange*, 494 Mich at 512 n 78, in *Corbin v Meemic Ins Co*, 340 Mich App 140; 985 NW2d 217 (2022). In *Corbin*, "the order of filiation did not establish a primary custodial parent or otherwise fix a parenting time schedule." *Id.* at 152. The "plaintiff's schedule was left to her parents so long as they continued to cooperate and work together." *Id.* This Court noted *Grange*, 494 Mich at 512 n 78, referred "to the unusual situation in which a custody order awards *both* joint physical custody and equal parenting time." *Corbin*, 340 Mich App at 153. In *Corbin*, the custody order "reserved to the parents their right to determine both residence and domicile, with some limitations." *Id.* "The order did not set forth a parenting time schedule, let alone one that required equal parenting time." *Id.* This Court held "the trial court needed to look beyond the order of filiation to determine [the] plaintiff's actual domicile, as the order of filiation was not dispositive." *Id.* As a result, the factors from *Workman v Detroit Auto Inter-Ins Exc*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), and *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 681-682; 333 NW2d 322 (1983), should have guided the trial court's analysis. *Corbin*, 340 Mich App at 153.

In this matter, plaintiff was a minor child of divorced parents at the time of the accident, triggering a *Grange* analysis. The issue is whether the custody agreement awarded "joint physical custody *and* grant[ed] both parents an equal amount of time to exercise physical custody . . . ." *Grange*, 494 Mich at 512 n 78. We hold it did.

The custody order awarded "joint legal custody of the minor children" to Lawrence and Frownfelter. However, "the relevant consideration is which parent has *physical custody* under the terms of the order." *Id.* at 512. The custody order awarded Lawrence and Frownfelter "joint physical custody of the minor children . . . ." Further, the order stated "that the parties shall have parenting time with the minor children . . . at such times and places as shall be agreed upon by the parties." The order noted, "a child whose parental custody is governed by this Court Order has a legal residence with each parent." The order clarified: "The residence of the minor children . . . shall be with [] [Lawrence], at her current address . . . 50% of the time and with [] [] [Frownfelter], at his current address . . . ." The order did not specify plaintiff was to reside with Frownfelter for the remaining 50% of the time, although this was implied. Like in *Corbin*, 340 Mich App at 153, "the order of filiation left parenting time to the discretion of the parents." But the custody order in *Corbin* "reserved to the parents their right to determine both residence and domicile . . . ." *Id.* In this matter, the order stated plaintiff had "a legal residence with each parent[,]" "50% of the time." Indeed, Lawrence explained, "at first it started out 50/50 [custody] obviously, kind of like most divorces do." In other words, Lawrence and Frownfelter initially acted in accordance with

[5] MCL 722.26a(7)(a).

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the custody determination by equally dividing physical custody, providing further evidence the custody order required an equal split of physical custody.

The facts of this matter fall squarely within the situation contemplated by *Grange*, because the "custody order award[ed] joint physical custody *and* grant[ed] both parents an equal amount of time to exercise physical custody. . . ." *Grange*, 494 Mich at 512 n 78. The custody order awarded Lawrence and Frownfelter joint physical custody. Then it created "an equal 50/50 division of physical custody[,]" *id.*, which required plaintiff to reside with Lawrence 50% of the time and Frownfelter the other 50% of the time. Although the order "left parenting time to the discretion of the parents[,]" *Corbin*, 340 Mich App at 153, physical custody is not parenting time. See *Shade v Wright*, 291 Mich App 17, 22; 805 NW2d 1 (2010) (quotation marks and citation omitted) (distinguishing between "legal custody, physical custody, or *parenting time* with respect to a child.") "Physical custody pertains to where the child shall physically 'reside' . . . ." *Grange*, 494 Mich at 511. Since the custody order awarded joint physical custody, and granted the parents an equal amount of time to exercise parenting time while plaintiff *resided* with them, *Grange* applies. *Grange*, 494 Mich at 512 n 78.

Our Supreme Court cautioned, "an award of joint physical custody alone does not automatically create this potentially perplexing situation because although an order may award joint physical custody, it may also establish that one parent has *primary* physical custody." *Id.* No primary physical custodian can be discerned from the custody order. Responsibilities regarding plaintiff and Hunter were to be equally divided between Lawrence and Frownfelter. For example, the order stated Lawrence and Frownfelter "shall carry health insurance for the minor children . . . enrolled on both parties [sic] employer provided medical insurance plan . . . and in the event that such insurance plan is not available, the parties *shall equally divide* the cost of the health insurance." (Emphasis added.) Lawrence was "responsible for fifty percent (50%) of any uninsured or unreimbursed health care expenses and [] [Frownfelter] [was] responsible for fifty percent (50%). . . ." Lawrence and Frownfelter had the right to claim Hunter and plaintiff as dependents for income tax purposes. In sum, the custody order was silent about who held primary physical custody and granted Lawrence and Frownfelter an equal amount of time to exercise parenting time.

Because the custody provision in the divorce judgment prevails and this is one of the rare situations contemplated in *Grange*, plaintiff's "domicile [was] with the parent who ha[d] physical custody as established by the custody order at the specific time of the incident at issue." *Grange*, 494 Mich at 512 n 78. It was undisputed Frownfelter had physical custody of plaintiff on the day of the accident because plaintiff physically resided with him under the terms of the custody order on that day. As a result, the trial court did not err when it held plaintiff was domiciled with Frownfelter on the day of the accident, and we affirm.

III. INSURANCE CONTRACT

Next, plaintiff argues she was not a resident of Frownfelter's household under the terms of the insurance policy. We disagree.

A. STANDARD OF REVIEW

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Plaintiff challenges the trial court's order denying her motion for summary disposition under MCR 2.116(C)(10), and the trial court's order denying her motion for reconsideration.

> This Court reviews de novo a decision to grant or deny a motion for summary disposition. Summary disposition under MCR 2.116(C)(10) is appropriately granted where no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. A domicile determination is generally a question of fact; however, where the underlying material facts are not in dispute, the determination of domicile is a question of law for the circuit court. [This Court] likewise review[s] de novo issues of statutory interpretation. [*Grange*, 494 Mich at 489-490.]

"This Court reviews a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion." *Farm Bureau Ins Co v TNT Equip, Inc*, 328 Mich App 667, 672; 939 NW2d 738 (2019). "A trial court abuses its discretion if it chooses an outcome outside the range of principled outcomes." *Id.* "The interpretation and construction of insurance contracts are also questions of law, which this Court reviews de novo." *Citizens Ins Co v Secura Ins*, 279 Mich App 69, 72; 755 NW2d 563 (2008).

B. ANALYSIS

"PIP [personal protection insurance] benefits are mandated by statute under the no-fault act, MCL 500.3105, and, therefore, the statute is the 'rule book' for deciding the issues involved in questions regarding awarding those benefits." *Dawson v Farm Bureau Mut Ins Co of Mich*, 293 Mich App 563, 568; 810 NW2d 106 (2011) (citation omitted; alteration in original). On the other hand, insurance policies can provide greater benefits, even for mandated coverages, than those required by statute. *Mapp v Progressive Ins Co*, 346 Mich App 575, 600; 13 NW3d 643 (2023).

"The same contract construction principles apply to insurance policies as to any other type of contract because it is an agreement between the parties." *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 291; 778 NW2d 275 (2009). "Thus an insurance policy must be read as a whole to determine and effectuate the parties' intent." *Id.* at 292. "The terms of the contract are accorded their plain and ordinary meaning." *Id.* "If the contractual language is unambiguous, courts must interpret and enforce the contract as written because an unambiguous contract reflects the parties' intent as a matter of law." *Id.* It is "[a] fundamental tenet of our jurisprudence . . . that unambiguous contracts are not open to judicial construction and must be *enforced as written*." *Dawson*, 293 Mich App at 569 (quotation marks and citation omitted; alterations in original). A "mere judicial assessment of 'reasonableness' is an invalid basis upon which to refuse to enforce contractual provisions." *Id.* (quotation marks and citation omitted). "The reason [for this] is clear: It is not the province of the judiciary to rewrite contracts to conform to the court's liking, but instead to enforce contracts as written and agreed to by the parties." *Id.*

The custody agreement determined plaintiff's residence would be with Frownfelter 50% of the time. However, "the terms of a contract must be enforced as written where there is no ambiguity." *Wells Fargo Bank, NA v Null*, 304 Mich App 508, 519; 847 NW2d 657 (2014) (citation omitted). In other words, when contractual terms are unambiguous, the trial court and

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this Court lack "the authority to look beyond the four corners of the document[]." *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 606; 576 NW2d 392 (1997).

"Coverage under a policy is lost if any exclusion in the policy applies to an insured's particular claims." *Century Surety Co v Charron*, 230 Mich App 79, 83; 583 NW2d 486 (1998). "Clear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume." *Id.* However, "[e]xclusionary clauses in insurance policies are strictly construed in favor of the insured." *Id.*

The exclusionary provision at issue states:

> To the extent that the limits of liability for this coverage exceed the ***"minimum limits"*** of liability required by the financial responsibility law of the state in which a ***"covered auto"*** is principally garaged, ***"we"*** do not provide Liability Coverage for any ***"insured"***:
>
> A. For ***"bodily injury"*** to ***"you"*** or any ***"family member"*** for any damages in excess of the ***"minimum limits"***.

The policy defined "family member" as: "Any person related to ***'you'*** by blood, marriage, or adoption who is a resident of ***'your' 'household'***[.]" A " ***'[h]ousehold'*** consists of ***'you'***, a ***'family member'***, . . . and other people who are not related to ***'you'***, who live together in the same housing unit. A housing unit includes a house . . . located at the address listed in ***'your'*** Declarations page."

It is undisputed plaintiff is Frownfelter's daughter and is related to him by blood. The issue is whether she was a resident of his household. If she was, then the exclusionary provision applies and defendant Esurance was not required to provide coverage to her "for any damages in excess of the minimum limits." The minimum limit was "$20,000.00 for [plaintiff's] bodily injury. . . ." But if plaintiff was not a resident of Frownfelter's household, the policy entitled plaintiff to as much as $250,000. Given the difference in payout amounts, it is understandable why the parties want their definitions of "resident" to control.

Despite defining "family member," the policy does not explicitly define the term "resident" of the insured's household. Plaintiff argues Frownfelter's application for insurance establishes who qualifies as a resident. The application lists Frownfelter and Hunter under "Driver and Resident Information." Plaintiff is conspicuously absent.

The application noted: "You, your spouse, all members of your household 14 years or older . . . are listed above [under Driver and Resident Information]." Plaintiff contends because this section of the application did not list her as a resident, and she was over 14 years of age, she could not be considered a resident for purposes of the insurance policy. We disagree.

Were we writing on a blank slate, we might agree with plaintiff. Indeed, a similar issue was present in *Mapp*, although in that case it was the inclusion, rather than exclusion, of the plaintiff's name in the "Drivers and resident relatives" listing. *Mapp*, 346 Mich App at 599. But we cannot conclude that plaintiff's absence from that list in the policy at issue controls. First, the trial court determined that once it had decided that plaintiff was domiciled with Frownfelter at the time of the accident, it necessarily followed that she resided with him. Indeed, this conclusion is

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consistent with the Supreme Court's observation in *Grange* that "domicile is acquired by the combination of residence and the intention to reside in a given place . . . ." 494 Mich at 495 (quotation marks and citation omitted). Second, returning to the judgment of divorce, it did specifically state that plaintiff's residence was with both her mother and her father.

Had the policy included a definition of "resident" that would exclude plaintiff, a different result would obtain here. But in the absence of any definition, we must look to other sources. See *Mapp,* 346 Mich App at 595-596. And the most pertinent sources to this case are the trial court's determination of domicile, which we have already affirmed, and the judgment of divorce that specifically determines the place of residence, which we find is controlling as we understand *Grange*.

IV. INSURANCE POLICY AMBIGUITY

Lastly, plaintiff argues the trial court erred when it found the term "resident" in the insurance policy was unambiguous. But having concluded that it is the determination of "domicile" and the provisions of the divorce judgment that controls, rather than the insurance policy, in defining whether plaintiff was a resident of her father's home at the time of the accident, we need not address this issue. *Grange*, 494 Mich at 511. Plaintiff resided part of the time with her father, pursuant to the divorce decree, and part of the time with her mother; she went to school from both parents' houses. As *Grange* made clear, we look to the custody order and plaintiff's father shared physical and legal custody of plaintiff. Physical custody is the "relevant consideration;" "[p]hysical custody pertains to where the child shall physically 'reside,' " and plaintiff resided with her father on the day of the accident. *Id.* at 511-512. Therefore, the term "resident," although not defined in the policy, is unambiguous, was defined pursuant to the custody orders, and is dispositive for purposes of this case.

V. CONCLUSION

Affirmed. Defendants may tax costs.

/s/ Kathleen A. Feeney

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

STATE OF MICHIGAN

COURT OF APPEALS

MCKENNA FROWNFELTER,

Plaintiff-Appellant,

v

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellee,

and

PROGRESSIVE MICHIGAN INSURANCE COMPANY, FARMERS INSURANCE COMPANY, and AUTO-OWNERS INSURANCE COMPANY,

Third-Party Defendants-Appellees.

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No. 366118
Oakland Circuit Court
LC No. 2020-184089-NF

MCKENNA FROWNFELTER,

Plaintiff-Appellant,

v

COREY FROWNFELTER, AUTO-OWNERS INSURANCE COMPANY, and ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendants-Appellees.

No. 366120
Oakland Circuit Court
LC No. 2022-192235-NI

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Before: LETICA, P.J., and GARRETT and FEENEY, JJ.

LETICA, P.J. (*concurring*).

I concur in Docket No. 366118. And, in Docket No. 366120, I agree that the term "resident" in the family step-down provision of the Esurance policy is unambiguous. I further agree that plaintiff was a resident of Frownfelter's household because she was Frownfelter's daughter and lived in Frownfelter's home with him on the date of the motor-vehicle accident. I write separately to address plaintiff's contention that Frownfelter's failure to "list[]" plaintiff as a resident on his application for insurance, contrary to language instructing him to identify "all members of your household 14 years . . . or older" in his application, created an ambiguity as to the meaning of "resident" in the policy. Initially, I note that "an insurer has a reasonable right to expect honesty in the application for insurance[.]" *Bazzi v Sentinel Ins Co*, 502 Mich 390, 407; 919 NW2d 20 (2018). Second, contracts require "mutuality of agreement." *Hess v Canton Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005). Third, the failure to list resident relatives in an application for no-fault insurance may result in rescission of the policy when an innocent third-party is injured. *Pioneer State Mut Ins Co v Wright*, 331 Mich App 396, 401; 952 NW2d 586 (2020). And, even though the plaintiff-applicant's misrepresentation is innocent, it will result in rescission when the plaintiff-applicant is the injured party and the insurer would have raised the plaintiff-applicant's premium if the correct number of relatives had been disclosed. *Sherman v Progressive Mich Ins Co (On Reconsideration)*, ___ Mich App ___; ___ NW3d ___ (2024). In this case, because Frownfelter failed to list plaintiff, who was over 14, as instructed in his application for no-fault insurance, Esurance was unaware of her existence. Thus, there could not have been a mutuality of agreement, *Hess*, 265 Mich App at 592, and I cannot accept plaintiff's contention that Esurance agreed to exclude plaintiff from being a resident or that it should be estopped from asserting that she was a resident of Frownfelter's household.

/s/ Anica Letica

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

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STATE OF MICHIGAN

COURT OF APPEALS

MCKENNA FROWNFELTER,

Plaintiff-Appellant,

v

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellee,

and

PROGRESSIVE MICHIGAN INSURANCE COMPANY, FARMERS INSURANCE COMPANY, and AUTO-OWNERS INSURANCE COMPANY,

Third-Party Defendants-Appellees.

UNPUBLISHED
February 24, 2025
11:42 AM

No. 366118
Oakland Circuit Court
LC No. 2020-184089-NF

MCKENNA FROWNFELTER,

Plaintiff-Appellant,

v

COREY FROWNFELTER, AUTO-OWNERS INSURANCE COMPANY, and ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendants-Appellees.

No. 366120
Oakland Circuit Court
LC No. 2022-192235-NI

RECEIVED by MSC 11/7/2025 5:12:57 PM

Before: LETICA, P.J., and GARRETT and FEENEY, JJ.

GARRETT, J. (*concurring in part and dissenting in part*).

Although I agree with the majority's analysis in Docket No. 366118 regarding plaintiff's domicile pursuant to the divorce judgment and our Supreme Court's decision in *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013), I disagree with the majority's determination that the same analysis controls whether plaintiff was a resident of Corey Frownfelter's household in Docket No. 366120. Because that issue must be determined based on the Esurance policy, I would reverse the trial court's order denying plaintiff's motion for summary disposition and remand for further proceedings.

When interpreting an insurance contract, courts employ a two-step approach. *Auto Owners Ins Co v Seils*, 310 Mich App 132, 146; 871 NW2d 530 (2015). First, we determine whether the policy provides coverage. *Id.* If so, we next determine whether an exclusion negates the coverage. *Id.* In Docket No. 366118, we determined that Esurance, Frownfelter's insurer, is the insurer responsible for coverage. Esurance argues that an exclusionary clause, or step-down provision, in the policy limits coverage to $20,000. The provision at issue states:

> To the extent that the limits of liability for this coverage exceed the ***"minimum limits"*** of liability required by the financial responsibility law of the state in which a ***"covered auto"*** is principally garaged, ***"we"*** do not provide Liability Coverage for any ***"insured"***:
>
> A. For ***"bodily injury"*** to ***"you"*** or any ***"family member"*** for any damages in excess of the ***"minimum limits"***.

The policy defines "family member" as "[a]ny person related to ***'you'*** by blood, marriage, or adoption who is a resident of ***'your' 'household'***[.]" Determining whether plaintiff was a resident of Frownfelter's household requires interpretation of the insurance policy.

Insurance contracts are interpreted in the same manner as other contracts. *Seils*, 310 Mich App at 145. Courts read the language of insurance contracts as a whole and give effect to every word, clause, and phrase. *McGrath v Allstate Ins Co*, 290 Mich App 434, 439; 802 NW2d 619 (2010). "When the policy language is clear, a court must enforce the specific language of the contract." *Id.* "[I]f an ambiguity exists, it should be construed against the insurer." *Id.* "An insurance contract is ambiguous if its provisions are subject to more than one meaning." *Id.*

The Esurance policy provided as follows:

> **WHEN THIS POLICY IS ISSUED, AND WHEN THIS POLICY IS RENEWED, WE RELY UPON THE TRUTH AND ACCURACY OF THE REPRESENTATIONS MADE IN THE APPLICATION FOR THIS INSURANCE. YOUR APPLICATION, THE POLICY TERMS AND CONDITIONS, ALL OTHER FORMS WE PROVIDE TO YOU AND ENDORSEMENTS ISSUED BY US, ARE PART OF, AND FORM YOUR POLICY.**

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Under the section titled "**Driver and Resident Information**," the insurance application asked Frownfelter to identify all members of his household age 14 or older. He identified himself and his son Hunter, but he did not identify plaintiff, notwithstanding that she was 14 years old at that time. The application stated: "You, your spouse, all members of your household 14 years or older . . . are listed above." Because the policy specifically stated that the application, along with other documents, formed the policy, plaintiff was not a resident of Frownfelter's household under the policy and was therefore not a "family member" for purposes of the step-down provision.

I disagree with the majority's and the trial court's conclusion that plaintiff's domicile, determined under *Grange*, 494 Mich at 512 n 78, and the divorce judgment, controls plaintiff's residency with respect to the Esurance policy. Domicile and residence are distinct concepts, and the plain language of the policy dictated whether plaintiff was a resident of Frownfelter's household. A valid contract requires mutuality of agreement. *AFT Mich v Michigan*, 497 Mich 197, 235; 866 NW2d 782 (2015). Esurance and Frownfelter reached an agreement that was premised in part on Frownfelter's representation that only he and Hunter were household residents who were age 14 or older. "[A]n insurer has a reasonable right to expect honesty" with respect to an insurance application. *Bazzi v Sentinel Ins Co*, 502 Mich 390, 407; 919 NW2d 20 (2018). In addition, an insurer's evaluation of its risk of loss generally affects the amount of the premium charged. See *Montgomery v Fid & Guar Life Ins Co*, 269 Mich App 126, 129; 713 NW2d 801 (2005). Because Esurance and Frownfelter agreed regarding the terms of the insurance contract, which required consideration of Frownfelter's representations, the risk of loss, and the premium charged, whether plaintiff was a resident must be determined in accordance with that agreement. Accordingly, I would hold that the trial court erred by determining that plaintiff was a resident of Frownfelter's household, and reverse and remand for further proceedings.

/s/ Kristina Robinson Garrett

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EXHIBIT B

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MCKENNA FROWNFELTER V ESURANCE PROPERTY AND CASUALTY INSURANCE CO

COA 366118
MSC 168356

Lower Court/Tribunal
OAKLAND CIRCUIT COURT

Judge(s)
ROWE KWAME

Case Information

Case Header

COA Court Of Appeals

MSC Michigan Supreme Court

Case Number

COA #366118 MSC #168356

Case Status

MSC Pending on Application

COA Case Concluded; File Open
Consolidated Appeals

COA #366120 Case Concluded; File Open

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AUTO-OWNERS INSURANCE COMPANY

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05/15/2023	3	Transcript Requested By Atty Or Party
05/17/2023	4	Steno Certificate - Tr Request Received
05/17/2023	5	Transcript Not Taken By Steno
05/18/2023	6	Appearance - Appellee
06/12/2023	7	Docketing Statement MCR 7.204H
06/12/2023	9	Appearance - Appellee
06/13/2023	8	Other
08/14/2023	10	Notice Of Filing Transcript
08/14/2023	11	Transcript Not Taken By Steno
10/06/2023	12	Stipulation: Extend Time - AT Brief
11/06/2023	13	Brief: Appellant
12/05/2023	14	Stipulation: Extend Time - AE Brief

12/08/2023	15	Stipulation: Extend Time - AE Brief
01/08/2024	16	Brief: Appellee(Multiple)
01/08/2024	17	Brief: Appellee
01/08/2024	18	Noticed
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01/16/2024	21	Electronic Record Rejected
03/19/2024	24	Submitted on Administrative Motion Docket
03/20/2024	25	Order: Consolidate - Administrative
09/04/2024	32	Submitted on Case Call
09/04/2024	34	Oral Argument Audio
02/24/2025	35	Opinion - Per Curiam - Unpublished
02/24/2025	36	Opinion - Concurrence
02/24/2025	37	Opinion - Partial Concurrence/Dissent
04/07/2025	38	Application for Leave to SCt
04/07/2025	39	Supreme Court: SCt Case Caption

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EXHIBIT C

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MCKENNA FROWNFELTER V COREY FROWNFELTER

COA 366120
MSC 168357

Lower Court/Tribunal
OAKLAND CIRCUIT COURT
Judge(s)
ROWE KWAME

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COA #366118 Case Concluded; File Open

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1

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Plaintiff - Appellant

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Defendant - Appellee

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Plaintiff

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ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY

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FARMERS INSURANCE COMPANY

Third-Party Defendant

Attorney(s)

Lynne S. DeBell
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AUTO-OWNERS INSURANCE COMPANY

Third-Party Defendant

Attorney(s)

Christopher Endres
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EXHIBIT D

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Transcript of the Testimony of
Frownfelter, McKenna

Date: August 6, 2021
Volume:

Case: Lawrence v. Esurance, et al

Printed On: August 27, 2021

ocument Submitted for Filing to MI Oakland County 6th Circuit Court.

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

STEPHANIE LAWRENCE, as Next Friend of MCKENNA L. FROWNFELTER, a minor,
Plaintiff,
Case No. 2020-184089-NF
Hon. Edward Sosnick

vs

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY, foreign profit company,

Defendant

and

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,
Foreign profit company,
Third-Party Plaintiff,
vs
PROGRESSIVE MICHIGAN INSURANCE COMPANY, FARMERS INSURANCE COMPANY, AND AUTO-OWNERS INSURANCE COMPANY,

Third-Party Defendants.
_____/

REMOTE DEPOSITION OF MCKENNA FROWNFELTER
Taken on Friday, August 6, 2021, at
44444 Mound Road, Suite 100,
Sterling Heights, Michigan

APPEARANCES

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Appearances continued

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Appearing on behalf of Defendant Farmers Insurance Company

Also present: Abraham Newhouse, Anselmi Mierzejewski Ruth & Sowle PC

Court Stenographer: Kelly Bonheim, CSR-8167
Certified Shorthand Reporter

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(None offered)		

Electronically signed by Kelly Burks (201-351-939-3319)

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Sterling Heights, Michigan
Friday, August 6, 2021
4:11 p.m.
* * *

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

MR. HINMAN: All right. Let the record reflect that this is the date and time for the discovery deposition of Ms. McKenna Frownfelter, taken pursuant to notice and to be used for all purposes under the Michigan Court Rules and Michigan Rules of Evidence.

EXAMINATION

BY MR. HINMAN:

Q. Ms. Frownfelter, my name is Aaron Hinman. I was retained by Esurance in a lawsuit filed on your behalf with regard to an accident that occurred on January 8th, 2020. You were in the room for your mother's deposition, correct?

A. Yes.

Q. Okay. Do you understand all the rules of a deposition that I provided to your mother that you

heard?

A. Yes.

Q. Okay. If for some reason you need to ask me any questions about them throughout the deposition, please let me know. I'll be happy to repeat them, all right?

A. Okay.

Q. Also, your mother was very, very thorough with regard to your treatment following this motor vehicle accident. Most of my questions are going to be about your background a little bit and trying to fill in some blanks, okay?

A. Okay.

Q. All right. First off, could you please provide your full name?

A. McKenna LeAnn Frownfelter.

Q. And what is your date of birth?

A. 3/30/04.

Q. I'm young and you make me feel old, just as an FYI.

This is again something I ask all of the deponents that I am asking questions of. For your safety and for your protection I'm asking that the court reporter only put the last four on the record, but are you aware of your full Social

Security number?

A. I don't.

Q. Okay. So if you or your mother could, please provide the full Social Security number to your attorney so that way he can give it out to us, okay?

A. Okay.

Q. All right. And again, this is a question I ask everybody. I know it's rude and not best etiquette but how old are you today?

A. I'm 17.

Q. Okay. And it's my understanding that you have a driver's license; is that correct?

A. Yes.

Q. Do you know your driver's license number?

A. Yes, one second.

Q. What is your driver's license number then?

A. F 651 597 493 252.

Q. And it's my understanding that you received your driver's license following the motor vehicle accident; is that correct?

A. Yes.

Q. What date was your driver's license issued?

A. 9/2/2020.

Q. So about eight months after the accident?

A. Yes.

Q. Okay. Now being that you're 17, I'm going to ask these questions even though they sound very, very silly, okay?

A. Okay.

Q. Are you currently married?

A. No.

Q. Do you have any children?

A. No.

Q. Okay. At the time of this accident, your mother has gone over the living situation, the fact that you were currently at your father's on the day of the accident.

Is there anything that your mother testified to earlier that is different from what you remember or what you know to be true with regard to the date of the accident and where you were living?

A. No.

Q. So it's your testimony today that you were residing with your dad for about a day before the accident, correct?

A. Yes.

Q. But it is the primary arrangement between your mother and your father that you would live with

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your mom about 75 percent of the time, correct?
A. Yes.
Q. Okay. So the way your mother described it, you would stay with your mother for the full week of her week, quote/unquote, under the custody arrangement. And then when it came time to your dad's week, you would only spend three or four days of that week with him and the rest of the time with your mother still, correct?
A. Yes.
Q. Okay. Now at the time of the accident your mom testified that she owned an Equinox. Do you recall that?
A. Yep. Yes.
Q. And so at the time of the accident do you know whether your dad owned any vehicles?
A. Yes.
Q. Do you know what vehicles?
A. He had a truck and I think that's it.
Q. Okay. Do you happen to know what the make and model is?
A. No, I don't.
Q. Okay. Do you know if that vehicle was insured?
A. No.
Q. All right. Was that the vehicle that was involved

Page 10

in this accident?
A. No.
Q. All right. At the time of the accident did your brother Hunter own a vehicle?
A. Yes.
Q. What type of vehicle was it?
A. He had a truck.
Q. Okay. Was that the vehicle involved in this accident?
A. Yes.
Q. Okay. Do you know what the make and model was of the truck?
A. I believe it was a Ford but that's all I know.
Q. Okay. Do you know if your brother Hunter primarily kept the truck at your dad's house or your mom's house?
A. Both.
Q. Okay. So when he was staying with your mom, he would have the truck there and when he was staying with your dad, he would have the truck there?
A. Yes.
Q. Okay. Did Hunter have the same living arrangements that you did? Like 75 percent with your mom and 25 percent with your dad or was it different?

Page 11

A. He stayed at my dad's more.
Q. Okay. Was his living arrangement similar to I guess that 50/50 arrangement that your mom discussed or was it different?
A. It was the same.
Q. Okay. Aside from the two trucks at your dad's and the Equinox at your mom's, are you aware of any other vehicles that your parents had at the time of the accident?
A. No.
Q. All right. Now it's my understanding you are currently enrolled at Holly High School, correct?
A. Yes.
Q. And are you currently enrolled for your senior year?
A. Yes.
Q. Do you know when that starts?
A. September 4th I believe.
Q. So just after Labor Day?
A. Yes.
Q. Have you picked out your classes yet?
A. No.
Q. Okay. Do you have any idea when you do that?
MS. LAWRENCE: I have a meeting with the school.

Page 12

THE WITNESS: My mom has a meeting at the school but I'm not sure exactly when.
BY MR. HINMAN:
Q. Okay Have you applied for any colleges?
A. No.
Q. Do you plan to apply to any colleges?
A. No.
Q. Okay. Aside from obviously going to high school, do you have any licenses or certifications, like randomly having your welders license or anything like that?
A. No.
Q. All right. Have you taken any medical classes, any medical training?
A. No.
Q. All right. At the time of the accident were you employed anywhere?
A. No.
Q. All right. And as you heard when I asked your mom, I'm going to ask a couple of questions that I ask everybody, okay?
A. Okay.
Q. Within the last five years have you been convicted of a felony?
A. No.

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Electronically signed by Kelly Burks (201-351-939-3319)

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Q. Within the last five years have you been convicted of a misdemeanor involving theft or dishonesty?
A. No.
Q. Okay. Before this accident that we're here to talk about today, have you been involved in any prior motor vehicle accidents?
A. No.
Q. Aside from the accident that we're here to talk about today, have you been involved in any slip and falls, trip and falls, and personal injuries?
A. Yes, I bit my tongue -- I fell and I bit my tongue. I broke my arm. And did you say surgeries?
Q. Not yet. But I know about your knee surgeries.
A. Okay. That's what I was...
Q. So let me premise it this way. Aside from what your mother told us about your knees, your tongue, and your broken arm on a four wheeler, are you aware of any other injuries that you suffered that your mom didn't tell us about or that she doesn't know about?
A. No.
Q. Okay. And I apologize, I might get you in trouble a little bit with your mom sitting in the room, okay?

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A. No, it's okay.
Q. All right. Aside from the lawsuit that we're here to talk about today, have you been a party or involved in any other lawsuits?
A. No.
Q. Have you given any type of testimony like we're doing today with a court reporter?
A. No.
Q. Okay. Are you aware of whether you -- well, strike that.
Did your mom or anyone else on your behalf apply for Social Security Disability before or after this accident?
A. I don't know.
Q. Okay. Are you aware of whether you are receiving any Social Security benefits or food stamps or any other governmental assistance?
A. No.
Q. Okay. I know you said that you weren't employed at the time of the accident. Have you been employed at all before the accident?
A. No.
Q. Okay. I know also you heard your attorney make some agreements on the record previously with your mom's testimony about wage loss, attendant care,

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and replacement services. That they're not being claimed in this lawsuit that are outstanding, correct?
A. Correct.
Q. Okay. Do you agree with those statements that was made earlier?
A. Yes.
Q. All right. Now these are going to be the questions that might get you in trouble because you haven't told your mom about them, okay?
A. Okay.
Q. First off, it's my understanding you have a primary care physician; is that correct?
A. Yes.
Q. What was his name again?
A. Dr. Akrawi.
Q. And how long have you been a patient of Dr. Akrawi?
A. Since I was a baby, he was -- he's been my doctor.
Q. So he was your pediatrician as well as your actual doctor?
A. Yes.
Q. Was there ever a time that you went to Dr. Akrawi and your mother was not there?
A. No.

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Q. Okay. So she knows everything that she -- that you've gone to Dr. Akrawi for then?
A. Yes.
Q. Okay. At the time of this accident -- I know we have gone over your knee surgeries, your tongue, and your broken arm. Were there any other medical conditions that you were treating for just before this accident?
A. No.
Q. Okay. Now I understand that you went to the hospital for anxiety and depression a little less than a year before the accident; is that correct?
A. Yes.
Q. Aside from that one hospital visit, before this accident did you treat with anyone else regarding any anxiety or depression?
A. No.
Q. Okay. Were you prescribed any medications on the date of this accident before the accident?
A. I'm sorry. Can you repeat that?
Q. Sure. That was a really bad question. I apologize.
A. That's okay.
Q. So before this accident were you regularly taking any prescribed medications?

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A. No.
Q. Okay. On the date of this accident it's my understanding that you were heading to school, correct?
A. Yes.
Q. Within 24 hours before the accident had you taken any illegal substances or drank any alcohol?
A. No.
Q. Okay. Now from what your mom testified to earlier, are you aware of whether you had health insurance on the date of the accident?
A. I don't know.
Q. Okay. Did you have any involvement in selecting or purchasing any health insurance?
A. No.
Q. Okay. So aside from the hospitalization in May of 2019 regarding the anxiety and depression, as well as your knee surgeries, your broken arm, and the tongue, have you gone to the hospital overnight for any reason?
A. No.
Q. And I mean, before the accident. I apologize.
A. No.
Q. Okay. And it's my understanding you underwent some physical therapy for your knees, correct?

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A. Yes.
Q. And that was before the accident?
A. Yes.
Q. Okay. Did you ever undergo any other surgeries besides the ones you or your mother and we have talked about?
A. No.
Q. Okay. Did you ever undergo any chiropractic treatment before the accident?
A. No.
Q. All right. Before the accident did you ever have to use a back brace, or a neck brace, or anything like that?
A. No.
Q. All right. Here's where you get to fill in the most blanks, okay, McKenna?
A. Okay.
Q. All right. Walk me through the day of the accident.
A. Okay. So me, my brother, and my boyfriend were all heading to school, and we were going down Rood Road, and it was snowing, and it was just really bad weather. And we were going -- driving to school and we hit a patch of ice and we hit a tree. And the ambulance took me to Genesys and

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then Genesys said that they can't treat me.
And so I went to Beaumont and I got my X-rays done, my MRI done, and I had plastic surgery on my lip. And then I went -- that night I went into surgery for my back and had a back fusion.
Q. Okay. So I'm going to back up. I understand that there was a lot right there but I'm going to back up to the accident itself, okay?
A. Okay.
Q. All right. So you said you're on Rood Road?
A. Yes.
Q. Heading to school?
A. Yes.
Q. Did your brother pick you up or were you and your brother at your dad's house?
A. Me and my brother were at our dad's house.
Q. Okay. Did you pick up your boyfriend or was your boyfriend at your dad's house?
A. We picked him up.
Q. Where did you pick him up from?
A. His house.
Q. And where was his house located?
A. It was in Holly. I don't know his address though.
Q. Okay. So then you pick up your boyfriend. Where

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is everyone seated in the vehicle?
A. I was sitted -- my brother was driving. I sat in the middle in the back and my boyfriend sat on the right side of me.
Q. Okay. So Hunter is -- so okay. I apologize. There are two rows of seats in your brother's truck, correct?
A. Yes.
Q. So there's two seats up front. And is there a bench in back or is there seats in back?
A. There's seats.
Q. Okay. So you're sitting in the middle back seat, correct?
A. Yes.
Q. Is there a seatbelt in that spot?
A. Yes.
Q. Okay. So are you using it?
A. Yes.
Q. All right. So your brother's driving and you and your boyfriend are in the backseat?
A. Yes.
Q. Do you know how fast your brother was driving?
A. I believe 45.
Q. Okay. And do you know what the speed limit on Rood Road is?

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A. 45.
Q. Okay. Was the area where Hunter lost control, was it a dirt road or was it paved?
A. Dirt road.
Q. All right. And if you can, explain to me – I know you might not be able to. But if you can, how do you know that your brother was going about 45?
A. Because I looked at what he was going because of the roads were going bad. And as soon as I looked that's when we hit the tree.
Q. Okay. So you said the roads were bad. Was it snowing?
A. Yes.
Q. Okay. And so you noticed the roads were bad and you looked at his speedometer?
A. Yes.
Q. And you saw it was about 45 miles an hour?
A. Yes.
Q. Okay. And just as soon as you saw it, that's when you hit the tree?
A. Yes.
Q. And when I say you, I mean the vehicle you're in, not you driving or anything like that.
A. Yes.

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Q. All right. So the seat you are in, normally, and this is my experience, a center seat only has a lap belt. Did that center seat also have a shoulder harness portion or did it just have the lap?
A. It just had the lap.
Q. Okay. Did any of the airbags go off in the truck?
A. Yes.
Q. Okay. Do you remember which airbags went off?
A. Just the driver I believe.
Q. Okay. Were there any side airbags that went off near you guys in the back?
A. No.
Q. Okay. Now when the collision with the tree happens, does your body strike anything inside the vehicle?
A. I got whipped – so my – my seatbelt kept me from flying forward, and I whipped and – forward and hit my knees. Like my face hit my knees.
Q. Okay. So, and I'm just – I wasn't there, so I'm just trying to ask a couple of clarifying questions, okay?
A. Okay.
Q. So there was enough space in between the front seats and where you were sitting that your entire

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body was able to fold over and hit your knees?
A. Yes.
Q. Okay. So your head didn't hit the front seats at all?
A. No.
Q. Okay. So you're sitting in the back. When you're looking forward, is there a console in the middle or is there a full bench in the front?
A. No, there's a console.
Q. Okay. So your head avoided the console and hit your knees?
A. Yes.
Q. Okay. Now, do you know what part of the truck struck the tree?
A. The front.
Q. Okay. So do you know if the truck ever spun out or it just went right into a tree?
A. We were going straight and we hit a patch of ice and we turned and we hit the tree.
Q. Okay. But the front part of it hit the tree still?
A. Yes. Yes.
Q. Okay. Now after your face hits your knees, what's the next thing that happens?
A. I lose my – like I completely stopped breathing

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for like a second. My – the wind got knocked out of me. And I remember just – I didn't feel anything, like as soon as, like, a split second, as soon as I, like, realized what happened, I was kind of, like, into a shock.
And I went to go unbuckle and that's when I – everything hit all at once. And then, like, I had to, like – it took me, like, five minutes to catch my breath. And I asked my boyfriend to pick up my legs and lay me down on the seat.
Q. Okay. So your first thought is you have to unbuckle?
A. Yes.
Q. Okay. You said you didn't really feel anything at that time, you believe it was because of shock?
A. I did feel stuff but my brain, like, didn't process, like, anything yet, and for, like, five seconds. And then as soon as I realized that we got in the accident, that's when everything all hit all at once.
Q. Okay. So then you ask your boyfriend to lay your legs on the backseat?
A. Yes.
Q. Okay. What's the next thing that happens?
A. I remember laying there for about ten minutes or

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so until the ambulance came. And then the ambulance got there and they were talking to me about asking me what hurt. And I explained to them, and then they had to do a full exam basically without moving me just to see what was wrong or if anything was, like, exposed they said. And so after that they put me onto the stretcher and that's when I got into the ambulance.
Q. Okay. So they did the exam while you were still in the truck?
A. Yes.
Q. All right. Do you know how long the exam took?
A. I -- I think it would be about, like, five minutes or so.
Q. Okay. During this time when they asked you what was hurting, did you tell them anything?
A. I just said my back because that was the only that I could really feel at that time.
Q. Okay. Any other complaints that you can think of that you made to the EMTs?
A. And my face.
Q. Okay. Did you talk with Hunter or your boyfriend at the scene?
A. Yes, I was just -- they were trying to calm me down.

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Q. Okay.
A. The whole time.
Q. Did either of them discuss any injuries they might have had with you?
A. No.
Q. All right. Now did you speak with police at the scene at all?
A. No.
Q. All right. So the only people you spoke with are your brother, your boyfriend, and the paramedics?
A. Yep. Yes.
Q. Did you ever see your dad get to the scene?
A. For two seconds when he came in. He looked at me first and then as soon as he got there -- he was there for about, like, two minutes and then the ambulance got there.
Q. So he was there before the ambulance got there?
A. Yes.
Q. All right. Did you speak with your dad?
A. No, I just screamed that my back was hurting really bad. And he went and -- I don't know what he did after, but I know he was talking to my brother, asking what happened.
Q. Okay. Did you hear that conversation at all?
A. No.

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Q. All right. Now, so you are examined by paramedics, you get into the ambulance. Your mom described pretty thoroughly everything that happened at Genesys, at Beaumont with regard to your physical therapy facilities, with regard to your pain medicine doctors.
Do you recall the name of the pain medicine specialist that you saw twice that your mom could not remember the name or the facility of?
A. I don't remember.
Q. Okay. And you've also been treating with Dr. Dabrowski, correct?
A. Yes.
Q. Okay. Is there anything that you remember that your mom did not discuss with us in the deposition prior to this that you were in the room for?
A. No.
Q. Okay. So her testimony regarding the treatment that you've undergone is basically how you remember how everything's gone since?
A. Yes.
Q. Okay. And just to reiterate her testimony regarding your living situation is also the same, correct?

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A. Yes.
Q. Okay. And it's my understanding also that in October of 2020 you started to work at Subway, correct?
A. Yes.
Q. Which Subway location?
A. In Holly.
Q. Is it the one that's over by the Wendy's?
A. Yes.
Q. Okay.
MR. HINMAN: I apologize for those not in Fenton or Holly, I just have knowledge of where everything is.
BY MR. HINMAN:
Q. And do you know the street name that that's on?
A. I think it's Grange Hall but...
Q. Okay.
A. I believe so.
Q. Yep. I think there's a Domino's right there too?
A. Yes. Yes.
Q. Okay. And according to your mother, you've worked there since October of 2020 and you are currently in the middle of your two weeks notice for quitting, correct?
A. Yes.

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Q. And your mother said it was for safety concerns?
A. No, they -- they are just -- we're short-staffed and so she -- my boss has been scheduling me way too much and I -- it got to the point to where I would cry coming home because my back hurt so bad. So that's when I had to put my two weeks in.
Q. Okay. That's what it was, your mother quit being a VP due to safety concerns. Yours was the under-staffing?
A. Yes.
Q. Okay. And I assume it's under-staffing because of the Covid pandemic?
A. Yes.
Q. Okay. During the time that you were working for Subway, your mom testified that you would work about four hours a day a few days a week; is that correct?
A. Yes.
Q. Okay. How much were you making at Subway?
A. We get paid every two weeks, so I was making about two -- 250ish.
Q. Okay. Do you know how much you were making per hour?
A. $10.
Q. Okay. I'm trying to think if I have much more

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because your mom was very, very thorough.
Oh. Your mom did also testify that you guys have gone to South Carolina twice to see your brother who's a Marine, correct?
A. North Carolina, and yes.
Q. North Carolina. Okay. Aside from those trips to North Carolina, have you yourself without your parents gone anywhere out of state since the accident?
A. No.
Q. All right. And what vehicle were you driving in order to get your license following the accident?
A. A Jeep Liberty.
Q. Okay. Is that your vehicle?
A. Yes.
Q. Did you purchase it?
A. My mom bought it for me.
Q. Okay. Is that vehicle insured?
A. I don't -- I don't know.
Q. If you don't know it's perfectly fine.
You didn't personally insure it with your own policy. You didn't purchase an insurance policy on it?
A. I don't -- I don't -- I don't --
MR. LEGATO: You can't ask her.

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THE WITNESS: Oh.
MR. LEGATO: If you don't know, just say you don't know.
THE WITNESS: I don't know.
MR. HINMAN: It's all right.
BY MR. HINMAN:
Q. If you didn't go to an insurance agent and purchase it and give them money yourself --
A. Oh, no.
Q. -- that's perfectly fine. Okay.
As we sit here today, I know that you have a scheduled doctors appointment with Dr. Dabrowski in a couple of months; is that correct?
A. Yes.
Q. Okay. Any other doctors appointments that you are scheduled for besides Dr. Dabrowski?
A. No.
Q. Okay. As we sit here today, how are you feeling?
A. I'm -- I'm doing my best. But it's -- there's -- every day is a struggle.
Q. Since the accident, I want you to think about all your treatment, the injections, all of that stuff. Are you feeling better?
A. I wouldn't say I've been getting better but I'm not getting worse. You know?

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Q. Okay. Has the pain become in any way more manageable since the accident?
A. I've learned how to deal with it better.
Q. Okay. So if I can, I understand you don't have any medical training, you don't have any type of that. On a scale of one to -- or zero to ten, zero being no pain at all, ten being the worst experience of your entire life, where is your pain today?
A. Today? Because I've been sitting down for so long, probably an eight.
Q. Okay. So if you hadn't been sitting, like on just a normal day where you're not sitting for a few hours, what's the pain on average?
A. Like a six and a half.
Q. Okay. And I know your mom said that you've told the doctors that those Botox injections helped for a little bit and then the pain starts to come back, correct?
A. Yes.
Q. So after the first injection your mom said that you had pain relief for about two months. Was that correct?
A. Yes.
Q. Now following the second Botox injection in June,

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how are you feeling?
A. In the beginning it was working pretty well but I realized that it's wearing off sooner than the first time I got it.
Q. Okay. And were you in the room when any of your doctors said that a second surgery may be necessary?
A. Yes.
Q. Okay. Do you remember which doctor specifically?
A. Dr. Setty.
Q. Okay.
A. And Dr. Dabrowski.
Q. All right. And as we sit here today, are you able to take care of all of your like personal needs, like grooming, going to the bathroom, bathing yourself, things like that?
A. Yes.
Q. Okay. When did that start to really become your own thing where your mom didn't have to help you?
A. I would say around April, a month after I started physical therapy.
Q. Okay. So that would have been April of 2020?
A. Yes.
Q. Okay. Kind of the same question, I know that your mom said you've still got some limitations. But

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you're able to do some chores now, correct?
A. Yes.
Q. And were you able to start doing those around the same time as the attendant care, those personal needs or was that a different time?
A. No, I would say I was starting to do little chores at a time around the beginning of this year.
Q. Okay. Aside from the equipment that your mom said some people brought in and the home modifications, were you – did you ever receive any, like, medical devices, like a back brace or anything like that?
A. Yes.
Q. Okay. Do you remember when you got that?
A. It was – it was when I got all my equipment. It was a bone stimulator, where I just had it on for about 30 minutes a day.
Q. Okay. Now did you ever have, like, a full wrap around your body, like almost like a cast or anything like that?
A. No.
Q. Okay. Did you ever have like a soft wrap, almost like an ACE bandage to go around your body like to hold your back?
A. No.

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Q. All right. I think that's all the questions I have, McKenna. These other attorneys, like for your mom, might have their own questions. But I think your mom was pretty thorough, but they might still have some.
A. Okay. Thank you.

EXAMINATION

BY MR. ENDRES:
Q. Hey, McKenna. How are you doing?
A. I'm good. How are you?
Q. Good. I'm going to be very brief. I just have a couple questions, okay?
A. Okay.
Q. And it more has to do with your living situation when you were staying at your dad's, okay?
A. Okay.
Q. Do you have your own bedroom over there?
A. Yes.
Q. Do you have your own bed?
A. Yes.
Q. Do you have like a dresser to put your clothes in?
A. Yes.
Q. Are clothes kept in it or do you bring your clothes over there when you go there?
A. I have some clothes in my dresser but I mainly

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transfer.
Q. Okay. And when you transfer, do you leave them there or do you bring them back home?
A. Bring them back home.
Q. Okay. Do you have like a closet there or any other possessions at your dad's house?
A. Yes.
Q. What do you have there? Like do you have a TV, do you have anything in the room?
A. Yeah, I have a TV and a small little desk that I use for all my stuff.
Q. Okay. And when you go over there do you have to bring like your own toothbrush or toothpaste or do you already have that there?
A. I already have that there.
Q. And why did you choose to put your mom's address on your driver's license?
A. Because that's – that's just where I stay the most and –
Q. Okay. Have you gone on any vacations with your dad?
A. Not recently, no.
Q. When was the last time you did?
A. When we went to Disney about seven years ago.
Q. Okay. And when you go to your dad's house how do

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you get there?
A. I drive.
Q. What about when you – before this accident how would you go over there? Did you get a ride from somebody?
A. My brother.
Q. Okay. How old is your brother?
A. Right now?
Q. Yeah, that's fine.
A. He's 19.
Q. And what was his name? I'm sorry.
A. Hunter.
Q. Yes. Okay. That's all I got. You're all set with me at least. Have a good weekend.
A. Thank you. You too.

EXAMINATION

BY MS. MURREL:
Q. Hi, McKenna.
A. Hi.
Q. I also just have just some very few questions for you. And also mainly having to do with where you live.

And if I ask you that question, who do you live with; do you live with your mom or do you live with your dad, what's your answer?

A. Both, but I mainly live with my mom.
Q Okay. And has that been true since you were a little kid?
A. Yes.
Q. All right. And your mom said that you would stay a week at her house and then you would – the next week you would stay two or three days with your dad; is that accurate?
A. Yeah.
Q. Okay. And typically what days would you stay with your dad?
A. Usually Monday, Tuesday. And then I would come over, like, Friday.
Q. All right. And you know what, I think that's all that I have for you.
A. Okay.
Q. Thank you.

MS. DEBELL: I don't have any other questions. Thank you very much.

MR. LEGATO: We're done.

MR. HINMAN: I don't have any follow-up for once. Thanks, McKenna.

THE WITNESS: Thank you.

(Proceedings concluded at 4:50 p.m.)

* * *

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

I, Kelly Bonheim, a CSR and Notary Public acting in the County of Oakland, State of Michigan, do hereby certify that this transcript, consisting of 39 pages was remotely taken before me in the above-entitled matter, was by me duly sworn remotely at the aforementioned time; that the testimony given by said witness was stenographically taken remotely of said witness and that the said deposition is a full, true, and correct transcript of the testimony given by the witness. I further certify that I am not connected by blood or marriage with any of the parties or their attorneys, and that I am not an employee of either of them, nor financially interested in the action. I agree that neither I nor any person, attorney, paralegal, or expert witness may make, copy, and/or distribute to others a transcript without paying Tri-County Court Reporters the ordinary and customary charges for any and all additional transcripts.

Kelly Bonheim, CSR-8167
Notary Public: Oakland County, Michigan
My commission expires: 11/1/2027

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Transcript of the Testimony of
Lawrence, Stephanie

Date: August 6, 2021
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Case: Lawrence v. Esurance, et al

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

STEPHANIE LAWRENCE, as Next Friend of MCKENNA L. FROWNFELTER, a minor,
Case No. 2020-184089-NF
Plaintiff, Hon. Edward Sosnick

vs

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY, foreign profit company,

Defendant.

and

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,
Foreign profit company,
Third-Party Plaintiff,
vs
PROGRESSIVE MICHIGAN INSURANCE COMPANY, FARMERS INSURANCE COMPANY, AND AUTO-OWNERS INSURANCE COMPANY,

Third-Party Defendants
_____/

REMOTE DEPOSITION OF STEPHANIE LAWRENCE
Taken on Friday, August 6, 2021, at
44444 Mound Road, Suite 100,
Sterling Heights, Michigan.

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Also present: Abraham Newhouse, Anselmi Mierzejewski Ruth & Sowle PC

Court Stenographer: Kelly Bonheim, CSR-8167
Certified Shorthand Reporter

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(None offered)		

Electronically signed by Kelly Burks (201-351-939-3319)

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Sterling Heights, Michigan
Friday, August 6, 2021
2:19 p.m.
* * *

REPORTER: My name is Kelly Bonhelm, a Notary Public and Certified Shorthand Reporter for the State of Michigan. This deposition is being held via videoconferencing equipment. The witness and the stenographer are not in the same room. The witness will be sworn in remotely pursuant to agreement of all parties. The parties stipulate that the testimony is being given as if the witness was sworn in person.

STEPHANIE LAWRENCE,

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

MR. HINMAN: All right. Stephanie, before we begin, could you state your full name for the record, please?

THE WITNESS: Stephanie Ann Lawrence.

MR. HINMAN: All right. Let the record reflect that this is the date and time for the discovery deposition of Ms. Stephanie Lawrence,

taken pursuant to notice and to be used for all purposes under the Michigan Court Rules and Michigan Rules of Evidence.

EXAMINATION

BY MR. HINMAN:

Q. First off, is it okay if I call you Stephanie? Because I'm going to accidently call you Ms. Frownfelter and then we're going to all screw everything up, okay?

A. That's fine. I've been called worse, so...

Q. All right. Thank you, Stephanie.

A. If you call me Ms. Frownfelter I'll still answer.

Q. All right. First off, before we begin, I'm going to go over a couple of ground rules. I know you have a fantastic attorney who has I'm sure talked to you about what's going to be going on today but I'm going to go over those rules for the court record, okay?

A. Okay.

Q. All right. First off, my name is Aaron Hinman. I represent Esurance in a lawsuit that's been filed on behalf of your daughter following a motor vehicle accident. Are you aware of that accident?

A. Yes.

Q. Okay. The other people in this amalgamation of

boxes is Kelly, who is our court reporter, who is taking down everything that's being said, okay?

A. Okay.

Q. The other attorneys represent other insurance companies that I had to bring in because there's potential insurance through everyone else, okay?

A. Okay.

Q. Following my questioning, these other attorneys might have questions for you. It might get a little tedious or repetitive but do not blame them and don't get defensive on them, okay?

A. I understand.

Q. All right. Also, my questions might get a little tedious, and I do apologize for that. It's Friday afternoon and I made a bad decision scheduling it at this time.

A. But wait a minute, you threw everybody else under the bus first and then bought in that you're going to do the same thing.

Q. Exactly, that's how we work. All right.

First off, as I said before, there's a court reporter taking down everything that's being said. So just make sure if you answer one of my questions, that your answers are verbal. So "yes," "no," and "I don't know" are perfectly

fine. But um-hums, uh-uhs, and nods of the head won't work, okay?

A. Okay.

Q. All right. If you do nod your head or say um-hum or uh-uh, I'm going to ask whether that was a yes or a no so that way it's clear for the record.

A. I understand.

Q. All right. If for some reason during my questioning or during anyone else's questioning, if you can't hear us because this is over Zoom, please let us know and we'll do our best to rephrase or ask the question, okay?

A. Okay.

Q. Also, if you don't understand one of my questions, again let us know and I'll do my best to rephrase or ask a different question that you understand, okay?

A. Okay.

Q. Also, because this is over Zoom there might be a little bit of a lag in between the end of my question or the beginning of your answer, and in that time either your attorney or one of the other attorneys might object to my question. So give them the opportunity to do so before you answer, all right?

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A. Okay.
Q. And if Mr. Legato does instruct you not to answer, we may have a little bit of a discussion on the record. So don't feel intimidated or like you have to do anything during that time, okay?
A. Okay.
Q. Last but not least, I don't expect this to take very long, but if you have to take a break for any reason just let me know and we'll take a break.
A. Okay.
Q. All right. Also, all of us are here just to know what you personally know, okay?
A. Um-hum.
Q. Is that a yes?
A. Yes. Sorry.
Q. Nope, that's fine. It's going to happen throughout this whole thing. We get very comfortable with conversation and that's kind of how this is going to go. So I might remind you every once in a while about that, okay?
A. Okay.
Q. All right. So generally speaking, we're going to ask that – I know your daughter is sitting next to you. I'm going to ask that she don't provide you – that she doesn't provide you any

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information to help you answer any of my questions, okay? If you know it personally, you know it. If you don't, you don't. It's perfectly fine, okay?
A. I understand, yes.
Q. All right. First off, I'm going to ask you an incredibly rude question.
A. Okay.
Q. What's your date of birth?
A. 12/11/82.
Q. And again this is a question you never, ever ask a woman that –
A. If it's about my weight I'm out.
Q. Nope. Nope. It's just how old would that make you today?
A. 38.
Q. Okay. And do you have a driver's license, Stephanie?
A. Yes.
Q. Do you know your driver's license number?
A. Yes.
Q. What is it?
A. F 651 777 067 942.
Q. And do you have any restrictions on that license? Like – wow – glasses or night – no night

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driving or anything like that?
A. No.
Q. Okay. And I see that the first letter is F. It is my understanding that you have been remarried now, correct?
A. Yes.
Q. And your last name is now Lawrence?
A. Yes.
Q. So if you renew your driver's license that letter may switch?
THE WITNESS: Will you hand me my – Let me – I'm going to look at my license real quick but I think they keep that F. I believe they told me they keep it but I have my license right here.
BY MR. HINMAN:
Q. I legitimately don't know one way or another actually.
MS. DEBELL: If we could have a copy of that too, after the deposition, please. Thank you.
THE WITNESS: It's still F.
BY MR. HINMAN:
Q. But it says Lawrence on the driver's license?
A. Correct.

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Q. Okay. Now this is a question that I ask every deponent. For your safety and for your protection I'm asking for your Social Security number, but the court reporter only puts the last four on the record. And as stated before, this transcript goes nowhere but into our files and is not used in any way beyond a court proceeding, okay?
A. I understand.
Q. All right. So what's your full Social Security number?
A. F 65 – or I'm sorry, I'm giving you my license number. XXX – holy cow. Why did I just draw a blank?
Q. Stephanie, it's okay. If for some reason you remember it during our questioning, just let us know, okay?
A. Yes, sorry about that.
Q. That's okay. If not, I can get it from Mr. Legato, okay?
A. Okay.
Q. What's your highest level of education, Stephanie?
A. High school.
Q. What high school?
A. Fenton High School.
Q. I currently live in Fenton actually.

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A. Oh, really?
Q. I do, yes.
What year did you graduate?
A. 2001.
Q. All right. Following Fenton High School did you take any college courses at all?
A. No.
Q. Do you have any certificates or licenses, like a realtors license or anything like that?
A. No.
Q. Okay. Following your graduation from Fenton High School did you take any medical training? Do you have a CPR license? Anything like that?
A. No.
Q. Okay. Are you currently employed, Stephanie?
A. No.
Q. At the time of this accident were you employed?
A. Yes.
Q. Okay. Where were you employed at at the time of the accident?
A. Beacon Park Finishing.
Q. So actually let me back up. And I apologize, I'm going to set a foundation here real quick.
Do you remember what the date of this accident was?

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A. 1/8 –
Q. Of what -- oh, sorry, go ahead.
A. 1/8/19.
Q. Is it possible it was 1/8/20?
A. Yes, sorry.
Q. That's okay. I just want to make sure that we're getting everything clear, okay?
A. Yes.
Q. So at the time of this accident you were working for Beacon Park –
A. Yes.
Q. – Finishing, correct?
A. Correct.
Q. All right. And what did you do for Beacon Park Finishing?
A. I was the vice president.
Q. And what were your job duties as vice president of Beacon Park Finishing?
A. Everything.
Q. And I –
A. Invoices, overall operations, safety, OSHA. Yeah, it was – it was literally all...
Q. What did Beacon Park Finishing do?
A. They're an automotive company. So they make parts for F-150 and F-250 trucks.

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Q. And immediately before the accident how many hours a week per week were you working?
A. I was in the office in Roseville for about 40 hours a week. And sometimes if there were emergencies I'd work from home and handle it.
Q. Did you ever work overtime?
A. Yeah.
Q. If you had to give me an estimate, how many hours per week were you doing overtime?
A. Probably five.
Q. And how long had you worked there at the time of the accident?
A. Two years.
Q. Was this a company that you started or were part of at the beginning?
A. The beginning, yes.
Q. Okay. Following the accident how long were you employed with Beacon Park Finishing?
A. Three years.
Q. So you were employed for another year following the accident?
A. Correct.
Q. Okay. Why did you leave?
A. Safety reason – safety and ethical reasons.
Q. Did it have anything to do with your daughter's

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accident?
A. No.
Q. Okay. It's not my job to get into the business stuff of it but I had to see if it was related to the accident. That's all.
All right. At the time of the accident was McKenna being provided any state benefits? Like Social Security Disability, Social Security Income, food stamps, anything like that?
A. No.
Q. Okay. At the time of the accident was McKenna employed anywhere?
A. No.
I remember my Social Security number.
Q. All right. Let's go with that.
A. XXX-XX-4567.
Q. Sorry, can you repeat that one more time?
A. XXX-XX-4567.
Q. Thank you very much. I appreciate it.
A. You're welcome. I have too many Social Security numbers in my head.
MR. LEGATO: Aaron, to try to streamline some stuff. The only thing at issue from our standpoint is medical. Nothing else.
MR. HINMAN: Oh, I -- let's go off the

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record really quick, Kelly.
(From 2:31 p.m. to 2:31 p.m., discussion held off the record.)
MR. HINMAN: Back on the record.
We went off the record for a minor discussion regarding the outstanding medical and No-Fault benefits that are being claimed in this case. I would ask that plaintiff counsel confirm what I'm about to state on the record. At this time there's no attendant care, no replacement services, and no wage loss being claimed in this lawsuit?
MR. LEGATO: As far as outstanding and unpaid, correct.
MR. HINMAN: And there's a possibility that there may be medical mileage but we're not sure at this time?
MR. LEGATO: Yes, for right now.
BY MR. HINMAN:
Q. All right. So that's going to make things a little bit faster okay, Stephanie?
A. Deal.
Q. All right. I'm going to keep going with some background stuff and then we'll move on, all right?

A. Okay.
Q. Do you have any military experience?
A. No. Well, my son's a marine.
Q. Did you go to any of his training with him and train with him?
A. No.
Q. Okay. So you don't have military experience yourself?
A. No.
Q. All right. And your son who is in the military, is that Hunter?
A. Correct.
Q. And what branch of the military you said?
A. Marines.
Q. Okay. And when did he enlist?
A. October of last year.
Q. Is he currently deployed?
A. He is stationed in Japan.
Q. In an unrelated matter, I have an ex-brother-in-law who was stationed in Japan in the Navy and he loved it. So I don't –
A. Yeah, so far so good.
Q. Again, in a completely unrelated question; is he able to be at the Olympics?
A. No.

Q. Oh, that's unfortunate.
A. They have him too busy but he – he was born to be a marine. He's doing very well and he's happy, so I'm happy.
Q. This is another question that I ask every deponent. And again, Mr. Legato might speak up on this one. Within the last ten years have you been convicted of a felony?
A. No.
Q. Similar question, within the last ten years have you been convicted of a misdemeanor involving theft or dishonesty?
A. No.
Q. Okay. Aside from the lawsuit we are here regarding have you been involved in any other lawsuits?
A. No.
Q. Okay. What's your current address, Stephanie?
A. 1254 Bay Court, Holly, 48442.
Q. And how do you spell the street?
A. B as in boy, A-Y. Next word, Court.
Q. Okay. And how long have you lived at the Bay Court address?
A. Five years.
Q. So you were living there at the time of this

accident?
A. Correct.
Q. And who was living with you at the time of the accident?
A. It was myself and then my kids when they didn't spend the night at their dad's.
Q. Now I know there is a tenuous relationship there. It's my understanding that you and Corey Frownfelter, who is McKenna Frownfelter's father, divorced in 2011; is that correct?
A. Correct.
Q. Okay. And it's my understanding that there is a custody agreement along with your divorce decree following that divorce; is that correct?
A. Correct.
Q. Could you please tell me the custody arrangement that you and Mr. Frownfelter had at the time of this accident?
A. 50/50 custody.
Q. Now in our realm, 50/50 on a piece of paper doesn't necessarily mean 50/50 all the time.
A. Correct.
Q. So I'm going to get into some details about that if you're okay with it, okay?
All right. First off, when you say

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50/50, was there -- were there particular schedules such as you had the kids one week and Corey had them the next week? Or they were every other weekend and holidays? How was it split?
A. Originally it was Monday to Monday, week on and week off. That's how we had originally set it up. Along with the holiday alternating years, just like, you know, the normal standard court, but that -- that wasn't the case. I'm the mom, so school stuff, doctor stuff, kids sick, needing care, you know, she was at my house more than at Corey's.
Q. Okay.
A. The day of the accident she was -- she spent the night at Corey's.
Q. Gotcha. So leading -- so I guess within the six months leading up to the accident, if you can remember, how much time was McKenna at your residence versus Corey's residence?
A. I would say an average of she was at my house about 75 percent of the time and his 25.
Q. Okay. Did you and Corey ever attempt to amend your custody agreement or divorce decree or anything like that based on the amount of time that McKenna was spending at your respective

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houses?
A. We went to court once and had a mediation. There were some things at his house that I didn't like but we ended up working it out amongst ourselves and kept going as normal.
Q. Okay. So there was never an amended custody arrangement that was actually issued by the court?
A. Correct.
Q. Okay. Now at the time of the accident, aside from your children, were you aware of anyone else that was living with Corey Frownfelter?
A. His girlfriend, Desiree. And her two kids, Brandon and Savanna.
Q. But no other individuals that might be related by blood to McKenna?
A. Not that I'm aware of, no.
Q. Well, sorry, aside from your children?
A. Yeah. No.
Q. Okay. And if I remember correctly, on the date of the accident your daughter was actually staying at her father's; is that correct?
A. That is correct.
Q. Do you remember approximately how long she had been there at the time of the accident?
A. One day.

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Q. And was it his week or was there a special circumstance?
A. It was his week.
MR. HINMAN: Off the record really quick (From 2:40 p.m. to 2:41 p.m., short break.)
MR. HINMAN: Back on the record.
BY MR. HINMAN:
Q. All right. I apologize, Stephanie.
Did you end up answering my last question?
A. Yes. You asked how long she had stayed at Corey's.
Q. And you said about one -- or one day before?
A. Correct.
Q. And then I asked before I interrupted this, was it a special circumstance or was that his week?
A. That was his week.
Q. All right. Do you remember what Corey's address was at the time of the accident?
A. I don't know the numbers, but Lahring Road, Holly, Michigan.
Q. In Holly?
A. Correct.
Q. Okay. And do you know how long he had been living

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there at the time of the accident?
A. Maybe two years.
Q. All right. Sorry, I'm jumping around in my notes now that things a little bit clearer.
A. That's okay.
Q. Immediately following the accident does she go back to your house or did she stay with Corey?
A. No, she was at my house.
Q. Okay.
A. For months.
Q. So it was a long time following the accident before she actually went back to Corey's?
A. Yes.
Q. Okay.
A. And I worked from home during that time and then had people come and stay with her after that
Q. All right. Being that you are McKenna's mom, I'm going to ask about her pre-accident health, okay?
A. Okay.
Q. Before the accident did she have any prior surgeries?
A. She had two knee surgeries.
Q. And do you remember what the reason for those knee surgeries was?
A. One was an extra bone. And then one was a tear.

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Q. And which knee had the tear?
A. I don't remember.
Q. Do you remember how she tore it?
A. No.
Q. Okay.
A. Possibly track.
Q. Possibly track? That was going to be my next question, is did she -- did McKenna, was she involved in any sports in school?
A. She did track, snowboarding. Basically everything. She was that kid.
Q. And a general question because I'm not really there yet; since the accident has she started participating in any sports?
A. No.
Q. All right. Aside from the two knee surgeries, was McKenna involved in any slip and falls, trip and falls, or personal injuries before this accident?
A. She bit her tongue off when she was one.
Q. Okay. I didn't expect that. That threw me through a loop a little bit.
A. She was walking and tripped and fell and bit her tongue off.
Q. Okay. That's a new one for me.
A. It was for me too. It was -- it wasn't like all

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the way off but it was dangling. Anyways...
Q. Thank you for that horrible, horrible visual. I have --
A. I know.
Q. -- a 19 month old at home.
A. Well, I'm trying to give you all your answers.
Q. All right. So aside from her accidentally biting her tongue mostly off, any other trip and falls, personal injuries, anything like that?
A. She broke her arm on a four-wheeler when she was younger. But no trip or falls.
Q. When did she break her arm?
A. Four years ago.
Q. So 2017?
A. Yes.
Q. Okay. And you said she did it riding a four-wheeler?
A. Yes.
Q. She fell off?
A. Yes.
Q. Okay. Where did she treat following that broken arm?
A. Clarkston Medical.
Q. Do you happen to have an address?
A. I don't.

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Q. And I'm assuming it's in Clarkston?
A. Yes, I believe that was the place.
MR. LEGATO: McLaren Hospital in Clarkston.
THE WITNESS: Oh, sorry. McLaren Hospital in Clarkston.
BY MR. HINMAN:
Q. Okay. And with regard to her knee surgeries, where did she have those performed at?
A. Hurley. And then the other one was in like a -- it wasn't actually in like a hospital. It was in, like, a surgical room.
Q. Okay. Do you remember the name of the facility, the surgical suite?
A. No.
Q. Okay.
A. It was Dr. Samani that did it.
Q. S-i-m-a-n-i?
A. I'm not sure.
Q. All right. Aside from the broken arm, the tongue, and the two knee surgeries, anything else major before this accident?
A. No.
Q. Okay. Aside from what we just talked about, any hospitalizations where she had to stay overnight?

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A. She was having some anxiety and depression.
Q. And when was that?
A. Approximately a year before the accident.
Q. Now I saw in McKenna's medical records that I believe she was either at Beaumont or Ascension in May of 2019. Is that what you're referring to?
A. That was when she was hospitalized, yes.
Q. Yep. Okay. Aside from the anxiety and depression, were there any other conditions that McKenna was diagnosed with in 2019 --
A. No.
Q. -- at that hospital visit?
A. No.
Q. Okay. Any other physical or mental health conditions that we haven't talked about before this accident?
A. No.
Q. Okay. Here's where this gets a little tedious, and I apologize, Stephanie, okay?
A. Okay.
Q. Before this accident did McKenna undergo any physical therapy?
A. The -- for her knees.
Q. Okay. Where did she go for physical therapy?
A. A facility in Holly. I don't remember the name of

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it. I think it's actually changed names.
Q. Do you remember where it's located in Holly?
A. Off Saginaw Street. It may have been called NovaCare.
Q. All right. Prior to the motor vehicle accident did McKenna undergo any chiropractic treatment?
A. No.
Q. Aside from the two knee surgeries, the assuming tongue surgery, and anything that happened with her broken arm, has she undergone any other surgeries?
A. No.
Q. Okay. Now –
A. Prior to the accident?
Q. Yes, prior to. Now as we've all established, the accident happened on January 8th, 2020; is that correct?
A. Yes.
Q. All right. How were you told about the accident?
A. Her boyfriend called me.
Q. And what's her boyfriend's name?
A. Rolando Cantu. The last name is C-a-n-t-u.
Q. And forgive me if I'm wrong, was he a passenger in the vehicle at the time of the accident?
A. Yes.

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Q. Okay. And you said he called you? I apologize.
A. Correct.
Q. Do you remember what time he called?
A. About 6:36.
Q. Okay. So almost immediately after the accident?
A. Yes.
Q. Okay.
A. Hunter was on the phone with 911 and Rolando called me.
Q. Do you remember the details of that conversation?
A. Yes.
Q. What did Rolando tell you?
A. That they had been in an accident. That Hunter was okay, Rolando was okay, but McKenna was not. And then all I could hear was her screaming in the background.
Q. Did Rolando tell you how the accident happened?
A. No.
Q. Did Rolando tell you whether McKenna was utilizing a seatbelt?
A. No. No, I asked him if they had their seatbelts on.
Q. And what did he say?
A. Yes.
Q. Did you ask Rolando whether airbags deployed?

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A. I did not
Q. Did he tell you whether the airbags went off?
A. No.
Q. Okay. Now I can't imagine what it's like to hear your daughter screaming in the background of a phone call. But did you ask Rolando why she was screaming?
A. Yes.
Q. And do you remember what he told you?
A. He doesn't know but there was blood everywhere and she can't feel her legs.
Q. And did Rolando tell you where everyone was sitting in the vehicle?
A. No.
Q. Okay. Did he tell you where anyone was sitting in the vehicle?
A. No.
Q. Okay.
A. Not that I remember.
Q. Gotcha.
A. At this point I was already out the door in Roseville and in my car and on my way there.
Q. That was going to be my next question. Did you go to the scene?
A. Oh, yeah. No, I did not go to the scene. By the

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time I got to the scene, she was already at Genesys. I was in Roseville at the time and the roads were bad.
Q. Okay. So if you can, do you remember what the day was like on the date of the accident?
A. It was snowy and icy.
Q. And you said the roads were bad?
A. Yes.
Q. And you were in Roseville you said, correct?
A. Correct.
Q. Were you at work already?
A. Yes.
Q. Okay. Do you happen to know why McKenna was in the vehicle?
A. They were on their way to school.
Q. Okay. How did McKenna usually get to school?
A. Her brother.
Q. So Hunter would regularly, like, pick her up and take her?
A. Um-hum.
Q. And by pick her up, let me rephrase a little bit.
Was there ever a time where Hunter and McKenna were not living with either Corey or you at the same time?
A. What do you mean by that?

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Q. Sure. Bad question.
Was there a time where Hunter would only live with his dad and McKenna was only living with you?
A. There were times that Hunter would stay with Corey more than she would stay with me.
Q. Okay. So at the time of this accident, on the date of the accident, was Corey and Stephanie living or residing or just at Corey's for their time?
A. You mean -- you mean Hunter and McKenna?
Q. Hunter and McKenna. Like I said, Friday afternoon.
A. I understand. I just wanted to clarify.
Q. So yeah, was Hunter and McKenna at Corey's at the same time or had Corey -- or had Hunter stayed at Corey's more?
A. The day of the accident Hunter and McKenna stayed at Corey's.
Q. Okay.
A. That time period, McKenna was with me about 75 percent of the time.
Q. Okay. So when McKenna was with you, would Hunter still come from Corey's and pick McKenna up to go to school?
A. Yes.

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Q. Okay. So if you remember, did you ever actually go to the scene or you went straight to the hospital?
A. I went straight to the hospital.
Q. So were you told where the accident happened?
A. Yes.
Q. Where did the accident happen, if you remember?
A. Rood Road.
Q. But no one told you details of how it happened, correct?
A. No. No, I -- I -- I --
Q. Not at the time I mean.
A. Yeah, I hung up the phone with Rolando and then I called Corey and let him know, you know, details of what happened and asked him to get there right away. He was two miles from there. And his girlfriend, Desiree was with him. So she was filling me in on what was going on. And I kept just asking for pictures of the vehicle so I could try to understand the severity and she would not send them to me because I was driving.
Q. Okay. Was Corey and Desiree able to get to the scene?
A. Yes.
Q. Are you aware of whether they were there before

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McKenna was transported?
A. They were.
Q. Okay. So any questions regarding the scene or McKenna at the scene would either be from McKenna or Corey then?
A. Correct.
Q. Okay. So then I will move on, all right?
A. Okay.
Q. All right. When you got to the hospital, did you speak with McKenna or any of her doctors?
A. Oh, yes.
Q. So then let's go with, did you speak with McKenna?
A. Yes.
Q. Okay. Did you ask McKenna how the accident happened?
A. No, at that time I was just focused on her injuries. She was in so much pain, she was screaming.
Q. Gotcha. All right. So then what did McKenna tell you when you got to the hospital?
A. She was kind of out of it. She was in shock. She just kept screaming, "my back." I didn't ask any details of the accident. That wasn't important to me at that time.
Q. Okay. And I know this is a dumb kind of nuanced

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question, but did she either point or say what part of her back?
A. No, she just kept saying, "my back."
Q. All right. Aside from speaking with McKenna, did you speak with her doctors?
A. Yes.
Q. Did they tell you what happened?
A. No.
Q. Did they provide you any information regarding McKenna's injuries?
A. They told me that the injuries were too severe for them to treat, and that she needed to be transported.
Q. Did they --
A. And they transferred her to Beaumont Royal Oak.
Q. Okay. And I do apologize, I'm going to back up for one second. What hospital was she taken to?
A. The first one or the second one?
Q. The first one.
A. Genesys in Grand Blanc.
Q. And Genesys couldn't handle it, so they had to transfer her to Beaumont Royal Oak?
A. That is correct.
Q. Did you ride with her in the ambulance or did you take a car?

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A. No, I rode with her.
Q. Okay. While you were riding in the ambulance with your daughter, do you have any conversations with her about what was hurting or how the accident happened?
A. I did not ask her anything about the accident. She again, just kept screaming her back. So I was just -- and her face was all bloody and her lip looked like ground up meat. Her teeth went through her lip.
Q. And I apologize, I'm not trying to upset you or bring back any bad memories. I'm just trying to get all the information I can, okay, Stephanie?
A. I understand.
Q. All right. So aside from McKenna's back and you said you observed that basically her teeth had gone through her lip, correct?
A. Oh, yes.
Q. Did you observe any other cuts, bruises, anything like that on McKenna at the time?
A. Yes.
Q. Okay.
A. Her whole face was -- it was swollen and, you know, the -- the bruises came like the next day.
Q. Okay.

A. She was in a neck brace.
Q. All right. So you guys go to Beaumont Hospital then?
A. Correct.
Q. All right. When you get to Beaumont Hospital does anything change? Is McKenna still screaming? What's going on?
A. Well, she had just got a pain shot right before they took her out of the ambulance. So that helped a little bit. We got into Royal Oak Beaumont and about I would say 50 to 80 doctors came into this room and just swarmed her. And they had me go wait in the hallway. They re-did the CAT scan and one of the doctors or nurses or somebody came out and just kind of whispered to me, "expect her to have back surgery tonight." Their full, you know, evaluation at that time, nobody told me anything.
Q. So I apologize, I'm going to back up a little bit, okay, Stephanie?
A. Okay.
Q. At Genesys Hospital when they told you that McKenna's injuries were too severe for them to treat and she had to be transported. Did they tell you specifically what they thought was wrong?

A. No.
Q. Okay. So this is –
A. I'm sorry, they did say that there's a back injury and that they thought that her pelvis was broke, but they weren't sure. It was very weird.
Q. Okay. So the doctors at Genesys were like there's a back injury and a possible pelvic injury?
A. Correct.
Q. But that was the extent of the details they gave you?
A. Yes.
Q. So then when you get to Beaumont basically they confirmed, "Okay, we're likely going to need to do back surgery on McKenna?"
A. Yes.
Q. All right. Did they provide you any other details regarding any other injuries besides McKenna's back at Beaumont?
A. No, when we got there, they took her for an MRI and they did come in and tell me that they don't think that her pelvis was fractured, it was probably just bruised. And then the plastic surgeon was the next to come in and he did his procedure on her face prior to us finding out that she needed to have emergency surgery for a back

fusion.
Q. Okay. And do you remember the name of the plastic surgeon?
A. I do not.
Q. Do you remember what he did for McKenna?
A. Yes, he put her lip back together.
Q. Aside from her lip, do you know if the plastic surgeon did any other procedures on McKenna?
A. No.
Q. All right. And then aside from the MRI, the CT, then she goes into plastic surgery. And then you said that now comes the back surgery?
A. So she was -- I was in the room with her when they were performing the plastic surgery on her lip and a member of Beaumont pulled me out and asked me how much longer I thought -- you know, was he almost done. And I said it looks like he's almost done, and he said, "Well, we need to take her for emergency back surgery now." And I said, "Why? What's going on?" And he said, "I don't have all the details; you'll have to wait to get up to the room to talk to the surgeon."
Q. Okay. So –
A. I walked into the – you know, back into the room where McKenna and the plastic surgeon was and I

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kind of looked at him and went like we got – we got to go. And he said, you know, "I'm almost done anyways," so he finished up and then they wheeled us into this dark room.
Q. All right. So when you spoke with the surgeon, did he tell you what happened, what was wrong, why they needed to do emergency surgery?
A. Yes, so –
Q. What did they say?
A. He brought Corey and I over to show us the pictures of her MRI, and he said that there is blood and the discs are pushing against the spine. And he said honestly there's no medical reason she's not paralyzed right now, but I need to do an emergency back fusion. He said time is not on our side here.
Q. So he believed that it was kind of how is she not paralyzed type situation?
A. Oh, yes. He still says it to this day.
Q. Okay. And do you remember what levels of McKenna's spine it was?
A. No.
Q. Do you remember if it was lower back or upper back?
A. Lower.

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Q. And you said Corey was there too, correct?
A. Correct.
Q. So did he ever end up at Genesys Hospital?
A. Yes.
Q. Okay.
A. He was the first one there because he was at the scene with her.
Q. Okay.
A. So he went to the scene after it happened.
Q. Did he ride with you in the ambulance to Beaumont?
A. No.
Q. So he arrived after you and McKenna did to Beaumont?
A. Correct.
Q. Okay. And so McKenna undergoes the surgery then?
A. Yes.
Q. Okay. Aside from the plastic surgeon doing the lip procedure and the back surgery, did McKenna undergo any other surgeries while she was at Beaumont Hospital?
A. Surgeries, no.
Q. Okay. Do you remember about how long she was at Beaumont Hospital?
A. Seven days.
Q. So aside from the surgeries, did she undergo any other procedures that you're aware of?

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A. No, just physical therapy and learning to walk again.
Q. Okay. So they ended up doing physical therapy and like occupational therapy at the hospital?
(Witness nodded head up and down.)
BY MR. HINMAN:
Q. Did she treat anywhere else?
A. After discharge?
Q. Correct.
A. She couldn't at first. The doctor said he didn't want her doing physical therapy or anything for I believe three months. So we went to our just normal follow-up appointments with Dr. Setty to make sure everything was going well. We had people come to the house that brought ice machines for her, the bone stimulator, and the little shock things.
Q. All right. So I apologize, I'm going to back up a little bit on you, okay, Stephanie?
A. Um-hum.
Q. Who's Dr. Setty?
A. The surgeon that performed her – her back fusion.
Q. And do you know how to spell that?
A. S-e-t-t-y.

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Q. Okay. And he said no treatment at least for three months, correct?
A. Correct.
Q. Okay. And, but during that time there were some follow-up appointments for McKenna?
A. With Dr. Setty, yes.
Q. Just with Dr. Setty?
A. Um-hum
Q. And did you appear at Beaumont Hospital for Dr. Setty or somewhere else?
A. At his office in Beaumont Hospital.
Q. Okay. So he has his own office in Beaumont?
A. Correct.
Q. Okay. Does he have a different name for his office or is it just within Beaumont?
A. I'm not sure.
Q. Okay. And you said some people brought an ice machine and like an electrical –
A. Yeah, and a bone stimulator, a brace that she had to wear.
Q. Okay. Do you know who said that she needed these?
A. Dr. Setty.
Q. Okay. And do you know what – or who brought this equipment to the – or strike that.
Did they bring the equipment to the

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house?
A. Yes.
Q. Okay. Do you know if it was a separate company or if it was someone associated with Beaumont that brought the equipment to the house?
A. I do not know.
Q. Okay. Did you or McKenna ever receive a bill for that equipment that was brought to the house?
A. No.
Q. Okay. So you're not sure how much anyone was charged for that equipment?
A. No.
Q. All right. Did you ever talk with the people that brought the equipment over?
A. Yes.
Q. Okay. How did those conversations go?
A. I -- they explained how the equipment works. You know, how long she needs to do it. Some different things that would help with her pain.
Q. Okay. And again, generally speaking, with regard to McKenna for her injuries, was it just her lip and her face and her back following this accident?
A. Primarily, yes. But she had, you know, muscle pain and stiffness, and it was rough.
Q. Okay. So what I'm getting at is, did you -- or

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did McKenna go to any other specialist with regard to anything else but her back or her lip and face?
A. Not right at first, no.
Q. Okay. So then about three months goes by. You only see Dr. Setty and they bring in that equipment, correct?
A. Correct.
Q. Okay. After the three months ends what's next?
A. She started physical therapy.
Q. Okay. Do you remember where she started physical therapy?
A. Level 11.
Q. And do you remember where that's located?
A. I think it's technically actually a Holly address.
Q. And do you remember who referred her or prescribed her physical therapy?
A. Dr. Setty did.
Q. Okay. And when Dr. Setty said she needed physical therapy, did you get to select a therapy or did Dr. Setty give you the name of a place?
A. No, we got to select a therapist.
Q. Okay.
A. Physical therapy.
Q. And do you remember how you came upon Level 11?
A. I was referred from her case manager that was

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helping that would come to the doctors appointments with us.
Q. Okay. So then let's go with the case manager. Who's the case manager?
A. I don't -- I don't remember her name. We haven't seen her in a while.
Q. Okay. Do you --
A. Covid made everything weird. Like she could be there at first and then she couldn't.
Q. Gotcha. Do you remember when the last time you saw the case manager was?
A. Probably nine months ago.
Q. So just, like, towards the end of fall of 2020?
A. I believe so, yes. Covid's made everything weird with timelines.
Q. I agree.
Following the accident when did you start meeting with a case manager?
A. We had a couple phone calls at first and then she went to -- I believe she went to her first follow-up appointment with Dr. Setty. So it was shortly after we got home. I think she had to see Dr. Setty two weeks after she got home, so about that time.
Q. Okay. And who referred -- or did anyone refer

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McKenna for case management?
A. The hospital gave us the information.
Q. Okay. Beaumont Hospital gave you the information for a case manager?
A. Yes.
Q. I know you don't remember the name of the case manager, but do you remember the name of the company that provided the case manager?
A. No.
Q. Okay. Again, I'm going to back up, and I apologize. Aside from Beaumont giving you the information for the case manager, immediately after the accident did you receive a call from any attorneys or medical facilities for McKenna to come treat with?
A. No.
Q. Okay.
A. You're talking about immediately after, right?
Q. Yeah, within the first couple of days or about a week after the -- after she was in the hospital.
A. I -- yes, about -- well, it was probably about a month after.
MR. LEGATO: He's asking if you were solicited.
THE WITNESS. Oh, no, I was not

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solicited.
BY MR. HINMAN:
Q. So, yeah, not about calls you made to anyone, but just somebody just making a random call after they heard about your daughter being in an accident.
A. No.
Q. Okay.
A. At that point I would have hung up on them anyways.
Q. Well, we appreciate that, believe me.
A. That was not my concern.
Q. Okay. So the case manager that was handling your daughter's case appeared with you at Dr. Setty's first appointment after she was discharged, correct?
A. Yes.
Q. Okay.
A. She came to a couple appointments with us and then like I said, Covid got weird, so...
Q. Okay. Did you ever have a sit down with the case manager about what they were there for, what they were doing, what was going on?
A. No, she just very simply put that she's here to help me with anything that I need, and we'll go to doctors office, you know, appointments with us and

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if we need a referral, to ask her.
Q. Okay. So she goes with you to Dr. Setty's first – or the first appointment and a couple of appointments before Covid got funky, correct?
A. Correct.
Q. And she gave you the information for Level I I Physical Therapy?
A. Yes.
Q. Did she give you any other information regarding any other referrals?
A. She gave me the name to Dr. Dabrowski, which is currently McKenna's rehabilitation doctor.
Q. Okay. Aside from the referrals and her appearing at those couple of appointments, did the case manager appear for or help with anything else with McKenna?
A. She helped with the home modifications that needed to be done. She knew of a company that – that did that and gave me their phone number.
Q. Do you remember the name of the home modification company?
A. I do not.
Q. All right. Do you know if the case manager came to any physical therapy appointments?
A. No.

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Q. I'm sorry, that's a bad question.
Did the case manager come to any physical therapy appointments?
A. No.
Q. Okay.
A. Not that I'm aware of.
Q. Did you go to physical therapy appointments?
A. Yes.
Q. So every one that you went to there was not a case manager there?
A. Correct.
Q. All right. While McKenna was utilizing a case manager, like you said, you haven't seen her for about nine months. How many times did you see the case manager?
A. Maybe five.
Q. Okay. And you said she gave you the information for Level I I, Dr. Dabrowski, and the home modification company?
A. Correct.
Q. Any other companies or treaters that she gave you the information for?
A. Not that I recall.
Q. All right. So then the case manager's coming with you. Three months go by, she starts at Level I I.

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Do you attend her first appointment at Level I I?
A. Yes.
Q. Okay. How did that appointment go?
A. As expected. They just did a lot of testing of range of motion and where she was currently at.
Q. Okay. Did they develop a physical therapy plan for her?
A. I'm sure they did on their end but they didn't really explain that to me other than they would working and testing to make sure that she was headed in the right direction.
Q. Gotcha. And you know, I'm going to try to speed this up. Is she still going to physical therapy?
A. Not right now, no. Right now she's trying Botox injections.
Q. Okay.
(From 3:16 p.m. to 3:16 p.m. off the record.)
MR. HINMAN: Back on the record.
BY MR. HINMAN:
Q. Stephanie, you said that McKenna hasn't been going to physical therapy recently, correct?
A. Not right now. Dr. Dabrowski's trying Botox injections.
Q. Okay. Do you remember when the –

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A. She works out on her own.
Q. Okay. Where does she work out at?
A. Planet Fitness. Dr. Setty explained to her how important it is to keep her core muscles and her back muscles strong, so she does – she focuses on those.
Q. Okay. Do you remember when the last time she went to Planet – or excuse me – went to Level 11 was?
A. I would say about six months ago.
Q. Okay.
A. Maybe a little longer.
Q. Was that the only physical therapy facility she went to?
A. No, she went to one in Holly for a little while.
Q. Was it before or after – or excuse me, was it after or during Level 11?
A. Why does this all seem so jumbled in my head right now?
It was after Level 11.
Q. Okay. And do you happen to know the name of the facility?
A. NovaCare.
Q. And do you remember how many appointments she had at NovaCare?
A. About three months.

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Q. Okay. So then let me try to put this in front of you. So has she stopped – she stopped all physical therapy approximately six months ago or she stopped Level 11 six months ago and then went to NovaCare for three more months?
A. No, she stopped physical therapy at NovaCare about -- about six months ago.
Q. Okay. So then Level 11 PT would have been about nine months ago and then there was about three months of NovaCare?
A. Correct.
Q. And so the last physical therapy appointment that you might be aware of was about six months ago just before 2021 or after -- or in February of 2021?
A. I don't remember.
Q. Okay. And you said she goes -- so did she start Planet Fitness before she ended physical therapy or after physical therapy?
A. After physical therapy.
Q. Okay. And is her home gym the Fenton one?
A. Yes.
Q. Okay. As weird as this sounds, I don't know your daughter, I've never seen her that I'm aware of but I actually go to the Fenton one also. So I

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apologize, I might have -- if she recognizes me, I apologize.
A. That's okay. Fenton's a small town.
Q. It's – yes, it is.
All right. Now following the end of physical therapy for McKenna, do you know approximately how many times per week she goes to Planet Fitness?
A. On average, three times a week.
Q. And you said Dr. Setty told her -- or recommended or instructed her to keep her back and her core strong, correct?
A. Correct.
Q. Okay. So aside from Dr. Setty and Level 11 and NovaCare, there's also Dr. Dabrowski, correct?
A. Yes, there was a pain management doctor right after Dr. Setty finished his part. We went to see him twice. I don't remember his name. I think it starts with an N. We saw him twice and then we got -- we were waiting to get into Dr. Dabrowski because he takes so long. And then we went to Dr. Dabrowski and he took over her entire care.
Q. Okay. Do you remember the name of the pain management facility?
A. I do not.
Q. Okay.

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A. I have this all in a folder at home.
Q. Well, you know what, if you do have that information – it's likely that we all do have that information. But if you could get some copies to your attorney just in case we don't have that information so they could provide it to us, we would appreciate it, okay?
A. Absolutely.
Q. All right.
So there's a pain management doctor that McKenna sees twice?
A. Um-hum.
Q. That we're not sure of who the name is or the facility, correct?
A. Correct.
Q. What did that doctor do for McKenna?
A. He did two injections. Well, he did one injection at each appointment in her back, and that didn't help.
Q. Do you remember ever being told what type of injections they were?
A. I don't -- I don't remember the name of them.
Q. All right. And you went to this doctor while you were waiting to get into for Dr. Dabrowski, correct?

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A. Correct.
Q. And so when does McKenna start treating with Dr. Dabrowski?
A. I would say about nine months ago.
Q. So just before the end of 2020?
A. Yes.
Q. Okay.
A. Gosh, this is all just mixing together.
Q. Okay. So, and you said Dr. Dabrowski was doing Botox injections?
A. Correct.
Q. Okay. Did he do any other procedures on McKenna during the time she's been treating with him?
A. Procedures, no.
Q. Okay. Aside from the injections has she been getting any medication from him?
A. Muscle relaxers.
Q. Do you know what the prescription is?
A. I do not.
Q. Any pain killers?
A. She takes a Norco once in a blue moon.
Q. Any other medications?
A. No.
Q. All right.
A. From Dr. Dabrowski?

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Q. From Dr. Dabrowski, yep.
A. No, he had her on an antiinflammatory for a little while and then took her off of that.
Q. All right. And it's my understanding that McKenna is still treating with Dr. Dabrowski, correct?
A. Yes.
Q. When was the last appointment she had with Dr. Dabrowski?
A. It was Botox injections approximately a month ago. She's had two rounds of Botox so far, and she gets them every three months.
Q. So prior to either the beginning of July or end of June she would have had one around March of 2021?
A. Yes.
Q. Is she currently scheduled for another appointment with Dr. Dabrowski?
A. Yes.
Q. When for?
A. I do not have that information in front of me.
Q. Okay. Does she only see Dr. Dabrowski when she's getting injections or does she see him on a monthly basis?
A. She sees him every three months for an office appointment and then injections.
Q. Okay. Do you know if at her next appointment she's scheduled for another Botox injection?
A. That's up for discussion.
Q. Okay. Did you ever have -- did you or McKenna have -- well, strike that.
Did you ever have a discussion with Dr. Dabrowski about why Botox injections?
A. It's for the muscle spasms.
Q. Did he ever describe to you how Botox helps with that?
A. Not in great detail, no.
Q. Okay. I know that McKenna underwent diagnostic testing at the hospital. Has she undergone any diagnostic testing at any non-hospital facility?
A. No.
Q. Okay. And you said that a third injection is up for discussion when you see Dr. Dabrowski next?
A. Yes.
Q. Okay.
A. He always wants to speak with her and find out how it's helping, how she is, you know.
Q. Okay. And have you been with McKenna at every one of her appointments?
A. Yes.
Q. Okay.
A. From -- from the day of the accident I believe.

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Q. All right. First off, I applaud you in your ability to do that.
A. Thank you.
Q. Especially working for a year after the accident as well.
A. Right. Luckily I work from home a lot. I didn't leave the hospital one time when she was in there. Didn't take a shower. I wasn't going anywhere.
Q. So then my question then becomes, when Dr. Dabrowski was talking about her progress from her first set of Botox injections, did she say whether it helped or not?
A. It did for the first, like, two months after she got it done. The -- the spasms weren't as bad. She's never completely out of pain, but it did relieve some of the pain. So when we spoke to Dr. Dabrowski at the next appointment he said, "Okay, you know, that's a good baseline to go off of."
He was happy that there was some improvement for a period of time. So he increased the injection amount and dose, I believe, to see how that would help her.
Q. Okay. Has any physician told you why McKenna is still having back spasms -- muscle spasms?
A. Because she has rods and screws in her back.

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Q. Okay. And that's from the fusion, correct?
A. Correct
Q. Has any doctor that you've seen with McKenna given a prognosis regarding her injuries?
A. They said that, you know, it's going to be a long road. It's a long road to recovery, and to make sure that she's staying as healthy as possible and doing the best to treat her body right. And, you know, there's -- there's a possibility of a future -- a future surgery.
But hopefully by then, you know, medicine's different because the discs above and below the fusion are going to deteriorate. They said that, you know, you're going to have to think about a career for her, because at the current time she is not able to stand for a long period of time. She's not able to sit for a long period of time. She is debating on what she's going to do for her senior year because she doesn't know how she's going to sit in a classroom.
Q. Do you remember which doctor said there might be a possibility of a second surgery?
A. All of them.
Q. Okay. So aside from Dr. Dabrowski, within the last -- actually within 2021, has McKenna seen any

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other doctors?
A. Her family doctor. Her PCP.
Q. Okay. Who's her PCP?
A. Dr. Akrawi, A-k-r-a-w-i. He's in Grand Blanc.
Q. Do you know what the name of his facility is?
A. Childhood and Adult Medicine.
Q. Wow, I'm sorry. I missed half of that. What was that?
A. Childhood and Adult Medicine.
Q. Do you know what street it's located on?
A. North Holly Road.
Q. Okay. And has she seen Dr. Akrawi for anything related to the accident?
A. No.
Q. Okay. Aside from the injuries from the accident, has she -- or has she suffered any other injuries from slipping and falling or anything like that?
A. No.
Q. Okay. Now actually that you mention it, you actually put me into my next section. I know following the accident, being that it was the beginning of 2020, McKenna was attending Holly High School?
A. Correct.
Q. Okay. And she was in her sophomore or junior

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year?
A. Sophomore.
Q. Okay. Did she return to school following the accident at any time before Covid hit?
A. So I had just had a meeting with the school, to which they were great. They put in every accommodation that, you know, we could hope for, for her to be able to try to come back to class. They were going to allow her special breaks in class. They were going to provide a stand up desk for her because she can't sit through that long. Using the elevator instead of the stairs. Passing time on her own. They were fantastic. So we just got through all of that and she went -- she tried to go to school, she made it about two hours. And then came home and then Covid hit.
Q. So she literally went one day for about a third of the day and then Covid?
A. Correct.
Q. Okay.
A. It was actually a blessing because it would have been hard for her to go to school anyways.
Q. Gotcha. Now was that two hours, was that an arranged two hours or it was two hours of a full day and she just couldn't do it anymore?

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A. It was the school and I deciding for her to go to school for as long as she could and see how -- how it worked out.
Q. Okay. So Covid hits. Is she able to do -- or did she go online?
A. She did online, yes.
Q. Okay. Was she able to complete her sophomore year online?
A. Yes.
Q. Okay. Was she held back at all?
A. No.
Q. How were her grades before the accident and after the accident?
A. She's struggled in school.
Q. And I apologize, I'm not trying to, like, insult or anything like that. When you say she struggled in school, was she like a C student before and a C student after or worse after?
A. I would say about the same.
Q. Okay. Now in the fall of 2020 when her junior year starts up, was Holly still in virtual?
A. Yes.
Q. Okay. Did she continue her education at Holly High School virtually?
A. Yes.

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Q. Okay.
A. They did open up to go back to in person but she couldn't do it, so she stayed virtual.
Q. So did Holly provide both options or she required virtual even though they were completely open?
A. They offered both options and she -- she required virtual.
Q. Okay. At any time has Holly High School opened completely back up and said, "no, all students have to be on campus and not virtual?"
A. That is happening this year.
Q. Okay. Have you had any discussions with either Holly High School or her doctors about her attending in person?
A. Absolutely. I have a team at the school that I work with.
Q. So how has that conversation gone?
A. They're still -- they're -- like I said, they're very accommodating. I've been very involved with the school with both my kids their entire lives. So I know them all very well and they will do whatever they can to make sure that McKenna's comfortable. But we're going to have to play this by ear and see how it goes.
Q. All right. So then I'll leave that at that.

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With regard to the modifications to your home, what modifications were performed?
A. Hand railings or, you know, like the -- for the toilet so she could pull herself up. The bathroom, the -- there was a tub there she couldn't lift herself over and there was a ramp in the garage that the stair was too high for her to lift her leg over and possible tripping hazards.
Q. Any other modifications?
A. I don't think so, no.
Q. Okay. So they put railings around one of the toilets. Did they basically put in a new tub, so that way she wouldn't have to lift her leg too high?
A. Yep, and new flooring in the bathroom because of slip hazards.
Q. Okay. And you said they put a ramp in the garage?
A. Yes, and they -- they offered to put a motorized chair for her to go up the stairs because they were worried about her slipping and falling. But she was recovering enough to be able to walk.
Q. Okay.
A. And most of the time she -- she stayed downstairs anyways. Actually her and I both did.
Q. Gotcha. All right. So have any of those

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modifications now been removed?
A. No.
Q. Okay. Since the accident -- I know this might be a question more for McKenna than you but I know you've been around a lot. Have you noticed any improvement in McKenna?
A. There are days that obviously she feels better than others. But that pain never goes away. She won't tell anybody else it hurts besides me. But you can tell in her walk. You can tell just by her saying she can't do certain things.
Q. Okay. So as we sit here today, is McKenna using a cane or a walker?
A. No.
Q. Is she using a wheelchair?
A. No.
Q. So she's able to walk without an assistive device?
A. Yes.
Q. Okay. Is there anything that she is unable to do that she was able to do before the accident right now today?
A. Yes.
Q. What kind of things are those?
A. Sports. Snowboarding. Track. She can't walk for long periods of time. She can't sit for long

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periods of time. She's over here weebling and wobbling and I keep telling her to stand up. She can't bend over very much. Her flexibility is very, very limited. She's learning to pick multiple things up with her toes. In fact, I think I should enter her into a competition for it. There is -- there's nothing McKenna doesn't do throughout the day that -- that doesn't effect her back.
Q. So I know counsel has already stated that you're not making a claim for household services and attendant care. But I still kind of want to get into things she can and can't do a little bit, okay?
A. Okay.
Q. As we sit here today, is she able to dress herself?
A. Yes.
Q. As we sit here today, is she able to feed herself?
A. Yes.
Q. As we sit here today, is she able to bathe herself?
A. Yes.
Q. As we sit here today, is she able to groom herself, like brush her hair and her teeth?

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A. Yes.
Q. Okay. Is there anything --
A. She's limited in -- she just finds different ways to do it.
Q. Okay. Now with regard to things around the house, before the accident what kind of chores did she do?
A. I tell my kids at a very young age every single chore in the house. There's a reason my son's a Marine. They helped with the -- you know, she helped with all the chores. There wasn't anything she didn't do.
Q. So you guys didn't have, like, a chore table that says, "Hunter, these are yours; McKenna, these are yours," anything like that?
A. We tried that for a period of time. And at the time of the accident she had to do two chores a day.
Q. Okay. And did she have specific sets of chores?
A. It alternated. So they -- she would be able to pick what chores she wanted to do. I didn't care what chores, just two chores.
Q. Okay. Now as we sit here today, is she able to participate in any of those chores?
A. She can help, you know, like pick up from dinner.

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She can't do the floors. She can't scrub a bathtub. A lot of like the lifting anything heavy. Lifting, pulling, bending, that hurts her back.
Q. Okay. When McKenna goes to Planet Fitness do you go with her as well?
A. No.
Q. Okay. Since the accident have you guys traveled out of state or gone on any vacations?
A. We went to see my son twice.
Q. In Japan?
A. No, in North Carolina.
Q. Okay. So before he was deployed to Japan?
A. Correct.
Q. Did you drive or fly?
A. Drive.
Q. Did you drive or did McKenna drive?
A. I drove.
Q. Okay. And I apologize, I didn't ask this before, does McKenna even have a driver's license?
A. She does.
Q. Okay. Did she get it before or after this accident?
A. After.
Q. That's impressive.

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A. Very.
Q. Did she go through the high school or did she just -- it was with you?
A. No, just with me.
Q. Okay. So she at least was able to drive and practice and pass her exam?
A. She was.
Q. All right. Does she currently drive herself anywhere?
A. Yes.
Q. So I'm assuming, like, Planet Fitness and things like that?
A. Correct.
Q. Okay.
A. She's still scared of the expressway obviously. She doesn't drive when the roads are bad, and I'm totally fine with that. You know, we're doing baby steps.
Q. Gotcha. Speaking of that actually, I know you discussed that McKenna had been -- had gone to the hospital regarding some anxiety and depression before this accident, correct?
A. Um-hum.
Q. Is that a yes?
A. Yes.

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Q. You were doing great.
Following the accident has she treated with any psychologists, psychiatrists, or counselors regarding this accident?
A. No, honestly I think that her going through that stint before and getting the care that she needed during that time is the reason she's been mentally strong throughout this. She stays positive. Just determined, but also real. You know, she understands she's very lucky that she's not paralyzed. But I remind her, yeah, you are lucky, you are blessed. God gave you another chance, but at the same time it sucks. So she's also expressing those feelings. So I'm very confident and happy with the -- the -- both ends of that. She's mentally good.
Q. All right. Aside from the appointment with Dr. Dabrowski that's coming up, does she have any other appointments scheduled with any other medical providers?
A. No.
Q. Okay. I think that's all the questions I have, Stephanie. These other attorneys, like I said, might have some questions for you. They might either look up some details that I might have

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missed or try to get some clarification from you. But as of right now I am done.
A. Okay. Can I pause for one second?
Q. Absolutely.
(From 3:42 p.m. to 3:42 p.m., off the record.)
MR. HINMAN: I guess does anybody --
MR. ENDRES: Who wants to go first?
MS. MURREL: Go ahead, Chris.
MR. ENDRES: Okay.
EXAMINATION
BY MR. ENDRES:
Q. All right. How are you doing, Stephanie? Thank you for your time today.
A. Good. Thank you.
Q. And you go by -- your last name is Lawrence now?
A. Correct.
Q. Okay. When were you married?
A. October 3rd.
Q. Of what year?
A. Last year.
Q. 2020?
A. Yes.
Q. And what's your husband's name?
A. Matthew Lawrence.

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Q. Does he have any children?
A. Two grown.
Q. Did either one live with you --
A. After the -- after the accident and then she moved out.
Q. Okay. And who lived with you?
A. His daughter, Caitlin.
Q. Do you know if her last name is Lawrence?
A. It is Lawrence. Matthew and Caitlin were not living with me at the time of the accident.
Q. No, I gotcha. No problem.
When did you start living with Mr. Lawrence?
A. He moved in about three months after the accident. Two or three months.
Q. And you said you had 50/50 custody. Is that physical and legal custody?
A. Yes, it doesn't -- I don't think it specifically states in the agreement.
Q. Okay. You said after the accident McKenna moved back into your house for several months. Why was that?
A. Because kids want their mom when they're hurt and I needed to watch over her and make sure she was okay. She was more comfortable.

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Q. You said after several months. Did she start going back to her dad's house?
A. Yeah, she started out slow. So she'd go one day and -- or two days. I mean, he came over and visited her but ..
Q. Okay. And where was this May 2019 hospitalization for the anxiety and depression? What hospital was that?
A. Beaumont.
Q. Which one?
A. Royal Oak.
Q. Was she inpatient for a period of time?
A. No
Q. Okay.
A. I think she stayed one night in the hospital.
Q. And I believe you said Hunter picked up McKenna for school every day. Did Hunter live with you?
A. If Hunter stayed at Corey's and McKenna stayed at my house, then he would pick her up and take her to school. That's what he was asked.
Q. Does McKenna have health insurance or did she in January of 2020?
A. Yes, through my employer at that time, Beacon Park Finishing And it was Total Healthcare.
Q. Do you have that information, like your card or

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whatever?
A. No, because I don't have that anymore.
Q. Okay. Does she have health insurance now?
A. Yes, she has Blue Cross Blue Shield.
Q. And who is that through?
A. Matthew's employer, my husband.
Q. Do you have that information? Your policy number, anything like that? Or if you just want to make a copy and your attorney will send it to all of us, if that's easier.
A. Okay. Yeah, we'll do that.
Q. And if you can find the Total Healthcare information, please send that over too?
A. You know, I might. In these stack of papers, I might have it somewhere.
Q. Okay. And then you don't know who the case manager was. Do you know what agency it was, anything like that?
A. Am I allowed to look in my phone?
Q. Yeah.
A. Okay. Hang on one second.
Q. Sure. Oh, if you have a phone number, that'd be great.
A. Alicia, "Alicia McKenna benefits." Her phone number is (734) 788-9111.

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Q. All right. And then do you know what kind of doctor Dr. Dombrowski is?
A. A rehabilitation doctor.
Q. And is it Dombrowski?
A. Dabrowski.
Q. Dabrowski. Do you know how to spell that?
A. Let me look it up real quick. D-a-b-r-o-w-s-k-i is what I think.
Q. And if you could provide his phone number, I'll be able to look up his practice.
A. Edward Dabrowski. It's D-a-b, as in boy, r-o-w-s-k-i. And the phone number is (313) 473-4797.
Q. The all three home modifications, are they permanent home modifications?
A. Yes.
Q. Okay. So the ramp is actually attached to your house, it's not a temporary situation?
A. Nope.
Q. Was McKenna ever in a wheelchair?
A. No.
Q. Did she ever use a walker?
A. No.
Q. Cane --
A. In the hospital.

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Q. -- or crutches?
A. No.
Q. Okay. Did you have to -- does she need a hospital bed or is she okay in her bed?
A. No, she's okay in her bed.
Q. All right. And you said I believe that Planet Fitness is in Fenton?
A. Correct.
Q. Do you know whose membership -- whose name the membership is under?
A. Mine.
Q. Okay. Do you have the phone number of the pain management physician?
A. No.
Q. All right. And then so tell me about -- McKenna lives -- you had her one week on, one week off. And then when the accident happened you said she was at your house about 75 percent of the time?
A. No, prior to the accident she was physically at my house about 75 percent of the time. After the accident for about three months she was at my house 100 percent of the time. And then still to this day it's about, you know, 75/25.
Q. And more of what I'm trying to figure out is you said there was a week on, week off arrangement.

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A. Correct. Monday to Monday is what we initially set up.
Q. And when did that stop occurring, the Monday to Monday?
A. As she got older. It was just kind of one of those things where, you know, "My -- my clothes are already at mom's house, I'm just going to stay there and not drag stuff back and forth." So ..
Q. And when were you divorced from Mr. Frownfelter, Corey?
A. 2011.
Q. Okay. And does McKenna have her own room at your home?
A. Yes.
Q. Does she have a bed?
A. Yes.
Q. A dresser?
A. Yes.
Q. Clothing?
A. Oh, yes.
Q. Okay. Where does -- she goes to school, what address do you use for her school purposes?
A. My address.
Q. What address is on her license, do you know? I'll ask her if you don't know, it's okay.

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A. She's grabbing it right now.
Q. I'll just ask her, don't worry about it.
Do you provide any type of support for her? Like financially, do you pay her bills, anything like that?
A. I help her, yeah.
Q. Does she have a cell phone?
A. Yes.
Q. Is it part of a family plan or does she have --
A. It's part of our -- my family plan. She's on my plan.
Q. Okay.
A. Her address is my -- or her license is my address.
Q. Okay. Does she get mail at your house?
A. No, she --
Q. I don't know what you receive when you're that young but I --
A. Yeah, she doesn't really get anything in the mail.
Q. Okay.
A. She gets medical bills.
Q. Okay. And do those come to your house?
A. Yes. And statements, like, from her primary doctor. School records. Her report card, all that stuff.
Q. Okay. Does she have a bank account?

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A. Yes.
Q. Do you know what the address on the bank account is?
A. Mine.
Q. Okay.
A. I have that app in my phone so I can make sure she's saving right.
Q. Okay. Is it in a trust account, in trust of?
A. No, but I'm -- I'm on the account.
Q. All right. Do you know if Corey is?
A. He is not.
Q. Okay. That's all I have for you. I appreciate it.
THE WITNESS: Well, you were a lot quicker than that guy.
MR. ENDRES: I'm not going to say anything about that.
MR. HINMAN: I do and do not take offense at the same time, so...
THE WITNESS: It's Friday. He wants to get out of here.
MR. ENDRES: No, I'm just very direct.
THE WITNESS: Oh, perfect. So am I.
MR. ENDRES: Yeah. Anybody else?
MS. DEBELL: Katrina, do you want to go?

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MS. MURREL: Sure. I have a few questions as well. Kind of like Chris and not like Aaron.
EXAMINATION
BY MS. MURREL:
Q. When you say that McKenna was at your house 75 percent of the time prior to the -- in the months leading up to the accident. What do you mean? Like what -- I know that the original agreement was week on, week off. But when you say 75 percent of the time, what does that mean? Was she only going to visit her dad on weekends or what --
A. It was, like, one or two days during the week and then, you know, two days on the weekends.
Q. Okay. Would she go, like, every weekend to see her dad or...
A. No.
Q. Okay. So out of the seven day week then, instead of spending a whole week with her dad and then a whole week with you, she would spend maybe two or three days with her dad and four days out of the week with you? Is that what you're saying?
A. She would spend my week with me and then a couple of days out of his week.
Q. Gotcha. Okay. All right. So your usual week was

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normal, and then when she was supposed to be with her dad, she wouldn't necessarily spend the whole week with him?
A. Correct.
Q. She would spend a couple days --
A. She needed help with school and all the normal stuff.
Q. Gotcha. All right. And at the time of this accident you owned a motor vehicle?
A. Yes.
Q. What kind of car did you own at the time of this accident?
A. I owned my Equinox.
Q. Okay. And your Equinox was insured with Auto-Owners; is that right?
A. That is correct.
Q. Did you have any other vehicles that you owned at your house?
A. No.
Q. Okay.
A. Hunter's policy was with Corey and he was excluded from my insurance.
Q. Hunter was excluded from your insurance?
A. Yes, so he could not drive my vehicle. I provided proof that he had his own policy through Corey,

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and understood that he could not drive my vehicle.
Q. Okay. Was McKenna listed on your policy?
A. No, she was 15.
Q. Okay. Had you advised Auto-Owners that you had a 15 year-old living in your house with you?
A. Oh, yeah.
Q. Okay. But she wasn't listed a named driver or anything because she wasn't driving?
A. Yeah, she hadn't even taken drivers training yet. Or she had taken the first part, not the second part.
Q. Yeah, it's my understanding she had a permit or something; is that right?
A. Yeah, she had taken the -- yeah.
Q. All right. And if someone were to ask you where did McKenna live at the time of this accident, what would your answer be?
MR. ENDRES: Objection. Foundation.
THE WITNESS: What was that?
BY MS. MURREL:
Q. You can go ahead.
A. Okay.
MR. ENDRES: Just an objection. You can answer.
THE WITNESS: I would say her primary

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residence was with me and she went and saw her dad on -- you know, when she wanted to. I'm her primary care provider. I -- I'm the mom. That's the best way I can put it. No offense to dads.

BY MS. MURREL:

Q. I feel the same way about my kids, so...

A. Right, I mean, you couldn't keep me away from the school and the doctors and making sure that everything's going as planned.

Q. When they need something they always call mom.

A. Exactly. And it's the society too, you know, you got to make sure they're -- you got to check everything.

Q. All right.

MS. MURREL: I think those are all the questions that I have.

MS. DEBELL: I just have a couple questions for you.

EXAMINATION

BY MS. DEBELL:

Q. Stephanie, my name is Lynne, and I represent Farmers Insurance.

A. Okay.

Q. Can I have you tell us your daughter's Social Security number? And again, this will be off the

record.

A. I do not know her Social Security number.

Q. Okay. Is that something that -- do you know if -- does she have a card? Are you aware of whether or not she has a card?

A. She does at home in my safe, and it's on my tax records. So I mean, I can get it to you. I just don't have it in front of me.

Q. If she doesn't know that when we get her deposition, can you provide that over to your attorney so he can give it to us?

A. Yes.

Q. Okay. I don't think you said; how long had that been the case that McKenna was 75 percent staying with you?

A. Really it had always been that way from the time she was little. She was a momma's girl. So at first it started out 50/50 obviously, kind of like most divorces do. And then as time went on, you know, Corey was very understanding that she wanted to be with her mom. So we just worked that out. There -- there was no child support. I filed the divorce paperwork. We just did what was best for the kids.

Q. I don't think I have any other questions. Thank

you very much.

A. You're welcome.

MR. LEGATO: Just a couple follow-ups.

EXAMINATION

BY MR. LEGATO:

Q. Did Stephanie have any physical limitations of any kind at the time of this motor vehicle accident?

A. Did Stephanie?

Q. I'm sorry. McKenna.

A. No.

Q. Who filed McKenna on their taxes as a dependent?

A. I always did.

Q. When McKenna began driving, who put her on their auto insurance?

A. Me.

Q. And that was after this accident happened, right?

A. Correct.

Q. But the living situation now is the same as it was before the accident at this point, correct?

A. Yep.

Q. I think you had mentioned before that she had to pack up her stuff and go to her dad's. Was the majority of her stuff at your house or his house?

A. She has stuff at his house but I would say the majority -- the majority of her stuff is at my

house. We use the word "home," and her dad's.

Q. Your house being the home?

A. Correct.

MR. LEGATO: I don't have any more questions.

MR. HINMAN: I just have, like, two follow-ups. I apologize, Stephanie.

THE WITNESS: No problem.

RE-EXAMINATION

BY MR. HINMAN:

Q. It's my understanding that McKenna recently -- well, not recently, but started working at Subway in October of 2020; is that correct?

A. She did. They were very good about her limitations at first and then the hours just got carried away with, you know, them not having enough employees. And she had to put in her two weeks.

Q. Okay. And how long ago was that?

A. She put in her two weeks a week ago.

Q. Oh, so she's quitting as of right now?

A. Yes, Sunday's her last day.

Q. Okay. What kind of accommodations were they helping her with?

A. They wouldn't make her mop the floors or if, you

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know, she did mop the floors it'd just be a little area. They didn't allow her to lift things. They didn't allow her to bend. They were really good on scheduling her morning shifts. Which I worked with the school as well so that she could work in the morning because her back is better in the morning than at night. So she would go into work for the four hours in the morning and then come home, ice, rest, whatever she had to do. And then pluck away at her school work throughout the day.

Q. Okay. And how many hours per morning was she working?

A. Four.

Q. Okay. And what was her I guess weekly schedule? Like Monday through Friday or...

A. No, it varied. Again, at first it started out like three days a week. And then sometimes it was five or six, but that just got to be way too -- it just got to be too much.

Q. Okay.

MR. HINMAN: That's all my follow-up. Anybody else? All right. Stephanie, I think you're good.

THE WITNESS: Okay. Thank you.

MR. HINMAN: Thank you.

MS. DEBELL: Thank you.

(Proceedings concluded at 4:01 p.m.)

* * *

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

I, Kelly Boalheim, a CSR and Notary Public acting in the County of Oakland, State of Michigan, do hereby certify that this transcript, consisting of 91 pages was remotely taken before me in the above-entitled matter, was by me duly sworn remotely at the aforementioned time; that the testimony given by said witness was stenographically taken remotely of said witness and that the said deposition is a full, true, and correct transcript of the testimony given by the witness. I further certify that I am not connected by blood or marriage with any of the parties or their attorneys, and that I am not an employee of either of them, nor financially interested in the action. I agree that neither I nor any person, attorney, paralegal, or expert witness may make, copy, and/or distribute to others a transcript without paying Tri-County Court Reporters the ordinary and customary charges for any and all additional transcripts.

Kelly Boalheim, CSR-8167
Notary Public: Oakland County, Michigan
My commission expires: 11/1/2027

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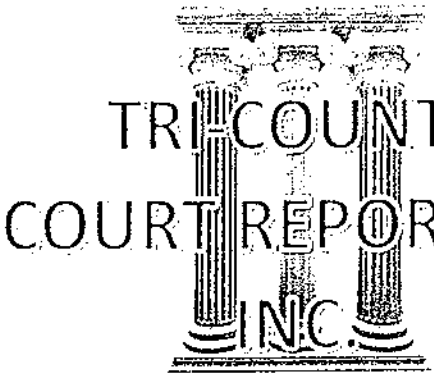
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Transcript of the Testimony of
Corey Frownfelter

Date: October 1, 2021
Volume:

Case: Lawrence v Esurance

Printed On: October 15, 2021

ocument Submitted for Filing to MI Oakland County 6th Circuit Court.

STATE OF MICHIGAN
IN THE CIRCUIT COURT IN THE COUNTY OF OAKLAND
STEPHANIE LAWRENCE, as Next
Friend of MCKENNA L. FROWNFELTER,
a minor,
Plaintiffs,
vs Case No. 2020-184089-NF
Hon. Edward Sosnick

ESURANCE PROPERTY AND
CASUALTY INSURANCE COMPANY,
foreign profit company,

Defendant

and

ESURANCE PROPERTY AND
CASUALTY INSURANCE COMPANY,
foreign profit company,

Third-Party Plaintiff,

vs

PROGRESSIVE MICHIGAN INSURANCE COMPANY,
FARMERS INSURANCE COMPANY, AND AUTO-OWNERS
INSURANCE COMPANY,

Third-Party Defendants

/

ORAL DEPOSITION OF COREY FROWNFELTER
Via Zoom No. 849 1586 2997
Friday, October 1, 2021 at 1:05 p.m.
TAKEN AT:
Tri-County Court Reporters, Inc
929 W. University Dr., Suite 103
Rochester, Michigan 48307

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EXHIBITS

NONE

Rochester, Michigan
Friday, October 1, 2021
1:05 p.m.

****

REPORTER: We are going on the record. My name is Amanda Grosshans. I am a notary public for the county of Macomb. I'm a certified shorthand reporter for the state of Michigan.

This deposition is being held via videoconferencing equipment. The witness and reporter are not in the same room. The witness will be sworn in remotely, pursuant to agreement of all parties. The parties stipulate that the testimony is being given as if the witness were sworn in person.

So could the witness please raise his hand?

COREY FROWNFELTER

the witness hereinbefore named, being first duly cautioned and sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

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MR. HINMAN: Let the record reflect that this is the date and time for the discovery deposition of the Mr. Corey Frownfelter, taken pursuant to notice and subpoena, and to be used for all purposes under the Michigan Court Rule and the Michigan Rules of Evidence.

EXAMINATION

BY MR. HINMAN:

Q. Mr. Frownfelter, my name is Aaron Hinman, I represent Esurance in a lawsuit filed by your daughter regarding a January 8th, 2020 motor vehicle accident. Are you familiar with that accident?

MR. HINMAN: And he froze. Off the record.

(OFF THE RECORD AT 1:05 P.M. TO 1:06 P.M.)

Q. (Continuing by Mr. Hinman:) So then you're familiar with the January 8th, 2020 accident, right?

A. Yeah.

Q. That is the accident we're here to talk about today. The other individuals on this Zoom are also attorneys representing the either your daughter or other insurance companies that are involved in the lawsuit. Okay?

A. Okay.

Q. First off, have you ever had your deposition taken before?

A. No.

Q. So I'm going to go over some ground rules, because there is a court reporter taking down everything we say, all right?

A. Okay.

Q. All right. First off, you're doing great so far. Make sure all of your answers are verbal. So yes, no, I don't know are perfectly fine, but uh-huh, uh-uh, or nods and shakes of your head is not okay, okay?

A. Okay.

Q. All right. If you do say uh-huh, or uh-uh, or nod or shake your head, I'm going to ask whether that means yes or no. I'm not trying to be disrespectful, I'm just trying to make sure our record is clear.

A. Okay.

Q. Secondly, if you don't understand one of my questions, do not hesitate to let me know that you don't understand, all right?

A. Okay.

Q. I will do my best to rephrase or ask a different question so you're able to understand it, all right?

A. Okay.

Q. Okay. If you do understand my question, and you answer it, I'm going to assume you understood it completely, okay?

A. Yep.

Q. All right. Also additionally, we are just here to ask

about what you know, so your personal information. If you don't know the answer, it's perfectly fine, and if you're going to guess about something, like a speed, or a distance, or something like that, just let us know you are guessing, all right?

A. Okay.

Q. Last but not least, like I said before the deposition began, I don't expect this to take a long time, because we already have some testimony from your ex-wife, Stephanie, and your daughter. So I'm going to try to speed this along as much as I can.

A. Okay.

Q. First off, what is your date of birth?

A. 7/14/81.

Q. And to speed this along, do you mind if I call you Corey throughout this?

A. That's fine.

Q. How old does that make you today?

A. Forty.

Q. And do you have a Michigan driver's license?

A. Yes.

Q. Okay. And I ask this of everyone that I deposed, but for your safety and your protection, we only put the last four numbers on the record, but I'm going to ask for your full social security number, okay?

A. Okay.

Q. What is your full social security number?

A. XXX-XX-2683.

Q. Thank you, Corey. I appreciate that.

A. Yep.

Q. What's your highest level of education, Corey?

A. Two years of like community college or trade college.

Q. And where did you attend?

A. ABC.

Q. Do you know what that acronym stands for?

A. I don't remember. Something builders and contractors. I can't remember what the A is. Associates Builders and Contractors I think.

Q. And what did you receive, did you receive a certificate or degree from ABC?

A. No.

Q. What were you studying there?

A. Construction.

Q. And when did you attend ABC?

A. Probably, probably like 2000, 2001 maybe.

Q. Okay. Aside from ABC, did you have you, do you have any other post-high school education?

A. No. I just have to up to 12th grade. That's it.

Q. I know you said you didn't receive a certification or a degree from ABC, but do you have any certifications or

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licenses in anything else?
A. No.
Q. Have you ever undergone any medication training?
A. Nope.
Q. Obviously you're currently employed right, Corey?
A. Yep. I have my own business.
Q. So what is the name of your business?
A. Git-R-Done Services.
Q. Now, I apologize, I've listened to Larry the Cable guy about a million times comedic wise. Is it Git-R-Done, like G-I-T or get, G-E-T?
A. G-I-T-R-D-O-N-E.
Q. And where is Git-R-Done located?
A. Holly.
Q. And how long have you had Git-R-Done?
A. Four years. I think like four years, five years.
Q. So you would have started in either 2016 or 2017?
A. Yes. Something like that.
Q. So you were employed here at the time of this accident then?
A. Yes.
Q. Okay. And what does Git-R-Done services do?
A. Handyman and small remodels.
Q. And what is your workweek like, your schedule?
A. Hum, I work, some nights I work until, I mean I've worked

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until midnight. Most of the time, you know, I'm home between 6 and 8. But there's many nights that I work until, I'm not home until 9, 10, 11.
Q What time do you normally start your day?
A. I usually leave the house at about 7.
Q. So they are like at least about twelve hour days?
A. Yeah.
Q. And how many days a week?
A. Usually no more than six. But sometimes we work three weeks straight depending on what we have going on.
Q. Has that schedule been consistent both before and after this accident?
A. Oh yeah, yep.
Q. It's good to hear that the business survived COVID personally.
A. Yeah. We didn't have any problems.
Q. Okay. At the time of the accident, are you aware of whether McKenna was receiving any governmental benefits through you or Stephanie?
A. No, she wasn't.
Q. Okay. Have you ever served in the military, Corey?
A. No.
Q. This is something I ask every person that I depose as well. I'm not trying to offend you in any way. Within the last ten years, have you been convicted of a felony?

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A. Nope.
Q. Similar question. Within the last ten years, have you been convicted of a misdemeanor involving theft or dishonesty?
A. No.
Q. Have you been a party to a lawsuit before this?
A. No.
Q. What's your current address, Corey?
A. 4082 Lahring, L-A-H-R-I-N-G, Road, Holly, Michigan, 48442.
Q. And how long have you lived there?
A. Five years.
Q. So this would have been your address at the time of the accident?
A. Yes.
Q. And this is me trying to just be as detailed as possible with this particular question. Before the accident, who lived with you at the Lahring address?
A. What do you mean, like everybody in the house?
Q. So it's my understanding that you and Stephanie had a custody agreement following your divorce in 2011; is that correct?
A. Correct.
Q. And there was a custody arrangement where McKenna and Hunter would live with you at some point, and would live with Stephanie at some point, correct?
A. Correct.

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Q. So in my question about who lived with you before this accident, please include Stephanie and Hunter.
A. Well, I don't live with Stephanie.
Q. I'm sorry. McKenna.
A. You mean McKenna.
Q. Yes.
A. So McKenna lives with me, or was with me that week. Hunter was with me that week, my girlfriend Desiree lives with me, and then her son Brandon lives with us. And I don't, at the time her daughter Savannah was with us, but she don't live there anymore.
Q. Okay. Now, I know you called Desiree your girlfriend. You and Desiree were not married at the time of this accident, correct?
A. Correct.
Q. And now following this accident, January 8th, 2020, did any of the living arrangements change?
A. I mean McKenna didn't, once she had her accident, she wasn't at my house, I mean she was a good, I don't even know, three months, four months something like that. I'm not, I'm not a hundred percent sure on that time, but I know it was a long time
Q. Okay. And so then Hunter would still come over for his regular visitation. Desiree, Brandon and Savannah were still there until Savannah moved out at one point, correct?

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A. Correct.
Q. Okay.
A. And then in November of this year, my son left for the marines.
Q. So and I apologize. By this year, you mean November of 2020 last year?
A. Yes, last year.
Q. So Hunter left for the marines in November?
A. Yep. Or was it November, or might have been October. I'm really bad with dates. It might have been October maybe.
Q. That's okay. Do you know if he has any leave coming up?
A. No, I don't.
Q. All right. And you said that McKenna was visiting with you on the week of her accident, correct?
A. Correct.
Q. Now it's my understanding, at least from previous testimony, that she had actually been at your house one day before the accident; is that correct, or do you remember something different?
A. What date? What, what was the actual date that the accident happened, do you know?
Q. My understanding it was a weekday, it was school day. I'm not sure exactly what day of the week it was.
A. Okay. Yeah. I mean I can't answer that a hundred percent. I mean that was a long time ago.

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Q. Almost two years now. So I understand, I understand that wholeheartedly.
A. Yep.
Q. All right.
MR. LEGATO: Looks like a Wednesday just in case anybody cares.
A. Okay. So yeah, then she would have been there like a day, yeah.
MR. HINMAN: Thanks Darren, I appreciate that.
Q. (Continuing by Mr. Hinman:) All right. And do you happen to recall what Stephanie's address was at the time of this accident?
A. I don't know.
Q. Now, I'm going to, this is going to be a little longwinded, because I'm going to recount what I recall Stephanie and McKenna testifying to to see if you can confirm it for me or not. Okay?
A. Okay.
Q. So according to Stephanie, you and she were divorced in 2011, correct?
A. Yes.
Q. And there was a custody arrangement regarding Hunter and McKenna following that divorce, correct?
A. Yes.
Q. And it is my understanding that that custody arrangement

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was fifty/fifty according to the custody order; is that correct?
A. Yes.
Q. And it would be Monday to Monday alternating weeks, correct?
A. Yes.
Q. And then alternating holidays; is that correct?
A. Yes.
Q. Now, Stephanie testified at some point it stopped being fifty/fifty and she lived, McKenna lived with Stephanie more often. Do you, is that true, or do you have a different understanding?
A. No, that's true. Because I mean, you know, there's days I worked until eleven o'clock, so there's no point of her being at the house, you know.
Q. And do you recall when that arrangement kind of started, where she was, McKenna was living more with Stephanie?
A. No.
Q. Was it before the accident?
A. Oh yeah, yeah.
Q. And following the accident -- well, I'm going to back up for a second.
It's my understanding that you have, or you had a policy with Esurance at the time of this accident, correct?
A. I think so, yes.

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Q. If you remember, at the time of this accident, how many vehicles did you own?
A. Hum, I believe three.
Q. Do you remember what the make and model of those vehicles were?
A. Ford Transit, Dodge Ram 1500, and then a Ford Explorer Trac.
Q. And do you remember if Esurance insured only one of the vehicles or all of the vehicles?
A. Hunter was just on his own policy right, yeah. So I think Hunter's truck, which was the Explorer, was under, it was me and him on the policy, but he was on his own policy. And then my other two vehicles were on a separate policy.
Q. Okay. Do you remember what insurance company the other, Hunter's vehicle was under?
A. Was Hunter's Esurance? Hunter's was Esurance.
Q. Corey, I apologize. We can't have anyone else confirm any insurance with you.
A. Okay, okay.
Q. If you know, you know, if you don't, you don't.
MS. MURREL: Who is in the vehicle with you?
A. My girlfriend. She does all of the billing, so she knows all of that information. I really don't know that stuff.
Q. (Continuing by Mr. Hinman:) I appreciate, Desiree's help, but we have to have it come from you. So at some point,

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around the time of the accident, did you have an insurance policy with Progressive Insurance Company?
A. I'm not sure.
Q. At some point, if you remember, around the time of the accident, did you have an insurance policy with Farmers?
A. I don't think so.
Q. And at the time of the accident, do you know if Stephanie had an insurance policy?
A. I would assume so, but I don't know.
Q. Okay.
A. We don't confirm that kind of stuff with each other.
Q. Gotcha. Now I'm going to jump ahead a little bit to the day of accident, okay, Corey.
A. Okay.
Q. Do you remember how you first heard about the accident?
A. Yep, yes.
Q. How did you hear about it?
A. Hunter called me.
Q. And it's my understanding that Hunter was driving the Ford Explorer at the time of the accident?
A. Correct.
Q. And do you remember -- and you said that that was his vehicle; is that correct?
A. Correct.
Q. And did he have his own set of keys to the vehicle?

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A. Yes.
Q. Did he have to ask your permission to use that vehicle?
A. I mean, yeah, I mean like going to school and stuff I mean. But obviously after school, yeah, he had to ask, you know, if he was going to do anything.
Q. And what did Hunter tell you regarding the accident?
A. He to called me and said, I was, we were in an accident, I slipped on some ice, I lost control, and McKenna is hurt but me and Rolando is okay.
Q. And Rolando was McKenna's boyfriend at the time of the accident; is that correct?
A. Correct.
Q. Did you end up going to the scene of the accident?
A. Yes.
Q. When you get there, what do you observe?
A. Well, I got stuck behind an ambulance coming, because it's on a dirt road. And I can take all dirt roads from my house to get to where they were. So when I, when I got to Grange Hall Road, an ambulance was turning onto Rood Road, which they were on Rood Road, the accident, so I got stuck behind them. I get there, there was fire trucks, ambulances, you know, I think there was a couple of cop cars. And I just got out and ran up to the car. And McKenna was the back seat crying, and there was blood everywhere. And the paramedics were dealing with her,

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trying to get her out of the car. And I asked my son and Rolando if they were okay, you know, just kept asking if they were okay.
Q. And I don't mean to upset you or bring up any details, but unfortunate you were there, so I'm going to ask. Okay. Did you see where the blood was coming from?
A. Yeah.
Q. Where was it coming from?
A. Her head.
Q. Do you remember what part?
A. Her lip.
Q. Okay. And I know you said that the paramedics were kind of working on her. Did you see any other injuries or anything like that on McKenna when you were able to see her?
A. Hum, I mean, I started seeing some bruising on her face and like black eyes were starting to kind of, you know, starting to come out. And there was just like some other little cuts, you know, on her face.
Q. Okay. Did you talk to McKenna at all at the scene?
A. Yeah.
Q. Did she ever tell you, aside from obviously her lip bleeding, that anything else was hurting?
A. Yes.
Q. What did she say to you?
A. She said her back hurt.

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Q. Okay.
A. She said her back hurts and she can't move.
Q. When you were talking with her and looking at her, did she move her arms at all?
A. Hum, I don't think so. I think she was just kind of like, I think if I remember right, I don't think she was quite like laying down, she was kind of like hunched over. The paramedics, like I said, when I got there, they were try to get her out of the car. So they were kind of moving her around, you know.
Q. Did you see whether the air bags had deployed in the vehicle?
A. Yes.
Q. And I apologize, it's kind of a bad question. Did they deploy?
A. Yes.
Q. Did you ask McKenna, or Hunter, or Rolando whether they were using their seat belts?
A. Yes, they all were.
Q. Okay. Did you speak with the police, or the paramedics, or any of the first responders at the scene?
A. I just spoke with one paramedic really that I rode with them to the hospital or, I'm sorry, I rode with McKenna to the hospital.
Q. You were in the ambulance?

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A. I was in the front seat. I wasn't in the back with her.
Q. Okay. And do you remember the contents of the conversations you had when you were in the ambulance?
A. It was a really bad day, like really icy, got some snow. So traffic was kind of heavy, roads were bad. So the lady was just kind of saying how bad the roads are, you know, stuff like that. She didn't really say, I mean we really didn't talk a whole lot, you know what I mean. It was just kind of like, just a small conversation here and there, you know, the roads and stuff, you know.
Q. Okay. And I apologize, this is me jumping around. I'm going to back up ever so slightly, okay, Corey.
A. Okay.
Q. Did Hunter tell why Rolando and McKenna were in the car with him?
A. Because McKenna rode with him every morning to school, they go to the same school. And that morning, they picked up her boyfriend because he's kind of on the way and took him.
Q. Okay. And at the time of this accident, do you know if McKenna was working anywhere?
A. Hum, no, she wasn't.
Q. Okay. All right. So back to where we were. So you guys are in the ambulance, where do you guys, where do they take you?
A. Genesys.

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Q. And what happens at Genesys?
A. Hum, so we go in, and they got her out of her clothes, because there was blood all of over them and got her into a gown. And they wanted to do, like they checked her blood pressure and, you know, all of that stuff. And I believe they did like x-rays or something along those lines. And then they seen that, how bad like her back injury was, so they sent her down to Beaumont.
Q. Okay. Did they send her by ambulance?
A. Yes.
Q. Did you ride in that ambulance as well?
A. I did not. Her mom did.
Q. So Stephanie switches and gets in that ambulance, where do you go?
A. Hum, I went home, grabbed some stuff for her, and changed my clothes and went, I left right away and went down to the hospital.
Q. All right. So then you get to Beaumont?
A. Yep.
Q. And what's the next thing that happens from your end?
A. So we pretty much just kind of sit in a waiting room for a little bit, and then we go in with her. And they were, they were just doing lots of tests and stuff like that. And they had a plastic surgeon come down and sew up her lip. And then the doctors came in and said that they were

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going to do emergency back surgery on her. And then we went back with the surgeon, and he was showing us like the x-rays and stuff. And he said, he said he can't believe that she's not paralyzed right now were his exact words
Q. And –
A. Looking at the x-rays –
Q. Sorry, Corey. Go ahead.
A. He said, looking at the x-rays, he doesn't see how she's not paralyzed right now. So he wants to go in and go in and get it taken care of right away. Five minutes later, she was in surgery.
Q. All right. And I know you're not a medical professional, Corey, but do you remember them explaining a diagnosis regarding what was wrong with McKenna's back?
A. There was a lot of emotions going on at that point. I don't, it was something to do with, you know, her – I don't know. I don't know a hundred percent on that one.
Q. Gotcha. So generally speaking, you might not remember what they told you at the hospital, but are you aware of what was, what is wrong with, or what was wrong with her back at the time of this accident at this time?
A. Yes.
Q. What is your understanding of what happened?
A. My understanding is that she messed up like the lower part of her back. And then they had to, basically I believe

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they had to fuse like her lower vertebras. And then, I don't know, she has like six pins or something like that in her back I think.
Q. And do you remember how long McKenna was in the hospital for?
A. Hum, I think she was in hospital for, I want to say it was at least a week, might have been a little bit more.
Q. And were you there for her discharge?
A. Yes
Q. So if you remember, what was the plan going forward, where she was going to live or stay following her discharge?
A. She was going to go home with her mom.
Q. And I know you testified that she didn't visit your home until like three or four months after the accident; is that correct?
A. Correct.
Q. Did you still go and see McKenna during that three or four months?
A. Yes. Almost everyday, if not every couple of days.
Q. Okay. Now aside from the hospital, both Genesys and Beaumont, did you end up going to any of McKenna's medical appointments following the accident?
A. Hum, not until like recently I think. It was like just like two months ago I took her to one of her doctors. I think she was getting Botox or something in her back.

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Q. Okay.
A. But I believe that's the only appointment I ever took her to.
Q. All right. So what I'm going to do is save us some time. I'm going to rely on Stephanie and McKenna's testimony regarding the medical treatment that she underwent that you weren't a part of, okay.
A. Correct, yep.
Q. Even though you didn't go to the appointments, were they telling you how her treatment was going or what procedures she was receiving?
A. Yeah. They, I mean they kept me updated on what like they were going to do and stuff like that.
Q. And I know you said that you just took her for one of her Botox injections a couple of months ago, correct?
A. Correct.
Q. Are you aware of any other surgeries, or Botox injections, or anything like that that McKenna has undergone since the accident?
A. Yeah She's had a few of those Botox injections. I think every couple of months is when she, like every couple of months she gets one.
Q. Okay. Do you know if she's currently going to physical therapy?
A. She is.

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Q. Do you know where?
A. Hum, I'm not sure. I know it's in Linden.
Q. Do you know how many days per week she goes?
A. Hum, it's either two or three.
Q. And aside from physical therapy and the doctor where she's undergoing Botox, are you aware of any other facilities or treatment that McKenna is currently undergoing?
A. No.
Q. Okay. Do you know if McKenna is scheduled for someone has recommended additional surgery right now?
A. No.
Q. All right. Did you speak with McKenna's doctor when you took her for that Botox injection?
A. She was literally in there for like five minutes. He just came in, looked at her back, said that he was going to do it, and that was it.
Q. Okay. Have you recently spoken with any of McKenna's doctors, or physical therapists, or treaters regarding her current condition?
A. No.
Q. Okay. When was the –
A. Her mom does all of that.
Q. When was the last time you saw McKenna?
A. Hum, last night.
Q. Okay. And I know you're not a medical professional or

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anything like that. Was she complaining about any pain or anything when you saw her yesterday?
A. Yes. Because she had just got done with physical therapy.
Q. What kind of complaints did she have?
A. She just said she was sore, her back was sore.
Q. Anything, any recent complaints about her lip, or her face, or anything like that?
A. No. Just mainly her back.
Q. And forgive me, I apologize, I completely forgot. What year in high school in McKenna?
A. She's a senior.
Q. Has she joined any sport groups or any activities groups at school this year?
A. No.
Q Before this accident, was she involved in any sports or anything like that?
A. Hum, she was always ready, she use to do like cheerleading and stuff like that. But I mean it's been a little bit before, you know, since she's done that. But she's always been a very active girl and she's not much anymore.
Q. Do you remember, or do you know if since the accident you guys have gone on vacation together at all?
A. Yeah, I mean we've done like weekend trips
Q. So –
A. To the cabin.

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Q. Where is the cabin located?
A. Rose City.
Q. That's actually beautiful.
A. Yeah, it's real nice up there.
Q. What do you guys normally do when you are up at the cabin?
A. Mainly like we'll go out fishing and we'll go lay on the, there's like a little sandbar, we will go float around on, floaty mats, if it's warm enough for that. Just hang out, have camp fires and stuff like that.
Q. Did you do any of that this summer?
A. Yeah.
Q. Do you remember when the last time you did that was?
A. Hum, couple of months ago.
Q. Did you guys go for Labor Day at all or no?
A. No.
Q. Did you guys do anything for Labor Day this year?
A. Hum, I don't believe so.
Q. Did she have any problems fishing, or hanging out, floating on a sandbar, anything like that?
A. Hum, hanging out on the sandbar and floating, not really. But you know fishing, you know, her back would get stiff once in a while, so she would have to like stand up or, you know, move around.
Q. Okay. Following the accident, do you know if McKenna started working anywhere?

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A. She was working at Subway.
Q. Okay. Do you remember when she started?
A. I don't.
Q. And you said she was working, is that a past tense?
A. Yes, she's not working anymore.
Q. Do you remember when she stopped?
A. Hum, I would say about two months ago, or a month ago maybe.
Q. Okay. And since she quit Subway, do you know if she has been looking for any other work?
A. No, I don't think so.
Q. Okay. And I know that you have been working like twelve hour shifts, six days a week since the accident, that's correct?
A. I mean not every week but.
Q. On a consistent basis, not necessarily everyday all day.
A. Yeah.
Q. When McKenna would come over to your house, after that three or four month period following the accident, did she ever, did she need help around the house with anything?
A. At that point, if I remember right, she was okay to like get up and go and get like food and, you know, she couldn't like carry or lift anything. But she could get, you know, go to bathroom on her own, and get food, and stuff like that, you know.

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Q. Okay. If she did need help, did someone help her at your house?
A. Definitely.
Q. Do you know who that was?
A. It would have been either me, or Desiree, or Savannah.
Q. Okay. And if she did need help, did you guys create any documents or anything like that for whatever you did for her that day?
A. No.
Q. Did you ever have a discussion about being paid for the services you were helping McKenna with?
A. Nope.
Q. Okay. And you said after that three or four month period where she was mostly at Stephanie's, when she came to your house, she was mostly independent but still needed a little help?
A. Correct.
Q. That was mostly with like lifting heavy objects?
A. Yeah. And like picking stuff up off of the ground, you know.
Q. So she was having some difficulties like bending over for a little bit?
A. Yes.
Q. Is she able to be completely independent now, or does she still need help with things?

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A. No. She does pretty good now.
Q. Okay
A. I mean like heavy stuff obviously, you know, she still needs help with.
Q. Okay. And I know you said she is still getting the Botox injections and the physical therapy. Is she still using any medical equipment, like a back brace, or crutches, or anything like that?
A. No.
Q. Did you ever observe her using that?
A. Yes.
Q. What did you observe her using?
A. Hum, back braces I don't know exactly what they are called, but the electric stock stimulators.
Q. Okay. Any other like medical equipment that you can think of right now?
A. No, no.
Q. Okay. When was the last time you saw McKenna use a back brace?
A. I'm not sure.
Q. Okay. She wasn't using one when you saw her yesterday, is that correct?
A. No, no.
Q. Is it possible that she's used it, used a back brace -- strike that.

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On the days that you're seeing McKenna, has she used a back brace in the last month?
A. No.
Q. So we'll move on then. When's the last time you saw her use the electric shock thing?
A. Hum, probably last time I physically saw her use it was probably two months ago.
Q. And what area of her body does she put the electric shock thing on?
A. Her lower mid back.
Q. Okay. All right. Any other medical equipment that you can think of?
A. Hum, I mean I know like she had like a shower chair, like I mean stuff like that.
Q. Well, that was going to be my next question. Has anybody come into your house and make any modifications or anything like that?
A. Not to my house, no
Q. Are you aware of whether anyone came in and made modifications to any other house for McKenna?
A. Yes, Stephanie.
Q. Do you know what modifications were made?
A. Hum, I know there was a couple of grab bars put in, there was a new tile floor in the bath, or new flooring in the bathroom so it wasn't so slippery. They had to put in some

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handrails and some steps so she could get in and out of the house.
Q. Do you know if any of that equipment has been removed?
A. I have no idea.
Q. Okay. And I know you said she had a shower chair at your house; is that correct?
A. Yeah. She had, she had one at both houses.
Q. Okay. Do you know if that shower chair is still there?
A. Yes, it is still at my house.
Q. And do you know if McKenna still uses it for any reason?
A. No, she don't.
Q. Okay. Corey, do you know if McKenna is scheduled to graduate on time?
A. As far as I know, yes.
Q. Has she applied for colleges yet?
A. No.
Q. Do you know if she's going to?
A. Not a hundred percent sure.
Q. Okay. Do you know if McKenna missed any time from school as the result of the accident?
A. Yes.
Q. Do you know if her grades were affected by her missing that time?
A. Yes.
Q. What kind of grades did she have before the accident?

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A. Hum, she was always kind of like a mid grade student, you know. Not all A's but, you know, B's.
Q. Okay. And what about after the accident?
A. After the accident, she had to do online schooling because she hurt too bad to go to school. And then COVID hit last year, so she stayed on online and this is her first year back to school since the accident.
Q. Okay. And before, before this year started, so for her junior year, her last year, did a her grades improve?
A. Yeah, little bit.
Q. So are her grades back to like that mid range, that B range?
A. Yeah. She is doing good right now.
Q. Okay. All right. Corey, I think that's all of the questions I have for you. A couple of the other attorneys might have some questions for you. So let them go ahead and I might have some follow-up after their questions, okay.
A. Okay.
MR. HINMAN: I'll pass the witness. Go ahead, Marla.

EXAMINATION

BY MS. JACOBS:

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Q. Hi, my name is Marla Jacobs and I represent Auto-Owners in this lawsuit. I just have a couple of follow-up questions regarding, you testified about where McKenna lived before the accident and during the accident. So I just have some follow-up questions in that regard.
You had indicated that according to your divorce decree it was a fifty/fifty split custody?
A. Correct.
Q. Did that ever change?
A. I can't hear you.
Q. Did that ever change in writing?
A. Did it ever change in writing?
Q. Yeah.
A. No.
Q. And does McKenna have a bedroom at your house?
A. Yes.
Q. How often, before the accident, let's limit it to two years before the accident. How often would McKenna stay at your house?
A. Hum, the weeks that she was suppose to be at my house, I mean every week was different, but you know, two, three days, sometimes four.
Q. And when did it change where she spent more time at her mother's house?
A. I don't know.

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Q. So the accident happened on January 8th of 2020 approximately. How many months before that point did McKenna start spending more time at her mother's house?
A. I don't know. It was probably gradually over the last, you know, few years before.
Q. So if there was a fifty/fifty custody, and she split time in between houses, when she started spending more time at Stephanie's, can you give us a number, was it forty percent of your time and sixty percent Stephanie's time?
A. I don't know what is going on. But you are cutting in and out and I can't hear you. Hello?
MR. HINMAN: Off the record real quick.
(OFF THE RECORD AT 1:50 P.M. TO 1:52 P.M.)
Q. (Continuing by Ms. Jacobs) Can you hear me?
A. Yes.
Q. It doesn't work so well sometimes, which is a big bummer. So if your custody agreement was fifty/fifty custody, and McKenna spent half of the time at Stephanie's house and half of the time at your house, when McKenna started spending more time at Stephanie's house, can you put a number on that as opposed to fifty/fifty, was it forty/sixty split, thirty/seventy?
A. Hum, I don't know. Probably, I don't know, probably like sixty-five, sixty percent probably.
Q. Okay. Does McKenna receive mail at your house?

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A. Hum, no. I mean once in a while I'll get like a report card or something, but that's it.
Q. And does she, does McKenna keep clothes at your house?
A. Yes
Q. And does McKenna depend on you for financial support?
A. Yeah, kind of.
Q. Does McKenna still spend more time at Stephanie's house then at your house?
A. Yes.
Q. And do you know the reason for that?
A. No. I mean I work a lot, so that's the main reason.
Q. All right.
MS. JACOBS: That's all of the questions I have
MR. LEGATO: Lynn, do you have anything?

EXAMINATION

BY MS. MURREL:
Q. Corey, I represent Progressive in this matter and I just have a few questions for you. That week, when this accident happened, and McKenna and Hunter were staying with you, was that part of the your regular pattern of custody, or did they decide they just wanted to be with you that week?
A. No. That was my scheduled time.

Q. It was your scheduled time. Okay. All right. And when you say it was your scheduled time, like did you and Stephanie, did you like sit down at the beginning of the month and figure out when the kids were going to be with you or with her, or is it just was, was it just the week on and week off plan?
A. Just week on and week off plan.
Q. Okay. Okay. And I know that the, you know, you went through your divorce and you had the agreement, when that took place. But is my understanding correct that you and Stephanie never wrote down any specific change, you just had a verbal agreement between the two of you?
A. Yeah. I mean it was just, I mean it was never really a verbal agreement. It was just whatever the kids wanted to do really.
Q. Okay. All right. So sometimes McKenna or Hunter would say, I'm staying with mom, I'm not coming over, is that sort of the way it would go?
A. Yeah. Or I would call them, hey, I'm going to be working until eleven o'clock tonight, you know, do what you want, and they usually would just stay at her house.
Q. Gotcha. Okay. All right. This week when the accident happened, that was part of the regular scheduled plan?
A. Yes, it was.
Q. All right. It seems you had several cars in your household

and you were insured with several different insurance companies. Is there a reason why you didn't have them all with one company or the other?
A. Basically just went for the cheapest rates
Q. Okay. All right.
A. I think there, I'm sure there were only two insurance companies. It should have just been Hunter, I wanted Hunter to have his own policy, that's why she had his own policy. The rest of my vehicles were on my policy.
Q. Okay. Why did you want Hunter to be on his own policy?
A. Well, I guess mainly it boiled down to that was the cheapest policy we could get with me and him on it. Whatever insurance company I had, the quote was higher then that quote, so we went with that quote.
Q. Gotcha.
A. And I wanted to make sure that he was on the policy so, you know, it showed that he was actually on the policy.
Q. Okay. Do you, have you received at your house any medical bills for McKenna's care and treatment that have not been paid?
A. No.
Q. Okay. Have you received any medical bills at all for her?
A. No.
Q. All right. Those typically go to Stephanie?
A. Yep, yes.

Q. Okay. And have you, I know we talked about some modifications that were made. Have you had to make any modifications to your house for her that haven't been paid for?
A. No.
Q. And do you have any plans to make any modifications that are necessary at this time?
A. No.
Q. The things that you talked about over at Stephanie's house, the extra pull bars or, and the steps, those sorts of things, did you assist with those, or did she hire those out, do you know?
A. She hired them out.
Q. Okay. I only ask you that because you have got that handyman service going on. I was just wondered if you were doing that for her.
A. Well, I, I did do it, but she hired it out to me.
Q. Gotcha. So she hired your company and then you went and took care of it. Okay.
A. Yes.
Q. And then she paid for those?
A. Correct.
MS. MURREL: I think those are all of the questions I have for you. Lynne?
MS. DEBELL: I just have a couple of questions.

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EXAMINATION

BY MS. DEBELL:

Q. You said that you provide financial support for her now?
A. Well, I mean like when I say that, like, hey dad, I need 20 bucks for gas, okay, here you go. Hey dad, you know, can I go out to McDonald's, here you go. That kind of stuff, you know what I mean.
Q. And was that the case at the time of the accident as well?
A. Well, she wasn't, she wasn't driving at that time. So like that kind of stuff wasn't really an issue but.
Q. Were you providing any financial support right before the accident, at the time of the accident?
A. Yeah. I mean like I split everything. I split, I split health insurance, you know, like that kind of stuff.
Q. Who would, before the accident, who would communicate with the school and McKenna's teachers?
A. That would be her mom.
MR. DEBELL: I don't have any other questions. Thanks so much.
A. Thanks.
MR. LEGATO: I just have a couple, Corey.

EXAMINATION

BY MR. LEGATO:

Q. My name is Darren Legato, I am the attorney for your daughter actually. In back in January of 2020, did you have a home owner's insurance policy?
A. Yes.
Q. Do you know who that was through?
A. No.
Q. Do you still have the policy?
A. Yeah.
Q. Would you be able to get that information to me, or your daughter, or somebody, your ex-wife?
A. I mean can find out right now if I can ask my girlfriend.
MR. LEGATO: Tell you what, why don't we go off the record and you can ask her anything you want to.
(OFF THE RECORD AT 2:00 P.M. TO 2:01 P.M.)
MR. LEGATO: Back on the record.
Q. (Continuing by Mr. Legato:) Off the record, you told me that your home owners insurance goes through your mortgage, and it recent just switched, and we're not sure who it switched to, correct?
A. Correct.
Q. And so then we still don't know who it was at the date of the accident, which was January of 2020. Okay. That's fine. We can try to, after we're done with this, if you

can figure out that information, you can give it to your daughter or ex-wife, so they can give it to me, that would be fantastic. And it kind of goes along with that, do you know what an umbrella policy is?
A. Yes.
Q. Did you have an umbrella policy in January of 2020?
A. I don't think so.
Q. Also can we double check on that. And if you happen to have one in place at that time, can you please again provide that information to your daughter or ex-wife so they can give it to me.
A. Yeah.
MR. LEGATO: I don't have any additional questions for you.
MR. HINMAN: I have no follow-up.
MR. LEGATO: We are all set then.
MR. DEBELL: Thanks, Corey.
REPORTER: Did anybody need to order?
MS. MURREL: Yeah, I'll take an etrans
MS. JACOBS: I'll take an etrans for me too.
MS. DEBELL: Etrans
MR. LEGATO: I do not need it.
MR. HINMAN: Everybody have a good weekend.

(WHEREUPON THE DEPOSITION CONCLUDED AT 2:03 P.M.)

CERTIFICATE

STATE OF MICHIGAN)
) ss.
COUNTY OF MACOMB)

I, Amanda L. Grosshans, Certified Court Reporter, Registered Professional Reporter, a notary public in and for the aforesaid county and state, do hereby certify that the witness, Corey Frownfelter was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein, that the testimony of said witness was taken by me in machine shorthand and was thereafter reduced to typewritten form by me or under my direction and supervision, that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcription or copies of the transcript attorney, or that requires me to provide any service not made available to all parties to the action.

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Amanda L. Grosshans

Amanda L. Grosshans, CSR 3853
Notary Public

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Policy Declarations Page
Personal Automobile Policy – Original

Policy Number	Effective Date	Expiration Date	Policy Term
PAMI-007954837	December 19, 2018	June 19, 2019 @ 12:01 AM	6 Months

Named Insured and Address	Rated Operators	Excluded Driver	Driver Type	Year of Birth
COREY FROWNFELTER 4082 LAHRING RD HOLLY, MI 48442 Email: sassiemom005@yahoo.com	1 COREY FROWNFELTER 2 HUNTER C FROWNFELTER		Named Insured Additional driver	1981 2002

Vehicle #	Year	Vehicle Description	Vehicle Identification Number
1	2002	Ford EXPLORER SPORT TRAC	1FMZU77E82UC06437

Policy Coverage is provided only where a premium and limit or deductible are shown.

Liability Coverages		Premium	Deductible
BODILY INJURY	250,000/person 500,000/accident	[redacted]	
PROPERTY DAMAGE	50,000/accident		
PROPERTY PROTECTION	1,000,000/accident		
LIMITED PROP DAMAGE	1,000/clmt veh		
PIP PRIMARY MEDICAL			
PIP PRIMARY WORK LOSS			500
UM/UIM BODILY INJURY	250,000/person 500,000/accident		

Vehicle Coverages	Vehicle 1 Premium	Vehicle 1 Deductible	Vehicle Premium	Vehicle Deductible	Vehicle Premium	Vehicle Deductible	Vehicle Premium	Vehicle Deductible
MCCA FEE RECOUPMENT FEE STATUTORY FEE	[redacted]							

FULL TERM PREMIUM [redacted]

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Loss Payees, Additional Insured – Lessors, and Lien Holders	
Vehicle #	Loss Payee, Additional Insured – Lessor, and Lien Holder Information

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1001 MI 02 16	Personal Auto Policy
8200 PN 10 16	Privacy Notice
8191 MI 02 16	Adverse Decision Notice
8151 MI 04 12	US Treasury OFAC Notice
2001 MI 10 16	Amendment of Policy Prov

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MICHIGAN PERSONAL AUTOMOBILE POLICY

INSURING AGREEMENT

When *"we"* agree to issue this policy, and when *"we"* agree to renew this policy, *"we"* rely upon the truth and accuracy of the information *"you"* provide to *"us"* and the representations made by *"you"* in *"your"* Application for this insurance and at the time of each renewal. *"Your"* Application, the policy terms and conditions, all other forms *"we"* provide to *"you"*, and Endorsements issued by *"us"*, are part of, and form, *"your"* policy. The duties and obligations imposed by this policy shall be binding upon *"you"*, *"family members"*, and all other persons seeking coverage or benefits under this policy.

In return for *"your"* premium payment, *"we"* agree to insure *"you"* subject to all of the terms of this policy as follows:

DEFINITIONS APPLICABLE TO ALL COVERAGES

The following definitions, in their singular, plural, and possessive forms, apply throughout this policy when printed in *"boldface italics within quotation marks"*.

1. *"You"* and *"your"* refer to:
   A. The named insured(s) shown on the Declarations page;
   B. The spouse of the named insured if that spouse is a resident of the named insured's *"household"* during the policy period.
   If the spouse ceases to be a resident of the same *"household"* during the policy period or prior to the inception of this policy, the spouse will be considered *"you"* and *"your"* under this policy but only until the earlier of:
   A. The effective date of another policy listing the spouse as a named insured; or
   B. The end of the policy period.

2. *"We"*, *"us"*, and *"our"* refer to the Company providing this insurance, as shown on the Declarations page.

3. *"Accident"* means a sudden, unexpected, and unintended event.

4. *"Auto"* means a land motor vehicle:
   A. Registered under the applicable motor vehicle laws;
   B. Designed principally for operation upon public roads;
   C. With more than three load-bearing wheels; and
   D. With a gross vehicle weight rating (as determined by the manufacturer's specifications) of 10,000 pounds or less.

5. *"Bodily injury"* means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.

6. *"Business"* includes trade, profession, or occupation.

7. *"Covered auto"* means:
   A. Any vehicle identified on *"your"* Declarations page;
   B. A *"newly acquired auto"*;
   C. Any *"trailer"* titled to *"you"*; or

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D. Any ***"auto"*** or ***"trailer"*** while used as a temporary substitute for any other ***"auto"*** or ***"trailer"*** described in this definition which is out of normal use due to:
(1) Breakdown;
(2) Repair;
(3) Loss; or
(4) Destruction.

8. ***"Depreciation"*** means the decline in value due to wear and tear and/or obsolescence.

9. ***"Family member"*** means:
A. Any person related to ***"you"*** by blood, marriage, or adoption who is a resident of ***"your"*** ***"household"***; and
B. ***"Your"*** ward or foster child who resides in ***"your"*** ***"household"***.

10. ***"Household"*** consists of ***"you"***, a ***"family member"***, and any domestic partners, unrelated roomers, boarders, live-in employees, and other people who are not related to ***"you"***, who live together in the same housing unit. A housing unit includes a house, apartment, condominium, mobile home, trailer, a group of rooms, or a single room that is self-contained and located at the address listed in ***"your"*** Declarations page.

11. ***"Loss"*** means:
A. Sudden, direct, and unintended physical damage; or
B. Theft.

12. ***"Minimum limits"*** refers to the minimum amounts of liability insurance required to be provided under the automobile financial responsibility and insurance laws of Michigan.

13. ***"Newly acquired auto"*** means an ***"auto"*** that ***"you"*** become the ***"owner"*** of during the policy period, if:
A. ***"You"*** pay any additional premium due for coverage under this policy;
B. ***"We"*** insure all other ***"autos"*** ***"you"*** ***"own"***;
C. No other insurance policy provides coverage for the ***"auto"***; and
D. Subject to the following conditions:
(1) If the ***"auto"*** ***"you"*** acquire replaces an ***"auto"*** shown on the Declarations page, that acquired ***"auto"*** will have the same coverage as the ***"auto"*** it replaces. Coverage will begin when ***"you"*** become the ***"owner"*** of the acquired ***"auto"***. ***"You"*** must ask ***"us"*** to insure a replacement ***"auto"*** within 30 days after ***"you"*** become the ***"owner"*** if ***"you"*** want to continue any coverage ***"you"*** had under **Part IV: Coverage for Physical Damage to an Auto** after those initial 30 days.
(2) If the ***"auto"*** ***"you"*** acquire replaces an ***"auto"*** shown on the Declarations page, and the replaced ***"auto"*** did not have coverage under **Part IV: Coverage for Physical Damage to an Auto**, ***"you"*** may add this coverage for the replacement ***"auto"***. The added coverage will not be effective until after ***"we"*** receive ***"your"*** request and ***"we"*** agree to add the coverage.
(3) If the ***"auto"*** ***"you"*** acquire is in addition to the ***"autos"*** shown on the Declarations page, that added ***"auto"*** will have the same coverage as the ***"auto"*** on the Declarations page with the broadest coverage if ***"you"*** ask ***"us"*** to insure the additional ***"auto"*** within 30 days after ***"you"*** become the ***"owner"***. If ***"you"*** ask ***"us"*** to insure the additional ***"auto"*** within 30 days after ***"you"*** become the ***"owner"***, coverage will begin when ***"you"*** become the ***"owner"*** of the ***"auto"***.
(4) If the ***"auto"*** ***"you"*** acquire is in addition to the ***"autos"*** shown on the Declarations page, and ***"you"*** do not ask ***"us"*** to insure the additional ***"auto"*** within 30 days after ***"you"*** become the ***"owner"***, no coverage will be provided for the additionally acquired ***"auto"*** until after ***"you"*** ask ***"us"*** to insure the additional ***"auto"*** and ***"we"*** agree to insure the ***"auto"***.

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(5) If no *"auto"* on the policy has coverage under **Part IV: Coverage for Physical Damage to an Auto**, *"you"* may add this coverage for the acquired *"auto"*. The added coverage will not be effective until after *"we"* receive *"your"* request and *"we"* agree to add the coverage.
(6) If *"you"* ask *"us"* to increase any of *"your"* limits, the increase will not be effective until after *"we"* receive *"your"* request and *"we"* agree to increase the limits.

14. *"Occupying"* means:
    A. In;
    B. Upon; or
    C. Getting in, on, out, or off.

15. *"Own"* and *"owned"*, with respect to a motor vehicle means:
    A. Holding the legal title to the motor vehicle, unless the titleholder is engaged in the business of leasing motor vehicles and is the lessor of the motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period greater than 30 days;
    B. Having the immediate right of possession of the motor vehicle under an installment sales contract; or
    C. Renting the motor vehicle or having use thereof, under a lease or otherwise, for a period greater than 30 days.

16. *"Owner"* means a person who:
    A. Holds the legal title to the motor vehicle, unless the titleholder is engaged in the business of leasing motor vehicles and is the lessor of the motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period greater than 30 days;
    B. Has the immediate right of possession of the motor vehicle under an installment sales contract; or
    C. Rents the motor vehicle or has use thereof, under a lease or otherwise, for a period greater than 30 days.

17. *"Property damage"* means the physical damage of, destruction of, or loss of use of, tangible property.

18. *"Trailer"* means a vehicle designed to be pulled by a private passenger *"auto"*, which is not used:
    A. As an office, store, or for commercial display purposes;
    B. To transport passengers; or
    C. As a primary residence.

PART I: LIABILITY COVERAGE

INSURING AGREEMENT – RESIDUAL LIABILITY COVERAGE

Subject to the Limits of Liability, *"we"* will pay damages for *"bodily injury"* and *"property damage"* for which any *"insured"* becomes legally responsible because of an *"auto"* *"accident"*. Damages include prejudgment interest awarded against the *"insured"*. *"We"* will settle or defend as *"we"* deem appropriate, any claim or lawsuit asking for these damages. However, *"we"* will not pay for punitive damages under **Part I**. In addition to *"our"* limit of liability, *"we"* will pay costs *"we"* incur when *"we"* defend an *"insured"*. *"Our"* duty to settle or defend ends when *"our"* limit of liability for this coverage has been exhausted by payment of judgments or settlements, or the limit is paid into a court that has jurisdiction. *"We"* have no duty to defend any lawsuit or settle any claim for *"bodily injury"* or *"property damage"* not covered under this policy.

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INSURING AGREEMENT – LIMITED PROPERTY DAMAGE LIABILITY COVERAGE

Subject to the $1,000 limit of liability, and in return for payment of the premium for Limited Property Damage Liability Coverage, ***"we"*** will pay for damage to a motor vehicle for which an ***"Insured"*** becomes legally liable.

ADDITIONAL DEFINITIONS FOR PART I: LIABILITY COVERAGE

1. ***"Insured"*** as used in **Part I** means:
   - **A.** ***"You"*** or any ***"family member"*** for the ownership, maintenance, or use of any ***"auto"*** or ***"trailer"***;
   - **B.** Any person using a ***"covered auto"*** with permission from ***"you"*** or a ***"family member"***;
   - **C.** For a ***"covered auto"***, any other person or organization but only with respect to legal responsibility for acts or omissions of an insured person described in **1.A** or **1.B** above; or
   - **D.** For any ***"auto"*** or ***"trailer"*** other than a ***"covered auto"***, any other person or organization but only with respect to legal responsibility for the acts or omissions of ***"you"*** or a ***"family member"*** covered under this **Part I**. This Provision **1.D.** applies only if the person or organization does not ***"own"*** or hire the ***"auto"*** or ***"trailer"***.

   However, the following are not ***"insureds"*** under **Part I** if the provisions of Section 2679 of Title 28, United States Code, as amended, require the Attorney General of the United States to defend that person or organization in any civil action for ***"bodily injury"*** or ***"property damage"*** arising out of the ***"accident"***:
   - **A.** The United States of America or any of its agencies.
   - **B.** Any person with respect to ***"bodily injury"*** or ***"property damage"*** resulting from the operation of an ***"auto"*** by that person as an employee of the United States Government.

SUPPLEMENTARY PAYMENTS

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

1. Up to $250 for the cost of bail bonds required because of an ***"accident"*** or traffic law violation resulting from an ***"accident"***. The ***"accident"*** must result in ***"bodily injury"*** or ***"property damage"*** covered under this policy. ***"We"*** have no duty to apply for or furnish this bond.
2. Premiums on appeal bonds and bonds to release attachments in any lawsuit ***"we"*** defend. ***"We"*** are not required to apply for or provide these bonds. ***"We"*** also are not required to purchase a bond in an amount that is greater than ***"our"*** limit of liability.
3. Interest accruing after a judgment is entered in any lawsuit ***"we"*** defend. ***"Our"*** duty to pay interest ends when ***"we"*** offer to pay, or have deposited with the court, that part of the judgment which does not exceed ***"our"*** limit of liability for this coverage. This does not apply if ***"we"*** have not been given notice of lawsuit or the opportunity to defend an ***"insured"***.
4. Up to $200 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 FOR PART I: LIABILITY COVERAGE

(PLEASE READ CAREFULLY. IF ANY OF THE EXCLUSIONS BELOW APPLY, COVERAGE WILL NOT BE AFFORDED UNDER PART I.)

1. ***"We"*** have no duty to defend and do not provide Liability Coverage for any ***"insured"***:
   - **A.** Who intentionally causes, reasonably expects to cause or directs another to cause, ***"bodily injury"*** or ***"property damage"***.
   - **B.** For ***"bodily injury"*** or ***"property damage"*** that results, or is reasonably expected to result from, the intentional acts of an ***"insured"***.
   - **C.** For ***"property damage"*** to property owned or being transported by that ***"insured"***.

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D. For ***"property damage"*** to property:
(1) Rented to;
(2) Used by; or
(3) In the care of;
that ***"insured"***.
This Exclusion **1.D.** does not apply to ***"property damage"*** to a residence or private garage unless that residence or garage is owned by ***"you"*** or another ***"insured"***.

E. For ***"bodily injury"*** to an employee of that ***"insured"*** during the course of employment. This Exclusion **1.E.** does not apply to ***"bodily injury"*** to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.

F. For that ***"insured's"*** liability arising out of the ownership or operation of any vehicle while it is used as a public or livery conveyance, or used to carry property for compensation or a fee. This Exclusion **1.F.** applies to, but is not limited to, the delivery of magazines, newspapers, food, or any other products. However, this Exclusion **1.F.** does not apply to shared-expense car pools or to the use of the ***"covered auto"*** for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received.

G. While employed or otherwise engaged in the ***"business"*** of:
(1) Selling;
(2) Leasing;
(3) Repairing;
(4) Testing;
(5) Servicing;
(6) Storing;
(7) Parking;
(8) Cleaning; or
(9) Delivering;
vehicles designed for use mainly on public highways.

This Exclusion **1.G.** does not apply to the ownership, maintenance, or use of a ***"covered auto"*** by:
(1) ***"You"***;
(2) Any ***"family member"***; or
(3) Any partner, agent, or employee of ***"you"*** or any ***"family member"***.

H. Maintaining or using any vehicle while that ***"insured"*** is employed or otherwise engaged in any ***"business"*** (other than farming or ranching). This Exclusion **1.H.** does not apply to business use of a ***"covered auto"*** by an ***"insured"*** that has been disclosed to ***"us"*** and for which all applicable premiums have been paid.

I. Using a vehicle without permission of its ***"owner"*** to do so.

J. For ***"bodily injury"*** or ***"property damage"*** resulting from exposure to radioactive or nuclear material, or otherwise covered under any nuclear energy liability policy.

K. For ***"bodily injury"*** or ***"property damage"*** resulting from the operation of a vehicle as an employee of the United States government and acting within the scope of that employment. This Exclusion **1.K.** applies when the provisions of the Federal Tort Claims Act apply.

L. For ***"bodily injury"*** or ***"property damage"*** resulting from the intentional discharge, dispersal, or release of radioactive, nuclear, biological, chemical, or other hazardous materials, or from exposure to those materials.

M. For any liability assumed by an ***"insured"*** under any contract or agreement.

N. For ***"bodily injury"*** or ***"property damage"*** resulting from the use of any ***"auto"*** or trailer as a residence or premises, or for office or display purposes.

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2. ***"We"*** do not provide Liability Coverage for the ownership, maintenance, or use of:
   A. Any vehicle which:
      (1) Has fewer than four wheels; or
      (2) Is designed mainly for use off public roads.
      This Exclusion **2.A.** does not apply:
      (1) While such vehicle is being used by an ***"insured"*** in a medical emergency; or
      (2) To a ***"trailer"***.
   B. Any vehicle, other than a ***"covered auto"***, which is:
      (1) ***"Owned"*** by ***"you"***; or
      (2) Furnished or available for ***"your"*** regular use.
   C. Any vehicle, other than a ***"covered auto"***, which is:
      (1) ***"Owned"*** by any ***"family member"***; or
      (2) Furnished or available for the regular use of any ***"family member"***.
      This Exclusion **2.C.** does not apply to ***"you"*** while ***"you"*** are maintaining or ***"occupying"*** any vehicle which is:
      (1) ***"Owned"*** by any ***"family member"***; or
      (2) Furnished or available for the regular use of any ***"family member"***.
   D. Any vehicle while competing in, or practicing or preparing for, any prearranged or organized racing or speed contest.
   E. Any vehicle located inside a facility designed for racing or high performance driving for the purpose of:
      (1) Competing in;
      (2) Practicing or preparing for any prearranged or organized racing or speed contest; or
      (3) Participating in any racing school, driving school, driver training, skills training, race driving experience, or racing adventure program.

3. To the extent that the limits of liability for this coverage exceed the ***"minimum limits"*** of liability required by the financial responsibility law of the state in which a ***"covered auto"*** is principally garaged, ***"we"*** do not provide Liability Coverage for any ***"insured"***:
   A. For ***"bodily injury"*** to ***"you"*** or any ***"family member"*** for any damages in excess of the ***"minimum limits"***.
   B. Arising out of the ***"use"*** of a ***"covered auto"*** which is leased or rented to others.

LIMIT OF LIABILITY

1. The applicable limit of liability for each person for Bodily Injury Liability is ***"our"*** maximum limit of liability for all damages, including, but not limited to, damages for:
   A. Loss of society;
   B. Loss of companionship;
   C. Loss of services;
   D. Loss of consortium; and
   E. Wrongful death;
   which may arise as a result 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 on the Declarations page 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"***.

2. The applicable limit of liability for each ***"accident"*** for Property Damage Liability is ***"our"*** maximum limit of liability for all ***"property damage"*** resulting from any one ***"auto"*** ***"accident"***.

3. The applicable limit of liability for Limited Property Damage Liability Coverage is $1,000.

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4. The applicable limit of liability is the most *"we"* will pay regardless of the number of:
   A. ***"Insureds"***;
   B. Claimants;
   C. Claims;
   D. Claims made;
   E. Lawsuits filed;
   F. Vehicles or premiums shown on the Declarations page; or
   G. Vehicles involved in the *"accident"*.

5. The limit of liability for each person and each accident shown on the Declarations page for ***"bodily injury"*** shall apply to all ***"bodily injury"*** sustained in the *"accident"*, and the limit of liability shown on the Declarations page for ***"property damage"*** shall apply for all ***"property damage"*** caused by the *"insured"* in any one *"accident"*.

6. A ***"covered auto"*** and a ***"trailer"*** are considered to be one ***"auto"***. Therefore, the limits of liability will not be increased or stacked for an *"accident"* involving a ***"covered auto"*** that has an attached ***"trailer"***.

7. No one will be entitled to receive duplicate payments for the same elements of damages under this policy or any other source.

OUT OF STATE COVERAGE

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

1. If the state or province has:
   A. A financial responsibility or similar law requiring limits of liability for ***"bodily injury"*** or ***"property damage"*** higher than the limit shown in the Declarations page, *"your"* policy will provide the higher specified limit.
   B. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses an ***"auto"*** in that state or province, *"your"* policy will provide at least the required minimum amounts and types of coverage.

2. No one will be entitled to duplicate payments for the same elements of damages.

FINANCIAL RESPONSIBILITY

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required. If *"we"* make a payment that *"we"* would not have made if this policy was not certified as proof of financial responsibility, the ***"insured"*** must reimburse *"us"*.

OTHER INSURANCE

1. If there is other applicable liability insurance available under one or more policies or provisions of coverage, *"we"* will pay only *"our"* share of the damages. *"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"*, including any temporary substitutes, shall be excess over any other collectible insurance, self-insurance, or bond.

2. Any Limited Property Damage Liability Coverage provided by *"us"* under **Part I** will be excess over any other insurance, self-insurance or bond, including, but not limited to, coverage on the damaged motor vehicle.

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PART II: PERSONAL INJURY PROTECTION & PROPERTY PROTECTION COVERAGE

INSURING AGREEMENT - PERSONAL INJURY PROTECTION

In return for ***"your"*** premium payment for Personal Injury Protection, and subject to the limits of liability specified in ***"your"*** Declarations page, ***"we"*** will pay Personal Injury Protection benefits, as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended, to or on behalf of an ***"insured"*** for covered losses and reasonable expenses:

1. Resulting from accidental ***"bodily injury"***;
2. Sustained by an ***"insured"***;
3. Arising out of the ownership, operation, maintenance or use of a ***"motor vehicle"*** as a ***"motor vehicle"***; and
4. Without regard to fault.

INSURING AGREEMENT - PROPERTY PROTECTION COVERAGE

In return for ***"your"*** premium payment for Property Protection Coverage, and subject to the limits of liability specified in ***"your"*** Declarations page, ***"we"*** will pay:

1. For accidental ***"property damage"***;
2. Arising out of the ownership, operation, maintenance or use of a:
   - **A.** ***"Motor vehicle"*** as a ***"motor vehicle"*** by ***"you"*** or a ***"family member"***; or
   - **B.** ***"Covered auto"*** as a ***"motor vehicle"*** by any other person who has permission from ***"you"*** or a ***"family member"*** to use that ***"covered auto"*** for less than 30 days; and
3. Without regard to fault;

as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended.

PERSONAL INJURY PROTECTION BENEFITS

Personal Injury Protection benefits are payments to or on behalf of the ***"insured"*** for:

1. ***"Allowable expenses"*** means all reasonable charges incurred for reasonably necessary products, services and accommodations for the care, recovery or rehabilitation of an ***"insured"***.

   However, ***"allowable expenses"*** does not include:
   - **A.** Charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations except when the ***"insured"*** requires special or intensive care; or
   - **B.** The portion of any charge for products, services and accommodations rendered that exceeds the amount customarily charged for like products, services and accommodations in cases not involving insurance.

2. Funeral expenses up to $1,750 per person.

3. ***"Work loss"*** means actual loss of income from work an ***"insured"*** would have performed during the first 3 years after the date of the ***"accident"*** if that ***"insured"*** had not been injured, subject to the statutory maximum limit and not more than 85% of gross income. For an ***"insured"*** who is temporarily unemployed at the time of the ***"accident"*** or during the period of disability, ***"work loss"*** shall be based on earned income for the last month employed full time preceding the ***"accident"***.

   However, ***"work loss"*** will not be provided:
   - **A.** For any loss of income after the death of the ***"insured"***.
   - **B.** If it has been waived by the ***"insured"*** as permitted by law.

4. ***"Replacement services"*** means expenses, not exceeding $20 per day, reasonably incurred by the ***"insured"*** in

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obtaining ordinary and necessary services in place of those that, if the ***"insured"*** had not been injured, the ***"insured"*** would have performed during the first 3 years after the date of the ***"accident"***, not for income but for the benefit of the ***"insured"*** and the dependents of the ***"insured"***.

5. ***"Survivors' loss"*** means, subject to the statutory maximum limit:
   A. Loss, after the date on which the ***"insured"*** died, of contributions of tangible things of economic value, not including services, that dependents of the deceased at the time of the deceased's death would have received for support during their dependency from the deceased if the deceased had not suffered the accidental ***"bodily injury"*** causing death; and
   B. Expenses, not exceeding $20 per day, reasonably incurred by these dependents during their dependency and after the date on which the deceased died in obtaining ordinary and necessary services in place of those that the deceased would have performed for their benefit if the deceased had not suffered the ***"bodily injury"*** causing death.

   However, ***"survivors' loss"*** is not payable:
   A. Beyond the first 3 years after the date of the ***"accident"***.
   B. When dependency on the ***"insured"*** ends which, in the case of:
      (1) A surviving spouse, dependency ends upon that spouse's death or remarriage; or
      (2) Any other person, dependency ends upon that person:
         (a) Attaining the age of 18;
         (b) Having no physical or mental incapacity from earning;
         (c) No longer being engaged full time in a formal program of academic or vocational education or training; or
         (d) Dying.

COVERED TERRITORY

Notwithstanding the "Policy Period and Territory" general provision, coverage under this **Part II** applies and is payable only for:

1. ***"Bodily injury"*** suffered in a ***"motor vehicle"*** ***"accident"*** occurring:
   A. Inside the State of Michigan.
   B. Outside the State of Michigan provided:
      (1) The ***"accident"*** occurs within the United States, its territories and possessions or in Canada, and
      (2) The person whose ***"bodily injury"*** is the basis of the claim under **Part II** was at the time of the ***"accident"***:
         (i) ***"You"***;
         (ii) A ***"family member"***; or
         (iii) An occupant of a ***"covered auto"*** involved in the ***"accident"***.
2. ***"Property damage"*** arising from any ***"motor vehicle"*** ***"accident"*** occurring inside the State of Michigan.

ADDITIONAL DEFINITIONS FOR PART II: PERSONAL INJURY PROTECTION & PROPERTY PROTECTION COVERAGE

1. ***"Insured"*** and ***"Insureds"*** mean:
   A. ***"You"*** or any ***"family member"*** who sustains ***"bodily injury"*** as a result of ***"motor vehicle"*** ***"accident"*** whether or not ***"occupying"*** a ***"motor vehicle"***;
   B. Any other person who sustains ***"bodily injury"***: and
      1. While ***"occupying"*** a ***"covered auto"*** ***"owned"*** by the named insured, if no other coverage providing personal injury protection benefits applies to that person; and
      2. While not ***"occupying"*** a ***"motor vehicle"***, sustains ***"bodily injury"*** as a result of an ***"accident"***

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involving a ***"covered auto"*** ***"owned"*** by the named insured, if no other coverage providing personal injury protection benefits applies to that person.

2. ***"Motor vehicle"*** and ***"motor vehicles"*** mean a vehicle, including a trailer, operated or designed for operation upon a public highway, by power other than muscular power, which has more than 2 wheels.

   However, ***"motor vehicle"*** and ***"motor vehicles"*** do not include:
   A. Motorcycles or mopeds; or
   B. Farm tractors or other implements of husbandry which are not required to be registered pursuant to Section 216 of the Michigan Vehicle Code, as amended.

EXCLUSIONS FOR PART II: PERSONAL INJURY PROTECTION & PROPERTY PROTECTION COVERAGE

(PLEASE READ CAREFULLY. IF ANY OF THE EXCLUSIONS BELOW APPLY, COVERAGE WILL NOT BE AFFORDED UNDER PART II.)

1. Coverage under **Part II** does not apply to ***"bodily injury"***:
   A. Arising out of the ownership, operation, maintenance or use of a parked ***"motor vehicle"***. This Exclusion **1.A.** does not apply if:
      (1) The ***"motor vehicle"*** was parked in such a way as to cause unreasonable risk of the ***"bodily injury"*** which occurred;
      (2) Except as provided in Exclusion **1.B.**, the ***"bodily injury"*** was a direct result of physical contact with equipment permanently mounted on the ***"motor vehicle"***, while the equipment was being operated or used or property being lifted onto or lowered from the ***"motor vehicle"*** in the loading or unloading process; or
      (3) Except as provided in Exclusion **1.B.**, the ***"bodily injury"*** was sustained by the ***"insured"*** while ***"occupying"*** the ***"motor vehicle"***.
   B. Arising out of the ownership, operation, maintenance or use of a parked ***"motor vehicle"*** if benefits are available under the Michigan Workers' Disability Compensation Act, as amended, or a similar law of another state or under a similar federal law to an ***"insured"*** who sustains the ***"bodily injury"*** in the course of his or her employment while doing either of the following:
      (1) Loading, unloading, or doing mechanical work on a vehicle unless the ***"bodily injury"*** arose from the use or operation of another vehicle, but not including a ***"motor vehicle"*** being loaded on, unloaded from, or secured to, as cargo or freight, a ***"motor vehicle"***; or
      (2) Entering into or alighting from the vehicle unless the ***"bodily injury"*** was sustained while entering into or alighting from the vehicle immediately after the vehicle became disabled. This shall not apply if the ***"bodily injury"*** arose from the use or operation of another vehicle, but not including a ***"motor vehicle"*** being loaded on, unloaded from or secured to, as cargo or freight, a ***"motor vehicle"***.
   C. Sustained by ***"you"***, a ***"family member"***, or any other person while using a motor vehicle or motorcycle which was taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle.
   D. Sustained by an ***"insured"*** who is the ***"owner"*** or registrant of a ***"motor vehicle"*** or motorcycle involved in an ***"accident"*** and that vehicle is not covered by security as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended.
   E. Sustained by a person who resides outside the State of Michigan, when ***"occupying"*** a ***"motor vehicle"*** or motorcycle not registered in Michigan, which is not insured by a company which has filed a certification in compliance with the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended.

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F. Sustained while ***"occupying"*** a ***"motor vehicle"*** operated in the business of transporting passengers which is:
(1) Not ***"your"*** ***"covered auto"***; and
(2) Insured as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended.
This exclusion does not apply to ***"bodily injury"*** while ***"occupying"***:
(1) A school bus providing transportation not prohibited by law;
(2) A bus operated by a certified carrier;
(3) A bus operated under a government sponsored transportation program;
(4) A bus operated by or servicing a non-profit organization;
(5) A taxi-cab; or
(6) A bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point.

G. Sustained by ***"you"*** or a ***"family member"*** while ***"occupying"*** a ***"motor vehicle"***, other than a ***"covered auto"***, which is:
(1) ***"Owned"*** or registered by the employer of ***"you"*** or a ***"family member"***; and
(2) Covered by the security required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended.

H. Sustained by ***"you"*** while ***"occupying"***, or when struck as a pedestrian by, a ***"motor vehicle"***, other than a ***"covered auto"***, which is ***"owned"*** by or registered to ***"you"***.

I. Sustained by a ***"family member"*** who is entitled to no-fault benefits or personal injury protection insurance under another policy as a named insured.

J. Sustained by ***"you"*** or any ***"family member"*** while an operator or passenger of a motorcycle, if the ***"owner"***, registrant or operator of the ***"motor vehicle"*** involved in the ***"accident"*** with the motorcycle has provided security for that ***"motor vehicle"*** as required under the Michigan Insurance Code.

K. To any person, other than ***"you"*** or a ***"family member"***, who is:
(1) Entitled to no-fault benefits or personal injury protection insurance under another policy as a named insured or ***"family member"***; or
(2) ***"Occupying"*** a ***"motor vehicle"***, or struck as a pedestrian by a ***"motor vehicle"***, which is:
(a) Not a ***"covered auto"***;
(b) Operated by ***"you"*** or a ***"family member"***; and
(c) Covered by security as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended.

2. Coverage under **Part II** does not apply to ***"property damage"*** to:
A. Vehicles and their contents, including trailers, operated or designed for operation upon a public highway by power other than muscular power, unless the vehicle is parked in a manner as not to cause unreasonable risk of the damage which occurred.
B. Property owned by ***"you"*** or a ***"family member"***, if that person was the ***"owner"***, registrant, or operator of a vehicle involved in the ***"motor vehicle"*** ***"accident"*** out of which the ***"property damage"*** arose.
C. Utility transmission lines, wires, or cables arising from the failure of a municipality, utility company, or cable television company to comply with the requirements of Michigan Law, as amended.
D. Tangible property, other than the ***"covered auto"***, that occurs within the course of a business of repairing, servicing, or otherwise maintaining ***"motor vehicles"***.

3. Coverage under **Part II** does not apply to ***"bodily injury"*** or ***"property damage"***:
A. Suffered or caused intentionally by the person making a claim under **Part II**. This exclusion does not apply when, even though a person knows that ***"bodily injury"*** or ***"property damage"*** is substantially certain to be caused by that person's act or omission, the person acts, or refrains from acting, for the purpose of averting injury to property or to any person including himself or herself.
B. Resulting from an intentional physical attack that occurs while ***"occupying"*** a ***"motor vehicle"***, which

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does not arise out of the ownership, operation, maintenance or use of a ***"motor vehicle"*** as a ***"motor vehicle"***.

C. Arising out of the operation, maintenance or use of a ***"motor vehicle"*** as a residence or premises.

D. Otherwise excluded by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended, or the law of the State of Michigan.

LIMITS OF LIABILITY

1. The limit of liability shown on the Declarations page 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:

A. ***"Insureds"***;

B. Claims made;

C. Vehicles or premiums shown in the Declarations page; or

D. Vehicles involved in the ***"accident"***.

There will be no stacking or combining of coverage afforded to more than one ***"auto"*** under this policy.

2. No one will be entitled to receive duplicate payments for the same expenses under this coverage and:

A. **Part I: Liability Coverage**;

B. Any Uninsured or Underinsured Motorists Coverage provided in **Part III** by this policy; or

C. Any other coverage.

3. No one will be entitled to duplicate payments for any elements of damages or expense under this policy or from any other source. If there is any other source of benefits, including insurance or self-insurance, providing benefits or coverage for expenses or loss covered under **Part II**, all coverages shall be coordinated so that up to, but no more than, 100% of any such expenses or loss shall be recoverable under this policy and all other sources of benefits combined.

4. Subject to the limit of liability shown on the Declarations page, any amount otherwise payable under **Part II** for Personal Injury Protection will be reduced by any of the following:

A. The deductible shown on the Declarations page. The deductible will apply only as to ***"you"*** or a ***"family member"***; and

B. Benefits which are provided or required to be provided under the laws of any state or the federal government including, but not limited to:

(1) Social security disability, survivor, or dependent benefits; and

(2) Workers' compensation benefits.

5. Subject to the applicable limit of liability shown on the Declarations page, payment for Property Protection Coverage for ***"property damage"*** shall consist of the lesser of the reasonable repair costs or replacement costs less ***"depreciation"*** and, if applicable, the value of loss of use.

6. If "**PIP EXCESS MEDICAL**" is identified on the Declarations page and at the time of the ***"accident"***, ***"you"*** or any ***"family member"*** have no primary medical insurance, health care benefit plans or similar benefit insurance, self-insurance or plans available and applicable to the loss, any amount payable by ***"us"*** will be reduced by a $500 penalty deductible in addition to the deductible shown on the Declarations page. The additional $500 penalty deductible amount applies separately to each loss.

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COORDINATION OF BENEFITS – EXCESS COVERAGE ELECTIONS

1. Excess *"Allowable Expenses"* Coverage
   - **A.** If *"you"* have elected to coordinate other coverage with Personal Injury Protection for ***"allowable expenses"***, the primary source of coverage for *"you"* and any ***"family member"*** will be all other medical insurance, health care benefit plans, or similar benefit insurance, self-insurance or plans available, including, but not limited to:
     - **(1)** Individual, blanket or group accident disability or hospitalization insurance, self-insurance or similar plans;
     - **(2)** Medical or surgical reimbursement insurance or plans;
     - **(3)** Automobile or premises insurance affording medical expense benefits; and
     - **(4)** Health Maintenance Organization (HMO) service plans.
   - **B.** Benefits under **Part II** for ***"allowable expenses"***:
     - **(1)** Are excluded to the extent that any elements of ***"allowable expenses"*** are paid, payable or required to be provided to, or on behalf of, *"you"* or a ***"family member"*** under the provisions of any medical insurance, health care benefit plans, or similar benefit insurance, self-insurance or plan.
     - **(2)** Will be provided as excess coverage for *"you"* and any ***"family member"*** after benefits from all other available medical insurance, health care benefit plans, or similar benefit plans have been obtained. *"We"* will pay ***"allowable expenses"*** in excess of any valid limitations as to amount or duration of benefits that are not paid or payable under any other insurance, self-insurance or plans.
   - **C.** Are subject to a separate deductible for each individual for whom these benefits apply.

2. Excess *"Work Loss"* Coverage
   - **A.** If *"you"* have elected to coordinate other coverage with Personal Injury Protection for ***"work loss"***, the primary source of coverage for *"you"* and any ***"family member"*** will be all other insurance, self-insurance or other similar plans available covering such loss including, but not limited to:
     - **(1)** Individual, blanket or group accident, sickness and accident, or disability insurance or plans; and
     - **(2)** Insurance or plans covering mortgage or motor vehicle loans which provide for direct payment to the lender.
   - **B.** Benefits under **Part II** for ***"work loss"***:
     - **(1)** Are excluded to the extent that any elements of ***"work loss"*** are paid, payable or required to be provided to, or on behalf of, *"you"* or a ***"family member"*** under the provisions of any insurance, self-insurance or other similar benefit plans.
     - **(2)** Will be provided as excess coverage for *"you"* or a ***"family member"*** after benefits from all other available insurance, self-insurance or other similar plans have been obtained. *"We"* will pay ***"work loss"*** in excess of any valid limitations as to amount or duration of benefits that are not paid or payable under any other insurance, self-insurance or plans.
   - **C.** Is subject to a deductible for each ***"accident"***.

OTHER INSURANCE

1. If other Personal Injury Protection or motor vehicle medical payments insurance applies, *"we"* will pay as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended, and as specified therein at M.C.L.A. Section 500.3114, 500.3115, and 500.3171, as amended. If not otherwise specified therein, the following order of priority shall determine which insurer is responsible for providing payment:
   - **A.** For a person ***"occupying"*** a ***"motor vehicle"***, except ***"motor vehicles"*** ***"owned"*** by an employer of the ***"insured"***, limousines and courtesy vehicles, the order of priority shall be:
     - **(1)** A policy in which the ***"insured"*** is a named insured; then
     - **(2)** A policy insuring the spouse of the ***"insured"*** or any ***"family member"***; then

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(3) A policy insuring the *"owner"* of the *"motor vehicle"* occupied in the *"accident"*; then
(4) A policy insuring the operator of the *"motor vehicle"* occupied in the *"accident"*; then
(5) The Assigned Claims Facility And Plan.

B. For a person *"occupying"* a *"motor vehicle"* *"owned"* by an employer of the *"insured"*, a limousine, or a courtesy vehicle, the order of priority shall be:
(1) A policy insuring the *"owner"* of the *"motor vehicle"* occupied in the *"accident"*; then
(2) A policy insuring the operator of any *"motor vehicle"* in the *"accident"*; then
(3) A policy in which the *"insured"* is a named insured; then
(4) A policy insuring the spouse of the *"insured"* or any *"family member"*; then
(5) The Assigned Claims Facility And Plan.

C. For injured operators or passengers of motorcycles, the order of priority shall be:
(1) A policy insuring the *"owner"* or registrant of any *"motor vehicle"* involved in the *"accident"*; then
(2) A policy insuring the operator of any *"motor vehicle"* in the *"accident"*; then
(3) A motor vehicle policy insuring the operator of the motorcycle in the *"accident"*; then
(4) Any motor vehicle policy insuring the *"owner"* or registrant of the motorcycle involved in the *"accident"*; then
(5) The Assigned Claims Facility And Plan.

D. For pedestrians or a person who is not *"occupying"* a *"motor vehicle"*, the order of priority shall be:
(1) A policy in which the *"insured"* is a named insured; then
(2) A policy insuring the spouse of the *"insured"* or any *"family member"*; then
(3) A policy insuring the *"owner"* or registrant of any *"motor vehicle"* involved in the *"accident"*; then
(4) A policy insuring the operator of a *"motor vehicle"* involved in the *"accident"*; then
(5) The Assigned Claims Facility And Plan.

2. If other Property Protection Coverage applies, *"we"* will pay as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended, and as specified therein at M.C.L.A. Section 500.3125 and 500.3127, as amended. If not otherwise specified therein, the following order of priority shall determine which insurer is responsible for providing payment:
A. Insurers of *"owners"* or registrants of *"motor vehicles"* involved in the *"accident"*; then
B. Insurers of operators of any *"motor vehicles"* involved in the *"accident"*.

PREMIUM RECOMPUTATION

The policy's premium was determined based upon the limitations on the right to sue and recover damages set forth in the Michigan Insurance Code. If it is conclusively determined by a court of competent jurisdiction that the provisions of the Michigan Insurance Code, or any amendment thereto, is invalid or unenforceable in whole or in part, then, *"we"* may amend this policy and recompute the policy premium. These amendments and recomputations will be effective retroactively to the date that such act or any amendment is deemed to be invalid or unenforceable in whole or in part.

PART III: UNINSURED AND UNDERINSURED MOTORISTS COVERAGE

INSURING AGREEMENT – UNINSURED MOTORIST COVERAGE

In return for payment of the premium for this coverage when due, and subject to the limits of liability, *"we"* agree with *"you"* as follows:

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

   The liability of that *"owner"* or operator 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 lawsuit brought without any notice to *"us"* is not binding on *"us"*.

INSURING AGREEMENT – UNDERINSURED MOTORIST COVERAGE

In return for payment of the premium for this coverage when due, and subject to the limits of liability, *"we"* agree with *"you"* as follows:

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

   The liability of that *"owner"* or operator for these damages must arise out of the ownership, maintenance, or use of the *"underinsured motor vehicle"*.

   "We" will pay under this coverage only if:
   A. The limits of liability under all *"bodily injury"* liability bonds or policies applicable to the *"underinsured motor vehicle"* have been exhausted by payment of judgments or settlements; or
   B. A tentative settlement has been made between an *"insured"* and the insurer of the *"underinsured motor vehicle"*, and *"we"*:
      (1) Have been given prompt written notice of such tentative settlement; and
      (2) Advance payment to the *"insured"* in an amount equal to the tentative settlement within 30 days after receipt of notice.

ADDITIONAL DEFINITIONS FOR PART III: UNINSURED AND UNDERINSURED MOTORIST COVERAGE

1. *"Insured"* as used in **Part III** means:
   A. *"You"*;
   B. Any *"family member"*;
   C. Any other person *"occupying"* a *"covered auto"* with permission from *"you"* or a *"family member"*, but only up to the minimum bodily injury limits of liability specified by the financial responsibility or insurance laws of the state in which a *"covered auto"* is principally garaged; or
   D. Any person for damages that person is entitled to recover because of *"bodily injury"* to which this coverage applies that has been sustained by an *"insured"* defined in **1.A.**, **1.B.**, or **1.C.** above.

2. *"Underinsured motor vehicle"* means a land motor vehicle, motorcycle or *"trailer"* of any type to which a bodily injury liability bond or policy applies at the time of the *"accident"* but the amount paid for *"bodily injury"* under that bond or policy to an *"insured"* is not enough to pay the full amount the *"insured"* is legally entitled to recover as damages.

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However, *"underinsured motor vehicle"* does not include any vehicle or equipment:

A. To which a bodily injury liability bond or policy applies at the time of the *"accident"* but its limit for bodily injury liability is less than the required *"minimum limits"* for bodily injury.
B. Operated on rails or crawler treads.
C. Designed mainly for use off public roads.
D. While located for use as a residence or premises.
E. To which a bodily injury liability bond or policy applies at the time of the *"accident"* but the bonding or insuring company:
(1) Denies coverage; or
(2) Is or becomes insolvent.
F. That is *"owned"* or operated by a person qualifying as a self-insured under any applicable motor vehicle law.
G. That is an *"auto"* *"owned"* by *"you"* or a *"family member"* or furnished or available for the regular use of *"you"* or a *"family member"*.
H. That is an *"uninsured motor vehicle"*.

3. *"Uninsured motor vehicle"* means a land motor vehicle, motorcycle or *"trailer"* of any type:
A. To which no bodily injury liability bond or policy applies at the time of the *"accident"*.
B. To which a bodily injury liability bond or policy applies at the time of the *"accident"* but its limit for bodily injury liability is less than the required *"minimum limits"* for bodily injury.
C. Which is a hit-and-run vehicle whose operator or *"owner"* cannot be identified and which hits or which causes an *"accident"* resulting in *"bodily injury"* without hitting:
(1) *"You"* or any *"family member"*;
(2) A vehicle which *"you"* or any *"family member"* are *"occupying"*; or
(3) A *"covered auto"*.
If there is no physical contact with the hit-and-run vehicle, the facts of the *"accident"* and the existence of the phantom vehicle must be proven and corroborated by an independent witness.
D. To which a bodily injury liability bond or policy applies at the time of the *"accident"* but the bonding or insuring company:
(1) Denies coverage; or
(2) Is or becomes insolvent.

However, *"uninsured motor vehicle"* does not include any vehicle or equipment:

A. *"Owned"* by or furnished or available for the regular use of *"you"* or any *"family member"*.
B. Operated on rails or crawler treads.
C. Designed mainly for use off public roads.
D. While located for use as a residence or premises.
E. That is *"owned"* or operated by a self-insured under any applicable motor vehicle law, other than a self-insured that is or becomes insolvent.
F. That is an *"auto"* *"owned"* by *"you"* or any *"family member"* or furnished or available for the regular use of *"you"* or a *"family member"*.
G. That is an *"underinsured motor vehicle"*.

EXCLUSIONS FOR PART III: UNINSURED AND UNDERINSURED MOTORIST COVERAGE

(PLEASE READ CAREFULLY. IF ANY OF THE EXCLUSIONS BELOW APPLY, COVERAGE WILL NOT BE AFFORDED UNDER PART III.)

1. *"We"* do not provide Uninsured Motorist Coverage for *"bodily injury"* sustained:

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A. By an ***"insured"*** while ***"occupying"***, or when struck by, any motor vehicle ***"owned"*** by that ***"insured"*** which is not a ***"covered auto"*** insured for this coverage under this policy. This includes a ***"trailer"*** of any type used with that vehicle.
B. By any ***"family member"*** while ***"occupying"*** or when struck by, any motor vehicle ***"you"*** ***"own"*** which is insured for Uninsured Motorist Coverage on a primary basis under any other policy.

2. ***"We"*** do not provide coverage under **Part III** for ***"bodily injury"*** sustained by any ***"insured"***:
A. If that ***"insured"*** or the legal representative settles the ***"bodily injury"*** claim without ***"our"*** prior written consent and such settlement prejudices ***"our"*** right to recover payment.
B. While ***"occupying"*** a ***"covered auto"*** when it is being used as a public or livery conveyance, or used to carry property for compensation or a fee. This Exclusion **2.B.** does not apply to use of the vehicle for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received

C. Using a vehicle without permission to do so. This Exclusion **2.C.** does not apply to a ***"family member"*** using a ***"covered auto"*** which is ***"owned"*** by ***"you"***.

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

4. ***"We"*** do not provide Uninsured Motorist Coverage or Underinsured Motorist Coverage for punitive damages.

5. ***"We"*** do not provide Uninsured Motorist Coverage or Underinsured Motorist Coverage for ***"bodily injury"*** that results from:
A. Nuclear radiation, exposure, or contamination; or
B. Bio-chemical attack or exposure to bio-chemical agents.

LIMIT OF LIABILITY

1. The limit of liability shown in the Declarations page for each person for Uninsured Motorist Coverage or Underinsured Motorist Coverage is ***"our"*** maximum limit of liability for all damages, including, but not limited to, damages for:
A. Loss of society;
B. Loss of companionship;
C. Loss of services;
D. Loss of consortium; or
E. Wrongful death;
arising out of ***"bodily injury"*** sustained by any one person in any one ***"accident"***. Subject to this limit for each person, the limit of liability shown on the Declarations page for each accident for Uninsured/Underinsured Motorist Coverage is ***"our"*** maximum limit of liability for all damages for ***"bodily injury"*** resulting from any one ***"accident"***.

This is the most ***"we"*** will pay regardless of the number of:
A. ***"Insureds"***;
B. Claims made;
C. Vehicles or premiums shown in the Declarations page; or
D. Vehicles involved in the ***"accident"***.

There will be no stacking or combining of coverage afforded to more than one ***"auto"*** under this policy.

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2. No one will be entitled to receive duplicate payments for the same elements of damages under this coverage and:
   A. **Part I: Liability Coverage**;
   B. **Part II: Medical and Funeral Services Payments Coverage** of this policy; or
   C. Any other source.

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

4. ***"We"*** will not pay for any element of damages if the ***"insured"*** is entitled to receive payment for the same element of damages under any of the following or similar law:
   A. Workers' compensation law;
   B. Disability benefits law; or
   C. Any similar self-insured or government plan.

5. The Limits of Liability under **Part III** shall be reduced by all sums:
   A. Paid because of ***"bodily injury"*** by or on behalf of any persons or organizations that may be legally responsible, including, but not limited to, all sums paid under **Part I**;
   B. Paid or payable under **Part II**; and
   C. Paid or payable because of ***"bodily injury"*** under any of the following or similar laws:
      (1) Workers' compensation law;
      (2) Disability law; or
      (3) Similar self-insured or governmental plan.

OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the Uninsured Motorist Coverage or Underinsured Motorist Coverage provided in this section, ***"we"*** will only pay ***"our"*** share of the damages. ***"Our"*** share is the proportion that ***"our"*** limit of liability provided in this **Part III** bears to the total of all applicable limits on either a primary or excess basis. However:

1. Any recovery for damages under all policies or provisions of coverage may equal, but not exceed, the highest applicable limit for any one vehicle under any one insurance policy 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 temporary substitute, shall be excess over any collectible insurance providing such coverage on a primary basis.
3. If more than one policy issued by ***"us"*** and/or an affiliated insurer provides coverage to an ***"insured"*** for ***"bodily injury"*** caused by an ***"uninsured motor vehicle"*** or ***"underinsured motor vehicle"***, that ***"insured"*** shall select and recover under only the coverage under one policy for one ***"auto"*** issued by ***"us"*** or an affiliated company. Only the one policy selected by the ***"insured"*** shall apply and no coverage will be provided by any of the other policies issued by ***"us"*** or an affiliated company. The limit of liability under **Part III** for one ***"auto"*** may not be added, combined, or stacked together with similar coverage under any other policy issued by ***"us"*** or an affiliated company for ***"bodily injury"*** sustained by an ***"insured"*** in an ***"accident"***.

ARBITRATION

1. If ***"we"*** and an ***"insured"*** do not agree:
   A. Whether that ***"insured"*** is legally entitled to recover damages; or
   B. As to the amount of damages which are recoverable by that ***"insured"*** from the ***"owner"*** or operator of an ***"uninsured motor vehicle"*** or ***"underinsured motor vehicle"***;

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then the dispute may be arbitrated. Disputes concerning coverage under **Part III** may not be arbitrated.

Both parties must agree to arbitration. If the parties agree, each party will then 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.

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

3. Unless both parties agree otherwise, arbitration will take place in the county in which the ***"insured"*** lives at the time of the ***"accident"***. Local rules of law as to evidence will apply.

4. A decision agreed to by at least two of the arbitrators will be binding as to:
   A. Whether the ***"insured"*** is legally entitled to recover damages; and
   B. The amount of damages.

5. The arbitrators shall have no authority to:
   A. Award any amount in excess of the limit of liability;
   B. Award any amount as punitive or exemplary damages;
   C. Award any amount as interest;
   D. Award any costs or attorneys' fees;
   E. Make any determination as to questions of law; or
   F. Make any determination as to questions of coverage under this policy.

ADDITIONAL DUTIES

1. A person seeking coverage under **Part III** must also promptly do the following:
   A. Send ***"us"*** copies of the legal papers if a lawsuit is brought.
   B. Promptly notify ***"us"*** in writing of a tentative settlement between the ***"insured"*** and the insurer of an ***"underinsured motor vehicle"*** or the ***"owner"*** or operator of an ***"uninsured motor vehicle"***.
   C. Allow ***"us"*** 30 days after ***"we"*** receive notice of a tentative settlement to advance payment to that ***"insured"*** in an amount equal to the tentative settlement so that ***"we"*** may preserve ***"our"*** rights against the insurer, ***"owner"***, or operator of such ***"underinsured motor vehicle"*** or ***"uninsured motor vehicle"***.
   D. Notify the police within 24 hours or as soon as practical after the ***"accident"*** if a hit-and-run or unidentified driver is involved, and report the ***"accident"*** to ***"us"*** within 30 days of the ***"accident"***.

2. Any lawsuit against ***"us"*** by a person seeking coverage under **Part III** must be commenced within 6 years after the date of the ***"accident"***.

PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO

INSURING AGREEMENT: COLLISION COVERAGE

1. Subject to the limits of liability and the conditions of the Collision Coverage option ***"you"*** elect, if ***"you"*** pay the premium for Collision Coverage, ***"we"*** will pay for a sudden, direct, and accidental ***"loss"*** to:
   A. ***"Your" "covered auto"*** for which Collision Coverage has been purchased, as stated in ***"your"*** Declarations page;

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B. A *"non-owned auto"*; or
C. A *"trailer"* titled to *"you"*;
if it overturns or is in a *"collision"* with another object.

2. If there is a *"loss"* to a *"non-owned auto"*, *"we"* will provide the broadest Collision Coverage applicable to any of *"your"* *"covered autos"*.

3. In addition, *"we"* will pay the reasonable cost to replace any child safety seat damaged in an *"accident"* to which this coverage applies.

4. *"Your"* Collision Coverage options are as follows:
A. If *"you"* pay the premium for Limited Collision Coverage, *"we"* will pay for collision *"loss"* provided the driver of the *"auto"* is not *"substantially at-fault"* in the *"accident"* causing the *"loss"*.
B. If *"you"* pay the premium for Standard Collision Coverage, *"we"* will pay for collision *"loss"*.
C. If *"you"* pay the premium for Broad Form Collision Coverage, *"we"* will pay for collision *"loss"* without applying a deductible for a *"loss"*:
(1) When the driver of the *"auto"* is not *"substantially at-fault"* for the *"accident"* causing the *"loss"*; or
(2) Which occurs while an *"auto"* is parked in a manner so as not to cause unreasonable risk of harm.

5. *"You"* may be required to provide *"us"* reasonable proof that the driver of the *"auto"* was not *"substantially at-fault"* for the *"accident"* causing the collision *"loss"*. If an agreement cannot be reached as to whether or not a driver was *"substantially at-fault"*, it will be determined by as outlined under the Arbitration - Collision provision of this **Part IV**.

INSURING AGREEMENT: COMPREHENSIVE COVERAGE

1. Subject to the limits of liability, if *"you"* pay the premium for Comprehensive Coverage, *"we"* will pay for a sudden, direct, and accidental *"loss"* to:
A. *"Your"* *"covered auto"* for which Comprehensive Coverage has been purchased, as stated in *"your"* Declarations page;
B. A *"non-owned auto"*; or
C. A *"trailer"* titled to *"you"*.

2. Comprehensive Coverage includes, but is not limited to, a *"loss"* caused by the following:
A. Missiles or falling objects;
B. Fire;
C. Theft or larceny;
D. Explosion or earthquake;
E. Windstorm;
F. Hail, water, or flood;
G. Malicious mischief or vandalism;
H. Riot or civil commotion;
I. Contact with bird or animal; or
J. Breakage of glass.
If breakage of glass is caused by a *"collision"*, *"you"* may elect to have it considered a *"loss"* caused by *"collision"*.

ADDITIONAL DEFINITIONS FOR PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO

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1. ***"Custom parts and equipment"*** means any equipment, devices, accessories, enhancements, and changes, other than those that are original manufacturer installed, which alter the appearance or performance of a vehicle, and includes, but is not limited to:
   A. Stereo, sound reproducing, sound recording, and television equipment;
   B. Radios, citizens band radios and scanners;
   C. Personal computers, Internet access and navigation systems;
   D. Telephones, televisions, and video entertainment systems;
   E. Body, engine, exhaust, or suspension enhancers;
   F. Winches, anti-roll, or anti-sway bars;
   G. Custom grilles, louvers, side pipes, hood scoops, or spoilers;
   H. Custom wheels, tires, or spinners;
   I. Custom chrome and paint;
   J. Special carpeting or insulation;
   K. Furniture or bars;
   L. Height-extending roofs; or
   M. Custom murals, paintings, or other decals or graphics.

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

   "Collision" does not include ***"loss"*** caused by the following, which shall be considered as ***"loss"*** caused by other than ***"collision"***:
   A. Missiles or falling objects;
   B. Fire;
   C. Theft or larceny;
   D. Explosion or earthquake;
   E. Windstorm;
   F. Hail, water, or flood;
   G. Malicious mischief or vandalism;
   H. Riot or civil commotion;
   I. Contact with bird or animal; or
   J. Breakage of glass.
   If breakage of glass is caused by a ***"collision"***, ***"you"*** may elect to have it considered a ***"loss"*** caused by ***"collision"***.

3. ***"Diminution in value"*** means the actual or perceived loss in market value that results from a direct and accidental ***"loss"***.

4. ***"Non-owned auto"*** means any:
   A. Private passenger ***"auto"***; or
   B. Pickup or van that has a Gross Vehicle Weight Rating (as determined by the manufacturer) of 10,000 lbs. or less;
   that is 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"*** with the permission of its ***"owner"***.

5. ***"Substantially at-fault"*** means that a person's action or inaction was more than 50% of the cause of the ***"accident"***.

RENTAL REIMBURSEMENT COVERAGE

1. Subject to the limits of liability, if ***"you"*** pay the premium for Rental Reimbursement Coverage, ***"we"*** will reimburse rental charges incurred when ***"you"*** rent an ***"auto"*** from a rental agency or auto repair shop due to

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a *"loss"* to a *"covered auto"*. This coverage applies only if *"you"* have purchased both Collision Coverage and Comprehensive Coverage for that *"covered auto"* and the *"loss"* is covered under one of those coverages.

2. The maximum *"we"* will pay is the daily amount and total incident amount shown on the Declarations page.

3. If the *"loss"* is not due to a total theft:
   A. Reasonable rental charges will be reimbursed beginning:
      (1) When *"your"* *"covered auto"* cannot be driven due to a *"loss"*; or
      (2) If *"your"* *"covered auto"* can be driven, when *"you"* deliver *"your"* *"covered auto"* to a vehicle repair shop for repairs due to the *"loss"*.
   B. Reasonable rental charge reimbursement will end at the earliest of the following:
      (1) When *"your"* *"covered auto"* has been returned to *"you"*;
      (2) When *"your"* *"covered auto"* has been repaired or after a reasonable time in which *"your"* *"covered auto"* could have been repaired;
      (3) When *"your"* *"covered auto"* has been replaced;
      (4) If *"your"* *"covered auto"* is deemed by *"us"* to be a total loss, 48 hours after *"we"* make an offer to pay the applicable limit of liability under this **Part IV**; or
      (5) When *"you"* incur 30 days of rental charges.

4. If the *"loss"* is due to a total theft, reasonable rental charges will be reimbursed beginning 48 hours after the total theft, and ends the earliest of:
   A. When *"your"* *"covered auto"* or *"non-owned auto"* is returned to *"you"* or its *"owner"*;
   B. When *"your"* *"covered auto"* or *"non-owned auto"* has been recovered and repaired or after a reasonable time in which *"your"* *"covered auto"* could have been repaired;
   C. When *"your"* *"covered auto"* or *"non-owned auto"* has been replaced;
   D. If *"your"* *"covered auto"* is deemed by *"us"* to be a total loss, 48 hours after *"we"* make an offer to pay the applicable limit of liability under this **Part IV**; or
   E. When *"you"* incur 30 days worth of reasonable rental charges.

5. *"You"* must provide *"us"* written proof of *"your"* reasonable rental charges to be reimbursed.

CUSTOM PARTS AND EQUIPMENT COVERAGE

1. Subject to the stated limit of liability, if *"you"* pay the premium for Custom Parts And Equipment Coverage , *"we"* will pay for a sudden, direct and accidental *"loss"* to *"your"* *"custom parts and equipment"* that is not otherwise covered by Collision Coverage or Comprehensive Coverage, reduced by any applicable deductible shown in the Declarations page.

2. With respect to a vehicle for which the Declarations page indicates that Custom Parts And Equipment Coverage applies, *"our"* limit of liability for *"loss"* for *"custom parts and equipment"* will be the lesser of the following:
   A. The actual cash value of the stolen or damaged property;
   B. The amount necessary to repair the property to its pre-loss physical condition;
   C. The amount necessary to replace the property with other property of like kind and quality; or
   D. The applicable limits of liability elected by *"you"* and shown in the Declarations page.

3. *"You"* are required to provide proof of purchase for all *"custom parts and equipment"*. Examples of proof of purchase include receipts listing the parts and cost, bills of sale listing the parts or cost invoice for the parts listing the cost.

TOWING AND LABOR COVERAGE

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1. Subject to the limit of liability, if *"you"* pay the premium payment for Collision Coverage and Towing and Labor Coverage, *"we"* will pay for the following services each time a *"covered auto"* for which these coverages have been purchased, or a *"non-owned auto"*, is disabled:
   A. Towing;
   B. Tire changing;
   C. Gas, oil, and water delivery;
   D. Battery services; and
   E. Lockout services.

2. *"We"* will only provide Towing and Labor Coverage up to the limit shown in the Declarations page as applicable to that vehicle, and subject to the following:
   A. *"We"* will only pay for necessary labor performed at the place of disablement;
   B. *"We"* will only pay up to three claims for any one *"covered auto"* under this Towing and Labor Coverage, within any 6 month policy period;
   C. This coverage applies only to a *"covered auto"*.

3. *"We"* will not pay Towing and Labor Coverage for any of the following:
   A. Installation of products or material not related to the disablement;
   B. Labor or repair work not related to the disablement;
   C. Repeated service calls for a covered disabled vehicle in need of routine maintenance or repair;
   D. Disablement that results from an intentional or willful act or action by *"you"*, a *"family member"* or the operator of the disabled *"auto"*; or
   E. A *"trailer"* of any kind.

AUTO LOAN/LEASE COVERAGE

1. If *"you"* pay the premium for Auto Loan/Lease Coverage for a *"covered auto"* and that *"covered auto"* sustains a total loss, *"we"* will pay any unpaid amount due on the lease or loan for that *"covered auto"* reduced by:
   A. The amount paid under **Part IV: Coverage for Physical Damage to an Auto** of the policy; and
   B. Any:
      (1) Overdue lease/loan payments at the time of the *"loss"*;
      (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear, or high mileage;
      (3) Security deposits not refunded by a lessor;
      (4) Costs for extended warranties, Credit Life insurance, Health, Accident, or Disability insurance purchased with the loan or lease or refunds due *"you"*;
      (5) Carry-over balances from previous loans or leases;
      (6) Collection or repossession expenses; and
      (7) Salvage value if *"you"* retain salvage.

2. *"Our"* payment shall not exceed twenty-five percent (25%) of the actual cash value of the *"covered auto"* at the time of the total loss. *"We"* may pay *"you"* and the lessor or lienholder named on the Declarations page.

3. This coverage only applies for a *"covered auto"* for which *"you"* have purchased Auto Loan/Lease Coverage, Collision Coverage, and Comprehensive Coverage.

EXCLUSIONS FOR PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO

(PLEASE READ CAREFULLY. IF ANY OF THE EXCLUSIONS BELOW APPLY, COVERAGE WILL NOT BE AFFORDED UNDER PART IV.)

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"We" will not provide coverage for:

1. *"Loss"* to a *"covered auto"* or any *"non-owned auto"* that occurs while it is being used as a public or livery conveyance, or used to carry property for compensation or a fee. This Exclusion **1** applies to, but is not limited to, the delivery of magazines, newspapers, food or any other products. However, this Exclusion **1** does not apply to a shared expense car pool or to the use of the *"covered auto"* for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received.

2. Damage resulting from and limited 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 a *"covered auto"* or any *"non-owned auto"*.

3. *"Loss"* due to exposure or as a result of:
   A. The discharge or release of radioactive materials or contamination;
   B. A radioactive or nuclear event for which insurance is or can be afforded under a nuclear energy liability insurance policy;
   C. War (declared or undeclared), including civil war;
   D. Warlike action by the government or other authority using military personnel or agents. This includes action taken to hinder or defend against an actual or expected attack; or
   E. Insurrection, rebellion or revolution.

4. *"Loss"* to any electronic equipment that reproduces, receives, or transmits audio, visual, or data signals. This includes, but is not limited to:
   A. Radios and stereos;
   B. Tape decks;
   C. Compact disk systems;
   D. Navigation systems;
   E. Internet access systems;
   F. Personal computers;
   G. Video entertainment systems;
   H. Telephones;
   I. Televisions;
   J. Two-way mobile radios;
   K. Scanners; or
   L. Citizens band radios.
   This Exclusion **4** does not apply to Custom Parts And Equipment Coverage or to electronic equipment that is permanently installed in a *"covered auto"* or any *"non-owned auto"* by the automobile's manufacturer.

5. *"Loss"* to tapes, records, disks, or other media used with equipment described in Exclusion **4**.

6. *"Loss"* to equipment designed or used for the detection or location of radar or laser.

7. A total loss to a *"covered auto"* or any *"non-owned auto"* due to destruction, confiscation, or seizure by governmental or civil authorities.

8. *"Loss"* to facilities or equipment used with *"your" "trailer"*, including but are not limited to:
   A. Cooking, dining, plumbing, or refrigeration facilities;

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B. Awnings or cabanas; and
C. Any other facilities or equipment not permanently attached to ***"your"*** ***"trailer"***.

9. ***"Loss"*** to any ***"non-owned auto"*** when used by ***"you"*** or any ***"family member"*** without permission of the ***"owner"*** to do so.

10. ***"Loss"*** to any custom furnishings or equipment in or upon any ***"covered auto"*** or any ***"non-owned auto"***. Custom furnishings or equipment include, but are not limited to equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which alter the appearance or performance of a vehicle. This includes, but is not limited to:
A. Body, engine, exhaust, or suspension enhancers;
B. Winches, anti-roll, or anti-sway bars;
C. Custom grilles, louvers, side pipes, hood scoops, or spoilers;
D. Custom wheels, tires, or spinners;
E. Custom chrome and paint;
F. Special carpeting or insulation;
G. Furniture or bars;
H. Height-extending roofs; or
I. Custom murals, paintings, or other decals or graphics.
This Exclusion **10** does not apply to:
A. ***"Loss"*** to ***"custom parts or equipment"*** to which Custom Parts And Equipment Coverage applies; or
B. To a cap, cover, or bed-liner in or upon any ***"covered auto"*** that is a pickup.

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 or leasing;
B. Repairing;
C. Servicing;
D. Testing;
E. Delivering;
F. Cleaning;
G. Storing;
H. Parking; or
I. Towing;
vehicles designed for use on public highways.

12. ***"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.

13. ***"Loss"*** to a ***"covered auto"*** or ***"non-owned auto"*** for ***"diminution in value"***.

14. ***"Loss"*** to a ***"covered auto"***, ***"non-owned auto"***, or ***"trailer"*** that is intended or is caused intentionally by a willful act by ***"you"***, a ***"family member"***, or its ***"owner"***, or at the direction of ***"you"***, a ***"family member"***, or its ***"owner"***. This Exclusion **14** will not apply to the extent of the legal interest of ***"you"*** or a ***"family member"*** who sustain the ***"loss"*** as the result of domestic violence if:
A. The applicable state law protects that interest;
B. That person has not participated in, contributed to, directed, or consented to the intentional act causing the ***"loss"***;

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C. A family violence complaint has been filed with the appropriate law enforcement authorities; and
D. That person cooperates in any investigation relating to the *"loss"*.

15. *"Loss"* to a *"covered auto"*, *"non-owned auto"*, or *"trailer"* resulting from the intentional discharge, dispersal, or release of radioactive, nuclear, biological, chemical, or other hazardous materials, for any purpose other than its safe and useful purpose.

16. *"Loss"* to a *"covered auto"*, *"non-owned auto"*, or *"trailer"* while it is leased or rented to others, or provided in exchange for any form of compensation.

17. *"Loss"* to a *"covered auto"* or *"trailer"* while it is in the care, custody, or control of anyone engaged in the *"business"* of selling the *"covered auto"* or *"trailer"*.

18. *"Loss"* to personal property that is not permanently attached to the *"covered auto"*, *"non-owned auto"*, or *"trailer"*.

LIMIT OF LIABILITY

1. *"Our"* limit of liability for *"loss"* will be the lesser of the:
   A. Actual cash value of the stolen or damaged property;
   B. Amount necessary to repair the property to its pre-loss physical condition; or
   C. Amount necessary to replace the property with other property of like kind and quality.

   However, the most *"we"* will pay for *"loss"* to:
   A. Electronic equipment that reproduces, receives, or transmits audio, visual, or data signals, and is permanently installed in the *"auto"* but not by the *"auto"* manufacturer or in the factory, is $1,000, unless increased coverage is purchased;
   B. A *"trailer"* is $1,000.

2. An adjustment for depreciation and physical condition, which may also be referred to as betterment, wear and tear, or prior damage, will be made in determining actual cash value in the event of a total loss.

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

4. Any payment for damaged property will be reduced by the applicable deductible shown on *"your"* Declarations page and by the salvage value if *"you"* or the *"owner"* retain the salvaged property.

5. If coverage applies to a *"non-owned auto"*, *"we"* will provide the broadest coverage applicable to any *"auto"* shown on the Declarations page. However, the highest deductible on any *"covered auto"* shall apply.

6. In determining the amount necessary to repair damaged property, the amount to be paid by *"us"* will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured, or used, including, but not limited to:
   A. Original manufacturer parts or equipment; and
   B. Non-original manufacturer parts or equipment.
7. No one will be entitled to duplicate payments for any elements of damages under this policy or any other source.

8. Payment under **Part IV** due to theft of an *"auto"* is conditioned upon transfer of the title to *"us"* if *"we"* make a demand for the title.

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9. If *"you"* agree to have a damaged windshield repaired, *"we"* shall have no duty to replace that windshield or pay any other amount with regard to that windshield *"loss"* after repair.
10. The limit of liability shall be reduced by any amount of a *"loss"* that has been paid under any Property Protection Coverage.

PAYMENT OF LOSS

"We" may, at *"our"* expense, return any stolen property to:
1. *"You"*; or
2. The address shown on the Declarations page.

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.

"We" may pay for a *"loss"* in money or repair or replace the damaged or stolen property. If *"we"* pay for *"loss"* in money, *"our"* payment will include the applicable sales tax for the damaged or stolen property.

LOSS PAYABLE CLAUSE

1. A total loss or damage under this policy shall be paid, as interest may appear, to *"you"* and the loss payee shown on the Declarations page. However, with *"your"* consent, *"we"* may pay a repair facility directly for the repair of a partial loss covered under this **Part IV**.
2. If we determine that fraud, misrepresentation, material omission, or an intentional act causing damage was committed by or at the direction of *"you"* or a *"family member"*, or if coverage is otherwise excluded or does not apply, the interest of the loss payee will not be protected.
3. *"We"* reserve the right to cancel or nonrenew this policy, and any cancellation or nonrenewal shall terminate all agreements as to the loss payee's interest. *"We"* will give the same notice of cancellation to the loss payee as *"we"* give to the named insured shown on the Declarations page. When *"we"* pay the loss payee, *"we"* shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

NO BENEFIT TO BAILEE

Coverage provided by this insurance policy shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

When there are other sources of recovery or applicable 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 *"non-owned auto"* shall be excess over any other collectible source of recovery including, but not limited to:
1. Any coverage provided by or to the *"owner"* of the *"non-owned auto"*;
2. Any other applicable physical damage insurance or self-insurance; or
3. Any other source of recovery applicable to the *"loss"*.

APPRAISAL

1. If *"we"* and *"you"* do not agree on the amount of *"loss"*, either party may demand an appraisal of the *"loss"*. If a demand is made, each party will select a competent and impartial appraiser. The two appraisers will select an impartial and qualified umpire. Each appraiser will state separately the actual cash value and the

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amount of loss. In the event of a disagreement, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:
A. Pay its chosen appraiser; and
B. Bear the expenses of the appraisal and umpire equally.

2. Neither party waives any rights under this policy by agreeing to an appraisal.

ARBITRATION – COLLISION COVERAGE

1. ***"You"*** will be notified in writing by ***"us"*** of ***"our"*** decision as to whether the driver was ***"substantially at-fault"*** for the ***"accident"*** causing the ***"loss"***. Any disagreement as to whether or not a driver was ***"substantially at-fault"*** for the ***"accident"*** causing the ***"loss"*** may be decided by arbitration. Any dispute as to the amount of the ***"loss"*** may be joined into the arbitration.

2. Both parties must agree to arbitration. If the parties agree, each party will then 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.

3. Each party will:
   A. Pay the expenses it incurs; and
   B. Share the expenses of the third arbitrator equally.

4. Unless both parties agree otherwise, arbitration will take place in the county in which ***"you"*** live. Local rules of law as to procedure and evidence will apply.

5. A decision agreed to by at least two of the arbitrators will be binding as to:
   A. Whether a driver was ***"substantially at-fault"*** for the ***"accident"*** causing the ***"loss"***; and
   B. The amount of the ***"loss"*** if it is included as an issue in the arbitration.

6. The arbitrators shall have no authority to:
   A. Award any amount in excess of the limit of liability;
   B. Award any amount as punitive or exemplary damages;
   C. Award any amount as interest;
   D. Award any costs or attorneys' fees;
   E. Make any determination as to questions of law; or
   F. Make any determination as to questions of coverage under this policy.

PART V: INSURED'S DUTIES AFTER AN ACCIDENT OR LOSS

"We" have no duty to provide coverage under this policy if an ***"insured"*** fails to comply with the following duties and ***"our"*** rights or interests are prejudiced:

1. ***"We"*** must be notified promptly of how, when, and where the ***"accident"*** or ***"loss"*** happened. Notice should also include:
   A. The names and addresses of any injured persons and of any witnesses;
   B. All facts and circumstances, including weather conditions and a description of injuries; and
   C. The license plate numbers and descriptions of the vehicles involved.

   Failure to give any notice required by this policy within the time specified shall not invalidate any claim made by the insured person if it is shown that:
   A. It was not reasonably possible to give such notice within the prescribed time; and

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B. Notice was given as soon as was reasonably possible.

Notice given by or on behalf of a person insured by this policy to any of ***"our"*** authorized agents within the state of Michigan, with particulars sufficient to identify the insured person, shall be deemed to be notice to ***"us"***.

2. ***"You"***, members of ***"your"*** ***"household"***, and any person seeking any coverage must:
   - **A.** Cooperate with ***"us"*** in the investigation, settlement, and defense of any claim or lawsuit.
   - **B.** Promptly send ***"us"*** copies of any notices or legal papers received in connection with the ***"accident"*** or ***"loss"***.
   - **C.** Submit, as often as ***"we"*** reasonably require, to physical exams paid for by ***"us"*** and conducted by doctors or medical providers ***"we"*** select.
   - **D.** Allow ***"us"*** to take signed and recorded statements, including statements and examinations under oath, and answer all questions ***"we"*** ask as often as ***"we"*** may reasonably require. ***"We"*** may require that statements and examinations be conducted outside of ***"your"*** presence or the presence of witnesses or other persons seeking coverage or benefits under this policy.
   - **E.** Authorize ***"us"*** to obtain:
     - **(1)** Medical records and reports;
     - **(2)** Data contained in an Event Data Recorder or similar device;
     - **(3)** Employment and wage records; and
     - **(4)** Other relevant records, including, but not limited to:
       - **(a)** Electronic records;
       - **(b)** Business and financial records;
       - **(c)** Audio and video recordings;
       - **(d)** Phone records including cellular records;
       - **(e)** Computer records;
       - **(f)** Current and prior insurance claims records;
       - **(g)** Global Positioning System (GPS) data records; and
       - **(h)** Loss payee records.
   - **F.** Submit a proof of loss when required by ***"us"***.

3. A person seeking Coverage for Physical Damage to an Auto must also:
   - **A.** Take reasonable steps after the ***"loss"*** to protect the ***"covered auto"*** or ***"non-owned auto"*** and their equipment from further ***"loss"***. ***"We"*** will pay reasonable expenses incurred to do this.
   - **B.** Promptly notify the police if a ***"covered auto"*** or ***"non-owned auto"*** is stolen.
   - **C.** Permit ***"us"*** to inspect, photograph, and appraise the damaged property before its repair or disposal.
   - **D.** Authorize ***"us"*** to move the damaged ***"auto"*** and/or ***"trailer"*** to a storage facility of ***"our"*** choice at ***"our"*** expense.

PART VI: GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE

BANKRUPTCY

Bankruptcy or insolvency of ***"you"***, a ***"family member"*** or any other person who is an ***"insured"*** under **Part I** shall not relieve ***"us"*** of any obligations under this policy. In case execution against the ***"insured"*** under **Part I** is returned unsatisfied in an action brought by a person entitled to recover for ***"bodily injury"*** under **Part I**, or his or her personal representative, because of such bankruptcy or insolvency, then an action in the nature of a writ of garnishment may be maintained by the injured person, or his or her personal representative, against ***"us"*** subject to the terms of this policy for the amount of the judgment in such action, but not exceeding the limit of liability.

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CHANGES

1. This policy, *"your"* Application, the terms and conditions *"you"* have expressly agreed to, the Declarations page, as may be amended from time-to-time, and Endorsements issued by *"us"*, contains all the agreements between *"you"* and *"us"*. Its terms may not be changed or waived except by an endorsement issued by *"us"*.

2. If there is a change to the information used to calculate 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:
   A. The number, type, or use classification of insured vehicles;
   B. Operators using insured vehicles;
   C. The place of principal garaging of insured vehicles; or
   D. Coverage, deductible, or limits.

If a change resulting from Provision **1** or **2** above requires a premium adjustment, *"we"* will make the premium adjustment in accordance with *"our"* rating rules.

3. If *"we"* make a change which broadens coverage under this edition of *"your"* policy without an additional premium charge, then that change will automatically apply to *"your"* policy as of the date *"we"* implement the change in *"your"* state. This Provision **3** 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:
   A. A subsequent edition of *"your"* policy; or
   B. An Amendatory Endorsement.

EXCLUDED DRIVERS

If *"you"* authorize *"us"* to exclude a specific named individual, there will be no coverage under this policy if that Excluded Driver listed on the Declarations page operates *"your"* vehicle. The vehicle will be considered uninsured under the no-fault law.

By agreeing in writing to the Named Driver Exclusion, the named insured agrees that any person(s) listed on the Declarations page as an Excluded Driver does not have permission to operate any vehicle insured under this policy. The named insured must clearly notify such person that he or she does not have permission to operate any such vehicle.

WARNING – When a named excluded person operates a vehicle, all liability coverage is void – no one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

A named excluded person is not entitled to be paid personal protections insurance benefits for accidental bodily injury if at the time of the accident the named excluded driver was operating a motor vehicle as to which he or she was named as an excluded driver.

If *"your"* vehicle is being operated by an Excluded Driver listed on the Declarations page, the following coverage is void:

Bodily Injury Liability Insurance
Property Damages Lability Insurance
Property Protection Insurance
Personal Injury Protection Insurance

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Uninsured Motorist Insurance
Underinsured Motorist Insurance
Comprehensive Insurance
Collision Insurance
Towing and Repair Costs
Carmatch Rental Coverage
Customized Parts and Equipment Coverage
Auto Loan/Lease Coverage

FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on ***"your"*** insurance application. ***"We"*** may void this policy if ***"you"*** or an ***"insured"*** person:

1. Made incorrect statements or representations to ***"us"*** with regard to any material fact or circumstance.
2. Concealed or misrepresented any material fact or circumstance; or
3. Engaged in fraudulent conduct at the time of application.

"We" may void this policy due to fraud, misrepresentation, or an incorrect statement of a material fact in the application; even after the occurrence of an ***"accident"*** or ***"loss"***. This means that ***"we"*** will not be liable for any claims or damages that would otherwise be covered. If ***"we"*** void a policy in accordance with this provision it will be voided from its inception.

If ***"we"*** void this policy from its inception, coverage will still be provided as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended for an ***"accident"*** occurring and causing damages to an innocent third party otherwise covered under:

1. **Part I**, but only up to the ***"minimum limits"*** required by law; or
2. **Part II**;

before ***"we"*** notify the named insured that the policy is void. No payment will be made to any person who engages in fraudulent conduct. If ***"we"*** void this policy but are required to make a payment, ***"you"*** must reimburse ***"us"***.

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

LEGAL ACTION AGAINST US

1. No legal action may be brought against ***"us"*** until there has been full compliance with all the terms of this policy. In addition, under **Part I: Liability Coverage**, no legal action may be brought against ***"us"*** until:
   A. ***"We"*** agree in writing that the person who is an ***"insured"*** under **Part I** has an obligation to pay; or
   B. The amount of that obligation has been finally determined by judgment after trial.
   "You" are not prohibited from filing a lawsuit against ***"us"*** within the statute of limitations to have any dispute settled by a court of proper jurisdiction if ***"you"*** allege that ***"we"*** have not appropriately responded to ***"your"*** requests concerning such proceedings or ***"you"*** allege that ***"we"*** have acted inappropriately in handling ***"your"*** claim.

2. No person or organization has any right under this policy to bring ***"us"*** into any action to determine the liability of a person who is an ***"insured"*** under **Part I**.

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3. There can be no abandonment to *"us"* of any *"auto"* or *"trailer"*. *"We"* have no duty to preserve or retain salvage for any purpose, including for use as evidence in any civil or criminal proceeding.

4. Any lawsuit against *"us"* by a person seeking coverage under Part III must be commenced within 3 years after the date of the *"accident"*.

OUR RIGHT TO RECOVER PAYMENT - SUBROGATION

1. 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:
   A. Whatever is necessary to enable *"us"* to exercise *"our"* rights; and
   B. Nothing after an *"accident"* or *"loss"* to prejudice *"our"* rights.

   However, *"our"* rights in this Provision **1** do not apply:
   A. Under **Part IV: Coverage for Physical Damage to an Auto**, against any person using a *"covered auto"* with permission of the *"owner"* to do so; or
   B. With respect to Uninsured/Underinsured Motorist Coverage if *"we"*:
   (1) Have been given prompt written notice of a tentative settlement between a person who is an *"insured"* under **Part III** and the insurer of an *"underinsured motor vehicle"*; and
   (2) Do not agree within 30 days after *"our"* receipt of notice to advance payment to the *"insured"* in an amount equal to the tentative settlement offered.
   If *"we"* advance payment to the *"insured"* in an amount equal to the tentative settlement within 30 days after receipt of notice:
   (1) That payment will be separate from any amount the *"insured"* is entitled to recover under the provisions of Underinsured Motorist Coverage; and
   (2) *"We"* also have a right to recover the advanced payment.

2. If *"we"* make any payment under Uninsured/Underinsured Motorist Coverage and the person to or for whom payment was made has a right to recover damages from the *"owner"* or operator of an *"uninsured motor vehicle"*, *"we"* shall be subrogated to that right. That person shall do:
   A. Whatever is necessary to enable *"us"* to exercise *"our"* rights; and
   B. Nothing after an *"accident"* to prejudice *"our"* rights.

3. *"We"* have no right of recovery against the driver or operator of an *"uninsured motor vehicle"* or *"underinsured motor vehicle"* if *"we"* have consented in writing to a settlement between that person and an *"insured"* under **Part III**.

4. If *"we"* seek recovery from a liable party, *"we"* shall be authorized by *"you"* to also seek recovery of any applicable deductible, and *"you"* agree to be bound on a pro rata basis to any compromise settlement agreement entered into by *"us"* with the liable party or the outcome of any arbitration *"we"* enter into for those sums.

POLICY PERIOD AND TERRITORY

1. This policy applies only to *"accidents"* and *"loss"* that occur:
   A. After the effective date and time shown in the Declarations page, or after the time this policy was purchased whichever is later;
   B. After it becomes effective but prior to cancellation, termination or 12:01 a.m. on the expiration date shown on the Declarations page, whichever is earlier; and
   C. Within the policy territory.

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2. The policy territory is:
   A. The United States of America, its territories or possessions;
   B. Puerto Rico; and
   C. Canada.
   This policy also applies to *"loss"* and *"accidents"* involving a *"covered auto"* while it is being transported between ports within the policy territory.

3. No coverage is provided under this policy for any *"accident"*, *"loss"*, *"bodily injury"* or *"property damage"* arising out of the use or maintenance of any vehicle or *"trailer"* in the Republic of Mexico.

TERMINATION

1. **Cancellation**
   This policy may be cancelled during the policy period as follows:
   A. *"You"* may cancel this policy by notifying *"us"* of cancellation on or before the date of cancellation.
   B. During the first 55 days of the initial policy period *"we"* may cancel the policy for any reason.
   C. *"We"* may cancel by mailing by First Class Mail or delivering to the named insured shown in the Declarations page at the address shown in this policy:
      (1) At least 10 days notice if cancellation is for nonpayment of premium;
      (2) At least 20 days notice if the notice of cancellation, for any reason other than nonpayment of premium, is mailed or delivered during the first 55 days this policy is in effect and this is not a renewal or continuation policy ; or
      (3) At least 30 days notice in all other cases.
   D. After this policy is in effect for 55 days, or if this is a renewal or continuation policy, *"we"* will cancel only:
      (1) For nonpayment of premium;
      (2) If *"your"* driver's license or that of:
         (a) Any driver who lives with *"you"*; or
         (b) Any driver who customarily uses a *"covered auto"*;
         has been suspended or revoked. This must have occurred:
            (i) During the policy period; or
            (ii) Since the last anniversary of the original effective date if the policy period is other than 1 year; or
      (3) During the 55 days following the effective date of the initial policy period the risk is unacceptable to *"us"*.

2. **Nonrenewal**
   If *"we"* decide not to renew or continue this policy, *"we"* will mail or deliver notice to the named insured shown in the Declarations page at the address shown in this policy. Notice will be mailed or delivered at least 30 days before the end of the policy period. Subject to this notice requirement, if the policy period is:
   A. 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.
   B. 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.
   C. 1 year or longer, *"we"* will have the right not to renew or continue this policy at each anniversary of its original effective date.

3. **Automatic Termination**
   A. If *"we"* offer to renew, and *"you"* reject the renewal offer or do not accept or pay the premium to renew the policy when due, this policy will automatically terminate at the end of the current policy period.

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Failure to pay the required renewal premium when due shall mean that *"you"* have not accepted *"our"* offer.

B. If a *"covered auto"* is sold, assigned, gifted or transferred to anyone other than a *"family member"*, the insurance *"we"* provide for that *"auto"* shall automatically terminate at the time it is sold, assigned, gifted or transferred.

4. Other Termination Provisions

A. *"We"* may deliver any notice instead of mailing it. Proof of mailing or delivery of any cancellation notice or nonrenewal notice shall be sufficient proof of notice.

B. As a condition of the issuance of this policy, *"you"* have consented to all notices and communication from *"us"* to *"you"* being sent electronically via e-mail or by other electronic means in lieu of any other method, and that *"our"* transmittal of any notice or communication to *"you"* via email or via other electronic means shall have the same force and effect as if provided in writing and sent to *"you"* via U.S. Mail with proof of mailing.

C. If this policy is cancelled, *"we"* will send *"you"* any premium refund due to *"you"* within a reasonable period of time. *"Our"* making of a refund is not a condition of cancellation.

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

PAYMENT OF PREMIUM

1. If *"your"* initial premium payment for the first policy period is by e-check, draft, credit card or any remittance other than cash, coverage under this policy is conditioned upon that e-check, draft, credit card or remittance being honored by the bank or other financial institution when it is presented for payment. If the e-check, draft, credit card, or remittance is not honored, *"we"* may deem this policy void from its inception, as if it was never issued. This means that *"we"* will not be liable under this policy for any claims or damages that would be covered if that e-check, draft, credit card, or remittance had been honored when presented by *"us"* for payment.

2. *"We"* do not waive any of *"our"* rights if *"we"* process a deposit after the due date so that *"we"* may issue a refund to *"you"* when the policy is cancelled.

3. If a premium payment made by e-check draft, credit card or any remittance other than cash, is subsequently not honored or a chargeback is processed, thereby depriving *"us"* of any premium from policy inception, *"we"* may deem this policy void from its inception, as if it was never issued. This means that *"we"* will not be liable under this policy for any claims or damages that would be covered if that e-check, draft, credit card, or remittance had been honored and not subjected to chargeback or reversal when presented by *"us"* for payment or any time thereafter.

4. However, if *"we"* void this policy from its inception, coverage will still be provided as required by the Michigan No-Fault Law, Chapter 31 of the Michigan Insurance Code, as amended for an *"accident"* occurring and causing damages to an innocent third party otherwise covered under:
   1. **Part I**, but only up to the *"minimum limits"* required by law; or
   2. **Part II**;

   before *"we"* notify the named insured that the policy is void. No payment will be made to any person who engages in fraudulent conduct. If *"we"* void this policy but are required to make a payment, *"you"* must reimburse *"us"*.

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TRANSFER OF YOUR INTEREST IN THIS POLICY

1. *"Your"* rights and duties under this policy may not be assigned without *"our"* written consent. However, if a Named Insured shown in the Declarations page dies, coverage will be provided for:
   A. The surviving spouse if a resident in the same *"household"* at the time of death. Coverage applies to the spouse as if a Named Insured shown in the Declarations page; and
   B. The legal representative of the deceased person as if a Named Insured shown in the Declarations page. This applies only with respect to the representative's legal responsibility to maintain or use a *"covered auto"*.

   If the surviving spouse ceased to be a resident of the same *"household"* during the policy period or prior to the inception of this policy, the spouse will be covered under this policy but only until the earlier of:
   A. The effective date of another policy listing the surviving spouse as a named insured; or
   B. The end of the policy period.

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

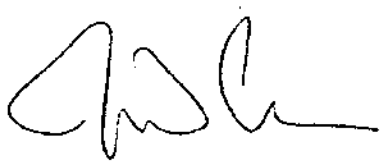
CONFORMITY WITH STATUTE

Any provision of this policy that conflicts with a statute of the state *"you"* listed on *"your"* application as *"your"* garaging address shall be changed to conform to such law.

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.

OFFICER'S SIGNATURE



Jonathan Adkisson
President

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Amendment of Policy Provisions – Michigan

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY.

I. Under the **DEFINITIONS APPLICABLE TO ALL COVERAGES**, the following definitions are added to your policy:

19. ***"Personal vehicle sharing program"*** means an entity qualified to do ***"business"*** in Michigan and engaged in the ***"business"*** of facilitating the sharing of private passenger motor vehicles for noncommercial use by persons in Michigan.

20. ***"Ridesharing"*** means the operation of any vehicle by an ***"insured"*** in connection with a ***"transportation network company"*** from the time an ***"insured"*** logs on or signs in to any Internet-based software application, website, or platform that connects or matches driver(s) with passenger(s) until the time an ***"insured"*** logs out of or signs off any such application, website or platform. This include the time the ***"insured"*** is:

A. Logged on or signed in to any Internet-based software application, website, or platform and awaits requests for prearranged rides from potential passengers;
B. En route to pick up passenger(s); and
C. Transporting passenger(s).

21. ***"Transportation network company"*** means an entity qualified to ***"business"*** in Michigan that provides transportation services using an Internet-based software application, website or platform that allows drivers and passengers to communicate for the purpose of providing transportation for compensation or a fee.

II. Under **PART I: LIABILITY COVERAGE**, provision **1.F.** of the **EXCLUSIONS FOR PART 1: LIABILITY COVERAGE** is replaced by the following:

1. ***"We"*** have no duty to defend and do not provide Liability Coverage for any ***"insured"***:

F. For that ***"insured's"*** liability arising out of the ownership or operation of any vehicle while it is:
(1) Used to carry persons or property for compensation or a fee, including but not limited to the delivery of food, newspapers, magazines or any other products; or
(2) Used for ***"ridesharing"***.
This Exclusion does not apply to shared-expense car pools or to the use of the ***"covered auto"*** for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received.

III. Under **PART I: LIABILITY COVERAGE**, the following provision is added to the section **EXCLUSIONS FOR PART 1: LIABILITY COVERAGE**:

1. ***"We"*** have no duty to defend and do not provide Liability Coverage for any ***"insured"***:

O. While ***"occupying"*** any motor vehicle which is operated, maintained or used as part of personal sharing facilitated by a ***"personal vehicle sharing program"***.

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IV. Under **PART II: PERSONAL INJURY PROTECTION & PROPERTY PROTECTION COVERAGE**, the following clause is added to **LIMITS OF LIABILITY:**

6. If "**PIP EXCESS MEDICAL**" is identified on the Declarations page and at the time of the ***"accident"***, ***"you"*** or any ***"family member"*** have no primary medical insurance, health care benefit plans or similar benefit insurance, self-insurance or plans available and applicable to the loss, any amount payable by ***"us"*** will be reduced by a $500 penalty deductible. The $500 penalty deductible amount applies per ***"accident"***.

V. Under **PART II: PERSONAL INJURY PROTECTION & PROPERTY PROTECTION COVERAGE**, in the section **EXCLUSIONS FOR PART II: PERSONAL INJURY PROTECTION & PROPERTY PROTECTION COVERAGE** the following provisions are added to your policy:

1. Coverage under **Part II** does not apply to ***"bodily injury"***:
   L. While any ***"covered auto"*** is being used for ***"ridesharing"***.
   M. Sustained while ***"occupying"*** any vehicle that is operated, maintained or used as part of personal sharing facilitated by a ***"personal vehicle sharing program"***.

VI. Under **PART II: PERSONAL INJURY PROTECTION & PROPERTY PROTECTION COVERAGE**, in the section **EXCLUSIONS FOR PART II: PERSONAL INJURY PROTECTION & PROPERTY PROTECTION COVERAGE** the following provisions are added to your policy:

2. Coverage under **Part II** does not apply to ***"bodily injury"***:
   E. While any ***"covered auto"*** is being used for ***"ridesharing"***.
   F. Sustained while ***"occupying"*** any vehicle that is operated, maintained or used as part of personal sharing facilitated by a ***"personal vehicle sharing program"***.

VII. Under **PART III: UNINSURED AND UNDERINSURED MOTORIST COVERAGE**, provision **2.B.** of the **EXCLUSIONS FOR PART III: UNINSURED AND UNDERINSURED MOTORIST COVERAGE** is replaced by the following:

2. ***"We"*** do not provide coverage under **Part III** for ***"property damage"*** or ***"bodily injury"*** sustained by any ***"insured"***:
   B. While ***"occupying"*** any vehicle being operated by any ***"insured"*** and:
   (1) Used to carry persons or property for compensation or a fee , including but not limited to the delivery of food, newspapers, magazines or any other products; or
   (2) Used for ***"ridesharing"***.
   This Exclusion does not apply to shared-expense car pools or to the use of the ***"covered auto"*** for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received.

VIII. Under **PART III: UNINSURED AND UNDERINSURED MOTORIST COVERAGE**, in the section **EXCLUSIONS FOR PART III: UNINSURED AND UNDERINSURED MOTORIST COVERAGE** the following provision is added to your policy:

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2. *"We"* do not provide coverage under **Part III** for *"property damage"* or *"bodily injury"* sustained by any *"insured"*:
   D. To any person or organization while *"occupying"* any motor vehicle is operated, maintained or used as part of personal sharing facilitated by a *"personal vehicle sharing program"*.

IX. Under **PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO**, provision **1.** of the **EXCLUSIONS FOR PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO** is replaced by the following:

1. *"Loss"* to any motor vehicle operated by any *"insured"* used:
   A. To carry persons or property for compensation or a fee, including but not limited to the delivery of food, newspapers, magazines or any other products; or
   B. For *"ridesharing"*.
   This Exclusion does not apply to shared-expense car pools or to the use of the *"covered auto"* for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received.

X. Under **PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO**, in the section **EXCLUSIONS FOR PART IV: COVERAGE FOR PHYSICAL DAMAGE TO AN AUTO** the following provision is added to your policy:

19. *"Loss"* to any motor vehicle while it is being operated, maintained or used as part of personal sharing facilitated by a *"personal vehicle sharing program"*.

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1-800-ESURANCE (1-800-378-7262)

Esurance Property &
Casualty Insurance Company
650 Davis Street
San Francisco, CA 94111

Policy Declarations Page
Personal Automobile Policy – Renewal

Policy Number	Effective Date	Expiration Date	Policy Term
PAMI-007954837	December 19, 2019	June 19, 2020 @ 12:01 AM	6 Months

Named Insured and Address	Rated Operators	Excluded Driver	Driver Type	Year of Birth
COREY FROWNFELTER 4082 LAHRING RD HOLLY, MI 48442 Email: sassiemom005@yahoo.com	1 COREY FROWNFELTER 2 HUNTER C FROWNFELTER		Named Insured Additional driver	1981 2002

Vehicle #	Year	Vehicle Description	Vehicle Identification Number
1	2002	Ford EXPLORER SPORT TRAC	1FMZU77E82UC06437

Policy Coverage is provided only where a premium and limit or deductible are shown.

Liability Coverages		Premium	Deductible
BODILY INJURY	250,000/person 500,000/accident	[redacted]	
PROPERTY DAMAGE	50,000/accident		
PROPERTY PROTECTION	1,000,000/accident		
LIMITED PROP DAMAGE	1,000/clmt veh		
PIP PRIMARY MEDICAL			
PIP PRIMARY WORK LOSS			500
UM/UIM BODILY INJURY	250,000/person 500,000/accident		

Vehicle Coverages	Vehicle 1 Premium Deductible	Vehicle Premium Deductible	Vehicle Premium Deductible	Vehicle Premium Deductible
MCCA FEE	[redacted]			
RECOUPMENT FEE				
STATUTORY FEE				

FULL TERM PREMIUM [redacted]

This policy is effective at 12:01 AM on the date shown or the time the policy was purchased, whichever is later.

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esurance
on Allstate company

Esurance Insurance Services, Inc.
P.O. Box 5250
Sioux Falls, SD 57117-5250
1-800-ESURANCE (1-800-378-7262)

Esurance Property &
Casualty Insurance Company
650 Davis Street
San Francisco, CA 94111

Policy Declarations Page
Personal Automobile Policy – Renewal Continued

Policy Number	Effective Date	Expiration Date	Policy Term
PAMI-007954837	December 19, 2019	June 19, 2020 @ 12:01 AM	6 Months

Named Insured and Address	Rated Operators	Excluded Driver	Driver Type	Year of Birth
COREY FROWNFELTER 4082 LAHRING RD HOLLY, MI 48442 Email: sassiemom005@yahoo.com	1 COREY FROWNFELTER		Named Insured	1981
	2 HUNTER C FROWNFELTER		Additional driver	2002

Loss Payees, Additional Insured – Lessors, and Lien Holders	
Vehicle #	Loss Payee, Additional Insured – Lessor, and Lien Holder Information

Forms and Endorsements made as a part of this policy at the time of issue

1001 MI 02 16	Personal Auto Policy
8200 PN 10 16	Privacy Notice
8191 MI 02 16	Adverse Decision Notice
8151 MI 04 12	US Treasury OFAC Notice
2001 MI 10 16	Amendment of Policy Prov

Important Notice: If page 1 of this Declarations Page indicates that you have **"PIP EXCESS MEDICAL"** coverage and if, at the time of an accident, you or any resident family member have no primary medical insurance, health care benefit plans or similar benefit insurance, self-insurance or plans available and applicable to the loss, any amount payable by us will be reduced by a $500 penalty deductible in addition to any other deductible that may apply.

Warning - When a named excluded person operates a vehicle all liability coverage is void - no one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

A named excluded driver is not entitled to be paid personal protection benefits for accidental bodily injury if at the time of the accident the named excluded driver was operating a motor vehicle as to which he or she was named as an excluded driver.

Date Issued: November 19, 2019

Authorized Representative

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EXHIBIT H

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

DARRYL L. LAWRENCE, Individually and as Personal Representative of the ESTATE OF KRYSTAL GAYLE LAWRENCE,

Plaintiff-Appellant,

v

SARAH ELIZABETH SCHAUF, AUSTIN PATRICK MARTIN, HARRY ALAN MARTIN, FREMONT INSURANCE COMPANY, and PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendants-Appellees,

and

LYFT, INC., and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants.

UNPUBLISHED
February 10, 2022

No. 354872
Kalamazoo Circuit Court
LC No. 19-000145-NI

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

PER CURIAM.

Plaintiff Darryl Lawrence, individually and as personal representative of the Estate of Krystal Gayle Lawrence, appeals as of right the trial court's stipulated final order of dismissal and previously entered orders granting summary disposition in favor of defendants Austin Martin, Harry Martin, Sarah Schauf, Fremont Insurance Company (Fremont), and Progressive Marathon Insurance Company (Progressive). We affirm.

I. FACTUAL BACKGROUND

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This case arises from an automobile accident that occurred on the dark, rainy night of October 12, 2018, shortly after 10:00 p.m., in which separate cars driven by defendants Austin Martin and Sarah Schauf struck Krystal Lawrence, a darkly clothed pedestrian, with a blood alcohol level of 0.296[1], as she attempted to cross West Michigan Avenue, a five-lane street, in Kalamazoo, Michigan. The decedent made a purchase at a convenience store and decided to cross the street without using a crosswalk. She made it through the two westbound lanes, the center turn lane, and one eastbound lane, before being struck by Austin's car as she entered the outside curb lane. The collision knocked Lawrence into the adjacent eastbound lane where she fell to the ground and Schauf's vehicle ran over her. Lawrence was pronounced deceased at the scene.

Plaintiff's complaint alleged claims for negligence against Austin, Harry Martin,[2] and Schauf. Plaintiff also sought first-party personal protection insurance ("PIP") benefits, including survivor benefits, from the Martin's automobile insurer, Fremont, and from Schauf's insurer, Progressive. All defendants moved for summary disposition. The trial court held that, under MCL 600.2955a, the Martin defendants and Schauf were entitled to summary disposition because no reasonable jury could find that Lawrence was less than 50% at fault for the accident. The court also granted summary disposition in favor of Fremont and Progressive, ruling that plaintiff failed to demonstrate that Lawrence provided regular financial support for her daughter, JL, and therefore, JL lacked eligibility to recover survivor benefits under MCL 500.3108(1).

II. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). The trial court granted summary disposition under MCR 2.116(C)(10). In reviewing a motion under this subrule, a court must consider the substantively admissible evidence submitted by the parties and must review such evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Id.* at 567-568. The court must determine whether the proffered evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*; *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Issues of statutory interpretation present questions of law, subject to review de novo. *Estate of Goodwin v Northwest Mich Fair Ass'n*, 325 Mich App 129, 138; 923 NW2d 894 (2018).

III. ANALYSIS

A. SUMMARY DISPOSITION FOR MARTIN DEFENDANTS

Plaintiff first argues that the trial court erred by granting summary disposition in favor of the Martin defendants on the ground that no reasonable juror could find that Lawrence was less

[1] After her death, toxicology testing revealed that at the time she attempted to cross West Michigan Avenue, Lawrence had a blood alcohol level of 0.296 per 100 milliliters of blood, more than three times the limit of 0.08 for drunk driving.

[2] Defendant Harry Martin owned the vehicle driven by Austin.

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than 50% at fault for the accident, and therefore, MCL 600.2955a(1) barred plaintiff's claim. We disagree.

To prove negligence, a plaintiff must prove that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the plaintiff was injured, and (4) the defendant's breach caused the plaintiff's injury. *Henry v Dow Chem Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005). Causation in a negligence action requires proof of both cause in fact and proximate cause. *Reeves v Kmart Corp*, 229 Mich App 466, 479; 582 NW2d 841 (1998).

A motor vehicle operator owes a duty to pedestrians to exercise due care. *Sweet v Ringwelski*, 362 Mich 138, 148; 106 NW2d 742 (1961); *Poe v Detroit*, 179 Mich App 564, 571; 446 NW2d 523 (1989). By the same token, however, a pedestrian "must take such care for his own safety as a reasonable, careful, prudent person would do under similar circumstances." *Malone v Vining*, 313 Mich 315, 321; 21 NW2d 144 (1946) (quotation marks and citation omitted). "In the absence of evidence to the contrary, a pedestrian killed while walking on a public highway is presumed to have exercised at all times the requisite degree and amount of care for his own safety and preservation." *People v Campbell*, 237 Mich 424, 442; 212 NW 97 (1927) (citation omitted). However, a pedestrian who knows that a vehicle is oncoming has a duty to watch the vehicle's progress to avoid being hit. *Heger v Meissner*, 340 Mich 586, 589; 66 NW2d 220 (1954). In *Malone*, our Supreme Court explained:

> Under present-day traffic conditions a pedestrian, before crossing a street or highway, must (1) make proper observation as to approaching traffic, (2) observe approaching traffic and form a judgment as to its distance away and its speed, (3) continue his observations while crossing the street or highway, and (4) exercise that degree of care and caution which an ordinarily careful and prudent person would exercise under like circumstances. . . .
>
> Pedestrians upon the public highway have a right to assume in the first instance the driver of an automobile will use ordinary care and caution for the protection of pedestrians, nevertheless the pedestrian must not rest content on such assumption, if there comes a time where he knows, or ought to know by the exercise of reasonable care, he is being placed in danger. He must take such care for his own safety as a reasonable, careful, prudent person would do under similar circumstances.
>
> We have repeatedly held that one must look before entering a place of possible danger, such as crossing an intersection, and maintain observation while crossing.
>
> If one is to make a proper observation of an oncoming car, []the observation must include not only the distance the approaching car is from the point of possible collision but also some observation and judgment of its approximate speed.
>
> In many cases we have held that one is not free from contributory negligence who observes an automobile coming on the intersecting street and then proceeds to cross without giving further heed to the oncoming vehicle until the

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> instant before or at the time of collision. [*Malone*, 313 Mich at 321-322 (quotation marks and citations omitted).]

Moreover, a trial court should consider whether a pedestrian crossed outside a crosswalk, because that can be evidence of comparative negligence. *Mason v Wayne Co Bd of Comm'rs*, 447 Mich 130, 136 n 5; 523 NW2d 791 (1994) ("Pedestrians crossing outside of crosswalks face the additional hurdle of comparative negligence.")

Whether a driver was negligent is generally a question of fact for the jury. See *Cole v Barber*, 353 Mich 427, 431; 91 NW2d 848 (1958). However, MCL 600.2955a provides:

> (1) It is an absolute defense in an action for the death of an individual or for injury to a person or property that the individual upon whose death or injury the action is based 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, the individual was 50% or more the cause of the accident or event that resulted in the death or injury. If the individual described in this subsection was less than 50% the cause of the accident or event, an award of damages shall be reduced by that percentage.
>
> (2) As used in this section:
>
> (a) "Controlled substance" means that term as defined in section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws.
>
> (b) "Impaired ability to function due to the influence of intoxicating liquor or a controlled substance" means that, as a result of an individual drinking, ingesting, smoking, or otherwise consuming intoxicating liquor or a controlled substance, the individual's senses are impaired to the point that the ability to react is diminished from what it would be had the individual not consumed liquor or a controlled substance. An individual is presumed under this section to have an impaired ability to function due to the influence of intoxicating liquor or a controlled substance if, under a standard prescribed by section 625a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.625a of the Michigan Compiled Laws, a presumption would arise that the individual's ability to operate a vehicle was impaired.

At the time of the accident that caused Lawrence's death, MCL 257.625a(7)(b) set the relevant legal alcohol intoxication limit as 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. The uncontroverted evidence established that toxicology test results following Lawrence's death reported that she had a blood alcohol level of 0.296 per 100 milliliters of blood, more than three times the legal limit. Indeed, plaintiff concedes in his brief that Lawrence's blood alcohol level "raises a presumption of her impairment." The Martin defendants were entitled to summary disposition if no reasonable person could find that Lawrence, who was presumptively impaired because of her high blood alcohol content, was 50% or more the cause of the accident or event that resulted in her death.

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This case also raises the issue whether any evidence supported a conclusion that Austin Martin violated MCL 257.627, which provides in pertinent part:

> (1) A person operating a vehicle on a highway shall operate that vehicle at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other condition existing at the time. A person shall not operate a vehicle upon a highway at a speed greater than that which will permit a stop within the assured, clear distance ahead. A violation of this subsection shall be known and may be referred to as a violation of the basic speed law or "VBSL".
>
> (2) Except as provided in subsection (1), it is lawful for the operator of a vehicle to operate that vehicle on a highway at a speed not exceeding the following:
>
> * * *
>
> (h) 35 miles per hour on a highway segment with not less than 45 vehicular access points but no more than 49 vehicular access points within ½ mile.

Plaintiff maintains that evidence was presented that Austin violated Subsection (2)(h) by his admission that he believed that he drove 38 miles per hour in the 35 mile per hour zone located at the scene of the accident. Plaintiff also argues that Austin violated the basic speed law by failing to operate his car at a prudent speed or to keep a proper lookout for Lawrence. Plaintiff appears to also acknowledge, however, that Lawrence violated portions of the Kalamazoo City Traffic Code by jaywalking. Article X of the Kalamazoo City Traffic Code governs pedestrian conduct, and § 36-282(A) states that "[n]o pedestrian shall cross or enter a public street in the City in a manner which endangers or is likely to endanger such pedestrian or others lawfully using the street." Further, § 36-280(D) of the Traffic Code provides in part that "[e]very pedestrian or bicyclist crossing the roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to oncoming vehicles upon the roadway." "In Michigan, a violation of a statute creates a rebuttable presumption of negligence while the violation of an ordinance or administrative regulation constitutes evidence of negligence." *Candelaria v BC Gen Contractors, Inc*, 236 Mich App 67, 82 n 5; 600 NW2d 348 (1999).

The undisputed record evidence established that Lawrence, while wearing dark clothing and legally intoxicated attempted to cross the street where no crosswalk existed, and ventured into the eastbound lanes which had oncoming traffic. Both drivers, Austin and Schauf, were unaware of her presence until too late. The undisputed evidence supported the trial court's decision. In any event, a jury may not award damages in favor of a party who is more than fifty percent at fault. MCL 500.3135(2)(b).

1. USE OF "*WHAT EVERY DRIVER MUST KNOW*" PAMPHLET

Plaintiff seeks to rely on various statements in a pamphlet issued by the Michigan Secretary of State, entitled *What Every Driver Must Know*, as authority for determining Austin's duties toward Lawrence. Plaintiff's reliance on this pamphlet as authority regarding the parties' respective duties, for example, to determine whether Lawrence or Austin had the right-of-way, is

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misplaced. The pamphlet is not an official source of Michigan's constitutional, statutory, or common law. Rather, as explained in the preface to the 2016 edition issued by former Secretary of State Ruth Johnson, it is merely a guide to finding information regarding "obtaining a driver's license, common traffic laws, signs and signals, and basic driving tips for sharing the road and handling emergency situations." Michigan Secretary of State, *What Every Driver Must Know* (April 2016), preface. Similarly, current Secretary of State Jocelyn Benson's preface to the 2019 edition cited by plaintiff discusses the pamphlet as "an excellent resource for assisting [drivers] on this lifelong journey." Michigan Secretary of State, *What Every Driver Must Know* (September 2019), preface. Historically, our Supreme Court has only endorsed the use of stopping-distance tables in the pamphlet, which are no longer contained in the pamphlet. See *Winekoff v Pospisil*, 384 Mich 260, 268-269; 181 NW2d 897 (1970) (permitting judicial notice of the "Stopping Distance-Passenger Cars" chart, with the caveat that "intervening changes of design or construction, say of cars, tires, or pavement surfaces, have rendered the chart misleading" would be a "good" objection to its introduction). Contrary to plaintiff's assertion, the pamphlet is not authoritative for determining the relative rights and responsibilities of the parties in this case.

2. CRASH REPORT

Plaintiff also relies on a report prepared by plaintiff's accident-reconstruction expert Timothy Robbins's conclusion that "the lighting would have sufficiently illuminated Ms. Lawrence as she crossed the five lanes of W. Michigan Avenue," which he based in part on photographs of the street that he included in his report. Plaintiff also relies on Robbins's estimation of Lawrence's speed as she crossed the street, and the amount of time this would have given Austin to see Lawrence before he struck her.

Much of Robbins's report, however, is inadmissible or insufficient to establish a question of fact. A witness qualified as an expert may testify in the form of an opinion or otherwise if "(1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." MRE 702. There must be evidentiary support for any facts or data on which an expert bases an opinion. MRE 703 ("The facts or data in the particular case upon which an expert bases an opinion or inference shall be in evidence."). In *Craig v Oakwood Hosp*, 471 Mich 67, 82; 684 NW2d 296 (2004), our Supreme Court stated:

> Under MRE 702, the trial court had an independent obligation to review *all* expert opinion testimony in order to ensure that the opinion testimony . . . was rendered by a "qualified expert," that the testimony would "assist the trier of fact," and . . . that the opinion testimony was rooted in "recognized" scientific or technical principles. These obligations applied irrespective of the type of expert opinion testimony offered by the parties. While a party may waive any claim of error by failing to call this gatekeeping obligation to the court's attention, the court *must* evaluate expert testimony under MRE 702 once that issue is raised. [Emphasis in original.]

In addition, MCL 600.2955 provides, in pertinent part:

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> (1) In an action for the death of a person or for injury to a person or property, a scientific opinion rendered by an otherwise qualified expert is not admissible unless the court determines that the opinion is reliable and will assist the trier of fact. In making that determination, the court shall examine the opinion and the basis for the opinion, which basis includes the facts, technique, methodology, and reasoning relied on by the expert, and shall consider all of the following factors:
>
> (a) Whether the opinion and its basis have been subjected to scientific testing and replication.
>
> (b) Whether the opinion and its basis have been subjected to peer review publication.
>
> (c) The existence and maintenance of generally accepted standards governing the application and interpretation of a methodology or technique and whether the opinion and its basis are consistent with those standards.
>
> (d) The known or potential error rate of the opinion and its basis.
>
> (e) The degree to which the opinion and its basis are generally accepted within the relevant expert community. As used in this subdivision, "relevant expert community" means individuals who are knowledgeable in the field of study and are gainfully employed applying that knowledge on the free market.
>
> (f) Whether the basis for the opinion is reliable and whether experts in that field would rely on the same basis to reach the type of opinion being proffered.
>
> (g) Whether the opinion or methodology is relied upon by experts outside of the context of litigation.

When expert testimony is offered in opposition to a motion for summary disposition, a court must evaluate that testimony. As explained in *Amorello v Monsanto Corp*, 186 Mich App 324, 331-332; 463 NW2d 487, 491 (1990):

> Summary disposition is not precluded simply because a party has produced an expert to support its position. The expert's opinion must be admissible. MRE 403; MRE 702. For an expert's opinion to be admissible, the court must determine whether the opinion will assist the trier of fact to understand the evidence or to determine a fact in issue, and the opinion must not tend to mislead or confuse the jury. *Id*. The facts and data upon which the expert relies in formulating an opinion must be reliable. [Citations omitted.]

"An expert witness's opinion is objectionable if it is based on assumptions that do not accord with the established facts," and when it is based on assumptions "that are contrary to the facts in evidence, it is technically irrelevant to the actual issues at trial." *People v Unger*, 278 Mich App 210, 248; 749 NW2d 272 (2008). Moreover, unsupported conclusory statements cannot establish a genuine issue of material fact that satisfies the party opposing a summary disposition motion's

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burden. See *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 470; 646 NW2d 455 (2002) (explaining that it "is not enough to create a genuine issue of material fact to provide conclusory statements that a duty was breached."); *Quinto v Cross & Peters Co*, 451 Mich 358, 371-372; 547 NW2d 314 (1996) (holding insufficient an affidavit that provided "mere conclusory allegations and was devoid of detail" to avoid summary disposition under MCR 2.116(C)(10)); see also *Jubenville v West End Cartage, Inc*, 163 Mich App 199, 207; 413 NW2d 705 (1987) (conclusory assertions that are unsupported and based on mere speculation are insufficient to establish a question of fact).

In this case, Robbins's report contains a number of conclusions that rely on facts or data created by Robbins, but unsupported by any evidence of the incident itself. As an example, plaintiff offers Robbins's report as evidence that Austin would have experienced lighting conditions at the time of the accident on October 12, 2018, shortly after 10:00 p.m. According to witnesses, however, it was raining and dark that night. Robbins's report states that he visited the accident scene on April 7, 2020, at approximately 10:30 p.m., when the area was wet and the skies were overcast. However, Robbins did not photograph the scene during rain, a factor that would affect visibility, as on the night of the accident. Moreover, Robbins specifically states that the photographs "are to help show the illumination pattern of the streetlights but are not intended to show what the human eye can see." Robbins presented another photograph that he took to demonstrate "how easily a pedestrian in dark clothing can be seen." The photograph is of a street in which a pedestrian can be seen, but the photograph is blurry and appears to have either been taken using magnification or from a much closer vantage point than the first picture. The items Robbins relied on to fashion his opinions did not replicate the actual accident conditions that record evidence established.

When asked to describe the lighting, Austin stated that it was poor, with the streetlights "very spaced out" with some light bulbs missing in the area. Kalamazoo Public Safety Officer Ariana Gasca, who attended the scene shortly after the accident, similarly testified that it was already night and she did not think there were too many streetlamps on or maybe they were just too far apart. She also testified that when she arrived at the scene, she "barely even saw [Lawrence] in the road because there was so much reflection from the lights . . . from the cars that were stopped, the road was wet."

Robbins's photographs were taken 1½ years later, under different weather conditions and without any other visible traffic. Robbins essentially created his own data, which he then used to justify his speculative opinion. To the extent that Robbins relied on the photographs to demonstrate that Lawrence would have been visible as she crossed the street, such reliance was misplaced because it failed to account for and could not rebut uncontroverted established facts. Moreover, because Robbins conceded that the photographs were not intended to show what the human eye could see, they could not establish a question of fact whether Austin could or should have seen Lawrence in time to avoid hitting her when she ventured into his car's path.

In determining that Austin would have been able to see Lawrence as she crossed the other lanes of traffic, Robbins estimated that it would have taken five seconds for Lawrence to walk the 30 feet to the center lane if she walked at six feet per second, which he asserts is an above-average walking speed. Robbins based his assumptions about Lawrence's walking speeds, however, solely on speculation, unsupported by any facts in evidence. Further, even assuming that data could lend

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support to Robbins's assumptions, Robbins did not discuss how seeing Lawrence for five seconds before the accident would have permitted Austin to stop before hitting Lawrence. As defendants point out, Robbins did not opine that Austin's speed served as a factor in the accident.

Robbins's opinions also appear to have been based in part on various "duties" derived from the "*What Every Driver Must Know*" publication. As explained earlier, the handbook is not an authoritative basis for determining the parties' relative rights and responsibilities. Moreover, the handbook is not probative of the issue of Lawrence's comparative negligence, i.e., whether Lawrence was more than 50% at fault.

The record reflects that plaintiff failed and could not show that Robbins's opinions were based on facts or data supported by evidence. His opinions did not account for established facts such as the actual weather or other conditions at the time of the accident. Robbins's opinions were not the product of reliable principles and methods, nor did he reliably apply scientific principles to the actual facts of the case. Accordingly, Robbins's opinions did not satisfy the requirements set forth in MRE 702 or MCL 600.2955. Therefore, as a matter of law, Robbins's report and speculative opinions failed and could not establish a question of fact concerning whether Austin negligently operated his vehicle.

3. APPLICATION OF MCL 600.2955a

"[P]ursuant to MCL 600.2955a, in order to successfully avail itself of the absolute defense of impairment, defendant in this case was required to establish that (1) the decedent had an impaired ability to function due to the influence of intoxicating liquor or a controlled substance, and (2) that as a result of that impaired ability, the decedent was fifty percent or more the cause of the accident or event that resulted in his death." *Harbour v Correctional Med Servs, Inc*, 266 Mich App 452, 456; 702 NW2d 671 (2005). Plaintiff argues that although Lawrence's 0.296 blood alcohol content raised a presumption of impairment under MCL 600.2955a(2)(b), that presumption is rebuttable. In an effort to rebut the presumption, plaintiff admits that Lawrence had a history of substance abuse, but contends that "[i]t is commonly understood that persons with chronic histories of excessive alcohol use have higher tolerances than casual drinkers" and urges this Court to consider such anecdotal information applicable in this case to Lawrence and treat that as sufficient to establish the existence of a genuine issue of material fact. Even if such common understanding may be true, plaintiff presented no competent evidence to establish that Lawrence, despite her 0.296 blood alcohol content, was not impaired. Plaintiff did not provide any substantively admissible evidence to rebut the presumption of her impairment. Plaintiff proffered no evidence that Lawrence actually had a higher tolerance than an "average" person who consumes alcohol, nor any expert testimony or other explanation for how such a "common understanding" may be quantified into a workable framework for rebutting a presumption of impairment for a person with a blood alcohol content of 0.296. Thus, plaintiff's contention that, given Lawrence's history of substance abuse, a blood alcohol content of 0.296 would not have impaired her ability to function rests solely on mere speculation. Moreover, even if one were to agree that a person with such a high blood alcohol content theoretically might not be impaired, such would not alter the fact that Lawrence ventured out into a street on a dark rainy night into the path of oncoming traffic. Such conduct demonstrates serious impairment of decision-making ability. The trial court did not err by holding that plaintiff failed to establish a question of fact regarding Lawrence's ability to

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function unimpaired despite her consumption of alcohol to the point of having a 0.296 blood alcohol content.

Plaintiff also argues that, even though Lawrence attempted to cross the street outside a crosswalk, she was not negligent because the nearest crosswalk was more than 600 feet away and no evidence established that Lawrence was even aware of that crosswalk. Plaintiff, however, presents no authority for the proposition that a pedestrian may be excused for jaywalking if she is unaware of a nearby crosswalk or decides that the nearest crosswalk is inconvenient. "A party may not simply announce a position and leave it to this Court to make the party's arguments and search for authority to support the party's position." *Seifeddine v Jaber*, 327 Mich App 514, 519-520; 934 NW2d 64 (2019). Lacking any legal authority for such contentions, we find plaintiff's argument meritless.

Plaintiff also relies on a statement in a police Incident/Investigation report which stated that a witness told a responding police officer that approximately 15 minutes before the accident, the witness observed a person who resembled Lawrence cross the street without difficulty. Because plaintiff relies on this out-of-court statement for the truth of the matter asserted, i.e., that the witness observed Lawrence crossing the street shortly before the accident, the statement is inadmissible hearsay absent an exception. MRE 401; MRE 402. As such, plaintiff must show that he could provide this evidence in admissible form at trial. When a document contains a second level of hearsay, each level must qualify under an exception to the hearsay rule. *Maiden*, 461 Mich at 125. The Incident/Investigation report itself is plausibly admissible under the business record exception, MRE 803(6). *Id*. at 124. However, plaintiff does not explain how the statement attributed to the witness falls within a recognized hearsay exception. "By presenting inadmissible hearsay evidence, a nonmoving party is actually promising to create an issue for trial where the promise is incapable of being fulfilled. The nonmovant is not showing that a genuine issue exists." *Id.* at 123 n 5.

Reviewing the evidence in the light most favorable to plaintiff, a reasonable jury could infer that Austin drove slightly over the speed limit in violation of MCL 257.627(2)(h), thereby creating a presumption of negligence. A reasonable jury could also rely on this information, coupled with the information that the roadway was dark and that it had been raining, to find that Austin violated a duty of care under MCL 257.627(1). However, plaintiff failed to present any substantively admissible evidence that Austin's speed caused or factored in the accident.

Plaintiff relies on Austin's acknowledgment to a detective that Austin may have seen Lawrence jogging across the street "at the last second" before the accident, and argues that this "direct contradiction" itself should have precluded the trial court from granting summary disposition. Viewed in a light most favorable to plaintiff, this statement indicates at most that Austin may have seen Lawrence just before striking her, but it provides no ground for concluding that Austin had the ability to see and react to Lawrence's unexpected presence. Plaintiff asserts that Austin's slightly different answers about his speed or whether he may have seen Lawrence at the last second before striking her suffices to establish a question of fact regarding the speed at which he traveled and whether he may have seen Lawrence early enough to react differently. Such speculation, however, does not suffice to establish a genuine issue of material fact for trial. Moreover, no evidence establishes that Austin acted in any manner other than a reasonably prudent driver under the circumstances.

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Even if we were to conclude that some evidence indicated Austin's negligence, to avoid summary disposition, plaintiff had to establish a genuine issue of material fact regarding Lawrence's ability to function unimpaired by alcohol and that Lawrence was less than 50% at fault for the accident. If one infers from the evidence that Austin may have been partly at fault, the trial court did not err by concluding that any negligence by Austin paled in comparison to Lawrence's flagrant disregard for her own safety. The uncontroverted evidence established that, with a significantly high blood alcohol content, she attempted to cross a five-lane street outside of a crosswalk in dark clothing on a rainy dark night and ventured into the pathway of oncoming traffic. The trial court did not err by ruling that no reasonable jury could find Lawrence less than 50% at fault for the accident. Accordingly, we affirm the trial court's order granting summary disposition in favor of the Martin defendants.

B. SUMMARY DISPOSITION FOR DEFENDANT SCHAUF

Plaintiff also argues that the trial court erred by granting defendant Schauf's motion for summary disposition. We again disagree.

As discussed earlier, plaintiff failed to establish a genuine issue of material fact regarding whether Lawrence was less than 50% at fault for the initial accident. The evidence also fails to establish a genuine issue of material fact whether Lawrence was less than 50% percent at fault regarding Schauf's role in the accident. Indeed, no evidence supports a finding that Schauf committed negligence when she struck Lawrence. The same underlying facts of darkness, rain, and the sudden appearance of a darkly clothed pedestrian crossing a five-lane street outside of a crosswalk apply equally when evaluating Schauf's conduct. Further, the evidence indicates that Schauf faced a completely unexpected emergency situation of a body landing in her vehicle's path without warning.

Plaintiff argues that the "[e]vidence presents the reasonable inference that Schauf exceeded the speed limit." Plaintiff misstates the evidence. Plaintiff contends that Schauf's testimony about her speed varied. He relies on the fact that Schauf testified that she drove "slightly under" or "slower" than the speed limit, but also claimed that she "was going with traffic." Plaintiff maintains that these statements establish inconsistencies that raise credibility issues which alone should preclude summary disposition. We disagree that these statements are inconsistent or present a question of fact precluding summary disposition. Schauf never testified that she drove over the speed limit, and her statement that she traveled at the speed of traffic cannot support an inference that she exceeded the speed limit, absent evidence that the vehicles she followed or with which she maintained pace exceeded the speed limit. No evidence in the record indicates such facts, and plaintiff does not identify any facts in evidence that permit such an inference. Instead, plaintiff seeks to rely on speculation.

Plaintiff states that Schauf traveled in the left lane of traffic, rather than the right lane as required under MCL 257.642(1)(a), and contends that "Schauf's presence in the left 'passing' lane raises a fact question that she was not driving below the speed limit, but was trying to 'overtake and pass' other vehicles." This argument again relies on speculation regarding the speed at which Schauf drove. Schauf's mere presence in a lane intended for passing does not establish that she exceeded the speed limit nor does it support an inference that she was speeding. Moreover, there are exceptions to the prohibition against traveling in the left lane, including when traffic exists in

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both lanes, see MCL 257.634(2), and the evidence indicated that vehicles traveled in both travel lanes at the time of the accident. Such evidence demonstrates further Lawrence's impaired decision-making and negligent disregard for her own safety.

Plaintiff's argument that the evidence supports a finding that Schauf had to have seen Lawrence lying in the road lacks merit because he relies on the fact that another vehicle behind Austin's vehicle did not strike Lawrence after Austin hit her. Austin and the other driver both testified that they were driving in the curb lane, not the inner lane. The other vehicle could not have hit Lawrence because, after she stepped into Austin's lane, the impact of the collision threw her from the curb lane into the inner lane. It is speculative to assume that Schauf would have known that Lawrence lay in her traffic lane because other cars, not in her lane, swerved.

Robbins's report also does not support a finding that Schauf was negligent. First, Robbins relies in part on portions of "*What Every Driver Must Know*," which is not competent authority for determining comparative negligence. Further, although Robbins stated that Schauf's headlights appeared to be cloudy or oxidized, he admitted that he did not actually inspect Schauf's car. In any event, Robbins merely stated that oxidation "reduces the headlight projection and, thus, driver visibility from direct headlight illumination of objects on the roadway." He did not discuss how or to what extent headlight oxidation affects illumination compared to nonoxidized headlights, nor did he discuss whether the condition of Schauf's headlights rendered her vehicle noncompliant with MCL 257.699, which establishes illumination requirements for headlights. Specifically, MCL 257.699(b) and (c) provide:

> (b) There shall be an uppermost distribution of light, or composite beam, so aimed and of an intensity as to reveal persons and vehicles *at a distance of at least 350 feet ahead* for all conditions of loading.
>
> (c) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles *at a distance of at least 100 feet ahead*; and under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver. [MCL 257.699 (emphasis added).[3]]

Robbins presented nothing to indicate that, on the evening of the accident, Schauf's headlights did not meet these requirements. He did not present any evidence regarding the standard low-beam illumination of headlights on a 2006 Prius, whether and to what extent such could have been affected by oxidation, or how any reduced illumination caused by oxidation would have affected the reaction time of a driver traveling 30 miles per hour, as Schauf testified. Robbins's observation that the headlights on Schauf's vehicle appeared to be cloudy or oxidized does not establish that Schauf's operation of the vehicle amounted to negligence. Further, Robbins never explained the extent to which oxidized headlights would have decreased Schauf's visibility and he never offered

[3] Plaintiff repeatedly asserts that Schauf's headlights were required to illuminate objects 500 feet away, citing MCL 257.684(a). However, this statute only states that one must use headlights if the natural light is insufficient to clearly illuminate objects 500 feet away. It is undisputed that Schauf's headlights were activated at the time Lawrence was struck.

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an opinion whether any increased visibility from nonoxidized headlights would have enabled Schauf to see an object in the roadway in time to avoid hitting it. Robbins's report and opinions fail to create a genuine issue of material fact regarding Schauf's driving performance or whether the condition of her headlights served as a cause in fact of her striking Lawrence in the roadway.

Even if plaintiff could establish that Schauf's headlights affected her vision or her ability to stop before hitting Lawrence, such would not alter the conclusion that no reasonable juror could find under the circumstances of this case that Lawrence was less than 50% at fault. Accordingly, the trial court did not err by granting Schauf's motion for summary disposition.

C. MOTION FOR RECONSIDERATION

Plaintiff next argues that the trial court erred by denying his motions for reconsideration of the orders granting summary disposition in favor of the Martin defendants and Schauf. We disagree.

"This Court reviews for an abuse of discretion a trial court's decision on a motion for reconsideration." *In re Estate of Moukalled*, 269 Mich App 708, 713; 714 NW2d 400 (2006). A trial court abuses its discretion when its decision is outside the range of reasonable and principled outcomes. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 208; 920 NW2d 148 (2018).

In support of her motions for reconsideration, plaintiff submitted still photographs taken from the convenience store video recording system shortly before the accident. The photographs depicted Lawrence entering the store and standing at the counter making purchases. Plaintiff argues that the photos show that Lawrence was not impaired while at the store shortly before she attempted to cross the street.

Motions for reconsideration are used to correct palpable error, not to present new evidence or arguments. *Maiden*, 461 Mich at 126 n 9. Evidence offered for the first time in support of a motion for reconsideration is "not properly before the court." *Id*.

The still photographs from the convenience store were available before the trial court decided the parties' motions for summary disposition. Plaintiff could have presented this evidence when responding to defendants' motions for summary disposition but did not. Regardless, the photographs fail to establish the trial court made a palpable error in granting the Martin defendants' and Schauf's motions for summary disposition. Although the photographs show Lawrence entering the convenience store and standing at the counter making purchases, they cannot establish whether Lawrence was impaired because the photos do not depict Lawrence's body movements, coordination at the time the photos were taken, or her mental function. Moreover, the photographs were cumulative of a detective's deposition testimony concerning whether Lawrence appeared intoxicated while she shopped in the store. The detective testified he reviewed the store security video from which the still photographs were obtained. The video lacked audio and the detective stated he could not see whether Lawrence's "eyes were glassy" and he did not recall whether Lawrence was "staggering." He acknowledged, however, nothing he could see at the time showed Lawrence was under the influence of alcohol. Because the still photographs were cumulative of this evidence which was before the court at the time it granted the Martin defendants' and Schauf's

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motions for summary disposition, plaintiff failed to demonstrate the trial court made a palpable error when granting the motions. Further, determination of the degree of fault attributable to Lawrence did not rest solely on the issue of the degree of her impairment from ingestion of alcohol. The trial court could reasonably conclude from all of the other evidence that Lawrence bore 50% or more fault for the accident. Because no reasonable juror could find that plaintiff was less than 50% liable for the accident, the trial court properly granted defendants' motions for summary disposition. Accordingly, the trial court did not abuse its discretion when it denied plaintiff's motions for reconsideration.

D. SURVIVOR BENEFITS

Plaintiff also argues that the trial court erred when it granted Progressive's and Fremont's motions for summary disposition respecting whether plaintiff was entitled to recover survivor or replacement service benefits under MCL 500.3108. We disagree.

"The [no-fault] act operates to compensate only a limited class of persons for economic losses sustained as a result of motor vehicle accidents." *Belcher v Aetna Cas & Surety Co*, 409 Mich 231, 243; 293 NW2d 594 (1980). Potential recipients of survivor's benefits must have had a certain relationship with the decedent before the decedent's death. *Id*. at 249. "Benefits for survivors' loss are payable only where the deceased had contributed things of tangible economic value to the dependent's support or where the deceased had performed services for his dependents during the injured person's lifetime." *Id*.

MCL 500.3108 governs benefits to survivors of individuals who die as a result of the ownership, operation, maintenance, or use of a motor vehicle. MCL 500.3108(1) provides in pertinent part:

> Except as provided in subsection (2), personal protection insurance benefits are payable for a survivor's loss which consists of a loss, after the date on which the deceased died, of contributions of tangible things of economic value, not including services, that dependents of the deceased at the time of the deceased's death would have received for support during their dependency from the deceased if the deceased had not suffered the accidental bodily injury causing death and expenses, not exceeding $20.00 per day, reasonably incurred by these dependents during their dependency and after the date on which the deceased died in obtaining ordinary and necessary services in lieu of those that the deceased would have performed for their benefit if the deceased had not suffered the injury causing death.

Under MCL 500.3108(1), only "dependents of the deceased at the time of the deceased's death" are entitled to survivor's benefits. Although MCL 500.3108 does not define "dependent," the term has been construed to include "a person who was receiving support and services from the deceased injured person prior to his death." *Belcher*, 409 Mich at 244. MCL 500.3110 provides further guidance as to who may qualify as a dependent of a decedent and states, in relevant part:

> (1) The following persons are conclusively presumed to be dependents of a deceased person:
>
> * * *

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> (c) A child while under the age of 18 years, or over that age but physically or mentally incapacitated from earning, *is dependent on the parent with whom he lives or from whom he receives support regularly at the time of the death of the parent*.
>
> (2) In all other cases, questions of dependency and the extent of dependency shall be determined in accordance with the facts as they exist at the time of death. [Emphasis added.]

Plaintiff maintains that because Lawrence's daughter, JL, stayed with Lawrence on alternating weekends, she therefore "lived with" Lawrence, which is sufficient to trigger the conclusive presumption of MCL 500.3110(1)(c). We disagree.

In *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013), our Supreme Court addressed the application of the term "domiciled" in MCL 500.3114(1),[4] to determine priority for PIP benefits for minor children. In *Grange*, a consolidated case, the Court considered application of the law to two factual scenarios. In the first case, the parents of the child killed in an accident, Edward Lawrence and Laura Rosinski, divorced before the accident. The two shared joint legal custody, but Rosinski had "primary physical custody" of the decedent and her sister. *Id*. at 482. The child was killed while riding in a car driven by Rosinski. *Id*. The trial court determined that the child had two domiciles and that benefits should be paid equally by the parents' respective insurers. This Court affirmed that decision. *Id*. at 484. In the second case, the parents of the deceased minor child had also divorced before the accident. The divorce judgment granted both parents joint legal custody, but "physical custody" was awarded to the child's father, with the mother to have "reasonable visitation." *Id*. at 486. After the father decided to move to Tennessee, the custody order was modified to provide the mother with six weeks of vacation in the summer. *Id*. The child was killed in an accident when visiting her mother in Michigan for the summer. *Id*. 486-487. The trial court found that the child resided in Michigan when with her mother for the summer. *Id*. at 488. This Court reversed, "reasoning that the evidence of [the child's] domicile, and in particular her intent, presented a question of fact for resolution by the jury and that summary disposition was, thus, not proper for either party." *Id*. This Court rejected the argument that the judgment of divorce and the subsequent order modifying domicile conclusively established the child's domicile for all purposes. *Id*. at 489.

Our Supreme Court reasoned that the term "domicile" has "a particular meaning in the law" and that an individual can only have one domicile, which it defined as "[a] place where a person *lives* or has his home." *Id*. at 494 (emphasis added, citation omitted). The Court also noted that, when enacting the no-fault act, "rather than there being any indication that the Legislature intended to deviate from this common-law rule, there is, in fact, evidence that the Legislature favored this single-location rule." *Id*. at 495. The Court held that, unlike an adult, a child cannot acquire a "domicile of choice," and therefore, the traditional ways of determining a person's

[4] MCL 500.3114(1) provides that "a personal protection insurance policy described in section 3101(1)1 applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident."

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domicile are "irrelevant." *Id*. at 503. Instead, the Court "expressly recognized that a child's domicile, upon the divorce or separation of the child's parents, is the same as that of the parent to whose custody he has been legally given pursuant to a custody order." *Id*. at 504. The Court determined that this conclusion was also consistent with the Child Custody Act, MCL 722.21 *et seq*., which provides, *inter alia*, that courts are charged in any dispute regarding custody, with "declar[ing] the child's inherent rights and establish[ing] the rights and duties as to the child's custody . . . in accordance with this act." *Id*. at 506, quoting MCL 722.24(1). Our Supreme Court explained:

> Once a custody order is entered pursuant to a judgment of divorce *or otherwise*, that custody order is legally binding on the parents and the order cannot be modified absent court approval or compliance with the applicable provisions of the Child Custody Act. Because parents are legally bound by the terms of the custody order, the order therefore negates the parents' legal capacity, which is necessary to establish a domicile of choice for the minor child that is different from that established in the custody order." [*Id*. at 508-509 (emphasis added).]

Turning to the first case, the Court held that because Rosinski was awarded primary physical custody, the child's domicile was with her. *Id*. at 513. In the second case, the Court held that because the child's father had been awarded "physical custody," the child remained domiciled with him in Tennessee, despite her residence in Michigan at the time of the accident. *Id*. at 515.

Although MCL 500.3110 does not use the term "domicile," the phrase "dependent on *the parent with whom he lives*" (emphasis added) is synonymous with the longstanding definition of domicile, of which JL could have only one. In May 2018, Lawrence and JL's father, Timothy Engler, agreed that Engler would have sole physical custody of JL, with the two continuing to share legal custody, and the court entered an order awarding Engler sole physical custody of JL beginning June 15, 2018. Therefore, consistent with *Grange*, as a matter of law, JL did not "live with" Lawrence at the time of the accident, but with Engler.

Plaintiff also argues that Lawrence provided regular support for JL, thereby entitling JL to survivor's benefits under MCL 500.3110(1)(c). The May 21, 2018 custody order provided that "[c]hild support is still an issue and shall be referred to a hearing with the Referee." However, Engler testified that he did not ask for child support, and Lawrence did not pay any. Lawrence did not provide transportation for JL, and Engler testified that neither Lawrence nor her mother owned a vehicle. Although JL stayed with Lawrence during alternate weeks in the summer of 2018, Engler testified that Lawrence lived with her mother. Engler was not aware whether Lawrence paid her mother rent. Engler provided somewhat inconsistent answers concerning any other support. When asked whether Lawrence had provided financial support to JL during the five months before the accident, Engler said he was not sure, but he also said that Lawrence had assisted with JL's hair, nails, and occasionally clothing, and she had done what she could with what she had. Engler testified that Lawrence provided JL with food and clothing when JL stayed with Lawrence and her mother. However, Lawrence received food stamps and Engler did not know whether Lawrence's mother also provided food for JL. Engler did not think that Lawrence's mother also provided clothing for JL because it was mostly JL's aunt or JL's older sister who did. JL was covered under Engler's health insurance and he provided her with school supplies.

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Plaintiff, Lawrence's brother, testified that Lawrence was employed part time as a housekeeper at a hotel but she did not have a bank account. Plaintiff was unaware whether Lawrence gave her mother any money for rent. Plaintiff also stated that in the six months before the accident, Lawrence resided at a shelter provided by a mission to help her qualify for housing assistance. Plaintiff stated that Lawrence bought clothes for JL. According to plaintiff, however, at the time of the accident, JL spent only occasional weekends at the home Lawrence shared with her mother.

Plaintiff also relies in part on testimony that Engler provided financial support to Lawrence's mother after the accident to argue that Lawrence must have been providing that amount of support. However, Engler testified that he provided Lawrence's mother money for food because JL stayed there because her summer school was located next to her grandmother's home. This later voluntary contribution after Lawrence's death, while JL resided with her grandmother full time, does not give rise to a reasonable inference that Lawrence provided such level of support when she was not financially responsible for JL.

The foregoing testimony, as well as Engler's explanation that the custody arrangement and Lawrence's lack of any child support obligation were designed to allow Lawrence to save money to afford her own place, support the trial court's determination that JL was not entitled to survivor's benefits. Although Lawrence may have provided some support for JL before the accident, no genuine issue of material fact existed that JL "regularly" received support from Lawrence at the time of Lawrence's death, as required under MCL 500.3110(1)(c). Ignoring the word "regular" in MCL 500.3110 would render that term surplusage or nugatory, which this Court will not do. *People v Pinkney*, 501 Mich 259, 282; 912 NW2d 535 (2018).

Plaintiff also argues that the trial court erred when it found no genuine issue of material fact regarding whether he was entitled to recover for reasonably incurred replacement services. An insured bears a burden of proving by a preponderance of the evidence whether the expenses were reasonable and necessary. *Douglas v Allstate Ins Co*, 492 Mich 241, 269; 821 NW2d 472 (2012). Whether an expense is reasonably necessary is reviewed under an objective standard. *Id.* at 265. When asked what activities or support Lawrence used to provide that he was now providing, Engler stated that Lawrence used to braid JL's hair. To the extent that recovery for this service might be appropriate, plaintiff presented no evidence to show how often this occurred or how much others charged for such a service. Without such evidence, plaintiff cannot show that the trial court erred.

Affirmed.

/s/ Stephen L. Borrello
/s/ Michael J. Kelly
/s/ James Robert Redford

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EXHIBIT I

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

JOHN DAVIS, as Next Friend of FD, HD, and ID, minors,

Plaintiff-Appellee

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant,

and

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellee

UNPUBLISHED
June 23, 2025
11:17 AM

No. 370748
Wayne Circuit Court
LC No. 22-000863-NF

Before: LETICA, P.J., and MURRAY and PATEL, JJ.

PER CURIAM.

In this action for first-party personal injury protection (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., defendant, Auto Club Insurance Association, appeals by leave granted[1] the trial court's order denying its motion for summary disposition under MCR 2.116(C)(10) and its motion for reconsideration. We reverse and remand for further proceedings consistent with this opinion.

[1] *FD Minors v Auto Club Ins Assoc*, unpublished order of the Court of Appeals, entered August 21, 2024 (Docket No. 370748).

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I. BACKGROUND

On January 30, 2021, the minor plaintiffs, FD, HD, and ID (collectively, the FD minors), were injured in an automobile collision while occupying a motor vehicle owned and operated by their aunt, Mary O'Neal. On the date of the accident, Mary's vehicle was insured by Auto Club.

John Davis and Kelly O'Neal are the FD minors' parents. From approximately April 2020 to March 2021, John and Kelly lived at an extended-stay motel. The FD minors lived at the hotel full-time with their parents until November 2020. Kelly was pregnant and placed on medical bedrest in November 2020. At that time, the children began staying at Mary's home during the week and at the hotel on the weekends. Kelly explained that the living arrangement took the stress off of her and John. With the children at Mary's home during the week, Kelly and John got a better rate for the hotel room and everyone had more living space. In addition, Mary's home was equipped with Wi-Fi and provided a better environment for the children's virtual classes. The FD minors had their own beds at Mary's home, shared bedrooms with their cousins, and kept clothing and other personal belongings there. John and Kelly visited the children at Mary's home, but never stayed overnight. John and Kelly provided some food and extra clothing for the children while they stayed with Mary. They also maintained legal custody of the children. This living arrangement continued until the January 2021 accident.

Neither John nor Kelly owned a vehicle on the date of the accident. And no one else lived in the hotel room with John and Kelly besides the children. Accordingly, it is undisputed that there were no applicable automobile insurance policies through John, Kelly, or another relative at the temporary hotel address.

A claim for PIP benefits was made on behalf of the FD minors under Mary's Auto Club insurance policy. Auto Club denied the claim on the basis that the children were not domiciled with Mary on the date of the accident. A claim was then made on behalf of the FD minors to the Michigan Automobile Insurance Placement Facility for PIP benefits under the Michigan Assigned Claims Plan (MACP). The claim was assigned to defendant, Citizens Insurance Company of the Midwest.

John, as next friend of the FD minors, commenced this action for PIP benefits against Auto Club and Citizens. Following discovery, Auto Club moved for summary disposition under MCR 2.110(C)(10). Applying the factors established by *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477, 496–497; 274 NW2d 373 (1979) and *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 681-682; 333 NW2d 322 (1983), Auto Club argued that there was no genuine issue of material fact that the FD minors were domiciled with their parents on the date of the accident and thus they were not entitled to PIP benefits under Mary's Auto Club policy. In response, Citizens asserted that there was a genuine issue of material fact under the *Workman/Dairyland* factors whether the children were domiciled with Mary. John, as next friend of the children, took no position regarding the insurer dispute.

After hearing arguments, the trial court ruled:

> [W]hen you look at the undisputed facts, the undisputed facts, of how these children came to be in the care of the [Auto Club] insured, Ms. O'Neal, it is without

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> question . . . that these children were with her indefinitely. And I think, because they were with her indefinitely, [be]cause there was no other stable or suitable housing available to these kids, it is without question, that, at the time of this loss, they were domiciled a [sic] living with her and, therefore, the Court finds that, a matter of law that the defendant, [Auto Club], is the first in priority for payment of benefits—no-fault benefits to these children and, as such, I think that that would mean that the defendant Citizens, would not be within the order of priority because Citizens was only assigned as the insurer of last resort because there was but believed to be no other coverage available, which has now been resolved by discovery in the—in the depositions being taken, that these kids were in fact living and domiciled with their aunt, the [Auto Club] insured. . . . So, your motion for summary disposition is denied and I believe that -- that defendant Citizens is out and [Auto Club] is in.

The trial court denied Auto Club's motion for summary disposition for the reasons stated on the record and held that Auto Club was the highest priority insurer for the FD minors' claim for PIP benefits arising out of the subject accident.

Auto Club moved for reconsideration or, in the alternative, for the trial court to exercise its discretion to grant relief under MCR 2.604(A) ("an order . . . adjudicating fewer than all the claims, or the rights and liabilities of fewer than all the parties . . . is subject to revision before entry of final judgment . . . ."). Auto Club argued that that the trial court had been misled by the parties into applying the *Workman/Dairyland* factors to determine the domicile of the minor children. Instead, Auto Club asserted, for the first time, that our Supreme Court's decision in *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 503; 835 NW2d 363 (2013), was dispositive. Auto Club maintained that, under *Grange*, the children's domicile was that of their parents. The trial court denied Auto Club's motion because it was "not convinced that palpable error occurred in the original ruling." This appeal followed.

II. STANDARDS OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Summary disposition under MCR 2.116(C)(10) is warranted 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." MCR 2.116(C)(10). When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must consider the evidence submitted by the parties in the light most favorable to the nonmoving party. *El-Khalil*, 504 Mich at 160. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id*. (cleaned up).

We review a trial court's decision on a motion for reconsideration for an abuse of discretion. *Sanders v Perfecting Church*, 303 Mich App 1, 8, 840 NW2d 401 (2013). A trial court abuses its discretion when its decision falls outside the range of principled outcomes, or when it "premises its exercise of discretion on an error of law." *Int'l Outdoor, Inc v SS Mitx, LLC*, __ Mich App __, __; __ NW3d __ (2023) (Docket No. 359082); slip op at 3-4.

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"We review de novo questions of statutory interpretation . . . ." *Milne v Robinson*, 513 Mich 1, 7; 6 NW3d 40 (2024).

III. ANALYSIS

Auto Club argues the FD minors were domiciled with their parents as a matter of law and thus they are not entitled to PIP benefits under Mary's Auto Club insurance policy. We agree.

"The goal of the no-fault insurance system was to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Donner v Progressive Mich Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365477); slip op at 4 (cleaned up). "This includes PIP benefits. A person injured in an accident arising from the ownership, operation, or maintenance of a motor vehicle as a motor vehicle is immediately entitled to PIP benefits without the need to prove fault." *Id*. (cleaned up). When a person is injured in an auto accident, MCL 500.3114 instructs the person "to pursue his or her 'claim' for PIP benefits from insurers according to the listed order of priority." *Griffin v Trumbull Ins Co*, 509 Mich 484, 498; 983 NW2d 760 (2022). Under MCL 500.3114(4), there are three levels of priority for insurers: "the person's no-fault insurer, the insurer of a spouse or resident relative, and lastly the MACP." *Bauer-Rowley v Humphreys*, 344 Mich App 52, 62; 988 NW2d 721 (2022). MCL 500.3114(1) provides "a personal protection insurance policy described in [MCL 500.3101(1)] applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident."

In this case, it is undisputed that the FD minors did not have their own no-fault policy. It is further undisputed that Mary had a valid no-fault policy issued by Auto Club and the FD minors Mary's relatives. Accordingly, the FD minors may only claim PIP benefits under Auto Club's policy if they were "domiciled in the same household" as Mary on the date of the accident. MCL 500.3114(1).

Generally, a domicile determination is a question of fact. *Grange*, 494 Mich at 491. But if the underlying material facts are not in dispute, the determination of domicile is a question of law. *Id*. The term "domiciled" is not defined in the no-fault act. "Domicile" has been defined as "the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Id*. at 493 (cleaned up). It has also been defined as "that place where a person has voluntarily fixed his abode not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time." *Id*. (cleaned up). A person "retains his domicile of origin upon his birth until he changes it, by acquiring another; and so each successive domicile continues, until changed by acquiring another." *Id*. at 494 (cleaned up). "[A] person can only have a single domicile at any given point in time." *Id*. On the other hand, a person may have more than one residence. *Id* . A residence is "any place of abode or dwelling place," regardless of whether it is temporary. *Id*. Applying this well-established common-law meaning of the term "domicile," our Supreme Court concluded in *Grange* that "a child, regardless of his parents' marital status or his multiple legal residences, may also have only one domicile at any given point in time." *Id*. at 495.

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In the summary disposition briefing, the parties relied on *Workman* and *Dairyland* to argue their respective positions regarding the children's domicile. In *Workman*, 404 Mich at 496–497, our Supreme Court articulated a multifactor balancing test to determine a person's domicile:

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

In *Dairyland*, 123 Mich App at 682, this Court articulated five additional factors for a court to consider in determining a domicile:

> whether the claimant continues to use his parents' home as his mailing address, whether he maintains some possessions with his parents, whether he uses his parents' address on his driver's license or other documents, whether a room is maintained for the claimant at the parents' home, and whether the claimant is dependent upon the parents for support.

The *Dairyland* factors have "a particular focus on adult children of an insured who may have complicated living arrangements." *Grange*, 494 Mich at 497 n 41.

However, because a minor lacks the legal capacity to acquire a domicile of choice, the *Workman/Dairyland* factors are irrelevant to the determination of a minor's domicile. *Grange*, 494 Mich at 501-503. "Instead, the child's domicile is determined by reference to the domicile of his or her parents." *Id*. at 503. Under Michigan common law, a child acquires a domicile of origin at birth. *Id*. The child's domicile of origin is that of his or her father and "remains the child's domicile until a new domicile is acquired through the actions of the child's parents or until that point in time when the minor, either through emancipation or by reaching the age of majority, can acquire a domicile of choice." *Id*. "[I]n the instance where a child's parents remain married, when the parents acquire a new domicile of choice, the child also acquires that same domicile consistent with the parents' intent." *Id*. at 503 n 56. In other words, a child of married parents acquires a new domicile when his or her parents acquire a new domicile or, when the child reaches the age of majority or emancipates from his or her parents, the child can choose a new domicile.

In this case, the FD minors had two residences on the date of the accident—the hotel and Mary's home. But the unemancipated minors could only have one domicile. See *Grange*, 494 Mich at 503. On the date of the accident, the FD minor's parents were married and had legal custody of the children. Therefore, the FD minors were domiciled with their parents as a matter of law. See *id*. It is undisputed that the FD minors' parents were not domiciled in Mary's household on the date of the accident. Because the FD minors were not named insureds under Mary's Auto Club policy and were domiciled with their parents on the date of the accident, Mary's Auto Club policy is inapplicable to the FD minor's PIP claim. See MCL 500.3114(1). Accordingly, the trial court erred by denying Auto Club's motion for summary disposition and holding that Auto Club was the highest priority insurer for the FD minor's PIP claim. And because

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Grange is dispositive, the trial court abused its discretion by denying Auto Club's motion for reconsideration.[2]

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

/s/ Anica Letica
/s/ Christopher M. Murray
/s/ Sima G. Patel

[2] We recognize that Auto Club initially relied on the *Workman/Dairyland* factors in its motion for summary disposition and did not raise *Grange* until its motion for reconsideration. "As a general rule, an issue is not preserved if it is raised for the first time in a motion for reconsideration in the trial court." *George v Allstate Ins Co*, 329 Mich App 448, 454; 942 NW2d 628 (2019). However, the issue was the same in both motions—whether the FD minors were domiciled with Mary and thus were entitled to claim PIP benefits under her policy. Auto Club was free to make more developed arguments and rely on additional caselaw. See *Glasker-Davis v Auvenshine*, 333 Mich App 222, 228; 964 NW2d 809 (2020) ("[S]o long as the issue itself is not novel, a party is generally free to make a more sophisticated or fully developed argument on appeal than was made in the trial court.").

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EXHIBIT J

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE
FAMILY DIVISION

STEPHAINE FROWNFELTER,	**CASE NO.: 10-297894-dm**
Plaintiff,	**HON.: DUNCAN M. BEAGLE**
Vs.	
COREY C. FROWNFELTER,	A TRUE COPY Michael J. Carr, Clerk
Defendant.	

STEPHAINE FROWNFELTER Plaintiff in Pro Per 225 Third St. Fenton, MI 4843	**COREY FROWNFELTER** Defendant In Pro Per 917 Delphine Holly MI 48442

JUDGMENT OF DIVORCE

At a session of said Court, held in the Courthouse
In the City of Flint, County of Genesee, State of Michigan
On the 7 day of June, 2011

PRESENT: DUNCAN M. BEAGLE, Circuit Court Judge, Family Division

ABSOLUTE DIVORCE

IT IS HEREBY ORDERED AND ADJUDGED that this Court by virtue of the authority therein vested and in pursuance of the statute in such case made and provided, DOTH ORDER that the marriage between the Plaintiff, Stephanie Frownfelter, and the Defendant, Corey Frownfelter, be dissolved and the same dissolved in a divorce from the bonds of matrimony between the parties is ORDERED.

CUSTODY

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff and the Defendant shall have joint legal custody of the minor children, to wit: Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004).

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IT IS FURTHER ORDERED AND ADJUDGED that the term, "Joint Legal Custody" shall mean the Plaintiff and Defendant shall confer with one another on important issues affecting the child, such as education, medical treatment, and religious training before making any major decisions affecting the child, except in cases of emergency.

IT IS FURTHER ORDERED AND ADJUDGED that the parties, in making such decisions regarding the welfare of the minor child, shall make such decisions taking into consideration the best interests of the minor child and the inherent rights of the child including but not limited to the following:

A. The right to be treated as an important human being, with unique feelings, ideas and desires and not as a source of argument between the parties.

B. The right to a continuing relationship with both parents and the freedom to receive love from and express love for both.

C. The right to express love and affection for each parent without having to stifle the love because of fear of disapproval of the other parent.

D. The right to know that their parents' decision to divorce is not their responsibility.

E. The right to continuing care and guidance from both parents.

F. The right to honest answers to questions about the changing family relationship.

G. The right to know and appreciate what is good in each parent without being placed in a position to manipulate one parent against the other parent.

H. The right to be able to experience regular and consistent visitation and the right to know the reason for a cancelled parenting time.

I. If the parent for any reason needs to find child care for the children during their

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parenting time for two nights or more the other parent is to be offered the time with the children fist.

PHYSICAL CUSTODY

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff and the Defendant shall have joint physical custody of the minor children, **Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004)**, until the minor children attains the age of eighteen (18) years. or until the children attains the age of nineteen (19) years and six (6) months (19 ½) of age if the child is residing with the payee and regularly attending high school on a full time basis with the reasonable expectation of completing sufficient credits to graduate from high school whichever is later or until further order of the Court.

PARENTING TIME

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall have parenting time with the minor children, to wit: Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004) herein at such times and places as shall be agreed upon by the parties.

LAW PROHIBITING 100 MILE MOVE
(DOMICILE)

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to P.A. 422 of 2000, a child whose parental custody is governed by this Court Order has a legal residence with each parent. A parent of a child whose custody is governed by this Court Order shall not change a legal residence or domicile of a child to a location that is more than 100 miles from the child's legal residence without approval of the Judge who awarded custody or his/her successor.

CURRENT ADDRESS, EMPLOYMENT AND SOCIAL SECURITY NUMBERS

That the present resident address of the Defendant, Corey Frownfelter, social security number: [redacted], currently resides at 917 Delphine, City of Holly, County of

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Oakland, and in the State of Michigan and is presently employed at MRCC, located at 3800 Woodward Ave., Suite 200 Detroit Michigan.

The resident address of the Plaintiff, Stephanie A. Frownfelter, social security number: [redacted], is 1767 Taylor Lake Rd., City of Holly, County of Oakland and State of Michigan and is currently employed at Mass Mutual, DFG-33533 W. 12 Mile Rd., Farmington Hills, Michigan.

The residence of the minor children, Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004) shall be with the Plaintiff, at her current address at 1767 Taylor Lake Rd. Holly, County of Oakland and State of Michigan 50% of the time and with the defendant, at his current address at 917 Delphine Holly, MI 48442.

IT IS FURTHER ORDERED AND ADJUDGED that neither party who's custody or parenting time of the minor child is governed by this order shall change the legal residence of this child except with compliance with Section 11 of the Child Custody Act of 1970, 1970 PA 91, MCL 722.31.

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall keep the office of the Genesee County Friend of the Court and each other informed at all times of their employment and any change of address.

SUPPORT OF THE MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that the issue of child support shall be held in abeyance until further order of the Court.

CHILD SUPPORT RETROACTIVE MODIFICATION

IT IS FURTHER ORDERED AND ADJUDGED that except as otherwise provided in Section 3 of the Support and Visitation Enforcement Act, Act #295 of the Public Acts of 1982, being Section 552.603 of the Michigan Compiled Laws, a support order that is part of the judgment or is an order in a domestic relations matter as that term is defined in Section

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31 of the Friend of Court Act, Act #294 of the Public Acts of 1982, being Section 552.531 of the Michigan Compiled Laws, is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this date, and is not, on and after the date that it is due, subject to retroactive modification.

MEDICAL INSURANCE AND HEALTH CARE EXPENSES

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Stephanie Frownfelter, and the Defendant, Corey Frwnfelter, shall carry health insurance for the minor children, **Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004)** enrolled on both parties employer provided medical insurance plans that is available to them and in the event that such insurance plan is not available, the parties shall equally divide the cost of the health insurance.

QUALIFIED MEDICAL CHILD SUPPORT ORDER

IT IS FURTHER ORDERED AND ADJUDGED that this Order shall serve as a Qualified Medical Child Support Order ("QMCSO"), effective December 30, 1985, which requires that the minor child of the parties be covered until the support obligation terminates under the group health plan specified hereinafter in accordance with Section 609 of ERISA. The group health plan subject to this Order are as follows:

a) The group health plan subject to this Order is as follows:

PRIMARY:

Participant: Corey Frownfelter
Social Security No.: [redacted]
Address: 917 Delphine, Holly, MI

Alternate Recipient:
Date of Birth: Hunter Frownfelter
SSN: [redacted]
Address: 1767 Taylor Lake Rd., Holly, MI 48442

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Date of Birth: McKenna Frownfelter

SSN: [redacted]

Address: 1767 Taylor Lake Rd., Holly, MI 48442

Plan Administrator – Hap

Subscriber No.: 2729038057

IT IS FURTHER ORDERED AND ADJUDGED that the Alternate Recipient shall be covered under this Plain until such time as the child attains the age of eighteen (18) years or until the age of nineteen (19) years and six (6) months, if said child is residing with the payee or at an institution and regularly attending high school on a full time basis with a reasonable expectation of completing sufficient credits to graduate from high school, or until further Order of this Court.

UNINSURED MEDICAL EXPENSES

IT IS FURTHER ORDERED AND ADJUDGED that all uninsured and unreimbursed health care expenses, other than ordinary expenditures on health care, shall be apportioned between the parties. That the Plaintiff-Mother shall be responsible for fifty percent (50%) of any uninsured or unreimbursed health care expenses and the Defendant-Father shall be responsible for fifty percent (50%) of any uninsured or unreimbursed health care expenses incurred for and on behalf of the minor child. The proportion paid by either party shall not be less than ten percent (10%) or more than ninety percent (90%).

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff-Mother and the Defendant-Father shall be solely responsible for their own medical insurance and health insurance.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff-Mother has absolutely no responsibility to provide health insurance, health care costs or any other medical or related medical care expenses or costs for the Defendant.

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IT IS FURTHER ORDERED AND ADJUDGED that the Defendant-Father has absolutely no responsibility to provide the Plaintiff's health Insurance, medical insurance costs, premiums and co pays.

IT IS FURTHER ORDERED AND ADJUDGED that in the event that either party does not pay their proportion of said expense, the Friend of the Court will collect documented expenses by Income Withholding Order.

MEDICAL, DENTAL, OPTICAL, AND PRESCRIPTIONS

IT IS FURTHER ORDERED AND ADJUDGED that "Health Care" means products or services provided or prescribed by a person or organization licensed or legally authorized to provide or prescribe human health care products or services, including, but not limited to, the following professionals; chiropractors, dentists, oral surgeons, orthodontists, prosthodontist, periodontist, endodontist, pedodontis, dental hygienists, dental assistants, medical doctors, physician's assistants, registered professional nurses, licensed practical nurses, nurse midwives, nurse anesthetists, nurse practitioners, trained attendants, optometrists, osteopaths, pharmacists, physical therapists, physiotherapistis, physical therapy technicians, chiropodists, podiatrist, foot specialists, psychologists, psychological assistants, psychological examiners, clinical social workers and providers of prosthetic devices. It also includes the following health facilities or agencies (even when located in a correctional institution or a university, college, or other educational institution); ambulances, advanced mobile emergency care services, clinical laboratories, county medical care facilities, freestanding surgical outpatient facilities, health maintenance organizations, homes for the aged, hospitals and nursing homes.

INFORMATION TO BE PROVIDED TO THE FRIEND OF THE COURT

IT IS FURTHER ORDERED AND ADJUDGED that while any support shall be due and owing under the support provisions of this judgment/Order, the Plaintiff and Defendant shall immediately inform the Office of the Genesee County Friend of the Court, in writing, of the following:

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a. Within 21 days after the payer or payee changes his or her residential or mailing address, that person shall report the new address and his or her telephone number in writing to the office of the Genesee County Friend of the Court;

b. Both the payer and payee of support shall notify the office of the Genesee County Friend of the Court if he or she holds an occupational license and if he or she holds a driver's license;

c. The name, address, and telephone number of the payer's current source of income; and

d. Both the payer and payee shall inform the office of the Genesee County Friend of the Court of his or her social security number and driver's license number. This requirement does not apply to a payer or payee who demonstrates that he or she is exempt under the law from obtaining a social security number or to a payer or payee who for religious convictions is exempt under law from disclosure of his or her social security number under those circumstances.

NOTICE TO PAYER OF SUPPORT OF IMPOSITION OF LEIN

IT IS FURTHER ORDERED AND ADJUDGED that by operation of LEIN a payer's real estate and personal property can be encumbered or seized if any arrearage accrues in an amount greater than the amount of periodic support payments for one year under the payer's support order.

INCOME TAX EXEMPTIONS

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff shall have the right to claim the minor child, McKenna Frownfelter (03/30/2004) as a dependent, for all federal, states and local income tax purposes.

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IT IS FURTHER ORDERED AND ADJUDGED that the Defendant shall have the right to claim the minor child, Hunter Frownfelter (02/06/2002) as a dependent, for all federal, states and local income tax purposes.

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall execute a declaration of waiver in a form satisfactory to the Internal Revenue Service so as to permit the other to claim the child on their income tax returns as provided by this Judgment. In the event that the parties fail to comply with this provision, then a certified copy of this Judgment of Divorce may be utilized as a declaration of waiver to allow the other to claim the minor child as a dependant.

REAL PROPERTY SETTLEMENT

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Corey C. Frownfelter shall be awarded the home located at 917 Delphine, Holly, MI as his sole and separate property free and clear from any claim of the Plaintiff, Stephanie A. Frownfelter, which is legally described as:

Commonly known as: 917 Delphine, Holly, MI

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Corey C. Frownfelter, shall be responsible and shall pay any indebtness associated with the home located at 917 Delphine, Holly MI and shall hold the Plaintiff, Stephanie A Frownfelter harmless from any liability existing on the property. The Defendant, Corey Frownfelter must refinance the marital home, removing the Plaintiff's, Stephanie Frownfelter's name from the mortgage within six (6) months from the date of this Judgment of Divorce.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Stephanie A Frownfelter, shall and must execute a Quit Claim Deed deeding all of her interests, if any, in the property as described above and located at 917 Delphine, Holly, MI to the Defendant, Corey Frownfelter, at the time the Judgment of Divorce is signed by this Honorable Court.

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IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Stephanie Frownfelter, shall have as her own, sole and separate property, free and clear from any claims upon the part of the Defendant, all those items of personal property, clothing and effects presently in her possession and she shall assume and pay any indebtness due or owing thereon and shall hold the Defendant harmless thereon.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Corey Frownfelter, shall have his own sole and separate property free and clear from any claim upon the part of the Plaintiff, all those items of personal property, clothing and effects presently in his possession and he shall assume and pay any indebtness due or owing thereon and shall hold the Plaintiff harmless thereon.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Stephanie Frownfelter, shall have as her sole and separate property, free and clear from any claim upon the part the Defendant, Corey Frownfelter , 2008 Chevy Tahoe with VIN No.:1gnFk130781235550 currently in her possession and she shall assume and pay any indebtness due and owing thereon and shall hold the Defendant harmless thereon.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant, Corey Frownfelter, shall have as his own sole and separate property, free and clear from any claims upon the part of the Plaintiff, the 2007 Dodge Trust and the Defendant shall assume and pay any indebtness due and owing thereon and hold the Plaintiff harmless thereon from this debt and obligation. 1D7HU182375236990

PENSION, 401K, AND RETIREMENT BENEFITS

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Stephanie Frownfelter, shall have as her own sole and separate property, free and clear from any claim upon the Defendant, all rights, titles and interest, any and all tax deferred plans, 401K accounts, pensions/retirement accounts, IRA's or any and all private investment accounts presently standing in her name as her own, sole and separate property free from any claim upon the part of the Defendant.

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IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Corey Frownfelter, shall have as his own sole and separate property, free and clear from any claim upon the Plaintiff, all rights, titles and interest, any and all tax deferred plans, 401K accounts, pensions/retirement accounts, IRA's or any and all private investment accounts presently standing in his name as his own, sole and separate property free from any claim upon the part of the Plaintiff.

BANK ACCOUNTS

IT IS FURTHER ORDERED AND ADJUDGED that each party shall retain the bank accounts in their respective names as their sole and separate property, free and clear from any claim upon the part of the other party and each shall hold the other party harmless.

INDEBTNESS

IT IS FURTHER ORDERED AND ADJUDGED that each of the parties shall assume any and all individual indebtness and any and all debts relating to items of personal property retained or required by that individual party, and they shall each indemnify and hold the other party harmless from any and all such indebtness except as is specifically set forth herein to the contrary.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Corey Frownfelter, shall be solely and fully responsible for any and all credit card debt, credit card obligations and credit card accounts that he has received and credit card debt that has accumulated since the parties have separated in July 20, 2010 that are in the name of the Defendant, Corey Frownfelter and he shall be fully and solely responsible for any and all debt due or owing thereon and shall hold the Plaintiff, Stephanie Frownfelter , harmless for any and all such debts.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Stephanie Frownfelter, shall be solely and fully responsible for any and all credit card debit, credit card obligations and credit card accounts that she has received and credit card debt that have accumulated

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since the parties have separated in July 20, 2010 that are in the name of the Plaintiff, Stephanie Frownfelter and she shall be fully and solely responsible for any and all debt due or owing thereon and shall hold the Defendant, Corey Frownfelter, harmless on any and all such debts.

INSURANCE/RETIREMENT/PENSION

IT IS FURTHER ORDERED AND ADJUDGED that neither party hereto shall hereafter have any further interest as beneficiary or otherwise in and to any life insurance policies endowments, annuity contracts, retirement and/or pension benefits standing in the name of or insuring the life of the other party except as provide herein to the contrary. The above provision does not distinguish, abrogate or setaside a beneficiary interests in a life insurance policy that exists due to a parties participation in an employers life insurance plan under the Employment Employee Retirement Income Security Act of 1974 (ERSA), 29 USC § 1001. The employee/party must file written notice of a change of beneficiary on an ERSA approved form with the employer and/or ERSA approved form with the life insurance company.

BANKRUPTCY PROVISION

IT IS FURTHER ORDERED AND ADJUDGED that the assumption of marital debts, joint debts, and individual debts as outlined in this Judgment of Divorce is acknowledged by the parties as an obligation of spousal support, maintenance, and alimony. The parties specifically and intentionally characterized the assumption of debt as spousal support for the purpose of meeting any definition of support, alimony, or maintenance under II USC 523(a)(15), so that the parties cannot have said debt discharged in bankruptcy. In the event a court determines that the agreement to characterize the assumption of marital debt as spousal support is not valid, then the parties agree that the assumption of such debts are exempted from discharge pursuant to II USC 523(a)(15). At the time of the entry of this Judgment, the parties agree that they have the ability to pay said debt from income presently available and the parties agree that the discharge of such debt at any time would result in a greater detriment to the party not receiving the discharge than to the party in

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bankruptcy. The parties further agree that in the event that either party does not have the ability to pay at the time of bankruptcy, or that a court does not recognize the above agreement regarding benefits and detriment, then the parties agree that the bankruptcy court should determine that the amount of the debtor's income at the time of said determination, for support of the debtor or for his or her business, should be set at a minimum amount. The parties agree that any construction of the terms of II USC 523(a)(15), "reasonably to be expected in support of debtor dependence of debtor or, if the debtor is a business, for expenditures necessary for the continuation, preservation, and operation of that business, shall be made in right most favorable to the party not in the bankruptcy.

LIFE INSURANCE PROVISION

IT IS FURTHER ORDERED AND ADJUDGED that all rights or either party in and to the proceeds of any policy or contract of life insurance, endowment or annuity upon the life of either party in which either was named or designated as beneficiary, contingent or otherwise, or to which either became entitled by assignment or change of beneficiary during the marriage or in the anticipation thereof, whether such contract or policy was heretofore or shall hereafter be written or become effective, are hereby cut off and at an end.

FURTHER, that upon the entry of the Judgment of Divorce, the parties are hereby required to change the beneficiary designation on each and every policy of insurance to effectuate the statutory insurance clause.

PROVISION IN LIEU OF DOWER

IT IS FURTHER ORDERED AND ADJUDGED that the provisions contained in this Judgment of Divorce shall be in lieu of spousal interest of either party in the real property of the other and each shall hereafter hold such property free and clear from any such dower right or interest and this provision shall be in full satisfaction of any claim that either party may have in any real property which the other now owns or may hereafter own or have any interest.

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IT IS FURTHER ORDERED AND ADJUDGED that all the rights of each of the parties hereto as defined in Section 291 of the Revised Probate Code, in and to the estate and property of the other party is hereby extinguished and waived, by virtue of the property settlement ordered herein; and that all benefits which would otherwise pass to either party by interstate succession or by virtue of the provisions of any Will executed prior to this divorce are hereby abolished, waived by each party and forever extinguished.

RIGHT TO DISCOVERY

IT IS FURTHER ORDERED AND ADJUDGED that both parties have been advised by their respective counsel that they should conduct discovery and have had the right to conduct the same and obtain appraisals and, by their own choice have forever waived any right to the same which has not yet been conducted.

DISCLOSURE OF ASSETS

IT IS FURTHER ORDERED AND ADJUDGED that the parties hereto have fully and totally disclosed all assets, claims, rights or action, beneficial interests, debts, liabilities, liens, and claims that each party has or may have.

IT IS FURTHER ORDERED AND ADJUDGED that based upon the representations and affirmations of both parties, this Consent Judgment of Divorce affirmatively disposes of any and all assets of any nature in the possession and control of either party as disclosed and held by each party or held on behalf of either party by a third person. If any marital assets have not been disclosed by either party and the same can be proven by the opposite party, upon a hearing, said non-disclosed asset may be awarded at least half to the opposite party.

RESIDENCY AND GOVERNING LAW

IT IS FURTHER ORDERED AND ADJUDGED that both husband and wife are bona fide residents of the State of Michigan at the time of the execution of this Judgment of Divorce. This Judgment shall be governed, therefore, by the laws of the State of Michigan.

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RELEASE OF TORT LIABILITY

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to the payment and performance obligations set forth in the property settlement provision, the parties themselves and their respective successors, transferees and assigns, hereby release and forever discharge each other and to the extent applicable, the other party's successors, transferees and assigns, form any and all claims, actions, causes of action, obligations, costs, losses, demands and liabilities relating to any matters of any kind, except as provided in the disclosure of assets provisions, whether presently known or unknown, which either party now has or ever had, up to and including the date of signing of this Judgment.

ENFORCEMENT EXPENSE

IT IS FURTHER ORDERED AND ADJUDGED that in the event either of the parties of this cause of action default in the performance of the any of the obligations hereinabove set forth, and it becomes necessary to institute legal proceedings to effectuate performance of any provisions of the Judgment of Divorce, then and in such case, the party found to be in default shall pay expenses, including reasonable attorney fees incurred in connection with such enforcement proceedings

ENCUMBRANCES ON PROPERTY

IT IS FURTHER ORDERED AND ADJUDGED that any client, encumbrance, or obligation on any property awarded shall be assumed and paid by the parties receiving it unless otherwise specified in this Consent Judgment. Further, the award of property in this Judgment is based on each party's warranty that any property being transferred to the other party is free of any liens, encumbrances or debts other than those specifically disclosed herein.

ATTORNEY FEES FOR ENFORCEMENT OF JUDGMENT

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IT IS FURTHER ORDERED AND ADJUDGED that should either party take the steps to enforce this judgment of divorce in the event of a default by the other party, the non-prevailing party shall pay the cost and actual attorney fees incurred by the prevailing party in enforcing the judgment of divorce.

TRANSFER PROVISION

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall execute and deliver to the other any deed or other conveyance of title necessary to carry out the terms of this Judgment. Upon failure thereof, this Judgment may be recorded to effectuate such transfer.

CONTINUING JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this matter, and that service of any Petitions with regard thereto may be made upon either party by mailing the same by first class mail to that party's last known address.

NOTICE PURSUANT TO MCR 2.602(A)(3)

IT IS FURTHER ORDERED AND ADJUDGED that the parties have represented to the Court that all unresolved matters have been resolved and that this case shall be closed pursuant to MCR 2.602.

IT IS SO ORDERED.

Dated: 7-14-11

Duncan M. Beagle
Genesee County, Family Court Judge

Stephanie Davis
DEPUTY COURT CLERK

APPROVED AS TO FORM AND CONTENT:

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Dated: July 14, 2011

Stephanie Frownfelter, Plaintiff

Dated: July 14, 2011

Corey Frownfelter, Defendant

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