

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
(CAVANAGH, P.J., BORRELLO, AND REDFORD (DISSENTING), JJ.)

WALTER SAKOWSKI, as conservator for
MEAGAN TURNER,

Plaintiff,

-and-

RIVERVIEW MACOMB HOME &
ATTENDANT CARE, LLC,

Intervening Plaintiff,

-v-

FARMERS INSURANCE EXCHANGE,

Defendant/Cross-Plaintiff/Cross-
Defendant-Appellee,

-and-

ENTERPRISE LEASING CORPORATION
OF DETROIT, LLC, EAN HOLDINGS,
LLC, and TAMERA HARPER,

Defendants/Cross-Defendants-
Appellants,

and

GARY DUANE RUPP, as personal
representative of the estate of JASON
PUCKETT,

Defendant/Cross-Plaintiff/Cross-
Defendant.

CONSOLIDATED WITH

JONTE EVERSON,

Plaintiff,

-v-

FARMERS INSURANCE EXCHANGE,

Defendant/Third-Party Plaintiff-
Appellee,

-and-

ENTERPRISE LEASING COMPANY,

Third-Party Defendant-Appellant.

Supreme Court
Case No. 159660

Court of Appeals
Docket Nos. 339624

Wayne Circuit Court
Case No. 16-002031-NF

APPELLEE
FARMERS INSURANCE EXCHANGE'S
APPENDIX

Supreme Court
Case No. 159661

Court of Appeals
Docket No. 339815

Washtenaw Circuit Court
Case No. 16-359-NF

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TURNER - EAN's Motion for Summary Disposition

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

MAEGAN TURNER, by
WALTER SAKOWSKI, Conservator

Plaintiff,

Vs.

Case No. 16-002031-NF 16-002031-NF
Hon. Annette Berry
224-4679
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12/27/2016 9:51:41 AM
CATHY M. GARRETT

FARMERS INSURANCE EXCHANGE,
ENTERPRISE LEASING CORPORATION
OF DETROIT, LLC, GARY DUANE RUPP,
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF JASON PUCKETT, PATSY VILLNEFF,
TAMERA HARPER AND EAN HOLDINGS, LLC,

Defendants.

***DEFENDANT ENTERPRISE'S
MOTION FOR SUMMARY DISP.***

And

RIVERVIEW MACOMB HOME & ATTENDANT CARE, LLC,

Intervening Plaintiff,

Vs.

GARY DUANE RUPP, as Personal Representative for the
Estate of Jason Puckett,

Cross Plaintiff,

Vs.

FARMERS INSURANCE EXCHANGE,
ENTERPRISE LEASING CORPORATION OF DETROIT, LLC,
GARY DUANE RUPP, PATSY VILLNEFF, TAMERA HARPER and
EAN HOLDINGS, LLC,

Defendants/Cross Defendants.

TURNER - EAN's Motion for Summary Disposition

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NOTICE OF HEARING

PLEASE TAKE NOTICE that the attached Motion for Summary Disposition will be brought on for hearing before the Honorable Annette Berry, Wayne County Circuit Court, on a date and time to be set by the Court.

TURNER - EAN's Motion for Summary Disposition

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Dated: December 22, 2016

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MAEGAN TURNER, by
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And

RIVERVIEW MACOMB HOME & ATTENDANT CARE, LLC,

Intervening Plaintiff,

Vs.

GARY DUANE RUPP, as Personal Representative for the
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Cross Plaintiff,

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DEFENDANT ENTERPRISE LEASING COMPANY OF DETROIT, LLC'S
MOTION FOR SUMMARY DISPOSITION

NOW COMES Defendant Enterprise Leasing Company of Detroit, LLC (Enterprise), by and through its attorneys, Plunkett Cooney, and for its Motion for Summary Disposition pursuant to MCR 2.116(C)(10), states as follows:

TURNER - EAN's Motion for Summary Disposition

1. This lawsuit arises from an alleged April 11, 2015, motor vehicle accident, whereby Plaintiff, claims Michigan no-fault personal protection insurance benefits as to Defendant Enterprise.

2. The rental motor vehicle occupied by Plaintiff, owned by Defendant Enterprise, at the time of the accident, was registered in the State of Maryland. (**Exhibit 1**, Affidavit of Kristen Zub).

3. Enterprise keeps a "Unit History" on its rental vehicles, which indicates that the Enterprise rental vehicle occupied by Plaintiff had not been operated in the State of Michigan for an aggregate of more than 30 days in the calendar year prior to Plaintiff's alleged April 11, 2015, motor vehicle accident. (**Exhibit 1**, Affidavit of Kristen Zub and **Exhibit 2**, Unit History).

4. An out-of-state vehicle not operated in Michigan for more than 30 days in the calendar year of the accident is not subject to the security provisions of the Michigan No-Fault Act. See, *Parks v Detroit Automobile Inter-Insurance Exchange*, 426 Mich 191; 393 NW2d 833 (1986).

5. Enterprise is not required to provide Michigan personal protection insurance no-fault benefits to the driver or occupants of its rental vehicle registered in Maryland and which has not been operated in Michigan for more than 30 days in the calendar year of the accident.

6. An out-of-state vehicle, owned and insured by a self-insurer, that was not operated in Michigan for more than 30 days is not subject to the priority provisions in the Michigan No-Fault Act. See *Heichel v Geico Indem Co*, unpublished opinion per curiam of

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the Court of Appeals, issued March 1, 2016 (Docket No. 12-003780-NF). (**Exhibit 3**, *Heichel* Opinion).

7. Based on the foregoing, Enterprise is not a proper party to this litigation and must be dismissed with prejudice.

WHEREFORE, Defendant, Enterprise asks this Honorable Court to grant its Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10).

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Dated: December 22, 2016

TURNER - EAN's Motion for Summary Disposition

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STATE OF MICHIGAN

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And

RIVERVIEW MACOMB HOME & ATTENDANT CARE, LLC,

Intervening Plaintiff,

Vs.

GARY DUANE RUPP, as Personal Representative for the
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Cross Plaintiff,

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**DEFENDANT ENTERPRISE LEASING COMPANY OF DETROIT'S
BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION**

INTRODUCTION

Plaintiff is claiming Michigan no-fault personal protection insurance benefits as a result of an April 11, 2015 motor vehicle accident. Plaintiff applied for no-fault benefits

TURNER - EAN's Motion for Summary Disposition

from Enterprise, but because Enterprise's vehicle was not registered in Michigan, was not required to be registered in Michigan, and was not in Michigan an aggregate of more than 30 days in the calendar year of the accident, Enterprise does not owe no-fault benefits for its out-of-state vehicle. Additionally, Enterprise has not voluntarily filed a MCL 500.3163 certificate.

Enterprise is not required to provide Michigan personal protection insurance no-fault benefits involving one of its owned vehicles, if the vehicle was not registered in the State of Michigan and was not operated in the State of Michigan for over 30 days in the calendar year of the accident (MCL 500.3102[1]; See *Parks v DAIIE*, 426 Mich 191 [1986]); See also, *J B Hunt Transport, Inc v Adams*, 537 F Supp 2d 880 (ED Mich 2007).

RELEVANT FACTS

Enterprise does not issue insurance policies, but was self-insured at the time of the April 11, 2015, motor vehicle accident.

Defendant Enterprise keeps a 'Unit History' on its rental vehicles, which indicates that Enterprise's rental car occupied by Plaintiff had not been operated in the State of Michigan for an aggregate of more than 30 days in the calendar year of the accident and/or as of April 11, 2015. (**Exhibit 1**, Affidavit of Kristen Zub and **Exhibit 2**, Unit History). In fact, the first time the vehicle was ever in Michigan was on March 18, 2015. (**Exhibit 1**).

Defendant Enterprise denied Plaintiff's no-fault claim based on the Michigan Supreme Court decision of *Parks v DAIIE*, 426 Mich 191 (1986), which holds that a self-insured entity is not required to provide Michigan no-fault coverage on any of the self-insured vehicles that are not registered in Michigan until they are in Michigan for 30 days in the calendar year. Likewise, *J B Hunt Transport, Inc v Adams*, 537 F Supp 2d 880 (2007),

came to the same conclusion and defined a calendar year to mean January 1 - December 31.

STANDARDS OF REVIEW

A motion brought pursuant to MCR 2.116(C)(8) requires the Court to determine whether or not an opposing party's pleadings allege a prima facie case. The Court does not act as fact finder. Rather, it accepts as true all well-pled facts. Summary disposition under MCR 2.116(C)(8) is valid only where allegations fail to state a legal claim. *Radtke v. Everett*, 442 Mich 368 (1993). Summary disposition pursuant to MCR 2.116(C)(8) is appropriate if the claim is unenforceable, as a matter of law, and no factual development would justify recovery. *Int'l Brotherhood of Electrical Workers, Local 58 v McNulty*, 214 Mich. App. 437, 443-444 (1995).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of plaintiff's claim. *St. Paul Fire & Marine Ins. Co., v Quintana*, 165 Mich App 719, 722; 419 NW2d 60, 62 (1988). In ruling on the motion, the trial court must consider not only the pleadings but also any depositions, affidavits, admissions, or other documentary evidence submitted by the parties. MCR 2.116(G)(5). All evidence must be viewed in a "light most favorable to the nonmoving party." *Chandler v Dowell Schlumberger Inc.*, 465 Mich 395; 572 NW2d 210 (1998).

If the non-moving party's claim is impossible to support because of some deficiency that cannot be overcome, summary disposition is appropriate. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 284; 393 NW2d 610, 612 (1986).

LEGAL ARGUMENT

MCL 500.3101

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There is no dispute that this motion is limited to whether Enterprise is responsible for payment of Plaintiff's Michigan personal protection insurance no-fault benefits involving an out-of-state registered vehicle. MCL 500.3101 is the key section to look to in the beginning of the analysis. The language of the statute does not state that all vehicles must maintain personal protection insurance, but instead states as follows:

(1) The owner or registrant of a motor vehicle **REQUIRED to be registered in this state shall maintain** security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. (MCL 500.3101)(emphasis added).

From this very first sentence of the very first section of the No-Fault Act, one very important concept emerges: **only** motor vehicles "**required to be registered**" in Michigan must have Michigan no-fault coverage.

In this case, the language in the statute is clear: only motor vehicles "**required to be registered**" in Michigan must have Michigan no-fault coverage. The Enterprise vehicle in question was lawfully registered in Maryland and was not required to be registered in Michigan on the date of the accident. Applying the law to the facts produces only one possible result: the Enterprise vehicle in question was not required to provide for Michigan personal protection insurance no-fault benefits, as it was not required to nor was it registered in Michigan.

MCL 500.3102

However, should this Honorable Court look further, it must take MCL 500.3102 into consideration, which is the second section of Michigan's No-Fault Act, and directly addresses out-of-state registered vehicles, as follows:

(1) A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or

TURNER - EAN's Motion for Summary Disposition

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permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter. (MCL 500.3102)

In other words, the only way a vehicle not registered in Michigan is required to carry Michigan no-fault coverage is if the vehicle is in Michigan for more than 30 days in the calendar year.

In this case, the Enterprise vehicle was not registered in Michigan and it was not “operated in this state for an aggregate of more than 30 days” in the calendar year prior to the subject motor vehicle accident. Plaintiff cannot possibly move forward with any argument that Enterprise is required to provide Plaintiff with Michigan personal protection insurance no-fault benefits, and the analysis need not go any further.

As is well known to this Honorable Court, the primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature in enacting a provision. *Liberty Mut Ins Co v Michigan Catastrophic Claims Ass'n*, 248 Mich App 35, 45, (2001). The first criterion in determining intent is the language of the statute. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. *Id.*

MCL 500.3101 and MCL 500.3102 are clear and unambiguous. The motor vehicle in which Plaintiff was allegedly injured is not subject to the mandatory security requirements of the No-Fault Act under either of the two provisions discussed above. First, § 3101(1) applies only to owners or registrants of vehicles “**required to be registered in this state.**” The Enterprise vehicle in question was not subject to the mandatory security requirement in § 3101(1). Second, § 3102(1) applies to vehicles owned by nonresidents and not registered in this state, and requires that security must be maintained only for vehicles

operated in this state for more than thirty days in a single calendar year. Enterprise also falls within § 3102(1) because it is a nonresident corporation and because the Enterprise vehicle was not registered in Michigan. The Enterprise vehicle had not been operated in Michigan for more than an aggregate of 30 days in 2015, up to and including April 11, 2015, the date of Plaintiff's alleged injury. Thus, the Enterprise vehicle was not subject to the mandatory security requirements of § 3102(1) at the time of the accident.

Parks v DAIIE is Controlling

The Michigan Supreme Court decision in *Parks v DAIIE*, 426 Mich 191 (1986) is applicable and binding. In *Parks*, the Court was faced with a situation similar to this case, where a Michigan resident and employee of a self-insured trucking company was injured in a motor vehicle in the State of Michigan in a motor vehicle registered in the State of Tennessee and not operated in Michigan for 30 days in the calendar year. In that case, the Court stated, in pertinent part:

We find,...that an out-of-state vehicle not required to be registered in Michigan and not operated in the state for more than 30 days is not subject to the security provisions...of the no-fault act... *Id.* at 196.

The Court further stated:

In conclusion, we hold that when an employee is injured in an employer's out-of-state vehicle, which is not required to be registered in the state under the Motor Vehicle Registration Act and the pertinent multi-state agreement, and **when the vehicle is not subject to the security provisions of the No-Fault Act because it has not been operated in this state for more than 30 days within the calendar year**, the employee's personal automobile insurer, in this case the DAIIE, is liable for no-fault benefits under §§3105 and 3114(1). *Id.* at 207. (Emphasis added).

TURNER - EAN's Motion for Summary Disposition

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In *Parks*, the plaintiff had his own personal automobile insurance which was responsible to pay his no-fault benefits. However, the Court discussed the situation of when a person would go to the Assigned Claims Plan and stated in part:

A person entitled to no-fault benefits may obtain them through an assigned claims plan ‘if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified,...or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of one or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. MCL §500.3172; MSA §24.13172.) *Id.* at 210.

Here, Enterprise cannot be liable for the payment of claimed Michigan personal protection insurance no-fault benefits because as a self-insurer, it is not required to make any payments for its out-of-state registered vehicles which have not been operated in the State of Michigan for over 30 days in the calendar year of the accident.

The reasoning in *Parks* is straightforward and instructive. This was both acknowledged and illustrated in *Heichel v Geico Indem Co*, unpublished opinion per curiam of the Court of Appeals, issued March, 1, 2016 (Docket No. 12-003780-NF). In *Heichel*, the Court applied the Michigan No-Fault Act to a self-insured, rental corporation who rented a vehicle that was registered in another state and not present in the Michigan for more than thirty days. *Id.* at 1. Regardless whether the self-insurer is deemed an insurer under the Michigan No-Fault Act or not, the priority provisions of the Act do not apply. *Id.* The Court in *Heichel* applied the analysis laid out in *Parks* and concluded that a vehicle not required to be registered in Michigan is not liable under the No-Fault Act. *Id.* at 3. Therefore, the fact that the vehicle rented to the Plaintiff in this case was not required to be registered in this state is conclusive. Enterprise cannot be held liable under the Michigan No-Fault Act as the

TURNER - EAN's Motion for Summary Disposition

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priority provisions set forth in § 3114 do not apply because the Enterprise vehicle was not in Michigan for more than 30 days.

Based on the clear language of § 3101(1), § 3102(1), and the Michigan Supreme Court decision in *Parks*, Plaintiff is not entitled to benefits from Enterprise because the Enterprise motor vehicle in which Plaintiff was allegedly injured is not subject to the mandatory security requirements of the No-Fault Act under any statute or case law. In this case, given the unambiguous legislative intent of § 3101(1), § 3102(1), and the Michigan Supreme Court decision in *Parks*, Enterprise does not have to provide personal protection insurance benefits for its out-of-state registered vehicle, unless that vehicle has been in Michigan for more than an aggregate for 30 days in the calendar year of the accident.

CONCLUSION

Based on the foregoing, Defendant Enterprise cannot be liable for the payment of the claimed Michigan personal protection insurance no-fault benefits.

WHEREFORE, Defendant Enterprise asks this Honorable Court to grant its Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10).

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Dated: December 22, 2016

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CERTIFICATE OF SERVICE

Stephanie Konkel, an employee with the law firm of PLUNKETT COONEY, being first duly sworn, deposes and says that on the 23rd day of December, 2016, she caused a copy of this document to be served upon all parties of record, and that such service was made electronically upon each counsel of record so registered with Odyssey and the Wayne County Circuit Court and via U.S. Mail to any counsel not registered to receive electronic copies from the court, by enclosing same in a sealed envelope with first class postage fully prepaid, addressed to the above, and depositing said envelope and its contents in a receptacle for the US Mail.

By: /s/ Stephanie Konkel
Plunkett Cooney
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STATE OF MICHIGAN

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Intervening Plaintiff,

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Cross Plaintiff,

Affidavit

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**TURNER - EAN's Motion for Summary Disposition
Exhibit 1 - Affidavit of Kristen Zub**

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AFFIDAVIT OF KRISTEN ZUB

KRISTEN ZUB, being first duly sworn deposes and states as follows:

1. I am a Risk Management Coordinator for Enterprise Leasing Company of Detroit, LLC,
2. I am making this Affidavit based on personal knowledge of this matter.

**TURNER - EAN's Motion for Summary Disposition
Exhibit 1 - Affidavit of Kristen Zub**

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3. I have had an opportunity to review the unit history for the vehicle rented to Tamerra Harper.

4. The vehicle rented to Tamerra Harper was registered in the State of Maryland.

5. Based upon my review of the unit history, the vehicle rented to Tamerra Harper was operated in the State of Michigan from March 18, 2015 through April 11, 2015 only.

6. The first and only time the vehicle was ever operated in Michigan was beginning March 18, 2015 through the accident date.

7. As the vehicle had only been operated in the State of Michigan from March 18, 2015 through April 11, 2015, it has not been operated in the State of Michigan for an aggregate of more than 30 days in any calendar year.

8. If sworn as a witness, I can testify competently to the facts stated in this affidavit.

KRISTEN ZUB

Subscribed and sworn to before me
this ___ day of _____, 2016.

, Notary Public
_____ County, _____
My commission expires: _____

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MAEGAN TURNER, by
WALTER SAKOWSKI, Conservator

Plaintiff,

Vs.

Case No. 16-002031-NF
Hon. Annette Berry
224-4679

FARMERS INSURANCE EXCHANGE,
ENTERPRISE LEASING CORPORATION
OF DETROIT, LLC, GARY DUANE RUPP,
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF JASON PUCKETT, PATSY VILLNEFF,
TAMERA HARPER AND EAN HOLDINGS, LLC,

Defendants.

And

RIVERVIEW MACOMB HOME & ATTENDANT CARE, LLC,

Intervening Plaintiff,

Vs.

GARY DUANE RUPP, as Personal Representative for the
Estate of Jason Puckett,

Cross Plaintiff,

Affidavit

Vs.

FARMERS INSURANCE EXCHANGE,
ENTERPRISE LEASING CORPORATION OF DETROIT, LLC,
GARY DUANE RUPP, PATSY VILLNEFF, TAMERA HARPER and
EAN HOLDINGS, LLC,

Defendants/Cross Defendants.

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KRISTEN ZUB

Subscribed and sworn to before me
this ___ day of _____, 2016.

_____, Notary Public
_____ County, _____
My commission expires: _____

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Vehicle Information Shop Units WSH-FISH RPH RH-MRUnits Activated WI-TB Units Vehicle Registration Operational Install Non-Rev Inventory Utilities Help

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History Search
 Unit Nbr: VIN/Chassis: Plate Nbr: Reg: Miles/Km: Next PM: Year: Make: Model: Series:

Vehicle Events/Movements, 1 - 50 of 112 records
 Hist Type: Event/Move Type: Date From: Date To: Filter: Reset

Evt/Move Type	Evt RefNbr	Renter Name	Evt/Rnt Location	Evt/Rnt GrpBr	Evt/Rnt Date	Evt/Rnt Time	Evt/Rnt M/Km	Return Location	Return GrpBr	Return Date	Return Time	Return M/Km	User ID
UVI	FB11085E-T...	...	E120VD	20VD	24-JUL-2015	09:56	18210						FLEET_BRIDGE
UVI	FB11085E-T...	...	E120VD	20VD	25-JUN-2015	20:16	18210						FLEET_BRIDGE
RMV	H-WI ADDED	...	E12099	2099	24-APR-2015	12:36	18210						7860M
SCA	INSERTED H...	...	E120VD	20VD	24-APR-2015	12:36	18210						7980M
VCM	DVN 4/24 N...	...	E120WW	20WW	24-APR-2015	11:44	18210						E987JH
VCM	FAIRLANE/E...	...	E120WW	20WW	23-APR-2015	14:54	18200						E987JH
WSM	27952309	...	E12055	2055	23-APR-2015	08:16	18200	E120VD	20VD	24-APR-2015	11:44	18210	E987JH
VCM	SUPER WOE	...	E120WW	20WW	23-APR-2015	08:16	18200						E987JH
VCM	SUPERIOR W.	...	E120WW	20WW	22-APR-2015	14:54	18197						E987JH
WSM	27858636	...	E12055	2055	13-APR-2015	12:46	18197	E12055	2055	23-APR-2015	08:15	18200	E329KX
VCM	GEHESS/HVE...	...	E12055	2055	12-APR-2015	12:38	18197						E329KX
DMG	DX205518W...	...	E12055	2055	12-APR-2015	00:00	14376						E329KX
ORA	979V2R	HARPER...	E12055	2055	28-MAR-2015	09:45	18197	E12055	2055	12-APR-2015	12:35	18250	E968KF
VCM	2037	...	E12037	2037	23-MAR-2015	13:46	17890						E582H2
ORA	9L8F5F	HARPER...	E12055	2055	23-MAR-2015	13:45	18060	E12055	2055	28-MAR-2015	09:45	18197	E582H2
VCM	2037 5E	...	E12037	2037	23-MAR-2015	11:30	17890						E229KZ

Export to Excel: First Previous 1 2 3 Next Last

Save Changes Quick Search

F7 - Update Vehicle

[Appellee's Appendix - Page 24b]

TURNER - EAN's Motion for Summary Disposition
 Exhibit 2: Unit History

Search | Operational Info | Financial Info | History | Hold Status | RO History | Notes

History Search
 Unit Nbr: VIN/Chassis: Plate Nbr: Reg: Miles/Km: Next PM: Year: Make: Model: Series:

Vehicle Events/Movements, 1 - 60 of 112 records
 Hist Type: Event/Move Type: Date From: Date To: Filter Reset

Event/Move Type	Event/Ref Nbr	Renter Name	Event/Rnt Location	Event/Rnt GrpBr	Event/Rnt Date	Event/Rnt Time	Event/Rnt M/Km	Return Location	Return GrpBr	Return Date	Return Time	Return M/Km	User ID
VCM	2037 5/6		E12037	2037	23-MAR-2015	11:30	17899						E226K2
VCM	2127		E12127	2127	18-MAR-2015	15:25	17811						E519P6
ORA	9PV3TK	DORTY...	E12037	2037	18-MAR-2015	15:24	16973	E12037	2037	23-MAR-2015	11:27	17899	E519P6
VCM	OTW FROM 2...		E12102	2102	18-MAR-2015	14:45	17811						E506K3
IHV	E121F9 CON...		E12127	2127	18-MAR-2015	14:45	17811						E506K3
ORA	9LJLM5	MCARTH...	E12127	2127	27-FEB-2015	15:48	16225	E12127	2127	16-MAR-2015	14:43	16868	E519P6
VCM	2127-FULL		E12127	2127	27-FEB-2015	15:48	17811						E728P2
ORA	9KRR77	SKILLIA	E12127	2127	24-FEB-2015	17:38	14811	E12127	2127	27-FEB-2015	15:44	14889	E519P6
ERM	9KNHT0	LEHMAN...	E12127	2127	24-FEB-2015	13:04	17811	E12127	2127	26-FEB-2015	18:00		E685N2
VCM	2127 3/4		E12127	2127	24-FEB-2015	11:13	17811						E519P6
ORA	9HPHV4	SUSAN...	E12127	2127	16-FEB-2015	10:26	14741	E12127	2127	24-FEB-2015	11:09	17811	E519P6
VCM	2127-1/2		E12127	2127	16-FEB-2015	07:27	14741						E728P2
ORA	9HDRVT	BRUBAK...	E12127	2127	13-FEB-2015	17:20	14389	E12127	2127	15-FEB-2015	07:26	14741	E728P2
VCM	2127-1/2		E12127	2127	13-FEB-2015	16:33	14389						E728P2
SCD	P-PM DELET...		E12127	2127	13-FEB-2015	09:46	14376						E728P2
ORA	9H549M	FRITZ...	E12127	2127	13-FEB-2015	08:06	14376	E12127	2127	13-FEB-2015	16:30	14389	E728P2
PMR	COMPLETED ...		E12127	2127	13-FEB-2015	09:00	14376						E728P2
IHV	PB: R1 P...		E12127	2127	12-FEB-2015	11:51	14350						E728P2
VCM	SECRET		E12127	2127	12-FEB-2015	11:51	14350						E728P2

Export to Excel: First Previous 1 2 3 Next Last
 Save Changes Quick Search F7 - Update Vehicle

[Appellee's Appendix - Page 25b]

TURNER - EAN's Motion for Summary Disposition
 Exhibit 2: Unit History

EL6DG Elco Admin Svcs - Chicago Enterprise® USG Application - Internet Explorer

http://prod-fleetops.vgcarr.net/fleetops/index.action?date=02-11-2015 08:58:20 AM ...

Vehicle Information | Shop Units WSH-MSM | RPM PM-MRUnits | Activated WJ-TB Units | Vehicle Registration | Operational Install | Non-Rev | Inventory | Utilities | Help

Search | Operational Info | Financial Info | History | Hold Status | RO History | Notes

History Search
 Unit Nbr: VIN/Chassis: Plate Nbr: Reg: Miles/Km: Next PM: Year: Make: Model: Series:

Vehicle Events/Movements: 1 - 50 of 112 records
 Hist Type: Event/Move Type: Date From: Date To: Filter Reset

Event/Move Type	Event RefNbr	Renter Name	Event/Rnt Location	Event/Rnt GrpBr	Event/Rnt Date	Event/Rnt Time	Event/Rnt M/Km	Return Location	Return GrpBr	Return Date	Return Time	Return M/Km	User ID
ORA	9H549M	FRITZ...	E12127	2127	13-FEB-2015	00:06	14376	E12127	2127	13-FEB-2015	16:30	14369	E728PZ
PMR	COMPLETED ...	...	E12127	2127	13-FEB-2015	00:00	14376						E728PZ
INV	PB: R1 P	...	E12127	2127	12-FEB-2015	11:51	14350						E728PZ
VCM	---FIREST...	...	E12127	2127	12-FEB-2015	11:51	14350						E728PZ
INV	E121Q3 CON ...	...	E12127	2127	11-FEB-2015	00:36	14350						E685N2
VCM	---NEED FI...	...	E12127	2127	11-FEB-2015	00:36	14350						E685N2
SCA	P-PM/PO AD	...	E121Q3	21Q3	10-FEB-2015	17:08	14350						FLEET_BRIDGE
ORA	9DK7H6	GAY.CH...	E121Q3	21Q3	02-FEB-2015	10:27	14264	E121Q3	21Q3	10-FEB-2015	17:07	14350	E519P6
INV	E12127 CON ...	...	E121Q3	21Q3	02-FEB-2015	00:25	14262						E519P6
VCM	2127-1/2	...	E12127	2127	02-FEB-2015	07:33	14262						E728PZ
ORA	9DBLSZ	GUERRE...	E12127	2127	31-JAN-2015	09:42	13673	E12127	2127	02-FEB-2015	07:32	14262	E728PZ
VCM	2127 - 1/2	...	E12127	2127	30-JAN-2015	16:27	13673						E685N2
ORA	9BFWXK	BEHERA...	E12127	2127	22-JAN-2015	10:02	13500	E12127	2127	30-JAN-2015	16:26	13673	E519P6
VCM	2127-11/16	...	E12127	2127	22-JAN-2015	07:57	13346						E728PZ
ORA	99TK2V	LOUGH...	E121Q3	21Q3	19-JAN-2015	14:55	12000	E12127	2127	21-JAN-2015	23:59	13346	E519P6
ERM	99GVBR	BRIDGE...	E12127	2127	19-JAN-2015	11:54	13113	E12127	2127	21-JAN-2015	06:00		E519P6
VCM	2127 1/4	...	E12127	2127	19-JAN-2015	09:59	13113						E921P9
ORA	9054C1	ACOSCT...	E12127	2127	12-JAN-2015	09:41	12507	E12127	2127	19-JAN-2015	09:57	13113	E728PZ

Export to Excel | First Previous 1 2 3 | Next Last

Save Changes | Quick Search | F7 - Update Vehicle

History Search
 Unit Nbr: VIN/Chassis: Plate Nbr: Reg: Miles/Km: Next PM: Year: Make: Model: Series:
 70372E UNPCHASERF068327 85W0800 040 18270 2007% (NYS) (NYC) (PLAT) (NYS)

Vehicle Events/Movements: 51 - 100 of 112 records
 Hist Type: Event/Move Type: Date From: Date To: Filter Reset

Event/Move Type	Event RefNbr	Renter Name	Event/Rnt Location	Event/Rnt GrpBr	Event/Rnt Date	Event/Rnt Time	Event/Rnt MI/Km	Return Location	Return GrpBr	Return Date	Return Time	Return MI/Km	User ID
VCM	2127-1/4	...	E12127	2127	10-JAN-2015	12:25	12507						E728PZ
ORA	97529K	BOWLER...	E12127	2127	06-JAN-2015	15:32	11980	E12127	2127	09-JAN-2015	12:21	12507	E728PZ
ORA	96072B	STANSB .	E12127	2127	02-JAN-2015	14:26	11125	E12127	2127	06-JAN-2015	14:49	11980	E728PZ
VCM	2127-FULL	...	E12127	2127	02-JAN-2015	10:14	11146						E728PZ
ORA	845J56	TRAILT..	E12127	2127	23-DEC-2014	10:08	10630	E12127	2127	02-JAN-2015	10:12	11146	E685H2
VCM	2127-F	...	E12127	2127	23-DEC-2014	09:22	10630						E685H2
ORA	949F3H	HAMA A..	E12127	2127	20-DEC-2014	10:01	9987	E12127	2127	23-DEC-2014	09:16	10630	E519P6
ORA	92P57T	VEGA A .	E12127	2127	12-DEC-2014	16:02	8599	E12127	2127	19-DEC-2014	15:52	9987	E519P6
ORA	96MLWZ	CARNEL...	E12103	2103	03-DEC-2014	12:02	9476	E12127	2127	12-DEC-2014	15:30	9766	E519P6
VCM	2127-1/4	...	E12127	2127	03-DEC-2014	10:59	9307						E685H2
ORA	96C8GW	CHAPA..	E11615	1615	02-DEC-2014	11:32	9600	E12127	2127	03-DEC-2014	10:55	9476	E823MB
INV	DCAT61 CON	...	E11615	1615	02-DEC-2014	11:00	9307						E393MD
INV	PB D1 . P	...	DCAT01	16V5	02-DEC-2014	10:26	9307						E781HG
INV	PB H1 . P	...	DCAT01	16V5	01-DEC-2014	10:46	9307						E781HG
ORA	148103429	SERRAIH	DCAT61	16V7	26-NOV-2014	07:08	8677	DCAT61	16V7	30-NOV-2014	16:43	9307	
ORA	143069147	TALCOT .	DCAT61	16V7	24-NOV-2014	08:17	8607	DCAT61	16V7	25-NOV-2014	10:32	8677	
ORA	148011782	LITTLE .	DCAT61	16V7	20-NOV-2014	19:45	8345	DCAT61	16V7	23-NOV-2014	16:06	8607	
ORA	626895853	YOOH,K.	DCAT71	16V6	18-NOV-2014	12:37	7788	DCAT71	16V6	20-NOV-2014	19:00	8345	

Export to Excel: First Previous 1 2 3 Next Last

Save Changes Quick Search F7 - Update Vehicle

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TURNER - EAN's Motion for Summary Disposition Exhibit 2: Unit History

El146DG Elco Admin Svcs - Chicago Enterprise® USG Application - Internet Explorer

http://prod-fla01ps.vgcar.net:8080/ops/index.action?data=5321cb23d8b5c292867841eebb48933b40cbfay0264c7ebc3d800cc584268c76&logonid=EL146DG3&badAttempt=0&passwordExpired=1&15892649600&version=2&changeParam=...

Vehicle Information | Shop Units WSM-MSM | RPM-PM-Units | Activated WI-TB Units | Vehicle Registration | Operational Install | Non-Rev | Inventory | Utilities | Help

Search | Operational Info | Financial Info | History | Hold Status | RO History | Notes

History Search
 Unit Nbr: VIN/Chassis: Plate Nbr: Reg: Miles/Km: Next PM: Year: Make: Model: Series:

Vehicle Events/Movements, 61 - 106 of 112 records
 Hist Type: Event/Move Type: Date From: Date To: Filter Reset

Evt/Move Type	Evt/RefNbr	Renter Name	Evt/Rnt Location	Evt/Rnt GrpBr	Evt/Rnt Date	Evt/Rnt Time	Evt/Rnt M/Km	Return Location	Return GrpBr	Return Date	Return Time	Return M/Km	User ID
ORA	BR702X	CANNON	E12162	2162	24-OCT-2014	17:02	5754	E12162	2162	26-OCT-2014	13:00	7132	E726QZ
VCM	2162-12		E12162	2162	24-OCT-2014	15:27	5734						E346PJ
INV	CHOT61 COH		E12162	2162	17-OCT-2014	15:21	5073						E346PJ
ORA	8PNX41	HELLER	E12162	2162	17-OCT-2014	14:49	5039	E12162	2162	24-OCT-2014	15:22	5734	E346PJ
INV	PB: R124 ...		CHOT01	215N	05-OCT-2014	17:20	4500						E652P1
RPB	PARKING BA...		CHOT61	215E	05-OCT-2014	13:13	4500						E852P1
RPB	PARKING BA...		CHOT61	215E	03-OCT-2014	12:46	4421						E252J6
INV	PB: D3 P...		CHOT01	215N	03-OCT-2014	06:00	4398						E252J6
ORA	8KPD05	SHILE	E1163N	163N	30-SEP-2014	15:55	4293	E121P5	21P5	01-OCT-2014	15:41	4393	E506Q5
ORA	8F768X	CHANHA	E1163N	163N	10-SEP-2014	15:17	3396	E1163N	163N	30-SEP-2014	14:30	4293	E460N5
VCM	163N 3/0		E1163N	163N	10-SEP-2014	13:14	3354						E375JM
ORA	8DN2RO	BALAJI	E1163N	163N	08-SEP-2014	13:16	3066	E1163N	163N	10-SEP-2014	13:12	3394	E354K3
VCM	163N 1/4		E1163N	163N	08-SEP-2014	07:54	3066						E375JM
ORA	8D92GW	LAFEMI	E1163N	163N	05-SEP-2014	17:53	2698	E1163N	163N	08-SEP-2014	07:53	3006	E506Q5
VCM	DROP @ SIG		E1163N	163N	05-SEP-2014	17:33	2629						E575JM
ORA	8CT24D	RUIZ.R	E1163N	163N	02-SEP-2014	09:46	2629	E1163N	163N	05-SEP-2014	17:32	2729	E354K3
VCM	163N 3/4		E1163N	163N	02-SEP-2014	08:51	2626						E506Q5
ORA	8BHWWS	JONES	E1163N	163N	29-AUG-2014	08:09	1741	E1163N	163N	02-SEP-2014	07:50	2626	E354K3

Export to Excel: First Previous 1 2 3 Next Last

Quick Search

F7 - Update Vehicle

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TURNER - EAN's Motion for Summary Disposition
 Exhibit 2: Unit History

EL46DG Elco Admin Svcs - Chicago Enterprise USG Application - Internet Explorer

http://prod-fleet.spl.vgcarr.net/fleetops/index.action?data=58d1cb2adbf5c33956b5511eebb45977b40bbf5a5954c34bc3a650cc56426dc7&logonId=EL46DG3&badAttempt=0&password=elcoadmin&last=1459926496000&services=2&changePassword=...

Vehicle Information | Shop Units WSH-FISM | RPM PM-HRUnits | Activated WT-TB Units | Vehicle Registration | Operational Install | Non-Rev | Inventory | Utilities | Help

Search | Operational Info | Financial Info | History | Hold Status | RO History | Notes

History Search
 Unit Nbr: VIN/Chassis: Plate Nbr: Reg: Miles/Km: Next PM: Year: Make: Model: Series:

Vehicle Events/Movements: 101 - 112 of 112 records
 Hist Type: Event/Move Type: Date From: Date To: Filter Reset

Evt/Move Type	Evt/RefNbr	Renter Name	Evt/Rnt Location	Evt/Rnt GrpBr	Evt/Rnt Date	Evt/Rnt Time	Evt/Rnt MKm	Return Location	Return GrpBr	Return Date	Return Time	Return MKm	User ID
VCM	163N 53	...	E1163N	163N	28-AUG-2014	16:49	1741						E354K3
ORA	00256W	LYTTMA...	E1163N	163N	26-AUG-2014	17:10	1539	E1163N	163N	23-AUG-2014	16:48	1741	E460N5
VCM	163N FULL	...	E1163N	163N	25-AUG-2014	17:50	1491						E7220D
VCM	163N FULL	...	E1163N	163N	18-AUG-2014	17:59	750						E506QS
ORA	067WYP	ANDERS	E1163N	163N	18-AUG-2014	17:58	750	E1163N	163N	25-AUG-2014	17:48	1491	E7220D
ORA	07F7JY	MICHAEL	E1163N	163N	14-AUG-2014	17:29	219	E1163N	163N	18-AUG-2014	17:54	750	E566QS
VCM	163N FULL	...	E1163N	163N	14-AUG-2014	10:33	219						E375JM
ORA	05Q7Z3	LAHSFO...	E1163N	163N	07-AUG-2014	14:36	18	E1163N	163N	14-AUG-2014	10:32	219	E375JM
REG		...	E116H9	16H9	07-AUG-2014	09:01	2						E97790
QIH	VEHICLE IS...	...	E116H9	16H9	07-AUG-2014	09:01	2						E97790
PIR	PURCHASE I...	...	E11699	1699	31-JUL-2014	00:08	0						FLTBRDGE
TRG		...	E11699	1699	31-JUL-2014	00:08	0						FLEET_BRIDGE

Export to Excel: First Previous 1 2 3 Next Last

Save Changes Quick Search

F7 - Update Vehicle

[Appellee's Appendix - Page 30b]

TURNER - EAN's Motion for Summary Disposition
 Exhibit 2: Unit History

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

WALTER SAKOWSKI, as Conservator for MEAGAN
TURNER,

Plaintiff,

and

RIVERVIEW MACOMB HOME & ATTENDANT
CARE, LLC,

Intervening Plaintiff,

v

FARMERS INSURANCE EXCHANGE, GARY
DUANE RUPP, as personal representative of the estate
of JASON PUCKETT,

Defendants/Cross-Plaintiffs/Cross-Defendants

and

ENTERPRISE LEASING CORPORATION OF DETROIT,
LLC, PATSY VILLNEFF, TAMERA HARPER, EAN
HOLDINGS, LLC,

Defendants/Cross-Defendants.

Case No. 16-002031-NF

HON. ANNETTE J. BERRY

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**FARMERS INSURANCE EXCHANGE'S RESPONSE TO EAN HOLDINGS, LLC'S
MOTION FOR SUMMARY DISPOSITION**

TURNER - Farmers' Response to EAN's Motion for Summary Disposition

RECEIVED by MSC 4/15/2020 8:58:20 AM

Defendant/Cross-Plaintiff/Cross-Defendant, Farmers Insurance Exchange, by and through its attorneys, Hewson & Van Hellemont, P.C., opposes Defendant/Cross-Defendant EAN Holdings, LLC's motion for summary disposition and in response thereto states as follows:

1. Admitted.
2. Admitted upon information and belief.
3. Farmers admits that Enterprise's "Unit History" indicates that the vehicle was not "rented" in the State of Michigan; however, the rental history does not establish whether or not the vehicle was "operated" within the State of Michigan for an aggregate of more than 30 days in the year prior to Plaintiff's alleged April 11, 2015 motor vehicle accident.
4. Farmers denies that the proposition of law contained in paragraph four is precisely accurate. Instead, Farmers admits that a vehicle not registered in this State and not operated in this State for more than 30 days in a calendar year is not required to have in effect the security otherwise mandated by MCL 500.3101.
5. Denied. MCL 500.3114(4) imposes an obligation to pay personal protection insurance benefits upon "the insurer of the owner of the motor vehicle...". Enterprise is both (1) the insurer of itself, and (2) the owner of the vehicle in question. Therefore, under the plain language of the statute, Enterprise is obligated to provide PIP benefits.
6. Farmers admits that Enterprise has accurately characterized the holding in the unpublished decision cited; however, Farmers denies that the authority is binding or otherwise controls the question presented here. Notwithstanding *Heichel*, the plain language of the statute places Enterprise within the order of statutory priority provided for in MCL 500.3114.
7. Denied.

TURNER - Farmers' Response to EAN's Motion for Summary Disposition

RECEIVED by MSC 4/15/2020 8:58:20 AM

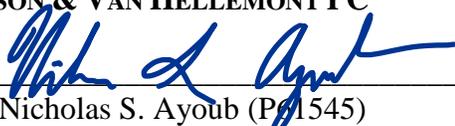
Farmers further relies on its brief in opposition to Enterprise's motion, along with the exhibits attached thereto, filed herewith.

WHEREFORE, Defendant/Cross-Plaintiff/Cross-Defendant, Farmers Insurance Exchange, respectfully requests that this Honorable Court enter an Order:

- a. Denying Enterprise's motion for summary disposition;
- b. Granting summary disposition in favor of Farmers and dismissing all claims against Farmers in their entirety;
- c. Declaring that Enterprise, as the insurer of the owner of the vehicle occupied by Plaintiff, is obligated to provide PIP coverage and renders Plaintiff ineligible for PIP benefits under the assigned claims plan; and
- d. Awarding Farmers all other relief to which it is entitled.

Respectfully submitted,

HEWSON & VAN HELLEMONT PC

By: 
Nicholas S. Ayoub (P/1545)
Attorney for Defendant

BUSINESS ADDRESS
625 Kenmoor Ave. SE
Suite 304
Grand Rapids, MI 49546

Dated: February 5, 2017

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

WALTER SAKOWSKI, as Conservator for MEAGAN
TURNER,

Plaintiff,

and

RIVERVIEW MACOMB HOME & ATTENDANT
CARE, LLC,

Intervening Plaintiff,

v

FARMERS INSURANCE EXCHANGE, GARY
DUANE RUPP, as personal representative of the estate
of JASON PUCKETT,

Defendants/Cross-Plaintiffs/Cross-Defendants

and

ENTERPRISE LEASING CORPORATION OF DETROIT,
LLC, PATSY VILLNEFF, TAMERA HARPER, EAN
HOLDINGS, LLC,

Defendants/Cross-Defendants.

Case No. 16-002031-NF

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**BRIEF IN OPPOSITION TO EAN HOLDINGS, LLC'S MOTION FOR SUMMARY
DISPOSITION AND IN SUPPORT OF FARMERS' CROSS-MOTION FOR SUMMARY
DISPOSITION**

OVERVIEW OF QUESTION PRESENTED

The cross dispositive motions before the Court present a legal dispute over priority for first-party personal protection insurance (PIP) coverage. Farmers, the assigned claims carrier and insurer of last resort, claims that EAN Holdings, LLC (“Enterprise”)¹ is in a higher order of priority and is responsible to provide PIP benefits to the claimant and to reimburse Farmers for benefits and loss adjustment expenses it has paid to or on behalf of the claimant.

The underlying no-fault claimant, Megan Turner, was injured while riding in a rental car owned by EAN Holdings, LLC, an entity which, at the time of the accident, was a certified self-insurer under the Michigan no-fault statute. After concluding that PIP coverage was not available under any of the higher priority classes, Turner sought PIP coverage through EAN Holdings, LLC, which is, for purposes of the act, “the insurer of the owner [and] registrant of the vehicle [Turner] occupied.” MCL 500.3114(4)(a). EAN Holdings, LLC denied that it had a statutory obligation to provide benefits despite the applicable statutory mandate stating that the vehicle that Turner occupied was not required to be insured under Michigan law because it had not been operated in Michigan for more than 30 days in the prior year.

Farmers maintains that Enterprise is under a clear statutory obligation to provide PIP coverage for Megan Turner and that the clear and unambiguous statutory obligation to provide PIP coverage under MCL 500.3114(4)(a) is in force regardless of whether the particular vehicle was required to have Michigan PIP coverages. Enterprise’s proposed exception to the otherwise clear and unambiguous statutory mandate is not supported by the plain language of the legislative enactment and must therefore be rejected.

¹ The actual legal entity that registered and owned the vehicle and is certified as a self-insured is EAN Holdings, LLC. However, that company does business as Enterprise Rent-a-Car. For convenience, at times herein Farmers will refer to EAN Holdings, LLC as simply “Enterprise.”

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The legally significant facts are not in dispute and the issue presented for the Court to decide is purely one of law and, more specifically, of statutory construction.

Plaintiff Meagan Turner was severely injured on April 11, 2015 while riding as a passenger in a rental vehicle titled to EAN Holdings, LLC, which does business as Enterprise Rent-a-Car. (Exhibit 1 & 2). The vehicle was registered in Maryland. (Exhibit 2). According to Enterprise's rental history, the vehicle had only been operated in the State of Michigan since March 18, 2015, 23 days before the accident. (See Affidavit of Kristen Zub, filed with Enterprise's motion).²

Plaintiff Turner was not insured under a no-fault policy of her own and did not reside with a relative that was insured under a policy. She sought coverage through EAN Holdings, which denied the claim suggesting that the vehicle was "not subject to the Michigan No-Fault laws." (Exhibit 3). Based on that denial and the absence of applicable insurance, Plaintiff sought coverage through the assigned claims plan. That claim was assigned to Farmers, which has assumed the obligation to provide no-fault coverage, subject to its rights to reimbursement under MCL 500.3172.

² As discussed, Enterprise argues that the controlling issue is whether the vehicle had been operated in Michigan for an aggregate of more than 30 days, while Farmers takes the position Enterprise's coverage is applicable regardless of the length of time that vehicle was operated in Michigan and that therefore the fact is not legally significant. Nonetheless, because of the nature of vehicle renting, the rental history does not necessarily establish that the vehicle had not been operated in the state for more than 30 days prior to the time of the accident. Once a vehicle is rented, the driver is free to travel across state boundaries and there is no way to know whether or not the renters drove the vehicles in Michigan. Enterprise's employee doesn't have personal knowledge of whether any of the previous renters of the vehicle operated the vehicle in Michigan in the year prior to the accident. However, for purposes of this motion, Farmers will stipulate to the fact that the vehicle had only been operated in Michigan 23 days prior to the date of the accident.

Turner initiated this civil action against both Farmers and Enterprise, among others, seeking the payment of PIP benefits.³ Farmers brought a cross-claim against Enterprise seeking reimbursement for benefits it has paid to Turner, as well as the expenses it has incurred in servicing the claim. (Farmers' Cross-Complaint, ¶ 13). Farmers also sought a judgment declaring that Enterprise is the insurer in the highest order of statutory priority applicable to this claim and is otherwise required to provide PIP coverage to Megan Turner, as required under the Michigan no-fault act.

Enterprise now seeks summary disposition and a legal determination that it is not obligated to provide PIP coverage for this loss because this particular vehicle was not registered in this State or operated here for more than 30 days in aggregate within the year. In response, Farmers states that it is entitled to summary disposition and judgment as a matter of law declaring that Enterprise is statutorily obligated to provide PIP coverage inasmuch as Enterprise was the “insurer of the owner of the vehicle [Turner] occupied” at the time of the accident. MCL 500.3114(4)(a).

I. STANDARD OF REVIEW

Farmers concurs with and adopts the standards of review contained in Enterprise's brief.

II. LAW AND ARGUMENT

A. Overview of the No-Fault Statutory Scheme

The Michigan automobile no-fault insurance act went into effect on March 31, 1973 with the goal of providing those injured in motor vehicle accidents with “assured, adequate, and

³ Farmers, as the assigned claims carrier, has paid PIP benefits and otherwise satisfied Plaintiff's claims for the payment of benefits, subject to its right of reimbursement against the higher priority insurer. The principle claim for PIP benefits by Plaintiff will be dismissed.

prompt reparation for certain economic losses.” *Shavers v Attorney General*, 402 Mich 554, 579; 267 NW2d 72 (1978). As part of the scheme, the act makes no-fault insurance coverage compulsory, "whereby every Michigan motorist is required to purchase no-fault insurance or be unable to operate a motor vehicle legally in this state." *Id.* The statute requires that the owner or registrant maintain security for the payment of benefits under personal protection insurance (PIP), property protection insurance (PPI), and residual liability insurance.

While satisfaction of the security mandate is generally achieved through purchasing a formal insurance policy, the statute expressly allows a person or entity to be “self-insured” if certain conditions are met:

(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is driven or moved on a highway. The person filing the security has all the obligations and rights of an insurer under this chapter. When the context permits, "insurer" as used in this chapter, includes a person that files the security as provided in this section. [MCL 500.3101(4).]

Enterprise (i.e. EAN Holdings, LLC) has availed itself of this option and is certified by the Department of Insurance and Financial Services as a Self-Insured Entity. (Exhibit 4). Enterprise, therefore, is the functional equivalent of the *insurer* of Enterprise (the owner and registrant of the vehicle) for purposes of applying the statute.

Importantly, no-fault insurance is akin to personal health and accident coverage in that it is not dependent upon the ownership of a specific motor vehicle. *Madar v League Gen*, 152 Mich App 734; 394 NW2d 90 (1986). The mandate of the no-fault act is that people, not vehicles, be insured against loss. See *DAIIE v Home Ins Co*, 428 Mich 43, 49; 405 NW2d 85 (1987); *Lee v DAIIE*, 412 Mich 505, 516; 315 NW2d 413 (1982); see also *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 725–730; 635 NW2d 52 (2001).

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Sections 3105 and 3107 govern when a person is entitled to PIP benefits as well as the nature of the benefits recoverable; while §§ 3114 and 3115 govern the question of which insurer is responsible for providing the benefits. Generally, a person suffering accidental bodily injury out of the use, operation or maintenance of a motor vehicle is entitled to benefits for reasonable charges incurred for reasonably necessary products, services, and accommodations for the person's care recovery or rehabilitation. A person eligible to claim benefits must generally first claim those benefits from his or her own insurer, the insurer of the owner of the registrant of the vehicle or the insurer of the operator of the vehicle, in that order. MCL 500.3114. The rules governing entitlement to benefits are generally referred to as the "eligibility" rules, while the rules governing which insurer is obligated to pay those benefits are generally referred to as the "priority" rules. The priority obligation applicable to Enterprise is found in MCL 500.3114(4):

Except as provided in subsection (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority: (a) The insurer of the owner or registrant of the vehicle occupied.

The parties do not dispute the fact that Turner suffered "accidental bodily injury out of the use, operation or maintenance of a motor vehicle" and that she is otherwise entitled to claim PIP benefits. Rather, the controversy centers on the application of the priority rule.⁴ Specifically, the question is whether Enterprise is an "insurer of the owner...of the vehicle [plaintiff] occupied." MCL 500.3114(4)(a). Because Enterprise is the insurer of Enterprise (itself), the owner of the vehicle, it is required to provide PIP benefits to or for the benefit of Turner.

⁴ As the assigned claims carrier, Farmers is the PIP carrier of last resort that will only have an obligation to provide coverage if no other PIP coverage is applicable. MCL 500.3172. Accordingly, any liability that Farmers has to Turner is contingent on whether Enterprise is obligated to provide coverage to Turner.

Therefore, Farmers is entitled to judgment as a matter of law declaring that Enterprise is higher in priority and the insurer applicable and liable for providing PIP coverage.

B. Enterprise is the “Insurer of *the Owner* of the Vehicle Involved in the Accident as a Matter of Law

The statutory phrase to be applied in this case is rather simple and straight-forward. The section at issue requires the person suffering injury “while an occupant of a motor vehicle” to claim PIP benefits from the “insurer of the owner or registrant of the vehicle occupied...”. MCL 500.3114(4). There is no dispute concerning the fact that Enterprise (i.e. EAN Holdings) was the owner of the vehicle in which Turner was riding when she was injured.⁵

Enterprise attempts to escape its otherwise clear obligation by suggesting that the particular vehicle in question was not *required* to have no-fault insurance coverage in effect at the time of the accident, even if the coverage relationship existed. However, Michigan law has consistently held that coverage is tied to the owner or registrant, not to any particular vehicle. The insurer/insured relationship exists regardless of whether specific vehicles are listed or covered in the policy. See *Madar v League Gen, supra*; *Universal Underwriters, supra* (recognizing that a person remains the named insured under a policy of PIP insurance even if the vehicle listed in the policy is sold or destroyed).

There can be no real dispute that Enterprise is the vehicle-owner’s insurer. And, Enterprise is no less its own “insurer” even if the vehicle in this accident was not expressly required to be insured under Michigan law. Multiple panels of our Court of Appeals have unanimously concluded that the owner of a vehicle is an insured under a no-fault policy even if the particular car associated with the accident was not listed or covered under the policy.

⁵ The vehicle was also registered to Enterprise, equally making Enterprise the insurer of the registrant of the vehicle.

In *Farmers Insurance Exchange v Farm Bureau Ins Co*, 272 Mich App 106; 724 NW2d 485 (2006), the Court of Appeals held that the phrase, “the insurer of the owner or registrant of the motor vehicle involved in the accident” applied to the van owner’s insurer, even though the van owner’s policy only covered a different vehicle that was not involved in the accident. The Court reasoned:

MCL 500.3114(5)(a) states that the insurer is liable if it is “[t]he insurer of the owner or registrant of the motor vehicle involved in the accident.” In order to scrutinize the plain language of the statutory sentence, we consult the dictionary definition of the word “of.” The word “of” is “used to indicate inclusion in a ... class” and “used to indicate possession or association” Random House Webster’s College Dictionary (1997). The sequential prepositional phrases “of the owner or registrant” and “of the motor vehicle involved in the accident” define the relevant insurer. The first prepositional phrase, “of the owner or registrant,” establishes a relationship between the “insurer” and an individual “owner or registrant” on the basis of the contractual nature of the parties’ relationship. The second phrase establishes a relationship between an individual “owner or registrant” and “the motor vehicle involved in the accident” on the basis of “the owner or registrant[’s]” possession of “the motor vehicle involved in the accident.” The prepositional phrases demarcate contracting parties, with the first party defined by the contractual relationship and the second party defined by the possessive relationship. Pursuant to the plain language of the statute, all that is required for an insurer to be first in priority to pay no-fault benefits is to insure “the owner or registrant of the motor vehicle involved in the accident.” In other words, the plain language of MCL 500.3114(5)(a) states that the insurer need not insure the vehicle in the accident, but must insure the owner or registrant. Here, because defendant insured Petiprin, who owned the van involved in the accident, defendant is first in priority to provide benefits under MCL 500.3114(5)(a). Had the Legislature intended MCL 500.3114(5)(a) only to require an insurer to provide no-fault benefits if the insurer actually insured the motor vehicle involved in the accident, it could have chosen the following language for MCL 500.3114(5)(a): “The insurer of the motor vehicle involved in the accident,” deleting the first prepositional phrase, “of the owner or registrant.” Clearly, the Legislature did not choose that language, and for us to adopt defendant’s position would be to render the phrase “of the owner or registrant” in the statute nugatory. *Griffith, supra* at 533–534, 697 NW2d 895. [*Id.* at 113-114]

A separate panel of the Court came to the same conclusion in a previous case that construed the same phrase contained in the MCL 500.3115:

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This statutory language clearly states that the insurer of the owner or registrant of the motor vehicle involved in the accident is liable for payment of personal protection insurance benefits. Contrary to Pioneer's argument, the statute does not state that the injured person must seek these benefits from the insurer of the motor vehicle. Stated another way, the statute does not mandate that the vehicle involved in the accident must have been insured by the insurer of the owner before an injured person can seek benefits. Pioneer points to no authority that supports its interpretation, and we find Pioneer's interpretation contrary to the plain language of the statute. The Legislature is presumed to have intended the meaning conveyed by the specific words used in the statute. [*Pioneer State Mut Ins Co v Titan Ins Co*, 252 Mich App 330, 336; 652 NW2d 469, 472 (2002).]

Finally, on September 15, 2015, the Court of Appeals issued a published opinion in *Titan Ins Co v Am Country Ins Co*, 312 Mich App 291; 876 NW2d 853 (2015). The motor vehicle at issue in that case was used in the business of transporting passengers and was uninsured. The vehicle's owner, however, was insured through the defendant in connection with other vehicles it owned. The panel considered two alternative priority rules to determine whether the owner's insurer was obligated to extend PIP coverage even though it did not insure the actual vehicle involved in the accident.

The panel concluded that the defendant did not fall within the § 3114(2) priority order because that rule addresses "the *insurer of the motor vehicle*" occupied. In contrast, though, the panel held that the defendant's coverage was applicable under § 3114(4) because the defendant was the "*insurer of the owner or registrant of the vehicle occupied.*" Accordingly, even though the involved *vehicle* was not insured, the *owner* of the vehicle was insured by the defendant, triggering priority under § 3114(4).

The *Titan Ins* panel recognized that it was bound under *Farmers Ins Ex* and *Pioneer*, and that the defendant insurer was liable to pay benefits even though it did not insure the vehicle involved in the accident. The opinion also highlights the fact that not only could the Legislature have worded the priority rule in a different way, as could be observed from the language used in

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subsection (2), in actuality, it did word one priority rule in that way, demonstrating the fact that it knew how to express its intent.⁶ *Shinholster v Annapolis Hosp*, 471 Mich 540, 566; 685 NW2d 275 (2004) (suggesting that the use of specific terms in other provisions demonstrates that the Legislature knew how to express a specific intent and that the failure to employ similar language in other sections evidences the Legislature's contrary intent).

Titan is a published opinion of a prior panel of the Court of Appeals and is therefore binding on this Court under MCR 7.215(J). *Titan* controls the question here concerning the proper construction of MCL 500.3114(4). Regardless of whether the occupied vehicle was required to be insured, the fact that its *owner* was the named insured (self-insured) means that the insurer is obligated to pay PIP benefits under MCL 500.3114(4).

Enterprise relies on *Parks v DAIIE*, 426 Mich 191; 393 NW2d 833 (1986) and suggests that it stands for the proposition that coverage will not apply if the vehicle in question was not required to be registered in this state. However, in that case the Court was construing subsection (3) of MCL 500.3114, not subsection (4), which is the section at issue here. Like the priority rule in MCL 500.3114(2), MCL 500.3114(3) does not reference the insurer of *the owner* of the vehicle, but rather references the *insurer of the vehicle* itself.⁷ This distinction in the language chosen by the Legislature cannot be ignored and is worth careful consideration. MCL

⁶ See also MCL 500.3114(3), which imposes the obligation to pay PIP benefits upon the "insurer of the furnished vehicle." This is the provision at issue in *Parks v DAIIE*, 426 Mich 191; 393 NW2d 833 (1986), the primary authority on which Enterprise relies, as discussed below.

⁷ The entire provision readings:

An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

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500.3114(2) imposes the obligation to provide PIP coverage on “*the insurer of the motor vehicle*” occupied, and similarly, MCL 500.3114(3) imposes the obligation on “*the insurer of the furnished vehicle.*” Both of these rules tie coverage to the insurer of the vehicle. And, as recognized in *Titan*, were either of those rules applicable here, the prerequisite would necessarily be that Enterprise *insured the vehicle* at issue. However, unlike MCL 500.3114(2)⁸ and MCL 500.3114(3), MCL 500.3114(4) imposes the coverage obligation on the “*insurer of the owner of the vehicle.*” Stated another way, while MCL 500.3114(2) and MCL 500.3114(3) tie the “insurer” directly to “the vehicle,” MCL 500.3114(4), in stark contrast, ties the “insurer” to the “owner of the vehicle.” Because the applicable priority provision is MCL 500.3114(4), the only question is whether Enterprise insured the vehicle owner (i.e. Enterprise). And while important for an analysis under the other two subsections, it is irrelevant whether Enterprise directly insured *the vehicle* for purposes of the analysis required under MCL 500.3114(4). Therefore, *Parks*, which was construing a completely different priority provision, is simply not authoritative or instructive here.

⁸ In a rather recent unpublished opinion, a panel of this Court reached the same conclusion concerning the construction of MCL 500.3114(3) as the *Titan* panel reached in construing MCL 500.3114(2):

Much as Citizens would like us to read the statute otherwise, “the insurer” is not tied to the employer, but is, instead, tied to the furnished vehicle. The language in MCL 500.3114(3) entitling the injured to PIP benefits from “the insurer of the furnished vehicle” is markedly different from, for example, the language in MCL 500.3114(4) which provides that the injured shall receive PIP benefits “... from insurers in the following order of priority: (a) The insurer of the owner or registrant of the vehicle occupied...” Clearly, the legislature recognizes a distinction between an insurer of a furnished vehicle and the insurer of an owner or registrant. Had the legislature intended MCL 500.3114(3) to apply to the insurer of the owner or registrant of the furnished vehicle it would have so stated. It did not. It explicitly stated that an injured party was entitled to PIP benefits simply from the insurer of the furnished vehicle. The insurer of the furnished vehicle is Citizens. *Hamdi v Citizens Ins Co of Am*, No. 314255, 2014 WL 5018825, at 4 (Mich Ct App October 7, 2014). (Attached as Exhibit 5).

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The distinction is all-important because while *vehicles* can be excluded from coverage under circumstances, owners cannot be divorced from coverage. Consider any owner of multiple vehicles who is insured under a no-fault policy. That policy provides insurance coverage to the person, the “owner” or “registrant.” That policy may also exclude coverage on a particular vehicle. While the insurer may not be the “insurer of the excluded vehicle,” it is nonetheless the “insurer of the owner of that excluded vehicle.” While *Parks* recognizes an extra-judicial exclusion for fleet vehicles that are not required to be insured, this exclusion of coverage on vehicles has no effect or bearing when the priority rules imposes the obligation on the “insurer of the owner.” Accordingly, even if the vehicle involved in the accident here is properly characterized as excluded under the rule announced in *Parks*, it would have no effect when the priority rule is tied to the insurer of the *owner* of the vehicle.

Moreover, the *Parks* panel appears to acknowledge that it was crafting an extra-textual rule and warned that this rule should not be extended to circumstances other than the employer-furnished vehicle scenario. In addition, even the limited exception at issue in *Parks* is founded upon an outmoded exercise of judicial authority which has been continually rejected in more modern Michigan jurisprudence. See *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503; 821 NW2d 117 (2012).

Here, the only analysis permitted is the application of the plain language of MCL 500.3114(4). Because Enterprise is its own no-fault insurer and because Enterprise is also the “owner” of the occupied vehicle, Enterprise is statutorily obligated to provide PIP coverage for Turner’s loss.

C. *Heichel v GEICO Indemnity Co* Should be Rejected Because it is not Binding and was Erroneously Decided

Enterprise also relies on the unpublished decision of the Court of Appeals in *Heichel*. Farmers concedes that this case is not factually distinguishable in a legally significant way.⁹ Nonetheless, a review of the opinion and the controlling statutory provision reveals how the conclusion reached in *Heichel* is erroneous. Because the opinion is unpublished, this Court is not obligated to follow it. More importantly, because the opinion misconstrues the statutory provisions, this Court should not follow it.

There, the claimant, Adam Heichel, was injured when his motorcycle struck a Ford Fusion that was rented from Enterprise Rent-A-Car. The Fusion was registered in North Carolina and there was no evidence to suggest that it had been in Michigan for more than 30 days. The title owner of the vehicle was EAN Holdings, LLC, the same Michigan self-insured entity that is the defendant here. Under MCL 500.3114(5), the plaintiff sought PIP coverage from EAN Holdings, LLC, in its capacity as the functional equivalent of the “insurer of the owner of the vehicle involved in the accident.” The panel, however, found that EAN Holdings, LLC was not liable for PIP, despite the fact that it was the insurer of the owner of the vehicle. Rather, the panel tied the obligation to provide coverage to the requirement that the particular motor vehicle be insured. It concluded that because the Fusion was not registered in Michigan and was not operated in Michigan for more than 30 days, there was no requirement that vehicle have PIP coverage in effect. Therefore, the panel held that EAN Holdings’ PIP coverage was not applicable.

⁹ *Heichel* does involve a different priority rule than the one implicated here. However, Farmers recognizes that the controlling language of both rules reference the “insurer of the owner of the vehicle” involved in the accident and that there is otherwise no reason to construe those provisions differently.

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However, for the reasons discussed by the Court of Appeals in *Titan*, the obligation to provide PIP coverage contained in that priority section of the statute is not tied to the involved motor vehicle. MCL 500.3114(5) required the claimant to claim benefits from the insurer of the owner of the vehicle involved, which was EAN Holdings, LLC, even if the particular vehicle was not insured or otherwise not required to be insured.

While some may argue that tying coverage to a particular vehicle rather than the owner of the vehicle is a better policy, the policy choice is one for the Legislature to make, not the Courts under the guise of statutory construction. The Court's obligation here is to apply the plain language as written without reviewing the prudence of the particular policy choice manifest in that language. See *Spectrum Health Hosps, supra*.

Instead, the task for this Court is simple. MCL 500.3114(4) requires it to identify the insurer of the owner of the vehicle in which Turner was riding at the time of the accident. Because the owner was EAN Holdings, LLC, and because EAN Holdings, LLC insures itself, EAN Holdings, LLC is obligated to provide PIP benefits to Turner. Therefore, Farmers is entitled to a judicial declaration that EAN Holdings, LLC is obligated to extend PIP benefits to Turner and to reimburse Farmers for benefits and expenses it has paid to Turner.¹⁰

¹⁰ MCL 500.3172(3)(f) and MCL 500.3175 expressly provide a right to reimbursement and indemnification from the insurer in higher priority and otherwise obligated to extend PIP coverage.

III. CONCLUSION

For these reasons, Defendant/Cross-Plaintiff/Cross-Defendant, Farmers Insurance Exchange, respectfully requests that this Honorable Court enter an Order:

- a. Denying Enterprise's motion for summary disposition;
- b. Granting summary disposition in favor of Farmers and dismissing all claims against Farmers in their entirety;
- c. Declaring that Enterprise, as the insurer of the owner of the vehicle occupied by Plaintiff, is obligated to provide PIP coverage and renders Plaintiff ineligible for PIP benefits under the assigned claims plan; and
- d. Awarding Farmers all other relief to which it is entitled.

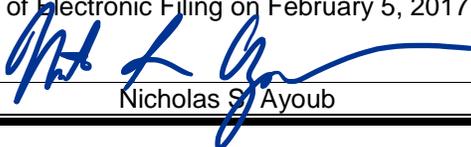
Respectfully submitted,

HEWSON & VAN HELLEMONT PC

By: 
Nicholas S. Ayoub (P61545)
Attorney for Defendant

BUSINESS ADDRESS
625 Kenmoor Ave. SE
Suite 304
Grand Rapids, MI 49546

Dated: February 5, 2017

PROOF OF SERVICE
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record at their respective e-mail addresses disclosed on the Notice of Electronic Filing on February 5, 2017.

Nicholas S. Ayoub

EXHIBIT

3

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PO BOX 99
LOMBARD, IL 60148
Tel: 630-424-6400 • Fax: 630-424-0880

May 5, 2015

Ava Care and Case Management
Attn: Marcus Murray
PO Box 183667
Shelby Twp., MI 48318

via mail and fax 586-758-7801

RE: Your Patient: Meagan Turner
Your File No.: 9227
Our File No.: 06423052 PIP
Date of Loss: 04/11/2015

Dear Mr. Murray:

As you are aware, this office handles PIP claims for Enterprise in the State of Michigan.

It has been determined that Enterprise is not financially responsible for your patients PIP benefits. In this case, the vehicle being driven by Tamerra Harper (and that your patient was a passenger in) was registered in the State of Maryland and had not been operated in the State of Michigan for more than 30 days when the accident occurred. This vehicle is not subject to the Michigan No-Fault laws.

Sincerely,

Jennifer Vahmistrovs
Liability Claims Representative II
(630) 424-6400 x 346
Fax (630) 345-9493

EXHIBIT

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Exhibit 4: Michigan Authorized Self-Insurer List

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Use this list for entities that qualify for a Certificate of Self-Insurance Authority (COSI) to operate as a Michigan automobile self-insured entity pursuant to Public Act No. 204 of 2012. Note the list was updated January 1 and entities may become qualified as self-insurers subsequent to the date below.

As of January 1, 2016

Archdiocese of Detroit
ADS Waste Holdings, Inc. and its wholly owned subsidiary Advanced Disposal Services Solid Waste Midwest, LLC
AT & T Inc. and its wholly owned subsidiary Michigan Bell Telephone
AT & T Inc. and its wholly owned subsidiary AT & T Services, Inc.
Avis Budget Group, Inc., P.V. Holding Corp.
Central Michigan University
City of Ann Arbor
City of Battle Creek
City of Dearborn
City of Detroit
City of Flint
City of Warren
Consumers Energy Company
County of Saginaw
Diocese of Gaylord
Diocese of Grand Rapids
Diocese of Kalamazoo
Diocese of Lansing
Diocese of Marquette
Diocese of Saginaw
DTE Electric Company (FKA Detroit Edison Company)
DTE Gas Company (FKA Michigan Consolidated Gas Company)
→ **EAN Holdings, LLC**
Eastern Michigan University
Ferris State University
Flint Mass Transportation Authority
Ford Motor Company
Genesee County
Grand Valley University
Lake Superior State University
Macomb County
MASB SEG Property Casualty Pool, Inc.
Metro Assoc for Improved School Leg Joint Risk, et al
Michigan Community College Risk Management Authority
Michigan County Road Commission Self-Insurance Pool
Michigan Gas Utilities Corporation
Michigan Municipal Liability and Property Pool
Michigan Municipal Risk Mgmt. Authority
Michigan State University
Michigan Technological University
Michigan Transit Pool
Middle Cities Risk Management Trust
Northern Michigan University
Oakland University
Regents of The University of Michigan
Road Commission for Oakland County
Saginaw Valley State University
State of Michigan
Suburban Mobility Authority for Regional Transportation
Wayne State University
Western Michigan University
Wisconsin Electric Power Company



EXHIBIT

5

**STATE OF MICHIGAN
COURT OF APPEALS**

ABDULLAH HAMDI,

Plaintiff/Counter-Defendant,

v

CITIZENS INSURANCE COMPANY OF
AMERICA,

Defendant/Cross-
Defendant/Appellant,

and

AL NISH MOHAMMED d/b/a 2 M'S
CHALMERS AUTO REPAIR, INC.,

Defendant,

and

NATIONAL CASUALTY COMPANY,

Defendant/Counter-Plaintiff/Cross-
Plaintiff/Appellee,

and

AQEEL ALZIRGANY and AYAT TRUCKING,
INC.,

Defendants.

UNPUBLISHED

October 7, 2014

No. 314255

Wayne Circuit Court

LC No. 12-002583-NF

CITIZENS INSURANCE COMPANY OF
AMERICA,

Plaintiff-Appellant,

v

No. 316334

NATIONAL CASUALTY COMPANY,
PEOPLES INSURANCE AGENCY, LTD., and
JM WILSON CORPORATION,

Oakland Circuit Court
LC No. 2012-129205-CK

Defendants-Appellees,

and

AYAT TRUCKING, INC., and AQEEL
ALZIRGANY,

Defendants.

CITIZENS INSURANCE COMPANY OF
AMERICA,

Plaintiff-Appellant,

v

No. 317008
Oakland Circuit Court
LC No. 2012-129205-CK

NATIONAL CASUALTY COMPANY,
PEOPLES INSURANCE AGENCY LTD., and JM
WILSON CORPORATION,

Defendants-Appellees,

and

AYAT TRUCKING, INC. and AQEEL
ALZIRGANY,

Defendants.

Before: GLEICHER, P.J., and SERVITTO and KRAUSE, JJ.

PER CURIAM.

In docket no. 314255, defendant/cross-defendant, Citizens Insurance Company of America (“Citizens”) appeals as of right a trial court order granting summary disposition in favor of National Casualty Company (“National”) and finding that Citizens was the highest priority insurer for purposes of a motor vehicle accident involving plaintiff Abdullah Hamdi (“Hamdi”) and was thus responsible for payment of Hamdi’s no-fault insurance benefits. In docket no.’s 316334 and 317008, Citizens appeals as of right the trial court’s grant of summary disposition in

favor of National, Peoples Insurance Agency Ltd. (“Peoples”) and JM Wilson Corporation (“JMW”), and its finding that Citizens’ second complaint was frivolous. We affirm.

Hamdi was injured in a one-vehicle accident on April 16, 2011, in Arizona while driving a semi truck or “tractor” and attached trailer, in the course of his employment. At the time of the accident, Hamdi was employed with Ayat Trucking, Inc. as an interstate commercial truck driver and the tractor and trailer he was driving were owned by Al Nish Mohammed d/b/a 2 M’s Chalmers Auto Repair, Inc. (“2 M’s”), but were leased to Aqeel Alziryany d/b/a Ayat Trucking (“Ayat”) for a 12 month period. Citizens was the insurer of the tractor under a policy obtained by 2 M’s and National was the insurer of the trailer under a policy obtained by Ayat.

Hamdi initiated a lawsuit against Citizens, National, Ayat Trucking, Aqeel Alziryany, and 2 M’s seeking payment of no-fault insurance benefits after both Citizens and National denied benefits. A priority dispute ensued between Citizens and National and resulted in National filing a cross-claim against Citizens seeking, primarily, a declaration as to the priority of these two insurers. The trial court granted National’s request for relief on summary disposition, finding that Citizens was the insurer legally responsible for payment of Hamdi’s no-fault benefits as the first in priority insurer. The trial court directed Citizens to pay Hamdi’s PIP benefits and it did so, after which Hamdi dismissed its claims against Citizens, resolving that case (docket. no. 314255).

Citizens thereafter filed an action against National, Ayat, Aqeel Alziryany, Peoples and JMW in Oakland Circuit Court arising out of the same incident. Citizens alleged in its complaint that National was the highest insurer in priority and sought a declaration of the same and reimbursement for the no-fault benefits that Citizens had paid to Hamdi thus far, as well as recovery from Ayat and Aqeel Alziryany, alleging that they were required to insure both the tractor and trailer. Citizens also claimed that Peoples and JMW were negligent in failing to procure the insurance coverage on the tractor as required under the lease agreement presented to them, causing Citizens to wrongly pay no-fault benefits. The trial court granted summary disposition in favor of National based upon res judicata and collateral estoppel and awarded it sanctions against Citizens for filing a frivolous action. The trial court further granted summary disposition in favor of Peoples and JMW and denied Citizens’ request to amend its complaint on grounds of futility.

Docket No. 314255

Citizens first contends that the trial court erred in finding that it, and not National, was the first in order of priority for purposes of providing Hamdi’s no-fault benefits based upon relevant statutory language and that summary disposition should thus have been granted in favor of Citizens. We disagree.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). If the proffered evidence fails to establish a genuine issue regarding any material fact,

the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Issues of statutory interpretation are reviewed de novo. *City of Riverview v Sibley Limestone*, 270 Mich App 627, 630; 716 NW2d 615 (2006). The applicability of a statute is also a question of law that is reviewed de novo. *Id.*

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Brown v Detroit Mayor*, 478 Mich 589, 593; 734 NW2d 514 (2007). To ascertain such intent, we first focus on the language of the statute itself. *Petersen v Magna Corp*, 484 Mich 300, 307; 773 NW2d 564 (2009).

If statutory language is unambiguous, the Legislature is presumed to have intended the meaning expressed in the statute. The words of a statute provide the most reliable evidence of the Legislature's intent, and as far as possible, effect should be given to every phrase, clause, and word in a statute. If the statutory language is certain and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. *Id.*

Judicial construction is only appropriate when an ambiguity exists in the language of the statute; that is when it irreconcilably conflicts with another provision or is equally susceptible to more than a single meaning. *Lansing Mayor v Pub Serv Comm'n*, 470 Mich 154, 166; 680 NW2d 840 (2004).

There is no dispute that Ayat leased both the tractor and trailer under a twelve month lease or that it provided both to Hamdi in the course of his employment. MCL 500.3101 provides, in relevant part:

(1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period the motor vehicle is driven or moved upon a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved upon a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

(2) As used in this chapter:

(e) "Motor vehicle" means 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. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b. Motor vehicle does not include a farm tractor or other implement of husbandry

which is not subject to the registration requirements of the Michigan vehicle code pursuant to section 216 of the Michigan vehicle code, 1949 PA 300, MCL 257.216. Motor vehicle does not include an ORV.

(h) “Owner” means any of the following:

(i) A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days.

(ii) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.

Under the above, Citizens is correct that Ayat was considered an owner of both the tractor and the trailer (the trailer qualifying as a motor vehicle) and was required to maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance for both the tractor and the trailer. Ayat did obtain insurance on the 1998 Great Dane trailer through its National policy via a change endorsement on April 15, 2011 (the day before the accident). However, the 2002 Kenworth tractor was not actively added to the National policy until April 18, 2011 (two days after the accident). Thus, at the time of the accident, the only active policy of insurance on the tractor was a policy obtained by 2 M’s issued by Citizens. While Ayat may have had an obligation to obtain insurance on the tractor, the fact that it did not does not make National liable. A court will not hold an insurance company liable for a risk that it did not assume. *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 82; 730 NW2d 682 (2007).¹

In any event, Citizens’ contention concerning priority ignores the plain reading of MCL 500.3114(3), which both parties agree governs this matter. That provision provides:

An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

¹ Citizens contends that because Ayat obtained insurance through National on the trailer, it necessarily also obtained National insurance on the tractor due to policy language. Citizens did not raise this argument before the trial court and the trial court did not rule on this argument. The argument not being preserved, we need not address it. *Burns v Detroit (On Remand)*, 253 Mich App 608, 615; 660 NW2d 85 (2002), mod 468 Mich 881 (2003).

Taking the statute piece by piece, there is no dispute that Hamdi [an employee] suffered an accidental bodily injury. There is also no dispute that he did so while an occupant of a motor vehicle, as he was driving the tractor, with the trailer attached, on a roadway. “Occupying” a motor vehicle for purposes of MCL 500.3114 means to be in or upon the vehicle. *Farm Bureau Mut Ins Co v MIC General Ins Corp*, 193 Mich App 317, 324; 483 NW2d 466 (1992).

The specific motor vehicle Hamdi was occupying was the tractor. A tractor and a trailer are two separate and distinct motor vehicles under the No-Fault Act. See, *Kelly v Inter-City Truck Lines, Inc*, 121 Mich App 208, 211; 328 NW2d 406 (1982)(“a semi-trailer, whether attached to a cab or freestanding, is a “motor vehicle” under the no-fault act”); *Citizens Ins Co of America v Roadway Exp, Inc*, 135 Mich App 465, 471; 354 NW2d 385 (1984)(“. . . a trailer remains a separate ‘motor vehicle’ when it is hooked up to a tractor.”). This fact is also made clear by the specific language in the No-Fault Act as well as the requirement that a tractor and trailer be separately insured.

The tractor was owned by Hamdi’s employer, Ayat, by virtue of the 12 month lease under application of MCL 500.3101. Pursuant to MCL 500.3114(3), then, Hamdi “shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.” The insurer “of the furnished vehicle” is Citizens, given that *the* furnished vehicle, i.e., the one Hamdi was occupying at the time of the accident and the one provided by his employer, was the tractor. There is simply no other way to read the plain and unambiguous language of this statute.

Much as Citizens would like us to read the statute otherwise, “the insurer” is not tied to the employer, but is, instead, tied to the furnished vehicle. The language in MCL 500.3114(3) entitling the injured to PIP benefits from “the insurer of the furnished vehicle” is markedly different from, for example, the language in MCL 500.3114(4) which provides that the injured shall receive PIP benefits “. . . from insurers in the following order of priority: (a) The insurer of the owner or registrant of the vehicle occupied” Clearly, the legislature recognizes a distinction between an insurer of a furnished vehicle and the insurer of an owner or registrant. Had the legislature intended MCL 500.3114(3) to apply to the insurer of the owner or registrant of the furnished vehicle it would have so stated. It did not. It explicitly stated that an injured party was entitled to PIP benefits simply from the insurer of the furnished vehicle. The insurer of the furnished vehicle is Citizens.

Citizens directs us to *Besic v Citizens Ins Co of the Midwest*, 290 Mich App 19, 26; 800 NW2d 93 (2010) in support of its position that National should be considered first in priority, but *Besic* actually runs contrary to Citizens’ stance. In that case, *Besic* was driving a tractor and trailer that he owned personally but leased to MGR Express. MGR obtained liability insurance on the tractor from Lincoln Insurance and *Besic* obtained a “bobtail” policy from Clearwater insurance.² Citizens insured *Besic*’s household vehicles. *Besic* was in an accident in Ohio and a priority dispute ensued amongst the three insurance companies concerning PIP benefits. The

² Bobtail insurance is as a policy that insures the tractor and driver when the tractor is operated without cargo or a trailer.

trial court found that Clearwater was the responsible insurer and this Court affirmed. Lincoln's policy was for liability only, and did not afford PIP coverage. Clearwater's policy, even though it was a bobtail policy, expressly provided PIP benefits. This Court found that because Besic was self-employed, MCL 500.3114(3) applied. This Court determined that Besic suffered accidental bodily injury while an occupant of a motor vehicle owned by his employer and thus he would receive PIP benefits from the insurer of the furnished vehicle under that statute. "In light of the fact that only Clearwater extended PIP benefits to the truck involved in Besic's accident, it has first priority to pay Besic's first-party benefits." *Id.* at 32.

Similarly, in this case, the lessor of the vehicle (2 M's in this case; in *Besic* it was Besic) obtained a policy on the tractor that provided PIP benefits and the lessee (Ayat in this case, MGR Express in *Besic*) did not. Citizens contends that its policy, just as in *Besic*, was a bobtail policy. In *Besic*, that fact was irrelevant. It is irrelevant here as well. The relevant fact is that the injured party was occupying a motor vehicle owned or registered by his employer. If so, the injured party is entitled to PIP benefits from the insurer of the furnished vehicle, whoever that insurer may be, and regardless of whether that insurer is the insurer of the employer.

Citizens also refers us to *Celina Mut Ins Co v Lake States Ins Co*, 452 Mich 84, 85; 549 NW2d 834 (1996). However, the issue presented in that case was "whether § 3114(3) of the no-fault act applies when the injured person is operating an insured vehicle in the course of self-employment." The trial court held that it does, and that the insurer of the vehicle involved in the accident is solely responsible for no-fault benefits and the Supreme Court agreed. Thus, *Celina* sheds no light on the facts before us, except, perhaps much to Citizens' dismay, to reconfirm that it is the insurer of the vehicle that is responsible for payment of the PIP benefits-not the insurer of the employer.

It is clear that National did not have a policy of insurance in place on the tractor and that Citizens did. Consistent with the relevant statutory language, Citizens, being the undeniable insurer of the tractor, is the first in priority under MCL 500.3114(3). The trial court did not err in finding that Citizens was the first in order of priority for payment of PIP benefits and its entry of summary disposition orders regarding the same are affirmed.

Citizens next argues that the trial court erred in denying its motion for leave to file a notice of non-party fault as to Peoples, Ayat's insurance agency. Citizens sought to assert that Peoples erroneously failed to include the tractor that Hamdi was driving at the time of the accident in the National policy purchased by Ayat. Citizens thus claimed that Peoples was a proximate cause or the proximate cause of Hamdi's lack of no-fault insurance coverage and sought to request that the jury assess fault as to Peoples. The trial court properly denied the motion.

MCR 2.112(K), governing notices of nonparty fault provides:

(1) *Applicability.* This subrule applies to actions based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death to which MCL 600.2957 and MCL 600.6304, as amended by 1995 PA 249, apply.

(2) *Notice Requirement.* Notwithstanding MCL 600.6304, the trier of fact shall not assess the fault of a nonparty unless notice has been given as provided in this subrule.

(3) *Notice.*

(a) A party against whom a claim is asserted may give notice of a claim that a nonparty is wholly or partially at fault. A notice filed by one party identifying a particular nonparty serves as notice by all parties as to that nonparty.

(b) The notice shall designate the nonparty and set forth the nonparty's name and last known address, or the best identification of the nonparty that is possible, together with a brief statement of the basis for believing the nonparty is at fault.

(c) The notice must be filed within 91 days after the party files its first responsive pleading. On motion, the court shall allow a later filing of the notice on a showing that the facts on which the notice is based were not and could not with reasonable diligence have been known to the moving party earlier, provided that the late filing of the notice does not result in unfair prejudice to the opposing party.

First and foremost, Hamdi did not allege that he lacked no-fault insurance coverage as claimed by Citizens. In his complaint, he alleged that he did have no-fault coverage, either from Citizens or National, or both and that both refused to pay him benefits under the same. The reasoning behind Citizens request to file its notice thus fails.

Second, under MCR 2,112(K)(1), notices of nonparty fault apply only to “actions based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death to which MCL 600.2957 and MCL 600.6304” apply. Hamdi’s claim was for first party no-fault benefits. “A claim for no-fault benefits is not a tort claim, nor is it comparable to one.” *Atkins v Suburban Mobility Authority for Regional Transp*, 492 Mich 707, 718; 822 NW2d 522 (2012).

Third, Citizens, citing *Holton v A+ Ins Associates, Inc*, 255 Mich App 318, 324; 661 NW2d 248 (2003), is correct that MCL 600.2957, containing provisions concerning comparative negligence, applies to a tort action alleging an insurance agent’s failure to procure adequate insurance. That case, however, instructs that the trial court correctly denied Citizens’ motion for leave to file its notice of nonparty fault.

In *Holton*, a homeowner underwent significant remodeling, including a new roof on his home. The homeowner then contacted its insurance agent to increase the coverage on the home, given the increased value after the extensive renovations. *Id.* at 319. Shortly thereafter, a roof fire caused damage exceeding the amount of the homeowner’s insurance coverage. The homeowner sued his insurance agent for, among other things, failure to procure adequate insurance. *Id.* at 320. Thus, the primary cause of action was negligence against the insurance agent. Notably, a panel of this Court found that the trial court properly rejected the insurance agent’s notice of nonparty fault (and thus an allocation of fault) against the roofing construction company and plaintiff because plaintiff’s action sought recovery for the insurance agent’s

negligent failure to procure adequate insurance. *Id.* at 321-322. The insurance agent could not request that liability for the lack of adequate insurance coverage be apportioned to anyone else because defendants were the only parties potentially responsible for plaintiffs' lack of insurance coverage. Thus, consideration of fault with regard to the roofing work or the fire was improper. The *Holton* court opined:

Stated simply, plaintiffs' claim is that their damages occurred because of inadequate insurance coverage, not because of the home fire. Their action is premised on defendants' alleged liability for negligence resulting in the lack of proper insurance coverage. Defendants have proffered no evidence showing that plaintiffs' or the contractor's alleged negligence in causing the fire is a factor in whether the resulting property damage would be covered under plaintiffs' homeowner's insurance, which defendants allegedly failed to provide. That is, on the evidence before us, the cause of the fire is no more relevant in this case than it would be if it related to a purely accidental event, such as a lightning strike. A defendant attempting to mitigate his liability through a comparative fault defense has the burden of alleging and proving that another person's conduct was a proximate cause of the plaintiff's damages. *Id.* at 325-326.

Plaintiff Hamdi initiated this action solely for first party no-fault benefits under the Michigan No-Fault Act, MCL 500.3101 *et seq.* Plaintiff thus claimed that he was damaged because those who insured the vehicle that he was in at the time of his accident refused to pay the PIP benefits they contractually agreed to pay. Under no factual scenario could Peoples be responsible for the first party no-fault insurance benefits Hamdi was seeking. It is not a no-fault insurer.

Hamdi did not allege negligence on the part of National, Citizens, or, for that matter, Peoples. There can be no tort liability unless the defendant owed a duty to the plaintiff. *Jones v Enertel, Inc*, 254 Mich App 432, 437; 656 NW2d 870 (2002). Even if Peoples was negligent in failing to add the tractor to the National policy, it still did not result in Hamdi having *no* PIP benefits or in Citizens' failure to pay the same. It simply shifted the order of priority, which affected Citizens. Thus, Peoples actions resulted in no damages to plaintiff. Denial of Citizens request to file a notice of nonparty fault as to Peoples was appropriate.

Citizens next asserts that the trial court erred in denying its motion for relief from the stipulated order of dismissal it entered into with Hamdi, which closed the case. We disagree.

This court reviews a trial court's decision to grant relief from a judgment or order for an abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999). An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of reasoned and principled outcomes. *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010).

Citizens moved for relief from the order pursuant to MCR 2.612(C)(1)(a) and (f), seeking to have the case reopened so that the trial court could resolve Citizens' pending motion for reconsideration. Those subrules provide as follows:

(C) Grounds for Relief From Judgment.

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(f) Any other reason justifying relief from the operation of the judgment.

“Mistake” for purposes of MCR 2.612(C)(1)(a) has been understood by this Court to mean “mutual mistake.” See *Marshall v Marshall*, 135 Mich App 702; 355 NW2d 661 (1984). The trial court has the authority to vacate the judgment if it finds that both parties shared a mistaken belief that led to their consent to a settlement. *Villadsen v Villadsen*, 123 Mich App 472, 477; 333 NW2d 311 (1983). The mistake may also be that of the trial court. *Fisher v Belcher*, 269 Mich App 247, 262; 713 NW2d 6 (2005). However, relief from judgment is generally granted only “when the circumstances are extraordinary and the failure to grant the relief would result in substantial injustice.” *Gillispie v Bd of Tenant Affairs of Detroit Housing Comm*, 145 Mich App 424, 428; 377 NW2d 864 (1985). “Well-settled policy considerations favoring finality of judgments circumscribe relief under MCR 2.612(C)(1).” *Rose v Rose*, 289 Mich App 45, 58; 795 NW2d 611 (2010).

It is a longstanding rule that parties are bound by their stipulations. See *Thompson v Continental Motors Corp*, 320 Mich 219, 224-225; 30 NW2d 844 (1948). However, because a stipulation is a type of contract, a party seeking to avoid a stipulation may use contract defenses. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 394; 573 NW2d 336 (1997). Accordingly, a stipulation may be set aside where there is evidence of mistake, fraud, or unconscionable advantage. *Id.*

In this matter, there is no indication that the *stipulating parties*, that is the parties to the contract, were acting under mistake, fraud, or that either was given an unconscionable advantage over the other. Citizens has not alleged that Hamdi was mistaken in any way or contributed to Citizens’ mistake or that the trial court made a mistake. Rather, Citizens simply entered the dismissal with the remaining party prior to the trial court’s denial of its motion for reconsideration. The trial court, at the hearing on plaintiff’s motion for relief from judgment, indicated that it had prepared an order denying reconsideration but that Citizens had the dismissal entered prior to the court’s signing of the order denying reconsideration. Notably, “MCR 2.612(C)(1)(a) was not designed to relieve counsel of ill-advised or careless decisions.” *Limbach*, 226 Mich App at 393. This appears to have been a careless decision on Citizens’ part, to which MCR 2.612(C)(1)(a) would not provide relief.

Citizens also moved for relief under MCR 2.612(C)(1)(f), the catch-all provision for relief from judgment or order. To grant relief under this subsection, three requirements must be fulfilled: “(1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the

judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999).

In this case, (3) has not been met. Nevertheless, it appears that Citizens' primary concern with having the trial court enter an order denying reconsideration was to ensure that its appeal of the trial court's summary disposition rulings was considered timely. Indeed, National raised a jurisdictional challenge to Citizens' appeal, based upon timeliness. Under MCR 7.204(A)(1)(b), a claim of appeal is timely, and the Court therefore has jurisdiction, if the claim of appeal is filed "within 21 days after the entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period." For the instant case to be considered timely, therefore, the December 17, 2012, order must be considered an order disposing of a motion for reconsideration or other relief from the order appealed from that was filed within the initial 21-day appeal period. The trial court granted summary disposition in favor of National and declared that Citizens was obligated to pay the no-fault benefits on August 17, 2012. On September 6, 2012, Citizens filed a timely motion for reconsideration of that order. While the October 2, 2012, dismissal order was the final order and the initial 21-day period commenced on that date, the fact that the motion for reconsideration was filed prior to that date, and thus prior to the expiration of the 21-day period is treated by this Court as timely filed so as to suspend the time for filing a claim of appeal until the motion was decided. As a result, Citizens has achieved the justice it sought in its motion for relief from judgment or order.

Docket No.'s 316334 and 317008

Citizens asserts that National was not entitled to summary disposition pursuant to MCR 2.116(C)(7) because neither *res judicata* nor collateral estoppel apply. We disagree.

A motion for summary disposition may be brought on the ground that an action is barred by *res judicata* or collateral estoppel. MCR 2.116(C)(7). *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). In reviewing a motion under MCR 2.116(C)(7), a court must accept "[t]he contents of the complaint . . . as true unless contradicted by documentation submitted by the movant." *Maiden v Rozwood*, 461 Mich at 119. The application of a preclusion doctrine is a question of law that is reviewed *de novo*. *Minicuci v Scientific Data Management, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000).

Res judicata prevents "multiple suits litigating the same cause of action." *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004). Specifically, the doctrine bars a second, subsequent action when "(1) the prior action was decided on the merits, (2) the decree in the prior decision was a final decision, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first." *Stoudemire v Stoudemire*, 248 Mich App 325, 334; 639 NW2d 274 (2001). *Res judicata* is broadly applied, barring not only claims already litigated, "but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair*, 470 Mich at 121.

With respect to *res judicata*, Citizens does not dispute that both Citizens and National filed cross motions for summary disposition in the Wayne County case and that the same were

decided on the merits by the trial court, nor does it dispute that both actions involved the same parties or their privies. Citizens thus does not dispute the existence of elements (1) and (3) of res judicata. Citizens argues, however, that the summary disposition rulings were not final as to the ultimate payee of no-fault benefits to Hamdi such that elements (2) and (4) are lacking. In support of its claim, Citizens relies on Judge Borman's statements on the record at the summary disposition hearings where, according to Citizens, Judge Borman opined that her decision did not preclude Citizens from seeking reimbursement from National in subsequent litigation.

At the hearing, Judge Borman stated, "There may be two owners here. You may be able to after you finish paying You got to start paying on this and stop disputing priority. You may be able to go back against National who is also an owner, but you insured the furnished vehicle, and there is insurance there. . . . Then maybe you can come back against National who should have also had insurance because you're both owners." National, recall, issued a policy to Ayat, as an owner, on the trailer. Thus, it appears that Judge Borman made a misstatement and was actually referencing the fact that Ayat should have had insurance on the tractor because National is clearly not an "owner." Judge Borman additionally stated, "And I don't even know that you're in the business of leasing because . . . this is a repair shop. It doesn't say we're a leasing company. It says we're a repair company. You may be on the hook too. Go back—but start paying and then sue them." In this paragraph, Judge Borman was telling Citizens to pay Hamdi and then sue Ayat. Judge Borman also told Citizens:

This is a furnished vehicle. You insured it for first party benefits. You're one of the owners. He's probably the other owner. I mean the guy that—what's his name, the employer?

Citizens' counsel: Al-Zirgany and Ayat.

Judge: Yeah, he should have insured it. He did it a couple of days later. And, you know, you may be able to collect from him. But the fact remains, you insured it.

Judge: I read that. You're also an owner. You're both owners.

Citizens' counsel: I get it. Judge, but here's the reality.

Judge: He should have gotten it. He didn't get it. Go sue him.

Judge Borman did state to National's counsel, when ruling, ". . . I mean, you probably owe too." National's counsel responded, "Your Honor, there is no coverage. In fact, it's not disputed." To which she responded, "You're an owner. There's no coverage, that's true. So to that extent, I will grant summary disposition in your favor. That does not mean that your insured is not responsible I will not reform the contract to say that you covered the owner, the real owner, I mean, the employer. I will not reform the contract to say that you have to make first party coverage for the lessor and the employer of the injured party, okay. That doesn't mean that your insured isn't responsible and I don't know, maybe there's an agent who goofed here."

From the above, it becomes clear that when Judge Borman was referencing National and indicating that it probably owed and told Citizens it could sue, the judge was referencing National's insured—Ayat. Citizens' reliance on the Wayne County judges "encouragement" or "directive" to sue National is thus misplaced.

Judge Borman was called upon, by virtue of Hamdi's lawsuit against both National and Citizens and then by the cross-motions for summary disposition, to determine who was first in order of priority to pay Hamdi's PIP benefits. The parties briefed the issue extensively. The judge then issued orders on August 17, 2002, the first of which explicitly states, "National Casualty Company is hereby dismissed as a defendant in this lawsuit because Citizens and not National Casualty is the highest priority insurer for the motor vehicle accident on April 16, 2011, involving Abdullah Hamdi and for reasons stated on the record." A second order issued on the same date states that "Citizens Ins. Co. of America shall provide no-fault coverage to plaintiff Hamdi forthwith as Defendant Citizens is first in priority and shall pay PIP benefits outstanding to date." These decrees were final decisions as to who was the first priority insurer responsible for payment of Hamdi's PIP benefits.

In its "complaint and request for declaratory judgment" in the later, Oakland County matter, Citizens asserted in its claim pertaining to National that "Pursuant to MCL 500.3114(3), Defendant National Casualty Company is the No-Fault insurer in highest priority" and asked the Oakland Circuit Court to "determine the relative rights, obligations, and priorities of the No-Fault insurers with respect to Abdullah Hamdi's claim for No-Fault benefits" That is the exact issue that the trial court resolved with finality in the Wayne County litigation. Res judicata thus barred Citizens' claim against National.

Collateral estoppel also barred Citizens' claim against National. "Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding." *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006). Generally, collateral estoppel requires that three elements be satisfied: "(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full [and fair] opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682–684; 677 NW2d 843 (2004).

Again, Citizens relies on the statements made by Judge Borman on the record, asserting that the judge specifically preserved the issue of priority for a later date. Not only were these oral pronouncements by the trial court misinterpreted by Citizens, the explicit August 17, 2012, orders holding that Citizens was the first priority insurer require a finding that this issue was actually litigated and determined by a final and valid judgment, the parties had a full and fair opportunity to litigate the issue, and mutuality of estoppel exists. Citizens certainly is, or should be, aware that a court speaks through its written orders. *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009).

For the same reason, the trial court did not err in denying Citizens claim for subrogation against National. Subrogation is "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to

the debtor.” In order for Citizens to be entitled to subrogation from National, Citizens would have had to pay National’s debt. The prior Wayne County ruling was and is that Citizens was first in priority for payment of the benefits. It thus did not pay National’s debt owed to Hamdi and Citizens’ argument for subrogation is simply another way of arguing that National was first in priority, which is a claim that is barred by *res judicata* and collateral estoppel.

Citizens next argues that the trial court erroneously granted summary disposition in favor of Peoples and JMW on Citizens’ negligence claim because both of these insurance agencies failed to procure the required insurance coverage on behalf of Ayat from National on the tractor, which caused Citizens to pay no-fault benefits when National would otherwise have been first in priority. We disagree.

To establish a *prima facie* case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Hampton v Waste Management of Michigan, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999). Duty can arise from a statute or a contract or by application of the basic rule of common law, which imposes an obligation to use due care or to act so as to not unreasonably endanger the person or property of others. *Id.* The threshold question in a negligence action is whether the defendant owed a duty to the plaintiff. “It is axiomatic that there can be no tort liability unless defendants owed a duty to plaintiff.” *Fultz v Union-Commerce Associates*, 470 Mich 460, 463; 683 NW2d 587 (2004).

Michigan courts have recognized that an insurance agent owes a duty to procure the insurance coverage requested by an insured. *Zaremba Equipment, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 38; 761 NW2d 151 (2008). Thus, Peoples and JMW, as insurance agents of Ayat, arguably owed Ayat a duty to procure the insurance coverage requested by Ayat. It must be recognized, however, that Citizens merely alleged that it “believed” that Ayat requested that these agents procure National coverage on the tractor at issue. There is no evidence provided by any party to substantiate this belief. The evidence indicates that Ayat contacted the agents on April 15, 2011, and obtained National coverage on the trailer. Ayat then contracted the agents two days after the accident to procure National coverage on the tractor. Peoples provided an affidavit indicating that it had not been provided a copy of Ayat’s lease showing that it had leased both the tractor and trailer. Citizens provided no evidence suggesting otherwise. There was thus no breach of any duty to Ayat and thus no potential follow through liability to Citizens.

Citizens has also failed to establish any separate duty that Peoples or JMW owed to it, a third party. Citizens relies upon law establishing the duties an insurance agent owes to its client but has provided no law indicating that these duties extend to another non-party insurance company as a matter of law. It is not sufficient for a party to announce a position and then leave it up to this Court to discover and rationalize the basis for his claims and then search for authority to sustain his position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Thus, summary disposition was appropriate in favor of these defendants.

Citizens also contends that the trial court abused its discretion in denying its motion for leave to file an amended complaint when it discovered that the National policy contained an error, namely the inclusion of a wrong form and/or a wrong designated symbol in the declarations for the “covered autos” included in the PIP coverage and an internal National

memorandum revealing the details of the errors in the National policy. According to Citizens, it should have been allowed to amend its complaint to allege negligence and/or fraud against National, Peoples, and JMW for failing or refusing to reveal the errors in the policy to Citizens.

A trial court should freely grant leave to amend a complaint when justice so requires. MCR 2.118(A)(2). Leave to amend may be denied for particularized reasons, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of the amendment. *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).

As previously indicated, the Wayne County court had already decided the matter of priority as between National and Citizens. Res judicata bars claims not only already litigated but also “every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.” *Adair*, 470 Mich at 121. In response to Citizens’ motion for summary disposition, National provided the affidavit of legal assistant Jacqueline Tanner, who swore that the “new evidence” relied upon by Citizens was provided to Citizens in response to discovery requests in the Wayne County case two months prior to the Wayne County judge’s ruling on the parties’ cross motions for summary disposition. Thus, it is not “new evidence” and could have been argued in the Wayne County action and is barred by res judicata. The requested amendment would thus have been futile as to National. Moreover, the issue of priority was still completely and fairly resolved, based upon application of the clear and unambiguous language of MCL 500.3114(3). As previously discussed, that provision provides:

An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

The last phrase “insurer of the furnished vehicle” reflects back to “occupant of a motor vehicle owned . . . by the employer.” What a National employee thought about an error in the policy designation symbol would not change the fact that Citizens was the insurer of the furnished vehicle, i.e., the vehicle that Hamdi occupied and that which was owned (by Citizens own argument) by Ayat, as Hamdi’s employer.

As to Peoples and JMW, Citizens cannot establish that they owed it any duty on which to base a negligence claim. Citizens’ effort to add counts for negligence and errors and omissions in procuring the policy of insurance implicates the same duty to Citizens which Citizens had already pleaded and which was rejected by the Oakland County Court. Thus, amendment would have been futile. The trial court did not abuse its discretion in denying Citizens’ motion to amend its complaint.

Finally, the trial court did not err in finding that Citizens’ complaint in this matter was frivolous and in awarding sanctions to National. We review a trial court’s finding that an action is frivolous for clear error, and the amount of sanctions that the court awarded for an abuse of discretion. *In re Attorney Fees & Costs*, 233 Mich App 694, 701, 704; 593 NW2d 589 (1999).

MCR 2.114 provides, in relevant part:

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

Pursuant to MCR 2.625(A)(2), “if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.” MCL 600.2591, in turn, provides that costs and fees awarded for a frivolous action include all reasonable costs actually incurred by the prevailing party, including court costs and attorney fees. MCL 600.2591(3) defines “frivolous” as meeting one of the following criteria:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

Citizens sought a ruling that National was the first priority insurer responsible for payment of Hamdi’s PIP benefits. This issue had already been directly and precisely ruled upon by the Wayne County Circuit Court. While Citizens attempts to argue that the Wayne County court specifically reserved ruling on the issue and directed it to bring an separate action against National, these claims misinterpret the Wayne County judge’s oral statements and directly

contradict her written orders, through which the trial court ultimately speaks. After receiving two written orders explicitly stating that Citizens was the first priority insurer and directing it to pay PIP benefits, Citizens had no reasonable basis to believe that National was the first priority insurer or that the issue was not resolved. At that point, Citizens' sole avenue for relief was an appeal, which it has taken. Its position against National in the Oakland County Circuit Court was devoid of arguable legal merit and the Oakland County court did not commit clear legal error in finding the Oakland action against National to be frivolous. Citizens does not contest the amount of sanctions awarded. Thus, we need not address that issue.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause

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

WALTER SAKOWSKI, as Conservator for MEAGAN
TURNER,

Plaintiff,

and

RIVERVIEW MACOMB HOME & ATTENDANT
CARE, LLC,

Intervening Plaintiff,

v

FARMERS INSURANCE EXCHANGE, GARY
DUANE RUPP, as personal representative of the estate
of JASON PUCKETT,

Defendants/Cross-Plaintiffs/Cross-Defendants

and

ENTERPRISE LEASING CORPORATION OF DETROIT,
LLC, PATSY VILLNEFF, TAMERA HARPER, EAN
HOLDINGS, LLC,

Defendants/Cross-Defendants.

Case No. 16-002031-NF

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**FARMERS INSURANCE EXCHANGE'S SUPPLEMENTAL AUTHORITY IN
OPPOSITION TO EAN HOLDINGS, LLC'S MOTION FOR SUMMARY DISPOSITION
AND IN SUPPORT OF DEFENDANT FARMER'S MOTION FOR SUMMARY
DISPOSITION**

TURNER - Farmers' Supplemental Authority Brief

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Defendant/Cross-Plaintiff/Cross-Defendant, Farmers Insurance Exchange, by and through its attorneys, Hewson & Van Hellemont, P.C., offers the attached order from the Wayne Circuit Court, Judge David Groner, as supplemental authority in support of its position on the cross motions before the Court. (**Exhibit 1**). The exact issue was before Judge Groner, very recently and the Court agreed that EAN Holdings is obligated to provide coverage under MCL 500.3114(4) as the insurer of the owner of the vehicle, even though the vehicle had been operated in this state for less than 30 days.

In addition, the Court made a factual finding that EAN Holdings, LLC is a resident of the State of Michigan and is therefore not excused from the obligation to insure its vehicles for a grace period of 30 days as otherwise provided under MCL 500.3102. This finding of fact bars EAN Holdings, LLC from relitigating that factual issue here. Under the doctrine of collateral estoppel, this Court must now conclusively treat EAN Holdings, LLC as a resident of the State of Michigan for all purposes.

Respectfully submitted,

HEWSON & VAN HELLEMONT PC

Dated: February 17, 2017

By: /s/ Nicholas S. Ayoub
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Attorney for Defendant
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Grand Rapids, MI 49546

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record at their respective e-mail addresses disclosed on the Notice of Electronic Filing on February 17, 2017.

/s/ Darla K. Korhorn
Darla K. Korhorn

EXHIBIT

1

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

FARMERS INSURANCE EXCHANGE,

Plaintiff,

Case No.: 16-007358-NF
Honorable David Groner

v.

EAN HOLDINGS, LLC; and ENTERPRISE
LEASING COMPANY OF DETROIT, LLC
d/b/a ENTERPRISE HOLDINGS,

Defendants.

16-007358-NF
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CATHY M. GARRETT
K. Davis

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION; AND
GRANTING SUMMARY DISPOSITION IN FAVOR OF PLAINTIFF

At a session of said Court, held in the
City of Detroit, County of Wayne, State of Michigan,
on January 17, 2017.

PRESENT: David A. Groner
Circuit Court Judge

Upon the filing of Defendant's Motion for Summary Disposition, oral argument having
been heard, and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED AND ADJUDGED that Defendant's Motion for Summary
Disposition DENIED, for the reasons stated on the record;

IT IS FURTHER ORDERED AND ADJUDGED that summary disposition is GRANTED
in favor of Plaintiff pursuant to MCR 2.116(I)(2), for the reasons stated on the record;

IT IS FURTHER ORDERED AND ADJUDGED that the Court makes the following factual findings:

- (1) Defendant is a resident of the State of Michigan; and
- (2) Defendant has applicable insurance coverage by virtue of the fact that it is self-insured.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff shall file a Motion for Entry of Judgment within twenty-one (21) days of the entry of this Order.

This is not a final Order and does not close the case.

IT IS SO ORDERED.

/s/ David A. Groner

Circuit Court Judge

TURNER - Farmers' Motion for Reconsideration

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

WALTER SAKOWSKI, as Conservator for MEAGAN
TURNER,

Plaintiff,

and

RIVERVIEW MACOMB HOME & ATTENDANT
CARE, LLC,

Intervening Plaintiff,

v

FARMERS INSURANCE EXCHANGE, GARY
DUANE RUPP, as personal representative of the estate
of JASON PUCKETT,

Defendants/Cross-Plaintiffs/Cross-Defendants

and

ENTERPRISE LEASING CORPORATION OF DETROIT,
LLC, PATSY VILLNEFF, TAMERA HARPER, EAN
HOLDINGS, LLC,

Defendants/Cross-Defendants.

Case No. 16-002031-NF

HON. ANNETTE J. BERRY

16-002031-NF

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**DEFENDANT FARMERS INSURANCE EXCHANGE'S MOTION FOR
RECONSIDERATION UNDER MCR 2.119(F) OR, IN THE ALTERNATIVE, FOR
RELIEF FROM JUDGMENT OR ORDER UNDER MCR 2.612(C)**

TURNER - Farmers' Motion for Reconsideration

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Defendant, Farmers Insurance Exchange, by and through its attorneys, Hewson & Van Hellemont, P.C., respectfully moves this Court to reconsider its May 5, 2017 Order granting summary disposition to Defendant Enterprise Leasing Company and denying Farmers' cross-motion for summary disposition, or, otherwise, granting it relief from the same order as provided under MCR 2.612(C). (Exhibit 1). In support of this motion, Farmers relies on its brief filed herewith along with the exhibits annexed thereto.

WHEREFORE, Defendant, Farmers Insurance Exchange, respectfully requests that this Honorable Court enter an Order:

- a. Granting the instant Motion in its entirety;
- b. Reconsidering and vacating the May 5, 2017 order granting Enterprise's motion for summary disposition and denying Farmers' motion for summary disposition;
- c. Granting Farmers complete summary disposition and judgment in its favor; and
- d. Awarding Defendant all other relief to which it is entitled.

Respectfully submitted,

HEWSON & VAN HELLEMONT PC

Dated: May 26, 2017

By: _____

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TURNER - Farmers' Motion for Reconsideration

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

WALTER SAKOWSKI, as Conservator for MEAGAN
TURNER,

Plaintiff,

and

RIVERVIEW MACOMB HOME & ATTENDANT
CARE, LLC,

Intervening Plaintiff,

v

FARMERS INSURANCE EXCHANGE, GARY
DUANE RUPP, as personal representative of the estate
of JASON PUCKETT,

Defendants/Cross-Plaintiffs/Cross-Defendants

and

ENTERPRISE LEASING CORPORATION OF DETROIT,
LLC, PATSY VILLNEFF, TAMERA HARPER, EAN
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Defendants/Cross-Defendants.

Case No. 16-002031-NF

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BRIEF IN SUPPORT OF

**DEFENDANT FARMERS INSURANCE EXCHANGE'S MOTION FOR
RECONSIDERATION UNDER MCR 2.119(F) OR, IN THE ALTERNATIVE, FOR
RELIEF FROM JUDGMENT OR ORDER UNDER MCR 2.612(C)**

I. BACKGROUND

The issue before the Court on Farmers and Enterprises' cross-motions for summary disposition presents an insurance coverage dispute. Farmers is the assigned claims insurance carrier. EAN Holdings, LLC ("Enterprise" or "EAN") is the self-insured owner of the rental vehicle that Plaintiff Megan Turner was riding in when she was injured. Farmers maintains that Enterprise, as the insurer of the owner of the vehicle that Turner was occupying, is in the order of no-fault coverage priority under MCL 500.3114(4)(a) and is obligated to reimburse Farmers for the claims that Farmers has paid for Turner's benefit.

Farmers' primary argument is that by virtue of the fact that EAN Holdings, LLC was self-insured, it is statutorily obligated to provide coverage without regard to whether it was mandated to insure the particular vehicle associated with the accident. This Court relied on the reasoning contained in a recent unpublished opinion of the Court of Appeals, *Heichel¹ v Geico Indem Co*, and concluded that because the particular vehicle was not registered in Michigan and was not operated in Michigan for more than 30 days, that the vehicle was excluded from the coverage mandate and Enterprise as not required to pay benefits, despite MCL 500.3114.

Without any analysis or consideration, the Court stated that "[t]here is no dispute that EAN is a nonresident owner or registrant." (Opinion, p. 7 (attached as Exhibit 1)). However, not only was EAN's status as a nonresident in dispute, a prior judicial determination on that issue operates to conclusively establish that EAN was resident of the state of Michigan. As recounted in greater detail below, Judge Gromer of this Court, in the course of considering the same issue as presented here, concluded that EAN Holdings, LLC is a resident under MCL 500.3102 and

¹ *Heichel v Geico Indem Co*, unpublished per curiam opinion of the Court of Appeals decided on March 1, 2016 (Docket Nos. 323818 and 324045)

that therefore it is not relieved the obligation to insurer its vehicles, regardless of where those vehicles may have been registered. (Exhibit 2).

Th fact that EAN is a resident of Michigan is dispositive because the exemption to the insurance mandate is only applicable to “a nonresident owner or registrant.” MCL 500.3102. Therefore, Farmers respectfully submits that the Court erred in failing to recognize EAN’s status as a Michigan resident, a fact that requires the Court to grant summary disposition to Farmers.

Therefore, Farmers asks that the Court now reconsider the cross-motions in light of the established fact that EAN Holdings, LLC is a Michigan resident for purposes of MCL 500.3102, and conclude that it was subject to the insurance mandate and is otherwise required to provide PIP coverage to Plaintiff Megan Turner.

II. LAW AND ARGUMENT

A. Standard of Review

The Michigan Court Rules expressly vest a party with the right to seek the reconsideration or rehearing of a court’s previous decision. MCR 2.119(F). When seeking a court’s reconsideration and review of a previous ruling, the rules suggest that a party should set forth some palpable error that caused the court to issue an erroneous ruling. Specifically, MCR 2.119(F)(3) states:

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

However, by inclusion of the terms “generally, and without restricting the discretion of the Court,” MCR 2.119(F) does not limit a trial court’s discretion when ruling on motions for reconsideration or rehearing to palpable errors. *Brown v Northville Regional Psychiatric Hosp,*

153 Mich App 300, 308-309; 395 NW2d 18 (1986). Our Court of Appeals has observed the broad discretion that a Court has in reconsidering its prior decisions:

It is hard to give literal application to this language—for example, it would seem unlikely that the original losing party was “misled” and irrelevant that the original winning party was misled. Instead, the language, taken as a whole, can be interpreted as an expression of great reluctance to entertain or grant motions for reconsideration. Nonetheless, it would be a strange result to perpetuate an error on the grounds that it was not “palpable” or more generally upon a reluctance to reconsider issues (especially when the same error, if not harmless, would presumably be subject to correction on appeal, but at much greater expense).

We read this provision governing rehearings as not restricting the discretion of the trial judge to reconsider motions where he later determines that he or his predecessor made a serious error, based on an intervening change in the law or otherwise. [*Michigan Bank-Midwest v DJ Reynaert, Inc*, 165 Mich App 630, 645-646; 419 NW2d 439, 445 (1988) quoting Martin, Dean & Webster, Michigan Court Rules Practice, Rule 2.119, p 537.]

Rather, the purpose of MCL 2.119(F) is to allow a court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal, but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987).

Similarly, under MCR 2.612(C), a trial court may relieve a party from a final judgment on any of the following grounds:

- (a) Mistake, inadvertence, surprise, or excusable neglect.
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
- (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
- (d) The judgment is void.
- (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

A court may relieve a party from a final judgment, order or proceeding on the grounds of mistake, inadvertence...or any other reason justifying relief from the operation of judgment. *Farley v Carp*, 287 Mich App 1; 782 NW2d 508 (2010). MCR 2.612 provides a court with a grand reservoir of equitable power to do justice in a particular case. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

B. The Court Improperly Concluded that EAN Holdings, LLC is not a Resident of the State of Michigan Without Analyzing or Expressly Making a Determination Concerning this Otherwise Dispositive Fact

This Court, relying on *Parks* and *Heichel*, determined that if Enterprise was not required to maintain insurance on the vehicle in question, then it is not required to pay PIP benefits under the no-fault act. While Farmers believes that this Court has misconstrued the statute in that regard, that issue was fully briefed by the parties and decided by the Court. Farmers is not attempting to rehash that argument. Instead, Farmers maintains that the Court erred in concluding, without analysis, that Enterprise was exempt from the obligation to register and insurer the vehicle.

Generally, every motor vehicle that is driven on a street or highway in Michigan must be registered. MCL 257.216. However, persons who are nonresidents of Michigan may be exempt from the registration requirement. MCL 257.216(a); see also MCL 257.34 (defining nonresident to mean “every person who is not a resident of this state”). If a motor vehicle must be registered in this state, the owner or registrant must “maintain security for payment of benefits under personal protection insurance [PIP benefits], property protection insurance, and residual liability insurance” during that period when “the motor vehicle is driven or moved on a highway.” MCL

500.3101(1). Exceptions to the general insurance mandate are recognized, but apply only to “nonresidents.” Particularly, MCL 500.3102 states, in pertinent part:

A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter. [Emphasis added.]

Accordingly, this Court’s conclusion that EAN was not required to insure the vehicle, and was therefore not required to provide coverage, was founded upon the erroneous assumption that EAN is not a resident of the State of Michigan. While this Court employed the proper framework for determining whether EAN was subject to the insurance mandate as to the involved vehicle, it improperly concluded that EAN Holdings, LLC is not a resident of Michigan. In fact, as a matter of law, by the operation of the doctrine of collateral estoppel, EAN Holdings, LLC must be conclusively treated as a Michigan resident for purposes of MCL 500.3102.

1. Enterprise is Estopped from Positing that it is a Nonresident in Light of the Contrary Conclusion Previously Reached by the Wayne Circuit Court

Collateral estoppel precludes relitigation of an issue in a subsequent, different case between the same parties or their privies if the prior action resulted in a valid final judgment and the issue was actually and necessarily determined in the prior matter. *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001); *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996). Collateral estoppel requires that “(1) a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment, (2) the same parties had a full and fair opportunity to litigate the issue, and (3) there was mutuality of estoppel.” *Estes v Titus*, 481 Mich 573, 585; 751 NW2d 493 (2008). However, mutuality of

TURNER - Farmers' Motion for Reconsideration

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estoppel is not required where the doctrine is used defensively. *Monat v State Farm Ins Co*, 469 Mich. 679, 691–692; 677 NW2d 843 (2004).

The very same factual issue was presented and decided upon by Judge David Groner by way of a final judgment. In *Farmers Insurance Exchange v EAN Holdings, LLC, et. al.*, Wayne Circuit Court Docket No. 16-007358-NF, as in this case, Farmers alleged that as the assigned-claims carrier, it was entitled to reimbursement from EAN inasmuch as EAN was the “insurer of the owner of the vehicle occupied” for purposes of the priority rules, MCL 500.3114, and was therefore higher in the no-fault priority than Farmers. As it argues here, EAN argued that it did not have an obligation to provide coverage under MCL 500.3102 in relation to the particular vehicle involved in the accident because the vehicle was not registered in Michigan and was not operated from more than 30 days in the calendar year. Farmers argued that, even though the vehicle may have been registered in Illinois and was not present in Michigan for more than thirty days, MCL 500.3102 did not shield EAN Holdings, LLC because it did not qualify as a “nonresident” for purposes of MCL 500.3102. Judge Groner agreed, and for that reason granted summary disposition in favor of Farmers and concluded that EAN Holdings, LLC was obligated to insure the subject vehicle, and was therefore obligated to pay benefits for the person injured while an occupant of that vehicle. Judge Groner’s order was clear in that the Court was making a finding of fact concerning EAN Holdings, LLC’s status as a resident of Michigan:

IT IS FURTHER ORDERED AND ADJUDGED that the Court makes the following factual findings:

- (1) Defendant is a resident of the State of Michigan; and
- (2) Defendant has applicable insurance coverage by virtue of the fact that it is self-insured. [Exhibit 2].

TURNER - Farmers' Motion for Reconsideration

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This prior order operates under the doctrine of collateral estoppel to require the same factual conclusion here as a matter of law. Application of the doctrine first requires that the ultimate issue in the second case be the same as that in the first proceeding. *City of Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). “The issues must be identical, and not merely similar, and the ultimate issues must have been both actually and necessarily litigated. To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding upon which the judgment did not depend cannot support collateral estoppel.” *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 376–377; 521 NW2d 847 (1994). In addition, the basis of the prior judgment must be “clearly, definitely, and unequivocally ascertained.” *Ditmore, supra*, at 578.

It is plainly obvious from the face of the order itself that the exact same issue was directly before the prior court. The Court expressly concluded that EAN Holdings, LLC, was a resident of the State of Michigan, and, because of that fact, was obligated to pay PIP benefits in connection with the vehicle involved in the accident, even though the vehicle was registered in Illinois. That predicate order is a valid enforceable and final order as to the factual issue: the same factual issue at play here.

As to the second and third elements, there is complete identity of the parties on both sides of the issue. Both cases pin Farmers Insurance Exchange and EAN Holdings, LLC against each other on opposite sides of the issue. And, had the Court found against Farmers on this dispositive factual issue, Farmers would equally have been precluded from litigating the question in this subsequent action.

Therefore, the elements of collateral estoppel are satisfied here. Under the application of the doctrine, this Court must conclude that EAN is a Michigan resident, or, more precisely, does

not qualify as a “nonresident” for purposes of MCL 500.3102. In light of that conclusion, EAN was equally not excused from the insurance mandate for the vehicle involved in this accident, notwithstanding the fact that it was not registered in Michigan and was not present in Michigan for more than 30 days.

Accordingly, Farmers respectfully requests that the Court either reconsider the prior order or otherwise grant Farmers relief from that order under MCR 2.612(C) to ultimately grant summary disposition in Farmers’ favor and declare that EAN is obligated to provide PIP benefits to Megan Turner in connection with the underlying accident and reimburse Farmers for the benefits it has paid on Turner’s behalf.

2. No Genuine Issue Remains that EAN Holdings, LLC is a Resident of Michigan

Even if EAN Holdings, LLC were not estopped on the question of whether it is a “nonresident” for purposes of MCL 500.3102, based on the undisputed facts it can be concluded that, as a matter of law, EAN Holdings, LLC does not qualify as a “nonresident” as that term is properly understood and construed.

Neither the term “nonresident” nor “resident” are expressly defined in the Michigan no-fault act. Both, however, are defined under the Michigan Motor Vehicle Code. But, the express statutory definitions are not particularly helpful in solidifying the distinction between a resident and nonresident:

“Nonresident” means every person who is not a resident of this state.
[MCL 257.34.]

In turn, the Motor Vehicle Code also defines the term “resident”:

"Resident" means every person who resides in this state and establishes that he or she is legally present in the United States. This definition applies to the provisions of this act only. [MLC 257.51a.]

Much of the case law construing these terms under the no-fault act and Motor Vehicle Code is concerned with the residency of a natural person, not a corporate entity, like EAN Holdings, LLC. Corporate entities can generally be deemed to have citizenship, be domiciled, or have residency in more than one place. *Hertz Corp v Friend*, 559 US 77; 130 S Ct 1181; 175 L Ed 2d 1029 (2010) (concluding that corporate entity is a “citizen” for purposes of the diversity federal jurisdiction of both the place where it is incorporated and the place where it has its principle place of business). While often casually used interchangeably, the terms citizenship, domicile, and residency all have distinct meanings as terms of art at law. *Grange Ins Co of Michigan v Lawrence*, 494 Mich 475, 494; 835 NW2d 363, 373 (2013) (“the common law has necessarily distinguished between the concepts of “domicile” and “residence”). As to the important distinction between “domicile” and “residence,” our Supreme Court has observed, “a person may have only one domicile, but more than one residence.” *Grange Ins Co of Mich, supra*, 494 citing *Gluc v Klein*, 226 Mich 175, 177–178; 197 NW 691 (1924).

Indeed, the question here turns on the construction of the much broader standard of “resident” rather than the more limited and restricted standard of “domicile.”² Regardless of whether EAN Holdings, LLC is *domiciled* in this state, the facts establish that it does qualify under the much lower of standard of “*resident*” of the state.

EAN was formed under the law of Delaware. (Exhibit 3). However, it sought and was granted a certificate of authority to conduct business in the State of Michigan. It has a resident agent and a registered office located here in the State of Michigan. Enterprise Rental, the name

² In contrast to MCL 257.216 of the Motor Vehicle Code and § 3102 of the Michigan no-fault act, MCL 500.3114(1) uses the term “domicile” for purposes of defining the scope of coverage under an insurance policy. Because the controlling statutes use the distinct term, “resident” the case law construing MCL 500.3114(1) of the no-fault act is not applicable as it is a narrower measure than the one at issue.

TURNER - Farmers' Motion for Reconsideration

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under which EAN does business, has retail offices throughout the State of Michigan and conducts business almost everywhere in the State. (Exhibit 4). It has also applied and obtained self-insurance status under the laws of the State of Michigan. (Exhibit 5). Based on these undisputed facts, EAN Holdings, LLC is a “resident” of this state as a matter of law for purposes of MCL 500.3102.

At the very least, a question of fact remains as to whether EAN Holdings, LLC is a “resident.” Either way, the trial court committed palpable error in concluding otherwise without an analysis of the issue. The Court should now reconsider and set aside its prior order which was built on the mistaken premise that EAN Holdings, LLC is a nonresident of this state.

III. CONCLUSION

For these reasons, Farmers Insurance Exchange respectfully requests that this Honorable Court enter an Order:

- a. Granting the instant Motion in its entirety;
- b. Reconsidering and vacating the May 5, 2017 order granting Enterprise’s motion for summary disposition and denying Farmers’ motion for summary disposition;
- c. Granting Farmers complete summary disposition and a judgment in its favor; and
- d. Awarding Defendant all other relief to which it is entitled.

Respectfully submitted,

HEWSON & VAN HELLEMONT PC

Dated: May 26, 2017

By: _____
Nicholas S. Ayoub (P61545)
Attorneys for Defendant
BUSINESS ADDRESS
625 Kenmoor Ave. SE
Suite 304
Grand Rapids, MI 49546

EXHIBIT

3



Department of Licensing and Regulatory Affairs



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LIMITED LIABILITY COMPANY DETAILS

Searched for: EAN HOLDINGS, LLC
ID Num: B94241
Name: EAN HOLDINGS, LLC
Type: Foreign Limited Liability Company
Resident Agent: THE CORPORATION COMPANY
Registered Office Address: 40600 ANN ARBOR RD E STE 201 PLYMOUTH MI 48170
Mailing/Office Address:
Formation/Qualification Date: 3-11-2009
Jurisdiction of Origin: DELAWARE
Managed by:
Status: ACTIVE **Date:** Present

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EXHIBIT

4

TURNER - Farmers' Motion for Reconsideration

Exhibit 4: Enterprise Rent-a-Car Michigan Locations

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Planning a trip to Michigan ? With major metro areas such as Detroit and Grand Rapids, along with top attractions including the Detroit Institute of Arts, Hitsville U.S.A and Fort Mackinac; you are sure to have a unique and memorable experience. Take in all the great sights that Michigan has to offer with a rental car from Enterprise Rent-A-Car. Choose from one of our popular airport locations or find the perfect car at a neighborhood branch. Search for a car rental location or browse the list below.

Top Cities

Detroit

Lansing

Grand Rapids

Airport Locations

Detroit Metro Airport

Lansing Airport

Flint Bishop
International AirportMuskegon County
AirportGrand Rapids
International AirportSaginaw
International AirportKalamazoo
International Airport

Traverse City Airport

Willow Run Airport

Neighborhood Locations

Adrian

Bay City

Ann Arbor Airport

Benton Harbor

Auburn Hills

Big Rapids

Battle Creek

Brighton

TURNER - Farmers' Motion for Reconsideration
Exhibit 4: Enterprise Rent-a-Car Michigan Locations

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Brownstown	Farmington Hills - Drake Rd.
Cadillac	Fenton
Central Lansing	Ferndale
Charlevoix	Flint
China - St. Clair Chevy	Fremont
Clarkston	Garden City
Clinton Township	Gaylord
Coldwater	Grand Blanc
Comstock Park	Grand Haven
Davison	Grand Rapids - 28th St. SE
Dearborn - Greenfield Rd.	Grandville
Detroit - New Center	Greenville
Detroit - Ray Laethem	Grosse Pointe Woods
Downtown Ann Arbor	Highland
Downtown Detroit - E. Jefferson	Holland
Downtown Detroit - Randolph St.	Howell
Downtown Grand Rapids	Hudsonville
East Ann Arbor	Jackson
Eastpointe	Kalamazoo
	Lake Orion

TURNER - Farmers' Motion for Reconsideration
Exhibit 4: Enterprise Rent-a-Car Michigan Locations

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Lapeer	Port Huron
Lincoln Park	Portage
Livonia	Rochester Hills
Macomb	Rockford
Madison Heights	Romeo
Marquette	Roseville
Midland	Royal Oak Township
Monroe	Royal Oak Woodward
Mount Pleasant	Saginaw
Muskegon	South Farmington Hills
Niles	South Grand Rapids
North Farmington	South Lansing
North Grand Rapids	South Redford
North Rochester	Southfield
Northville	Southfield - Art Moran
Novi	Southgate
Oak Park	St. Clair Shores
Okemos	Sterling Heights
Petoskey	Sturgis
Plainwell	Sylvan Lake
Plymouth - Ann Arbor Rd	

TURNER - Farmers' Motion for Reconsideration
Exhibit 4: Enterprise Rent-a-Car Michigan Locations

Taylor

Waterford

Traverse City

Wayne

Traverse City - Fox
Ford

West Ann Arbor

Troy

West Dearborn

Walled Lake

West Lansing

Warren - E. 14 Mile
and Van Dyke

Wixom

Warren - I-696 & Van
Dyke

Ypsilanti

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TURNER - Opinion & Order Denying Reconsideration

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WALTER SAKOWSKI, Conservator,

Plaintiff,

Case No. 16-002031-NF

-v-

Hon. Annette J. Berry

FARMERS INSURANCE EXCHANGE,
ENTERPRISE LEASING CORPORATION OF
DETROIT, LLC, GARY DUANE RUPP, as Personal
Representative for the Estate of Jason Puckett,
PATSY VILLNEFF, TAMERA HARPER, and
EAN HOLDINGS, LLC,

16-002031-NF
FILED IN MY OFFICE
WAYNE COUNTY CLERK
7/20/2017 2:34:16 PM
CATHY M. GARRETT

Defendants,

/s/ Cheryl Bascomb

and

RIVERVIEW MACOMB HOME & ATTENDANT CARE,
LLC,

Intervening Plaintiff,

-v-

GARY DUANE RUPP, as Personal Representative for the
Estate of Jason Puckett,

Cross Plaintiff,

-v-

FARMERS INSURANCE EXCHANGE,
ENTERPRISE LEASING CORPORATION OF DETROIT,
LLC, GARY DUANE RUPP, PATSY VILLNEFF, TAMERA HARPER
and EAN HOLDINGS, LLC,

Defendants/Cross Defendants.

TURNER - Opinion & Order Denying Reconsideration

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At a session of said Court held in the Coleman
A. Young Municipal Center, Detroit, Wayne
County, Michigan on this: 7/20/2017

Annette J. Berry

Defendant, FARMERS INSURANCE EXCHANGE (hereafter “Defendant”), has filed a Motion for Reconsideration pursuant to MCR 2.119(F) or, in the alternative, for Relief from Judgment pursuant to MCR 2.612(C), and the Court being fully advised in the premises states as follows:

Because Defendant has merely presented the same issues already ruled on by the Court, either expressly or by reasonable implication, the motion will not be granted. MCR 2.119(F) (3); *Sargent v AM Eckhouse, DO, PC*, 171 Mich App 703, 706; 430 NW2d 763 (1988). Defendant has also failed to demonstrate a palpable error by which the Court and the parties have been misled, and has failed to show that a different result would necessarily result from correction of the alleged mistake. MCR 2.119(F)(3); *Brown v Libbey-Owens-Ford Co*, 166 Mich App 213, 216; 420 NW2d 106 (1987).

Accordingly, the Court in its discretion will deny the Motion for Reconsideration. *Charbeneau v Wayne County General Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Additionally, Defendant has failed to demonstrate that any of the grounds for Relief from Judgment are present in this case. MCR 2.612(C). As such, Defendant’s Motion for Relief from Judgment will be denied.

TURNER - Opinion & Order Denying Reconsideration

Therefore, **IT IS ORDERED** that Defendant's Motions for Reconsideration and for Relief from Judgment are hereby **DENIED**.

/s/ Annette J. Berry

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STATE OF MICHIGAN
IN THE CIRCUIT COURT OF WASHTENAW

JONTE EVERSON,

Plaintiff,

Case No.: 16-359-NF

Vs.

Hon. David S. Swartz

FARMERS INSURANCE EXCHANGE,

Defendant(s)/ Third-Party Plaintiff.

Vs.

ENTERPRISE LEASING COMPANY OF DETROIT,

Third-Party Defendant.

Daniel G. Romano (P49117)
ROMANO LAW, PLLC
Attorney for Plaintiff
23880 Woodward
Pleasant Ridge, MI 48069
248.750.0270

Mark L. Dolin (P45081)
Michael B. Barey (P41445)
KOPKA PINKUS DOLIN
Attorney for Defendant Enterprise
33533 W. Twelve Mile Road, Suite 350
Farmington Hills, MI 48331
248.324.2620

Matthew C. Koss (P74088)
CORY KNIGHT & BENNETT
Attorney for Defendant Farmers Insurance
100 W. Big Beaver, Suite 650
Troy, MI 48064
248.244.8931

AFFIDAVIT OF KRISTEN F. ZUB

Kristen F. Zub, being first and duly sworn deposes states as follows:

1. I am a Regional Risk Supervisor for Enterprise Leasing Co of Detroit, LLC.
2. I am making this Affidavit based on my own personal knowledge of this matter.

EVERSON - Affidavit of Kristen F. Zub

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3. I have had an opportunity to review the unit history for the vehicle rented to Jonte Everson.

4. The vehicle rented to Jonte Everson was registered in the State of Pennsylvania.

5. Based upon my review of the unit history, the vehicle rented to Jonte Everson was operated in the State of Michigan from October 30, 2015 through November 7, 2015, only.

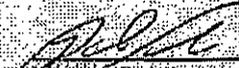
6. As the vehicle had only been operated in the State of Michigan from October 30, 2015 through November 7, 2015, it had not been operated in the State of Michigan for an aggregate of more than 30 days in the calendar year of 2015.

7. I, if sworn as a witness, can testify competently to the facts stated in this affidavit.


KRISTEN F. ZUB

Subscribed and sworn to before me.

On Feb 20, 2017


Notary Public, 24925 County, MI
My Commission Expires:


PETER J. SHELTERS
Notary Public, State of Michigan
County of Oakland
My Commission Expires Jun. 30, 2018
Acting in the County of Sakaw

EVERSON - Affidavit of Kristen F. Zub

Evt/Move T	Evt/Ref Nk	Renter Name	Evt/Rnt Loc	Evt/Rnt Grp	Evt/Rnt DateTime	Evt/Rnt M/	Return Loc	Return Grp	Return DateTime	Return M/f
WSM	29001315		E12049	2049	11/9/2015 8:37	18804	DTWT61	203C	12/9/2015 8:37	
INV	PB: BD . Physical Inventory f		DTWS60	203G	11/9/2015 6:14	18804				
SCD	P-BD deleted. RICCI (USG)		E12049	2049	11/8/2015 13:47	18804				
VCM	RICCI/DX2049P16		E120WW	20WW	11/8/2015 10:44	18804				
WSM	28999957		E12049	2049	11/8/2015 10:44	18804	DTWS60	203G	11/9/2015 6:14	18804
INV	DTWS60 CONTROLLING LOC		DTWS60	203G	11/8/2015 7:05	18804				
SCA	Body Damage (USG)		E12049	2049	11/8/2015 0:40	18799				
BDR	RICCI (USG)		E12049	2049	11/8/2015 0:00	18804				
DMG	DX2049P16 - PASS SIDE DO		E12049	2049	11/7/2015 0:00	18799				
ORA	2Q5YZP EVERSON, JONTE		E12049	2049	10/30/2015 17:30	18801	E12053	2053	11/7/2015 19:43	18804
SCD	P-PM deleted. LOFR MONRO		E14014	4014	10/30/2015 14:12	18799				
SCA	P-PM/PO Add-FLTF5450 rule		E14014	4014	10/30/2015 12:42	18799				
PMR	LOFR MONRO (USG)		E14014	4014	10/30/2015 0:00	18799				
ORA	2G4QQB STEINER, DAVID		E14014	4014	10/8/2015 14:47	15196	E14014	4014	10/30/2015 12:38	18799
VCM	mike megats		E14014	4014	10/7/2015 16:43	15096				
VCM	4014		E14014	4014	9/19/2015 12:33	15096				
ORA	2B3YC9 BRUMAGIN, JENI		E14018	4018	9/19/2015 12:00	15096	E14014	4014	10/7/2015 16:43	15196
SCD	P-PM deleted. monro lofr (L		E14014	4014	9/19/2015 10:16	13089				
VCM	DIRTY		E14014	4014	9/19/2015 8:07	13089				
PMR	monro lofr (USG)		E14014	4014	9/19/2015 0:00	13089				
SCA	P-PM/PO Add-FLTF5450 rule		E14014	4014	9/16/2015 7:16	11658				
ORA	29T3LY CRABTREE, DARR		E14014	4014	9/16/2015 7:13	13000	E14014	4014	9/19/2015 7:00	13089
ORA	28Z3DG RENNER, RONALI		E14014	4014	9/13/2015 11:34	11478	E14014	4014	9/16/2015 7:00	11658
ORA	27CTQK CORAN, PAUL		E14014	4014	9/8/2015 8:47	11100	E14014	4014	9/13/2015 8:26	11478
ORA	266XM7 BARISH, ROBERT		E14014	4014	9/2/2015 16:15	9857	E14014	4014	9/4/2015 13:18	9907
ORA	2605JN ZONNA, RJ		E14014	4014	9/2/2015 7:55	9722	E14014	4014	9/2/2015 16:10	9857
ORA	25P94Z SHEARER, RANDY		E14014	4014	9/1/2015 8:45	9407	E14014	4014	9/1/2015 18:00	9720
VCM	GSD		E14014	4014	8/29/2015 14:12	9150				
INV	PB: R1 . Performed By: E900		E14014	4014	8/29/2015 14:12	9150				
ORA	238J5V HARDEN, ADRIEN		E14014	4014	8/24/2015 10:00	8913	E14014	4014	8/26/2015 23:59	9150
ORA	22PWM4 BURTON, TIMOTIE		E14014	4014	8/21/2015 9:42	8221	E14014	4014	8/23/2015 9:30	8913
ORA	227QF1 ZONNA, RJ		E14014	4014	8/19/2015 17:36	8101	E14014	4014	8/20/2015 16:42	8221
VCM	DIRTY		E14014	4014	8/19/2015 17:23	8100				

EVERSON - Affidavit of Kristen F. Zub

ORA	21XQQN	MATTERS, AMBE	E14014	4014	8/18/2015 18:07	7506	E14014	4014	8/19/2015 17:19	8100
VCM	DIRTY		E14014	4014	8/18/2015 17:31	7506				
ORA	20YNLC	NESBITT, SARA /	E14014	4014	8/15/2015 10:52	6017	E14014	4014	8/18/2015 17:29	7506
ORA	1Y4RWQ	CRACIUN, LAURA	E14014	4014	8/6/2015 8:46	5085	E14014	4014	8/15/2015 8:30	6017
SCD	P-PM deleted.	monro lofr (L	E14014	4014	8/5/2015 18:53	5080				
INV	PB: R1 . Performed By:	E900	E14014	4014	8/5/2015 18:51	5080				
VCM	MONRO LOFR DONE		E14014	4014	8/5/2015 18:51	5080				
SCA	P-PM/PO Add-FLTF5450 rule		E14014	4014	8/5/2015 13:10	5080				
PMR	monro lofr (USG)		E14014	4014	8/5/2015 0:00	5080				
INV	ERIT01 CONTROLLING LOCA		E14014	4014	8/2/2015 7:29	4859				
ORA	1WXRZG	SHINN, ROY	E14014	4014	8/2/2015 7:26	4859	E14014	4014	8/3/2015 12:56	5080
ORA	222919463	STRAND, PHIL	ERIT01	40VE	7/30/2015 11:42	4741	ERIT01	40VE	8/1/2015 13:21	4859
ORA	9294861.11	SANTILLO, GERAL	ERIT61	40V2	7/18/2015 11:42	3215	ERIT61	40V2	7/29/2015 17:01	4741
UVI	FBI1085E~The satellite Radi		ERIT01	40VE	7/17/2015 22:37	2971				
ORA	222840554	MARTINEZ, JUDY	ERIT01	40VE	7/16/2015 7:52	2971	ERIT01	40VE	7/17/2015 20:56	3215
ORA	222815581	NEMENZ, THOM	ERIT01	40VE	7/12/2015 17:19	2427	ERIT01	40VE	7/15/2015 19:54	2971
ORA	222807322	HAGER, JAMES L	ERIT71	40V4	7/10/2015 10:59	2366	ERIT71	40V4	7/12/2015 17:10	2427
INV	PITT61 CONTROLLING LOCA		ERIT01	40VE	7/7/2015 16:54	1845				
ORA	222791867	BEAMON, GARY	ERIT01	40VE	7/7/2015 16:54	1845	ERIT01	40VE	7/10/2015 7:42	2366
ORA	328857711	LEE, MING JYE	PITT61	40V6	6/27/2015 7:27	1093	PITT61	40V6	7/2/2015 5:48	1845
ORA	32878286	OSTROM, JASON	PITT61	40V6	6/21/2015 14:49	730	PITT61	40V6	6/26/2015 13:16	1093
ORA	328768285	MONCURE, JOHN	PITT61	40V6	6/19/2015 16:22	676	PITT61	40V6	6/21/2015 12:43	730
ORA	328743635	NEIL, RANDALL	PITT61	40V6	6/17/2015 13:40	44	PITT61	40V6	6/19/2015 13:16	676
ORA	328731064	DEKERMAN, JEE	PITT61	40V6	6/16/2015 13:24	10	PITT61	40V6	6/17/2015 12:44	44
INV	PITT01 CONTROLLING LOCA		PITT61	40V6	6/16/2015 13:24	10				
INV	PITT01 CONTROLLING LOCA		PITT01	40VN	6/16/2015 7:25	10				
REG			E140N1	40N1	6/15/2015 12:21	10				
OIN	Vehicle is Operationally Inst		E140N1	40N1	6/15/2015 12:21	10				
PIR	Purchase Invoice Received		E14099	4099	6/11/2015 0:49	0				
TRG			E14099	4099	6/11/2015 0:49	0				

40= pittsburgh, PA group
 20= Michigan group

EVERSON - Application for Benefits

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS

Michigan Assigned Claims Plan
 c/o Michigan Automobile Insurance Placement Facility
 PO Box 532318
 Livonia, MI 48153-2318
 Phone: 734-464-8111

Internal Use Only
Reference #: _____
Date Received: _____

Please note, "you" referenced throughout this application is defined as the Injured person applying for benefits. This application must be completed, signed and received no later than one (1) year from the date of accident. Incomplete or illegible applications will be returned without assignment to a servicing insurer. Please also submit a copy of the police report, EMS run form and/or any other documentation. All information will be reviewed, however, please note, additional information may be required.

Injured Person Information

1. Name of Injured Person: First Name <u>Jonte</u> Middle Name _____ Last Name <u>Everson</u>			2. Date of Birth: <u>4/3/91</u>	
3. List any and all names you have previously or currently go by _____			4. Social Security #: _____	
5. Injured Person's Current Address Street <u>2143 S. Deacon St.</u> City <u>Detroit</u> State <u>MI</u> Zip Code <u>48217</u>		6. Injured Person's Address at the Time of the Accident Street _____ City _____ State _____ Zip Code _____		
7. Home Phone# <u>313-854-3979</u>	8. Work Phone # _____	9. Cell Phone # <u>616-444-8932</u>	11. Marital Status: <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input checked="" type="checkbox"/> Never Married <input type="checkbox"/> Widowed	
10. Email Address _____			12. Date of Accident <u>11/17/15</u>	
13. Injured Person's Driver's License # <u>E/62 435 143 263</u>		14. Driver License State <u>MI</u>		
15. At the time of the accident, were you a Michigan resident? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No a. If no, list state: _____		16. At the time of the accident, did you have any auto insurance? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No a. If yes, list Name of Automobile Insurance Company & Policy Number _____		

Accident Information

17. Accident Location Street <u>27500 Novi Rd.</u> City <u>Novi</u> State <u>MI</u> Zip Code _____	
18. Provide a full description of how the accident occurred. Note: if you require additional space, please attach a separate sheet with details as part of this application. <u>I was on Novi Rd. in mall making a turn into Red Lobster when at fault driver travelling at a high rate of speed hit me.</u>	
19. Was a police report made? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No a. If yes, list name of police department & police report number: <u>150056700 Novi Police Dept.</u>	
20. What was your position? <input checked="" type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Pedestrian <input type="checkbox"/> Motorcyclist a. If you answered "Passenger", where were you seated in the vehicle? <input type="checkbox"/> Passenger Front Seat <input type="checkbox"/> Driver Side Back Seat <input type="checkbox"/> Middle Back Seat <input type="checkbox"/> Passenger Back Seat <input type="checkbox"/> Other _____ b. If you answered "Passenger" or "Driver", did you have permission to use the involved vehicle? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
21. Was the vehicle a motorcycle? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you answered "Yes" please provide the following: a. List the name of the owner of the motorcycle: _____ b. Was the motorcycle insured at the time of the accident? <input type="checkbox"/> Yes <input type="checkbox"/> No c. List the name and policy number of the motorcycle's insurance company: _____	
22. Were you contacted by a doctor's office or other person about this claim? <input type="checkbox"/> Doctor <input type="checkbox"/> Other <input checked="" type="checkbox"/> None a. If you answered "Doctor", please provide: Name of Doctor _____ Address _____ Phone Number _____ b. If you answered "Other", please provide: Name _____ Address _____ Phone Number _____	

EVERSON - Application for Benefits

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APP. IATION FOR PERSONAL INJURY PROTECTION BENEFITS

Injury Information

23. Were you injured in the accident? Yes No a. If yes, describe your injuries:
left shoulder, left knee, neck, and back

24. Are or were you treated by a doctor(s) for injuries from this accident? Yes No
 a. If yes, please provide:
 Doctor's Name Prodigy Spinal Rehabilitation Address _____ Phone Number 313-846-9100
 b. Name of person who referred you to this doctor: _____

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

25. Were you treated in a hospital? Yes No a. If yes, what type of treatment did you receive? In-Patient Out-Patient
 b. If yes, please provide:
 Hospital Name Hing Ford Wyncotte Address _____ Phone Number _____

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

26. Please list any pre-existing conditions that you had before this accident and how long you have been treating for those conditions.
None

27. Had you sought treatment for any prior conditions before this accident? Yes No Not Applicable
 a. If yes, please provide the name, address and phone number(s) of each doctor and pharmacy you had treated with prior to this accident:
 Doctors/Pharmacy Name _____ Address _____ Phone Number _____

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

28. Were you taking any medications prior to this accident? Yes No
 a. If yes, please list the names of all medications: _____

29. Do you have a primary care doctor? Yes No a. If yes, please provide:
 Doctor's Name Dr. Shapiro Address Midwest Health Phone Number _____

30. Have you received any medical bills? Yes No 31. Do you expect to receive medical bills? Yes No 32. Are you eligible for any benefits under social security? Yes No

Medical Insurance

33. Do you have any kind of health insurance? Yes No a. If yes, please provide:
 Name of Health Insurance Co. _____ Address _____ Phone Number _____
 Policy or Plan Number: _____ Member Number: _____ Group Number: _____

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

Employment Information

35. Were you employed at the time of the accident? Yes No a. If yes, provide the following information:

Name, Address and Phone Number of Your Employer	Occupation	Average Weekly Gross Income at the time of the Accident	List the Date of Your Employment : From	To
<u>Enterprise Rental car</u>	<u>Service Agent</u>	<u>\$ 9.50 per hour</u>		

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

36. Have you missed any work because of your injuries? Yes No a. If yes, what is the first date you missed work? 11/7/15

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

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

39. If not yet returned, have you been given a return date? Yes No a. If yes, return to work date: _____

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

41. How did you normally get to work prior to this accident? I.E. Public Transportation, Carpool, Own Car, Etc.
Got a ride

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

EVERSON - Application for Benefits

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS

Entitlement Information

43. Was there damage to the vehicle you were occupying or struck by? Yes No Unknown If yes, describe the damage to the vehicle:
Damaged The whole front of vehicle

Was the vehicle towed? Yes No If yes, please provide: Novi PD
 Name of Towing Company Address Phone Number

Was the vehicle repaired? Yes No If yes, please provide:
 Name of Repair Company Address Phone Number
N/A

Do you know the current location of the involved vehicle? Yes No If yes, please provide:
 Location of Vehicle Address Phone Number

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

d. Did you have use of the involved motor vehicle or lease the involved motor vehicle any time before the date of the accident? Yes No If yes:
 e. What was the frequency at which you used the vehicle?
 Daily Once a Week Two or More Times Per Week Less than Once Per Month Rarely

f. Did you have your own set of keys to the vehicle? Yes No g. Did you or have you ever had to ask permission to drive the vehicle? Yes No

h. Have you ever been denied permission to use the vehicle? Yes No

i. Did you ever put gas in or do any maintenance on the vehicle? Yes No

j. List the Name of the Owner/Registrant of Vehicle Involved in the accident: First Name Middle Name Last Name
Enterprise Rental Car

Owner/Registrant's Address and Phone Number

k. Vehicle Involved:
 Year Make Model Vehicle Identification Number (VIN) Plate Number State the Vehicle is Registered In
2015 Dodge Charger 2C3CDXB63FH165977 JWR9770 PA

l. Was there automobile insurance in effect for this vehicle on the date of the accident? Yes No If yes:
 Name of Automobile Insurance Company: ELCO Policy Number: 452009

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

n. Did the driver have automobile insurance in effect on the date of the accident? Yes No If yes:
 Name of Automobile Insurance Company: Policy Number:

o. If different than the injured person, did the driver of the vehicle have a Driver's License at the Time of the Accident? Yes No
 If yes, please provide: Driver License #: E162435143263 Driver License State: MI

p. Were there any other occupants in the vehicle? Yes No If yes:
 How many occupants were in the vehicle? 1
 Occupant's Name Address Phone Number
Tavia Potterfield 2143 S. Dragon St. Detroit, MI 48217

Did any of the occupants have automobile insurance in effect on the date of the accident? Yes No If yes:
 Occupant's Name Name of Automobile Insurance Company Policy Number

Note: If more than 1 occupant had insurance, attach separate sheet with contact information as part of this application.

44. Were there witnesses to the accident? Yes No If yes, please provide:
 Witness Name Address Phone Number
 Witness Name Address Phone Number

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

45. List all persons and their relationship to you that lived with you at the time of the accident including your spouse even if they didn't live with you:
 Name (Spouse Address if Different than Yours) Relationship
Jayde D. Everson Daughter 1st
Anton Lavender Son
Semmy Hayes Daughter

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

EVERSON - Application for Benefits

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS

Entitlement Information (continued)

46. Describe all motor vehicles owned by you, your spouse or any relative residing in your home on the date of the accident. If none, check here: <input type="checkbox"/>	Year, Make & Model of Vehicle	Vehicle Identification Number	Plate Number	Insurance Co & Policy Number
	1999 Cadillac SL GM.	N/A	N/A	N/A not drivable

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

47. Have you ever filed a claim for Personal Injury Protection Benefits? Yes No a. If yes, please provide:
 Name of Insurance Company _____ Claim Number _____

48. Are you filing this claim because there is a dispute between two or more insurance companies for your Personal Injury Protection coverage? Yes No
 a. If yes, please provide documentation of the dispute and the following:
 Name of Insurance Company _____ Phone Number _____ Claim Number _____
 Name of Insurance Company _____ Phone Number _____ Claim Number _____

49. Please document what actions you have taken to determine that there is no other auto insurance coverage. This question should be completed to expedite the claims process (attach additional sheet(s) if needed and any supporting documentation).
please see attached response from Eico insurance

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

I have reviewed the application in its entirety and attest that the information contained therein is true and accurate. If I am a medical provider and am submitting this application on behalf of the injured person, I attest that I have thoroughly investigated and verified all documented information. All information I have supplied is a representation of information obtained from the injured person or their representative.

I acknowledge I have read the following fraud warning:

FRAUD WARNING

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

I understand that by submitting the application for benefits, the owner of the involved, uninsured automobile will be financially responsible for reimbursement of all no fault benefits paid and costs associated with this claim pursuant to the Michigan No Fault Act.

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

Signature of Injured Person or Representative X <i>[Signature]</i>	Printed Name of Injured Person or Representative X Jank Everson	Date: <input type="text"/> 12-23-15
Signature of Preparer (if different than above) X	Printed Name of Preparer (if different than above) X	Date:

Who prepared this application? <input type="checkbox"/> Injured Person <input type="checkbox"/> Attorney <input type="checkbox"/> Third Party Biller <input type="checkbox"/> Parent <input type="checkbox"/> Legal Guardian If other than Injured Party, please provide: Address: _____ City: _____ State: _____ Zip Code: _____ Phone Number: _____	Email, Fax or Mail the signed application to: Michigan Assigned Claims Plan c/o Michigan Automobile Insurance Placement Facility PO Box 532318 Livonia, MI 48153-2318 Phone: 734-464-8111 Fax: 734-943-6068 Email: Info@michacp.org
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EVERSON - Application for Benefits

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APP. ICTION FOR PERSONAL INJURY PROTECTION .NEFITS

AUTHORIZATION FOR RELEASE OF INFORMATION

FRAUD WARNING

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

I hereby request and authorize the disclosure of protected health information and any other records about me. The name or other specific identification of the person(s) or class of persons authorized to receive the information: The Michigan Assigned Claims Plan maintained by the Michigan Automobile Insurance Placement Facility and/or their Servicing Insurers.

I understand that the information disclosed may be subject to redisclosure by the person(s) or class of person(s) receiving it and no longer protected by the federal privacy regulations. For the purpose of risk management, claim adjustment or administration, The Michigan Assigned Claims Plan maintained by the Michigan Automobile Insurance Placement Facility and/or their Servicing Insurers will have complete and unrestricted rights to **OBTAIN, DISCLOSE, RELEASE, or MAKE USE** of personal or privileged information about me which may include financial and wage statements, all medical records, hospital records, reports, charts, notes, histories, laboratory records and reports, diagnostic test reports, doctor's and nurse's notes, correspondence, and all other material, including x-ray films, MRI's, CT's and EMG/NCS and charges for all care, treatment and prognosis at any and all times for any condition whatsoever.

I understand this authorization could include information with respect to HIV infection, AIDS, mental health, substance abuse, and alcohol abuse. Those who may **RELEASE** this information, to the extent permitted by applicable law, include health care providers, government agencies, other insurance companies, insurance data base operators, third party administrators, or managed care companies, their agents, or contractors.

I understand this authorization shall be valid for three years from the date accompanying my signature. I may revoke this authorization by notifying the medical provider and The Michigan Assigned Claims Plan maintained by the Michigan Automobile Insurance Placement Facility and/or their Servicing Insurers in writing of my desire to revoke it. However, I understand that if I revoke this authorization, it will not have any effect on actions they took before they received my revocation.

I agree that a photographic copy of this authorization shall be as valid as the original.

[Signature]
Signature of Injured Party or Legal Guardian (if applicable)

12-20-15
Date

Jonda Everson
Printed Name of Injured Party

[Redacted]
Social Security Number

Printed Name of Legal Guardian

STATE OF MICHIGAN

IN THE CIRCUIT COURT OF WASHTENAW

JONTE EVERSON,

Plaintiff,

Case No.: 16-359-NF

Vs.

Hon. David S. Swartz

FARMERS INSURANCE EXCHANGE,

Defendant(s)/ Third-Party Plaintiff.

Vs.

ENTERPRISE LEASING COMPANY OF DETROIT,

Third-Party Defendant.

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Clerk/Register

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248.244.8931

THIRD-PARTY DEFENDANT'S MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(8) and (10)

NOW COMES Third-Party Defendant, ENTERPRISE LEASING COMPANY OF DETROIT, LLC by and through its attorneys, Mark L. Dolin, Esq., Michael B. Barey, Esq., and KOPKA PINKUS DOLIN PLC and for its Motion for Summary Disposition Pursuant to MCR

EVERSON - EAN's Motion for Summary Disposition

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2.116(C)(8) and (10), states as follows:

1. This is a claim for reimbursement brought by Third-Party Plaintiff for First Party No-Fault benefits allegedly paid or to be paid to Plaintiff.
2. Third-Party Plaintiff alleges that it is entitled to reimbursement for any payments made to Plaintiff Everson for injuries allegedly sustained in the motor vehicle accident of November 7, 2015.
3. The involved vehicle is a rental vehicle rented by Jonte Everson from Enterprise on October 30, 2015. (Exhibit A, rental contract).
4. The rental vehicle at issue was a Pennsylvania registered vehicle and owned by EAN Holdings, LLC. (Exhibit B, vehicle registration).
5. Third-Party Plaintiff alleges in its Third-Party Complaint that it is entitled to reimbursement from Enterprise for any no-fault benefits paid to Plaintiff pursuant to MCL 500.3101.
6. MCL 500.3102 exempts non-resident owners or registrants of motor vehicles from maintaining Michigan personal injury protection coverage on vehicles that are not operated in Michigan for an aggregate of more than 30 days in a calendar year.
7. MCL 500.3101 is inapplicable to the facts in this case as the rental vehicle at issue was not operated in Michigan for an aggregate period of more than 30 days in 2015. (Exhibit C, vehicle rental history and Affidavit of Heidi Nisch).
8. As MCL 500.3101 is inapplicable to Enterprise, Third-Party Plaintiff's claim that Enterprise is in first priority for payment of personal insurance benefits for Jonte Everson pursuant to MCL 500.3114, such that Third-Party Plaintiff has not stated a claim upon which relief may be granted and summary disposition is appropriate per MCR 2.116(C)(8).

EVERSON - EAN's Motion for Summary Disposition

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9. As MCL 500.3114 is inapplicable to Enterprise in this case, there is no genuine issue of material fact contained in Third-Party Plaintiff's Complaint and summary disposition is appropriate per MCR 2.116(C)(10).

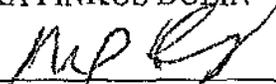
10. As MCL 500.3101 is inapplicable to Enterprise, Third-Party Plaintiff's claims pursuant to MCL 500.3114, MCL 500.3142, MCL 500.3148 and MCL 500.3172 are also inapplicable to Enterprise such that Third-Party Plaintiff has not stated a claim upon which relief may be granted and summary disposition is appropriate per MCR 2.116(C)(8).

11. As MCL 500.3114, MCL 500.3142, MCL 500.3148 and MCL 500.3172 are inapplicable to Enterprise in this case, there is no genuine issue of material fact contained in Third-Party Plaintiff's Complaint and summary disposition is appropriate per MCR 2.116(C)(10).

WHEREFORE, Enterprise respectfully requests that this Honorable Court grant its Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (10) and dismiss Third-Party Plaintiff's Complaint with prejudice.

Respectfully submitted,

KOPKA PINKUS DOLIN

By: 

Mark L. Dolin (P45081)

Michael B. Barey (P41445)

KOPKA PINKUS DOLIN

Attorney for Defendant Enterprise

Dated: January 30, 2017

STATE OF MICHIGAN

IN THE CIRCUIT COURT OF WASHTENAW

JONTE EVERSON,

Plaintiff,

Case No.: 16-359-NF

Vs.

Hon. David S. Swartz

FARMERS INSURANCE EXCHANGE,

Defendant(s)/ Third-Party Plaintiff.

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Vs.

ENTERPRISE LEASING COMPANY OF DETROIT,

Third-Party Defendant.

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Troy, MI 48084
248.244.8931

BRIEF IN SUPPORT OF MOTION

I. FACTUAL OVERVIEW

Third-Party Plaintiff alleges that it is owed reimbursement for medical treatment provided to Jonte Everson for injuries allegedly sustained in a motor vehicle that occurred on November 7, 2015.

EVERSON - EAN's Motion for Summary Disposition

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Third-Party Plaintiff now brings this suit, alleging that Enterprise is first in order of priority per MCL 500.3114 for payment of first party no-fault benefits to Jonte Everson. However, MCL 500.3102 exempts Enterprise from maintaining Michigan No-Fault personal injury coverage as the vehicle rented by Plaintiff Everson was registered in Pennsylvania, owned by EAN Holdings, LLC and was not operating in Michigan for an aggregate of more than 30 days in 2015. Therefore, Third-Party Plaintiff has not stated a claim upon which relief can be granted against Enterprise and there is no genuine issue of material fact as to Enterprise such that Third-Party Plaintiff's Complaint must be dismissed with prejudice.

II. STANDARD OF REVIEW

A motion brought pursuant to MCR 2.116(C) (8) tests the legal sufficiency of a claim. *Koenig v City of Berkley*, 460 Mich 667, 674, 597 NW2d 99, (1999); *Spiek v Department of Transportation*, 456 Mich 331, 337, 572 NW2d 201, (1998). When deciding such a motion, the court may consider only the pleadings. MCR 2.116(G) (5); *Spiek, supra*; *Simko v Blake*, 448 Mich 648, 654, 532 NW2d 842, (1995). However, in an action based on a contract, the court may examine the contract. *Woody v Tamer*, 158 Mich App 764, 770, 405 NW2d 213, (1987).

The court must accept as true all factual allegations contained in the complaint, as well as all reasonable inferences which may be drawn from those allegations. *Singerman v Municipal Serv Bureau*, 455 Mich 135, 139, 565 NW2d 383, (1997); *Simko, supra*. The court may not consider the merits of the plaintiff's factual allegations. *Mieras v DeBona*, 452 Mich 278, 291, 550 NW2d 202, (1996). "The trial court must consider all well-pleaded facts in favor of the nonmoving party and should grant the motion only if the allegations fail to state a legal claim." *Wortelboer v Benzie Co*, 212 Mich App 208, 217, 537 NW2d 603, (1995); *Radtko v Everett*, 442 Mich 368, 373-374, 501 NW2d 155, (1993).

EVERSON - EAN's Motion for Summary Disposition

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A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. In deciding a motion brought under this sub-rule, the trial court considers the documentary evidence which is substantively admissible and which is submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Michigan 109, 120; 597 N.W.2d 817 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). The Plaintiff must proffer substantively admissible evidence in opposition to a motion under MCR 2.116(C)(10), and again the reviewing Court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. See *Maiden, supra*, at 121 (1999).

The Supreme Court defined "substantively admissible" evidence as requiring an adverse party to "set forth specific facts showing there is a genuine issue for trial." Further, by "presenting inadmissible hearsay evidence, a non-moving party is actually promising to create an issue for trial where the promise is incapable of being fulfilled. The non-moving party is not showing that a genuine issue exists. Permitting inadmissible evidence to suffice an opposing summary disposition would require less than the pre-1985 court rule and create illusory fact issues." See *Maiden, supra*, at 124 (1999).

III. LAW AND ARGUMENT

In its Third-Party Complaint, Plaintiff claims that Enterprise is the "insurer" of the vehicle and is in first priority for payment of no-fault benefits on behalf of Jonte Everson pursuant to MCL 500.3114.

MCL 500.3114 provides as follows:

Persons entitled to personal protection insurance benefits or personal injury benefits; recoupment barred; order of priority for claim of motor vehicle occupant or motorcycle operator or passenger; 2 or more insurers in same order of priority; partial recoupment.

Sec. 3114.

(4) Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

(b) The insurer of the operator of the vehicle occupied.

While Defendant admits that it rented the vehicle, EAN Holdings is the owner or registrant of the vehicle occupied by Jonte Everson, per MCL 500.3102 and the terms of its rental contract, it is not required to maintain the personal protection insurance required under MCL 500.3101 and is not required to provide Michigan No-Fault personal injury protection benefits to Jonte Everson.

MCL 500.3101 provides as follows:

500.3101 Security for payment of benefits required; period security required to be in effect; deletion of coverages; definitions; policy of insurance or other method of providing security; filing proof of security; "insurer" defined.

Sec. 3101.

(1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved on a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

EVERSON - EAN's Motion for Summary Disposition

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Enterprise does not dispute the plain language of MCL 500.3101. However, MCL 500.3012 exempts Enterprise from the requirements of MCL 500.3101. MCL 500.3102 provides as follows:

500.3102 Nonresident owner or registrant of motor vehicle or motorcycle to maintain security for payment of benefits; operation of motor vehicle or motorcycle by owner, registrant, or other person without security; penalty; failure to produce evidence of security; rebuttable presumption.

Sec. 3102.

- (1) A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter.

In this case the rental vehicle was registered in Pennsylvania and had only been operated in Michigan from October 30 2015 to November 7, 2015. As the vehicle was only operated in Michigan for 9 days in the calendar year of 2015 it was not required to have Michigan No-Fault Insurance and Third-Party Plaintiff is not entitled to reimbursement for first party no-fault benefits from Enterprise. (Exhibit C, Affidavit of Heidi Nisch).

The Michigan Supreme Court case of *Park v DAIIE*, 426 Mich 191, 393 NW 2d 833, (1986) is dispositive of this case. In *Parks*, Roadway Express, a Delaware corporation, was engaged in the interstate transportation of goods. Roadway employed Plaintiff Parks, a resident of Michigan. Parks was injured while working inside a Roadway trailer at Roadway's Muskegon terminal. The trailer in which Plaintiff was injured was owned by Roadway and registered in the state of Tennessee. Plaintiff filed suit to recover no-fault benefits against Roadway, his self-insured employer and others. The trial court granted Roadway's motion for summary disposition, as Roadway was not subject to liability under the Michigan no-fault act.

EVERSON - EAN's Motion for Summary Disposition

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After the Court of Appeals reversed the trial court's decision, the Michigan Supreme Court upheld the trial court, finding that Roadway was not responsible for personal protection benefits under the Michigan no-fault act. This was so because Plaintiff was injured in a vehicle that was not registered in the state of Michigan and had not been operated in the state of Michigan for more than thirty days.

The *Parks* case is exactly on point to the facts in this case. In this case, the vehicle in question was registered in the state of Pennsylvania. Furthermore, it had only been operated in the state of Michigan for 9 days in 2015. Thus pursuant to MCL 500.3102, Defendant Enterprise, like Roadway Express, was not required to provide Michigan no-fault benefits for its vehicle.

More recently, in the case of *J.B. Hunt v. Adams and State Farm Mutual Automobile Insurance*, Case No. 4-CV-70347-DT, (Exhibit D), the Federal Court for the Eastern District of Michigan relied on the *Parks* case in upholding summary disposition in favor of Plaintiff, J.B. Hunt Transportation Inc.

In the *Hunt* case, one Jamal Adams was riding a motorcycle and drove into a tractor trailer owned by J.B. Hunt and driven by J.B. Hunt's employee, Herman Diaz. Adams was seriously injured as a result of the accident and requested that J.B. Hunt provide him personal protection benefits. J.B. Hunt declined to pay personal protection benefits, arguing that the mandatory security requirements of the Michigan No-Fault Act did not apply. J.B. Hunt asserted that the tractor trailer had not been operated in the state of Michigan for more thirty days in the calendar year of 2003. Furthermore, the tractor involved in the accident was registered in the state of Oklahoma and J.B. Hunt is incorporated in Georgia. Therefore, J.B. Hunt as a non-resident owner or registrant of a motor vehicle, which was not operated in the state of Michigan

EVERSON - EAN's Motion for Summary Disposition

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for more than thirty days in a calendar year, was not subject to the security requirements of the No-Fault Act pursuant to MCL 500.3102 (1).

The Honorable Robert Cleland of the United States District Court, Eastern District of Michigan found that there was no material question or fact that neither the tractor nor the trailer were operated in Michigan for more than thirty days in 2003 and therefore granted J.B. Hunt's motion for summary disposition.

Once again, like the *Parks* case, the *Hunt* case is identical to the factual situation here and supports Defendant's motion for summary disposition in this matter.

The Court of Appeals recently affirmed Defendant's positions in this case -- that it is a non-resident owner or registrant of a motor vehicle, which was not operated in the state of Michigan for more than thirty days in a calendar year and was not subject to the security requirements of the No-Fault Act pursuant to MCL 500.3102 (1).

In the March 1, 2016 unpublished opinion in the case of *Adam Heichel v Geico Indemnity Company, et al*, WCCC Case No., 12-003780-NF, Court of Appeals docket number 323818, the Court was faced with the same set of facts to what we have here. **(Exhibit E)**. The Ford Fusion involved in *Heichel* accident was owned by EAN Holdings, L.L.C. and registered in North Carolina and had been operated in Michigan for less than 30 days when it struck Adam Heichel's motorcycle. The Court, in *Heichel* also relied upon the *Parks*:

Parks is not precisely on point, as it arose from a workplace injury in an employment context, did not involve a motorcycle, and dealt with a different subsection of MCL 500.3114. **These distinctions make no difference.** In *Parks*, the vehicle involved in the accident was owned by a self-insured nonresident company, was registered in another state, and was not required to be registered in Michigan. The same is true here. In *Parks*, another insurer contended that the nonresident vehicle owner was liable under MCL 500.3114, regardless of whether the no-fault act required the owner to maintain security on the vehicle. Again, the same is true

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here. In *Parks*, the Supreme Court rejected the complaining insurer's argument, holding that the registration requirement set forth in §3101(1) is the key to liability under the no-fault act. **A vehicle that does not need to be registered in Michigan cannot trigger the application of the priority provisions set forth in MCL 500.3114.** *Parks*, 426 Mich at 203-204. (Emphasis added).

The factual scenario in *Heichel* is identical to the factual scenario in this case. As the ELCO vehicle was not subject to the requirements of MCL 500.3101, it cannot trigger the application of the priority provisions set forth in MCL 500.3114. Additionally, the Michigan Supreme Court has recently denied the application for leave to appeal brought by GEICO, thus upholding the Heichel opinion. (Exhibit F).

Defendant argued this same motion in Genesee County Circuit Court on January 25, 2016 before the Honorable Geoffrey L. Neithercut. Judge Neithercut agreed with the Defendant's position and granted summary disposition. (Exhibit G).

IV. CONCLUSION

As shown above, it is clear that Enterprise is exempt from the requirements set forth in MCL 500.3101 pursuant to MCL 500.3102 and therefore, Plaintiff Everson is not entitled to Michigan No-Fault personal injury protection benefits from Enterprise. As such, Enterprise is not in the order of priority of MCL 500.3114.

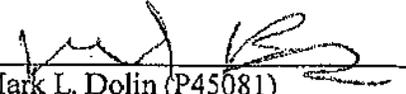
Third-Party Plaintiff's Complaint fails to state a claim upon which relief may be granted and there is no genuine issue of material fact. Thus, summary disposition is appropriate under MCR 2.116(C)(8) and (10).

WHEREFORE, Defendant respectfully requests that this Honorable Court grant its Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (10) and dismiss Plaintiff's Complaint with prejudice.

EVERSON - EAN's Motion for Summary Disposition

Respectfully submitted,

KOPKA PINKUS DOLIN

By: 

Mark L. Dolin (P45081)

Michael B. Barey (P41445)

KOPKA PINKUS DOLIN

Attorney for Defendant Enterprise

Dated: January 30, 2017

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EVERSON - EAN's Motion for Summary Disposition

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STATE OF MICHIGAN

IN THE CIRCUIT COURT OF WASHTENAW

JONTE EVERSON,

Plaintiff,

Case No.: 16-359-NF

Vs.

Hon. David S. Swartz

FARMERS INSURANCE EXCHANGE,

Defendant(s)/ Third-Party Plaintiff.

Vs.

ENTERPRISE LEASING COMPANY OF DETROIT,

Third-Party Defendant.

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Washtenaw County
Clerk/Register

Daniel G. Romano (P49117)
ROMANO LAW, PLLC
Attorney for Plaintiff
23880 Woodward
Pleasant Ridge, MI 48069
248.750.0270

Mark L. Dolin (P45081)
Michael B. Barey (P41445)
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Attorney for Defendant Enterprise
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248.324.2620

Matthew C. Koss (P74088)
CORY, KNIGHT & BENNETT
Attorney for Defendant Farmers Insurance
100 W. Big Beaver, Suite 650
Troy, MI 48084
248.244.8931

NOTICE OF HEARING

TO: Court Clerk
Counsel of Record

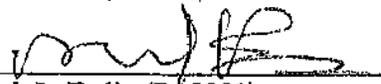
PLEASE TAKE NOTICE Defendant's Motion for Summary Disposition will be brought on for hearing before Hon. David S. Swartz, Washtenaw County Circuit Court, on *Wednesday, March 1, 2017 at 1:30 p.m.*, or as soon thereafter as counsel may be heard.

EVERSON - EAN's Motion for Summary Disposition

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Respectfully submitted,

KOPKA PINKUS DOLIN

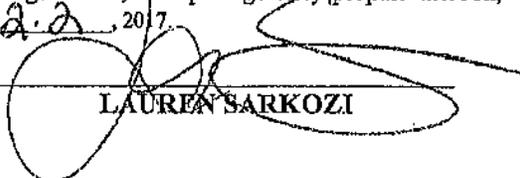
By: 

Mark L. Dolin (P45081)
Michael B. Barey (P41445)
KOPKA PINKUS DOLIN
Attorney for Defendant Enterprise

Dated: January 30, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause, by mailing the same to them at their respective addresses as disclosed by the pleadings herein, with postage fully prepaid thereon, on 2.2, 2017.

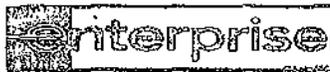
By: 

LAUREN SARKOZI

Exhibit A

EVERSON - EAN's Motion for Summary Disposition
Exhibit A: Rental Agreement

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1 MONTH RENTAL RATE \$1,100.00

MO 8:00 AM - 6:00 PM TU 8:00 AM - 6:00 PM WE 8:00 AM - 6:00 PM
 TH 8:00 AM - 6:00 PM FR 8:00 AM - 6:00 PM SA 9:00 AM - 12:00 PM
 2015 PLYMOUTH PAGE 1 of 4

OWNER OF VEHICLE:
 BRANCH ADDRESS:

ENTERPRISE LEASING COMPANY OF DETROIT, LLC
 21611 ALLEN RD, WOODHAVEN, MI, 481831685

(734) 692-6050

Andrea

458009

10/30/2015		RENTAL TYPE	BUSINESS	EMPLOYEE	NO	RENTAL AGREEMENT NO	20327F	
START CHARGES IF DIFFERENT		ADDRESS	2163 S DEACON ST		POWER (013)	354-3979	VEHICLE \$12.83/HOUR \$17.32/DAY	
ORIGINAL VEHICLE		CITY	DETROIT	STATE	MI	48217	OFFICE PHONE	
COLOR SILVER		LICENSE NO	0476341994		YEAR	2015	MI-PA	
MODEL SONATA		SECURITY	7RR8B		RENTAL DATE	04/03/2016		
MILEAGE		IN	0		OUT	0		
DRIVEN		NO DAMAGE						NO CHARGE MILEAGE
CONDITIONS AND LIMITS		REFERENCE TAG	0607 2006 A					PP @ 2.50
ADDITIONAL AUTHORIZED DRIVER(S)		EXCEPT AS REQUIRED BY THIS AGREEMENT, NO OTHER DRIVERS ARE AUTHORIZED TO DRIVE THE VEHICLE UNDER THIS AGREEMENT.						
WHO IS UNDER MY CONTRACT		I AM RESPONSIBLE FOR THEIR ACTS WHILE THEY ARE DRIVING, AND FOR FULFILLING TERMS AND CONDITIONS OF THE RENTAL AGREEMENT. USE OF VEHICLE BY AN UNAUTHORIZED DRIVER WILL AFFECT MY LIABILITY AND RIGHTS UNDER THIS AGREEMENT.						
PERMISSION GRANTED TO OPERATE VEHICLE ONLY IN THE STATE OF RENTAL AND THE FOLLOWING STATE(S):		MI-PA						
OPERATION IN ANY OTHER STATE OR COUNTRY WILL AFFECT YOUR LIABILITY AND RIGHTS UNDER THIS AGREEMENT.								
OPTIONAL PRODUCTS NOTICE:		WE OFFER FOR AN ADDITIONAL CHARGE THE FOLLOWING OPTIONAL PRODUCTS: DAMAGE WAIVER; PERSONAL ACCIDENT INSURANCE; SUPPLEMENTAL LIABILITY PROTECTION AND ROADSIDE ASSISTANCE PROTECTION. BEFORE DECIDING TO PURCHASE ANY OF THESE PRODUCTS, YOU MAY WISH TO DETERMINE WHETHER YOUR PERSONAL INSURANCE, CREDIT CARD OR OTHER COVERAGE PROVIDES YOU PROTECTION DURING THE RENTAL PERIOD. THE PURCHASE OF ANY OF THESE PRODUCTS IS NOT REQUIRED TO RENT VEHICLE.						
RENTER DECLINES PAI		RENTER ACCEPTS PAI						
RENTER DECLINES DW		RENTER ACCEPTS DW						
RENTER DECLINES SLP		RENTER ACCEPTS SLP						
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RENTER DECLINES VLF REC		RENTER ACCEPTS VLF REC						
REPLACEMENT VEHICLE		RENTER	<i>W. E. Sloan</i>		DATE	10/30/2015		
COLOR		LICENSE NO			EMPL	EB40FF		
MODEL		RENTAL DATE	11/03/2015		DEPOSIT AMOUNT	1000.00		
MILEAGE		IN	0		OUT	0		
DRIVEN		ADDITIONAL INFORMATION						
CONDITIONS AND LIMITS		SECTION 267.401 OF THE MICHIGAN COMPILLED LAWS PROVIDES THAT THE RENTAL VEHICLE OWNER (ENTERPRISE) IS LIABLE ONLY UP TO \$20,000 BECAUSE OF BODILY INJURY OR DEATH TO ONE PERSON IN ANY ONE ACCIDENT AND \$40,000 BECAUSE OF BODILY INJURY OR DEATH TO TWO OR MORE PERSONS IN ANY ONE ACCIDENT, AND ONLY IF THE RENTED VEHICLE IS OPERATED BY THE RENTER, OTHER AUTHORIZED DRIVER, OR BY THE RENTER'S SPOUSE, FATHER, MOTHER, BROTHER, SISTER, SON, DAUGHTER, OR OTHER IMMEDIATE FAMILY MEMBER, AND THAT THE RENTER MAY BE LIABLE TO THE OWNER UP TO THESE AMOUNTS AND TO AN INJURED PERSON FOR AMOUNTS AWARDED IN EXCESS OF THESE AMOUNTS.						
TOTAL CHARGES								
DEPOSITS								
REFUNDS								
AMOUNT DUE								
CLOSED BY								
PAID BY		CASH	CHECK	CHARGE				
RECEIPT OF CASH/REFUND		DATE	AMOUNT	RECEIVED BY				

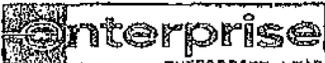
OWNER IS AN AFFILIATE OF ENTERPRISE HOLDINGS INC, WHICH OWNS ALL RIGHTS TO ENTERPRISE NAMES AND MARKS.

© Enterprise Leasing Company of Detroit, LLC, 2014

189.85 77.76

**EVERSON - EAN's Motion for Summary Disposition
Exhibit A: Rental Agreement**

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 TH 6:30 AM - 11:30 PM FR 6:30 AM - 11:30 PM SA 7:00 AM - 10:00 PM
 SU 6:30 AM - 11:30 PM

OWNER OF VEHICLE: 930 LUCAS DR, DETROIT, MI, 482421403
 BRANCH ADDRESS:

(734) 229-3100

458009

073072015 10:23 AM		RENTAL BUSINESS TYPE	VERSOER	DATE	10/30/2015	AGREEMENT NO.	205Y2P
START CHARGES/DIFFERENT		VEHICLE	DEACON ST	STATE	MI	VEHICLE #	12'83/HOUR \$17.32/DAY
ORIGINAL VEHICLE		DRIVER	BRIT	STATE	MI	DATE	48247
MILEAGE		IN	05484	OUT		NO CHARGE MILEAGE	
DRIVEN		ADDITIONAL AUTHORIZED DRIVER(S) - EITHER BY SIGNATURE OR BY WRITTEN APPROVAL. REQUEST OWNER'S PERMISSION TO ALLOW.					
NO DAMAGE		WHO IS UNDER MY CONTROL, AND DIRECTION TO DRIVE VEHICLE FOR ME AND ON MY BEHALF, I AM RESPONSIBLE FOR THEIR ACTS WHEN THEY ARE DRIVING, AND FOR FULFILLING TERMS AND CONDITIONS OF THIS RENTAL AGREEMENT. USE OF VEHICLE BY AN UNAUTHORIZED DRIVER WILL AFFECT MY LIABILITY AND RIGHTS UNDER THIS AGREEMENT.					
NO GASOLINE REFUNDS		PERMISSION GRANTED TO OPERATE VEHICLE ONLY IN THE UNITED STATES UNLESS AUTHORIZED BELOW:					
OPTIONAL PRODUCTS NOTICE		OPERATION IN ANY OTHER COUNTRY WILL AFFECT YOUR LIABILITY AND RIGHTS UNDER THIS AGREEMENT.					
WE OFFER FOR AN ADDITIONAL CHARGE THE FOLLOWING OPTIONAL PRODUCTS:		RENTER: X					
DAMAGE WAIVER		ACCEPTS DW					
PERSONAL ACCIDENT INSURANCE		RENTER: X					
PERSONAL EFFECTS COVERAGE		ACCEPTS PAEEC					
SUPPLEMENTAL LIABILITY PROTECTION AND ROADSIDE ASSISTANCE PROTECTION		RENTER: X					
BEFORE DECIDING TO PURCHASE ANY OF THESE PRODUCTS, YOU MAY WISH TO DETERMINE WHETHER YOUR PERSONAL INSURANCE, CREDIT CARD OR OTHER COVERAGE PROVIDES YOU PROTECTION DURING THE RENTAL PERIOD. THE PURCHASE OF ANY OF THESE PRODUCTS IS NOT REQUIRED TO RENT VEHICLE.		ACCEPTS SLP					
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		ACCEPTS PAEEC					
		RENTER: X					
		ACCEPTS SLP					
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		ACCEPTS RAP					
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		RENTER: X					
		ACCEPTS SLP					

**EVERSON - EAN's Motion for Summary Disposition
Exhibit A: Rental Agreement**

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MICHIGAN, 21811 ALLEN RD, WOODHAVEN, MI 481831686 (734) 692-6050

RENTAL AGREEMENT REF#
458009 2Q5Y2P

RENTER
EVERSON, JONTE

DATE & TIME OUT
10/30/2015 09:23 AM
DATE & TIME IN
11/17/2015 09:17 AM

BILLING CYCLE
24-HOUR

CAR CLASS CHARGED
FCAR

VEH #3 2015 NISSN ALTI 24DS
VIN# 1N4AL3AP2FN378945
LIC# DJK3549
MILES DRIVEN 1295
CAR CLASS: FCAR

VEH #2 2015 DODG CHAR P4DR
VIN# 2C3CDX8G3PH865977
LIC# JWR9770
MILES DRIVEN 3
CAR CLASS: FCAR

VEH #1 2015 HYUN SONA 4SE
VIN# 5NPE24AFXPH028488
LIC# V872916
MILES DRIVEN 1330
CAR CLASS: FCAR

CLAIM INFO
352Q7 20B6 A

SUMMARY OF CHARGES

Charge Description	Date	Quantity	Per	Rate	Total
TIME & DISTANCE	10/30 - 11/17	18	DAY	\$17.32	\$311.76
DW	10/30 - 11/17	18	DAY	\$7.50	\$135.00
FUEL SERVICE OPTION	10/30 - 11/17				\$35.00
YOUNG DRIVER FEE (21-24)	10/30 - 11/17			WAIVED	
Subtotal:					\$481.76
Taxes & Surcharges					
VEHICLE LICENSE RECOVERY FEE	10/30 - 11/08	9	DAY	\$0.66	\$5.94
MICHIGAN STATE SALES TAX	10/30 - 11/17			6%	\$22.08
WAYNE COUNTY STADIUM TAX	10/30 - 11/17			2%	\$9.43
VEHICLE LICENSE RECOVERY FEE	11/08 - 11/17	9	DAY	\$0.66	\$5.94
Total Charges:					\$525.15
Bill-To / Deposits					
DEPOSITS					(\$525.15)

Total Estimated Amount Due \$0.00

PAYMENT INFORMATION

AMOUNT PAID	TYPE	CREDIT CARD NUMBER
\$525.15	Visa	409974...9108

Exhibit B

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**EVERSON - EAN's Motion for Summary Disposition
Exhibit B: Pennsylvania Registration Info**

SA-2C(10-0)

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WTO: 15166 3400 005520-001

TITLE: 74804772/22-JUN-15

**DealerTrack On-Line Registration System
Pennsylvania Department of Transportation Applicant Summary Statement**

Transaction: New Title/New Reg Processor: 04 EAN AGENCY/D0815783 Processed By: GLORIA COSTA
Purchase Date: Jun 15, 2015 Process Date: Jun 15, 2015 Temp Reg Date: Jun 15, 2015
Prev Title Not None Prev Dup Title Count: 0 State of Origin: None

VIN: 2C3CDXG3PH865977 Condition: Unladen weight: Stock No. PH865977
YR/Make: 2015/DODG Body: SDN GVWR: Chassis Mfr:
Odom Reading: 10 Fuel: G GVWR: Body Make:
Odom Qual: ACTUAL MILEAGE Purchase Price: \$0.00 GVWR: Seal Cap:
Brands:

Owner Information: LESSEE, IN LEASE, INC. **Insurance Information:**
EAN HOLDINGS LLC/C [] Triang in SELF INSURED
6929 N LAKEWOOD AVENUE Survivorship? 02
SUITE 100 [] Tenant in Common Mar 01, 2015 - Feb 28, 2016
TULSA OK/ [] Retired
74117 [] ODF [] VET
[A] Daily Postal Mail code: 0/0/0/0

Disabled Veteran: 0

Trade In Information	Lien Holder Information	FEES & SALES TAX INFORMATION	PERCENT FEES
VIN: None YR: None Make: None Condition: None Allowance: None Trade In RT: None Allowance: None	None	Tax exempt Reason: SEVTL AND LEASIN Tax Exempt No: 84760281 Taxable Sale Price: Sales Tax Credit: [] Local Sales Tax Override?	Sales/Use Tax: 0.00 Motor Veh. Fees: 86.00 Local Use Fee: 0.00 Other Fees: 0.00 Total: \$86.00

Assigned Tag Type: PASSENGER/03 Class: Assigned Exp Sticker No: 0117731 -
Assigned Tag No: 3WR9770 reg. GVW: Class Sticker No:
Assigned Exp Date: May/2016 reg. GCN: Transferred Title No:
Signature of Person From Whom Tag is Being Transferred: Relation to Applicant: [] w/ Renewal
No of Dup Reg Cards: 0 [] w/ Tag Replacement
[] w/ Tag Exchange

[] - Request for Optional Registration At A Weight Exceeding the GVWR (MV-1005)
WARNING: The operation of a truck loaded beyond the manufacturer's Gross Vehicle Weight Rating (GVWR) may create unsafe conditions and also void the manufacturer's warranty if damage should result from such overloading. Check with your dealer or factory representative. You should also consult your insurer concerning possible adverse effects to your insurance coverage with respect to such overloading. I/we request that the above described vehicle be registered as L-1 gross vehicle weight (GVW or GVWR) listed above under the provisions of Section 1516(b) of the vehicle code as amended by act no. 8 (1980), approved 7-15-10. I/we acknowledge that I have been warned by the department of transportation that loading by TRUCK beyond the manufacturer's gross weight rating may damage the truck and endanger its occupants, as well as other vehicles and their occupants and pedestrians, and I/we assume all risks connected with any such overloading of the truck.
I/we acknowledge that I/we may lose my/our operating privilege(s) or vehicle registration(s) for failure to maintain financial responsibility on the currently registered vehicle for the period of registration, I/we further acknowledge that I/we may be subject to a fine not exceeding \$500 and suspension of not more than two (2) years for any false statements that I/we make on this form, and I/we certify that I/we have executed and signed this form after full disclosure of that if an exception from payment of sales tax is claimed, I/we are authorized to claim this exemption. I/we further certify that all statements herein are true and correct, and make application for certificate of title for the vehicle described above.

DATE SUBMITTED and sworn to: [Signature]
Signature of Notary Public for the Commonwealth of Pennsylvania: [Signature]
Notary Seal: [Seal]
Signature of Co-Owner/Title of Authorized signer: [Signature]
[] VIN/GVW Certification or Tracing is Required
Place Signature of Person Verifying VIN/GVW or the Tracing Here:
I/we hereby certify that I have verified the VIN/GVW of this vehicle and the information above is correct.
SIGN: [Signature] DIN: 835783

COMMONWEALTH OF PENNSYLVANIA REGISTRATION CREDENTIAL
EXPIRY: MAY 31, 2016 VALID: 06/15/15
PLATE: 3WR9770
TITLE: 74804772101 EA
VIN: 2C3CDXG3PH865977
YR/MAKE: 2015 DODGE
TYPE: SDN
WTO: 15166 3400 005520-001
TITLE BRANDS:
[Signature]
I hereby acknowledge this day that I have received notice of the provisions of Section 3709 of the Vehicle Code

EAN HOLDINGS LLC
6929 N LAKEWOOD AVENUE
SUITE 100
TULSA OK
74117

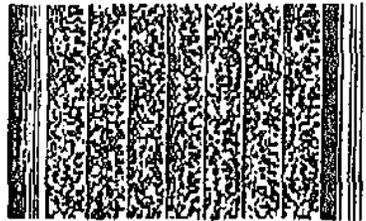


Exhibit C

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**EVERSON - EAN's Motion for Summary Disposition
Exhibit C: Unsigned Affidavit of Heidi Nisch**

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STATE OF MICHIGAN

IN THE CIRCUIT COURT OF WASHTENAW

JONTE EVERSON,

Plaintiff,

Case No.: 16-359-NF

Vs.

Hon. David S. Swartz

FARMERS INSURANCE EXCHANGE,

Defendant(s)/ Third-Party Plaintiff.

Vs.

ENTERPRISE LEASING COMPANY OF DETROIT,

Third-Party Defendant.

Daniel G. Romano (P49117)
ROMANO LAW, PLLC
Attorney for Plaintiff
23880 Woodward
Pleasant Ridge, MI 48069
248.750.0270

Mark L. Dolin (P45081)
Michael B. Barey (P41445)
KOPKA PINKUS DOLIN
Attorney for Defendant Enterprise
33533 W. Twelve Mile Road, Suite 350
Farmington Hills, MI 48331
248.324.2620

Matthew C. Koss (P74088)
CORY, KNIGHT & BENNETT
Attorney for Defendant Farmers Insurance
100 W. Big Beaver, Suite 650
Troy, MI 48084
248.244.8931

AFFIDAVIT OF HEIDI J. NISCH

Heidi J. Nisch being first and dully sworn deposes states as follows:

1. I am a risk Management coordinator for Enterprise Leasing Co of Detroit, LLC.
2. I am making this Affidavit based on my own personal knowledge of this matter.

**EVERSON - EAN's Motion for Summary Disposition
Exhibit C: Unsigned Affidavit of Heidi Nisch**

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3. I have had an opportunity to review the unit history for the vehicle rented to Jonte Everson.

4. The vehicle rented to Jonte Everson was registered in the State of Pennsylvania.

5. Based upon my review of the unit history, the vehicle rented to Jonte Everson was operated in the State of Michigan from October 30, 2015 through November 7, 2015, only.

6. As the vehicle had only been operated in the State of Michigan from October 30, 2015 through November 7, 2015, it had not been operated in the State of Michigan for an aggregate of more than 30 days in the calendar year of 2015.

7. I, if sworn as a witness, can testify competently to the facts stated in this affidavit.

HEIDI J. NISCH

Subscribed and sworn to before me
On _____, 2017

Notary Public, _____ County, MI
My Commission Expires: _____

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

J.B. HUNT TRANSPORT, INC.,

Plaintiff,

Case No. 04-CV-70347-DT

JAMAL ADAMS and STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Defendants,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Third-Party Plaintiff,

v.

HERMAN DIAZ,

Third-Party Defendant.

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Counter-Claimant,

v.

J.B. HUNT,

Counter-Defendant,

and

STATE FARM MUTUAL AUTOMOBILE

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INSURANCE COMPANY,

Third-Party Plaintiff,

v.

BLUE CARE NETWORK OF MICHIGAN,

Third-Party Defendant.

**OPINION AND ORDER DENYING STATE FARM'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING J.B. HUNT'S MOTION FOR SUMMARY JUDGMENT**

Pending before the court are cross-motions for summary judgment filed by State Farm Mutual Automobile Insurance Company ("State Farm") and J.B. Hunt Transport, Inc. ("J.B. Hunt"). The motions have been fully briefed and the court concludes that a hearing is unnecessary. See E.D. Mich. LR 7.1(e)(2). For the reasons stated below, the court will deny State Farm's motion and grant J.B. Hunt's motion.

I. BACKGROUND¹

On April 2, 2003, in Southfield, Michigan, a motorcycle driven by Jamal Adams drove into a tractor-trailer owned by J.B. Hunt and driven by J.B. Hunt employee, Herman Diaz.² As a result of the collision, Adams was seriously injured and requested that J.B. Hunt provide him personal protection benefits. J.B. Hunt refused to pay the benefits. Adams then requested that State Farm, his motor vehicle insurer, provide him

¹Portions of the Background section have been set forth in previous orders of the court. Unless otherwise noted, the facts are undisputed.

²Diaz was traveling on Eight Mile Road when he began to turn right onto a driveway abutting the road. (See Police Report, J.B. Hunt's Ex. 8.) As Diaz was making the turn, Adams, driving his motorcycle to the rear of Diaz and then moving up to Diaz's right, collided with the passenger side of Diaz's tractor. The police report notes a reckless, high speed motorcycle abruptly changing lanes and doing a "wheely." (*Id.*)

with no-fault benefits. State Farm provided the benefits to Adams, but claims that it is entitled to reimbursement and indemnification for all personal protection insurance benefits that State Farm has paid and will pay to Adams.

This action revolves around which entity is required to pay for Adams' personal protection benefits in connection with the accident. There does not appear to be any dispute that if the mandatory security requirements of the Michigan No-Fault Act apply to J.B. Hunt, then J.B. Hunt is first in priority and must provide Adams with benefits.³ Rather, the dispute centers upon whether J.B. Hunt is subject to the Michigan No Fault Act at all.⁴ J.B. Hunt instituted this declaratory action on January 30, 2004, seeking a declaration that it was not obligated to pay benefits because the tractor at issue was not

³The priority provision of the No Fault Act, Mich. Comp. Laws § 500.3114(5), provides:

A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

- (a) The insurer of the owner or registrant of the motor vehicle involved in the accident.
- (b) The insurer of the operator of the motor vehicle involved in the accident.
- (c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.
- (d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

⁴J.B. Hunt is incorporated in Georgia and has its principal place of business in Arkansas. (Pl.'s Compl. at ¶ 1.) The tractor involved in the accident was registered in Oklahoma. (*Id.* at ¶ 13.)

**EVERSON - EAN's Motion for Summary Disposition
Exhibit D: JB Hunt v GEICO (ED Mich No. 04-CV-70347)**

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covered by the Michigan No Fault Act because the tractor was not operated in Michigan for more than 30 days in 2003 (Count II).⁶ State Farm filed a counterclaim against J.B. Hunt, seeking reimbursement from J.B. Hunt for the no-fault benefits State Farm has already paid and continues to pay to Adams.

The case proceeded through discovery and dispositive motion practice. State Farm and Blue Care Network filed motions for summary judgment, arguing that J.B. Hunt was subject to the security requirements of the No Fault Act because its tractor and trailer were operated in Michigan for the requisite number of days. After holding a hearing, this court denied both motions, concluding that a rational jury could find that J.B. Hunt did not operate its tractor or trailer in Michigan for more than 30 days in 2003. (5/9/06 Order.)

After several adjournments, a jury trial was scheduled to commence on September 27, 2006. Two days prior to trial, the court was contacted by counsel, who requested that trial be adjourned and discovery reopened because of J.B. Hunt's erroneous discovery responses. Specifically, in March 2005, State Farm had requested that J.B. Hunt produce "all documents related to the J.B. Hunt trailer that was involved in the accident that is the subject of the captioned litigation for the life of the trailer, including but not limited to . . . [r]epair records." (See State Farm's Mot. for Costs at 6.) In response, J.B. Hunt produced repair records in June 2005, which J.B. Hunt represented related to the trailer at issue. (*Id.*) State Farm contends that these

⁶J.B. Hunt also argues that the Michigan No Fault Act is unconstitutional as applied (Counts III & IV) and that Adams' injuries were caused intentionally because Adams was "pulling a wheelie" on his motorcycle (Count I). (See Pl.'s Compl.) None of these theories are at issue here.

documents established that the trailer at issue was operated in Michigan for more than 30 days in 2003. While preparing for trial, however, J.B. Hunt discovered that some, or a majority, of the repair records which it produced actually related to a tractor and trailer that were not involved in the accident at issue. (*Id.* at 7.) J.B. Hunt informed State Farm, and together the parties contacted the court for an emergency telephone conference.

As a result of this conference, and because of J.B. Hunt's erroneous document production, the court adjourned the trial and reopened discovery. (See 9/29/06 Order.) The court conducted another conference in October 2006 and determined that additional discovery was warranted. (See 10/31/06 Order.) Discovery has now concluded, and both State Farm and J.B. Hunt have filed motions for summary judgment.

II. STANDARD

Under Federal Rule of Civil Procedure 56, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). "In deciding a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor." *Sagan v. United States*, 342 F.3d 493, 497 (6th Cir. 2003). "Where the moving party has carried its burden of showing that the pleadings, depositions, answers to interrogatories, admissions and affidavits in the record, construed favorably to the non-moving party, do

**EVERSON - EAN's Motion for Summary Disposition
Exhibit D: JB Hunt v GEICO (ED Mich No. 04-CV-70347)**

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not raise a genuine issue of material fact for trial, entry of summary judgment is appropriate." *Gutierrez v. Lynch*, 826 F.2d 1534, 1536 (6th Cir. 1987) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)).

The court does not weigh the evidence to determine the truth of the matter, but rather, to determine if the evidence produced creates a genuine issue for trial. *Sagan*, 342 F.3d at 497 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

The moving party must first show the absence of a genuine issue of material fact. *Plant v. Morton Int'l, Inc.*, 212 F.3d 929, 934 (6th Cir. 2000) (citing *Celotex*, 477 U.S. at 323).

The burden then shifts to the nonmoving party, who "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). They must put forth enough evidence to show that there exists a genuine issue to be decided at trial. *Plant*, 212 F.3d at 934 (citing *Anderson*, 477 U.S. at 256). Summary judgment is not appropriate when "the evidence presents a sufficient disagreement to require submission to a jury." *Anderson*, 477 U.S. at 251-52 (1986).

The existence of a factual dispute alone does not, however, defeat a properly supported motion for summary judgment – the disputed factual issue must be material. See *id.* at 252 (emphasis and alteration in original) (citation omitted) ("The Judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict – 'whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.'"). A fact is "material" for purposes of summary judgment when proof of that fact would establish or refute an

essential element of the claim or a defense advanced by either party. *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984) (citation omitted).

III. DISCUSSION

A. Security Requirements of Mich. Comp. Laws § 500.3102(1)

The issue at hand centers upon whether J.B. Hunt's tractor-trailer was subject to the mandatory security requirements of the No-Fault Act at the time of the collision. If the tractor-trailer was subject to such security requirements, then J.B. Hunt is first in priority to provide Adams with personal protection insurance benefits. If J.B. Hunt is not subject to the security requirements, then J.B. Hunt is not obligated to provide Adams with benefits and the obligation falls to the next entity in the priority line, in accordance with the priority provision of § 500.3114(5).⁶

The relevant provision of the No Fault Act provides, in pertinent part:

A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payments of benefits pursuant to this chapter.

Mich. Comp. Laws § 500.3102(1). Therefore, "[s]ecurity must be maintained for vehicles operated in this state for more than thirty days in a single calendar year."

Parks v. Detroit Auto Inter-Insurance Exchange, 393 N.W.2d 833, 837 (Mich. 1986).

The 30-day requirement is designed to protect tourists and other transient nonresidents

⁶There is a dispute between State Farm and Blue Care Network regarding which entity is next in priority to provide Adams with no fault benefits, should J.B. Hunt be found not subject to the security requirements of the No Fault Act. The court expresses no opinion on that dispute. Pursuant to a stipulated order, State Farm's claims against Blue Care Network are stayed pending resolution of all of the claims among J.B. Hunt, State Farm, Jamal Adams, and Herman Diaz. (9/24/04 Stipulated Order.)

from criminal sanctions imposed by the No Fault Act. *Gersten v. Blackwell*, 314 N.W.2d 645, 648 (Mich. Ct. App. 1981).

B. Interpretation of "calendar year" as used in § 500.3102(1)

State Farm grounds its motion on the assertion that the term "calendar year," as used in § 500.3102(1), refers to the twelve-month period immediately preceding an accidental bodily injury upon which a claim for benefits is based. State Farm maintains

that since the tractor at issue was undisputedly operated in Michigan for more than 30 days during the twelve months preceding the collision, J.B. Hunt is subject to the security requirements of the No Fault Act. (State Farm's Mot. at 11-13.) J.B. Hunt, on the other hand, contends that the plain, unambiguous meaning of "calendar year" is the time period of January 1 through December 31 of the year in which the claim arises. (J.B. Hunt's Resp. Mot. at 1-12.) J.B. Hunt asserts that since neither [its tractor nor its trailer was operated in Michigan for more than 30 days in 2003, neither the tractor nor the trailer was subject to the security requirements of the No Fault Act.]⁷ (*Id.*)

Accordingly, the heart of the issue lies in the interpretation of "calendar year," as used in Michigan's No Fault Act.

Although the No Fault Act does not define the term "calendar year," the term is defined in Michigan case law. In *Mathews v. Republic Western Ins. Co.*, No. 251333,

⁷J.B. Hunt does acknowledge that "in some calendar years, the tractor involved in the subject accident was driven in Michigan for more than 30 days," just not in the calendar year 2003. (J.B. Hunt's Answers to State Farm's Request for Admissions at 2, J.B. Hunt's Ex. 13.)

**EVERSON - EAN's Motion for Summary Disposition
Exhibit D: JB Hunt v GEICO (ED Mich No. 04-CV-70347)**

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2006 WL 510512, at *3 (Mich. Ct. App. March 2, 2006),⁶ which likewise explored the meaning of the term calendar year within the context of § 500.3102(1), the court declared that the plain meaning of "calendar year" is the twelve-month period from January 1 through December 31 of the year in which the accident occurred.⁷ The defendant in *Mathews*, the insurer of the truck involved in the accident, attempted to prove that the truck was not subject to the mandatory security requirements of the No

⁶The Michigan Supreme Court granted leave to appeal the Court of Appeals' decision in *Mathews* and directed the parties to brief whether the term "calendar year" refers "to the 12 months preceding the accidental bodily injury on which a claim for personal protection benefits is based, the calendar year in which the claim arises, the calendar year preceding the year in which the claim arises, to all of the foregoing, or to some other period equal to a calendar year." *Mathews v. Republic Western Ins. Co.*, 725 N.W.2d 463, 464 (Mich. 2007). However, the Supreme Court went on to vacate its order granting leave to appeal and ordered that leave to appeal be denied, noting that "we are no longer persuaded that the questions presented should be reviewed by this Court." *Mathews v. Republic Western Ins. Co.*, 731 N.W.2d 426 (Mich. May 25, 2007). The court also denied a motion for reconsideration. *Mathews v. Republic Western Ins. Co.*, 733 N.W.2d 17 (Mich. June 22, 2007). Consequently, the order suggesting that the term "calendar year" is subject to various interpretations has no precedential value. Furthermore, State Farm's argument that this court should stay the matter pending the Michigan Supreme Court's determination of the correct interpretation of calendar year is moot.

⁷Random House Webster's College Dictionary defines "year" as: "a period of 365 or 366 days, in the Gregorian calendar, divided into 12 calendar months, now reckoned as beginning Jan. 1 and ending Dec. 31 (calendar year)." *Random House Webster's College Dictionary* 1491 (2nd ed. 1997) (bold in original). Black's Law Dictionary defines "calendar year" thus: "[t]he period from January 1 to December 31 inclusive. Ordinarily calendar year means 365 days except leap year, and is composed of 12 months varying in length." *Black's Law Dictionary* 140 (6th ed. 1991). Additionally, the term "calendar year" has been construed in several cases, spanning jurisdictions, to indicate the period from January 1 to December 31, inclusive. E.L. Strobin, *What 12-month Period Constitutes "year" or "calendar year" as Used in Public Enactment, Contract, or other Written Instrument*, 5 A.L.R.3d 584 (1966).

A court may consult a dictionary definition to ascertain the generally accepted meaning of a term that is not expressly defined by statute. *Oakland Co. Bd. of Co. Rd. Comm'rs v. Michigan Property & Casualty Guaranty Ass'n*, 575 N.W.2d 751, 757-758 (Mich. 1998).

Fault Act by presenting an affidavit indicating that the truck had not been operated in Michigan for more than 30 days "in the calendar year preceding" the accident. The court rejected the notion that the "preceding" calendar year was relevant in the § 500.3102(1) analysis. It noted:

[T]he trial court correctly concluded that Balcerzak's affidavit did not resolve the question as to the location of the vehicle between January 1, 1996 and the date of the accident, July 14, 1996. See Random House Webster's College Dictionary (2nd ed), p 1491, defining the word "year" as "as a period ... divided into 12 calendar months, now reckoned as beginning January 1 and ending December 31 (calendar year)." [Bold in original]; see also Black's Law Dictionary (8th ed), p 1648, defining the word "year" as "[t]welve calendar months beginning January 1 and ending December 31. -Also termed calendar year." [Italics in original]. Giving the term, "calendar year" its plain meaning, Balcerzak's affidavit must be read as addressing the location of the truck between January 1, 1995 and December 31, 1995, and not addressing the vehicle's location from January 1, 1996 forward.

Matthews, 2006 WL 510512 at *3.¹⁰ In addition to establishing that a calendar year means the interval of January 1 through December 31, *Matthews* established that the relevant calendar year is the one in which the accident occurred. This is apparent in the court's reasoning that Balcerzak's affidavit is deficient because it does not resolve the question regarding how many days the truck was operated in Michigan in the year of the accident. If the relevant calendar year were the one preceding the year in which the accident occurred, there would be no need to determine how many days the truck was operated in Michigan in the year of the accident. See also *Comcast Cablevision of Sterling Heights, Inc. v. City of Sterling Heights*, 443 N.W.2d 440, 444 (Mich. Ct. App.

¹⁰Although *Matthews* is unpublished and thus not precedentially binding, this court is entitled to conclude that the reasoning of an unpublished decision is persuasive. *Steele v. Dep't of Corrections*, 546 N.W.2d 725, 728 n.2 (Mich. Ct. App. 1996). This court finds the reasoning of *Matthews* to be persuasive and applicable to the instant case.

**EVERSON - EAN's Motion for Summary Disposition
Exhibit D: JB Hunt v GEICO (ED Mich No. 04-CV-70347)**

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1989) ("The term 'year' when used in a statute has generally been construed to denote a calendar year, running from January 1 to December 31. . . . [I]f Congress intended a twelve-month period, it knew how to so specify . . .").

The same statutory provision was also involved in *Parks*, where the court was called upon to determine whether a tractor-trailer was operated in Michigan for more than 30 days. *Parks*, 393 N.W.2d at 837. Although the *Parks* court was not confronted with, and thus made no express ruling regarding the correct interpretation of "calendar year," the court was called upon to apply § 500.3102(1) and did so using the calendar year in which the claim arose. Because the tractor-trailer at issue in *Parks* was not operated in Michigan for more than 30 days in the year in which the claim arose, the court held that "the trailer was not subject to the mandatory security requirements of § 3102(1) at the time of the injury." *Id.* at 837.

State Farm fails to cite to, and this court could not locate, case law to support the contention that the twelve months preceding the accident is the relevant time period. Although the "twelve months preceding" argument is unsubstantiated, the court does recognize that, notwithstanding the plain meaning of "calendar year," there exist a few cases involving § 500.3102(1) which make mention of a "previous" or "preceding" calendar year. Judge Reilly in his concurring opinion in *Grosshelm v. Associated Truck Lines, Inc.*, 450 N.W.2d 40 (Mich. Ct. App. 1989), stated that § 500.3102 "must be interpreted to impose the burden on the nonresident owner or registrant of the vehicle which is not registered in Michigan to maintain records to support the claim that the vehicle had not been operated in Michigan for more than thirty days in the *previous calendar year.*" *Id.* at 42 (emphasis added). Additionally, the court in *Citizens Ins. Co. of*

America v. Roadway Exp., Inc., 354 N.W.2d 385 (Mich. Ct. App. 1984) noted that "[defendant] submitted uncontroverted affidavits stating that its trailer was registered in the State of Tennessee and had not been operated in Michigan for more than 30 days during the *preceding calendar year*." *Id.* at 387 (emphasis added).

This court is not convinced that the language in *Grosshelm* or *Citizens* sufficiently ~~establishes that the calendar year preceding the year in which the accident occurred is~~ the relevant time period. First, as explained *supra*, the bulk of the case law holds that the relevant time period is the calendar year in which the accident occurred. See *Parks*, 393 N.W.2d at 837; *Matthews*, 2006 WL 610512 at *3.¹¹ Significantly, even if *Grosshelm* and *Citizens* can be viewed as lending credence to the argument that the term calendar year is subject to various interpretations, the cases do nothing to support State Farm's contention that the twelve months preceding the accident is the relevant time period. *Grosshelm* and *Citizens* refer, respectively, to a previous and preceding "calendar year," i.e., January 1 through December 31 of the year before the year in which the accident occurred. To the contrary, State Farm is the proponent of a completely different time period.

Second, the court relies upon case law that is consistent with a plain reading of § 500.3102(1). Section 500.3102(1) makes no mention of a "preceding" or "previous" calendar year. Rather, the statute simply provides that any vehicle or motorcycle operated in Michigan for an aggregate of more than 30 days "in any calendar year" must

¹¹For additional cases which utilized the term "calendar year" as opposed to a preceding or previous year, see *Farmers' Ins. Exchange v. Farm Bureau General Ins. Co. of Michigan*, 731 N.W.2d 757, 762 (Mich. 2007); *McGhee v. Helsel*, 686 N.W.2d 6, 8 (Mich. Ct. App. 2004); *Drake v. Gordon*, 644 F.Supp. 376, 378 (E.D. Mich. 1985).

be insured. Statutory language must be enforced as written and according to the plain meaning of the words.¹² *DeVillers v. Auto Club Insurance Ass'n*, 702 N.W.2d 539, 552, 555 (Mich. 2005). Subsequent to the determination that the term "calendar year" refers to the time period of January 1 through December 31, the next focus of inquiry is which calendar year is the correct one to consider. J.B. Hunt contends that only the calendar year in which the accident occurs is relevant in determining whether the vehicle involved in the accident was required to be insured at the time of the accident. (J.B. Hunt's Resp. at 1-12.) The court agrees that the calendar year in which the accident occurred, and not the preceding year, is the relevant calendar year.

¹²According to the Michigan Court of Appeals:

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. Initially, we review the language of the statute itself. If the statute is unambiguous on its face, the Legislature is presumed to have intended the meaning plainly expressed and further judicial interpretation is not permissible. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. An ambiguity of statutory language does not exist merely because a reviewing court questions whether the Legislature intended the consequences of the language under review. An ambiguity can be found only where the language of a statute as used in its particular context has more than one common and accepted meaning. Thus, where common words used in their ordinary fashion lead to one reasonable interpretation, a statute cannot be found ambiguous.

Cofacci v. McMillan, 662 N.W.2d 87, 90 (Mich. Ct. App. 2003) (internal citations omitted).

**EVERSON - EAN's Motion for Summary Disposition
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Finally, the remarks in *Grosshelm* and *Citizens* pertaining to the "preceding" or "previous" calendar year are fleeting and ill-supported.¹³ Neither opinion includes an analysis of the specific issue implicated in this case. Instead, the opinions present a singular mention of the word "previous" or "preceding" without providing any explanation as to the origin or meaning of the word or anything by way of support for the contention that the preceding or previous year is relevant in analyzing § 500.3102(1). In sum, the remarks are fleeting and unsubstantiated and do not support a finding that the calendar year preceding the year of the accident is the relevant time period for purposes of § 500.3102(1).

Further, State Farm also claims that the purpose of the 30-day provision would best be served by construing the term calendar year to refer to the twelve months preceding the accident. (State Farm's Mot. at 12-13.) The purported merits of such a construction notwithstanding, the cost-benefit analysis involved in determining which time period more fairly serves the purposes of the No Fault Act is a matter of policy best left to the Legislature.

¹³In *Grosshelm*, the majority opinion makes no mention of a preceding or previous calendar year. The extent of the elaboration on § 500.3121(1) is as follows: "[defendant] claimed it was not required to insure the truck in Michigan because the truck had not operated in Michigan for the thirty days required." *Grosshelm*, 450 N.W.2d at 41. Likewise in *Citizens*, the issue in front of the court did not involve interpretation of the term calendar year, but rather, "[t]he sole issue presented in this case is whether the trailer is a separate and distinct "motor vehicle" within the meaning of the no-fault act." *Citizens*, 354 N.W.2d at 387. The remark concerning a preceding calendar year was singular, unsupported, and did not play a role in the court's analysis of the issue before it.

C. The Law of the Case Doctrine

In denying State Farm's first motion for summary judgment, this court concluded that "a reasonable jury could find that J.B. Hunt operated its tractor in Michigan for fewer than 31 days in 2003 and that it operated its trailer in Michigan for fewer than 31 days in 2003." (5/9/06 Order at 17.) Although the court did not expressly state that it had made a finding that the relevant time period was the calendar year 2003, as the issue of

interpreting the term "calendar year" did not arise until State Farm presented it in its second motion for summary judgment, a review of the court's order suggests that the court proceeded as though the calendar year 2003 was the relevant time period.¹⁴

Pursuant to the law-of-the-case doctrine, findings made at one point in the litigation become the law of the case for subsequent stages of that same litigation. *United States v. Moore*, 38 F.3d 1419, 1421 (8th Cir. 1994). The doctrine applies to findings either expressly or impliedly made. *Id.*

Notwithstanding State Farm's failure to raise the issue in its first motion for summary judgment, this court acknowledges that where, as here, the contested issue is critical to the disposition of the case, yet was not specifically and fully addressed previously, an injustice could occur by precluding a reopening of the issue. To the extent that the calendar year issue was previously decided, the law-of-the-case doctrine

¹⁴It does not appear that the court made an explicit finding concerning which time period was the correct one, but rather, simply followed the parties' lead and accepted the time period proffered by the parties. At least implicitly, it seems that the court determined that 2003 was the correct time period to be utilized in determining how many days the tractor and trailer were operated in Michigan. Additionally, both J.B. Hunt and State Farm framed the issue as involving the time period of 2003. Nowhere in State Farm's first motion for summary judgment or in its reply, did State Farm raise the argument that the relevant time period was the twelve months preceding the accident.

allows a court to reopen an issue previously decided where "a clearly erroneous decision would work a manifest injustice." *Id.* However, a manifest injustice cannot be said to have occurred here. As discussed, *supra*, the court has analyzed the issue on its merits and is persuaded that "calendar year," as used in § 500.3102(1), refers to the time period of January 1 through December 31 of the year in which the accident occurred. Hence, the law-of-the-case doctrine, if applicable, serves to bolster the court's determination, and, if not applicable, does nothing to undermine the court's determination, as the court's previous findings are in accordance with its present findings.

D. OBC Reports

There was an on-board computer ("OBC") installed on the tractor at issue which used satellite technology to record the tractor's location.¹⁵ (Diaz Dep. at 41, 70-71, J.B. Hunt's Ex. 5.) OBC reports establish that the tractor was operated in Michigan for 30 days during the calendar year of 2003.¹⁶ (OBC Records, J.B. Hunt's Ex. 11.)

¹⁵The OBC is on whenever the tractor's engine is running. (Diaz Dep. at 68-69, J.B. Hunt's Ex. 5.) At least once an hour, the OBC sends a signal to a satellite indicating the tractor's location. (Cope Dep. at 64-66, J.B. Hunt's Ex. 7.) The OBC also sends a signal when the tractor is turned on or off and when a driver begins and finishes unloading. (Diaz Dep. at 69-71, J.B. Hunt's Ex. 5.)

¹⁶The tractor was operated in Michigan in the calendar year of 2003 on the following thirty dates: January 6, 7, 21, and 22, February 2, 3, 9, 10, 11, 12, 17, 18, and 19, March 10, 11, 12, 13, 18, 19, 24, 25, 30, and 31, and April 1, 2, 3, 4, 27, 28, and 29. (OBC Records, J.B. Hunt's Ex. 11.)

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Although there was no OBC on the trailer at issue, as is typical for J.B. Hunt's trailers, a trailer's location could be tracked via the trailer's dispatch history, which consists of OBC records for the tractors that were at any point connected to the trailer. (Diaz Dep. at 52-53, J.B. Hunt's Ex. 5.) By reviewing the OBC records for the tractors associated with a particular trailer, one can determine how many days the trailer was operated in a given state. (Core Dep. at 108, J.B. Hunt's Ex. 7.) The dispatch records establish that the trailer at issue was operated in Michigan for 16 days during the 2003 calendar year.¹⁷ (Dispatch Records, J.B. Hunt's Ex. 12.)

Significantly, State Farm does not present any evidence to dispute the OBC or dispatch records. Rather, State Farm focuses its argument on the interpretation of calendar year. Utilizing the "twelve months preceding the accident" time period, it is uncontested that the tractor was operated in Michigan for 49 days.¹⁸ (2002 OBC Records, State Farm's Ex. 6.) However, as explained above, the correct time period is the calendar year of 2003 (January 1 through December 31, 2003). Accordingly, the tractor's presence in Michigan during a different time period is irrelevant.

E. Adverse Inference

J.B. Hunt drivers are required to make an entry into their driver's log every time they change an activity. (8/10/06 Griffin Dep. at 17, J.B. Hunt's Ex. 9.) Each time a

¹⁷The trailer appears to have been operated in Michigan in the calendar year of 2003 on the following sixteen dates: February 11 and 12, March 31, April 2 and 3, June 15, 16, and 17, August 25, 26, and 27, September 8 and 9, and October 28, 29, and 30. (Dispatch Records, J.B. Hunt's Ex. 12.)

¹⁸Pursuant to the dates provided by J.B. Hunt in its Answer to Blue Care's Second Interrogatories, the tractor at issue was not operated for more than 30 days during the calendar year 2002. (J.B. Hunt's Answers to Blue Care's Second Interrogatories, J.B. Hunt's Reply to Blue Care's Mot. at Ex. 1.)

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driver makes a comment on the log, he is required to list the state wherein the activity occurred. (*Id.* at 25.) J.B. Hunt was unable to produce the driver logs or repair documents for the tractor and trailer in question, because it had already discarded the documents. (J.B. Hunt's Reply to Blue Care's Br. at 4-5.) J.B. Hunt preserved the logs and repair documents for the requisite amount of time provided in the federal regulations governing interstate motor carriers, then discarded them. (*Id.*) Blue Care Network argues that, notwithstanding J.B. Hunt's compliance with the regulations, J.B. Hunt's act of discarding the documents after the potential for litigation had arisen entitles Blue Care¹⁹ to an adverse inference that the tractor and trailer were operated in Michigan for more than 30 days in 2003. (Blue Care Network's Resp. at 9.)

Michigan courts have held that "[e]ven when an action has not been commenced and there is only a potential for litigation, the litigant is under a duty to preserve evidence that it knows or reasonably should know is relevant to the action." *Brenner v. Kolk*, 573 N.W.2d 65, 71 (Mich. Ct. App. 2002). In the instant case, J.B. Hunt was on notice of the "potential for litigation" at least by April 25, 2003, when Adams

¹⁹Although Blue Care did not file a summary judgment motion of its own, it did file a brief in opposition to J.B. Hunt's motion. (See Blue Care's Br. in Opposition to J.B. Hunt's Mot.) Blue Care's arguments essentially tracked State Farm's arguments. The only argument that Blue Care raised in its brief that State Farm did not raise in its own motion was the adverse inference argument. (Blue Care's Br. at 9-10.) Pursuant to a stipulated order slaying State Farm's claims against Blue Care, Blue Care's role in this action is not the focus of the instant order. (9/24/04 Stipulated Order.)

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presented his request for benefits and J.B. Hunt denied that request. Generally, where a party deliberately destroys or fails to produce evidence, courts will presume that the evidence would operate against the party who destroys or suppresses. *Hamann v. Ridge Tool Co.*, 539 N.W.2d 753, 755 (Mich. Ct. App. 1995). However, missing evidence gives rise to an adverse presumption only when the complaining party can establish intentional conduct indicating fraud and a desire to destroy evidence and thereby suppress the truth. *Ward v. Consol. R.R. Corp.*, 693 N.W.2d 366, 371 (Mich. 2005).

In the instant case, there is no evidence to suggest that J.B. Hunt destroyed the records fraudulently or in bad faith. The records were discarded in accordance with the controlling regulations and in accordance with J.B. Hunt's standard business practices. To the extent that J.B. Hunt can be considered culpable for failing to preserve relevant documents after the potential for litigation had arisen, the court is still not persuaded that an adverse inference is necessary. J.B. Hunt preserved the OBC reports, which are the best evidence to determine the tractor's location, and such evidence conclusively established that neither the tractor nor trailer was in Michigan for more than 30 days in the calendar year 2003. Where, as here, there exists credible, uncontroverted evidence to refute the adverse inference, the adverse inference is rebutted, if not altogether unwarranted. *Ward*, 693 N.W.2d at 371 (stating that a presumption disappears where there is credible rebuttal evidence or where there was no intentional conduct indicating fraud).

Any inference that the tractor was operated in Michigan for more than 30 days in 2003 is rebutted by the OBC records. The OBC records are what J.B. Hunt relies upon

for the most accurate method of tracking a tractor. (Copa Dep. at 24, J.B. Hunt's Ex. 7.)

Although the driver logs also provide information concerning a tractor's location, the logs are not as accurate as OBC records in determining the exact location of a tractor.

(9/27/08 Griffin Dep. at 75, 77-78, J.B. Hunt's Ex. 10.) Because a driver is only required to make an entry in his driver log when he changes an activity, the logs would not document the tractor's presence in a state if the driver has not changed activity within

the state and had not otherwise had occasion to make an entry into his log during his travel through the state.²⁰ (8/10/05 Griffin Dep. at 19, J.B. Hunt's Ex. 9; 9/27/08 Griffin Dep. at 77-78, J.B. Hunt's Ex. 10.)

The OBC, which is on whenever the tractor's engine is running, sends a signal to a satellite indicating the tractor's location. A signal is sent at various times, including, at least once an hour, when the tractor is turned on or off, and when a driver begins and finishes unloading. (Diaz Dep. at 68-71, J.B. Hunt's Ex. 5; Copa Dep. at 64-66, J.B. Hunt's Ex. 7.) Each OBC entry identifies, with objective precision, the city and state in which the tractor was located when the signal was sent, including latitudinal and longitudinal coordinates. The OBC records account for every day that the tractor was operated in 2003; the records begin with January 1, 2003 and run through May 4, 2003, at which point the tractor was taken out of service at a J.B. Hunt facility in Georgia, and no longer driven, in preparation for a May 28, 2003 trade-in of the tractor, pursuant to J.B. Hunt's standard retention policy. (8/10/05 Griffin Dep. at 105-108, J.B. Hunt's Ex.

²⁰In a driver log, drivers are required to account for all of their time, including time spent loading or unloading, driving, taking a break, or sleeping. (Diaz Dep. at 67, J.B. Hunt's Ex. 5; 8/10/05 Griffin Dep. at 17-23, J.B. Hunt's Ex. 9.)

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9.) There is no gap in the records and there is no evidence that the records are inaccurate or otherwise deficient.

Consequently, State Farm's motion fails in that State Farm cannot demonstrate that the tractor or trailer was in Michigan for more than 30 days in the calendar year 2003, the relevant time period. J.B. Hunt's motion is meritorious because it is supported by the OBC and dispatch records which establish no question of material fact that

neither the tractor nor the trailer was operated in Michigan for more than 30 days in 2003.

IV. CONCLUSION

For the reasons stated above, IT IS ORDERED that State Farm's "Motion for Summary Judgment" [Dkt. # 104] is DENIED and J.B. Hunt's "Motion for Summary Judgment" [Dkt. # 105] is GRANTED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 19, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 19, 2007, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522

s:\Cleland\Judge\B DESK\03\ORDERS\04-70347_JBHUNT_67.vpd

Exhibit F

Order

Michigan Supreme Court
Lansing, Michigan

December 28, 2016

Robert P. Young, Jr.,
Chief Justice

153501-2

Stephen J. Markman
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

ADAM HEICHEL,
Plaintiff,

and

ST. JOHN MACOMB-OAKLAND HOSPITAL,
Intervening Plaintiff-Appellee,

and

MENDELSON ORTHOPEDICS, P.C.,
Intervening Plaintiff,

v

SC: 153501-2
COA: 323818; 324045
Wayne CC: 12-003780-NF

GEICO INDEMNITY COMPANY,
Defendant/Third-Party
Plaintiff-Appellant,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Defendant-Appellant,

and

EAN HOLDINGS, INC. and ENTERPRISE
HOLDINGS, INC.,
Defendants/Third-Party
Defendants-Appellees.

On order of the Court, the application for leave to appeal the March 1, 2016 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.



d1212

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 28, 2016

Clerk

Exhibit G

**EVERSON - EAN's Motion for Summary Disposition
Exhibit G: Representative Briefing (Frazier v MAIPF)**

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

KALEEA MONIQUE FRAZIER,

CASE NO. 15-104837-NF

Plaintiff,

HON. GEOFFREY L.
NEITHERCUT

vs.

MICHIGAN AUTOMOBILE INSURANCE
PLACEMENT FACILITY and
ENTERPRISE LEASING COMPANY OF
DETROIT, LLC d/b/a NATIONAL CAR
RENTAL,

Defendant.

KATRINA A. MURRBL (P53831)

MARK L. DOLIN (P45081)

ROBIN A. MISERLAIN (P78324)

MICHAEL B. BAREY (P41445)

APPLEBAUM & STONE, PLC

KOPKA PINKUS DOLIN PLC

Attorneys for Plaintiff

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**DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AS TO COUNT II OF
PLAINTIFF'S COMPLAINT PURSUANT TO MCR 2.116(C)(8) and (10)**

BRIEF IN SUPPORT OF MOTION

NOTICE OF HEARING

NOW COMES Defendant, ENTERPRISE LEASING COMPANY OF DETROIT, LLC d/b/a NATIONAL CAR RENTAL ("Enterprise"), by and through its attorneys, KOPKA PINKUS DOLIN PLC and for its Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and (10), states as follows:

1. This is a first party case arising from a motor vehicle accident that occurred on May 31, 2014.
2. Plaintiff alleges that she sustained physical injuries as a result of the May 31,

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Exhibit G: Representative Briefing (Frazier v MAIPF)**

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2014 motor vehicle accident in Calumet, Illinois and has filed a first party claim with Enterprise seeking payment of Michigan No-Fault personal injury protection benefits. (Exhibit A Police report).

3. The involved vehicle is a rental vehicle rented by Plaintiff from Defendant for the period of May 31, 2014 to June 1, 2014. (Exhibit B, rental contract).

4. The rental vehicle at issue was an Illinois registered vehicle. (Exhibit C, vehicle registration).

5. Plaintiff alleges in her Complaint that she is entitled to receive first party personal injury protection benefits from Enterprise pursuant to MCL 500.3101.

6. MCL 500.3102 exempts non-resident owners or registrants of motor vehicles from maintaining Michigan personal injury protection coverage on vehicles that are not operated in Michigan for an aggregate of more than 30 days in a calendar year.

4. MCL 500.3101 is inapplicable to the facts in this case as the rental vehicle at issue was not operated in Michigan for an aggregate period of more than 30 days in 2014. (Exhibit D, vehicle rental history and Affidavit of Sarah Reininger).

5. As MCL 500.3101 is inapplicable to Enterprise, Count II of Plaintiff's Complaint fails to state a claim upon which relief may be granted and summary disposition of Count II is appropriate per MCR 2.116(C)(8).

6. As MCL 500.3101 is inapplicable to the facts in this case, there is no genuine issue of material fact contained in Count II of Plaintiff's Complaint and summary disposition of Count II is appropriate per MCR 2.116(C)(10).

WHEREFORE, Enterprise respectfully requests that this Honorable Court grant its Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (10) and dismiss Count II

**EVERSON - EAN's Motion for Summary Disposition
Exhibit G: Representative Briefing (Frazier v MAIPF)**

of Plaintiff's Complaint with prejudice.

Respectfully Submitted,

KOPKA PINKUS DOLIN PLC

By: 

MARK L. DOLIN (P45081)

MICHAEL B. BAREY (P41445)

Attorneys for Defendant Enterprise

33533 W. Twelve Mile Road, Suite 350

Farmington Hills, MI 48331-5611

(248) 324-2620

Dated: October 21, 2015

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

KALEEA MONIQUE FRAZIER,

CASE NO. 15-104837-NF

Plaintiff,

HON. GEOFFREY L.
NEITHERCUT

vs.

MICHIGAN AUTOMOBILE INSURANCE
PLACEMENT FACILITY and
ENTERPRISE LEASING COMPANY OF
DETROIT, LLC d/b/a NATIONAL CAR
RENTAL,

Defendant.

KATRINA A. MURREL (P53831)
ROBIN A. MISERLAIN (P78324)
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BRIEF IN SUPPORT OF MOTION

I. FACTUAL OVERVIEW

Plaintiff alleges that she suffered physical injuries in a motor vehicle accident that occurred on May 31, 2014 in Calumet, Illinois while operating an Illinois registered rental vehicle owned by Enterprise.

Plaintiff now brings this suit, alleging in Count II of her Complaint that she is entitled to first party Michigan No-Fault personal injury protection benefits from Enterprise per MCL 500.3101. However, MCL 500.3102 exempts Enterprise from maintaining Michigan No-Fault personal injury coverage as the vehicle rented by Plaintiff was registered in Illinois and was not operating in Michigan for an aggregate of more than 30 days in 2014. Therefore, Plaintiff has

**EVERSON - EAN's Motion for Summary Disposition
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not stated a claim upon which relief can be granted against Enterprise and there is no genuine issue of material fact as to Enterprise such that Count II of Plaintiff's Complaint must be dismissed with prejudice.

II. STANDARD OF REVIEW

A motion brought pursuant to MCR 2.116(C) (9) tests the legal sufficiency of a claim. *Koentz v City of Berkeley*, 460 Mich 667, 674, 597 NW2d 99, (1999); *Spiek v Department of Transportation*, 456 Mich 331, 337, 572 NW2d 201, (1998). When deciding such a motion, the court may consider only the pleadings. MCR 2.116(G) (5); *Spiek, supra*; *Simko v Blake*, 448 Mich 648, 654, 532 NW2d 842, (1995). However, in an action based on a contract, the court may examine the contract. *Woody v Tamer*, 158 Mich App 764, 770, 405 NW2d 213, (1987).

The court must accept as true all factual allegations contained in the complaint, as well as all reasonable inferences which may be drawn from those allegations. *Singerman v Municipal Serv Bureau*, 455 Mich 135, 139, 565 NW2d 383, (1997); *Simko, supra*. The court may not consider the merits of the plaintiff's factual allegations. *Mieras v DeBona*, 452 Mich 278, 291, 550 NW2d 202, (1996). "The trial court must consider all well-pleaded facts in favor of the nonmoving party and should grant the motion only if the allegations fail to state a legal claim." *Wortelboer v Benzle Co*, 212 Mich App 208, 217, 537 NW2d 603, (1995); *Radtke v Everett*, 442 Mich 368, 373-374, 501 NW2d 155, (1993).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. In deciding a motion brought under this sub-rule, the trial court considers the documentary evidence which is substantively admissible and which is submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Michigan 109, 120; 597

N.W.2d 817 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). The Plaintiff must proffer substantively admissible evidence in opposition to a motion under MCR 2.116(C)(10), and again the reviewing Court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. See *Malden, supra*, at 121 (1999).

The Supreme Court defined "substantively admissible" evidence as requiring an adverse party to "set forth specific facts showing there is a genuine issue for trial." Further, by "presenting inadmissible hearsay evidence, a non-moving party is actually promising to create an issue for trial where the promise is incapable of being fulfilled. The non-moving party is not showing that a genuine issue exists. Permitting inadmissible evidence to suffice an opposing summary disposition would require less than the pre-1985 court rule and create illusory fact issues." See *Malden, supra*, at 124 (1999).

III. LAW AND ARGUMENT

In Count II of her Complaint, Plaintiff plead that she is entitled to Michigan No-Fault personal injury protection benefits from Enterprise as MCL 500.3101 requires.

MCL 500.3101 provides as follows:

500.3101 Security for payment of benefits required; period security required to be in effect; deletion of coverages; definitions; policy of insurance or other method of providing security; filing proof of security; "insurer" defined.

Sec. 3101.

(1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection

**EVERSON - EAN's Motion for Summary Disposition
Exhibit G: Representative Briefing (Frazier v MAIPF)**

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insurance, and residual liability insurance. Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved on a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

Enterprise does not dispute the plain language of MCL 500.3101. However, MCL

500.3012 exempts Enterprise from the requirements of MCL 500.3101. MCL 500.3102

provides as follows:

500.3102 Nonresident owner or registrant of motor vehicle or motorcycle to maintain security for payment of benefits; operation of motor vehicle or motorcycle by owner, registrant, or other person without security; penalty; failure to produce evidence of security; rebuttable presumption.

Sec. 3102.

- (1) A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter.

In this case the rental vehicle was registered in Illinois and had only been operated in Michigan for 5 days. As such the vehicle was not required to have Michigan No-Fault Insurance and Plaintiff is not entitled to first party no-fault benefits. (Exhibit D, Affidavit of Sarah Reiminger).

The Michigan Supreme Court reached the identical conclusion in *Park v DAIE* 426, Mich 191, 393 NW2d 833 (1986) In *Park*, Plaintiff was injured in a trailer which was registered in the State of Tennessee. The trailer had not been operated in Michigan for 30 days. Thus the

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Exhibit G: Representative Briefing (Frazier v MAIPF)**

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Supreme Court found that Roadway the owner of the trailer was not responsible to pay Plaintiff first party no fault benefits.

Likewise in the case Plaintiff is not entitled to first party no fault benefits from Defendant Enterprise. The vehicle was not registered in the State of Michigan and had not been operated in the state of Michigan for 30 days. Enterprise Leasing is not responsible for Plaintiff's first party no-fault benefits.

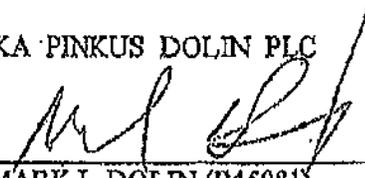
IV. CONCLUSION

As shown above, it is clear that Enterprise is exempt from the requirements set forth in MCL 500.3101 pursuant to MCL 500.3102 and therefore, Plaintiff is not entitled to Michigan No-Fault personal injury protection benefits from Enterprise. Plaintiff's Count II fails to state a claim upon which relief may be granted and there is no genuine issue of material fact. Thus, summary disposition is appropriate under MCR 2.116(C)(8) and (10).

WHEREFORE, Defendant respectfully requests that this Honorable Court grant its Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (10) and dismiss Count II of Plaintiff's Complaint with prejudice.

Respectfully Submitted,

KOPKA PINKUS DOLIN PLC

By: 

MARK L. DOLIN (P45081)
MICHAEL B. BAREY (P41445)
Attorneys for Defendant Enterprise
33533 W. Twelve Mile Road, Suite 350
Farmington Hills, MI 48331-5611
(248) 324-2620

Dated: October 21, 2015

**EVERSON - EAN's Motion for Summary Disposition
Exhibit G: Representative Briefing (Frazier v MAIPF)**

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

KALEEA MONIQUE FRAZIER,

CASE NO. 15-104837-NF

Plaintiff,

HON. GEOFFREY L.
NEITHERCUT

vs.

MICHIGAN AUTOMOBILE INSURANCE
PLACEMENT FACILITY and
ENTERPRISE LEASING COMPANY OF
DETROIT, LLC d/b/a NATIONAL CAR
RENTAL,

Defendant:

A TRUE COPY
Genesee County Clerk

KATRINA A. MURREL (P53831)
ROBIN A. MISERLAIN (P78324)
APPLEBAUM & STONE, PLC
Attorneys for Plaintiff
26777 Central Park Blvd., Ste. 300
Southfield, MI 48076
(248) 233-5050 / (248) 233-5051 [FAX]

MARK L. DOLIN (P45081)
MICHAEL B. BAREY (P41445)
KOPKA PINKUS DOLIN PLC
Attorneys for Defendant Enterprise
33533 W. Twelve Mile Road, Suite 350
Farmington Hills, MI 48331-5611
(248) 324-2620 / (248) 324-2610 [FAX]

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in
The City of Flint, County of Genesee
State of Michigan on January 25, 2016

PRESENT: Honorable Geoffrey L. Neithercut
CIRCUIT COURT JUDGE

THIS MATTER having come before the Court on Defendant Enterprise Leasing Company of Detroit, LLC d/b/a National Car Rental's Motion for Summary Disposition, oral argument having been heard and the Court being otherwise fully advised in the premises.

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition is granted for the reasons stated on the record.

**EVERSON - EAN's Motion for Summary Disposition
Exhibit G: Representative Briefing (Frazier v MAIPF)**

IT IS FURTHER ORDERED that Count II of Plaintiffs Complaint is dismissed.

IT IS SO ORDERED.

GEOFFREY L. NEITHERCUT
P-25488

CIRCUIT COURT JUDGE

2-4-16

Prepared by: MICHAEL B. BAREY (P41445)

STATE OF MICHIGAN
IN THE CIRCUIT COURT OF WASHTENAW

JONTE EVERSON,

Plaintiff,

Case No.: 16-359-NF

Vs.

Hon. David S. Swartz

FARMERS INSURANCE EXCHANGE,

Defendant(s)/ Third-Party Plaintiff.

Vs.

ENTERPRISE LEASING COMPANY OF DETROIT,

Third-Party Defendant.

Daniel G. Romano (P49117)
ROMANO LAW, PLLC
Attorney for Plaintiff
23880 Woodward
Pleasant-Ridge, MI 48069
248.750.0270

Mark L. Dolin (P45081)
Michael B. Barey (P41445)
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33533 W. Twelve Mile Road, Suite 350
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Matthew C. Koss (P74088)
CORY, KNIGHT & BENNETT
Attorney for Defendant Farmers Insurance
100 W. Big Beaver, Suite 650
Troy, MI 48084
248.244.8931

**SUPPLEMENT TO THIRD-PARTY DEFENDANT'S MOTION FOR SUMMARY
DISPOSITION PURSUANT TO MCR 2.116(C)(8) and (10)**

NOW COMES Third-Party Defendant, ENTERPRISE LEASING COMPANY OF DETROIT, LLC by and through its attorneys, Mark L. Dolin, Esq., Michael B. Barey, Esq., and KOPKA PINKUS DOLIN PLC and for its Supplement to Motion for Summary Disposition

EVERSON - EAN's Supplemental Brief

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Pursuant to **MCR 2.116(C)(8)** and **(10)**, states as follows:

Attached are the signed Affidavit of Kristen F. Zub and the unit history to be supplemented to the motion for summary disposition as **Exhibit C- Vehicle Rental History & Affidavit.**

Respectfully submitted,

KOPKA PINKUS DOLIN

By: 

Mark L. Dolin (P45081)

Michael B. Barey (P41445)

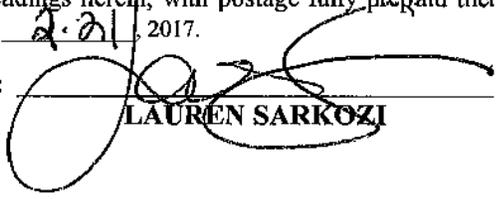
KOPKA PINKUS DOLIN

Attorney for Defendant Enterprise

Dated: February 20, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause, by mailing the same to them at their respective addresses as disclosed by the pleadings herein, with postage fully prepaid thereon, on 2.21, 2017.

By: 

LAUREN SARKOZI

Exhibit A

**STATE OF MICHIGAN
IN THE CIRCUIT COURT OF WASHTENAW**

JONTE EVERSON,

Plaintiff,

Case No.: 16-359-NF

Vs.

Hon. David S. Swartz

FARMERS INSURANCE EXCHANGE,

Defendant(s)/ Third-Party Plaintiff.

Vs.

ENTERPRISE LEASING COMPANY OF DETROIT.

Third-Party Defendant.

Daniel G. Romano (P49117)
ROMANO LAW, PLLC
Attorney for Plaintiff
23880 Woodward
Pleasant Ridge, MI 48069
248.750.0270

Mark L. Dolin (P45081)
Michael B. Barey (P41445)
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100 W. Big Beaver, Suite 650
Troy, MI 48084
248.244.8931

AFFIDAVIT OF KRISTEN F. ZUB

Kristen F. Zub, being first and duly sworn deposes states as follows:

1. I am a Regional Risk Supervisor for Enterprise Leasing Co of Detroit, LLC.
2. I am making this Affidavit based on my own personal knowledge of this matter.

**EVERSON - EAN's Supplemental Brief
Exhibit A: Affidavit of Kristen F. Zub**

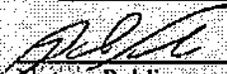
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3. I have had an opportunity to review the unit history for the vehicle rented to Jonte Everson.
4. The vehicle rented to Jonte Everson was registered in the State of Pennsylvania.
5. Based upon my review of the unit history, the vehicle rented to Jonte Everson was operated in the State of Michigan from October 30, 2015 through November 7, 2015, only.
6. As the vehicle had only been operated in the State of Michigan from October 30, 2015 through November 7, 2015, it had not been operated in the State of Michigan for an aggregate of more than 30 days in the calendar year of 2015.
7. I, if sworn as a witness, can testify competently to the facts stated in this affidavit.



KRISTEN F. ZUB

Subscribed and sworn to before me
On Feb 20, 2017


Notary Public, Oakland County, MI
My Commission Expires:

PETER J SHELTERS
Notary Public, State of Michigan
County of Oakland
My Commission Expires Jun. 30, 2018
Acting in the County of Oakland

Evt/Move T	Evt/Ref Nk	Renter Name	Evt/Rnt Loc	Evt/Rnt Grp	Evt/Rnt DateTime	Evt/Rnt M/	Return Loc	Return Grp	Return DateTime	Return M/i
WSM	29001315		E12049	2049	11/9/2015 8:37	18804	DTWT61	203C	12/9/2015 8:37	
INV	PB: BD . Physical Inventory f		DTWS60	203G	11/9/2015 6:14	18804				
SCD	P-BD deleted. RICCI (USG)		E12049	2049	11/8/2015 13:47	18804				
VCM	RICCI/DX2049P16		E120WW	20WW	11/8/2015 10:44	18804				
WSM	28999957		E12049	2049	11/8/2015 10:44	18804	DTWS60	203G	11/9/2015 6:14	18804
INV	DTWS60 CONTROLLING LOC		DTWS60	203G	11/8/2015 7:05	18804				
SCA	Body Damage (USG)		E12049	2049	11/8/2015 0:40	18799				
BDR	RICCI (USG)		E12049	2049	11/8/2015 0:00	18804				
DMG	DX2049P16 - PASS SIDE DOC		E12049	2049	11/7/2015 0:00	18799				
ORA	2Q5YZP EVERSON, JONTE		E12049	2049	10/30/2015 17:30	18801	E12053	2053	11/7/2015 19:43	18804
SCD	P-PM deleted. LOFR MONRO		E14014	4014	10/30/2015 14:12	18799				
SCA	P-PM/PO Add-FLTF5450 rule		E14014	4014	10/30/2015 12:42	18799				
PMR	LOFR MONRO (USG)		E14014	4014	10/30/2015 0:00	18799				
ORA	2G4QQB STEINER, DAVID		E14014	4014	10/8/2015 14:47	15196	E14014	4014	10/30/2015 12:38	18799
VCM	mike megats		E14014	4014	10/7/2015 16:43	15096				
VCM	4014		E14014	4014	9/19/2015 12:33	15096				
ORA	2B3YC9 BRUMAGIN, JENI		E14018	4018	9/19/2015 12:00	15096	E14014	4014	10/7/2015 16:43	15196
SCD	P-PM deleted. monro lofr (L		E14014	4014	9/19/2015 10:16	13089				
VCM	DIRTY		E14014	4014	9/19/2015 8:07	13089				
PMR	monro lofr (USG)		E14014	4014	9/19/2015 0:00	13089				
SCA	P-PM/PO Add-FLTF5450 rule		E14014	4014	9/16/2015 7:16	11658				
ORA	29T3LY CRABTREE, DARR		E14014	4014	9/16/2015 7:13	13000	E14014	4014	9/19/2015 7:00	13089
ORA	28Z3DG RENNEN, RONALI		E14014	4014	9/13/2015 11:34	11478	E14014	4014	9/16/2015 7:00	11658
ORA	27CTQK CORAN, PAUL		E14014	4014	9/8/2015 8:47	11100	E14014	4014	9/13/2015 8:26	11478
ORA	266XM7 BARISH, ROBERT		E14014	4014	9/2/2015 16:15	9857	E14014	4014	9/4/2015 13:18	9907
ORA	2605JN ZONNA, RJ		E14014	4014	9/2/2015 7:55	9722	E14014	4014	9/2/2015 16:10	9857
ORA	25P94Z SHEARER, RANDY		E14014	4014	9/1/2015 8:45	9407	E14014	4014	9/1/2015 18:00	9720
VCM	GSD		E14014	4014	8/29/2015 14:12	9150				
INV	PB: R1 . Performed By: E900		E14014	4014	8/29/2015 14:12	9150				
ORA	238J5V HARDEN, ADRIEN		E14014	4014	8/24/2015 10:00	8913	E14014	4014	8/26/2015 23:59	9150
ORA	22PWM4 BURTON, TIMOTI		E14014	4014	8/21/2015 9:42	8221	E14014	4014	8/23/2015 9:30	8913
ORA	227QF1 ZONNA, RJ		E14014	4014	8/19/2015 17:36	8101	E14014	4014	8/20/2015 16:42	8221
VCM	DIRTY		E14014	4014	8/19/2015 17:23	8100				

EVERSON - EAN's Supplemental Brief
 Exhibit A: Affidavit of Kristen F. Zub

ORA	21XQQN	MATTERS, AMBE	E14014	4014	8/18/2015 18:07	7506	E14014	4014	8/19/2015 17:19	8100
VCM	DIRTY		E14014	4014	8/18/2015 17:31	7506				
ORA	20YNLC	NESBITT, SARA /	E14014	4014	8/15/2015 10:52	6017	E14014	4014	8/18/2015 17:29	7506
ORA	1Y4RWQ	CRACIUN, LAURA	E14014	4014	8/6/2015 8:46	5085	E14014	4014	8/15/2015 8:30	6017
SCD	P-PM deleted.	monro lofr (L	E14014	4014	8/5/2015 18:53	5080				
INV	PB: R1 . Performed By:	E900	E14014	4014	8/5/2015 18:51	5080				
VCM	MONRO LOFR DONE		E14014	4014	8/5/2015 18:51	5080				
SCA	P-PM/PO Add-FLTF5450	ruk	E14014	4014	8/5/2015 13:10	5080				
PMR	monro lofr (USG)		E14014	4014	8/5/2015 0:00	5080				
INV	ERIT01 CONTROLLING LOCA		E14014	4014	8/2/2015 7:29	4859				
ORA	1WXRZG	SHINN, ROY	E14014	4014	8/2/2015 7:26	4859	E14014	4014	8/3/2015 12:56	5080
ORA	222919463	STRAND, PHIL	ERIT01	40VE	7/30/2015 11:42	4741	ERIT01	40VE	8/1/2015 13:21	4859
ORA	9294861.11	SANTILLO, GERAL	ERIT61	40V2	7/18/2015 11:42	3215	ERIT61	40V2	7/29/2015 17:01	4741
UVI	FBI1085E~The satellite Radi		ERIT01	40VE	7/17/2015 22:37	2971				
ORA	222840554	MARTINEZ, JUDY	ERIT01	40VE	7/16/2015 7:52	2971	ERIT01	40VE	7/17/2015 20:56	3215
ORA	222815581	NEMENZ, THOM	ERIT01	40VE	7/12/2015 17:19	2427	ERIT01	40VE	7/15/2015 19:54	2971
ORA	222807322	HAGER, JAMES L	ERIT71	40V4	7/10/2015 10:59	2366	ERIT71	40V4	7/12/2015 17:10	2427
INV	PITT61 CONTROLLING LOCA		ERIT01	40VE	7/7/2015 16:54	1845				
ORA	222791867	BEAMON, GARY	ERIT01	40VE	7/7/2015 16:54	1845	ERIT01	40VE	7/10/2015 7:42	2366
ORA	328857711	LEE, MING JYE	PITT61	40V6	6/27/2015 7:27	1093	PITT61	40V6	7/2/2015 5:48	1845
ORA	32878286	COSTROM, JASON	PITT61	40V6	6/21/2015 14:49	730	PITT61	40V6	6/26/2015 13:16	1093
ORA	328768285	MONCURE, JOHN	PITT61	40V6	6/19/2015 16:22	676	PITT61	40V6	6/21/2015 12:43	730
ORA	328743635	NEIL, RANDALL	PITT61	40V6	6/17/2015 13:40	44	PITT61	40V6	6/19/2015 13:16	676
ORA	328731064	DEKERMANU, JES	PITT61	40V6	6/16/2015 13:24	10	PITT61	40V6	6/17/2015 12:44	44
INV	PITT01 CONTROLLING LOCA		PITT61	40V6	6/16/2015 13:24	10				
INV	PITT01 CONTROLLING LOCA		PITT01	40VN	6/16/2015 7:25	10				
REG			E140N1	40N1	6/15/2015 12:21	10				
OIN	Vehicle is Operationally Inst		E140N1	40N1	6/15/2015 12:21	10				
PIR	Purchase Invoice Received		E14099	4099	6/11/2015 0:49	0				
TRG			E14099	4099	6/11/2015 0:49	0				

40= pittsburgh, PA group
 20= Michigan group

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JONTE EVERSON,

Plaintiff,

vs

FARMERS INSURANCE EXCHANGE,

Defendant/Third-Party Plaintiff,

vs

ENTERPRISE LEASING COMPANY,

Third-Party Defendant.

Case No.: 16 359 NF

HON. DAVID S. SWARTZ

Daniel G. Romano, P49117
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Phone No.: (248) 750-0270

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Matthew C. Koss, P74088
Attorney for Defendant/Third-Party
Plaintiff Farmers Insurance Exchange
Knight & Bennett
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Troy, MI 48084
Phone No.: (248) 244-8931
matthew.koss@farmersinsurance.com

**DEFENDANT/THIRD-PARTY PLAINTIFF FARMERS INSURANCE
EXCHANGE'S RESPONSE TO THIRD-PARTY DEFENDANT ENTERPRISE
LEASING COMPANY OF DETROIT, LLC'S MOTION FOR
SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(8) AND (10)**

NOW COMES Defendant/Third-Party Plaintiff FARMERS INSURANCE EXCHANGE ("Farmers"), by and through its attorneys, KNIGHT & BENNETT, and for its Response to Third-Party Defendant Enterprising Leasing Company of Detroit,

EVERSON - Farmers' Response to EAN's Motion for Summary Disposition

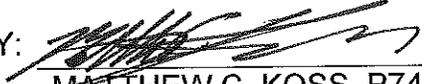
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LLC's ("Enterprise") Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and (10) states as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Denied that MCL 500.3101 is inapplicable. All of the statutes and requirements of the No Fault Act are applicable.
8. Denied for the reasons stated in the accompanying Brief.
9. Denied for the reasons stated in the accompanying Brief.
10. Denied for the reasons stated in the accompanying Brief.
11. Denied for the reasons stated in the accompanying Brief.

WHEREFORE, Defendant/Third-Party Plaintiff Farmers Insurance Exchange respectfully requests this Honorable Court to enter an Order denying Third-Party Defendant Enterprise Leasing Company of Detroit LLC's Motion for Summary Disposition for the reasons stated in the accompanying Brief and in oral argument by counsel.

KNIGHT & BENNETT

BY: 

MATTHEW C. KOSS, P74088
Attorney for Defendant/Third Party Plaintiff,
FARMERS INSURANCE EXCHANGE

Dated: February 28, 2017

**BRIEF IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF FARMERS
INSURANCE EXCHANGE'S RESPONSE TO THIRD-PARTY DEFENDANT
ENTERPRISE LEASING COMPANY OF DETROIT, LLC'S MOTION
FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(8) AND (10)**

Facts

This lawsuit arose out of injuries allegedly sustained in a motor vehicle accident that occurred on November 7, 2015. **(Exhibit A)** At the time of the accident, Plaintiff Jonte Everson was operating a vehicle, a 2015 Dodge Charger, which was rented from Third-Party Defendant Enterprise Leasing Company of Detroit, LLC ("Enterprise") under a short-term rental contract. **(Exhibit B)** The Charger was titled and registered to EAN Holdings LLC. **(Exhibit C)** On the date of the accident, Plaintiff Jonte Everson was not covered under a no-fault policy of his own or in his household, and so applied for Bodily Injury Benefits through the Michigan Assigned Claims Plan (MACP). Farmers is acting as the assigned carrier through the MACP. **(Exhibit D)** According to Michigan law, the Assigned Claims carrier is the insurer of last resort.

No-Fault PIP benefits generally follow the person who bought the insurance rather than the motor vehicle that is insured. To an extent, no-fault coverage is personal in origin and extends to the insured, the insured's spouse, and resident relatives of the insured's household. Thus, usually the injured person will get no-fault benefits based on the policy that the person has on his or her own vehicle. If that policy does not apply, no-fault benefits may be obtained from a policy on the spouse's vehicle or that of any relative residing in the same household. If there is no coverage in the name of the injured person or a relative in his or her household, he or she will generally get coverage from the vehicle in which he or she was an occupant. In this

EVERSON - Farmers' Response to EAN's Motion for Summary Disposition

case, the vehicle that Plaintiff was occupying was a rental vehicle owned and insured by EAN Holdings LLC.

This is a statutory reimbursement action against Enterprise aka EAN Holdings LLC (hereinafter "Enterprise"), the owner of the vehicle that Plaintiff was driving on the date of the accident. Enterprise is self-insured as EAN Holdings LLC in the State of Michigan. **(Exhibit E)** Because Enterprise had an active policy in effect on the date of the accident, Enterprise is primary to provide no-fault PIP benefits to Plaintiff for injuries arising out of the subject accident. Under MCL 500.3114, Enterprise is the insurer highest in the order of priorities responsible for Plaintiff's PIP benefits related to the November 7, 2015 motor vehicle accident.

Standard of Review

A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In reviewing a motion under MCR 2.116(C)(10), the Court considers the pleadings, affidavits, depositions, admissions and any other documentary evidence to determine whether any genuine issue of material fact exists that would preclude judgment for the moving party as a matter of law. *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999). The trial court considers the documentary evidence submitted by the parties in a light most favorable to the non-moving party. *Maiden, supra*, at 120. When faced with a motion for summary disposition pursuant to MCR 2.116(C)(10), the non-moving party must present evidentiary proofs creating a genuine issue of material fact for trial; otherwise, summary disposition is properly granted. The nonmovant may not rest upon

EVERSON - Farmers' Response to EAN's Motion for Summary Disposition

mere allegations or denials in the pleadings, but must, by documentary evidence, set forth facts that there is a genuine issue for trial. *Nichols v Clare Community Hospital*, 190 Mich App 679 (1991) and *Smith v. Globe Life Ins. Co.*, 460 Mich 446 (1999).

If the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to summary disposition as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial. *Maiden, supra*. The plaintiff in this case is therefore required to come forward with specific, admissible, documentary evidence establishing that a genuine issue of material fact exists in order to avoid this motion being granted. Under the facts of this case, Plaintiff will not be able to meet this burden.

Analysis**I. AS THE SELF-INSURED OWNER OF THE VEHICLE AT ISSUE, ENTERPRISE IS FIRST IN PRIORITY TO PAY NO-FAULT BENEFITS**

Michigan's No-Fault Insurance Act requires all owners of motor vehicles to maintain personal protection insurance, property protection insurance, and residual liability insurance. MCL 500.3101(1). The Act provides that an insurer is liable to pay personal protection insurance benefits for accidental injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle, subject to the provisions of the No-Fault Act. MCL 500.3105(1). Further, Michigan courts have held that

EVERSON - Farmers' Response to EAN's Motion for Summary Disposition

the No-Fault Act is remedial in nature and must be liberally construed in favor of persons intended to benefit from it. *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 61; 404 NW2d 199 (1987).

The first step in a coverage determination is found in MCL 500.3114(1), which creates the highest priority for occupants of motor vehicles who are injured in an accident. *Shinabarger v Citizens Ins Co*, 90 Mich App 307, 311; 282 NW2d 301 (1979).

MCL 500.3114(1) states:

- (1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy describe in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

In this case, Plaintiff has claimed that neither he nor any family members had a valid automobile insurance policy in effect on the date of the accident, and he applied for no-fault benefits from the Michigan Assigned Claims Plan (MACP). However, when there is no automobile coverage available in the household, an injured party does not automatically go to the MACP for benefits. According to Michigan law, the MACP is the insurer of last resort, and last in order of priority. *Cason, supra*. For vehicle occupants, the next step is to look to MCL 500.3114(4), which states:

- (4) Except as provided in subsection (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

At the time of the accident, Plaintiff was occupying a rental vehicle which was titled and registered to Enterprise (EAN Holdings LLC). It is undisputed that Enterprise is

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the titled owner of the subject vehicle, and the vehicle was self-insured. This means that, on the date of the accident, Enterprise is considered “the insurer of the owner . . . of the vehicle occupied” and, under MCL 500.3114(4)(a), Enterprise would be higher in the order of priority to provide no-fault benefits to Plaintiff.

The Michigan Supreme Court's interpretation of the No-Fault Act as it relates to whether an owner or driver must provide coverage is contained in *Citizens Ins Co v Federated Mut Ins Co*, 448 Mich 225, 227; 531 NW2d 138 (1995), **(Exhibit F)** two automobile insurance cases consolidated for the purpose of appeal that involved the requirements of Michigan’s No-Fault Act, MCL 500.3101 *et seq.*, and Financial Responsibility Act, MCL 257.501 *et seq.* relative to vehicle ownership. Each of the cases arose from an automobile accident involving a vehicle insured under a policy issued by Federated Insurance Company to the vehicle owner, a car dealership. In each case, the driver of the dealership vehicle carried insurance for a personal automobile that was not involved in the accident at issue (Citizens and State Farm).

In *Citizens*, 448 Mich 225, Federated attempted to deny coverage to any permissive user of the dealership vehicle who is otherwise insured for an amount equal to that specified by the No-Fault Act, thus forcing the driver's insurers to provide coverage. In *Citizens*, the Michigan Supreme Court determined that a policy represented or sold as providing security shall be deemed to provide insurance for the payment of benefits described in § 3101 of the No-Fault Act. The Court noted that “Federated's insurance policy attempts to unilaterally dictate the respective insurance obligations of a vehicle owner and those who may use the insured vehicle.” The Court

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concluded that a rental car contract is no more voluntary or mutual than the dealership's policy at issue in *Citizens*.

The car rental companies in *State Farm Mut Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25; 549 NW2d 345 (1996) similarly forced a choice. **(Exhibit G)** A driver can either sign an agreement stating that the driver's insurance will be primary, or the driver can agree to pay an extra fee to the car rental company for insurance coverage. The driver is not informed that the car rental company, as the owner, is required by law to carry insurance on the vehicle that covers any permissive user. The owner cannot shift that responsibility to another party. Just as Federated was required to provide insurance coverage for permissive users in *Citizens*, 448 Mich 225, the Court in *Enterprise Leasing*, 452 Mich 25, held that a car rental company, like any other car owner, must obtain insurance coverage for permissive users of its vehicles.

The substance of the holding in *Citizens*, 448 Mich 225, is that the No-Fault Act requires car owners to be primarily responsible for insurance coverage on their vehicles. However, the car rental companies in Michigan have been largely successful in avoiding that responsibility, as demonstrated by the Court of Appeals decisions in these cases.

Under *State Farm Mut Auto Ins Co v Snappy Car Rental*, 196 Mich App 143; 492 NW2d 500 (1992) "*Snappy I*," the Court of Appeals found that it was allowable to permit car owners to shift the primary responsibility for providing coverage for the use of their vehicles to the driver and the driver's insurer. Because this violates the intent of the No-Fault Act, the Michigan Supreme Court overturned *Snappy I* in *Enterprise*, 452 Mich 25, to the extent that it holds that car owners may avoid primary responsibility for

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vehicle insurance coverage by agreeing to allocate that responsibility to the driver or the driver's insurer.

Here, Enterprise is attempting to sidestep its responsibility to provide no-fault PIP benefits to Plaintiff by the claim in its denial letter that the subject rental car had not been in Michigan for 30 days. This is not allowed by Michigan law as outlined above. Enterprise is responsible for any PIP benefits allegedly due to Plaintiff for the November 7, 2015 accident as the owner of the 2015 Dodge Charger. In Michigan, a certificate of self-insurance issued by the Secretary of State is the functional equivalent of a commercial policy of insurance with respect to the No-Fault Act, MCL 500.3009, and the Financial Responsibility Act, MCL 257.520(b); *Allstate Ins Co v Elassal*, 203 Mich App 548, 554; 512 NW2d 856 (1994), **(Exhibit H)** cited by *Enterprise Leasing Co of Detroit v Sako*, 233 Mich App 281; 590 NW2d 617 (1998). **(Exhibit I)**

Farmers is acting as the Michigan Assigned Claims Plan insurer in this case. The MACP was designed to handle no-fault PIP benefit claims payable to eligible injured persons who had no other insurance applicable to a given motor vehicle accident. MCL 500.3172. Under the No-Fault Act, the MACP represents the insurer of last resort. *Cason v Auto Owners Ins Co*, 181 Mich App 600; 450 NW2d 6 (1989). Before there can be recovery of benefits from the MACP, it must be determined that there is no other personal protection insurance applicable to the injury. *Belcher v Aetna Cas and Sur Co*, 409 Mich 231; 293 NW2d 594 (1980).

II. **FARMERS IS ENTITLED TO REIMBURSEMENT OF NO-FAULT BENEFITS PAID FROM ENTERPRISE LEASING**

In this case, Farmers, as the MACP insurer, has an independent statutory right to indemnity and/or reimbursement from appropriate third parties under MCL 500.3172(1), which is separate and distinct from the rights of the injured claimant. *Allen v Farm Bureau Ins Co*, 210 Mich App 591, 597; 534 NW2d 177 (1995). The relevant part of the statute states:

(1) A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan if . . . no personal protection insurance applicable to the injury can be identified In such case unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and ***the insurer to which the claim is assigned . . . is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.*** (emphasis added)

Actions for reimbursement or indemnity brought by assigned insurers are governed by MCL 500.3175(2), which states in pertinent part:

The insurer to whom claims have been assigned **shall** preserve and enforce rights to indemnity or reimbursement against third parties and account to the assigned claims facility therefor and shall assign such rights to the assigned claims facility upon reimbursement by the assigned claims facility.

These statutes give the assigned claims insurer both the right and the duty to seek reimbursement of PIP benefits paid on behalf of an eligible claimant from appropriate third parties, including subsequently identified higher priority insurers. *Spencer v Citizens Ins Co*, 239 Mich App 291, 305-06; 608 NW2d 113 (2000). The term “third parties” in the statute is a category which includes subsequently identified higher priority insurers, such as Enterprise, in this action. *Auto-Owners Ins Co v Michigan Mut*

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Ins Co, 223 Mich App 205, 210; 565 NW2d 907 (1997).

Farmers' position is that Enterprise is the higher priority insurer, and is responsible for no-fault benefits in relation to this accident, under the plain language of the No-Fault Act. Enterprise, as a certifying self-insurer, is bound to provide no-fault benefits in this case, where there was accidental bodily injury. As the owner of the 2015 Dodge Charger, Enterprise has asserted that it is an out-of-state vehicle, and was self-insured by Enterprise. Plaintiff in this case did not have a no-fault policy available in his household. Farmers asserts that Enterprise is higher in order of priority under MCL 500.3114(4)(a), because it insured the owner of the vehicle Plaintiff was occupying at the time of the accident. Enterprise is the priority insurer responsible for Plaintiff's first-party no-fault PIP benefits for this accident, based on its **ownership** of the motor vehicle in which Plaintiff sustained accidental bodily injuries.

The Michigan Court of Appeals has also held that where there is a dispute between two insurers regarding repayment of PIP benefits, the Michigan No-Fault Act requires that attorney fees and costs be awarded to the prevailing insurer. MCL 500.3172(3)(f) and *Michigan Mutual Ins Co v Farm Bureau Ins Group*; 183 Mich App 626, 637; 455 NW2d 352 (2003). By disputing prompt repayment for Plaintiff's PIP benefits, Enterprise is responsible for payment of attorney fees and costs to Farmers.

Therefore, regardless of any defense Enterprise may attempt to present to payment of the costs incurred for Plaintiff Jonte Everson's claim, Enterprise owes the entirety of the benefits. It is not able to retroactively argue that payment was inappropriate. Because it has admitted it is higher in priority for Plaintiff's PIP benefits, the strength of his underlying claim is not at issue. *Williams, supra*.

EVERSON - Farmers' Response to EAN's Motion for Summary Disposition**III. AS A MICHIGAN LLC AND THE OWNER OF THE RENTAL VEHICLE, ENTERPRISE IS LIABLE FOR FIRST PARTY NO-FAULT BENEFITS**

Enterprise sent a letter denying no-fault PIP benefits basing the denial on its claim that the subject rental vehicle was not registered in Michigan, and had not been driven in Michigan for 30 days, relying on *Parks v DAIIE*, 426 Mich 191; 393 NW2d 833 (1986) in its motion for summary disposition. Enterprise's reliance on *Parks* is misplaced as the vehicle in that case is an employer's vehicle that was not required to be registered in state, and therefore did not require no-fault insurance. An employer vehicle is not at all analogous to a rental vehicle. Indeed, the Michigan Supreme Court, the Court of Appeals and the Sixth Circuit Court of Appeals have confirmed the applicability of the obligations of the No-Fault Act to rental vehicles and rental companies, as well as the 30-day Rule in particular. *Enterprise Leasing Co*, 452 Mich 25.

Reliance on *Parks v DAIIE*, 426 Mich 191; 393 NW2d 833 (1986) as a basis for a ruling in the case at bar would result in an erroneous application to a situation that was not even considered by the Michigan Supreme Court in its opinion written almost 30 years ago. The *Parks* holding was based on a specific fact pattern, which involved an employee of non-resident corporation Roadway, injured by a parked trailer, that pursuant to the highway reciprocity act, was not required to be registered in Michigan, and therefore, was not subject to the mandatory security requirements of the No-Fault Act.

In the instant matter, non-resident corporation Enterprise is in the business of renting vehicles to paying customers, who are then considered permissive users. The exceptions outlined in *Parks* do not apply to rental vehicles, and they do not apply here.

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The trailer which was the subject matter of the *Parks* case had a far more incidental contact with Michigan. Unlike the *Parks* case, the injured party in the instant matter paid a fee for the use of the rental vehicle (\$525.15) **(see Exhibit B)** The plaintiff in the *Parks* matter paid no such fee. Plaintiff is an employee of Enterprise, however, he rented the subject vehicle, and he was not driving it in the scope of his employment. The subject rental vehicle was not parked, therefore, the exception related to loading or unloading a vehicle while it is parked does not apply. Enterprise vehicles are not subject to the highway reciprocity act. The highway reciprocity act applies to vehicles engaged in interstate / intrastate commerce, in other words "commercial vehicles," not private rental vehicles.

It is also important to note that unlike the *Parks* case, Enterprise knew that this vehicle was going to be used as a Michigan vehicle. It was rented to a Michigan resident from an Enterprise location in Detroit, Michigan, to be returned some 18 days later. Therefore, Enterprise had every reason to believe that this vehicle would be operated exclusively in the State of Michigan for the 18 days of its rental agreement. Further, the unit history provided by Enterprise as proof that the involved vehicle was not in Michigan for 30 days in calendar year 2015 only shows that the vehicle was rented out of the Pittsburgh, Pennsylvania office until October 30, 2015 when it appeared in Michigan. The unit history does not detail where the vehicle was driven, or that it was driven solely in Pennsylvania until October 30, 2015, when it happened to turn up in Michigan and was rented out of Enterprise's Detroit, Michigan location. **(see Enterprise's Exhibit C)**

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An employer vehicle is not at all analogous to a rental vehicle. While employees may be considered to be permissive users of their employer's vehicles, there is also a statutory requirement for no-fault coverage for employees occupying employer's motor vehicle under MCL 500.3114(3):

"An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle."

MCL 500.3114 does not make any exceptions for vehicles that are not registered in Michigan or are not required to be registered in Michigan.

The scope of coverage of no-fault insurance set forth in MCL 500.3105, which also does not make any exceptions for vehicles that are not registered in Michigan, provides in subsection (1):

"Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter."

For vehicle occupants who do not have their own policy and who are not a resident relative of a named insured, the next step is to look to MCL 500.3114(4), which states:

- (4) Except as provided in subsection (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

Regardless of its state of origin, Enterprise is the owner of the rental vehicle which Plaintiff was occupying when he was injured. Rental vehicles and the requirement that

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the owner of a rental vehicle provide primary insurance coverage were not addressed by the *Parks* court. There is relevant case law in Michigan specific to rental vehicles that provides that: 1) the car rental company, as the owner, is required by law to carry insurance on the vehicle that covers any permissive user (the driver who is renting the vehicle), and 2) the car rental company, as the owner, cannot shift that responsibility to another party, including the insurer of the operator, the insurer of an occupant, or the Michigan Assigned Claims Plan.

The case law regarding rental vehicles was necessarily decided because rental car companies were side-stepping their responsibility to provide no-fault coverage as the owners of the vehicles and putting it onto the drivers and their insurers, which violates the No-Fault Act. An owner of a vehicle may not shift the responsibility to insure the vehicle onto anyone else. *Parks* does not apply in this case because it does not address the specific fact pattern here, which is a rental vehicle, being driven by a permissive user who has paid a fee to Enterprise, that is, essentially, an uninsured motor vehicle.

In the instant matter, *Titan Ins Co v American Country Ins Co*, 312 Mich App 291, 301; 876 NW2d 853 (2015) is binding precedent. **(Exhibit J)** The consolidated appeal in *Titan* stemmed from motor vehicle accidents involving uninsured drivers. At issue was which insurance providers were responsible to pay the no-fault claims. The drivers in each case were injured while operating vehicles owned and registered by transportation companies that both owned other vehicles that were insured. Titan, the MACP insurer, argued that when subsection (2) of MCL 500.3114 does not apply because the vehicles are uninsured, and insurance is not available under subsection

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(1), then subsection (4) would apply, and the insurer of the owners of the vehicles, American Country, would be liable under MCL 500.3114(4)(a), rather than the MACP insurer.

The Court in *Titan* agreed, and stated that “case law demonstrates that when Subsection (1) applies but an insurer is not available, Subsection (4) applies next. See *Mich Mut Ins Co v Farm Bureau Ins Group*, 183 Mich App 626, 630; 455 NW2d 352 (1990) (stating that when insurance is not available under Subsection (1), Subsection (4) applies).” The *Titan* Court referenced the *Parks* opinion, 426 Mich at 203 n. 3, where our Supreme Court stated, “Those injured while occupants of motor vehicles must look to the rules provided in Subsections (1), (2), and (3) before applying the priorities listed in Subsection (4).” This Court has stated that Subsections (1) and (4) together establish “the general order of priority . . .” *Mich Mut Ins Co*, 183 Mich App at 631. Accordingly, if an exception provided in Subsections (2), (3), or (5) would apply but insurance is not available, Subsections (1) and (4) apply in tandem.

The *Titan* Court, which stated, under American Country’s argument, that because Subsection (1) could theoretically apply, then Subsection (4) could never apply, went on to clarify that this Court must avoid an interpretation that would render statutory language surplusage. *Robinson v Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010). Instead, Subsection (4) plainly governs which insurance applies when insurance is unavailable under Subsection (1).

Tevis v Amex Assurance Co, 283 Mich App 76; 770 NW2d 16 (2009) is controlling and binding precedent under MCR 7.215(C)(2) as it relates to imposing liability for injuries “arising from” the legal status of ownership in connection with a

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motor vehicle being completely consistent with the No-Fault Act, and congruent with the interpretation and application of analogous areas of Michigan law.

Here, Enterprise is claiming that MCL 500.3102 exempts it from the requirements of MCL 500.3101. **However, MCL 500.3102 applies only to non-residents, and that does not apply to Enterprise.** Enterprise is a resident of the State of Michigan for the purposes of the No-Fault Act and the Motor Vehicle Code. The Motor Vehicle Code specifically defines resident as follows: "Resident means every person who resides in the State and establishes that he or she is legally present in the United States." MCL 500.3102 is an exemption that is meant to protect transients, and other temporary travelers in Michigan from the penalties imposed by the No-Fault Act.

In *Witt v American Family Ins Co*, 219 Mich App 602; 557 NW2d 163 (1996), the Michigan Court of Appeals held that the vehicle's owner was domiciled in Michigan, and that a person who becomes a resident of this state does not necessarily enjoy a thirty-day grace period to operate an owned auto without no-fault insurance.

EAN Holdings LLC is a Michigan Corporation, ID Number B94241, which was formed on March 11, 2009, and has a Resident Agent of The Corporation Company located at 40600 Ann Arbor Road East, Suite 201, Plymouth, MI 48170. **(Exhibit K)** As such, Enterprise is a resident for purposes of the Michigan No-Fault Act, and MCL 500.3102 does not apply.

Enterprise's reliance on unpublished case law in its motion is ineffective at best when there is published case law on point – albeit not supportive of Enterprise's position in the case at bar. Similarly, the habitual practice of attaching copies of trial

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court briefs filed in other cases, and orders from the trial court that are not binding authority – nor even persuasive - is unavailing. The unpublished *Heichel v Geico* opinion is distinguishable from the case at bar because it did not involve a vehicle that was rented in Michigan, but rather a vehicle that was rented in Pennsylvania and then driven to Michigan where the driver ran a red light in Orion Township in Oakland County and struck plaintiff Heichel's motorcycle.

Enterprise also relies on an opinion and order for summary judgment in the U.S. District Court, ED Mich, *J.B. Hunt v Adams and State Farm Mutual Automobile Insurance*, Case No. 4-CV-70347-DT, which is not binding authority. Although lower federal court decisions may be persuasive, they are not binding on state courts. *Walters v Nadell*, 481 Mich 377; 751 NW2d 431 (2008). See also *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004). The *J.B. Hunt* Court relied mainly on *Parks*, which is not relevant or applicable, as established above.

Farmers is clearly entitled to seek reimbursement and/or indemnification from Enterprise for payment of any and all no-fault benefits allegedly due on Plaintiff's behalf related to the November 7, 2015 automobile accident, and summary disposition in Enterprise's favor is not warranted in this case. In fact, Enterprise is able to enjoy a significant savings by not having to purchase no-fault insurance policies for the vehicles that it rents out to the public, and by operating as a self-insured company. What is happening, however, is Enterprise is shifting the burden for payment of no-fault benefits that it owes to the occupants of its vehicles to the MACP, and in turn, to Michigan residents and Michigan companies who purchase no-fault policies.

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The MACP is financially supported by the insured drivers of the State of Michigan, MCL 500.3176. The amount that each driver in Michigan pays is estimated to be \$36.00 per insured vehicle. This is based on a total assessment of approximately \$248 million. www.michacp.org. The Courts have repeatedly expressed that, "when a car rental company enjoys the advantages of self-insurance, it cannot attempt to limit its risks by asserting that its responsibility is limited to the minimum coverage requirements of the no-fault or the financial responsibility act." *Enterprise Leasing Co v Sako, supra* at 284-285. **(see Exhibit I)** With every motion such as this, Enterprise is increasing its financial gains at the expense of Michigan drivers.

Finally, there is no question that the insurer of the owner of the vehicle that Plaintiff occupied at the time of the accident is a higher priority insurer than the MACP, and therefore, Farmers' request for summary disposition finding that Enterprise is in the higher priority should be granted pursuant to MCR 2.116(I)(2). **(Exhibits L, M)** Farmers, as the assigned claims insurer, is entitled to full and complete reimbursement and/or indemnification from the higher priority insurer, Third-Party Defendant Enterprise.

Conclusion

For these reasons, Defendant/Third-Party Plaintiff Farmers Insurance Exchange respectfully requests this Honorable Court to deny Third-Party Defendant Enterprise Leasing Company of Detroit's Motion for Summary Disposition, and enter an Order holding Enterprise liable for first-party no-fault PIP benefits relating to the November 7, 2015 motor vehicle accident, because Enterprise is an authorized no-fault self-insurer, and the accidental bodily injuries sustained in the accident arose from the *ownership* of the subject vehicle by Enterprise. Defendant/Third-Party Plaintiff Farmers

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further respectfully requests that this Honorable court enter an Order for full and complete reimbursement and/or indemnification from Enterprise to Farmers.

KNIGHT & BENNETT

BY:



MATTHEW C. KOSS, P74088

Attorney for Defendant/Third Party Plaintiff,
FARMERS INSURANCE EXCHANGE

Dated: February 28, 2017

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument(s) was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses on the pleadings on February 28, 2017 by U.S. Mail.



DENISE TUCKER

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Exhibit D

**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit D: Application for Benefits**

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS

Michigan Assigned Claims Plan
c/o Michigan Automobile Insurance Placement Facility
PO Box 532318
Livonia, MI 48153-2318
Phone: 734-464-8111

Internal Use Only
Reference #: _____
Date Received: _____

Please note, "you" referenced throughout this application is defined as the Injured person applying for benefits. This application must be completed, signed and received no later than one (1) year from the date of accident. Incomplete or illegible applications will be returned without assignment to a servicing insurer. Please also submit a copy of the police report, EMS run form and/or any other documentation. All information will be reviewed, however, please note, additional information may be required.

Injured Person Information

1. Name of Injured Person: First Name Middle Name Last Name <u>Jonte</u> <u>Everson</u>			2. Date of Birth: <u>4/3/91</u>	
3. List any and all names you have previously or currently go by			4. Social Security #: [REDACTED]	
5. Injured Person's Current Address Street Apt # City State Zip Code <u>2163 S. Deacon St.</u> <u>Detroit</u> <u>MI</u> <u>48217</u>		6. Injured Person's Address at the Time of the Accident Street Apt # City State Zip Code		
7. Home Phone # <u>313-854-3979</u>	8. Work Phone #	9. Cell Phone # <u>616-449-8932</u>	11. Marital Status: <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input checked="" type="checkbox"/> Never Married <input type="checkbox"/> Widowed	
10. Email Address		12. Date of Accident <u>11/17/15</u>		
		13. Injured Person's Driver's License # <u>E/62 435 143 263</u>		14. Driver License State <u>MI</u>
15. At the Time of the accident, were you a Michigan resident? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No a. If no, list state: _____		16. At the time of the accident, did you have any auto insurance? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No a. If yes, list Name of Automobile Insurance Company & Policy Number		

Accident Information

17. Accident Location Street City State Zip Code <u>27500 Novi Rd.</u> <u>Novi</u> <u>MI</u>	
18. Provide a full description of how the accident occurred. Note: If you require additional space, please attach a separate sheet with details as part of this application. <u>I WAS ON NOVI RD. IN MALL MAKING A TURN INTO RED LOASTER WHEN AN FAULT DRIVER TRAVELLING AT A HIGH RATE OF SPEED HIT ME.</u>	
19. Was a police report made? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No a. If yes, list name of police department & police report number: <u>150056700 Novi Police Dept.</u>	
20. What was your position? <input checked="" type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Pedestrian <input type="checkbox"/> Motorcyclist a. If you answered "Passenger", where were you seated in the vehicle? <input type="checkbox"/> Passenger Front Seat <input type="checkbox"/> Driver Side Back Seat <input type="checkbox"/> Middle Back Seat <input type="checkbox"/> Passenger Back Seat <input type="checkbox"/> Other _____ b. If you answered "Passenger" or "Driver", did you have permission to use the involved vehicle? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
21. Was the vehicle a motorcycle? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you answered "Yes" please provide the following: a. List the name of the owner of the motorcycle: _____ b. Was the motorcycle insured at the time of the accident? <input type="checkbox"/> Yes <input type="checkbox"/> No c. List the name and policy number of the motorcycle's insurance company: _____	
22. Were you contacted by a doctor's office or other person about this claim? <input type="checkbox"/> Doctor <input type="checkbox"/> Other <input checked="" type="checkbox"/> None a. If you answered "Doctor", please provide: Name of Doctor Address Phone Number _____ b. If you answered "Other", please provide: Name Address Phone Number _____	

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Exhibit D: Application for Benefits**

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APP. I CATION FOR PERSONAL INJURY PROTECTION BENEFITS

Injury Information

23. Were you injured in the accident? Yes No a. If yes, describe your injuries:
left shoulder, left knee, neck, and back

24. Are or were you treated by a doctor(s) for injuries from this accident? Yes No
 a. If yes, please provide:
 Doctor's Name Prodigy Spinal Rehabilitation Address _____ Phone Number 313-846-9100
 b. Name of person who referred you to this doctor: _____
Note: If you were treated by more than 1 doctor, attach a separate sheet with contact information as part of this application.

25. Were you treated in a hospital? Yes No a. If yes, what type of treatment did you receive? In-Patient Out-Patient
 b. If yes, please provide:
 Hospital Name Henry Ford Wyandotte Address _____ Phone Number _____
Note: If you were treated at more than 1 hospital, attach a separate sheet with contact information as part of this application.

26. Please list any pre-existing conditions that you had before this accident and how long you have been treating for those conditions.
None

27. Had you sought treatment for any prior conditions before this accident? Yes No Not Applicable
 a. If yes, please provide the name, address and phone number(s) of each doctor and pharmacy you had treated with prior to this accident:
 Doctors/Pharmacy Name _____ Address _____ Phone Number _____
Note: If you sought treatment from more than 1 doctor/pharmacy, attach a separate sheet with contact information as part of this application.

28. Were you taking any medications prior to this accident? Yes No
 a. If yes, Please list the names of all medications: _____

29. Do you have a primary care doctor? Yes No a. If yes, please provide:
 Doctors Name Dr. Shapiro Address Midwest Health Phone Number _____

30. Have you received any medical bills? Yes No 31. Do you expect to receive medical bills? Yes No 32. Are you eligible for any benefits under social security? Yes No

Medical Insurance

33. Do you have any kind of health insurance? Yes No a. If yes, please provide:
 Name of Health Insurance Co. _____ Address _____ Phone Number _____
 Policy or Plan Number: _____ Member Number: _____ Group Number: _____

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

Employment Information

35. Were you employed at the time of the accident? Yes No a. If yes, provide the following information:

Name, Address and Phone Number of Your Employer	Occupation	Average Weekly Gross Income at the time of the Accident	List the Date of Your Employment : From To
<u>Enterprise Rental Car</u>	<u>Service Agent</u>	<u>\$9.55 per hour</u>	

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

36. Have you missed any work because of your injuries? Yes No a. If yes, what is the first date you missed work? 11/15

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

38. Have you returned to work? Yes No a. If yes, what date did you return to work? _____
 39. If not yet returned, have you been given a return date? Yes No a. If yes, return to work date: _____

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

41. How did you normally get to work prior to this accident? i.e. Public Transportation, Carpool, Own Car, Etc.
Got a ride

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

**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit D: Application for Benefits**

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS

Entitlement Information

43. Was there damage to the vehicle you were occupying or struck by? Yes No Unknown If yes, describe the damage to the vehicle:
Damaged The whole front of vehicle

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

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

c. Do you know the current location of the involved vehicle? Yes No If yes, please provide:
 Location of Vehicle Address Phone Number

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

d. Did you have use of the involved motor vehicle or lease the involved motor vehicle any time before the date of the accident? Yes No If yes:
 e. What was the frequency at which you used the vehicle?
 Daily Once a Week Two or More Times Per Week Less than Once Per Month Rarely

f. Did you have your own set of keys to the vehicle? Yes No g. Did you or have you ever had to ask permission to drive the vehicle? Yes No

h. Have you ever been denied permission to use the vehicle? Yes No

i. Did you ever put gas in or do any maintenance on the vehicle? Yes No

j. List the Name of the Owner/Registrant of Vehicle Involved in the accident: First Name Middle Name Last Name
Enterprise Rental Car

Owner/Registrant's Address and Phone Number

k. Vehicle Involved:
 Year Make Model Vehicle Identification Number (VIN) Plate Number State the Vehicle is Registered In
2015 Dodge Charger 2C3CDXBG3FH865977 JWR9770 PA

l. Was there automobile insurance in effect for this vehicle on the date of the accident? Yes No If yes:
 Name of Automobile Insurance Company: ELCO Policy Number: 451009

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

n. Did the driver have automobile insurance in effect on the date of the accident? Yes No If yes:
 Name of Automobile Insurance Company: Policy Number:

o. If different than the injured person, did the driver of the vehicle have a Driver's License at the Time of the Accident? Yes No
 If yes, please provide: Driver License #: E162435143203 Driver License State: MI

p. Were there any other occupants in the vehicle? Yes No If yes:
 How many occupants were in the vehicle? 1
 Occupant's Name Address Phone Number
Tavie Potterfield 2163 S. Deacon St. Detroit, MI 48217

Did any of the occupants have automobile insurance in effect on the date of the accident? Yes No If yes:
 Occupant's Name Name of Automobile Insurance Company Policy Number

Note: If more than 1 occupant had insurance, attach separate sheet with contact information as part of this application.

44. Were there witnesses to the accident? Yes No If yes, please provide:
 Witness Name Address Phone Number
 Witness Name Address Phone Number

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

45. List all persons and their relationship to you that lived with you at the time of the accident including your spouse even if they didn't live with you:
 Name (Spouse Address if Different than Yours) Relationship
Jayde D. Everson Daughter 1st.
Anton Lavender Son
Semay Hayes Daughter

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

**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit D: Application for Benefits**

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS

Entitlement Information (continued)

46. Describe all motor vehicles owned by you, your spouse or any relative residing in your home on the date of the accident: If none, check here: <input type="checkbox"/>				
Owner/Relationship	Year, Make & Model of Vehicle	Vehicle Identification Number	Plate Number	Insurance Co & Policy Number
	1999 Cadillac SL GM.	N/A	N/A	N/A # not drivable
<i>Note: If more than 3, attach separate sheet with contact information as part of this application.</i>				
47. Have you ever filed a claim for Personal Injury Protection Benefits? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No a. If yes, please provide: Name of Insurance Company _____ Claim Number _____				
48. Are you filing this claim because there is a dispute between two or more insurance companies for your Personal Injury Protection coverage? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No a. If yes, please provide documentation of the dispute and the following: Name of Insurance Company _____ Phone Number _____ Claim Number _____ Name of Insurance Company _____ Phone Number _____ Claim Number _____				
49. Please document what actions you have taken to determine that there is no other auto insurance coverage. This question should be completed to expedite the claims process (attach additional sheet(s) if needed and any supporting documentation). <u>please see attached response from Elco insurance</u>				
Please note, if the top two boxes below are not acknowledged and the application is not signed and dated, the application will be considered incomplete and will be returned to the injured person or their representative for further completion.				
<input checked="" type="checkbox"/> I have reviewed the application in its entirety and attest that the information contained therein is true and accurate. If I am a medical provider and am submitting this application on behalf of the injured person, I attest that I have thoroughly investigated and verified all documented information. All information I have supplied is a representation of information obtained from the injured person or their representative.				
<input checked="" type="checkbox"/> I acknowledge I have read the following fraud warning:				
FRAUD WARNING				
A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan Assigned Claims Plan maintained by the Michigan Automobile Insurance Placement Facility for payment or any other benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 of the Insurance code that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the Assigned Claims Plan.				
<input checked="" type="checkbox"/> I understand that by submitting the application for benefits, the owner of the involved, uninsured automobile will be financially responsible for reimbursement of all no fault benefits paid and costs associated with this claim pursuant to the Michigan No Fault Act.				
<input type="checkbox"/> If I have provided an email address, I understand that all future correspondence and information regarding this claim may be exchanged via the email contact provided.				
Signature of Injured Person or Representative X <i>[Signature]</i>		Printed Name of Injured Person or Representative X Jank Everson		Date: 12-23-15
Signature of Preparer (if different than above) X <i>[Signature]</i>		Printed Name of Preparer (if different than above) X		Date:
Who prepared this application? <input type="checkbox"/> Injured Person <input type="checkbox"/> Attorney <input type="checkbox"/> Third Party Biller <input type="checkbox"/> Parent <input type="checkbox"/> Legal Guardian If other than Injured Party, please provide: Address: _____ City: _____ State: _____ Zip Code: _____ Phone Number: _____			Email, Fax or Mail the signed application to: Michigan Assigned Claims Plan c/o Michigan Automobile Insurance Placement Facility PO Box 532318 Livonia, MI 48153-2318 Phone: 734-464-8111 Fax: 734-943-6068 Email: info@michacp.org	

APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS

AUTHORIZATION FOR RELEASE OF INFORMATION

FRAUD WARNING

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

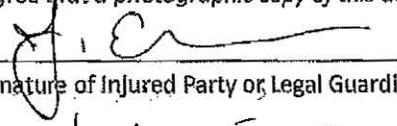
I hereby request and authorize the disclosure of protected health information and any other records about me. The name or other specific identification of the person(s) or class of persons authorized to receive the information: The Michigan Assigned Claims Plan maintained by the Michigan Automobile Insurance Placement Facility and/or their Servicing Insurers.

I understand that the information disclosed may be subject to redisclosure by the person(s) or class of person(s) receiving it and no longer protected by the federal privacy regulations. For the purpose of risk management, claim adjustment or administration, The Michigan Assigned Claims Plan maintained by the Michigan Automobile Insurance Placement Facility and/or their Servicing Insurers will have complete and unrestricted rights to **OBTAIN, DISCLOSE, RELEASE, or MAKE USE** of personal or privileged information about me which may include financial and wage statements, all medical records, hospital records, reports, charts, notes, histories, laboratory records and reports, diagnostic test reports, doctor's and nurse's notes, correspondence, and all other material, including x-ray films, MRI's, CT's and EMG/NCS and charges for all care, treatment and prognosis at any and all times for any condition whatsoever.

I understand this authorization could include information with respect to HIV infection, AIDS, mental health, substance abuse, and alcohol abuse. Those who may **RELEASE** this information, to the extent permitted by applicable law, include health care providers, government agencies, other insurance companies, insurance data base operators, third party administrators, or managed care companies, their agents, or contractors.

I understand this authorization shall be valid for three years from the date accompanying my signature. I may revoke this authorization by notifying the medical provider and The Michigan Assigned Claims Plan maintained by the Michigan Automobile insurance Placement Facility and/or their Servicing Insurers in writing of my desire to revoke it. However, I understand that if I revoke this authorization, it will not have any effect on actions they took before they received my revocation.

I agree that a photographic copy of this authorization shall be as valid as the original.


 Signature of Injured Party or Legal Guardian (if applicable) Date 12-20-15

Jonte Everson Social Security Number
 Printed Name of Injured Party

 Printed Name of Legal Guardian

Exhibit K

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
LIMITED LIABILITY COMPANY ANNUAL STATEMENT

2017

Identification Number B94241	Limited Liability Company Name EAN HOLDINGS, LLC
Resident agent name and mailing address of the registered office THE CORPORATION COMPANY MI	
The address of the registered office 40600 ANN ARBOR RD E STE 201 PLYMOUTH MI 48170	

Electronic Signature		
Filed By RICK A SHORT	Title MANAGER	Phone 314-512-5000
<input checked="" type="checkbox"/> I certify that this filing is submitted without fraudulent intent and that I am authorized by the business entity to make any changes reported herein.		

Payment Information		
Payment Amount \$ 25	Payment Date/Time 12/22/2016 10:36:58	Reference Nbr 71315 6802 B94241 2017

Required by Section 207, Act 23, Public Acts of 1993

INFORMATION & INSTRUCTIONS

Annual Statement must be signed in accordance with MCL 450.4103.

For Domestic Limited Liability Companies - It may be signed by a member, if managed by members, by a manager if managed by managers, or by an authorized agent of the company.

For Foreign Limited Liability Companies - Must be signed by a person with authority to do so under the laws of the jurisdiction of its organization.

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Exhibit L

**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit L: Payment Log (Everson)**

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Payment Log



Unit Number: 3005603021-1-1

Date of Loss: 11/07/15

Claimant's Name: JONTE EVERSON

Insured's Name: 160706601 MICHIGAN

Benefit Type :	Check Number	Service From Date	Service To Date	Payee	Date Issued	Date Paid	Paid Amount	Check Amount
					02/16/17		\$1,125.00	\$0.00
					02/16/17		\$450.00	\$0.00
					02/16/17		\$225.00	\$0.00
	1615907971-0166			KYTEL SOLUTIONS INC	02/02/17	02/03/17	\$92.36	\$92.36
	1615907971-0167			KYTEL SOLUTIONS INC	02/02/17	02/03/17	\$92.36	\$92.36
	1615907971-0168			KYTEL SOLUTIONS INC	02/02/17	02/03/17	\$92.36	\$92.36
	1615907971-0159			KYTEL SOLUTIONS INC	02/02/17	02/03/17	\$92.36	\$92.36
	1615907971-0160			KYTEL SOLUTIONS INC	02/02/17	02/03/17	\$92.36	\$92.36
	1615886745	01/13/17		J & P MICHIGAN EVALUATION GROUP, INC	01/31/17	02/07/17	\$2,000.00	\$2,000.00
	1615832959	01/06/17		JLE PROCESS SERVICES, INC.	01/25/17	02/14/17	\$90.00	\$90.00
					01/16/17		\$40.00	\$0.00
					01/16/17		\$480.00	\$0.00
					01/16/17		\$1,350.00	\$0.00
	1615720452-0017			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
	1615720452-0016			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
	1615720452-0015			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
	1615720452-0018			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
	1615720452-0019			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
	1615720452-0020			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
	1615720452-0021			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
	1615720452-0222			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
	1615720452-0116			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36



**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit L: Payment Log (Everson)**

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Payment Log



1615720452-0120			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
1615720452-0125			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
1615720452-0126			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
1615720452-0127			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
1615720452-0115			KYTEL SOLUTIONS INC	01/15/17	01/18/17	\$92.36	\$92.36
1615518363	12/13/16		JLE PROCESS SERVICES, INC.	12/22/16	01/18/17	\$135.00	\$135.00
				12/21/16		\$345.00	\$0.00
1615493612	12/12/16		DATA SURVEYS INC	12/20/16	01/06/17	\$317.50	\$317.50
				12/16/16		\$2,220.00	\$0.00
				12/16/16		\$80.00	\$0.00
				12/16/16		\$40.00	\$0.00
				12/16/16		\$345.00	\$0.00
1615415655-0191			KYTEL SOLUTIONS INC	12/13/16	12/14/16	\$92.39	\$92.39
1615415655-0190			KYTEL SOLUTIONS INC	12/13/16	12/14/16	\$92.39	\$92.39
1615415655-0189			KYTEL SOLUTIONS INC	12/13/16	12/14/16	\$92.39	\$92.39
1615415655-0183			KYTEL SOLUTIONS INC	12/13/16	12/14/16	\$92.39	\$92.39
1615415655-0182			KYTEL SOLUTIONS INC	12/13/16	12/14/16	\$92.39	\$92.39
1615415655-0195			KYTEL SOLUTIONS INC	12/13/16	12/14/16	\$92.39	\$92.39
1615373892	11/07/16		SUPERIOR INVESTIGATIVE SERVICES	12/08/16	12/19/16	\$1,800.00	\$1,800.00
1615296195			HANSON RENAISSANCE	11/30/16	12/08/16	\$194.00	\$194.00
				11/23/16		\$75.00	\$0.00
1615230223	11/16/16		J & P MICHIGAN EVALUATION GROUP, INC	11/22/16	11/29/16	\$1,475.00	\$1,475.00
1615229075	10/12/16	11/14/16	SUPERIOR INVESTIGATIVE SERVICES	11/22/16	11/29/16	\$3,246.21	\$3,246.21
				11/16/16		\$50.00	\$0.00
				11/16/16		\$20.00	\$0.00
				11/16/16		\$510.00	\$0.00
1615011243	10/27/16	10/27/16	Stefani Carter & Deborah Labelle	11/01/16	12/21/16	\$50.00	\$50.00
1615011241	10/27/16	10/27/16	Allen PHILBRICK	11/01/16	12/14/16	\$25.00	\$25.00
				10/17/16		\$150.00	\$0.00
				10/17/16		\$50.00	\$0.00
				10/17/16		\$810.00	\$0.00
1614822194	07/29/16	08/25/16	SUPERIOR INVESTIGATIVE SERVICES	10/13/16	10/19/16	\$1,178.00	\$1,178.00
1614782351	10/03/16		J & P MICHIGAN EVALUATION GROUP, INC	10/10/16	10/18/16	\$1,475.00	\$1,475.00
				09/19/16		\$75.00	\$0.00
1614349406			MACOMB COURT REPORTERS, INC	08/26/16	09/01/16	\$125.00	\$125.00
1614308038	08/03/16		J & P MICHIGAN EVALUATION GROUP, INC	08/23/16	08/31/16	\$1,212.50	\$1,212.50
1614239318	08/08/16		MASTERTRACE	08/17/16	08/24/16	\$450.00	\$450.00
				08/16/16		\$300.00	\$0.00



**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit L: Payment Log (Everson)**

Payment Log



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1613971224	06/27/16	06/27/16	J & P MICHIGAN EVALUATION GROUP, INC	07/22/16	07/27/16	\$1,212.50	\$1,212.50
1613392359	04/28/16	04/28/16	DATA SURVEYS INC	05/26/16	06/02/16	\$525.00	\$525.00
1613391475	05/11/16	05/11/16	J & P MICHIGAN EVALUATION GROUP, INC	05/26/16	06/03/16	\$2,318.75	\$2,318.75

Benefit Type Total	\$28,878.64	\$20,138.64
Total Amount	\$28,878.64	\$20,138.64



**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit L: Payment Log (Everson)**

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Jonte Everson 3005603021-1-1

Created	Sub Action Code	Total Time
02/07/2017 14:50	Claim Review - Diary Review	30
02/06/2017 9:19	Litigation - Misc	90
02/06/2017 9:17	Claim Review - Information Request/Correspondence	15
01/31/2017 9:57	Administrative/Management - Check Approval	10
01/31/2017 8:56	Billing Time	65
01/31/2017 7:24	Claim Review - Information Request/Correspondence	15
01/31/2017 7:24	Claim Review - Approval Request to Manager	5
01/25/2017 16:02	Litigation - Misc	90
01/25/2017 8:51	Administrative/Management - Check Approval	10
01/25/2017 8:51	Claim Review - Information Request/Correspondence	15
01/25/2017 8:50	Claim Review - Approval Request to Manager	5
01/23/2017 9:38	Phone Call - 6+ Minutes	10
01/17/2017 10:06	Claim Review - Diary Review	30
01/13/2017 12:01	Claim Review - Information Request/Correspondence	15
01/13/2017 6:53	Subrogation - Status Update	20
01/03/2017 8:31	Claim Review - Information Request/Correspondence	15
12/27/2016 10:19	Claim Review - Diary Review	30
12/21/2016 13:30	Administrative/Management - Check Approval	10
12/21/2016 12:58	Claim Review - Information Request/Correspondence	15
12/21/2016 12:58	Claim Review - Approval Request to Manager	5
12/20/2016 11:47	Administrative/Management - Check Approval	10
12/20/2016 10:42	Claim Review - Approval Request to Manager	5
12/20/2016 10:41	Claim Review - Information Request/Correspondence	15
12/20/2016 7:47	Claim Review - Information Request/Correspondence	15
12/08/2016 11:01	Claim Review - Information Request/Correspondence	15
12/08/2016 7:55	Administrative/Management - Check Approval	10
12/08/2016 7:48	Claim Review - Information Request/Correspondence	15
12/08/2016 7:47	Claim Review - Approval Request to Manager	5
11/29/2016 7:20	Claim Review - Information Request/Correspondence	15
11/22/2016 9:53	Administrative/Management - Check Approval	10
11/22/2016 9:31	Claim Review - Approval Request to Manager	5
11/22/2016 8:22	Claim Review - Information Request/Correspondence	15
11/17/2016 14:26	Litigation - Misc	90
11/11/2016 8:48	Claim Review - Diary Review	30
11/11/2016 8:47	Claim Review - Information Request/Correspondence	15
11/04/2016 12:27	Claim Review - Information Request/Correspondence	15
11/01/2016 7:36	Litigation - Misc	90
10/21/2016 8:54	Claim Review - Diary Review	30
10/19/2016 8:26	Claim Review - Diary Review	30
10/18/2016 9:53	Claim Review - Diary Review	30
10/17/2016 9:03	Litigation - Misc	90
10/13/2016 9:43	Claim Review - Information Request/Correspondence	15
10/12/2016 11:13	Claim Review - Information Request/Correspondence	15
10/12/2016 10:04	Claim Review - Information Request/Correspondence	15
10/10/2016 13:13	Administrative/Management - File Review	30

**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit L: Payment Log (Everson)**

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10/10/2016 10:14	Claim Review - Information Request/Correspondence	15
10/10/2016 8:11	Litigation - Initial Set Up	120
09/28/2016 10:25	Litigation - Initial Set Up	120
09/27/2016 8:27	Claim Review - Diary Review	30
09/14/2016 10:28	Litigation - Misc	60
09/06/2016 12:12	Claim Review - Information Request/Correspondence	15
09/06/2016 10:31	Claim Review - Diary Review	30
08/23/2016 14:47	Claim Review - Information Request/Correspondence	15
08/17/2016 7:10	Claim Review - Information Request/Correspondence	15
07/22/2016 11:24	Claim Review - Information Request/Correspondence	15
07/22/2016 9:45	Claim Review - Diary Review	30
07/19/2016 14:00	Billing Time	20
07/19/2016 8:26	Claim Review - Information Request/Correspondence	15
07/19/2016 8:19	Claim Review - Information Request/Correspondence	15
07/18/2016 14:04	Phone Call - 6+ Minutes	10
07/07/2016 9:48	Phone Call - 6+ Minutes	10
06/24/2016 14:46	Phone Call - 6+ Minutes	10
06/23/2016 13:50	Phone Call - 6+ Minutes	10
06/01/2016 8:59	Claim Review - Diary Review	30
05/24/2016 14:35	Claim Review - Information Request/Correspondence	15
05/04/2016 12:37	Litigation - Initial Set Up	120
05/03/2016 11:47	Claim Review - Diary Review	30
04/26/2016 10:25	Phone Call - 1-5 Minutes	5
04/25/2016 7:03	Administrative/Management - File Review	30
04/20/2016 9:52	Phone Call - 6+ Minutes	10
04/18/2016 9:36	Claim Review - Information Request/Correspondence	15
04/06/2016 10:40	IME/Peer Review - Initial Set Up	15
04/06/2016 9:18	Claim Review - Diary Review	30
03/09/2016 13:33	Phone Call - 6+ Minutes	10
03/09/2016 13:31	Phone Call - 6+ Minutes	10
03/08/2016 15:04		
03/08/2016 11:04	Phone Call - 6+ Minutes	10
03/02/2016 14:41	Phone Call - 6+ Minutes	10
03/02/2016 14:25	Phone Call - 6+ Minutes	10
03/01/2016 15:23		
03/01/2016 14:05		
03/01/2016 14:05		
02/29/2016 12:23	Phone Call - 6+ Minutes	10
02/29/2016 9:48	New Claim	75
	minutes	2120
	hours	35.33333
	total amount	\$3,180.00

Exhibit M

**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit M: Payment Log (T. Porterfield)**

RECEIVED by MSC 4/15/2020 8:58:20 AM

Payment Log



Unit Number: 3005603021-1-4

Date of Loss: 11/07/15

Claimant's Name: TAVIE PORTERFIELD

Insured's Name: 160706601 MICHIGAN

Benefit Type :							
Check Number	Service From Date	Service To Date	Payee	Date Issued	Date Paid	Paid Amount	Check Amount
1615909165	01/27/17		J & P MICHIGAN EVALUATION GROUP, INC	02/02/17	02/08/17	\$500.00	\$500.00
1615707431	01/03/17		DATA SURVEYS INC	01/13/17	01/19/17	\$242.90	\$242.90
1615611572	12/14/16		SHADOW INVESTIGATIONS INC	01/04/17	01/18/17	\$150.00	\$150.00
1615611514	12/16/16		J & P MICHIGAN EVALUATION GROUP, INC	01/04/17	01/11/17	\$500.00	\$500.00
1615611015	12/04/16	12/16/16	SHADOW INVESTIGATIONS INC	01/04/17	01/18/17	\$2,761.32	\$2,761.32
1615610927	12/15/16		DATA SURVEYS INC	01/04/17	01/13/17	\$1,169.00	\$1,169.00
1615249766	12/16/16		TAVIE PORTERFIELD	11/23/16		\$20.09	\$20.09

Benefit Type Total	\$5,343.31	\$5,343.31
Total Amount	\$5,343.31	\$5,343.31



**EVERSON - Farmers' Response to EAN's Motion for Summary Disposition
Exhibit M: Payment Log (T. Porterfield)**

RECEIVED by MSC 4/15/2020 8:58:20 AM

Tavie Porterfield 3005603021-1-4

Created	Sub Action Code	Total Time
02/14/2017 12:43		
02/09/2017 8:23	Claim Review - Diary Review	30
02/06/2017 9:22	Litigation - Misc	90
02/02/2017 9:32	Claim Review - Information Request/Correspondence	15
02/01/2017 12:23	Claim Review - Information Request/Correspondence	15
01/24/2017 14:24	Claim Review - Diary Review	30
01/13/2017 9:56	Claim Review - Information Request/Correspondence	15
01/13/2017 7:00	Subrogation - Status Update	20
01/12/2017 10:00		
01/04/2017 13:19	Claim Review - Information Request/Correspondence	15
01/03/2017 12:55	Administrative/Management - File Review	30
01/03/2017 7:38	Claim Review - Diary Review	30
01/03/2017 7:35	Claim Review - Approval Request to Manager	5
01/03/2017 7:35		
12/22/2016 14:54	Claim Review - Diary Review	30
12/09/2016 14:54		
12/02/2016 7:24	Phone Call - 6+ Minutes	10
11/23/2016 13:17		
11/16/2016 8:37	Claim Review - Information Request/Correspondence	15
11/15/2016 14:26	IME/Peer Review - Initial Set Up	15
11/11/2016 13:41		
11/11/2016 9:02		
11/09/2016 8:04	New Claim	75
	minutes	440
	hours	7.333333
	total amount	\$660.00

**STATE OF MICHIGAN
IN THE CIRCUIT COURT OF WASHTENAW**

JONTE EVERSON,

Plaintiff,

Case No.: 16-359-NF

vs.

Hon. David S. Swartz

FARMERS INSURANCE EXCHANGE,

Defendant(s)/ Third-Party Plaintiff.

vs.

ENTERPRISE LEASING COMPANY OF DETROIT,

Third-Party Defendant.

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MATTHEW C. KOSS (P74088)
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100 W. Big Beaver, Suite 650
Troy, MI 48084
248.244.8931

REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

The issue presented in this motion for summary disposition is whether the Michigan No-Fault Act priority provisions apply to the owner of a vehicle which was neither registered in Michigan, nor operated in Michigan for more than thirty days. The case of *Parks v. DAIE 326*

Mich at 191 393 NW 2nd 833 (1986), is dispositive of this issue. As in Parks, the vehicle in question in this case was not subject to the no-fault security provisions (because it was not registered in Michigan and was not operated for more than thirty days in a calendar year in Michigan), the owner of the vehicle falls outside of the no-fault acts priority provisions. For this reason, Defendant's motion for summary disposition must be granted.

I. Defendant is not in the order of priority pursuant to *Parks v. DAIIE*.

In this case, the vehicle in question was only operated in the State of Michigan for nine days in the calendar year of 2015. It was registered in the State of Pennsylvania and owned by EAN Holdings, a non-resident of the State of Michigan. Under section MCL 500.3101, only the owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance. EAN Holding is not included in this definition. Further, under section 3102, the security requirements of no-fault insurance applies to a non-resident owner or registrant of a motor vehicle, but only when the motor vehicle is operated in this state for aggregate of more than thirty days in any calendar year. Here it is uncontested that the motor vehicle in question was operated in Michigan for only nine days. Therefore, the automobile is not subject to the mandatory security requirements in section 3101(1). See *Parks 326 Mich at 199-200*.

The factual parallels between this case and Parks are material. In Parks, the vehicle involved in the accident was owned by a self-insured, non-resident company, was registered in another state and was not required to registered in Michigan. This applies to the present case. In Parks, the insurer argued that the non-resident vehicle owner was liable under MCL 500.3114 regardless of whether the no-fault act required the owner to maintain security on the vehicle. This also applies to the instant case. In Parks the insurer's priority argument failed because the

registration requirement of section 3101 is necessary and key prerequisite to liability under the no-fault act. Thus, the Parks case governs this motion.

MCL 500.3102(1), does apply to vehicles owned by non-residents and not registered in the state, but specifically limits the requirement of security to vehicles operated in the state for more than thirty days in a single calendar year. Here there is no claim that the subject vehicle was operated in Michigan for more than thirty days in any particular calendar year. Since the vehicle in this case was not subject to the security requirements of the Act, the priority provisions of section 3114 do not apply. Priority exists only if there is an owner/registrator of the vehicle as that phrase is limited by more complete requirements of section 3101 that the owner or registrator of the motor vehicle is one which must be “required to be registered in the state”. Defendant is not an owner or registrator of a motor vehicle required to be registered in this state as the term is contemplated by Michigan legislature and as so interpreted by the Parks court. Therefore, Third-Party Plaintiffs priority argument fails.

Secondly, Third-Party Defendant is not first in priority to pay the no-fault benefits because it is not “insurer” and does not fall under the phrase insurer or registrator of the vehicle in MCL 500.3114(4)(a). Status as a self-insured does not place the self-insurance entity into the category of insurer authorized to transact automobile liability and personal property protection insurance in this state. MCL 500.3161(1) *Parks* 426 Mich 208.

For all these reasons, the Parks case is dispositive of this motion and Third-Party Defendant’s motion for summary disposition must be granted.

II. Third-Party Plaintiff fails to distinguish Parks.

Third-Party Plaintiff attempts to distinguish the case citing *Titan Insurance Company v. American Country Insurance Company* by 312 Mich App 291 876 NW 2nd 853 (2015). The Titan

case is clearly not relevant. It involves a case in which a driver was injured while operating vehicles owned and registered by transportation companies that were required to be registered in the State of Michigan. Both companies owned other vehicles that were insured. The court found that the owner of the vehicles were responsible under the priority sections of MCL 500.3114. The Titan case did not involve a non-resident owner and a vehicle that was not required to be registered in the State of Michigan. Therefore it is distinguishable on its facts.

Likewise, *Tevis v. Amex Insurance Company* 283 Mich App 76 77 NW 2nd (2016), is not “binding precedent”. The Tevis case is clearly distinguishable. First, Tevis involved a commercial insurer, not a self-insured entity. Additionally, Tevis did not involve a non-Michigan resident vehicle or a self-insured owner of the involved vehicle. The Tevis case is applicable to this case. The only case that is controlling on these issues is Parks.

III. EAN Holdings is not a resident of the State of Michigan.

Finally, Plaintiff appears to argue that EAN Holdings is a resident of the State of Michigan. EAN Holdings is not a party to this case. Further, at page 12 of its response, Third-Party Plaintiff’s brief identifies Enterprise as a “non-resident corporation”. Even in the documents attached as Exhibit K to Third-Party Plaintiff’s response, EAN Holdings is identified as a Delaware corporation. In the form attached states “for use by foreign limited liability companies”. EAN Holdings is a foreign limited liability corporation incorporated in the State of Delaware. **(Exhibit A)**. Third-Party Plaintiff claims that because EAN Holdings has a resident agent in the State of Michigan it’s a resident of the state. The purpose of a resident agent, are to allow for service of process on non-resident corporations doing business within the state.

The Court should also be aware that the definition provided by Third-Party Plaintiff fails to give a complete definition of “resident” under the Motor Vehicle Code. Third-Party Plaintiff is

citing MCL 257.51, which states: “Resident defined- Resident means every person who resides in the state and establishes that he or she is legally present in the United States. This definition applies to the provision of this act only.” Thus, the definition which Third-Party Plaintiff provided the Court, only applies to the Motor Vehicle Code and not the Michigan No-Fault Act. Therefore it is inapplicable.

EAN Holdings is a Delaware Corporation and clearly not a resident of the State of Michigan. See *Heichel v. Geico Indemnity unpublished Court of Appeals opinion Docket No. 32818 (March 1, 2016)*.

CONCLUSION

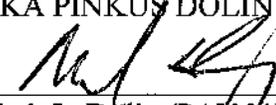
The Michigan No-fault Act provides that if a non-resident or vehicle owner exceeds certain limitations on the usage of the vehicle within the state it must comply with the act and secure coverage in conformity with the provisions of the Act, MCL 500.3102(1). Here as a non-resident owner of a subject vehicle, Defendant is not required to supply the security required because the vehicle at the time of accident was registered in Pennsylvania. Additionally, the vehicle had not been operated in the Michigan for an aggregate of more than thirty days in any one-year prior to the accident an issue. As Defendant was not required to provide security for the vehicle pursuant to MCL 500.3101, the priority provisions MCL 500.3114 are inapplicable. Parks supra. Therefore, based on the holdings of *Parks v. DAIIE 326 Mich 19, 393 NW 2nd 833 (1986)*, Defendant’s motion for summary disposition must be granted.

EVERSON - EAN's Reply Brief

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Respectfully submitted,

KOPKA PINKUS DOLIN

By:  _____

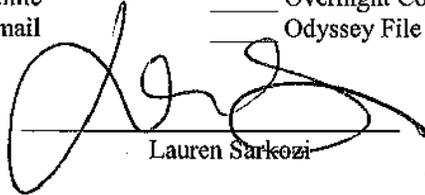
Mark L. Dolin (P45081)
Michael B. Barey (P41445)
KOPKA PINKUS DOLIN
Attorneys for Defendant Enterprise

Dated: March 6, 2017

PROOF OF SERVICE

The undersigned certifies that on March 6, 2017 he served a copy of the foregoing document upon all counsel of record, via:

<input type="checkbox"/> First Class Mail	<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Facsimile	<input type="checkbox"/> Overnight Courier
<input checked="" type="checkbox"/> Email	<input type="checkbox"/> Odyssey File and Serve



Lauren Sarkozi

A

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EVERSON - EAN's Reply Brief
Exhibit A: EAN Application to Transact Business in Michigan (Complete)

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BCS/GD-100 (Rev. 12/03)

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES

FILED

MAR 10 2009

by Administrator
 Bureau of Commercial Services

Date Received:	(FOR BUREAU USE ONLY) ADJUSTED PURSUANT TO TELEPHONE AUTHORIZATION (6)
	This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Tran Info: 14752635-1 03/06/09
 Ch#: 000138548 Amt: 150.00
 ID: ENTERPRISE

Name EAN Holdings, LLC - Mary K. DeLassus		
Address 600 Corporate Park Dr.		
City St. Louis, MO 63105	State	Zip Code

EFFECTIVE DATE:

Document will be returned to the name and address you enter above.
 If left blank document will be mailed to the registered office.

B94241

**APPLICATION FOR CERTIFICATE OF AUTHORITY
 TO TRANSACT BUSINESS IN MICHIGAN**

For use by Foreign Limited Liability Companies
 (Please read information and instructions on last page)

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned limited liability company executes the following Application:

1. The name of the limited liability company is:
EAN Holdings, LLC

2. (Complete this item only if the limited liability company name in item 1 is not available for use in Michigan.)
 The assumed name of the limited liability company to be used in all its dealings with the Bureau and in the transaction of its business in Michigan is:

3. It is organized under the laws of Delaware
 The date of its organization is 09/15/2008
 The duration of the limited liability company if other than perpetual is perpetual

4. The address of the office required to be maintained in the state of organization or, if not so required, the principal office of the limited liability company is:
600 Corporate Park Dr. St. Louis, MO 63105
(Street Address) (City) (State) (ZIP Code)

311451 - 2/21/07 CTS System Online

AM

EVERSON - EAN's Reply Brief
Exhibit A: EAN Application to Transact Business in Michigan (Complete)

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6. a. The address of its registered office in Michigan is:

30600 Telegraph Road, Suite 2345 Bingham Farms Michigan 48025-5720
(Street Address) (City) (ZIP Code)

b. The mailing address of the registered office if different than above:

_____, Michigan _____
(Street Address or P.O. Box) (City) (ZIP Code)

c. The name of the resident agent at the registered office is:

The Corporation Company

6. The Department is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed, or if appointed, the agent's authority has been revoked, the agent has resigned, or the agent cannot be found or served through the exercise of reasonable diligence.

The name and address of a member or manager or other person to whom the administrator is to send copies of any process served on the administrator is: (Must be different than agent shown in Item 5c)

Mark I. Litow, Secretary
(Name)

600 Corporate Park Dr. St. Louis MI 63105
(Street Address) (City) (State) (ZIP Code)

7. The specific business which the limited liability company is to transact in Michigan is as follows:

Vehicle Rental, Leasing, and Car Sales

The limited liability company is authorized to transact such business in the jurisdiction of its organization.

Signed this 25th day of February, 2009

By Mary K. DeLassus
(Signature)

Mary K. DeLassus

Assistant Secretary

(Type or Print Name)

(Type or Print Title)

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "EAN HOLDINGS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE EIGHTEENTH DAY OF FEBRUARY, A.D. 2009.

4600225 8300

090154571

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7142574

DATE: 02-18-09

EVERSON - EAN's Reply Brief
Exhibit A: EAN Application to Transact Business in Michigan (Complete)

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The screenshot displays the Delaware State Department of State website. At the top, there is a banner for the State of Delaware. Below the banner, the navigation menu includes 'Home', 'About Us', 'Services', 'Forms', 'Fees', 'Contact Us', 'Help', 'Privacy Policy', 'Terms of Use', 'Accessibility', and 'Feedback'. The main content area is titled 'Entity Details' and shows information for 'THE CORPORATION EVBY COMPANY'. The entity is a corporation organized in Delaware, with its principal office located at 10000 Corporate Blvd, Newark, Delaware 19711. The company is listed as 'THE CORPORATION EVBY COMPANY' with a DUNS number of 11301. The website also provides a link to the 'Delaware Business Search' and a 'Print' button.

STATE OF MICHIGAN
COURT OF APPEALS

TOMMIE MCMULLEN,
Plaintiff-Appellee,

UNPUBLISHED
June 13, 2017

v

CITIZENS INSURANCE COMPANY and
TRAVELERS INSURANCE COMPANY,

No. 332373
Washtenaw Circuit Court
LC No. 14-000708-NF

Defendants,
and

FARMERS INSURANCE EXCHANGE,

Defendant/Cross-Plaintiff-
Appellant,
and

MARKEL INSURANCE COMPANY,

Defendant/Cross-Defendant-
Appellee.

Before: JANSEN, P.J., and MURPHY and BORRELLO, JJ.

PER CURIAM.

Defendant/cross-plaintiff-appellant, Farmers Insurance Exchange (Farmers), appeals as of right the order denying the relief requested in Farmers' motion for reconsideration of the trial court's earlier order granting summary disposition in favor of defendant/cross-defendant-appellee, Markel Insurance Company (Markel), and denying Farmers' motion for summary disposition with regard to its cross-claim against Markel. We reverse and remand.

This case arises from a motor vehicle accident in which plaintiff suffered substantial injuries. Plaintiff was the passenger in a stolen Mercury Sable when the Mercury was involved in a single vehicle accident. A woman named Sara Soenen donated the Mercury to Purple Heart before the accident. KBS Auto Sales (KBS), LLC, an automobile dealership, purchased the Mercury, but did not obtain a new registration for the vehicle. At the time of the accident, KBS maintained a no-fault insurance policy through Markel. Following the accident, Farmers was

assigned as the insurer of last resort through the Michigan Assigned Claims Plan. It is undisputed that plaintiff was not a named beneficiary under a no-fault policy, and he did not live with any family members who were named beneficiaries under a no-fault insurance policy.

Plaintiff filed the instant action against multiple no-fault insurers, including Markel and Farmers, for personal protection insurance (PIP) benefits. Plaintiff requested that the trial court determine which insurer is responsible for payment of the PIP benefits. Farmers filed a cross-claim against Markel, contending that Markel is the insurer of highest priority. The trial court granted summary disposition in favor of defendants Citizens Insurance Company and Travelers Insurance Company, and the court's decision with regard to these defendants is not challenged on appeal. The court also granted summary disposition in favor of Markel with regard to plaintiff's complaint. Farmers filed a motion for reconsideration, as well as a motion for summary disposition with regard to Farmers' cross-claim. The court denied the relief requested in Farmers' motion for reconsideration and denied Farmers' motion for summary disposition on its cross-claim.

Farmers argues that the trial court erred by granting summary disposition in favor of Markel because Markel was the insurer of higher priority. We agree.

We review for an abuse of discretion the trial court's decision to grant or deny a motion for reconsideration. *D'Alessandro Contracting Group, LLC v Wright*, 308 Mich App 71, 76; 862 NW2d 466 (2014). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *Id.* MCR 2.119(F)(3) provides:

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

"[We review] the grant or denial of summary disposition de novo." *Farm Bureau Gen Ins Co v Blue Cross Blue Shield of Mich*, 314 Mich App 12, 19; 884 NW2d 853 (2015). " 'A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.' " *Id.* (citation omitted). A court properly grants a motion for summary disposition under MCR 2.116(C)(10) when there is no genuine issue of material fact. *Id.* " 'There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party.' " *Id.* (citation omitted).

Finally, to the extent that resolution of this issue involves the proper interpretation of a statute, we review de novo issues of statutory interpretation. *Dell v Citizens Ins Co of America*, 312 Mich App 734, 739; 880 NW2d 280 (2015).

The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language. The first step in that determination is to review the language of the statute itself. Unless statutorily defined, every word or phrase of a statute should be accorded its plain and

ordinary meaning, taking into account the context in which the words are used. [This Court] may consult dictionary definitions to give words their common and ordinary meaning. When given their common and ordinary meaning, [t]he words of a statute provide the most reliable evidence of its intent [*Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 515; 821 NW2d 117 (2012) (citation and quotation marks omitted; second alteration in original).]

The issue in this case is whether Markel had priority over Farmers, the insurer of last resort, to pay plaintiff's PIP benefits under the no-fault act, MCL 500.3101 *et seq.* The no-fault act was enacted in order to provide " 'assured, adequate, and prompt recovery for economic loss arising from motor vehicle accidents.' " *Adanalic v Harco Nat'l Ins Co*, 309 Mich App 173, 187; 870 NW2d 731 (2015) (citation omitted). MCL 500.3101 provides, in relevant part, "The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." The relevant priority statute, MCL 500.3114, provides the priority order for payment of PIP benefits. The relevant priority section states:

Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

(b) The insurer of the operator of the vehicle occupied. [MCL 500.3114(4).]

Farmers was assigned to plaintiff's claim through the Michigan Assigned Claims Plan and is required to provide PIP benefits to plaintiff if Markel is not obligated to provide PIP benefits to plaintiff. See MCL 500.3172(1). Therefore, the sole question presented in this case is whether Markel is the insurer of highest priority pursuant to MCL 500.3114(4) because Markel insured the owner of the Mercury at the time of the accident.

Farmers argues that Markel is required to provide PIP benefits to plaintiff pursuant to MCL 500.3114(4) because Markel insured the owner of the Mercury. In contrast, Markel argues that the no-fault policy provides that a "covered auto" is one that was "required to have No-Fault benefits in the state where [it is] licensed or principally garaged," and that the Mercury was not "required to be registered" in Michigan because KBS is an automobile dealer. Therefore, according to Markel, KBS was not required to obtain no-fault coverage for the Mercury, and the no-fault policy in place at the time of the accident did not apply to the vehicle.

Farmers relies on *Farmers Ins Exch v Farm Bureau Gen Ins Co of Mich*, 272 Mich App 106; 724 NW2d 485 (2006), in support of its position. In *Farmers*, a motorcyclist was injured when his motorcycle was hit by a van. *Id.* at 108. The van was uninsured at the time of the accident. *Id.* However, one of the two owners of the van maintained a policy of no-fault insurance through the defendant with regard to another vehicle. *Id.* The insurance policy did not list the van as an insured vehicle, and it did not list the other owner of the van as a named

insured. *Id.* The motorcyclist filed a claim for PIP benefits through the Michigan Assigned Claims Plan, formerly known as the Michigan Assigned Claims Facility, which assigned the claim to the plaintiff. *Id.* The plaintiff filed an action for declaratory relief regarding which no-fault insurer was required to pay the PIP benefits. *Id.* The issue in the case was whether the language in MCL 500.3114(5)(a) requires an insurer to pay PIP benefits when that insurer did not issue a policy covering a vehicle involved in the accident. *Id.* at 110.

Although the accident in *Farmers* involved a motorcycle, MCL 500.3114(5)(a), the priority statute at issue in the case, contains relevant language that is identical to the priority statute at issue in this case. MCL 500.3114(5)(a) provides:

A person suffering accidental bodily injury arising from a motor vehicle accident that shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) *The insurer of the owner or registrant* of the motor vehicle involved in the accident.

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident. [Emphasis added.]

This Court concluded that the plain language of the statute provided that “the insurer need not insure the vehicle in the accident, but must insure the owner or registrant.” *Farmers*, 272 Mich App at 113. Therefore, because the defendant insured one of the owners of the van, the defendant was the first in priority to provide PIP benefits. *Id.* This Court further explained:

Had the Legislature intended MCL 500.3114(5)(a) only to require an insurer to provide no-fault benefits if the insurer actually insured the motor vehicle involved in the accident, it could have chosen the following language for MCL 500.3114(5) (a): “The insurer of the motor vehicle involved in the accident,” deleting the first prepositional phrase, “of the owner or registrant.” Clearly, the Legislature did not choose that language, and for us to adopt defendant’s position would be to render the phrase “of the owner or registrant” in the statute nugatory. [*Id.* at 113-114.]

This Court further explained that its holding was consistent with a legislative intent to insure persons, rather than vehicles, from loss. *Id.* at 114. This Court quoted an earlier decision of this Court interpreting materially identical language, in which this Court stated, “ ‘[T]he statute does not state that the injured person must seek these benefits *from the insurer of the motor vehicle.*’ ” *Id.* at 115 (emphasis added; alteration in original), quoting *Pioneer State Mut Ins Co v Titan Ins Co*, 252 Mich App 330, 336; 652 NW2d 469 (2002).

Additionally, Farmers relies, in large part, on this Court's recent decision in *Titan Ins Co v American Country Ins Co*, 312 Mich App 291; 876 NW2d 853 (2015). The *Titan* decision concerned two consolidated cases stemming from motor vehicle accidents involving uninsured drivers. *Id.* at 294-295. In both cases, the vehicles in issue were uninsured, and the operators of the vehicles were not insured under a no-fault policy. *Id.* at 295. However, in both cases, the owners of the vehicles involved in the accidents, Safe Arrival Transportation and Bronco Express Company, maintained policies of no-fault insurance with the defendant covering other vehicles. *Id.* In both cases, the plaintiff was assigned as the insurer of last resort. *Id.* This Court held that because the defendant insured other vehicles owned by Safe Arrival and Bronco Express, the defendant was responsible for the claims under MCL 500.3114(4). *Id.* at 302.

We conclude that *Farmers* and *Titan* stand for the proposition that the no-fault insurer of the owner of the vehicle involved in the accident is the insurer of highest priority under MCL 500.3114(4), regardless of whether the vehicle involved in the accident was covered under the insurance policy. Both opinions reach the conclusion that the insurer of the owner of the vehicle involved in the accident has priority over an assigned insurer, *regardless* of whether the vehicle was insured under the no-fault policy. As this Court indicated in *Farmers*, had the Legislature intended for the focus of the priority language in issue to be on the vehicle, the Legislature would have worded the statute to indicate that the insurer insures the motor vehicle, rather than the owner of the vehicle. *Farmers*, 272 Mich App at 113-114. The parties do not dispute that Markel issued a no-fault insurance policy to KBS that was effective at the time of the accident. Therefore, it is irrelevant whether the Mercury was a "covered auto" as defined in Markel's insurance policy because Markel provided no-fault insurance to KBS at the time of the accident.

Markel contends that the Mercury was required to be registered in Michigan in order for the Markel insurance policy to apply in this case. Markel cites *Parks v Detroit Auto Inter-Ins Exch*, 426 Mich 191; 393 NW2d 833 (1986), in support of its position. In *Parks*, the plaintiff was injured while working inside a trailer owned by his employer. *Id.* at 196. The priority provision at issue in the case stated that "an employee 'who suffers accidental bodily injury while an occupant of a motor vehicle *owned or registered by the employer*, shall receive personal protection insurance benefits to which the employee is entitled *from the insurer of the furnished vehicle.*'" *Id.*, quoting MCL 500.3114(3). The Court concluded that the trailer was not required to be registered in Michigan under MCL 500.3101(1). *Id.* at 200. Therefore, the Court concluded that

an out-of-state vehicle not required to be registered in Michigan and not operated in this state for more than thirty days is not subject to the security provisions or [MCL 500.3114(3)] of the no-fault act and that when an employee is injured while an occupant of such a vehicle, the employee's personal insurer, if there is one, must pay the employee's personal protection benefits under [MCL 500.3101(1)]. [*Id.*]

Parks can be distinguished from this case for several reasons. First, the statutory provision at issue in *Parks* differs from the provision at issue in this case. The priority provision at issue in *Parks* involved an injury suffered by an employee occupying a motor vehicle owned or registered by the employer. *Id.* at 196. Importantly, the language of the statute at issue in *Parks* referred to the insurer of the *vehicle*, rather than the insurer of the *owner* of the vehicle.

Id. Additionally, the plaintiff in *Parks* maintained a policy of no-fault insurance, and a plaintiff's own insurer is generally the no-fault insurer of highest priority. *Id.* at 197, 202-203. Therefore, *Parks* differs from the instant case in several key respects.

Importantly, however, our Supreme Court stated in a footnote:

[W]e assume [MCL 500.3114(4)] does not apply because we read the phrase "owner or registrant of the vehicle occupied" within [MCL 500.3114(4)] to be part of the more complete requirement as stated in [MCL 500.3101(1)]: "The owner or registrant of a motor vehicle *required to be registered in this state*[" *Id.* at 203 n 3.]

We conclude that our Supreme Court's statement in the footnote constituted obiter dictum and did not constitute binding precedent. See *Auto-Owners Ins Co v Seils*, 310 Mich App 132, 160 n 7; 871 NW2d 530 (2015) ("Obiter dicta are not binding precedent. Instead, they are statements that are unnecessary to determine the case at hand and, thus, lack the force of an adjudication.") (Citation and quotation marks omitted.) The Court's discussion in the footnote in *Parks* constituted obiter dictum because it was not necessary to determine the case at hand. The priority rule outlined in MCL 500.3114(4) was not at issue in *Parks*, and the Court stated that it "assumed" that MCL 500.3114(4) did not apply in the case without directly deciding whether that priority rule had any effect on the case. *Parks*, 426 Mich at 203 n 3. Therefore, the Court's statements regarding MCL 500.3114(4) were not necessary to determine the case at hand and, therefore, lacked the force of an adjudication. See *Seils*, 310 Mich App at 160 n 7.

Markel also cites *MEEMIC Ins Co v Mich Millers Mut Ins*, 313 Mich App 94; 880 NW2d 327 (2015), for the proposition that MCL 500.3114(4) does not apply when the vehicle is exempt from no-fault coverage under MCL 500.3101(1). In *MEEMIC*, a man named John Putvin owned a 1966 Corvette, which was stored in a commercial storage facility. *Id.* at 95. Putvin did not drive the Corvette in the year preceding the incident, but he purchased comprehensive insurance coverage that covered the Corvette. *Id.* at 96-97. Two men performed work on the Corvette in the storage facility and caused a fire. *Id.* The fire caused damage to the personal property of two other individuals that was stored at the facility. *Id.* at 97. The plaintiff, the insurer of two individuals whose property was damaged, sued a variety of insurers to recover its losses. *Id.* Ultimately, the plaintiff added Home-Owners Insurance Company (Home-Owners) to the complaint, alleging that Home-Owners issued a no-fault policy to Putvin that covered the automobiles that he continued to drive. *Id.*

This Court concluded that Putvin was not required to maintain no-fault coverage for the Corvette during the period at issue because he did not drive the Corvette during that time. *Id.* at 99-100. The relevant priority provision at issue in the case provides that "a person who suffers accidental property damage 'shall claim property protection insurance benefits' first from 'insurers of owners or registrants of vehicles involved in the accident'" *Id.* at 100, quoting MCL 500.3125. This Court concluded:

Thus, construing MCL 500.3125 in harmony with MCL 500.3101(1), we conclude that an insurer of an owner of a motor vehicle involved in an accident is not statutorily required to pay property protection insurance benefits to a person

suffering accidental property damage if the motor vehicle involved in the accident was not driven or moved upon a highway and the owner or registrant elected to forgo that coverage in favor of comprehensive coverage, as permitted under MCL 500.3101(1). Because the coverage is optional in such cases, whether the policy provides coverage must be determined from the policy itself. [*Id.* at 102 (citation omitted).]

This Court held that because the Corvette was not driven on a highway during the relevant period, Putvin was not required to maintain security for no-fault benefits under MCL 500.3101(1), and that, because Putvin maintained a comprehensive insurance policy, Home-Owners was able to exclude the Corvette from coverage under its no-fault policy. *Id.* at 103. Therefore, Home-Owners was not liable to pay property protection benefits. *Id.* Importantly, however, this Court stated, “Because this case only involves property protection insurance, we express no opinion as to whether the same would be true for claims involving personal protection insurance or residual liability insurance.” *Id.* at 102 n 2.

We conclude that *MEEMIC* is distinguishable from the instant case. First, *MEEMIC* involved property protection insurance benefits, and this Court expressly stated that its opinion did not address claims involving PIP benefits. *Id.* at 102 n 2. In addition, the *MEEMIC* case centered around the fact that the Corvette had not been driven or moved on a highway, and the owner of the Corvette had purchased a comprehensive coverage policy covering the vehicle. *Id.* at 102. In this case, the parties do no contest that the Mercury was driven on the street, and neither party asserts that KBS maintained a separate policy covering the vehicle.

However, even assuming that Markel is correct that the Mercury must be registered or required to be registered in Michigan in order for Markel’s no-fault policy to apply, we conclude that the Mercury was required to be registered at the time of the accident because it was driven on a street or highway without conforming to the provisions of the Michigan Vehicle Code, MCL 257.1 *et seq.*, relating to dealers. ¹ Markel points to several registration statutes in support of its position that the vehicle was not required to be registered in Michigan. MCL 257.216 provides, in relevant part:

Every motor vehicle, recreational vehicle, trailer, semitrailer, and pole trailer, when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act except the following:

¹ We agree with Markel’s contention that the Secretary of State Dealer Manual indicating that a dealer must obtain no-fault insurance lacks the force and effect of law. Our Supreme Court has held that the Dealer Manual is not entitled to the force and effect of law because it was not properly promulgated as a rule. *Goins v Greenfield Jeep Eagle, Inc*, 449 Mich 1, 7-10; 534 NW2d 467 (1995). Accordingly, the Dealer Manual is not entitled to deference on the issue whether KBS was required to obtain no-fault coverage for the Mercury. For the same reason, we also agree with Markel that the Secretary of State Dealer Application lacked the force of law.

(a) A vehicle driven or moved on a street or highway *in conformance with the provisions of this act* relating to manufacturers, transporters, *dealers*, or nonresidents. [Emphasis added.]

Thus, under MCL 257.216, if a vehicle is driven on a street or highway in compliance with the provisions of the Michigan Vehicle Code relating to automobile dealers, then the vehicle does not need to be registered. Markel also points to MCL 257.235, which indicates, in relevant part:

If the transferee of a vehicle is a new motor vehicle dealer or a used or secondhand vehicle dealer that acquires the vehicle for resale, *the dealer is not required to obtain a new registration of the vehicle or forward the certificate of title to the secretary of state*, but shall retain and have in the dealer's immediate possession the assigned certificate of title with the odometer information properly completed, except as otherwise provided in [MCL 257.235b]. A dealer shall obtain a certificate of title for a vehicle having a salvage certificate of title before the dealer may operate the vehicle under dealer's license plates. Upon transferring title or interest to another person that is not a dealer, the dealer shall complete an assignment and warranty of title upon the certificate of title, salvage certificate of title, or dealer reassignment of title form and make an application for registration and a new title as provided in [MCL 257.217(4)]. [Emphasis added.]

Further, MCL 257.244(4) provides:

A dealer owning a vehicle of a type *otherwise required to be registered* under this act may operate or move the vehicle upon a street or highway *without registering the vehicle* if the vehicle displays, in the manner prescribed in section 225, 1 special plate issued to the owner by the secretary of state. As used in this subsection, "dealer" includes an employee, servant, or agent of the dealer. [Emphasis added.]

Reading the above statutes *in pari materia*, a dealer does not need to obtain a new registration for a vehicle, but the dealer must display a special dealer plate in order to operate or move the vehicle on the street without a registration. See *Titan Ins Co v State Farm Mut Auto Ins Co*, 296 Mich App 75, 84; 817 NW2d 621 (2012) ("Statutes that relate to the same subject or share a common purpose are *in pari materia* and must be read together as one law, even if they contain no reference to one another and were enacted on different dates.")

In this case, the parties do not dispute that KBS is a dealer under the Michigan Vehicle Code. MCL 257.216 clarifies that a motor vehicle operated on a street by a dealer does not need to be registered under the no-fault act, but only if the vehicle is driven in compliance with the other provisions of the act. The Michigan Vehicle Code also states that a dealer does not need to obtain a new registration for a vehicle. See MCL 257.235. However, MCL 257.244(4) clarifies that a dealer may only operate the vehicle on the street if that vehicle displays a special plate. In this case, the parties do not dispute that the Mercury would have to be registered if KBS did not own the vehicle. Additionally, it is undisputed that the Mercury did not display a special plate at the time of the accident. Therefore, because the dealer was not operating the vehicle on the road

while displaying a special plate, the Mercury was required to be registered at the time of the accident.

Therefore, we conclude that the Mercury constituted a “covered auto” under Markel’s insurance policy. Even assuming that Markel is correct that the definition of “covered auto” states that an automobile must be “required to have No-Fault benefits in the state where [it is] licensed or principally garaged,” for the reasons discussed, the Mercury was required to have no-fault benefits in Michigan at the time of the accident. Therefore, the Mercury was covered under the no-fault policy. For the reasons discussed, Markel is the insurer of highest priority to provide PIP benefits to plaintiff. We reverse and remand for entry of an order granting summary disposition in favor of Farmers.

Reversed and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ William B. Murphy

/s/ Stephen L. Borrello