

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Judges Murphy, Sawyer, and Bandstra

CATHERINE WILCOX, individually,
and as Next Friend of ISAAC WILCOX,
a minor,

SC: 138602

COA: 290515

Plaintiffs-Appellants,

Kent CC: 08-010129-NF

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

APPELLANTS' BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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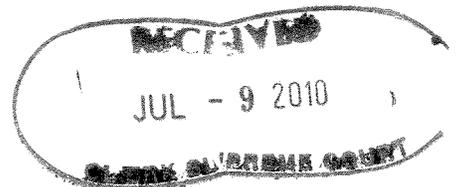


TABLE OF CONTENTS

INDEX OF AUTHORITIES..... iii

STATEMENT OF THE BASIS OF JURISDICTION OF THE MICHIGAN
SUPREME COURT.....v

STATEMENT OF QUESTIONS INVOLVED vii

STATEMENT OF FACTS.....1

SUMMARY OF ARGUMENT7

ARGUMENT.....9

I. *GRIFFITH* v *STATE FARM* WAS CORRECTLY DECIDED.9

**A. *Griffith* Requires a Causation Analysis to Determine What
 Constitutes an Allowable Expense Under MCL 500.3107(1)(a).9**

**B. *Griffith* Presents an Alternative Causation Analysis Based on
 "Limited Available Options.15**

**II. THE COURT OF APPEALS IN *HOOVER* ERRONEOUSLY
 CONCLUDED THAT *GRIFFITH* REQUIRES THE
 "INCREMENTALIZATION" OF NO-FAULT BENEFITS.16**

**A. The Court of Appeals Erred in Holding That *Griffith* Requires
 an Analysis That Utilizes the Concept of Incrementalism.16**

**B. Incrementalism Has Been Repeatedly Rejected by Michigan
 Courts.....21**

**C. The Concept of Incrementalism Runs Counter to the
 Legislative Purpose of the No-Fault Act.24**

**III. STATE FARM IS LIABLE FOR THE FULL COST OF HOUSING,
 AND NOT JUST THE MARGINAL INCREASE IN HOUSING
 EXPENSES, FOR A MINOR WHO WAS CATASTROPHICALLY
 INJURED IN A MOTOR VEHICLE ACCIDENT SUCH THAT
 LARGER AND BETTER EQUIPPED HOUSING IS NECESSARY
 FOR HIS CARE, RECOVERY, OR REHABILITATION.25**

A.	Isaac's Care Requires Housing Different From Before His Injury.	27
B.	The Cost of Isaac's Housing Accommodations Constitutes an Allowable Expense Under § 3105(1) and § 3107(1)(a).	29
C.	The Full Expense of Isaac's Housing Accommodation is Recoverable, Rather Than Just the Incremental Increase Related to His Accidental Bodily Injury.	30
	CONCLUSION	30
	RELIEF REQUESTED	32

INDEX OF AUTHORITIES

Cases

<i>Begin v Mich Bell Telephone Co</i> , 284 Mich App 581; 773 NW2d 271 (2009).....	8, 11, 17, 21, 23, 24
<i>Chappel v Auto-Owners Ins Co</i> , No. 260561, 2006 WL 3230765 (Mich App Oct. 3, 2006)	21
<i>Chartier v Auto Club Ins Ass'n</i> , No. 257301, 2006 WL 73624 (Mich App Jan. 12, 2006).....	21
<i>Davis v Citizens Ins Co of Am</i> , 195 Mich App 323; 489 NW2d 214 (1992).....	21
<i>Farmers Ins Exch v South Lyon Comm Schools</i> , 237 Mich App 235; 602 NW2d 588 (1999).....	4
<i>Gobler v Auto-Owners Ins Co</i> , 428 Mich 51; 404 NW2d 199 (1987).....	10
<i>Griffith v State Farm Mut Auto Ins Co</i> , 472 Mich 521; 697 NW2d 895 (2005).....	Passim
<i>Hoover v Mich Mut Ins Co</i> , 281 Mich App 617; 761 NW2d 801 (2008).....	v, 6, 8, 16, 18, 19, 20, 24, 26, 30, 31
<i>Kitchen v State Farm</i> , 202 Mich App 55; 507 NW2d 781 (1993).....	10
<i>Manley v DAIIE</i> , 127 Mich App 444; 339 NW2d 205 (1983).....	14, 22, 23
<i>Manley v Detroit Automobile Inter-Insurance Exchange</i> , 127 Mich App 444; 339 NW2d 205 (1983).....	11, 22, 23
<i>Miller v State Farm Mut Auto Ins Co</i> , 410 Mich 538; 302 NW2d 537 (1981).....	24
<i>Nelson v Transamerica Ins Services</i> , 441 Mich 508; 495 NW2d 370 (1992).....	10
<i>Putkamer v Transamerica Ins Corp</i> , 454 Mich 626; 563 NW2d 683 (1997).....	10
<i>Reed v Citizens Ins Co</i> , 198 Mich App 443; 499 NW2d 22 (1993).....	11, 14, 18

<i>Sharp v Preferred Risk Mut Ins Co</i> , 142 Mich App 499; 370 NW2d 619 (1981).....	5, 21, 22, 23, 25
<i>Shavers v Attorney Gen</i> , 402 Mich 554; 267 NW2d 72 (1978).....	24
<i>Turner v Auto Club Ins Ass'n</i> , 448 Mich 22; 528 NW2d 681 (1995).....	10
<i>United States Fidelity Ins & Guar Co v Mich Catastrophic Claims Ass'n</i> , 484 Mich 1; 773 NW2d 243 (2009).....	24
<i>Van Marter v American Fidelity Fire Ins Co</i> , 114 Mich App 171; 318 NW2d 679 (1982).....	10

Statutes

20 USC 1400.....	4
MCL 500.3101, <i>et seq.</i>	9
MCL 500.3105(1)	1, 7, 12, 30
MCL 500.3107(1)(a).....	1, 12, 15, 17, 21, 30
MCL 500.3107(a)	10
MCL 500.3142.....	25

Other Authorities

Sinas, George and Sinas, Stephen, "Deciphering Two Related Concepts: No-Fault PIP Causation Law and the Decision in <i>Griffith v State Farm</i> ," <i>Thomas M. Cooley Law Review</i> , <i>Trinity 2010</i>	10
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Rules

MCR 2.116(C)(8) and (C)(10).....	5
MCR 7.302.....	iv

STATEMENT OF THE BASIS OF JURISDICTION
OF THE MICHIGAN SUPREME COURT

This Court has jurisdiction to hear this matter pursuant to leave granted under MCR 7.302 by Order dated April 16, 2010.

STATEMENT OF QUESTIONS INVOLVED

- I. Was *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521; 697 NW2d 895 (2005) correctly decided?

Plaintiff says, "Yes, but *Griffith* was wrongly interpreted and applied in *Hoover v Mich Mut Ins Co*, 281 Mich App 617; 761 NW2d 801 (2008)."

Defendant says, "Yes."

The trial court did not address this issue.

- II. Did the Court of Appeals, in its decision in *Hoover*, erroneously conclude that *Griffith* requires the "incrementalization" of no-fault benefits?

Plaintiff says, "Yes."

Defendant says, "No."

The trial court says, "No."

- III. Is State Farm liable for the full cost of housing, and not just the marginal increase in housing expenses, for a minor who was catastrophically injured in a motor vehicle accident such that larger and better equipped housing is necessary for his care, recovery, or rehabilitation?

Plaintiff says, "Yes."

Defendant says, "No."

The trial court says, "No."

STATEMENT OF FACTS

A. Introduction.

Isaac Wilcox was terribly injured in a car accident in November 2004, when he was just four years old. Isaac, now nine, is permanently paralyzed from the neck down and unable to breathe on his own. His parents, with the assistance of nursing personnel, care for him at home. Isaac suffered no significant brain injuries in the accident and is able to attend a public elementary school that provides special-needs assistance to him.

State Farm Mutual Automobile Insurance Company ("State Farm") was the Wilcox family's no-fault insurer on the date of the accident. Isaac's parents made claims under MCL 500.3105(1) and MCL 500.3107(1)(a) for personal protection insurance ("PIP") benefits for Isaac's accidental bodily injuries arising out of the motor vehicle accident, including all incurred expenses reasonably necessary for his care, recovery or rehabilitation. In that Isaac required larger and better equipped housing than the apartment he had lived in before the accident, his parents made claims for all of Isaac's housing expenses which arose out of the accident.

State Farm does not dispute, as a general proposition, that it is obligated to provide PIP benefits to Isaac.¹ Several issues arose between State Farm and Isaac's parents, however, regarding the extent to which State Farm is responsible for particular benefits. When the parties could not resolve those issues, Isaac's mother, Catherine Wilcox, sued State Farm individually and on his behalf for recovery of various PIP benefits. Disputes regarding some of those expenses have been resolved; others remain to be addressed by the lower court. The primary issue before the Court in this appeal pertains to Isaac's housing expenses, which include the cost

¹ See Plaintiffs' Complaint and Defendant's Answer, pp. 3-5. **Appendix 20a** and **25a**.

of a permanent home, modifications to that home, and past rental expenses for temporary housing while Isaac continued to receive out-patient treatment.

B. Isaac's Need for Temporary Housing Following the Accident.

Isaac, his parents and two brothers lived in a three-bedroom apartment in Big Rapids, Michigan before the car accident, for which they paid \$950 per month for rent and utilities. **Appendix 13a.** Isaac's hospital expenses at University of Michigan Hospital in Ann Arbor were approximately \$5,000 per day after the accident. **Appendix 35a.** State Farm was obligated to pay, and did pay, those expenses. The Wilcoxes wanted to bring their young son home, but their apartment did not have room for a ventilator-dependent, quadriplegic child and all the equipment and supplies that he required. In addition, their apartment in Big Rapids was not close enough for Isaac to continue with necessary out-patient treatment in Ann Arbor.

State Farm initially agreed to pay full rental expenses for a temporary, partially barrier-free home in exchange for the Wilcoxes' agreement to pay for utilities, maintenance, and other incidental expenses. **Appendix 12a.** This home, located in Howell, allowed the Wilcox family to remain together while Isaac continued with his treatment. Isaac was discharged from the pediatric ventilation facility at the University of Michigan Hospital directly to this home in February 2005.

On June 14, 2005, this Court issued its 4-3 ruling in *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521; 697 NW2d 895 (2005). Shortly thereafter, State Farm informed the Wilcoxes that, pursuant to its interpretation of *Griffith*, it was no longer required to pay the full cost of Isaac's partially barrier-free temporary housing and instead was only required to pay the increase in rent from the family's \$950 pre-accident rental obligation. **Appendix 13a.** State Farm accordingly reduced the next month's rental reimbursement from \$1,850 to \$900. *Id.* The

Wilcoxes had no choice but to pay the increased rent. Continuation of Isaac's out-patient therapy was essential and no other housing options existed.²

Ten months later, on October 31, 2006, State Farm announced to the Wilcoxes that it further interpreted *Griffith* to limit its housing obligation to only that amount solely attributable to "Isaac's increased needs" since the accident. **Appendix 18a.** State Farm calculated that, of the five-member Wilcox household, it was only responsible for Isaac and a caregiver, i.e. two-fifths of the rent. *Id.* State Farm subtracted yet another \$540, three-fifths of the \$900 it was currently paying, leaving a total \$360 monthly reimbursement to the Wilcoxes. *Id.* With no other housing options available and Isaac still requiring therapy, the Wilcoxes were forced to pay \$1,490 of the \$1,850 rental obligation plus utilities every month. *Id.*

State Farm took these actions notwithstanding that: (1) the family's pre-accident housing expenses totaled \$950 per month, including utilities; (2) no other housing options existed for the family which would allow Isaac's therapy to continue; and, (3) the Wilcoxes' agreement to provide full-time care for Isaac saved State Farm approximately \$5,000 a day in hospital expenses. **Appendix 35a.** State Farm has refused to reimburse the Wilcoxes for \$22,500 in rental expenses they have incurred as a result of the injuries sustained by Isaac in the accident, above and beyond the limited amounts paid by State Farm.

C. The Acquisition of Permanent Housing for Isaac.

The Wilcoxes eventually returned to West Michigan, where they could obtain help with Isaac's care from their extended family, return to familiar surroundings, and enroll Isaac in an

² In a Progress Report dated March 17, 2006, Isaac's case manager stated that she had been asked by the State Farm Claim Representative to "research some apartment homes for the Wilcox family," but added "Isaac has a very large amount of equipment in his home; this equipment is not likely to fit in a 3-bedroom apartment, which could impede his rehabilitation." **Appendix 16a.**

accommodating school system. A real estate agent and a State Farm case manager assisted them in locating a permanent home that already possessed some "handicapped accessible" features, such as an open floor plan and hallways to accommodate Isaac's wheelchair. An existing elevator allows Isaac access to the downstairs recreation room which acts as the primary play area for Isaac and his brothers, a feature which is particularly important given that the vast majority of Isaac's non-school socialization occurs with his parents and brothers.

Most importantly, the home was located in a school district that had a pre-existing program for children with highly-specialized-needs and which could absorb the significant expenses necessary to meet Isaac's care requirements.³ All of Isaac's schools (elementary, middle, and high school) are located less than ten minutes from a hospital with a pediatric ventilation care unit and less than one minute away from his home and his life-saving equipment.

The Wilcoxes bought the home in August 2007 and submitted proofs to State Farm for reimbursement, including documentation that the monthly mortgage payment for the home was \$1,958.⁴ **Appendix 31a, Appendix 39a.** State Farm refused to reimburse the family for *any* of the monthly mortgage expenses on the grounds that those expenses were not "reasonable." *Id.* During the next year, the house was thoroughly evaluated by two qualified occupational therapists for the modifications that Isaac required and the Wilcoxes provided State Farm with every form of "reasonable proof" relative to the housing purchase, including mortgage payments,

³ The law requires that the school system pay for all of Isaac's attendant care, therapy, nursing, specialized equipment, and so forth while he is in school. *Farmers Ins Exch v South Lyon Comm Schools*, 237 Mich App 235, 239; 602 NW2d 588 (1999), citing the Individuals With Disabilities Education Act, 20 USC, *et seq.* Over his school years, these costs will equate to hundreds of thousands of dollars.

⁴ This amount does not include escrow payments for taxes, insurance, and private mortgage insurance which adds another \$960 to the Wilcoxes' monthly payment. **Appendix 31a.**

costs associated with the purchase, occupational therapy home evaluation, contractor proposals for necessary modifications, a signed contract for the modifications, and medical opinions verifying that this home, its access to the school system, and proximity to emergency medical care, was reasonably necessary for Isaac's care, recovery, or rehabilitation. **Appendix 32a.**

State Farm, however, continued to claim that under *Griffith* it would, at most, be responsible only for "Isaac's portion" of the home mortgage expenses that were related to his injuries. Inexplicably, given that State Farm apparently acknowledges that it is responsible for *some* portion of Isaac's housing expense, it has paid *nothing* for Isaac's permanent housing to date and has only paid for some modifications to the home.

D. Proceedings in the Trial Court.

State Farm filed a Motion for Partial Summary Disposition pursuant to MCR 2.116(C)(8) and (C)(10) requesting the trial court to make a dispositive ruling that State Farm was not liable, under any circumstances, for any of Plaintiffs' housing expenses. **Appendix 42a.** Among other things, State Farm argued that:

Plaintiffs have failed to show that additional housing expenses associated with the other four members of the family, basic housing for Isaac Wilcox, utilities, maintenance, taxes, etc. are causally connected to the care, recovery, or rehabilitation of Isaac's bodily injury. These claimed expenses are no different from that of an uninjured person. . . . State Farm is not responsible for payment of expenses that are not causally related to the accident injuries. MCL §500.3105, §500.3107; *Griffith*, 472 Mich at 531.

Appendix 43a-44a.

Plaintiffs filed a Counter-Motion for Partial Summary Disposition requesting that the trial court, among other things, enter a declaratory ruling that neither *Griffith* nor any other Michigan court decision overturned *Sharp v Preferred Risk Mut Ins Co*, 142 Mich App 499; 370 NW2d 619 (1981), or eliminated a no-fault insurer's obligation to pay for the full purchase price of a

house when the expense is "for accidental bodily injury" pursuant to MCL 500.3105 and constitutes an "allowable expense" pursuant to MCL 500.3107(1)(a). **Appendix 61a.** Plaintiffs therefore requested they be allowed to seek full reimbursement of Isaac's housing expenses at trial. **Appendix 63a-64a.**

The trial court granted State Farm's motion in part, expressly noting its obligation to follow the Court of Appeals' interpretation of *Griffith* as set forth in *Hoover v Mich Mut Ins Co*, 281 Mich App 617; 761 NW2d 801 (2008). **Appendix 92a and 115a.** Based on its analysis of *Griffith* and *Hoover*, the trial court determined that State Farm was responsible only for Isaac's portion of the "increased housing costs" that were incurred as a result of Isaac's injuries. **Appendix 103a-106a.** In other words, the trial court adopted the concept of "incrementalization" announced in *Hoover*, which will be more fully discussed below. The trial court accordingly ruled that, regardless of the undisputed circumstances, the full purchase price of the home was not the responsibility of the no-fault insurer and that Plaintiffs were prohibited from presenting this issue to the jury for adjudication.

E. Proceedings in the Court of Appeals.

Plaintiffs sought leave to appeal the trial court's decision to the Court of Appeals. By Order dated July 1, 2009, the court, in lieu of granting Plaintiffs' application for leave to appeal, remanded the case to the trial court with instructions to "employ the analysis described and used" in the *Hoover* decision. **Appendix 117a.** Plaintiffs thereafter brought an application for leave to appeal to this Court, which the Court granted by Order dated April 16, 2010.

SUMMARY OF ARGUMENT

Nine-year-old Isaac Wilcox, a vent-dependent quadriplegic as a result of injuries suffered in a motor vehicle accident, requires housing that can accommodate the equipment, supplies, and round-the-clock care needed to keep him alive. The Michigan No-Fault Act requires his family's no-fault carrier, State Farm, to pay for housing that is reasonably necessary for Isaac's care. At issue in this case is whether, under this Court's decision in *Griffith v State Farm*, 472 Mich 521; 697 NW2d 895 (2005), State Farm is required to pay the full cost of that housing or, as State Farm contends, only the difference between Isaac's current home accommodation costs and Isaac's pre-injury housing costs.

The *Griffith* decision correctly articulates the causation analysis required by MCL 500.3105(1) and MCL 500.3107(1)(a). In brief, in order for benefits to be paid under these two sections of the no-fault act, the claimed benefit must be for (1) an accidental bodily injury, (2) arising out of the ownership, operation, maintenance or use of a motor vehicle, and (3) must be reasonably necessary for the injured person's care, recovery or rehabilitation. This Court applied that causation analysis to the food expenses at issue in *Griffith* and concluded that the plaintiff could not meet the first of these elements in that there was no evidence that the injured person's food expense was causally related to an accidental bodily injury.

What the *Griffith* decision did *not* do, however, was to change the no-fault act's requirement that if the causation test in § 3105(1) and § 3107(1)(a) is met, then the no-fault insurer is obligated to pay *all* necessary expenses for the injured person's care, recovery or rehabilitation, subject only to the restriction that those expenses be reasonable. State Farm, like many other no-fault insurers, takes the position that *Griffith* incorporated the concept of "incrementalization" into the jurisprudence of Michigan's No-Fault law. No-fault insurers have

relied on this concept, as applied in *Hoover v Mich Mut Ins Co*, 281 Mich App 617; 761 NW2d 801 (2008), to reduce their liability for no-fault benefits by an amount that approximates the cost of what an injured person would have consumed or required if uninjured.

This Court and other panels of the Michigan Court of Appeals have rejected the concept of incrementalization. Contrary to the conclusion of the Court of Appeals in *Hoover*, there is nothing in the *Griffith* decision that supports the incrementalization of no-fault benefits. The most recent case law since *Griffith*, *Begin v Mich Bell Telephone Co*, 284 Mich App 581; 773 NW2d 271 (2009), confirms that incrementalization is not a proper analytical model for determining the amount a no-fault insurer is required to pay for allowable benefits.

Catherine Wilcox, on behalf of her son Isaac, seeks a ruling from this Court that State Farm is not permitted to limit its liability for Isaac's housing costs based upon what Isaac would have needed for housing if he were uninjured. Rather, State Farm must pay the full cost of reasonable home accommodations that are necessitated by Isaac's injuries.

ARGUMENT

I. GRIFFITH v STATE FARM WAS CORRECTLY DECIDED.

This Court has instructed Appellants to address the issue of whether *Griffith v State Farm*, 472 Mich 521; 697 NW2d 895 (2005) was correctly decided. Appellants respond that the causation analysis clarified in *Griffith*, which looks to the causal connection between the claimed benefit and the accidental bodily injury, is a correct interpretation of the Michigan No-Fault Act as presently written. Appellants further respond, however, that *Griffith* was wrongly interpreted and applied by the Court of Appeals in *Hoover v Mich Mut Ins Co*, 281 Mich App 617; 761 NW2d 801 (2008), and is now being improperly used by no-fault insurers as a justification to incrementalize and otherwise diminish the payment of personal protection insurance ("PIP") benefits to injured persons, even in instances where the *Griffith* causation threshold is met. This practice of "incrementalism" is not supported by *Griffith* and, as will be discussed below, has been repeatedly rejected by Michigan courts both before and after *Griffith*. For these reasons, a clarification or limitation of *Griffith* is necessary to ensure that (a) injured persons receive PIP benefits in accordance with the remedial purposes of the Michigan No-Fault Act, MCL 500.3101, *et seq.*, and (b) no-fault insurers continue to remain liable for the full cost of allowable expenses.

A. Griffith Requires a Causation Analysis to Determine What Constitutes an Allowable Expense Under MCL 500.3107(1)(a).

The Michigan Supreme Court in *Griffith*, for the first time since the enactment of the no-fault act in 1973, fully articulated the causation analysis necessary to determine what constitutes an "allowable expense" under MCL 500.3107(1)(a). This dual-pronged analysis questions whether (1) the claimed benefits are causally connected to an accidental bodily injury arising out of an automobile accident, and (2) whether those benefits are for an injured person's care,

recovery, or rehabilitation. Only when this causation threshold is satisfied may the claimed benefit constitute an allowable expense and be fully compensable by a no-fault insurer, subject only to the limitation that the expense be reasonable.

The no-fault act was enacted to provide motor vehicle accident victims with assured, adequate, and prompt reparations without regard to fault and at the lowest cost to both the individual and the no-fault insurance system. See *Kitchen v State Farm*, 202 Mich App 55, 58; 507 NW2d 781 (1993), citing *Nelson v Transamerica Ins Services*, 441 Mich 508, 514; 495 NW2d 370 (1992). The no-fault act is remedial in nature and must be liberally construed in favor of accident victims. *Putkamer v Transamerica Ins Corp*, 454 Mich 626, 631; 563 NW2d 683 (1997); *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 28; 528 NW2d 681 (1995); *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 61; 404 NW2d 199 (1987).

The extent to which no-fault insurers are liable for PIP benefits and the proper scope of those benefits are issues that have occupied Michigan's judiciary for at least twenty-eight years, and have led to numerous judicial determinations regarding payments for housing accommodations and modifications, attendant care services, transportation modifications, durable medical equipment, and other PIP benefits.⁵ The first case to consider whether a claimed benefit constituted an "allowable expense" under MCL 500.3107(a)⁶ was *Van Marter v American Fidelity Fire Ins Co*, 114 Mich App 171; 318 NW2d 679 (1982). In *Van Marter*, the Court of Appeals held that attendant care and other services provided by a stepparent to a stepchild constituted "allowable expenses." The court found that all reasonable charges that

⁵ See Sinas, George and Sinas, Stephen, "Deciphering Two Related Concepts: No-Fault PIP Causation Law and the Decision in *Griffith v State Farm*," *Thomas M. Cooley Law Review, Trinity 2010*. **Appendix 118a**.

⁶ Sec. 3107(a) was renumbered in 1991 to 3107(1)(a).

related to the care, recovery or rehabilitation of the injured person were payable, regardless of whether such services were provided by "trained medical personnel." *Id.* at 180. The court noted in its reasoning:

[D]efendant would be liable for these services if they were performed in a hospital or nursing home. If we were to accept defendant's reading of M.C.L. § 500.3107(a); M.S.A. § 24.13207(a), we would penalize both the injured insured and his family for providing care which would otherwise be performed by a less personalized health care industry. [*Id.* at 181.]

The *Van Marter* decision marked the beginning of a legal tug-of-war over the extent to which room and board expenses are compensable where an injured person is cared for by family members. Compare, for example, *Manley v Detroit Automobile Inter-Insurance Exchange*, 127 Mich App 444, 455; 339 NW2d 205 (1983), *mod* 425 Mich 140; 388 NW2d 216 (1986) ("products, services, or accommodations which are as necessary for an uninjured person as for an injured person are not 'allowable expenses'") with *Reed v Citizens Ins Co*, 198 Mich App 443, 453; 499 NW2d 22 (1993) ("where an injured person is unable to care for himself and would be institutionalized were a family member not willing to provide home care, a no-fault insurer is liable to pay the cost of maintenance in the home"). But the *Griffith* causation analysis—when correctly applied, as it was in *Begin v Mich Bell Telephone Co*, 284 Mich App 591; 773 NW2d 271 (2009)⁷—resolves this struggle because it provides full compensation for those expenses that are causally related to the injuries arising from the motor vehicle accident. In some instances, those expenses may amount to full room and board, while in other cases the expenses will be

⁷ The *Begin* decision, which will be discussed below in further detail, correctly distinguishes between the food needed by the injured person in *Griffith*, which was no different from the food he required before the accidental injury, and a *changed* need (in that case, for transportation), the entire cost of which could be an "allowable expense" under § 3107(1)(a). *Begin* **Error! Bookmark not defined.** at 593-96.

more limited. The *Griffith* causation analysis allows a case-by-case approach that continues to provide prompt and adequate reparations as intended by the Legislature.

The *Griffith* case involved a man who, at the age of sixty-three, suffered a severe brain injury in a motor vehicle accident. He was totally disabled after the accident and required round-the-clock nursing and attendant care. He was confined to a wheelchair and needed assistance with every aspect of his life, including eating and personal care. *Id.* at 524. For over three years, Griffith lived either in an institution or in an apartment with quasi-institutional care provided by aides. *Id.* Griffith eventually returned home to be cared for by his wife, with hired assistance. *Id.* Griffith's no-fault insurer provided room and board, including food expenses, until he returned home, at which time it refused to pay for food expenses that were no different from his food expenses before the accident. *Id.* at 525. Griffith's wife sued, arguing that the cost of Griffith's food was an "allowable expense" under MCL 500.3107(1)(a).

The Supreme Court began its analysis in *Griffith* with a review of the statutory language of the no-fault act, specifically, the two provisions that control payment of PIP benefits, MCL 500.3105(1) and MCL 500.3107(1)(a). It was the interplay between these two sections of the statute, and the legal causation standard imposed by them, that most concerned the Court.⁸ Sec. 3105(1) defines when a no-fault insurer is liable for PIP benefits, while § 3107(1)(a) defines the scope of those benefits. Sec. 3105, which deals with *entitlement to benefits*, provides that an insurer is liable to pay benefits for (1) accidental bodily injury, (2) arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. Sec. 3107(1)(a), which deals with *allowable expense benefits*, provides that an insurer is obligated to pay only (1) those

⁸ For an analysis of the causation standard articulated in *Griffith*, see the Sinas law review article attached at **Appendix 118a**.

expenses incurred, (2) for reasonably necessary products, services, and accommodations, (3) for an injured person's care, recovery or rehabilitation.

The Court determined that entitlement to benefits under § 3105(1) requires a claimant to meet two causal elements. First, an insurer is liable to pay benefits only to the extent that the claimed benefits are causally connected to the "accidental bodily injury." *Id.* at 531. Second, an insurer is only liable to pay those benefits that are for injuries that are caused by the insured's use of a motor vehicle. *Id.* The second causal element under § 3105(1) was not at issue in *Griffith* in that it was uncontested that Griffith's injuries stemmed from his use of a motor vehicle. *Id.* But the first causal element could not be satisfied because there was no claim by the plaintiff that the food costs at issue were in any way related to Griffith's injuries. *Id.* Rather, the plaintiff made a claim for "ordinary, everyday food expenses." Plaintiff therefore could not establish that those expenses were "for accidental bodily injury" as required under § 3105. *Id.* at 532.

Despite the plaintiff's inability to satisfy the causation requirements of § 3105(1), the Court continued its analysis of "allowable expenses" under § 3107(1)(a) to determine whether the claimed expenses were reasonably necessary for Griffith's "care, recovery, or rehabilitation." In that "recovery" and "rehabilitation" were not applicable to Griffith's case, the Court focused its scrutiny on the meaning of "care" as used in § 3107(1)(a) and particularly in light of the statute's use of that word in the same context with the terms "recovery" and "rehabilitation." *Id.* at 533-35.

The Court reasoned that:

As noted above, both "recovery" and "rehabilitation" refer to an underlying injury; likewise, the statute as a whole applies only to an "injured person." It follows that the Legislature intended to limit the scope of the term "care" to expenses for those products, services, or accommodations whose provision is necessitated by the injury sustained in the motor vehicle accident. "Care" is broader than "recovery" and "rehabilitation" because it may encompass expenses for products, services, and accommodations that are necessary because of the

accident but that may not restore a person to his preinjury state. [*Griffith* at 535; fn. omitted.]

The *Griffith* analysis looks specifically at the claimed expense and asks whether that expense is now *different* because of the injuries suffered as a result of the car accident. If the injured person incurs expenses different in kind due to his or her injuries, then the expenses constitute an allowable expense under § 3107. In *Griffith's* case, however, there was no evidence that *Griffith's* food was different following the accident, that his food was part of his treatment plan, or that the cost of his food was related in any way to his injuries. The Court noted that if *Griffith* had never been injured, or if he were to recover from his injuries, his dietary needs would be no different than they were after the accident. *Id.* at 536.

This analysis demands a more searching review than the rule enunciated by the Court of Appeals in *Reed*. Whereas *Reed* provided that where an injured person who would otherwise required institutional care was instead cared for at home by family members, the no-fault insurer was required to pay for all benefits that would have been provided by the institution, under *Griffith*, a court would look to the claimed benefit, regardless of whether it was provided in an institutional or home setting, and determine whether the expense is causally related to the injuries suffered in the automobile accident. At the same time, the *Griffith* analysis does not categorically restrict allowable expenses as does the rule announced in *Manley*. The inquiry in *Griffith* is not whether the expense is as necessary for uninjured persons as for as injured persons, but whether the claimed expense is reasonably necessary for the care, recovery, or rehabilitation of the injured person as a result of the accidental bodily injury.

B. Griffith Presents an Alternative Causation Analysis Based on "Limited Available Options."

Griffith also presents an alternative analysis to establish the required causal connection in instances where the claimed expenses are no different than they were before the accident, but are nevertheless causally related to the accident because of the care being received by the injured person. *Id.* at 537-38. This analysis recognizes that extreme injuries may create circumstances that eliminate an injured person's ability to avoid expenses that uninjured people can avoid. It focuses on the connection between the injuries and how they force the injured person to pay expenses because options to avoid the expense do not exist. Simply stated, if the injuries limit the options available to fulfill a need (e.g., food, housing, or transportation) and cause the injured person to pay an otherwise avoidable expense, the causation requirement of the statute may be satisfied, even for "common" expenses.

The Court provided an example of this "limited option" analysis using the same "ordinary, everyday food" eaten by Griffith in an institutional setting:

Food costs in an institutional setting are "benefits for accidental bodily injury" [MCL 500.3105(1)] and are "reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation." [MCL 500.3107(1)(a).] That is, it is "reasonably necessary" for an insured to consume hospital food during in-patient treatment given the limited dining options available. Although an injured person would need to consume food regardless of his injuries, he would not need to eat *that particular food* or bear the cost associated with it. Thus, hospital food is analogous to a type of special diet or select diet necessary for an injured person's recovery. Because an insured in an institutional setting is required to eat "hospital food," such food costs are necessary for an insured's "care, recovery or rehabilitation" while in such a setting. [*Griffith* at 537-38 (emphasis in original).]

Thus, even though hospital food can be "ordinary, everyday food," the causal connection requirement is satisfied because the injured person is unable to avoid the expense in relation to his or her care.

Consequently, the *Griffith* analysis requires a case-by-case consideration of the circumstances involved in order to determine if there is either a change in a general expense due to the person's injuries, or if the circumstances impose limited options which force payment of an increased expense upon the injured person. Either circumstance will establish the necessary causal connection.

What *Griffith* does not require, and where the Court of Appeals in *Hoover* erred in its interpretation of *Griffith*, is an analysis that limits a no-fault insurer's liability for an allowable expense to only that portion of the expense that is solely attributable to the accidental bodily injury. To cite an example used in *Griffith* (at 535 fn. 12), if the insured's injury is such that he needs special shoes, the no-fault insurer is obligated to pay for the full cost of the special shoes, and not just the marginal cost of modifying regular shoes. Rather, any causal relationship⁹ to the accidental bodily injury that causes a difference in the general expense, or otherwise causes that expense to be unavoidable by the insured, mandates full payment of that expense to the extent it is reasonable.

II. THE COURT OF APPEALS IN *HOOVER* ERRONEOUSLY CONCLUDED THAT *GRIFFITH* REQUIRES THE "INCREMENTALIZATION" OF NO-FAULT BENEFITS.

A. The Court of Appeals Erred in Holding That *Griffith* Requires an Analysis That Utilizes the Concept of Incrementalism.

The Court of Appeals in *Hoover*, *supra*, erroneously interpreted *Griffith* to require an analysis that questions whether the claimed expense would have been used in a life uninjured, and, if so, to what extent. This analysis results in what has been referred to as "incrementalism," a process by which a no-fault insurer decreases the amount owed to the insured by approximating that portion of the claimed expense that would have been incurred absent the

⁹ See **Appendix 145a-149a.**

accidental bodily injury.¹⁰ This interpretation of *Griffith* is not supported by any binding precedent, does not originate from the language of § 3107(1)(a), and was certainly not intended by the Legislature when it enacted the no-fault system:

[W]e reject defendants' bright-line rule that if an injured person uses a product, service, or accommodation both before and after the person's motor vehicle accident, the person cannot for that reason meet the statutory causal relationship tests clarified in *Griffith* for an "allowable expense" no-fault benefit. Rather, the *Griffith* Court held that a product, service, or accommodation an injured person uses both before and after a motor vehicle accident might be an "allowable expense" no-fault benefit depending on the particular facts and circumstances involved.

* * *

We also note that the *Griffith* Court, when discussing the cost of food provided to an injured person in an institutional setting, did not suggest that only the marginal increase in the cost of such food served in an institutional setting would be an allowable expense. Nor did the Court suggest that only the marginal cost of modifying regular shoes would be a "recoverable expense" under MCL 500.3107(1)(a). Rather, in each example, the product, service, or accommodation used by the injured person before the accident is so blended with another product, service, or accommodation that *the whole cost is an allowable expense* if it satisfies the statutory criteria of being sufficiently related to injuries sustained in a motor vehicle accident and if it is a reasonable charge and reasonably necessary for the injured person's care, recovery, or rehabilitation under MCL 500.3107(1)(a).

Begin, supra, at 594-95, 596 (emphasis added).

Hoover involved a suit by parents of an adult child, Michael, who was rendered developmentally disabled, vent-dependent, and quadriplegic at the age of two after being struck by a drunk driver. Michael's parents sued their no-fault insurer for PIP expenses for various housing and living expenses and services associated with their son's care.¹¹ Michael was cared for round-the-clock by his parents and hired nurses in a wing of the parents' home specially

¹⁰ See **Appendix 129a**.

¹¹ Housing accommodations and modifications had previously been settled by the parties and was not an issue before the court.

designed to accommodate Michael and all the medical equipment necessary to keep him alive. There was no question that, absent the care of his parents and others, Michael would be institutionalized. *Id.* at 621. The particular expenses challenged by the no-fault insurer involved "property taxes, standard utility bills, homeowner's insurance, home maintenance costs, telephone bills, dumpster expenses, elevator inspection costs, home security system expenses, cleaning stipends paid to Mrs. Hoover for time spent cleaning Michael's area of the home, and snow removal." *Id.* at 631-32.

The Court of Appeals determined that the trial court did not properly apply this Court's decision in *Griffith*, resulting in erroneous conclusions regarding some of the claimed expenses. Judge Murphy, writing for the court, began the *Hoover* opinion with a discussion of *Reed*, which he had authored twelve years earlier. Judge Murphy asserted that the holding in *Reed*—"where an injured person is unable to care for himself and would be institutionalized were a family member not willing to provide home care, a no-fault insurer is liable to pay the cost of maintenance in the home"—was correctly decided and honored the language in MCL 500.3107(1)(a) until overruled by *Griffith*. For this reason, Judge Murphy encouraged this Court to revisit *Griffith*. *Id.* at 623.

The court proceeded to review the causation analysis articulated in *Griffith* and how it was applied in relation to Mr. Griffith's food expenses. Of particular import to the court was this Court's language in the rhetorical question posed at pages 537-39 of the *Griffith* decision:

This reasoning can be taken a step further when considering the costs of items such as an injured person's clothing, toiletries, and even housing costs. Under plaintiff's reasoning, because a hospital provided Griffith with clothing while he was institutionalized, defendant should continue to pay for Griffith's clothing after he is released. The same can be said of Griffith's toiletry necessities and housing costs. While Griffith was institutionalized, defendant paid his housing costs. Should defendant therefore be obligated to pay Griffith's housing payment now that he has been released when Griffith's housing needs have not

been affected by his injuries? [Quoted in *Hoover* at 626-27; emphasis added by Court of Appeals.]

Judge Murphy continued:

It is crucially important for our purposes here to keep in mind all the language in the rhetorical question regarding housing needs posed in this passage from *Griffith*, which demands a determination whether the housing needs at issue are "affected by [one's] injuries." [*Hoover* at 626-27.]

The Court of Appeals acknowledged that the passage from *Griffith* quoted above meant that "room and board or living expenses are not necessarily precluded from being covered by insurance benefits in their entirety in every case" and that such expenses could still be covered if "the expenses, because of or as affected by the injuries, go beyond or are different from what normally could be expected." *Id.* at 627. This is consistent with *Griffith's* conclusion that an insured could still recover the full expense of an ordinary item, such as food, in the context of institutional care or where the insured's options were otherwise limited.

The Court of Appeals made a sharp turn away from *Griffith*, however, with the remainder of its analysis, finding that:

The analysis necessarily entails a comparison between costs associated with circumstances as they actually exist, which includes reflection on a life scarred and affected by injuries sustained in an automobile accident, and costs associated with a life unscarred by injuries, which would include examination of circumstances that existed preinjury or that would in all likelihood have transpired absent the injury. [*Hoover* at 629.]

The court provided an example of how its analysis would apply to a given claimed benefit:

Thus, for example, all costs attributable to Michael [Hoover] for utilities on the basis of his usage would not be recoverable because, had Michael not been injured, his activities would nonetheless have generated some level of expenses for utility usage regardless of who ultimately paid the utility bills. Under *Griffith*, an examination is required to discern the portion of the utility costs attributable to Michael that is causally connected to his injuries, which would be utility usage that goes beyond typical or ordinary usage, i.e., usage "*affected by his injuries.*" *Griffith*, 472 Mich. at 539, 697 N.W.2d 895 (emphasis added). In other words, a court must allocate not the portion of a utility bill attributable to the injured

person's usage, *but that portion of the bill attributable to the injured person's usage that is only occurring because of the injuries, e.g., power to operate Michael's ventilator.* Making these calculations and ascertaining the proper allocations might prove difficult; however, *Griffith* requires such an undertaking. [*Hoover* at 630-31 (emphasis added).]

The court then applied this incrementalism analysis to each of Michael's claimed expenses. *Id.* at 632-36. Those expenses that were likely causally connected to Michael's injuries and inflated beyond what would normally be expected, i.e., property taxes, utilities, homeowner's insurance premiums, and maintenance expenses such as cleaning and snow removal, were remanded back to the trial court for further submission of evidence and for the trial court to render its own judgment on each expense and its marginal increase. *Id.* at 636. In contrast, the court held that those expenses that were solely necessitated by Michael's accidental bodily injury and not required prior to the accident, i.e. the dumpster, backup generator, elevator inspection costs, and so forth, were fully covered. *Id.* at 637.¹²

It is this analysis that the Court of Appeals has instructed the trial court to employ in Isaac Wilcox's case to determine what housing costs constitute an allowable expense: "[I]n lieu of granting the application for leave to appeal, the Court REMANDS to the trial court with instruction to employ the analysis described and used in [*Hoover*]." **Appendix 117a.** The Court of Appeals further instructed that: "The parties are to submit evidence on each of the expenses at issue and should present arguments under the analytical framework outlined in *Hoover*." *Id.*

¹² It is unclear what factor the *Hoover* court utilized to distinguish between dumpster expenses, which it held were fully compensable, and the other services, such as snow removal expenses, which required a determination of the costs greater than those regularly spent on snow removal by the plaintiffs. Both trash removal and snow removal services were required before Michael's injuries and both expenses could be attributed, at least in part, to his parents, along with costs Michael would have incurred in an accident-free life. See *Hoover, supra*, at 634-35. The *Hoover* court's reasoning seems to suggest that expenses that somehow become different in kind are fully compensable, while those that only create an increase in the expense are not.

As will be discussed below, however, incrementalism has been rejected by numerous decisions of the Michigan Court of Appeals. Moreover, application of the *Hoover* analysis is unworkable where "the product, service, or accommodation used by the injured person before the accident is so blended with another product, service, or accommodation" reasonably necessary after the accident for the injured person's care, recovery or rehabilitation. *Begin* at 596-97 (finding that *Griffith* "did not suggest that only the marginal increase in cost . . . would be a recoverable allowable expense" under MCL 500.3107(1)(a)).

B. Incrementalism Has Been Repeatedly Rejected by Michigan Courts.

Michigan courts have repeatedly rejected a no-fault insurer's incrementalization of PIP benefits, both before and after this Court's decision in *Griffith*. See *Begin, supra* (no-fault insurer liable for full cost of modified van despite plaintiff's use of van for transportation before injuries); *Davis v Citizens Ins Co of Am*, 195 Mich App 323; 489 NW2d 214 (1992) (no-fault insurer liable for full cost of modified van where availability of other transportation was limited); *Sharp, supra* (no-fault insurer liable for full cost of rental expenses as long as larger and better equipped housing was required for the injured person). See also *Chappel v Auto-Owners Ins Co*, No. 260561, 2006 WL 3230765 (Mich App Oct. 3, 2006) (unpublished) (**Appendix 185a**) (no-fault insurer liable for full cost of home modifications required for plaintiff's care after motor vehicle accident); *Chartier v Auto Club Ins Ass'n*, No. 257301, 2006 WL 73624 (Mich App Jan. 12, 2006) (unpublished) (**Appendix 191a**) (no-fault insurer liable for full costs of modified van reasonably necessary for plaintiff's care, recovery or rehabilitation).

The Court of Appeals in the above-cited cases reviewed housing and transportation accommodation expenses claimed under § 3107(1)(a). In each of these cases, the court, while acknowledging that housing and transportation are as necessary for an injured person as for an uninjured person, held that where the housing or transportation expense was *different* from what

would normally be expected as a result of accidental bodily injury, the full expense is recoverable. See *Begin* at 596-97; *Sharp* at 511; *Chappel* at *3; *Chartier* at *2. The conclusions reached in these decisions are consistent with *Griffith*, which holds only that where the claimed benefit is *not different* and not otherwise necessitated by limited options, the cost is not an allowable expense. *Id.* at 535-36.

Sharp, a pre-*Griffith* decision by the Court of Appeals, addressed whether apartment rental expenses were "allowable expenses" under the no-fault act. *Sharp* at 510-12. The court examined whether, once an injured insured proves the causal connection of a claimed expense to his or her accidental bodily injury, that claimed expense can be further incrementalized to only that portion of the expense that is specifically related to the accidental bodily injury. Scott Sharp, the injured insured, lived in an apartment before suffering a severe closed head injury in a motor vehicle accident. Scott, in lieu of being institutionalized, lived in two different apartments for thirteen months while waiting for an addition to be built onto his mother's home to accommodate him. *Id.* Scott's no-fault insurer, relying on the holding in *Manley v DAIIE*, 127 Mich App 444; 339 NW2d 205 (1983)¹³ that housing was as necessary for an uninjured person as an injured person, refused to reimburse him for rental expenses during that time on the grounds that Scott had lived in an apartment before his injuries. *Sharp* at 510-12. Scott's mother, his conservator, sued for full rental expenses, but the trial court awarded Scott only the difference between what he paid for apartment rental pre-injury and the cost of the more expensive apartments he lived in post-injury. *Id.*

¹³ This Court later modified *Manley*, 425 Mich 140, 152-53; 388 NW2d 216 (1986), finding that the question of whether food, shelter, utilities, clothing, and other such maintenance expenses are allowable expenses when the injured person is cared for at home was not presented in the trial court or the Court of Appeals, and therefore directing that the opinion of the Court of Appeals on that question "shall not be regarded as of precedential force or effect."

The Court of Appeals reversed the trial court and awarded the full rental costs of Scott's post-injury housing. *Id.* In reaching this conclusion, the court found that the trial court had construed *Manley* too narrowly. The court looked to *Manley's* example of food provided in an institution and specifically emphasized that portion of the opinion that recognized that food provided in an institution is an extraordinary expense not analogous to the cost of obtaining food at home, and is therefore an "allowable expense":

We think the same reasoning applies to the cost of the apartment. As long as housing larger and better equipped is required for the injured person than would be required if he were not injured, the full cost is an "allowable expense." [*Sharp* at 511.]

Begin, supra, a post-*Griffith* transportation accommodation case, reached the same conclusion, holding that a no-fault insurer is liable for the full cost of a vehicle that is reasonably necessary for the care of the injured person. The defendant no-fault insurer contended that it was not liable for the cost of a van, arguing that because the plaintiff had used a van before his injuries, his injuries did not create his need for the van. *Id.* at 590.

The Court of Appeals in *Begin* looked to *Griffith* and found that this Court's analysis, rather than espousing a new causation standard, clarified the truncated and incomplete test first iterated by Justice Boyle in *Manley*.¹⁴ Unlike in *Griffith*, the plaintiff in *Begin* presented evidence that his transportation needs were different from those of an uninjured person and that the modified van was related to his care. The Court of Appeals unambiguously rejected the incrementalization of an "allowable expense," *id.* at 596-97, and expressly rejected the defendant's notion that "if an injured person uses a product, service or accommodation both before and after the person's motor vehicle accident, the person cannot for that reason meet the

¹⁴ Justice Boyle's test only required that (1) the charge must be reasonable, (2) the expense must be reasonably necessary, and (3) the expense must be incurred. See *Manley, supra* at 169 (Boyle, J., concurring in part and dissenting in part).

statutory causal relationship tests clarified in *Griffith* for an 'allowable expense' no-fault benefit." *Id.* at 594.

With the publication of *Begin*, there now exist two binding yet conflicting appellate decisions on how *Griffith* should be interpreted and applied to no-fault cases. *Hoover*, on the one hand, would narrowly construe *Griffith* to mean that *only* the increase in expense solely attributable to the accidental bodily injury is recoverable. *Begin*, on the other hand, permits full recovery of the claimed expense if it satisfies the causal requirements of the no-fault act. It is Appellants' position that *Begin*, and not *Hoover*, is the correct analysis and that which should be applied to Isaac Wilcox's case.

C. **The Concept of Incrementalism Runs Counter to the Legislative Purpose of the No-Fault Act.**

This Court has repeatedly recognized that the legislative purpose of the no-fault act is to "assur[e] efficient and quick recovery for claimants in the no-fault system." *United States Fidelity Ins & Guar Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 19; 773 NW2d 243 (2009), citing *Shavers v Attorney Gen*, 402 Mich 554, 578-79; 267 NW2d 72 (1978) ("The goal of the no-fault insurance system was to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses"). As recently stated by this Court, the no-fault act "is designed to minimize administrative delays and factual disputes that would interfere with achievement of the goal of expeditious compensation of damages suffered in motor vehicle accidents." *United States Fidelity* at 25, quoting *Miller v State Farm Mut Auto Ins Co*, 410 Mich 538, 568; 302 NW2d 537 (1981).

Application of the *Hoover* analysis is unworkable and would result in the very delays the no-fault act was intended to prevent, especially where "the product, service, or accommodation used by the injured person before the accident is . . . blended with another product, service, or

accommodation" reasonably necessary after the accident for the injured person's care, recovery or rehabilitation. *Begin* at 596-97. To require every injured insured to provide reasonable proof of the specific portion of a general expense that is solely attributed to the accidental bodily injury,¹⁵ such as the amount of the utility bill specifically attributable to the injured insured's use of a ventilator, could potentially result in an endless delay in payment because reasonable proof may never exist or be satisfactory to the insurer.

The only workable rule is one that provides that where the causation threshold has been met, the full expense, to the extent reasonable, is recoverable. Otherwise, incrementalization of no-fault benefits would mean that every claim—from housing and transportation to clothing and toys—would be subject to intense scrutiny to identify an injured person's pre-accident expenses and to determine which of those expenses increased and by exactly how much.

III. STATE FARM IS LIABLE FOR THE FULL COST OF HOUSING, AND NOT JUST THE MARGINAL INCREASE IN HOUSING EXPENSES, FOR A MINOR WHO WAS CATASTROPHICALLY INJURED IN A MOTOR VEHICLE ACCIDENT SUCH THAT LARGER AND BETTER EQUIPPED HOUSING IS NECESSARY FOR HIS CARE, RECOVERY, OR REHABILITATION.

Isaac Wilcox lived in a modest apartment with his family before he was injured. His family had never owned a home and was not in a financial position to purchase a home. As in *Sharp, supra*, Isaac was discharged from in-patient care to temporary housing while he continued out-patient therapy and the parties looked for a permanent housing solution. Isaac's parents, who provided the majority of Isaac's attendant care, lived in the temporary housing with Isaac and their other two minor children. Isaac's parents later purchased and moved into a home that could be modified to meet Isaac's care needs.

¹⁵ The no-fault act places the burden on the injured insured to provide reasonable proof of loss to the no-fault insurer. MCL 500.3142.

State Farm initially paid for the cost of the temporary housing, except for the utilities paid for by the family. **Appendix 12a.** But then, after this Court's decision in *Griffith*, State Farm took the position that it was only obligated to pay for Isaac's "increased needs as a result of the motor vehicle accident," which it deemed to be two-fifths of the \$900 differential between the rent paid by the family before the accident, \$950 per month, and the rent for the temporary apartment, \$1,850 per month. **Appendix 13a and Appendix 18a.** In other words, following the *Griffith* decision, State Farm was willing to pay only \$360 *per month* for the housing and increased utility expenses required by this catastrophically injured child. State Farm refuses to pay for any portion of the home related to any other family member or any portion that Isaac would have required had he not been injured. *Id.* Despite Appellants' submission of reasonable proof of loss for past rental expenses and current housing expenses and State Farm's admission when Isaac was discharged from University of Michigan Hospital that the family's previous home was not a viable option,¹⁶ **Appendix 36a-37a**, State Farm has to date paid *nothing* in reimbursement for Isaac's permanent housing.¹⁷

Appellants argued to the trial court, in their Counter-Motion for Summary Disposition, **Appendix 61a**, that because Isaac required different housing accommodations as a result of his accidental bodily injury, his full housing accommodations, including temporary housing rental expenses and the cost of his current residence, constitute an "allowable expense" under § 3107(1)(a) and satisfy *Griffith's* causation analysis. The trial court disagreed and, on the basis of

¹⁶ State Farm to date has not done *any* analysis of permanent housing options for Isaac or presented the Wilcox family with any alternative housing options.

¹⁷ State Farm eventually provided a check for a portion of barrier-free home modifications.

Griffith and *Hoover*, ruled that State Farm was responsible for only Isaac's portion of the increased housing costs that were incurred as a result of Isaac's injuries. **Appendix 104a-106a.**

A. Isaac's Care Requires Housing Different From Before His Injury.

The uninjured Isaac does not exist anymore—he is now a vent-dependent quadriplegic child, confined to a "sip-and-puff" wheelchair and in need of constant supervised care. His daily needs have changed drastically and are far more extensive than those of an uninjured child. It is undisputed that Isaac's need for housing has also changed significantly as a result of his accidental bodily injury. Isaac has the full intellect and understanding of any normal nine-year-old boy. But his physical restrictions have created a unique need for an environment that supports his physical, mental and emotional well-being—an environment that provides independence, unfettered familial socialization, unique and increased entertainment, and numerous other needs which do not exist for an uninjured nine-year-old boy. Ample support for Isaac's different need for housing may be found in a consultation note by Michael Wolff and Rochelle Manor, doctoral-level psychologists familiar with Isaac's situation:

Functionally, a majority of Isaac's time and livelihood will be within the primary residence. It is highly unlikely that his friends, other families, or relatives will be able to host Isaac in their home. As a result, Isaac's home is more than a simple shelter, but is the primary location for socialization, psychological well-being, and activity. Recognizing this, it is reasonably necessary to have the house be open and spacious, but also sufficiently large to permit variation in activity to reduce the inevitable despair that would be resultant from being bound to only one or two rooms.

Appendix 32a.

Dr. Wolff and Dr. Manor also addressed Isaac's need to have a home where his family can live with him. While recognizing that no child can live independently, they emphasized that Isaac's physical and emotional wellbeing depends upon his family:

Unfortunately, Isaac's family responsibilities supersede the requirements of a family with an uninjured child. The level of care and vigilance required for Isaac [extends] from providing his feeding, to assisting with ADL's, positioning, transfers, and assistance with a majority of life activities. . . . As such, his family provides more substantive [care] than the "typical" care required to support an uninjured child.

Further, it is with their level of vigilance for their son and sibling that he has not regressed or experienced the common ailments associated with ventilator dependent quadriplegic individuals. This has been imperative for his on-going rehabilitation. And, this has permitted his cognitive ability to develop consistent with others in his age group, per report of previous neuropsychological evaluation, since his body is not fighting illness and his mental health is stable with the loving support they provide. The family represents more than a cluster of parent and children, but a rehabilitative unit assisting Isaac's ongoing rehabilitation and stability.

Appendix 32a-33a.¹⁸

The three-bedroom apartment the family was living in before the accident could not accommodate injured Isaac and State Farm acknowledged that his only option for discharge from an institution was to live in a different home: "State Farm initially assisted Plaintiffs in rent payments for a wheelchair-accessible home because the Wilcox family could not return to the property they lived in at the time of the accident." **Appendix 44a**; see also **Appendix 36a-37a**. Isaac must live in a home that not only will accommodate all of his life-sustaining equipment, medical supplies and caregivers, but that also will allow him to continue to live with his parents and two brothers. **Appendix 32a-33a**. Any attempt to separate Isaac from his family, especially

¹⁸ The enormity of Isaac's needs belies State Farm's callous statement that "the entire Wilcox family is benefitting from this home, as well as the amenities in the home." **Appendix 18a**. This statement by State Farm demonstrates its complete lack of understanding of how Isaac's injuries have affected not just his life, but the lives of all of his family members. Everyday choices of this family are driven by Isaac's accidental bodily injury, from where to live to what family activity to do on a Saturday afternoon. This is not a benefit to Isaac's family. They would gladly trade this larger home with all of its "amenities" for an Isaac that could run and play and breathe on his own.

since his parents are his primary caregivers and his two brothers are virtually his only playmates, is absurd.

B. The Cost of Isaac's Housing Accommodations Constitutes an Allowable Expense Under § 3105(1) and § 3107(1)(a).

The causation analysis in this case is straightforward. Isaac was injured in a motor vehicle accident. Before the accident he lived in an apartment with his family. Isaac can no longer live in that apartment as a result of his accidental bodily injury. It is undisputed that no other non-institutional housing accommodations can adequately meet Isaac's care needs other than a newly purchased and modifiable home or a newly constructed home.¹⁹ Reasonable proof was submitted to State Farm that the home purchased was reasonably necessary for Isaac's care and rehabilitation. The causal relationship between the claimed housing expenses and Isaac's accidental bodily injury has been satisfied.

To put this situation into the language of this Court in *Griffith*, the housing expenses at issue arise from the injuries Isaac sustained in the accident. If Isaac had never sustained, or were to fully recover from, his injuries, he would not require a larger and better equipped home, and he and his family could return to living in their apartment. Given the current state of medical science regarding spinal cord injuries, however, full recovery for Isaac is no more than a dream. His housing expenses are therefore allowable costs under the statute.

¹⁹ Dr. Wolff and Dr. Manor estimate that placing Isaac in "any comparable facility with the staffing requirements . . . and ongoing vigilance for Isaac's recovery would easily cost over \$500,000 a year for room and board, clinical staffing, and therapeutic recreation." **Appendix 33a.**

C. **The Full Expense of Isaac's Housing Accommodation is Recoverable, Rather Than Just the Incremental Increase Related to His Accidental Bodily Injury.**

Isaac is entitled to the full claimed housing expenses, rather than just the incremental increase, subject to the requirement that the expenses be reasonable. It would be impossible for this family, or any family, to parse out exactly what portion of the cost for this home is attributable solely to Isaac's injury, as opposed to that portion being used by his family members and that portion that would have been used by Isaac had he not been injured.

It must also be kept in mind that neither Isaac's family members nor Isaac would be using *any* portion of this home if it had not been for his catastrophic injury. Further, as evidenced in *Hoover*, minds can easily disagree over what expenses are solely attributable to one's injuries—such as dumpster expenses—as opposed to those that have only increased—such as snow removal expenses. And as raised before, how does an injured insured submit reasonable proof of these incremental expenses? State Farm has already demanded such information from Appellants: "The increase in utilities due to Isaac's equipment will need to be supported and documented for consideration." **Appendix 13a**. Neither the *Hoover* decision nor State Farm has provided any guidance to injured persons on how this apportionment is to be satisfactorily accomplished.

CONCLUSION

Griffith articulated the causation analysis required to determine the liability of a no-fault insurer for PIP benefits under the Michigan No-Fault Act, §§ 3105(1) and 3107(1)(a). This analysis requires that a causal relationship exist between the claimed expense and the accidental bodily injury, and that the expense be for the injured person's care, recovery, or rehabilitation. The *Griffith* analysis does not require or allow no-fault insurers to incrementalize "allowable expenses" by an amount that is as necessary for an uninjured person as an injured person. *Hoover*

misinterpreted and misapplied *Griffith*, and the Court of Appeals erred when it instructed the trial court in this case to apply the analytical framework of *Hoover* to Isaac's Wilcox's case. Isaac's need for housing is different as a result of his accidental bodily injury, and as long as he requires larger and better equipped housing, State Farm is liable for the full expense.

RELIEF REQUESTED

Appellants ask this Court to provide the following relief:

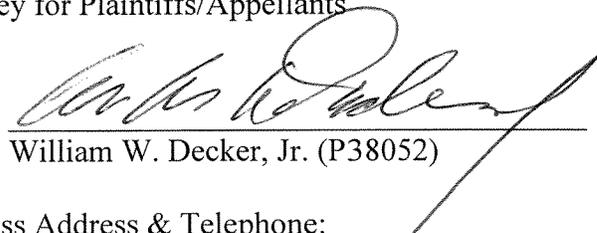
- Reverse the Court of Appeals' order of remand dated July 1, 2009;
- Reverse the trial court's Order Regarding Motions for Summary Disposition entered on February 2, 2009;
- Reverse *Hoover*;
- Clarify that *Griffith v State Farm* does not preclude a claim for the full costs of no-fault PIP benefits if the evidence establishes that the benefits at issue are necessary for an injured person's care, recovery, or rehabilitation;
- Rule as a matter of law that State Farm is liable for Isaac Wilcox's full housing expenses, including past temporary rental expenses and permanent housing expenses or, in the alternative, remand the case to the trial court with instructions that the court is to allow Plaintiffs to present evidence supporting their claim for the full costs of Isaac's housing expenses.

Respectfully submitted,

WILLIAM W. DECKER, JR. LLC
Attorney for Plaintiffs/Appellants

Dated: July 8, 2010

By:

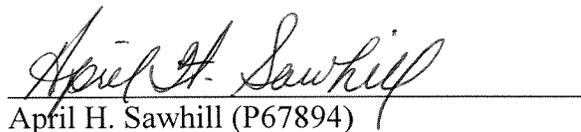

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