

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS
Hon. William B. Murphy, Presiding Judge

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

Plaintiffs-Appellants,

and

Supreme Court No. 138602

SUNRISE HOME HEALTH SERVICES, INC.,

Intervening Plaintiff,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

Court of Appeals No. 290515
Kent County Circuit Court No. 08-10129-NF

BRIEF OF DEFENDANT-APPELLEE,
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

PROOF OF SERVICE

* * * ORAL ARGUMENT REQUESTED * * *

GARAN LUCOW MILLER, P.C.
DANIEL S. SAYLOR (P37942)
1000 Woodbridge Street
Detroit, Michigan 48207-3192
(313) 446-5520

Attorneys for Defendant-Appellee STATE FARM

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JURISDICTION

Plaintiffs' appeal is from a non-final order of the Kent County Circuit Court, which granted in part Defendant's motion for partial summary disposition and denied Plaintiffs' counter-motion for partial summary disposition (Order Regarding Motions for Summary Disposition, 2/2/09 -- **115a-116a**). Plaintiffs filed a bypass application for leave to appeal to this Court (April 6, 2009). By order of October 26, 2009, the Court addressed the bypass application. Since the subject trial court ruling already had been reviewed by the Court of Appeals on Plaintiffs' concurrently pending application to that court (**117a** -- order of July 1, 2009), this Court regarded the bypass application "as an application for leave to appeal from that [Court of Appeals] decision" and held the application in abeyance (Order, 10/26/09).

By order of April 16, 2010, the Court again addressed Plaintiffs' application and granted leave to appeal (Order, 4/16/10). The Court has jurisdiction under MCR 7.301(A)(2) and MCR 7.302(G)(3).

STATEMENT OF THE QUESTIONS PRESENTED

Defendant-Appellee, State Farm Mutual Automobile Insurance Company, accepts Plaintiffs-Appellants' statement of the questions involved as accurate.

COUNTER-STATEMENT OF FACTS

Factual Background

Plaintiff, Isaac Wilcox, was four years old on November 24, 2004, when an automobile accident left him with the permanent injuries that give rise to this case. As his family's no-fault automobile insurer, Defendant State Farm has provided and continues to provide Isaac with coverage for the reasonably necessary products, services and accommodations for his care, recovery and rehabilitation in accord with its obligations under the No-Fault Act (Plaintiffs' Complaint and Defendant's Answer, ¶¶ 3-5 -- **21a, 26a**).

Plaintiff, now 9 years old, is a ventilator-dependent quadriplegic (**62a; 101a**). He is able to attend school, however, with his special needs able to be accommodated by the public school system (**108a-112a**). In this lawsuit, Plaintiffs seek recovery of no-fault insurance benefits in the form of full reimbursement of all housing expenses incurred by the Wilcox family, including the full purchase price of their house and the property on which it is situated, the full cost of extensive additions to the already spacious home, and back-rental payments incurred prior to the purchase of the house.¹

Isaac's acute post-accident medical care was provided at the University of Michigan Hospital, from which he was discharged on February 15, 2005. When the accident happened, the Wilcox family was residing in a small rental apartment that would not be suitable for Plaintiff's post-accident needs and could not be modified (**62a**). Accordingly, with their insurer's assistance, the family moved into a partially barrier-free rental home in Howell,

¹ Plaintiffs' Counter-Motion for Partial Summary Disposition, pp. 3-4 -- **63a-64a**; dep. of K. Wilcox -- **17b-18b, 25b**; dep. of C. Wilcox -- **29b, 34b-35b**; Tr 1/15/09 hearing -- **101a-102a**.

Michigan, for which, by agreement, State Farm paid the full monthly rent for an initial six month period, with the Wilcox family bearing only the cost of utilities (**12a; 62a, 66a; 102a**). This was mutually regarded as a temporary solution only, as discussions were ongoing between State Farm and Isaac's parents, case manager and counsel, toward (a) the Wilcox family obtaining a permanent home, reasonably priced and suitable for modifying appropriately, and (b) reaching an agreement for allocating necessary expenses as between State Farm and the family.²

No such solution or agreement, however, was reached. As of December of 2005, State Farm reduced the amount of its voluntary rental payments for the Wilcox's home in Howell from the full payment of \$1,850 per month to approximately one-half, indicating to the family that the no-fault insurer's legal obligation is only to provide those reasonable additional expenses for the insured's accommodations that are "above and beyond" what would have been incurred had there been no injury.³ When progress still had not been realized by May of 2006, State Farm advised Plaintiffs' counsel that its existing level of rent support would remain in place only through November of 2006, during which time a decision would be needed for the family's long-term living situation. As no solution was reached, State Farm reduced its rent contribution effective November of 2006 to \$360.00 per month

² Dep. of E. Harrison (Plaintiff's former case manager) -- **4b-6b**; letter of 7/24/07 between counsel for State Farm and Plaintiff -- **7b**; dep. of K. Wilcox -- **10b-13b**; and dep. of C. Wilcox -- **27b-28b**.

³ State Farm correspondence of 1/20/06 -- **13a-14a**; Plaintiffs' Counter-Motion, p. 7 -- **67a**; Tr 1/17/09 hearing -- **102a**.

(reflective of either Isaac's one-fifth share of the total household rent payment, or two-fifths of the \$900 per month State Farm had been paying) (**18a; 67a; 102a**).

Finally, in August of 2007 -- unbeknownst to State Farm⁴ -- Keelo Wilcox (Isaac's father) selected and purchased a 4,000 square foot house near Grand Rapids for himself, his wife, and their three children, including Isaac (and occasionally the children's grandmother). The purchase price of the home was \$280,000.00 (**101a-102a; 18b, 24b; 32b**).⁵ The expansive residence includes four bedrooms, two baths, a pool, a pond and substantial acreage (*id.*). The home purportedly was selected on the basis that it had an elevator and already was wheelchair-accessible (**20b, 24b**), yet, after the purchase, Plaintiffs maintained that State Farm must bear the expense of funding additions and modifications to the home totaling approximately \$265,000 (*id.*; **47a; 102a; 32b**).⁶

In their Brief on Appeal, Plaintiffs assert as undisputed fact that no other housing options existed for the family, that State Farm never even proposed any alternative housing options, and that the particular home purchased by the Wilcox family was reasonably necessary for Isaac's care and rehabilitation (Appellants' Brief on Appeal, pp. 3, 26 n 16,

⁴ Mr. and Mrs. Wilcox acknowledge that, despite knowledge of State Farm's interest in participating in the evaluation of any prospective home purchase to which it would be contributing, they selected and closed on the subject purchase without including State Farm in the process (dep. of K. Wilcox -- **22b-23b**; dep. of C. Wilcox -- **27b-28b**).

⁵ While the Wilcox family apparently would not have been able to afford such a home purchase prior to the subject accident, ongoing payments made by State Farm since the accident for Mr. and Mrs. Wilcox's attendant care services being provided to Isaac have provided them with a \$100,000 annual income (dep. of K. Wilcox -- **17b**; dep. of C. Wilcox, 7/9/08 -- **31b**).

⁶ State Farm has in fact funded more than \$199,000 in modifications to the subject home, while maintaining its position that its responsibility does not extend to reimbursement of the purchase price of the home.

29). Such “facts,” however, have never been established (*see, e.g., 7b*), and the assertions are disputed. This is particularly so, given the seemingly gratuitous size and features of the home, its need for still more modifications costing nearly as much as the entire purchase price, and the fact that State Farm was excluded from the selection process.

Plaintiffs have also asserted that the Wilcox family would not have incurred the expense of a newly purchased or newly constructed home “but for” Isaac’s accident and injuries, and thus articulate the issue as whether 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 accommodations and Isaac’s pre-injury housing costs.” (Appellants’ Brief on Appeal, p. 7). Plaintiffs’ statement of what State Farm contends is not accurate.

The proper comparison is not between the present, post-injury housing costs and Isaac’s housing costs as they existed pre-injury in 2004, but between the present, post-injury housing costs (and in this respect, only to the extent shown to be reasonably necessary) and what Isaac’s housing costs would be at present, all other things being equal, had Isaac not been injured. Because of the confluence in the timing of Isaac’s accident and his parents coming into a substantial income, the “but for” causation between the accident and Plaintiffs’ acquisition of a large, family home is oddly fortuitous. Prior to the accident in 2004, the Wilcox’s living circumstances were extremely modest, although they hoped one day to be able to provide themselves with a settled home in a permanent location once they had the financial ability to do so (**31b**). As explained, (footnote 5, *supra*), the Wilcoxes did

commence earning an annual income of \$100,000 after Isaac's accident -- albeit by becoming providers for their son's injuries.

What is beyond doubt is that, given an income of \$100,000 or more per year, the Wilcoxes today would be living in a spacious home of their own, with or without an injury to one of their family members. To the extent that the home actually purchased to accommodate Isaac's injuries reasonably needed to be larger or differently equipped than what they would have purchased otherwise, the difference in price could constitute an economic loss covered by no-fault insurance. Likewise, had the family already owned their dream home when the accident occurred, and modifications were reasonably necessary to accommodate the accident victim's injuries, the reasonable charges associated with the modifications would be covered by no-fault insurance. There is no legal justification in either instance, however, for transferring the entire cost of meeting the Wilcox family's need for housing to the no-fault automobile insurance system.

Proceedings Below

This action was initiated by Plaintiffs' filing of a Complaint on December 8, 2006. Through the course of two rounds of discovery depositions of Mr. and Mrs. Wilcox, two changes in attorney representation, and a change in venue (due to the Wilcox family's above-described move from Howell to Kent County), Plaintiffs' claim for housing accommodations on behalf of young Isaac Wilcox evolved from seeking an allocated contribution from State Farm (10b-11b) to seeking full reimbursement of the entire purchase price of their 4000 square-foot home and surrounding property, additional payment of \$265,000 for

modifications to the house, and reimbursement of all rental expense borne by the family while in the Howell rental home (63a, ¶¶ 9, 11; 101a-102a; 17b-18b, 25b; 29b, 34b-35b).

The parties thus filed cross-motions for partial summary disposition with respect to Plaintiffs' claim for full reimbursement of all housing expenses incurred by the Wilcox family. It was Plaintiffs' contention that prior case law, left unaffected by *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521; 697 NW2d 895 (2005), required a no-fault insurer "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)."⁷ Correspondingly, Defendant's motion sought a ruling from the court that Defendant is not responsible for all of the Wilcox family's housing expenses, but rather, that its obligation extended only to those expenses reasonably attributable to Isaac's injury-related accommodations:

Plaintiffs claim that since Isaac's housing needs have changed after the accident (i.e., he requires barrier-free living), then the law entitles Plaintiffs to a windfall by requiring State Farm to pay the full costs of any and all of the Wilcoxes' housing needs for a home which Isaac's parents selected without State Farm's (or any expert's) input. ...

Defendant does not deny that Plaintiffs have incurred some additional housing expenses as a result of accident-related injuries. Defendant has paid and is willing to pay these *additional* expenses i.e. reasonable and necessary modifications

⁷ **63a-64a** -- Plaintiffs' Counter-Motion for Partial Summary Disposition, "Wherefore" clause, *citing, Sharp v Preferred Risk Mut Ins Co*, 142 Mich App 499; 370 NW2d 619 (1985) ("*Sharp* [] was not overturned by *Griffith, supra*, by implication or otherwise, and continues to require no-fault insurers to reimburse insureds for the full cost of the home purchase expenses when 'housing larger and better equipped is required for the injured person than would be required if he were not injured.'").

to a home needed for Plaintiff's care and recovery. However, Plaintiff's family is responsible for the general housing costs associated with Isaac and the Wilcox family.

(58a-59a -- Defendant's Motion for Partial Summary Disposition).⁸ Defendant acknowledged that it was responsible for home modifications shown to be reasonably necessary, and that factual questions still existed as to "reasonable costs for reasonably necessary expenses for housing," but maintained that it was entitled summary disposition on Plaintiffs' claim for full reimbursement of the entire family's housing expenses (60a).

In granting Defendant's motion only in part, the circuit court made it clear that the ultimate determination necessarily is heavily fact-driven. Based on the applicable law, including *Griffith* and the newly issued opinion in *Hoover v Mich Mut Ins Co*, 281 Mich App 617; 761 NW2d 801 (2008), the circuit court discerned the test as being whether the myriad expenses incurred for the plaintiff's housing "[would] have been incurred in the course of an ordinary life, unmarred by an accident. No Fault benefits are payable for the increased costs. And I -- I do believe that it is a question of law for the judge to determine whether or not there is an increased cost. I do believe, however, it's a question of fact as to what the amount of that would be." (104a-105a).

The court thus went on to rule that State Farm would not be responsible for the *entire* purchase price of the Wilcox home, but to the extent that square footage or other housing costs were increased due to the accident victim's injury-related needs, "State Farm would be

⁸ Plaintiffs' assertion that Defendant sought "a dispositive ruling that State Farm was not liable, under any circumstances, for any of Plaintiffs' housing expenses" (Appellants' Brief on Appeal, p. 5) thus is inaccurate.

responsible” (105a). How much increased cost is reasonable, and the extent to which such increases were reasonably necessitated “because of this young man’s injuries,” the court said, are questions of fact (105a-106a). The court thus granted Defendant’s motion for summary disposition in part, and denied Plaintiffs’ motion (115a-116a -- Order Regarding Motions for Summary Disposition, 2/2/09). Under the trial court’s decision, the case necessarily would proceed to full factual development and presentation to a jury.

From the trial court’s order, Plaintiffs sought leave for interlocutory appeal to the Court of Appeals (February 23, 2009). Soon thereafter, from the same circuit court order, Plaintiffs filed a bypass application for leave to appeal to the Supreme Court (April 6, 2009). Defendant filed answers in opposition to both applications.

By order of July 1, 2009, the Court of Appeals, in lieu of granting leave to appeal, remanded the case to the circuit court directing that the parties “submit evidence on each of the expenses at issue and [] present arguments under the analytical framework outlined in *Hoover* [*v Mich Mut Ins Co*, 281 Mich App 617; 761 NW2d 801 (2008)].” (117a).

The Supreme Court addressed Plaintiffs’ bypass application for leave to appeal in an order dated October 26, 2009. Since the circuit court ruling underlying Plaintiffs’ appeal already had been reviewed by the Court of Appeals, the Supreme Court opted to treat the bypass application “as an application for leave to appeal from that [Court of Appeals] decision” and hold the application in abeyance pending a decision in *Hoover*, *supra*, which then was on appeal before the Court (Supreme Court Order, 10/26/09). After *Hoover* was settled and dismissed by stipulation of the parties, *Hoover v Mich Mut Ins Co*, 485 Mich

1036 (January 10, 2010), the Court again addressed Plaintiffs' application and, by order of April 16, 2010, granted leave to appeal.

INTRODUCTION -- SUMMARY OF ARGUMENT

The issue before the Court concerns the costs incurred by or on behalf of an accident victim to acquire and maintain a home. To be determined is whether, or to what extent, such costs are recoverable as "allowable expenses" under the No-Fault Act, MCL 500.3107(1)(a). There are three possible positions on the issue. One is that such expenses simply do not qualify as "allowable" under the act, since housing is a necessity of life, not a necessity caused by injuries suffered in a motor vehicle accident. A second position is to require the no-fault insurance system to bear the full weight of an accident victim's housing expenses, if impacted in any way by the accident-injuries, on the premise that the shelter of home is necessary for an injured person's care, recovery, or rehabilitation.

Between these two positions is a third one, as set forth in *Hoover v Mich Mut Ins Co*, 281 Mich App 617; 761 NW2d 801 (2008), which the Court of Appeals discerned from *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521; 697 NW2d 895 (2005), and which the trial court applied here in the case at bar: an accident victim's housing costs may qualify as a reimbursable "allowable expense" under the No-Fault Act when causally connected to (that is, affected by) the accident injuries, but only to the extent of such causal connection.

In *Griffith*, which involved a claim for reimbursement of "food" expense (the "board" component of "room and board") the plaintiff's need for food, in its entirety, was the same as that of any uninjured person, so the claimed expense was held not to be covered by no-

fault insurance to any extent. The Court made clear, however, that where a claimant's injuries require inpatient care and treatment, and thus engender the expense of a hospital room (along with institutionally-provided food, bedding, toiletry items and other such amenities unavoidably associated with the need for inpatient treatment), such expenses do come within no-fault coverage.

The case at bar involves a claim for reimbursement of housing expenses -- expenses that would not come under no-fault coverage, except that they have been affected (that is, potentially increased) by the needs arising from the claimant's injuries. The trial court properly rejected Plaintiffs' extravagant claim that the no-fault insurer must bear responsibility for the Wilcox family's entire cost of housing and home ownership. Defendant maintains that it satisfies its housing "accommodation" obligations under the No-Fault Act by providing the Wilcox family with benefits for special amenities, home modifications and other housing expenses where they exceed what otherwise would have been incurred, to the extent shown to be reasonably necessary due to the circumstances of Isaac Wilcox's injury. The trial court agreed, holding as a matter of law that Plaintiffs have incurred accident-related housing expenses, but leaving it for the jury "as a question of fact as to what the amount of that would be." (105a).

This common sense approach is hardly unprecedented. When injuries suffered by an accident victim render the person wheelchair-dependent, no-fault coverage provides a housing "accommodation" benefit in the form of paying the construction costs for reasonably necessary modifications in order to make a home wheelchair-accessible; yet the insurer does

not thereby become liable for providing the accident victim with life-long, cost free housing. To *that* extent, a person's need for such "accommodations" does not arise as a result of injury but exists as a basic necessity of life.

The *Griffith*-based analysis of the Court of Appeals in *Hoover* is consistent with this well-established practice. Once an accident victim's housing needs are shown to have been "affected" by the injuries sustained in the accident so as to have produced increased costs, benefits may become payable to the extent of such increase, but only to that extent. The insurer should not, based on such an effect, suddenly be required to provide the claimant with full, life-long housing reimbursement benefits.

Yet such is the position advocated by Plaintiffs. Relying primarily on an over broad statement in the case of *Sharp v Preferred Risk Mut Ins Co*, 142 Mich App 499, 511; 370 NW2d 619 (1985), Plaintiffs contend that once an injury is shown to have impacted young Isaac's housing needs, to any extent, the no-fault insurer must, as if a critical "causation threshold" has been crossed, bear the entire amount of Isaac's housing expenses -- *and* those of his parents and siblings, as well. The notion that no-fault benefits might be limited to the actual economic loss sustained due to injury is labeled pejoratively by Plaintiffs as "incrementalism" (Appellant's Brief on Appeal, p. 9).

The very proposition advanced by Plaintiffs should give any court pause before proceeding to impose such a burden on the state's purchasers of mandatory automobile insurance. As the following will show, the governing provisions of the No-Fault Act do not support the result Plaintiffs seek, nor have Plaintiffs demonstrated, based on the facts of this

case, *why* the No-Fault Act should be construed as imposing this kind of burden on the no-fault system.

The Court should conclude that the trial court properly rejected the claim Plaintiffs propose here, and otherwise judiciously left it for the trier of fact to determine the extent to which Plaintiffs' incurred expenses reasonably exceed, due to Isaac's injury, what otherwise would be expended on Isaac's behalf to meet his ordinary need for housing.

STANDARD OF REVIEW

The issues raised in this appeal were addressed and decided in the trial court on motions for summary disposition. On appeal, a trial court's decision to grant or deny a motion for summary disposition is reviewed *de novo*. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Further, Plaintiffs' arguments raise issues of statutory interpretation, which are questions of law and likewise are reviewed *de novo* on appeal. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005).

ARGUMENT

- I. *GRIFFITH* WAS CORRECTLY DECIDED, AND IS PROPERLY CONSTRUED TO PROVIDE THAT AN ACCIDENT VICTIM'S HOUSING ACCOMMODATION EXPENSES QUALIFY AS "ALLOWABLE" UNDER §3107(1)(a) ONLY TO THE EXTENT THEY ARE NECESSARILY INCREASED, DUE TO ACCIDENT-INJURIES, OVER THOSE THAT WOULD HAVE BEEN INCURRED HAD THERE BEEN NO INJURY.

The issue presented in this case, concerning the scope of no-fault coverage for housing expenses, modifications and accommodations, is controlled by *Griffith v State Farm Mut Auto Ins Co*, *supra*. More precisely, it is controlled by §§3105(1) and 3107(1)(a) of the

No-Fault Act, MCL 500.3105(1); MCL 500.3107(1)(a), as definitively interpreted by this Court in *Griffith*. Plaintiffs concede, as the opening point in their argument, that *Griffith* was correctly decided. Contrary to Plaintiffs' contention, however, *Griffith*'s analysis was, in fact, properly applied by the Court of Appeals in *Hoover v Mich Mut Ins Co, supra*, as limiting housing accommodation benefits to actual economic loss as measured by increased expenses due to injury.

Griffith concerned the viability of a claim for "room and board" benefits on behalf of a permanently and catastrophically injured person residing at home. The particular claim in *Griffith* had been narrowed specifically to the cost of the plaintiff's food. Endorsing the Court of Appeals' conclusion in *Manley v DAIIE*, 127 Mich App 444, 453-454; 339 NW2d 205 (1983), *rev'd in part*, 425 Mich 140 (1986), that "[p]roducts, services, or accommodations which are as necessary for an uninjured person as for an injured person are not 'allowable expenses,'" *Griffith*, 472 Mich at 528 (*quoting, Manley, supra*), the Court found the text of both §3105(1) and §3107(1)(a) as providing necessary limits on housing accommodation claims.

First, the Court addressed §3105(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.

MCL 500.3105(1) (as emphasized in *Griffith*, 472 Mich at 526). The Court construed the emphasized phrase as imposing the requirement of a distinct causal connection between the particular expense and the person's injury in order to come within no-fault coverage:

“Accordingly, a no-fault insurer is liable to pay benefits *only to the extent* that the claimed benefits are causally connected to the accidental bodily injury arising out of an automobile accident.” 472 Mich at 531 (emphasis added). Applying this requirement, the Court concluded that, while the claimant clearly needed food and would incur expense meeting that need, it was not a need caused by his injury. “Such expenses are not necessary ‘for accidental bodily injury’ under MCL 500.3105(1).” *Griffith*, 472 Mich at 532, 540.

The Court then addressed §3107(1)(a), noting that this provision likewise would need to be satisfied for the insurer to become liable for benefits (*Griffith*, at 532):

... [P]ersonal protection insurance benefits are payable for the following:

(a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations *for an injured person’s care, recovery, or rehabilitation.*

MCL 500.3107(1)(a) (as emphasized in *Griffith*, 472 Mich at 527). Again, the emphasized passage was recognized as being necessary limiting language.

Addressing the elements of §3107(1)(a), the Supreme Court acknowledged that the expenses incurred for Mr. Griffith’s food “are no doubt necessary for his *survival*” (472 Mich at 536) (emphasis in original); but his need for food was not one caused by his injuries. “Unlike prescription medications or nursing care, the food that Griffith consumes is simply an ordinary means of sustenance rather than treatment for his ““care, recovery, or

rehabilitation.” 472 Mich at 536. Accordingly, the Court held, such “quotidian expenses” do not constitute “allowable expenses” under §3107(1)(a). *Id.*, at 540.⁹

In short, the reasoning of *Griffith* correctly recognizes that, while any accident victim will undeniably have reasonable needs for food and housing, the costs incurred to meet such needs generally are not for the person’s “care, recovery, or rehabilitation” within the meaning of §3107(1)(a), and to that extent, an insurer cannot be liable to pay such benefits because they would not be “for accidental bodily injury” under §3105(1).

That the precise holding in *Griffith* logically extends beyond “food” to reach other basic needs of life like housing and clothing was made clear by the following rhetorical question posed by the Court:

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

⁹ In her dissenting opinion, then-Justice Kelly rejected this construction of §3107(1)(a): “Food is a product reasonably necessary for the care of an invalid, however narrowly ‘care’ is defined. Without nourishment, an injured person could not be restored to health and could not properly be cared for.” 472 Mich at 548 (Kelly, J., dissenting). Respectfully, a construction as broad as this would provide for payment of benefits clearly beyond what is intended in the statute. In the same way an accident victim could not be restored to health without nourishment, he likewise could not be restored to health if, say, an impacted molar (unrelated to his accident injuries) went untreated; is an automobile accident victim thus entitled to have *all* his medical and dental care covered by no-fault insurance without regard to whether the condition is related to his accident injury? Further, since it is not only the invalid who needs nourishment to be restored to health, but even one whose accident-injury is decidedly minor, would there be any principled basis for denying him the same no-fault food benefit allowed for the severely injured accident victim?

housing payment now that he has been released when Griffith's housing needs have not been affected by his injuries?

Griffith, 472 Mich at 539 (emphasis added). Although Plaintiffs quote this passage in their Appellants' Brief, they misinterpret it as support for their all-or-nothing theory. From this rhetorical question, Plaintiffs mistakenly infer that if one's housing needs *are* affected by the accident injuries, *all* of the accident victim's housing costs thereafter must be paid by no-fault insurance. Plaintiffs infer too much.

Discussing the *Hoover* court's reading of the *Griffith* rhetorical question (Appellants' Brief on Appeal, pp. 18-19), Plaintiffs miss Judge Murphy's point entirely, when he states, "consistent with *Griffith* and its language speaking to housing needs unaffected by injuries, room and board or living expenses are not necessarily precluded from being covered by insurance benefits in their entirety in every case..." *Hoover*, 281 Mich App at 627 (emphasis added). By this statement, as is made clear both by its context and the court's ultimate holding, the court is indicating that housing-type expenses are not necessarily precluded in their entirety. When such expenses exceed what would normally be expected, they may be allowable to that extent. The court, in other words, was simply rejecting the extreme notion that housing accommodation benefits are never allowed. Yet the converse notion advocated by Plaintiffs is equally extreme and untenable -- that once a claimant's housing needs have been affected by his accident-injuries, the no-fault insurer must bear the entire cost of his housing needs.

When a person's housing needs are affected by his accident-related injuries, e.g., when reasonable modifications are needed to accommodate the insured's wheelchair-

dependency, the no-fault insurer pays for the modifications; these “effects” on housing expenses are covered as being causally linked to the accident. Yet, as *Hoover* demonstrates, coverage properly applies to such reasonable expenses *only to the extent* that they are so causally connected. *Hoover*, 281 Mich App at 631; *accord*, *Ward v Titan Ins Co*, ___ Mich App __; ___ NW2d __; 2010 WL 934005 (No. 284994, March 16, 2010), slip op, at 3 (app for lv pending). Coverage of one accident-related housing expense should not shift all of the insured’s housing expenses to the no-fault insurer. Such an all or nothing approach is neither justified nor economically feasible if Michigan’s already generous no-fault reparations system is to remain affordable:

Plaintiff’s interpretation of [the statute] stretches the language of the act too far and, incidentally, would largely obliterate cost containment for this mandatory coverage. We have always been cognizant of this potential problem¹⁵ when interpreting the no-fault act, and we are no less so today.

¹⁵ See, e.g., *Shavers v Attorney General*, 402 Mich 554, 607-611; 267 NW2d 72 (1978) (“In choosing to make no-fault insurance compulsory for all motorists, the Legislature has made the registration and operation of a motor vehicle inexorably dependent on whether no-fault insurance is available at fair and equitable rates.”); *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588, 597; 648 NW2d 591 (2002) (recognizing that, because no-fault coverage is mandatory, the Legislature has continually sought to make it affordable); *Celina Mut Ins Co v Lake States Ins Co*, 452 Mich 84, 89; 549 NW2d 834 (1996) (“the no-fault insurance system ... is designed to provide victims with assured, adequate, and prompt reparations *at the lowest cost to both the individuals and the no-fault system*” [emphasis added]); *O’Donnell v State Farm Mut Ins Co*, 404 Mich 524, 547; 273 NW2d 829 (1979) (recognizing that the Legislature had provided for setoffs in the no-fault act: “Because the first-party insurance proposed by the act was to be compulsory, it was important that the premiums to be charged by the insurance companies be maintained as low as possible. Otherwise, the poor and the disadvantaged people of the state might not be able to obtain the necessary insurance.”)

Griffith, 472 Mich at 539 (emphasis in original).

What Plaintiff ultimately proposes is a strict “any effect” test that, when triggered, transfers 100% of an accident victim’s basic housing expenses to the no-fault insurer -- including the full purchase price of the family home, all rental expense incurred by the family post-accident, and all incidental expenses unavoidably associated with home ownership. There is no rational or statutory basis, however, for transferring such a burden to the no-fault insurance system.

Thus, Defendant maintains that *Griffith* not only was properly decided, but, further, that it has been properly construed by the Court of Appeals, in *Hoover, supra*, and *Ward, supra*, as allowing for housing accommodation benefits only *to the extent* expenses are shown to be greater, due to the need to accommodate an accident victim’s injuries, than what would have been incurred absent an injury.

As in the case at bar, *Hoover* involved a no-fault claim for housing accommodation benefits on behalf of a permanently disabled, ventilator-dependent accident victim residing with his family members in a large home suited to his special needs. Sitting as the trier of fact, the trial court found, in light of the uninjured family members having their housing needs met, that 28% of the home could be attributed to the injured plaintiff’s use. In accordance with that finding, the trial court held that the plaintiff’s entire 28% of the household’s ordinary expenses of property taxes, home insurance, maintenance, telephone bills and the like would qualify as “allowable expenses” under the No-Fault Act. 281 Mich App at 621-622. Where an accommodation expense was incurred solely for the benefit of Michael (the injured claimant), such as the cost of a gasoline back-up generator for his

ventilator, or the dumpster rental and trash removal contract for his medical waste, the expense was “allowable” in full. *Id.*

On appeal, the defendant insurer maintained that the expenses associated with Michael’s ordinary housing needs (i.e., those shared with his uninjured family members, as distinct from those unique to his special needs), should not have been deemed as “allowable” *at all*, to any extent, for purposes of no-fault reimbursement, since housing expenses are a necessity of life, not a necessity caused by injuries suffered in a motor vehicle accident. The insurer’s position in this regard was *rejected* by the Court of Appeals (Judges Murphy and Fitzgerald), with one judge dissenting.

Carefully applying not only *Griffith v State Farm Mut Auto Ins Co*, but also the applicable statutory provisions on which *Griffith* was based, the *Hoover* majority held that an accident victim’s housing costs “are not necessarily precluded from being covered by [no-fault] insurance[.]” 281 Mich App at 627. Expenses that, because of needs arising from the claimant’s accidental injuries, “go beyond or are different from what would normally be expected,” may qualify as “allowable expenses” under the No-Fault Act. *Id.*

Dissenting in part from the majority, Judge Schuette expressed agreement with the insurer’s contention that none of the housing expenses that Michael shared in common with the other members of the household should qualify as no-fault allowable expenses, since, “irrespective of his injuries, plaintiffs would be required to pay [such expenses].” 281 Mich App at 640 (Schuette, J., dissenting in part). Yet all three of the Court of Appeals’ panel members concluded that the trial court legally erred in allocating the full “28 percent” of the

Hoovers' household expenses to Michael and then translating those amounts into the insurer's liability for no-fault benefits payable to Michael:

We do agree with defendant that the 28 percent allocation ordered by the trial court was not legally sound, and it is inconsistent with our analysis[.] . . . [W]e reverse on the expenses that were given a 28 percent allocation and remand the case to the trial court in order for the court to entertain additional evidence relevant to the approach dictated by *Griffith* and to rule accordingly.

Hoover, 281 Mich App at 636-637.

Thus, following *Griffith* (“a no-fault insurer is liable to pay benefits *only to the extent* the claimed benefits are causally connected to the accidental bodily injury...”)(*Hoover*, 281 Mich App at 624, quoting, *Griffith*, 472 Mich at 531) (emphasis added), the Court of Appeals directed that the trial court undertake an actual comparison between (a) the costs and expenses associated with the claimant's housing circumstances as they actually exist, and (b) the costs/expenses that the claimant would be expected to have incurred, in terms of his housing needs, had he not been injured. Where housing expenses are the same as they would have been “in the course of an ordinary life unmarred by an accident,” benefits are not payable; but where an expense is atypical, and arose “solely because or out of the accidental bodily injury,” then a causal connection is established and benefits are payable to that extent. *Id.*, 281 Mich App at 628.

Independent of the holding in *Hoover*, another panel of the Court of Appeals reasonably construed *Griffith* precisely the same way:

[W]e further conclude that the trial court erred in awarding plaintiff housing costs based on the full amount he currently

pays for rent. This issue is governed by *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521; 697 NW2d 895 (2005). Although *Griffith* considered compensation for food expenses, it indicated, in dicta, that its reasoning and analysis would also apply to housing costs. *Id.* at 538. Under the *Griffith* analysis, plaintiff's housing costs are only compensable to the extent that those costs became greater as a result of the accident. *Id.* at 535-540. Plaintiff must show that his housing expenses are different from those of an uninjured person, for example, by showing that the rental cost for handicapped accessible housing is higher than the rental cost of ordinary housing.

Ward v Titan Ins Co, __ Mich App at __ (slip op, at 3) (emphasis added).

In short, the Court of Appeals' decisions in *Hoover* and *Ward* held the insurer liable to pay the injury victim's housing-related expenses to the extent that they reasonably exceed what they would be without the need for injury accommodations. When the expense is one that would not have been incurred at all but for the injury (e.g., the back-up gas generator in *Hoover*, or the dumpster rental expense), the insurer would be liable for the expense in full. Where the expense is of the type necessarily incurred in the ordinary course of meeting one's need for housing (e.g., heating and electrical bills, property taxes, home insurance -- and, indeed, the purchase or rental cost of a home), but the amount is greater than what the injured person would have incurred were it not for the injury, then there is a demonstrable economic loss that is injury-related and, accordingly, where the expense is shown to be reasonably necessary, the insurer would be liable for the difference.

II. WHERE THE COSTS OF HOUSING ACCOMMODATIONS QUALIFY AS “ALLOWABLE EXPENSES” UNDER THE NO-FAULT ACT ONLY WHEN “CAUSALLY CONNECTED” TO THE CLAIMANT’S INJURIES AND “*ONLY TO THE EXTENT*” OF SUCH CAUSAL CONNECTION, THE TRIAL COURT WAS CORRECT IN REJECTING PLAINTIFFS’ CLAIM FOR FULL REIMBURSEMENT OF ALL HOUSING COSTS OF THE ENTIRE WILCOX FAMILY.

What Plaintiffs appear to be seeking in this appeal is a ruling that, as a matter of law, a no-fault insurer is obligated to reimburse *all* housing costs and expenses for an accident victim’s entire family -- based simply on a showing that the victim’s housing needs have, in any way, been affected by his injuries. This, despite the fact that Isaac’s parents, at all times pertinent to the housing claim, have had the financial wherewithal to provide for their family’s basic housing needs. To advance this claim, Plaintiffs seize upon an admittedly sweeping statement contained in the opinion of *Sharp v Preferred Risk Mut Ins Co*, 142 Mich App 499, 511; 370 NW2d 619 (1985): “[a]s 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’ under the no-fault act.” The Court should reject Plaintiffs’ bid to elevate this over broad statement to the status of black-letter precedent.

A. Neither the sweeping “rule” stated in *Sharp*, the transportation cases, nor the hospital food and “special shoe” examples cited in *Griffith* support Plaintiffs’ attack on so-called “incrementalism”.

As a central premise of the all-or-nothing position they advocate on appeal, Plaintiffs seek to characterize the no-fault law preceding *Hoover* and *Griffith* as well settled on the question of entitlement to full payment for all housing expenses. What emerges, however, is that Plaintiffs’ entire theory is founded on *Sharp v Preferred Risk Mut Ins Co*, 142 Mich

App 499; 370 NW2d 619 (1985), and its talismanic statement that, “[a]s 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’ under the no-fault act.” *Sharp*, at 511.

This unnecessarily expansive proposition in *Sharp* should be rejected. If the holding in *Sharp* remained viable at all after *Griffith*, it must be narrowly restricted to its facts. When properly tied to the facts that were actually before the court, the holding in *Sharp* was simply that a claimant’s temporary cost of an apartment may qualify as an allowable expense during the interim period between the claimant’s discharge from inpatient treatment and completion of necessary home modifications.¹⁰

The injured claimant in *Sharp* had resided in his own apartment prior to his accident, but then remained in hospital and institutional care for such a long time that, apparently, he had no home (apartment) to return to when at last his physician felt he could be discharged and, in fact, be better treated at home. Until he finally could be moved into his parents’ specially modified home, the plaintiff stayed in two different apartments, both of whose rents exceeded that of his pre-accident apartment. At issue was whether the no-fault insurer was

¹⁰ Furthermore, *Sharp* involved only the housing expenses of the injured person. As was well observed by the Court of Appeals in *Blackburn v Auto Club Ins Assoc*, unpublished per curiam opinion, 2005 WL 1412920 (Court of Appeals No. 253991, June 16, 2005), *Sharp* has no bearing on a case involving family members sharing the same household as the injury victim. (“[I]n *Sharp*, the plaintiff was the sole occupant, and the entire cost of the accommodation was necessarily for the plaintiff’s benefit. Here, the accommodations were for Kayla’s entire family, which presumably gained some benefit from the additional space.”)

liable for the full cost of these rentals or just the difference between their actual cost and the amount of his pre-accident rent.

The court held that the full cost of the apartment rental qualified as an “allowable expense.” In so holding, however, the court needlessly articulated the above-quoted talismanic “rule” on which Plaintiffs’ theory is based. In this regard, *Sharp* is a classic example of bad facts making bad law. The claimant in *Sharp* was effectively a homeless person at the time of his discharge. Until his parents’ home could be modified (at the insurer’s expense) to accommodate his condition, the patient effectively had no shelter under which to receive necessary care -- unless he were simply to remain in the hospital or institution.

Yet if the broad statement in *Sharp* were to be accepted and applied at face value, then every time a no-fault claimant needed any home modification whatsoever (i.e., when housing that is “larger and better equipped” is required), the claimant would, by virtue of this fact, be entitled thereafter to shift all his housing expenses to no-fault insurance. This proposition irreconcilably conflicts with *Griffith*’s clear, statute-based, and seemingly uncontroversial requirement of a causal connection between claimed no-fault expenses and accident-injuries. Under this requirement, expenses for housing may become allowable “only to the extent” that they are causally connected to the claimant’s injuries.

In an effort to support their no-incrementalism theory with authority other than *Sharp*, Plaintiffs cite the van transportation cases of *Davis v Citizens Ins Co*, 195 Mich App 323; 489 NW2d 214 (1992), and *Begin v Michigan Bell Telephone Co*, 284 Mich App 581; 773

NW2d 271 (2009). Neither case, however, provides the support Plaintiffs seek. *Davis* actually endorses a causation-based “injured person versus uninjured person” test. While it is well settled that MCL 500.3107(1)(a) covers the expense of travel to and from injury-related medical visits, transportation for non-medical purposes “is as necessary for an uninjured person as for an injured person.” *Davis*, 195 Mich App at 327. Thus, in the absence of unique circumstances whereby no other means of transportation for necessary medical visits exist, the no-fault insurer is *not* obligated to provide the claimant with a van or reimburse for the full price of its purchase. *Id* (plaintiff established at bench trial that public transportation and ambulance services were inadequate in her county). Importantly, as the concurring opinion emphasized in *Davis*, no appellate challenge was made against the measure of the plaintiff’s damages -- i.e., how *much* of the van expense was recoverable, thus the court’s holding does not lend support to Plaintiffs’ position. *Davis*, at 331-332 (Griffin, J., concurring).

Neither does the decision in *Begin v Michigan Bell Telephone Co*, *supra*, despite its holding that allowed recovery of the full cost of a handicap van. Plaintiffs quote the portion of the *Begin* opinion that discusses *Griffith* and the fully reimbursable expenses of hospital food and “special shoes” (Appellants’ Brief on Appeal, p. 17):

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 would be an allowable expense. Nor did the Court suggest that only the marginal cost of modifying regular shoes would be a recoverable “allowable expense” under MCL 500.3107(1)(a). Rather, in each example, the product, service, or accommodation used by the person before the accident is so blended with

another product, service, or accommodation that the whole cost is an allowable expense[.]

Begin, 284 Mich App at 596 (emphasis added).

Plaintiffs thus seek to advance their broad all-or-nothing rule (anti-“incrementalism”) by positing the fully reimbursable expense of hospital food or of a prosthetic leg¹¹ as the essential equivalent of requiring a no-fault insurer to cover the full cost of a person’s family home. Plaintiffs fail to acknowledge the materially different essence of such things. The rationale that the cost of hospital food or of a therapeutic shoe “is so blended with another product, service, or accommodation that the whole cost is an allowable expense” may well be apt for those items. An accident victim’s “need” for hospital food, like the hospital room itself, is inherently tied to his accident-related need for *inpatient medical treatment*. *Griffith*, 472 Mich at 537-538. The examples of a prosthetic limb or special shoe likewise represent things that are predominantly for the care of the person’s injury. *Id.*, at 535, n 12.

Contrast these items with a family home. The primary essence of a house is *not* treatment or care of an injury, but of meeting the basic need for shelter. The “allowable expense” under no-fault coverage would be the necessary expense of modifying or making adaptations to the independently necessary shelter, not the cost of shelter itself.¹²

¹¹ The *Griffith* Court spoke of the cost of a therapeutic “special shoe” or “prosthetic limb” as coming within the statute’s coverage of things needed for one’s “care.” *Griffith*, 472 Mich at 535, n 12. The *Begin* opinion’s reference to this discussion is inaccurate, since *Griffith* never mentioned a purported “marginal cost of modifying regular shoes.”

¹² The same analysis applies to a modified van, Defendant submits, notwithstanding the result reached in *Begin*, which permitted the “full cost” of the van and its modifications to be reimbursed. The primary essence of a motor vehicle is *not* treatment or care of an injury, but of meeting one’s basic need for transportation. Yet for all its discussion of an insurer’s obligation to provide an injured person with transportation, the issue of when such an expense would be

Accordingly, contrary to Plaintiffs' contention (Appellants' Brief on Appeal, pp. 23-24), neither the *Begin* court's observations regarding hospital food and special shoes nor the ultimate holding in the case itself (affirming full reimbursement for the modified van due to issues not being preserved for appellate review) create any significant conflict with *Hoover v Michigan Mutual Ins Co*. The court in *Hoover* addressed numerous housing expenses of a "quotidian" nature, and reasonably held that no-fault insurance would apply to such expenses to the extent that they are shown to be greater, as a result of the claimant's accident-injuries, than they otherwise would have been. The court also addressed certain expenses that related exclusively to the care of the injured claimant (e.g., a back-up gas generator to power the ventilator), holding that such expenses are covered in full. Nothing in *Begin* impairs these reasonable holdings.

- B. Defendant owes coverage for reasonably necessary modifications to Plaintiffs' home to accommodate Isaac's injuries, and for any increased housing expense reasonably necessitated by his injuries, but payment in full of all the Wilcox family's post-accident housing expenses constitutes a windfall, not compensation for economic loss caused by the accident.

There is no dispute whatsoever that Isaac Wilcox's needs, in general, are dramatically different than "any uninjured person." Uninjured persons do not need around the clock

"reasonably necessary" was not before the court because it was "waived". *Begin*, 284 Mich App at 589-590. Not only did the defendant decline to challenge the factual, evidentiary support for the award of these benefits (*id*, at 589), but in *all* respects due to having failed to preserve the van-reimbursement issue on appeal, it was deemed waived altogether (*id*, at 590). Accordingly, no more than this needed to be said to affirm the judgment of the lower court, as the concurring opinion clarified. 284 Mich App at 608-609 (Hoekstra, J., concurring).

attendant care services, widened hallways and elevators in their homes, wheelchairs, ventilators, and other such amenities that Isaac needs as a result of the injuries he suffered. Such expenses *are* causally related to his automobile accident and, in accord with *Griffith*, are covered under no-fault insurance. Defendant has paid and continues to pay the expenses incurred for meeting these needs. Distinct from these special needs, however, is the basic, universal need for shelter. Costs incurred by the Wilcox family in the form of such expenses as the purchase (or rental) of a home, property taxes, home maintenance, utilities, and homeowners insurance are incurred by injured persons and uninjured persons alike.

Indeed, such expenses would have been incurred by the Wilcox family, to one degree or another, whether or not young Isaac had been injured. Plaintiffs may submit that the large home they were able to purchase in August of 2007 surely would not have been purchased were it not for Isaac's injury, since they would not have been able to afford it. Plaintiffs must acknowledge, however, that had they been earning \$100,000 or more per year prior to the injury, they in all likelihood would have owned their own home and maintained payment of their property taxes and other obligations associated with such home ownership. The coincidental fact that Plaintiffs would not have come into a \$100,000 per year income had it not been for Isaac's injury clearly is not a causal connection envisioned by the No-Fault Act as providing a basis for rendering housing accommodations an "allowable expense" under §3107(1)(a).

At bottom, the inclination to find Isaac Wilcox, Michael Hoover and other severely and permanently injured accident victims entitled to benefits for "room and board" and other

basic living accommodations is the fact that, due to their injuries, such victims are left forever dependent upon others for their subsistence. This basic economic loss is, in fact, addressed in the No-Fault Act in the form of “work loss” benefits, but they only apply to persons who would have been earning income but for their injury, and they cover only the first three years after an accident. MCL 500.3107(1)(b). Beyond this limited provision, there simply is no entitlement under the act to benefits for subsistence income for injured persons. To provide such benefits under the heading of “reasonably necessary products, services and accommodations for an injured person’s care...” under §3107(1)(a) is to erroneously shift work loss benefits from §3107(1)(b) to §3107(1)(a). *Griffith*, 472 Mich at 540.

As was acknowledged by this Court in *Belcher v Aetna Casualty*, 409 Mich 231; 293 NW2d 594 (1980), the no-fault scheme cannot, and is not intended, to cover *every* loss:

[T]he act is not designed to provide compensation for all economic losses suffered as a result of an automobile accident injury. Under personal protection insurance, the act recognizes certain losses suffered by the injured person and seeks, to a limited extent, to compensate them.

Belcher, 409 Mich at 245 (emphasis added).

Defendant acknowledges that Plaintiffs have incurred housing expenses as a result of Isaac’s accident-related injuries that go above and beyond what they would have incurred, even if earning the same income they are now, had there been no need to accommodate a family member’s injury. In accord with the law, Defendant has paid and is willing to pay these *additional* expenses -- i.e., for reasonable and necessary modifications to a home suitable for Plaintiffs’ special needs. The Wilcox family, however, remains responsible for

the general expense of meeting its own need for housing -- which is unrelated to and does not arise out of any motor vehicle accident -- and likewise is responsible even for meeting Isaac's housing needs, "to the extent" that such need would exist independent of his accident-injuries.

The Court should thus affirm the ruling of the Kent County Circuit Court in its entirety. The case should be remanded for further proceedings in accord with the Court of Appeals' order of July 1, 2009 (117a), with one modification. Citing *Hoover, supra*, the Court of Appeals' remand order directs that the question of "[w]hether a cost constitutes an allowable expense is a question of law and so, it is to be decided by the court, not the jury." (*Id.* -- 117a). The order is materially imprecise. (Notably, *Hoover* was decided as a bench trial -- 281 Mich App at 636-637.)

While it is well established that the question of whether a particular type of expense potentially qualifies as an "allowable expense" under §3107(1)(a) is a matter of statutory construction and, thus, a question of law (*see, Griffith*, 472 Mich at 525-526 -- cited in the Court of Appeals' order), it is equally true that disputes regarding whether an amount charged is "reasonable" or whether the disputed service or accommodation was "reasonably necessary" are questions of fact that must be overcome as part of the plaintiff's burden of proof. *Nasser v Auto Club Ins Assoc*, 435 Mich 33, 49, 54-55; 457 NW2d 637 (1990) (noting that the standard jury instructions expressly so indicate). The remand directive, therefore, should be for the finder of fact to decide the extent to which the expenses Plaintiffs have incurred to meet Isaac's need for housing reasonably and necessarily exceeded what Isaac

would have incurred (or what would have been incurred on his behalf) if there were no accident-injuries needing to be accommodated.

RELIEF REQUESTED

For all the foregoing reasons, Defendant-Appellee, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, respectfully requests that this Honorable Court affirm the partial summary disposition ruling of the circuit court.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

By: 
DANIEL S. SAYLOR (P37942)
Attorneys for Defendant-Appellee,
State Farm Mutual Automobile Ins Co
1000 Woodbridge Street
Detroit, Michigan 48207-3192
(313) 446-5520

September 17, 2010

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STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiff-Appellant,

Supreme Court No. 138602

and

SUNRISE HOME HEALTH SERVICES, INC.,

Court of Appeals No. 290515

Intervening Plaintiff,

Kent County Circuit Court
No. 08-10129-NF

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

PROOF OF SERVICE

DANIEL S. SAYLOR states that he is associated with the law firm of GARAN LUCOW MILLER, P.C., attorneys for Defendant-Appellee, State Farm Mutual Automobile Insurance Company, in the above captioned cause; and that on September 17, 2010, he caused two copies of **Defendant-Appellee's Brief, Defendant-Appellee's Appendix**, and this **Proof of Service**, to be served upon:

April E. H. Sawhill, (P67894)
Varnum, LLP
Co-Counsel for Plaintiff-Appellant
333 Bridge Street NW
P.O. Box 352
Grand Rapids, MI 49501

William W. Decker, Jr. (P38052)
William W. Decker, Jr., LLC
Attorney for Plaintiff-Appellant
220 Lyon Street NW, Suite 560
Grand Rapids, MI 49503

Richard J. Carolan (P39980)
Carolan & Carolan, P.C.
Attorneys for Intervening Plaintiff
200 Maple Park Boulevard, Suite 205
St. Clair Shores, MI 48081

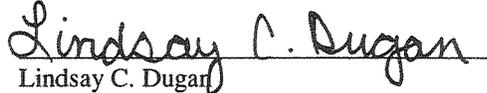
David M. Dark (P35731)
James Dark & Brill
151 South Rose Street
850 Comerica Building
Kalamazoo, MI 49007

with postage fully prepaid thereon and deposited in the United States mail.



DANIEL S. SAYLOR

Subscribed and sworn to before me
this 17th day of September 2010.



Lindsay C. Dugar
Notary Public, Wayne County, Michigan
My Commission Expires: 11/26/13

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