

STATE OF MICHIGAN
IN THE SUPREME COURT

IAN MCPHERSON,

Plaintiff-Appellee,

-vs-

PROGRESSIVE MICHIGAN INSURANCE
COMPANY

Supreme Court No. : 144666
Court of Appeals No: 299618
Lower Court Case No: 2008-095926-NI

Defendant-Appellant,

and

AAA AUTO CLUB GROUP INSURANCE
COMPANY, AUTO CLUB INSURANCE
ASSOCIATION MEMBER SELECT
INSURANCE COMPANY,

Defendants,

and

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

Defendant/Cross-Plaintiff

-vs-

AAA AUTO CLUB GROUP INSURANCE
COMPANY, AUTO CLUB INSURANCE
ASSOCIATION MEMBER SELECT
INSURANCE COMPANY,

Defendants/Cross-Defendants.

144666
**PLAINTIFF-APPELLEE IAN MCPHERSON'S
RESPONSE IN OPPOSITION TO DEFENDANT PROGRESSIVE
MICHIGAN INSURANCE COMPANY'S APPLICATION FOR LEAVE TO APPEAL**

Date: March 19, 2012

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TABLE OF CONTENTS

	Page No.
Counter-Statement Regarding Order Appealed From	iii
Table of Authorities	iv
Index of Exhibits	vii
Counter-Statement of Jurisdiction	viii
Counter-Statement of Questions Presented	ix
Counter-Statement of Facts	1
Background Facts and Procedural History	2
Counter-Statement Regarding Progressive’s Statement of “Grounds for Granting Application”	8
Counter-Statement of Standards of Review	11
Argument	13
I. IN RULING THAT QUESTIONS OF FACT PRECLUDE SUMMARY DISPOSITION IN FAVOR OF DEFENDANT PROGRESSIVE WITH RESPECT TO PLAINTIFF’S CLAIM FOR NO-FAULT BENEFITS WITH RESPECT TO A 2007 AUTOMOBILE ACCIDENT, THE COURT OF APPEALS ACKNOWLEDGED AND APPLIED THE PREVAILING STANDARD CONCERNING ENTITLEMENT TO BENEFITS UNDER MCL 500.3105(1), SPECIFICALLY, THAT THE CAUSAL CONNECTION BETWEEN THE USE OF THE INJURY AND THE USE OF THE MOTOR VEHICLE MUST BE MORE THAN INCIDENTAL, FORTUITOUS OR BUT FOR	13
A. THE TRIAL COURT PROPERLY DENIED PROGRESSIVE’S MOTION FOR PARTIAL SUMMARY DISPOSITION BASED ON MCR 2.116(C)(10) WHERE PLAINTIFF PRESENTED EVIDENCE THAT HIS PRESENT INJURIES AROSE OUT OF THE OPERATION OF AN AUTOMOBILE INSURED BY DEFENDANT PROGRESSIVE AND INVOLVED IN AN	

ACCIDENT ON NOVEMBER 25, 2007, SUFFICIENT TO RAISE
A GENUINE ISSUE OF MATERIAL FACT WITH RESPECT TO
HIS ENTITLEMENT TO BENEFITS UNDER MCL 500.3105 14

B. PROGRESSIVE’S RELIANCE ON MCL 500.3101, MCL 500.3106,
PECK v AUTO OWNERS INS CO AND *SANFORD v INS CO OF
NORTH AMERICA* IS OF NO MERIT IN THE CONTEXT OF THE
PRESENT MATTER AND WHERE THE COURT OF APPEALS
APPLIED THE PREVAILING STANDARD CONCERNING
ENTITLEMENT TO BENEFITS UNDER MCL 500.3105(1),
SPECIFICALLY, THAT THE CAUSAL CONNECTION
BETWEEN THE USE OF THE ACCIDENTAL BODILY INJURY
AND THE MOTOR VEHICLE MUST BE MORE THAN
INCIDENTAL, FORTUITOUS OR BUT FOR 19

C. THE TRIAL COURT PROPERLY DENIED PROGRESSIVE’S
MOTION FOR PARTIAL SUMMARY DISPOSITION BASED ON
MCR 2.116(C)(8) WHERE SUCH MOTION WAS
UNSUPPORTED BY ARGUMENT BOTH IN ITS BRIEF AND AT
THE HEARING ON THE MOTION 21

D. PROGRESSIVE’S REQUEST FOR REVIEW OR REVERSAL OF
THE TRIAL COURT’S DENIAL OF IT’S MOTION FOR
PARTIAL SUMMARY DISPOSITION BASED ON MCR
2.116(C)(8) IS PROPERLY DENIED AS SUCH REQUEST IS
UNSUPPORTED BY ARGUMENT IN ITS APPLICATION FOR
LEAVE 22

E. THE TRIAL COURT PROPERLY DENIED PROGRESSIVE’S
MOTION FOR PARTIAL SUMMARY DISPOSITION BASED ON
MCR 2.116(C)(8) 22

Request for Relief 25

COUNTER-STATEMENT REGARDING ORDER APPEALED FROM

Defendant-Appellant Progressive Michigan Insurance Co. ("Progressive") is seeking leave to appeal an unpublished Michigan Court of Appeals opinion and order of January 10, 2012, in which the majority affirmed the trial court's denial of Progressive's motion for partial summary disposition, acknowledging that, in order to meet the "arising out of" standard of causation of MCL 500.3105(1), the causal connection between the injury and the use of the motor vehicle must be more than incidental, fortuitous or "but for." (Court of Appeals opinion at 4).

Plaintiff further objects to Defendant-Appellant's rendition of its Statement of Order Appealed From and Relief Sought, found on p. ii of its Application. MCR 7.302(A)(1)(a) only calls for "a statement identifying the judgement or order appealed from and indicating the relief sought." This statement is intended to be an objective statement of matters relating to the Application, and not as a vehicle for Progressive's portrayal of the nature and factual context of Plaintiff's claims. Defendant-Appellant has improperly expanded and used this segment of the Application for the latter purpose. Plaintiff's claim for benefits is made with regard to injuries he contends, for purposes of entitlement to first part no-fault benefits under MCL 500.3105(1), "arise out of" a 2007 motor vehicle accident in which he was a passenger in a motor vehicle insured by Progressive.

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page Nos.:</u>
<i>Barnard Mfg Co v Gates Performance Eng'g Inc,</i> 285 Mich App 362, 369; 775 NW2d 618(2009)	11
<i>Dillon v DeNooyer Chevrolet Geo,</i> 217 Mich App 163, 168; 550 NW2d 846 (1996)	12
<i>Dora v Lesinski,</i> 351 Mich 579, 581; 88 NW2d 592 (1958)	8, 13
<i>Gobler v Auto-Owners Ins Co,</i> 428 Mich 51, 61; 404 NW2d 199 (1987)	15
<i>Goolsby v Detroit,</i> 419 Mich 651, 655 n 1; 358 NW2d 856 (1984)	10, 22
<i>Innovative Adult Foster Care Inc v Ragan,</i> 285 Mich App 466, 476; 776 NW2d 398 (2009)	12
<i>Iqbal v Bristol West Ins Group,</i> 278 Mich App 31, 37; 748 NW2d 574 (2008)	19
<i>Iron County v Sundberg, Carolson & Assocs,</i> 222 Mich App 120, 124; 564 NW2d 78 (1997) .	23
<i>Kochoian v Allstate Ins Co,</i> 168 Mich App 1, 9; 423 NW2d 913 (1988)	9, 17
<i>Maiden v Rozwood,</i> 461 Mich 109, 121; 597 NW2d 817 (1999)	12
<i>McKenney v Crum & Forster,</i> 218 Mich App 619; 554 NW2d 600 (1996)	15
<i>Meyer v City of Center Line,</i> 242 Mich App 560, 575; 619 NW2d 182 (2000)	12
<i>Mitcham v Detroit,</i> 355 Mich 182, 203; 94 NW2d 388 (1959)	10, 22
<i>Peck v Auto Owners Ins Co,</i> 112 Mich App 329; 315 NW2d 586 (1982)	20
<i>People v Kelly,</i> 231 Mich App 627, 640-641; 588 NW2d 480 (1998)	22
<i>Polkton Charter Twp. v Pellegrom,</i> 265 Mich App 88, 95; 693 NW2d 170 (2005)	21
<i>Prysak v R L Polk Co,</i> 193 Mich App 1, 6; 483 NW2d 629 (1992)	12
<i>Putkamer v Transamerica Ins Corp of America,</i> 454 Mich 626, 634; 563 NW2d 683 (1997)	7-10, 13, 16, 21, 25

<i>Radtke v Everett</i> , 442 Mich 368, 373-374, 501 NW2d 155 (1993)	23
<i>Sanford v Ins Co of North America</i> , 151 Mich App 747; 391 N.W.2d 473 (1986)	20
<i>Scott v State Farm Mut Auto Ins Co</i> , 278 Mich App 578; 751 NW2d 51 (2008), lv den on recon 483 Mich 1032 (2009)	18
<i>Scott v State Farm Mut Auto Ins Co.</i> , 482 Mich 1074; 758 NW2d 249 (2008)	18
<i>Spiek v Dep't of Transportation</i> , 456 Mich 331, 337; 572 NW2d 201 (1998)	11
<i>Stehlik v Johnson (On Rehearing)</i> , 206 Mich App 83, 85; 520 NW2d 633 (1994)	23
<i>Thornton v Allstate Ins Co</i> , 425 Mich 643; 659-660; 391 NW2d 320 (1986)	16, 25
<i>Turner v Auto Club Ins Ass'n</i> , 448 Mich 22, 27; 528 NW2d 681 (1995)	15
<i>Wade v Dep't of Corrections</i> , 439 Mich 158, 162; 483 NW2d 26 (1992)	24

Statutes/Court Rules/Other Authority:

Page Nos.:

MCL 500.3101 et seq.	14
MCL 500.3101(2)(d)	19
MCL 500.3101(2)(e)	15, 19, 20
MCL 500.3105	5, 9, 14, 19, 20, 23
MCL 500.3105(1)	1, 7, 9, 10, 13, 15-19, 21, 25
MCL 500.3105(2)	20
MCL 500.3106	19, 20
MCL 500.3107(1)(a)	15
MCL 500.3113	5, 7, 8, 9, 13
MCR 2.111(B)(1)	23
MCR 2.112(B)(1)	23

MCR 2.116(C)(8) 1, 5-7, 11, 21-24

MCR 2.116(C)(10) 5-7, 9, 11, 12, 14

MCR 2.116(G)(3) 11

MCR 2.116(G)(4) 11, 12

MCR 2.116(I)(5) 24

MCR 2.119(F)(3) 6

MCR 7.212(C)(6) 1

MCR 7.302(A)(1)(a) iii

MCR 7.302(A)(1)(d) 1

MCR 7.302(B)(3) 8, 9

MCR 7.302(B)(5) 8, 9

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Excerpt of Transcript of Deposition of Ian McPherson
B	Defendant Progressive Michigan Insurance Company's Responses to Plaintiff's Requests for Admission
C	Excerpt of Transcript of Deposition of Dr. Mazen Al-Hakim
D	Progressive Michigan Insurance Co. Adjuster's Log
E	Excerpt of Transcript of Deposition of Alison Wieck
F	Plaintiff's Complaint
G	Defendant Progressive Michigan Insurance Co.'s Motion for Partial Summary Disposition and Brief in Support of Motion
H	Plaintiff's Response to Progressive Michigan Insurance Co.'s Motion for Partial Summary Disposition and Brief in Support of Response
I	Defendant Progressive Michigan Insurance Co.'s Reply to Plaintiff's Response to Motion for Partial Summary Disposition
J	Transcript of March 17, 2010 Hearing on Defendant Progressive Michigan Insurance Co.'s Motion for Partial Summary Disposition
K	Order Dated March 17, 2010 Denying Defendant Progressive Michigan Insurance Co.'s Motion for Partial Summary Disposition
L	Defendant Progressive Michigan Insurance Co.'s Motion for Rehearing or Reconsideration
M	Order of Judge Rae Lee Chabot dated August 19, 2010 Denying Progressive Michigan Insurance Co.'s Motion for Rehearing or Reconsideration
N	MCL 500.3105
O	January 10, 2012 per Curiam Opinion of the Michigan Court of Appeals

COUNTER-STATEMENT OF JURISDICTION

Appellant has correctly stated the basis of jurisdiction of this Court.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

IN RULING THAT QUESTIONS OF FACT PRECLUDE SUMMARY DISPOSITION IN FAVOR OF DEFENDANT PROGRESSIVE, DID THE COURT OF APPEALS ERR WHEN IT ACKNOWLEDGED AND APPLIED THE PREVAILING STANDARD CONCERNING ENTITLEMENT TO BENEFITS UNDER MCL 500.3105(1), SPECIFICALLY, THAT THE CAUSAL CONNECTION BETWEEN THE ACCIDENTAL BODILY INJURY AND USE OF THE MOTOR VEHICLE MUST BE MORE THAN INCIDENTAL, FORTUITOUS OR BUT FOR?

Plaintiff-Appellee McPherson says: "No."

Defendant-Appellant Progressive says: "Yes."

The Court of Appeals would answer: "No."

COUNTER-STATEMENT OF FACTS

This Brief is submitted by Plaintiff Ian McPherson in support of the Court of Appeals' affirmation of trial court's denial of Progressive's motion for partial summary disposition and ruling that questions of fact preclude summary disposition as to the question of Plaintiff's entitlement to first-party no-fault benefits from Progressive under MCL 500.3105(1). Plaintiff must regretfully reject the Statement of Facts presented in Defendant's Application for Leave because the Statement of Facts does not comply with MCR 7.212(C)(6). That is, Defendant's Statement of Facts does not fairly state all material facts, both favorable and unfavorable, without argument or bias.¹ Defendant's Statement is particularly deficient in that it entirely omits reference to the testimony of Plaintiff's treating neurologist, Dr. Mazen Al-Hakim, relating a seizure which occurred on September 19, 2008 to the earlier trauma/accident for which entitlement to benefits is being claimed, said testimony having been submitted by Plaintiff for consideration by the trial court in ruling upon Defendant's motion. These facts merit careful consideration under MCL 500.3105(1). Moreover, the full substance of the record before is not provided such as to permit verification of preservation

¹ Further, Plaintiff notes that, via the mechanism of the inclusion of an "introduction" in its "statement of facts," Progressive has presented several arguments (again, contrary to MCR 7.302(A)(1)(d) and MCR 7.212(C)(6) and included several misstatements of underlying facts into its Statement of Facts, including with respect to its incorrect rendition of "uncontested facts (pp. 3-4 of Progressive's Application) further including its statements/arguments that: it is undisputed that all claimed first-party benefits have been paid in regard to the November 25, 2007 accident (which Plaintiff steadfastly contests, as evidenced by the present lawsuit); and that Plaintiff's quadriplegia "was the result of" a September, 2008 accident (again, which Plaintiff steadfastly contests, given the considerable and uncontested evidence submitted by Plaintiff to the trial court for consideration relating his 2008 seizure and consequent quadriplegia to the November, 2007 accident for purposes of MCL 500.3105(1)). Moreover, as explained in Plaintiff's argument, Progressive's motion for partial summary disposition (Exhibit G) was not grounded in part on MCR 2.116(C)(8) and no issue concerning same was preserved for appellate review, as no argument relative to that rule was set forth therein or presented to the trial court at the motion hearing (Exhibit J).

of issues and assess Progressive's Application with respect to the grounds set forth in MCR 7.302(B). Accordingly, Plaintiff submits the instant Counter-Statement of Facts such that the Court will have an accurate picture of the proceedings below and the issues involved in the present matter.

BACKGROUND FACTS AND PROCEDURAL HISTORY

On November 25, 2007 Plaintiff Ian McPherson was a passenger in an automobile owned and being driven by his brother, Christopher McPherson, when Christopher lost control of the vehicle and smashed his automobile into the freeway wall on the I-696 service drive, near Woodward Avenue in Royal Oak, Michigan (Exhibit A, Excerpt of Transcript of Deposition of Ian McPherson, pp. 5-6, 8).²

At the time of this one-car accident, Ian McPherson was a named insured on the Progressive policy covering Christopher McPherson's automobile (Exhibit B, Defendant Progressive's Response to Request for Admission #16).³ Ian lived in Huntington Woods with his brother Christopher, who was insured by Defendant Progressive, and with his parents Linda (since deceased) and Robert McPherson, who were insured by Defendant AAA. There is no dispute that these policies were in effect on November 25, 2007 and that both Ian and Christopher McPherson lived with their parents Linda and Robert McPherson. Defendant Progressive has admitted that, to the extent first-party benefits are applicable, Progressive is first in priority with respect to same (Exhibit B, Defendant Progressive's Response to Request for Admission #18).

² A copy of this testimony was attached as Exhibit 2 to Plaintiff's Response to Progressive's Motion for Partial Summary Disposition (see Exhibit H); a separate copy is attached hereto as Exhibit A for ease of reference).

³ A copy of this discovery response was attached as Exhibit 1 to Plaintiff's Response to Progressive's Motion for Partial Summary Disposition (see Exhibit H); again, a separate copy is attached hereto as Exhibit B for ease of reference).

Ian McPherson testified that, at the time of the November 25, 2007 accident, he struck his head against the deployed air bag (Exhibit A, Excerpt of Transcript of Deposition of Ian McPherson, p. 8). He further testified that, at approximately noon the next day, November 26, 2007, he felt a strange sensation overcome him, blacked out and woke up at William Beaumont Hospital. (Exhibit A, pp. 13-14). Ian had never before experienced any sort of seizure or seizure activity.

Dr. Mazen Al-Hakim, the neurologist at William Beaumont Hospital with whom Ian began treating following the accident, diagnosed Plaintiff as having had a full blown grand mal seizure (Exhibit C, Excerpt of Transcript of Deposition of Dr. Mazen Al-Hakim, p. 9)⁴. Dr. Al-Hakim has further opined that the seizure was in part post-traumatic, related to the head injury suffered on November 25, 2007 (Exhibit C, pp.19-20).

In January of 2008, Ian was examined by Dr. Brien Smith of Henry Ford Hospital for a second opinion, and ultimately ended up treating with Dr. Smith. As noted in a Progressive adjuster's log entry dated February 18, 2008, Dr. Smith indicated in an attending physician report to Progressive that Ian McPherson had a history of "Seizure episodes since MVA" with the further log notations ""Complaints solely related to MVA: Yes" and "Current Dx: Probable post traumatic epilepsy" appearing therein (Exhibit D; see also Exhibit E, Excerpt of Transcript of Deposition of Progressive claims supervisor Alison Wieck, p. 22:2-16)⁵. A March 22, 2008 Progressive adjuster's log entry included the notation "relatedness confirmed," a notation acknowledged by Ms. Wieck as

⁴ A copy of this testimony was attached as Exhibit 3 to Plaintiff's Response to Progressive's Motion for Partial Summary Disposition (Exhibit H); a separate copy is attached hereto as Exhibit C for ease of reference).

⁵ The adjuster's log and excerpt of testimony of Ms. Wieck were attached as Exhibits 4 and 5, respectively, to Plaintiff's Response to Defendant Progressive's Motion for Partial Summary Disposition.

referring to the seizure activity and the attending physician's report (Exhibit D; see also Exhibit E, pp. 23-24).

Plaintiff has testified that he did not experience any recurrence of seizure activity until September 19, 2008, when he was riding his motorcycle on Woodward Ave. in Berkley, Michigan.

Ian McPherson testified that:

I was going to apply for a new job, a new security job at Guardian Security. I was going down Woodward, , and I sort of had the same feeling I had from my first seizure, and then I didn't have enough time to pull over or anything. Before I knew it, I just kind of blacked out.

(Exhibit A, Excerpt of Transcript of Deposition of Ian McPherson, pp. 19-20). After the onset of the claimed second seizure, Ian lost control of the motorcycle, ultimately suffering what was later diagnosed as quadriplegia. His current condition is not in dispute. Treating neurologist Dr. Al-Hakim, who as noted had stated that Ian had suffered a post-traumatic seizure the day following the November 25, 2007 accident and related in part to said accident (Exhibit C, p. 19:15-21), further testified that Ian's described second seizure on September 19, 2008 is consistent with the post-traumatic seizure condition (Exhibit C, pp. 19-20). Dr. Al-Hakim further testified as follows with respect to Ian's post-traumatic seizure condition and subsequent seizure in September of 2008:

Q. Okay. And in terms of how much a role the - I'll call it a head injury or - well, the head injury he may have suffered in that November of '07 accident, how much did that play a role in the one that happened in September of '08?

A. Well, posttraumatic seizure can happen at any time. You can have head trauma today, you can have seizure from posttrauma [sic] two days later, you can have it a year later, you can have it the rest of your life.

(Exhibit C, p. 20:17-25).

Plaintiff filed the present action on November 10, 2008 (Exhibit F, Plaintiff's Complaint),

claiming first-party no-fault benefits from Progressive (Count II) and specifically alleging that for purposes of entitlement to benefits under MCL 500.3105, Plaintiff's injuries, including the seizure disorder and quadriplegia, arose out of the of the subject November 25, 2007 accident (Exhibit F, ¶11, 15). Progressive has denied payment of certain claimed benefits sought to date.

On or about December 28, 2009 Progressive moved for partial summary disposition (motion and brief and supporting exhibits attached as Exhibit G), grounded on MCR 2.116(C)(10), and, ostensibly, MCR 2.116(C)(8). Apart from reiterating the standard of review for requests for relief based on a claimed failure to state a claim (Exhibit G, page 3 of brief), the motion and brief were silent as to the basis for seeking partial disposition pursuant to MCR 2.116(C)(8). With respect to MCR 2.116(C)(10) Progressive argued exclusively that given that Plaintiff was operating an uninsured motorcycle at the time of the September, 2008 incident he should be precluded from recovering PIP benefits pursuant to MCL 500.3113 for the injuries being claimed in this action, injuries characterized for by Progressive for purposes of its motion as "arising out of" the September, 2008 incident (Exhibit G, pp. 4-5 of brief).

In response to the motion for partial summary disposition (Exhibit H), Plaintiff argued that Progressive had not submitted any argument in support of its request for relief pursuant to MCR 2.116(C)(8), and further arguing that, with respect to the request for relief under MCR 2.116(C)(10), the motion should be denied in that Plaintiff is claiming (with regard to his entitlement to benefits under MCL 500.3105) that his present injuries arose out of the November, 2007 accident in which Ian McPherson was a passenger in a vehicle insured by Progressive, as substantiated by the

testimony of Ian McPherson, Dr. Al-Hakim and the other evidence submitted to the trial court.⁶ Progressive did not support any evidence to the trial court contradicting Dr. Al-Hakim's testimony or the opinion of Dr. Smith and in support of its contention that Ian's seizure in September of 2008 and consequent quadriplegia was not related to the September, 2007 accident.

On March 17, 2010 oral argument was conducted on Progressive's motion for partial summary disposition in front of Oakland County Circuit Court Judge Rae Lee Chabot. At the hearing, counsel for Defendant explicitly advised the court that the motion was premised on MCR 2.116(C)(10) (Exhibit J, p. 3, lines 23-24). Judge Chabot ruled in favor of Plaintiff with respect to Progressive's request for relief pursuant to MCR 2.116(C)(8), holding that Plaintiff had set forth a claim upon which relief could be granted (Exhibit J, p. 7, lines 21-24). In addition, Judge Chabot ruled in favor of Plaintiff with respect to Progressive's request for relief pursuant to MCR 2.116(C)(10), stating at the hearing:

Further, reviewing the evidence in the light most favorable to plaintiff it is possible for a reasonable juror to determine the second accident was caused by the injuries suffered in the first.

(Exhibit J, pp. 7-8).⁷

Progressive filed a "motion for rehearing or reconsideration" on March 31, 2010 (Exhibit L), but did not state that there was any sort of "palpable error by which the court and the parties have been misled" or that "a different disposition of the motion must result from correction of the error" as required under MCR 2.119(F)(3). Rather, Progressive asserted that the trial court's ruling,

⁶ A copy of Progressive's Reply to Plaintiff's Response to Motion for Partial Summary Disposition is attached as Exhibit I.

⁷ A copy of the Order denying Defendant's Motion for Partial Summary Disposition is attached as Exhibit K).

denying the motion for partial summary disposition, appeared to be based exclusively on MCR 2.116(C)(8) (Exhibit L, p. 2) and requested a “supplemental ruling” with respect to the MCR 2.116(C)(10) component of the motion for partial summary disposition.

On August 13, 2010 Progressive filed its delayed interlocutory application for leave to appeal the March 17, 2010 trial court ruling. On August 19, 2010 the trial court issued its Order denying Defendant’s motion for rehearing or reconsideration (Exhibit M). On September 21, 2010 the Court of Appeals denied Progressive’s delayed application for leave to appeal. Progressive filed a motion for reconsideration, with said motion being granted on November 1, 2010, and the Court of Appeals further granting the delayed application for leave to appeal.

On January 10, 2012 the Court of Appeals issued its unpublished opinion affirming the decision of the trial court that fact questions precluded summary disposition in the insurer’s favor (Exhibit O, Court of Appeals opinion at 1), with the majority of the panel citing the decision of this Court in *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997) and acknowledging that, under existing precedent, in order to meet the “arising out of” standard of causation of MCL 500.3105(1), the causal connection between the injury and the use of the motor vehicle must be more than incidental, fortuitous or “but for.”⁸ (Exhibit O, Court of Appeals opinion at 4). The dissenting opinion was based exclusively on the application of MCL 500.3113 as argued by Progressive before the trial court and Court of Appeals, which argument, as noted hereafter,

⁸ Contrary to Progressive’s unsupported conclusion in referencing *Scott v State Farm Mut Auto Ins Co*, 278 Mich App 578; 751 NW2d 51 (2008), lv den on recon 483 Mich 1032 (2009) in its Statement of Facts and in the context of the Court of Appeals’ opinion, there was no holding or acknowledgment that “almost any causal connection will suffice for the ‘arising out of’ standard” on the part of the Court of Appeals in its ruling in this matter.

Progressive has abandoned in its present Application for Leave.⁹

COUNTER-STATEMENT RE: PROGRESSIVE'S STATEMENT OF "GROUNDS FOR GRANTING APPLICATION"

As demonstrated in the ensuing Argument section of Appellee's Response, Progressive does not offer any substantive reasoning in support of its contention that considerations under MCR 7.302(B)(3) and B(5)¹⁰ warrant review of the Court of Appeals' unpublished decision. These sub-parts of MCR 7.302(B) provide that an application for leave to appeal must show: (3) the issue involves legal principles of major significance to the state's jurisprudence; and (5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. As discussed below, Progressive's Application is lacking in both respects.

With regard to MCR 7.302(B)(3), it is significant that Progressive's Application for Leave demonstrates only a narrow dispute in a fact intensive matter concerning an individual's entitlement to first person no-fault benefits. The outcome of this case turns on its particular facts.¹¹ Whether

⁹ Progressive states in a footnote (p. 3 of its Application), without substantiation in the record, that Ian McPherson's motorcycle was insured as grounds for its abandonment of its earlier, exclusive argument premised on MCL 500.3113 as presented before the trial court and the Court of Appeals. Although assertions of fact in a brief that are not supported by references to record represent an improper attempt to enlarge the record, *Dora v Lesinski*, 351 Mich 579, 581; 88 NW2d 592 (1958), the extent of insurance coverage maintained with respect to Ian's motorcycle is of no significance in the determination of the issues herein, i.e. the propriety of the Court of Appeals' express reliance on the standard set forth by this Court in *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997).

¹⁰ Progressive apparently cites "MCR 7.301B(3) and (5)" in error on page 6 of its Application. Plaintiff assumes that Progressive intended to reference MCR 7.302(B)(3) and B(5).

¹¹ Progressive has abandoned its arguments to the trial court and Court of Appeals relying on MCL 500.3113 as a means of circumventing Ian MacPherson's entitlement to benefits

an injury arose from the use of a motor vehicle depends on the unique facts of each case and must be made on a case-by-case basis. *Kochoian v Allstate Ins Co*, 168 Mich App 1, 9; 423 NW2d 913 (1988). Moreover, the law regarding the standard of causation for purposes of determining entitlement to benefits under MCL 500.3105(1) has been thoroughly addressed by this Court, with the Court of Appeals majority expressly acknowledging and applying the interpretation espoused by this Court in *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997), i.e., in order to meet the "arising out of" standard of causation of MCL 500.3105(1), the causal connection between the injury and the use of the motor vehicle must be more than incidental, fortuitous or "but for." Further, there is no jurisprudential significance in the Court of Appeals' unpublished opinion. Accordingly, Progressive has not shown that this case "involves legal principles of major significance to the state's jurisprudence." MCR 7.302(B)(3).

Progressive also fails to satisfy MCR 7.302(B)(5), which again provides that an application for leave to appeal from a decision of the Court of Appeals shall demonstrate that the decision of the Court of Appeals "is clearly erroneous and will cause material injustice" or identify a conflict with a decision of this Court or another decision of the Court of Appeals, and as such this Court should deny leave to appeal. Although the Application appears to argue that the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals, presumably as its grounds for error, such arguments are in essence conclusions on Progressive's part

under MCL 500.3105. As noted, Progressive moved for partial summary disposition pursuant to MCR 2.116(C)(10), arguing exclusively in its motion the novel proposition that, given that Plaintiff was operating an uninsured motorcycle at the time of the September, 2008 accident which Plaintiff claims was precipitated by a seizure related to the trauma suffered in November of 2007, he should be precluded under MCL 500.3113 from recovering PIP benefits being claimed in this action with respect to the November, 2007 accident despite its acknowledgment of evidence of a causal connection.

and are in any event incorrect. As noted above, the Court of Appeals majority expressly acknowledged and applied the above-referenced interpretation of the “arising out of” language of MCL 500.3105(1) set forth by this Court in *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997). Further, while Progressive lists several cases in its argument in addition to the foregoing authority of this Court (expressly followed by the Court of Appeals), as ostensible indicia of conflict, it is significant that each is factually distinguishable further that Progressive does not beyond its conclusory statements demonstrate or aver that the Court of Appeals decision is in conflict with precedent¹² or is clearly erroneous and will cause material injustice.¹³

¹² As previously noted by this Court:

It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow."

Goolsby v. Detroit, 419 Mich 651, 655 n. 1; 358 NW2d 856 (1984) (quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959)).

¹³ Contrary to Progressive’s representation, there was no holding or acknowledgment on the part of the Court of Appeals in its ruling that “almost any causal connection will suffice for the ‘arising out of’ standard” and as was challenged by this Court in *Scott*.

COUNTER-STATEMENT OF STANDARDS OF REVIEW

Appellant has correctly stated that this Court reviews *de novo* the trial court's decision to grant or deny a motion for summary disposition. Appellee further accepts the standard of review set forth by Appellant with respect to motions for summary disposition brought pursuant to MCR 2.116(C)(8) as correct, although Plaintiff maintains that this question has not been preserved for appellate review and is not properly subject to consideration by this Court, as Appellant presented no argument with respect to this sub-rule in the circuit court proceedings, as acknowledged by the Court of Appeals. In addition, Appellee submits that the standard of review proffered as to MCR 2.116(C)(10) is incomplete, including and in particular with respect to the burden imposed upon the moving party in the context of a motion brought under MCR 2.116(C)(10).

A. Legal Standard Under MCR 2.116(C)(10)

A motion under MCR 2.116 (C)(10) tests the factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998) . When making a motion under MCR 2.116(C)(10), the moving party must "specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact." MCR 2.116(G)(4). The level of specificity required under MCR 2.116(G)(4) is that which would place the nonmoving party on notice of the need to respond to the motion made under MCR 2.116(C)(10). *Barnard Mfg Co v Gates Performance Eng'g Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). Further, the moving party must support its motion with affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted. MCR 2.116(G)(3). If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." MCR 2.116(G)(4). *Barnard*, Mich App at 370. If the moving party fails to properly support its

motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. *Id. See also Meyer v City of Center Line*, 242 Mich App 560, 575; 619 NW2d 182 (2000).

When a motion is brought under MCR 2.116(C)(10) and is properly supported, the adverse party may not rest on the mere allegations or denials in its pleadings but must by affidavits, depositions, admissions, or other documentary evidence set forth specific facts showing a genuine issue of material fact for trial. MCR 2.116(G)(4). *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 168; 550 NW2d 846 (1996). Moreover, as stated by the Michigan Supreme Court in *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999):

The reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion. A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules.

If the non-moving party fails to meet the burden of showing that a genuine issue of material fact exists, then judgment for the moving party shall be entered if appropriate. *Prysak v R L Polk Co*, 193 Mich App 1, 6; 483 NW2d 629 (1992).

Review is limited to the evidence that had been presented to the Court at the time the motion was decided. *Innovative Adult Foster Care Inc v Ragan*, 285 Mich App 466, 476; 776 NW2d 398 (2009). Moreover, courts are liberal in finding a factual dispute sufficient to withstand summary disposition. *Id.*

ARGUMENT

I. IN RULING THAT QUESTIONS OF FACT PRECLUDE SUMMARY DISPOSITION IN FAVOR OF DEFENDANT PROGRESSIVE WITH RESPECT TO PLAINTIFF'S CLAIM FOR NO-FAULT BENEFITS WITH RESPECT TO A 2007 AUTOMOBILE ACCIDENT, THE COURT OF APPEALS ACKNOWLEDGED AND APPLIED THE PREVAILING STANDARD CONCERNING ENTITLEMENT TO BENEFITS UNDER MCL 500.3105(1), SPECIFICALLY, THAT THE CAUSAL CONNECTION BETWEEN THE USE OF THE INJURY AND THE USE OF THE MOTOR VEHICLE MUST BE MORE THAN INCIDENTAL, FORTUITOUS OR BUT FOR

The Court of Appeals correctly followed Michigan Supreme Court precedent in this matter, and as such there is no “issue” properly before this Court as to the “proper framework for evaluating whether [Ian McPherson’s] injuries arose out of a motor vehicle accident for purposes of first party no-fault benefits,” as averred by Progressive.¹⁴ In its opinion, the Court of Appeals majority explicitly acknowledged and applied the well-settled standard concerning entitlement to benefits under MCL 500.3105(1), citing this Court’s decision in *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997) for the proposition that a claimant must present facts that demonstrate the causal connection between the claimed injury for which benefits is sought and the use of the motor vehicle is more than incidental, fortuitous or “but for.” Progressive now seeks leave to request the Court in essence to inject itself into the role of trier of fact despite

¹⁴ Again, Progressive states (p. 9 of its Application), without substantiation in the record, that Ian McPherson’s motorcycle was insured as grounds for its abandonment of its earlier, exclusive argument premised on MCL 500.3113 as presented before the trial court and the Court of Appeals and which formed the basis of the dissenting opinion in the Court of Appeals. Again, although assertions of fact in a brief that are not supported by references to record represent an improper attempt to enlarge the record, *Dora v Lesinski*, 351 Mich 579, 581; 88 NW2d 592 (1958), the extent of insurance coverage maintained with respect to Ian’s motorcycle is of no significance in the determination of the issues herein, i.e. the propriety of the Court of Appeals’ express reliance on the standard set forth by this Court in *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997).

Plaintiff's submission of evidence (again, unchallenged by Progressive before the trial court via the submission of contrary testimony or other evidence), including testimony of Ian McPherson, his treating neurologists and effective admissions of Progressive's adjuster, deemed sufficient by the trial court and the Court of Appeals to withstand summary disposition. This is plainly a question of fact for the jury.

A. PLAINTIFF HAS PRESENTED EVIDENCE, SUFFICIENT TO RAISE A GENUINE ISSUE OF MATERIAL FACT AND WITHSTAND A REQUEST FOR SUMMARY DISPOSITION BROUGHT PURSUANT TO MCR 2.116(C)(10), WITH RESPECT TO HIS ENTITLEMENT TO BENEFITS UNDER MCL 500.3105

The issue before the Court is a straightforward one. Simply put, Plaintiff is alleging that his injuries, including a seizure disorder and eventual quadriplegia, arose out of the subject November 25, 2007 accident (Exhibit F, ¶11), in which Plaintiff was a passenger in an automobile admittedly insured by Progressive, entitling Plaintiff to PIP benefits from Progressive under MCL 500.3105 with respect to these later-manifesting injuries. Plaintiff presented uncontroverted testimony, evidence sufficient to raise a genuine issue of material fact and withstand a request for summary disposition brought pursuant to MCR 2.116(C)(10). There is no dispute that Plaintiff was an occupant of the insured motor vehicle at the time of the November 25, 2007 accident. Despite admitting that Ian McPherson was involved in the motor vehicle accident on November 25, 2007 and that he suffered bodily injury covered by no-fault personal protection insurance as set forth in MCL 500.3105, Progressive is attempting to avoid its statutorily-imposed duties under MCL 500.3105 and to that end continues to go to great lengths to obfuscate the issues the resolution of which are determinative of Ian McPherson's rights.

Michigan's no-fault act, MCL 500.3101 et seq., provides: “[u]nder 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).¹⁵ Payable benefits are defined as follows, in relevant part:

(1) Except as provided in subsection (2), personal 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).

The no-fault act is remedial in nature, and as such must be liberally construed in favor of those for whom benefit was intended, i.e., persons injured in motor vehicle accidents. *McKenney v Crum & Forster*, 218 Mich App 619, 554 NW2d 600 (1996). remedial in nature and must be liberally construed in favor of the persons intended to benefit from it. *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 61; 404 NW2d 199 (1987); *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995).

Significantly, there has been no evidence submitted to refute that the immediate injuries Ian MacPherson claims to have sustained as an occupant of the insured vehicle in November 25, 2007 were both “accidental” and “bodily” within the meaning of MCL 500.3105(1).¹⁶ As noted above, a Progressive adjuster acknowledged in February, 2008 that Dr. Brien Smith of Henry Ford Hospital related Ian’s seizure disorder to the trauma he sustained in the accident involving the vehicle insured

¹⁵ A copy of MCL 500.3105 is attached as Exhibit N.

¹⁶ Nor is there a question that the vehicle in which he was a passenger at that time fit the definition of a motor vehicle in MCL 500.3101(2)(e).

by Progressive (Exhibit D). Progressive, however, contended before the trial court and the Court of Appeals that Ian McPherson should be precluded from receiving no-fault benefits for injuries arising out of that accident solely because he owned an uninsured motorcycle which was not involved in the accident which precipitated his seizure disorder, and is the genesis of his present condition.

Having established the requisite causal nexus between his present injuries and the November 25, 2007 accident, Plaintiff is entitled to proceed to a jury with respect to his claim for first-party no-fault benefits from Defendant Progressive.

Progressive's reliance on *Thornton v Allstate Ins Co*, 425 Mich 643; 391 NW2d 320 (1986) as grounds for seeking leave to appeal is misplaced. Rather, the Court of Appeals' explicit acknowledgment and application of this Court's ruling in *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997) that, in order to meet the "arising out of" standard of causation of MCL 500.3105(1), the causal connection between the injury and the use of the motor vehicle must be more than incidental, fortuitous or "but for," is entirely consistent with *Thornton's* espousal of the same standard. *Thornton*, 425 Mich at 659-660. To that extent, *Thornton* is "applicable" to the analysis at hand, but in all other respects the case is of no guidance as it is distinguishable on its facts. Specifically, at issue in *Thornton* were injuries sustained by a taxicab driver in the course of an armed robbery by a passenger, ultimately deemed no more than incidental or fortuitous to the use of the motor vehicle (taxicab) as a motor vehicle, while in this instance Ian McPherson was a passenger in the moving vehicle insured by Progressive and which was involved in the accident at issue (collision of said vehicle with a freeway wall) (facts which are not in dispute) and which is claimed to be the genesis of Ian McPherson's post-traumatic (resulting from the deployment of an air bag) seizure disorder and, ultimately, his present injuries for purposes

of MCL 500.3105(1).

Similarly, Progressive's reliance on *Kochoian v Allstate Ins Co*, 168 Mich App 1, 9; 423 NW2d 913 (1988) in support of its request for leave to appeal is of no avail. Indeed, as did the Court of Appeals in the present matter, the *Kochoian* court followed *Thornton* and applied the standard of causation applicable to a determination under MCL 500.3105(1) that the causal connection between the claimed injury for which benefits is sought and the use of the motor vehicle must be more than incidental, fortuitous or "but for." *Kochoian*, 168 Mich App at 8. Significantly, the court also ruled that the determination of whether an injury arose from the use of a motor vehicle depends on the unique facts of each case and must be made on a case-by-case basis. *Kochoian v Allstate Ins Co*, 168 Mich App 1, 9; 423 NW2d 913 (1988).

The facts involved in *Kochoian* are therefore likewise of no determinative guidance with respect to the merits of the trial court and Court of Appeals decision in this instance. Moreover, Progressive selectively quotes *Kochoian*, and fails to note that it was determined in the bench trial and on appeal, upon review of the conflicting evidence presented in that matter, that there was no causal genesis from the accident at issue, i.e. the myocardial infarction was deemed solely related to non-accident factors such as age, etc., whereas in this instance Plaintiff submitted evidence (unchallenged by Progressive before the trial court via the submission of contrary testimony or other evidence), including testimony of Ian McPherson, his treating neurologists Dr. Hazen Al-Hakim and Dr. Brien Smith, and the admissions of Progressive's adjuster, substantiating his seizure disorder's relationship to the November, 2007 accident in which he was a passenger in a vehicle insured by Progressive, evidence deemed sufficient by the trial court and the Court of Appeals to withstand summary disposition.

Progressive's recitation of the procedural history of and reliance on *Scott v State Farm Mut Auto Ins Co*, 278 Mich App 578; 751 NW2d 51 (2008), lv den on recon 483 Mich 1032 (2009), is of no bearing on the propriety of the Court of Appeals' ruling in this instance. Contrary to Progressive's allusion (p. 6 of its Application), the Court of Appeals in the present matter did not rely in its decision on the statement in *Scott* that "almost any causal connection will do" with respect to the "arising out of" standard of MCL 500.3105(1), and as was at issue in *Scott v State Farm Mut Auto Ins Co*, 482 Mich 1074; 758 NW2d 249 (2008). Rather, the Court of Appeals explicitly cited *Scott*, along with *Putkamer*, for the proposition that the causal connection between the claimed injury for which benefits is sought and the use of the motor vehicle must be more than incidental, fortuitous or "but for" (Court of Appeals opinion at 4). The "arising out of" standard as articulated by the Court of Appeals in this instance is consistent with the precedent of this Court.

Finally, the matter of *Keller v Citizens Ins Co*, 199 Mich App 714; 502 NW2d 329 (1992) cited by Progressive in support of its request is of no determinative value in this instance. Again, as did the Court of Appeals in the present matter, the *Keller* court followed *Thornton* and applied the standard of causation applicable to a determination under MCL 500.3105(1) that the causal connection between the claimed injury for which benefits is sought and the use of the motor vehicle must be more than incidental, fortuitous or "but for." *Keller*, 199 Mich App at 715. And, as in the case law relied upon by Progressive and discussed above, the distinguishable facts involved in *Keller* are of no guidance with respect to the merits of the trial court and Court of Appeals decisions in this instance. In that matter, plaintiff Margaret Keller was in her home when she heard the screech of tires and immediately went outside. *Id.* at 715. She saw her son's body lying in the street where he had been struck by an automobile. *Id.* In other words, the plaintiff herself was not involved in a

motor vehicle accident, rather, she claimed emotional distress resulting from the death of her son in a motor vehicle accident. In this instance, however, there is no dispute that Ian McPherson was “personally involved” in a motor vehicle accident, with claims of a consequent post-traumatic seizure disorder resulting from the deployment of an air bag and impact of his head upon same, as substantiated by his treating physicians, evidence deemed sufficient by the trial court and the Court of Appeals to withstand summary disposition with respect to his consequent claimed present injuries under MCL 500.3105(1). That Ian McPherson’s present injuries did not immediately manifest does not operate to relieve Progressive of its obligations under MCL 500.3105 with respect to the November 25, 2007 accident. Progressive’s position is contrary to the clear legislative intent underlying Michigan’s no-fault law. *See Iqbal v Bristol West Ins Group*, 278 Mich App 31, 37; 748 NW2d 574 (2008) (The purpose of the Michigan no-fault act is to broadly provide coverage for those injured in motor vehicle accidents without regard to fault).

B. PROGRESSIVE’S RELIANCE ON MCL 500.3101, MCL 500.3106, *PECK v AUTO OWNERS INS CO* AND *SANFORD v INS CO OF NORTH AMERICA* IS OF NO MERIT IN THE CONTEXT OF THE PRESENT MATTER AND WHERE THE COURT OF APPEALS APPLIED THE PREVAILING STANDARD CONCERNING ENTITLEMENT TO BENEFITS UNDER MCL 500.3105(1), SPECIFICALLY, THAT THE CAUSAL CONNECTION BETWEEN THE USE OF THE ACCIDENTAL BODILY INJURY AND THE MOTOR VEHICLE MUST BE MORE THAN INCIDENTAL, FORTUITOUS OR BUT FOR

Progressive obfuscates the questions properly brought before this Court in seeking leave to appeal the Court of Appeals’ unpublished opinion in its discussion of MCL 500.3101(2)(d) and (e) and MCL 500.3106. The parked motor vehicle exclusion set forth in MCL 500.3106 is of no relevance in these circumstances, and Progressive’s argument that a motorcycle is excluded from the definition of a motor vehicle under MCL 500.3101(2)(e) and further statement (p.11 of its Application) that

“as the motorcycle accident did not arise out of the operation of a motor vehicle due to the fact that a parked motor vehicle was involved and motorcycle accidents are not motor vehicle accidents pursuant to MCL 500.3101(d), Plaintiff is not entitled to receive no-fault benefits”

overtly misconstrues the nature and factual context of the present claims and ignores the evidence submitted before the trial court. The accident underlying Plaintiff’s claims, that occurring in November of 2007, did not involve a parked vehicle. There is no dispute that the motor vehicle in which Ian McPherson was a passenger at that time was in motion/being driven by his brother Christopher at the time it collided into the wall, resulting in deployment of the air bags and resulting in trauma to Ian’s head.¹⁷

Moreover, Progressive’s novel argument that “causation is not relevant to the analysis and ultimately interjects concepts of fault prohibited by MCL 500.3105(2)” is of no bearing on the matter before the Court. Plaintiff is not arguing Progressive should pay the benefits sought because it, or for that matter anyone else, is at fault. Rather, Plaintiff filed the present action claiming first-party no-fault benefits from Progressive (Count II) and specifically alleging that for purposes of entitlement to benefits under MCL 500.3105, Plaintiff’s injuries, including the seizure disorder and quadriplegia, arose out of the of the subject November 25, 2007 accident (Exhibit F, ¶11, 15). As

¹⁷ The decisions in *Peck v Auto Owners Ins Co*, 112 Mich App 329; 315 NW2d 586 (1982) and *Sanford v Ins Co of North America*, 151 Mich App 747; 391 NW2d 473 (1986) relied upon by Progressive are further not germane to the issue before the Court in that there is no dispute that Ian McPherson suffered an initial injury in a motor vehicle accident, specifically, the November, 2007 accident. In *Peck*, the plaintiff’s accident arose from his act of fleeing from the police, not from the police use of a vehicle. In *Sanford*, the Court ruled that a motorcyclist injured in an accident that occurs while he is fleeing from a police cruiser is not entitled to recover no-fault benefits where there has been no causal nexus established that would link the injuries incurred in the accident to a motor vehicle. Progressive’s submission of these cases for consideration by this Court, as well as its citation/discussion of MCL 500.3101(2)(e) and MCL 500.3106 is of no moment and amounts to mere sophistry.

explained by the Court of Appeals, *tort law* causation analysis does not control a claimant's eligibility to receive no-fault benefits, however, the "arising out of" standard set forth in MCL 500.3105(1) requires that a claimant must present facts that demonstrate the *causal connection* between the claimed injury for which benefits is sought and the use of the motor vehicle is more than incidental, fortuitous or "but for." *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997).

C. THE TRIAL COURT PROPERLY DENIED PROGRESSIVE'S MOTION FOR PARTIAL SUMMARY DISPOSITION BASED ON MCR 2.116(C)(8) WHERE SUCH MOTION WAS UNSUPPORTED BY ARGUMENT BOTH IN ITS BRIEF AND AT THE HEARING ON THE MOTION

As noted in Plaintiff's response to the motion brought before the trial court, despite its ostensible reliance on MCR 2.116(C)(8) as grounds for relief, Progressive failed to set forth in its motion and brief any argument in support of its contention that Plaintiff's pleadings fail to state a claim, and despite setting forth the standard for review of such motions in its present Application, Progressive continues to fail to set forth any corresponding argument, leaving this Court to divine same, and thus Progressive has failed to preserve the issue for appellate review.¹⁸ Nowhere in its motion and brief did Progressive cite any portion of the pleading/allegations set forth by Plaintiff or make any effort to demonstrate why such allegations are deficient. Moreover, at oral argument, counsel for Progressive specifically stated to the Court that "[o]ur motion is under (C)(10) for summary disposition." Generally, an issue is not properly preserved if it is not raised before, addressed, or decided by the circuit court or administrative tribunal. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). As such, Progressive's application for

¹⁸ A copy of Progressive's Motion for Partial Summary Disposition is attached hereto as Exhibit G.

leave to appeal with respect to its request for summary disposition based on MCR 2.116(C)(8) is properly denied.

D. PROGRESSIVE'S REQUEST FOR REVIEW OR REVERSAL OF THE TRIAL COURT'S DENIAL OF IT'S MOTION FOR PARTIAL SUMMARY DISPOSITION BASED ON MCR 2.116(C)(8) IS PROPERLY DENIED AS SUCH REQUEST IS UNSUPPORTED BY ARGUMENT IN ITS APPLICATION FOR LEAVE

As was the instance before the trial court and Court of Appeals, Progressive's Application for Leave is bereft of any argument with respect to its ostensible request for reversal of the trial court's denial of the motion for partial summary disposition brought pursuant to MCR 2.116(C)(8), and as such the trial court's denial of the motion, irrespective of the grounds for denial, is properly affirmed given the waiver of this argument. Merely setting forth the standard of review for such motions is insufficient to present this questions for consideration in this forum. Again, as noted by the Court:

It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.

Goolsby v. Detroit, 419 Mich 651, 655 n. 1; 358 NW2d 856 (1984) (quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959)).¹⁹

E. THE TRIAL COURT PROPERLY DENIED PROGRESSIVE'S MOTION FOR PARTIAL SUMMARY DISPOSITION BASED ON MCR 2.116(C)(8)

Without conceding that the issue has been preserved for appellate review, and with Plaintiff

¹⁹ Plaintiff similarly argued to the Court of Appeals that it is well-settled that an appellant may not merely announce his position and leave it to the Court of Appeals to discover and rationalize the basis for his claims. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

further contending that Progressive has not demonstrated any deficiency in the pleadings warranting summary disposition under MCR 2.116(C)(8), any argument claiming a failure to state a claim is nevertheless without merit.

As noted, Plaintiff filed the present action on November 10, 2008 (Exhibit F, Plaintiff's Complaint). The Complaint alleges that on November 25, 2007 Ian McPherson was a passenger in a vehicle operated by Christopher McPherson (Exhibit F, ¶7), and that the vehicle was involved in an accident with resultant injuries to Plaintiff (Exhibit F, ¶8). The Complaint includes a Count claiming first-party no-fault benefits from Progressive (Count II (Exhibit F, pp. 5-6)) as the issuer of a no-fault policy in effect on that date (Exhibit F, ¶14), and specifically alleges that for purposes of entitlement to benefits under MCL 500.3105, Plaintiff's injuries, including a seizure disorder eventually resulting in quadriplegia, arose out of the of the subject November 25, 2007 accident (Exhibit F, ¶11, 15). As noted, in reviewing a complaint for purposes of a motion brought under this rule, the court must accept as true all well-pleaded facts. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994). Only if the allegations fail to state a legal claim is summary disposition pursuant to MCR 2.116(C)(8) valid. *Radtke v Everett*, 442 Mich 368, 373-374, 501 NW2d 155 (1993). In this instance the trial court properly ruled that the pleadings submitted by Plaintiff state a claim upon which relief can be granted (Exhibit J, p. 7).

Plaintiff's pleading complied with MCR 2.111(B)(1). Under Michigan's rule of general fact-based pleading, MCR 2.111(B)(1), the only facts and circumstances that must be pleaded "with particularity" are claims of "fraud or mistake." MCR 2.112(B)(1). *Iron County v Sundberg, Carlson & Assocs*, 222 Mich App 120, 124; 564 NW2d 78 (1997). The pleadings were sufficient to place Progressive on notice of the nature of the action against it (a personal protection insurance

benefits claim). *Id.* Consequently, denial of the motion for partial summary disposition based on MCR 2.116(C)(8) was proper.

Finally, and even assuming, *arguendo*, that Progressive had prevailed under MCR 2.116(C)(8) based on a claimed failure to plead particular facts, Plaintiff would be afforded the opportunity to amend his Complaint to cure the claimed defect under MCR 2.116(I)(5). Such pleadings would again have to be accepted as true for purposes of any further request for relief pursuant to MCR 2.116(C)(8), *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992), and would again be sufficient to withstand a motion for summary disposition. Again, the trial court's denial of the motion for partial summary disposition grounded on MCR 2.116(C)(8) was correct.

REQUEST FOR RELIEF

In this instance the Court of Appeals majority expressly acknowledged and applied the interpretation espoused by this Court in *Putkamer v Transamerica Ins Corp of America* 454 Mich 626, 634; 563 NW2d 683 (1997) and previously set forth in *Thornton v Allstate Ins Co*, 425 Mich 643; 659-660; 391 NW2d 320 (1986) with respect to the “arising out of” standard of causation of MCL 500.3105(1), i.e., the causal connection between the injury and the use of the motor vehicle must be more than incidental, fortuitous or “but for.” For the reasons set forth in the foregoing response, Plaintiff-Appellee Ian McPherson respectfully requests that the Michigan Supreme Court issue an Order: denying Defendant-Appellant Progressive’s Application for Leave to Appeal in its entirety; and granting such further relief in favor of Plaintiff-Appellee as this Court deems appropriate.

Respectfully submitted,



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