

STATE OF MICHIGAN  
IN THE SUPREME COURT

MICHIGAN INSURANCE COMPANY,  
a Michigan Insurance Company,

Plaintiff-Appellant,

v

NATIONAL LIABILITY & FIRE INSURANCE  
COMPANY, a foreign corporation, licensed  
to do business in the State of Michigan,

Defendant-Appellee.

Supreme Court No. 144771

Court of Appeals No. 301980

Oakland County Circuit Court  
No. 09-104725-NF

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ANSWER TO APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

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COUNTER-STATEMENT OF JURISDICTIONAL BASIS

On October 20, 2010, the trial court granted MIC's motion for partial summary disposition, and denied NATIONAL LIABILITY's motion for summary disposition. On December 20, 2010, a Judgment was entered awarding MIC \$848,678.90, and further ordering that NATIONAL LIABILITY assume responsibility for payment, processing and handling of all claims and bills submitted on behalf of Lawrence Stubbe.

Defendant filed a Claim of Appeal to the Court of Appeals on January 7, 2011. On February 14, 2012, that Court issued an unpublished opinion (Appendix L) reversing the Judgment and remanding for a trial on the issue whether MR. STUBBE was a "ward" of MIC's insured. MIC filed its Application for Leave To Appeal with this Court on March 9, 2012.

This Court has jurisdiction over this appeal pursuant to MCR 7.301(A) (2).

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COUNTER-STATEMENT OF QUESTION PRESENTED

- I. IF NATIONAL LIABILITY IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW, IS THERE A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER MR. STUBBE WAS, IN FACT, A WARD OF THE CORPORATE INSURED?

The trial court answered, "No".

The Court of Appeals answered, "Yes".

Plaintiff-Appellant contends that the answer should be, "No".

Defendant-Appellee contends that the answer should be, "Yes".

COUNTER-STATEMENT OF STANDARD OF REVIEW & GROUNDS FOR RELIEF

Unlike the Application for Leave To Appeal filed by NATIONAL LIABILITY & FIRE INSURANCE COMPANY ("NATIONAL LIABILITY"), the one filed by MICHIGAN INSURANCE COMPANY ("MIC") does not present any legal principles of major jurisprudential significance. Nor does it demonstrate any clear error or decisional conflict.

Although incomplete due to its failure to address the legal issues presented in NATIONAL LIABILITY's Application for Leave To Appeal, the Court of Appeals opinion is otherwise quite unremarkable. It simply holds that the evidence presents a genuine issue of material fact as to whether MR. STUBBE was a "ward" of Quality AFC Home Corporation. That holding -- unlike the legal issues presented in NATIONAL LIABILITY's Application -- hardly merits this Court's attention.

MIC inadvertently omitted to point out that this Court reviews a decision to grant summary disposition de novo. Maiden v Rozwood, 461 Mich 109, 118 (1999).

## COUNTER-STATEMENT OF FACTS

Although not inaccurate, MIC's factual account is incomplete in a manner which illustrates the parties' different perspectives on which facts are material.<sup>1</sup> MIC's position is that what matters is what was contracted for and what was formally supposed to be done. On the other hand, NATIONAL LIABILITY maintains that what is important is whether, in fact, the corporation provided "care and protection and control" (MIC Application, p 16) to MR. STUBBE.<sup>2</sup> MIC's Statement of Material Proceedings and Facts is thus necessarily incomplete. Accordingly, NATIONAL LIABILITY will provide the rest of the story.

### Historical Facts: Pre-Accident

MR. STUBBE was a homeless person with a 40-year drinking problem. (STUBBE Dep [Appendix A], p 7, 10, 11-12). Easter

---

<sup>1</sup>This entire responsive brief is premised on the (erroneous) assumption that NATIONAL LIABILITY is not entitled to prevail as a matter of law for the reasons set forth in its Application for Leave To Appeal. Therefore, the text discussion assumes arguendo that its liability is a fact question.

<sup>2</sup>MIC implicitly recognizes the dichotomy noted in the text when it avers:

"Moreover, sadly, some adult foster care homes clearly provide better quality care than others. The quality of care at Quality AFC Home, Inc. is not the issue, but rather, that while Stubbe lived in the adult foster care home, he was under the home's care and control."

(MIC Application, p 21). Similarly, MIC quotes snippets of the owners' depositions to focus on Plaintiff's theoretical needs, rather than discussing his actual level of functioning and the absence of any services to address his "special needs and challenges". (MIC Application, p 19-20).

Seals had gotten him into a 3/4 house for substance abuse treatment. (Id., p 8, 9). He admitted himself to that facility, but was kicked out for drinking. (Id., p 8, 12).

MR. STUBBE lived on the street for three weeks before Easter Seals got him into Quality AFC on August 27, 2008. (Appendix A, p 7-8; BITEW Dep [Appendix C], p 9). Quality AFC is a corporation which ran an adult foster care facility in Pontiac, Michigan. (DENEKE Dep [Appendix B], p 5, 6; Appendix C, p 5). The facility consisted of two adjacent houses, each of which had 10 bedrooms. (Appendix B, p 13). One bedroom had four beds, the others had two or three. (Id., p 14). There were eight to ten employees working in three shifts. (Id., p 9).

The facility was licensed by the State of Michigan to provide adult foster care for mentally challenged or developmentally disabled people. (Appendix B, p 6-7; Appendix C, p 8). MR. STUBBE was at the home because of his "special needs or challenges". (Appendix C, p 36).

Breakfast, lunch, and dinner were provided, but the residents were not required to eat at the facility and could sign out and eat elsewhere. (Appendix B, p 14; Appendix C, p 22-23, 27). The facility also dispensed medicine to those residents who had prescriptions. (Appendix B, p 15-16). The owners testified that MR. STUBBE had a prescription, but did not indicate what it was for. (Appendix B, p 15; Appendix C, p 18).

The facility had house rules (Appendix D) to let residents know what was expected of them. (Appendix B, p 10-11; Appendix

C, p 12-13). There was a sign-out sheet (Appendix E) on which residents leaving the premises would indicate where they were going and what time they would return. (Appendix A, p 14; Appendix B, p 9-10).

The residents had various levels of functioning. (Appendix B, p 21). Some had guardians; others were relatively independent. (Id., p 21-22; Appendix C, p 25, 33). The latter category required little supervision and could come and go as they pleased. (Appendix B, p 23). MR. DENEKE, one of the owners, explained that he had no authority to stop them. (Id., p 23-24). He elaborated:

"Q But, again, you and your staff don't have the power to stop Mr. Stubbe from leaving?

"A No; no, no. We can't stop nobody unless they are really low function, they would be danger to themselves, that time we, you know, we're involved. But if they are high function, the only thing required, sign out, have fun, come back. You know, we don't have any control; the state even, they don't allow us."

(Appendix B, p 31) (emphasis added).

His wife and co-owner, MS. BITEW, said that residents were free to drink alcohol off the premises because "there's no control for us to [prevent] that". (Appendix C, p 29). MR. STUBBE added that there was no daily regimen at the facility. (Appendix A, p 13).

MS. BITEW testified that MR. STUBBE was not mentally challenged. (Appendix C, p 30). Both she and her husband characterized him as "very high functioning", "very independent". (Appen-

dix B, p 24, 25; Appendix C, p 25, 35). He communicated lucidly. (Appendix B, p 30; Appendix C, p 26). He knew what he was doing and where he was going. (Appendix B, p 24). He was able to take care of his personal needs. He did not need a special diet. He had no physical limitations. (Appendix C, p 31). He managed his own money. (Appendix B, p 20-21, 27). He never had a guardian or conservator. (Appendix A, p 9-10; Appendix B, p 27; Appendix C, p 34).

Most of the time MR. STUBBE was not at the facility. (Appendix C, p 32). Almost every day he went out and walked around the city. (Appendix B, p 25-26; Appendix C, p 26). MS. BITEW never saw him spend the whole day on the premises. (Appendix C, p 28). He came and went as he pleased, returning to take his medication. (Appendix B, p 26; Appendix C, p 26). His movements were not restricted in any way. (Appendix A, p 14-15).<sup>3</sup>

#### The Accident and Sequella

On December 27, 2008, MR. STUBBE was injured when he was struck by a motor vehicle insured by MIC. (Complaint, ¶¶4, 7). On January 19, 2009, MR. STUBBE submitted an application for no-fault benefits to MIC, which paid his medical expenses. (Id., p 8-9). MCL 500.3115(1)(a).

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<sup>3</sup>Unbeknownst to the people at Quality AFC, MR. STUBBE would obtain Vicodin on the street to get high. (Appendix A, p 12-13, 15).

NATIONAL LIABILITY had issued a commercial policy (Appendix F) to Quality AFC which included business auto coverage on a 2000 Dodge Van which was used to transport residents to doctor appointments or work (Appendix B, p 16-18; Appendix C, p 19-20). The only named insured was Quality AFC Home Corp, a corporation. (Appendix F: Business Auto Coverage Declarations). The policy contained a Michigan no-fault endorsement which defined an insured as follows:

**"B. Who Is An Insured**

- "1. You or any 'family member'.
- "2. Anyone else who sustains 'bodily injury':
  - "a. While 'occupying' a covered 'auto';
  - "b. As the result of an 'accident' involving any other 'auto' operated by you or a 'family member' if that 'auto' is a covered 'auto' under the policy's Liability Coverage; or
  - "c. While not 'occupying' any 'auto' as a result of an 'accident' involving a covered 'auto'."

(Appendix F: Michigan Personal Injury Protection Endorsement [ISO Form CA 22 20 11 06], p 2 of 4).

The policy defined "you" as follows:

"Throughout this policy the words 'you' and 'your' refer to the Named Insured shown in the Declarations."

(Appendix F: Business Auto Coverage Form [ISO Form CA 00 01 03 06], p 1 of 12).

The policy defined "family member" as follows:

"'Family member' means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child."

(Appendix F: Michigan Personal Injury Protection Endorsement, p 4 of 4) (emphasis added).

The total annual premium for the PIP coverage was \$284. (Appendix F: Business Auto Coverage Declaration (Form NLF-4667b [07/2006])).

On October 9, 2009, MIC filed the Complaint in the instant case, alleging that by virtue of the policy it issued to Quality AFC, NATIONAL LIABILITY might be in a higher order of priority than MIC for payment of MR. STUBBE's no-fault benefits. The parties filed cross-motions for summary disposition. The central issues argued were whether MR. STUBBE could be or was a "ward" of Quality AFC. (10/20/10 Tr, p 4).

On October 20, 2010, the trial court issued an Opinion and Order (Appendix G), ruling that NATIONAL LIABILITY must reimburse MIC for all expenditures paid by the latter, and must assume liability for all present and future benefits. On December 20, 2010, the trial court entered a Judgment (Appendix H) in favor of MIC in the amount of \$848,678.90.

The Court of Appeals reversed the grant of summary disposition and remanded the case for a trial on whether MR. STUBBE was, in fact, a ward of the facility. (Appendix L).<sup>4</sup>

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<sup>4</sup>The panel refused to address NATIONAL LIABILITY's arguments that (1) as a matter of law, MR. STUBBE could not be a ward of the corporate named insured; and (2) MCL 500.3114(1) does not relieve MIC of liability because MR. STUBBE was not "the person named in the policy, the person's spouse, [or] a relative of either". (Appendix L, p 3). Those issues are the subject of NATIONAL LIABILITY's Application for Leave to Appeal.

I. IF NATIONAL LIABILITY IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW, THERE IS A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER MR. STUBBE WAS, IN FACT, A WARD OF THE CORPORATE INSURED.

Assuming that a corporation can have a ward within the meaning of the NATIONAL LIABILITY policy, the question is whether MR. STUBBE was, in fact, a "ward" of Quality AFC. The policy does not define "ward". Accordingly, it is to be given its ordinary and commonly understood meaning. Hartman v Insurance Company of North America, 106 Mich App 731, 739 (1981).

In Hartman, the Court of Appeals consulted one dictionary to determine the common and ordinary meaning of "ward" ("a person . . . under the protection or tutelage of a person"). The following are several other dictionary definitions:

- "6.           **"a.** Law A minor or incompetent person placed under the care or protection of a guardian or court.  
              **"b.** A person under the protection or care of another."

\*           \*           \*           \*

- "7. a person who is under the protection or in the custody of another"

\*           \*           \*           \*

**"Noun 1. ward** - a person who is under the protection or in the custody of another"

<http://www.thefreedictionary.com/Ward>

- "10. a person who is under the protection or control of another."

<http://dictionary.reference.com/browse/ward>

- "6 : a person or thing under guard, protection, or surveillance: as"

\* \* \* \*

"b: a person who by reason of incapacity (as minority or mental illness) is under the protection of a court either directly or through a guardian appointed by the court -- called also ward of court."

<http://www.merriam-webster.com/dictionary/ward><sup>5</sup>

"a person who is under the protection or in the custody of another"

\* \* \* \*

"One who, or that which, is guarded. Specifically:

"(a) A minor or person under the care of a guardian;"

<http://dictionary.die.net/ward>

"c. a child or legally incompetent person placed under the care of a guardian or court

"d. any person under another's protection or care"

\* \* \* \*

"6. b. A person under the protection or care of another.

<http://www.yourdictionary.com/ward>

The term is not restricted to a person for whom a legal guardian has been appointed by a court of competent jurisdiction. Hartman, supra at 739. However, the common thread running through the above-quoted definitions is "protection and control".

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<sup>5</sup>MIC's averment that reference to dictionary definitions other than the one cited in USF&G v Citizens Ins Co, 241 Mich App 83, 87 (2000), quoting Hartman v Insurance Company of North America, 106 Mich App 731, 739 (1981), "completely misses the mark" (MIC Application, p 15-16) is difficult to fathom. First, it would seem that considering a number of definitions would yield a more accurate grasp of the essence of the term. Second, the common thread that NATIONAL LIABILITY cites ("protection and control") is also utilized by MIC (MIC Application, p 16).

Thus, the question is whether Quality AFC exercised sufficient "protection and control" over MR. STUBBE to render him a "ward". The record demonstrates conclusively that, in fact,<sup>6</sup> it did not.

We start with MR. STUBBE's own account:

"Q. When you went to live at the Quality AFC Home, did you have a daily routine as to what you would do day in and day out there?

"A. No, except for eating at certain times. I went for a lot of walks. They don't really have a daily routine there. I mean, you know, of course I was able bodied then and I could get up and -- I mean, they had curfews and stuff like that, like 11:00 at night, but there was never any regimen, you know what I'm saying.

"Q. Okay. So were you able to leave the facility when you wanted to?

"A. Yes.

"Q. And walk through the neighborhood or go visit people or go to the store?

"A. Yes, exactly.

"Q. And come back when you wanted to?

"A. Well, like I said, there was a curfew, there was a certain time you had to be back by.

"Q. Do you remember when that curfew was?

"A. I'm sure it was 11:00.

"Q. So as long as you were back before curfew, there were no problems?

"A. No.

---

<sup>6</sup>MICHIGAN INSURANCE and the trial court relied on the formal nature of the arrangement, an approach which will be critiqued below. The text discussion here will focus on the reality of MR. STUBBE's everyday experience.

"Q. Did you ever have to tell anyone at Quality AFC Home where you were going when you left the facility?

"A. Well, they had a sheet of paper where you would -- it was called a sign-in, sign-out sheet. To go somewhere you would write your name, your room, the destination, which could be a walk or whatever, the time you expected to be back in, and typical stuff. I mean, that's all you had to do. Didn't have to let anybody know where you were going, you didn't have to sign any papers saying I'm going here, I'm going there. Just that one sign-in, sign-out sheet. That was for everybody.

"Q. At any time did any employee or Mr. D at the Quality AFC Home tell you that you could not go somewhere?

"A. Nope.

"Q. Your movements were not restricted in any way?

"A. Not really, no."

(Appendix A, p 13-14) (emphasis added).

That is consistent with MR. DENEKE's testimony:

"Q. Do you remember if you maintained any kind of money in an envelope for Mr. Stubbe at all?

"A. I don't think so.

"Q. He didn't have any money left over?

"A. He managed his own money whatever, I think they gave him food stamp. I don't know what he got so he managed. You know, we don't have no the only thing we get, rent only from him. So whatever money he got, he managed himself."

\* \* \* \*

"Q Then you had individuals who, as I said before, are relatively independent?

"A Yes.

"Q They come and go as they please?

"A Correct.

"Q They require minimum supervision?

"A Correct.

"Q Those residents are not obligated to eat all their meals at the home?

"A No."

\* \* \* \*

"Q If they want to go to a nearby store, they're free to leave the home and go to a store?

"A Correct.

"Q If they want to go to a nearby park, they're free to leave the home and go to a park?

"A Yes.

"Q Those individuals that I've just described, do you have the authority to stop them from leaving?

"A No; no, we can't.

"Q If they want to leave, they can leave?

"A Yes.

"Q They sign out on the sign-out sheet?

"A They free to go.

"Q And they're free to go?

"A Yes."

\* \* \* \*

"Q So let's try to quantify it. If we could. Let's use the number one as being very independent, you know, high level of functioning and the number ten for a resident who is very dependent, a low level of functioning. Okay. One to ten scale, where would you place Mr. Stubbe? . . .

"A I would say he's high.

"Q In the one-two range?

"A Yeah, one-two range."

\* \* \* \*

"Q Had Mr. Stubbe left the facility on other days before December 28<sup>th</sup>, 2008?

"A Yeah, almost every day he go out.

"Q Do you know where he would go?

"A He would go for a walk? Sometimes when I drive, I see him on the street walking.

"Q You say he was very familiar with Pontiac?

"A Very, yes; yes.

"Q When you saw him walking, he was walking alone on these other days?

"A Yeah; yeah, walking alone.

"Q Were there other times when he would be gone for hours on end?

"A Yes.

"Q Was that almost an everyday occurrence?

"A I would say almost everyday, yeah, you know, he doesn't sit home all the time. He's come and go? He come -- he'll return when he need."

\* \* \* \*

"Q Would you agree with me that Mr. Stubbe's problem and the reason why he was placed into your home was alcohol abuse? . . .

"A My wife more familiar; when she take assessments, she knows more, but, you know, when he's living with us, I know he have alcohol problem.

"Q Okay. So you knew he had an alcohol problem at the time he was living with you?

"A Yes, yes; and when we saw him, you know, a couple of times drink and come home, you know, we call the agency -- CNS. We informed them, you know, he still drinking. So they have case workers, they got -- they talk to them so we inform that.

"Q But, again, you and your staff don't have the power to stop Mr. Stubbe from leaving?

"A No; no, no. We can't stop nobody unless they are really low function, they would be danger to themself, that time we, you know, we're involved. But if they are high function, the only thing required, sign out, have fun, come back. You know, we don't have any control; the state, even, they don't allow us.

"Q So if a person like Mr. Stubbe leaves the home, signs out and he gets some alcohol --

"A We can't control that."

(Appendix B, p 20-21, 23-26, 30-31) (emphasis added). Thus, MR. DENEKE essentially testified that he did not have the authority to exercise any meaningful control or protection over MR. STUBBE.

MS. BITEW confirmed MR. STUBBE's independence and the facility's lack of control over him:

"Q Then you have individuals who are relatively independent?

"A True.

"Q How would you characterize Mr. Stubbe's functional abilities?

"A Pretty high functioning.

"Q And can you elaborate on what you mean by 'pretty high functioning'?

"A He would come to the office and talk to us -- his needs and he would sign out and go out and, you know, come back for his meds, you know."

\* \* \* \*

"Q Do you remember how often he would sign himself out to leave the facility?

"A As far as I remember, I've never seen him stay the whole day at the home. He would go out and come back and go almost every day that.

"Q Come and go as he pleased?

"A Yes.

"Q And there's nothing you could do to stop?

"A There's nothing you can -- that's not how --

"Q That's not how --

"A No.

"Q And unfortunately, if you left the home and wanted to go drink alcohol somewhere --

"A Yes; yeah, that's why we have our, admissions --

"Q They can't bring it into the home?

"A They can't bring it to the home but they can drink; there's no control for us to do that."

\* \* \* \*

"Q With some reminder he was able to take care of his personal needs?

"A Yes.

"Q He was able to wash himself, groom himself?

"A Yes.

"Q And we already discussed he had no problems getting around the home or getting around the neighborhood?

"A No problem.

"Q No special diets?

"A No special diets."

\* \* \* \*

"Q On a one to ten scale, I'm going to use one as those individuals with a very high level of functioning and ten as individuals with a low level of functioning. In your opinion, where would you place Mr. Stubbe? . . .

"A I think I would place him maybe three."

(Appendix C, p 25-26, 28-29, 31, 35) (emphasis added).

Against the foregoing evidence of the fact that Quality AFC exercised virtually no control or protection over MR. STUBBE, in the trial court MICHIGAN INSURANCE pointed to:

- Quality AFC's license to provide "adult foster care services" (Plaintiff's Motion for Partial Summary Disposition: Exhibit D).
- Michigan Department of Human Services, Bureau of Children and Adult Licensing Renewal Inspection Report (id.: Exhibit F), which recites that the facility's "Program Type" was "Developmentally disabled, Mentally Ill".
- The AFC-Resident Care Agreement (id.: Exhibit G), in which Quality AFC agreed to provide MR. STUBBE -- for a monthly rent of \$750-\$800 (Appendix B, p 15) -- certain services including transportation (which was not, in fact, provided for MR. STUBBE [Appendix C, p 19-20]), management of his money (which was not, in fact, provided to MR. STUBBE [Appendix B, p 20-21]), and supervision of his medication.
- An Assessment Plan for AFC Residents (Plaintiff's Motion for Partial Summary Disposition: Exhibit H), which recited that the staff was to supervise his medication.
- The Quality AFC House Rules (id.: Exhibit I), which required residents to attend to their personal hygiene and neatness, to refrain from drinking on the premises and from smoking in non-designated areas, and to refrain from fighting. The rules also included some which were never enforced against MR. STUBBE, such as getting permission to

leave the premises and not going out alone. The rules did include a curfew.

- An Admission Policy (id.: Exhibit J) setting forth the facility's objectives, which included the following disclaimer:

"4. If a resident leaves the premises for personal or social outing by him/herself, the home will not be responsible about what happens to him/her outside the home."

(Plaintiff's Motion for Summary Disposition: Exhibit J, Admission Policy: Admission Requirements, ¶4 [Appendix K]) (emphasis added).

The last-mentioned document is noteworthy in that it expressly denies responsibility for MR. STUBBE's "care and protection" while he was off the premises, which appeared to be most of his waking hours, including the time of the accident. The remainder of the documents do not negate the factual testimony of the owners of the facility that they provided no meaningful protection or control over MR. STUBBE.

The argument advanced by MICHIGAN INSURANCE is essentially nothing more than a formalistic contention that because Quality AFC was licensed to provide services to the "developmentally disabled and mentally ill", MR. STUBBE therefore fell into that category and required control and protection. That is akin to saying that because a cat is found sleeping in a doghouse, it must therefore be a dog.

The lack of any factual content in MICHIGAN INSURANCE's argument is underscored by the trial court's stated basis for its decision:

"Viewing the evidence in the light most favorable to the defendant, this Court finds that the claimant is a ward of Quality AFC Home because they provided him with care, meals, transportation, objectives and rules, and disciplined him when he violated those rules."

(10/20/10 Opinion and Order, p 7).

The record does not show how often MR. STUBBE ate at the facility. However, there is no evidence that Quality AFC in fact provided MR. STUBBE with care or transportation, or that it ever disciplined him for violating any rules. In the absence of any factual basis for its decision, the trial court simply made it up.

In short, the uncontradicted testimony of the persons who were alleged to have provided (on behalf of the corporation) "protection and care" to MR. STUBBE established that they did not do so. Indeed, they testified that they were not allowed to control MR. STUBBE. Moreover, the facility's admission policy expressly disavowed any responsibility for MR. STUBBE for most of his waking hours.

The foregoing is all that this Court needs in order to conclude that a genuine issue of material fact exists as to whether MR. STUBBE was, in fact, a "ward" of AFC Group Home. Nevertheless, NATIONAL LIABILITY will address certain additional arguments advanced by MIC.

MIC cites USF&G v Citizens Ins Co, supra, for the proposition that it is entitled to summary disposition. NATIONAL LIABILITY has two responses.

First, Hartman, supra, a case upon which MIC relies, noted that "it is necessary to examine the factual context of the case at bar to determine whether William Prince was a 'ward' of the Baumgartens as that word is used in common parlance". 106 Mich App at 739.

Second, when the factual context of the instant case is compared to that in USF&G, the difference is stark. In USF&G, the trial court found:

"This is an individual who was under the care of this adult foster care facility, which is a corporation. This corporation handles their funds. It decides where they're going to eat, where they're going to sleep, how they're going to live, when they're going to get to go home -- go outside, when they're not going to get to go outside. They basically control this person's life. And I don't know, if that's not being a ward, I don't know what is being a ward."

241 Mich App at 88 (emphasis added). The dramatic factual distinction between the instant case and USF&G precludes relying on the latter as authority for the proposition that MIC is entitled to summary disposition.

MIC also makes much of the fact that NATIONAL LIABILITY was aware of the insurable risk it was assuming. (MIC Application, p 8, 11).

In Bosco v Bauermeister, 456 Mich 279, 297-300 (1997), this Court noted that although not dispositive, the amount of premium

collected is relevant to determining the scope of the risk assumed. A persuasive indication that the NATIONAL LIABILITY policy did not contemplate providing PIP coverage for all residents of Quality AFC is the \$284 annual premium for PIP coverage. (Appendix F: Business Auto Coverage Declarations). This Court can take judicial notice that annual PIP coverage for an insured vehicle in Michigan cost an average of \$277 in 2006. (Rand Analysis [Appendix I]). MRE 201(b)-(c). This Court can also take judicial notice that more than 90% of vehicles registered in Michigan are private passenger vehicles. (Appendix J). So the \$284 paid by Quality AFC is in line with the average per vehicle cost of PIP coverage in Michigan for private passenger vehicles.

However, if MIC is correct, NATIONAL LIABILITY collected an "average" premium for an extraordinary risk. Specifically, under the trial court's ruling, the NATIONAL LIABILITY policy would provide primary PIP coverage for upwards of 35-40 adults (Appendix C, p 34) if any of them were injured in an auto accident involving any motor vehicle during the time they are residents at Quality AFC.

Finally, MIC asks that if a corporation cannot have a ward, why is the ward provision in the policy? (MIC Application, p 15). The answer is that we are dealing with a form policy marketed to both individuals and corporations:

"Unlike a unique contract tailor-made to the interests peculiar to each party, the UM/UIM and PIP endorsements are standard forms crafted to accommodate a wide variety of insurance needs. Elections made by the insured may invoke or render inert various provisions

of insurance endorsements. For example, Future Investments could have named a designated person in the UM/UIM endorsement, which would have created coverage for the designee as well as the designee's family members. The corporation's failure to designate such a person rendered the policy language regarding a 'designated person' and the person's 'family' inapplicable in this instance, but does not nullify the endorsements or create an ambiguity."

Grain Dealers Mutual Ins Co v McKee, 943 SW2d 455, 458-59 (Tex Sup 1997) (emphasis added).

"We believe that the only thing that this marketing practice suggests is that MSI's business auto policies were written so as to be marketable to either individual proprietorships or to corporations. Assuming that individual proprietorships received certain coverages that corporations did not, that is so only because the contract specifies that it is so. It does not provide a basis for extending coverage where none exists."

Huebner v MSI Ins Co, 506 NW2d 438, 441 (Iowa 1993) (emphasis added).

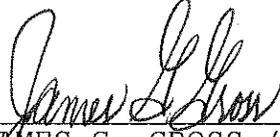
In conclusion, when the evidence presented by both sides is considered, it is patent that MIC is not entitled to summary disposition. If NATIONAL LIABILITY is not granted judgment in its favor as a matter of law, the question whether MR. STUBBE was a "ward" of the corporation will have to be decided by a jury.

**RELIEF**

Defendant-Appellee, NATIONAL LIABILITY & FIRE INSURANCE  
COMPANY, prays this Honorable Court to deny Plaintiff-Appellant's  
Application for Leave To Appeal in all respects.

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