

STATE OF MICHIGAN
IN THE SUPREME COURT

CHARLES ANTHONY LEFEVERS,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant,

and

TITAN INSURANCE COMPANY, ZURICH
AMERICAN INSURANCE COMPANY,
STEADFAST INSURANCE COMPANY,
CLARENDON NATIONAL INSURANCE
COMPANY and REDLAND INSURANCE
COMPANY,

Defendants.

Supreme Court No. 144781

Court of Appeals No.: 298216

Wayne County Circuit Court
Case No: 08-116325-NF
(Hon. Gershwin Drain)

SUPPLEMENT TO
APPLICATION FOR LEAVE TO APPEAL

**FILED ON BEHALF OF DEFENDANT-APPELLANT,
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
ORAL ARGUMENT REQUESTED**

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TABLE OF AUTHORITIES

MICHIGAN CASE LAW:

Published Decisions of the Michigan Court of Appeals:

Block v Citizens Ins Co of America, 111 Mich App 106; 314 NW2d 536 (1981)..... 6

Dembinski v Aetna Casualty & Surety Co, 76 Mich App 181; 256 NW2d 69 (1977) 6

Dowdy v Motorland Ins Co, 97 Mich. App. 242; 293 N.W.2d 782 (1980)..... 6

Perez v Farmers Ins. Exch., 225 Mich App 731; 571 NW2d 770 (1997) 6

Ritchie v Federal Ins Co, 132 Mich App 372; 347 NW2d 478 (1984) 4

Unpublished Decisions of the Michigan Court of Appeals

Lawrence v MEMIC Ins. Co., unpublished per curiam decision of the Michigan Court of Appeals, decided August 2, 2012 (Docket No. 305385) (**Exhibit D**) 5

MEMIC Ins. Co. v Estate of McNamara, unpublished per curiam decision of the Michigan Court of Appeals, decided June 5, 2012 (Docket No. 301157) (**Exhibit E**).....7

STATUTES

MCL 500.3106(1)(b)..... 3

INTRODUCTION

State Farm takes seriously this Court's admonition, in its Order granting oral argument on the Application, that "[t]he parties may file supplemental briefs ... *but they should not submit mere restatements of their application papers.*" (Order granting oral argument, issued October 4, 2012) (italics added). For this reason, State Farm rests primarily on its Application. Nevertheless, there are a couple of things that ought to be addressed, if only to clarify things for the upcoming oral arguments. Each is relevant only to the second issue identified in this Court's Order, namely: "whether the Plaintiff's injury was 'a direct result of physical contact with' the tailgate." *Id.*

SUPPLEMENTAL LAW AND ARGUMENTS

I. CONTRARY TO WHAT PLAINTIFF-APPELLEE REPRESENTED IN HIS RESPONSE TO THIS APPLICATION, THERE IS NO RECORD EVIDENCE THAT HE WAS "STRUCK" BY THE REAR DOOR/TAILGATE OF THE TRAILER; INDEED, PLAINTIFF'S OWN TESTIMONY WAS THE OPPOSITE.

Plaintiff-Appellee repeatedly makes a factual representation that is inconsistent with the record. On at least two occasions in his Response to this Application, the Plaintiff-Appellee represented that he was "struck" by the rear door/tailgate of the trailer, which he suggests supports his contention that his injuries were the "direct result of physical contact with equipment [assuming the tailgate is equipment] permanently mounted on the vehicle, while the equipment was being operated or used[.]" MCL 500.3106(1)(b).

The first reference to being "struck" was made almost in passing. It appears on page "v" (lower case Roman numeral five) of his brief, where he focused on the change in momentum, but did so by reference to the tailgate striking him:

“Here, the Court determined that a trier of fact could find that Plaintiff’s injury was a direct result of his physical contact with the tailgate, which caused an abrupt shift in Plaintiff’s momentum when it suddenly struck the Plaintiff.”

(Plaintiff-Appellee’s Response to Defendant-Appellant’s Application for Leave to Appeal, p. v) (emphasis added). The statement, being somewhat inconspicuous, is a bit of a “Trojan horse” because it implies that the door somehow knocked him into the pit.

The second reference is more obvious. It appears on page 3 of his Response brief, where he suggests that it is an “unrebutted” fact that he was “struck” by the rear door/tailgate:

“It is unrebutted that Plaintiff’s injury arose when he was struck by the tailgate while attempting to open the tailgate of his trailer.”

(Plaintiff-Appellee’s Response to Defendant-Appellant’s Application for Leave to Appeal, p. v) (emphasis added). Here, more than in the first instance, Plaintiff-Appellee focuses on his allegedly having been “struck” by the tailgate, which he then goes on to suggest confirms that his injuries were directly caused by physical contact with the rear door/tailgate. Again, the inference is, in essence, that the door somehow knocked him into the pit.

Neither time were these representations supported by a citation to the record. In fact, the actual testimony is directly the contrary. Mr. Lefevers testified multiple times that he was not struck:

- Q- And there was no contact between you and the tailgate that caused your injury?
A- Well - -
Q- Do you understand the question? Because I can rephrase it.
A- I don’t believe that I do, not the way you put that.
Q- Okay. The trailer didn’t strike you.
A- That’s fair.

(Deposition of Charles Anthony Lefevers, p. 139) (attached to State Farm’s Application as “Exhibit ‘C’”). He then went on, *sua sponte*, to attempt to clarify this issue later in his testimony – *again testifying that he was never struck*:

- Q- And at the time of this incident, because the trailer had not started to raise up, the truck had not started to move?
- A- I believe that's fair, yes, sir. But I need to clarify something.
- Q- Okay.
- A- When you said the trailer didn't strike me, you know, I don't guess it struck me. But getting that tailgate loose, I don't know if it was the jerk from the tailgate when it released. I guess you could say it pulled, because something caused me to lose my balance. **So it didn't actually strike me**, like it flew up and hit me, but I wouldn't have fallen if it hadn't been for that.

(Deposition of Charles Anthony Lefevers, p. 140) (emphasis added). He then went on to explain how he believed that the momentum from the door swinging open is what caused him to lose his balance, *before* his injury “occurred as a result of direct physical contact with the cement floor” of the pit, some twelve feet below. (Deposition of Charles Anthony Lefevers, pp. 140-141). In other words, not only is it inaccurate to suggest that the rear door struck Plaintiff, his own testimony is exactly the opposite. There is no record evidence that he was ever “struck” by the door or anything else.

II. THE COURT OF APPEALS' DECISION IN *RITCHIE v FEDERAL INS CO* IS DISTINGUISHABLE BOTH LEGALLY AND FACTUALLY. THIS COURT SHOULD FOLLOW AND APPLY *WINTER v AUTO CLUB* TO FIND CAUSATION LACKING AS A MATTER OF LAW.

Plaintiff-Appellee refers, in his Response to this Application, to a decision of the Court of Appeals, *Ritchie v Federal Ins Co*, 132 Mich App 372; 347 NW2d 478 (1984), in part for the proposition that the causation issue is a question of fact for the Jury, and seemingly in part for the proposition that physical contact with the equipment is not actually required.

There are a couple of things to recognize about *Ritchie*. First, the Court of Appeals decided *Ritchie* about five (5) years *before* this Court decided *Winter*, which appears to be the only binding precedent regarding the causal standard in the context of the equipment exception. (This Court decided *Winter* in 1989). This Court's decision in *Winter*, as State Farm briefed in

its Application, supports the defendant's assertion that the injury must directly result from actual physical contact between the person and the equipment.

Second, *Ritchie* addressed the loading/unloading exception, rather than the equipment exception. (Richie was injured when he fell through some stairs while approaching his vehicle holding a heavy block of ice, apparently intending to load the ice into his truck). Although the "direct result of physical contact" requirement is the same for each, the exceptions themselves involve distinct processes, with different beginnings and ends. At the time *Ritchie* was decided, it was apparently an "open question" whether the loading/unloading exception required that the injury occur while actually loading/unloading (i.e., lifting or lowering), or whether it could be triggered by events surrounding that activity. *Ritchie, supra* at 374.

If *Ritchie* was under consideration today, it is likely that it would have been decided in favor of the defendant insurer, as Mr. Ritchie's injury clearly occurred as he was preparing to load the vehicle, rather than while he was actually loading the ice into his truck. See, Lawrence v MEMIC Ins. Co., unpublished per curiam decision of the Michigan Court of Appeals, decided August 2, 2012 (Docket No. 305385) (no coverage where plaintiff tripped and fell while approaching the vehicle, preparing to load it - even though when he fell forward he struck the rear of the car before falling to the concrete) (a copy is attached as "Exhibit D"); *Block v Citizens Ins Co of America*, 111 Mich App 106, 109; 314 NW2d 536 (1981) (no coverage where person falls while approaching vehicle carrying boxes). Compare, Dembinski v Aetna Casualty & Surety Co, 76 Mich App 181; 256 NW2d 69 (1977) (loading process does not encompass mere "preparations" to load); *Dowdy v Motorland Ins Co*, 97 Mich. App. 242; 293 N.W.2d 782 (1980) (property that had already been unloaded before striking plaintiff fell outside the unloading exception); *Perez v Farmers Ins. Exch.*, 225 Mich App 731, 735-736; 571 NW2d 770

(1997) (loading process ends after property is lifted onto the vehicle, and does not include efforts to secure the load).¹

Third, the *Ritchie* Court did not decide, as Plaintiff-Appellee appears to suggest (and the Court of Appeals in this case appears to have believed), that questions involving the causal standard under Section 3106(1)(b) are *always* or *automatically* fact questions. Instead, the *Ritchie* Court primarily recognized that at that point in the development of no-fault jurisprudence, the standard under the loading/unloading exception was an “open question,” and

¹ There is also a very recent, but interesting, loading/unloading case from the Court of Appeals involving this concept where it was the *loss of contact* with an item that ultimately resulted in her injuries – a situation somewhat akin to this case. *See, MEEMIC Ins Co v Estate of McNamara*, unpublished per curiam decision of the Michigan Court of Appeals, decided June 5, 2012 (Docket No 301157) (a copy is attached hereto as “Exhibit ‘E’”). There, Plaintiff was injured when she fell to the pavement outside her car after losing her balance in an unsuccessful attempt to stop a glass bottle of water from falling and breaking. *Id.* at 1. In arguing that the injury was covered under her no-fault policy, Plaintiff argued that she satisfied the loading/unloading exception at MCL 500.3106(1)(b), maintaining that her injury was sustained “as a direct result of physical contact with property being lifted onto or lowered from the vehicle in the loading or unloading process.” *Id.* at 2. The Court of Appeals disagreed, observing that it was actually the *loss of physical contact* with the bottle of water that “set into motion the act of McNamara falling to the ground” and thus the exception was too attenuated to support a finding of coverage:

Here, the evidence indicates that it was the loss or lack of physical contact with the bottled water that set into motion the act of McNamara falling to the ground. McNamara’s physical contact with the bottle, in and of itself, did not cause or result in her injuries; she was apparently trying to gain physical contact or control when the fall occurred. Moreover, McNamara’s injuries were not the result of being struck by the bottle of water. The bottled water did not fall on her and cause her injuries. McNamara focuses on the fact that she was holding or had physical contact with the water bottle *before she was injured*, but physical contact with the property alone does not establish the applicability of § 3106(1)(b). The injury must be the *direct* result of the person’s physical contact with the property, and such was simply not the case here relative to McNamara’s injuries and any physical contact with the bottled water. [...] Reversed and remanded for entry of judgment in favor of MEEMIC.

Id. at 7-8 (emphasis added). Based on State Farm’s research, the *MEEMIC v McNamara* decision appears to be the only case, aside from this one, that has ever addressed a situation where it is the *loss* of physical contact that somehow sets events in motion that lead the production of the injury.

that the facts of the case were sufficiently in dispute to render summary disposition inappropriate. Here, by contrast, as was discussed at length in State Farm's Application, the *Winter* decision appears to have put the legal issue to rest, and the facts are entirely undisputed. Although the momentum from the opening of the rear door of the trailer may have played a role in setting into motion the events that gave rise to his injuries (i.e., his loss of balance and fall), his physical contact with the door was not the "*direct cause*" of his injuries. The physical contact that directly caused his injuries was physical contact with the concrete floor below.

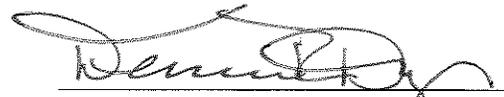
CONCLUSION / RELIEF REQUESTED

For the reasons set forth in State Farm's Application for Leave to Appeal, as well as those set forth in this Supplemental Brief, State Farm Mutual Automobile Insurance Company respectfully asks that this Honorable Court to either peremptorily reverse the judgment of the Michigan Court of Appeals insofar as it failed to grant summary disposition in favor of State Farm, or alternatively, grant this Application and allow the matter to be more fully briefed, argued, and decided on its merits.

Dated: 11/7/2012

Respectfully submitted,

RizzoBryan, P.C.



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(D)

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL LAWRENCE,
Plaintiff-Appellant,

UNPUBLISHED
August 2, 2012

v

MEEMIC INSURANCE COMPANY,
Defendant-Appellee.

No. 305385
Wayne Circuit Court
LC No. 10-010372-NF

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this action for no-fault benefits sought where plaintiff was injured when he tripped on an uneven slab of concrete as he approached his parked car. Because no exception to the exclusion of no-fault benefits for injuries arising out of the ownership, operation, maintenance, or use of a parked vehicle applied, we affirm.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court's task in reviewing a motion brought pursuant to MCR 2.116(C)(10) is to consider the pleadings, affidavits, and other documentary evidence, in a light most favorable to the nonmovant. *Cedroni Assoc v Tomblinson, Harburn Assoc*, 290 Mich App 577, 584; 802 NW2d 682 (2010). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."

No-fault personal protection insurance benefits for injuries arising out of the ownership, operation, maintenance, or use of a motor vehicle are not available for injuries involving a parked vehicle unless one of the exceptions set forth in MCL 500.3106(1) applies. *Frazier v Allstate Ins Co*, 490 Mich 381, 384-385; 808 NW2d 450 (2011). Plaintiff relies on the exceptions in § 3106(1)(b) and (c), which provide, in pertinent part:

(b) . . . the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.

(c) . . . the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

In this matter, section 3106(1)(b) does not apply because the undisputed evidence demonstrates that plaintiff did not come into contact "with equipment permanently mounted on the vehicle." Plaintiff's deposition testimony indicates that he tripped on an uneven slab of concrete and fell against the back of his car, near the taillight. "[T]he constituent parts of 'the vehicle' itself are not 'equipment.'" *Frazier*, 490 Mich at 385. Plaintiff's injury was also not the "direct result of physical contact with . . . property being lifted onto or lowered from the vehicle in the loading . . . process." See *Perez v Farmers Ins Exch*, 225 Mich App 731, 736; 571 NW2d 770 (1997), and *Arnold v Auto-Owners Ins Co*, 84 Mich App 75; 269 NW2d 311 (1978). An injury that occurs while carrying a box to a vehicle is not a loading accident within the ambit of § 3106(1)(b). *Block v Citizens Ins Co of America*, 111 Mich App 106, 109; 314 NW2d 536 (1981).

Section 3106(1)(c) also does not apply. Plaintiff did not sustain injuries while entering into the vehicle. He tripped as he was walking toward the vehicle, lunged forward, hit his shoulder on the rear of the vehicle, and fell to the concrete. The deposition testimony on which plaintiff relies in support of his argument improperly combines testimony describing distinct events to inaccurately describe what is presented as a single event. Properly viewed, plaintiff's deposition testimony clearly indicates that his injury was not sustained while occupying, entering into, or alighting from the vehicle. His injury occurred as he was approaching the car.

Accordingly, the trial court did not err in finding that there was no genuine issue of material fact regarding the applicability of an exception to the exclusion of no-fault benefits for injuries arising out of the ownership, operation, maintenance, or use of a parked vehicle.

Affirmed.

/s/ Michael J. Talbot
/s/ Deborah A. Servitto
/s/ Michael J. Kelly

(E)

STATE OF MICHIGAN
COURT OF APPEALS

MEEMIC INSURANCE COMPANY,
Plaintiff-Appellant,

UNPUBLISHED
June 5, 2012

v

No. 301157
Wayne Circuit Court
LC No. 10-010980-NF

WALTER SAKOWSKI, Personal Representative
of the Estate of MARY JO MCNAMARA,

Defendant-Appellee.

Before: MURPHY, C.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiff MEEMIC Insurance Company appeals as of right the trial court's order granting summary disposition in favor of defendant Mary Jo McNamara and denying MEEMIC's motion for summary disposition. The motions were brought pursuant to MCR 2.116(C)(10). We reverse and remand for entry of judgment in favor of MEEMIC.

McNamara was a backseat passenger in a car that had just been parked at a condominium after McNamara and friends had finished a day of shopping. McNamara sustained serious injuries as the result of falling to the pavement outside of her car door after losing her balance in an unsuccessful attempt to stop a glass bottle of water she had purchased from falling and breaking. After the instant appeal was filed, McNamara unfortunately died.

McNamara was a named insured on a policy issued by MEEMIC, and, pursuant to the no-fault act, MCL 500.3101 *et seq.*, a claim for personal protection insurance (PIP) benefits was submitted to MEEMIC, which denied the claim on the basis that McNamara was not entitled to PIP benefits under MCL 500.3105 and MCL 500.3106. MEEMIC proceeded to file a declaratory judgment action to settle the dispute. McNamara, in support of her position that PIP benefits were due and payable, relied on MCL 500.3106(1)(b), which provides:

(1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:

(b) Except as provided in subsection (2) [inapplicable Worker's Disability Compensation provision], *the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.* [Emphasis added.]

McNamara maintained and argues on appeal that MCL 500.3106(1)(b) is applicable because the injuries were a direct result of physical contact with property, i.e., the water bottle, as it was being lowered from Sheeran's car in the unloading process. On competing motions for summary disposition, the trial court denied MEEMIC's motion and granted McNamara's motion, finding that MCL 500.3106(1)(b) was indeed applicable as a matter of law. The court cited *Sherman v Mich Mut Ins Co*, 124 Mich App 700; 335 NW2d 232 (1983), in support of its ruling. MEEMIC appeals as of right, setting forth numerous arguments with respect to why MCL 500.3106(1)(b) does not apply to the factual circumstances presented in this case.

A trial court's ruling on a motion for summary disposition is reviewed de novo on appeal, *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011), as is a question of statutory interpretation, *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The trial court is not permitted to assess credibility, to weigh the evidence, or to resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). *Skinner*, 445 Mich at 161; *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

As indicated above, MCL 500.3106(1)(b), the statutory provision at issue, provides as follows:

(1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:

* * *

(b) [T]he injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or

used, or *property being lifted onto or lowered from the vehicle in the loading or unloading process.* [Emphasis added.]

In *Arnold v Auto-Owners Ins Co*, 84 Mich App 75; 269 NW2d 311 (1978), this Court found the statutory provision quoted above to be ambiguous in tackling the question of whether the two clauses in the statute, i.e., the “equipment” and “property” clauses, were dependent or independent clauses. The Court found that the clauses were independent and held that § 3106(1)(b) “makes compensable injuries which are a direct result of physical contact with property being lifted onto or lowered from the parked vehicle in the loading or unloading process.” *Id.* at 80. In *Celina Mut Ins Co v Citizens Ins Co*, 136 Mich App 315, 319-321; 355 NW2d 916 (1984), this Court found that § 3106(1)(b) applied where a truck owner was injured when a bundle of steel tubing fell and struck him during the loading and unloading process.

In *Dembinski v Aetna Cas & Surety Co*, 76 Mich App 181, 182; 256 NW2d 69 (1977), this Court noted the following facts:

While plaintiff was carrying a ceramic mold from his store through a vestibule or hallway toward an outside doorway to load the mold into his truck, he slipped in a puddle of water, fell, and injured his back. He was twenty feet from his truck when he fell. The mold did not land on him.

Examining § 3106, the *Dembinski* panel first found that the injury did not occur in the loading or unloading process. *Id.* at 183. Furthermore, the Court held that the plaintiff’s injury was not “a direct result of physical contact with property being lifted into the truck;” rather, the “injury was a result of slipping in the puddle, and the mold, not having landed on plaintiff, did not contribute to the injury.” *Id.*

In *Frohm v American Motorists Ins Co*, 148 Mich App 308, 309-310; 383 NW2d 604 (1985), this Court, setting forth the events that led to the plaintiff’s injury, stated:

In the course of plaintiff’s employment as a driver of a refuse truck, he loaded large free-standing metal waste containers onto his truck by attaching a metal cable to the waste container and engaging a hydraulic mechanism on his truck to winch the container onto the bed of the vehicle. In order to operate the hydraulic mechanism, it was necessary to keep the engine of the truck running and to use levers located inside the cab to maneuver the container.

On April 21, 1981, the date of plaintiff’s injury, plaintiff hooked the cable to the waste container, but prior to engaging the hydraulic mechanism he climbed onto the adjacent loading dock to throw wooden pallets into the waste container. While throwing a pallet into the waste container, and standing with one foot on the loading dock and one foot on the waste container, plaintiff injured his back.

With respect to § 3106, this Court held that “even if his loading of the containers to be loaded onto the vehicle was considered part of the loading or unloading process, and even though plaintiff was in contact with the property, i.e., waste container, to be loaded, his injury did not *directly result from physical contact with the property, i.e. the waste container, being lifted onto or lowered from his vehicle.*” *Id.* at 311 (emphasis in original).

Here, the evidence indicates that it was the loss or lack of physical contact with the bottled water that set into motion the act of McNamara falling to the ground. McNamara's physical contact with the bottle, in and of itself, did not cause or result in her injuries; she was apparently trying to gain physical contact or control when the fall occurred. Moreover, McNamara's injuries were not the result of being struck by the bottle of water. The bottled water did not fall on her and cause her injuries. McNamara focuses on the fact that she was holding or had physical contact with the water bottle before she was injured, but physical contact with the property alone does not establish the applicability of § 3106(1)(b). The injury must be the *direct* result of the person's physical contact with the property, and such was simply not the case here relative to McNamara's injuries and any physical contact with the bottled water. We also question whether it can be said that the water bottle was being "lowered" from the car as required by § 3106(1)(b). The factual circumstances in this case, when viewed in a light most favorable to McNamara, do not support the conclusion that § 3106(1)(b) was implicated.

The trial court's reliance on *Sherman*, 124 Mich App 700, was misplaced, where there this Court relied on MCL 500.3106(c), now MCL 500.3106(1)(c), in finding that the plaintiff was "occupying" the vehicle at the time of his injury. The *Sherman* panel did not even analyze the provision at issue here. The trial court erred in ruling that McNamara was entitled to summary disposition pursuant to MCL 500.3106(1)(b), and it erred in denying MEEMIC's motion for summary disposition. Given that McNamara placed sole reliance on MCL 500.3106(1)(b) and that said provision is not applicable as a matter of law, we remand for entry of judgment in favor of MEEMIC.

Reversed and remanded for entry of judgment in favor of MEEMIC. We do not retain jurisdiction. Having prevailed in full, MEEMIC is awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan