

STATE OF MICHIGAN
IN THE SUPREME COURT

CHARLES ANTHONY LEFEVERS,

Individually,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant

and

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

Defendants.

Supreme Court No: 144781 ¹⁴⁴⁷⁸¹
Court of Appeals No: 298216
Wayne County Circuit Court No: 08-116325-NF

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*144781
PLAEE'S SUPP*

**PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF IN RESPONSE TO
DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

FILED

NOV 8 2012

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

LAW AND ARGUMENT

I.

THE TAILGATE OF THE DUMPING MECHANISM THAT STRUCK PLAINTIFF-APPELLEE QUALIFIES AS EQUIPMENT FOR THE PURPOSES OF MCL 500.3106(1)(b).

In order to give the Court full perspective on the issue, a more detailed look at the nature of the trailer on which the subject tailgate was mounted is necessary. Plaintiff-Appellee drove a truck for U.S. Bulk that was leased through B&L Trucking. (Exhibit 1, p. 33). At the time of the subject incident, he was driving a 2006 International power unit with a dump end trailer. (Exhibit 1, p. 48, 62-63). A dump end trailer is essentially an elongated version of the bed of a standard dump truck. The material to be hauled is placed in a bucket. The bucket has hydraulic pistons attached so that it can raise from the end nearest the power unit in order to dump the contents out of the back of the trailer. The rear of the particular trailer at issue had a tailgate that could be set up to open from the top, like a pick-up truck, or swing open, like a barn gate. At the time of the subject incident, the tailgate of this trailer was set up to open barn gate style. (Exhibit 1, p. 65).

The procedure by which Plaintiff-Appellee had to open the bucket's tailgate distinguishes it from a typical vehicle's door. Unlike a simple door with a handle, the tailgate was held shut by an air switch, meaning that compressed air held the door's primary latch in place. (Exhibit 1, p. 72). In order to disengage the door's locking mechanism, Mr. Lefevers first had to remove a safety latch. The safety latch was a fork-like pin at the rear of the trailer that held the door in place in the event that the truck's air system failed. (Exhibit 1, p. 68-70). Once the safety latch was removed, Mr. Lefevers had to operate the tailgate release. **The tailgate release was an air switch located in front of the trailer's front axle, meaning that the tailgate was opened remotely.** (Exhibit 1, p. 71). Under normal circumstances, once the tailgate was released, Mr. Lefevers would then have to go back to the tailgate, swing it around to the passenger side of the trailer, and chain it open so that it did not get in the way once the trailer's bucket was raised. (Exhibit 1, p. 74). Once the tailgate was opened and secured, Mr. Lefevers then would go to cab of the power unit to operate the hydraulics

that lifted the end of the bucket into the air so that it could dump its contents. (Exhibit 1, p. 76). The fact that the door was part of a large mechanically operated device designed to dump material, secured by a safety latch, held shut by an air lock, designed to be opened remotely, and could be set up to open in two different manners further distinguishes it from a typical car door and illustrates its nature as equipment permanently mounted on the trailer.

Furthermore, Plaintiff-Appellee contends this Court should view **the entire dumping mechanism, including its attached tailgate**, as equipment permanently mounted to the vehicle under MCL 500.3106(1)(b). A trailer is generally defined as “a large vehicle to be towed by a truck; a vehicle used to carry a load, designed to be towed behind a car.” *Webster’s Universal Dictionary* (1993). This Court has defined “equipment” as “the articles, implements, etc., used or needed for a specific purpose or activity.” *Frazier v. Allstate Insurance Co.*, 490 Mich 381, 385; 808 NW2d 450 (2011). The trailer at issue was more than a simple trailer. It was a trailer with a dump end permanently mounted on it. The dump end modified that trailer so that it could carry specific types of loads; namely ones that required dumping, such as dirt or gravel. Additionally, the dump end performed its own mechanical function. It raised its front end up via hydraulic controls in order to dump its load out of the rear. These modifications also precluded the trailer from hauling other types of loads. For instance, the trailer could not haul a pallet of material because a high-lo could not access the bucket. Nor could the dump end carry a vehicle, as it had no way to attach ramps to complete the loading and unloading process, and one simply does not dump a vehicle out of the back of a trailer. Simply put, the trailer, designed for carrying any type of load, was equipped with a dump end, designed for carrying specific types of loads and to actively dump them. The dump end, in turn, was equipped with a tailgate to secure its contents. In this sense, the trailer was merely the conveyance that housed the equipment that allowed it to serve these specific functions.

In *Frazier* this Court’s analysis of whether or not a particular part of a vehicle constituted equipment hinged on its use. If the part was integral to the general function of the vehicle, it was not equipment. In the case at bar, the dumping mechanism and its tailgate were not integral to the

trailer's general function. The trailer could still carry loads without the bucket, hydraulics and tailgate. However, the dump end, including its tailgate, transformed the trailer into one that could only carry out a specific purpose; the hauling and dumping of particular loads. Because the dump end, including its tailgate, was made part of the trailer for the sole reason of allowing it to perform a specific purpose, it should be viewed as equipment by this Court.

Plaintiff-Appellee also notes that context is important in establishing what constitutes equipment. Shoes provide an excellent example. An individual does not consider the shoes he or she wears during everyday activity as equipment. This follows because, as this Court observed in *Frazier*, the earmark of equipment is a specialized purpose. However, if that individual also climbs mountains, he or she would certainly consider climbing shoes equipment. Again, this follows because the shoes are not worn for the general purpose of walking around, but for the specific purpose of getting up a mountain. The same can be said of doors in the motor vehicle context. The passenger door in *Frazier* could not be equipment because its only purpose related to the vehicle's general function of transporting passengers. To the contrary, in the case at bar, the dumping mechanism, and its tailgate, were related to the specific purposes of hauling and actively dumping specific types of loads to the exclusion of others. Again, it is the transformation of the trailer from one that perform the general function of carrying any load to one that actively dumps specific types of loads that makes the entire dumping mechanism, including its tailgate, equipment.

Such an analysis comports with this Court's objective in interpreting clear and unambiguous statutes as written. In fact, four jurists have determined that the clear and unambiguous language of MCL 500.3106(1)(b) supports the conclusion that the tailgate at issue constitutes equipment. This is not a case where a trial and appellate court were forced to apply judicially created add-ons to statutory language. To the contrary, there is little case law analyzing what is meant by "equipment" under the statute giving the trial and appellate court a degree of freedom in interpreting it.¹ At a

¹The cases that do exist reach what common sense seems to dictate as the proper outcome. For instance an ordinary car door simply does not seem like equipment. This Court correctly concluded it was not in *Frazier*.

glance the tailgate certainly seems to be equipment. It is part of a large mechanism designed to raise into the air in order to dump its load. The door itself can be set up to open in different ways, is held shut by an air lock and safety latch, and must be opened remotely. An everyday understanding of the word "equipment" supports the conclusion that the dumping mechanism and its tailgate qualifies as such. Four judges have already reached the same conclusion.

Affirming the Court of Appeals decision does not create the situation feared by this Court in *Frazier*, whereby the definition of equipment engulfs that of vehicle. The dumping mechanism, including its tailgate, is conceptually separable from the rest of the trailer. All of its parts associated with the general function of carrying any type of load still qualify as constituent parts. For instance, the frame on which the dumping mechanism rides, the wheels, the axles, the running lights, the bumpers, and the hitch still would not qualify as equipment under the parked vehicle exception. Likewise, because the tailgate is attached to a larger mechanical device, it is also distinguishable from other tailgates that might not qualify as equipment, such as those on standard pick-up trucks. Accepting the tailgate at issue in the cast at bar as equipment does not create a situation where the floodgates are opened to claims under the parked vehicle exception of the no-fault act. To the contrary, such a result is entirely consistent with the legislative intent embodied in MCL 500.3106(1)(b) of providing no-fault benefits to those injured while operating specialized work equipment permanently mounted to their vehicles.

II.

PLAINTIFF-APPELLEE'S INJURIES WERE "A DIRECT RESULT OF PHYSICAL CONTACT WITH EQUIPMENT MOUNTED ON THE VEHICLE," AS REQUIRED BY MCL 500.3106(1)(b).

In *Winter v. Automobile Club of Michigan*, 433 Mich 446, 459; 446 NW2d 132 (1989) this Court held that, in order to qualify for no-fault benefits under the MCL 500.3106(1)(b), "the injury must directly result from actual physical contact between the injured person and the equipment." The word "direct" in the statute, however, has not been given prior legal meaning, making reference to

dictionary definitions proper. *Citizens Insurance Co. v. Pro-Seal Service Group, Inc.*, 477 Mich 75, 78; 730 NW2d 682 (2007). *Black's Law Dictionary* (6th ed. 1990) defines direct as:

Immediate; by the shortest course; without circuitry; operating by an immediate connection or relation, instead of operating through a medium; the opposite of indirect.

In the usual or natural course or line; immediately upwards or downwards; as distinguished from that which is out of the line, or on the side of it; the opposite of collateral. In the usual or regular course of order, as distinguished from that which diverts, interrupts or opposes; the opposite of cross, contrary, collateral or remote.

Without any intervening medium, agency or influence; unconditional.

The key component in this definition is immediacy and the lack of an intervening medium. See *Tooling Mfg. and Technologies Ass'n v. Hartford Fire Ins. Co.*, 693 F3d 665, 673 (6th Cir. 2012).

Therefore, something directly results from an occurrence if that something is immediate and not caused by any intervening factors.

It must also be pointed out that the Legislature used the modifier "a" instead of "the" in front of "direct result." MCL 500.3106(1)(a). This Court set forth the distinction between the two modifiers in *Robinson v. City of Detroit*, 462 Mich 439, 461-62, 613 NW2d 307 (2000):

We agree with the following analysis found in the dissent in *Hagerman v. Gencorp Automotive*, 457 Mich. 720, 753-754, 579 N.W.2d 347 (1998):

"Traditionally in our law, to say nothing of our classrooms, we have recognized the difference between 'the' and *508 'a.' 'The' is defined as 'definite article. 1. (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an)' Random House Webster's College Dictionary, p. 1382. Further, we must follow these distinctions between 'a' and 'the' as the Legislature has directed that 'all words and phrases shall be construed and understood according to the common and approved usage of the language['] MCL 8.3a."

In short, the use of the word "the" denotes a singular event whereas the use of the word "a" denotes general events. When applied to MCL 500.3106(1)(a), it follows that, because the Legislature used "a" instead of "the" before "direct result," more than one injury may directly result from actual physical contact with equipment permanently mounted on the vehicle.

In the case at bar, Mr. Lefevers injuries directly resulted from contact with the trailer's equipment. Because the air latch stuck, he was forced to manually attempt to open the tailgate. He applied pressure to it, eventually causing it to swing open. When it swung open it knocked him into

the pit. (Exhibit 1, p. 79). The force of the door immediately knocked him back and over the pit's edge. The record does not contain, and Defendant does not cite, any intervening event that caused Mr. Lefevers's fall. To the contrary, falling to the ground is certainly a direct result of being struck by a heavy object. Again, the statute allows for recovery of any direct result, not just the most immediate one. As such, Mr. Lefevers can recover for injuries sustained when he was actually struck by the tailgate as well as those sustained immediately afterwards without an intervening cause, i.e. when he fell to the ground as a result of being struck. To hold otherwise violates the plain language of the statute.

Adopting Defendant's argument actually changes MCL 500.3106(1)(b)'s statutory language. As it is written the injury must be "a direct result of physical contact." "Direct" modifies "result," not "physical contact." Had the Legislature intended to only compensate injuries that were caused by direct physical contact, it would have drafted the language accordingly. However, as it is written, a plaintiff only need to show that the injury resulted from actual physical contact with equipment, not that the injury was caused by direct physical contact. This is precisely how the trial court and three Justices of the Court of Appeals have interpreted the statute thus far.

CONCLUSION

This Court should deny Defendant-Appellants Application for Leave to Appeal. The trial court and a unanimous Court of Appeals have found that the plain, unambiguous statute, without any judicially created modifications, supports the award of Michigan no-fault benefits in the case at bar. A common sense view of the facts supports this conclusion. Mr. Lefevers was injured while opening a tailgate attached to a dumping mechanism mounted on a trailer. The dumping mechanism was placed on the trailer in order to perform a specific purpose apart from its general hauling function. This reality distinguishes the tailgate from a typical car door, or even a typical pick-up truck tailgate and certainly seems to meet this Court's definition of "equipment." Furthermore, his injuries were a direct result of being knocked to the ground when he was actually struck by the tailgate. A simple sniff test seems to indicate that the Legislature intended on providing Plaintiff-Appellee no-fault benefits under these circumstances.

Respectfully submitted,

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Dated: November 8, 2012

PROOF OF SERVICE	
The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein	
on the	8 th day of NOVEMBER, 2012
By: Fax <input type="checkbox"/>	Hand Delivered <input type="checkbox"/>
U.S. Mail <input checked="" type="checkbox"/>	Certified Mail <input type="checkbox"/>
Postage fully prepaid	