

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
The Hon. Mark T. Boonstra, Patrick M. Meter, and Deborah A. Servitto (dissenting)

ALAN JESPERSON,

Plaintiff-Appellant,

v

AUTOMOBILE CLUB INSURANCE
ASSOCIATION,

Defendant-Appellee.

Supreme Court No. 150332

Court of Appeals No. 315942

Lower Court No. 2010-005127-NI

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**DEFENDANT-APPELLEE'S ANSWER IN OPPOSITION
TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

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STATEMENT REGARDING QUESTIONS PRESENTED

- I. IN THIS FIRST-PARTY NO-FAULT ACTION, DID THE LOWER COURTS CORRECTLY HOLD THAT AAA WAS ENTITLED TO SUMMARY DISPOSITION PURSUANT TO THE ONE YEAR NOTICE PROVISION OF MCL 500.3145(1), WHERE IT IS UNDISPUTED THAT PLAINTIFF DID NOT PROVIDE AAA WITH WRITTEN NOTICE OF HIS CLAIM WITHIN ONE YEAR OF THE MAY 12, 2009 MOTOR VEHICLE ACCIDENT, PLAINTIFF DID NOT FILE SUIT WITHIN ONE YEAR OF THE ACCIDENT, AND AAA DID NOT PAY ANY NO-FAULT BENEFITS WITHIN ONE YEAR OF THE ACCIDENT?**

The Trial Court said: "yes."

The Court of Appeals said: "yes"

Plaintiff-Appellant says: "no."

Defendant-Appellee AAA says: "yes."

- II. DID THE LOWER COURTS PROPERLY CONSIDER AAA'S STATUTE OF LIMITATIONS ARGUMENT, WHERE AAA'S AFFIRMATIVE DEFENSES SPECIFICALLY REFERRED TO MCL 500.3145(1), AND WHERE PLAINTIFF HAS FAILED TO SHOW THAT HE SUFFERED ANY PREJUDICE AS A RESULT OF AAA'S SUPPOSEDLY "LATE" INVOCATION OF THIS ARGUMENT?**

The Trial Court said: "yes."

The Court of Appeals said: "yes"

Plaintiff-Appellant says: "no."

Defendant-Appellee AAA says: "yes."

S E C R E T W A R D L E

INTRODUCTION

The plain language of MCL 500.3145(1) requires that something happen within one year after a motor vehicle accident, in order for a claimant bring a suit for personal protection insurance (“PIP”) benefits. Either the claimant must provide written notice to the carrier *within that year*, the claimant must file suit *within that year*, or the carrier must make a payment *within that year*.¹ Here, Plaintiff-Appellant Alan Jesperson (“Plaintiff”) acknowledges that he “did not notify” Defendant-Appellee Auto Club Insurance Association (“AAA”) “of the accident in writing within one year of its occurrence.” (Application, p 1.) Plaintiff further acknowledges that he did not file suit against AAA until May 2011, approximately two years after the May 12, 2009 accident. (Id., pp 1, 7.) Also, Plaintiff acknowledges that AAA did not make any payments until July 2010, approximately one year and two months after the accident. (Id., p 1.)

However, Plaintiff argues that his suit for PIP benefits was timely on the basis of payments made by AAA “[b]eginning in July 2010.” (Id.) Plaintiff argues that these payments – which AAA was under no obligation to make – resurrected an otherwise time-barred PIP claim by virtue of the following language:

An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident *or unless the insurer has previously made a payment of personal protection*

¹ See Logeman, *Michigan No-Fault Automobile Cases: Law and Practice*, 3rd Ed (2011 Supp), § 6.14 (Ex. A): “There is a one-year limitation of action unless the claimant gives the insurer written notice of the accident within one year of the accident *or the insurer makes payment within one year*.” (Emphasis added.) See also Sinas and Miller, *Motor Vehicle No-Fault Law in Michigan* (2011 Ed), p 399 (Ex. B): “It is clear from the statutory language that a claimant ... must give the requisite written notice to the proper insurance company within one year of the date of the accident or the claim for no-fault benefits will be *forever barred*. *The only thing that excuses this is if the insurer has paid something on the claim during the first one year following the accident*. (Emphasis added.)

insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred.... (Application, p 6, quoting MCL 500.3145(1), emphasis added.)

In short, Plaintiff interprets the italicized language to allow for suit to be filed so long as “the insurer has previously made a payment.” The word “previously,” in Plaintiff’s view, refers to the filing of the Complaint for PIP benefits, rather than the expiration of “1 year after the date of the accident” as AAA has argued and as the Circuit Court and the Court of Appeals held. (See Application, p 10.) There are a number of problems with Plaintiff’s interpretation which would defeat the purpose of the one-year limitation period, for reasons explained below.

First, Plaintiff would read the “[i]f the notice has been given or a payment has been made” clause in isolation, without reference to the preceding sentence. On Plaintiff’s reasoning, *any* payment *ever* would allow a claimant to file suit “within 1 year after the most recent allowable expense.” (See Application, p 11.) But if we were to read the second sentence of § 3145(1) this way – without reference to the preceding sentence – then *any* notice *ever* would also allow a claimant to file suit “within 1 year after the most recent allowable expense.”² Such a reading would nullify the requirement – established by the first sentence of § 3145(1) – that written notice be provided within one year after the accident. “Words in a statute should not be construed in the void, but should be read together to harmonize the meaning, giving effect to the

² In this regard, Plaintiff’s reliance upon the second sentence of § 3145(1) also commits the “fallacy of begging the question ... consists in taking for granted precisely what is in dispute, in passing off as an argument what is really no more than an assertion of your position.” *Wilburn v Commonwealth*, 312 SW3d 321, 334 (Ky 2010) (Noble, J., dissenting). Or, put another way, “[t]he fallacy of begging the question occurs when a claim is dependent on another claim that is implicitly assumed but has not been established in the argument.” *Pioneer Ridge Nursing Facility Operations, L.L.C. v Ermey*, 41 Kan App 2d 414, 421; 203 P3d 4 (2009). Plaintiff’s position presupposes that AAA’s payments starting 14 months post-accident had some legal significance relative to the statute of limitations - which is precisely what is in dispute.

act as a whole.” *Sweatt v Department of Corrections*, 468 Mich 172, 180 n 4; 661 NW2d 201 (2003). “A general rule of statutory construction is that words or phrases shall be read in context....” *Deur v Newaygo Sheriff*, 420 Mich 440, 445; 362 NW2d 698 (1984).

Second, under Plaintiff’s interpretation, the “or unless” clause would operate so that *any* payment by the insurer *ever* would resurrect an otherwise stale claim. Claimants could submit a bill a year and a day after an accident, five years after an accident, or even twenty years after an accident, in the hopes that the insurer pays it. If, by some oversight, the insurer does so, then it would be opening the door to open ended responsibility for whatever “allowable expenses” the claimant may be attributing to the long ago motor vehicle accident. This would create a tremendous disincentive to promptly paying claims, contrary to the Act’s purpose of ensuring “prompt payment to the insured.” *Ross v Auto Club Group*, 481 Mich 1, 11; 748 NW2d 552 (2008). Insurers cannot be put in fear of paying claims, as it would impede “the primary goal of the no-fault act,” which “is to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses.” *McCormick v Carrier*, 487 Mich 180, 234; 795 NW2d 517 (2010).

While Plaintiff suggests that this disincentive would be tempered by the “one year back rule of § 3145(1)” (Application, p 12) – since the resurrected claim could only include losses incurred within the year leading up to the complaint’s filing – this argument overlooks the fact that for “allowable expenses,” the Act provides for “unlimited lifetime benefits.” *Douglas v Allstate Ins Co*, 492 Mich 241, 257; 821 NW2d 472 (2012). So a single erroneous payment years after the accident could, under Plaintiff’s interpretation, have significant consequences *going forward*, which the “one year back rule” would not protect against.

Third, and perhaps most problematic, the resurrected claim – which, under Plaintiff’s interpretation, would be brought into being by any payment more than a year after the accident – *would not be subject to any statute of limitations*. Plaintiff claims that the “forgotten second sentence of § 3145(1)” takes care of this problem by requiring that “a case must still be commenced within one year of the most recent allowable expense.” (Application, p 12.) But an “allowable expense” could be incurred years, if not decades, after the accident. A claimant who had otherwise sat on his or her rights would only need to submit the claim for payment and, if the insurer were to accidentally pay it, the door is reopened for any other “allowable expenses” that may follow. Say, for example, a person is involved in a motor vehicle accident and experiences minor back pain. Thinking that the injury is minor, she does not provide written notice to her insurer within a year of the accident. However, she continues to experience back pain and seeks treatment two years after the accident. Chiropractic care is prescribed, and the chiropractor submits a relatively small bill to the insurer. The insurer, despite not having been timely notified of the potential claim, for some reason pays it. Because “a payment has been made,” the door is now open. Then, five years after that, the claimant’s treating physician determines that chiropractic care is not working, and that surgery will be required, due to a condition that allegedly relates to the now seven year old accident. Because “a payment has been made,” and because the “allowable expense” of this surgery would only now be “incurred,” a lawsuit to recover the expense of this surgery would be timely under Plaintiff’s interpretation of the statute. So the “absurdity” that the Court of Appeals majority sought to avoid, by rejecting Plaintiff’s reading, is in no way cured by the “forgotten second sentence of § 3145(1).”³ Once an accident

³ Moreover, because the record in this case is devoid of any reference to when the last “allowable expense” was incurred, this interpretation would do nothing to establish the timeliness of Mr. Jespersion’s suit against AAA.

has occurred, an insurer would never be able to rule out a potential claim – even when nothing happened within a year of the accident – so long as the insured is alive, because there would always be the specter of some delayed “allowable expense” that could become recoverable by virtue of the accidental or gratuitous payment of a belatedly submitted bill.

In short, of the two competing interpretations of § 3145(1), only one – the one accepted by the Circuit Court and the Court of Appeals – carries out the Legislature’s intent that the *potential* for PIP claims at some point be foreclosed within a certain period of time after the accident occurs.

S E C R E T W A R D L E

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Plaintiff was involved in a low-impact accident on May 12, 2009, when the motorcycle he was operating was rear-ended by a motor vehicle driven by Matthew Badelalla. (Ex. C, Badelalla's trial brief, pp 1-2.) The impact was apparently between the front right tire of Badelalla's vehicle and the exhaust pipe of Plaintiff's motorcycle. (Id., pp 2-3.) That impact did not cause the motorcycle to tip over and Plaintiff did not get knocked down by the impact. (Id.) Plaintiff jumped off the motorcycle and later "righted" the bike before leaving the scene of the accident. (Id.) Plaintiff did not report any injury to the officers at the scene. (See Id., p 4.) He returned to work as a carpenter the day of the accident, and continued to work as a carpenter for more than a year after the accident. (See Id.) In the year following the accident (May 12, 2009-May 12, 2010), Plaintiff did not file any type of suit, Plaintiff did not provide any written notice to AAA, and AAA did not make any payments to or for the benefit of the Plaintiff. (Application, pp 1, 7.) Later, Plaintiff claimed injuries to his, neck, back, and shoulders. (See Ex. C, p 4.)

Plaintiff filed a third-party action against Mr. Badelalla and Badelalla's employer (Mr. Badelalla was delivering pizzas at the time of the accident) on December 1, 2010. (See Ex. D, p 13.) AAA was not added to the case until May 16, 2011, more than two years after the accident, by way of Plaintiff's Second Amended Complaint. (See Id., p 12.) The matter proceeded through discovery as a combined first and third-party case, but the first and third-party cases were scheduled for separate trials. (See Ex. D, p 8, referencing the order "to bifurcate claims for trial" entered on October 29, 2012.) The third-party suit resulted in a no-cause verdict on December 6, 2012. (Id., p 6.)

The Circuit Court scheduled the first-party suit for trial on February 19, 2013. (Id., p 5.)

On January 28, 2013, AAA filed a Motion for Summary Disposition, arguing that Plaintiff's first-party suit was untimely under MCL 500.3145(1) for the following reasons:

1. This action arises out of an alleged May 12, 2009 motorcycle/motor vehicle accident.
2. Pursuant to MCL 500.3145(1), a lawsuit for no-fault benefits is barred unless the claimant gives written notice of the injury within one-year of the motor vehicle accident or the insurer paid no fault benefits within one-year of the accident date.
3. The one-year notice rule in MCL 500.3145(1) is a statute of limitations that bars the claim in cases of noncompliance and a showing of prejudice is not required. *Davis v Farmers Insurance Group*, 86 Mich App 45 (1978).
4. That Plaintiff did not provide written notice within one year of the accident date.
5. Defendant did not receive notice of the May 12, 2009 accident until June 2, 2010, more than one-year after said accident when Defendant's insured contacted Defendant.
6. Defendant did not pay benefits to Plaintiff between May 12, 2009 and May 12, 2010, within the one-year period.
7. The one-year notice rule contained under MCL 500.3145(1) bars this action. (Ex. E.)

Plaintiff filed a Response on February 12, 2013, arguing (1) AAA was barred from raising the argument because it supposedly was not stated in its Affirmative Defenses, (2) AAA's position was defeated by the "or unless" language of § 3145(1), as AAA made payments starting more than a year after the accident and this supposedly resurrected the claim,

and (3) the “mend the hold”⁴ doctrine purportedly “estopped” AAA from “asserting this defense.” (Ex. F, pp 6-8.)

The Circuit Court heard AAA’s motion on February 19, 2013,⁵ and granted the motion for the following reasons:

...It's clear from the statutory language ... that a claimant or someone acting on the claimant's behalf must give the requisite written notice to the proper insurance company within one year of the date of the accident or the claim for no-fault benefits will be forever barred. The only thing that excuses this is if the insurer has paid something on the claim during the first one year following the accident.

Now, when we're trying to make sense of the statutory language in 3145(1), one way of reading it is that, and Plaintiff is suggesting that it should be read to say: That if the insurer ever made a payment, then the suit could be brought at any time. It's without limitation.

⁴ The “mend the hold” doctrine requires that “when a loss under an insurance policy has occurred and payment refused for reasons stated, good faith requires that the company shall fully apprise the insured of all the defenses it intends to rely upon, and its failure to do so is, in legal effect, a waiver, and estops it from maintaining any defenses to an action on the policy other than those of which it has thus given notice.” *Smith v Grange Mut Fire Ins Co of Mich*, 234 Mich 119, 122-123; 208 NW 145 (1926). The doctrine does not appear to have been discussed in a published Michigan decision in nearly 60 years. See *C. E. Tackels, Inc v Fantin*, 341 Mich 119, 124; 67 NW2d 71 (1954). In the Circuit Court, AAA argued that this argument constituted an impermissible attempt to invoke equity, in order to avoid the dictates of a statute. See *Eastbrook Homes, Inc v Dep't of Treasury*, 296 Mich App 336, 347; 820 NW2d 242 (2012). In any event, Plaintiff abandoned this argument on appeal. See *Lash v Traverse City*, 479 Mich 180, 201 n 6; 735 NW2d 628 (2007) (Kelly, J., concurring in part and dissenting in part). “The Court of Appeals has repeatedly stated that a party abandons an issue by failing to specifically raise it in the statement of questions presented.” *Id.*

⁵ During this argument, Plaintiff’s counsel asserted that *English v Home Ins Co*, 112 Mich App 468, 470; 316 NW2d 463 (1982) was “directly on point” (2/19/13 trans, p 11), although it had not been cited in Plaintiff’s brief and Plaintiff’s counsel could not provide a copy of it at the hearing. It is unclear how *English* would have supported Plaintiff’s position, as the insurer in *English* began making payments within six months of the accident. *English, supra* at 470 (“On November 29, 1973, plaintiff suffered injuries in an automobile accident. Defendant paid no-fault insurance benefits through May 13, 1974.”) In the instant case, it is undisputed that no payments were made within the year following the accident (2/19/13 trans, p 10), a fact which renders *English* inapposite.

Not to be ridiculous, but if a payment was made in this case in July of 2010, if that's the rule, then you could bring a lawsuit ten years later because it's without limitation. There are no words of limitation for that.

I'm looking at the language in this Chapter 9 [of the Sinas and Miller treatise discussed below]: PIP Claim Processing and Litigation. These rules contain pitfalls for the unwary and, therefore, it is important to thoroughly understand these rules and exercise great caution with regard to their implementation. The beginning point of making any claim for no-fault benefits is to comply with the written notice provisions of Section 3145, Subsection 1 of the Act. Unless these provisions are [complied with], a claim will be, in bold, permanently forfeited. (2/19/13 trans, pp 12-14.)

In support of this holding, the Circuit Court found the following excerpt from Sinas and Miller, *Motor Vehicle No-Fault Law in Michigan* (2011 Ed), p 399 to be persuasive:

It is clear from the statutory language [of MCL 500.3145(1)] that a claimant, or someone acting on the claimant's behalf, must give the requisite written notice to the proper insurance company within one year of the date of the accident or the claim for no-fault benefits will be *forever barred*. The only thing that excuses this is if the insurer has paid something on the claim *during the first one year following the accident*. (See Ex. B, emphasis added.)

Plaintiff moved for reconsideration, offering an affidavit from Wayne Miller, one of the treatise's authors. (Ex. G, p 7.) Here, Mr. Miller averred that he had "carefully reviewed both the statute and my⁶ textbook commentary" and that he "now believe[s] that my comments do not accurately reflect the text of the statute." (Id.) Mr. Miller further averred that in future editions, the comment will state: "[t]he only thing that excuses this is if the insurer has, notwithstanding the lack of proper notice, paid something on the claim." (Id.)

The Circuit Court denied reconsideration in an April 9, 2013 Opinion and Order:

⁶ Ignoring the fact that the volume was *co-authored* by Mr. Miller and George Sinas.

In the case at bar, it is undisputed that (1) plaintiff did not file this action within one year of the accident, (2) no notice to the insurer was provided within one year after the accident, and (3) defendant made no payments within one year after the accident. Notwithstanding Wayne Miller's affidavit regarding his revised interpretation of MCL 500.3145(1), the Court of Appeals has opined [that] "MCL 500.3145(1) of the No-Fault Act requires that a claim for personal protection insurance benefits be filed within one year of the accident causing the injury unless a prescribed form of notice was either provided to the insurer or *the insurer paid benefits within one year after the accident.*" *Velazquez v MEEMIC*, unpublished opinion per curiam of the Court of Appeals, issued April 6, 2006 (Docket No. 264776) [Ex. H, emphasis added by the Circuit Court].

While *Velazquez* is unpublished and therefore not binding on the Court, the plain language of the statute itself supports the conclusion that MCL 500.3145(1) imposes a one year statute of limitations on claims unless notice has been provided "or unless the insurer has *previously* made a payment of personal protection insurance benefits for the injury." MCL 500.3145(1) (emphasis added). The use of the term "previously" implies that the payment must have been made "previously" to some other event. The only time period mentioned in this sentence of MCL 500.3145(1) is the passage of "1 year after the accident causing the injury." As such, the statute is properly read as requiring either (1) notice to an insurer within one year after the accident or (2) payment of personal protection insurance benefits prior to the time that notice would have been required to have been given (i.e. within one year after the accident).

The Court's conclusion is further supported by the fact that any other interpretation of MCL 500.3145(1) would render the statute of limitations illusory. To wit, a claim could never be forever barred by the statute of limitations, since the original claim would be resurrected if the insurer ever gratuitously decided to make a payment after the statute of limitations has run.

In light of the plain language of MCL 500.3145(1) and the Court of Appeals' decision in *Velazquez, supra*, the Court was – and remains – convinced that the insurer must either (1) be given notice within one year after the accident, or (2) have paid benefits within one year of the accident, in order for an insured to be entitled to bring suit under the No-Fault Act.... (Ex. I, pp 2-4.)

Specifically referencing Mr. Miller's belatedly proffered affidavit, the Circuit Court further noted: "Miller now avers that 'if a no-fault insurer makes a payment at any time, notwithstanding the lack of notice within one year, § 3145 does not appear to serve as a bar to a claimant's further entitlement to no-fault benefits.' ... However, Miller cites no authority apart from the text of MCL 500.3145(1) to support his [new] interpretation." (Ex. I, p 3 n 1.) With his Motion for Reconsideration denied, Plaintiff appealed by right to the Court of Appeals.

The Court of Appeals affirmed in a published decision, with the majority adopting AAA's statutory construction argument as follows:

The statute begins by establishing a general rule that an action for first-party personal protection insurance benefits "may not be commenced later than 1 year after the date of the accident causing the injury." MCL 500.3145(1). However, the statute then provides two exceptions to the general rule, under which a suit may be brought more than one year after the date of the accident. The first exception is where "written notice of injury as provided herein has been given to the insurer within 1 year after the accident." The second exception is where "the insurer has previously made a payment of personal protection insurance benefits for the injury." Although the first exception [not at issue here] explicitly requires that notice have been provided within one year of the accident, the second exception [which this appeal was about] requires that the insurer have "previously" made a payment of insurance benefits.

The question then becomes what the adverb "previously" means in the context of [the second exception]. ... The word "previously" means "coming or occurring before something else; prior[.]" ... The pertinent issue before this Court is what the "something else" is before which the payment by an insurer must have come or occurred. Plaintiff essentially argues that the "something else" is simply the filing of plaintiff's first-party claim against defendant; defendant argues to the contrary, and the trial court found, that the "something else" is the expiration of one year following the accident. We agree with defendant and the trial court.

...[T]he Legislature intended that the word "previously" mean previous to "1 year after the date of the accident causing injury." This interpretation is supported by the fact that the Legislature juxtaposed "previously" with "1 year after the date of the accident causing injury," which language thus appears much closer in proximity to the word "previously" than does the Legislature's earlier reference to the commencement of "[a]n action." This interpretation also is supported by two principles of statutory construction: our directive to avoid interpretations that result in absurd consequences, and our directive to avoid interpretations that render portions of a statute nugatory. ... To hold, as plaintiff suggests, that any payment made by an insurer would revive a stale claim, no matter how much time has elapsed, would render an absurd result by allowing, potentially, even decades-old claims to be asserted. Further, such an interpretation would essentially eliminate the limitations period of MCL 500.3145(1) in cases where an insurer has ever paid anything on a claim, rather than providing a limited exception that allows for the filing of suit more than one year after the accident in certain circumstances. We decline to adopt plaintiff's preferred interpretation, which we find would be in contravention of the "Legislative purpose in the No-Fault Act in encouraging claimants to bring their claims to court within a reasonable time and the reciprocal obligations of insurers to adjust and pay claims seasonably" and to "protect against stale claims and protracted litigations." ...

We therefore hold that MCL 500.3145(1) allows for suit to be filed more than one year after the date of the accident causing injury only if the insurer has either received notice of the injury within one year of the accident or made a payment of personal protection insurance benefits for the injury within one year of the accident. (Ex. B attached to Plaintiff's Application, pp 5-7.)

The majority rejected the Plaintiff's waiver argument as follows:

...[L]eave to amend pleadings should be freely granted to a nonprevailing party at summary disposition, unless such amendment would be futile or otherwise unjustified. ... Thus, had the trial court found that defendant had failed to plead the statute of limitations defense with sufficient clarity, it could have, in its

discretion, granted defendant leave to amend its pleading,⁷ in which case the result would be the same—the limitations period of MCL 500.3145(1) would still bar plaintiff's claim. Given the trial court's discretion to simply allow amendment of the pleading, and in the interest of judicial efficiency, we see no need to remand the case for the trial court to do just that. Accordingly, we find no waiver of the affirmative defense of statute of limitations. (Ex. B attached to Plaintiff's Application, p 8.)

Judge Deborah Servitto dissented, finding that the statutory argument had been waived because it was not specifically referenced in AAA's affirmative defenses, and because the trial court never explicitly granted AAA's oral request for leave to amend the affirmative defenses. Judge Servitto did not express an opinion on the statutory construction argument.

S E C R E T W A R D L E

⁷ In the Circuit Court, AAA made an oral motion for leave to amend its Affirmative Defenses. (2/19/13 trans, p 7.) The Circuit Court did not expressly rule on this request, but proceeded to rule on the substance of AAA's statutory argument.

STANDARD OF REVIEW

There are two standards of review applicable to the instant Application for Leave to Appeal. The first standard of review relates to whether the Application should be granted. MCR 7.302(B) sets out specific criteria for the granting of an application for leave to appeal to this Court. This rule states, in relevant part, that an application to this Court “must show” at least one of the following: “(3) the issue involves legal principles of major significance to the state’s jurisprudence; [or] ... (5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice....” MCR 7.302(B). Plaintiff’s Application does not satisfy either of these criteria. As explained below, the dismissal of Plaintiff’s PIP suit was completely in accord with, if not mandated by, established rules of statutory construction. Moreover, the case presents a relatively unusual situation – in order for this scenario to repeat, a claimant must first fail to notify the proper insurer within “1 year after the date of the accident,” *then* submit a bill after that initial year has passed, *then* have an insurer who pays the bill, either by oversight or out of generosity, despite not being obligated to do so. In light of this, it is difficult to see how the case presents “legal principles of major significance to the state’s jurisprudence.”⁸

The second standard of review relates to the actual decision of the court below that is the subject of the Application. The motion was brought pursuant to MCR 2.116(C)(7) (statute of limitations). Such decisions are reviewed on appeal *de novo*. *DiPonio Construction Co v Rosati Masonry Co*, 246 Mich App 43, 46-47; 631 NW2d 59 (2001). See also *Joseph v Auto Club Ins*

⁸ Indeed, the only way this case could take on statewide significance would be if the Court of Appeals ruling were disturbed, and Plaintiff’s construction were accepted, as this would introduce an entirely new way of practicing PIP law, where claimants are encouraged to submit belatedly incurred bills, in the hopes of inducing an unwary adjuster into inadvertently resurrecting an otherwise stale claim.

Ass'n, 491 Mich 200, 205; 815 NW2d 412, 415 (2012). Likewise, the interpretation § 3145 represents an issue of law that would, if leave were granted, be reviewed *de novo*. *Joseph, supra* at 205. Although this Court “reviews a decision to grant a motion for summary disposition *de novo*,” this standard “does not authorize the Court to abandon its neutral role and become plaintiff’s counsel.” *Kaupp v Mourer-Foster, Inc.*, 485 Mich 1033, 1035; 776 NW2d 893 (2010) (Corrigan, J., dissenting). Moreover, even where the standard is *de novo*, appellate courts should generally have some degree of “preference for affirmance,” which “follows from the deference we owe to the [trial] courts and the judgments they reach, many times only after years of involved and expensive proceedings.” *Richison v Ernest Group, Inc.*, 634 F3d 1123, 1130 (10th Cir 2011). “Because of the cost and risk involved anytime we upset a court’s reasoned judgment, we are ready to affirm whenever the record allows it.” *Id.* For this reason, “appellants must always shoulder a heavy burden – they must come ready both to show the [trial] court’s error and, when necessary, to explain why no other grounds can support affirmance of the [trial] court’s decision.” *Id.*

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LEGAL ARGUMENTS

I. IN THIS FIRST-PARTY NO-FAULT ACTION, THE LOWER COURTS CORRECTLY HELD THAT AAA WAS ENTITLED TO SUMMARY DISPOSITION PURSUANT TO THE ONE YEAR NOTICE PROVISION OF MCL 500.3145(1), WHERE IT IS UNDISPUTED THAT PLAINTIFF DID NOT PROVIDE AAA WITH WRITTEN NOTICE OF HIS CLAIM WITHIN ONE YEAR OF THE MAY 12, 2009 MOTOR VEHICLE ACCIDENT, PLAINTIFF DID NOT FILE SUIT WITHIN ONE YEAR OF THE ACCIDENT, AND AAA DID NOT PAY ANY NO-FAULT BENEFITS WITHIN ONE YEAR OF THE ACCIDENT.

MCL 500.3145(1) states that “[a]n action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced ... unless written notice of injury ... has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury.” “The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf.” *Id.* “The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.” *Id.* “The one-year-back rule draws a strict line, which must be followed even with unfair results.” *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 229; 779 NW2d 304 (2009). See also *Joseph, supra* at 203.

MCL 500.3145(1) is subject to ordinary rules of statutory interpretation. See *Joseph, supra* at 205-206. “In reviewing questions of statutory construction, [a court’s] purpose is to discern and give effect to the Legislature’s intent.” *People v Holder*, 483 Mich 168, 172; 767 NW2d 423 (2009). “We begin by examining the plain language of the statute; where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed and enforce that statute as written.” *Id.* “We must give the words of a statute their

plain and ordinary meaning, and only where the statutory language is ambiguous may we look outside the statute to ascertain legislative intent.” *Id.* Courts may not “rewrite the plain statutory language and substitute [their] own policy decisions for those already made by the Legislature.” *DiBenedetto v West Shore Hosp*, 461 Mich 394, 405; 605 NW2d 300 (2000). Courts have “no authority to add words or conditions to [a] statute.” *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 214 n 10; 731 NW2d 41 (2007).

“[T]he policy behind a statute cannot prevail over what the text actually says. The text must prevail.” *Elezovic v Ford Motor Co*, 472 Mich 408, 421-422; 697 NW2d 851 (2005). “The Legislature is held to what it said. It is not for us to rework the statute. Our duty is to interpret the statute as written.” *Id.* at 425. The “Legislature is free to make policy choices that, especially in controversial matters, some observers will inevitably think unwise. This dispute over the wisdom of a law, however, cannot give warrant to a court to overrule the people’s Legislature.” *Id.* (citation omitted). Even when “the Legislature’s policy choice can be debated,” the “judiciary is not the constitutional venue for such a debate.” *Id.*⁹

Here, the text of § 3145(1) actually “contains two limitations on the time for filing suit and one limitation on the period for which benefits may be recovered.” *Joseph, supra* at 207.

⁹ Or as this Court explained in *Cameron v Auto Club Ins Ass’n*, 476 Mich 55, 64; 718 NW2d 784 (2006), litigants cannot ask “that all the disciplines that judges, lawyers, and even lay people use for giving meaning to documents and distinguishing in a principled fashion between potentially conflicting instruments ... be disregarded” so that courts can “raise our eyes from the tedious page, weigh who is the most compelling litigant, and ‘effect legislative intent.’” Such arguments beg “the question ... of why the words the Legislature used do not do that better than their efforts to find the ‘real intent.’” *Id.* “Moreover, with a system of mandatory automobile no-fault insurance such as the Legislature has enacted, it just may be, because of the economies required to make it work, that the Legislature’s ‘real intent’ was to set up strict rules that can unfortunately, but unavoidably if you want no-fault insurance, produce some sad outcomes.” *Id.* Although *Cameron* was overruled by *Univ of Mich Regents v Titan Ins Co*, 488 Mich 893, 794 NW2d 570 (2010), *Cameron* was expressly reinstated by *Joseph, supra* at 221.

“(1) An action for personal protection insurance [PIP] benefits must be commenced not later than one year after the date of accident, unless the insured gives written notice of injury or the insurer previously paid [PIP] benefits for the injury.” *Joseph, supra* at 207, quoting *Devillers v Auto Club Ins Ass’n*, 473 Mich 562, 574; 702 NW2d 539 (2005). “(2) If notice has been given or payment has been made, the action may be commenced at any time within one year after the most recent loss was incurred.” *Joseph, supra* at 207. “(3) Recovery is limited to losses incurred during the one year preceding commencement of the action.” *Id.*

Put more succinctly, “§ 3145(1), does two things. First, it provides that an action to collect PIP [personal injury protection] benefits must be commenced within one year after the date of the accident. The period is tolled if a proper notice is given to the insurer within one year. Second, it provides that a claimant may not recover benefits for losses incurred more than one year before the date the action was commenced.” *Cameron, supra* at 92 (Cavanagh, J., dissenting). “The purpose of the one-year period of limitations is to encourage claimants or persons acting on their behalf to bring their claims to court while those claims are still fresh.” *Id.* (citations omitted).

This appeal concerns the first limitation, i.e., the limitation “on the time for filing suit” as identified in *Joseph*. Specifically, when Alan Jespersen first filed suit against AAA on May 16, 2011 (by way of his Second Amended Complaint), Mr. Jespersen *had not provided any prior written notice of his claim to AAA*. Plaintiff’s accident occurred on May 12, 2009, and the statute required Plaintiff to provide “written notice of injury ... to the insurer within 1 year after the accident....” MCL 500.3145(1).

The plain language of § 3145(1) makes clear that the Legislature intended for *something to happen in the first year* following an accident, in order for a first-party suit to ever arise from

it. This interpretation is supported by the following excerpt from Sinas and Miller, *supra* at 399, which is quoted above but bears repeating here:

It is clear from the statutory language [of MCL 500.3145(1)] that a claimant, or someone acting on the claimant's behalf, must give the requisite written notice to the proper insurance company within one year of the date of the accident *or the claim for no-fault benefits will be forever barred*. The only thing that excuses this is if the insurer has paid something on the claim *during the first one year following the accident*. (Ex. B, emphasis added.)

Or as Logeman, *supra* at § 6.14 put it – writing several years before the Court of Appeals' published ruling in this case – “[t]here is a one-year limitation of action unless the claimant gives the insurer written notice of the accident within one year of the accident *or the insurer makes payment within one year*.” (Ex. A, emphasis added.)¹⁰

Here, it is undisputed that the accident occurred on May 12, 2009. (Application, pp 1, 7) Plaintiff first filed suit against AAA on May 16, 2011, more than two-years after the accident, by way of his Second Amended Complaint. (See *Id.*) Therefore, this action could have been timely only if Plaintiff had satisfied the requirements of the one-year notice rule. He did not. ***Defendant did not receive notice of the May 12, 2009 motor vehicle accident, or of Plaintiff's claimed injuries from it, within the year following that accident, and Defendant did not pay any benefits within that year.*** The timeline was as follows:

¹⁰ Also, the Court of Appeals wrote in *Velazquez, supra*: “MCL 500.3145(1) of the No-Fault Act requires that a claim for personal protection insurance benefits be filed within one year of the accident causing the injury unless a prescribed form of notice was either provided to the insurer or the insurer paid benefits *within one year after the accident*.” (Ex. H, p 2, emphasis added.)

Motor vehicle accident	→	May 12, 2009
Expiration of "1 year after the date of the accident"	→	May 12, 2010
<hr/>		
Notice received	→	June 2, 2010
First payment made	→	July 23, 2010
Suit filed against AAA	→	May 16, 2011

There were no questions of fact concerning this timeline. Plaintiff did not provide written notice (or any notice) within one year, and AAA did not make a payment of benefits within one year. Therefore, the Circuit Court correctly held that the requirements of § 3145(1) had not been met, and the suit was untimely.

In opposing AAA's motion, and in seeking reversal in the Court of Appeals, Plaintiff relied primarily upon *Bohlinger v Detroit Auto Inter-Insurance Exchange*, 120 Mich App 269; 327 NW2d 466 (1982). However, *Bohlinger* dealt with the one-year back rule of MCL 500.3145(1); *not* the one-year notice limitation. Moreover, in *Bohlinger* the accident occurred on December 9, 1974 and the insurer began paying in May 1975 (within one year). *Bohlinger, supra* at 271. For this reason *Bohlinger* is readily distinguishable.

For the same reason, *English, supra* – which Plaintiff held out to the Circuit Court as “directly on point” (2/19/13 trans, p 11) – is also readily distinguishable. The insurer in *English* began making payments within six months of the accident. *English, supra* at 470. (“On November 29, 1973, plaintiff suffered injuries in an automobile accident. Defendant paid no-fault insurance benefits through May 13, 1974.”) In the instant case, it is undisputed that no payments were made within the year following the accident (2/19/13 trans, p 10), a fact which renders *English* inapposite.

Indeed, granting summary disposition under these circumstances was consistent with, if not mandated by, the policy goals of the No-Fault Act. “Although the no-fault system is administered through insurance companies, premiums paid by the owners of motor vehicles to no-fault automobile insurers are governmentally mandated exactions that socialize the cost of providing work-loss benefits and medical payments to all persons injured in automobile accidents.” *Thompson v DAIIE*, 418 Mich 610, 622; 344 NW2d 764 (1984) (opinion by Levin, J). “No-fault premiums, then, like social security taxes, do not reflect only the cost expected to be imposed on the system by the person making the payment, but include amounts for costs expected to be imposed on the system by persons who do not contribute thereto or do so in amounts inadequate to provide the benefits they receive.” *Id.* at 623. “The no-fault automobile liability act may thus provide the most comprehensive and generous ‘social welfare program’ yet enacted.” *Thompson, supra* at 624.

In order to carry out this “social welfare program” in a way that does not bankrupt the private corporations that administer it, no-fault carriers must be protected from stale claims. If no-fault carriers are going to be forced to set aside resources for unknown claims that *may* be presented *for the first time* more than a year after an accident, carriers will be unable to “accomplish the goal of providing an equitable and prompt method of redressing injuries in a way which [makes] the mandatory coverage affordable to all motorists.” *MacDonald v State Farm Mut Ins Co*, 419 Mich 146, 154; 350 NW2d 233 (1984). Indeed, our Supreme Court has held that, because no-fault is mandatory, “Michigan motorists are constitutionally entitled to have no-fault insurance made available” at “fair and equitable” rates. *Shavers v Kelley*, 402 Mich 554, 600; 267 NW2d 72 (1978). “Fair and equitable” rates can only be maintained if the one-year-back rule is enforced as written, so as to protect no-fault carriers from stale claims.

Moreover, a rule that stale suits may be resurrected, by the erroneous payment of untimely claims, could not be reconciled with the Act's purpose of ensuring "prompt payment to the insured." *Ross, supra* at 11. "[T]he primary goal of the [Michigan] no-fault act is to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *McCormick, supra* at 234. "Under the Michigan no-fault system, automobile accident victims are entitled to prompt payment of certain personal injury protection benefits as soon as 'the loss accrues.'" *Bajraszewski v Allstate Ins Co*, 825 F Supp 2d 873, 880 (ED Mich 2011). Thus, any *disincentive* to promptly paying bills would contravene this purpose. Yet that is exactly what the rule advanced by Plaintiff would do. On Plaintiff's interpretation of § 3145(1), before a no-fault carrier could pay any bill, no matter how small, the carrier would first have to investigate whether doing so might be resurrect an otherwise stale claim – and potentially expose the carrier to future liabilities of an unknown amount which otherwise would have been barred.

No-fault carriers already face severe penalties for not paying a claim quickly enough. See MCL 500.3142(3) (allowing for the imposition of 12% penalty interest if an insurer does not pay "within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained"); MCL 500.3148(1) (allowing for the imposition of attorneys' fees "if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment"). The rule advanced by Plaintiff would also penalize insurers who pay too quickly (i.e., insurers who pay a bill before they confirm that the claim would otherwise be stale). Plaintiff's interpretation of § 3145(1) would create a tremendous disincentive to making prompt payment; in this case, AAA's erroneous payment of approximately \$22,000, starting 14 months after the accident, supposedly resurrected an otherwise stale claim of approximately \$487,000. Judge Switalski and the Court of Appeals majority were correct in rejecting such an

interpretation and insisting that § 3145(1) be read so as to place *some* temporal limitation on suits.

Finally, AAA must address the affidavit of Wayne Miller, proffered by Plaintiff in the trial court with his Motion for Reconsideration. Because this affidavit was proffered for the first time on reconsideration, it should not be considered part of the record on appeal. “Where an issue is first presented in a motion for reconsideration, it is not properly preserved.” *Vushaj v Farm Bureau Gen Ins Co of Michigan*, 284 Mich App 513, 519; 773 NW2d 758 (2009). As this Court has noted, motions for reconsideration are used to correct palpable error, not to present new evidence or arguments. *Maiden v Rozwood*, 461 Mich 109, 126 n 9; 597 NW2d 817 (1999). Evidence or arguments “offered ... for the first time in support of [a] motion for rehearing” are “not properly before the court.” *Id.*

Moreover, the affidavit should be disregarded because it constituted an improper attempt to submit expert opinions about a *legal* conclusion. See *Downie v Kent Products, Inc*, 420 Mich 197, 205; 362 NW2d 605 (1984). The authority to decide questions of law, such as statutory construction, “has been allocated to the courts, not to the parties’ expert witnesses.” *Reeves v K-Mart Corp*, 229 Mich App 466, 475; 582 NW2d 841 (1998). “[T]he function of an expert witness is to supply expert testimony. This testimony includes opinion evidence, when a proper foundation is laid, and opinion evidence may embrace ultimate issues of fact. However, the opinion of an expert may not extend to ... legal conclusions.” *Carson Fischer Potts & Hyman v Hyman*, 220 Mich App 116, 122-123; 559 NW2d 54 (1996). “An expert witness ... may not give testimony regarding a question of law, because it is the exclusive responsibility of the trial court to find and interpret the law.” *Id.* Here, Mr. Miller essentially tried to tell Judge Switalski

that he should have denied AAA's Motion for Summary Disposition. Judge Switalski correctly disregarded such advocacy, offered under the guise of an ostensibly neutral "expert's" affidavit.

In light of these precedents, there is no inconsistency between Judge Switalski's consideration of Sinas & Miller's treatise, on the one hand, and his rejection of Mr. Miller's affidavit, on the other. While Mr. Miller's belatedly proffered affidavit represented improper expert testimony on a pure question of law, there is ample precedent for courts looking to published treatises, as persuasive authority on issues of statutory construction. See *House Speaker v State Administrative Bd*, 441 Mich 547, 562; 495 NW2d 539 (1993); *In re D'Amico Estate*, 435 Mich 551, 559; 460 NW2d 198 (1990); *People v McFarlin*, 389 Mich 557, 563; 208 NW2d 504 (1973); *People v Sell*, 310 Mich 305, 326; 17 NW2d 193 (1945); *People v Lockett*, 295 Mich App 165, 174; 814 NW2d 295 (2012). Put another way, if the contest is between Sinas & Miller's treatise vs. Miller's affidavit,¹¹ precedent says the treatise should win.

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¹¹ AAA denies, however, that the case turns on such a controversy. Wholly apart from the opinions of Miller and Sinas, Judge Switalski's decision was firmly supported by *Velazquez, supra* and the aforementioned canons of statutory construction.

S E C R E T W A R D L E

II. THE LOWER COURTS PROPERLY CONSIDERED AAA'S STATUTE OF LIMITATIONS ARGUMENT, WHERE AAA'S AFFIRMATIVE DEFENSES SPECIFICALLY REFERRED TO MCL 500.3145(1), AND WHERE PLAINTIFF HAS FAILED TO SHOW THAT HE SUFFERED ANY PREJUDICE AS A RESULT OF AAA'S SUPPOSEDLY "LATE" INVOCATION OF THIS ARGUMENT.

Plaintiff claims that the Circuit Court (and in turn, the Court of Appeals) should not have considered AAA's Motion for Summary Disposition because the particular one-year-back argument articulated therein supposedly was not raised as an affirmative defense. However, the Affirmative Defenses filed by AAA on June 15, 2011 did specifically cite § 3145(1) in Affirmative Defense No. 3. (Application, p 1.) Plaintiff argues that this was not specific enough and that the Affirmative Defense needed to say which specific clause within § 3145(1) was being invoked.

A party is not required to "plead every fact that might conceivably have a bearing on the defense." *Jersevic v Dist. Health Dep't No. 2*, unpublished opinion per curiam of the Court of Appeals, rel'd 3/27/12 (No. 306659) (Ex. J). "Rather, it is sufficient to plead facts that enable the opposing party to take a responsive position." *Id.*, citing *Stanke v State Farm Mutual Auto Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993). "[T]he primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Jersevic, supra*, quoting *Stanke, supra* at 317. AAA's reference to § 3145(1) in its Affirmative Defense No. 3 gave Plaintiff such notice.

"Moreover, the trial court should freely give leave to the parties to amend their pleadings – including their affirmative defenses – as justice so requires." *Jersevic, supra*. Here, it is unclear whether Judge Switalski found AAA's pleading reference to § 3145(1) to be sufficient, or whether he implicitly granted AAA leave to amend its pleading. To the extent that AAA's Motion for Summary Disposition asserted a "new" one-year-back argument, the Circuit Court

had broad discretion to allow the amendment, as the Court of Appeals majority noted here. (Ex. B attached to Plaintiff's Application, p 8.) The propriety of granting leave to amend under the circumstances of this case, and the fact that such a decision *would not* constitute reversible error, is illustrated by *Ostroth v Regency*, 263 Mich App 1, 5; 687 NW2d 309 (2004):

Leave to amend should be freely granted when justice so requires. MCR 2.118(A)(2). However, leave to amend should not be granted in the face of undue delay, bad faith, or dilatory motive on the part of the movant, or undue prejudice to the opposing party by virtue of allowance of the amendment. ... Although defendant failed to assert the statute of limitations in its previous answers to plaintiff's complaint, and did not move to amend its affirmative defenses until after it raised the statute of limitations defense in its motion for summary disposition, we do not find that defendant's lack of action was the result of bad faith or undue delay. And the amendment did not prejudice plaintiff's ability to respond to the issue. ... The mere fact that an amendment might cause a party to lose on the merits is not sufficient to establish prejudice. ... Therefore, we conclude that the trial court did not abuse its discretion^[12] in allowing the amendment.

As alluded to in *Ostroth, supra* at 5, amendments "shall" be permitted, in the absence of a "particularized reason" to the contrary, such as undue prejudice. *Weymers v Khera*, 454 Mich 639, 661n 27; 563 NW2d 647 (1997). "Prejudice" in this context "does not mean that the allowance of the proffered amendment may cause the opposing party to ultimately lose on the merits." *Id.* at 657. "Rather, 'prejudice' exists if the amendment would prevent the opposing party from receiving a fair trial, if for example, the opposing party would not be able to properly

¹² Plaintiff's Brief on Appeal in the Court of Appeals did not address the abuse of discretion standard, which would govern the Circuit Court's decision to allow amendment. "[A]n abuse of discretion occurs *only* when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007) (emphasis added). Arguably, Plaintiff's waiver argument was itself waived in the Court of Appeals through Plaintiff's failure to brief the relevant standard of review. See *Etefia v Credit Technologies, Inc.*, 245 Mich App 466, 471; 628 NW2d 577 (2001) (when a party fails to sufficiently brief the merits of an allegation of error, the issue is deemed abandoned on appeal).

contest the matter raised in the amendment because important witnesses have died or necessary evidence has been destroyed or lost.” *Id.*

Here, assuming that Judge Switalski impliedly granted Defendant leave to amend its Affirmative Defenses (rather than simply finding Affirmative Defense No. 3 to be sufficient as pled), Plaintiff is unable to show that he was prejudiced by the supposedly “late” invocation of the one-year-back rule. Plaintiff had the same opportunity to brief and argue the issue in response to AAA’s Motion for Summary Disposition as he would have had if the issue had been raised earlier in the proceeding. AAA filed and served the motion on January 28, 2013. MCR 2.116(G)(1)(a)(i) required that the motion be filed and served “at least 21 days before the time set for hearing,” and AAA complied with this by requesting a hearing on February 19, 2013. The time period set by MCR 2.116(G)(1)(a)(i) would have been the same, regardless of when AAA filed its motion. MCR 2.116(G)(1)(a)(ii) gave the Plaintiff until “7 days before the hearing” to file a response, and Plaintiff did in fact file a response within the time period required. Again, this time period would have been the same, regardless of when AAA filed its motion. Plaintiff is not suggesting that he would have made a different or better argument if AAA had filed the motion earlier. This complete absence of prejudice undermines any argument that the Circuit Court abused its discretion. *Ostroth, supra* at 5.

In his Application to this Court, Plaintiff suggests that the Court of Appeals needed to remand the case so that Judge Switalski could specifically say that he was granting leave to amend the Affirmative Defenses. (Application, pp 16-18.) Plaintiff does not contest that the Circuit Court would have had the discretion to grant leave to amend, and Plaintiff tellingly does not claim that granting leave to amend would have been an abuse of discretion (Plaintiff merely claims that the trial court “might have” denied the request). (*Id.*, p 18.) So, although Plaintiff

emphatically states that “[t]his is not about ‘judicial efficiency’” (Id.), at bottom Plaintiff is asking this Court to wipe away 1 ½ years of appellate proceedings and a published decision of the Court of Appeals, so that Judge Switalski can explicitly state what he did implicitly on February 19, 2013, and the entire proceeding can start over. It is unclear how this would advance the interests of justice.

Moreover, the argument runs contrary to Plaintiff’s assertion that “[t]his case presents a significant question as to the appropriate interpretation of MCL 500.3145(1)...” (Application, p 6.) If the real issue is the sufficiency of the trial court record, then Plaintiff is merely arguing for “error correction” and is not presenting anything of “major significance to the state’s jurisprudence.” MCR 7.302(B)(3). On the other hand, if this is an issue of statewide importance that needs to be reviewed by this Court, then it is hard to see why we should start over.

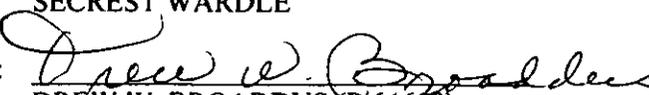
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CONCLUSION

The present Application does not justify leave from this Court. There is no legal issue being presented to this Court that would justify review under MCR 7.302(B)(3) or (B)(5) – the issues raised do not involve legal principles of major significance to the state’s jurisprudence, and the Court of Appeals’ decision does not cause material injustice, nor does it conflict with any decision of this Court. Plaintiff (or someone acting on his behalf) failed to provide written notice to AAA within one year of the May 12, 2009 motor vehicle accident. Moreover, AAA did not pay any benefits during that first year after the May 12, 2009 accident. Therefore, the one-year written notice requirement of MCL 500.3145(1) was not satisfied. While Plaintiff attempts to frame this result as some type of anomaly, the Court of Appeals published opinion in this case merely confirmed what Sinas and Miller, *supra* at 399, Logeman, *supra* at § 6.14, and the *Velazquez* panel all recognized years earlier: if there is no written notice provided within a year of the accident, and no suit filed within that year, then a payment has to be made *within one year after the accident*, or the claim is time barred. For these reasons, Defendant respectfully requests this Honorable Court deny Plaintiff’s Application.

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