

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

SPECTRUM HEALTH HOSPITALS and
SPECTRUM HEALTH UNITED
(Shawn Norman),

Plaintiffs-Appellees,

-vs-

WESTFIELD INSURANCE COMPANY,
Defendant-Appellant.

SUPREME COURT DOCKET NO.:

COURT OF APPEALS DOCKET NO.: 323804

CIRCUIT COURT NO.: 14-02515-AV
HON. DONALD JOHNSTON

DISTRICT COURT NO.: 13-GC-2025
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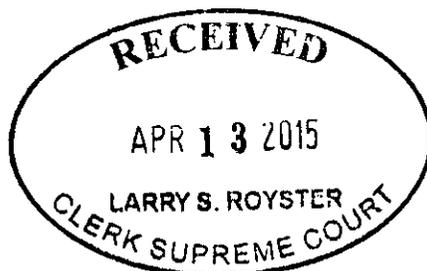
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**DEFENDANT-APPELLANT WESTFIELD INSURANCE COMPANY'S
APPLICATION FOR LEAVE TO APPEAL**

NOTICE OF HEARING

**NOTICE OF FILING OF DEFENDANT-APPELLANT'S APPLICATION
FOR LEAVE TO APPEAL**

PROOF OF SERVICE



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STATEMENT OF ORDER BEING APPEALED AND REQUESTED RELIEF

Defendant-Appellant Westfield Insurance Company (hereinafter “Defendant” or “Westfield”) submits this Application for Leave to Appeal from the Order entered by the Court of Appeals dated March 2, 2015, denying Westfield’s Application for Leave to Appeal. See *Spectrum Health Hospitals v Westfield Ins Co*, docket no. 323804. A copy of the Court of Appeals’ Order of March 2, 2015 is attached as **Exhibit 8**.

Westfield’s Application for Leave to Appeal, filed in the Michigan Court of Appeals, pertained to an Order entered by the Hon. Donald Johnston of the Kent County Circuit Court on September 3, 2014, which affirmed the March 3, 2014 Judgment of the 61st Judicial District Court. In its appeal to the Kent County Circuit Court, Westfield sought review of Judge J. Michael Christensen’s Order and Judgment dated March 3, 2014, which had granted summary disposition in favor of Plaintiffs-Appellees Spectrum Health Hospitals and Spectrum Health United (hereinafter “Plaintiffs” or “Spectrum”), and entering Judgment in favor of Plaintiffs and against Defendant, in the amount of \$16,109.00. In doing so, both the District Court and the Circuit Court determined that Westfield was obligated to afford benefits under the Michigan No-Fault Insurance Act, MCL 500.3101 *et seq*, even though the clear and unambiguous statutory text of the Parked Vehicle Exclusion, set forth in in section 3106(1) of the No-Fault Act, MCL 500.3106(1), as well as the terms of Defendant’s insurance policy, expressly **precludes** payment of no-fault benefits under the facts of this case. For this Court’s ease of reference, copies of these two Orders are attached as **Exhibits 4** and **6** to this Application for Leave to Appeal.

After giving due consideration to the arguments raised in the Application, Defendant Westfield Insurance Company respectfully requests that this honorable Court grants its Application for Leave to Appeal and, after full briefing and oral argument, enter an Order

reversing the Order and Judgment granting Plaintiffs' Motion for Summary Disposition entered by the 61st Judicial District Court on March 5, 2014, as well as the Order of the Kent County Circuit Court affirming the District Court's decision September 3, 2014. Westfield likewise requests that this matter be remanded back to the 61st Judicial District Court with instructions to enter summary disposition in favor of Defendant Westfield Insurance Company based on the unambiguous statutory text of Section 3106(1) of the No-Fault Act, MCL 500.3106(1), and Defendant's insurance policy language. Finally, even if this Court is inclined to uphold the decisions of the District Court and the Kent County Circuit Court to award no-fault benefits, despite the fact that the clear and unambiguous statutory text of MCL 500.3106(1) states that benefits are precluded under the facts and circumstances of this case, Westfield nonetheless requests that this Court issue an Order vacating the decisions of both the Kent County Circuit Court and the 61st Judicial District Court to award no-fault penalty attorney fees to Plaintiff, as the issues raised by Westfield Insurance Company, throughout the course of this litigation, involve legitimate issues of statutory construction and interpretation. Indeed, as demonstrated *infra*, Westfield's defense to this claim is firmly grounded on multiple decisions from this Court which have unequivocally stated that, with regard to injuries arising out of the ownership, operation, maintenance or use or a **parked motor vehicle** as a motor vehicle, one of the three statutory exceptions to the Parked Vehicle Exclusion set forth in MCL 500.3106(1)(a), (b) or (c) must be satisfied **in every case** in order for any no-fault benefits to be paid. **In this case, both parties agree that none of the three statutory exceptions to the Parked Vehicle Exclusion, set forth in MCL 500.3106(1) apply under the facts and circumstances of this case.** Westfield also seeks such other relief from this Court as may be deemed warranted under these circumstances.

CONCISE STATEMENT OF ERROR AND RELIEF REQUESTED

The issue in this appeal is whether or not Defendant Westfield Insurance Company, relying on both the clear and unambiguous statutory text of Section 3106(1) of the No-Fault Act, MCL 500.3106(1), its own policy language as approved by the State of Michigan Department of Insurance and Financial Services (DFIS), and decisions from this Court, properly denied Plaintiffs' claim for payment of medical expenses incurred by one Shawn Norman as a result of the injuries suffered by Mr. Norman in an incident occurring on August 9, 2012. As described below, Mr. Norman was changing a tire on a 2004 Chevy Blazer, owned by his father, Godfrey Norman, and his mother, Pam Jewel, which was insured with Defendant Westfield Insurance Company. While the Blazer was parked, Mr. Norman jacked up the vehicle and removed the wheel and tire assembly from the axle. Unfortunately, the jack became dislodged and the vehicle fell on Mr. Norman's hand. Specifically, Mr. Norman's fingers were pinched between the axle and the wheel rim. As a result of the injuries suffered by Mr. Norman, he sought treatment at Plaintiff's medical facilities. Even though Mr. Norman's injuries were sustained while he was maintaining an automobile, Westfield Insurance Company denied the claim because MCL 500.3106(1), commonly referred to as the Parked Vehicle Exclusion, provides that no-fault benefits are **not payable** for "accidental bodily injury arising out of the . . . **maintenance** . . . of a **parked vehicle** as a motor vehicle," and none of the three statutory exceptions to the Parked Vehicle Exclusion were applicable.

The starting point (and, in light of the clear and unambiguous statutory language, the end point) of the analysis that should have been employed by both of the lower courts is the actual statutory text utilized in MCL 500.3106(1), the Parked Vehicle Exclusion. This Court has repeatedly indicated that if a statute's language is clear and unambiguous, the Court must assume that the legislature intended its plain meaning, as expressed in the actual statutory language, and

the statute must be enforced as written. See *People v Harris*, 495 Mich 120, 845 NW2d 477 (2014). No judicial construction, interpretation or “gloss” is permitted. *Petipren v Jaskowski*, 494 Mich 190, 833 NW2d 847 (2013); *Auto-Owners Ins Co v All-Star Lawn*, 303 Mich App 288, 845 NW2d 744 (2013). A Court simply has no authority to add words or conditions to a statute, or to delete words from a statute. *Rowland v Washtenaw Co Road Comm*, 477 Mich 197, 731 NW2d 41 (2007). The statute at issue, MCL 500.3106(1) 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:
- (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
 - (b) Except as provided in subsection (2), 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) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.”

Again, this section is commonly referred to as the Parked Vehicle Exclusion and all parties agreed that none of the statutory exceptions to the Parked Vehicle Exclusion were applicable under the facts and circumstances surrounding this loss. Therefore, the analysis should have ended with the application of the clear and unambiguous statutory text, and both the District Court and the Circuit Court should have entered the appropriate Orders granting Westfield’s Motion for Summary Disposition.

Unfortunately, both of the lower courts were bound to follow this Court’s decision in *Miller v Auto-Owners Ins Co*, 411 Mich 633, 309 NW2d 544 (1981), which held that **all** maintenance injuries were compensable under Section 3105 of the Michigan No-Fault Insurance

Act, MCL 500.3105(1), **without regard to the clear and unambiguous statutory text utilized by the legislature in the Parked Vehicle Exclusion, MCL 500.3106(1), which precludes the recovery of no-fault benefits in cases involving the “maintenance . . . of a parked vehicle as a motor vehicle” unless one of the three statutory exceptions applies.**

To compound the error brought about as a result of this Court’s decision in *Miller, supra*, which undoubtedly deviated from the actual statutory text as described below, the District Court also awarded no-fault penalty attorney fees to Plaintiff under MCL 500.3148(1), even though two Justices of this Court have signaled their belief that *Miller, supra*, was wrongly decided, and a majority of Justices of this Court have held that injuries arising out of a parked motor vehicle are compensable **only if** one of the three statutory exceptions to the Parked Vehicle Exclusion are satisfied. See *Willer v Titan Ins Co*, 480 Mich 1177, 747 NW2d 245 (2008) and *Frazier v Allstate Ins Co*, 490 Mich 381, 808 NW2d 450 (2011). In doing so, the District Court characterized Defendant’s attempt to legitimately challenge existing case law, which is arguably in contravention of the clear and unambiguous statutory text, as somehow “unreasonable.” The Circuit Court compounded the error, in this regard, by affirming the decision of the District Court to grant no-fault penalty attorney fees to Plaintiffs under MCL 500.3148(1).

Therefore, Defendant seeks twofold relief from this Court. First, only this Court has the authority to overrule one of its earlier cases. This case presents a direct challenge to the continuing viability of this Court’s decision in *Miller, supra*. *Miller* was decided in 1981, during a period of time where Courts apparently felt they were free to substitute their perceived policy preferences in place of the unambiguous statutory text enacted by the Legislature. In this regard, *Miller* is completely at odds with today’s Supreme Court jurisprudence, where this Court has repeatedly stated that it is the responsibility of the Court to declare what the law **is** based on the statutory text and **not** what the law “ought to be.” See *Cameron v ACIA*, 476 Mich 55, 66; 718

NW2d 784 (2006); *Terrien v Zwit*, 467 Mich 56, 66-67; 648 NW2d 602 (2002), citing *Marbury v Madison*, 5 US (1 Cranch) 137, 177, 2 L. Ed. 60 (1803).

Second, this Court must reverse the lower courts' decisions to award no-fault penalty attorney fees under MCL 500.3148(1). This case most certainly raises a legitimate issue of statutory interpretation; whether this Court, in *Miller, supra*, judicially amended MCL 500.3106(1) to delete word "maintenance" to achieve what it perceived as its preferred public policy outcome. As a result, Westfield's argument cannot be considered "unreasonable," based upon a long line of cases from this Court and the Court of Appeals, including *Moore v Secura Ins Co*, 482 Mich 507, 759 NW2d 833 (2008); *Ross v ACIA*, 481 Mich 1, 748 NW2d 552 (2008); *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 404 NW2d 199 (1987); *Rice v ACIA*, 252 Mich App 25, 651 NW2d 188 (2002); *Attard v Citizens Ins Co of America*, 237 Mich App 311, 602 NW2d 633 (1999) and *United Southern Assurance Co v Aetna Life & Casualty Ins Co*, 189 Mich App 485, 474 NW2d 131 (1991). The lower courts' decisions to impose no-fault penalty attorney fees against Westfield obviously has a chilling effect on the ability of future litigants to challenge wrongly decided precedent that, upon closer examination, is clearly at odds with the actual statutory text. Essentially, the lower courts' decisions penalize a litigant for daring to challenge precedent, even though that precedent distorts (or even ignores) the otherwise clear and unambiguous statutory text, even where the litigant's challenge to precedent is based on holdings from this very Court in subsequent cases! The decision to penalize Westfield by awarding no-fault penalty attorney fees under MCL 500.3148(1) is completely at odds with long established jurisprudence from this Court dating back to 1999, which actually **encourages** parties to challenge wrongly decided cases that distort, or completely ignore, the otherwise clear and unambiguous statutory text:

“Further, it is well to recall in discussing reliance, when dealing with an area of the law that is statutory . . . that it is to the words of the statute itself that a citizen first looks for guidance in directing his actions. This is the essence of the rule of law: to know in advance what the rules of society are. Thus, if the words of the statute are clear, the actor should be able to expect, that is rely, that they will be carried out by all in society, including the courts. In fact, should a court confound those legitimate citizen expectations by misreading or misconstruing a statute, it is that court itself that has disrupted the reliance interests. When that happens, a subsequent court, rather than holding to the distorted reading because of the doctrine of stare decisis, should overrule the earlier court’s misconstruction. **The reason for this is that the court in distorting the statute was engaged in a form of judicial usurpation that runs counter to the bedrock principle of American constitutionalism, i.e., that the law-making power is reposed in the people as reflected in the work of the Legislature and, absent a constitutional violation, the courts have no legitimacy in overruling or nullifying the people’s representatives. Moreover, not only does such a compromising by a court of the citizen’s ability to rely on the statute have no constitutional warrant, it can gain no higher pedigree as later courts repeat the error.**”

Robinson v City of Detroit, 462 Mich 439, 613 NW2d 307, 321-322 (2000) (emphasis added)

Thus, at the very least, this Court should correct the egregious error committed by both lower courts when they decided to award Plaintiffs their no-fault penalty attorney fees under MCL 500.3148(1).

STATEMENT OF THE JURISDICTIONAL BASIS

This Application for Leave to Appeal stems from an Order of a panel of the Michigan Court of Appeals (consisting of Judges William Murphy, Jane Beckering and Douglas Shapiro) dated March 2, 2015, which denied Westfield's Application for Leave to Appeal. See *Spectrum Health Hospitals v Westfield Ins Co*, docket no. 323804. A copy of the Court of Appeals' Order is attached to this Application for Leave to Appeal as **Exhibit 8**. Accordingly, Westfield's Application for Leave to Appeal is timely under MCR 7.302(C)(2)(a), which provides that an Application for Leave to Appeal must be filed within 42 days "after the Court of Appeals clerk mails notice of an Order entered by the Court of Appeals."

The Application for Leave to Appeal filed by Westfield Insurance Company with the Michigan Court of Appeals stemmed from a decision of the Kent County Circuit Court, sitting as an appellate court reviewing a decision of the Hon. J. Michael Christensen, of the 61st Judicial District Court, which granted summary disposition in favor of Plaintiffs-Appellees Spectrum Health Hospitals and Spectrum Health United. The Kent County Circuit Court affirmed the decision of the 61st Judicial District Court pursuant to an Order entered by the Kent County Circuit Court on September 3, 2014. Westfield filed its Application for Leave to Appeal with the Court of Appeals pursuant to MCR 7.205 on September 23, 2014. Again, the Court of Appeals denied Westfield's Application for Leave to Appeal by way of an Order entered on March 2, 2015.

STATEMENT OF QUESTIONS INVOLVED

- I. This Court has unequivocally held that in order to recover no-fault benefits for injuries arising out of a parked motor vehicle, **“a claimant must demonstrate that his or her injury meets one of the requirements of MCL 500.3106(1) because unless one of those requirements is met, the injury does not arise out of the use of a vehicle as a motor vehicle, under MCL 500.3105(1).”** *Frazier v Allstate Ins Co*, 490 Mich 381, 384, 808 NW2d 450 (2011) Did the Court of Appeals err when it refused to consider the Circuit Court’s decision to affirm the decision of the District Court to grant Plaintiffs’ Motion for Summary Disposition, and to deny Westfield’s Motion for Summary Disposition, where the facts of the loss fell squarely within the purview of the Parked Vehicle Exclusion to benefits under the No-Fault Insurance Act, MCL 500.3106(1) and none of the three statutory exceptions to the exclusion applied?

Defendant-Appellant Westfield Insurance Company contends that the answer is, “Yes,” although Westfield concedes that the Court of Appeals, the Circuit Court and the District Court were bound by this Court’s erroneous decision in *Miller v Auto-Owners Ins Co*, 411 Mich 633, 309 NW2d 544 (1981) **Westfield submits that the time is ripe for this Court to determine whether Miller remains viable in light of more recent decisions from this Court, as well as its jurisprudential pronouncements.**

Plaintiffs-Appellees contend that the answer is, “No.”

The District Court answered this question, “No.”

The Circuit Court answered this question, “No.”

The Court of Appeals declined to address this issue when it denied Westfield’s Application for Leave to Appeal.

- II. This case involves a legitimate issue of statutory construction and interpretation; two sitting Justices of this Court have declared that its earlier decision in *Miller v Auto-Owners Ins Co*, 411 Mich 633, 309 NW2d 544 (1981) was inconsistent with the actual statutory text of MCL 500.3106(1) and should be overruled; four Justices of this Court have ruled that unless one of the three statutory exceptions to the Parked Vehicle Exclusion are met, under MCL 500.3106(1), injuries involving a parked motor vehicle are not compensable under the No-Fault Insurance Act; under these circumstances, did the Court of Appeals err when it refused to consider the Circuit Court’s decision to affirm the District Court’s decision to award Plaintiffs their no-fault penalty attorney fees under MCL 500.3148(1), even though the Circuit Court did not specify precisely how Westfield’s arguments were “unreasonable”?

Defendant-Appellant Westfield Insurance Company contends that the answer is, “Yes.”

Plaintiffs-Appellees contend that the answer is, “No.”

The District Court answered this question, “No.”

The Circuit Court answered this question, “No.”

The Court of Appeals declined to address this issue when it denied Westfield’s Application for Leave to Appeal.

STATEMENT JUSTIFYING INTERVENTION
BY THE MICHIGAN SUPREME COURT

“It is the Supreme Court’s obligation to overrule or modify case law, and until it takes such action, the Court of Appeals and all lower courts are bound by that authority.”

Pellegrino v Ampco System Parking, 486 Mich 330, 354, N. 17, 785 NW2d 59 (2010) quoting *Boyd v W.G. Wade Shows*, 443 Mich 515, 523, 505 NW2d 544 (1993) overruled on other grounds by *Karaczewski v Farbman Stein & Co*, 478 Mich 28, 732 NW2d 56 (2007).

“MCL 500.3105(1) sets forth the parameters of personal protection insurance coverage [under the Michigan No-Fault Insurance Act, MCL 500.3101 *et seq*] . . . The next section of the Act, MCL 500.3106, explains when such liability attaches in the case of a parked vehicle:

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:

* * *

MCL 500.3106(1) expressly delineates when ‘accidental bodily injury arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle’ if the vehicle is parked. **Therefore, in the case of a parked motor vehicle, a claimant must demonstrate that his or her injury meets one of the requirements of MCL 500.3106(1) because unless one of those requirements is met, the injury does not arise out of the use of a vehicle as a motor vehicle, under MCL 500.3105(1).’**

Frazier v Allstate Ins Co, 490 Mich 381, 384, 808 NW2d 450 (2011) (emphasis added)

“Because §3106(1) states that an injury generally does not ‘arise out of’ the maintenance of a parked vehicle as a motor vehicle ‘unless’ one of the three exceptions is satisfied, §3106(1) indicates that, **in every case involving a parked vehicle**, the plaintiff must demonstrate that one of the three listed exceptions is satisfied.”

Willer v Titan Ins Co, 480 Mich 1177, 1179 (Markman, J., joined by Corrigan, J. concurring) (emphasis added)

This appeal stems from an incident that occurred on August 9, 2012, in which Plaintiffs-Appellees’ patient, Shawn Norman, sustained injuries while in the course of maintaining a

parked motor vehicle insured by Defendant-Appellant Westfield Insurance Company. The parties are in full agreement that the subject vehicle was parked while it was being maintained and none of the three statutory exceptions to the Parked Vehicle Exclusion, set forth in MCL 500.3106(1) apply under the facts and circumstances of this case. Therefore, the only way for Plaintiffs-Appellees to recover payment of the medical expenses incurred by Mr. Norman is through this Court's decision in *Miller v Auto-Owners Ins Co*, 411 Mich 633, 309 NW2d 544 (1981), in which this Court indicated that,

“Compensation is thus required by the No-Fault Act [MCL 500.3105, for injuries arising out of the maintenance of an automobile] without regard to whether his vehicle might be considered ‘parked’ at the time of injury.”

Miller, 309 NW2d at 547.

Justice Markman, joined by former Justice Corrigan, has already opined that *Miller* was wrongly decided, and should be overruled:

“However, this Court previously has not required plaintiffs in parked vehicle cases to satisfy §3106(1) if §3105(1) is satisfied. In *Miller v Auto Owners Ins Co*, 411 Mich 633, 641, 309 NW2d 544 (1981), this Court opined that ‘the policies underlying §3105(1) and §3106 . . . are complementary rather than conflicting.’ Accordingly, ‘compensation is . . . required by No-Fault Act without regard to whether [the plaintiff’s] vehicle might be considered ‘parked’ at the time of injury.’ *Id.* In other words, under *Miller*, a plaintiff who satisfies §3105(1) in a parked vehicle case is not also obligated to satisfy §3106(1).

Miller’s interpretation of the interplay between §3105(1) and §31056(1) is, in my view, clearly erroneous. §3105(1) permits recovery only if the insured vehicle is being used ‘as a motor vehicle.’ §3106(1) states that a parked vehicle is not being used ‘as a motor vehicle’ unless one of the three exceptions is applicable. Accordingly, every plaintiff in a parked vehicle case must satisfy §3106(1) in order to recover.”

Willer, 480 Mich 1177, 1179, 747 NW2d 245 (2008)

The instant appeal is being mounted as a direct challenge to the continuing viability of this Court’s decision in *Miller, supra*, as the facts in this appeal (which are undisputed) involve maintenance of a parked motor vehicle.

This Court has previously disavowed certain key holdings in *Miller, supra*, in three separate cases – *LeFevers v State Farm*, 493 Mich 960, 828 NW2d 678 (2013); *Frazier, supra*; and *Willer, supra*. However, none of those cases expressly overruled *Miller, supra*, presumably because aside from *Willer, supra*, none of the other cases involved “maintenance” of a parked vehicle.¹ As this Court has previously noted:

“Courts may not elevate preferential rules of interpretation above the unambiguous text of a statute or contract.”

Rednour v Hastings Mut’l Ins Co, 468 Mich 241, 251, 661 NW2d 562 (2003)

Just as it is improper for a Court to insert words in an unambiguous statutory text, so too is it improper for a Court to delete or ignore words that appear in an otherwise clear and unambiguous statutory text:

“As United States Supreme Court Justice John Marshall Harlan stated in his famous dissent in *Plessy v Ferguson*, 163 U.S. 537, 558, 16 S. Ct. 1138, 41 L. Ed. 256 (1896):

The Court’s best discharge their duty by executing the will of the law-making power, constitutionally expressed, leaving the results of legislation to be dealt with by the people through their representatives.

In a more recent iteration of the rule, we stated in *DiBenedetto v West Shore Hospital*, 461 Mich 394, 605 NW2d 300 (2000) that

¹ *Willer* was a 2-2-3 decision, which resulted in a remand to the Wayne County Circuit Court for the entry of an Order Granting Defendant Titan Insurance Company’s Motion for Summary Disposition. The Plaintiff in *Willer* was injured when she slipped and fell on ice and snow surrounding her motor vehicle when she was scraping ice and snow off of her windshield. In that case, former Chief Justice Taylor, joined by Justice [now Chief Justice] Young determined that Plaintiff had failed to show that “the causal connection between her injuries and her scraping the windshield of her vehicle was anything beyond “incidental, fortuitous or ‘but for’ such that the injuries arose out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle” within the meaning of MCL 500.3105(1). Justice Markman, joined by former Justice Corrigan, determined that *Miller* was inconsistent with the actual statutory language set forth in MCL 500.3106(1), which clearly references “maintenance” of a parked motor vehicle, and would have ruled that “*Miller* was wrongly decided” and should be overruled.

Courts may not ‘rewrite the plain statutory language and substitute our own policy decisions for those already made by the legislature.’ *Accord Lansing Mayor v Public Service Comm*, 470 Mich 154, 161, 680 NW2d 840 (2004) **In short, this Court had no authority to add words or conditions to this statute.**”

Rowland v Washtenaw Co Road Comm, 477 Mich 197, 731 NW2d 41 (2007)

Unfortunately, the *Miller* Court did precisely what this Court said, in *Rowland*, that it should not do – it judicially amended the Parked Vehicle Exclusion set forth in MCL 500.3106(1) to delete or “judicially erase” the word “maintenance” from that section and make all maintenance injuries compensable under the Michigan No-Fault Insurance Act, without regard to the provisions of the Parked Vehicle Exclusion set forth in MCL 500.3106(1).

As noted above, only this Court has the authority to re-examine and overturn its earlier decisions. Westfield concedes that in this case, the Court of Appeals, the Circuit Court (sitting as an appellate court) and the District Court were bound by this Court’s decision in *Miller, supra*, so the fact that these courts determined (directly or indirectly) that coverage was owed for this loss came as no surprise. As noted above, this case is brought as a direct challenge to the continuing viability of *Miller, supra*. Given today’s Supreme Court jurisprudence, which has repeatedly stated that the words in a statute are to be applied as written, without regard to judicial interpretation, construction or “gloss,” it is apparent that *Miller* is wholly inconsistent with this judicial philosophy. The *Miller* court arguably acted outside its judicial confines and, sitting as a “super legislature,” judicially amended the language of the Parked Vehicle Exclusion in MCL 500.3106(1) by erasing the word “maintenance” from this Legislative enactment.

What Westfield seeks in this case is no different than what other litigants have sought from this Court, particularly since 1999, in situations where earlier decisions from this Court appear to conflict with the clear and unambiguous statutory text. In these earlier cases, the Court apparently invoked “public policy” concerns and adopted doctrines that completely ignored the

otherwise clear and unambiguous statutory text. Nowhere is there a greater example of this Court's correction of an earlier decision that deviated from the actual statutory text, in the area of the Michigan No-Fault Insurance Act, than in this Court's decision in *DeVillers v ACIA*, 473 Mich 562, 702 NW2d 539 (2005). In *DeVillers*, this Court was asked to reconsider and potentially overrule its earlier decision in *Lewis v DAIIIE*, 426 Mich 93, 393 NW2d 167 (1986), which had engrafted a "judicial tolling" requirement onto the One-Year-Back Rule set forth in MCL 500.3145(1). After full briefing and oral argument, this Court overruled *Lewis* as being inconsistent with the actual statutory text of MCL 500.3145(1). In doing so, this Court reiterated the bedrock principle that it is the Legislature's prerogative to weight public policy considerations when enacting a law. By contrast, the Court's duty is to simply state what the law is, not what the law ought to be:

"As is no doubt evident from the foregoing discussion of the questionable lineage of *Lewis*, as well as the expansion of the *Lewis* doctrine by our Court of Appeals, we are today compelled to overrule *Lewis* to reaffirm the legislature's prerogative to set policy and our long-established commitment to the application of statutes according to their plain and unambiguous terms to preserve that legislative prerogative."

Id. at 581, 702 NW2d 539 (2005)

One year later, this Court again reaffirmed the legislative prerogative to establish policy, through the very words it has chosen when enacting the legislation itself, when it noted:

"It is the legislators who establish the statutory law because the legislative power is exclusively theirs. We cannot revise, amend, deconstruct, or ignore their product and still be true to our responsibilities that give our branch only the judicial power. By what theory can we not recognize these undeniable constitutional truths? The only one is that we have the raw power, because we rule after they have enacted, to refuse to honor the bargain they struck. This is an indefensible position whose illegitimacy was classically outlined by Chief Justice Marshall in the celebrated case of *Marbury v Madison*, 5 US (1 Cranch) 137, 177, 2 L. Ed. 60 (1803), which has been the lodestar for generations of judges in

questions of statutory construction: ours is to declare what the law is, not what it ought to be.”

Cameron v ACIA, 476 Mich 55, 66, 718 NW2d 784 (2006)

What Westfield seeks, in this case, is no different from what the litigants sought in *DeVillers* and *Cameron*; namely, Westfield seeks a reaffirmation from this Court that is the Legislature, not this Court, which makes policy decisions, and where the Legislature has already spoken on an issue, by virtue of its clear and unambiguous statutory text, it is improper for any Court, including this Court, to judicially amend the statutory text.

Unfortunately, this Court did just that in *Miller, supra*. Again, the statutory text of MCL 500.3106(1) provides:

“Accidental bodily injury does not arise out of the . . . maintenance . . . of a parked vehicle as a motor vehicle unless any of the following occur.”

In *Miller*, just as in this case, the parties agreed that none of the three statutory exceptions to MCL 500.3106(1) applied. Nonetheless, this Court apparently ignored the statutory text, excerpted above, when it held that:

“Compensation is thus required by the No-Fault Act [MCL 500.3105, for injuries arising out of the maintenance of a motor vehicle] without regard to whether his vehicle might be considered ‘parked’ at the time of the injury.”

Miller, 309 NW2d at 547.

In holding that all maintenance-related injuries are compensable under the No-Fault Act, without regard to whether or not the vehicle was “parked” at the time of the injury, this Court judicially amended the statutory text of MCL 500.3106(1), which clearly precludes coverage for maintenance injuries arising out of a parked motor vehicle unless one of the three statutory exceptions to the Parked Vehicle Exclusion applied.

This matter is ripe for review by this Court at this time. The facts are undisputed. All parties agree that this case presents a direct challenge to the continuing viability of this Court’s

decision in *Miller, supra*, where its legal underpinnings have been seriously eroded by this Court's subsequent decisions in *Willer, supra*; *Frazier, supra* and *LeFevers, supra*. This case involves legal principles of major significance to the jurisprudence of this state, pursuant to MCR 7.302(B)(3), particularly with regard to the application of the clear and unambiguous language of the Parked Vehicle Exclusion contained in the No-Fault Act, MCL 500.3106(1). This Court's "judicial amendment" of this provision, in *Miller, supra*, when it effectively eliminated the word "maintenance" from the text of MCL 500.3106(1) must be corrected by this Court, as only this Court has the authority to overrule one of its earlier decisions. Accordingly, the merits of Westfield's appeal demand review by this Court.

DETAILED STATEMENT OF FACTS

This Application for Leave to Appeal involves a claim for payment of “allowable expenses” under the Michigan No-Fault Insurance Act, in the form of medical expenses, incurred by one Shawn Norman as a result of injuries he suffered in an incident occurring on May 5, 2012, involving a parked motor vehicle. At the time of this occurrence, Westfield was the no-fault insurer of the owner or registrant of the parked motor vehicle involved in the incident. Spectrum provided medical services to Mr. Norman as a result of the injuries he suffered in this incident.

The underlying facts are undisputed, as they are taken directly from the deposition of Shawn Norman, taken on August 9, 2013. A copy of the deposition transcript is attached as *Exhibit 1*. Mr. Norman was changing a tire on a 2004 Chevy Blazer, owned by his father, Godfrey Norman and his mother, Pam Jewell. The driver’s side rear tire was flat, so Mr. Norman decided to help his mother and father by changing the tire. Mr. Norman jacked up the vehicle and removed the wheel and tire assembly from the axle. He then laid the wheel assembly flat on the ground and slid it under the axle, so that if the jack became dislodged, the vehicle would not fall to the ground. Instead, it would simply fall on the wheel assembly. Unfortunately, while sliding the wheel assembly under the axle, it accidentally bumped the jack and dislodged it, causing the vehicle to fall off the jack and pinch Shawn Norman’s fingers between the axle and the wheel’s rim.

Mr. Norman described the incident as follows during his deposition:

“Q And it’s my understanding that you were changing a tire?

A Yes, sir.

Q And on whose vehicle were you changing the tire?

A **It would be my mother and father’s vehicles, both theirs, I believe.**

Q Which vehicle is it?

A **It would be a 2004 Chevy Blazer, ZR-2; the two-door model.**

Q And do you remember which tire it was?

A **The driver-side rear.**

Q Were you asked to change it? Did you pay on—

A **The tire was flat, so I took it upon myself so my mother didn't have to do it and neither did my father. Started changing it, slid the tire underneath the brake caliper, you know, to catch it in case the jack were to fail or something like that. While doing that, the tire bumped the jack, causing it to fall, and the corner of the brakes caught these (indicating) two fingers.**

Q Okay. I'll try and get this clear, then. The tire is flat?

A **Yes, sir.**

Q And I assume you go to jack up the vehicle?

A **Uh-huh (affirmative).**

Q That "yes"?

A **Yes, sir.**

Q And what jack do you use?

A **I used the factory jack.**

* * *

Q And where do you put the jack?

A **Underneath the axle pad; one of the specified jacking points, actually....**

Q So it's on the rear axle pads?

A **Yes, sir.**

Q I assume you loosened the lug nuts before you jacked it up?

A **Only cracked them free, not actually taking them off or anything like that, yes.**

* * *

Q And then it's unclear. What happened after you got the lug nuts off?

A **I pulled the tire off and I just went to slide it underneath the end of the axle, in case the jack were to fail, 'cause things like that — 'cause I didn't have jack**

stand, where a jack stand would prevent a failure, which actually I used the tire as a supplement for it. While sliding it under, caught the edge of the jack or hit the jack somehow, for some reason, and it shifted in the gravel driveway and collapsed down and caught these two fingers right here (indicating), which would be right middle and right ring finger, and pinched them. This (indicating) one, it peeled off a good layer of skin, bruised it badly. This (indicating) one, it pinched all the way through, severing muscle, tendon, breaking bone; whole nine.

Q It was the contact with the — was it the flat tire that you were sliding under the axle?

A It was actually the rim to the flat tire and the axle, yes.

Q That hit the jack?

A Uh-huh (affirmative).

Q That's "yes"?

A "Yes," yes, sir."

Deposition of Shawn Norman, pages 7-10 (emphasis added).

Simply put, there is no doubt but that the vehicle was **parked** at the time of the accident.

Generally speaking, MCL 500.3106(1), commonly referred to as the Parked Vehicle Exclusion, bars any claims for no-fault benefits arising out of the ownership, operation, **maintenance** or use of a **parked motor vehicle** as a motor vehicle, subject to three statutory exceptions. Given the statutory text and the fact that the vehicle being maintained was parked, the only way that Mr. Norman's medical providers would be entitled to recover no-fault benefits would be if Mr. Norman's claim fell within one of the three statutory exceptions to the Parked Vehicle Exclusion set forth in MCL 500.3106(1). As demonstrated more fully below, none of the three statutory exceptions to the Parked Vehicle Exclusion apply, and, but for this Court's decision in *Miller, supra*, Westfield should have been entitled to Summary Disposition in the District Court.

However, the District Court and Circuit Court were bound by this Court’s 1981 “judicial re-writing” of the Parked Vehicle Exception set forth in MCL 500.3106 in *Miller, supra*. As discussed more fully below, in *Miller*, this Court judicially amended the otherwise clear and unambiguous statutory text of MCL 500.3106(1) to eliminate the word “maintenance” from the Parked Vehicle Exclusion. **In other words, this Court, back in 1981, judicially rewrote MCL 500.3106(1) to achieve what it perceived as its preferred public policy goal – to have all maintenance injuries arising out of a parked motor vehicle compensable under MCL 500.3105(1) – without regard to the clear and unambiguous statutory text of MCL 500.3106(1), which limits the compensability of maintenance injuries only to those incidents falling within one of the three statutory exceptions to the Parked Vehicle Exclusion.**

Like the No-Fault Act itself, the Westfield insurance policy limits coverage for accidents involving a parked motor vehicle to situations where one of the three statutory exceptions to the Parked Vehicle Exclusion is satisfied. See **Exhibit 2**, the certified copy of the Westfield policy that was in effect at the time of this occurrence. Page 4 of the Personal Auto Amendatory Endorsement provides:

“We do not provide Personal Injury Protection Coverage for **bodily injury**:

* * *

13. Arising out of the ownership, operation, maintenance or use of a parked *auto*. This exclusion (A.13.) does not apply if:
 - a. The *auto* was parked in such a way as to cause unreasonable risk of the bodily injury; or
 - b. The bodily injury resulted from physical contact with:

- (1) Equipment permanently mounted on the *auto* while the equipment was being used; or
 - (2) Property being lifted onto or lowered from the *auto*; or
- c. The bodily injury was sustained while occupying the *auto*.”

(Underscore added, italics and bold in original.)

Westfield’s policy, like the No-Fault Act itself, limits the compensability of injuries arising out of the maintenance of an automobile to certain circumstances:

- The vehicle must be parked in such a way or manner as to cause unreasonable risk of the bodily injury which occurred (MCL 500.3106(1)(a));
- The injury must result from physical contact with equipment permanently mounted on the vehicle while the equipment was being used or property being lifted on to or lowered from the vehicle (MCL 500.3106(1)(b)); or
- The injury must occur while the person was entering into, occupying or alighting from the vehicle (MCL 500.3106(1)(c)).

Because the policy form mirrors the statute and has been approved for use by the State of Michigan Department of Insurance and Financial Services (DFIS), these contractual provisions should have been enforced by the Courts below. As this Court observed in *Rory v Continental Ins Co*, 473 Mich 457, 703 NW2d 23 (2005), the provisions of an insurance contract are to be enforced just as the provisions of any other contract, particularly where the provisions have been approved by the state agency in charge of approving such provisions. The only exception is if the provisions themselves clearly violate the Michigan public policy **as enunciated by the Legislature**. In this case, the policy provisions mirror the statutory text and, as such, the policy provisions are designed to achieve the same goal as the legislative provisions – to limit the compensability of injuries involving parked motor vehicles to situations falling within one of the three statutorily enumerated exceptions to the Parked Vehicle Exclusion.

PROCEDURAL HISTORY

Following the completion of discovery in the District Court, Westfield filed its Motion for Summary Disposition on December 5, 2013. In its Motion for Summary Disposition, Westfield argued that Plaintiffs' claim for no-fault benefits was precluded by the clear and unambiguous statutory language of MCL 500.3106(1), otherwise known as the Parked Vehicle Exclusion. This statute 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:
- (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
 - (b) Except as provided in subsection (2), 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) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.”

Westfield then engaged in a detailed analysis of why none of the three statutory exceptions to the Parked Vehicle Exclusion applied under the facts and circumstances of this case.

Plaintiffs then filed their Cross-Motion for Summary Disposition with the District Court on December 12, 2013. Interestingly, in its Cross-Motion for Summary Disposition, Plaintiffs argued that Mr. Norman was actually “occupying” the vehicle at the time of the occurrence, relying upon this Court’s decision in *Nickerson v Citizens Mut’l Ins Co*, 393 Mich 324, 224 NW2d 896 (1995) and its progeny, including *Koole v Michigan Mut’l Ins Co*, 126 Mich App 483, 337 NW2d 369 (1983), *Sherman v Michigan Mut’l Ins Co*, 124 Mich App 700, 335 NW2d

232 (1983) and *Davis v Auto-Owners Ins Co*, 116 Mich App 402, 323 NW2d 412 (1982). In response, Westfield pointed out, in its Answer to Plaintiff's Cross-Motion for Summary Disposition dated January 17, 2014, that this Court's decision in *Nickerson, supra*, was actually **overruled** by this Court in *Rednour v Hastings Mut'l Ins Co*, 468 Mich 241, 661 NW2d 562 (2003), which applied a common sense definition to the term "occupant" or "occupying," as those terms are used in the No-Fault Insurance Act. **Plaintiffs subsequently withdrew this argument and, as a result, all parties agreed that none of the three statutory exceptions to the Parked Vehicle Exclusion, set forth in MCL 500.3106(1), apply under the facts and circumstances of this case.**

As a result, the only theory under which Plaintiffs could recover benefits from Westfield is the judicially-created "maintenance exception" to the Parked Vehicle Exclusion enunciated by this Court back in 1981, in *Miller, supra*. Following briefing by Defendant as to why *Miller, supra*, was wrongly decided, and briefing by Plaintiffs as to why this Court reached the right result in *Miller*, as well as briefing on Plaintiffs' entitlement to no-fault penalty attorney fees, Judge J. Michael Christensen, of the 61st Judicial District Court, entertained oral argument on the Cross-Motions for Summary Disposition on January 28, 2014. The transcript from the motion hearing is attached as **Exhibit 3**. The District Court recognized that it was bound by this Court's earlier decision in *Miller* and granted summary disposition in favor of Plaintiffs on that ground. Interestingly, the District Court indicated that it agreed with Westfield's attempt to convince this Court, in this case, that its earlier decision in *Miller* was wrongly decided. However, the District Court was uneasy about Westfield's endeavor because, in its opinion, "the trend, both federally and statewide, is that, in fact, the Courts are obligated to write legislation as they review cases." As stated by the District Court:

“Westerland (sic) would like to change all that. I applaud their request to change the interpretation of the statute by the Michigan Supreme Court. I would say, parenthetically, that I think that that’s an uphill battle, not because of the Supreme Court makeup, itself, but because the trend, both federally and statewide, is that, in fact, the Courts are obligated to write legislation as they review cases.”

The newest appointment to the Supreme Court, Sonia Sotomayor, in fact, said that in a speech, that that was her role as a Supreme Court Justice, and I just read the other day – again, I’m on a political rant, but that the President’s gonna ignore Congress and just do things by edict. That’s the trend now. So I wish Westerland (sic) good luck.”

TR 1-28-2014, pg 10 (emphasis added).

Having applauded Westfield’s attempt to do what numerous other litigants have done when confronted with shaky legal precedent (i.e., take the matter up to this Court), the District Court suddenly did a 180 degree reversal and ruled that no-fault penalty attorney fees were due because, in the lower court’s opinion, Westfield’s position (which, as demonstrated *infra*, has significant justifiable basis in fact and in law) was “unreasonable.” (TR 1-28-2014, pg 11.)

As a result of the lower court’s ruling, the District Court subsequently entered an Order and Judgment Granting Plaintiffs’ Motion for Summary Disposition on March 3, 2014. A copy of the Order is attached as **Exhibit 4**. Westfield timely filed its Claim of Appeal, as of Right, with the Kent County Circuit Court on March 21, 2014.

Defendant filed its Brief on Appeal with the Kent County Circuit Court on July 12, 2014. In its Appeal, Westfield again argued that, but for this Court’s decision in *Miller, supra*, Westfield should have been entitled to summary disposition, given the clear and unambiguous statutory text of the Parked Vehicle Exclusion. Westfield also pointed out that two Justices of this Court (Justice Markman and former Justice Corrigan) had signaled their belief that *Miller* was wrongly decided, and ought to be overruled. See *Willer, supra*. Westfield also pointed out that, in a subsequent decision of this Court, *Frazier, supra*, four Justices of this Court explicitly

held that in order for an injury arising out of a parked motor vehicle to be compensable, one of the three statutory exceptions to the Parked Vehicle Exclusion must be met:

“MCL 500.3106(1) expressly delineates when ‘accidental bodily injury arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle’ if the vehicle is parked. **Therefore, in the case of a parked motor vehicle, a claimant must demonstrate that his or her injury meets one of the requirements of MCL 500.3106(1) because unless one of those requirements is met, the injury does not arise out of the use of a vehicle as a motor vehicle, under MCL 500.3105(1).**”

Frazier, 808 NW2d at 450-451 (emphasis added).

Therefore, Defendant should have been granted summary disposition.

Defendant also argued that the District Court improperly awarded no-fault penalty attorney fees under MCL 500.3148(1), as Westfield’s argument was based upon a legitimate question of statutory construction or interpretation. Defendant pointed out that the law is constantly in a state of flux, and that Courts should not be bound by precedent where that precedent is poorly reasoned, or inconsistent with the clear and unambiguous statutory text. As it did in the District Court, Defendant also relied on the comprehensive list of cases, referenced by Justice Markman in his concurring opinion in *Rowland v Washtenaw Co Road Comm*, 477 Mich 197, 731 NW2d 41 (2007), in which litigants had successfully challenged prior decisions from both this Court and the Court of Appeals which were in derogation of the clear and unambiguous statutory text that otherwise would have governed the issue. This chart is likewise attached as **Exhibit 5** to this Application for Leave to Appeal.

Following further briefing, the Kent County Circuit Court conducted oral argument on Westfield’s appeal on July 31, 2014. As the Court was bound to do, it affirmed the decision of the lower court regarding Plaintiffs’ entitlement to benefits, pursuant to this Court’s decision in *Miller, supra*. However, the Court likewise affirmed the District Court’s decision to award

no-fault penalty attorney fees, even though the Court rightly acknowledged that Westfield has a colorable argument, which may very well be considered by this Court, given the textual analysis employed by Defendant throughout this litigation. As a result, the District Court's ruling was affirmed in all respects and the appropriate Order was entered by the Kent County Circuit Court on September 3, 2014. See **Exhibit 6**.

Defendant filed its Application for Leave to Appeal with the Michigan Court of Appeals on September 23, 2014. Shortly thereafter, Defendant filed a Bypass Application for Leave to Appeal with this Court. The Bypass Application for Leave to Appeal was assigned docket no. 150384. On February 3, 2015, this Court issued an Order denying Westfield's Bypass Application for Leave to Appeal. This Order is attached as **Exhibit 7** and is reproduced below:

“On order of the Court, the application for leave to appeal prior to decision by the Court of Appeals is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court before consideration by the Court of Appeals.”

Westfield's application to the Michigan Court of Appeals, pending under docket no. 323804, had not been decided by the Court of Appeals when this Court issued its Order of February 3, 2015. However, one month later, on March 2, 2015, a panel of the Court of Appeals, consisting of Presiding Judge William Murphy and Judges Jane Beckering and Douglas Shapiro, issued an Order denying Westfield's Application for Leave to Appeal. See **Exhibit 8**. Therefore, Westfield's Application for Leave to Appeal is timely pursuant to MCR 7.302(C)(2)(a), which provides that an Application for Leave to Appeal can be filed within 42 days after the Court of Appeals clerk mails notice of an Order entered by the Court of Appeals.

LEGAL ARGUMENT

I. STANDARD OF REVIEW

This Court reviews *de novo* a lower court's decision on a Motion for Summary Disposition. *Shepherd Montessori Center of Milan v Ann Arbor Charter Twp*, 486 Mich 311, 783 NW2d 695 (2010). Furthermore, this case involves significant issues of statutory construction and interpretation and, as such, these are questions of law that this Court likewise reviews *de novo*. *Eggleston v Bio-Med Applications of Detroit Inc*, 468 Mich 29, 628 NW2d 139 (2003). This standard of review applies to the first question presented in this appeal; namely, whether Defendant is obligated to afford no-fault benefits to Plaintiffs where the clear and unambiguous statutory text dictates otherwise.

With regard to the attorney fee issue, the appellate review of a decision about whether the insurer acted reasonably in its denial of claim involves mixed questions of law and fact. What constitutes reasonableness is a question of law, but whether the Defendant's denial of benefits is reasonable under the particular facts of the case is a question of fact. *Moore, supra; Ross v Auto Club Group*, 481 Mich 1, 748 NW2d 552 (2008). As noted above, this Court reviews *de novo* questions of law, but findings of fact are reviewed for clear error. *Moore, supra*. "A decision is clearly erroneous when the reviewing Court is left with a definite and firm conviction that a mistake has been made." *Kitchen v Kitchen*, 465 Mich 654, 641 NW2d 245 (2002).

II. SHAWN NORMAN’S INJURIES ARE NOT COMPENSABLE UNDER THE NO-FAULT ACT, PURSUANT TO THE CLEAR AND UNAMBIGUOUS STATUTORY LANGUAGE SET FORTH IN MCL 500.3106(1), COMMONLY KNOWN AS THE PARKED VEHICLE EXCLUSION; TO THE EXTENT THAT THIS COURT IN *MILLER V AUTO-OWNERS INS CO*, 411 MICH 633, 309 NW2d 544 (1981) RULED OTHERWISE, *MILLER* IS INCONSISTENT WITH THE STATUTORY TEXT; BY HOLDING THAT ALL MAINTENANCE INJURIES ARE COMPENSABLE UNDER MCL 500.3105(1), WITHOUT REGARD TO THE TEXT OF THE PARKED VEHICLE EXCLUSION IN MCL 500.3106, THE *MILLER* COURT EXCEEDED ITS CONSTITUTIONAL BOUNDS BY JUDICIALLY DELETING THE WORD “MAINTENANCE” FROM THE STATUTORY TEXT OF MCL 500.3106(1) AND THEREBY JUDICIALLY CREATING A FOURTH EXCEPTION TO THE PARKED VEHICLE EXCLUSION

The starting point for any analysis of the issue of no-fault coverage is MCL 500.3105(1).

This section of the No-Fault Insurance Act, referred to as the “Gateway Provision” provides:

“Under personal protection insurance, an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.”

Webster’s II New College Dictionary defines the word “subject” as “being under the authority, control or power of another” as in the phrase “subject to the law.” Simply put, this statutory provision is a general grant of benefits to persons who suffer injuries arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, unless certain exceptions, found in other statutory provisions, apply. In those situations, the exceptions control the outcome of whether or not benefits are payable. To put it another way, the broad grant of coverage set forth in MCL 500.3105 is “trumped” by any conflicting provisions found in other sections of the No-Fault Act.

One such exception is found in MCL 500.3106, the so-called “Parked Vehicle Exclusion.” This section of the No-Fault Act provides that:

“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:

- (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
- (b) Except as provided in subsection (2), the injury was 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) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.”

In this case, there is no doubt but that the injuries suffered by Shawn Norman do not fall within any of the three statutory exceptions to the Parked Vehicle Exclusion. **The parties agree on this key point.** Since the broad grant of benefits under MCL 500.3105(1) is **subject to** other provisions of the No-Fault Act, including MCL 500.3106(1), it is clear that MCL 500.3106(1) controls the issue of whether or not Shawn Norman and his medical providers are entitled to recover no-fault benefits. Spectrum is clearly **not** entitled to benefits, if the plain and unambiguous statutory text is to be applied as written. It is the application of judicial “interpretation,” “construction,” or “gloss” brought about by this Court’s unfortunate deviation from its constitutional obligations in *Miller, supra*, which defeats the otherwise plain and unambiguous statutory text and gives rise to coverage under this case. Simply stated, the *Miller* court judicially erased the word “maintenance” from the statutory text of MCL 500.3106(1) and held that all maintenance injuries are compensable under the No-Fault Act, pursuant to MCL 500.3105(1), without regard to any limitations set forth in the Parked Vehicle Exclusion, found in the very next section of the Michigan No-Fault Insurance Act – MCL 500.3106(1). Regretfully, this Court’s decision in *Miller* is a classic example of “judicial legislation.”

As this Court, as presently constituted, has made abundantly clear, the starting point for any analysis of a statute is the statutory language itself. In *Robinson, supra*, this Court clarified the standards to be applied when interpreting the language of a particular statute:

“Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis must begin with the wording of the statute itself. *Carr v General Motors Corp*, 423 Mich 313,317,319 NW2d 686 (1986). Each word of a statute is presumed to be used for a purpose and, as far as possible, effect must be given to every clause and sentence. *University of Michigan Board of Regents v Auditor General*, 167 Mich 444,450,132 NW 1037 (1911). The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another. *Detroit v Redford Township*, 253 Mich 453, 456, 235 NW 217 (1931). Where the language of the statute is clear and unambiguous, the court must follow it. *City of Lansing v Lansing Township*, 356 Mich 641, 649, 97 NW2d 804 (1959).”

Robinson, 462 Mich 439, 459, 613 NW2d 307 (2000)

Words that are not defined by a statute will be given their plain and ordinary meanings and a Court may consult dictionary definitions when ascertaining such a meaning. *Griffith v State Farm*, 472 Mich 521, 697 NW2d 895 (2005); *Stocker v Tri-Mount Bay Harbor Building Co Inc*, 268 Mich App 194, 706 NW2d 878 (2005). If the language is clear and unambiguous, the statute must be enforced as written, as the Court must presume that the Legislature intended the meaning as expressed. *Madugula v Taub*, 496 Mich 685, 853 NW2d 75 (2014); *Elezovic v Ford Motor Company*, 472 Mich 408, 697 NW2d 851 (2005). Under these circumstances, judicial construction or interpretation of the statutory provision is simply not permitted. *Bedford Public Schools v Bedford Educ Ass'n MEA/NEA*, 305 Mich App 558, 564; 853 NW2d 452 (2014); *Brans v Extrom*, 266 Mich App 216, 701 NW2d 163 (2005).

Devillers, supra, illustrates the principle which should be applied in the case at bar. In *Lewis, supra*, this Court had ruled that the One Year Back Rule set forth in MCL 500.3145(1) could be tolled from the date that a claim was submitted to the date that the claim was formally

denied. *Lewis* remained the law of the land until this Court had an opportunity to re-examine its holding in *Devillers, supra*. In *Devillers*, this Court specifically ruled that the *Lewis* Court had exceeded its constitutional authority by essentially redrafting MCL 500.3145(1) to incorporate the concept of “judicial tolling,” in contravention of the clear and unambiguous statutory language. As stated by then Justice (now Chief Justice) Young, writing for the majority:

“As is no doubt evident from the foregoing discussion of the questionable lineage of *Lewis*, as well as the expansion of the *Lewis* doctrine by our Court of Appeals, we are today compelled to overrule *Lewis* to reaffirm the legislature’s prerogative to set policy and our long-established commitment to the application of statutes according to their plain and unambiguous terms to preserve that legislative prerogative.

* * *

Statutory — or contractual — language must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of this court. **The *Lewis* majority impermissibly legislated from the bench in allowing its own perception concerning the lack of ‘sophistication’ possessed by no-fault claimants, as well as its speculation that the average claimant expects payment without the necessity for litigation, to supersede the plainly expressed legislative intent that recovery of PIP benefits be limited to losses incurred within the year prior to the filing of the lawsuits.**”

Devillers, 473 Mich 562, 581-583, 702 NW2d 539 (2005)
(emphasis added)

As stated above, this Court went on to note that the *Lewis* Court acted outside of its constitutional authority by inserting its own policy views into the text of MCL 500.3145(1).

Westfield respectfully submits that the *Miller* Court did the very same thing that the *Lewis* Court did when it judicially amended MCL 500.3106(1) to remove the word “maintenance” from the “Parked Vehicle Exclusion” set forth in that statute to achieve its perceived public policy objective that all maintenance-related injuries be compensable under the No-Fault Act, regardless if the vehicle involved is parked or not.

In *Miller*, Plaintiff was injured when his automobile fell on his chest while he was attempting to replace a pair of shock absorbers. Plaintiff sought payment of PIP benefits from his own no-fault insurer, Defendant Auto-Owners Insurance Company pursuant to MCL 500.3105(1). Defendant denied the claim on the basis of the clear and unambiguous language set forth in the “Parked Vehicle Exclusion” set forth in MCL 500.3106. Even though Plaintiff’s vehicle was obviously “parked,” the Trial Court granted Plaintiff’s Motion for Partial Summary Judgment on the issue of liability, *i.e.*, coverage, holding that Plaintiff was maintaining the vehicle under MCL 500.3105(1), and that it was not “parked” within the meaning of MCL 500.3106(1). The Court of Appeals reversed and remanded the matter back to the Circuit Court for a determination as to whether or not Plaintiff’s injuries arose out of one of the three statutory exceptions to the Parked Vehicle Exclusion set forth in MCL 500.3106(1).

On appeal, the *Miller* Court noted an apparent “conflict” between MCL 500.3105(1) and MCL 500.3106(1), and stated the following:

“There is an apparent tension between these two sections of the No-Fault Act: requiring, on the one hand, compensation for injuries incurred in the maintenance of a vehicle but not requiring, on the other hand, compensation for injuries incurred in the maintenance of a *parked* vehicle, with three exceptions. Since most, if not all, maintenance is done while the vehicle is parked, and since the three exceptions appear addressed to circumstances unrelated to normal maintenance situations, a conflict appears.”

Miller, 309 NW2d at 545 (italics in original.)

There is, in fact, no conflict between these two provisions. As previously observed, MCL 500.3105(1) provides for a general grant of coverage “subject to the provisions of this chapter.” One such provision, of course, is the Parked Vehicle Exclusion, set forth in MCL 500.3106(1). **Therefore, the terms of the exclusion set forth in MCL 500.3106 trump the broad, general grant of coverage under MCL 500.3105(1).** The *Miller* Court should have

stopped its analysis at that point, and ruled that injuries suffered while maintaining an automobile are not compensable under the No-Fault Insurance Act, unless the injury fell within one of the three statutory exceptions to the Parked Vehicle Exclusion described in MCL 500.3106(1) (a), (b) or (c).

Unfortunately, the *Miller* Court did not do so. Having set up a classic “straw man” argument, regarding the purported conflict between MCL 500.3105(1) and MCL 500.3106(1), the court then set out to achieve its preferred policy objective; i.e., coverage for Mr. Miller and indeed, every claimant who is injured while maintaining an automobile. To do so, it engaged in an analysis of the various policy considerations behind the “Parked Vehicle Exclusion” set forth in MCL 500.3106(1). In fact, Justice Levin made no bones about relying on the policy considerations behind the “Parked Vehicle Exclusion”:

“The policy underlying the parking exclusion is not so obvious, but once discerned, is comparably definite. Injuries involving parked vehicles do not normally involve the motor vehicle *as a motor vehicle*. Injuries involving parked vehicles typically involve the vehicle in much the same way as any other stationary object (such as a tree, sign post or boulder), would be involved. There is nothing about a parked vehicle *as a motor vehicle* that would bear on the accident.

The stated exceptions to the parking exclusion clarify and reinforce this construction of the exclusion. Each exception pertains to injuries related to the character of a parked vehicle as a motor vehicle — characteristics which make it unlike other stationary roadside objects which can be involved in vehicle accidents.”

Miller, 309 NW2d at 546 (italics in original).

The *Miller* Court went on to effectively “delete” or judicially “erase” the word “maintenance” from MCL 500.3106 by relying on such policy considerations:

“Each of the exceptions to the parking exclusion thus describes an instance where, although the vehicle is parked, its involvement in an accident is nonetheless directly related to its character as a motor vehicle. The underlying policy of the parking exclusion is that, except in three general types of situations, a parked car is not

involved in an accident *as a motor vehicle*. It is therefore inappropriate to compensate injuries arising from its non-vehicular involvement in an accident within a system designed to compensate injuries involving motor vehicles as motor vehicles.

The policies underlying §3105(1) and §3106 are thus complementary rather than conflicting. None of the policy behind the parking exclusion — to exclude injuries not resulting from the involvement of a vehicle as a motor vehicle — conflicts with the policy of compensating injuries incurred in the course of maintaining (repairing) a motor vehicle. The terms of the parking exclusion should be construed to effectuate the policy they embody and to avoid conflict with another provision whose effect was intended to be complementary.”

Miller, 309 NW2d at 546-547 (italics in original).

Justice Levin then concluded that plaintiff was entitled to no-fault benefits, despite the fact that Plaintiff was injured while **maintaining** a **parked** motor vehicle. **In so doing, the Miller Court judicially amended MCL 500.3106 to remove the word “maintenance” from the text of the statute.** When seen in this light, it is clear that the *Miller* Court went beyond its constitutional authority when it **judicially created** a fourth exception to the Parked Vehicle Exclusion wholly unwarranted by the actual statutory language utilized — the “maintenance” exception.

In *Willer, supra*, Titan Insurance Company challenged the continuing viability of this Court’s decision in *Miller, supra*. Westfield’s current defense counsel is intimately familiar with the facts and circumstances involved in *Willer, supra*, as Westfield’s counsel represented Titan at all levels, including briefing and oral argument before this Court. In *Willer*, one Fern Willer suffered a serious shoulder injury while scraping ice and snow from her car’s windshield. She apparently slipped and fell on the ice surrounding the vehicle. The Circuit Court ruled that Ms. Willer was entitled to no-fault benefits as she was maintaining her automobile at the time of the occurrence, relying on this Court’s decision in *Miller, supra*. The Court of Appeals denied Titan’s Interlocutory Appeal. Titan then filed a Leave to Appeal with this Court, which granted Oral Argument on the Application. Following oral argument, two justices (former Chief Justice

Clifford Taylor and Justice [now Chief Justice] Robert Young) determined that the causal relationship between the motor vehicle and the injury was “incidental, fortuitous or ‘but for’.” Therefore the “causal nexus” requirement set forth in MCL 500.3105 (“use of a motor vehicle as a motor vehicle”) was not satisfied because the vehicle was not the instrumentality of the injury — only the situs. See *Thornton v Allstate Ins Co*, 425 Mich 643, 391 NW2d 320 (1986) (Cab driver shot by passenger inside his cab; because the vehicle was not the instrumentality of the injury, the driver was not entitled to recover no-fault benefits); *Morosini v Citizens Ins Co of America*, 462 Mich 303, 682 NW2d 828 (1999) (Plaintiff assaulted following minor traffic accident; not entitled to no-fault benefits); *Bourne v Farmers Ins Exch*, 449 Mich 193, 534 NW2d 491 (1995) (Claimant injured during an attempted carjacking—not entitled to no-fault benefits).

However, two Justices (Justice Stephen Markman and former Justice Maura Corrigan) determined that, in fact, *Miller* was **wrongly decided** as it was inconsistent with the clear and unambiguous statutory language utilized by the legislature in MCL 500.3106(1). As stated by Justice Markman in his concurring opinion, after the quoting the statutory language of MCL 500.3106(1) itself:

“Because §3106(1) states that an injury generally does not ‘arise out of’ the maintenance of a parked vehicle as a motor vehicle ‘unless’ one of the three exceptions is satisfied, **§3106(1) indicates that, in every case involving a parked vehicle, a plaintiff must demonstrate that one of the three listed exceptions is satisfied.**”

However, this Court previously has not required plaintiffs in parked vehicle cases to satisfy §3106(1) if §3105(1) is satisfied. In *Miller v Auto Owners Insurance*, 411 Mich 633, 641, 309 NW2d 544 (1981), this Court opined that ‘the policies underlying §3105(1) and §3106 . . . are complementary rather than conflicting.’ Accordingly, ‘compensation is . . . required by the No-Fault Act without regard to whether [the plaintiff’s] vehicle might be considered ‘parked’ at the time of injury.’ *Id.* In other

words, a plaintiff who satisfies §3105(1) in a parked vehicle case is not also obligated to satisfy §3106(1).

Miller's interpretation of the interplay between §3105(1) and §3106(1) is, in my view, clearly erroneous. Section 3105(1) permits recovery only if the insured vehicle is being used 'as a motor vehicle.' Section 3106(1) states that a parked vehicle is not being used 'as a motor vehicle' unless one of the three exceptions is applicable. Accordingly, every plaintiff in a parked-vehicle case must satisfy §3106(1) in order to recover.

Willer, 480 Mich 1177, 1179, 747 NW2d 245(2008) (emphasis added).

After declaring that *Miller* was “wrongly decided”, Justice Markman determined that because *Miller* ignored the clear and unambiguous language of MCL 500.3106(1), it “undercut the reliance that average citizens are entitled to place in the law enacted by their elected representatives.” *Id.* @ 1180. In other words, *Miller, supra* was an example of the judiciary acting as a “super legislature” and essentially erasing the word “maintenance” from the statutory text of MCL 500.3106(1). Justices Markman and Corrigan determined that because Ms. Willer’s injuries did not otherwise fall within any of the three statutory exceptions to the Parked Vehicle Exclusion, Ms. Willer was not entitled to recover No-Fault benefits.²

In *Frazier, supra*, this Court discussed whether or not no-fault benefits could be awarded in a situation where the Plaintiff was injured after he had completed the process of alighting from a vehicle. In so ruling, this Court again emphasized that in losses involving a parked vehicle, the loss **must** fall within one of the three statutory exceptions to the Parked Vehicle Exclusion in order to be compensable:

“At issue is whether defendant insurer is liable to plaintiff for personal protection insurance benefits under the no-fault act,

² Again, *Willer* was a 2-2-3 decision, with a majority of four justices agreeing that Ms. Willer was not entitled to recover no-fault benefits. As noted above, two of the four justices simply determined that the “causal nexus” requirement was not met. Two others determined that Ms. Willer failed to demonstrate that her injury fell within any of the three statutory exceptions to the Parked Vehicle Exclusion, and would have overruled the judicially created “maintenance exception” to the Parked Vehicle Exclusion enunciated by the Supreme Court in *Miller, supra*.

MCL 500.3101 etc. MCL 500.3105(1) sets forth the parameters of personal protection insurance coverage. It provides:

“Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.”

The next section of the Act, MCL 500.3106, explains when such liability attaches in the case of a parked vehicle:

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:

* * *

MCL 500.3106(1) expressly delineates when “accidental bodily injury arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle” if the vehicle is parked. Therefore, in the case of a parked motor vehicle, a Claimant must demonstrate that his or her injury meets one of the requirements of MCL 500.3106(1) because unless one of those requirements is met, the injury does not arise out of the use of a vehicle as a motor vehicle, under MCL 500.3105(1).”

Frazier, 490 Mich 381, 383-384, 808 NW2d 450 (2011) (emphasis added).

This Court ultimately determined that because Plaintiff’s injury did not fall within any of the three statutorily enumerated exceptions to the Parked Vehicle Exclusion, her claim for no-fault benefits was barred. Again, this Court made it clear, in *Frazier*, that “unless one of those requirements” set forth in MCL 500.3106(1) is met, an injured claimant or his or her provider is simply **not entitled** to recover no-fault benefits. As noted above and as subsequently agreed to by the parties, Mr. Norman’s injuries do not fall within any of the enumerated statutory exceptions to the Parked Vehicle Exclusion. Therefore, just as in *Frazier*, *supra*, and *Willer*, *supra*, the injury is not compensable under the No-Fault Insurance Act.

More recently, in *LeFevers v State Farm*, 493 Mich 960, 828 NW2d 678 (2013), this Court considered whether or not no-fault benefits would be available to a truck driver who was

injured while trying to open a hatch on the tail gate to the trailer. The circuit court, in *LeFevers*, held that there was a question of fact as to whether or not Mr. LeFevers would be entitled to no-fault benefits, even though his vehicle was parked at the time of the occurrence. The Court of Appeals affirmed the decision, even after this Court released its decision in *Frazier, supra*. After hearing oral argument on the Application for Leave to Appeal, this Court vacated the decision of the Court of Appeals and remanded the matter back to the Wayne County Circuit Court for further fact finding. In doing so, this Court reminded the lower courts that its latest pronouncement in *Frazier, supra* “effectively disavowed” its earlier decision in *Miller, supra*, “to the extent that [this decision is] inconsistent with *Frazier*.” Although *LeFevers* dealt with the issue of whether or not the hatch to the tailgate constituted “equipment” as that term is utilized in MCL 500.3106(1)(b), the point is that this Court has been chipping away at the continuing viability of *Miller, supra*, to the point where it now stands on very shaky legal foundations. As acknowledged by Justice Markman, in his concurring opinion in *Willer, supra*:

“In *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635, 563 NW2d 683 (1997), we stated that ‘where a [plaintiff] suffers an injury in an event related to a parked motor vehicle,’ such a plaintiff must ‘establish that he falls into one of the three exceptions to the parking exclusion in subsection 3106(1).’ Moreover, we reiterated the requirement that a plaintiff in a parked-vehicle case must satisfy §3106(1) and *McKenzie v Auto Club Ins Ass’n*, 458 Mich 214, 217 n 3, 580 NW2d 424 (1998), and in *Stewart v Michigan*, 471 Mich 692, 697, 692 NW2d 376 (2004). **Accordingly, this Court has called into question the continuing validity of Miller for over 10 years.**”

Willer, 480 Mich 1177, 1180, 747 NW2d 245 (2008) (emphasis added)

Simply put, because Shawn Norman’s injuries do not fall within any of the three statutorily enumerated exceptions to the Parked Vehicle Exclusion found at MCL 500.3106(1), his medical

providers' claims for no-fault benefits must necessarily fail. *Miller* was, beyond any doubt, wrongly decided and inconsistent with the actual statutory text of MCL 500.3106(1).

Throughout this appeal, Plaintiffs have consistently argued that "public policy" requires that all maintenance injures be compensable under the No-Fault Act. As noted by this Court in *Rednour, supra*, "Courts may not elevate preferential rules of interpretation above the unambiguous text of a statute or contract." (*Id* at 251.) The statutory text of MCL 500.3105(1) and MCL 500.3106(1) is clear and unambiguous. Mr. Norman's injuries are compensable **only if** the circumstances giving rise to the injury fall within one of the three statutory exceptions to the Parked Vehicle Exclusion set forth in MCL 500.3106(1) (a), (b), or (c). The parties agree that none of the statutory exceptions to the Parked Vehicle Exclusion apply under the facts of this case. But for the judicial amendment of MCL 500.3106(1) by this Court in *Miller*, this case is subject to dismissal.

In the numerous cases emanating from this Court since 1999, this Court has stated, almost without exception, that it is not the province of any Court to engage in a policy analysis behind a statute. That is a job for the Legislature, and it has done so under the facts and circumstances of this case. Contrary to the District Court's suggestion that Westfield seek redress in the legislative arena, Westfield respectfully submits that the Legislature has already spoken on this issue! There is no need for the Legislature to go back and redraft what it has already written, in rather clear and unambiguous terms. The time has come for this Court to re-examine the "continuing validity" of *Miller, supra*, and to declare that consistent with the statutory text, injuries suffered while maintaining a parked vehicle must fall within one of the three statutorily enumerated exceptions set forth in the Parked Vehicle Exclusion, MCL 500.3106(1), in order to be compensable under the No-Fault Act.

III. THE LOWER COURTS ERRED WHEN THEY AWARDED PLAINTIFFS THEIR NO-FAULT PENALTY ATTORNEY FEES UNDER MCL 500.3148(1), AS THERE EXISTS A LEGITIMATE ISSUE OF STATUTORY CONSTRUCTION AND INTERPRETATION, AND THE ARGUMENTS RAISED BY DEFENDANT ARE WELL GROUNDED IN FACT AND IN LAW, INCLUDING A STATEMENT BY TWO JUSTICES OF THIS COURT, TO THE EFFECT THAT *MILLER* WAS WRONGLY DECIDED (*WILLER, SUPRA*, MARKMAN, J. CONCURRING) AND FOUR SITTING JUSTICES OF THIS COURT, WHO RULED THAT IN ORDER FOR A PERSON TO QUALIFY FOR NO-FAULT BENEFITS ARISING OUT OF AN INCIDENT INVOLVING A PARKED MOTOR VEHICLE, ONE OF THE THREE STATUTORY EXCEPTIONS TO THE PARKED VEHICLE EXCLUSION MUST BE SATISFIED IN EVERY CASE (*FRAZIER, SUPRA*).

In the District Court, Plaintiffs argued that they were entitled to an award of no-fault penalty attorney fees under MCL 500.3148(1). Plaintiffs reiterated this argument at the Circuit Court level as well. This section of the Michigan No-Fault Insurance Act provides, in pertinent part:

“An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.”

In making this argument, Plaintiffs relied on the “relative clarity” of the current case law, and upon the Court of Appeals’ decision in *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 552 NW2d 671 (1996).

Both this Court and the Court of Appeals have made it clear that if there is a legitimate question of statutory construction or interpretation which forms the basis for a denial of a claim, a no-fault insurer’s refusal to pay no-fault benefits will be deemed reasonable, and, as a result, there can be no award of no-fault penalty attorney fees. See, e.g. *Ross, supra*; *Gobler, supra*;

Rice, supra; Attard, supra; United Southern Assurance Co, supra. The *United Southern* case is worthy of note, as the Court of Appeals found that a legitimate question of statutory construction existed as to whether or not the truck involved in the accident was “parked” at the time of the accident for purposes of the Parked Vehicle Exclusion and, if so, whether it was “parked in a manner as not to cause unreasonable risk of the damage which occurred” under MCL 500.3106(1)(a), the first exception to the Parked Vehicle Exclusion. As a result, there was no basis under MCL 500.3148(1) for an award of attorney fees.

The law is constantly in a state of flux. Courts should not be bound by precedent where that precedent is poorly reasoned, or inconsistent with the clear and unambiguous statutory text. As noted by Justice Weaver, in her concurring opinion in *McCormick v Carrier*, 487 Mich 180, 795 NW2d 517 (2010):

“*Stare decisis* is neither an ‘inexorable command,’ *Lawrence v Texas*, 539 U.S. 558, 577 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003) nor ‘a mechanical formula of adherence to the latest decision,’ *Helvering v Hallock*, 309 U.S. 106, 109, 60 S. Ct. 444, 84 L. Ed. 604 (1940) . . . If it were, segregation would be legal, minimum wage laws would be unconstitutional, and the government could wiretap ordinary criminal suspects without first obtaining warrants. See *Plessy v Ferguson*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896), overruled by *Brown v Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954); *Adkins v Children’s Hospital*, 261 U.S. 525, 43 S. Ct. 394, 67 L. Ed. 785 (1923), overruled by *West Coast Hotel Company v Parrish*, 300 U.S. 397, 57 S. Ct. 578, 81 L. Ed. 703 (1937); *Olmstead v United States*, 277 U. S. 438, 48 S. Ct. 564, 72 L. Ed. 944 (1928), overruled by *Katz v United States*, 389 U. S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).”

McCormick, Id. at 224 — Weaver, J. concurring, citing *Citizens United v Federal Election Commission*, 558 U.S. ___, 130 S. Ct. 896, 920, 175 L. Ed. 2d 753, 806 (2010).

Indeed, one need only examine the chart prepared by Justice Markman, in his concurring opinion in *Rowland v Washtenaw Co Road Comm*, 477 Mich 197, 731 NW2d 41 (2007), for a

comprehensive example of cases where counsel was not content to simply rely on established precedent, but to challenge that precedent as being inconsistent with statutory language. Again, this chart is attached hereto as **Exhibit 5**. In some of the cases listed in Justice Markman's chart, the cases being overruled were of recent vintage. Others, however, had been established case law for decades, but upon closer examination, it was determined that the Court's earlier holding was simply incompatible with the actual statutory language adopted by the legislature. This case is no different.

In *Gobler v Auto Owners Ins Co (on remand)*, 162 Mich App 717, 413 NW2d 92 (1987), the Court of Appeals unanimously determined that Plaintiff was not entitled to either no-fault penalty interest or attorney fees, given the Defendant's good faith in handling the claim which involved a legitimate issue of statutory interpretation. As stated by the Court of Appeals:

“What more thorough disposition can be necessary to vindicate the Defendant's position than the considered *per curiam* of two judges of the Court of Appeals and two dissenting justices of the Supreme Court, Justice Boyle and Chief Justice Riley . . . As the dissenter in the Court of Appeals decision, it is clear to me that the Defendant's refusal to volunteer survivors' benefits was a good-faith refusal. The majority opinion written by Judge Allen . . . was well written and well reasoned. It should be abundantly clear to any reader of that opinion and the authorities discussed therein that the good faith of the insurance company was clearly established. **Stated another way, the insurance company's refusal to voluntarily pay the claim was not unreasonable. The trial court's award of penalty interest and attorney fees is set aside.**”³

The Court of Appeals' decision in *Gobler (on remand)* is certainly applicable under these circumstances. As in *Gobler (on remand), supra*, what further vindication is necessary, regarding Defendant's assertion that there exists a legitimate issue of statutory construction in this case, than the fact that two sitting justices of this Court, one of whom (Justice Stephen

³ *Gobler*, 413 NW2d @93 (emphasis added).

Markman) still remains on the court, have unequivocally signaled their belief, in *Willer, supra*, that *Miller, supra* was wrongly decided and must be overruled.

As if this weren't enough, further vindication for the reasonableness of Westfield's position is the statement from four Justices of this Court (Chief Justice Young and Justices Stephen Markman, Mary Beth Kelly and Brian Zahra), who indicated that, "**unless** one of those requirements [the three statutory exceptions to the Parked Vehicle Exclusion] is met, the injury does not arise out of the use of a vehicle as a motor vehicle," and is therefore not compensable under the No-Fault Act. Again, to quote from this Court's decision in *Frazier, supra*:

"MCL 500.3106(1) expressly delineates when 'accidental bodily injury arises' out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle if the vehicle is parked. **Therefore, in the case of a parked motor vehicle, a claimant must demonstrate that his or her injury meets one of the requirements of MCL 500.3106(1) because unless one of those requirements is met, the injury does not arise out of the use of a vehicle as a motor vehicle, under MCL 500.3105(1).**"

Id @ 384, 808 NW2d 450 (emphasis added)

The parties agreed that none of the requirements in MCL 500.3106(1) was met in this case. Therefore, Westfield should have been granted summary disposition, and would have been granted summary disposition had it not been for this Court's judicial amendment of MCL 500.3106(1) in its decision in *Miller, supra*.

Westfield's counsel tried to drive home the reasonableness of its statutory construction argument at the beginning of his oral argument before the District Court on January 28, 2014:

"MCL 500.3106 expressly delineates when accidental bodily injury arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle if the vehicle is parked.

Therefore, in a case involvement a parked motor vehicle, the Claimant must demonstrate that his or her injury meets one of the requirements of MCL 500.3106(1), because unless one of these requirements is met, the injury does not arise out of the use of a vehicle as a motor vehicle under MCL 500.3105(1).

That's not me saying that. That's not my client saying that. That's the Michigan Supreme Court majority opinion in *Frazier v Allstate Ins Co*, 808 NW2d at 450-451. **And Plaintiff calls my argument unreasonable.**

Courts may not elevate preferential rules of interpretation above the unambiguous text of a statute or contract.

That's not me saying that. That the Michigan Supreme Court's majority opinion in *Rednour v Hastings Mutual*, 661 NW2d 562. **And they call my argument unreasonable.**

Miller's interpretation of the interplay between §3105(1) and §3106(1) is, in my view, clearly erroneous. §3105(1) permits recovery only if the insured vehicle is being used as a motor vehicle. §3106 states that a parked vehicle is not being used as a motor vehicle unless one of the three exceptions is applicable. **Accordingly every Plaintiff in a parked vehicle case must satisfy §3106(1) in order to recover.**

That's not me saying that. That's Justice Markman speaking for himself and Justice Corrigan in a concurring opinion in *Willer v Titan Ins Co*. **And they call my argument unreasonable.**

The point is, this case involves a legitimate issue of statutory construction. The continued liability [sic, viability] of *Miller v Auto-Owners* is currently being challenged both in this case and I'm aware of one other one in the Court of Appeals right now.

The challenge is pretty clear. Miller rewrote §3106. . . . But in terms of the attorney fees, the Court needs to find that my arguments that I've raised, and I just cited before this Court, are unreasonable. And how can they be unreasonable when, since 1999, the Michigan Supreme Court has made it clear that this clear and unambiguous statutory text must be enforced as written without regard to any policy considerations?"

TR 1/28/2014, pgs 4-6 (emphasis added)

However, without even stating the reasons why Westfield's arguments were "unreasonable," the District Court simply concluded that Westfield's denial was "unreasonable" and awarded Plaintiff its attorney fees pursuant to MCL 500.3148(1). (TR 1/28/2014, pg 11.)

The Circuit Court likewise compounded the error when it affirmed the District Court's decision to award no-fault penalty attorney fees. In its ruling, the Circuit Court implicitly criticized attorneys, such as Westfield's current defense counsel, who dare challenge established

precedent. Although commenting that Westfield's argument was "excellent," and further opining that this Court needs to ultimately review the issue, the Circuit Court judge was apparently of the belief that if an insurer is going to challenge existing precedent, the insurer better be successful at the Supreme Court level, or the insurer will "pay the price" of challenging existing precedent, in the form of no-fault penalty attorney fees. This Court is certainly not obligated to hear any particular case, even one that challenges prior precedent as an egregious example of "judicial legislation." Simply because this Court may ultimately decide not to review a case (and Defendant is hopeful that this Court will, in fact, review the continuing viability of *Miller, supra*) does not mean that Westfield's arguments are "unreasonable." **The question before this Court is simply this – is Westfield's argument based on sound textual analysis of the clear and unambiguous statutory language, and can a cogent argument be made that *Miller, supra*, was wrongly decided?** Obviously, the answer is yes. As noted above, two Justices of this Court have already signaled their belief that *Miller, supra*, was wrongly decided. Four Justices have held, in the context of another case, that before an injury arising out of the use of a parked motor vehicle can be compensated, it must satisfy one of the three statutory exceptions to the Parked Vehicle Exclusion. Accordingly, both the Circuit Court and the District Court erred when they awarded no-fault penalty attorney fees to Plaintiffs under MCL 500.3148(1).

CONCLUSION AND RELIEF REQUESTED

Like the cases referenced by Justice Markman in his concurring Opinion in *Rowland, supra*, attached as **Exhibit 5**, this case presents a direct challenge to earlier Supreme Court precedent, involving proper interpretation of the Michigan No-Fault Insurance Act. See e.g., *Joseph v ACIA*, 491 Mich 200, 815 NW2d 412 (2012); *DeVillers, supra*. This case is no different. The Court is being asked to directly address the “continuing validity” of its 1981 decision in *Miller, supra*, under facts that are similar to those involved in *Miller, supra*; namely, where the vehicle is the instrumentality of the injury which forms the basis for the claim. As noted by Justice Markman, in his concurring opinion in *Willer, supra*, this Court has been questioning the “continuing validity” of *Miller, supra*, since 1997. See *Putkamer, supra*; *McKenzie, supra*; *Stewart, supra*. Even after this Court’s decision in *Willer, supra*, the Court has continued to question the “continuing validity” of *Miller, supra*, in *Frazier, supra* and *LeFevers, supra*. This point was recognized recently by the Court of Appeals, in *Kalo v Home Owners Ins Co*, docket no. 316442, unpublished decision rel’d 9/9/2014, attached as **Exhibit 9**, in which the Court of Appeals noted:

“In *Frazier*, our Supreme Court discussed the relationship between MCL 500.3105 and MCL 500.3106. The Court stated:

MCL 500.3106 expressly delineates when ‘accidental bodily injury arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle’ if the vehicle is parked. Therefore, in the case of a parked motor vehicle, a claimant must demonstrate that his or her injuries meets one of the requirements of MCL 500.3106(1) because unless one of those requirements is met, the injury does not arise out of the use of a vehicle as a motor vehicle, under MCL 500.3105(1). [*Frazier*, 490 Mich at 384.]

Based on *Frazier*, the appropriate analysis when considering whether a person is entitled personal protection insurance in relation to a parked vehicle is first to consider whether the injury meets one of the requirements provided by MCL 500.3106, and then to consider whether plaintiff is entitled to benefits pursuant to MCL 500.3105.

This holding is inconsistent with earlier decided cases, such as *Miller v Auto-Owners Ins Co*, 411 Mich 633; 309 NW2d 544 (1981). In *Miller*, the Court held that, in cases involving a claimant performing maintenance on a parked vehicle, compensation is required pursuant to MCL 500.3105 without regard to MCL 500.3106(1) and the general parked vehicle exceptions. *Id.* at 641. *Frazier* never specifically overruled *Miller* or related cases. However, the Supreme Court later made clear that the *Frazier* holding controlled over *Miller* in *LeFevers v State Farm Mut Auto Ins Co*, 493 Mich 960, 828 NW2d 678 (2013). In *LeFevers*, the Court reversed a Court of Appeals' decision that relied on *Miller* holding, 'the Court of Appeals erred by failing to recognize that the decision in *Frazier* effectively disavowed *Miller*, and *Gunsell v Ryan*, 236 Mich App 204, 599 NW2d 767 (1999), to the extent those decision are inconsistent with *Frazier*.' *LeFevers*, 493 Mich at 960. *LeFevers* made clear that, to the extent *Miller* is inconsistent with *Frazier*, *Frazier* must be followed."

Kalo, slip opinion at page 2-3.

Because only this Court can reconsider and overturn one of its earlier precedents, it is imperative that this Court re-examine its holding in *Miller, supra*, and to hold, consistent with the statutory text, that in order for an injury arising out of the ownership, operation, maintenance or use of a parked motor vehicle as a motor vehicle, the injury must satisfy one of the three statutory exceptions to the Parked Vehicle Exclusion set forth in MCL 500.3106(1). In this case, the injury suffered by Shawn Norman, for which Plaintiff seeks payment of its medical expenses, admittedly does not fall within any of the three exceptions to the Parked Vehicle Exclusion. But for this Court's decision in *Miller, supra*, this case should have been subject to summary disposition.

Accordingly, Defendant-Appellant Westfield Insurance Company respectfully requests that this honorable Court grants its Application for Leave to Appeal on this issue and reconsider the continuing validity of this Court's holding in *Miller, supra* in light of more recent decisions from this Court in *LeFevers, supra*; *Frazier, supra*, and *Miller, supra*. Given this Court's

jurisprudential statements going back to at least 1999, it is obvious that *Miller, supra*, is a relic from a period of time where Courts took it upon themselves to essentially re-write statutes to suit their own public policy preferences.

With regard to the District Court's award of attorney fees, as affirmed by the Circuit Court, there is no doubt but that this award must likewise be reversed by this Court. Given the well thought out legal arguments, which Westfield's counsel has been making for a number of years, how can it be said that Westfield's arguments are "unreasonable" and do not involve a legitimate issue of statutory construction or interpretation? Two Supreme Court Justices, one of whom is still in the Court, have stated, in no uncertain terms, that *Miller* was wrongly decided and must be overruled. See *Willer, supra*. Four Justices of the Michigan Supreme Court, all of whom are still on the bench, have ruled that, in cases involving parked motor vehicles, unless one of the requirements in MCL 500.3106(1) is met, a person is not entitled to recover no-fault benefits! Whether under a *de novo* standard of review, or a clearly erroneous standard of review, the District Court erred when it awarded Plaintiffs their attorney fees under the facts and circumstances of this case. What is more remarkable is that the District Court even conceded, with some disdain, that "Courts are obligated to write legislation as they review cases." Again, as noted by this Court in *Devillers, supra*, it is not the province of the judiciary to amend legislation that it does not agree with or even "write legislation as they review cases." Rather, it is the job the judiciary to simply interpret and apply the plain and unambiguous text of a statute, as written, without regard to "public policy" considerations. The judiciary job is to state what the law is, not what the law ought to be. As noted recently by the Court of Appeals, relying heavily on recent precedent from this Court:

"The fundamental purpose of judicial construction of statutes is to ascertain and give effect to the intent of the legislature. *In Re*

Certified Question, 433 Mich 710, 722, 449 NW2d 660 (1989); *Amburgey v Sauder*, 238 Mich App 228, 231-232, 605 NW2d 84 (1999). Once the intention of the legislature is discovered, it must prevail regardless of any rule of statutory construction to the contrary. *Certified Question*, 433 Mich at 72, 449 NW2d 660. The language of the statute expresses the legislative intent. *Dept. of Transportation v Tomkins*, 481 Mich 184, 191, 749 NW2d 716 (2008). **The rules of statutory construction provide that a clear and unambiguous statute is not subject to judicial construction or interpretation. Id. If the language of the statute is plain and unambiguous, effect must be given to the words used, and judicial construction is neither necessary nor permitted. Johnson v Pastoriza**, 491 Mich 417, 436, 818 NW2d 279 (2012). **Stated otherwise, when a statute plainly and unambiguously expresses the legislative intent, the role of the Court is limited to applying the terms of the statute to the circumstances in a particular case.** *Dept of Transportation*, 418 Mich at 191, 749 NW2d 716.”

Wilcoxon v Detroit Election Commission, 301 Mich App 619, 838 NW2d 183 (2013)

Unfortunately, by awarding no-fault penalty attorney fees to Plaintiffs, both the District Court and the Circuit Court were essentially punishing Westfield for its attempt to correct an error, made by this Court more than thirty years ago, when it deviated from the clear and unambiguous statutory text and ruled that all maintenance injuries are compensable under the No-Fault Insurance Act, MCL 500.3105(1), without regard to the terms of the Parked Vehicle Exclusion in MCL 500.3106(1). Why Defendant should be punished for simply trying to enforce years and years of more recent jurisprudence from this Court, regarding application of clear and unambiguous statutory text to uncontested facts, is an issue that must be corrected by this Court!

Therefore, Defendant-Appellant Westfield Insurance Company respectfully requests that this honorable Court grant its Application for Leave to Appeal and, after full briefing and oral argument, issue an Order reversing or vacating the decisions of the Kent County Circuit Court and the 61st Judicial District Court regarding both the decision to grant Plaintiffs-Appellees Motion for Summary Disposition and the decision to award of no-fault penalty attorney fees

under MCL 500.3148(1) and remand this matter back to the District Court with instructions to enter summary disposition in favor of Westfield, together with such other relief from this Court as may be deemed warranted under these circumstances.

LAW OFFICES OF RONALD M. SANGSTER, PLLC

By: 

Ronald M. Sangster-Jr. (P39253)
Attorney for Westfield Insurance Company
901 Wilshire Drive, Suite 230
Troy, Michigan 48084
(248) 269-7040

Dated: 4/13/2015

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ATTORNEYS & COUNSELORS

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Fax: (586) 466-5955

Of Counsel: LEO E. JANUSZEWSKI
MARK S. GOLDBERG

April 13, 2015

Clerk of the Court
Court of Appeals
201 West Big Beaver Road
Suite 800
Troy, Michigan 48084

RE: *Spectrum Health Hospitals (Norman) v Westfield Insurance Company*

Docket No.: (Court of Appeals)

Docket No.: 14-02515-AV (Kent County Circuit Court)

Docket No.: 13-GC-2025 (61st District Court)

Claimant: NORMAN, Shawn

Insured: JEWELL, Pam

Claim No.: NR-APV-4802088-050512-A

Policy No.: 4802088

Date of Loss: 5/5/2012

Our File No.: 8.3014 (RMS/KAC)

Dear Clerk:

With reference to the above-entitled litigation, enclosed please find an original and copy of *Defendant-Appellant Westfield Insurance Company's*:

- Notice of Filing Application for Leave to Appeal to Michigan Supreme Court; and
- Proof of Service.

Please file these documents per your usual procedures.

Law Offices of Ronald M. Sangster PLLC

Clerk of the Court

Spectrum Health Hospitals (Norman) v Westfield Insurance Company

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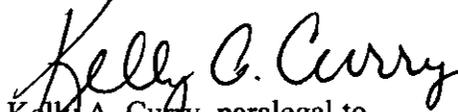
April 13, 2015

Page 2 of 2

As always, should you have any questions regarding this matter, kindly contact the undersigned.

Very truly yours,

Law Offices of Ronald M. Sangster, PLLC



Kelly A. Curry, paralegal to
Ronald M. Sangster Jr.

kcurry@sangster-law.com

/kac

Enclosure

cc: Clerk of the Court, Michigan Supreme Court
Clerk of the Court, Kent County Circuit Court
Clerk of the Court, 61st District Court
Andrew D. Oostema, Esq.
Netcy Handy

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

SPECTRUM HEALTH HOSPITALS and
SPECTRUM HEALTH UNITED
(Shawn Norman),

Plaintiffs-Appellees,

-vs-

WESTFIELD INSURANCE COMPANY,

Defendant-Appellant.

SUPREME COURT DOCKET NO.:

COURT OF APPEALS DOCKET NO.: 323804

CIRCUIT COURT NO.: 14-02515-AV
HON. DONALD JOHNSTON

DISTRICT COURT NO.: 13-GC-2025
HON. J. MICHAEL CHRISTENSEN

MILLER JOHNSON
Andrew D. Oostema (P68595)
Stephen R. Ryan (P40798)
Attorneys for Plaintiffs
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Phone: (616) 831-1732
Fax: (616) 988-1732

LAW OFFICES OF RONALD M. SANGSTER PLLC
Ronald M. Sangster Jr. (P39253)
Attorney for Westfield Insurance Company
901 Wilshire Drive
Suite 230
Troy, Michigan 48084
Phone: (248) 269-7040
Fax: (248) 269-7050

**NOTICE OF FILING OF DEFENDANT-APPELLANT'S
APPLICATION FOR LEAVE TO APPEAL**

PLEASE TAKE NOTICE that Plaintiff-Appellant, Westfield Insurance Company, herein files its Application for Leave to Appeal in the above-captioned matter to the State of Michigan, Supreme Court.

Respectfully Submitted,

LAW OFFICES OF RONALD M. SANGSTER, PLLC

By:



Ronald M. Sangster Jr. (P39253)
Attorney for Westfield Insurance Company
901 Wilshire Drive, Suite 230
Troy, Michigan 48084
(248) 269-7040

Dated: 4/13/2015

STATE OF MICHIGAN

MICHIGAN SUPREME COURT

SPECTRUM HEALTH HOSPITALS and
SPECTRUM HEALTH UNITED
(Shawn Norman),

SUPREME COURT DOCKET NO.: .

Plaintiffs-Appellees,

COURT OF APPEALS DOCKET NO.: 323804

-vs-

CIRCUIT COURT NO.: 14-02515-AV
HON. DONALD JOHNSTON

WESTFIELD INSURANCE COMPANY,

Defendant-Appellant.

DISTRICT COURT NO.: 13-GC-2025
HON. J. MICHAEL CHRISTENSEN

NOTICE OF HEARING

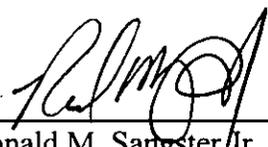
TO: Andrew D. Oostema (P68595)
Miller Johnson
250 Monroe Avenue NW
Suite 800
Grand Rapids, Michigan 49503

The attached Application for Leave to Appeal is set for hearing on Tuesday, May 5, 2015. There will be no oral argument.

Respectfully Submitted,

LAW OFFICES OF RONALD M. SANGSTER, PLLC

By: _____


Ronald M. Sangster Jr. (P39253)
Attorney for Westfield Insurance Company
901 Wilshire Drive, Suite 230
Troy, Michigan 48084
(248) 269-7040

Dated: 4/13/2015

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

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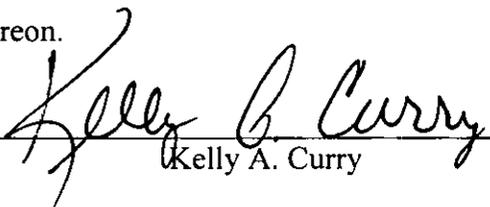
DISTRICT COURT NO.: 13-GC-2025
HON. J. MICHAEL CHRISTENSEN

MILLER JOHNSON
Andrew D. Oostema (P68595)
Stephen R. Ryan (P40798)
Attorneys for Plaintiffs
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Phone: (248) 269-7040
Fax: (248) 269-7050

PROOF OF SERVICE

Kelly A. Curry, being sworn, states that on April 13, 2015, she mailed copies of Notice of Hearing, Application for Leave to Appeal on Miller Johnson, Andrew D. Oostema (P68595), 250 Monroe Avenue NW, Suite 800, Attorney for Plaintiff-Appellee,; and a Notice of Filing of the Application on the Clerk of the Court of Appeals, 201 West Big Beaver Road, Suite 800, Troy, Michigan 48084; the Clerk of the Kent County Circuit Court, 180 Ottawa Avenue NW, Grand Rapids, Michigan 49503; and the Clerk of the 61st District Court, 180 Ottawa Avenue NW, Grand Rapids, Michigan 49503, by placing the documents in the United States mail, properly addressed, with first class postage fully prepared thereon.



Kelly A. Curry

THE LAW OFFICES OF RONALD M. SANGSTER PLLC

ATTORNEYS & COUNSELORS

901 WILSHIRE DRIVE, SUITE 230, TROY, MICHIGAN 48084

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RONALD M. SANGSTER, JR. - rsangster@sangster-law.com

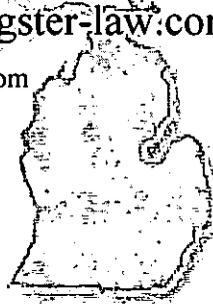
ELIZABETH L. AMARU - lamaru@sangster-law.com

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Of Counsel: LEO E. JANUSZEWSKI
MARK S. GOLDBERG

April 13, 2015

Clerk of the Court
Michigan Supreme Court
Michigan Hall of Justice
925 West Ottawa Street
Lansing, Michigan 48915

RE: *Spectrum Health Hospitals (Norman) v Westfield Insurance Company*

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Date of Loss: 5/5/2012

Our File No.: 8.3014 (RMS/KAC)

Dear Clerk:

With reference to the above-entitled litigation, enclosed please find an original and copy of *Defendant-Appellant Westfield Insurance Company's*:

- **Application for Leave to Appeal;**
- **Notice of Filing of Defendant-Appellant's Application for Leave to Appeal;**
- **Notice of Hearing;**
- **Copy of the Orders/Judgment being appealed (Exhibits 4, 6 and 8 to Application for Leave to Appeal);**
- **Proof of Service; and**
- **\$375.00 filing fee.**

Law Offices of Ronald M. Sangster PLLC

Clerk of the Court

Spectrum Health Hospitals (Norman) v Westfield Insurance Company

Docket No.: 14-02515-AV (Kent County Circuit Court)

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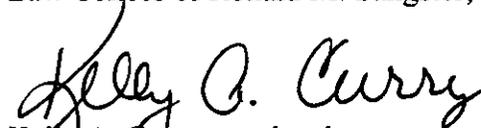
Page 2 of 2

Please file these documents per your usual procedures.

As always, should you have any questions regarding this matter, kindly contact the undersigned.

Very truly yours,

Law Offices of Ronald M. Sangster, PLLC



Kelly A. Curry, paralegal to
Ronald M. Sangster Jr.

kcurry@sangster-law.com

/kac

Enclosure

cc: Clerk of the Court, Michigan Supreme Court
Clerk of the Court, Kent County Circuit Court
Clerk of the Court, 61st District Court
Andrew D. Oostema, Esq.
Necy Handy