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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.: 151419

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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DEFENDANT-APPELLANT WESTFIELD INSURANCE COMPANY'S SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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INTRODUCTION

On January 29, 2016, this Court entered an Order Granting Oral Argument on the Application for Leave to Appeal filed by Defendant-Appellant Westfield Insurance Company (hereinafter "Defendant" or "Westfield"). In its Order, this Court asked the parties to submit Supplemental Briefs addressing the following issues:

> (1) Whether *Miller v Auto-Owners Ins Co*, 411 Mich 633 (1981) remains a viable precedent in light of *Frazier v Allstate*, 490 Mich 381 (2011) and *LeFevers v State Farm Mut'l Automobile Ins Co*, 493 Mich 960 (2013); and
>
> (2) If so, whether *Miller* should be overruled.

Westfield now takes this opportunity to submit the following Supplemental Brief in Support of its Application for Leave to Appeal, addressing these two issues.

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I. THIS COURT'S DECISION IN *MILLER, SUPRA*, HAS BEEN SO ERODED BY SUBSEQUENT DECISIONS FROM THIS COURT THAT IT SHOULD NO LONGER BE CONSIDERED VIABLE PRECEDENT.

As pointed out in Westfield's Application for Leave to Appeal, this Court in *Miller v Auto-Owners*, 411 Mich 633, 309 NW2d 544 (1981) held that for injuries arising out of the maintenance of a parked motor vehicle, no-fault benefits are payable under MCL 500.3105(1) (commonly referred to as the "gateway" provision of the No-Fault Insurance Act), without regard to whether or not the vehicle was considered "parked" when the maintenance activities were being performed. In so ruling, this Court unfortunately ignored the unambiguous statutory text of MCL 500.3105(1) and MCL 500.3106(1) and, instead, proceeded to divine what it perceived as a preferred public policy outcome; i.e., coverage in favor of the injured party. As noted by this Court in *Miller*:

> "The policy embodied in the requirement of §3105(1) that coverage be extended to 'injury arising out of the . . . maintenance . . . of a motor vehicle as a motor vehicle' thus is to provide compensation for injuries, such as Miller's, incurred in the course of repairing a vehicle.
>
> 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 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.
>
> * * *
>
> 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 thus are complementary rather than conflicting. Nothing 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."
>
> *Miller*, 411 Mich at 639-641, 309 NW2d 544 (emphasis in original).

As pointed out in Westfield's Application for Leave to Appeal, it is as if the *Miller* court took its "magic judicial eraser" and simply erased the word "maintenance" out of the text of MCL 500.3106(1).

Eight years later, in *Winter v Automobile Club of Michigan*, 433 Mich 446, 446 NW2d 132 (1989), this Court apparently realized that expanding the rule enunciated by this Court in *Miller* would completely eviscerate the Parked Vehicle Exclusion set forth in MCL 500.3106(1). In *Winter*, Plaintiff had borrowed a tow truck from a friend, which he was using to lift a slab of concrete, from his sidewalk, off the ground so that the ground underneath could be filled in and leveled. While one of the slabs was being raised, Plaintiff put his hand underneath the slab in order to level the last high spot. At that point, a piece of the concrete broke off of the hook and the slab fell, resulting in serious injuries to Plaintiff's hand. His insurer, Automobile Club of Michigan (AAA), denied coverage for this loss, and the Wayne County Circuit Court granted summary disposition in favor of the insurer. On appeal, the Court of Appeals reversed and held that Plaintiff was entitled to coverage, relying in part on this Court's policy-driven outcome in *Miller* "as authority to conclude that §3106(1) does not exclude coverage on these facts," even though the vehicle was undoubtedly "parked" at the time of the incident. *Winter*, 433 Mich at 450.

However, this Court reversed the ruling of the Court of Appeals and reinstated the summary disposition order in favor of the no-fault insurer. In doing so, this Court was careful to

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note that the holding in *Miller* was an exceedingly narrow holding, and should not be expanded beyond the specific facts presented in that case:

> "Although the Court of Appeals determined that the tow truck was parked, it pointed to *Miller* and found §3106(1) to be inapplicable on the facts of this case. The panel reasoned that since the tow truck was 'involved in the accident while being used as a motor vehicle,' it would be unnecessary, under *Miller*, to satisfy any of the §3106(1) exceptions.
>
> As already noted, Miller involved an injury which occurred while the plaintiff was performing maintenance repairs on his vehicle. The *Miller* Court did determine that because the injury arose out of 'maintenance' of the vehicle, it was unnecessary to consider whether the vehicle was parked. **<u>However, we caution that the *Miller* holding is limited to the narrow circumstances of that case.</u>**
>
> In the instant case 'maintenance' of a motor vehicle is not involved, and absent that involvement, we detect no 'tension' between §3105(1) and §3106(1)."
>
> *Id.*, at 456-457, 446 NW2d 132 (emphasis added)

Indeed, this Court's majority in *Winter* need only to have looked at the dissent authored by former Justice Cavanagh, joined by former Justice Archer, who would have utilized the holding in *Miller* to permit coverage under the facts in *Winter*, even though that case did not involve "maintenance" of a parked vehicle:

> "I agree with the Court of Appeals that reference to the policies underlying these two statutory provisions is no less appropriate in the present case than in *Miller*. The purpose behind the parked vehicle exclusion would not be advanced by applying the provision so as to prevent coverage for plaintiff's injuries.
>
> I would hold that once it is determined that a dual-purpose vehicle, such as the cement truck in *Bialochowski* [*v Cross-Concrete Pumping Co*, 428 Mich 219, 407 NW2d 355 (1987)] and the tow truck in this case, was being used for one of its intended purposes and was, therefore, in use 'as a motor vehicle' under §3105(1), no-fault coverage is available for injuries which arose out of that use without regard to whether the vehicle might be considered 'parked.' For this reason, I would affirm the decision of the Court of Appeals."
>
> *Id.* at 462-463 (Cavanagh, J. dissenting).

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Having limited the holding in *Miller* to maintenance-related injuries, only, this Court made it clear 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 set forth in MCL 500.3106(1) had to be satisfied:

> "In limiting no-fault benefits to injuries 'arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle,' the Legislature realized that it would be inherently difficult to determine when a *parked* vehicle is in use 'as a motor vehicle.' Accordingly, the Legislature specifically described in subsections (a)-(c) of §3106(1) the limited circumstances when a parked vehicle is being used 'as a motor vehicle.' Thus it is apparent that if a vehicle is 'parked' coverage otherwise available under §3105(1) is qualified by the provisions of §3106(1). In the instant case, because the tow truck was parked, coverage is excluded by §3106(1) unless one of its exceptions is applicable."
>
> *Id.* at 457-458.

By limiting the holding in *Miller* to maintenance-related injuries, only, and imposing the requirement that for all other injuries arising out of a "parked" vehicle, one of the three statutory exceptions to the Parked Vehicle Exclusion must be satisfied, this Court unfortunately reaffirmed the judicially created "fourth exception" to the Parked Vehicle Exclusion – the maintenance exception enunciated in *Miller*. This Court in *Winter* simply cautioned litigants to go no further.

Twenty-four years later, this Court addressed this issue again in *Frazier v Allstate Ins Co*, 490 Mich 381, 808 NW2d 450 (2011). In *Frazier*, Plaintiff sought benefits arising out of injuries suffered alighting from a motor vehicle. Without referencing this Court's decision in *Miller*, this Court reaffirmed the proper application of the statutory text of MCL 500.3106(1) as follows:

> "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 at 384.

This Court then proceeded to analyze the three statutory exceptions to the Parked Vehicle Exclusion found in MCL 500.3106(1) and concluded that neither the exception set forth in MCL 500.3106(1)(b) nor the exception set forth in MCL 500.3106(1)(c) applied under the facts of that case. In a sense, this Court, in a manner consistent with its jurisprudence since 1999, simply reaffirmed the statutory text, as well as the prerogative of the Legislature to set public policy considerations, when it limited compensation for injuries arising out of a parked vehicle to one of the three statutory exceptions to the Parked Vehicle Exclusion. However, because *Frazier* did not involve maintenance of a parked vehicle, Plaintiff-Appellee has been able to argue, throughout the course of this litigation, that this Court's holding in *Frazier* has no bearing, given the judicially created "maintenance exception" enunciated by this Court in *Miller*, and as limited to maintenance injuries, only, by this Court in *Winter*.

Westfield, of course, pointed out that *Miller* was no longer viable precedent in light of *Frazier*, at oral argument in the 61st Judicial District Court on January 28, 2014, when Westfield's counsel opened his argument as follows:

> "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 involving 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 the 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 Insurance Company*, 808 NW2d at 450-451. And Plaintiff calls my argument unreasonable."

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TR 1-28-2014, p 4.

And what did Westfield get for relying on this Court's clear and unequivocal statement in *Frazier*? Defendant was hit with an award of no-fault penalty attorney fees under MCL 500.3148(1) because the lower courts apparently felt that it was "unreasonable" for Westfield to rely upon language from this Court that supports its position that regardless of whether or not maintenance is being performed on a vehicle, the statutory language set forth in MCL 500.3106(1) must be applied as written, without regard to any "public policy" gloss as, apparently, the *Miller* Court did.

Turning to this Court's opinion in *LeFevers v State Farm*, 493 Mich 960, 828 NW2d 678 (2013), that case involved an issue of whether Plaintiff was entitled to no-fault benefits as a result of injuries he suffered as a direct result of physical contact with "equipment" permanently mounted on his vehicle's trailer; namely, a tailgate latch. In vacating the Opinion and Order of the Court of Appeals, this Court specifically noted that this Court's decision in *Frazier, supra,* "effectively disavowed" *Miller, supra,* "to the extent those decisions are inconsistent with *Frazier*." *LeFevers*, 493 Mich at 960. Unfortunately, this Court, in *LeFevers*, noted that *Frazier* only disavowed that portion of the *Miller* Opinion that described some of the circumstances under which an injury might be compensable under the second exception to the Parked Vehicle Exclusion, MCL 500.3106(1)(b), as when "a parked delivery truck may cause injury in the course of raising or lowering its lift or the door of a parked car, when opened into traffic, may cause an accident." Unfortunately, this Court, in *LeFevers*, did not go so far as to say that *Miller*, **in its entirety**, was wrongly decided – probably because the maintenance of a parked vehicle was not at issue in *LeFevers*.

Nonetheless, it is clear that this Court in *Frazier, supra,* and *LeFevers, supra,* has seriously questioned this Court's holding in *Miller, supra,* by repeatedly stating that in order for

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an injury arising out of a parked vehicle to be compensable, "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 at 384. The fact that this Court has knocked out some of the key underpinnings in *Miller*, as described in *Winter, supra; Frazier, supra*, and *LeFevers, supra*, simply suggest that this Court should finish the job, once and for all, and overrule *Miller* as being inconsistent with the actual statutory text of MCL 500.3106(1). *Miller* remains a remnant of a bygone era in statutory construction and interpretation, where Courts routinely "discovered" or "made" law (such as it does in cases involving the common law), and thereby substituting their own public policy preferences for those public policy preferences clearly expressed by the Legislature, in the actual statutory text.

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II. ASSUMING, FOR THE SAKE OF DISCUSSION, THAT THE HOLDING IN *MILLER* STILL SURVIVES, IN THE NARROW CONTEXT OF INJURIES SUFFERED WHILE IN THE COURSE OF MAINTAINING MOTOR VEHICLES, *MILLER* OUGHT TO BE OVERRULED AS BEING CLEARLY INCONSISTENT WITH THE ACTUAL STATUTORY TEXT SET FORTH IN MCL 500.3106(1).

Westfield anticipates that even the most diehard supporter of *Miller, supra,* would be forced to concede that the holding in *Miller* is plainly inconsistent, and downright contrary, to the actual statutory text of MCL 500.3106(1). After all, if all maintenance injuries are compensable under MCL 500.3105(1), without regard to whether or not the vehicle was "parked" within the meaning of MCL 500.3106(1), why bother to include the word "maintenance" in the text of Parked Vehicle exclusion, MCL 500.3106(1) at all? If *Miller* was correctly decided, under what circumstances would maintenance of a parked vehicle not be compensable? Stated another way, if *Miller* was correctly decided, how does one effectuate the Legislative intent, clearly expressed in the actual statutory language of MCL 500.3106(1) to limit maintenance-related injuries, arising out of a parked vehicle, to one of the 3 statutorily enumerated exceptions to the Parked Vehicle Exclusion? This is why Defendant takes the position that in *Miller*, this Court took out its "magic judicial eraser" and erased the word "maintenance" from the statutory text of MCL 500.3106(1) to achieve what the *Miller* Court thought was a desirable public policy outcome – compensability of all maintenance-related injuries under the No-Fault Insurance Act.

As a preliminary matter, it bears repeating that, when dealing with statutory law, it is improper for any judge to import his or her own public policy preferences into an interpretation of the legislative language. It seems as if the *Miller* Court based its decision not on what the Legislature said, but what it meant, and the *Miller* Court tipped its hand that it would be relying

on "public policy" considerations when it set up the "straw man" regarding the "apparent tension" between MCL 500.3105(1) and MCL 500.3106(1):

> "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.

In fact, there is no such conflict, as pointed out in Defendant's Application for Leave to Appeal. By incorporating the phrase "subject to the other provisions of this chapter" in MCL 500.3105(1), this statutory provision expressly subordinates its coverage to anything else that comes after, including MCL 500.3106(1) – the Parked Vehicle Exclusion. Thus, only those maintenance injuries that fall within one of the three statutory exceptions to the Parked Vehicle Exclusion should be compensable under the No-Fault Insurance Act.

The fallacy of the *Miller* Court's holding is perhaps best illustrated by the late Justice Antonin Scalia, in his book, *A Matter of Interpretation – Federal Courts and the Law*, where he commented as follows:

> "The evidence suggests that, despite frequent statements to the contrary, we do not really look for subjective legislative intent. We look for a sort of 'objectified' intent – the intent that a reasonable person would gather from the text of the law, placed alongside the remainder of the *corpus juris*. As Bishop's old treatise nicely put it, elaborating upon the usual formulation: 'the primary object of all rules for interpreting statutes is to ascertain the legislative intent; *or, exactly, the meaning which the subject is authorized to understand the Legislature intended*.' And the reason we adopt this objectified version is, I think, that it is simply incompatible with democratic government, or indeed, even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than by what the lawgiver promulgated. That seems to be one step worse than the trick Emperor Nero was

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> said to engage in; posting edicts high up on the pillars, so that they could not easily be read. Government by unexpressed intent is similarly tyrannical. It is the *law* that governs, not the intent of the lawgiver. That seems to me the essence of the famous American ideal set forth in the Massachusetts Constitution: a government of laws, not of men. Men may intend what they will; but it is only the laws that they enact which bind us.
>
> In reality, however, if one accepts the principle that the object of judicial interpretation is to determine the intent of the legislature, being bound by genuine but unexpressed legislative intent rather than the law is only the *theoretical* threat. The *practical* threat is that, under the guise or even the self-delusion of pursuing unexpected legislative intents, common-law judges will in fact pursue their own objectives and desires, extending their lawmaking proclivities from the common law to the statutory field. When you are told to decide, not on the basis of what the Legislature said, but on the basis of what it *meant*, and are assured that there is no necessary connection between the two, your best shot at figuring out what the Legislature meant is to ask yourself what a wise and intelligent person *should* have meant; and that will surely bring you to the conclusion that the law means what you think it *ought* to mean – which is precisely how judges decide things under the common law. As Dean Landis of Harvard Law School (a believer in the search for legislative intent) put it in a 1930 article:
>
>> The gravest sins are perpetrated in the name of the intent of the Legislature. Judges are rarely willing to admit their role as actual lawgivers, and such admissions as are wrung from their unwilling lips lie in the field of common and not statute law. To condone in these instances the practice of talking in terms of the intent of the legislature, as if the legislature had attributed a particular meaning to certain words, when it is apparent that the intent is that of the judge, is to condone atavistic practices too reminiscent of the medicine man."
>
> Scalia, *A Matter of Interpretation – Federal Courts and the Law*, pp 17-18.

For these reasons alone, *Miller* should be overruled.

In *Robinson v City of Detroit*, 462 Mich 439, 613 NW2d 307 (2000), this Court discussed what criteria should be applied when deciding to overrule one of this Court's earlier decisions. As noted therein, once this Court determines that one of its earlier decisions was wrongly

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decided, as being inconsistent with the actual statutory text (as *Miller* undoubtedly is), this Court needs to consider "the effect on reliance interests and whether overruling would work an undue hardship because of that reliance." *Robinson*, 462 Mich at 466, 613 NW2d 307 (2000). In this regard, Westfield respectfully relies upon the observations made by Justice Markman, joined by former Justice Corrigan, in his concurring opinion in *Willer v Titan Ins Co*, 480 Mich 1177, 747 NW2d 245 (2008):

> "Because *Miller* was wrongly decided, it must be determined whether it should be overruled by considering "the effect on reliance interests and whether overruling would work an undue hardship because of that reliance. *Robinson v Detroit*, 462 Mich 439, 466, 613 NW2d 307 (2000). To make this determination, *Robinson* requires consideration of 'whether the previous decision has become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations. *Id.* *Miller* is not 'so embedded' in my judgment. 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). In *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. Under these circumstances, I cannot conclude that *Miller* is 'so embedded' in Michigan law that overruling it will produce 'real-world dislocations.'** Nor do I discern any 'reliance' interests upon *Miller* that would counsel against it being overruled.
>
> * * *
>
> This Court has stated that 'it is to the words of the statute itself that a citizen first looks for guidance in directing his actions.' *Robinson, supra*, at 467, 613 NW2d 307. **By contravening the language of §3105 and §3106, *Miller* undercut the reliance that average citizens are entitled to place on the law enacted by their elected representatives.**"
>
> *Willer*, 480 Mich at 1180 (Markman, J. concurring) (emphasis added).

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As noted in Legal Argument I, supra, this Court has continued to call the continuing validity of *Miller* into question in the eight years since *Willer* was decided, as exemplified in *Frazier, supra*, and *LeFevers, supra*. Furthermore, as evidence of the public's reliance on the actual statutory text, Westfield' policy language mirrors the statutory language embodied in MCL 500.3106(1), without regard to this Court's judicially-created "maintenance exception" enunciated by this Court in *Miller*. The time is ripe for this Court to consign *Miller* to the "dustbin of history."

Defendant anticipates that Plaintiff will argue that because the holding in *Miller* represents a wise "public policy" choice, it should be left undisturbed. What this argument fails to take into consideration is that for every "public policy" argument in favor of maintaining the holding in *Willer*, there is a countervailing 'public policy' consideration for affirming the legislative intent to limit maintenance-related injuries to those circumstances that fall within one of the three statutorily enumerated exceptions to the Parked vehicle exclusion in MCL 500.3106(1)- the "cost containment" aspect of the Michigan No-Fault Insurance Act. The *Miller* Court makes no mention of this important consideration, but this Court, in subsequent decisions, has emphasized the fact that, in order to keep the Michigan no-fault insurance system affordable, with its provision for lifetime, unlimited "allowable expenses" under MCL 500.3107(1)(a), certain cost limitations had to be built into this system, by the Legislature, in order to keep the system affordable. One such "cost containment" provision is the actual text of MCL 500.3106(1), which expressly limits the compensability of maintenance-related injuries (and indeed all injuries) arising out of parked vehicles. As noted by this Court, in a different context:

> "Under plaintiff's reasoning, nothing would prevent no-fault insurers from being obligated to pay for any expenses that an injured person would otherwise be provided in an institutional setting as long as they are remotely related to the person's general

> care. Plaintiffs' interpretations of MCL 500.3107(1)(a) stretches the language of the act too far, and incidentally, would largely obliterate cost containment for this mandatory coverage. We have always been cognizant of this potential problem when interpreting the No-Fault Act, and we are no less so today."
>
> *Griffith v State Farm*, 472 Mich 521, 539, 697 NW2d 895 (2005), citing *Shavers v Attorney General*, 402 Mich 554, 607-611, 267 NW2d 72 (1978); *Cruz v State Farm Mut'l Automobile Ins Co*, 466 Mich 588, 597, 648, NW2d 591 (2002), *Celina Mut'l Ins Co v Lake States Ins Co*, 452 Mich 84, 89, 547 NW2d 834 (1996) and *O'Donnell v State Farm Mut'l Ins Co*, 404 Mich 524, 547, 273 NW2d 829 (1979)

The Legislature clearly chose to limit the compensability of maintenance-related injuries to circumstances falling within one of the three statutory exceptions to the Parked Vehicle Exclusion. Expanding that coverage is the job of the Legislature – not the Judiciary. It is the Legislature that is in the best position to weigh public policy considerations – broadened coverage versus increased costs- not this Court. Again, Defendant takes the position that the statutory language embodied in MCL 500.3106(1), the Parked Vehicle Exclusion, ought to be applied as written, but only references these "public policy" considerations of cost containment in anticipation of the question that will undoubtedly be asked by Plaintiff – why would the Legislature so limit the compensability of maintenance-related injuries in the manner suggested by Defendant?

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CONCLUSION AND RELIEF REQUESTED

Under these circumstances, Defendant-Appellant respectfully requests that this honorable Court grant issue an Order reversing or vacating the decisions of the Kent County Circuit Court and the 61st Judicial District Court granting 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 61st Judicial District Court with instructions to enter summary disposition in favor of Defendant-Appellant Westfield Insurance Company, together with such other relief from this Court as may be deemed warranted under these circumstances.

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Dated: March 11, 2016

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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.: 151419

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

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PROOF OF SERVICE

Kelly A. Curry, being sworn, states that on March 11, 2016, she served copies of Defendant-Appellant Westfield Insurance Company's, Supplemental Brief in Support of Application for Leave to Appeal on Miller Johnson, Andrew D. Oostema (P68595), 250 Monroe Avenue NW, Suite 800, Attorney for Plaintiff-Appellee, by efiling the documents via the TrueFiling system.

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Kelly A. Curry