

STATE OF MICHIGAN  
IN THE SUPREME COURT

MATTHEW PATRICK REAUME,  
a Minor, By His Next Friend,  
LARRY REAUME,

Plaintiffs-Appellees,

Supreme Court No. 132154  
COA No. 268071  
LC No. 03-16704-NO

v  
RYAN NADEAU,

Defendant-Appellant,

\_\_\_\_\_ /

DEFENDANT, RYAN NADEAU'S SUPPLEMENTAL BRIEF

INTRODUCTION

On January 19, 2007, this Court ordered that oral argument shall be heard to address the issues of 1) whether plaintiff's injury, which occurred during the course of wrestling activity with defendant coach, was proximately caused by defendant's alleged failure to give adequate notice of the initial takedown to the wrestling mat; and 2) if so, whether defendant's conduct "was so reckless as to demonstrate a substantial lack of concern for whether an injury results." This Court ordered that the parties may file supplemental briefs. Pursuant to this Order, Defendant Ryan Nadeau submits this brief to address only the issues listed above which will be heard at oral argument.

It is undisputed that the initial takedown to the padded wrestling surface did not cause an injury to Plaintiff. Plaintiff had full use of his arm following the takedown and the two began to wrestle. They completed one full roll, and Plaintiff then decided to post his arm in attempt to effectuate a wrestling maneuver called an "escape" at the same

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time that Coach Nadeau effectuated a second “roll.” Plaintiff admitted that the fact that his arm was leveraged against the second roll caused the injury to his arm. In addition, even if Plaintiff’s contention that Coach Nadeau took him to the mat unawares is true, Coach Nadeau’s actions in taking an extremely experienced wrestler down to a padded surface, which is designed for the sole purpose of wrestling, does not constitute gross negligence.

**STATEMENT OF FACTS**

Plaintiff has wrestled since he was approximately 5 years old when he began at the Bear Attack level. (Deposition of Matthew Reaume, pp 21-22, 65). Coach Nadeau had been Plaintiff’s coach from the time he started wrestling. *Id* at 65. Plaintiff has admitted that Coach Nadeau was a good and knowledgeable coach and that Plaintiff had no problems or difficulties with the manner in which Coach Nadeau ran his practices. *Id* at 65-66.

On the day in question, Plaintiff claims that Coach Nadeau came up behind him unawares and took him down to the padded wrestling mat in order to demonstrate a wrestling maneuver called a roll. Coach Nadeau describes his actions in taking Plaintiff to the matt as follows: “Using the proper wrestling technique, I – I bumped his hips and returned him cautiously to the ground” (Deposition of Ryan Nadeau, p 39). Coach Nadeau further states “In a – in a controlled manner, I . . . placed him to the ground.” *Id* at 40. Plaintiff has not disputed Coach Nadeau’s description of the initial takedown. Coach Nadeau states that Plaintiff was then on his belly and Coach Nadeau was then over him in a wrestling position. *Id*. It is undisputed that Plaintiff’s arm was not broken directly after the initial takedown. Plaintiff admits that following the initial takedown, they

began to wrestle (Deposition of Matthew Reaume, p 69). They went through one full roll. The Plaintiff, who admits that they were wrestling, also admits that he posted his arm in an attempt to effectuate an escape. *Id* at 61-62. The posting of his arm leveraged his body against the second roll maneuver, which Coach Nadeau then effectuated. *Id*. Plaintiff admits that it was this second roll, coupled with the posting of his arm, that caused his injury. *Id*.

Plaintiff has further admitted that both a roll and an escape are common wrestling maneuvers and that demonstrating rolls was a normal part of wrestling practice. *Id* at 18, 59, 62, and 72. He further admitted that Coach Nadeau bore him no ill will. *Id* at 65.

### ARGUMENT

**I. COACH NADEAU'S ALLEGED FAUILURE TO GIVE ADEQUATE NOTICE OF THE INITIAL TAKEDOWN TO THE WRESTLING MAT WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF'S INJURY.**

Plaintiff has alleged that Coach Nadeau took him down to the wrestling mat without first giving warning that wrestling was going to be initiated. Plaintiff has not alleged, nor does the record support that Coach Nadeau's initial takedown was *the proximate cause* of Plaintiff's injury. It is undisputed that Plaintiff's arm did not break in the course of the initial takedown. The record supports that the cause of Plaintiff's injury was what occurred after 1) the takedown was complete; 2) the Plaintiff was on his belly on the mat; and 3) the first roll was completed without injury (Deposition of Matthew Reaume at 61-62; Deposition of Ryan Nadeau at 40). It was not until the preceding three steps were completed and the Plaintiff chose to post his arm while Coach Nadeau decided to roll through that Plaintiff's injury occurred. Following the initial takedown, both Plaintiff and Coach Nadeau wrestled as they were trained to wrestle. Plaintiff

attempted to effectuate an escape by posting his arm, and Coach Nadeau effectuated a second roll. Unfortunately, Plaintiff's posted arm, coupled with Coach Nadeau's second arm, caused an unfortunate injury to the Plaintiff.

For a plaintiff to be successful in a tort action against a governmental employee, the plaintiff must prove both that (1) the governmental employee's conduct demonstrated a substantial lack of concern for whether his conduct would cause injury to the plaintiff, and (2) the alleged misconduct was "the" proximate cause of the plaintiff's injury." *Tarlea v Crabtree* 263 Mich. App. 80, 82; 687 N.W.2d 333 (2004) citing *Robinson v Detroit*, 462 Mich. 439, 462; 613 N.W.2d 307 (2000). This Court has held that the phrase "the proximate cause" as used in the governmental immunity act, MCL 691.1407(2), means "the one most immediate, efficient, and direct cause of the injury or damage" complained of by Plaintiff. *Robinson, supra*. This Court explained: "that 'the' is a definite article, and 'cause' is a singular noun, it is clear that the phrase 'the proximate cause' contemplates *one* cause." *Id*. It follows, therefore, that a Plaintiff can only recover if the actors reckless conduct was the ONLY cause of the injury.

The record can only support a finding that Plaintiff's injury was caused by factors other than the initial takedown. It is undisputed that Plaintiff was not injured in the course of the initial takedown. Coach Nadeau initiated wrestling with Plaintiff by placing him on the ground in a controlled manner (Deposition of Ryan Nadeau, p 39). Coach Nadeau has testified that they were in a wrestling position with Plaintiff on his belly and Coach Nadeau over him. *Id* at 40. At this time, there is no allegation that Plaintiff stated "stop, I'm not ready" or "I'm unawares." They then completed one full roll (Deposition of Matthew Reaume, p 56). After the first roll, Plaintiff posted his arm in an attempt to

effectuate an escape, as he had been trained to do while, at the same time, Coach Nadeau effectuated a second roll. *Id* at 61-62. **Plaintiff admits that he broke his arm because his arm was leveraged against the “roll motion” of the second roll.**

Plaintiff stated:

Q That would be an escape?

A Yes.

Q So he's done a roll and you're attempting to do an escape?

A It's normal as soon as he's done just to get ready to get up.

Q And then he conducted another roll?

A Yes.

**Q And because your arm then was leveraged against the roll motion, if you will, that's how you injured the elbow?**

**A Yes.**

(Deposition of Matthew Reaume, pp 61-62.)

By Plaintiff's own admission, the initial takedown to the mat did not cause his injury. Rather, Plaintiff has admitted that other factors, which were three steps removed from the initial takedown, caused his injury. This admission necessitates a finding that the initial takedown was not the one most immediate, efficient and direct cause of the injury or damage. *Robinson, supra*. Plaintiff has admitted that the one most immediate and direct cause of his injury was his decision to post his arm in an attempt to effectuate an escape while Coach Nadeau chose to effectuate a second roll (Deposition of Matthew Reaume, pp 61-62). Plaintiff has not claimed that he was taken unawares and thereby slammed into the mat so hard that he broke his arm. Plaintiff has also not alleged that Coach Nadeau took Plaintiff to the mat so quickly or with so much force that Plaintiff was disoriented and unable to wrestle. To the contrary, Plaintiff has admitted that following the initial takedown, they began to wrestle and Plaintiff was able to make

the conscious decision to effectuate an escape from the wrestling hold, as he had been trained to do. *Id* at 61-62.

It is undisputed that the initial takedown did not cause Plaintiff's injury. Further, Plaintiff has admitted that his decision to post his arm, while Coach Nadeau effectuated a second roll, was the one most immediate cause of his injury. As such, Coach Nadeau's initial takedown was not the proximate cause of Plaintiff's injury, as defined in *Robinson* and in MCL 691.1407, and Summary Disposition of this matter is appropriate.

**II. THE ALLEGED CONDUCT OF COACH NADEAU IN TAKING PLAINTIFF TO THE PADDED WRESTLING SURFACE DOES NOT CONSTITUTE GROSS NEGLIGENCE.**

Plaintiff has claimed that Coach Nadeau was grossly negligent when he allegedly took Plaintiff, an experienced wrestler, down to the padded surface which is designed for wrestling, without first warning the Plaintiff that he was going to initiate the wrestling. Coach Nadeau has denied that he took Plaintiff down to the mat unawares. However, even if Plaintiff's allegation that Coach Nadeau did not give him warning before taking him down to the mat were true, Coach Nadeau's conduct does not constitute gross negligence. Furthermore, no actions taken by Coach Nadeau on the day in question amount to gross negligence.

Our courts have made it clear that gross negligence will only be found in the narrowest of circumstances. Indeed, MCL 691.1407(2)(c) defines gross negligence as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Consistent with this strong language, Michigan courts have drawn a clear distinction between gross negligence and mere ordinary negligence. As this Court

said in *Maiden v Rozwood*, 461 Mich 109,121; 597 NW2d 817 (1999), gross negligence requires that a Defendant's conduct was "substantially more than negligent." Furthermore, gross negligence is said to suggest "a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks," so much so that the Defendant "simply [does] not care about the safety or welfare of those in his charge." *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004) (alteration in original).

The distinction between gross negligence and ordinary negligence is even more pronounced in the context of sports-related injuries. Sports are governed by rules that are necessarily different than those that apply to every day life. As this Court pointed out in *Ritchie-Gamester v City of Berkeley*, 461 Mich 73, 86 (1999), although it would be a "breach of etiquette, and possibly the law, to battle with other shoppers for a particularly juicy orange in the grocery store . . . it is quite within the rules of basketball to battle for a rebound." (alteration in original). Sports are a fundamental part of our *ethos*. Given the critical role of sports in our society, courts have been reluctant to impose liability for sports-related injuries.

In support of Plaintiff's argument that Coach Nadeau acted with gross negligence Plaintiff relies heavily on (and misconstrues) the case of *Sciotto v Marple Norton School Dist*, 81 F Supp 2d 559 (ED Penn 1999). *Sciotto* demonstrates the type of behavior where courts will impose liability for sports related injuries. In *Sciotto*, Plaintiff, a 16 year old high school wrestler, was rendered a quadriplegic as the result of an injury that took place during wrestling practice. The Coach, Stu Nathans, would regularly invite former Marple Norton wrestlers to practice with current members of his squad. *Id* at 561. Coach

Nathans invited a 22 year old member of the Penn State University Wrestling team to participate in wrestling practice by engaging in live, full force wrestling with the students. *Id.* During practice that day, Fendler began to wrestle with Plaintiff. In the course of the full force wrestling, Fendler placed Plaintiff in a “half-nelson,” which resulted in an injury to the Plaintiff’s spinal cord.<sup>1</sup> *Id.* Plaintiff subsequently brought suit against several parties, including Coach Nathans.

Plaintiff’s suit against Coach Nathans was brought under a “state created danger” theory. In order to establish liability, Plaintiff had to prove that:

- (1) The harm caused was foreseeable and direct;
- (2) *The State actor acted with willful disregard for the Plaintiff’s safety;*
- (3) There existed some relationship between the State and the Plaintiff;  
and
- (4) The State actor used his authority to create an opportunity that otherwise would not have existed for the [injury] to occur.

*Id.* at 564-66 (emphasis added) (alteration in original). In essence, this legal framework hinges on much the same question as the gross negligence and reckless disregard inquiries. That is, could a reasonable juror find that Defendant acted with *willful disregard* for Plaintiff’s safety? As Plaintiff-Appellee’s correctly points out, in *Sciotto*, the Court answered this question in the affirmative and, therefore, denied Defendant’s Motion for Summary Judgment. However, although Plaintiff-Appellee correctly states the holding of *Sciotto*, he fails to take heed of the reasoning behind the Court’s decision. In addressing the issue of willful disregard, the Court placed considerable emphasis on precisely what Coach Nathans *understood* about the alumni-participation program prior

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<sup>1</sup> The half nelson is done using only one hand, by passing it under the arm of the opponent and locking the hand at the opponent’s neck (Exhibit 1). [http://en.wikipedia.org/wiki/Nelson\\_hold](http://en.wikipedia.org/wiki/Nelson_hold)

to the date of Plaintiff's injury. Specifically, Coach Nathans was aware of at least three key facts:

- (1) There had been a prior injury suffered by a team member during live wrestling with an alumnus;
- (2) There had been numerous parental complaints about the safety of alumni-participation;
- (3) Pennsylvania Interscholastic Athletic Association (PIAA) rules prohibited college athletes from scrimmaging with high school athletes, specifically in wrestling.

*Id* at 564. Thus, in holding that there was sufficient evidence of “willful disregard” to defeat the Defendant Coach’s Motion for Summary Judgment, the critical insight was the following one – a Coach who insists on continuing a dangerous program in the face of prior complaints and injuries displays willful disregard for the safety of his squad.

Looking carefully at the reasoning set forth above, Plaintiff’s conclusory assertion that the facts of the instant case are “very similar” and more “egregious” than those of *Sciotto* is shown to be misguided – if not altogether disingenuous. Again, the critical fact in *Sciotto* was that the Defendant Coach insisted on continuing a program that he (as well as concerned parents of wrestlers) understood to be dangerous and disfavored. Indeed, it was his conscious decision to continue such a program (a decision made in the face of myriad complaints and previous injuries) that distinguished the *Sciotto* case from those characterized by “ordinary careless conduct.” See *Behar v Fox*, 249 Mich App 314, 321; 642 NW2d 426 (2001) (Defendant Coach, who was participating full force in soccer against an 11 year old, was merely negligent, clumsy, and over-exuberant when he kicked the 11 year old’s knee during a soccer practice, thereby tearing his ACL). See also *Lilley, supra* (Coach’s grappling with wrestler with only one day of experience may have been careless, but was not reckless).

In *Patrick v Great Valley Sch Dist*, 2006 US Dist Lexis 35346 (attached as Exhibit 2), the Court distinguished *Sciotto*, and held that Plaintiff had not established that the Defendant Coach acted with willful disregard for his safety. In this case, the coach organized his Junior High wrestling team in pairs of two for the purpose of scrimmaging<sup>2</sup> with one another. *Id* at 2-3. Plaintiff, who weighed 152 pounds, was paired up with a teammate referred to as CP, who (at only fourteen years of age) weighed a remarkable 240 pounds. *Id*. The Court described what happened next:

While wrestling, [Plaintiff] became entangled with CP and the two violently collapsed to the padded floor. [Plaintiff] screamed and was immediately aided by assistant coaches Levi and Tricket. [He] had shattered his right tibia and growth plate.

*Id* at 3 (alteration in original). Plaintiff brought suit under the “state created danger” theory described in *Sciotto*, and Defendant Coach filed a Motion for Summary Judgment.

The Court held that Plaintiff had failed to establish a genuine issue of material fact on the issue of willful disregard. *Id* at 17. The Court began its analysis by conceding that the harm appeared to be foreseeable, and the conduct rather unwise. Nonetheless, the court was adamant that these facts alone did not establish that defendant Coach had *willfully disregarded* Plaintiff’s safety. *Id* at 16. The Court’s reasoning here was lucid and forceful:

[W]hereas in *Sciotto* the Defendant Coach **callously continued** to have the collegiate wrestlers live wrestle the high schoolers despite numerous complaints and prior injuries, *there is no evidence in this case that Coach Brown so acted in the face of such complaints or injuries.*

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<sup>2</sup> While the Opinion does not use the term “live wrestling,” as used in *Sciotto*, it is relatively clear from the Opinion that Plaintiff and CP were wrestling at full force, “just like in a match.” *Id*; See also *Sciotto*, 81 F Supp 2d at 562, n.2.

*Id* at 16 (emphasis added). Thus, the *Patrick* court drew a clear distinction between two types of behavior, only one of which was sufficiently egregious to subject a wrestling coach to liability: (1) a “callous” decision to act “in the face” of previous complaints/injuries – which compels the denial of a Motion for Summary Judgment – and (2) an unwise yet *isolated* lapse in judgment – which instead compels dismissal of the Plaintiff’s case. Since the facts of *Patrick* fell squarely within scenario (2), the Court concluded that Defendant did not possess the requisite “level of callousness” to bring the case within the purview of *Sciotto*. *Id* at 16-17. As such, Plaintiff’s case against the Defendant Coach was dismissed.

In point of fact, the record in the instant case is devoid of any evidence of the sort of conduct exhibited by Coach Nathans in *Sciotto*. There were no prior parent or student complaints regarding the Coach Nadeau’s conduct. Further, plaintiff has admitted that Coach Nadeau was a good and knowledgeable coach and that Plaintiff had no problems or difficulties with the manner in which Coach Nadeau ran his practices or exhibited his coaching techniques (Deposition of Matthew Reaume, p 65-66). This alone brings this case outside the scope of *Sciotto*. Ultimately, there is no evidence in this case that Coach Nadeau’s conduct amounts to the callous misbehavior described in *Sciotto*.

Plaintiff’s only argument is that Coach Nadeau displayed a reckless disregard for Plaintiff’s safety by, on one occasion, taking Plaintiff, an experienced wrestler, down to the padded wrestling matt (designed for the very purpose for which it was used on this occasion) to initiate a wrestling move (allegedly) without first warning Plaintiff. However,

even if Plaintiff had been taken by surprise, this does not “magically” lead to the conclusion that Coach Nadeau acted with willful disregard for Plaintiff’s safety. The very fact that Coach Nadeau took Plaintiff down to the mat so carefully that the initial takedown did not injure Plaintiff shows that Coach Nadeau did not act with a reckless disregard for Plaintiff’s safety. Coach Nadeau’s undisputed description of the takedown is that, using a proper wrestling maneuver, he carefully placed Plaintiff onto the mat (Deposition of Ryan Nadeau, p 39). It is undisputed, as described above, that this was not the cause of the injury. Plaintiff has not alleged that Coach Nadeau slammed him onto the concrete or that Coach Nadeau slammed him into the mat with such force so as to render him unable to wrestle. Rather, the record demonstrates that after Plaintiff was taken to the mat, the two began to wrestle. After completing one full roll, Plaintiff posted his arm, and Coach Nadeau attempted to effectuate a second roll. This second roll, coupled with the posting of Plaintiff’s arm caused his injury. These facts, alone, demonstrate that Coach Nadeau did not act with reckless disregard for the safety of Plaintiff during the initial takedown or during the remainder of the demonstration.

The instant case bears a striking resemblance to *Patrick*.<sup>3</sup> Just like in that case (and unlike in *Sciotto*), here there had been no prior complaints or injuries regarding Coach Nadeau or regarding the coaches demonstrating moves on students. And although it is true that Plaintiff’s injuries required considerable medical care and rehabilitation, this was also the case in *Patrick*, just as it will almost certainly be the case

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<sup>3</sup> Both *Patrick* and *Sciotto* come from the Eastern District of Pennsylvania. Therefore, the *Patrick* court’s reading/application of *Sciotto* has considerable salience, as it comes *straight from the horse’s mouth*.

in future wrestling cases.<sup>4</sup> Ultimately, the injury to Plaintiff's arm was the sort of injury that commonly occurs in wrestling. One study showed that during a wrestling season, injuries will occur to 52 out of every 100 wrestlers (Exhibit 3). Over 17% of those wrestling injuries will be injuries to the shoulder and arm (Exhibit 4). Ultimately, injuries of this sort will continue to occur in a physical contact sport like wrestling, the very goal of which is to exert dominion over one's opponent by pinning him to the ground.<sup>5</sup> Therefore, without the blatant level of disregard displayed in *Sciotto*, imposing liability in the world of interscholastic athletics remains inappropriate.<sup>6</sup> See *Ritchie-Gamester*, 461 Mich at 93, n 13 (noting the toll that increased litigation costs has had on Little League Baseball and the Girl Scouts of America). Truly, the implications of imposing liability in the world of interscholastic athletics are grave when applied to cases where there was no willful disregard for the safety of the Plaintiff. A watered-down standard that imposes liability for ordinary careless conduct will "chill vigorous participation and fundamentally alter the nature of the sport itself." *Lilley*, 68 Cal App 4th at 943 (referring to the impact that such a standard would have on wrestling). Contact-sports like wrestling provide a

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<sup>4</sup> Although all sports carry with them the risk of potential injury, wrestling is particularly dangerous. Indeed, the only sport where an athlete is more likely to be injured is football. See Charles B Pasque and Timothy Hewett *A prospective Study of High School Wrestling Injuries*, *The American Journal of Sports Medicine*, Vol 28, No 4 (finding an overall injury incidence of 52 injuries per 100 wrestlers per season) (Exhibit 3); See also <http://www.nata.org/consumer/injuryinfo> (injuries to the shoulder/arm account for 17.3% of all high school wrestling injuries).

<sup>5</sup> Despite the fact that contact-sports have not become any more dangerous over the years, litigation in this context has increased. Some commentators argue that this paradox is the result of increased media attention on sports-related injuries. See Bill Dwyre, *Conditions Have Improved, But More Help Is Needed*, *Los Angeles Times Orange County Ed.*, Oct. 26, 2001.

<sup>6</sup> Indeed, until the courts below ruled on this case, Michigan courts seemed to uniformly agree with this point.

number of invaluable benefits to participants.<sup>7</sup> In addition to the obvious physical benefits, wrestlers are also instilled with the values of hard work, perseverance, and in Plaintiff's own words, the ability to pick oneself up off of the ground.<sup>8</sup> At the end of the day, the law ought to protect such an activity – not proscribe it.

A proper juxtaposition of *Sciotto* and *Patrick* establishes that critical distinction in these sorts of cases is a simple one – has Coach Nadeau been made aware of a certain danger and, if so, has he proceeded to act in the face of it? With respect to Coach Nadeau, the answer to this question is a resounding “NO.” Plaintiff's only allegation is that Defendant Coach, who had demonstrated wrestling moves to Plaintiff on numerous prior occasions without any injury resulting, took Plaintiff down to a padded surface designed for wrestling, in order to initiate a wrestling move without first warning Plaintiff that he was going to do so. Perhaps if Defendant Coach had taken Plaintiff down to a cement surface or a mat covered in barbed wire, there could be a question of fact as to gross negligence. However, given the facts of this case, and Plaintiff's own admission that Coach Nadeau was an experienced coach who bore him no ill will, gross negligence is not present as a matter of law. Therefore, the facts of the instant case do not support a finding of reckless disregard for Plaintiff's safety and summary disposition is appropriate (Deposition of Matthew Reaume, pp 65-66).

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<sup>7</sup> Some of our greatest citizens have benefited from lessons learned on school wrestling mats. Abraham Lincoln was County Champion, Chief Justice John Roberts was a star at La Lumiere Prep in his home state of Indiana, and the critically-acclaimed author John Irving wrestled at New Hampshire's prestigious Exeter Academy. See <http://www.longvalleywrestling.org/wrestle-football.pdf> (Exhibit 5)

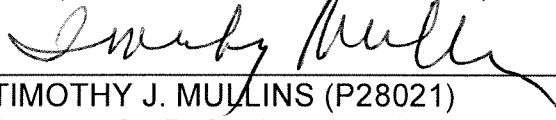
<sup>8</sup> “[I]n wrestling you *always* want to get up to your feet, get away” (Deposition of Matthew Reaume, pp 61-62) (emphasis added).

**CONCLUSION**

For all of the reasons stated above, this Honorable Court should reverse the Court of Appeals and find that Summary Disposition in favor of Defendant should be granted.

Respectfully submitted,

COX, HODGMAN & GIARMARCO, P.C.



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Dated: March 2, 2007

STATE OF MICHIGAN  
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PROOF OF SERVICE

ELIZABETH BINNO states that on March 2, 2007, she caused to be served a copy of **DEFENDANT, RYAN NADEAU'S SUPPLEMENTAL BRIEF** upon:

Diane L. Aimar-Saylor, Esq.  
29900 Lorraine Ave., Ste. 100  
Warren, MI 48093

by placing same in a sealed envelope, properly addressed, with sufficient first class postage affixed thereon, in a United States Mail receptacle on the aforementioned date.

  
\_\_\_\_\_  
ELIZABETH BINNO