MICHIGAN SUPREME COURT

Office of Public Information

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FOR IMMEDIATE RELEASE

SLIP-AND-FALL COVERED BY AUTO NO-FAULT POLICY? PLAINTIFF CLAIMS SHE FELL WHILE CLOSING PASSENGER-SIDE DOOR AFTER LOADING TRUCK; INSURER DISPUTES CONNECTION BETWEEN USE OF VEHICLE AND INJURIES
Jury said that exceptions to "parked vehicle exclusion" applied, plaintiff entitled to benefits
Michigan Supreme Court to hear case in Caro as part of "Court Community Connections" program; local high school students to attend argument, meet Supreme Court justices

LANSING, MI, October 11, 2011 – A dispute over whether the plaintiff's no-fault auto insurance covers injuries she suffered while allegedly closing the door to her parked truck will come before the Michigan Supreme Court on October 27, when the Court convenes in Caro for "Court Community Connections," a Supreme Court program aimed principally at high school students.

The plaintiff in *Frazier v Allstate Insurance Company* broke her ankle in a fall in her condominium parking lot while preparing to leave for work; she contended that she slipped and fell while closing the door to her truck after loading some items inside. After initially paying her some personal injury benefits, the plaintiff's no-fault insurance company refused to continue; the insurer argued, based on statements from paramedics, that the woman simply slipped and fell in an icy parking area, and that her fall had nothing to do with her use of her vehicle.

Michigan's no-fault auto insurance act generally does not allow recovery for accidental injuries arising "out of the ownership, operation, maintenance, or use of a **parked vehicle** [emphasis added] as a motor vehicle," but there are exceptions. The parked vehicle exclusion does not apply if the injury is "a direct result of physical contact with equipment permanently mounted on the vehicle" or where someone was injured while "alighting from the vehicle." A jury found that these exceptions did apply in the plaintiff's case; although the insurer appealed, the Michigan Court of Appeals affirmed the $433,655.12 trial verdict and ruled that the woman was also entitled to recover her attorney fees from the insurance company. The insurer, Allstate, has appealed.

The Michigan Supreme Court, which normally hears oral arguments at the Michigan Hall of Justice in Lansing, will hear oral argument in Caro at the Tuscola Technology Center. Students and educators from Caro, Cass City, Vassar, Kingston, Reese, Akron-Fairgrove, Mayville, and Unionville-Sebewaing high schools will attend the oral argument, which begins at 12:45 p.m. Students and teachers will study the case in advance with the help of local judges and attorneys from the Tuscola County Bar Association.

Following the argument, students will meet with the attorneys in *Frazier v Allstate* for a debriefing. Students are also invited to a reception with the justices of the Michigan Supreme Court.

Chief Justice Robert P. Young, Jr. said that the Court started "Court Community Connections" in September 2007 to educate the public about the appellate court process. "Compared to the trial courts, the appellate courts are low drama, high impact," Young said. "High-profile trials offer a lot of interest, but they have a direct effect only on a limited group of people. Appellate courts may not be very glamorous, but their rulings, to the extent they are binding on future courts, can have a wide and lasting impact on many people. We cannot really appreciate the justice system, and its role in our constitutional republic, without understanding how the appellate courts work."

"Court Community Connections" takes the Court to different communities throughout Michigan, Young explained. "The communities that have hosted us for these programs have been unfailingly gracious and supportive, and Tuscola County is no exception," he said. "My fellow justices and I are very grateful to the local educators and students, judges and court staff, and local attorneys for all their support and cooperation."

Tuscola County Probate Judge Amanda Roggenbuck said that "Court Community Connections" is a valuable experience in state government. "The judicial branch is probably the least understood of the three branches of government," she said. "By participating in this program, students will see one aspect of their government in action."

Please note: *The following summary provides a brief account of a complex case and may not reflect the way that some or all of the Court's seven justices view the case. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of the case. Briefs are online at http://www.courts.michigan.gov/supremecourt/Clerk/MSC_orals.htm. For further details about the case, please contact the attorneys.*

FRAZIER v ALLSTATE INSURANCE COMPANY (case nos. 142545, 142547)
Attorney for plaintiff Mona Lisa Frazier: Mark R. Granzotto/(248) 546-4649
Attorney for defendant Allstate Insurance Company: Karen W. Magdich/(248) 344-0013
Trial Court: Macomb County Circuit Court
Court of Appeals case nos. 292149, 293904
At issue: A woman who broke an ankle in a fall sued her auto no-fault insurance company after the company refused to continue paying her personal injury benefits. The insurer argued, based on statements from paramedics, that the woman simply slipped and fell in an icy parking area, and that her fall had nothing to do with her use of her vehicle. The woman contended that she fell while closing her passenger side door after loading the vehicle, and that her injuries were connected to her use of it. While the state's no-fault auto insurance act generally does not allow recovery for accidental injuries arising "out of the ownership, operation, maintenance, or use of a **parked vehicle** [emphasis added] as a motor vehicle," there are exceptions: the parked motor vehicle exclusion does not apply where the injury is "a direct result of physical contact with equipment permanently mounted on the vehicle" or where the someone was injured while "alighting from the vehicle." A jury found that these exceptions did apply in the plaintiff's case and awarded her a favorable verdict. Ultimately, the Michigan Court of Appeals affirmed the jury's $433,655.12 verdict and ruled that the woman was also entitled to recover her attorney fees from the insurance company.

- Was the woman's injury "a direct result of physical contact with equipment permanently mounted on the vehicle," as provided by MCL 500.3106(1)(b)?
- Did she sustain her injury while "alighting from the vehicle" within the meaning of MCL 500.3106(1)(c)?
- Is she entitled to attorney fees under MCL 500.3148(1)?

Background: On December 30, 2005, while leaving for work, Mona Lisa Frazier fell and broke her ankle in her condominium parking lot. According to Frazier, she went to her carport and opened her truck's front passenger door to put a work bag and other items inside. There was ice in the parking lot, and the passenger side of the truck was near a step incline. Frazier said that, after putting her belongings in the truck, she stepped aside to make room to close the door, but slipped on ice and fell. She testified that she was touching the door when she fell, but probably slid a short way from the truck because of the steep incline and the impact of her fall. Frazier had surgery to repair her ankle, but never returned to her job, and reported that she experienced pain for years after the accident.

Frazier applied for personal injury protection (PIP) benefits from Allstate, her no-fault auto insurance company, on the basis that her injury was related to her use of the vehicle. After making some payments to Frazier, the insurance company cut off her benefits several months later, after an Allstate representative interviewed the two paramedics who assisted Frazier after the fall. One paramedic stated that – contrary to Frazier's claim that she was touching the car when she fell – Frazier was lying three to six feet from the carport pole when he arrived. The other paramedic testified that she was lying about six feet from the pole. Allstate contended that Frazier simply fell on the ice and that there was no connection between her fall and the use of the truck.

Frazier sued Allstate to recover the PIP benefits; the case proceeded to a jury trial. Allstate moved for a directed verdict, arguing that Frazier had not presented enough evidence to support her case and that her claims should not go to the jury. But the judge allowed Frazier's case to go to the jury on the issues of whether her injury was the direct result of physical contact with the vehicle and whether she sustained her injury while alighting from the vehicle.

On December 15, 2008, the jury returned a verdict in Frazier's favor, finding that her injury was the direct result of physical contact with equipment permanently mounted on the vehicle and that she sustained her injury while alighting from the vehicle. The trial judge entered a judgment of $433,655.12 for Frazier.

Both Allstate and Frazier made post-trial motions – Allstate moved for judgment notwithstanding the verdict, which the judge denied. While finding that Frazier was entitled to costs as the prevailing party in the case, the judge denied Frazier's motion for attorney fees. While Frazier contended that Allstate had acted unreasonably in cutting off her PIP benefits, the trial judge found that Allstate acted reasonably because there was a bona fide question as to whether Frazier's injury arose from the operation of a motor vehicle.

Frazier and Allstate both appealed. In an unpublished opinion, the Michigan Court of Appeals affirmed the judgment in Frazier's favor and also reversed the trial judge's order denying her request for attorney fees.

Allstate appealed to the Michigan Supreme Court. On June 17, the Supreme Court issued an order, stating that the Court would hear oral arguments on whether to grant Allstate's applications for leave to appeal. The Court has directed the parties to address the following issues:

- *Was the plaintiff's injury "a direct result of physical contact with equipment permanently mounted on the vehicle," as provided by MCL 500.3106(1)(b)?*
  The Court of Appeals concluded that the passenger door on Frazier's truck was "equipment permanently mounted on the vehicle," although one judge on the panel disagreed, stating that a car door is an integral component of the vehicle and not "equipment." Allstate argues that "equipment" is something added to a vehicle for a specific activity. Frazier disagrees, noting that the Court of Appeals has ruled in *Gunsell v Ryan* that a vehicle's door may be construed as "equipment permanently mounted" for purposes of the no-fault act.

- *Did the plaintiff sustain her injury while "alighting from the vehicle" within the meaning of MCL 500.3106(1)(c)?*
  Frazier argued, and the Court of Appeals agreed, that if the jury found that Frazier was in the process of closing the passenger door when she fell, then she was still "alighting from" her truck. Allstate argues that Frazier could not have been "alighting from" her truck because she never entered the vehicle. Even if Frazier could be said to be "alighting from" her vehicle, she had finished doing so because she had taken several steps away from the truck and both her feet were on the ground, Allstate contends.

- *Is the plaintiff entitled to attorney fees under MCL 500.3148(1)?*
  Under the no-fault act, a claimant who prevails in a PIP benefits case can recover attorney's fees from the insurance company "if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." The trial court denied Frazier's request for attorney's fees, finding that Allstate acted reasonably in stopping the PIP benefits after Allstate's claims representative interviewed the paramedics who assisted Frazier after her fall. "The question whether Plaintiff was operating her motor vehicle giving rise to no fault benefits for her injury was a key question in this case given Plaintiff's explanation of her injury, thereby making Defendant's denial of her claim reasonable since it was based upon a legitimate outcome determinative question of fact," the judge stated. But the Court of Appeals disagreed, noting that the claims representative did not record the interviews or obtain signed statements from the paramedics, and that her affidavit was inconsistent on several points with sworn testimony that the paramedics later gave in depositions and in court. Moreover, Allstate relied on the claims representative's decision without conducting any further substantial investigation, the appellate panel said. Under the circumstances, the insurer did not meet its burden of showing a "legitimate" factual question that would justify ending Frazier's benefits, the Court of Appeals concluded.

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