

# Michigan Court of Appeals Again Looks to ‘Transportational’ Function of Motor Vehicle at Issue in Holding That No-Fault Threshold Was Satisfied

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The Michigan Court of Appeals recently examined whether the no-fault threshold was satisfied in regard to a factual dispute in which the plaintiff and his wife (co-defendant) were allegedly trying to move a large safe with a truck. The plaintiff Charles Walega filed a third-party action against Kathleen Walega and a first-party action for no-fault benefits against Farm Bureau.

In the case of *Walega v Walega*, 2015 WL 5284895 (Mich. App. Sept. 10, 2015), according to the plaintiff's version of the incident, he was trying to load the safe onto the back end of the pickup truck when it fell onto his leg. According to the co-defendant Farm Bureau, and as discovered from a Facebook post of Kathleen Walega, the accident occurred when Kathleen attempted to pull the safe across the concrete with a cord connected to the truck when the safe flipped up and landed on the plaintiff's leg. Farm Bureau filed a motion for summary disposition, arguing that the truck was not used as a motor vehicle but the trial court disagreed, finding that the plaintiff had access to no-fault benefits under either factual scenario.

Farm Bureau appealed, arguing that under the defendant's version of the facts the vehicle was used as an anchor point or as a "tool" and thus was not being used as a motor vehicle as required by MCL 500.3105(1). The appellate court disagreed, affirming the trial court in holding that the causal nexus was satisfied under either scenario.

The appellate court reasoned that there were only two possible factual scenarios: (1) the safe either fell from the back of a moving or stationary truck or (2) tipped over while being dragged by a moving truck.

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Had the safe fallen from the back of the truck while it was parked, the court noted that the plaintiff would still be entitled to benefits pursuant to the loading/unloading parked vehicle exception found under MCL 500.3106(2)(a). In addition, even under the defendant's alleged version of the facts (that the safe was being towed across a driveway) the court, relying on *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214 (1998), noted that the Michigan Legislature intended coverage of injuries resulting from the use of motor vehicles when closely related to their transportation function and only when engaged in that function.

Applying that standard, the *McKenzie* court had found that the nexus was not satisfied when a motor vehicle was being used as a sleeping accommodation while parked. To the contrary, the *Walega* court noted that viewing the facts in the light most favorable to the plaintiff, it was undisputed that the truck was being used for the purposes of moving a safe from one place to another, which fell squarely within the "transportation function" of the vehicle, thus satisfying the no-fault threshold.

In determining whether the no-fault threshold has been satisfied, the key is to assess the "transportational function" of the vehicle and how the vehicle is being used at the time of the accident. For example, had the safe been propped on the back of the truck to try to crack it open when it fell on the plaintiff's leg, there would have likely been a strong argument that the "transportational function" of the vehicle was not at issue.

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