

STATE OF MICHIGAN
BENZIE COUNTY CIRCUIT COURT

CHARLENE KERBY,
Plaintiff,

Hon. James M. Batzer
Circuit Judge

File No. 88-3233-NI

v

AUTO-OWNERS INSURANCE COMPANY,
Defendant.

Kenneth P. Walz (P21964)
Mark J. Warba (P36238)
WALZ, STANTON & VIEL, P.C.
Attorneys for Plaintiff
115 Ives - Box C
Big Rapids, MI 49307

James I. Sullivan (P25330)
Dennis Taylor (P32649)
Attorney for Defendant

ORDER REGARDING SUMMARY DISPOSITION

At a session of said Court, held on
the 9th day of OCT, 1989.

Present: Hon. James M. Batzer
Circuit Judge

This matter having come to the Court's attention by way of Plaintiff's Motion for Partial Summary Disposition brought pursuant to MCR 2.116(C)(10), and Defendant's Motion for Summary Disposition brought pursuant to MCR 2.116(C)(8) and (10); the Court having reviewed the written submissions of the parties in support of (as well as in opposition to) the respective Motions; hearing having been held in Court on 09/25/89, at which time counsel for the parties presented oral argument; and the Court being otherwise advised in the premises;

IT IS HEREBY ORDERED AS FOLLOWS:

- A. Plaintiff's Motion for Partial Summary Disposition on the issue of Defendant's responsibility/liability to pay, as part of No-Fault 1st-party work-loss benefits, the cost of hiring substitute/replacement labor to perform those self-employment services in connection with Plaintiff's business she would have performed but for the injuries sustained in the automobile accident is GRANTED;
- B. There will be left open, for future determination, the amount of Plaintiff's damages pursuant to the above;
- C. Plaintiff's request for the assessment of penalty interest and attorney fees based on Defendant's refusal to pay the costs of hiring substitute/replacement labor to perform self-employment services in connection with Plaintiff's business is DENIED, the Court finding a legitimate question of statutory construction regarding the language, legislative intent, and application of MCL 500.3107(b); MSA 24.13107(b) having been involved;
- D. Defendant's Motion for Summary Disposition is DENIED.

JAMES M. BATZER *JMB*

Hon. James M. Batzer
Circuit Judge