The social security number and dates of birth have been redacted from this opinion.

**STATE OF MICHIGAN**
**MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY**
**WORKERS' COMPENSATION BOARD OF MAGISTRATES**

CHANIKA BAKER,
SSN: XXX-XX-XXXX,
Plaintiff,

vs.

YAROCH SENIOR SERVICES 408, LLC d/b/a
HOME INSTEAD SENIOR SERVICES and
INSURANCE COMPANY OF THE WEST,
Defendants.
_____/

APPEARANCES:

Plaintiff – William W. Watkinson, Jr. (P 53733)
Defendant – Donald H. Hannon (P 32745)

TRIAL DATES: April 18, 2022 & May 25, 2022 (Briefs Submitted)

# OPINION and ORDER

This case is currently before the Board of Magistrates pursuant to an Application for Mediation or Hearing–Form A (hereafter referred to as "AFH-A") filed by Plaintiff on February 18, 2021.[1] It is alleged that Plaintiff sustained an injury arising out of and in the course of her employment with Defendant Yaroch Senior Services 408, LLC on September 19, 2019, and September 2019. Disability is claimed to have resulted from same and it is further claimed that she is entitled to various benefits under the Michigan Workers' Disability Compensation Act ("WDCA") as a result thereof.

For purposes of the pending AFH-A the parties, through their respective counsel, submitted what was deemed to be a "Joint Final Pre-Trial Statement" (**Joint Exhibit I**) setting forth not only Stipulations as to certain factual matters (but **only** for purposes of

[1] An earlier AFH-A had been filed by Plaintiff on November 20, 2019, but was withdrawn October 10, 2020, and case Dismissed via Order signed November 16, 2020, being mailed by Workers' Compensation Agency ("WCA") from Lansing on January 6, 2021.

this hearing and determination of the issue at hand) along with a proposed list of witnesses (some of whose testimony was presented by deposition), as well as certain Exhibits which were expected to be submitted by each side at the outset or during the course of trial. These matters and items effectively agreed to by the parties, again **solely** for the purpose of adjudicating one issue, were as follows:

1. That the one and only date of injury involved herein occurred on or about September 26, 2019.
2. That both parties were subject to the Act.
3. That the carrier named was on the risk for the alleged date of injury.
4. That the Defendant employed Plaintiff on the alleged date of injury.
5. That the employer had timely notice of the alleged injury.
6. That claim was timely made as it relates to the alleged injury.
7. That the average weekly wage is **not** applicable to the issue currently presented.
8. That details re: fringe benefits, including the existence of same, their value & when/whether the same were discontinued are **not** applicable at this time.
9. That the appropriate weekly benefit rate is **not** applicable to the issue which is presented at this time.
10. That dual employment is **not** applicable
11. That whether Plaintiff was paid alternate benefits which were subject to coordination under sections 354 and/or 358 the Act is/are **not** applicable to the issue currently presented.
12. That whether the claimed disability is due to the alleged personal injury is **not** applicable to the issue presented at this time.
13. That Plaintiff is married & files taxes jointly.
14. That the existence of dependents is **not** applicable to the issue presented at this time.
15. That the weekly rate of benefits potentially payable to Plaintiff, were she to prevail in establishing a compensable work-related disability, is **not** applicable to the issue presented at this time.

It was also agreed by the parties that lay witnesses presented in person at trial will consist of:

1. For Plaintiff: Chanika L. Baker
2. For Defendant: Glenna Yaroch; Michael Thielemans; Gail Wilk and Alexis Loftus (whose testimony was ultimately secured via deposition)

They also identified certain documents, records, reports, and other items of a like nature that would be submitted by each side, which at the time of the Joint Pre-Trial Statement was signed and dated (3/9/22)[2], consisted of the following list:

[2] However, extent of potential Exhibits was not definitely limited to those listed below and both parties reserved the right to object to any document or item being admitted at the time of trial.

For Plaintiff: State of Michigan Traffic Crash Report.

For Defendants: Employers Basic Report of Injury
State of Michigan Traffic Crash Report
Beaumont Health ER Records 09-26-2019
Notice of Dispute 10-22-2019
Google maps excerpts
CAREGiver Job Description (5 pages)
Home Instead Incident Report Form (2 pages)
ICW Notepad entry of 10-11-2019 (A. Loftus TC w/claimant)
ICW Notepad entry of 10-11-2019 (A. Loftus TC w/Glenna Yaroch [sic.] & Gail Wilk)
Employer notes 9-26-2019 to 10-09-2019 re: DOI 9-26-2019
Employer note (handwritten) of 10-9-19
Michael Thielemans' e-mail of 02-05-2021
Transcript of Testimony of Chanika Baker of June 30, 2021, in *Chanika L. Baker v. Falls Lake National Insurance Company*

In connection with this Joint Final Pre-Trial Statement counsel also submitted two additional paragraphs in accordance with Board of Magistrates Rule 15(4), *supra*, which basically set forth the limited issue to be determined in the upcoming trial and that all other issues as to Plaintiff's possible entitlement to benefits under the WDCA were reserved for a future determination, if necessary, expressly stating in pertinent part that:

> ". . . the parties **Stipulate and Agree** that the **only** issue to be decided by the Board of Magistrates . . . is limited to the determination as to: Whether at the time of the motor vehicle crash in which Plaintiff was involved on September 26,2019 occurring near the intersection of Crooks Road and South Boulevard, she was in the scope and course of her employment . . ." (p.3)

The next paragraph went on to reserve **all** other issues under the WDCA including Affirmative or other Defenses which Defendants retained for determination in any future proceedings.[3]

At the outset of Trial, the Joint Final Pre-Trial Statement was noted, reviewed on the record and in connection therewith various items and documents, including deposition transcripts, were identified, marked as exhibits and largely admitted into evidence, albeit with some objections made to portions of the same or otherwise preserved as may have been previously lodged, with others deferred having been offered at that time pending a need for foundation. These are either specifically identified independently later in this

[3] It is to be noted that both sides, through their respective attorneys, had previously entered what amounted to be the same Stipulation limiting the issue to be determined and reserved anything else to be decided at later date, if necessary, that written agreement dated January 31, 2022.

Opinion[4] and/or referenced and discussed in connection with the summary of testimony given at trial as set forth in the paragraphs which follow.

**SUMMARY OF LAY WITNESS TESTIMONY**

**Chanika L. Baker:**

Ms. Baker was the only witness called and who testified on her own behalf and as part of the case in chief. After going over the usual identification process and her job for Defendant[5] as a Home Health Aide caring for patients, the balance and focus of her testimony related to the circumstances and details of what occurred on September 26, 2019, beginning with the commute from her residence in Flint, Michigan to the Thielemans' residence in Rochester Hills, Michigan. Her shift began at 7:00 a.m., further stating that she drove her own car and that the shift was scheduled to end at 1:00 p.m.[6]

The Plaintiff then testified that she left the home mid-morning at about 8:00 or 9:00 a.m. to accompany Mr. and Mrs. Thielemans, to an appointment with one of her doctors at "Beaumont"[7] and assist the latter. She stated at the outset of this trip she helped get Ms. Thielemans into her husband's car. They left the Thielemans residence in their respective cars as she was told by Mr. Thielemans to drive herself. She went on to indicate that upon arrival at the doctor's office she again was involved with assisting Mrs. Thielemans out of the car[8] and then (the patient being wheelchair-bound) roll her up to the building where the doctor's office was located. She went on to state that at that point Mr. Thielemans instructed her to return to their home. She did not go into the building or office but went back into her car and left the parking lot to go back to the Thielemans' residence.

When questioned about what happened next, Ms. Baker testified that she "got lost," as her navigation system was not working. Plaintiff went on to explain that once this occurred, she kept driving around but not knowing exactly where she was, pulled into a nearby Kroger store to ask for directions. This store was identified as being at the corner of Crooks Road and South Boulevard in Rochester Hills.[9] She denied going into the store, stating that she asked directions from a lady in the parking lot. She did not know who this was, never got out of her car, simply rolled down the window and talked to this person about how to get to the Thielemans home due to her non-working navigation system. She then departed the Kroger parking lot, heading to the Thielemans' house.

In relation to the specific direction Ms. Baker went upon pulling out of the parking lot, she testified to having turned left. Shortly after that is when the accident happened.

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[4] See: pp.24-29, *infra.*
[5] But unable to recall when she started working for this entity.
[6] She also provided some detail relating to specific tasks normally performed for Ms. Lisa Thielemans and that her husband, Michael Thielemans was also present at their home.
[7] Although unable to state where that office was located, but later referring to it as "Beaumont Hospital."
[8] Later clarifying that the Thielemans' vehicle was some sort of modified wheelchair-accessible van.
[9] Subsequently more detail as to the exact location and configuration of that lot and intersection was as depicted in the "Google Maps" excerpts, admitted as **Defendants' Exhibit G**.

She could not recall what street she turned onto, but after mention of the accident report indicating it occurred at the Crooks and South Boulevard intersection, agreed that was correct. In relation to the details of the crash, she simply indicated that approaching the intersection she noticed a black truck proceeding "real fast at me" so she tried to go faster, but she got hit from the rear. The Oakland County Sheriff arrived on the scene sometime later. The only person she contacted after the accident was Mr. Thielemans. She first indicated having driven from the accident, but then corrected herself to state she was taken via ambulance to Beaumont Hospital. Ms. Baker further testified that had she not been involved in the accident she intended to return to the Thielemans'. She also denied running personal errands at the time of the incident but reiterated that it would have been against the rules to stay in the Thielemans home while they were at the doctor's office.

On cross-examination examination Plaintiff confirmed that she drove to work from Flint, going directly to their residence, not stopping at Defendant's office first. She was then asked numerous details in terms of the specific route she would take from her home to the Thielemans', starting with I-75. She was unable to recall the exit, adding that she did not use her "navigation" all the time, but then went on to state that she was unfamiliar with the area. It was onto a limited access road (or freeway) but was not sure if it was M-59. She could not recall what exit she got off after that but seemed to agree that Crooks Road was one of the exits off M-59. Upon being presented with a hard copy of a Google Map, she acknowledged two exits off M-59 were Crooks and another being Rochester Road. In response to which of the two she used to get off and proceed to the Thielemans' house, she could not recall.[10] She then said she thought the exit started with a "U" which was another highway that turned into Crooks. Plaintiff added that she was not familiar with that area, Rochester in general or any of the streets involved, having to use her navigation system to get anywhere. She stated the only one she recalled is "Shelby" or "Shelly" because that was the one which always popped up on her navigation, this being the street the Thielemans lived on.

Ms. Baker was then presented with another Google Map[11] and questioned about the respective locations of the Thielemans residence, various streets, and other places, including the doctor's office. She could not recall exactly when they departed from the house to go the doctor's office, guessing it to be about 9:00 or 10:00 a.m. She had arrived at the house at 7:00 a.m. and assisted Mrs. Thielemans with numerous personal tasks, such as getting dressed, combing her hair, feeding her, etc. As far as any conversation she had with Mr. Thielemans before departing for the appointment, Ms. Baker advised her that he did not want her to stay in the house and to come with him to the doctor's office. Specifically, she testified that he asked her to "follow him" (in her car) not knowing which way they turned, but that she was just "tailing him," again referencing her being unfamiliar with the area. She added that it would be necessary for her to further assist the

[10] When at this point questioned about the location of the accident on the Google Map, Ms. Baker reiterated it having occurred at Crooks and South Boulevard but was unable to locate the doctor's office.

[11] Being a part of what had been admitted as **Defendants' Exhibit G**.

client in getting her out of the Thielemans' vehicle and into the doctor's office. When questioned about the most direct route and using the aforementioned map, she agreed that it could be in line with counsel's recitation of which roads to use and turns to make. Ms. Baker once more indicated that she was just following and not really paying much attention to directions, again bringing up that her navigation was not working.[12]

Continuing with the trip Ms. Baker confirmed when they left the house Mr. & Mrs. Thielemans were in their vehicle and she was following in her own car. She initially stated that "nothing happened" during that trip from their house to the doctor's office. However, she then acknowledged that while in route Mr. Thielemans called her by cell phone. In response to further questioning as to what she said in answering whatever Mr. Thielemans had asked her (at that point in response to an objection relating to what he said being withdrawn) Ms. Baker indicated something to the effect that what did he want her to do, stay there or continue? As a result, Plaintiff testified that she did not change or alter her route but continued to follow the Thielemans, which ended at the office. Nevertheless, she was unable to state which direction she had turned onto South Boulevard, once more referencing her unfamiliarity with and general lack of geographical knowledge about the area, albeit also admitting that she had worked for this patient for two (2) or three (3) years. She emphasized that she actually went only to their house and even as to there, pretty much pleaded general ignorance of directions without her "navigation."

Upon arriving at the doctor's office, she and Mr. Thielemans parked their respective vehicles, his at a handicapped spot and hers elsewhere. She also testified that both she and Mr. Thielemans got out, with her going on to assist getting Mrs. Thielemans out of the van and to the door, after which her husband took over. At that time there was a further conversation between herself and Mr. Thielemans and, as a result, she left having been told to meet him back at the house.

She then departed the parking lot of the doctor's office on South Boulevard but was unable to recall which way she turned, or direction headed, adding that she was "lost" for about 30 to 35 minutes.[13] Ms. Baker further stated that after a while she came upon the Kroger store, which is when she went into that lot to ask for directions. Upon further questioning about any turns, she may have made between leaving the doctor's office and getting onto South Boulevard, she denied same, reiterating that she did not recall which was she turned but regardless it was the "wrong way" and then ended up in the area where the Kroger was located, but then backtracked and suggested that she had turned around, her navigation system was not working and so on, but saw the Kroger and went

[12] During this process, an exchange between both counsel and this Magistrate verified what the compass directions (east, west, north & south) were (had there been specific reference to or a compass rose depicted on the map itself) in relation to which way the various streets identified ran, and hence direction which the party took from the Thielemans house to the doctor's office. Counsel agreed to allow the reference to "North" being placed in the proper position on both the initial Google map identified and the other version (**Exhibit G**) which was identified in this part of examination (one being a "landscape" view, the other a "portrait").

[13] Since the map itself was not precise as to which side of South Boulevard the doctor's office was located, counsel clarified that it was on the "north side" of this street.

in there for directions. In response to being further questioned as to whether she made any turns between leaving the doctor's office on South Boulevard and pulling into the Kroger lot she reiterated her apparent ignorance as to the area whatsoever, including to profess that she was unable to even read a map or find her way without "navigation." She did recall having made a left turn to get into the Kroger parking lot, moments later, when pressed with one of the maps (**Defense Exhibit G, pp.2 & 3**), then recanted and indicated she did not recall which way she turned, not knowing anything without her navigation being on, but again agreeing she could have turned left.

Moving on to questions about her leaving the Kroger parking lot, the answers were equally inconsistent and confusing when trying to assess her testimony in relation to the diagram(s) contained in the Accident Report (**Plaintiff Exhibit #1** & **Defense Exhibit D**). In further response to questioning on this score Ms. Baker repeatedly referenced a lack of recollection as it pertained most everything about the turns, directions, street names and so forth in relation to this accident in question, going so far as to not really knowing streets in her own neighborhood. It was also at this juncture the various pages of **Defense Exhibit G** were sub-numbered 1 thru 3, with **G#1** being the black & white normal "map" type, and **G #2** & **G#3** being what are considered black and white satellite views of the area involving the Kroger store, parking lot, South Boulevard and Crooks Road, including the intersection between those two.

Further examination focused upon details pertaining to the motor vehicle accident itself in terms of exactly where, how and under what circumstances the same occurred. During this line of questions there was extensive reference to **Defense Exhibit D**.[14] Upon her being presented with this at trial, having said she previously had reviewed it, initially agreed with the substance of its contents. In response to questions about her having been on time for Mrs. Thielemans appointment with her doctor that morning, whether it was at 9 or 10 a.m., she stated that they had arrived on time. She appears to have conceded that if the appointment at had been a 10, with the crash report having listed the incident having occurred at 10:53 a.m., there was close to an hour's gap between the two.[15] When asked why the time difference between when she left the doctor's office and the crash, Plaintiff professed that same was due to a couple of factors; the inoperable nature of her navigation system, having gotten lost for about ½ hour, plus the long distance between the streets and no readily accessible exit off the road to re-route, but also denied having gotten on a freeway during this time. She once again denied familiarity with the area and fact that the major roads were spaced about 1 mile apart from each other. As such, per **Defense Exhibit G**, the map showed the distance between the doctor's office and Kroger store to be approximately four (4) miles.

She was next questioned about what exit she used to leave the Kroger lot, having gotten onto South Boulevard or Crooks Road, not recalling the name but adding some

[14] Which by Stipulation of counsel upon closing and submission of briefs included an additional item beyond that submitted during the hearing, being the Form UD-10 Traffic Report User Guide published by the State of Michigan.
[15] And obviously much more, closer to two (2) hours if the appointment had been at 9:00 a.m.

description of the physical layout. In this regard she claimed to have left the Kroger and gone across what she referred to as a "turning pike" and then going "straight across" what sounded like a cut-out or turn around, being akin to a "median" between two roads, having turned left, then ending up at the "light" of [the intersection] between Crooks and whatever that other street was. When confronted with diagram from **Defense Exhibit G, p.3**, and which one she turned on, clearly stated it was that which had the "turnpike" (i.e., median) in the middle with a cut or turn around in between, adding she went straight through, turned left, and continued to the intersection after that. She ultimately confirmed that from the diagram she must have gone out the Kroger parking lot and gotten on Crooks Road. However, when confronted with the fact that the parking lot exit onto Crooks did not have a cut through or turn around, when asked if she thus actually made a right turn going south on Crooks, then left into a turn around to go back north towards South Boulevard, she expressly denied this.

Further examination was directed to information, diagrams and a description of the accident as contained in the Traffic Crash Report (**Plaintiff's Exhibit #1** & **Defense Exhibit D**). On page 2 a diagram lists Plaintiff's vehicle as "unit 1". When trying to establish that the diagram showed her vehicle traveling north on Crooks when reaching the intersection with South Boulevard Plaintiff returned to her inability to recall which roads were which and general unfamiliarity with the area but conceded that she was on the road which showed a separation (median) between the northbound and southbound lanes,[16] the only one in that diagram being Crooks. She said her intention was to drive to the Thielemans.[17] She initially testified that the route would be as per the individual in the Kroger lot had told her, to exit left out of the lot and continue on that road, but then the accident happened. However, when pressed about what the rest of the directions were or what route she planned to use to go back to the Thielemans, Ms. Baker once again utilized the excuse as to her lack of familiarity with the area, not knowing what roads or streets to use, adding that if not for navigation "wouldn't know where [she] was going." Her testimony does not reflect that she ever answered the basic or underlying question about the rest of the directions this individual had provided.

Continuing with questions relating to the map (**Defense Exhibit G, p.1**), Ms. Baker agreed that she had been headed north on Crooks going towards M-59. However, when asked about the location of a "McDonald's" near (just south) the intersection of Crooks and M-59, professed to know nothing of the kind about that. Plaintiff was then confronted with another document (**Defense Exhibit K**).[18] This was a written summary of what Ms. Alexis Loftus had prepared in connection with a telephone conversation between herself and Ms. Baker on October 11, 2019. After basically confirming the timing of when this took place and some of the information Plaintiff imparted to Ms. Loftus, she was asked

[16] A very small equivalent of what is considered a directional reference being agreed to both counsel, Plaintiff & myself showing "North" as the direction her vehicle was proceeding on Crooks Road at the intersection with South Boulevard where the accident took place.
[17] Then moments later when asked again, mentioned to go to Kroger's before correcting herself.
[18] Also appended to the transcript of the testimony provided by Alexis Loftus (Defense Exhibit A) which was itself made an exhibit in the deposition of that witness (Loftus Dep. Exhibit #1)

about that portion of the statement which referenced her plan to stop by McDonald's on the way. Her response was that she ". . . never made it nowhere." At this point in her testimony, it seems she disavowed any aspect of the earlier statement recorded by Ms. Loftus about heading to a McDonald's. By the same token, when asked about her leaving the Kroger parking lot and a description of how she got onto northbound Crooks this appeared consistent with the diagram, but not the initial version she gave on direct exam, following which she got into the accident at the intersection of Crooks and South Blvd. Continuing, she testified stated that her car was at or under the traffic light when the vehicle which hit her came from the right side, despite the Accident Report showing the opposite, "unit 2" actually traveling east on South Blvd and thus coming from her left. (**Plaintiff Ex. #1, p.2**). Ms. Baker disagreed that anything came from the left but stated that she saw a big black truck coming from the right (passenger side) which hit the rear part of her vehicle after which she got "spun around" and then hit a second time, but on her left side. A review of the Accident report itself, not just the diagram, identifies details of all vehicles involved, the direction each was headed on which road, etc. Some of this lines-up with Plaintiff's version, but much is inconsistent with hers. According to this writer's conclusion, Ms. Baker was heading northbound on Crooks in her 2014 Cadillac STS (unit 1) when she ran the red light[19] at the intersection of South Blvd. and was struck on the left (driver's side) front corner by a silver 2010 Ford Focus (unit 2) which appears to have spun her vehicle about 180 degrees (per the Sheriff's report) and was hit on what then would have been her left rear driver's side by a black 2019 Ford F-150 pickup truck (unit 3).

Moving on Plaintiff was next questioned about the Troy-Beaumont medical records (**Defendants' Exhibit E**) relating to historical information contained therein which she provided healthcare providers following arrival at the ER[20] between noon and 1:00 p.m. that day. Specifically, same focused on her version of the accident, where her vehicle was struck and so forth, as recorded by a Physician's Assistant, Sara Klick, PA-C. Apart from the details of any alleged injuries she sustained, questions were raised as to her having been ticketed for running a red light and some witnesses "in cahoots" with each other about this being not true, at least according to her, claiming that hers was green. Nevertheless, she did not formally dispute the ticket but admitted to paying same.

Questions were also raised concerning her training when hired by Defendant and an employee "handbook" she was given. Following her review of a specific section on page 11 of the current (2022) version of this document[21] under the topic of 'Quality of Care and Work Performed' she initially could not recall if something in the nature of those instructions had been provided to her. However, she later agreed that the instructions she had did require her to remain with the patient at all times, but added the caveat was while she was in the home, not recalling a further point of where the caregiver was to be when a patient was at a doctor or other type of healthcare provider's office, adding that she

[19] For which she received a citation.
[20] Being taken via ambulance from the scene to this medical facility.
[21] **Defendants' Exhibit J**, but which was not admitted at that time.

usually was to remain with the patient/client, unless directed otherwise by such individual. She further testified that it was not procedure to call the office when she went with a client to a doctor's appointment, although that did not quite respond to the specific question of if and/or when she was to contact the office when a patient/client did not want her to be present or stay with him/her when outside their home. As to her training with Defendant, at the outset she had difficulty even naming the company but ended up agreeing that it took place at its office by either Ms. Yaroch or whoever had been scheduled to teach that day. She acknowledged being instructed to contact the office if there ever arose questions about handling of a situation. The focus of numerous additional questions posed related to whether under the training guidelines she was able to leave her "client" without first contacting the office. A distinction was raised about the "client" and thus individual she was beholding to, Mr. or Mrs. Thielemans, in terms of "instructions" given to her. She did not call the "employer" when leaving the doctor's office because she did what Mr. Thielemans told her to do,[22] but agreed that he was not her "employer".

Plaintiff was then examined in connection with the "Incident Report" (**Defendant's Exhibit I**). She acknowledged having written her name and other information contained on that form. Upon being read her description of how the accident occurred once she left the Kroger parking lot, having gone around a median, then proceeding towards the light, following which her vehicle was struck, she initially agreed but then changed her story and said the part about her going around the median was consistent with some of the other information or records which had been referred to earlier,[23] was incorrect having previously testified she simply went straight through a "cut" in the median, turning left.[24] When further questioned about when she had filled out this form (admitting it was all in her handwriting), there was some disagreement whether that was done a week or so later at the Defendant employer's office or, as Ms. Baker maintained, some unknown doctor's office to whom she had been sent by the company.[25] While Plaintiff claimed to have the address in her cell phone because it was part of a text message, she could show it to her attorney later, but was unable to do so at trial because the phone was at her home.[26] One additional item set forth in Exhibit I noticed by the undersigned upon further review of that document while drafting this opinion was another inconsistency with her trial testimony. Specifically, she said her plan was to proceed straight on Crooks (as per directions given her by the unknown woman in the Kroger lot), but in this form it expressly reflects that she was proceeding to the intersection and ". . . as I went to proceed to turn right I got hit once

[22] Per Plaintiff, Mrs. Theillmann being unable to speak for herself.
[23] **Defendants' Exhibit G**.
[24] At this point **Defendants' Exhibit I** was offered and admitted.
[25] In response to questioning by this Magistrate about where she filled out the form, Ms. Baker eventually conceded that she really could not recall whether this took place at Defendant's office or that of a physician, but there was no question she had filled it out.
[26] Which in and of itself brings up the question that given other testimony she gave about her navigation system being in connection with her cell phone, how is it that if she was so geographically inept or directionally challenged, this causes one to wonder just how managed to locate the Workers' Compensation Agency/Board of Magistrates site located in Pontiac (another area she apparently was unfamiliar) without that device to attend the hearing?

and spent [sic.] around and then stuck on the passenger." First, these two versions are incompatible, second, the diagram in the Traffic Crash Report Form shows her vehicle to have been in the left lane on northbound Crooks. If so, this either means she was going to make a right turn onto South Blvd. from the wrong lane or supports a conclusion that she in fact intended to continue north on Crooks, in the direction of McDonald's.

The subject of the next line of questioning related to **Defendant's Exhibit H**.[27] After an exchange between Plaintiff and defense counsel about her not having been authorized by her attorney to sign the document or provide certain information, when it came down to the second page of this, at the bottom it was dated August 1, 2019, almost two (2) months prior to the accident in question. She still questioned why and when this was relevant to the issues involved here, but ultimately conceded that this bore her signature and she had been to some meeting or meetings with the company at their office at time(s) prior to the injury date. Details of certain obligations and responsibilities as an employee[28] were then gone over with Ms. Baker, including reflecting the core values of this entity as well as maintain regular communication with supervisor and office staff, which she professes to have done. However, when asked directly whether when she left the client at the doctor's office on Sept. 26, 2019, admitted to not having undertaken any communication with office staff at that time. This exhibit was admitted over objection.

Plaintiff was then further questioned about another document, **Defendants' Exhibit K**.[29] In response to whether she disagreed with any portion of the contents as written by Ms. Loftus on that item. In this regard she identified "McDonalds," denying that she was headed there, and the reference that she "*thought* the light was green," emphasizing that it "was green." When offered into evidence Plaintiff maintained objections which had been made to this document (being Exhibit #1 of during Ms. Loftus' deposition). This was admitted subject to the above-noted points about which Ms. Baker disagreed or otherwise disputed, with a caveat as to potential revision of such ruling upon review of the testimony given by Ms. Loftus concerning this.

When asked about having made a claim from her own automobile no-fault insurer for benefits following the accident, Ms. Baker returned to one of what was now seemingly a canned response of she either could not recall or did not know anything about that, this being the job of her attorney. Despite this, she acknowledged having received money from her lawyer as a result of a lawsuit relating to this accident, obtaining a settlement of $160,000.00. She also acknowledged having testified via a Zoom deposition in that case.[30]

The transcript of Plaintiff's deposition testimony in the other case was identified as **Defendants' Exhibit B** herein. In response to questioning about whether it was her

[27] The CAREGiver Job Description.
[28] Yaroch Senior Services 408 LLC DBA Home Instead Senior Care.
[29] Which itself was also an exhibit (#1) identified during the deposition of Ms. Alexis Loftus.
[30] Details of when, where, and how that deposition were conducted were summarized by defense counsel, as were some of the attendees (attorneys) at the same prior to further questioning of Ms. Baker about this.

responsibility to drive her own car to appointments which the client had to assist them at such appointment, she answered "no" and that this was the only occasion which she had done so (**Exhibit B**, p.38, lines 9-13). In follow-up to the next question posed in that deposition she further testified that the reason she followed the client on this occasion was because they (Mr. & Mrs. Thielemans) had their children/family with them and so ". . . it wasn't no room for me." (*Id*, lines 17-18). She first denied this was what she said, then returned to the 'cannot recall' explanation as had been given to numerous prior questions. Following up on that when explaining her answer to another deposition question about what happened other times when the client had appointments she would go with them in their vehicle, adding that "Our insurance don't cover that so we have to drive their car." (*Id*, lines 24-25) reiterating this explanation during trial testimony. She added that her insurance will not cover them as passengers, so she had to ride along with them. On another subject, she was questioned about the manner she was paid by Defendant. At trial she indicated that she would receive a W-2 at the end of the year, then attach same to her income tax returns. However, when challenged about testimony she gave during her deposition in the Circuit Court case, reflecting that she was given a "1099" when asked between the two (**Defendant's Exhibit B**, p.20, lines 12-19), She again waffled about not really knowing the difference and once more not recalling what she said "back then, it was so long ago."[31] Just prior to this she had also testified working part-time for Defendant and, a few moments after speaking about the W-2 versus 1099 issue, specifically how exactly she would classify herself in relation to the Defendant Yaroch, an employee or independent contractor, responding: "I don't know." (*Id*, p.20, lines 8-11 and 20-25).

Plaintiff further testified that she is no longer working for Yaroch Senior Services, asserting that she discontinued this because she was not physically able to do so because of the injuries she suffered. She stated that she called soon after the accident, within a few days or so, and advised Defendant of this, but was unable to recall exactly when such notice took place. Additional questions posed Ms. Baker intended to challenge credibility and use of her deposition testimony in the other case were permitted over objection based upon factors about recollection and prior inconsistent statements, etc. which had already been to that point during cross exam. Thus, she was confronted with prior testimony that after the incident she went to her primary care doctor's office the next day (which would have been Sept. 27, 2019) but was called out on this point based upon information that it did not actually occur until October 11th. (*Id*, pp.24-25) However, further review of her earlier deposition cast some question about the timing of when she sought medical treatment, after the ER visit to Troy-Beaumont the day of the incident, reflecting that she claimed to have gone to see a Dr. Syed on September 27th, but he declined to see her, purportedly due to the fact it was connected to an auto accident (*Id*, lines 3-6).

Upon conclusion of defense cross-examination of Mr. Baker, Defendants offered another exhibit, being a printout of a different Google Map showing a more detailed or closer depiction the general area near the accident, surrounding vicinity as well as certain

[31] Her deposition in this other case was taken on June 30, 2021, a period of only approximately 9 ½ months before she testified in the instant matter, not years ago as could be suggested by her characterization of the time interval.

business and other locations going a mile or two north and east of the Crooks-South Blvd intersection (**Defendants' Exhibit P**). This was admitted without objection by Plaintiff. Counsel having no re-direct examination of his client or additional exhibits, this party then her case.

**Michael Joseph Thielemans:**

The first witness called by Defendants was Mr. Michael Thielemans. His wife was the client of Defendant Yaroch Senior Services (d/b/a Home Instead Senior Care). Upon laying foundation for his testimony Mr. Thielemans recounted what occurred leading up to and including when he learned of Plaintiff's motor vehicle accident on September 26, 2019. His testimony as to the sequence of events was as follows. Mrs. Thielemans had a medical appointment on this date. He spoke to Ms. Baker about what was expected of her. At about 9:45 or so she and Plaintiff went to the driveway, where both her car and his van were parked. At that point he advised her that she need not accompany them to or be at the appointment, but could go with them, although it was unnecessary. After he got his wife into the van which entailed a ramp for the wheelchair, belted it and so forth, he got into the van. Mr. Thielemans then observed Plaintiff get into her car. Based upon the preceding conversation he believed she had elected not to go along with them.[32] The only occupants of the van were he and his wife.

After identifying the location of the doctor's office, on the north side of South Boulevard near Dequindre, he further testified as to what happened during the trip and once there. After exiting the sub-division and driving south on John R for about a mile, somewhat surprised, he noticed Plaintiff's car in his rear-view mirror. At that point he called her on the cell phone. In response to his inquiring as to her intentions and her response that she thought he told her to follow them, he reiterated that was not the case and she need not go to the appointment. He related that she then acknowledged this and indicated she would "go wherever" or do something else. He paid no further attention to this until arriving in the parking lot of the healthcare provider's office.[33] Once parked, Mr. Thielemans then handled getting his wife out of the van, using the ramp and so on. Ms. Baker was not involved in that process. He went on to testify that after the phone conversation which had occurred, he was unaware what she did, where she drove or turned, but clearly stated that he had seen neither Plaintiff nor her vehicle after ending that conversation or in the parking lot.

The next time he spoke with Plaintiff was later that morning. At approximately 11:00 a.m. or thereabouts, while in the process of taking his wife from the doctor's office, he received a call on his cell phone from Ms. Baker who indicated that she had been involved in a car accident. After she told him about her condition, which he understood not being serious, but her car being "pretty banged up," she told him they were going to

[32] On one prior occasion she had ridden with them to a different doctor's appointment.

[33] At this point he recounted the pretty much the entire route taken from his home, from getting onto John R, then tuning from that road onto South Boulevard, including the last part which involved traveling east on South Blvd towards Dequindre, then turning left into the parking lot for the building where the doctor's office was located.

take her to Troy-Beaumont Hospital. Since Mr. Thielemans' wife had another pressing appointment this day, which he did not want her to miss, advised Plaintiff he would catch up with her later, plus Ms. Baker told him that her son was driving down to see her. This witness further stated that he did follow-up and went to the hospital.

Mr. Thielemans indicated that he was subsequently contacted by a representative of the Defendant home care company about the events and incident. At that point, in early February 2022, he had received an e-mail by a Ms. Gail Wilk, who posed a number of questions to him. Following his having verified an item or two on his calendar, he provided a response via the same mode of communication. Mr. Thielemans believed having had a reasonably good recollection of this at the time he provided that written response. This was offered and admitted as **Defendants Exhibit O**, subject to acknowledgement that the bottom portion of the document (being the inquiry from Ms. Wilk was not his, rather only the top portion was, that being Mr. Thielemans response, which this Magistrate characterized as a narrative of that day's events reduced to writing). The substance of the information recited by Mr. Thielemans in this document is in almost all salient respects the same as or entirely consistent with the testimony summarized above. However, it is noteworthy that there are a couple additional items in this document which provide further details. Specifically, following the phone conversation in route where he reiterated that she need not follow or otherwise go to the appointment with them, he told her to meet them back at the house in about 45 to 50 minutes, to which she replied 'ok.' Second, and of more significance, is a comment Plaintiff made during the conversation when she called from the scene advising him of same, Ms. Baker stating that she had 'decided to run an errand a few miles away and got in an accident.' There were also a couple of other things not really mentioned in his testimony, but of only either tangential minimal relevance.[34]

On cross-examination Mr. Thielemans disagreed slightly with the time Ms. Baker started her shift or arrived at the house to do so, being 8:00 rather than 7:00 a.m., but agreed it went until about 1:00 p.m. He reiterated that he was the one, without Plaintiff's assistance, who loaded his wife into the van, stating that the conversation wherein he told her it was not necessary she go with them to the appointment took place just upon exiting the home and while walking towards their vehicles. He agreed that there were occasions where care givers would either remain in their own vehicle at his residence while he transported his wife to certain appointments, or could ride along with them, but remain in his vehicle while he and his wife went into the office. He also reiterated the nature and substance of the phone conversation when he called after seeing her following them. Mr. Thielemans agreed that he was not present when the accident occurred. As to his being contacted by Defendant's representative in relation to what in this matter is Defense Exhibit O, stated that he had also been contacted earlier about this, but only by way of a conversation over the phone. He was unsure who he had spoken with, but speculated it

[34] Covered by other testimony or noted elsewhere in the evidence, such as having told her she could do whatever while they were gone, but it was prohibited she remain inside their home if they were not present, and his observations of her situation and comments about her condition when visiting her in the hospital later that day. The only somewhat inconsistent element of the email appears to be his not being sure whether, when he got her call from the scene, he and his wife were still in the doctor's office or on their way home at the time (rather than the parking lot).

might have been “Gail”, no doubt the same person involved in the email exchange. He could not recall when that took place and denied any other written statement having been given.

This witness reiterated the appointment time Mrs. Thielemans had with the doctor, as testified to on direct exam, having been set for 10:15 a.m. He estimated travel time from his residence to that office location being 8 minutes. As for the time spent getting her in and out of the vehicle, he believed it to normally takes about 3 minutes. He expected the appointment to have lasted roughly 45 minutes. Although not having kept specific time for that appointment, believed it was not out of the ordinary in terms of length, hence the duration as mentioned above. He also reiterated the instructions given to Plaintiff in the telephone call, for her be back at the house in approximately 45 minutes to an hour from then. And, although Ms. Thielemans had another appointment later in the day, given that Plaintiff’s shift ended at 1:00 p.m., thought they would be back in time to do a few things at the house before it ended and would then take his wife to the other commitment. This was an art class for disabled individuals. Not wanting her to miss that and its time was why he deferred seeing Plaintiff in the hospital until later. He conceded that but for the accident it was expected Ms. Baker would have finished her shift and helped-out at the Thielemans residence in between those two events. He could not specifically recall the time the art class started, initially saying about 11:00 a.m. but it had changed over time. However, it had been anticipated that they would have about 45-minute to hour gap between the two which would allow having lunch at home. He added that if they did not leave until after Plaintiff’s shift ended at 1:00 p.m., she would finish that out, but if it was earlier, then Ms. Baker could depart whenever they did, so she would get to go home early, but expected her to be paid for the balance of the time.

Mr. Thielemans also elaborated on when that afternoon he went to see Ms. Baker in the hospital emergency room. As it involved conversations he had with her that day, the one which took place while in their respective vehicles and his having questioned why she was following him, along with his reiterating earlier instructions at the house that her attending this appointment was unnecessary, she did not tell him what she planned to do or where she would go in the interim, until being expected back at the house 45 minutes to an hour later. Regarding the later telephone call which took place when she was at the hospital, he did not recall her saying anything about what she had been doing or where, just that she was a few miles away and gotten into an accident.

This witness was then questioned about the maps which had been admitted into evidence, specifically **Defense Exhibit G, p.1**. He first confirmed his reading of the same and locations of their residence, the doctor’s office and Kroger store. He admitted that from the Kroger location it was possible for an individual to drive north then turn east to get of the Thielemans residence or conversely, go east then later turn north, to get there. He also agreed that either route would be about the same distance.

As it related to Plaintiff’s testimony that she had followed the Thielemans all the way to the doctor’s office that morning and then assisted him getting his wife out of the

van to attend the appointment, this witness unequivocally testified this was not true. Rather, he maintained this element of what he initially stated, having done so himself without any help from Ms. Baker, and was absolutely "positive" of this fact. He concurred that once before she had ridden along with them to another doctor's appointment but had not helped with unloading Mrs. Thielemans' wheelchair out of the van, adding it was a rather cramped or confined space, which he personally handled. Likewise, on that other one-time instance, Plaintiff did not accompany them into the office itself, staying outside.

On re-direct Mr. Thielemans was asked to identify the approximate location where during the trip to the doctor's office he noticed Plaintiff's car in the rear-view mirror and had called her cell phone. This general area was circled on the map (**Defense Exhibit G**, **p.1**) and which he initialed MJT. Geographically, it is elliptical running along John R from what appears to be an equidistance north and south of Auburn Road. Depending on where the precise spot was, it was still clearly north of South Boulevard, where the left turn was made to travel east towards the doctor's office. He further indicated that a return to his residence would only have entailed Ms. Baker turning around and re-trace, going back north on John R to the entrance of his sub-division. This witness also stated that at no time prior to this date had Plaintiff followed them to a medical appointment.

In response to a request by the undersigned that the witness give a brief recap of the exact route used to go from the Thielemans residence to the doctor's office, he did so and which, when combined with the reference to the map (**Exhibit G-1**), is clear in terms of where and which direction any turns were made along the way.[35] Another question posed to this witness clarified what he meant by Plaintiff remaining "outside" the one time when she had ridden along with them to an previous doctor's appointment. By that he meant that she was to stay in or about the van but did not enter either the building where the office was located or the actual suite or whatever constituted the waiting room, nor the exam room itself.

**Glenna Yaroch**

This witness is essentially the 'owner' of Yaroch Senior Services 408, LLC, which does business as Home Instead Senior Care. It provides non-medical home care for seniors, going on to expound upon what types of services are involved. The 'office' is in Waterford, Michigan. At the timeframe involved here, 2019, she estimated that there were about seven or eight 'office staff."[36] She briefly outlined the various positions or duties of these individuals. One is recruiter/trainer, explaining the importance of this aspect of the business. This is in part because care givers are in homes of clients and not under direct supervision. Two days of training is involved, going over the varied and numerous type tasks involved. Another large part of this process entails covering the company policies,

[35] In hindsight it might have been appropriate to have done what the folks at AAA used to do when assisting customers with directions and preparing what was known in those days (sometime between the Ford Model-T and Tesla EV) as a "Trip-Tik" and highlighted same. However, not wanting to tamper with the evidence at this point did not do so figuring that the route is sufficiently apparent given the commentary at trial.

[36] At present the number is five.

procedures, and the handbook. She emphasized that upon conclusion of this training it was made clear to the care givers that if at any time they had any questions, concerns or issues which arose at the client's home, they should call the office. This was also done repeatedly during training and there were quarterly meetings with these employees as well. Since the company is licensed, government regulations also require this type of ongoing program.

Ms. Yaroch further testified that she was generally familiar with the 'plan of care' in place for Mrs. Thielemans, briefly outlining the condition and problems this individual had, but deferring as to specific types of care required without reviewing the plan itself. She knew this client was paralyzed on one side and thus mentioned a few elements which would have been needed but did not have all details at hand. She did provide information as far as number of hours normally provided for Lisa (Mrs. Thielemans) at times in 2019 although may have been subject to change from week to week. In general, it was 7 days per week with the care giver there from a range between 8:00 a.m. to 12:00 p.m. or to 1:00 p.m. Intermittently care was also provided to this individual some evenings, from about 7:00 to 10:00 p.m., generally being intermittent, sometimes on Monday, Wednesday, and Friday.

On September 26, 2019, the date of Plaintiff's motor vehicle accident, this witness indicated that her calendar showed Plaintiff worked the period from 8:15 to 11:00 a.m. However, she added that the reason for this lesser than normal period was due to Plaintiff having called the office and reported the incident. Since she had not been in the home this precluded Ms. Baker from 'clocking out" that day. That was done manually by the office based upon the phone call. The procedure for a care giver clocking in and out was done from the client's and identified[37] (but not familiar to this writer). In any event, Ms. Yaroch indicated Plaintiff was not scheduled to work beginning at 7:15 a.m. and she had logged in hour later, the start time being at 8:15 a.m.

In reference to instructions given caregivers about being in contact with the client they are advised to remain present all the time. Ms. Yaroch mentioned that there were instances when a family member arrived and wanted to have some privacy with the client, that was allowed, but only to the extent the care giver would go into another room in the house or possibly outside or to their car but remain in close proximity and immediately available to assist if needed. She gave a few examples of why this was required. As it pertained to taking directions from other family members, the care givers are expressly and specifically told that they are employees of the company and not to take instructions from such individuals, explaining the purpose and rationale for this policy. Accordingly, based upon the 'plan of care' for the client, if such issue arises the care giver is instructed to call the office for clarification of any questions or deviations which may come up.

At this point Defendant's ***proposed*** **Exhibit J**, first mentioned in defense counsel's cross-examination of Ms. Baker, resurfaced and was presented to Ms. Yaroch. She

[37] Thought to be called a 'telephany system' but this is primarily a phonetic guess as to its actual spelling.

indicated that care givers are given a copy at the time of orientation and then every year thereafter. To the best of her knowledge this one (the current 2022 version) was basically the same as that which existed in 2019. When directed to page 11 of this document, both as part of the multi-page handbook and then an enlarged section of same, this witness reiterated that "to the best of [her] knowledge" its substance was the same as that which was contained in the earlier version. However, Ms. Yaroch added that she did not have a copy of the 2019 handbook as her HR director had relocated to Florida. By the same token, she also indicated that the policies outlined in this portion of the handbook, the 'primary directives' had "been around as long as [she] can remember" and was thus virtually certain that the items outlined in the 2022 version was/were the same as prior. Defendant then offered this document, or as an alternative, suggested that for the sake of expediency (and no doubt in part due the fact all effectively agreed this entire handbook was not the 2019 version) but defense believing that foundation for the one-page excerpt on page 11 had been adequately laid, moved for its admission. As expected, Plaintiff objected. The end result was that Defendants effectively withdrew the entire document (**Exhibit J**) from consideration and in its stead marked the excerpt (**Exhibit Q**). The undersigned having yet to review the actual exhibit and wanting to proceed with testimony by additional witnesses which was expected, deferred consideration as to its admission which was taken under advisement. It is addressed later in this Opinion.[38]

Ms. Yaroch was then questioned about further details regarding the motor vehicle accident in which Plaintiff was involved on September 26, 2019, including how and under what circumstances she became aware of this. While in her office that day she overheard Carol, one of the 'schedulers' sitting near her, take a call concerning a car accident. As part of the company scheduling software, it allows notes to be entered and become a part of the company records. At that point she identified **Defendants' Exhibit M**, explaining that this was made by herself over the following couple of weeks. Upon laying the appropriate foundation and without objection this document was admitted. Going into further detail about certain items contained in the written notes, Ms. Yaroch explained the "policy" mentioning a caregiver to remain the waiting room when accompanying a client to a doctor's appointment, the purpose of same to assist them with bathroom activity if, necessary. This would have been conveyed to Ms. Baker (the caregiver) at orientation, in the handbook and during the quarterly meetings when covering the most important policies and issues confronted by employees, citing this and other types of problems, including staying with the clients and calling the office relating to any questions which may arise at the assignment.

This witness also testified that one of the previously admitted documents (**Defense Exhibit I**), Home Instead Incident Report Form, which Plaintiff had completed was one in the same as that mentioned in the last entry of her notes (**Exhibit M**), having been submitted to the company when Ms. Baker came into the office on October 9, 2019. As it relates to Plaintiff's "employment status" with the company, this remains the situation as

[38] See p.29, *infra*.

has no changes were made after that and technically still considered an employee. Plus, when Ms. Baker later called about workers' compensation, did not feel that it would be appropriate to take any action relating to her status at that time. Plaintiff neither formally "quit" for which written confirmation is necessary, nor did the Defendant take any action to that effect (i.e., termination).

Another document identified by Ms. Yaroch is **Defendants' Exhibit N**. It was prepared by her on the date indicated, Oct. 9, 2019. This was done in connection with the meeting involving Ms. Baker, this witness, and Ms. Gail Wilk, one of the company managers, after which Plaintiff completed the incident report (**Exhibit M**). Ms. Yaroch testified that her scribble, after noting the date and individual, reflected that she was told by Ms. Baker that upon leaving Kroger, was ". . . going to eat and turned out of Kroger." Her further recollection, though not written, was that Plaintiff said something about having gone to Kroger for some pickles and getting something to eat, then got into the accident. This document (**Exhibit N**) was likewise admitted.

Ms. Yaroch then provided testimony about conversations and interaction she and office staff had with an individual associated with the Defendant employer's insurance company. Following her review of Defendants' proposed **Exhibit L**[39] she was questioned about another witness, Ms. Loftus, testifying that entries in this document were prepared following conversations she had with both Ms. Yaroch and Gail (Wilk). Ms. Yaroch responded that she was present for the conversation, familiar with the content contained in such notes or entries, and that they were truthful at the time. When offered into evidence Plaintiff objected, maintaining that which he made during the deposition of Ms. Loftus and at which time the same item was identified (**Loftus Deposition Exhibit #2**), as per fn.38. below. Objections to the parts of same which purported to reference having been furnished by Ms. Wilk (who defense counsel advised he did not plan on calling as a witness in this proceeding) were sustained based upon the hearsay nature of same.

Upon being asked further about the above-referenced document, Ms. Yaroch stated that this conversation involving herself, Ms. Wilk, and Ms. Loftus took place on October 11, 2019, after the conversation which she had with Plaintiff on October 9th when she appeared at the office, as per the preceding paragraph.[40] In response to further questions Ms. Yaroch testified that on October 11th she was understood and was aware that Plaintiff had indicated she followed the client in her car when she and the husband had driven to a doctor's appointment. She also understood that the reason given for Ms. Baker for having followed in her own vehicle was because they (Mr. & Mrs. Thielemans) did not allow her to ride along with them when a family member was driving. She was also aware that Ms. Baker had ridden with the Thielemans on prior occasions. The part in **Exhibit L**[41] about her (Plaintiff) having run a personal errand, to get herself food (pickles), had been provided Ms. Yaroch herself. She added that in fact

[39] Which is a copy of the same document been marked and offered as Exhibit 2 in connection with the deposition of Alexis Loftus (**Defendant's Exhibit A**).
[40] See: **Defendants' Exhibits M and N**.
[41] See fn. 38, *supra*.

the information or notes of this conversation as reported by Ms. Loftus were actually those which took place between Ms. Yaroch and Ms. Loftus. The manager, Ms. Wilk, was also present, but primarily as an observer rather than active participant. Thus, she went on to state that there was nothing in this exhibit which had not come from this witness herself. It was then re-offered by Defendants, to which Plaintiff reiterated the hearsay objection. Upon clarification when this Magistrate asked for some additional detail about who was or were the person(s) providing the information written by Ms. Loftus in that document, this witness stated that, to the best of her recollection, basically all of it came from her, rather than Ms. Wilk. At this point **Exhibit L** was admitted.[42]

On cross-examination Ms. Yaroch reiterated that Ms. Baker had been clocked out as of 11:00 a.m. on the date in question because she had called. Based upon the last date she had worked, the best this witness could do about stating when Plaintiff's shift would have ended on September 26th was the schedule for the preceding Thursday which ended at 12:30 p.m. Ms. Yaroch admitted that if Plaintiff testified that she was scheduled to work until 1:00 p.m. on the date of injury, she had nothing with her which refuted that. She concurred that Ms. Baker would not have been allowed to stay in the Thielemans house while they were at the doctor's office. When asked to clarify some ambiguity in the company documents about whether it was permissible for a caregiver to ride along in the vehicle when a family member of the client was driving, she stated that it was not. She added that the reason for this was to protect the caregiver in the event this other family member of the client had his or her own problems, such as dementia and thus the caregiver should drive the client's vehicle in most instances. However, in this case, since the Thielemans had a specially equipped van, it was appropriate for Mr. Thielemans to drive it and the caregiver follow, to be present at the appointment if the client needed assistance of any sort when at that location. So, it was reiterated that in a situation such as this, the caregiver should have driven her own vehicle.

This witness agreed that her company was not providing 24 hour or round-the-clock care for Mrs. Thielemans but could not state how much time her husband or any other individual(s) may have been spending on such activity. Ms. Yaroch, not being at the accident or elsewhere associated with the events on the date in question, admitted that whatever information she had provided to Ms. Loftus about it was based upon something which had been related to her, emphasizing that this mainly, if not entirely, came from Ms. Baker herself. With respect to the first sentence or so in the entry from Ms. Yaroch's typed notes beginning with the date September 26, 2019, about the call to the office by Plaintiff, she indicated that this was basically what was related from what Ms. Baker told the scheduler. However, she had also spoken directly to Ms. Baker later that day and the balance of information after that was what Plaintiff had told her (Ms. Yaroch), including the client not requesting her (Plaintiff) to go into the appointment.

[42] This would then also effectively cure the hearsay objections made by Plaintiff to admission of this document when it was referenced as **Loftus Deposition Exhibit #2** during her testimony.

Additional questions posed by this Magistrate to clarify a potential distinction or ambiguity between Ms. Baker having been advised not to go "into" the appointment with the client, as opposed to having been instructed not to even go to the appointment itself, Ms. Yaroch explained the intent of such comment. In this regard, she testified that if Mr. Thielemans had told Plaintiff at their home that he did not need her assistance at the appointment, then she would have stayed in her car at that location.[43] First, she should have called the office and it would speak with Mr. Thielemans to clarify whether Mr. Baker's shift should end at that point or if he needed her to assist when they returned to the home after the appointment. However, because this did not happen at that point the company had no opportunity to be a part of the decision-making process relating to this issue. On the other hand, if such information had been imparted to the caregiver while on the way to the appointment in her own car, different considerations would be appropriate. In that case, Ms. Yaroch testified that had Ms. Baker been following them she would have continued and upon arriving at the destination, gone into the building, but stay in the "waiting room" of the doctor's office during the appointment, it not seeming to make sense to wait in the car, although not outside the realm of possibility. Nevertheless, policy involves staying with the client and hence going into the office to be close by if any assistance was necessary. She thus seemed to mean that had Plaintiff gone all the way to the office, there was no indication that Mr. Thielemans needed her to go 'into' the examining room proper, so she would have stayed in the waiting room, in contrast to not even going to the location where the appointment was scheduled to take place.

Ms. Yaroch was also asked to clarify how long Plaintiff worked for the defendant-business. She believed Ms. Baker's date of hire went back to July of 2015, but this witness did not own the company at the time, that not occurring until she purchased it in March 2016. This was in reference placing her work for defendant in some sort of historical context, from when she started as a caregiver as opposed to when she may have initially been assigned to care for Mrs. Thielemans.

In follow-up to this Board member's questions about going to the appointment versus into the doctor's office, possibly resulting in muddying the water further rather than clearer, Plaintiff counsel confirmed with the witness that if the client did not want the caregiver to be present at the appointment, one option was that they could remain at the location where the client resides but wait outside in their car. The other option was to go to the doctor's office and assist. On further questioning by defense counsel concerning this issue and who makes that decision, Ms. Yaroch stated that this would require a phone call to the office to confirm that the caregiver was going to stay at the home without the client, emphasizing this not to mean "inside" the home, but wait in their own car. The purpose or intent of same is to determine whether the caregiver remains on or off their shift. Per this witness, a call is always necessary to enable the company to make such decisions about its employees.

[43] Reiterating that the caregiver was not allowed to stay in the client's home when they were gone, giving various reasons for this policy.

**Alexis Loftus** (by Deposition)

As mentioned at the outset, one of Defendant's lay witnesses had relocated to Florida by the time this matter went to trial. Accordingly, both sides ultimately agreed that the most efficient manner to handle that would be for her testimony to be taken by way of deposition. It proceeded on March 25, 2022, via Zoom, with a court reporter and counsel located in Michigan. Same constitutes **Defendants' Exhibit A**. A summary of testimony given by this witness is set forth in the paragraphs which follow.

Ms. Loftus is employed by ICW Group. It handles workers' compensation claims and she works as a claims-examiner. She then briefly gave an overview of what that position entails. She was involved in connection with investigation of the claims by Ms. Baker against Yaroch Senior Services. This witness proceeded to testify what action she had undertaken in connection with this, including contacting the employer to secure information as well as obtaining a statement from Ms. Baker. This is not recorded but she takes notes during the process. They are then uploaded into the system and preserved.

Ms. Loftus then identified Deposition Exhibit #1, a notepad entry dated October 11, 2019. She further testified that this item was generated in connection with the ordinary course of business. This document, characterized as a "partial contact" with Chanika Baker[44] was offered into evidence pursuant to MRE 803(6), subject to hearsay objections of a continuing nature lodged with respect to same.

This witness testified that on the same day she also contacted representatives of the employer. In this regard she likewise took notes as to what was discussed, and information obtained from those individuals, Ms. Gail Wilk and Glenda [sic] Yaroch. In line with the procedure she utilized with Ms. Baker, this witness took notes and recorded them on the 'notepad', inputting the same onto the system immediately after the call was completed. A copy of this 2-page electronic note was identified (Deposition Exhibit #2) and offered in like manner to the first exhibit, to which Plaintiff also objected.

Finally, the witness related that after securing the information as set forth above, including becoming aware that Ms. Baker was represented by counsel, she contacted defense attorney, Mr. Hannon, for further advice and discussion of compensability.[45]

On cross-examination Ms. Loftus reiterated that she works for the insurance company involved in this case. She also indicated that the two exhibits referenced above were used to refresh her recollection of details about the conversations in question. They were generated the same day, but do not specifically identify the time taken.[46] She first contacted the employer representatives and then Ms. Baker. These conversations were not recorded and there are no other notes, save for what she typed. She agreed that in

[44] Due to Ms. Loftus having learned part way into the process that Ms. Baker was represented in both her auto and workers' compensation claims, whereupon further questions and contact with Plaintiff was terminated.
[45] Erroneously transcribed by the court reporter in two spots to be spelled "commence-ablitiy", about which both counsel agreed was wrong, with the correct term used and intended being "compensability"'
[46] On Re-direct Ms. Loftus re-affirmed that there is no doubt about the date on which this conversation occurred.

this sense what was taken down came from Ms. Baker but was neither in the true sense a verbatim recording of what was said, nor did she (Ms. Baker) have an opportunity to review and verify the accuracy of its contents.

In reference to specific information provided by Ms. Baker, (Deposition Exhibit #1) this witness agreed that she told her that ". . . she was giving [sic] instructions to go back to the house to wait for the client." (pp.11-12) This witness also agreed that Ms. Baker told her she went into Kroger to ask for directions because her navigation system was not working. Plaintiff also informed her that she had planned on stopping by McDonald's but never got there. Ms. Loftus did not know the location of that restaurant, only that she understood it to be near the Kroger store.

As it concerned the other document (Deposition Exhibit #2) the witness confirmed that this information was imparted by representatives of the employer, the insured of her own employer. Ms. Baker did not take part in this call or provide any information contained in the same. She was unable to parse out which information or details were provided by one or the other of the two individuals, Ms. Wilk and Ms. Yaroch. Ms. Loftus also was asked about other particulars contained in in this item, including the "caregiver" (i.e., Ms. Baker) having followed the client & her husband in her own car to the doctor's appointment and not being allowed by the employer to ride with them when a family member was driving. She also acknowledged having been told that Ms. Baker still had an hour left in her shift, but also that the shift is 'over' when a caregiver abandons the client. Ms. Loftus reiterated that when having spoken to Ms. Baker she was told that this individual planned on going back to the house, but added after making "other stops" (p.14, lines 24-25). All this witness could say about the comment in the note relating to Ms. Baker having "gone to Kroger to get herself food (pickles)" was it came from either Ms. Wilk or Ms. Yaroch. The same held true for reference to Plaintiff running a personal errand. She agreed that Ms. Baker had told her the purpose of going to Kroger was to ask for directions.

Following completion of the previously summarized testimony by Ms. Yaroch, defense advised that it had no other witnesses and from its standpoint proofs had been completed. On the other hand, Plaintiff counsel requested and was granted an opportunity for brief rebuttal by his client to the evidence and proofs presented by Defendants.

**Chanika L. Baker – <u>Rebuttal</u>**:

Upon Plaintiff being recalled as a witness, Ms. Baker addressed some aspects of the testimony given by Mr. Thielemans. Specifically, she disputed his testimony that after the phone call from him in route she ceased following him, rather reiterating having continued to follow and in fact came to the doctor's office that morning, then provided assistance to his wife. After Mr. Thielemans unbuckled his wife and pushed her to the door (understood to mean pushing the wheelchair in which was seated), then helped to "pull her out", something which she indicated he was not able to do himself, this being her job to assist and done from outside the van. It was at this point they had the conversation

about his not needing her further in connection with attending the appointment. She also recounted an earlier instance she had been involved in attending another appointment, closer to the Thielemans' residence. This was prior to her shift being over, having followed him to the appointment and providing assistance to his wife, adding that she could not understand why he was forgetting these.

Under additional cross-examination Plaintiff acknowledged that while Ms. Yaroch indicated there is not full time or round-the-clock care being provided to Plaintiff by the company, she had observed when coming to the Thielemans at different times, occasions where other caregivers were present and involved with care for Mrs. Thielemans. She also understood there were times when others were not present and only Mr. Thielemans provided care for his wife. In response to whether he was the one who gets her in and out of the van, she replied: "To a point."

With respect to the phone call Mr. Thielemans made while in route from the house to the doctor's office, Ms. Baker admitted that this had in fact occurred. However, when asked about his having advised her that it was not necessary that she accompany them to the appointment, again disagreed, stating this was a "misunderstanding" and she only was made aware of it once she got there. However, when further pressed as to the specifics concerning that cell phone conversation and told her assistance was not needed and to return to the house, her response was "not at the moment", then catching herself seconds later, purporting to correct this not to have taken place until following arrival. Plaintiff continued along these lines stating that the only thing discussed in that conversation related to her being questioned why she was following him and not understanding the basis for his instructions otherwise (to follow), given before leaving the house. In this regard she further stated that she was just doing her job. Upon further questioning as to what she would have done if the substance of Mr. Thielemans testimony had been as he claims, why she could not have simply turned around and gone back the same route, she became somewhat argumentative, not acknowledging this was even possible for her to do, and using what at this point in the proceedings seemed to be the well-rehearsed, standing explanation about being totally lost or powerless to figure out where she was or headed without a navigation system.

**EXHIBITS:**

**Plaintiff's Exhibits:**

1. State of Michigan Traffic Crash Report: See Summary of Plaintiff's testimony, pp.7-9, *supra.*

**Defendant's Exhibits:**

**A.** Alexis Loftus (deposition) testimony: See: pp. 22-23, *supra*.
**B.** Chanika Baker (deposition testimony in the MVA PIP claim):

Some of the numerous relevant portions of this Exhibit which bear upon the issue presented in this matter case were covered in the summary of Plaintiff's trial testimony,

especially under cross-examination (pp.11-12, *supra*). The balance of further pertinent aspects thereof are as follows. Initially, it is noted that Ms. Baker and her husband had filed for bankruptcy in 2018 and appears that some portion of her wages may have been subject to garnishment at the time of the injury, but the case was subsequently "closed" in 2021 (deposition pp.15-16). When she was in high school a guardian had applied for Social Security Disability on her behalf due to 'ADHD' and 'bipolar' conditions (*Id*, p17, 55-56), but she was not granted benefits (*Id*, p17). In connection with these problems, she previously treated with a psychiatrist and was prescribed medication (*Id*, p.56-57). Ms. Baker denied having been treated for or taken the latter for at least 10 years (*Id*, p.57). However, she also admitted to having memory problems dating back to that time frame and which persist to the present day (*Id*, pp.56, 82)

At the time of the MVA she had been employed by Yaroch for about 5-6 years (*Id*, p.18-19). In response to a question of when she last worked for this employer and then whether the company was holding her job open, replied "I don't know", adding that she "gave notice" to that employer, the day after the accident (*Id*, pp.23-24) based upon advice of a lawyer (*Id*, p.25). When asked when she first sought or had medical treatment for this incident, she stated it was on that same date, September 27, 2022, with Dr. Syed [sic], disagreeing with the suggestion that did not take occur until Oct. 11th, but the doctor would not see her at that time (*Id*, pp.24-25). She did not initially mention that she was seen in the Emergency Department of Beaumont on the date of the accident after having been 'corrected' a couple of times as to the date, name of the medical facility/hospital and its location, initially having said Hurley Hospital last year (which would have been 2020 given the date of that deposition) and located in Rochester (*Id*, pp.26-27).

In the deposition Ms. Baker further testified that she was scheduled to work from 7:00 a.m. to 1:00 p.m. and had arrived on time (*Id*, p.30). Ms. Baker stated that the appointment for her client on that date was at 9:00 a.m. (*Id*, 30-31). She also stated that she was at the appointment for five minutes, then told to go back to the house, (*Id*, pp.31-32). When asked about a stop, after saying Kroger's for directions because her GPS did not work, identified the person (sex not specified) who she spoke to as being a Kroger employee, "one of the workers" (*Id*, p.33). According to her the time this conversation took place was about 9:30 a.m., later back tracking about various times she had previously given (*Id*, pp.33-34). She denied any other stops or activity from the time she left the doctor's office until the MVA (*Id*, pp.34-35). She also testified that this was the only time she ever had driven her own vehicle to a client's appointment and, as pointed out by counsel in cross-examination of her at trial, this was because they (presumed to mean Mr. & Mrs. Thielemans) had their family with them so there was no room for her (*Id*, p.38). She later appeared to clarify this by stating that on other occasions she would drive the client's car (*Id*, p.38).

In terms of the accident itself, Plaintiff stated that there was a traffic signal at the Kroger driveway, and she had immediately turned left and was hit at the intersection (*Id*, pp.40-41). She also claimed to have lost consciousness and while not sure for how

long, it was not until a person from the ambulance was banging on her window (*Id*, p.42). She denied having spoken to any police of sheriff until at the hospital, after being taken from the scene by ambulance (*Id*, p.43). Acknowledging that she was given a ticket, while continuing to profess that she had the green light (*Id*, pp.43-44). When asked if she challenged the ticket, stated that she "Went to court." (*Id*, p.44), but ended up having to "pay a fine" (Id, p.45). Her inconsistency between going to left at the intersection as opposed to straight ahead was also confusing, as was the vehicle which hit her first, when comparing it to the Accident Report (*Id*, pp.46-47) and the Trial Exhibits (**Plaintiff's Exhibit #1** & **Defense Exhibit D**). Except as otherwise noted above, the balance of pages in the transcript of her deposition primarily bore upon issues relating to her medical status, ongoing treatment, replacement services she received and receives, etc. Given the limited issue and scope of Plaintiff's testimony given at the trial in this matter, there is really nothing further in her deposition which could be challenged on grounds of credibility, such as by being internally inconsistent, grossly at odds with other trial testimony or exhibits or significantly address and impact the question at hand.

**C.** Employer's Basic Report of Injury – WCA Form WC-100:

Various aspects of this exhibit were adequately covered by the trial testimony given by Ms. Glenna Yaroch, as summarized at pp.16-21, *supra* and to a lesser extent portions of the deposition testimony provided by Ms. Alexis Loftus (**Defendants Exhibit A**), pp. 22-23, *supra*, such that nothing further is necessary here.

**D.** State of Michigan Traffic Crash Report:

See: **Plaintiff's Exhibit 1**, p.24, *supra* and Summary of Plaintiff's testimony, pp.7-9, *supra*.

**E.** Medical Records of Beaumont Hospital-Troy ER dated 9/26/19:

Given the nature of the sole issue to be decided herein, the main purpose and focus of these records is no doubt related to historical information contained therein, specifically Ms. Baker's trial testimony compared to what she reportedly told one or more healthcare providers at this facility about how it occurred. In this regard the initial entry made the Emergency Department by Paige A. Fogg, RN was Plaintiff thinks she ran a red light, but thought it was green. In a later entry by Sara K. Klick, PA-C further explanation was given that Ms. Baker indicated that was told she ran a red light, but she may have been looking at the light beyond (which was green). In addition to the confusion about the color of the light, Nurse Fogg recorded that Ms. Baker indicated this incident occurred "as she was pulling out of the grocery store lot" also recounting that the initial impact was on the "passenger" side which spun her car around and then hit on the driver's side. It was recorded that "LOC" (understood to mean loss of consciousness) was denied. It was noted in multiple entries that Ms. Baker reported having been traveling at between 30 and 35 mph. The balance of information in this exhibit in large measure relates to what symptoms she presented, clinical as well as other diagnostic tests performed and so forth, none of which bear upon the question presented here.

**F.** Notice of Dispute – WCA Form WC-107:

This exhibit is dated 10/22/19 and had been prepared by Ms. Loftus at or around that time. It simply reflects benefits were disputed pending "further investigation" and the explanation for same later on in that form provides the reason as: Claimant was traveling in per personal vehicle, reportedly to obtain food and/or directions, when she caused a three-vehicle accident at an intersection."

**G.** Notice of Intent & Map of the area plus two Satellite Images:

These documents (hard copies of some form of digital imaging relating to a map and photographs, believed to be satellite images of the same geographic area) basically depict the layout of various streets, business locations, buildings, and other details of the general area around the intersection between Crooks Road and South Boulevard, as well as the Kroger grocery store and lot. The satellite images are of a more limited area in that respect, with the map presenting a broader or larger geographic region which extends between two plus to five miles plus in both north/south and east/west compass directions. This includes handwritten locations of the Thielemans home, doctor's office, Kroger store, part of John R Street where one witness indicated he had a cell phone call with Ms. Baker about not needing Plaintiff at the appointment. It also has the "McDonalds" restaurant location of imprinted therein. Further explanation of same and relevance to the issue was covered in the testimony given by both Plaintiff and Mr. Thielemans. See: pp.4-16, *supra*.

**H.** CAREgiver Job Description:

This document consists of five (5) pages. The first two pages contain categories and sub-categories concerning Objectives of the company, Primary Responsibilities of staff and the supervisory personnel, Secondary Responsibilities, and Essential Job Requirements, plus the CAREgiver Pay Scale. It was signed by Plaintiff and a Supervisor dated 8/1/19. The third page is titled CAREGIVER JOB DESCRIPTION with details applicable to same. The last two pages appear to itemize the various physical requirements of Ms. Baker's position as a non-medical care giver and note a date of injury 9/26/19, with identification of the employer contact, Gail Wilk, General Manager, her signature, and dated 10/17/19.

**I.** Home Instead Senior Care Incident Report:

This is the document which Plaintiff completed, setting forth the date and general location of same, as well as some information relating to physical injuries sustained, type of incident "car accident" and a brief explanation or summary of what occurred. Some of the details or portions of what she wrote were covered during the testimony of Ms. Yaroch as previously summarized, p.18, *supra*.

**J.** Home Instead Employee Handbook – 2021 Edition:

This document, although initially mentioned during questioning of one or more witnesses, was not ultimately or formally offered and admitted as evidence in the case.

**K.** Notepads Entry made by Alexis Loftus dated 10/11/19:

This specific Notepads entry (one of two identified by Ms. Loftus during her deposition testimony) pertains to the computer notes she made during her telephone conversation with Ms. Chanika Baker on the date noted. It was also marked and identified as Loftus Deposition #1. This contains information obtained up to the point when the call was terminated once she learned that Ms. Baker had already retained counsel and was represented. For pertinent details noted therein see the summary of Ms. Loftus' testimony, p.22, *supra*.

**L.** A Second Notepads Entry made by Alexis Loftus dated 10/11/19:

This Notepads entry pertains to the telephone conversation between Ms. Loftus, Glenna Yaroch, and Gail Wilk. Most pertinent aspects of the information contained in this claims-entry was covered in the testimony of both Ms. Yaroch at trial and deposition of Ms. Loftus, set forth previously, pp.19-23, *supra*.

**M.** Notes made by Ms. Glenna Yaroch from 9/26-10/9/19:

As the title reflects, this document (1 page) represents a hard copy (of notes made on a computer and then printed) generated by Ms. Yaroch from the date of the injury up to October 9, 2019, about what contact and other communication had occurred between Ms. Baker and herself relating to the incident. It covers Plaintiff's initial reporting of same by telephone on 9/26 and then follow-up until 10/9/19 when she brought paperwork into the office and completed the incident report (**Defendants' Exhibit I**). Further details of same were also provided per Ms. Yaroch's trial testimony, pp.18-19, *supra*.

**N.** Handwritten Notes of Glenna Yaroch dated 10/9/19:

This is a copy of Ms. Yaroch's handwritten notes made contemporaneous with the October 9, 2019, meeting which took place at the Defendant's office. In particular, it pertained to the information Plaintiff provided relating to where she said she was headed after leaving the Kroger parking lot, "going to eat". The balance relates to some of her physical complaints and tests which she had (not relevant to the immediate issue) and limited information about the accident itself; "2 cars involved – driver side, rear passenger" The part about where Ms. Baker indicated she was going was reiterated by Ms. Yaroch's trial testimony, p.17, *supra*.

**O.** Hard copy of e-mail entries 2/5/21 between Ms. Wilk & Mr. Thielemans:

This document consists of a one-page print-out from an e-mail exchange between Ms. Gail Wilk and Mike Thielemans on Feb. 5, 2021. It sets forth some questions (4) Ms. Wilk had about the events which took place on Sept. 26, 2019, leading up to when Ms. Baker's accident occurred and requesting any further information about that day. His response covered a variety of details, to the best of his recollection at the time, and consisted of 3 separate paragraphs (save for the first and last) addressing the matter.

The substance and details of these were by and large covered with Mr. Thielemans during testimony he provided at trial, as previously summarized, pp.13-16, *supra*.

**P.** Enlarged Google Map of Kroger location and immediate area:

As the above identification reflects, this is another hard copy from a Google Map which shows more details about the location of the Kroger Store (lower left-hand corner) and various streets in the area, including east from the corner of Crooks Road and South Blvd. to a point somewhat west of Rochester Road, as well as north from that same intersection to a point north of West Avon Road. It also depicts the location of numerous businesses and other points of interest (church, golf course & the like). In this respect it includes the Kroger store and a McDonald's restaurant which is located off the exit ramp of M-59 and Crooks Road, just south of that freeway. This was identified and covered to some extent in the testimony of Ms. Yaroch, p.19, *supra* at the time it was admitted.

**Q.** Enlargement of page contained in Defendant's Employee Handbook:

This one-page document is an enlargement of a portion of page 11 contained in the Defendant employer's 'Employee Handbook' (originally identified as **Defendants' Exhibit J**, but not ultimately offered as such, having been withdrawn), pp.17-18. The alternative, this one page contained therein, was later identified by Ms. Yaroch and offered into evidence. A ruling on same was deferred at the time pending further review of same and desire to move the trial testimony and proceedings along, p.18, *supra*. Upon further review of the entire record and taking into consideration the foundation laid for admission of this limited item, in conjunction with testimony of Ms. Yaroch, the same is admitted. As for the contents and information in this exhibit, after giving a generalized statement with respect to quality of service expected, it specifically addresses and sets forth requirements of the CAREgiver in relation to staying with and attending to the "client" at all times. It further cites rules to which the CAREgiver must adhere, spelling out sanctions of failure to do so. These directives and the reasons for them were also reasonably well covered and further explained by Ms. Yaroch, pp.17-18, 20-21, *supra*.

## APPLICABLE LEGAL STANDARD(S) & CRITERIA

**Evidentiary Standard**:

The burden of proof in an employee's claim for workers' compensation benefits is on the plaintiff. MCL 418.851. The WDCA requires that the employee establish a claim for benefits against an employer by a "preponderance of the evidence". This statutory standard essentially codified prior precedent on this issue. *Aquilina v General Motors Corporation*, 401 Mich 206; 267 NW2d 923 (1978). In the normal course this goes to every element of an employee's *prima facie* claim. *Aquilina, supra*, 267 NW2d at 925.

To satisfy the afore-cited burden, the employee must present legally sufficient evidence, *Knoblett v Sam's Club*, 2005 ACO #208, which is deemed credible and

preponderates in the employee's favor. Determinations of witness credibility, especially those who appear live, are primarily within the province of the trier of fact (i.e., Magistrate) to assess and evaluate based upon various factors attendant to their presentation. See: *Isaac v Masco Corp.*, 2004 ACO #81.

**Substantive Standard – Work Related Injury:**

In the normal course it is required that an employee prove his or her case by first establishing that he/she sustained a personal injury arising out of and in the course of the employment:

> (1) An employee, who receives a person injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act.

MCL 418.301(1).

There are additional considerations involved when the employee's alleged injury is sustained in connection with some form "travel" apart from the location where he or she normally works. To the extent that this case and issue does not strictly involve the a 'going to or coming from' work, cases addressing that legal issue are nevertheless relevant herein. Further, there are numerous instances where the essential question is whether the travel is job-related or of a personal nature. The basic criteria for same have been litigated over many years and with varying outcomes, depending on the particular facts of each case. The basic rule is that when the injury occurs during travel which is necessary to and clearly associated with the employee's job duties and responsibility, then it is deemed to have occurred in the course of employment.

This is not to say that the entirety of the journey or trip/travel is covered such that any injury which occurs while involved in the same is one of a compensable nature. *Eversman v. Concrete Cutting & Breaking*, 463 Mich 86; 614 NW2d 862 (2000). Thus, the so-called "traveling employee doctrine" does not entirely apply under Michigan's workers' compensation law. There, what was deemed a social or recreational deviation broke the causation chain when the employee was out of town but injured while engaged in activities which were so found and thus fell under that WDCA sec. 301(3) exclusion. MCL 418.303(3).

The Michigan Court of Appeals has previously mentioned that factors to consider when assessing whether business travel is covered are basically the same as those which apply to the "going to and coming from" work analysis, including; whether the employer paid for or furnished the transportation, if it occurred during working hours, whether the employer derived a special benefit from the employee's activities or whether the employment subjected the employee to excessive exposure to traffic risks. *Stark v. L.E. Myers, Co*., 58 Mich App 439, 443; 228 NW2d 411 (1975).[47] Another later case added two more factors to the going to and coming from exception; such travel having a dual

[47] Accord: *Forgach* v. *George Koch & Sons Co*., 167 Mich App 50; 421 NW2d 568 (1998).

purpose and whether the work schedule involved a split shift. *Bowman v. RL Coolsaet Constr. Co.,* 275 Mich App 188; 738 NW2d 260 (2007). Later, that court also indicated that these were not merely factors to be weighed but any one which applied could render an injury sustained during such travel to be compensable. *Smith v. Chrysler Group, LLC, on remand*, (Docket #339705), ___ Mich App ___; ___ NW2d ___ (2020).[48]

By the same token, there remain factual situations where an incident involving a travel-related injury can remove it from being found compensable. First is a geographic deviation and the other what could be deemed "activity-connected" deviations. For various cases involving these types of deviations, see portions of a well-respected treatise which generally covers the broader topic, Workers' Compensation in Michigan: Law and Practice by Welch, Royal & MacDonald, 2021 Ed. Sections 5.3; 5.5-5.6; 5.8 & 5.10. pp.74-75;79-8182-84;85-87. To a certain extent this also can bring into play issues having to do with the recreational/social activity provision of non-compensability under WDCA sec 301(3), *supra*, as well as intentional or willful misconduct being deemed a bar to such an injury determined as compensable under WDCA sec. 305; MCL 418.305. See: Workers' Compensation in Michigan: Law and Practice, *supra*, sec. 5.12, and 5.16, pp. 88-89; 93-95. Some cases cited therein which bear upon these considerations may be noted and discussed in the Analysis portion of this Opinion which follows.

## FINDINGS OF FACT, DISCUSSION & ANALYSIS

As should be apparent from the synopsis of the testimony and evidence presented in this matter, apart from the jurisdictional issues and to some extent agreed-upon underlying facts as set forth in the Joint Pre-Trial Statement of the Parties, there exist numerous salient facts which pertain to and will in large measure impact the ultimate outcome of the determination requested here – Whether the motor vehicle accident which occurred on Sept. 26, 2019 arose out of and in the course of Plaintiff's employment with Defendant Yaroch Senior Services 408, LLC d/b/a Home Instead Senior Care? The facts which are found to exist and applicable to determination of that issue are discussed, analyzed, and found as are set forth below.

As it pertains to certain general facts cited below, there is no question. These are that Plaintiff was employed by Defendant Yaroch on the date of injury and had been so for a while. Part of the time pre-dated Ms. Yaroch's acquisition of the company in March 2016 and thereafter, including on the date of injury. She worked as a nurse's assistant, providing non-medical home care for a client of Home Instead, Mrs. Lisa Thielemans. This individual is unable to communicate verbally such that the one truly responsible for her well-being and any verbal interaction with others is her husband, Michael Thielemans. This attendant care service is primarily, if not exclusively, provided at the Thielemans' home in Rochester Hills. The Plaintiff resides in Flint Michigan. She drives from her residence in her personal vehicle to the Thielemans on days she is assigned to work. She does not first go to or otherwise appear at Defendant's office, located in Waterford, before starting her workday but directly to the Thielemans home.

[48] And a still later unpublished Court of Appeals decision, *Adams v. AmComm Telecomms, Inc*., #346502 (2020) followed this application/interpretation.

On the date of the injury Plaintiff Baker was driving her own car when she was involved in a motor vehicle accident which occurred at the intersection of Crooks Road and North Blvd. in Rochester Hills. It occurred in the mid to late morning at approximately 10:50 a.m. She had just left the parking lot of a Kroger store when she collided with two vehicles, the first one hitting her car, having spun it around, when then hit from the other direction by another vehicle (pick-up truck). Thereafter at least one Oakland County Sheriff's deputy and EMS came to the scene. Ms. Baker was taken to Troy Beaumont Hospital where she was seen in the Emergency Department of this facility. While there, she provided historical information to one or more medical providers in connection with triage and treatment. She was not admitted, rather discharged later that same day.

The nature, extent, and other aspects of any injuries which were incurred, or as a result thereof, are not of much significance to the sole question presented here. However, some details, discussed later bear upon her testimony as to any recollection of the incident and account of what happened (whether at trial or by way of history given to either medical providers on that date or to others very close in time to the event itself). These include details of the accident, whether she lost consciousness at the time, where she said she had been and was going, etc. On this count there appears to be a rather wide gap between what she said, and others reported having been told about all of this. Likewise, there is a rather sizeable difference between her account of events which took place on this date before the incident, and testimony of the only other witness who having personal knowledge of the same, being Mr. Michael Thielemans. Further, there is an abundance of other evidence and testimony which bears upon this determination apart from that provided by both Plaintiff and Mr. Thielemans which goes to the issue of whether the motor vehicle accident arose out of and in the course of her employment.

Based upon all the testimony and evidence presented, including assessment of witnesses' credibility and veracity of their testimony, along with contradictory evidence as discussed and analyzed in the paragraphs which follow, I conclude that motor vehicle accident in which Plaintiff was involved on Sept. 26, 2019, did <u>not</u> arise out of and in the course of her employment with Defendant Yaroch Senior Services – Home Instead Senior Care. Accordingly, regardless of whether she sustained any physical or other injuries as a result thereof, the same would not be compensable under the WDCA.

Plaintiff's version of what preceded the accident varies significantly from what Mr. Thielemans testified to, as well what other evidence in the case reflects having been said shortly after its occurrence. With respect to Plaintiff's testimony, she said she arrived about 7:00 a.m.,[49] assisting Ms. Thielemans get ready for a doctor's appointment later that morning. She claims to have helped Mr. Thielemans get his wife into the handicapped accessible van. She denies at that point being told by Mr. Thielemans it was unnecessary for her to go to the appointment or otherwise claims that there was a misunderstanding as to what her role was to be in connection with this visit to her doctor. She testified that Mr. Thielemans instructed that she take her own car. Ms. Baker subsequently asserted

[49] Defendant Yaroch's records document another start time, Plaintiff having clocked in at 8:15 a.m., as stated by another witness, Ms. Yaroch herself, p.17, supra, but that is not all that significant with respect other details.

that the reason for this was that there was no room in his vehicle as the Thielemans' children were in the van. She followed him. She also initially failed to mention any cell phone call between herself and Mr. Thielemans occurring during the trip, but later acknowledged it during cross exam. Ms. Baker went on to testify that she in fact arrived at this doctor's office, where after parking, spoke with Mr. Thielemans and assisted him getting Mrs. Thielemans' wheelchair out of the van, onto the parking lot surface, then rolling her up to the entrance door of the office building, but did not go in.

Plaintiff continued to testify that following her conversation with Mr. Thielemans at the doctor's location, she then proceeded to drive back to their residence as instructed but got lost. This was said to be a result of the inoperable state of her 'navigation system'. After a while, she eventually came upon a Kroger store in the area and went into the parking lot, ostensibly to ask for directions. After speaking to an unknown woman in the lot, believed to be a Kroger employee, she departed and soon thereafter was involved in the accident. There exist numerous inconsistencies relating to directions she turned, whether it was necessary to go around a median on Crooks Road and the situation which occurred at the intersection with South Boulevard, where the crash occurred. Indeed, there were inconsistencies of which side of her car was initially struck and the second time, hit by a pick-up truck. EMS and the Oakland County Sheriff's member(s) appeared following same. This is about when she called Mr. Thielemans and informed him of the accident and that she would not be returning to the house that day. Her car was undrivable and she was transported to Beaumont Hospital–Troy, being seen in the ER shortly thereafter, late morning and into the afternoon.

Based upon the balance of the testimony and other evidence presented, Plaintiff's account of events that day, almost from the beginning, not only suggest but indeed demonstrate numerous discrepancies and inconsistencies. This includes not only what she was told by Mr. Thielemans while at the residence before he left with his wife for the appointment, the phone call in route, her arrival at and tasks performed in the parking lot and entry way at the doctor's office building. Likewise, while it may never be known exactly where she went and what happened between then and the accident, her version given the time differential and geographic proximity between that location and the Kroger parking lot, raises many doubts. This is not to mention the continual banter and rote explanation for being "lost" and unable figure out where she was or go anywhere without her 'navigation system', even from the point where she exited I-75 onto M-59 before arriving at the Thielemans home that morning,[50]. This tact began right off the bat, at least when questioned about directional ineptitude on cross-exam, seeming to set the stage for many more lack of navigation system excuses and avoidance of what generally would have seemed to be reasonably straightforward explanations. It was only enhanced and highlighted by virtue of testimony given by others at trial or deposition, coupled with records which contradict much of that which Plaintiff testified to. The bottom line is that once put into the context of the "she said" versus what "he said" versions, but even more so considering what others testified to and/or is supported by records, I conclude and find Plaintiff to have very little credibility. Further, regardless of any "memory" issues from

[50] This is so despite having worked there for quite some time, claiming to have no knowledge whatsoever about the surrounding area.

which she may suffer, the testimony she provided with respect to specific details of events on the day in question lack any truly meaningful degree of veracity about many facts, regardless of however one may choose to characterize her memory such events. At best it is very poor, and at worst outright false.

Apart from Ms. Baker's rather incredulous claims that she had no idea where or what exit she used off the freeway (M-59) to reach the Thielemans to begin her shift[51], there are many other assertions made on this topic which reinforce a conclusion that much of what she testified to about the subject was less than truthful. Even giving her the benefit of the doubt that the trek to work was akin to being on "autopilot" based upon the length of time she had made this, hence an inoperable navigation system was not an impediment to reaching the Thielemans' home, for her to assert a *total* unfamiliarity with the general area seems a stretch. Regardless of whether she "misunderstood" his having told her it was unnecessary to assist with the appointment, after the cell phone call which took place reiterating this,[52] there was no reason whatsoever for her to continue the journey, except to turn around on John R (in whatever manner she believed to be the safest or most appropriate), head back to the Thielemans and wait there until they returned. Thus, at this juncture there would have been no legitimate basis do otherwise or become disoriented. At this stage, even the most geographically challenged individual should have been able to make a U-turn, go back a mile or so and enter the subdivision where the Thielemans resided, pull into the driveway, and wait. Had the accident occurred during that part of the process, a different conclusion may be reached, again assuming the initial conversation with Mr. Thielemans was misinterpreted by Plaintiff.[53] However, Plaintiff's version of what she did after this call, especially considering other testimony and evidence which almost entirely belies the rest of her version of events, dictates otherwise.

The next and more significant disparity between Plaintiff's testimony and that of Mr. Thielemans, which I do not find subject to 'misunderstanding' or interpretation, is what took place at the doctor's office (or more precisely the parking lot). Plaintiff testified that she arrived there, met Mr. Thielemans, assisted getting his wife out of the van, even pushing her wheelchair, or at least going with them, up to the entrance of the office building itself. Totally at odds with this assertion, enter the *unequivocal* testimony of Mr. Thielemans which reflects that at no time after the cell phone conversation with Ms. Baker in route did he see, speak with, or any have further contact with her until after the MVA. Of note also is the fact that by all appearance he is the only witness in this case without any "skin in the game" so to speak. Virtually all others, to one extent or another, could be considered to have some alignment or potential financial relationship with the Defendant, save for Mr. Thielemans. While he was a client of Defendant Yaroch - Home

[51] Plaintiff having stated 7:00 a.m., with Mr. Thielemans believing it was an hour later, at 8:00 a.m. although this in and of itself is inconsequential in relation to other timing issues, such as the doctor's appointment, time of the accident, etc.
[52] Following which no further contact occurred, until she called later to advise that she had been in an accident.
[53] On the other hand, if a miscommunication or misunderstanding was not truly the case, having simply elected to leave the Thielemans' residence and do whatever else she wanted in the interim, then the entire trip would have had no work-connected basis from the outset, being strongly indicative that from that point on nothing which happened is considered to have arisen out of and in the course of her employment with the Defendant.

Instead at the time,[54] did not appear to have any financial or definitive vested interest in the outcome of this case. Thus, accepting his credible testimony over that of Plaintiff, I find that she did not in fact appear at or was in any way involved with Mrs. Thielemans' appointment at the doctor's office on this date.[55] Based upon this finding, any true work-connection with her travel on that day effectively could be deemed to have ceased as of the phone call in route, with a caveat as explained below.

Notwithstanding the conclusion set forth above, another question which needs be addressed is to what extent, if any, do Plaintiff's actions undertaken following the phone call potentially remain within the context of being considered to have arisen out of and in the course of her employment? As previously mentioned, had she ceased pursuit of the Thielemans after this conversation and immediately gone back to the residence awaiting their return, and had the MVA taken place during that activity,[56] a conclusion and finding of relationship to work *might* be different from those rendered in this case.[57] However, based upon the totality of proofs presented and admitted, this is not found to be what most likely occurred here, such that additional discussion and analysis is unnecessary.

Given the absence of Plaintiff having simply turned around and gone directly back to the Thielemans home by way of John R, pulling off this thoroughfare, entering the driveway or lot for one of many locations along this road, then getting back onto the same street, but simply heading from the direction she came,[58] inquiry into a viable alternate route which would have been reasonably appropriate seems warranted. Such option to return to the Thielemans would have been turning right on East South Boulevard, proceed to Rochester Road, turn right again, getting onto Auburn Road, then make a left turn when she got back to John R, followed by one more left into the Thielemans' subdivision.

However, the balance of proofs presented in this matter do not reasonably support this. To the contrary, when all is taken into consideration the ultimate location of the accident and reason for Ms. Baker to have been at the spot where it occurred simply does not coincide with her having done either of the above, as opposed to what is found to be the most likely and factually supported conclusion. In this respect, once again even affording Plaintiff the utmost latitude of believability associated with her testimony thus far, there is little doubt that once freed from whatever obligation she might otherwise have deemed to be proper by following the Thielemans up to that point, rather than proceeding in a reasonable manner directly back to the house, she both had other plans in mind and undertook them as a way to occupy her time in the interim.

[54] It being unknown if he, on behalf of his spouse, remained so at the time of trial.
[55] Conversely, had she followed until into the parking lot where the doctor's office was located, heading directly back from there to the Thielemans would have been either to re-trace the route from which she came (easily done even without the benefit of GPS navigation) or to go left onto South Blvd., then left on Dequindre, back to Auburn and make another left until reaching John R, going right (North) towards the subdivision where the Thielemans house was located. Either way, she would have been nowhere near the Kroger parking lot which was at least three (3) or more miles away.
[56] Again, *assuming* that there was a legitimate misunderstanding or confusion as to what she was instructed to do when in the Thielemans' driveway before leaving the residence.
[57] If she were to have directly returned to the Thielemans residence at that point, without any deviation or other agenda.
[58] Regardless of whether this conversation ended before or after the intersection of John R and East Auburn Road.

Therefore, what now presents itself, once more assuming Plaintiff's version up to this point about her journey and travails due to lack of a working navigation system were to be believed, is where she in fact went and why. On this score, again given Plaintiff's lack of veracity in general, plus what themselves seem to be outright contradictory statements made at the time, versus later "explanations," I choose not to buy what can rightfully be characterized as the literary license associated with Ms. Baker's version of the fiction she attempted to sell. As is the situation with other elements of her testimony as to what took place on this day, while she was involved in the accident already discussed, this chapter of the story again fails to jibe with not only her very own more contemporaneous statements, but also what others recalled about that which she had said before the matter entered "litigation mode". As is evident, there were multiple contacts made between her and others shortly after the incident. Chronologically, these include members of the Oakland County Sheriff's office and EMS, Mr. Thielemans, multiple healthcare providers at Beaumont-Troy, followed by Defendant's representative. All took place on the same day, either shortly after the accident, or reasonably close in time, albeit the order in which they occurred may be juxtaposed somewhat.

According to Ms. Baker's account, upon leaving the parking lot of the doctor's office[59] and due to an inoperable 'navigation system' she then got lost in her attempt to return to the Thielemans home. However, as noted above, even assuming she continued to follow them to the office where Ms. Thielemans doctor was located, and had that truly been the case, her return to the Thielemans was still quite simple, with or without a GPS, retrace your steps. Did she do so, no. The reason, even affording ***any*** credence to her version of how and why she got there, is that she had no intention of returning directly. Instead, Plaintiff had another agenda and things to do while still questionably "on the clock."

This is where the next inconsistency comes into play, being the time difference between when she would have left the doctor's parking lot and the accident. Per Mr. Thielemans the discussion he had with Plaintiff in the driveway when he told her it was not necessary that she go took place at about 9:45 a.m. The appointment was at 10:15 a.m. It was about an eight (8) minute drive from the house to the doctor's office, with another 3 minutes or thereabouts to get his wife from out of the van and to the building. Even giving a bit more leeway to that last task, and again operating under an assumption that Plaintiff was also present, at the latest it appears she would have ceased any work-connected assistance shortly <u>before</u> 10:00 a.m. at which time returning to her car and departing that location. The accident was recorded to have taken place at 10:53 a.m. This is at least 50 minutes after her own testimony would support having left the parking lot at the doctor's office.

Per the Google map (**Defendant's Exhibit G**, p.1) the distance between that office and the location of the Kroger parking lot is about 3½ to 3¾ miles.[60] So Ms. Baker wants one to believe that after having gotten lost just after having exited the parking lot, it was

[59] Which according to her, not recalling which way she turned, right or left.
[60] The grid system of main roadways in that area (whether north-south or east-west) being approximately 1 mile apart, having taken both 'quasi' judicial notice of same and based upon personal experience. MRE 201(a) & (b).

not until at least 45 minutes, if not a bit longer,[61] that she decided to pull into the Kroger parking lot and ask for directions. Had she gone right on East South Boulevard to start and continued to the intersection of it and Crooks, it probably should have taken only a few minutes to travel that 3 ½ miles or so. If she went left initially (but why since even for her professed limited knowledge of that geographic area and/or being directionally inept, heading back – a right hand turn from the lot – would have been a logical start), one might conclude having become lost for some greater period of time. If so, it is more likely that she would have been somewhere even farther away from the Kroger store when seeking directions. Turning right would have at least started her in the correct direction, back to John R. Had Ms. Baker missed that turn she would continue going towards Kroger. If, however, she turned direction at that point, even the wrong direction from the Thielemans' home she would have been paralleling Crooks which runs north and south, not going in the direction of the Kroger store. The same holds true were this to have happened again at the next two intersections heading west, being first Rochester and then Livernois. After that, the next one in the same direction was Crooks. Plaintiff either could not or would not recall what or where she may have turned during this misadventure. In either instance, it does nothing to support her version of how she ended up at Kroger close to an hour after leaving the doctor's parking lot a few miles away. To the contrary, other testimony and evidence strongly cuts against the version she gave at trial.

It is not entirely certain in reference to whether Mr. Thielemans spoke again with Ms. Baker following the accident before or after she had been interacted with the Deputy Sheriff and EMS personnel, but he testified as to the time, approximately 11:00 a.m., before EMS transported her to the hospital. At that juncture he was unable to go directly to the scene because of another important appointment his wife had a bit later, at or just following the lunch hour. He nevertheless went to see her in the hospital later that day, the late afternoon or early evening. His recollection of the conversations with Plaintiff immediately following the MVA were later reduced to writing based upon his personal recollection of same (**Defendants' Exhibit Q**). He reiterated the substance of this during his sworn testimony given at trial. Of great significance with respect to what she had done after last speaking with him on the cell phone in route to the doctor's office, it being reiterated that her assistance was not needed, is what she told him when they next spoke. From the context of the last full paragraph in this Exhibit, during the call she made just after the accident, advising that she would be unable to meet them back at the house due to this, speaks volumes. The call coming from Ms. Baker which he received either just after getting out of the doctor's appointment or while he and his wife were traveling home, thus around 11:00 a.m., characterized her as being "frantic" and she specifically stated having ". . . decided to run an errand a few miles away and got into an accident." (emphasis supplied) At the time she was awaiting EMS to take her to the hospital.

Inspection of records generated shortly after the accident also lend support to this alternate reason why Plaintiff was involved in the accident after leaving Kroger late that morning. She had been there on personal business and very little exists which provides a legitimate basis for giving much credence to her version and conclude otherwise. Although information in the Traffic Crash Report says nothing about the activities in which

[61] Although Plaintiff testified on cross-examination that she was "lost" for only about 30 to 35 minutes.

she had been engaged before the MVA, it does demonstrate inconstancies in terms of which direction the car which first struck vehicle was going when she ran the red light.[62] Of note also is she initially testified that following getting directions from this random individual in the Kroger lot, she was headed back to the Thielemans. However, when pressed on cross-exam as to any details of these, she immediately reverted to what was by now the well-worn explanation of not knowing anything about the area, lack of a navigation system and just generally claiming to have no clue how to get there. Further doubt as to her recollection and veracity was also indirectly raised under questioning by her own counsel. At this point she only mentioned a black truck proceeding towards her, so she sped up, but it hit her vehicle in the rear. No mention was made at that point of another vehicle. On cross-exam, after being confronted with the Crash Report diagram (**Defendants' Exhibit D**, p.2) she changed her version, now including 2 cars, but still alleged that the initial impact was on the *passenger* side, totally opposite from the diagram in that report. It seems further compounded when the pick-up truck traveling west hit her vehicle, but after her car "spun around" following the first impact. She previously said it hit at or near the rear but remained unclear towards which side. Exactly where or adjacent to which side this impacted is not documented in the diagram.

She was transported to the hospital via EMS. The records of Beaumont-Troy ER document her being seen at about 12:25 p.m. Although there is reference to the accident, little or no background information of any relevance to what she had been doing shortly before this, her route getting to that location and so on. However, the history initially taken by Paige A. Fogg, RN, references the two impacts, the first being on the passenger side (**Defendants' Exhibit E**, p.1). Once more this is the opposite of what the Crash Report and related diagram show.[63] Of comparable significance is that, when questioned about having sustained any "LOC"[64] in connection with the accident, this was denied. However, her trial testimony once again appears to the contrary, basically stating having been knocked out, with the first thing she recalled after that being the Sheriff knocking on her window, which got her attention. Once more it appears evident that information relayed by Plaintiff immediately after the event is not the same as her trial testimony.

At this juncture one more inconsistency about the actual accident which, although not provided immediately after the MVA but certainly within a week or so following the same, and which calls these multiple varying versions into question, is also found in the Incident Report (**Defendants' Exhibit I**, p.1). As mentioned in the preceding summary of Plaintiff's trial testimony, p.10, *supra*, is what she wrote down about her intentions at the intersection, ". . . <u>as I went to proceed to turn right</u> I got hit once and spent [sic.] around. . . "(emphasis added). Thus, assuming so and given the diagram she was either making a right turn from the left lane, another traffic violation[65], **or** that she really was not going to turn right but planned continuing North on Crooks Road. It is the latter which coincides

[62] Not only found as fact from the totality of evidence, but also essentially by her own admission of having not followed through and going to a hearing to contest the basis for the ticket, rather simply having paid same.
[63] Still later, when she went to Defendant Yaroch's offices and in her own handwriting completed the Incident Report (**Defendants' Exhibit I**, p.1), it references the second impact after she was "spent [sic.] around and then "struck" (or 'smack') "on the passenger side."
[64] Being the abbreviation or shorthand for 'loss of consciousness' per this writer's understanding of medical jargon.
[65] In addition to having run the red light.

with other evidence and testimony concerning what is considered yet another "detour" she wanted to make before returning to the Thielemans' home – being to stop at McDonald's. These various other significant inconsistencies pertinent to the issue presented here which became evident are pointed out and further discussed in later paragraphs.

The only other individual for which there is either a record relating to a conversation on the date of injury or who testified in this case is Ms. Yaroch. Per notes kept by this individual in the ordinary course of business concerning the call (**Defendants' Exhibit M**) corroborate this last important aspect of the day's events. This is a representation made by Plaintiff herself that after being informed by Mr. Thielemans her assistance was not needed at the doctor's office: "Chanika chose to go run a personal errand to Kroger where she purchased something to eat. When leaving the Kroger parking lot, Chanika caused a 3-car accident." *Id*, first paragraph. Ms. Yaroch reiterated this in her trial testimony, which mentioned purchasing some pickles at Kroger, when referencing her handwritten note generated a bit later in the meeting with Ms. Baker on October 9th, leaving that location to go get something to eat.[66] It also undermines Plaintiff's testimony that that she was only in the lot to ask for directions and never got out of her car or went into the store. Either way, this refutes Plaintiff's version of how and why she ended up at Kroger as well as what appears to have been her intentions immediately thereafter, before returning to the Thielemans. This also would account for the time interval from whenever she left the Thielemans, after the call while in route to or from the doctor's office, and when the accident happened.

There exists an additional document and testimony in this matter which relate to interaction between Plaintiff and one other individual a couple of days later, (**Defendant's Exhibit K**) and the deposition of Ms. Loftus (**Defendants' Exhibit A**). While some of the contents contained in the summary generated by Ms. Loftus based upon her telephone conversation with Ms. Baker on October 11, 2019, are in line with Plaintiff's trial testimony, the same are not fully supportive of her claim. Further, unbeknownst to Ms. Loftus until partway into the interview, it was divulged that Ms. Baker had already retained lawyer to represent her in connection with a claim relating to the incident, at which time contact with Plaintiff was immediately terminated. Given this, it certainly raises a concern that some elements of her version may have been a result of such contact with counsel. Since the substance of testimony provided by Ms. Loftus was in essence a reiteration of notes made from both her conversation with Plaintiff on this date and individuals associated with the Defendant-employer, Ms. Yaroch and Ms. Wilk (**Defendants' Exhibit L**), these are the primary cites for details.

In relation to the interview with Ms. Baker, while maintaining she followed the "client" (i.e., Mr. and Mrs. Thielemans) to the doctor's office, it is unclear whether what was related in the next sentence occurred during the drive from the house or actually after reaching the office, simply stating "Client said she could go back to the house and sit." (**Exhibit K**). Her trial version of why she got lost on the way back, because the navigation "on her phone" wasn't working and went to Kroger's to ask for directions, nevertheless

[66] (**Defendants' Exhibit N**) and p.19, *supra*, first paragraph.

also reflects she told Ms. Loftus that she was ". . . planning on stopping by McDonalds, which was nearby" (emphasis supplied). Plaintiff's account of exactly how she exited the Kroger parking lot onto the street (which per her trial testimony was Crooks Road), shows that, contrary her testimony about there being no "turn-around" and so forth, other evidence demonstrates otherwise; that she would have exited the Kroger drive, turned right, then merged into the left turning lane on the other side of that road and made a 'U-turn' to be going north on Crooks. She went on to state having been about to turn right when struck by the other car. The Traffic Crash Report of course shows her to have been in the left not right lane of Northbound Crooks when crossing the intersection. Given that some of this account has parts consistent with her trial testimony, others suggest otherwise. However, the biggest take away from this summary was as highlighted above; On her way back, Ms. Baker was planning to go for food at a nearby McDonalds! *Query*: **if** her navigation system[67] had been inoperable and **if** being truthful about an inability to get anywhere without it (thus totally lost and not familiar with the general area) how is it that not only had she intended to go to a McDonalds which was "nearby" and indeed appears to have been heading north on Crooks to just such a restaurant a little less than 2 miles away?[68] In my opinion, the answer is simple, most of what she testified to about these geographic challenges, navigational deficiencies and pretty much everything else about this voyage after leaving the Thielemans home is untrustworthy. Whether this be due to issues with her memory which has existed for many years or partially the result of fabrication, only reinforces the conclusion that testimony and explanations given at trial are highly suspect and totally unreliable.

Based upon the foregoing, all of this only serves to bolster a conclusion as to the lack of credibility being ascribed to Plaintiff, rejection of much of her testimony overall on these grounds, as well as supporting conclusions reached with respect to this accident h having virtually nothing to do with her job. The legal conclusions which flow from this are discussed and analyzed in the following paragraphs of this opinion.

As for a determination of the primary and underlying factual issue presented in the matter at hand, as summarized and discussed in detail above, these are: Plaintiff took it upon her own to follow the Thielemans towards the office where her client, Lisa Thielemans (being driven by the client's husband, Michael Thielemans) had a doctor's appointment that morning and disregarded instructions of Mr. Thielemans to stay in her car in the driveway at the Thielemans home. Apart from issues of whether she should have contacted the employer for advice on what to do based upon company policy, she elected to follow or continue to tail them in her own vehicle.[69] Rather than stay put, not calling the employer for guidance on handling this situation, she decided to depart. And, even if there was a misunderstanding, the later phone conversation about this did not faze her as she neither immediately nor directly went back to the Thielemans house to

[67] Whether built-in to her car, a portable Garmin or similar device, or an app on a cell phone and thus likely something which would have Google maps or similar digital maps.

[68] For its location see: **Defendants' Exhibit G-1**, upper left-hand corner in small print & **Defendants' Exhibit P**, middle left-hand side clearly labeled as such.

[69] Regardless of whether this instruction was clearly conveyed to her by Mr. Thielemans in the driveway before he and his wife departed the residence or 'clarified' in a cell phone conversation somewhere about a third or half-way to where the doctor's office was located.

await their return and continue her duties to assist the client when she arrived home. The entire repetitive script about not knowing where she was, how to get from one point to another absent a working navigation system is pure and simple, malarky. Ms. Baker's testimony is fraught with inconsistencies, purported difficulties with her memory, efforts to embellish or tailor facts to her liking and appearing to present what she thought best to serve her purposes. Thus, either before departing the Thielemans house or at the latest the cell phone call which occurred while both were on John R, actions taken by Plaintiff thereafter no longer retained any connection with her job.

As it pertains to how the above-summarized sequence of events played out in terms of the legal impact of the same, these are determined to the be the following. The four (4) factors mentioned in *Stark, supra*, are **not** applicable to the facts presented in this case as found in the preceding paragraphs. First, there is nothing to support that the employer furnished or paid for the transportation. Second, the employer in this instance cannot be said to have derived a special benefit from the employee's activities given her disregard of instructions of Mr. Thielemans that she need not attend the appointment and in fact should remain at the residence, albeit not in the home, until they returned. Just the opposite, had she done so this never would have occurred. Assuming she had a question as to procedure under the circumstances, she was fully aware of her obligation to contact the employer for guidance and direction. She elected not to do so. Further, even if a misunderstanding existed at the beginning, it certainly was remedied by the phone call in route, following with Ms. Baker nevertheless failed to proceed directly back or contact the employer at that point. Third, the same can be said of whether this travel exposed Plaintiff to *excessive* traffic risks. Since it is found that she was not supposed to have left the residence location in the first instance, there would have been no risk whatsoever. Even assuming the miscommunication and initial part or her journey exposed her to more than no traffic risks whatsoever had she remained put, one cannot conclude that there were any excessive risks had she immediately re-routed herself to the Thielemans residence following the phone call. However, had that scenario been what really happened, a different conclusion *might* be reached based upon whatever other specific facts were to be found in such case. The same may also be said were Plaintiff to have contacted the employer advising it of the situation and then received other instructions which involved her driving somewhere else. In this matter, none of the facts found here fit into one of these exceptions.

As for the fourth factor mentioned by the Court in *Stark, supra*, whether this incident occurred during working hours, at first glance and without further analysis it appears that such is the case. According to both Plaintiff and the Defendant-employer she was scheduled to work from either 7:00 or 8:00 a.m. until 1:00 p.m. Thus, absent the additional facts presented in this case, the accident having happened just before 11:00 a.m. it is plausible that one could find that this indeed took place during her scheduled work hours or shift. However, upon review of all the factual nuances here, even assuming her version of events, whether from the outset of this 'travel', sometime in route following the phone conversation with Mr. Thielemans or after that, in the parking lot/location of the doctor's office, especially based upon Ms. Baker's failure to contact the employer when notified that her services were not needed at the appointment, there exist three (3) factors which

cut against the viability of Plaintiff's claim. The first pertains to when her working hours would have been deemed over by the terms of the employer's policy, the second by virtue of her having engaged in a significant "deviation" from what otherwise should have been the proper route, not to mention a third by way of the recreational or social nature of her stop at Kroger's and intention to then proceed from there to McDonald's for lunch before returning to her client's location.

In relation to the first of the three factors cited in the preceding paragraph, there is little question that even giving Plaintiff the benefit of every doubt in this case, including it is assumed, contrary to Mr. Thielemans' recollection and testimony, Ms. Baker did end up driving to the doctor's location on this day, as well as having assisted Mrs. Thielemans in one form or another up having reached the outside door of the building (but neither accompanying the client to the office lobby, remaining in her car at that location nor contacting the employer to advise them of what Mr. Thielemans related about her services and obtaining guidance as to further action), she is considered to have "abandoned" the client. This is in accordance with the explicit instructions conveyed to her and as contained in the pertinent part of the Home Instead Employee Handbook (**Defendants' Exhibit Q**, second paragraph), explained by both Ms. Yaroch and as had been similarly made in the 'Notepads' entry of Ms. Loftus in connection with her telephone conversation with Ms. Yaroch and Ms. Wilks on October 11, 2019 (**Defendants' Exhibit L**).[70] Three points noted therein conveyed by the employer to this witness were that: (1) if the client was not interested in their help then she "shift would be over"; (2) the "[s]hift is over when caregiver abandons client" and; (3) Plaintiff did not call until after the accident. Thus, in basically all these instances Ms. Baker would no longer have been considered 'on the clock' and thus actually performing work activities at the time of the MVA. She failed to notify the employer of the situation before leaving to go follow the client (who was being driven by her husband to a doctor's appointment) after having been advised her services were not needed in connection with the appointment, not doing likewise upon again being so advised via cell phone in route and once more in the parking lot of the building where the doctor's office was located. Further, upon leaving that lot and not staying in her vehicle even if her presence in the doctor's waiting room was not deemed necessary, but proceeding to depart from there, again without calling the employer, which effectively and automatically terminated her shift at that point. In all these instances it therefore cannot be said that the MVA in which Plaintiff was involved occurred "during work hours." Accordingly, the facts presented here do not satisfy any of the four criteria set forth in *Stark*, and/or *Forgach*, *supra*.

As noted earlier, a later case, *Bowman v. RL Coolsaet Constr. Co., supra*, added a couple of other criteria to the list; if there was a dual purpose to the travel or it involved a split shift. Neither is deemed applicable here. And, even assuming some analogy could be drawn with respect to her intending to return to the Thielemans' later that morning and work up until her pre-arranged stop-time, 1:00 p.m., this is not truly in the same vein as a split shift. Rather, in actuality and under the circumstances here, it is one involving leaving the work for lunch and being involved in a car accident, thus either the process of leaving

[70] Which was also marked and identified during the course of the deposition given by Ms. Loftus, (Defendants' Exhibit A) as a separate exhibit in and of itself (Loftus deposition Exhibit #2).

from or returning to the work situs. These situations are clearly non-work related or otherwise compensable under Michigan law. *McClure v. General Motors Corp. (On Rehearing),* 401 Mich 191; 289 NW2d 631 (1980); and *Simkins v. General Motors Corp.,* 453 Mich 703; 556 NW2d 839 (1996).

At this juncture it is also appropriate to briefly discuss another aspect of Plaintiff's conduct which was brought to the fore during trial by virtue of the testimony and evidence presented. This relates to the additional effect of Plaintiff's conduct in terms of not having contacted the employer about what she should have done after being advised by Mr. Thielemans that her services were not needed at the doctor's office. This also was another or alternative basis for Defendants' position that even if a conclusion is reached that the MVA involving Plaintiff is found to be work-related, her actions or lack thereof with reference to not having contacted the employer until after-the-fact would disqualify its being deemed "compensable" under the WDCA. To the extent this is unnecessary based upon the findings and conclusion discussed above, it seemingly would have no impact on the outcome herein, unless on appeal, and for whatever reason, there occurred a reversal of the determination that this event did not itself 'arise out of and in the course of' Plaintiff's employment such that other factors or further analysis would be required to ultimately decide the outcome of this case. At present, while additional discussion analysis and findings on that score would constitute *dicta*, the undersigned having little desire to revisit this matter later if that came to pass, a condensed version of how this question would likely have been decided is set forth below.

The additional and alternative basis upon which Plaintiff's claim can be denied is due to the fact that her actions in connection with handling of the circumstances leading up to the accident can all be traced directly back to what is technically considered employee "misconduct" under WDCA sec. 305, *supra.* As such, this removes it from being held compensable. Although an employee's negligence or even gross negligence is not sufficient to rise to such level, such as failure to wear a mask when required, *Allen v. National Twist Drill & Tool Co*., 324 Mich 660; 37 NW2d 664 (1949), if such type of rule is one strictly enforced, the result may be different. *Shepard* v. *Brunswick Corp*., 36 Mich App 307; 197 NW2d 370 (1971). The intentional misconduct nevertheless requires that the conduct directly tie into the circumstances giving rise to the basis for the occurrence of the incident being claimed as compensable (i.e., arising out of and in the course of employment), *Daniel v. State of Michigan-Dept. of Corrections*, 468 Mich 34; 658 NW2d 144 (2003). If so, this itself can constitute grounds for disqualification. More recently, in *Brackett v. Focus Hope Inc*., 482 Mich 269; 753 NW2d 207 (2008), the Michigan Supreme Court reiterated this general rule, emphasizing that such misconduct need not rise to the level of something along the lines of moral turpitude, rather intentional violation of a work rule.

Based upon the evidence presented it is difficult to reach any conclusion other than the underlying factor which led to the incident allegedly providing the basis for Plaintiff's claim here was, to one degree or another, her violation of a work rule or rules. Specifically, according to the testimony of Ms. Yaroch, as well as that which spelled out in the pertinent portion of Defendant's employee handbook (**Defendants' Exhibit Q**), Ms. Baker was

made aware she was required to remain with a client at all times. This extended to when such individual went to personal appointment, in which situation the employee either stays in the waiting room or their own car.[71] It goes on to reflect that such caregiver never leave a client who has scheduled care, without first notifying the office prior to departing the client's home. *Id.* The testimony of Ms. Yaroch reiterated the caregiver's responsibility to the employer[72] and an obligation to contact the employer if any questions arose about how a situation should be handled. Plaintiff's testimony failed to adequately refute both her being unaware of such rule, evidence more than sufficient about her having been advised about this prior to the incident and that violated it when Mr. Thielemans' left (with her client) to go to the appointment and she failed to notify the employer at that point, well before anything happened. Likewise, even if she had questions about proper procedure under these circumstances, Ms. Baker's failure to contact the employer at any time between leaving the Thielemans' residence up to the point when she was involved in the MVA leads to a logical inference that such work rule violation was not merely an oversight, inadvertent error, action or inaction on her part, but rather one which can be deemed of an intentional nature. She had ample opportunity to do so at multiple times but appears chose not to. This first happened when in the driveway at the Thielemans' home when he told her that no services were required or her in connection with this appointment, during the phone conversation in route to the doctor's office after he noticed that she was following them and reiterated this, even up to at the point in time both were in the parking lot of building where the doctor's office was located, assuming Ms. Baker's version of events is believed at all and finally for that matter, at any time in the intervening period after she claims to have departed that location and then "got lost". There is no evidence whatsoever that at any one or more of these stages Plaintiff contacted the employer, let alone even tried to call and report the situation. Instead, and quite frankly of equal if not more moment, is the fact that she took this opportunity to engage in other activities which had nothing to do with work as previously discussed. The fact that she, in this writer's opinion "voluntarily" opted **not** to notify her employer, Home Instead Senior Care, of these facts, contrary to written policy and verbal instructions previously given to her (and all similarly situated employees of this company) is tantamount to and constitutes a "willful" act on her part, in direct violation of a valid and known work rule. This in essence explains why and where she was when involved in the accident.

Based upon the evidence and testimony considered, there is not much question that regardless of issues relating to Plaintiff's credibility problems as previously discussed a determination of this derivative issue would not have turned upon such factor. There was ample evidence that from a factual perspective Plaintiff made no contact with any employer representative(s) from the Thielemans home, after the cell phone call in route or when she says she spoke with and assisted getting Ms. Thielemans out of the van in the parking lot and up to the office building door where the doctor's office was located. Certain employment-related rules and instructions were thus disregarded. She was well-aware of the same. One or more of these violations would have had an impact on what

[71] Noting that based upon the testimony and other evidence presented it would be expected in the generally applicable context to meant that the employee will have driven the client to the location in the client's own vehicle in able for him or her to attend such appointment.

[72] In this matter being Yaroch Senior Services 408, LLC d/b/a Home Instead Senior Services, not the Thielemans.

she was both supposed to or otherwise be allowed to do next, including how her work time would have been recorded. Since she not only failed to undertake action or conduct set forth in both the relevant portion of the employee handbook (**Defendants' Exhibit Q**), as well as **Defendants' Exhibit H** and per the testimony of Ms. Yaroch relating to the same and other obligations or responsibilities on the part of Ms. Baker, such conduct can be deemed misconduct sufficient to warrant finding that an injury sustained either directly or possibly indirectly, which in a manner occurring secondary thereto and as a result thereof can be held to constitute a disqualification for workers' compensation benefits. *Brackett v. Focus Hope, Inc., supra*.

## SUMMARY and CONCLUSION

Based upon the totality of testimony and evidence presented in this matter, as summarized, discussed and analyzed in the preceding sections of this Opinion, it is found that the motor vehicle accident in which Plaintiff Baker was involved on September 26, 2019, did not arise out of and in the course of her employment with Defendant Yaroch Senior Services 408 LLC, d/b/a Home Instead Senior Services. This conclusion is based upon multiple, alternative factors and grounds.

These include that Plaintiff's testimony was not found to be entirely believable, especially on certain counts as previously explained and hence deemed to have little credibility relating to important facts in this case. Conversely, witnesses called on behalf of the Defendant's are found to be far more trustworthy and reliable in terms of what happened on the day in question and chronology of events as they developed following Plaintiff's arrival at the Thielemans' residence to begin her shift that morning and what transpired thereafter. It is determined that Plaintiff's claim the activities in which she engaged during 45-minute period or so immediately before being involved in the crash were not related to her job. Even if so, at some point upon departing the Thielemans' home (or at one or more times during the process if any credence is given to her version) she elected to engage in activities which were of an entirely personal nature, whether being considered social or recreational, as well as there being significant geographical deviation from any reasonably direct route taken with the intention of returning to her client's residence and explanation for same due to lack of an operational navigation system being rejected in their entirety. Last, even assuming some legitimacy attendant to Ms. Baker's claimed account, she is found to have intentionally violated a work rule as expressly outlined in Defendant employer's handbook, the same constituting misconduct, failure to make any effort to contact the employer for guidance as verbally so instructed on multiple occasions during her employment only compounding the problem, thus removing the resulting incident from coverage under the WDCA.

## ORDER

IT IS HEREBY ORDERED that Plaintiff's Application for Mediation or Hearing – Form A filed in this matter on November 20, 2019, claiming that the injury she sustained in the motor vehicle accident which occurred on September 26, 2019 arose out of and in the course of her employment is DENIED.

IT IS FURTHER ORDERED that this case is DISMISSED and based upon the finding of there being no compensable injury having occurred there is basis for any further proceedings in connection with this matter.

_____
David H. Williams (253G)

Signed this 26th of August, 2022 in Detroit, Michigan