

STATE OF MICHIGAN
COURT OF APPEALS

HENRY FORD HEALTH SYSTEM,

Plaintiff-Appellee/Cross-Appellant,

v

PROGRESSIVE INSURANCE COMPANY of
MICHIGAN,

Defendant-Appellant/Cross-
Appellee,

and

STATE FARM MUTUAL AUTO INSURANCE
COMPANY,

Defendant-Appellee/Cross-Appellee

LARRY DODSON,

Plaintiff-Appellee/Cross-Appellant,

v

PROGRESSIVE INSURANCE COMPANY of
MICHIGAN,

Defendant-Appellant/Cross-
Appellee,

and

STATE FARM MUTUAL AUTO INSURANCE
COMPANY,

Defendant-Appellee/Cross-Appellee,

and

UNPUBLISHED

March 18, 2010

No. 288107

Wayne Circuit Court

LC No. 06-635557-NF

No. 288108

Wayne Circuit Court

LC No. 07-707619-NF

MICHIGAN ASSIGNED CLAMS FACILITY,

Defendant.

C. J. MAZURE, D.O.,

Plaintiff-Appellee/Cross-Appellant,

v

PROGRESSIVE INSURANCE COMPANY of
MICHIGAN,

Defendant-Appellant/Cross-
Appellee,

and

STATE FARM MUTUAL AUTO INSURANCE
COMPANY,

Defendant-Appellee/Cross-Appellee.

No. 288109
Wayne Circuit Court
LC No. 07-718451-NF

Before: BORRELLO, P.J., AND MARKEY AND STEPHENS, JJ.

PER CURIAM.

In these consolidated actions for no fault personal protection benefits, the trial court ruled on motions for summary disposition that Progressive Insurance Company of Michigan (Progressive) was the responsible insurer and that assigned claims carrier defendant State Farm Mutual Auto Insurance Company (State Farm), had no liability. Separate judgments were entered for plaintiff Henry Ford Health System in Docket No. 288107, and plaintiff C.J. Mazure, D.O. in Docket No. 288109. A final judgment was entered in favor of plaintiff Larry Dodson in Docket No. 288108, on September 15, 2008. Progressive appeals by right asserting the tow truck it insured was “parked,” and no exception under MCL 500.3106(1) applied. Plaintiffs cross-appeal the trial court’s rulings with respect to State Farm. We affirm.

I. SUMMARY OF FACTS AND PROCEEDINGS

Plaintiffs Henry Ford Health System and C. J. Mazure provided medical treatment to plaintiff Larry Dodson, a tow-truck driver who was severely injured when an uninsured van hoisted by the truck’s towing mechanism fell on him while he was underneath it manually shifting the van into neutral so that it could be towed. Dodson attempted to move the van a few feet with its front end hoisted up in the tow truck’s sling, but the rear-wheel drive van would not

roll because its transmission was in park. Dodson did not have a key to access the van to shift the transmission into neutral, so he lifted the front end of the van as high as possible with the tow truck's derrick and pulley mechanism, crawled underneath the van, and with a hammer and screw driver, disengaged the van's transmission. Released tension from the prior movement of the van caused it to lurch, escape from the towing restraints, and fall on Dodson.

When an insurer to provide no-fault benefits was not identified, the Michigan's Assigned Claims Facility directed Dodson's claim for no-fault benefits to State Farm. Subsequently, Progressive was identified as insuring the tow truck through a commercial automobile policy issued to Contract Towing, Inc. Progressive denied no-fault benefits contending the tow truck was "parked," and no exception under MCL 500.3106(1) applied. State Farm denied no-fault benefits because it contended that Progressive was the responsible insurer. Plaintiffs separately brought suit for no-fault benefits, and the lawsuits were later consolidated.¹

The trial court granted plaintiffs partial summary disposition, ruling that Dodson was entitled to no-fault benefits because his injuries arose "out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." MCL 500.3105(1). Specifically, the court ruled that Dodson's injuries arose out of the maintenance and operation of the tow truck. The trial court, however, did not decide whether Progressive or State Farm or both were the responsible insurer. But the court denied Progressive's motion for summary disposition, ruling that although the tow truck was stopped while in the process of hooking up the van, it was not "parked" within the meaning of MCL 500.3106.

Subsequently, the trial court denied Progressive's motion for reconsideration and affirmed its decision that Dodson was entitled to no-fault benefits. The court reiterated that "the tow truck was being used—was a vehicle and that the accident and injury arose out of and in connection with the maintenance or use of loading or unloading of . . . this . . . tow truck." Regarding which insurer was liable, State Farm argued that because Progressive insured a vehicle involved in the accident, State Farm could not be liable under MCL 500.3172. Progressive conceded on the basis of the trial court's ruling that the tow truck was not "parked" within the meaning of MCL 500.3106, that all of its arguments denying coverage "fall by the wayside." Nevertheless, counsel for Progressive urged the court—to avoid repeated appeals—to consider the tow truck parked because its wheels were stopped and it was the van that moved preceding the accident. Plaintiffs' counsel argued that even if the trial court accepted that the tow truck was parked, Dodson was still entitled to no-fault benefits because the exception for loading and unloading applied, MCL 500.3106(1)(b), and because Dodson was not an occupant when injured, Progressive was the responsible insurer under MCL 500.3115. The court ruled that even if the tow truck was parked, Progressive remained liable for Dodson's no-fault benefits,

¹ In a separate declaratory judgment action, Progressive denied liability coverage because its policy excluded employees of the insured. The trial court ruled that Dodson was not an employee so that the exclusion did not apply. This Court reversed and remanded for trial because a material question of fact existed whether Dodson was an employee. *Progressive Michigan Ins Co v Contract Towing, Inc*, unpublished opinion per curiam of the Court of Appeals issued October 1, 2009 (Docket No. 286570).

not State Farm. The trial court entered judgments as previously noted and these appeals followed.

II. PROGRESSIVE'S APPEAL

This Court reviews de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(10). *Drake v Citizens Ins Co*, 270 Mich App 22, 24; 715 NW2d 387 (2006). The Court also reviews issues of statutory interpretation de novo. *Spectrum Health v Grahl*, 270 Mich App 248, 251; 715 NW2d 357 (2006). When the material facts are undisputed, whether a statutory exclusion or exception under the no-fault act applies is a question of law this Court reviews de novo. *Stewart v Michigan*, 471 Mich 692, 696; 692 NW2d 376 (2004).

Analysis of whether an injured party is entitled to, or an insurer liable for, no fault personal protection benefits, must begin with MCL 500.3105(1). *Drake*, supra at 25; *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 33; 651 NW2d 188 (2002). That statute provides that "an insurer is liable to pay [personal protection] benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." This Court has described whether the statute applies as requiring two broad analytical steps:

Under § 3105(1), the analysis for determining whether no-fault benefits are available involves two broad steps. First, it is necessary to determine "whether the injury at issue is covered," i.e., whether it is "accidental," "bodily," and "aris[es] out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." Second, it is necessary to determine whether the injury is excluded under other provisions in the no-fault act and whether an exception to an exclusion would save the claim. [*Drake*, supra at 25, citing *Rice*, supra at 33.]

In the present case, it is undisputed that Dodson suffered accidental bodily injuries when the van fell from the tow truck's harness. Indeed, it is not even disputed that Dodson's injuries arose out "maintenance" of the van as a motor vehicle because it was being towed. "While the term 'maintenance' suggests the servicing or repairing of a motor vehicle, this Court has expanded the term to include persons injured during preparations for towing a stuck pickup truck and to nonoccupants injured awaiting a tow truck at the side of the road." *Amy v MIC Gen Ins Corp*, 258 Mich App 94, 126; 670 NW2d 228 (2003), rev'd in part on other grounds *Stewart*, supra. Thus, towing or preparing to tow a motor vehicle constitutes maintenance, and accidental injuries sustained while performing those acts come within the provisions of MCL 500.3105(1). See *Yates v Hawkeye-Security Ins Co*, 157 Mich App 711, 714; 403 NW2d 208 (1987).

The only defense that Progressive asserts is the "parked" vehicle exclusion of MCL 500.3106(1). This exclusion, however, does not apply where maintenance is being performed on the parked vehicle. *Miller v Auto-Owners Ins Co*, 411 Mich 633, 641; 309 NW2d 544 (1980). Thus, at a minimum, Dodson is entitled to no-fault benefits because his accidental injuries arise out of "maintenance" of the van, satisfying the requirements of § 3105(1), and are not excluded by § 3106(1). Where multiple vehicles are potentially "involved in the accident," an injured person need not satisfy the requirements of § 3105(1) for each vehicle. The accidental bodily injuries must only arise "out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." MCL 500.3105(1) (emphasis added). If "that showing is made with respect

to *one* motor vehicle, the insurers of owners of vehicles having some physical connection to the accident are potentially primarily liable for property protection benefits.” *Turner v Auto Club Ins Ass’n*, 448 Mich 22, 35; 528 NW2d 681 (1995).² Because Dodson had no insurance of his own or available to him through a resident relative, MCL 500.3114(1), and because he was not an occupant of a vehicle when injured, MCL 500.3115(1)(a) applies:

(1) Except as provided in subsection (1) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) Insurers of owners or registrants of motor vehicles involved in the accident. [MCL 500.3115.]

Thus, as MCL 500.3115(1)(a) provides, if the tow truck was “involved in the accident,” then Progressive as the insurer of its owner or registrant is liable to pay Dodson’s no-fault benefits.

Under our Supreme Court’s decision in *Heard v State Farm Mutual Automobile Ins Co*, 414 Mich 139; 324 NW2d 1 (1982), whether the tow truck was “involved in the accident” depends on whether one of the exceptions to the parked vehicle exclusion of § 3106(1) applies. In *Heard*, the plaintiff was pumping gas into his uninsured automobile when another vehicle struck it. At issue was whether Heard was precluded from collecting personal protection benefits because his vehicle was “involved in the accident” within the meaning of MCL 500.3113. The Court reasoned that Heard’s vehicle “was not in use as a motor vehicle; rather, it was like ‘other stationary roadside objects that can be involved in vehicle accidents.’” *Heard, supra* at 145. The *Heard* Court following *Miller, supra* at 639, observed that accidental injuries “involving parked vehicles do not normally involve the vehicle *as a motor vehicle*.” The Court opined:

It is apparent, upon examination of the sections of the no-fault act other than § 3113 (concerning disqualification), that a parked motor vehicle is indeed regarded for purposes of the no-fault act as if it were a “tree or a pole”. Just as the owner of a tree or pole is not required to purchase no-fault insurance, neither is the insurer of a parked motor vehicle subject to liability for no-fault benefits unless one of the parked vehicle exceptions is applicable.

* * *

Where no-fault liability arises from maintenance, the injury results from use of the vehicle as a motor vehicle, as when a battery or fuel line explodes or, as in *Miller*, a vehicle falls upon and injures a person. Heard’s injury did not arise from the maintenance or use of an uninsured vehicle as a motor vehicle, but from the operation and use of the vehicle insured by State Farm as a motor vehicle.

² *Turner* interpreted MCL 500.3121(1), which uses the same phrase, “arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle,” as § 3105(1).

The only vehicle being used as a motor vehicle at the time of the accident was the vehicle insured by State Farm. Heard's vehicle was a "tree or pole" for purposes of the act. [*Heard, supra* at 149, 154.]

The specific holding of *Heard* was: "a parked vehicle is not 'involved in the accident' unless one of the exceptions to the parked vehicle provision (§ 3106) is applicable." *Heard, supra* at 144.

We believe State Farm's effort to factually distinguish *Heard* has merit. Unlike the parked automobile in *Heard* that was passively sitting next to a gasoline pump while being fueled and played no active role in the accident, the tow truck here was actively being used for its transportational purposes, i.e., as a motor vehicle, to tow the van to a different location. The tow truck also played an active role in the accident by lifting the van up and creating the tension that on release caused the van to lurch and escape from the tow truck's restraints. Nevertheless, we assume for the purposes of our analysis that the tow truck was "parked" because its transmission was in "park" and its wheels motionless. See *Winter v Automobile Club of Michigan*, 433 Mich 446, 449, 456; 446 NW2d 132 (1989) (tow truck was "parked" within § 3106(1) when its wheels were immobilized by setting the hand brake and positioning wheels against the curb), and *MacDonald v Michigan Mut Ins Co*, 155 Mich App 650, 655-656; 400 NW2d 305 (1986) (trailer box moved but wheels immobilized, therefore it was "parked"); see also *Davis v Auto-Owners Ins Co*, 116 Mich App 402; 323 NW2d 418 (1982) (tow truck was "parked" while stopped on shoulder of road attempting to hook up stranded automobile).

The "parked" vehicle exclusion and exception b at issue here provides:

(1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:

(b) Except as provided in subsection (2)³, the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process. [MCL 500.3106(1).]

In *Miller, supra* at 639-640, the Court opined that § 3106(1) was intended to limit no-fault benefits to accidental injuries resulting from the use of a motor vehicle as a motor vehicle and that the exceptions pertained "to injuries related to the character of a parked vehicle as a motor vehicle—characteristics which make it unlike other stationary roadside objects that can be involved in vehicle accident." The *Miller* Court described subsection b as recognizing that

³ The parties agree subsection (2), which excludes no-fault benefits when workers compensation benefits are available in situations roughly equivalent to subparagraphs (b) and (c) of § 3106(1), does not apply because even if Dodson is determined to be an employee of Contract Towing, no workers compensation insurance benefits are available.

some parked vehicles may still be operated as motor vehicles, creating a risk of injury from such use as a vehicle. Thus a parked delivery truck may cause injury in the course of raising or lowering its lift or the door of a parked car, when opened into traffic, may cause an accident. Accidents of this type involve the vehicle as a motor vehicle. [*Miller, supra* at 640.]

In *Putkamer v Transamerica Ins Corp*, 454 Mich 626; 563 NW2d 683 (1997), the Court examined the meaning of the parked vehicle exclusion when a woman was injured when she slipped and fell on the ice while attempting to enter her parked motor vehicle. The Court discussed the general rule of § 3105(1) and the exclusion of § 3106(1) for “parked” vehicles. *Putkamer, supra* at 631-632. The particular exception at issue was that of subsection (c): “the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.” MCL 500.3106(1)(c). Although suggesting that the plaintiff’s right to no-fault benefits was governed exclusively by § 3106(1),⁴ the Court went on to state a three-step analytical framework that included satisfying the general requirement of § 3105(1) that “accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.” The Court observed that the “underlying policy of the parked motor vehicle exclusion of subsection 3106(1) is to ensure that an injury that is covered by the no-fault act involves use of the parked motor vehicle *as a motor vehicle.*” *Putkamer, supra* at 633. The Court further reasoned that to satisfy § 3105(1) the “causal connection between the injury and the use of the motor vehicle [must be] more than incidental, fortuitous, or ‘but for.’” *Putkamer, supra* at 634.

The *Putkamer* Court stated three steps for analyzing accidents involving parked vehicles:

[W]here a claimant suffers an injury in an event related to a parked motor vehicle, he must . . . demonstrate that (1) his conduct fits one of the three exceptions of subsection 3106(1); (2) the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle *as a motor vehicle*; and (3) the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for. [*Putkamer, supra* at 635-636 (emphasis).]

And, the Court went to hold that the *Putkamer* plaintiff satisfied these criteria because

(1) she was injured while entering the parked motor vehicle under subsection 3106(1)(c), (2) her injury was related to her use of the vehicle as a motor vehicle, i.e., she was going to be driving the automobile when she entered it, and (3) there was a sufficient causal connection between her injury and the use of her parked vehicle. [*Putkamer, supra* at 638.]

Our Supreme Court later clarified *Putkamer* in *McKenzie v Auto Club Ins Ass’n*, 458 Mich 214, 215; 580 NW2d 424 (1998), which involved a plaintiff who sustained injuries when

⁴ The Court opined: “Where the motor vehicle is parked, the determination whether the injury is covered by the no-fault insurer generally is governed by the provisions of subsection 3106(1) alone.” *Putkamer, supra* at 632.

nonfatally asphyxiated while sleeping in a camper/trailer affixed to his pickup truck. The *McKenzie* Court reasoned that § 3106(1)(c) was satisfied because the plaintiff was an occupant of the vehicle; therefore, the issues presented were whether steps 2 and 3 of the *Putkamer* test were satisfied. *McKenzie, supra* at 216-217. The Court focused on the requirement of step two—that the “accidental bodily injury” arise out of the “use of a motor vehicle as a motor vehicle.” § 3105(1); *McKenzie, supra* at 216-219. Regarding this requirement, the Court held “that the Legislature intended coverage of injuries resulting from the use of motor vehicles when closely related to their transportational function and only when engaged in that function.” *Id.* at 220. This requirement can be satisfied when the motor vehicle is not moving. *Id.* at 219 n 6. Regarding the plaintiff who suffered asphyxiation injuries while sleeping in his pickup truck, the *McKenzie* Court held “that the requisite nexus between the injury and the transportational function of the motor vehicle is lacking.” *Id.* at 226.

Pertinent to the present case, the *McKenzie* Court noted, “most often a vehicle is used ‘as a motor vehicle,’ i.e., to get from one place to another.” *McKenzie, supra* at 219. Thus, use “as a motor vehicle” depends on whether the vehicle is being used for transportational purposes. “Whether an injury arises out of the use of a motor vehicle ‘as a motor vehicle’ turns on whether the injury is closely related to the transportational function of automobiles.” *Id.* at 215.

Here, there is no dispute that Dodson was about to move both the tow truck and the van attached to it “from one place to another.” *McKenzie, supra* at 219. It is also undisputed that Dodson, in fact, moved the tow truck and the attached van a few feet. He then put the tow truck in park and crawled underneath so that he could attempt to mechanically shift the van into neutral to facilitate moving both vehicles from one place to another, i.e., to facilitate the use of tow truck for its transportational function. *Id.* Dodson clearly intended at the time of his injury to continue using the tow truck for its transportational functions. *Putkamer, supra* at 636. When we apply the reasoning of *Putkamer* and *McKenzie*, we reach the conclusion that Dodson was using the tow truck as a motor vehicle at the time of his injuries. Indeed, the present case is closely analogous to the example in *Miller* of an injury ensuing while a parked vehicle is being used as a motor vehicle: “a parked delivery truck [causing] injury in the course of raising or lowering its lift” *Miller, supra* at 640. Our conclusion is also consistent with the remedial nature of the no-fault act requiring a construction of its terms liberally in favor of its intended beneficiaries. *Turner, supra* at 28. Just as towing and preparing to tow are within the meaning of “maintenance” of the disabled vehicle as a motor vehicle, towing and preparing to tow constitute use of the tow truck as a motor vehicle. *Amy, supra* at 126; *Yates, supra* at 714. Consequently, we find Dodson’s injuries were “closely related to the transportational function” of the tow truck. *McKenzie, supra* at 215.

In addition, step 3—the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for—is satisfied. *Putkamer, supra* at 636. When the tow truck moved the van a few feet with its wheels in park, it created tension between the tow truck and the transmission of the van. When Dodson exited the tow truck, he used its boom and winch to lift the front end of the van as far as it would go above the ground to facilitate his getting underneath to mechanically shift the van into neutral so that the truck could tow the van to another location. When Dodson physically knocked the van’s transmission into neutral, the tension thereby released caused the van to lurch. The tow truck and its permanently attached boom and towing harness were unable to restrain the van, allowing it to fall on Dodson. We

believe this factual sequence provides a “causal nexus” or “active link” between the use of the tow truck as a motor vehicle and the accidental injuries that is “more than incidental, fortuitous, or but for.” *Putkamer, supra* at 636. In sum, Dodson was actively using the tow truck for its transportational purposes, i.e., as a motor vehicle, to tow the van to a different location. The tow truck as a motor vehicle played an active role in the accident by raising the van and creating the potential that gravity could cause it to fall and also generate tension that when released, caused the van to lurch and escape from its tow-truck restraints, falling on Dodson.

We hold that the loading and unloading exception of § 3106(1)(b) applies to the undisputed facts of this case. Attaching a van to a tow truck to move the van to another location is within the transportational functions of the tow truck and within the ordinary common meaning of the word “loading.” “Loading” is defined as “the act of a person or thing that loads.” A “load” is “anything put in or on something for conveyance or transportation.” See *Random House Webster’s College Dictionary* (1992). Moreover, the statute refers to more than a single discrete act; it also applies to “the loading or unloading *process*.” MCL 500.3106(1)(b). Thus, placing the van in or on the tow truck’s boom and sling harness would be part of the *process* of “loading” or making a load ready for transportation. The “process” would also include making the tow truck and van ready to be moved from one place to another, i.e., shifting the van into neutral so that it might effectively roll to the new location.

We find misplaced Progressive’s argument that van was not “being lifted onto” the tow truck because the van was only attached to a boom and towing harness. Simply put, this argument reads too much into the single word “onto” and is inconsistent with both common sense and dictionary definitions. The common ordinary meaning of “being lifted onto” in the context of a tow truck with a boom and towing harness would include loading one end of a vehicle to be towed into the harness and lifting it so that the tow truck and the disabled vehicle could move, essentially as one unit, from one place to another. Further, a dictionary defines “onto” as “to place or position on; upon; on.” *Random House Webster’s College Dictionary* (1992). Essentially then, “onto” is synonymous with “upon” or “on,” which is defined as, “so as to be or remain supported by or suspended from,” and “so as to be attached to or unified with.” *Id.* That is exactly what occurred when the front end of the van was raised by the boom and towing harness of the tow truck.

We also reject Progressive’s argument that the Legislature’s use of different wording in MCL 500.3106(2)(a) and (b) to define “another vehicle” as not including “a motor vehicle being loaded on, unloaded from or secured to, as cargo or freight, a motor vehicle,” limits the meaning of “the loading or unloading process” in § 3106(1)(b). Section 3106(2) was adopted subsequent to § 3106(1) “to eliminate duplication of benefits (workers’ compensation and no-fault) for work-related injuries except where the actual driving or operation of a motor vehicle is involved.” *Raymond v Commercial Carriers, Inc*, 173 Mich App 290, 293; 433 NW2d 342 (1988). Section 3106(1), subsections 3106(1)(a), (b) & (c), and subsections 3106(2)(a) & (b), all serve different but related purposes. The general rule in § 3106(1) excludes no-fault benefits for accidental injuries involving “parked” vehicles because they do not arise out of the ownership, operation, maintenance, or use of a vehicle as a motor vehicle. But §§ 3106(1)(a), (b) and (c) are exceptions to the general rule of exclusion regarding parked vehicles. As for §§ 3106(2)(a) and (b), those subsections provide exceptions to the exceptions in §§ 3106(1)(b) and (c) and act to preclude double recovery when benefits under workers compensation or similar law are available

to the injured person in a parked vehicle situation. *Raymond, supra* at 293; *Crawford v Allstate Ins Co*, 160 Mich App 182, 186; 407 NW2d 618 (1987).

Because of the differing language in the two subsections, this Court in *Bell v F J Boutell Driveaway Co*, 141 Mich App 802, 808-810; 369 NW2d 231 (1985), declined to import the meaning of “loading” and “unloading” from § 3106(1)(b) into § 3106(2)(a) & (b). The *Bell* Court held that the terms “loading” and “unloading” in § 3106(2) should be broadly interpreted to further the statute’s purpose of eliminating “duplication of benefits for work-related injuries that do not relate to the actual driving or operation of a motor vehicle.” *Bell, supra* at 810-811. With respect to § 3106(1)(b), the *Bell* Court observed that prior caselaw had broadly interpreted the terms “loading” and “unloading” as they appear in insurance contracts to mean “the complete operation of loading or unloading, or the entire *process* of loading and unloading.” *Bell, supra* at 808 (emphasis added). The broad meaning of “the loading or unloading process” in § 3106(1)(b) is, however, limited by the other express terms in the same subsection. *Bell, supra* at 809.

In the present case, Dodson’s injuries occurred during the “loading or unloading process.” Dodson was preparing a load—the van—for transportation. Dodson’s injury occurred while property, the van, was being lowered from the tow truck. While the lowering of the van was sudden, swift, and accidental, the precise statutory language “lowered from the vehicle” was satisfied when the van fell from the tow truck harness and came into physical contact with Dodson. In other words, Progressive’s focus on the phrase “being lifted onto” is misplaced. In sum, Dodson’s injuries were “a direct result of physical contact with . . . property being . . . lowered from the vehicle in the loading or unloading process.” MCL 500.3106(1)(b).

Because § 3106(1)(b) is satisfied on the facts of this case, our Supreme Court’s holding in *Heard*, does not preclude the tow truck’s being “involved in the accident” within the meaning of MCL 500.3115. Indeed, the very facts that lead to the conclusion that § 3106(1)(b) is satisfied also lead to the inescapable conclusion that the tow truck was “involved in the accident.” “For a vehicle to have been ‘involved in the accident’ requires, at a minimum, that the vehicle be used as a motor vehicle at the time of the accident.” *Turner, supra* at 38. Further, there must be “an ‘active link’ between the injury and the use of the motor vehicle as a motor vehicle in order for the vehicle to be deemed ‘involved in the accident.’” *Id.* at 39. The *Turner* Court more extensively opined on the meaning of being “involved in the accident” as requiring that

for a vehicle to be considered “involved in the accident” [under the no fault act], the motor vehicle, being operated or used as a motor vehicle, must actively, as opposed to passively, contribute to the accident. Showing a mere “but for” connection between the operation or use of the motor vehicle and the damage is not enough to establish that the vehicle is “involved in the accident.” Moreover, physical contact is not required to establish that the vehicle was “involved in the accident,” nor is fault a relevant consideration in the determination whether a vehicle is “involved in an accident.”

As discussed already, the facts of this case satisfy these criteria. There was a “causal nexus” between Dodson’s injury and the tow truck’s being used as a motor vehicle, and the injury was “more than incidental, fortuitous, or ‘but for.’” *Turner, supra* at 31-32. The tow truck “actively, as opposed to passively,” contributed to the accident. *Turner, supra* at 39. Because the tow truck was “involved in the accident,” Progressive as the insurer of its owner or

registrant is liable to pay Dodson's no-fault benefits. MCL 500.3115(1). Finally, because Progressive was identified and determined to be the insurer responsible for paying no-fault benefits, we find no basis to hold State Farm liable as the assigned claims carrier. MCL 500.3172(1).

In sum, we conclude the trial court correctly ruled Dodson was entitled to no-fault benefits from Progressive and properly denied Progressive's motion for summary disposition. Specifically, Dodson's injuries arose out of the use of the tow truck as a motor vehicle or out of the maintenance of the van as a motor vehicle. MCL 500.3105(1). The loading or unloading exception to the "parked" vehicle exclusion applies on the undisputed facts of this case. MCL 500.3106(1)(b). Because the tow truck was "involved in the accident" under MCL 500.3115, the trial court properly denied Progressive's but granted State Farm's motion for summary disposition.

III. PLAINTIFFS' CROSS-APPEAL

First, we note plaintiffs' claim regarding interest and attorney fees for State Farm's refusal to pay no-fault benefits promptly is not properly preserved for appellate review. "Generally, an issue is not properly preserved if it is not raised before, addressed, or decided by the circuit court or administrative tribunal." *Polkton Twp v Pellegroni*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Nonetheless, "this Court may overlook preservation requirements . . . if the issue involves a question of law and the facts necessary for its resolution have been presented." *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006).

We conclude State Farm is not liable for penalty interest under MCL 500.3142, nor is it liable for attorney fees under MCL 500.3148(1). Each of these statutes requires as a prerequisite that no-fault benefits be "overdue." But, benefits cannot be overdue when the trial court properly concludes that State Farm was not liable for no-fault benefits. "Penalty interest must be assessed against a no-fault insurer if the insurer refused to pay benefits *and is later determined to be liable*, irrespective of the insurer's good faith in not promptly paying the benefits." *Morales v State Farm Mutual Ins Co*, 279 Mich App 720, 730; 761 NW2d 454 (2008), quoting *Williams v AAA Michigan*, 250 Mich App 249, 265; 646 NW2d 476 (2002) (emphasis added). Likewise, with respect to attorney fees, "if an insurer does not owe benefits, then benefits cannot be overdue," and "a claimant's attorney may not receive attorney fees under Michigan's no-fault insurance statutes." *Moore v Secura Ins*, 482 Mich 507, 526; 759 NW2d 833 (2008). Here, because the trial court properly determined that State Farm was not liable for Dodson's no-fault benefits, it also could not be held liable for penalty interest under § 3142 or attorney fees under § 3148(1).

We affirm. Defendant, State Farm Auto Insurance Company, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Stephen L. Borrello
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens