STATE OF MICHIGAN
IN THE SUPREME COURT

CODY BONTER and
KAITLYN JACKMAN,

Plaintiffs/Counter-Defendants/Appellants,

v.

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant/Counter-Plaintiff/Cross-Plaintiff/Appellee,

and

TAYLON WILLIAMS,

Cross-Defendant.

Docket No. 166182

Court of Appeals No. 360411

Lower Court No. 21-115568-CK
Genesee County Circuit Court

BRIEF AMICUS CURIAE OF MICHIGAN ASSOCIATION FOR JUSTICE

Robert B. June (P51149)
Law Offices of Robert June, P.C.
415 Detroit Street, 2nd Floor
Ann Arbor, MI 48104-1117
(734) 481-1000
bobjune@junelaw.com

Attorney for Amicus Curiae
Michigan Association for Justice

I. TABLE OF CONTENTS

II. INDEX OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

III. INTEREST OF AMICUS CURIAE[1]

The Michigan Association for Justice is an organization of Michigan lawyers engaged primarily in litigation and trial work, typically representing plaintiffs in civil lawsuits. MAJ recognizes an obligation to assist this Court on important issues that would substantially affect the orderly administration of justice in the courts of this state. This case presents such issues, particularly insofar as it involves interpretation of the Michigan No-Fault Act.

[1] No counsel associated with any party participated in authoring this brief in whole or in part. No party, or counsel for any party, made any monetary contribution intended to fund the preparation or submission of this brief, and all monetary contributions for preparation of this brief were made by the Michigan Association for Justice.

IV. QUESTION PRESENTED

Whether Michigan no-fault automobile insurance policies issued after the amendments to the Michigan no-fault act took effect on June 11, 2019 were required to include liability coverage subject to *all* of the limits stated in MCL § 500.3009(1)(a)-(c) as amended.

V. ARGUMENT OF AMICUS CURIAE

Michigan no-fault automobile policies issued after June 11, 2019 were required to provide limits of "not less than $250,000.00" per person and "not less than $500,000.00" for two or more persons for any covered accident occurring "after July 1, 2020." MCL § 500.3009(1)(a)-(b). It is undisputed that the insurance policy involved in this case was issued after June 11, 2019, and the accident involved occurred after July 1, 2020. Therefore, these are the limits that must apply to this case.

The Court of Appeals found to the contrary because it was bound by a published decision in the case of *Progressive Marathon Ins Co v Pena,* 345 Mich App 270; 5 NW3d 367 (2023). After hearing oral argument on an application for leave to appeal on May 8, 2024, the *Pena* case has been held in abeyance pending the outcome of this case.

Appellee Progressive Marathon Insurance Company argues here that the Legislature intended for the increased liability limits to apply only to policies issued after July 1, 2020 and not to policies issued between June 11, 2019 and July 1, 2020. The statutory text does not support Progressive's argument regarding legislative intent. We contend that the Legislature meant what it said in the statute, and therefore, we ask the Court to reverse the decision of the Court of Appeals at this time.

A. Standard Of Review

The Court reviews questions of statutory interpretation *de novo*. *In re Reliability Plans of Electric Utilities for 2017-2021*, 505 Mich 97, 118; 949 NW2d 73 (2020).

B. The Amendment To MCL § 500.3009(1) Ensured That All Michigan Automobile Insurance Policies Would Transition To Higher Liability Limits On The Same Day – July 2, 2020

The primary goal of statutory interpretation "is to ascertain and give effect to the Legislature's intent." *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 410; 987 NW2d 501 (2022). This begins "with an examination of the language of the statute." *Nickola v MIC Gen Ins Co*, 500 Mich 115, 123; 894 NW2d 552 (2017). "A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." Id. Courts read statutory language "in the light of previously-established and recognized rules of the common law," *Benge v Mich Nat'l Bank*, 341 Mich 441, 452; 67 NW2d 721 (1954), and "in the light of history and common sense." *Honigman Miller Schwartz & Cohn LLP v Detroit*, 505 Mich 284, 313; 952 NW2d 358 (2020). Courts should favor an interpretation that is "consistent with the general legislative plan and purpose." *In re Buckley's Estate*, 330 Mich 102, 119; 47 NW2d 33 (1951). Finally, it is a "familiar principle of statutory construction that '[e]very word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible.'" *Altman v*

Meridian, 439 Mich 623, 635; 487 NW2d 155 (1992); quoting *Baker v General Motors Corp*, 409 Mich 639, 665; 297 NW2d 387 (1980).

Effective June 11, 2019, the Legislature enacted 2019 PA 21 and 2019 PA 22, both of which made significant amendments to the no-fault act. Relevant to this case, the Legislature amended MCL § 500.3009(1) to increase the minimum liability coverage limits in Michigan motor vehicle insurance policies as follows:

> (1) Subject to subsections (5) to (8), an automobile liability or motor vehicle liability policy that insures against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle must not be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to ***all*** of the following limits:
>
> (a) Before July 2, 2020, a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident, and after July 1, 2020, a limit, exclusive of interest and costs, of not less than $250,000.00 because of bodily injury to or death of 1 person in any 1 accident.
>
> (b) Before July 2, 2020 and subject to the limit for 1 person in subdivision (a), a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and after July 1, 2020, and subject to the limit for 1 person in subdivision (a), a limit of not less than $500,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident.
>
> (c) A limit of not less than $10,000.00 because of injury to or destruction of property of others in any accident.
>
> MCL § 500.3009(1) (emphasis added)

Significantly, the Legislature set the liability coverage transition date for July 2, 2020 – slightly more than one year after the June 11, 2019 effective date of the statutory amendments. Because Michigan automobile insurance policies generally cover a period of one year or less, this meant that virtually all new or renewed Michigan policies subject to the statute would "be delivered or issued for delivery" between the effective date of the amendments and the coverage transition date. In effect, the legislative plan ensured that all Michigan drivers and vehicle owners would transition to the higher liability limits on the same day – July 2, 2020.

Because the amendments affected only those insurance policies "delivered or issued for delivery" after the June 11, 2019 effective date, the Legislature avoided any problem with the constitutional prohibitions on laws impairing the obligations of contract. Const 1963, art 1, § 10; U.S. Const, art I, § 10. All of the affected policies would be issued or renewed within the one year gap between the statutory effective date and the coverage transition date. The amendments would not affect any policies issued before June 11, 2019.

The amendment to MCL §500.3009(1) unambiguously requires that insurance policies "must not be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to *all* of the [limits stated in MCL § 500.3009(1)(a)-(c)] (emphasis added). We do not need to consult a dictionary to know that "all" does not mean "some." Policies issued after June 11, 2019 were plainly required to

contain liability coverage subject to all of the terms of MCL §500.3009(1)(a) and (b) such that liability coverage limits would transition from the lower limits to the higher limits on July 2, 2020 in all such policies.

Although it could have done so, the Legislature did not take the approach of separating policies issued or delivered before July 2, 2020 from those policies issued or delivered afterward. To the contrary, the Legislature mandated that all insurance policies issued or delivered after June 11, 2019 must have liability coverage subject to all of the applicable limits – including limits applicable before and after July 2, 2020. There is nothing ambiguous about this statutory requirement.

Nevertheless, Progressive argues that the Legislature *intended* to impose different liability limits based on when a policy was issued. (Appellee's Brf, pp 13-15). Progressive contends that MCL § 500.3009(1) "did not purport to impose an automatic increase to the liability limits on existing policies as of July 2, 2020, that were delivered or issued for delivery prior to that date" (Appellee's Brf, p 13). Progressive then rewrites the statute under the guise of interpreting it "in its grammatical context" to say that: "Subsection (1) sets forth the applicable limits on a policy depending on when it is "delivered or issued for delivery." (Appellee's Brf, p 14). But this statutory provision does not say any such thing. It refers to policies "delivered or issued for delivery in this state" without specifying any time frame. MCL § 500.3009(1). This provision applies to all policies delivered or issued in Michigan after the effective date of the statute, June 11, 2019.

Progressive attempts to reinforce its "grammatical context" argument by referencing other subsections of the statute: "Any conceivable doubt as to whether the Legislature intended the changes to apply only to policies issued or renewed after July 1, 2020, is removed by MCL 500.3009(5) and (8)." (Appellee's Brf, p 14). Examination of those subsections defeats Progressive's argument. MCL § 3009(5) provides:

> (5) After July 1, 2020, an applicant for or named insured in the automobile liability or motor vehicle liability policy described in subsection (1) may choose to purchase lower limits than required under subsection (1)(a) and (b), but not lower than $50,000.00 under subsection (1)(a) and $100,000.00 under subsection (1)(b). To exercise an option under this subsection, the person shall complete a form issued by the director and provided as required by section 3107e, that meets the requirements of subsection (7).

Importantly, there is no reference to when a policy is issued or renewed in this subsection. Beginning on July 2, 2020, it permits either an applicant *or* a "named insured in the automobile liability or motor vehicle liability policy described in subsection (1)" to elect "lower limits than required under subsection (1)(a) and (b)." In other words, on July 2, 2020, a named insured holding a policy issued between June 11, 2019 and July 2, 2020 could avoid an automatic increase in liability coverage by filling out a form electing lower limits. There is no way to reconcile this subsection with MCL § 500.3009(1)(a)-(b) unless there is an automatic increase in coverage in the absence of a contrary election under MCL § 500.3009(5).

MCL § 500.3009(8) does refer to policies "issued or renewed" after July 1, 2020, and simply establishes the limits stated in MCL § 500.3009(1)(a)-(b) as the default if "the person named in the policy has not made an effective choice under subsection (5)." There is no conflict in these statutory provisions.

Progressive's interpretation of the amendments would require the Court to conclude it was mere surplusage for the Legislature to include the first part of MCL § 500.3009(1)(a) mandating that liability coverage must be subject to the following limitation: "Before July 2, 2020, a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident." Under Progressive's theory, this amendment did not change the law at all and policies issued before July 2, 2020 were subject to the same limits applicable if the amendments were not adopted. Here, we should mind the "familiar principle of statutory construction that '[e]very word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible.'" *Altman*,439 Mich at 635. The provisions of both MCL § 500.3009(1)(a) and (b) regarding liability coverage limits "[b]efore July 2, 2020" have meaning only if we interpret MCL § 500.3009(1) as applying to all policies delivered or issued for delivery after the effective date of the statutory amendments – June 11, 2019. All such policies were required to include "all" of the liability limits stated in MCL § 500.3009(1)(a) and (b). Clearly, this amendment applied to policies issued both before and after July 2, 2020.

Interpreting the statute "consistent with the general legislative plan and purpose" supports the conclusion that all Michigan drivers and vehicle owners would transition to the higher liability limits on the same day – July 2, 2020. *Buckley's Estate*, 330 Mich at 119. The statute is not ambiguous, and we should "read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Nickola*, 500 Mich at 123.[2] We should not insert the words "delivered or issued for delivery" before or after July 2, 2020 when the Legislature did not do so in MCL § 500.3009(1)(a)(or (b). *Id.* Common sense tells us that "all" does not mean "some," and a mandate that policies must contain "all of the following limits" should be read to mean just what it says. *Honigman Miller Schwartz & Cohn LLP*, 505 Mich at 313.

In summary, MCL § 500.3009(1)(a)-(b) ensured that Michigan no-fault automobile policies issued after June 11, 2019 were required to provide limits of "not less than $250,000.00" per person and "not less than $500,000.00" for two or more persons for any covered accident occurring "after July 1, 2020," unless the "named insured" followed the process to purchase lower liability limits on or after July 2, 2020 in accordance with MCL § 500.3009(5). It is undisputed that the

[2] As CPAN correctly points out, this conclusion is also consistent with the legislative history of this statute. *See, Demske v Fick*, Docket No 167153, Brief Amicus Curiae of the Coalition Protecting Auto No-Fault (CPAN), pp 11-13. Under the original version of PA 21, liability limits would have increased in a staggered fashion based on when a policy was issued or renewed. Under the version adopted in PA 22, all policies transitioned to the higher limits on the same day – July 2, 2020.

insurance policy involved in this case was issued after June 11, 2019, the accident involved occurred after July 1, 2020, and there was no applicable purchase of lower limits after July 2, 2020. Therefore, the higher limits of MCL § 500.3009(1)(a)-(b) must apply to this case.

VI. CONCLUSION AND REQUEST FOR RELIEF

For all of these reasons, Amicus Curiae Michigan Association for Justice requests this Honorable Court to reverse the decision of the Court of Appeals below.

Respectfully submitted,

s/Robert B. June
Robert B. June (P51149)
Law Offices of Robert June, P.C.
415 Detroit Street, 2nd Floor
Ann Arbor, MI 48104-1117
(734) 481-1000
bobjune@junelaw.com

Attorney for Amicus Curiae
Michigan Association for Justice

Date: April 28, 2025

VII. CERTIFICATE OF COMPLIANCE

This document has 2,355 countable words and is formatted using Equity Text-A 14-point font.

Respectfully submitted,

s/Robert B. June
Robert B. June (P51149)
Law Offices of Robert June, P.C.
415 Detroit Street, 2nd Floor
Ann Arbor, MI 48104-1117
(734) 481-1000
bobjune@junelaw.com

Attorney for Amicus Curiae
Michigan Association for Justice

Date: April 28, 2025