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STATE OF MICHIGAN

IN THE SUPREME COURT

MOHAMMED ABDULLA,

Plaintiff-Appellee,

PRECISE MRI OF MICHIGAN, LLC,

Intervening Plaintiff-Appellee,

v

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellant,

and

PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY/MICHIGAN ASSIGNED CLAIMS PLAN and UNNAMED SERVICING INSURER,

Defendants.

MSC No. _____

COA No. 364797

LC No. 21-006382-NF
(Wayne County Circuit Court)
Hon. Dana Margaret Hathaway

_____/ *CONSOLIDATED WITH*

MOHAMMED ABDULLA,

Plaintiff-Appellee,

PRECISE MRI OF MICHIGAN, LLC,

Intervening Plaintiff-Appellee,

v

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellant,

and

PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, MICHIGAN AUTOMOBILE INSURANCE PLACEMENT

COA No. 364866

LC No. 21-006382-NF
(Wayne County Circuit Court)
Hon. Dana Margaret Hathaway

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FACILITY/MICHIGAN ASSIGNED CLAIMS
PLAN and UNNAMED SERVICING INSURER,

Defendants.

DEFENDANT-APPELLANT AUTO CLUB GROUP INSURANCE COMPANY'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT IDENTIFYING THE JUDGMENT APPEALED FROM

Defendant-Appellant Auto Club Group Insurance Company ("Auto Club") seeks leave to appeal or peremptory reversal of 1) the October 5, 2022 order denying Auto Club's motion for summary disposition (APX 0746a); 2) the January 13, 2023 order denying reconsideration of the circuit court's earlier October 5, 2022 order (APX 0998a-0999a); 3) the January 20, 2023 order granting Mohammed Abdulla's motion for partial summary disposition against Defendant Auto Club (APX 1047a); and, the Court of Appeals opinion issued in *Abdulla v Auto Club Group Insurance Co*, published opinion of Michigan Court of Appeals Docket Nos. 364797 and 364866, issued July 25, 2024, ___ Mich App ___; ___ NW2d ___ (2024) (APX 1306a-1315a) .

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STATEMENT OF APPELLATE JURISDICTION AND NEED FOR APPELLATE REVIEW

This Court has jurisdiction over this application for leave to appeal under MCR 7.305. Review is required because the circuit court and panel majority erroneously decided a significant matter of insurance policy interpretation and statutory interpretation under Michigan's No Fault Act that will have a widespread and negative impact if not corrected. In a published opinion of first impression, the panel majority wrongly held that a truck driver can obtain personal injury protection benefits even when the truck that the driver has exclusively in his control for purposes of hauling loads is insured only with a policy that explicitly excludes personal injury protection benefits when the truck is hauling loads. This ruling undermines the Legislature's careful plan to require every driver to maintain personal injury protection coverage on vehicles over which the driver has possession and control for more than 30 days. The Legislature sought to protect the solvency of insurance providing personal injury protection benefits and to keep costs low by requiring everyone to have such coverage – and by barring benefits for those who fail to assure that a vehicle they drive for 30 or more days has the requisite coverage for personal injury protection benefits.

When one individual has the right to control whether and when a truck is used to haul loads and that individual is the only driver of that truck for more than 30 days, that individual is required to assure that the truck has personal injury protection coverage, or he or she is barred from obtaining those benefits. Yet, the panel majority held that the Auto Club owes coverage to Abdulla rejecting an argument that he was the "owner" as defined in the No Fault Act and failed to obtain coverage for the personal injury protection benefits,

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he now seeks to obtain. The panel majority's opinion offers a blueprint for anyone who wishes to game the no fault system at the expense of those who pay their fair share. The Legislature carefully enacted a plan to assure that those who pay for personal injury protection coverage would not be burdened with expenses for coverage for those who don't pay for such coverage. To keep premiums from skyrocketing, the Legislature explicitly provided that Michigan's generous benefits would not be available to those who own a vehicle but fail to obtain the appropriate coverage for it.

Review is also needed because the current state of the law is confused concerning how to interpret statutory ownership. The Court of Appeals decisions reflect varied approaches to deciding this question and the current published opinion is in tension with or directly conflicts with other decisions from that court. Thus, this Court should grant review to clarify and correct the analytical framework for determining when a person has use of a motor vehicle so that he or she has the obligation to assure that the requisite insurance coverage exists.

Abdulla used a vehicle exclusively for more than 30 days – he was driving it to haul tomatoes at the time of the accident. No coverage for personal injury protection benefits existed for his truck. Abdulla created a limited liability entity and made it the title holder of the truck. Abdulla, as sole owner of the LLC, controlled the truck. Abdulla was the truck's only driver. Abdulla evaded the statutory requirement to assure that the truck had coverage for personal injury protection benefits by buying a bobtail policy for the truck that provided property damage coverage when it was parked but specifically excluded personal injury protection benefits while the truck was being used to haul produce.

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Abdulla's accident occurred while he was driving the truck to haul tomatoes – so he was under no illusion that he had obtained personal injury protection benefits.

Yet the panel majority held that by using the legal fiction of a limited liability company (which Abdulla solely owned), Abdulla was a mere agent and not responsible for obtaining insurance and did not have proprietary and possessory use of the vehicle. The Legislature specifically sought to prevent such strategies from successfully evading the coverage requirements by enacting a broad definition of "owner" within the No Fault Act. An "owner" includes both the legal title holder and "a person renting a motor vehicle or having use of the motor vehicle, under a lease or otherwise, for a period that is greater than 30 days." MCL 500.3101(3)(1). The Legislature included the phrase "under a lease or otherwise" to reach exactly this sort of effort to obtain benefits without having purchased appropriate coverage.

The Court of Appeals panel majority has now issued a published opinion that guts this requirement. The panel majority did not address the meaning of "having use of the motor vehicle" "or otherwise" when it analyzed whether Abdulla was an "owner" under the statute. Nor did it consider whether at a minimum, he was a co-owner as several intermediate appellate decisions have found in analogous circumstances. Rather, it blithely upheld the circuit court decision in a published opinion that offers a roadmap to future small business owners and individuals to evade the costs of obtaining appropriate insurance through a similar scheme.

If left to stand, the Court of Appeals panel majority's published decision will allow individuals to avoid paying their share for personal injury protection coverage whenever they obtain exclusive use of a commercial vehicle merely by placing title in a limited

liability company or corporation and parking the vehicle when not in use on other property (here – a truck stop). This is not what the statute provides for – and review and a reversal are therefore required. As the dissent correctly concluded, Adbulla was an "owner" of the truck at the time of the accident and is barred from obtaining personal injury protection benefits by his own failure to assure that his truck had the requisite coverage. To do otherwise is to flout the strong public policy that the Michigan Legislature adopted when it enacted these provisions.

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STATEMENT OF THE QUESTION PRESENTED

SHOULD THIS COURT GRANT LEAVE TO APPEAL BECAUSE THE COURT OF APPEALS REVERSIBLY ERRED IN ITS PUBLISHED OPINION AWARDING MOHAMMED ABDULLA PAYMENT OF PERSONAL PROTECTION INSURANCE BENEFITS FROM THE AUTO CLUB CONTRARY TO MCL 500.3101 AND MCL 500.3113(b) SINCE MOHAMMED ABDULLA HAD AN EXCLUSIVE RIGHT TO CONTROL USE OF THE TRUCK TO HAUL LOADS THROUGH HIS SOLELY OWNED LLC, WAS THE SOLE DRIVER OF THE TRUCK FOR MORE THAN 30 DAYS, AND DROVE IT AT THE TIME OF THE ACCIDENT ALTHOUGH IT HAD NO COVERAGE FOR PERSONAL INJURY PROTECTION BENEFITS?

Plaintiff-Appellee Mohammed Abdulla answers "No."

Defendant-Appellant Auto Club Group Insurance Company answers "Yes."

The Wayne County Circuit Court answered "No."

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STATEMENT OF FACTS

This appeal challenges a circuit court decision that a no-fault insurer, Auto Club Group Insurance Company, owes personal protection insurance benefits, penalty interest, and attorney fees to the plaintiff, Mohammed Abdulla, as a resident relative of his father, who is Auto Club's policyholder. The circuit court reversibly erred because Mohammed Abdulla did not maintain full and proper no-fault coverage on the truck he was driving at the time of the accident, as required by MCL 500.3101(1). Thus, based on the uninsured status of his vehicle, Mohammed Abdulla is prohibited from receiving personal protection insurance benefits under MCL 500.3113(b).

A. ABDULLA LACKED INSURANCE COVERAGE ON HIS VEHICLE AT THE TIME OF THE ACCIDENT

1. The motor vehicle accident involved a semi-truck hauling a truckload of tomatoes outside Michigan

The motor vehicle accident that is the subject of this action occurred on December 17, 2020. (Abdulla Dep Transcript, p 18, APX 0531a). At the time of the accident, Mohammed Abdulla was a self-employed truck driver driving a semi-truck owned by his company, Tornado Trucking. (Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 6, APX 0511a). When the collision occurred, Abdulla was making a run for Land Trucking, hauling a truckload of tomatoes to San Antonio, Texas. (Abdulla Dep Transcript, p 18, APX 0531a). The truck/tractor he was driving was a 2012 Volvo ("the truck"). (Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 2, APX 0507a). He had picked up the load from Livonia, Michigan before starting his route to Texas. (Abdulla Dep Transcript, p 42, APX 0537a). Mr. Abdulla explained that the accident occurred outside of Michigan:

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A. It was 2:00 at night. I was driving to go to Texas. I was on 55 Missouri. That was the highway. I passed a truck and I was driving about like 70 miles per hour.

***

A. Once I passed this truck and I'm driving in this lane -- so the other truck, you know, jumped from the other side to my lane and it was speeding, a very fast speed, and I was not able to avoid him.

Q. Was the other truck coming like from the other side of the highway, did they come into you head-on?

A. No. There was a separation line between us. Once I noticed that this truck came out of line and he was coming toward me, I tried to avoid him and I couldn't.

Q. What side was this other truck on from you?

A. In front of me.

Q. Were you driving in the same direction or opposite directions?

A. The opposite direction.

(*Id.* at p 19, APX 0531a).

The accident occurred in Missouri and was a tractor/trailer versus tractor/trailer collision. (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 3, APX 0666a).

2. Mohammed Abdulla conceded that he owned the tractor directly through his solely owned company

Mohammed Abdulla testified that he owned the Volvo truck he was driving at the time of the accident:

Q. And what kind of truck were you driving?

A. A Volvo.

Q. Who owns the truck.

A. Myself.

Q. How long have you owed the truck?

A. I think less than a year.

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Q. Did you own it at the time of the accident?

A. Yes.

(Abdulla Dep Transcript, p 11, APX 0529a). He also testified that he is the sole owner of Tornado Trucking, and that Tornado Trucking owned the Volvo:

Q. What's your relationship to Tornado trucking?

A. *I am the owner of the company*.

***

Q. Does Tornado trucking have any ownership of the Volvo?

A. Yes.

Q. Does anybody else drive for Tornado Trucking other than you?

A. No.

Q. Are there any other owners of Tornado Trucking?

A. *No*.

(*Id.* at p 12, APX 0529a).

Later on in his deposition, Mohammed Abdulla confirmed that Tornado Tucking owned the truck (*Id.* at p 42, APX 0537a), and that Tornado Trucking had owned the truck for what he believed to be more than six months before the December 17, 2020 motor vehicle accident:

Q. How long did Tornado Trucking own that vehicle before it was involved in the accident?

A. I don't remember. I don't know.

Q. More than a year?

A. Less than a year.

Q. *More than six months?*

A. *I think so.*

(*Id.* at p 42, APX 0537a). Mohammed Abdulla admitted that "Tornado Trucking owned and registered the tractor Mohammed Abdulla was driving" (Plaintiff's Response to Defendant

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Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 3, APX 0666a), attaching the proof of insurance for the vehicle. (Insurance Identification Card, APX 0745a).

Mr. Abdulla added that before the accident, when he was not driving the truck, he stored the truck at a truck stop in Dearborn. (Abdulla Dep Transcript, pp 13-14, APX 0529a-0530a).

3. The lease agreement provided for full use of the tractor by Tornado Trucking, which Abdulla solely owned and controlled

Tornado Trucking and Land Trucking entered into an "Independent Contractor Lease Agreement" (the "lease agreement"). (Lease Agreement, APX 0116a-0120a). Under the long-haul lease agreement, "Land Trucking was leasing Tornado Trucking's tractor," and Tornado Trucking was transporting cargo for Land Trucking. (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 3, APX 0666a). The lease agreement identified Tornado Trucking as the "Contractor," and Land Trucking as the "Carrier." (Lease Agreement, p 1, APX 0116a). Mohmmed Abdulla explained the arrangement in his deposition as follows:

> Q. No problem. Can you explain how Tornado Trucking did business with Land Trucking?
>
> A. There was a contract between the two companies. They would give me the loads, the assignments and I would take it.
>
> Q. Who did you communicate with on what loads to take?
>
> A. With a dispatcher.

(Abdulla Dep Transcript, p 13, APX 0529a).

The terms of the lease agreement state that the contractor (i.e. Tornado Trucking) "shall be solely responsible for furnishing the power equipment used to provide service…"

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(Lease Agreement, p 2, APX 0117a). The lease further states: "Contractor [Tornado Trucking] shall at all times be free to set its hours of operations[,]" and that "Contractor is free to work when and where it chooses and shall accept or reject work assignments on a load-by-load basis." (*Id.*). The agreement also states that "Contractor … shall have the right to make all crucial decisions with respect to the maintenance and operation of [the leased] equipment[,]" and that "Contractor shall be free to set the method and time of performance for all delivery of loads accepted by it." (*Id.* at p 3, APX 0118a).

The "Termination" clause of the agreement states: "Either party has the right to terminate this agreement upon 24 hour notice." (*Id.* at p 5, APX 0555a). An exact date of termination is not stated within the lease agreement.

4. The insurance policies excluded or otherwise did not provide personal protection insurance coverage to the truck at the time of the accident

On the date of the accident, Tornado Trucking was the named insured on an insurance policy with Great American, which policy listed the 2012 Volvo as a scheduled auto. (Great American Policy, p 8 of 65, APX 0135a). But the policy enumerated several exclusions to its personal protection insurance coverage. The policy excluded personal protection insurance coverage while the truck was "being used in the business of any lessee or while being used to transport cargo of any type." The full exclusion reads:

A. Exclusions

We will not pay Personal Injury Protection benefits for bodily injury.

13. To anyone arising out of the ownership, operation, maintenance, or use of a covered auto while being used in the business of any lessee or while being used to transport cargo of any type. For purposes of this exclusion the phrase "in the business of any lessee" means any of the following uses of the covered auto:

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a. use for the benefit of or to further the interest of any lessee or when conducting business of any type;
b. use by any person or organization acting within the scope of employment by any lessee;
c. use by any person or organization acting under the direction, control or dispatch of any lessee;
d. use while traveling to or from any location for the purpose of picking up, delivering or transporting cargo on behalf of any lessee; or
e. use while traveling between any location where the covered auto is regularly garaged and

    1) any terminal or facility of any lessee, or
    2) any other location,

    for the purpose of picking up, delivering or transporting any cargo; or

f. use while traveling from:

    1) any terminal or facility of any lessee, or
    2) any location at which the covered auto was present for the purpose of picking up, delivering or transporting cargo,

    to any location where the covered auto is regularly garaged.

(*Id.* at p 36 of 65, APX 0163a). Thus, the Great American policy did not provide personal protection insurance coverage to Mr. Abdulla at the time of the accident because he was transporting cargo for the lessee, Land Trucking.

When the accident occurred, a policy of insurance had also been issued to Land Trucking by Progressive Southeastern Insurance Company. (Progressive Marathon's Motion for Summary Disposition, ¶ 4, APX 0028a). The policy was issued in the State of Indiana and did not provide medical payment coverage. (*Id.* ¶ 5, APX 0028a). Progressive Southeastern was "not authorized to write insurance in Michigan" and had "not voluntarily subjected itself to the Michigan No-Fault Act..." (*Id.* ¶ 8, APX 0028a). Rather, "[t]he contract for insurance was executed in Indiana between Progressive Southeastern, an entity

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conducting business in Indiana, and Plaintiff's contract employer [Land Trucking], an Indiana based company…" (*Id.* ¶ 9, APX 0028a). Most notably, the Progressive policy did not list the 2012 Volvo, *and it did not include personal protection insurance coverage*. (Progressive Dec. Page and Policy, APX 0046a-0075a).

Mohammed Abdulla lived with his parents at the time of the accident, including his father, "Abdulla Kader." (Abdulla Dep Transcript, p 8, APX 0528a). Auto Club insured Abdulkader Al-Shihry at the time of the accident via an Automobile Insurance Policy. (Auto Club Dec. Page and Policy, APX 0592a-0617a). The policy did not list Mohammed Abdulla as a named inured and did not list the 2012 Volvo as a covered vehicle. (*Id.*).

B. ABDULLA SUED MULTIPLE INSURERS SEEKING PERSONAL PROTECTION INSURANCE BENEFITS FOR INJURIES HE SUSTAINED IN AN AUTOMOBILE ACCIDENT

Plaintiff-Appellee Mohammed Abdulla sued Progressive Marathon Insurance Company ("Progressive Marathon"), Auto Club Group Insurance Company ("Auto Club"), and Great American Insurance Company[1] ("Great American"), seeking personal protection insurance benefits for injuries he sustained in an automobile collision on December 17, 2020. (Complaint, APX 0007a-0016a). Abdulla claimed that Defendant-Appellant Auto Club owed benefits because he was a resident relative of Abdulkader Al-Shihry's household. (*Id*. ¶ 7, APX 0012a). Al-Shihry was a named insured on an automobile policy issued by Auto Club. (*Id.* ¶ 6, APX 0012a). Mohammed Adbulla claimed that Progressive Marathon owed coverage under a policy it issued to Land Trucking, LLC, which Abdulla alleged was the

[1] In Great American's motion for summary disposition, Great American clarified that Mohammed Abdulla improperly identified "Great American Insurance Company" in the caption, where its proper name is "Great American Assurance Company." (Great American's Motion for Summary Disposition, p 1, APX 0107a).

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company that "dispatched/employed [Mohammed Abdulla's] trucking company, Tornado Trucking, LLC ['Tornado Trucking'], at the time of the December 17, 2020 collision[.]" (*Id.* ¶ 8, APX 0012a). Abdulla further claimed that Great American issued a policy to his trucking company, Tornado Trucking. (*Id.* ¶ 9, APX 0013a). Abdulla contended that either Auto Club, Progressive Marathon, or Great American "is first in priority to provide applicable Personal Protection Insurance benefits…" (*Id.* ¶ 12, APX 0013a). Abdulla seeks outstanding personal protection insurance benefits, penalty interest, attorney fees, and "any and all other amounts he is entitled to recover…" (*Id.* ¶ 20, APX 0014a).

Auto Club answered the complaint, denying liability. (Auto Club's Answer to Complaint and Affirmative Defenses, APX 0017a-0024a). Auto Club raised several affirmative defenses, including that Abdulla was not entitled to payment of personal protection insurance benefits because he was the owner or registrant of a motor vehicle involved in an accident on which the security required by MCL 500.3101 was not in effect. (*Id.*, Affirmative Defenses ¶ 1, APX 0021a).

After initial motion practice, Abdulla amended the complaint to set forth three counts. Count I claimed that Abdulla was entitled to personal protection insurance benefits from Progressive, Great American, Auto Club, or the unnamed servicing insurer. Abdulla claimed that Auto Club had to pay benefits because Abdulla was a resident relative of its named insured, Al-Shihry. (*Id.* ¶ 11, APX 0088a). He claimed that Progressive Southeastern had to pay benefits because it issued a policy to Land Trucking, the company that dispatched/employed Abdulla's trucking company, Tornado Trucking, LLC, at the time of the collision. (*Id.* ¶ 12, APX 0088a). He claimed that Great American had to pay benefits because it issued a policy to Tornado Trucking. (*Id.* ¶ 13, APX 0088a-0089a). According to

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Abdulla, "[e]ither Defendant Auto Club, Defendant Progressive, Defendant Great American, or Defendant USI is first in priority to provide applicable Personal Protection Insurance Benefits…" (*Id.* ¶ 16, APX 0089a).

The circuit court denied another round of motions and cross-motions for summary disposition as premature, adding that the parties "may refile after the close of discovery." (Nov. 2, 2021 Order, APX 1023a). But the court granted Great American's motion for summary disposition based on the business use exclusion. (*Id.*).

Months later, Michigan Automobile Insurance Placement Facility/Michigan Assigned Claims Plan moved for summary disposition. (MAIPF and MACP's Motion for Summary Disposition, APX 0416a-0503a). The motion, based on MCL 500.3172, argued that Abdulla was not eligible for no fault benefits from the Michigan Automobile Insurance Placement Facility/Michigan Assigned Claims Plan because the motor vehicle accident occurred outside of Michigan (in Missouri). (*Id.* at p 9-11, APX 0424a-0426a).

The Auto Club filed its "Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle." (Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, APX 0504a-0657a). The Auto Club explained that Abdulla had conceded that he was the sole owner of Tornado Trucking, and that he/Tornado Trucking owned the tractor/truck at the time of the accident. (*Id.* ¶¶ 3, 9, APX 0507a, 0508a). The Auto Club also explained Abdulla (through Tornado Trucking) had leased the truck to Land Trucking, and under the lease, Abdulla was driving with a load of tomatoes at the time of the collision. (*Id.* ¶ 4). Although Land Trucking was insured with a fleet liability policy issued by Progressive Southeastern, that policy did not have personal protection insurance coverage. (*Id.* ¶¶ 5-6, APX 0508a). Further, Great American's bobtail policy on the tractor did not

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provide personal protection insurance coverage when the vehicle was under dispatch hauling a load or when the truck was in use for the business of any lessee. (*Id.* at p 7, APX 0508a).

The Auto Club also explained that because Abdulla had "proprietary and possessory use" of the truck for more than 30 days, he was a statutory owner of the truck under MCL 500.3101(3)(l)(*i*). As the owner of an uninsured vehicle at the time of the accident, Abdulla had no right to personal protection insurance benefits under MCL 500.3113(b). (*Id.* at p 8-12, APX 0508a).

Both the Michigan Automobile Insurance Placement Facility and Progressive Southeastern concurred with Auto Club's motion for summary disposition. (MAIPF's Concurrence with Co-Defendant Auto Club's Motion for Summary Disposition, APX 0658a-0659a; Progressive's Concurrence with Co-Defendant Auto Club Group Insurance Company's Motion for Summary Disposition, APX 0660a-0663a).

Abdulla opposed the Auto Club's motion for summary disposition. (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, APX 0664a-0745a). Abdulla admitted that he owned Tornado Trucking, and that Tornado Trucking owned and registered the tractor, he was driving at the time of the accident. (*Id.* at p 3, APX 0666a). Based on the Great American policy, Abdulla asserted that the tractor he was driving at the time of the collision was not "uninsured," and so his claim should not be barred under MCL 500.3113(b). (*Id.* at p 10, APX 0673a). Relying on a

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non-binding federal court opinion[2] (*Est of Dojcinovic by Dojcinovic v Citizens Ins Co of the Midwest*, 583 F Supp 3d 972 (ED Mich 2022)), Abdulla further asserted that Auto Club "should have to provide [him] with personal protection insurance benefits." (*Id.* at p 14, APX 0677a).

The circuit court granted Michigan Automobile Insurance Placement Facility/Michigan Assigned Claims Plan's motion for summary disposition under MCL 500.3172, stating that "[t]hey are not in priority to pay for PIP benefits as the accident occurred out of state." (Oct. 5, 2022 Order Granting MAIPF/MACP's Motion for Summary Disposition, APX 0747a). On the same day, the court denied Auto Club's motion for summary disposition "Re: MCL 500.3113(b) Uninsured Vehicle," stating: "Pursuant to MCL 500.3101 and MCL 500.3113(b), [as] the Plaintiff did maintain proper security on the tractor and therefore isn't excluded from PIP coverage; and pursuant to MCL 500.3114(4), ACIA is the highest priority to pay benefits." (Oct. 5, 2022 Order Denying Auto Club's Motion for Summary Disposition, APX 0746a).

With only Auto Club and Progressive remaining as defendants, Progressive sought clarification of the October 5, 2022 orders, one of which dismissed the Michigan Automobile Insurance Placement Facility/Michigan Assigned Claims Plan, and the other of which stated that Auto Club is the "highest in priority to pay benefits" to Plaintiff. (Progressive's Motion for Clarification of Order, APX 0748a-0787a). Progressive later amended its motion. (Progressive's Amended Motion for Clarification of Order, APX 0788a-

[2] State courts are not bound by the decisions of lower federal courts. See *Slis v State*, 332 Mich App 312, 361 n.25; 956 NW2d 569 (2020); *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004).

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0805a). In its amended motion, Progressive sought "an Order clarifying the October 5, 2022 Orders, wherein it is addressed as to where Progressive, in relation to Auto Club, stands in order of priority to pay no-fault benefits to Plaintiff." (*Id.* at p 4, APX 0793a).

Auto Club responded to the amended motion for clarification. (Auto Club's Response to Defendant Progressive's Amended Motion for Clarification, APX 1204a-1207a). Auto Club argued that Progressive's request for dismissal was premature where time remained for an appeal or a motion for reconsideration. (*Id.* at p 4, APX 1207a). In the alternative, Auto Club argued Progressive's request should be denied in part and Progressive should be dismissed without prejudice only. (*Id.*).

The circuit court granted Progressive's motion for clarification of order. (Nov. 14, 2022 Order, APX 0813a-0815a). The court dismissed Progressive without prejudice, granting its motion "for the reasons stated on the record." (*Id.* at p 3, APX 0815a). At the hearing on the motion, the circuit court emphasized that the dismissal was without prejudice, noting the potential for appeal by Auto Club:

> Here's why I'm gonna do it without prejudice, Mr. Klenczar, because your motion was technically an SD and it didn't give everybody -- it didn't follow within the court rules time, 'cause I mean it is a dispositive motion on the merits.
>
> So why don't we do that, why don't we enter it without prejudice, because there is an issue I see with ACIA if they do take up an appeal and everything else, they had a little bit of a unique issue in this case.

(Nov. 11, 2022 Hearing Transcript, p 5, APX 0810a).

Auto Club moved for reconsideration of the October 5, 2022 Order denying its motion for summary disposition. (Auto Club's Motion for Reconsideration, APX 0816a-0997a). Auto Club contended that the circuit court committed palpable error by: 1) "finding that Plaintiff complied with MCL 500.3101 by insuring his truck under a policy that never

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provides No-Fault benefits for the truck's primary, frequent, and regular purpose"; and 2) because "MCL 500.3114(4) does not place Auto Club in the order of priority for payment of PIP benefits." (*Id.* at p 5, APX 0820a).

Abdulla subsequently filed a motion for partial summary disposition, which argued: 1) that Abdulla maintained proper security on the truck and is not precluded from making a claim for personal protection insurance benefits (Plaintiff's Motion for Partial Summary Disposition Against Auto Club, p 14, APX 1038a); 2) that a priority dispute is not a defense to a claim for personal protection insurance benefits, and there has been no dispute that Auto Club is in the order of priority for payment of Abdulla's personal protection insurance benefits (*Id.* at pp 14-18, APX 1038a-1042a); 3) that Abdulla is entitled to penalty interest under MCL 500.3142(2) (*Id.* at pp 18-19, APX 1042a-1043a); and 4) that Abdulla is also entitled to payment of attorney fees under MCL 500.3148(1) (*Id.* at pp 19-23, APX 1043a-1047a). Abdulla also filed a supplemental brief, arguing that settlement offer letters sent by Auto Club to several of Abdulla's medical providers after the filing of his motion for partial summary disposition further show that Auto Club is responsible to issue payment on Abdulla's personal protection insurance benefits (as well as interest and attorney fees). (Plaintiff's Supplemental Brief, APX 1214a-1221a).

Auto Club opposed Mohammed Abdulla's motion for partial summary disposition. (Auto Club's Response to Plaintiff's Motion for Partial Summary Disposition, APX 1222a-1258a). Auto Club pointed out that Abdulla was the owner and operator of an uninsured motor vehicle at the time of the accident and is barred under MCL 500.3113(b) from recovering personal protection insurance benefits. (*Id.* at pp 7-8, APX 1228a-1229a). Auto Club also argued that Abdulla's motion must fail because the benefits are not "overdue" (*Id.*

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at pp 9-10, APX 1230a-1231a), and attorney fees are not automatically owed where Auto Club did not act unreasonably due to a legitimate question of statutory construction and/or bona fide factual dispute. (*Id.* at pp 10-15, APX 1231a-1236a).

Abdulla replied. (Plaintiff's Reply Brief to Auto Club's Response to Plaintiff's Motion for Partial Summary Disposition, APX 1259a-1262a). Abdulla explained that he sought a ruling that Auto Club's payment of benefits was late, which would allow for increased interest and attorney fees. (*Id.* at p 2, APX 1260a).

In an order dated January 13, 2023, the circuit court denied the Auto Club's motion for reconsideration. (Jan. 13, 2023 Order Denying Auto Club's Motion for Reconsideration, APX 0998a-0999a). In a later order, the circuit court granted Mohammed Abdulla's motion for partial summary disposition. (Jan. 20, 2023 Order Granting Plaintiff's Motion for Partial Summary Disposition Against Auto Club, APX 1024a). The order states: "At this point, any unpaid personal protection insurance benefits which were supported by reasonable proof and denied are overdue and Plaintiff is entitled to mandatory penalty interest and attorney fees for any claims in which Defendant is liable." (*Id.*).

C. AUTO CLUB SUCCESSFULLY SOUGHT INTERLOCUTORY REVIEW BY THE COURT OF APPEALS, WHICH ISSUED A MAJORITY OPINION PARTIALLY AFFIRMING AND PARTIALLY REVERSING OVER A STRONG DISSENT

On February 2, 2023, Auto Club filed an interlocutory application for leave to appeal from the October 5, 2022 order denying its motion for summary disposition and the January 13, 2023 order denying its motion for reconsideration. Then on February 8, 2023, Auto Club filed a second interlocutory application for leave to appeal from the January 20, 2023 order granting Mohammed Abdulla's motion for partial summary disposition against Auto Club. The Court granted both applications on July 5, 2023, and, on its own motion

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under MCR 7.216(A)(7), consolidated the two docket numbers. (July 5, 2023 Order Granting Leave, APX 1283a).

After briefing and oral argument, the Court of Appeals issued a divided opinion partially affirming and partially reversing the circuit court. The panel majority agreed that the No Fault Act requires the owner or registrant of a motor vehicle registered in Michigan to maintain insurance for payment of personal protection injury benefits. Opinion, p 4. It also agreed that when a person fails to do so, that person is barred from obtaining benefits. *Id.* But the panel majority concluded that Tornado Trucking held legal title to the vehicle and that Tornado Trucking stored its vehicle at a truck stop between long-haul jobs. *Id.* at p 5. The panel majority concluded that the device of holding ownership in a separate legal entity was enough to mean that Abdulla was not an "owner" within the meaning of the statute because the record lacked "sufficient indicia of Abdulla's ownership of the tractor to find that Abdulla was either an owner or the registrant of the tractor" for purposes of barring his coverage. *Id.* The panel majority agreed that Abdulla was not entitled to attorney fees because the Auto Club's refusal to pay was the product of a legitimate question of statutory interpretation. But the panel majority upheld the payment of penalty interest based on its conclusion that the Auto Club owed benefits and failed to pay them within 30 days of the receipt of reasonable proofs.

The dissent disagreed, pointing out that the panel majority's ruling "defeats the purpose of the no-fault act to conclude that Abdulla has no ownership over the tractor." Opinion, J Jansen, dissenting, p 2. The dissent pointed out that Abdulla was the sole owner of the LLC, Tornado Trucking, which was the titled and registered owner of the tractor. *Id*. The dissent also pointed out that "Abdulla admitted he was the sole exclusive driver of the

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tractor, that there were no other drivers for Tornedo Trucking at the time of the accident, and that Tornado Trucking entered into contracts to haul cargo for companies like Land Trucking." *Id.* In the dissent's view, "the term 'having the use' of a motor vehicle for purposes of defining 'owner' in MCL 500.3101 means 'using the vehicle in ways that comport with concepts of ownership.'" *Id*. Thus, the dissent concluded that "Abdulla had use of the vehicle for a period longer than 30 days as he was the sole owner of the LLC and the only person to drive the tractor for a time period less than a year before the accident." *Id*. at p 3. The dissent also reasoned that Abdulla was "at a minimum, a co-owner of the tractor, and therefore was required to maintain a no-fault policy under MCL 500.3101(1)." *Id*. Thus, the dissent would have vacated the trial court order denying Auto Club summary disposition and the order awarding penalty interest and fees. *Id*.

From that opinion, the Auto Club seeks review and a reversal from this Court.

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STANDARD OF REVIEW

The grant or denial of summary disposition is reviewed de novo based on the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817, 822 (1999).[3] Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue about any material fact such that the moving party is entitled to judgment as a matter of law. *Wilson v Alpena Cnty Rd Comm'n*, 474 Mich 161, 166; 713 NW2d 717, 720 (2006). When considering a motion under MCR 2.116(C)(10), a court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in a light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact for trial. *Id.* See also *Maiden*, 461 Mich at 121, in which the Supreme Court explained that the reviewing court should evaluate a motion under MCR 2.116(C)(10) "by considering the substantively admissible evidence actually proffered in opposition to the motion." Under MCR 2.116(G)(4), when a motion under (C)(10) is made and supported, "an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." If the adverse party does not so respond, "judgment, if appropriate, shall be entered against him or her." *Id.*

The interpretation of statutes and court rules, and the application of legal doctrines, is also reviewed de novo. *Estes v Titus,* 481 Mich 573, 578–79; 751 NW2d 493, 496 (2008).

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[3] And a trial court's decision to deny a motion for reconsideration is reviewed for an abuse of discretion. *Am Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 709; 609 NW2d 607, 615 (2000).

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The interpretation of a statute or court rule constitutes a question of law that is reviewed de novo. *Silich v Rongers,* 302 Mich App 137, 143; 840 NW2d 1, 4 (2013). When a statute's language is clear and unambiguous, the Court applies the terms of the statute to the circumstances of the particular case. *PIC Maintenance, Inc v Dep't of Treasury*, 293 Mich App 403, 408; 809 NW2d 669, 673 (2011). See also *Shinn v Michigan Assigned Claims Facility,* 314 Mich App 765, 768; 887 NW2d 635, 637 (2016).

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. To this rule all others are subordinate." *McIntosh v Groomes,* 227 Mich 215, 218; 198 NW 954, 955 (1924). "If the language of the contract is clear and unambiguous, it is to be construed according to its plain sense and meaning; but if it is ambiguous, testimony may be taken to explain the ambiguity." *New Amsterdam Cas Co v Sokolowski,* 374 Mich 340, 342; 132 NW2d 66, 68 (1965); see also *Frankenmuth Mut Ins Co v Masters,* 460 Mich 105, 111–12; 595 NW2d 832, 837 (1999). "However, we will not create ambiguity where the terms of the contract are clear." *Id.* at 111. An insurance policy is much the same as any other contract and is interpreted in the same way. More specifically, "[a]n insurance policy is a contract and should be interpreted according to its plain meaning." *Wozniak v John Hancock Mut Life Ins Co of Bos, Mass*, 288 Mich 612, 615; 286 NW 99, 100 (1939).

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ARGUMENT

THIS COURT SHOULD GRANT LEAVE TO APPEAL BECAUSE THE COURT OF APPEALS REVERSIBLY ERRED IN ITS PUBLISHED OPINION AWARDING MOHAMMED ABDULLA PAYMENT OF PERSONAL PROTECTION INSURANCE BENEFITS FROM AUTO CLUB CONTRARY TO MCL 500.3101 AND MCL 500.3113(B) SINCE MOHAMMED ABDULLA HAD AN EXCLUSIVE RIGHT TO CONTROL USE OF THE TRUCK TO HAUL LOADS THROUGH HIS SOLELY OWNED LLC, WAS THE SOLE DRIVER OF THE TRUCK FOR MORE THAN 30 DAYS, AND DROVE IT AT THE TIME OF THE ACCIDENT ALTHOUGH IT HAD NO COVERAGE FOR PERSONAL INJURY PROTECTION BENEFITS

The circuit court reversibly erred in holding that Auto Club owes coverage to the son of its insured, and resultant interest and attorney fees, even though he did not maintain full and proper security on the truck he was driving at the time of the accident as required by the Michigan No-Fault Act. The panel majority upheld this erroneous decision in a published opinion over a strong dissent. Review is needed to correct this error and clarify the meaning of "or otherwise" "having the use of the motor vehicle" within the meaning of the No Fault Act.

A. MOHAMMED ABDULLA, THE SOLE OWNER OF TORNADO TRUCKING, WAS THE OWNER OF THE TRACTOR AT THE TIME OF THE ACCIDENT WITHIN THE MEANING OF THE NO FAULT ACT

The Michigan No-Fault Act defines an "owner" in MCL 500.3101(3)(l) in relevant part as follows:

> (l) "Owner" means any of the following:
>
> *(i)* A person renting a motor vehicle or *having use of the motor vehicle*, under a lease *or otherwise*, for a period that is greater than 30 days.
>
> …
>
> *(iii)* A person that holds the legal title to a motor vehicle … other than a person engaged in the business of leasing motor vehicles … that is the lessor of a motor vehicle … under a lease that provides for the use of

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> the motor vehicle … by the lessee for a period that is greater than 30 days.

MCL 500.3103(1)(emphasis added). In other words, the statutory definition of owner includes much more than the mere title holder and also includes more than those having possession of a vehicle under a lease. The Legislature included the phrase "or otherwise" to provide a broad catch-all category to assure that those who routinely possess and use vehicles assure that those vehicles are insured. But the Court of Appeals panel majority has now offered a pinched interpretation of the statute's provision on ownership that opens a gaping loophole in the statutory fabric. Review is needed to correct it.

Mohammed Abdulla testified in his deposition that he is the sole owner of Tornado Trucking (Abdulla Dep Transcript, p 12, APX 0529a), that Tornado Trucking owned the truck (*Id.* at pp 12, 42, APX 0529a, 0537a), and that he believes Tornado trucking owned the truck for more than six months before the accident occurred. (*Id.* at p 42, APX 0537a).[4] Abdulla explained that under the lease agreement between his company and Land Trucking, Land Trucking would give him the loads, and he would transport the loads to the desired destination. (*Id.* at pp 13, 43, 44, APX 0529a, 0537a). He also confirmed via his testimony that when he was not driving the truck, he stored the truck at a truck stop in Dearborn, Michigan. (*Id.* at pp 13–14, APX 0529a–0530a). Mr. Abdulla also admitted that in the six-to-twelve-month period before the accident when Tornado Trucking owned the 2012 Volvo truck, he went to "[m]any, many locations in Michigan" to pick up loads, and the

[4] Mohammed Abdulla admitted in his own response to Auto Club's motion for summary disposition that "[a]t the time of the accident, Tornado Tucking owned and registered the tractor Mohammed Abdulla was driving." (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 3, APX 0666a).

loads were picked up for Land Trucking during the parties' engagement. (*Id.* at p 43, APX 0537a).

The statute, MCL 500.3101(3)(l), defines "owner" to include both title holders (subsection *iii*) and those who rent or have use of a vehicle for more than 30 days (subsection *i*). The Legislature deliberately included the phrases "having use" of the motor vehicle under a "lease or otherwise" to assure that someone could not evade their obligation by a scheme such as this one. But the panel majority's published opinion has interpreted the language so narrowly as to vitiate the legislative plan to assure complete and universal coverage for vehicles.

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1. *Abdulla, as the sole owner of Tornado Trucking, was the title owner of the truck under MCL 500.3101(3)(l)(iii) and was not engaged in the business of leasing motor vehicles*

At the time of the accident, Abdulla was the title owner of the truck through his wholly owned company, Tornado Trucking, which owned the 2012 Volvo. (Abdulla Dep Transcript, pp 11-12; 42, APX 0440a, 0470a). Mohammed Abdulla admitted that at the time of the accident, "Tornado Trucking owned and registered the tractor Mohammed Abdulla was driving" (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, at p 3, APX 0666a), attaching the proof of insurance for the vehicle. (Insurance Identification Card, APX 0745a). And in Abdulla's answer to Auto Club's application for leave to appeal in docket number 364797, Abdulla again admitted that he "was the owner of the tractor," and that his company, Tornado Trucking, "held legal title to and was the registrant of the tractor…" (Abdulla's Answer to Auto Club's Application for Leave to Appeal in Docket No. 364797, pp 7, 18). These admissions of ownership alone resolve the question and require a reversal and ruling for Auto Club. Abdulla was a title holder's sole owner, and so he was an owner under MCL 500.3101(3)(l)(*iii*).

In the trial court. Abdulla argued that even though his solely owned entity held legal title, he was not required to obtain coverage because he fell within the exception to this provision as someone engaged in the business of leasing vehicles. But the Court of Appeals did not rely on this exception in its opinion. Instead, it concluded that since Tornado Trucking held legal title to the truck and was a separate legal entity, Abdulla was not an owner because he was merely an agent of his wholly-owned entity.

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The panel majority turned the analysis on its head. If Abdulla acted for Tornado Trucking as an agent, that is, "one who is authorized to act for or in place of another," this means that he, as the sole owner of Tornado Trucking, had responsibility to obtain the appropriate insurance coverage. The panel majority is somehow treating Abdulla (the sole owner who made all decisions for Tornado Trucking and was the sole driver of this truck) as though he is two separate individuals -- one is the owner who controls Tornado Trucking and is responsible for making decisions about proper insurance and another who is the driver of the vehicle who is merely acting at his principal, Tornado Trucking's behest. But laying it out shows that this analysis is nonsensical. Abdulla owns and controls Tornado Trucking – and calling him an agent does not change the fact that Abdulla had sole use and complete control over this truck for more than 30 days.

Michigan courts have long held that legal entities can be treated as alter egos in the context of tort liability when necessary because the legal entity is a mere instrumentality of another entity or individual and the legal entity is used to commit a fraud or wrong causing harm. See *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 715; 762 NW2d 529 (2008); *Dutton Partners, LLC v CMS Energy Corp*, 290 Mich App 635, 722-723; 802 NW2d 635 (2010). The Court of Appeals has recognized in other contexts that a "community of interest between a corporation and shareholders may be so great that, to meet the purposes of justice, they should be considered as one and the same." *Kline v Kline*, 104 Mich App 700, ___; 305 NW2d 297 (1981) citing *LA Walden & Co v Consolidated Underwriters*, 316 Mich 341, 346; 25 NW2d 248 (1946).

Here, Abdulla admitted he was the sole owner of a limited liability company, Tornado Trucking, and he therefore had complete control of its decisions. Abdulla, as the

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sole owner of Tornedo Trucking, decided to lease his truck to Land Trucking to haul a tractor with tomatoes. He did so knowing that he had not procured insurance for the truck when it was engaged in hauling cargo. Tornedo Trucking and Abdulla had a complete identity of interests. And under longstanding precedent, Abdulla cannot be allowed to evade a legislative requirement for appropriate insurance coverage by placing title to the truck in the name of his solely-owned limited liability company.

The panel majority ignored this law to simply announce in conclusory terms that Tornado Trucking was a separate legal entity and that Abdulla was its agent. Based on this, the panel majority approved Abdulla's use of this legal entity as a means to evade his obligation to assure that the truck he drove had the requisite insurance coverage. This Court should grant leave to correct this error and prevent the panel majority's opinion from facilitating unscrupulous persons from evading the legislative policy requiring coverage by use of the legal fiction of a limited liability company. As the dissent pointed out, the decision conflicts with the Legislature's policy concerning how "owner" is interpreted under the statute and undermines the legislative plan for full coverage of all vehicles.

2. Abdulla was also the statutory owner of the truck under MCL 500.3101(3)(l)(i) because he had use and control of it for more than 30 days

Abdulla was the statutory owner of the vehicle at the time of the accident. The panel majority addressed this point in a conclusory manner and reached the wrong result. Abdulla's trucking company agreed to lease the truck to Land Trucking. But under the lease, Land Trucking gave Abdulla loads to transport to their desired destinations. (Abdulla Dep Transcript, pp 13-14, 43, APX 0441a, 0471a). In *Ardt v Titan Ins Co*, 233 Mich App 685; 593 NW2d 215 (1999), the Court explained that "having the use" of a motor vehicle when

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defining "owner" under MCL 500.3101(2)(g)(i) [now MCL 500.3101(3)(l)(*i*)] "means using the vehicle in ways that comport with concepts of ownership." *Id.* at 690. Ownership "follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another." *Id.* at 691 (emphasis in original). See also *Kessel v Rahn*, 244 Mich App 353, 359–60; 624 NW2d 220 (2001) ("…the Legislature believes it reasonable to require someone to ensure insurance coverage if they have use of a vehicle for more than thirty days in ways that comport with ownership.").

Abdulla had proprietary and possessive use of the vehicle for more than 30 days, making him the owner under MCL 500.3101(3)(l)(*i*). Abdulla decided through the lease agreement between Tornado Trucking and Land Trucking when he would drive the truck to haul loads for Land Trucking. Over the course of more than 30 days, Abdulla drove the truck to pick up many loads for Land Trucking during that period. (See Abdulla Dep Transcript, pp 42-43, APX 0470a-0471a). Abdulla parked the truck at a truck stop when he was not driving it to haul loads. Abdulla was the only person to drive the truck. In other words, Abdulla conceded that he had use of the truck for more than 30 days at the time of the accident.

The language of the lease agreement shows that it was Abdulla, by way of his company Tornado Trucking, who had full use of the tractor, not Land Trucking as the carrier lessee. The lease states that the "Contractor [Tornado Trucking] shall at all times be free to set its hours of operations[,]" and that "Contractor is free to work when and where it chooses and shall accept or reject work assignments on a load by load basis." (Lease Agreement, p 2, APX 0117a). The lease adds that "Contractor … shall have the right to make all crucial decisions with respect to the maintenance and operation of [the leased]

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equipment[,]" and that "Contractor shall be free to set the method and time of performance for all delivery of loads accepted by it." (*Id.* at p 3, APX 0118a). In *Horace Mann Ins Co v Acuity*, 447 F Supp 3d 594 (ED Mich 2020), the lease agreement contained explicit language stating that the *lessee carrier* "shall have the exclusive possession, control and use of the equipment for the duration of the lease" and that the carrier "shall be considered the 'owner' of the equipment[,]" which included the tractor. *Id.* at 599. But no language granting exclusive possession, control, and use of the truck to Land Trucking appears in the lease here. Without that language, and when Abdulla used and operated the tractor for a period greater than 30 days, Abdulla is properly considered the statutory owner of the tractor under MCL 500.3101(3)(l)(*i*). Any reliance by the lower courts on other factors, such as where Abdulla parked the tractor, was in error. Those facts do not show that Abdulla lacked statutory possession and control of the truck; for example, the fact that Abdulla kept the truck at a truck stop when he was not driving it simply shows that he did not park it at his home. The unambiguous language of the lease agreement shows that the other facts relied on by the trial court and Abdulla have no legal effect because under the lease, Abdulla had full use and possession of the truck.

The Court has emphasized the broad reach of the statute's definition of owner in *Twichel v MIC Gen Ins Corp*, 469 Mich 524; 676 NW2d 616 (2004). The Court clarified the meaning of MCL 500.3101(2)(g)(i) [now MCL 500.3101(2)(l)(*i*)], explaining that "[n]othing in the plain language of [the statute] requires (1) that a person has at any time actually used the vehicle, or (2) that the person has commenced using the vehicle at least thirty days before the accident occurred." *Id.* at 530–31. Rather, "[t]he statute merely

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contemplates a situation in which the person *is renting or using* a vehicle for a period that is greater than thirty days." *Id.* at 531 (emphasis in original).

Here, Abdulla drove the truck to haul cargo. Abdulla was the only driver who had use of the truck for more than 30 days. The panel majority nevertheless concluded that because title was held by Tornado Trucking, Abdulla's solely-owned limited liability company, Abdulla could not be held liable because he had use of the truck for more than 30 days by leasing it "or otherwise." That "or otherwise" encompasses this situation where a truck driver creates a limited liability company to hold title but preserves to himself complete ownership of that company and acts as the sole decisionmaker about that company and that truck, and yet fails to obtain personal injury protection coverage.

B. AS THE OWNER OF THE TRACTOR, MOHAMMED ABDULLA NEEDED TO MAINTAIN FULL AND PROPER PERSONAL PROTECTION INSURANCE ON THE TRACTOR UNDER MCL 500.3101(1)

MCL 500.3101(1) requires that the owner of a vehicle maintain insurance coverage on the vehicle, which includes personal protection insurance. The statute reads:

> (1) Except as provided in sections 3107d and 3109a, the owner or registrant of a motor vehicle required to be registered in this state *shall maintain security for payment of benefits under personal protection insurance* and property protection insurance as required under this chapter, and residual liability insurance. Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway.

(emphasis added).

Abdulla could have protected himself by requiring that the dispatch company that leased his truck and hired him to haul cargo obtained personal injury protection coverage for the tractor and trailer while it was hauling cargo. But Abdulla did not do so. Instead, he carefully purchased insurance for his truck that did not provide any coverage while he was

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driving it to haul cargo. And although Abdulla was the only person who drove the truck for more than 30 days, he did not make sure that Land Trucking purchased coverage. In *Vantol v Home-Owners Ins Co*, unpublished per curiam decision of the Michigan Court of Appeals, issued October 22, 2019 (Docket No 345639) (APX 1000a-1004a), the Court noted that *it was Vantol, the self-employed truck driver and holder of the legal title to the tractor*, who "had to ensure that the requisite insurance was maintained on the semi-tractor." *Id.* at *5. Unlike here, in *Vantol*, the insurance procured by the lessee *did* include personal protection insurance benefit coverage. Thus, Vantol's obligation to ensure that the semi-tractor was covered by the requisite insurance was fulfilled. The Court explained that "MCL 500.3101(1) … requires that the owner or registrant 'maintain' no-fault insurance, and the term 'maintain,' as commonly understood, means to 'keep in an existing state.'" *Id.* Thus, "Vantol [simply] had to ensure that the requisite insurance was maintained on the semi-tractor." *Id.* "Because Short, an owner of the semi-tractor, maintained the required coverage on the semi-tractor, Vantol (and/or Hammer) had no compulsory duty under the no-fault act to obtain any insurance on the vehicle[.]" *Id.* By contrast, in this case, the Progressive policy procured by Land Trucking *did not include personal protection insurance coverage*. (Progressive Dec. Page and Policy, APX 0557a-0590a). As a result, Abdulla's obligation to ensure that the requisite insurance was maintained on the truck was not fulfilled.

Abdulla could readily have protected himself by including a provision in the lease agreement between his wholly-owned entity and Land Trucking. But while 49 CFR 376.12(j) proscribes insurance requirements in the context of the leasing of vehicles, the

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lease agreement between Tornado Trucking and Land Trucking included no language or provisions pertaining to insurance. 49 CFR 376.12(j)(1) states:

> (j) Insurance.
>
> > (1) The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. *The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment*, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

(emphasis added). Abdulla, as the sole owner of Tornado Tucking, failed to ensure that any such language, such as language shifting responsibility to Land Trucking to maintain personal protection insurance coverage on the 2012 Volvo when transporting a load of cargo, was in the lease agreement.

Abdulla argued that he is not barred from personal protection insurance benefits because a fact question exists concerning whether he was a statutory owner of the vehicle or whether he was engaged in the business of leasing motor vehicles. But Abdulla's argument was erroneously premised on the notion that other owners needed to obtain the requisite coverage. Michigan courts have rejected this point because "where an uninsured motor vehicle involved in an accident has more than own owner, all the owners come under the statutory exclusion for personal protection benefits." *Bundles v Markel Ins Co of Canada*, unpublished per curiam opinion of the Michigan Court of Appeals, issued September 21, 2004 (Docket No 248843), at *2 (APX 0401a-0404a).[5] See also *Ardt*, 233

[5] This unpublished decision is cited for its holding that *all* owners of a vehicle come under MCL 500.3113(b)'s statutory exclusion of personal protection insurance benefits.

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Mich App at 692.

Abdulla was responsible under the statute. He needed to ensure that personal protection insurance was maintained on his vehicle in order to obtain personal protection insurance benefits under the statute. He failed. The lease agreement that he entered into on behalf of Tornado Trucking did not require Land Trucking to obtain personal protection insurance. It was silent on insurance obligations. And this silence violated 49 CFR 376.12(j), which requires such leases to specify the legal obligation of the authorized carrier to maintain insurance coverage for protection of the public, and to specify who is responsible for providing any other insurance coverage for operating the leased equipment. The regulation was intended to provide guidance to those engaged in trucking about the need for appropriate insurance and to ensure that the parties contractually agreed as to who would provide it to ensure that the vehicle was properly covered. Had Abdulla done so, he would have been protected. But he did not—and he is left without the benefits that he now seeks.

C. BECAUSE THE TRACTOR WAS NOT COVERED BY *ANY* PERSONAL PROTECTION INSURANCE AT THE TIME OF THE ACCIDENT, MCL 500.3113(B) PROHIBITS ABDULLA FROM RECEIVING PERSONAL PROTECTION INSURANCE BENEFITS

MCL 500.3113(b) bars the owner of a motor vehicle from receiving personal protection insurance benefits when that individual fails to maintain insurance on the vehicle as required by the No-Fault Act. The language reads:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

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At the time of the accident, the Progressive policy obtained by Land Trucking did not list the 2012 Volvo, and it did not provide any personal protection insurance coverage. (Progressive Dec. Page and Policy, APX 0046a-0075a). The only insurance procured on the truck was the Great American policy—a "bobtail" policy. (Great American Policy, APX 0125a-0192a). The Michigan Supreme Court has defined a "bobtail" insurance policy as coverage for when the tractor is being used with no trailer or an empty trailer:

> " 'Bob-tail' in trucking parlance is the operation of a tractor without an attached trailer," and "[f]or insurance purposes, ... it typically means *coverage* '*only when* the tractor is being used *without a trailer* or with an empty trailer, and *is not being operated in the business of an authorized carrier*.' "

Hunt v Drielick, 496 Mich 366, 373; 852 NW2d 562, 566 (2014) (emphasis added).

In *Integral Ins Co v Maersk Container Serv Co*, 206 Mich App 325; 520 NW2d 656 (1994), Ralph Scott was injured when the semitrailer and truck tractor he was driving overturned in Pennsylvania. *Id.* at 328. The tractor was owed by Scott and registered in Michigan, but Scott had leased the truck to Maersk a month before the accident for 90 days. *Id.* Under the lease, "Maersk agreed to procure and maintain liability insurance covering bodily injury and property damage for the tractor. Scott agreed to procure 'bobtail' insurance and worker's compensation insurance." *Id. Unlike the Progressive policy here issued to lessee Land Trucking*, the policy issued to Maersk by INA "*cover[ed] personal injury protection for automobiles subject to no-fault*." *Id.* (emphasis added). The "bobtail" policy issued to Scott excluded coverage when the tractor was used to carry property for business, and while the tractor was used for the business of a lessee. *Id.* The Court explained that a bobtail policy, in and of itself, *did not provide full coverage*, but that the INA policy procured by lessee Maersk could be combined with the bobtail policy to achieve full

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coverage: "Admittedly, the [bobtail] policy itself does not provide full coverage. However, the tractor was fully covered under no-fault by the addition of INA's policy that provided coverage when Scott was hauling cargo on behalf of Maersk." *Id.* at 331. Taken together, the Court explained, "the policy issued by INA and the bobtail policy issued by Integral provided continuous insurance coverage to the tractor as required by the motor vehicle financial responsibility act." *Id.* at 331–332,

Unlike in *Integral*, full and proper coverage under the No-Fault Act was not maintained on the 2012 Volvo at the time of the December 17, 2020 motor vehicle accident. As explained by *Integral*, a bobtail policy itself *does not provide full coverage*. And while the bobtail policy in *Integral* could be combined with the separate insurance policy procured by the lessee (Maersk) to satisfy the requirements of the No-Fault Act *because Maersk's policy provided personal protection insurance coverage*, the separate Progressive policy obtained by Land Trucking in this case *did not provide any personal protection insurance coverage*. Without such coverage, Great American's bobtail policy did not satisfy the requirements of MCL 500.3101.

Much like *Integral*, in *Vantol*, *supra* (APX 1000a-1004a), the bobtail policy obtained from Progressive could be combined with the Home-Owners policy procured by the lessee to satisfy the No-Fault Act *because the Home-Owners policy provided personal protection insurance coverage*. ("Home-Owners and Progressive agree that both of their policies provide PIP benefit coverage for the vehicle at issue…" *Vantol*, at *3). The Court in *Vantol* explained that the Progressive bobtail policy "did not … provide for complete PIP benefits in all circumstances, but the Progressive policy, when combined with the Home-Owners policy, ensured that the semi-tractor was covered by the required insurances at all times."

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Id. at *5. But that is not true here where the Progressive Southeastern policy procured by lessee Land Trucking provided no coverage for personal protection insurance benefits (and thus cannot be combined with the Great American bobtail policy to secure full coverage).

Applying the same principles, in *Johnson v USA Underwriters*, 328 Mich App 223; 936 NW2d 834 (2019), the Court of Appeals held that "USA was permitted to sell an insurance policy that included only collision and comprehensive coverages with the understanding that the insured had to procure the mandatory no-fault coverages elsewhere before the vehicle could be driven or moved on a highway." *Johnson*, 936 NW2d at 844. But where multiple policies are needed to satisfy the requirements of the no-fault act, "*[t]he obligation is on the owner or registrant to procure the proper no-fault coverages. MCL 500.3101(1)*." *Id.* at 846 (emphasis added). And Abdulla failed to do so.

The policy language in the bobtail policy obtained by the truck driver in *Besic v Citizens Ins Co of the Midwest*, 290 Mich App 19; 800 NW2d 93 (2010), further supports and illustrates the incomplete nature of bobtail coverage. Besic was driving a tractor-trailer, hauling freight from Illinois to New York, when he was involved in a motor vehicle accident in Ohio. *Id.* at 21. "Besic owned the tractor, registered and licensed the vehicle in Michigan, and leased it to MGR Express, Inc., pursuant to a 'Contractor Operating Agreement' (COA)." *Id.* MGR bought liability insurance for the truck from Lincoln General Insurance Company, and Besic bought bobtail insurance from Clearwater. *Id.* at 22. The bobtail policy "contain[ed] a 'Certificate of Non–Trucking Automobile Liability Insurance,' which stat[ed] in relevant part, 'No coverage is afforded when the described vehicle(s) is (are): 1. Under motor carrier direction, control, or dispatch.'" *Id.* at 25. But the bobtail policy also included the following conditional language in an endorsement:

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> Michigan Personal Injury and Property Protection coverages do not apply to "bodily injury" or "property damage" resulting from the operation, maintenance or use of the covered "auto" in the business of anyone to whom it is leased or rented *if the lessee has Michigan Personal Injury and Property Protection coverages on the "auto."*

Id. at 25 (emphasis in original).

The lessee in *Besic* (like lessee Land Trucking here) "did not buy 'Michigan Personal Injury and Property Protection' coverage for Besic's truck." *Id.* at 25–26. But unlike the Great American bobtail policy obtained by Tornado Trucking, the bobtail policy in *Besic* included the above additional language, conditioning application of the exclusion of personal protection insurance coverage on the lessee obtaining the appropriate personal protection insurance coverage on the truck. Based on such language, *Besic* held that "[t]he Clearwater [bobtail policy] endorsement unambiguously extends no-fault coverage under the existing circumstances because Michigan no-fault PIP coverage was otherwise unavailable under MGR's Lincoln policy." *Id.* at 26–27. That the Clearwater policy conditioned its exclusion of personal protection insurance coverage on the lessee's procurement of such coverage once again illustrates the incomplete nature of bobtail coverage when its exclusions are triggered.

Further, a straightforward example of MCL 500.3113(b)'s prohibition against the receipt of personal protection insurance benefits in the context of an owner who fails to properly insure his vehicle is *Bundles*, *supra* (APX 1016a-1019a). In *Bundles*, the plaintiff was a Michigan resident hauling freight in Kentucky when the tractor-trailer he was driving was struck by another tractor-trailer. *Id.* at *1. At the time of the accident, the plaintiff was hauling the freight for Glory Transport, the title holder of the truck, which was registered in

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Canada. *Id.* A lease/purchase agreement existed between the plaintiff and Glory Transport, Glory Transport maintained an insurance policy on the truck via Markell, and the plaintiff owed another vehicle which ACIA insured. *Id.* Markel was not an admitted insurer under Michigan law and the Markel policy did not provide no-fault coverage. *Id.*

The plaintiff in *Bundles* argued: "while he was 'an owner' of the truck, he was not 'the owner' of the truck, and … because MCL 500.3113(b) only precludes 'the owner' from receiving no-fault benefits, a designation which he did not have, he is not precluded from receiving benefits under the statute." *Id.* at *2. But the Court rejected this argument, citing to *Ardt* and explaining that "where an uninsured motor vehicle involved in an accident has more than one owner, all the owners come under the statutory exclusion for personal protection insurance benefits." *Id.* The Court then held that "because plaintiff was an owner of the [uninsured] truck, he is statutorily precluded from receiving PIP benefits." *Id.* at *3.

Further, in *Guraj v Connecticut Indem Ins Co*, unpublished opinion per curiam of the Michigan Court of Appeals, issued February 23, 2006 (Docket No 257509) (APX 1020a-1022a),[6] the Court explained that "*where coverage is excluded, it is 'not in effect' for purposes of MCL 500.3113(b)." Id.* at *3 (emphasis added). The plaintiff in *Guraj* was injured in a motor vehicle accident in Indiana while hauling steel for Northern Steel Transport Company. *Id.* at *1. The truck was insured by Connecticut Indemnity Insurance Company, and the policy "provided for non-trucking liability and Michigan no-fault coverage, but it excluded coverage if the vehicle was 'under motor carrier direction, control or dispatch, or used to carry property in any business.'" *Id.* It was undisputed that the plaintiff was

[6] This unpublished opinion is cited for its clarification of the meaning of excluded coverage in the context of MCL 500.3113(b).

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operating the truck under dispatch at the time of the accident. *Id.* The trailer the plaintiff was carrying at the time of the accident was insured by Legion Insurance Company. *Id.* "In addition to the semi-truck, plaintiff owned two personal vehicles, both of which were insured by ACIA under Michigan no-fault policies." *Id.*

In reaching the ultimate holding that, under MCL 500.3113(b), the plaintiff was not entitled to the payment of personal protection insurance benefits, *Id.* at *3, the court explained: "Plaintiff asserts that it is sufficient that he paid for coverage by Connecticut, even if that coverage was excluded at the time of the accident, but he provides no authority to support his claim that paying for non-trucking coverage is enough to make the coverage 'in effect' at the time of a trucking accident." *Id.* The court then concluded that "*where coverage is excluded, it is 'not in effect' for purposes of MCL 500.3113(b)*." *Id.* (emphasis added). And because the separate out-of-state Legion policy "did not provide coverage for plaintiff's semi-truck, nor did it specifically provide for no-fault coverage[,]" *Id.*, "the security required by § 3131 [sic – presumably § 3101] was not in effect at the time of the accident, [and] pursuant to MCL 5113(b), plaintiff [wa]s not entitled to be paid PIP benefits." *Id.*

In sum, Abdulla is not entitled to receive personal protection insurance benefits under MCL 500.3113(b). The Great American policy on the truck was a bobtail policy which excluded personal protection insurance coverage while the truck was "being used in the business of any lessee" or while the truck was "being used to transport cargo of any type." (Great American Policy, p 36 of 65, APX 0163a). Abdulla was "in the business of" lessee Land Trucking at the time of the accident, transporting cargo (tomatoes), thus triggering the exclusion. Further, the Progressive Southeastern policy obtained by Land Trucking did

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not insure the 2012 Volvo, and it included no personal protection insurance coverage. (Progressive Dec. Page and Policy, APX 0046a-0075a). Mohammed Abdulla, as the owner of the truck, thus failed to maintain full and proper personal protection insurance coverage on the truck as required by the No-Fault Act (MCL 500.3101(1)). So the truck was not covered by *any* personal protection insurance at the time of the accident when it was being used for its intended and primary purpose—to deliver goods while under dispatch. Without the mandatory security, MCL 500.3113(b) bars Abdulla from receiving personal protection insurance benefits via this action.

This result makes sense because the Legislature intended to ensure that those who obtain personal injury protection benefits are not free riders. In other words, those who do not secure appropriate coverage on their vehicles may not then obtain the benefits intended for everyone who does. Otherwise, the system would become unworkable in practice.

D. REVIEW IS NEEDED BECAUSE THE PANEL MAJORITY'S DECISION CONFLICTS WITH OTHER DECISIONS HOLDING THAT WHEN ONE DRIVER HAS THE RIGHT TO AND USE OF A VEHICLE FOR MORE THAN 30 DAYS – EVEN IF THE VEHICLE IS TITLED IN THE NAME OF ANOTHER – THAT DRIVER IS DEEMED A CO-OWNER AND IS BARRED FROM BENEFITS IF THE DRIVER DOES NOT ASSURE PERSONAL PROTECTION INSURANCE COVERAGE

Past decisions of the Court of Appeals have held that the test for ownership under MCL 500.3101 is whether the driver had proprietary or possessory use of the vehicle for more than 30 days, irrespective of who holds title to the vehicle. The panel majority's analysis conflicts with – or at a minimum – is in tension with these decisions. This creates confusion in the law requiring leave so that this Court can decide the proper analytical approach.

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In *Kessel v Rahn*, 244 Mich App 353; 624 NW2d 220 (2001), the plaintiff, Kessel, was driving a vehicle titled in the name of her mother when she was rear ended. *Id.* at 354. The vehicle did not have the insurance coverage required by law at the time of the accident. *Id.* In analyzing whether Kessel qualified as an owner of the vehicle under MCL 500.3101(2)(g)(i) (now appearing at MCL 500.3101(3)(l)(i)), the Court cited to *Ardt v Titan Ins Co*, 233 Mich App 685, 593 NW2d 215 (1999), explaining that the *Ardt* Court "concluded that the operator of the vehicle could be deemed an 'owner' under § 3101 if the operator had a proprietary or possessory use of the vehicle (rather than merely incidental use) for more than thirty days." *Kessel*, 244 Mich App at 356.

Kessel testified that she had been using the vehicle for over a year at the time of the accident and that she "pretty much" had exclusive use of the vehicle during that time. *Id.* at 357. As a result, the Court held that Kessel "had a 'regular pattern of unsupervised usage,'" establishing proprietary and possessory use of the vehicle for more than thirty days and thus satisfying the definition of owner under MCL 500.3101. *Id.* at 358. The Court reached this holding even where it was Kessel's mother, and not Kessel herself, who held title to the vehicle. The Court explained that imposing the responsibilities of an owner to maintain insurance on a person who has proprietary and possessory use of the vehicle for more than thirty days "clearly promotes the objectives of the mandatory insurance provisions[.]" *Id.* at 359. In other words, "the Legislature believes it reasonable to require someone to ensure insurance coverage if they have use of a vehicle for more than thirty days in ways that comport with ownership." *Id.* at 359–60. Contrary to the panel majority's crabbed approach, the Court here concluded that the daughter "pretty much had the use" even though that use was permissive, and title was in the mother's name. Here, Abdulla owned

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Tornado Trucking – and as owner – decided when and where to use the truck it leased to Land Trucking. And Abdulla was the only driver. The fact that title was in his wholly-owned limited liability company and that he parked it at a truck stop – and not his home – should not have changed the outcome.

Similarly, in *Chop v Zielinski*, 244 Mich App 677; 624 NW2d 539 (2001), the plaintiff, Donna Chop, was injured in a motor vehicle accident while driving a vehicle titled to her ex-husband. See *id.* at 680. Chop regularly used the vehicle for months leading up to the accident, *id.* at 680–81, and the Court reasoned that such regular use revealed that Chop exercised ownership rights over the vehicle. *Id.* at 681. The fact that Chop did not hold legal title to the vehicle was not dispositive of whether she may be considered an "owner" because "[t]here may be multiple owners of a vehicle for purposes of the no-fault act." *Id.*

Further, in *Infinity Physical Therapy LLC v Nationwide Mut Fire Ins Co*, unpublished per curiam decision of the Michigan Court of Appeals, issued July 18, 2024 (Docket No 364890) (APX 1316a-1321a), the Court held that "[a] person having the use of a motor vehicle for more than 30 days may be deemed a constructive owner of the vehicle and be denied recovery under the no-fault act if the person fails to maintain mandatory no-fault coverage." *Id.* at *1. In *Infinity*, Elijah Smith was the only driver of a Chevrolet Impala for approximately nine months before the accident and had sole control and possession of the vehicle, but the vehicle was titled to another – Mildred Wainwright. *Id.* Even though the Impala was not titled to Smith, the Court of Appeals nevertheless held that Smith was a constructive owner as a matter of law, and as constructive owner, "Smith was required to ensure the vehicle had mandatory no-fault coverage before driving it." *Id.* The Court of Appeals emphasized that "Smith cannot convert a vehicle for his own use, have exclusive

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access to the vehicle for nine months, and then claim he had no duty to insure the vehicle before driving it." *Id.* at *6.

If a person uses a wholly-owned limited liability company to hold title but retains full use and control of a vehicle, the outcome should not be different. Otherwise, anyone can create an LLC, transfer vehicle title to it, and rely on another household member's insurance to pay for personal injury protection benefits although that individual deliberately failed to insure their own vehicle. If this gaping loophole is allowed to remain, insurance premiums for those who properly insure their vehicles will no doubt rise.

The statutory provisions of the No-Fault Act, including MCL 500.3101 and MCL 500.3113, "were enacted in furtherance of the sound public policy imperative that users of motor vehicles maintain appropriate insurance for themselves as indicated by their actual patterns of usage[.]" See *Ardt v Titan Ins Co*, 233 Mich App 685, 690; 593 NW2d 215, 218 (1999). But the panel majority allowed Abdulla to use his solely owed LLC to violate this sound public policy. See *Fors v Farrell*, 271 Mich 358, 370; 260 NW 886, 890 (1935) ("Corporate entity will always be recognized by the courts and the law administered accordingly *unless it appears that the corporation is functioning in such a manner as to violate or at least evade the law or contravene public policy*." (Emphasis added)). See also 6 Mich Civ Jur Corporations § 10 ("A corporation's separate existence will be respected, unless doing so would subvert justice or cause a result that would be contrary to some other clearly overriding public policy.")

The panel majority's published decision puts an imprimatur on a strategy for flouting legislative policy by creating a wholly-owned limited liability company to hold vehicle title. The statutory provisions of the No-Fault Act, including MCL 500.3101 and MCL

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500.3113, "were enacted in furtherance of the sound public policy imperative that users of motor vehicles maintain appropriate insurance for themselves as indicated by their actual patterns of usage[.]" See *Ardt v Titan Ins Co*, 233 Mich App 685, 690; 593 NW2d 215, 218 (1999). Abdulla should not be allowed use his solely owed LLC to violate this sound public policy. See *Fors v Farrell*, 271 Mich 358, 370; 260 NW 886, 890 (1935) ("Corporate entity will always be recognized by the courts and the law administered accordingly *unless it appears that the corporation is functioning in such a manner as to violate or at least evade the law or contravene public policy*." (Emphasis added)). See also 6 Mich Civ Jur Corporations § 10 ("A corporation's separate existence will be respected, unless doing so would subvert justice or cause a result that would be contrary to some other clearly overriding public policy.") As the dissent properly recognized, Abdulla should be deemed a statutory owner of the truck and thus barred from collecting personal injury protection benefits. Review is needed to bring the law into accord with the legislative plan.

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CONCLUSION AND RELIEF

At bottom, MCL 500.3113(b) prohibits Mohammed Abdulla from receiving personal protection insurance benefits because he did not maintain full and proper security on the tractor at the time of the accident as required by MCL 500.3101(1). The Great American policy on the truck did not provide personal protection insurance coverage at the time of the accident because Abdulla was hauling a load of cargo for lessee Land Trucking. And the separate policy obtained by Land Trucking from Progressive Southeastern did not provide personal protection insurance coverage at all. Thus, no personal protection insurance in effect on the truck Abdulla owned (through his alter ego and wholly-owned limited liability entity). Abdulla was driving the vehicle at the time of the accident and had been the only driver and had control of the vehicle for more than 30 days. So Abdulla is barred from receiving no-fault benefits, interest, or attorney fees via this action.

Wherefore, Defendant-Appellant, Auto Club Group Insurance Company, respectfully requests that this Court peremptorily reverse the lower courts and adopt the dissenting opinion of the Court of Appeals, or grant oral argument on the application, or grant leave to appeal, and grant any other relief that is warranted in law and equity.

Respectfully submitted,

PLUNKETT COONEY

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Dated: September 5, 2024

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WORD COUNT CERTIFICATE

MARY MASSARON, being first duly sworn, certifies and states the following:

1. She is a shareholder with the firm Plunkett Cooney, and is in principal charge of the above-captioned cause for the purpose of preparing the attached Application for Leave to Appeal;

2. The brief prepared by her office complies with the print type requirements;

3. Plunkett Cooney relies on the word count of their word processing system used to prepare the brief, using Cambria size 12 font; and

4. The word processing system counts the number of words in the brief as 12,128.

/s/ Mary Massaron
MARY MASSARON

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