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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

MOHAMMED ABDULLA,

Plaintiff/Appellee,

and

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.

Supreme Court Case No. 167532

Court of Appeals Case No. 364797

Wayne County Circuit Court
Case No. 2021-006382-NF
Hon. Dana M. Hathaway

CONSOLIDATED WITH:

Court of Appeals Case No. 364866

Wayne County Circuit Court
Case No. 2021-006382-NF
Hon. Dana M. Hathaway

PLAINTIFF/APPELLEE'S ANSWER TO AUTO CLUB GROUP INSURANCE COMPANY'S APPLICATION FOR LEAVE TO APPEAL

Prepared by:

Steven A. Hicks (P49966)
Attorney at Law
Co-Counsel for Plaintiff/Appellee
216 North Chestnut Street
Lansing MI 48933
(517) 881-5564
steve@chair2consulting.com

RECEIVED by MSC 11/18/2024 1:14:50 PM

TABLE OF CONTENTS

Index of Authorities. iii

Counter-statement as to Jurisdiction
and Alleged Need for Appellate Review. v

Concurring Standard of Review ix

Concurring Statement as to Trial Court Orders
and Published Appellate Opinion Appealed From. ix

Counter-Statement of Question Presented. ix

Introduction. 1

Counter-Statement of Facts. 3

Argument. 4

I. LEAVE SHOULD BE DENIED BECAUSE THE COURT OF APPEALS HELD CORRECTLY THAT ABDULLA DID NOT OWN THE TRUCK THAT HE WAS DRIVING WHEN THE ACCIDENT OCCURRED AND CONSEQUENTLY HE WAS NOT DISQUALIFIED FROM RECOVERING PIP BENEFITS IN MICHIGAN UNDER MCL 500.3113(b). 4

A. TO BE DISQUALIFIED UNDER MCL 500.3113, ABDULLA HAD TO BE AN OWNER OF THE TRUCK THAT HE WAS DRIVING WHEN THE ACCIDENT OCCURRED. 6

1. TORNADO TRUCKING WAS THE TITLED OWNER OF THE TRUCK – NOT ABDULLA. 7

2. LAND TRUCKING ALSO OWNED THE TRUCK AS IT LEASED IT FROM TORNADO FOR MORE THAN 30 DAYS. 7

3. TORNADO TRUCKING INSURED THE TRUCK WITH BOB-TAIL COVERAGE THAT INCLUDED MICHIGAN PIP BENEFITS. 8

RECEIVED by MSC 11/18/2024 1:14:50 PM

TABLE OF CONTENTS, Continued

B. ABDULLA DID NOT HAVE A POSSESSORY OR PROPRIETARY RIGHT TO USE THE TRUCK AND THUS HE NEVER USED IT IN THAT MANNER. 8

C. THERE IS NO EVIDENCE THAT ABDULLA USED TORNADO AS AN ALTER EGO TO AVOID PAYING FOR PIP COVERAGE. 9

D. AUTO CLUB IS REQUIRED TO PAY ABDULLA'S PIP BENEFITS UNDER MCL 500.3111. 11

Conclusion 13

Relief Requested. 14

Certificate of Compliance 14

RECEIVED by MSC 11/18/2024 1:14:50 PM

INDEX OF AUTHORITIES

Cases

Ardt v Titan, 233 Mich App 685; 593 NW2d 215 (1999) 4, 5, 7

Childers v Progressive Marathon Ins Co, 343 Mich App 257; 997 NW2d 273 (2022),rev'd and rem'd on other grounds, ___ Mich ___, ___ NW3d ___ (2024) 11

DAIIE v Home Ins Co, 428 Mich 43; 405 NW2d 85 (1987) 10-11

Florence Cement Co v Vettraino, 292 Mich App 461; 807 NW2d 917 (2011) 4

Gobler v Auto-Owners Ins Co, 428 Mich 51; 604 NW2d 199 (1987) 1-2

Guraj v Connecticut Indem Ins Co, unpublished per curiam opinion of the Court of Appeals, Docket No. 257509, issued February 23, 2006 12

Hines v Volkswagen of America, Inc, 265 Mich App 432; 695 NW2d 84 (2005) 9

Irwin v Farm Bureau Gen Ins Co, unpublished per curiam opinion of the Court of Appeals, Docket No. 360819, issued August 23, 2023, lv den'd, 4 NW3d 480 (2024) . . . . . passim

Integral Ins Co v Maersk Cont Serv Co, 206 Mich App 325, 520 NW2d 626 (1994) 6

Kline v Kline, 104 Mich App 700; 305 NW2d 297 (1981). 10

LA Walden & Co v Consolidated Underwriters, 316 Mich 341; 25 NW2d 248 (1946) 10

Lee v DAIIE, 412 Mich 505; 315 NW2d 413 (1982) 11

Miller v Farm Bureau Mut Ins Co, 218 Mich App 221; 553 NW2d 371 (1996) 11

RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678; 762 NW2d 529 (2008) 10

Dutton Partners, LLC v CMS Energy Corp, 290 Mich App 635, 802 NW2d 635 (2010) 10

Shavers v Attorney General, 402 Mich 554; 267 NW2d 72 (1978) 2

RECEIVED by MSC 11/18/2024 1:14:50 PM

INDEX OF AUTHORITIES, Continued

Cases, Continued

Turner v Farmers Ins Exch, 507 Mich 858; 953 NW2d 204 (2021) . . . . . .

Underhill v Safeco Ins Co, 407 Mich 175; 284 NW2d 463 (1979) 10

Vantol v Home-Owners Ins Co, unpublished per curiam opinion of the Court of Appeals, issued October 29, 2019 (Docket No. 345639) 7

Statutes

MCL 450.4504(1) 4

MCL 450.4504(2) 4

MCL 450.4210 4

MCL 450.4406 4

MCL 500.3101(3)(l)(i) . . . . . vii, 3

MCL 500.3101(3)(l)(iii) .. . . . . vi, 7

MCL 500.3111 11-12

MCL 500.3113(b). . . . . passim

MCL 500.3114(1) 11

MCL 500.3114(4) 11

Court Rules

MCR 7.215(C). 19

MCR 7.305(A)(1)(d) . . . . . 2-3, fn 1

MCR 7.303(B)(1) vi

RECEIVED by MSC 11/18/2024 1:14:50 PM

COUNTER-STATEMENT AS TO JURISDICTION AND ALLEGED NEED FOR APPELLATE REVIEW

Plaintiff-Appellee, Mohammed Abdulla, agrees that this Court has discretion to exercise its jurisdiction under MCR 7.303(B)(1) to review a case after it has been decided by the Court of Appeals. But, he disagrees with Defendant-Appellant, Auto Club Group Insurance Company ("Auto Club" or "ACGIC"), that there is any grounds to do so in this case under MCR 7.305. Simply put, Auto Club is wrong when it contends that the Court of Appeals' published decision in this case was "erroneously decided". [MSC Lv App at vii].

In seeking leave to appeal, Auto Club inaccurately states that this case is a "published opinion of first impression." [Id]. While it is true that it is the first published case to address this question, it is not an issue of first impression in Michigan. See *Irwin v Farm Bureau Gen Ins Co*, unpublished per curiam opinion of the Court of Appeals, Docket No. 360819, issued August 23, 2023, lv den'd, 4 NW3d 480 (2024). Nor is this decision inconsistent with other published cases involving bob-tail coverage in the trucking industry, much less published cases affirming that ownership also may arise from possessory or proprietary use of a vehicle in Michigan for more than 30 days. See MCL 500.3101(3)(l)(iii).

Simply put, Abdulla did not have a possessory or proprietary right to use the truck. He did not use it in a possessory or proprietary manner. He used it only on behalf of his company. He drove it short distances while bob-tailing and PIP coverage applied whenever he did. Otherwise, he parked it in a nearby lot until was it was time for a load to be hauled.

Auto Club's claim that the Court of Appeals' published decision in this case "will have a widespread and negative impact if not corrected" is seriously overstated. [Id]. There is nothing novel about the factual circumstances in this case. Abdulla formed a limited

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liability company, Tornado Trucking, LLC. Tornado purchased a truck to haul loads and leased it to Land Trucking. Tornado owned the truck, not Abdulla. The truck was titled to Tornado and it was registered by Tornado in Michigan. Tornado insured the truck with bob-tail coverage that included PIP benefits so that it was covered when no load was attached.

Auto Club falsely states in its leave application that the truck owned by Tornado was "exclusively in [Abdulla's] control for purposes of hauling loads." [Id]. That is not true for two reasons. First, Abdulla did not own the truck. Tornado did. Whenever he used the truck, he did so on behalf of Tornado. In other words, he acted as an agent of Tornado. Second, the truck was leased long-term to Land Trucking. Any hauling that Tornado did was performed on behalf of Land Trucking. Consequently, Land Trucking had "exclusive control" over when and where loads were hauled by Tornado, not Abdulla. Auto Club wrongly equates Abdulla not only with his company, Tornado, but also with Land Trucking.[1]

Under the No-Fault Act, Abdulla was not the "owner" of the truck as Auto Club falsely contends. Tornado owned the truck because it was titled to Tornado and Tornado had possession and control of the truck for more than 30 days. MCL 500.3101(3)(l)(i), (iii). Land Trucking was also an "owner" of the truck because it leased the truck from Tornado for more than 30 days. Id. Abdulla, in contrast, was merely an agent of Tornado and Land.

Progressive argues that this Court must review this case because the Court of Appeals' published decision "offers a blueprint for anyone who wishes to game the no-fault

[1]Land Trucking insured the truck when it was hauling a load. But, Land did not secure coverage with PIP benefits. Instead, it secured coverage in Indiana even though its business appears to have operated out of Michigan. Presumably, it did so because it was incorporated in Indiana, and not Michigan. To the extent that Land failed to comply with the No-Fault Act, Auto Club was entitled to sue Land or the agent in Indiana that wrote its commercial auto coverage for both trucks and trailers registered in Michigan.

RECEIVED by MSC 11/18/2024 1:14:50 PM

system at the expense of those who pay their fair share." [MSC Lv at p viii]. To be clear, Abdulla did not "game the system". To the contrary, he did exactly what was required of him. He formed a company, the company bought a truck, the company insured it with bob-tail coverage that included PIP benefits, and the company leased it to Land. Abdulla merely drove the truck while acting as an agent for Land and Tornado. It was Land that did not buy the PIP coverage required in Michigan. But, that is not on Abdulla, nor is it on Tornado which did purchase bob-tail coverage that included the required PIP coverage in Michigan.

To the extent that Auto Club claims that the published result in this case is not the best way for trucking coverage to be handled, it has a point – but that does not mean that Abdulla should be disqualified from recovering PIP benefits under these circumstances, especially as Auto Club could have easily avoided this result with better underwriting practices. It is not at all uncommon for auto insurers in Michigan to pay PIP benefits to persons injured in motor vehicle accidents even though the PIP claimant did not pay them a premium for PIP coverage. The Legislature's overriding goal was to ensure that Michigan residents were protected. PIP insurers know that and adjust premiums accordingly to account for situations where they must pay PIP benefits regardless of any premiums paid.

Lastly, there is no confusion in Michigan law regarding situations "when one driver has the right to use and use of a vehicle for more than 30 days" and becomes a statutory owner who is required to ensure that vehicle for PIP benefits in Michigan. The law is clear and Auto Club states it correctly. The problem is that Auto Club repeatedly misrepresents Abdulla's relationship to the truck. He did not own the truck. It was owned by Tornado and Land. It was operated for Tornado and Land only. He did not use it for personal reasons because he, unlike Tornado, did not have a possessory right or proprietary right to use it.

RECEIVED by MSC 11/18/2024 1:14:50 PM

CONCURRING STANDARD OF REVIEW

Plaintiff/Appellee, Mohammed Abdulla, agrees that the standard of review on appeal is *de novo* for summary disposition rulings and issues of statutory interpretation as stated by Defendant/Appellant Auto Club in its Application for Leave to Appeal at pages 17-18.

CONCURRING STATEMENT AS TO TRIAL COURT ORDERS AND PUBLISHED APPELLATE OPINION APPEALED FROM

Plaintiff/Appellee, Mohammed Abdulla, accepts and concurs with Defendant/ Appellant Auto Club's Statement Identifying the Judgment Appealed From as it names the orders issued by the trial court in denying its motions for summary disposition and reconsideration, as well as the trial court order granting summary disposition for Abdulla, and the Court of Appeals' published opinion issued on July 25, 2024. [MSC Lv App at p vi].

COUNTER-STATEMENT OF QUESTION PRESENTED

I. Should leave to appeal be denied because the Court of Appeals correctly held that Abdulla is entitled to recover PIP benefits and is not disqualified under MCL 500.3113(b) where 1) the truck that Abdulla was driving when the accident occurred was owned not by him, but by his company, Tornado, and it was leased long-term to Land; 2) Tornado insured it for PIP benefits when used for bob-tailing, i.e., driving without a load attached, 3) Abdulla had no possessory or proprietary right to use the truck and 4) he did not use the truck in a possessory or propriety manner when not hauling a load for Tornado and Land?

Plaintiff/Appellee says "Yes".

Defendant/Appellant says "No".

The trial court would say "Yes".

This Court should say "Yes".

RECEIVED by MSC 11/18/2024 1:14:50 PM

INTRODUCTION

The Court of Appeals' published opinion in this case is not surprising as the same holding was previously reached in *Irwin v Farm Bureau Gen Ins Co*, unpublished per curiam opinion of the Court of Appeals, Docket No. 360819, issued August 23, 2023 and this Court unanimously denied leave to appeal in Irwin on April 18, 2024. See 4 NW3d 480 (2024). Evidently, none of the justices on this Court were persuaded in *Irwin* that the question presented should be reviewed. Id. The question in this PIP case is the same as in *Irwin*. The same legal arguments were considered by this Court in *Irwin*. There is no material factual differences between this case and *Irwin*. Thus, the result in this PIP case should be the same as in *Irwin* as it was decided on the same grounds and it was correctly decided. Conveniently, Auto Club has failed to mention *Irwin* in seeking leave to appeal.

Fundamentally, Auto Club cannot escape the fact that Abdulla did not own the truck that he was driving when the motor vehicle accident occurred. He drove it for his company, Tornado Trucking, LLC. Tornado owned the truck. It was titled to Tornado. It was registered in Michigan to Tornado. Tornado leased it to Land Trucking. Land Trucking paid Tornado, not Abdulla. And most importantly, there is simply no evidence in this case that Abdulla ever drove the truck when he was not doing so on behalf of Tornado and Land.

Auto Club is upset that it is required to pay PIP benefits to Abdulla without being paid a premium for the truck that he was operating when the motor vehicle accident occurred in Missouri. But, that is not an unusual result under the No-Fault Act. The No-Fault Act is a broad remedial act that is designed to ensure that Michigan residents are protected from economic loss in the event that they are injured in a motor vehicle accident. See *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 61; 604 NW2d 199 (1987) ("[t]he no-fault

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act is remedial in nature and must be liberally construed in favor of persons intended to benefit" from it). That is the overriding goal of the No-Fault Act. See *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978) ("[t]he goal of the no-fault insurance system was to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses"). It is up to insurers to assess the possibility and likelihood that they will be responsible for paying PIP benefits when no premium was paid.

Auto Club has only itself to blame for the fact that it did not identify Abdulla as an insured under its policy and not asking whether any insureds regularly drove vehicles not identified. Ask potential insureds the right questions and you will know if any of them regularly drive other vehicles. Fail to do so and you will end up paying benefits for which a premium was not paid. This Court should not be asked to do Auto Club's job for it by denying Abdulla's PIP claim after the fact when it could have screened him out beforehand.

This Court should again deny leave to appeal, as it did in *Irwin*, supra, because Auto Club has the means to ameliorate its concerns about having to pay PIP benefits under such circumstances. This Court should not overturn a sound legal decision simply because Auto Club failed to protect itself from potential liability for PIP benefits. It certainly should not deny PIP benefits to Abdulla where, as in this case, he did not have a possessory or proprietary right to use the truck, and he did not do so unless he was acting as an agent. Ideally, a commercial auto policy with PIP benefits would have been secured by Land Trucking. Or, alternatively, Auto Club would have recognized that Abdulla (or Tornado) needed PIP coverage separate from his parents' auto policy but the blame for that rests solely on Auto Club because it did not ask the right questions when writing its auto policy.

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COUNTER-STATEMENT OF FACTS

Plaintiff/Appellee, Mohammed Abdulla, largely agrees with the lengthy Statement of Facts provided by Auto Club in its Application for Leave to Appeal with the exception of the first paragraph which is nothing more than a conclusory statement of its legal position. [MSC Lv App at 1]. The facts in this case, however, were also well-stated by the Court of Appeals' majority opinion. Sometimes, less truly is more – so Abdulla will rely on that factual recitation instead. The dissenting opinion took no issue with how the facts were stated by the majority. It also accurately restated them before reaching a different holding on "public policy grounds". [Appx 1314a-1315a, slip op at pp 2-3, Jansen, dissenting]. In sum, the dissenting opinion concluded that Abdulla was a "co-owner" of the truck he was driving because he was "the only person to drive the tractor for a time period less than a year before the accident" ostensibly in violation of MCL 500.3101(3)(l)(I). [Id, slip op at 3].

That said, a few things should probably be clarified that pertain to Auto Club's claim that Abdulla was "gaming the system". First, it is hard to read Abdulla's deposition without reaching the conclusion that he is not very sophisticated in his understanding of the legalities of running a business or insuring vehicles for use in a trucking operation. Appx 0429a-0481a]. While that does not excuse him, it does suggest that he was not trying to "game the system". Second, he was born in Yemen. [Appx 0435a]. He is not an American citizen. [Id]. He has only lived in the United States since 2014. [Appx 0436a]. When deposed, an interpreter was present for him as he is not fluent in English. [Appx 0431a].

Abdulla clarified in his deposition that the owner of Land Trucking insured the truck that his company, Tornado, leased to Land. [Appx 0469a; P41L10-12]. Effectively, Land controlled all aspects of Tornado's trucking operation. The independent contractor lease

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agreement between Tornado and Land was drafted by Land. [Appx 0551a]. Tornado did not haul loads for any company other than Land at the time that this accident occurred. [Appx 0474a]. Tornado was assigned loads by a dispatcher with Land. The truck was insured and it was insured by the owner of Land Trucking. [Appx 0441a]. The cost of insuring the truck was deducted from payments that Land made to Tornado. [Appx 0474a].

The insurance agency that Tornado used to insure the truck was the same agency that Land used. It is based in Manitou Beach, Michigan. It specializes in insuring trucking operations. That agency is National Transportation Associates, LCC or NTA. [Appx 0557a & 0686a-0687a]. See generally, www.ntains.com for more information about that agency.

ARGUMENT

I. LEAVE TO APPEAL SHOULD BE DENIED BECAUSE THE COURT OF APPEALS HELD CORRECTLY THAT ABDULLA DID NOT OWN THE TRUCK THAT HE WAS DRIVING WHEN THE ACCIDENT OCCURRED AND CONSEQUENTLY HE WAS NOT DISQUALIFIED FROM RECOVERING PIP BENEFITS IN MICHIGAN.

After discussing relevant statutory provisions, the Court of Appeals in its majority opinion in this case stated the legal and factual grounds for its holding. It is a concise summary of the law and facts that supported the trial court's decision to deny summary disposition. Rather than rephrasing the majority holding, it will be quoted because it simply could not have been better said. In its majority opinion, the Court of Appeals concluded:

> There is no dispute that Land Trucking is the owner of the trailer. There is also no dispute that Tornado Trucking, and not Abdulla, holds legal title to the tractor. Its name, not Abdulla's, appears on the tractor's Michigan Motor Vehicle Registration. Tornado Trucking stored the trailer at a truck stop between long-haul jobs. At the time of the accident, the tractor was being used exclusively to haul loads for Land Trucking. There is no evidence that the tractor was being used for any purpose

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> other than in furtherance of the business of Tornado Trucking. Importantly, Tornado Trucking is a limited-liability company and, thus, a separate legal entity distinct from Abdulla, which possesses "all powers necessary or convenient to effect any purpose for which the company is formed." MCL 450.4210. Although Abdulla is the sole member of Tornado Trucking, "a member has no interest in specific limited liability company property." MCL 450.4504(1), (2). Abdulla is merely an agent of Tornado Trucking. MCL 450.4406. There is no evidence that Abdulla used the tractor in a propriety or possessory manner. Rather, his use of the tractor was incidental to the business of Tornado Trucking and the long-haul trucking companies served by Tornado Trucking. Under these circumstances, the record lacks 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 MCL 500.3101(3) and MCL 500.3113(b). *Ardt v Titan Ins Co*, 233 Mich App 685, 690-691; 593 NW2d 215 (1999). Moreover, the record contains no grounds to pierce the corporate veil of the limited-liability company and declare Abdulla the owner of the tractor for these statutory purposes. *Florence Cement Co v Vettraino,* 292 Mich App 461, 468-469; 807 NW2d 917 (2011). The trial court correctly denied summary disposition to Auto Club under MCR 2.116(C)(10). [Appx 1310a, slip op at p 5].

Judge Jansen, in her dissenting opinion disagreed with the majority's holding. Without any evidentiary support, she concluded that Abdulla was a "co-owner" of the truck because he was the "sole exclusive driver of the tractor" when the motor vehicle accident occurred. [Appx 1314a, slip op at 2]. Simply put, Judge Jansen chose to disregard the fact that Abdulla was driving as an agent of Tornado (and Land) as well as the fact that Tornado was a separate legal entity from him and that it owned the truck, not him. In sum, she concluded that "it is against public policy for Abdulla to isolate himself from liability under the no-fault act by setting up the LLC and putting the tractor in its name. " [Id]. In support, she relied on *Ardt*, supra, which did not involve a company owned vehicle as in this case. While Judge Jansen may not be wrong on public policy grounds – obviously it would be

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better if Land had purchased commercial auto coverage that included PIP benefits – she nonetheless has no support for her conclusion that the Legislature intended that motorists like Abdulla be disqualified from recovering PIP benefits. In fact, the opposite is true as the primary goal of the No-Fault Act is to protect Michigan residents from economic loss.

A. TO BE DISQUALIFIED, ABDULLA HAD TO BE AN OWNER OF THE TRUCK THAT HE WAS DRIVING WHEN THE ACCIDENT OCCURRED.

MCL 500.3113(b) provides that "[a] person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident . . . [t]he person was the owner or registrant of a motor vehicle . . . involved in the accident with respect to which the security required by [MCL 500.3101] . . . was not in effect." It does not say that the sole owner of a company will be precluded from recovering PIP benefits if the company owned a vehicle that was operated solely on behalf of the company. It would not have been difficult for the Legislature to say that. If it had done so, that would have been a clear expression of its intent to preclude recovery of PIP benefits under circumstances similar to this situation on public policy grounds. But, it did not do so.

In *Integral Ins Co v Maersk Cont Serv Co*, 206 Mich App 325, 328, 520 NW2d 626 (1994) an individual owned the semi-truck that he was operating when it was involved in a motor vehicle accident outside Michigan. Unlike Abdulla, his truck was not owned by a limited liability company formed for a trucking business. It was titled in his name only. Consequently, that individual had no similar legal argument that he was not the owner (or registrant) of the truck that he was operating when the motor vehicle accident occurred. To the extent that Auto Club claims that Abdulla is similarly situated, it was wrong. As the majority held, and contrary to what Judge Jansen concluded, Abdulla did not own the truck.

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1. TORNADO TRUCKING WAS THE TITLED OWNER OF THE TRUCK WHEN THE ACCIDENT OCCURRED – NOT ABDULLA.

Under MCL 500.3101(3)(l)(iii), "[a] person that holds the legal title to a motor vehicle or motorcycle, other than a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is greater than 30 days." It is undisputed in this case that Tornado was the titled owner of the truck that Abdulla was driving when the motor vehicle accident occurred. Abdulla was not the truck's titled owner. Consequently, he was not an owner of the truck under MCL 500.3113(l)(iii).

2. LAND TRUCKING ALSO OWNED THE TRUCK BECAUSE IT LEASED IT FROM TORNADO FOR MORE THAN 30 DAYS.

Land Trucking was not the titled owner of the truck that Abdulla was driving when the accident occurred. But, it did lease the truck from Tornado. And, it did so for a period greater than 30 days. While Land presumably leased other trucks for use in its trucking operation, it was not "in the business of leasing" motor vehicles as that phrase has long been interpreted by appellate courts in Michigan under the No-Fault Act. MCL 500.3101(l)(iii). See *Vantol v Home-Owners Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued October 29, 2019 (Docket No. 345639), citing *Ardt*, supra. Consequently, Land was also an owner of the truck that Abdulla was driving at the time of the crash. Accordingly, Land has an obligation as an owner of the truck to secure auto coverage that included PIP benefits. It did not do so. But, in no way does that disqualify Abdulla for recovering PIP benefits. To the extent that Auto Club cites *Vantol* as support for its position, it is mistaken as nothing in that opinion suggests that Abdulla should be

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disqualified from recovering PIP benefits. Instead, it confirms that Land did not do what was required under the No-Fault Act. But, that is not true for Tornado, much less Abdulla. While it is true that Abdulla could have purchased his own commercial auto coverage that included PIP benefits, that merely begs the question of whether he was required to do so. Clearly, he had no duty to do so as he did not own the truck. Moreover, Tornado had bob-tail coverage with PIP benefits. It was Land that dropped the ball here, and not Abdulla. And Auto Club could have protected itself from liability with better underwriting practices.

3. TORNADO TRUCKING INSURED THE TRUCK WITH BOB-TAIL COVERAGE THAT INCLUDED MICHIGAN PIP BENEFITS.

As an owner of the truck, Tornado did what was required of it by obtaining bob-tail coverage with PIP benefits for whenever the truck was operated without a load attached. Unfortunately, Land did not buy commercial auto coverage that included PIP benefits. It is unclear why it did not do so as its business appears to be operated primarily out of Dearborn. Michigan. Yet, it insures its trucking operation in Indiana where it is incorporated even though its insurance policy identifies covered vehicles that are registered in Michigan. The insurance agency that bound the coverage for Land is based in southwestern Michigan. Abdulla used the same agent as Land because Land suggested that he do so. He bought the coverage that he was told that he needed. He simply did nothing wrong.

B. ABDULLA DID NOT HAVE A POSSESSORY OR PROPRIETARY RIGHT TO USE THE TRUCK AND THUS HE NEVER USED IT IN THAT MANNER.

Fundamentally, the question of possessory and proprietary rights and usage of the company truck in question is the crux of the factual and legal dispute in this PIP case. It is where the majority opinion and the dissenting opinion do not see eye to eye in this case.

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But, the problem with the dissenting opinion (and thus, for Auto Club on appeal) is that there is no evidence to support the claim that Abdulla had a possessory or propriety right to use the truck. The simple fact is that he never did so. Nor did he have reason to do so. And, whether he could have authorized himself to do so simply begs the question. Auto Club basically admits that there is no evidence to support its claim that Abdulla used the truck in a possessory or proprietary manner. It also presents no evidence that he authorized himself to do so before the motor vehicle accident occurred. It is simply saying that he could have done so if he wanted to do so. But, he neither needed to do so nor wanted to do so. It may be a plausible argument in factually different case but it simply holds no water under these factual circumstances. And, again, if Auto Club is truly concerned about being exposed to liability for which no premium was paid, all it has to do is ask better question in underwriting to eliminate liability for PIP benefits in this scenario.

C. THERE IS NO EVIDENCE THAT ABDULLA USED TORNADO AS AN ALTER EGO TO AVOID PAYING FOR PIP COVERAGE.

In order for an issued to be preserved for appeal, it must be raised in the trial court before the case is appealed and it must be addressed and decided by the lower court. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005). Here, Auto Club seeks to raise a new argument for the very first time in seeking leave to appeal. That new argument is the crux of its efforts to seek review in this case. Auto Club now contends that Tornado Trucking was nothing more than an "alter ego" that Abdulla used to "game the system" and avoid paying for PIP coverage in Michigan. There is, of course, no evidence in this case to support that claim. Presumably, that is so because it is a new argument and no attempt was ever made below to find any evidence to support it. It is also

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a completely spurious claim as the cases cited to support the "alter ego" argument have no application under circumstances in this case as this case is not a tort case and no one is seeking to "pierce the corporate veil" to recover damages from a corporate tortfeasor. *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, 802 NW2d 635 (2010).[2] This case is about whether Abdulla is entitled to PIP benefits or whether he is disqualified from PIP benefits because he owned a truck that was not properly insured. Auto Club cites no cases to support its "alter ego" argument in a remotely similar context. It also has no evidence that Abdulla was "trying to commit a fraud or wrong causing harm".

In *DAIIE v Home Ins Co*, 428 Mich 43, 49; 405 NW2d 85 (1987), this Court affirmed the understanding that the No-Fault was intended to protect persons against loss, stating:

> The result we reach in this case is also consistent with the Legislature's intent that persons, not vehicles, be insured against loss, as well as the Legislature's concordant desire that persons look primarily to their own insurers for benefits. *Lee v DAIIE*, 412 Mich 505, 509; 315 NW2d 413 (1982); *Underhill v Safeco Ins Co*, 407 Mich 175, 191-192; 284 NW2d 463 (1979). Thus, the Legislature's intent is not frustrated by a result that places the burden on an insurer that has written no coverage on the vehicle involved in the accident. *Lee*, 412 Mich 515-517.

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[2]The additional corporate shareholder liability cases are even more attenuated. [MSC Lv App at page 23]. See Auto Club's citation to cases such as *Kline v Kline*, 104 Mich App 700, [702-703]; 305 NW2d 297 (1981), citing *LA Walden & Co v Consolidated Underwriters*, 316 Mich 341, 346; 25 NW2d 248 (1946). The sound-bite from those corporate shareholder liability cases about treating a corporation and shareholders as "one and the same" is taken so far out of context, it is hard to know how to respond to such an unsupported, unpreserved argument other than to point out that the factual underpinning for that holding has nothing to do with the question presented in this PIP case. Auto Club is truly grasping at straws here with all of its unpreserved arguments.

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See *Childers v Progressive Marathon Ins Co*, 343 Mich App 257, 275-276, 997 NW2d 273 (2022) rev'd and rem'd on other grounds, ___ Mich ___, ___ NW3d ___ (2024), where the Court of Appeals, relying on *DAIIE v Home Ins Co* and *Lee v DAIIE*, similarly stated that:

> "Michigan's no-fault insurance system aims to provide victims of automobile-related accidents with assured, adequate, and prompt payment for economic losses." *Miller v Farm Bureau Mut Ins Co,* 218 Mich App 221, 225; 553 NW2d 371 (1996). *In Detroit Auto Inter-Ins Exch v Home Ins Co, 428 Mich 43, 49; 405 NW2d 85 (1987)*, our Supreme Court noted that it was "the Legislature's intent that persons, not vehicles, be insured against loss . . . ." This is especially true when the statutory provision at issue—like the former MCL 500.3114(4)—ties priority to an individual. *Lee v Detroit Automobile Inter-Insurance Exch, 412 Mich 505, 508, 515; 315 NW2d 413 (1982)*; *Turner v Farmers Ins Exch*, 507 Mich 858, 863 n 2; 953 NW2d 204 (2021) (VIVIANO, J., dissenting).

The same is true of MCL 500.3114(1) which likewise ties priority to an individual, i.e., the named insured under the policy and asks whether the person seeking PIP benefits is "the person named in the policy, the person's spouse, and a relative of either domiciled in the same household." Here, Abdulla was a resident relative of the named insured. The PIP coverage available under the policy followed him as person entitled to PIP benefits and it did not matter the motor vehicle that he was driving when the accident occurred, unless it triggered a higher priority PIP insurer, which it clearly did not under these circumstances.

D. AUTO CLUB IS REQUIRED TO PAY ABDULLA'S PIP BENEFITS UNDER MCL 500.3111.

MCL 500.3111 provides that "[PIP] benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs with the United States, its territories or possessions or Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection

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insurance policy, the spouse of a named insured, a relative of either domiciled in the same household . . . ". Abdulla was an insured under the Auto Club policy when this accident occurred because he resided with his parents. MCL 500.3111 clearly provides that he is entitled to recover PIP benefits from Auto Club as a resident relative of the named insureds. There is no statutory provision that negates Auto Club's obligation to provide PIP coverage for him under these circumstances. Whether Tornado or Land had PIP coverage on the truck that he was driving is a classic red herring as he was entitled to PIP benefits from Auto Club under MCL 500.3111 and he was not disqualified by MCL 500.3113(b).

Auto Club mistakenly suggests that that the Court of Appeals' unpublished opinion in *Guraj v Connecticut Indem Ins Co*, unpublished per curiam opinion of the Court of Appeals, Docket No. 257509, issued February 23, 2006, supports its position. But, as an unpublished opinion, the *Guraj* case should be viewed as persuasive only to the extent that its facts are the same or similar to the circumstances in this case. See MCR 7.215(C). In *Guraj*, the issue was whether Guraj was required to register his truck in Michigan, and if so, whether he failed to secure PIP coverage as required in Michigan. Unlike this PIP case, he registered his truck in Oklahoma even though he admittedly resided in Michigan.

Here, the truck that Irwin was operating was registered in Michigan by Tornado. And, unlike Guraj, Irwin did not own the truck, Tornado (and Land) did. While Guraj argued that he was entitled to incorporate wherever he liked, there was no evidence, unlike in this case, that Guraj ever incorporated his trucking business, much less that another legal entity actually owned the truck, and not him. The holding in *Guraj* has no application because the facts are not analogous to the facts in this case on multiple grounds. Thus, it should not even be considered persuasive, much less precedential, in this PIP litigation.

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CONCLUSION

Simply put, this case, like *Irwin,* is limited to the context of commercial trucking where coverage for bob-tailing is not only permitted but is the norm within the trucking industry. Auto insurers concerned about having to pay PIP benefits in factually similar cases can solve this problem with better underwriting practices. All they need to do is ask prospective insureds whether any insureds will be operating other vehicles when coverage is bound. If the answer is yes because an insured such as a resident relative operates a company-owned truck, then the insurer will write different coverage. If the answer is no, then the prospective insured has made a fraudulent misrepresentation and coverage will be denied if the resident relative is subsequently injured while driving the company truck because that fact was not disclosed when the policy was secured so it could be covered.

Leave should be denied because Auto Club is clearly wrong in contending that Abdulla as the sole owner of Tornado Trucking, LLC, was also the owner of the truck that he was driving for Tornado (and Land Trucking) when the motor vehicle accident occurred. There is no evidence in this case to support Auto Club's spurious claim that Abdulla used Tornado as an "alter ego" to avoid paying for PIP coverage. He did what he understood that he was supposed to do by setting up a company that bought the truck, insuring it for bob-tail coverage that included PIP benefits, leasing the truck to a larger trucking operation so he could haul loads exclusively for them and parking the truck nearby when not hauling. Auto Club never asked his parents if any insured regularly operated a vehicle not identified. If it had, it would have known that Abdulla regularly drove a truck for his trucking company.

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RELIEF REQUESTED

Plaintiff/Appellee, Mohammed Abdulla, respectfully requests that this Court affirm the Court of Appeals' majority opinion in this published PIP case as he is clearly entitled to recover PIP benefits from Defendant/Appellant, Auto Club Group Insurance Company, and he is not disqualified from recovering PIP benefits under MCL 500.3113(b) because he did not own the truck that he was driving when the motor vehicle accident occurred and there is no evidence in this case that he ever used it in a possessory or proprietary fashion.

Respectfully submitted:

Dated: November 18, 2024

/s/ Steven A. Hicks
Steven A. Hicks (P49966)
Co-Counsel for Plaintiff/Appellee
216 North Chestnut Street
Lansing MI 48933
(517) 881-5564
steve@chair2consulting.com

CERTIFICATE OF COMPLIANCE

I, Steven A. Hicks, certify that Abdulla's Answer to Auto Club's Application for Leave to Appeal complies with the type-volume limitation stated in MCR 7.212(B). I am relying on the word count of the word-processing software used to produce the answer to the leave application. It uses a 12 point proportional font and the word count is 6,091 words.

Dated: November 18, 2024

/s/ Steven A. Hicks
Steven A. Hicks (P49966)