RECEIVED by MSC 12/9/2024 5:48:02 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

MOHAMMED ABDULLA, Plaintiff-Appellee, v. PRECISE MRI OF MICHIGAN, LLC, Intervening Plaintiff-Appellee, v. AUTO CLUB GROUP INSURANCE COMPANY, Defendant-Appellant, and PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY, ET AL., Defendants.	Supreme Court No. 167532 Court of Appeals No. 364797 Wayne Cir. Ct. No. 21-006382-NF

Amicus Brief of the Michigan Defense Trial Counsel

David Porter (P76785)
Sean T.H. Dutton (P77515)
KIENBAUM HARDY VIVIANO PELTON & FORREST, PLC
280 N. Old Woodward, Suite 400
Birmingham, Michigan 48009
(248) 645-0000
dporter@khvpf.com

Counsel for Amicus Michigan Defense Trial Counsel

RECEIVED by MSC 12/9/2024 5:48:02 PM

TABLE OF CONTENTS

Table of Contents 2

Index of Authorities 3

Interest of Amicus 4

Introduction 5

Argument 7

I. The Court of Appeals' published decision upsets the No-Fault Act's finely tuned incentive structure, entitling tens of thousands of free riders to receive the benefits of the Act without paying into system. 7

A. To meet its promise of affordable and prompt benefits, Michigan's No-Fault Act requires every "owner" to obtain insurance coverage. 7

B. By relying on quarter-century-old judicial gloss, the Court of Appeals lost sight of the text and purpose of the No-Fault Act's functional definition of "owner." 8

C. The Court of Appeals' decision gives license to tens of thousands of motorists to avoid their insurance obligations, at the expense of law-abiding citizens and the stability of the insurance system. 11

Conclusion and Relief Requested 14

Certificate of Compliance 15

RECEIVED by MSC 12/9/2024 5:48:02 PM

INDEX OF AUTHORITIES

Cases

Ardt v Titan Ins Co,
233 Mich App 685 (1999) 8, 9

DGI by Irwin v Farm Bureau Gen Ins Co of Michigan,
unpublished per curiam opinion of the Court of Appeals, issued Aug 24, 2023 (Docket No. 360819) 12

Nawrocki v Macomb Co Rd Comm,
463 Mich 143 (2000) 10

Shavers v Kelley,
402 Mich 554 (1978) 7

Skanska USA Bldg Inc v MAP Mech Contractors, Inc,
505 Mich 368 (2020) 10

Stevenson v Reese,
239 Mich App 513 (2000) 7

Twichel v MIC General Ins Corp,
469 Mich 524 (2004) 10, 11

Yono v Dep't of Transportation,
499 Mich 636 (2016) 10

Statutes

MCL 500.3101 ..... 7, 8

MCL 500.3113 8

Rules

MCR 7.312 4

RECEIVED by MSC 12/9/2024 5:48:02 PM

INTEREST OF AMICUS

The Michigan Defense Trial Counsel is a statewide association of attorneys whose mission is to enhance and promote the civil defense bar. It does this by facilitating discourse among defense lawyers and promoting their knowledge and skills, with the goal of improving the adversarial system of justice in Michigan. MDTC appears before this Court as a representative of defense lawyers and their clients throughout Michigan, a significant portion of which will be affected by the issues involved here.[1]

[1] Neither party's counsel authored this amicus brief in whole or in part, nor contributed money that was intended to fund the preparation or submission of the brief. Further, no person has contributed money intended to fund the preparation and submission of this brief. See MCR 7.312(H)(4).

RECEIVED by MSC 12/9/2024 5:48:02 PM

INTRODUCTION

With its published decision, the Court of Appeals opened a hole in Michigan's No-Fault Act big enough to drive an uninsured truck through it.

The Act incentivizes every motor vehicle "owner" to comply with its insurance mandate by disqualifying them from benefits if they are injured while operating their vehicle without the required coverage. And to deter those who would evade the mandate using legal fictions and corporate shell games, the Act broadly defines "owner" to include not just those who hold title to a vehicle, but also those who "hav[e] use of" a vehicle for a period of 30 days or more.

Applying the Act's functional definition of "owner," the Court of Appeals held that Mr. Abdulla, a commercial truck driver who had exclusive use of and dominion over this his semi-truck tractor, was not an "owner" of the tractor because it was titled in the name of a limited liability company, of which he was the only member. In so doing, the Court of Appeals effectively eliminated the Act's key deterrent against free riders in this context. Mr. Abdulla—the only one who could be incentivized to obtain coverage through the Act's disqualification provision—will receive the benefits of a no-fault system he did not pay into. Meanwhile, there are no consequences for his company in failing to get coverage because, as a legal fiction, it will never be behind the wheel. This is precisely the result the Legislature sought to avoid with its functional definition of "owner."

This case presents a commonly recurring fact pattern, and even more so if the Court of Appeals decision is left in place. Roughly 36,000 commercial freight companies in Michigan are single-driver, single-truck operations like Mr. Abdulla—half of Michigan's entire commercial freight industry. The Court's decision provides a roadmap for these and countless other owner-operators (from electricians, to plumbers, to florists) to sidestep the act's coverage requirement without repercussion.

If left in place, the Court of Appeals' published decision will have a profound impact on the insurance industry in Michigan. When uninsured commercial vehicles like Mr. Abdulla's semi-truck inevitably become involved in an accident, the resulting costs—which on average run magnitudes higher than accidents involving passenger vehicles—will be passed on to law-abiding motorists in the form of higher premiums. This is precisely the result the Legislature wanted to avoid with the Act's compulsory coverage and broad, functional definition of those required to comply. This Court should therefore grant the Auto Club Group's application to reestablish the common sense meaning of "owner" and preserve the stability of Michigan's auto insurance system.

RECEIVED by MSC 12/9/2024 5:48:02 PM

RECEIVED by MSC 12/9/2024 5:48:02 PM

ARGUMENT

I. The Court of Appeals' published decision upsets the No-Fault Act's finely tuned incentive structure, entitling tens of thousands of free riders to receive the benefits of the Act without paying into system.

A. To meet its promise of affordable and prompt benefits, Michigan's No-Fault Act requires every "owner" to obtain insurance coverage.

Michigan's No-Fault Act is a complex and carefully calibrated scheme designed to meet two competing objectives. It seeks, on the one hand, to provide accident victims "assured, adequate, and prompt reparation for certain economic losses," *Shavers v Kelley*, 402 Mich 554, 579 (1978), while at the same time "reducing or restraining insurance premiums," *Stevenson v Reese*, 239 Mich App 513, 520 (2000).

Through the Act's "comprehensive and expeditious benefit system," auto accident victims receive insurance benefits (commonly called "PIP" benefits) directly from a no-fault insurance carrier as compensation for their injuries without having to prove who was at fault. The costs of those benefits are born by motorists who insure their vehicles through carriers responsible for paying PIP benefits. To keep free riders from undermining the financial viability of the system, and to keep premium rates low, the Legislature made insurance coverage compulsory. See MCL 500.3101(1); *Shavers*, 402 Mich at 579 ("[E]very Michigan motorist . . . [is] required to purchase no-fault insurance or be unable to operate a motor vehicle legally in this state.").

Deterring free riders was so important that the Legislature implemented a series of incentives to influence the behavior of those best positioned to ensure that vehicles have adequate coverage: "owners." The heart of this incentive structure is MCL 500.3113(b), which prohibits owners of motor vehicles that

RECEIVED by MSC 12/9/2024 5:48:02 PM

lack the required insurance coverage from recovering *any* PIP benefits from *any* insurer if they are injured while operating or occupying the vehicle:

> 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 or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

Paired the strong medicine of disqualification is an equally broad definition of "owner." Under the Act, a person can be an "owner" in one of two ways. The first is actual ownership, that is, by "hold[ing] the legal title to a motor vehicle." MCL 500.3101(3)(*l*)(*iii*). The second is *de facto* ownership, that is, by "having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days." MCL 500.3101(3)(*l*)(*i*).

Over the years, the statutory definition of *de facto* ownership has built up a judicial patina as courts resolved disputes over what it means to "hav[e] use of a motor vehicle" under different fact patterns. Most significant, in *Ardt v Titan Ins Co*, the Court of Appeals recognized that not just any "use" qualifies as *de facto* ownership, as that could lead to absurd results like rendering "all members of a carpool" or "an advertiser utilizing the vehicle's image" *de facto* owners of a vehicle. 233 Mich App 685, 691 n 1 (1999). "[H]aving the use of a motor vehicle," the Court said, had to mean "using the vehicle in ways that comport with concepts of ownership." *Id.* at 690-691. Thus, those with "*proprietary* or *possessory* usage" are *de facto* owners, but those with only "incidental usage under the direction or with the permission of another" are not. *Id.*

B. By relying on quarter-century-old judicial gloss, the Court of Appeals lost sight of the text and purpose of the No-Fault Act's functional definition of "owner."

The Court of Appeals majority misapplied *Ardt*'s interpretative gloss to hold that an individual with exclusive use of a vehicle and the sole discretion in how and when it is used is not a *de facto* owner. More specifically, it held that Mr.

RECEIVED by MSC 12/9/2024 5:48:02 PM

Abdulla was not an "owner" of his semi-truck tractor because it was titled and registered in the name of his limited liability company, a "separate legal entity distinct from Abdulla." (Slip op, at 5.) The truck was used "exclusively to haul loads for [the LLC]" and "[t]here was no evidence that the tractor was being used for any purpose other than in furtherance of the business of [the LLC]." (*Id.*) Mr. Abdulla's use of the truck was therefore "incidental to the business of [the LLC]" and not "propriety [sic, proprietary] or possessory" in nature. (*Id.*)

There are two problems with this reasoning.

First, *de facto* ownership focuses on real facts, not legal fictions. The question, as framed by the courts since *Ardt*, is whether the injured person had use of the vehicle without significant supervision or direction. Owner-operators of single-member LLCs fit that description. Take the facts of this case: Mr. Abdulla was the sole member and manager of the LLC, he was the only driver and employee of the LLC, he was the only person to use the truck, and he was the only person in possession of the truck. (Application, pp 24-27.) He was not merely an agent of his LLC; he was his own boss. No one else directed or permitted his use of the vehicle. (*Id.*) He alone made all the decisions about how and when vehicles are used, and he alone drove the truck in the manner he chose. (*Id.*) Functionally, he was an "owner" of the semi-truck.[2]

Second, the majority's fixation on *why* Mr. Abdulla was using the semi-truck was misplaced. The reason for someone's use is not a component of the statutory definition of *de facto* ownership, which merely requires that a person

[2] In his response to the Auto Club Group's Application, Mr. Abdulla suggests that another corporate entity involved in his commercial trucking operation was also a *de facto* owner, as if that somehow precludes him from being a *de facto* owner. (Appellee's Response, pp 7-8.) The Legislature sought to avoid this kind of corporate finger-pointing with its function-over-form definition of "owner." If a vehicle lacks the required coverage and the person seeking benefits meets the definition of "owner," they are disqualified from benefits, even if someone else also qualifies as an owner.

RECEIVED by MSC 12/9/2024 5:48:02 PM

"hav[e] use of a motor vehicle" for a period of 30 days or more. MCL 500.3101(3)(*l*)(*i*). The relevance stems, if at all, from *Ardt*'s judicial gloss, which asks whether the person's use was "under the direction or with the permission of another." *Ardt*, 233 Mich App at 690-691. But courts applying *Ardt* look to the *nature of the right of use*—i.e., the extent to which the person can exercise dominion over the vehicle—not to the *purpose* of the use. See *Twichel v MIC General Ins Corp*, 469 Mich 524, 530 (2004) ("[T]he focus must be on the nature of the person's right to use the vehicle."). Thus, even accepting *Ardt*'s judicial gloss, the decision here cannot be squared with existing case law.

But relying exclusively on *Ardt* was itself a questionable exercise. As Justice McCormack warned:

> [W]e must tread very carefully when using terminology foreign to the statute in analyzing its scope: our interpretation must always start with and remain governed by 'a close examination of the statute's plain language' and not 'merely attempt[ ] to add still another layer of judicial gloss to those interpretations of the statute previously issued by this Court and the Court of Appeals.' [*Yono v Dep't of Transportation*, 499 Mich 636, 658–659 (2016) (MCCORMACK, J., dissenting) (quoting *Nawrocki v Macomb Co Rd Comm,* 463 Mich 143, 150 (2000)).]

Here, the Court of Appeals majority relied exclusively on "terminology foreign to the statute in analyzing its scope," without any recognition that its conclusion defied the text and purpose of the statute. *Id.*; see also *Skanska USA Bldg Inc v MAP Mech Contractors, Inc*, 505 Mich 368, 381 n 13 (2020) ("declin[ing] to adopt" an interpretation of the term "accident" as requiring some "fortuity" because it "relied more on judicial gloss on that term than on the plain meaning of the word"). That the Court of Appeals has strayed so far from the statutory language to reach a result so at odds with the text shows that lower courts need this Court's guidance after 25 years of applying layer after layer of *Ardt*'s judicial gloss.

RECEIVED by MSC 12/9/2024 5:48:02 PM

C. The Court of Appeals' decision gives license to tens of thousands of motorists to avoid their insurance obligations, at the expense of law-abiding citizens and the stability of the insurance system.

Beyond its jurisprudential significance, the Court of Appeals' decision will have real world, practical effects across the insurance industry. The Court of Appeals has incentivized those in Mr. Abdulla's position to avoid their compulsory coverage obligations simply by titling their semi-truck the name of an LLC. Despite being the only person who drove the vehicle or made decisions about its use, Mr. Abdulla will receive PIP benefits even though he lacked the required coverage on his vehicle. Because the LLC is a corporate fiction and will never operate or occupy the vehicle, § 3113(b) provides zero incentive to obtain the required insurance coverage in this context. The Court of Appeals has thus drawn a roadmap for how to circumvent the requirement to obtain PIP insurance if you operate a small business as a single-member LLC.

Given the commonplace nature of this fact pattern, the Court of Appeals decision will likely go viral, and its effects felt throughout the insurance system. In the trucking business, it is common practice for drivers to title their trucks in the name of an LLC. According to publicly available data from the Federal Motor Carrier Safety Administration, there are roughly 73,000 freight carriers domiciled in Michigan; over 36,000 are single-driver, single-truck operations. (See Ex. A, MCMIS Snapshot Data.)[3] In other words, half of Michigan's commercial freight industry are poised to take advantage of the Court of Appeals' decision.[4]

---

[3] This database is available at https://perma.cc/84KC-3XGG.

[4] In fact, the cases involving this issue have already begun. In *DGI by Irwin v Farm Bureau Gen Ins Co of Michigan*, unpublished per curiam opinion of the Court of Appeals, issued Aug 24, 2023 (Docket No. 360819), the Court of Appeals reached a similar conclusion on the same basic facts.

RECEIVED by MSC 12/9/2024 5:48:02 PM

And that is just the commercial trucking industry. The Court of Appeals holding, however, is not limited to commercial trucks. It applies equally to every other kind of small business organized as a single-member LLC. Countless tradesmen like electricians, plumbers, and contractors who use vehicles titled in the name of their single-member LLC will be able to take advantage of this court-created loophole.

When these uninsured commercial vehicles inevitably become involved in accidents, they will result in some of the costliest claims paid by insurance carriers. This common-sense proposition of physics is backed up by the data. According to a study by National Transportation Safety Board, commercial truck accidents result in more severe injuries, more frequently, than other kinds of motor vehicles. See National Transportation Safety Board, *Crashes Involving Single-Unit Trucks that Resulted in Injuries and Deaths*, Safety Study (2013) p 42, available at https://perma.cc/CN7U-57PD. For example, using emergency room visits as a "useful metric because they are costly and often involve treatment of non-fatal injuries that cause suffering and impair the quality of life" the NTSB's Safety Study found that "[s]ingle-unit trucks were involved in the majority (61 percent) of large truck crashes resulting in emergency department visits," costing an average of "$14.3 million annually for single-unit truck crashes in the participating states." *Id.*

This will have a profound effect on Michigan's no-fault insurance system, touching every insurer that writes no-fault insurance in Michigan. Because of the No-Fault Act's priority framework,[5] every insurer that writes personal auto

[5] In place of fault-based principles, the Legislature implemented a priority framework in the No-Fault Act for identifying which insurer would be responsible for covering benefits in each case. See MCL 500.3114(1), (4). This ensures that costs are distributed in a predictable manner—a benefit to both injured persons and insurers setting premium rates based on expected risk.

Mr. Abdulla shrugs off the burden on insurers further down the chain of priority, stating that it is "not an unusual result" for insurers to pay benefits

RECEIVED by MSC 12/9/2024 5:48:02 PM

policies and participates in the Assigned Claims Plan will be forced to pay out PIP benefits to those who follow the Court of Appeals decision and title their commercial vehicle in the name of an LLC. It is more than just PIP benefits at stake, too. If the personal auto policy holder is at fault and causes serious injury to another person, that person can bring a third-party claim against the driver and their insurer for those damages. This is yet another risk that an insurer does not assume. All these unexpected costs will be to the detriment of Michigan's insurance system and, ultimately, premium-paying residents. The unforeseen costs of paying out these unexpected benefits will, by necessity, be passed on to law-abiding (i.e., premium-paying) drivers in the form of higher rates.

* * *

The No-Fault Act was specifically designed to avoid the result reached by the Court of Appeals here. The Act operates on the assumption that those best positioned to acquire insurance for vehicles they regularly use will do so. The loss of PIP benefits for uninsured drivers is critical to preserve the system's financial integrity. Without it, free riders will routinely rely on other insurers to cover their accident-related expenses, which will shift the financial burden onto the system and compliant policyholders. That undermines one of the No-Fault Act's overriding principles that those who benefit from the system should also contribute to it. Because the Court of Appeals in a published opinion has provided a roadmap for avoiding the Act's coverage obligations, this Court should step in to restore balance to the statutory scheme.

---

without being paid a premium from the recipient. (Appellee's Response, p 1.) But this argument, if taken to its logical endpoint, would excuse all forms of non-compliance with the No-Fault Act's coverage requirements, rendering the disqualification provision of § 3113(b) meaningless. If the system is to remain financially stable, those expected to obtain coverage for their vehicles (like Mr. Abdulla) must be incentivized to do so, even if carriers are still required to provide benefits to other victims with whom they have no contractual relationship.

RECEIVED by MSC 12/9/2024 5:48:02 PM

CONCLUSION AND RELIEF REQUESTED

The Michigan Defense Trial Counsel asks this Court to grant the Auto Club Group's application for leave to appeal.

Respectfully submitted,

/s/ David Porter

David Porter (P76785)
Sean T.H. Dutton (P77515)
KIENBAUM HARDY
VIVIANO PELTON & FORREST, PLC
280 N. Old Woodward, Ste 400
Birmingham, Michigan 48009
dporter@khvpf.com
sdutton@khvpf.com

December 9, 2024

Counsel for Amicus MDTC

RECEIVED by MSC 12/9/2024 5:48:02 PM

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in MCR 7.212(B). See MCR 7.312(A), (H)(3). I certify that this document contains 2,848 countable words. The document is set in Garmond, and the text is in 13-point type with 1.5 line spacing and 8 points of spacing between paragraphs.

Respectfully submitted,

/s/ *David Porter*

David Porter (P76785)
KIENBAUM HARDY VIVIANO
PELTON & FORREST, PLC
280 N. Old Woodward, Ste 400
Birmingham, Michigan 48009
(248) 645-0000
dporter@khvpf.com

Counsel for Amicus MDTC

EXHIBIT A

9/2024 5:48:02 PM

Motor Carrier Management Information System (MCMIS) Snapshot Date: 10/25/2024

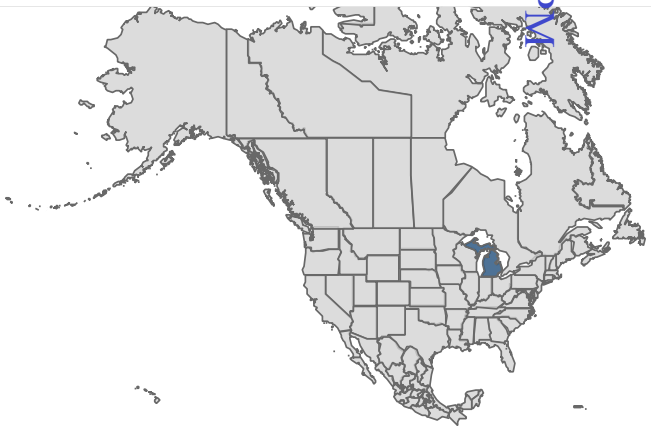
Select View	Select Count by	Domicile Country	Service Center	Domicile State	Carrier Operation	Operation Class	Carrier Type	Fleet Size	Driver Size
Chart	# of Carriers	All	All	Michigan	All	All	Freight	All	All

72,425 # of Carriers

290,860 # of Drivers

280,770 # of Vehicles

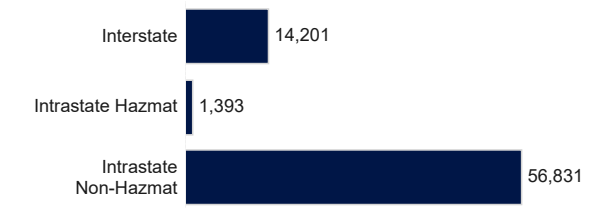
of Carriers by Domicile Country & State



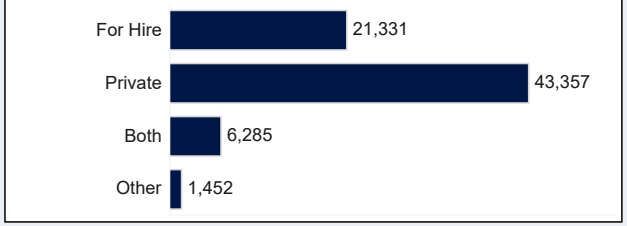
of Carriers by Snapshot Date



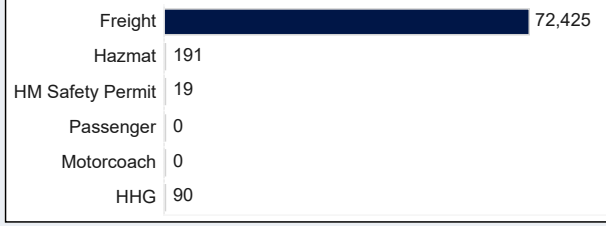
of Carriers by Carrier Operation



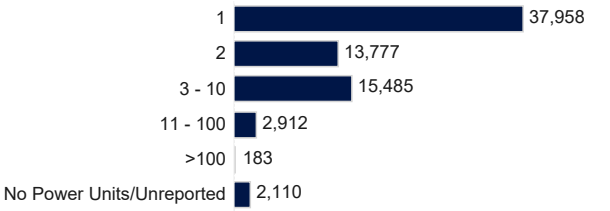
of Carriers by Operation Classification



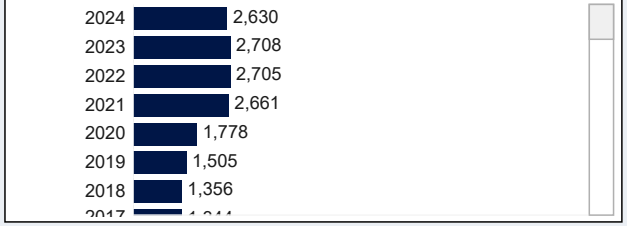
of Carriers by Carrier Type



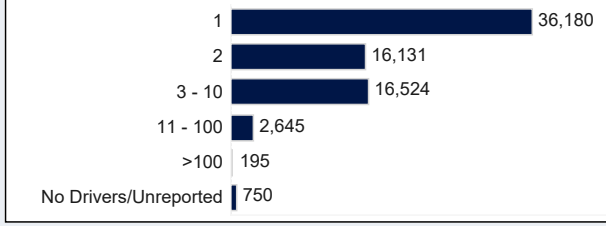
of Carriers by Fleet Size



of Newly Registered Carriers



of Carriers by Driver Size



Displaying # of Carriers that meet the following criteria, as of 10/25/2024
Domicile Country: All | **Service Center:** All | **Domicile State:** Michigan | **Operation Type:** All | **Operation Classification:** All | **Carrier Type:** Freight | **Fleet Size (Power units):** All | **Driver Size:** All

Advanced Filters Applied :