RECEIVED by MSC 12/5/2024 7:55:53 AM

STATE OF MICHIGAN
IN THE SUPREME COURT

MOHAMMED ABDULLA,

Plaintiff-Appellee,

and

PRECISE MRI OF MICHIGAN, LLC,

Intervening Plaintiff-Appellee,

v

PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, and MICHIGAN ASSIGNED CLAIMS PLAN,

Defendants,

and

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellant

and

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendant-Appellee.
_____/

Court of Appeals Nos. 364797, 364866

Wayne County Circuit Court
LC No. 21-006382-NF

Brief of *Amicus Curiae*
Insurance Alliance of Michigan
Farm Bureau General Insurance Company of Michigan

RECEIVED by MSC 12/5/2024 7:55:53 AM

Table of Contents

Index of Authorities……..……8

Statement of Interest……..……..10

Statement of Question Presented……..11

Introduction…….....12

Statement of Facts……...14

Discussion……14

A. THE COURT OF APPEALS ERRED BY INVENTING A NEW DISTINCTION BETWEEN PERSONAL AND BUSINESS USE FOR PURPOSES OF MCL 500.3101 and MCL 500.3113……14

Conclusion……...……19

Certificate of Compliance……...……30

RECEIVED by MSC 12/5/2024 7:55:53 AM

INDEX OF AUTHORITIES

Cases

Abdulla v Progressive Se. Ins. Co., at *9-10; 2024 Mich App LEXIS 5799 (No. 364797) (July 25, 2024) ..... passim
Allstate Ins. Co., v Keilor, 450 Mich 412, 418 ; 537 NW2d 589 702 (1995) 17
Ardt v Titan Ins Co, 233 Mich App 685; 593 NW2d (1999) 16, 23, 24, 25, 28
Auto Club Ins. Asso. v Maryland Casualty Co., 177 Mich App 40, 43; 441 NW2d 16 (1989) 28
Cherry Growers, Inc., v *Michigan Processing Apple Growers*, 240 Mich App 153, 166; 610 NW2d 613 (2000) 16
Chop v Zielinski 244 Mich App 677; 624 NW2d 539 (2001) 16, 23, 25
Coburn v Fox, 425 Mich 300, 309; 389 NW2d 424 (1986) 14
Consolidated Mortg. Corp. v American Sec. Ins. Co., 69 Mich App 251, 256; 244 NW2d 434 (1976) 17, 20
Detroit Med Ctr v Titan Ins Co, 284 Mich App 490, 492; 493-494; 775 NW2d 151 (2009).. 16, 24
Dye v Esurance Prop. & Cas. Ins. Co., 504 Mich 167; 934 NW2d 674 (2019) 25
Frankenmuth Mut. Ins. Co. v Marlette Homes, Inc., 456 Mich 511, 515; 573 NW2d 611 (1998) 16
In re Schnell, 214 Mich App 304, 310; 543 NW3d 11 (1995) 16
Iqbal v Bristol West Ins Group, 278 Mich App 31, 34; 748 NW2d 574 (2008) 16
Kamalnath v Mercy Hosp. v Redox Corp., 182 Mich App 758, 765; 453 NW2d 304 (1999) .. 18
Keillor, 450 Mich at 417 20
Kessel v Rahn, 244 Mich App 353, 357-358; 624 NW2d 220 (2001) 16
Kloian v Domino's Pizza LLC, 273 Mich App 449, 453; 733 NW2d 766 (2006) 18
Mathis v Interstate Motor Freight System, 408 Mich 164; 289 NW2d 708 (1980) 27
Mathis v Interstate Motor Freight System, 408 Mich 164; 289 NW2d 708 (1980) 27
Ottenwess v Hawkeye Security Ins. Co., 84 Mich App 292, 299; 269 NW2d 570 (1978) 27
Ringewold v Bos, 200 Mich App 131; 503 NW2d 716 (1993) 23
State Farm Mut Ins Co v Hawkeye-Security Ins Co, 115 Mich App 675, 680; 321 NW2d 769 (1982) 27, 28
Twichel v MIC Gen. Ins. Corp., 469 Mich 524, 527; 676 NW2d 616 (2004) ..... passim

Statutes

MCL 500.3131 14
MCL 500.3101(1) 14
MCL 500.3101(2)(g)(i) 23, 25
MCL 500.3101(2)(h)(i) 24

MCL 500.3101(3)(I)(i) 15
MCL 500.3102(2)..... 15
MCL 500.3113(b) 22
MCL 500.3114 ..... 26, 27
MCL 500.3114(3) 27
MCL 500.3135 19
MCL 500.3135(1) 19
MCL 500.3137 21
MCL 500.3172 21
MCL 500.3172(1)(a) 21

Rules

MCR 7.312(H)(3) 3

RECEIVED by MSC 12/5/2024 7:55:53 AM

RECEIVED by MSC 12/5/2024 7:55:53 AM

Statement of Interest

Insurance Alliance of Michigan is the principal state government affairs and public information association consisting of insurers, groups, and related organizations operating in Michigan. Its members include property/casualty insurers representing approximately 94% of the Michigan auto insurance market, 90% of the Michigan home insurance market, and 50% of the Michigan commercial insurance market. Its purpose is to serve the industry and consumers by providing educational, media, legislative, and public information on significant issues affecting the insurance business in this state.[1]

Farm Bureau General Insurance Company is a Michigan Insurance Company doing business in the State of Michigan. Said business includes issuance of automobile insurance policies. Farm Bureau's business, as well as the businesses of all other automobile insurers in the State of Michigan, have been, and will continue to be materially affected by the *Abdulla* decision in that Farm Bureau has been forced to cover losses that it never contractually agreed to insure. Auto insurers in Michigan, such as Farm Bureau, are now exposed to risks that they never even knew existed, let alone did not contractually agree to insure, nor does the no-fault statute allow for coverage of owners of uninsured vehicles. Parties to insurance agreements are entitled to mutual disclosure, clarity and a meeting of the minds as to what insurers are contractually agreeing to insure.

[1] None of the parties or their counsel contributed monetarily or to the authorship of this brief. The Insurance Alliance of Michigan and Farm Bureau made the only monetary contribution to preparing this brief.

RECEIVED by MSC 12/5/2024 7:55:53 AM

Statement of Questions Presented

Michigan's automobile no-fault statute, MCL 500.3113, precludes owners of automobiles from recovering personal injury protection benefits in instances where the claimant owns the vehicle, but has failed to obtain the coverage required under MCL 500.3101. Abdulla attempted to skirt this requirement by titling his automobile in the name of his solely owned LLC, used the automobile for "business" use only, and failed to obtain the coverage required under MCL 500.3101. Does the Court of Appeals decision allow owners of motor vehicles to avoid obtaining coverage required under MCL 500.3101?

The trial court answers, "no."

The Court of Appeals answers, "no."

Plaintiff-appellee answers, "no."

Defendant-appellant answers, "yes."

Amicus Curiae The Insurance Alliance of Michigan answers, "yes."

Amicus Curiae Farm Bureau General Insurance Company of Michigan answers, "yes."

RECEIVED by MSC 12/5/2024 7:55:53 AM

Introduction

A fundamental feature of Michigan's no-fault act is that it is compulsory. Michigan residents must purchase no-fault insurance for their vehicles. If they do not, they cannot get no-fault benefits when they are injured in their uninsured vehicle (among other consequences). Beyond the fact that owners of uninsured vehicles are not entitled to no-fault benefits, is the basic premise that uninsured vehicles should not even be on Michigan's roads, period. No-fault insurance is required to title and register a vehicle in our State, and it is illegal to drive in Michigan without insurance. The Court of Appeals' opinion in this case creates a dangerous loophole to the exclusion that prevents owners of uninsured vehicles from obtaining no-fault benefits. The opinion also sanctions allowing uninsured vehicles to operate on Michigan's roads. The opinion has far-reaching implications that merit this Court's review.

Many Michigan residents own and operate their own company. According to the Court of Appeals' opinion, those residents can purchase vehicles, title them in their company's name, never buy no-fault insurance for those vehicles, and they will still receive no-fault benefits when they are in an accident in the uninsured vehicle. That loophole is a problem for several reasons.

Motorists should not get coverage that they not only did not pay for, but chose to not pay for. That is obvious. Less obvious, though, is the risk that the loophole foists upon third parties. If, for example, someone titles a car in the name of their company but has no personal vehicles to insure (or just doesn't insure them), the Court of Appeals opinion would still allow that person to receive no-fault benefits when injured in the company

RECEIVED by MSC 12/5/2024 7:55:53 AM

car through Michigan's assigned-claims system—the risk they chose not to insure is spread to all the law-abiding citizens who did insure their vehicles. According to the Court of Appeals, the risk associated with Abdulla's decision to not secure no-fault coverage for his semi was foisted upon Auto Club, the insurer responsible for insuring Abdulla's father's personal automobile. Without question, Auto Club never agreed to insure the risk presented by Abdulla's use of his semi-truck. The result is squarely at odds with the no-fault act provisions putting the onus on residents to insure their vehicles and instead, foists liability onto an insurer that never agreed to insure this risk.

What's more, imagine a scenario wherein the person who chose not to insure the company vehicle was at fault for causing the accident. If sued by an innocent third-party involved in the accident for bodily injury claims, there would be no insurance coverage for the third-party claim. The owner of an uninsured company vehicle would have no insurance available to defend against a third-party claim, leaving the innocent third-parties out in the cold.

Replace the truck owner-operator scenario present in *Abdulla* with any other solo business owner who has a work vehicle—contractor, makeup salesperson, landscape company, *etc*… All of them no longer need to pay for no-fault coverage on their commercial vehicles, per the Court of Appeals opinion in this case. Though they all have the ability to use their work vehicles any way they choose, they are exempt from the requirement to secure no-fault coverage, says the court, as long as they do not actually use it for personal matters. And though *Abdulla* only involved one company vehicle, this scenario could certainly present itself if a person decides to not insure a fleet of company

RECEIVED by MSC 12/5/2024 7:55:53 AM

vehicles. The result would be the same, according to the Court of Appeals. PIP coverage would be foisted upon an insurer who never agreed to insure the claim, or, on the Michigan Assigned Claims Plan.

It is a dangerous loophole that has no basis in the language of the no-fault act. It is also contrary to this Court's precedent that actual use does not matter; only the right to use the vehicle matters. Solo business owners, like Abdulla, have the right to use their company vehicles any way they want. And yes, they are owners of their company vehicles, too. The court's decision allows owners, such as Abdulla, to hide behind a corporate structure, while ignoring that there is a person behind that corporate structure who is responsible for ensuring that the corporation complies with all applicable laws. The holding is also contrary to a prior Supreme Court holding which requires at least one owner insure every vehicle.

Indeed, Abdulla is the only person, the only human, who could have, and should have complied with the no-fault statute by ensuring each and every vehicle he owned was properly insured. Yet he chose not to do so and still obtained PIP coverage. The Court of Appeals' decision invites people to not insure cars they own and incentivizes said non-compliance with the no-fault act by providing coverage anyway.

Lastly, the decision erodes the doctrine of mutuality of assent, or "meeting of the minds" between contracting parties. It erodes the clear, mandatory requirements of MCL 500.3101. It erodes the protections afforded to innocent third-parties who get into accidents with company owned, uninsured vehicles. Because the Court of Appeals'

RECEIVED by MSC 12/5/2024 7:55:53 AM

decision allows Michigan residents to avoid the compulsory provisions of Michigan's no-fault law, this Court should reverse the Court of Appeals, or grant leave to appeal.

Statement of Facts

IAM and Farm Bureau accept the facts stated in the Court of Appeals' opinion, which the parties do not appear to dispute in any material fashion.

Discussion

A. THE COURT OF APPEALS ERRED BY INVENTING A NEW DISTINCTION BETWEEN PERSONAL AND BUSINESS USE FOR PURPOSES OF MCL 500.3101 and MCL 500.3113

Michigan's no-fault act is compulsory, and requires both personal injury protection (PIP) and residual liability insurance. See MCL 500.3101; MCL 500.3131; see also *Coburn v Fox*, 425 Mich 300, 309; 389 NW2d 424 (1986) ("[i]nsurance coverage to protect oneself from the costs of injury through PIP benefits and to protect injured third parties through residual liability insurance is compulsory"). What is more, is that it is illegal to drive without insurance on Michigan's road. See MCL 500.3102(2). Yet in this case, Abdulla was, in fact, operating his tractor without the requisite insurance in place. The Court of Appeals decision allows this, with no civil or criminal penalties.

MCL 500.3101(1) provides, in pertinent part, that "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." The term "owner" is broadly defined as "a person renting a motor vehicle or having the use of a motor vehicle,

RECEIVED by MSC 12/5/2024 7:55:53 AM

under a lease or otherwise, for a period that is greater than 30 days." MCL 500.3101(3)(I)(i).

MCL 500.3113 identifies those persons who are not entitled to personal protection benefits. It states: "[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) [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." Simply, those owners who do not obtain the requisite no-fault coverage for their vehicles are precluded from obtaining no-fault benefits.

i. The relevant statute, MCL 500.3101(3)(I)(i), does not identify a distinction between personal and business use.

In the case at hand, the Court of Appeals rejected Auto Club's argument that Abdulla was the owner of an uninsured vehicle on the basis that 1) Abdulla's LLC, Tornado Trucking, held legal title to the tractor as reflected on the Michigan Motor Vehicle Registration and, 2) there was no evidence Abdulla used the tractor for any other purpose other than in furtherance of Tornado Trucking's business. *Abdulla v Progressive Se. Ins. Co.*, at *9-10; 2024 Mich App LEXIS 5799 (No. 364797) (July 25, 2024).

As indicated above, "owner" of a vehicle is defined, in part, as a "**person** renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days." MCL 500.3101(3)(I)(i) (emphasis added). There is nothing in the statute that identifies the type of use—be it individual or business. The Court of Appeals erred in adding additional language into the statute where none exists. Nothing in the

RECEIVED by MSC 12/5/2024 7:55:53 AM

statute qualifies an owner or "person" as one having "individual" or "personal" use of a vehicle, nor does it provide any other qualifying or limiting language on the phrase "having the use thereof." Rather, it's much simpler than that. Abdulla, a person, had the use of the tractor for a period that was greater than 30 days. Period. He is the only person, or the only human, who could have and should have been responsible for procuring no-fault coverage on the tractor. Yet he did not. The Court of Appeals cannot add additional language into the statute.

"The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent." *Frankenmuth Mut. Ins. Co. v Marlette Homes, Inc.*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc.*, v *Michigan Processing Apple Growers*, 240 Mich App 153, 166; 610 NW2d 613 (2000). "We may not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute." *In re Schnell*, 214 Mich App 304, 310; 543 NW3d 11 (1995).

Had the Legislature wanted to differentiate "individual" use and "business" use, it would have done so. It did not. The statute simply says a "person" "having the use thereof." Judicial construction that adds an element of "individual" versus "business" use to the statute is neither necessary nor permitted. While there is a plethora of cases that analyze the term "owner" as used in MCL 500.3101, none of those cases make a distinction between using a vehicle for "individual" versus "business" use. See, e.g., *Chop v Zielinski* 244 Mich App 677; 624 NW2d 539 (2001); *Detroit Med Ctr v Titan Ins Co*, 284 Mich App 490, 493-494; 775 NW2d 151 (2009); *Ardt v Titan Ins. Co.*, 233 Mich App 685; 593

RECEIVED by MSC 12/5/2024 7:55:53 AM

NW2d 215 (1999); *Kessel v Rahn*, 244 Mich App 353, 357-358; 624 NW2d 220 (2001); *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 34; 748 NW2d 574 (2008).

By requiring "individual" use of the vehicle, the Court of Appeals has allowed Abdulla to shield himself from the ramifications of failing to obtain the requisite no-fault insurance by simply titling his tractor in the name of his LLC. Furthermore, the Court of Appeals erred in its discussion of "piercing the corporate veil." Analysis of the corporate veil is neither warranted nor appropriate since the delineation between individual versus business use is not allowed for. The issue of whether or not to "pierce the corporate veil" is not reached when an individual versus business distinction is not provided for by the statute.

As aptly noted in the dissent, "[i]t defeats the purpose of the no-fault act to conclude that Abdulla has no ownership over the tractor…[i]t 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" *Abdulla, supra*, at *15. To be sure, there is a *person* behind every corporation. That person is responsible for forming the corporation, and for ensuring the corporation complies with all applicable laws. It is insufficient to allow a person to escape liability by shifting the focus from the person's actions/inactions to the corporation. There have been many decisions which recognize that there can be multiple owners of a motor vehicle. See, e.g., *Ardt v Titan Ins. Co.*, 233 Mich App 685, 691; 593 NW2d 215 (1999); *Chop v Zielinski*, 244 Mich App 677, 681; 624 NW2d 539 (2001); *Miclea* v *Cherokee Ins. Co.*, 333 Mich App 661; 963 NW2d 665 (2020). And while there can be multiple owners, this Court has made it clear that at least one owner must obtain no-fault

RECEIVED by MSC 12/5/2024 7:55:53 AM

insurance. *Dye v Esurance Prop & Cas Ins Co*, 504 Mich 167; 934 NW2d 674 (2019). This did not occur here as no owner obtained the requisite coverage, and yet, Abdulla still managed to obtain coverage. The *Abdulla* decision is contrary to this Court's holding in *Dye*, wherein this Court made clear that at least one owner must insure the vehicle.

According to the *Abdulla* Court of Appeals, owners may choose to not insure each and every vehicle they own and insurers will be held liable to cover risks they did not agree to assume. Insurers are now being asked to cover losses for risks they never agreed to insure. (*See e.g., Allstate Ins. Co., v Keillor*, 450 Mich 412, 417; 537 NW2d 589 (1995) ("it is impossible to hold an insurance company liable for a risk it did not assume"); *Consolidated Mortg. Corp. v American Sec. Ins. Co.,* 69 Mich App 251, 256; 244 NW2d 434 (1976) ("It is elementary that an insurer cannot be held liable on a risk which it did not elect or choose to assume…[t]he theory is that the insurer has the right to assess the risks attendant upon the proposed insured and adjust its rate accordingly" (internal citations omitted)). The Court of Appeals fully acknowledged that Abdulla was not listed on his father's no-fault policy with Auto Club, nor did the policy list the tractor. *Abdulla, supra,* at *5.

The Court of Appeals was fully aware then, that in no way shape or form did Auto Club agree to insure Abdulla's tractor. And yet, despite this undisputed point, Auto Club was still left liable for a risk it never contractually agreed to assume. In fact, Abdulla's company vehicle would constitute a risk an insurer thought it was avoiding as an "owned vehicle" that was not included in coverage under the policy applied for by an insured. When applying for insurance, someone such as Abdulla would simply deny ownership

RECEIVED by MSC 12/5/2024 7:55:53 AM

of the tractor (after all, that's exactly what he did during this litigation), but then demand coverage for said non-owned tractor when involved in an accident. Even though "owned" vehicles are asked about in the underwriting process, it is simple enough for ownership to be denied, yet coverage is still foisted upon the insurer who specifically asked about other owned vehicles. Simply, under *Abdulla*, there is no way for an insurer to avoid liability for risks it never agreed to insure, simply because a person chooses to not insure each and every vehicle they own.

In justifying this erosion of contract law requiring mutual assent, or a "meeting of the minds," the Court relied on their new distinction of "individual" versus "business" purpose concerning Abdulla's use of the tractor. *Abdulla, supra,* at *9. Of course, mutuality of assent, or a "meeting of the minds" is a cornerstone of contract formation. See, *Kamalnath v Mercy Hosp. v Redox Corp.,* 182 Mich App 758, 765; 453 NW2d 304 (1999); see also, *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 453; 733 NW2d 766 (2006) (a contract requires mutual assent or a meeting of the minds on all essential terms). Here, Auto Club had no knowledge of Abdulla when it issued an automobile policy of insurance to Abdulla's father, let alone knowledge of Abdulla's tractor. And yet when leaving this *automobile* out of the *automobile policy*, (i.e., an essential term), the Court of Appeals still bound Auto Club to provide coverage. Further, while the Court recognized Tornado Trucking's legal title to the tractor, the opinion completely ignores Abdulla's constructive ownership. The Court of Appeals decisions allow owners of vehicle to escape the mandatory requirements of the no-fault act by insuring some, but not all, vehicles. The decision also holds insurers liable for risks they did not agree to insure.

RECEIVED by MSC 12/5/2024 7:55:53 AM

ii. Far reaching ramifications of *Abdulla*

The ramifications of the Court of Appeals decision do not stop with *Abdulla*. The injustice will apply to every insurer in the State of Michigan who writes no-fault insurance. All insurers will be forced to cover motor vehicle accidents of those who accept the Court of Appeals' invitation to allow owners to not cover each and every vehicle they own with the appropriate no-fault insurance. Indeed, in the case of semi truck drivers, it is already common practice to title their trucks in the name of an LLC. Of course, these professional truck drivers are going to accept the Court of Appeals' invitation and drop any no-fault policy covering their semis—they were not planning on driving the semis to the movies or McDonalds anyway[2].

However, the far-reaching implications that result from the Court of Appeals decision does not stop there. Consider the outcome had Abdulla been at fault in causing the instant accident. MCL 500.3135(1) states that "[a] person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment or body function, or permanent serious disfigurement." If Abdulla had been at fault, and the accident caused the requisite threshold injury to innocent third-party drivers/passengers

[2] According to https://www.statista.com/statistics/191023/registered-private-and-commercial-trucks-in-the-us-by-state/#:~:text=In%202021%2C%20nearly%20166.1%20million,and%2014.6%20million%20trucks%20respectively., there were 6,315,019 private and commercial semi-truck registrations in Michigan in 2021. As of April 12, 2023, Michigan semi -trucks were involved in 1,567 life-threatening crashes. https://www.ccjdigital.com/workforce/safety/article/15382868/nhtsa-data-says-michigan-the-safest-state-for-truck-drivers

RECEIVED by MSC 12/5/2024 7:55:53 AM

of other vehicles, there would be no coverage for the bodily injury claims because Abdulla chose not to insure his company vehicle.

There will be other owners of semi-trucks who now follow Abdulla's footsteps, at the direction of the Court of Appeals. In fact, there already has been. Semis will be titled in the names of LLC, which is already currently the common practice. The semis, of course, will be for "business use" only, as Abdulla claims here. The semis will not have the requisite no-fault insurance, as they are no longer required to under the Court of Appeals decision. Innocent third-parties would have no recourse in bodily injury suits because company vehicles are uninsured. Of course, this argument does not apply to just semi-trucks, but any situation where a Michigan resident is a solo business owner, where work vehicles are purchased. How will insurers pay for covering risks that the insurers never agreed to assume, and never collected premiums for? By increasing premiums on all those who comply with Michigan's no-fault statute by insuring every vehicle they own. In other words, those who comply with the no-fault statute are penalized in this fashion, while those who chose to not insure every vehicle they own, are rewarded with full coverage that they never paid for. Who gets left out in the cold? Innocent third-parties with bodily injury claims who are unable to collect because people like Abdulla chose to not insure each and every vehicle they own.

There is one more twist that must be considered as a far-reaching implication of this decision. Consider the outcome had there been no resident relative coverage from Auto Club and there was no insurer of any personal vehicles. In a situation where the semi, or "business use" vehicle was the only vehicle owned by the claimant, the owner

RECEIVED by MSC 12/5/2024 7:55:53 AM

of the insured vehicle would be entitled to submit claims for no-fault benefits to the Michigan Assigned Claims Plan. A person may seek PIP benefits through the Michigan Assigned Claims Plan if, among other requirements, "[n]o personal protection insurance is applicable to the injury." MCL 500.3172(1)(a). The risk is then spread not just to insurers who never contractually agreed to cover the vehicle, but to all those in the State of Michigan who do insure their vehicles and pay through their auto premiums to fund the Michigan Assigned Claims Plan.

Generally speaking, owners of uninsured vehicles would be precluded from PIP coverage if the owner was operating their uninsured vehicle at the time of the accident. See MCL 500.3137. However, now that the Court of Appeals has carved out an "individual" versus "business" use exception for purposes of constructive owners, all truck owner-operators who don't have no-fault insurance for their personal vehicles would qualify for PIP benefits through the Michigan Assigned Claims Plain since they do not own their "business" vehicles in their "individual" capacity. In saving Abdulla from the fate typically destined for those who choose not to insure their motor vehicles, the Court of Appeals has set a new standard with disastrous implications.

iii. The Court of Appeals opinion conflicts with this Court's decision in *Twichel v MIC Gen. Ins. Corp*

Though the Court of Appeals' opinion correctly noted that in determining whether a person is an owner, the proper focus is on the nature of the person's right to use the vehicle, *Twichel v MIC Gen. Ins. Corp*., 469 Mich 524, 527; 676 NW2d 616 (2004), it did not actually follow the law as set forth in *Twichel*. In *Twichel*, this Court analyzed whether

RECEIVED by MSC 12/5/2024 7:55:53 AM

the claimant was an "owner" as defined by MCL 500.3101 as follows: "(i) A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days…" The issue in *Twichel* was "whether the deceased was the 'owner' of the vehicle under either MCL 500.3113(b) or the language of the policy." *Id*. at 526. At the time of a fatal accident on November 17, 1998, decedent Brady S. Sies was driving a 1988 GMC pickup truck. Five days earlier, he had purchased the truck from a friend, Matthew Roach. The sales price was $600 and Sies gave Roach $300 and was to pay the remainder at a later date. *Id*. at 526. Sies took possession of the vehicle, but the title was not signed over because of the incomplete payment. There was no insurance policy listing the vehicle.

In *Twichel*, this Court examined MCL 500.3113(b), which precludes owners of uninsured vehicles from receiving personal protection insurance benefits:

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

Id. at 527.

The key question in *Twichel* was whether Sies was the "owner" of the truck. *Id*. In reversing the Court of Appeals, the *Twichel* court noted that the Court of Appeals erroneously read *Ardt v Titan Ins. Co*., 233 Mich App 685; 593 NW2d 215 (1999), and *Chop v Zielinski*, 244 Mich App 677; 624 NW2d 539 (2001) as indicating under the definition of

RECEIVED by MSC 12/5/2024 7:55:53 AM

"owner"[3] in the no-fault act, the person must *actually* have had use of the vehicle for thirty days or more. The *Twichel* court agreed with the reasoning in the case of *Ringewold v Bos*, 200 Mich App 131; 503 NW2d 716 (1993), and ultimately held that "it is not necessary that a person *actually* have used the vehicle for a thirty-day period before a finding may be made that the person is the owner. **Rather, the focus must be on the nature of the person's right to use the vehicle**" *Twichel*, 469 Mich at 530 (italics in original; bold added).

Twichel went on to state, "[n]othing in the plain language of MCL 500.3101(2)(g)(i) 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. The statute merely contemplates a situation in which the person is renting or using a vehicle for a period that is greater than thirty days." *Id*. at 530-531.

The ultimate holding of *Twichel* that is important: actual use is irrelevant and instead, the focus must be on the nature of the person's right to use the vehicle. It is nonsensical to argue that the owners of sole corporations cannot use their "business" vehicles for whatever purposes they deem fit. Of course, if Abdulla wanted to take the semi to the grocery store he could have. There was no one else who could have granted or precluded this from happening. Regardless, the Court of Appeals' requirement of proof of use "for any purpose other than in furtherance of the business" is misplaced. *Adbulla, supra*, at *9. The proper focus is not actual use; it is the right to use. Abdulla absolutely had the right to use his tractor however he deemed appropriate. There are no

[3] At the time, the definition, which hasn't changed, was in MCL 500.3101(2)(g)(i).

RECEIVED by MSC 12/5/2024 7:55:53 AM

cases that draw a distinction between "individual" use and professional use, when determining constructive ownership under MCL 500.3101. Rather, this is a completely new element borne by the Court of Appeals. Under *Twitchel*, the touchstone is the right to use the vehicle.

There is extensive case law that provides guidance on the definition of "owner." None of it delineates between professional and personal use. Having the use of a motor vehicle for purposes of defining "owner," MCL 500.3101(2)(h)(i), means using the vehicle in ways that comport with concepts of ownership. *Detroit Med Ctr v Titan Ins Co*, 284 Mich App 490, 492; 775 NW2d 151 (2009), citing *Ardt v Titan Ins Co*, 233 Mich App 685; 593 NW2d (1999). The provision does not equate ownership with any and all uses for 30 days, but rather equates ownership with having the use of a vehicle for that period. *Id*.

The holdings in *Twichel* and *Ardt* distinguish this case from situations wherein an employee has use of an employer-furnished vehicle. Employees who drive employer-furnished vehicles (example, a Fed Ex driver with an assigned truck), do not enjoy exclusive use and control. They do not have the right to use the vehicle that would make them an owner under *Twitchel*. Even if their employer allowed personal use, it would be "incidental usage under the direction or **with the permission of another**" that precludes them from being an owner under *Ardt v Titan Ins. Co.,* 233 Mich App 685; 233 Mich App 685 (1999). In those situations, the employer dictates permission for the employee's use and the employer maintains control of the vehicle. Abdulla and those like him are materially different—they have the right to use the vehicle any way they want without anyone else's permission.

RECEIVED by MSC 12/5/2024 7:55:53 AM

A regular pattern of unsupervised usage supports ownership rather than spotty or exceptional use that requires permission. *Chop v Zielinski* 244 Mich App 677; 624 NW2d 539 (2001), citing *Ardt*, 233 Mich App 685 at 691. One of the Legislative purposes of the no-fault laws, and MCL 500.3101(2)(g)(i) in particular, is "to correct the injustice of allowing drivers who do not contribute to the no-fault system to recover damages from persons that do contribute to the system, and to provide an incentive for uninsured motorists to comply with the requirement that they maintain no-fault automobile insurance" *Chop* 244 Mich App at 682. See also *Ardt*, 233 Mich App 685 ("the statutory provisions at issue operate to prevent users of motor vehicles from obtaining the benefits of personal protection insurance without carrying their own insurance through the expedient of keeping title to their vehicles in the names of family members"). As noted by the dissent, "the statutory provisions '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'" *Abdulla, supra*, at *16, citing *Ardt* at 233 Mich App 685, 691.

The Court of Appeals' opinion absolutely provides incentive for persons who do not contribute to the system by rewarding them with no-fault coverage despite the failure to purchase insurance. Instead, the Court of Appeals departed from the clear holdings in *Twichel* and *Ardt*, by incentivizing owners to not insure each and every vehicle they own – be it ownership for individual or business use. Again, the persons behind each business are required to ensure their businesses comply with the law. Even though Abdulla chose not to contribute to the no-fault system, the Court of Appeals has provided incentive for

RECEIVED by MSC 12/5/2024 7:55:53 AM

him, and the tens of thousands of other semi-truck drivers in the State of Michigan, to go uninsured "through expedient title to their vehicles in the names" of their LLC's. By simply titling the semi in an LLC, and claiming for "for business only," an uninsured motorist can avoid contributing to the system and yet still enjoy the benefits of coverage. To be sure, should this decision stand, the number of uninsured vehicles in Michigan will absolutely increase. Michigan's no-fault system will shoulder untold risks related to the commercial operation of vehicles with no monetary contribution from the owners. This is not speculation, rather it is certainty. The ease with which business owners can title a vehicle, then purport use for business only, provides a very easy and simple loophole around obtaining expensive no-fault insurance.

The Court of Appeals' decision also undermines the Legislature's intent that every motor vehicle carry the requisite no-fault insurance in other ways. Pursuant to MCL 500.3114, the priority statute, employees who suffer accidental bodily injury while an occupant of an employer-furnished vehicle shall receive PIP benefits from the insurer of the furnished vehicle. The employer's insurance would be first in line in terms of priority, according to MCL 500.3114(3). Priority is on the insurer of the employer-furnished vehicle regardless of how the car is being used. The priority statute would then be directly at odds with the Court of Appeals' holding in this case, which essentially incentivizes the employer to not obtain no-fault insurance and instead, foist the risk onto either an employee's personal insurer, such is the case here, or onto the Michigan Assigned Claims Plan, in the event there is no personal insurance.

RECEIVED by MSC 12/5/2024 7:55:53 AM

Additionally, in analyzing the priority section of the no-fault statute, MCL 500.3114, courts have previously declined to require use of the vehicle in a professional capacity. Specifically, the Court of Appeals has declined to hold that use of a motor vehicle during the course of employment to be a requirement under a §3114 analysis, stating "[s]uch a potentially costly and dilatory procedure would be contrary to a principal purpose of the no-fault act, which is to facilitate the swift resolution of claims." *State Farm Mut Ins Co v Hawkeye-Security Ins Co*, 115 Mich App 675, 680; 321 NW2d 769 (1982). The *State Farm* court went on to note, "had the Legislature desired to limit the operation of § 3114(3) to injuries occurring in the course of employment, it would have been a simple matter to insert a sentence or phrase so providing." *Id.* at 680. The *State Farm* court cited with approval to *Ottenwess v Hawkeye Security Ins Co*, 84 Mich App 292, 299; 269 NW2d 570 (1978), rev'd sub nom *Mathis v Interstate Motor Freight System*, 408 Mich 164; 289 NW2d 708 (1980):

> We are sure that thousands of employees have access to company vehicles for personal use. That the Legislature anticipated injuries arising in such situation is apparent from its inclusion of the employee's spouse, and relatives domiciles within the household, within the subsection, for how many employees have their spouses and relatives riding with them in company vehicles in the course of their employment?
>
> *State Farm, supra*, at 681.

The *State Farm* court held that it was irrelevant as to whether or not the vehicle was being used for a business purpose versus personal purpose and that to hold otherwise would be contrary to the plain language of the statute and contrary to the principal purpose of the no-fault statute, which is to facilitate swift resolution of claims.

RECEIVED by MSC 12/5/2024 7:55:53 AM

See also *Auto Club Ins Assoc v Maryland Casualty Co*, 177 Mich App 40, 43; 441 NW2d 16 (1989) (declining to consider the fact that the accident occurred on a social outing rather than a business outing, stating that such a determination is "beside the point" in the determination of the applicability of the employer-owned vehicle exemption).

Here, Court of Appeals' distinction between use of the semi for business versus personal use presents the exact same issues that the *State Farm* court warned against—it is contrary to the plain language of §3101 and contrary to the principal purpose of the no-fault statute. Rather than examining these factors as discussed by the respective cases, the Court of Appeals added an additional requirement to each factor, *i.e,* personal usage. *Twitchel* put the focus on the *right* to use a vehicle. 469 Mich at 532. *Ardt* instructs that "owner" means "using the vehicle in ways that comport with concepts of ownership." Ardt, 233 Mich App 685, 690. To allow *Abdulla* to stand erodes mutuality of assent between contracting parties, erodes the clear requirements of MCL 500.3101, and places far too much risk and liability on insurers who never agreed to assume this risk. It spreads the costs in doing so to those persons who comply with the mandatory statutory requirements. Amicus Curiae The Insurance Alliance of Michigan and Farm Bureau General Insurance Company of Michigan requests this Court either reverse the Court or Appeals or grant leave to appeal.

CONCLUSION

The issue in this case is the Court of Appeals invitation to allow people to not insure each and every vehicle they own – whether the vehicles are used for individual versus business purposes is irrelevant under the statutory scheme. Under *Abdulla*,

RECEIVED by MSC 12/5/2024 7:55:53 AM

insurers are forced to insure risks they never agreed to. The risk is then spread to all those who decide to follow the law and insure their vehicles. But the ramifications do not stop there. In situations where a person decides to not insure a vehicle titled in the name of a corporation and used for "business" purposes only, there is no insurance coverage available to innocent 3rd parties on a bodily injury claim. This Court's prior holding that at least one owner of every motor vehicle must obtain no-fault coverage now has no meaning. The new proposition under Abdulla is that no owner has to obtain the requisite insurance, and yet coverage is still provided. The significant problems presented by Abdulla are far reaching.

This Court should either reverse the Court of Appeals or grant leave to appeal.

Respectfully submitted,

KOPKA PINKUS DOLIN

By: */s/Rana D. Lange*
MARK L. DOLIN (P45081)
RANA D. LANGE (P67627)
Appellate Counsel for Amicus Curie Insurance Alliance of Michigan and *Farm Bureau General Insurance Company of Michigan*
32605 W. Twelve Mile Road, Suite 300
Farmington Hills, MI 48334
(248) 324-2620 (248) 324-2610 [FAX]
mldolin@kopkalaw.com
rdlange@kopkalaw.com

Dated: December 5, 2024

RECEIVED by MSC 12/5/2024 7:55:53 AM

Certificate of Compliance

I certify that the Brief of Amicus Curiae The Insurance Alliance of Michigan complies with the type volume limited set forth in MCR 7.212(B). I am relying on the work court of the work-processing system to used to produce this brief. This brief uses a 12-point proportional font (Book Antiqua), and the word court for this brief is 7,378.

Respectfully submitted,

KOPKA PINKUS DOLIN

By: */s/Rana D. Lange*_____

MARK L. DOLIN (P45081)
RANA D. LANGE (P67627)
Appellate Counsel for Amicus Curie Insurance Alliance of Michigan and *Farm Bureau General Insurance Company of Michigan*
32605 W. Twelve Mile Road, Suite 300
Farmington Hills, MI 48334
(248) 324-2620 (248) 324-2610 [FAX]
mldolin@kopkalaw.com
rdlange@kopkalaw.com

Dated: December 5, 2024