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**STATE OF MICHIGAN**

**IN THE SUPREME COURT**

MOHAMMED ABDULLA,

Plaintiff-Appellee,

PRECISE MRI OF MICHIGAN, LLC,

Intervening Plaintiff-Appellee,

v

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellant,

and

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

Defendants.

MSC No. 167532

COA No. 364797

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

_____/ *CONSOLIDATED WITH*

MOHAMMED ABDULLA,

Plaintiff-Appellee,

PRECISE MRI OF MICHIGAN, LLC,

Intervening Plaintiff-Appellee,

v

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellant,

and

COA No. 364866

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

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

Defendants.

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**DEFENDANT-APPELLANT AUTO CLUB GROUP INSURANCE COMPANY'S REPLY BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL**

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## INTRODUCTION

Abdulla's answer argues Tornado Trucking and Land Trucking owned the truck without addressing the fact that he also qualified as an owner. The record evidence confirms Abdulla's statutory ownership since he was the only one to drive the truck and deliver the loads for more than 30 days. The lower court—and Abdulla—miss the point that Abdulla is the principal controlling the limited liability trucking company and also the company's agent driving the truck. So Abdulla is properly barred from personal protection insurance benefits because he failed to ensure that the truck had no-fault insurance coverage for those benefits. Abdulla cannot rely on a business vs. personal use distinction because no such language appears in MCL 500.3101. And he cannot rely on the Great American bobtail policy because a bobtail policy, in and of itself, does not provide full coverage. If anything, Abdulla's having obtained a bobtail policy (through his wholly owned and controlled trucking company) shows his understanding of the complexities of insurance for trucking—and confirms why a reversal is needed here.

Abdulla's arguments and the panel majority's holding hinge on the contention that Tornado Trucking is a separate and distinct legal entity from Abdulla. But here, a limited liability company is wholly owned and controlled by the same person who always controls the truck's use and is the only driver. Thus, under the statutory language, that driver (always acting as both agent and principal for use of the truck) must comply with the statutory requirement under the No-Fault Act and maintain proper insurance coverage on the vehicle he drives on the road.

The Legislature wisely included language intended to get at just this sort of effort to evade the requirement to purchase and pay for personal protection insurance benefits. If

the decision of the Court of Appeals is not corrected, it will serve as a blueprint for any business owner operating a single-member LLC on how to avoid purchasing and paying for no-fault insurance—an outcome the Legislature specifically sought to avoid by instituting the compulsory coverage system. If a giant hole is going to be torn into the fabric of Michigan No-Fault, this Court ought to be the one to decide that. Thus, review is in order here.

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## ARGUMENT

### A. ABDULLA'S ARGUMENTS THAT TORNADO TRUCKING AND LAND TRUCKING OWNED THE TRUCK DO NOTHING TO REFUTE AUTO CLUB'S ARGUMENT THAT ABDULLA ALSO QUALIFIED AS AN OWNER UNDER THE TERMS OF THE STATUTE

Abdulla argues that he did not own the truck because Tornado Trucking and Land Trucking owned it instead. (Plaintiff's Answer, pp 7-8). But this argument misunderstands Michigan law regarding ownership. "This Court has specifically identified *multiple* owners of a motor vehicle for purposes of M.C.L. § 500.3101(2)(g) [now MCL 500.3101(3)(l)]." *Ardt v Titan Ins Co*, 233 Mich App 685, 691; 593 NW2d 215, 218 (1999) (emphasis added). Even if Tornado Trucking and Land Trucking qualify as owners, Abdulla can also be an owner.

Auto Club's application explains how Abdulla qualifies as an owner of the truck under MCL 500.3101. (Auto Club's Application, pp 19-27). Abdulla's attempt to shift the focus to Tornado Trucking and Land Trucking does nothing to improve his position. "[W]here an uninsured motor vehicle involved in an accident has more than one owner, *all the owners come under the statutory exclusion for personal protection insurance benefits*." *Bundles v Markel Ins Co of Canada*, unpublished per curiam decision of the Michigan Court of Appeals, issued September 21, 2004 (Docket No 248843), at *2 (APX 0651a) (emphasis added).

Abdulla points the finger at Land Trucking, asserting that Land had a duty to secure auto coverage including personal protection insurance benefits but did not do so, stating: "It was Land that dropped the ball here, and not Abdulla." (See Plaintiff's Answer, pp 7-8). But pointing the finger at Land Trucking does not show that Abdulla is not also an owner. He was. And as the only principal acting for Tornado Trucking, and the only driver of the truck, Abdulla is responsible for the failure to obtain coverage.

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As an owner, Abdulla could have protected himself by requiring Land Trucking to secure personal protection insurance coverage on the truck while it was hauling cargo. In fact, the lease agreement between Land Trucking and Tornado Trucking specifically states that the parties' intention was to "create a contract to facilitate [Land Trucking's] compliance with federal law[.]" (Lease Agreement, p 1, APX 0680a). And Federal Motor Carrier Safety Regulations require that the lease specify who is responsible for providing insurance coverage on the leased equipment (i.e, the truck here). 49 C.F.R. § 376.12(j)(1). But Abdulla failed to ensure any such language was included in the lease agreement before leasing the truck to Land Trucking. Abdulla dropped the ball. Or he deliberately crafted a complex ownership and insurance plan to cut costs by not getting personal protection insurance benefits while still obtaining the benefits under other policies. Either way, the Legislature's plan was to bar him from seeking coverage as an owner who did not obtain the requisite coverage.

Abdulla argues that he was not an owner of the truck because he was "driving as an agent of Tornado (and Land)[.]" (Plaintiff's Answer, p 5). But labeling Abdulla as an "agent" does not change the fact that he had sole use and control over the truck for more than 30 days before the accident, making him an owner under MCL 500.3101 (3)(l)(*i*). Abdulla—as the single owner of a limited liability company—was the principal controlling that entity and its truck. Abdulla was the sole user of the truck—and he completely controlled when it would be used, where it would be parked, how it would be maintained, and what insurance it would have. Under these facts, the Court of Appeals wrongly narrowed application of the legislative language to allow Abdulla to get benefits he failed to pay for.

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## B. ABDULLA'S ARGUMENT THAT HE DID NOT HAVE PROPRIETARY OR POSSESSORY USE OF THE TRUCK IGNORES THE RECORD EVIDENCE

In *Ardt*, this Court held that ownership under (what is now) MCL 500.3101(3)(l)(*i*) "follows from *proprietary or possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another." *Ardt*, 233 Mich App at 691 (emphasis in *Ardt*). To get around this requirement, Abdulla asserts that "there is no evidence . . . that Abdulla had a possessory or proprietary right to use the truck." (Plaintiff's Answer, p 9). Not so, when the record evidence is considered.

Under *Ardt*, "having the use" of a vehicle for purposes of being an "owner" under MCL 500.3101(3)(l)(*i*) (formerly MCL 500.3101(2)(g)(i)) "means using the vehicle in ways that comport with concepts of ownership." *Ardt*, 233 Mich App at 690. And the record is replete with evidence that Abdulla used the truck in this way:

- Abdulla was the only owner of Tornado Trucking and the only person to drive the truck (Abdulla Dep., p 12, APX 0837a);
- As part of Tornado Trucking's business with Land Trucking, Abdulla transported the loads (*id.* at p 13, APX 0837a);
- Abdulla picked up many loads for Land Trucking for a period exceeding 30 days before the accident (*id.* at pp 42-43, APX 0845a);
- Abdulla, as the sole owner of Tornado Trucking, was free to: set his hours, decide when and where to work, accept or reject work assignments on a load-by-load basis, schedule the order of his work, make all crucial decisions about the maintenance and operation of the truck, and set the method and time of performance for the delivery of all loads. (Lease Agreement, pp 2-3, APX 0681a-0682a).

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Abdulla said in his answer brief to this Court that Land Trucking "had 'exclusive control' over when and where the loads were hauled" (Plaintiff's Answer, p vii) and that Land Trucking effectively "controlled all aspects of Tornado Trucking's trucking operation." (*Id.* at p 3). But this cannot be squared with the language in the lease agreement—or the reality that Abdulla had complete control—as a driver and principal of the limited liability company. As the sole owner and driver for Tornado Trucking, Abdulla had the autonomy to use the truck as he pleased. He did not need to obtain permission from anyone to use the truck. Thus, the record evidence confirms Abdulla's ownership within the meaning of the No-Fault Act.

The Court of Appeals decision is grounded on a formalistic approach to the legal fiction created by the existence of a limited liability company. Under the Court's reasoning, any time a corporate entity exists, it matters not whether it is owned by a single principal who is also the truck driver. This is not a multi-owner limited liability company with an employee. It is not a publicly traded or private corporation with a board of directors and an employee hired to drive a truck but not in control of when the truck is used or of its insurance. It is a limited liability entity that Abdulla entirely controls. At every moment of the use of the truck, Abdulla is the one who decides when and where it will go, what loads it will haul, where it will be parked, and what insurance coverage it will have. The Court of Appeals has ignored this reality that the legislature sought to address in creating the provision on statutory owners. Its decision guts the statute.

Abdulla also says that "Auto Club basically admits that there is no evidence . . . that Abdulla used the truck in a proprietary or possessory manner." (Plaintiff's Answer, p 9). This assertion is patently false. In its application, Auto Club argued the opposite—that

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Abdulla had proprietary and possessory use of the truck. And Auto Club cited to record evidence in support. (Auto Club's Application, pp 25-26). Looking to the meaning of "proprietary or possessory usage," "possessory" means "[o]f, relating to, or having possession." POSSESSORY, Black's Law Dictionary (12th ed. 2024). It cannot be disputed that Abdulla had possession of the truck where he was the only one to drive it and where he was the one who transported the loads for Land Trucking.

While the Court of Appeals held that Abdulla's use of the truck did not qualify as proprietary or possessory because his use was "incidental to the *business* of Tornado Trucking" (Majority Opinion, p 5, APX 1310a) (emphasis added), the Court's holding improperly rewrites the text of MCL 500.3101. The statute, MCL 500.3101(3)(l)(*i*), contains no language requiring "personal" use rather than "business" use, and under the rules of statutory interpretation, "nothing may be read into a statute that is not within the intent of the Legislature apparent from the language of the statute itself." *Detroit Pub Sch v Conn*, 308 Mich App 234, 248; 863 NW2d 373, 381 (2014). MCL 500.3101(3)(l)(*i*) requires nothing other than use of the vehicle "under a lease or otherwise, for a period that is greater than 30 days." When the record evidence confirms such use of the truck by Abdulla, Abdulla qualified as a statutory owner. And as this Court has recognized, "the Legislature believes it reasonable to require someone to ensure insurance coverage if they have use of a vehicle for more than thirty days in ways that comport with ownership." *Kessel v Rahn*, 244 Mich App 353, 359–60; 624 NW2d 220, 223 (2001). The Court of Appeals improperly narrowed the reach of this provision, which was intended to capture those seeking to evade the requirement to obtain appropriate insurance—as Abdulla did here.

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### C. ABDULLA'S RELIANCE ON THE GREAT AMERICAN POLICY MISUNDERSTANDS BOBTAIL COVERAGE AND IGNORES MICHIGAN AUTHORITY STATING THAT IF COVERAGE IS EXCLUDED, IT IS NOT IN EFFECT FOR PURPOSES OF MCL 500.3113

Abdulla also argues that Tornado Trucking "did what was required of it" by obtaining the Great American bobtail policy. (Plaintiff's Answer, p 8). Abdulla also points the finger at Land Trucking, asserting it is unclear why Land Trucking did not buy commercial auto coverage that included personal protection insurance benefits. (*Id.*). Abdulla further asserts that he "used the same agent as Land because Land suggested that he do so. He bought the coverage that he was told he needed." (*Id.*). These arguments fail for several reasons.

First, Abdulla cites no record evidence confirming the speculative assertion that Land Trucking suggested that he use a certain insurance agent or that he was told what type of insurance to buy. Also, Abdulla's argument that the Great American bobtail policy provided sufficient coverage misunderstands the coverage bobtail policies provide. Bobtail coverage "typically means coverage only when the tractor is being used without a trailer or with an empty trailer, and is not being operated in the business of an authorized carrier." *Hunt v Drielick*, 496 Mich 366, 373; 852 NW2d 562, 566 (2014) (internal quotation marks omitted). Auto Club explained at length in its application that: 1) bobtail policies do not provide full coverage, 2) bobtail policies can be combined with other policies to ensure full coverage, but here, 3) the Progressive policy could not be combined with the Great American policy to ensure full coverage because the Progressive policy provided no coverage for personal protection insurance benefits. (Auto Club's Application, pp 31-34).

Ultimately, the Great American policy excluded coverage for the very thing Abdulla contracted to do and was doing at the time of the accident—hauling a load of cargo for

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lessee Land Trucking. (See Great American Policy, p 36 of 65, APX 0163a). Abdulla's answer fails to address this Court's holding that "where coverage is excluded, it is 'not in effect' for purposes of MCL 500.3113(b)." *Guraj v Connecticut Indem Ins Co*, unpublished per curiam decision of the Michigan Court of Appeals, issued February 23, 2006 (Docket No 257509), at *3 (APX 1043a-1045a).

### D. A LIMITED LIABILITY COMPANY WHOLLY OWNED AND CONTROLLED BY A VEHICLE DRIVER SHOULD NOT BE USED TO EVADE THE STATUTORY REQUIREMENT UNDER THE NO-FAULT ACT FOR THE OWNER OF A VEHICLE TO MAINTAIN PROPER INSURANCE

Abdulla's argument that Auto Club presents an unpreserved alter ago argument is incorrect. A simple reading of Auto Club's application confirms that it made the alter ago argument in response to the conclusion of the panel majority that Abdulla did not qualify as an owner because he was acting as an "agent" of Tornado Trucking. (Auto Club's Application, p 23). Auto Club is not attempting to raise a new argument; Auto Club is providing this Court with authority to show why the Court of Appeals holding is erroneous.

The point Auto Club sought to make is that a truck driver may not use the legal fiction of a limited liability company, which he solely owns and entirely controls, to evade the requirement that vehicle owners must buy insurance under the No-Fault Act. See MCL 500.3101(1). Multiple reasons support that argument. First, as principal for his wholly owned limited liability company, Abdulla entirely controls it. When an individual is both principal and purported agent of a limited liability company, the legal fiction of the entity cannot be allowed to obscure the reality.

The panel majority relied on the conclusion that Tornado Trucking is a "separate legal entity distinct from Abdulla[.]" (Majority Opinion, p 5, APX 1310a). Courts honor the legal fiction of a corporation by indulging a presumption that the entity is separate and

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distinct from its owner unless there is an abuse of the corporate form. *Green v Ziegelman*, 310 Mich App 436, 451; 873 NW2d 794, 803 (2015). In other words, "courts will disregard distinct corporate entities that exist as a device to violate or evade the law or commit wrongs or frauds." 6 Mich Civ Jur Corporations § 10; see also *Fors v Farrell*, 271 Mich 358, 370; 260 NW 886, 890 (1935) (corporate entity will not be recognized if "it appears that the corporation is functioning in such a manner as to violate or at least evade the law or contravene public policy.").

Here, Tornado Trucking's status as a limited liability company is being used by Abdulla to avoid legal obligations, and specifically, the obligation under MCL 500.3101(1) for the owner of a vehicle to maintain security for the payment of personal protection insurance benefits. As a result, this Court should intervene to prevent injustice. *See Green*, 310 Mich App at 452 ("When a corporation exists as a device to evade legal obligations, the courts, without regard to actual fraud, will disregard the entity theory" (internal quotation marks omitted)). Although the panel majority held Abdulla was not required to procure personal protection insurance on his truck based on Tornado Trucking's existence, the practical implication of that holding is that the security requirement under MCL 500.3101(1) is completely circumvented because Tornado Trucking will never be behind the wheel (and thus, Tornado Trucking will never be forced to obtain coverage).

What is more, "[a] court's treatment of a corporate entity clearly rests on notions of equity, whether it is an action at law or at equity." *Dep't of Consumer Indus Servs v Shah*, 236 Mich App 381, 393; 600 NW2d 406, 411 (1999) (internal quotations omitted). But the law is clear that "*equity cannot be used to avoid the dictates of a statute* [i.e., MCL 500.3101(1)

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here], absent fraud, accident, or mistake." *Burkhardt v Bailey*, 260 Mich App 636, 659; 680 NW2d 453, 465 (2004) (emphasis added).

Further, Abdulla—whether as truck driver or as principal of his wholly-owned company—had sole use of the truck. Thus, under Michigan courts' longstanding recognition that multiple owners can exist under the legislative plan, Abdulla is properly held responsible for the failure to ensure appropriate insurance. Michigan's legislature contemplated this kind of situation—and included the statutory owner provision to prevent crafty schemes to avoid paying for personal protection insurance while still obtaining the benefits.

Review and reversal is needed to assure that the legislative plan is not decimated by this erroneous ruling.

### E. ABDULLA'S REMAINING ARGUMENTS FAIL FOR SEVERAL REASONS

In an effort to persuade this Court that the issue raised here is not jurisprudentially significant, Abdulla says that this case "is limited to the context of commercial trucking." (Plaintiff's Answer, p 13). But nothing could be further from the truth. The holding of the panel majority, if not corrected, can be used by any small business organized as a single-member limited liability company to avoid the requirement under MCL 500.3101(1) to maintain proper no-fault coverage. Thus, small businesses engaged in catering or plumbing or carpentry or construction or any other area can—and likely will—take advantage of the lower courts' erroneous reading of the statute. This Court's review is needed to assure that the Legislature's careful provision for statutory owners is given its legitimate scope. Otherwise, those seeking to cut their costs will do what Abdulla did here—and the lawyers advising wholly-owned entities will help them create an ownership and insurance plan that

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will help them do so while still obtaining benefits. If that happens, everyone who pays for personal protection insurance benefits will end up bearing that cost.

Abdulla also argues he is entitled to personal protection insurance benefits under MCL 500.3114(1) because the Legislature's intent was to insure persons, not vehicles, and he qualified as a resident relative of Auto Club's insured. (Plaintiff's Answer, pp 10-11). But this argument fails because the Auto Club policy contains a specific provision excluding coverage for bodily injury to "a resident relative [i.e., Abdulla] while occupying . . . a motor vehicle, if the resident relative is the owner or registrant of that motor vehicle and has failed to maintain security required by the Code on that motor vehicle[.]" (Auto Club Policy, p 7 of 20, APX 0598a). In addition, MCL 500.3113(b) speaks in terms of the vehicle rather than the person and should be construed accordingly. See *Turner by Sakowski v Farmers Ins Exch*, 507 Mich 858 n 2; 953 NW2d 204, 210 (2021) (Cavanagh, J., dissenting) ("some statutory provisions do speak in terms of the vehicle rather than the person and, when they do, we must construe those statutes as actually written, regardless of whether those provisions follow the general scheme of 'people, not vehicles.'").

Also, Abdulla's reliance on *DGI by Irwin v Farm Bureau Gen Ins Co of Michigan*, unpublished per curiam decision of the Michigan Court of Appeals, issued August 24, 2023 (Docket No 360819) (APX 1322a-1326a) is misplaced. (Plaintiff's Answer, p 1). His reliance on *Irwin* emphasizes why review by this Court is needed. The Court of Appeals in *Irwin*, as here, improperly wrote a business vs. personal use distinction into the statute. See *id.* at *4 ("the record evidence . . . does not establish that plaintiff used the tractor under any circumstances other than in relation to Droptine's business."). That continued error must be corrected. The *Irwin* Court noted that the defendant insurer failed to explain why the

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corporate separateness of the plaintiff's business should be disregarded. *Id.* at *5. But that is not true here. Auto Club has explained in detail why the legal fiction of the Tornado Trucking LLC must not be used by Abdulla—the only principal of the company, the only driver of the truck, and the only person in control of the company and the truck's use—to avoid the statutory requirement to insure his truck.

Abdulla also argues that "Auto Club could have protected itself from liability with better underwriting practices." (Plaintiff's Answer, p 8). In support, Abdulla asserts that Auto Club failed to ask whether any household members regularly drove vehicles not identified. (*Id.* at p 2). But this assertion is pure speculation—Abdulla has no evidence that Auto Club failed to do its due diligence during the underwriting process. Maybe Auto Club asked all the right questions, but its named insured never disclosed Abdulla's use of the commercial truck. And this Court has confirmed that "an insurer has no duty to investigate or verify the representations of a potential insured." *Titan Ins Co v Hyten*, 491 Mich 547, 570; 817 NW2d 562, 576 (2012).

Further, if this Court were to accept Plaintiff's additional argument that it is "not an unusual result" for insurers to be required to pay benefits without being paid a premium for the involved vehicle, that argument could be used by countless plaintiffs to excuse all forms of non-compliance with the security requirement under MCL 500.3101(1).

Abdulla also relies on a broad contention that "the primary goal of the No-Fault Act is to protect Michigan residents from economic loss." (Plaintiff's Answer, p 6). But in making this argument, he ignores the fact that MCL 500.3101(1) and MCL 500.3113(b): 1) "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" [or, here, in the name of Abdulla's solely owned LLC], *Ardt*, 233 Mich App at 690, and 2) "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[.]" *Id.*

Respectfully submitted,

PLUNKETT COONEY

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Dated: January 3, 2025

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## WORD COUNT CERTIFICATE

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

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

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

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

4. The word processing system counts the number of words in the reply brief as 3,843.

*/s/Mary Massaron*
MARY MASSARON