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STATE OF MICHIGAN
IN THE SUPREME COURT

MOHAMMED ABDULLA,

Plaintiff/Appellee,

and

PRECISE MRI OF MICHIGAN, LLC

Intervening Plaintiff/Appellee

v.

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant/Appellant,

and

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

Defendants/Appellees,

/

Supreme Court No. 167532
Court of Appeals No: 364797
Wayne County Circuit No. 2021-006382-NF

CONSOLIDATED WITH:

Court of Appeals No. 364866
Wayne County Circuit No. 2021-006382-NF

DEFENDANT-APPELLEE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY'S ANSWER IN SUPPORT OF AUTO CLUB GROUP INSURANCE COMPANY'S APPLICATION FOR LEAVE

By:

Lori McAllister (P39501)
Erin A. Sedmak (P78282)
DYKEMA GOSSETT PLLC
Attorneys for Defendant/Appellee
Michigan Automobile Insurance
Placement Facility
201 Townsend St., Ste. 900
Lansing, MI 48933
(517) 374-9100

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STATEMENT OF ORDERS APPEALED FROM AND RELIEF SOUGHT

The Michigan Automobile Insurance Placement Facility ("MAIPF") agrees this Court should grant Defendant-Appellant Auto Club Group Insurance Company's ("Auto Club's") application for leave to appeal the published opinion of the Court of Appeals issued on July 25, 2024, which is attached hereto as Exhibit A. Auto Club's Application for Leave was timely filed within 42 days of the date of the opinion, pursuant to MCR 7.305(C)(2)(a). The Court of Appeals opinion in this matter affirmed the Wayne County Circuit Court's October 5, 2022 order denying Auto Club's motion for summary disposition and January 13, 2023 order denying reconsideration of the October 5, 2022 order denying summary disposition; and reversed in part and affirmed in part the Wayne County Circuit court's January 20, 2023 order grating Plaintiff-Appellee's motion for partial summary disposition against Defendant Auto Club. (Appx.[1] 746a, 998a-999a, 1047a.)

[1] Citations to the appendix are citations to Auto Club's Appendix filed with its Application for Leave to Appeal in this Court.

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SUFFICIENT GROUNDS EXIST TO WARRANT GRANTING THE APPLICATION FOR LEAVE TO APPEAL

The Michigan Automobile Insurance Placement Facility ("MAIPF") agrees leave to appeal is warranted under MCR 7.305(B) because the Court of Appeals' 2-1 majority opinion below undermines the most basic foundational premise of Michigan's no-fault insurance system – compulsory coverage. The majority held that Plaintiff was not excluded from recovering no-fault benefits as the constructive owner of the uninsured vehicle involved in the accident under MCL 500.3113(b) because his solely owned and operated limited liability company legally held title to the vehicle and not him. The majority's opinion carves out an exception to the Michigan No-Fault Act's security mandate, allowing constructive owners of business vehicles to avoid the Act's penalties for failing to maintain mandatory coverages and entitles them to reap the benefits of the system without contributing to the system through the payment of insurance premiums calculated to cover the risk of business vehicles. Because the no-fault system's function requires participation in the Act's coverage requirements, the holding below undermines the Act's goals of providing prompt redress for economic injuries at an affordable rate.

Moreover, the holding below flies in the fact of this Court's opinion in *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 532; 676 NW2d 616 (2004), which interpreted the definition of "owner" under the Act, finding that"[i]t is the nature of the right to use the vehicle" that determines whether one is a constructive owner – not the actual use. The majority's opinion improperly focuses on purpose of the vehicle's use, establishing a distinction between business and personal vehicle use – a distinction entirely absent from the statutory language.

Accordingly, the criteria under MCR 7.305(B) is met and this Court should grant leave and reverse.

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THIS COURT SHOULD GRANT LEAVE WHERE THE COURT OF APPEALS HELD PLAINTIFF ABDULLA WAS NOT EXCLUDED FROM BENEFITS DESPITE THE FACT THAT HE WAS INVOLVED IN A MOTOR VEHICLE ACCIDENT WHILE OPERATING AN *UNINSURED* TRACTOR-TRUCK TITLED TO HIS SOLELY OWNED LLC OVER WHICH HE HAD COMPLETE AUTONOMY, HE HAD THE RIGHT TO USE THE TRUCK FOR MORE THAN 30 DAYS, AND HE WAS ABLE TO USE THE TRUCK JUST AS IF HE WAS THE TITLED OWNER.

Defendant-Appellant Auto Club answers:	Yes.
Defendant-Appellee MAIPF answers:	Yes.
Plaintiff-Appellee Abdulla answers:	No.
The trial court answered:	No.
The Court of Appeals answered:	No.
This Court should answer:	Yes.

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SUMMARY OF ARGUMENT

The issue in this case is whether a person may avoid the Michigan No-Fault Act's compulsory coverage requirements and penalties for failing to maintain such coverage by titling a vehicle in the name of one's solely owned and operated corporate entity, despite that person having all the rights associated with ownership of the vehicle. The answer to that question is a resounding "no."

The cornerstone of Michigan's no-fault system is its compulsory coverage requirement. This requirement is instrumental in accomplishing the Act's goal of providing a guaranteed and prompt recovery for economic losses at affordable rates. Without the Act's compulsory coverage system, the gargantuan costs of the system could not be spread across all of Michigan's driving public. The Act's provisions penalize those who fail to abide by its mandatory-coverage requirements and does not allow those who do not participate in the system to benefit from it. One of those key provisions is MCL 500.3113(b), which excludes owners injured in motor vehicle accidents involving their uninsured vehicles from recovering no-fault benefits. The lynchpin of the statute is the fact that it uses the term "owner", which the Act defines broadly to include those who do not hold legal title but enjoy the rights to use a vehicle associated with ownership – constructive ownership.

Over a compelling dissent, the majority veered past the Act's definition of "owner," instead focusing on the purpose of the vehicle's use– an element entirely absent from the statutory language. The analysis employed by the majority is in direct contravention to this Court's holding that, to determine whether one is a constructive owner, courts must analyze the facts that inform the scope of the person's right to use the vehicle – not the reason. The result below is that one who does not hold title but enjoys unfettered rights to use a business vehicle cannot be considered a constructive owner for the purposes of the Act. The majority's opinion carves out a

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perilous exception to the Act's coverage mandate that lacks any statutory foundation. Accordingly, this Court should grant leave and reverse.

COUNTER-STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

I. THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY AND THE MICHIGAN ASSIGNED CLAIMS PLAN.

The Michigan Automobile Insurance Placement Facility ("MAIPF") is a nonprofit association in which every insurer authorized to write automobile insurance in Michigan must participate. MCL 500.3301. See also MCL 500.134(6) (the MAIPF is "a nonprofit organization of insurer members…created under chapter 33" of Michigan's Insurance Code). Among its other duties, the MAIPF administers the Michigan Assigned Claims Plan ("MACP") pursuant to MCL 500.3171 through MCL 500.3175, which is part of the Michigan no-fault act, MCL 500.3101 *et seq.* (the "Act").[2]

The MACP is a statutorily-created plan, MCL 500.3171, that is designed to provide Michigan no-fault personal protection insurance ("PIP") benefits to persons otherwise entitled for coverage under the Act in certain limited circumstances. See MCL 500.3172(1). Whether a person is eligible to make a claim for benefits under the MACP is governed by § 3172(1), which states that a person entitled to claim no-fault benefits as a result of being injured in a motor vehicle accident "in this state" may claim such benefits through the MACP in four enumerated circumstances. MCL 500.3172(1); MCL 500.3173. Most commonly, this right to claim benefits under the MACP arises where there is no insurance policy the injured person can look to for coverage.

[2] Originally, the Michigan Secretary of State was charged with the organizing and maintaining an "assigned claims facility and plan." MCL 500.3171(1). However, 2012 PA 204 transferred administration of the assigned claims system from the Department of State to the MAIPF. See MCL 500.3171.

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Where a claim for benefits under the MACP appears initially eligible, the MAIPF assigns the claim to an insurer, who investigates, adjusts, and pays the claim if the claimant is determined to be eligible under the Act. See MCL 500.3173a, MCL 500.3174; MCL 500.3175. However, the assigned insurer is reimbursed for that cost from the MAIPF.

The MAIPF is funded through assessments on each Michigan automobile insurer and self-insurer and includes an amount necessary to fund the operation of the MACP, including amounts to pay claims and administer claims. See MCL 500.3171(1) ("Costs incurred in the operation of the facility and the plan shall be allocated fairly among insurers and self-insurers."); MCL 500.3171(2) ("Costs incurred in the administration of the assigned claims plan shall be allocated fairly among insurers and self-insurers."). The last annual assessment was nearly $554 million dollars.[3]

These assessments are ultimately borne by Michigan's driving public, as the cost of auto insurance in every Michigan automobile insurance policy is based in part on the amount of funds required to operate the MACP. See MCL 500.3176 ("Reasonable costs incurred in the handling and disposition of assigned claims, including amounts paid pursuant to assessments under section 3171, *shall be taken into account in making and regulating rates for automobile liability and personal protection insurance*.") (emphasis added). In fact, insurers may display a separate line item on the customer's policy declarations page, demonstrating their cost attributable to the MACP.

II. FACTUAL & PROCEDURAL BACKGROUND

Plaintiff was invovled in a motor vehicle accident in Missouri while operating a 2012 Volvo tractor (semi truck) on December 17, 2020. (Appx. p. 520a-524a, Crash Report.) Plaintiff is a self-employed truck driver and was hauling a load of tomatoes from Michigan to Texas pursuant to an "Independent Contractor Lease Agreement" between Land Trucking and

[3] https://www.michacp.org/assessment.aspx (last visited July 31, 2024).

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Tornado Trucking, LLC, which is Plaintiff's limited liability company of which he is the sole member. (Appx. 520a-524a; Crash Report; 529a-531a, 536a-537a, Pl. Dep.) While Plaintiff testified initially that he owned the tractor he was driving, he later clarified that it was actually titled to his limited liability company, Tornado Trucking.

Prior to the accident, on behalf of Tornado Trucking, Plaintiff entered into the "Independent Contractor Lease Agreement" under which Land Trucking would furnish loads for Tornado Trucking to transport using Tornado Trucking's own equipment – the 2012 tractor truck. (Appx. 680a-684a.) The agreement specified that Tornado Trucking "holds title to certain motor truck equipment…." (Appx. 680a.)

The agreement referred to Tornado Truckins as "Contractor" and required as follows:

- "Contractor shall be solely responsible for furnishing the power equipment used to provide service and shall keep same in good repair in accordance with federal regulation and inspection requirements."
- "Contractor shall be solely responsible for the payments on the leased equipment on the subject equipment and shall have the right to make all crucial decisions with respect to the maintenance and operation of such equipment."
- "Contractor is free to work when and where it chooses and shall accept or reject work assignments on a load by load basis."
- "Contractor shall at all times be free to set its hours of operations consistent with the federally imposed hours of service requirements and the scope of the work accepted and the customer's service expectations."
- "Contractor agrees to comply with any scope of work requirement imposed by the customer service conditions when accepting a job assignment but is otherwise free to schedule the order of its work."
- "…Contractor shall be free to set the method and time of performance for all delivery of loads accepted by it."
- "Contractor shall remain responsible for hiring and supervising his employees and for paying their salaries and all relevant taxes."
- "Contractor shall train all of its driver personnel…" [Appx. 681a-682a]

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The agreement was silent as to whose responsibility it was to maintain insurance on the equipment used to transport Land Trucking's loads.

At the time of the accident, Plaintiff resided in Lincoln Park, Michigan. (Appx. 528a.) *The tractor was registered and garaged in Michigan*. (Appx. 529a-530a, 745.) Plaintiff stored the tractor at a truckstop in Dearborn, Michigan when he was not using it. (Appx. 529a-530a.)

Plaintiff obtained what is commonly referred to as a "bobtail" policy for the tractor from Great American Insurance Company. The Great American policy contains a "trucking or business use" exclusion, which states that the coverage "does not apply" to bodily injury "arising out of any accident which occurs while the covered auto is being ussed in the busines of any lessee or while the covered auto is being used to transport cargo of any type." (Appx. 690a, 692a.) Plaintiff acknowledged this policy does not provide coverage for personal protection insurance ("PIP") benefits if an accident occurs while the tractor is hauling a load. (Appx. 667a.) *There was no other insurance coverage on the tractor*.

Land Trucking was issued an insurance policy by Progressive Southeastern Insurance Company, which was an Indiana policy and does not offer PIP coverage. (Appx. 557a-590a.) Neither Plaintiff nor his tractor was listed on the declarations page where drivers and vehicles were listed. (Appx. 558a-559a.)

A. Trial Court Proceedings

Plaintiff filed this action seeking payment of no-fault benefits from Great American, Progresive Southeastern Insurance Company, and Auto Club. Auto Club insured Plaintiff's resident relative, Abdullkader Al-Shihry. (Appx. 592a-617a.) Later, Plaintiff amended his complaint to add the MAIPF as a defendant. (Appx. 86a-94a.)

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Great American was dismissed because its business-use exclusion applied, which Plaintiff did not dispute. (Appx. 1046a.) Auto Club and Progressive[4] also filed motions for summary disposition that were initially denied without prejudice as being premature. (*Id.*) Later, the parties filed another round of motions for summary disposition. As a result, the MAIPF was dismissed on the basis that Plaintiff was ineligible to claim benefits under the MACP, pursuant to MCL 500.3172(1), because the accident did not occur "in this state[.]" (Appx. 747a.) See also, *Steanhouse v Mich Automobile Ins Placement Facility*, ___Mich App___; ___NW2d___ (2024). The order dismissing the MAIPF was not appealed and that ruling is not at issue in Auto Club's application for leave to appeal to this Court.

Pertinent to this appeal is Auto Club's motion for summary disposition which asserted that Plaintiff was excluded from recovering no-fault benefits under MCL 500.3113(b) because he was the operating an uninsured vehicle that he owned at the time of the accident. (Appx. 504a-657a.) The MAIPF and Progressive concurred. (Appx. 658a-663a.) Plaintiff argued it was not his responsibility, as the sole owner and operator of Tornado Trucking, to maintain coverage for the tractor for any periods of time the tractor was being used to haul loads for Land Trucking, as that was Land Trucking's responsibility. (Appx. 667a-668a.) Plaintiff argued he fulfilled Tornado Trucking's obligation to maintain coverage by obtaining bobtail insurance on the vehicle. (*Id.*) Plaintiff did ***not*** argue that MCL 500.3113(b) should not apply based on any distinction between him individually and Tornado Trucking, instead focusing his argument on the distinction between the tractor and trailer, arguing he did not own the trailer. (See Appx. 664a-677a.)

[4] Progressive argued it was not subject to the Michigan's No-Fault Act, as it does not write business in Michigan.

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Without oral argument, on October 5, 2022, the trial court denied Auto Club's motion on the praecipe, stating "Pursuant to MCL 500.3101 and MCL 500.3113(b) as the Plaintiff did maintain proper security on the tractor and therefore isn't excluded from PIP coverage; and pursuant to MCL 500.3114(4), ACIA is the highest in priority to pay benefits." (Appx. 746a.) Auto Club filed a motion for reconsideration, which was also denied on January 13, 2023. (Appx. 998a-999a.) Auto Club filed an application for leave to appeal the October 5, 2022 and January 13, 2023 orders, which was granted.

The court enterd an order dismissing Progressive, albeit without prejudice, following Progressive's motion to clarify the court's prior order concluding Auto Club was highest in the order of priority. (Appx. 0813a-815a.)

Plaintiff also filed a motion for partial summary disposition in the trial court, asking the trial court to order that Auto Club is liable for payment of benefits, interest, and attorney's fees. The trial court granted the motion on January 20, 2023. (Appx. 1047a.) Auto Club also filed an application for leave to appeal this order, which was granted.

B. The Court Of Appeals' Opinion

The Court of Appeals issued a 2-1 opinion, affirming the trial court's denial of summary disposition to Auto Club. The majority held that MCL 500.3113(b) does not exclude Plaintiff from recovery no-fault benefits because Plaintiff is not the owner of the tractor invovled in the accident – Tornado Trucking was the owner. The majority reasoned that Tornado Trucking was a separate legal entity distinct from Plaintiff and, as a limited liability company, it "possesses 'all powers necessary or convenient to effect any purpose for which the company is formed.'" (Exhibit A, slip op. at 5, quoting MCL 450.4210). Plaintiff, as a member of the limited liability company "has no interest in specific limited liability company property" and was, therefore,

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only an agent of Tornado Trucking. *Id.*, quoting MCL 450.4504(1), (2); MCL 450.4406. The majority rejected Auto Club's argument that Plaintiff met the definition of an owner under the No-Fault Act because he had use of the tractor for more than 30 days, reasoning that the record did not contain evidence that Plaintiff "used the tractor in a propriety or possessory manner." *Id.* The court instead found Plaintiff's use "incidental to the business of Tornado Trucking and the long-haul trucking companies served by Tornado Trucking." *Id.*

Judge Jansen authored a compelling dissent, opining that Plaintiff was the owner of the tractor under the definition set forth under the No-Fault Act because he had use of the tractor for more than 30 days. (Exhibit A, Dissent, p. 3). The dissent reasoned that the majority's opinion contoverted the purpose of the Act, which is "to keep insurance premiums at affordable rates while providing victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Id.* at 2. This policy is carried out by a system of compulsory insurance, as the Act precludes recovery of benefits by those who fail to meet the statutory security requirements. See *id.* Therefore, the Act defines owner in a manner that includes one who has "proprietary or possessory usage, as opposed to merely incidental usage" of a vehicle – use that comports with ownership. *Id.* at 2-3, *quoting Ardt v Titan Ins Co*, 233 Mich App 685, 690; 593 NW2d 215 (1999) and citing *Kessel v Rahn*, 244 Mich App 353, 359-360; 624 NW2d 220 (2001). Plaintiff had such use of the tractor in this case, meaning § 3113(b) applies.

ARGUMENT

I. STANDARDS OF REVIEW

Should the Court grant leave, this Court reviews a grant of summary disposition *de novo*. *Bush v Shabahang*, 484 Mich 156, 164; 772 NW2d 272 (2009). Questions of law and the

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interpretation of statutes are also reviewed *de novo*. *Haksluoto v Mount Clemens Regional Med Center*, 500 Mich 304, 309-310; 901 NW2d 577 (2017).

II. PLAINTIFF IS EXCLUDED FROM RECOVERING BENEFITS UNDER MCL 500.3113(B) BECAUSE HE WAS AN "OWNER" OF THE UNINSURED TRACTOR UNDER THE NO-FAULT ACT.

"More than 50 years ago, Michigan's no-fault act, 1972 PA 294, was enacted by the Legislature as 'an innovative social and legal response to the long payment delays, inequitable payment structure, and high legal costs inherent in the tort (or 'fault') liability system." *Andary v USAA Cas Ins Co*, ___Mich___;___NW3d___ (2023) quoting *Shavers v Attorney General*, 402 Mich 554, 578; 267 NW2d 72 (1978). The goal of the Act is provision of an equitable and prompt method of redressing injuries in a way which makes mandatory insurance coverage affordable to all motorists. *Tebo v Havlik,* 418 Mich 350, 360; 408 NW2d 181 (1984). "The no-fault act was as concerned with the rising cost of health care as it was with providing an efficient system of automobile insurance." *Dean v Auto Club Ins Ass'n*, 139 Mich App 266, 273; 362 NW2d 247 (1984), *appeal denied,* 422 Mich 921 (1985). The Legislature believed its goals could be "most effectively achieved through a system of compulsory insurance, whereby every Michigan motorist would be required to purchase no-fault insurance or be unable to operate a motor vehicle legally in this state." *Shavers*, 402 Mich at 579.

The Act accomplishes its goals through its provisions. See *Proudfoot v State Farm Mut Ins Co*, 254 Mich App 702, 708; 658 NW2d 838 (2003) vacated on other grounds 469 Mich 476 (2003). Section 3101 provides, in relevant part, "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." MCL 500.3101(1). The Act requires such security to be in place "during the period the motor vehicle is driven or moved on a highway." *Id.* This compulsory insurance

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requirement facilitates the spreading of the cost of the no-fault system among all of Michigan's drivers. *Citizens Ins Co v Tuttle*, 411 Mich 536, 547; 309 NW2d 174 (1981). See also, *Shavers*, 402 Mich at 599 ("In choosing to make no-fault insurance compulsory for all motorists, the Legislature has made the registration and operation of a motor vehicle inexorably dependent on whether no-fault insurance is available at fair and equitable rates.").

Since its inception, the Act has precluded those who fail to participate in the no-fault system by purchasing its mandatory coverages from reaping the benefits of the system. See *id.* at 624. The Act enforces its compulsory security requirement through statutory penalties. *See Auto Club Ins Ass'n v Hill*, 431 Mich 449, 465; 430 NW2d 636 (1988) (noting the Act penalizes those who fail to comply with the Act's security mandate through abolishing tort liability only for those who participate in the no-fault system by maintaining such security, through penalties under § 3102, and under § 3113(b)). Section 3113(b) is one such provision because, under the statute, "an owner or registrant of a vehicle with respect to which the compulsory requirements of the act are not in effect (i.e., the uninsured Michigan motorist) is not entitled to personal injury protection insurance benefits." *Shavers*, 402 Mich at 619.

A. Section 3113(b) Precludes Recovery Of No-Fault Benefits To Those Who Fail To Maintain Security Required By The Act.

The purpose of MCL 500.3113(b) is to encourage owners and registrants to fulfill their statutory duty to maintain the requisite coverages or be penalized by being excluded from the right to collect no-fault benefits. Section 3113 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:
>
> ***

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> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

MCL 500.3113.

Importantly, § 3113(b)'s penalty for failure to participate in the Act is not limited to those who hold title to a vehicle. Instead, § 3113(b) applies to "owners" of motor vehicles subject to the Act's security requirements. The term "owner" is defined by the Act as follows:

> "Owner" means any of the following:
>
> (i) A person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.
>
> (ii) A person renting a motorcycle or having the use of a motorcycle under a lease for a period that is greater than 30 days, or otherwise for a period that is greater than 30 consecutive days. A person who borrows a motorcycle for a period that is less than 30 consecutive days with the consent of the owner is not an owner under this subparagraph.
>
> (iii) A person that holds the legal title to a motor vehicle or motorcycle, other than a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is greater than 30 days.
>
> (iv) A person that has the immediate right of possession of a motor vehicle or motorcycle under an installment sale contract.

MCL 500.3101(3)(l). Thus, the Act's definition of an "owner" is broad.

The Supreme Court's well-settled precedent requires that, when interpreting a statute, courts must "follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature." *Kostadinovski v Harrington*, 511 Mich 141, 150; 999 NW2d 318 (2023) quoting *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). Thus, courts "begin by examining the most reliable evidence of that intent, the language of the statute itself." *Whitman*, 493 Mich at 311. "'When a statute specifically defines a given term, that definition alone controls.'" *People v Butka*, ___Mich___; ___NW3d___

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(2024), quoting *Kuznar v Raksha Corp*, 481 Mich 169, 176; 750 NW2d 121 (2008). Moreover, where a court interprets a statute, it must "determine and effectuate the intent of the Legislature through reasonable construction in consideration of the purpose of the statute and the object sought to be accomplished." *Frankenmuth Mut Ins Co v Marlette Homes*, 456 Mich 511, 515; 573 NW2d 611 (1998). For that reason, "the proper interpretation" of a statute within the Act "comports both with the plain language of the statute and the legislative purpose of keeping insurance premiums at affordable rates while providing victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 217-18; 815 NW2d 412 (2012). Because the Legislature used a defined term, courts must presume the Legislature did so with the intent that "owner" be interpreted broadly in a manner that best serves the Act's underlying policy goals.

Here, as the dissent aptly recognized, "[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." (Exhibit A, Dissent, at 2). Relying "on resident-relative coverage through [Plaintiff's] father's policy would undermine the statutory requirement in MCL 500.3101(1) that owners maintain insurance on their own vehicles." *Id.* at 3. He was the sole owner and operator of Tornado Trucking to which the tractor was titled. Plaintiff had exclusive control and custody over the tractor involved in the accident. Put simply, Plaintiff is the only actual living person – not a corporate entity – who could possibly be effected by § 3113(b)'s consequences if the tractor were to be invovled in an accident. The Court of Appeals' opinion establishes a dangerous precedent, allowing corporate entities to benefit by failing to comply with the Act's security requirements, resulting in increased costs to individuals who purchase Michigan auto insurance, as required

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by law. The result is antithetical to the interests of Michigan's drivers whom the Act is designed to benefit.

B. Plaintiff Is An Owner Of The Tractor Involved In The Accident.

Michigan's appellate courts have interpreted § 3101(l)'s definition of "owner" as one who has the right to use a motor vehicle in a manner that comports with ownership. *Ardt*, 233 Mich App at 690. It is axiomatic that Plaintiff had the right to use the tractor in the same manner as Tornado Trucking, which held title.

In *Ardt*, the issue was whether the plaintiff, who had use of his mother's uninsured vehicle, was a statutory owner, under § 3101, thus, excluded from benefits under § 3113(b). The court explained "[t]he 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." *Id.* at 690. The court "infer[red] from these provisions that they 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.* *Ardt* makes clear that "having the use" of a motor vehicle, "for purposes of defining 'owner'", means "that ownership follows from proprietary or possessory usage, as opposed to merely incidental usage under the direction or with the permission of another." *Id.* at 691. In other words, "using the vehicle in ways that comport with concepts of ownership." *Id.* at 690.

The rule set forth in *Ardt* was applied by the Court of Appeals two years later in *Chop v Zielinski*, 244 Mich App 677; 624 NW2d 539 (2001). In *Chop*, the court held the plaintiff was the "owner" of a vehicle titled to her ex-husband where she parked the vehicle at her apartment complex, a residence separate from her ex-husband's, drove the car to and from work daily, and used the car for personal errands. *Id.* at 681. The court reasoned that the plaintiff's use of the

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vehicle demonstrated that she exercised ownership rights. *Id.* The court rejected the argument that she could not be an "owner" because the statutory definition only applied where there was a lease or rental agreement. The court explained, "[a] plain reading of the statutory definition of the term 'owner' indicates that anyone having use of a vehicle pursuant to a lease *or otherwise* for a period that is greater than thirty days is considered an owner of the vehicle." *Id.* at 682 (emphasis supplied). Further, construing the Act's definition of "owner" "to apply in situations not involving lease and rental agreements comports with the legislative purpose of the no-fault laws '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.'" *Id.*, quoting *Stevenson v Reese*, 239 Mich App 513, 519; 609 NW2d 195 (2000).

Three years after *Chop*, this Court interpreted the definition of "owner" under the Act[5], holding that one need not actually have had use of the vehicle for at least 30 days before the accident. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 531; 676 NW2d 616 (2004). Rather, *"[i]t is the nature of the right to use the vehicle* whether it is contemplated that the right to use the vehicle will remain in effect for more than thirty days that is controlling, not the actual length of time that has elapsed." *Id.* at 532 (emphasis added).

In *Twichel*, this Court held that Brady Sies was the "owner" of a vehicle. Five days before the accident, Sies paid the titled owner of the vehicle $300 of the $600 purchase price and took possession of the vehicle, agreeing to pay the titled owner the remainder of the purchase price at a

[5] *Ardt*, *Chop*, and *Twichel* all interpret the statutory definition of "owner" under § 3101(2)(g)(i), which is now located under § 3101(3)(l)(i). The version of the statute that existed at the time of *Ardt*, *Chop*, and *Twichel* is substantively identical, as it stated, "[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."

later date. *Id.* at 526. Title was not transferred to Sies. This Court held, "the arrangement between the seller and [Sies] was for a permanent transfer of ownership of the vehicle and it contemplated that [Sies] would have exclusive use of the truck permanently." *Id.* at 531. Thus, at that point, his *right* to use the vehicle comported with ownership. It was entirely inconsequential whether his *actual use* of the vehicle exceeded 30 days. In sum, when determining whether a person is an "owner" under § 3101(3)(l)(i), the focus must be on the nature of the person's right to use the vehicle and whether that right comports with ownership.

Here, Plaintiff was the statutory "owner" of the tractor because he had the "right" to use the tractor as an owner. Plaintiff was the sole owner and sole driver of Tornado Trucking, who drove the tractor for months. (Appx. 528a-529a, 536a-537a.) Plaintiff clearly possessed the keys to the tractor. Plaintiff kept the tractor in his custody, garaging it at a truck stop when he was not using it. (Appx. 529a-530a.) Indeed, in his deposition, he testified he was the owner of the tractor. (Appx. 529a.) He did not distinguish himself from Tornado Trucking as the owner. As the sole member of Tornado Trucking, Plaintiff had the autonomy to use the tractor as he pleased. While Plaintiff may not have used the tractor to run personal errands, he certainly had the right to do so. It *is the right – not the actual use – that is the proper focus of this analysis*. *Twichel*, 469 Mich at 532.

C. The Majority Opinion Widely Strays From Plain Statutory Language, Focusing On The Purpose Of A Vehicle's Use, Resulting In Grafting An Exception To The Act's Security Mandate.

The Court of Appeals erred by concluding that Plaintiff's "use of the tractor was incidental to the business of Tornado Trucking and the long-haul trucking companies served by Tornado Trucking." (Exhibit A, slip op., at 5. This conclusion contravenes this Court's holding in *Twichel*, creating a distinction – entirely absent from the Act's text – between business and personal use, resulting in grafting a perilous exception into the Act's security mandate.

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First, the majority focused on Plaintiff's *actual use* of the tractor – his business use – instead of analyzing the scope of his *right to use* the tractor. The majority appears to have drawn from the language in *Ardt*, explaining that an "owner" is one who has a right to behave as an owner of a vehicle and not one whose use is merely "incidental usage under the direction or with the permission of another." *Ardt*, 233 Mich App at 691. The majority's mistake is elevating the words of *Ardt's* analysis over the plain language of the statute. Statutes must be applied as written. *Dye v Esurance Prop & Cas Ins Co*, 504 Mich 167, 180; 934 NW2d 674 (2019). The language in *Ardt* simply contrasted constructive ownership with behavior that is unlike ownership – where one must ask permission from another and then uses the vehicle only as directed by another. Thus, to the extent that specific language in *Ardt* is instructive, the relevant question is whether Plaintiff's *right to use* the tractor was merely "incidental usage under the direction or with the permission of another" or whether it comported with ownership. See also, *Twichel*, 469 Mich at 532. Plaintiff's rights comport with ownership.

As explained above, Plaintiff's *right* to use the tractor was not confined only to hauling loads for Tornado Trucking. Plaintiff did not require Tornado Trucking's permission to use the tractor. Tornado Trucking did not control or dictate Plaintiff's use of the tractor. Plaintiff purchased the tractor and titled it under his solely owned and operated LLC, over which he had complete autonomy. Had Plaintiff wished to take the tractor to the grocery store or on vacation, he could have. Had Plaintiff wanted to take a road trip to a desired location after dropping off a load, he could have. As the only person who controlled Tornado Trucking, Plaintiff was the only person who controlled the tractor owned by Tornado Trucking. Plaintiff set the rules and had the ability to make all decisions concerning the tractor. Plaintiff is the sole living being that had custody of and control over the tractor; thus, the "owner" within the meaning of § 3101(3)(l)(i).

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Even Plaintiff's use of the tractor for Tornado Trucking's business was not "under the direction or with the permission of another." Tornado Trucking hauled loads under the agreement with Land Trucking. The agreement recognized Tornado Trucking owned "certain motor truck equipment" and was responsible for "furnishing the power equipment used to provide service" and maintaining such equipment, including making any decisions concerning maintenance. (Appx. 681a-682a.) In sum, Plaintiff, as the sole owner, operator, and driver for Tornado Trucking had complete autonomy over the equipment used to complete deliveries under the agreement and did not require Land Trucking's permission to use the tractor. Moreover, Land Trucking did not provide any direction to Plaintiff regarding his use of the tractor. Under the agreement, Land Trucking did not dictate when or how the loads were delivered or by whom. Land Trucking did not supply, train, or employ drivers. (*Id.*) Land Trucking had no authority over Tornado Trucking's drivers – which consisted only of Plaintiff – or how Tornado Trucking's driver used the tractor. Put simply, as explained by Plaintiff, Land Trucking's dispatcher "would give [Plaintiff] loads…and [he] would take them" where they needed to go with his tractor. (Appx. 529a.)

Second, paying little heed to text, the majority's opinion improperly focuses on the purpose of the vehicle's use.[6] According to the majority, one who has completely autonomy over the use of a vehicle used for business cannot meet the definition of an owner under § 3101(3)(l)(i). But, the statute contains no distinction between business and personal use. Rather, it plainly defines an "owner" as a "person…having the use of a motor vehicle…for a period that is greater than

[6] Plaintiff purchased a bobtail policy for the tractor that only provided coverage when the tractor was being used for non-business purposes. Thus, even under the lower court's incorrect framework, there is evidence that Plaintiff used the tractor for non-business purposes, as he was not hauling any loads for Land Trucking when the bobtail insurance would apply.

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30 days." MCL 500.3101(3)(l)(i). Nothing in this unambiguous statute considers the purpose of the vehicle's use. "Judicial construction of an unambiguous statute is neither required nor permitted." *McCormick v Carrier*, 487 Mich 180, 191-192; 795 NW2d 517 (2010). Courts "may not read into the statute what is not within the Legislature's intent as derived from the language of the statute." *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010) (quotation marks and citation omitted) (emphasis added).

This case perfectly illustrates why courts must analyze the actual facts to determine if the statutory definition of "owner" is met, as opposed to relying on a phantom distinction between personal and business use entirely absent from the statutory language. The words of the statute provide the best evidence of legislative intent and the policy choices made by the Legislature. See *White v City of Ann Arbor*, 406 Mich 554, 562; 281 NW2d 283 (1979). Admittedly, it is likely far more common that one who uses a business vehicle is not an "owner" under the Act because the vehicle is likely titled to the employer, who sets the rules for the use of the vehicle, dictating when and how it is to be used. However, there are exceptions, such as this case, where the person using a business vehicle is also one with complete autonomy over the vehicle – thus, logically, irrespective of title, that person must be subject to the Act's security mandate.

Put simply, § 3113(b) is concerned with incentivizing compliance with that mandate – not the reason for the vehicle's use. See *Chop*, 244 Mich App at 682. The statute penalizes the "owner" or "registrant" of an uninsured vehicle. The best indication of whether one should be subject to the Act's mandates, even in the absence of holding title, is whether that person acts as an owner by having rights to control and use the vehicle as an owner. This Court correctly interpreted the statutory definition of "owner" to reflect constructive ownership associated with one's rights to use the vehicle – not reasons for use. See *Twichel*, 469 Mich at 532.

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Statutory "language does not stand alone, and thus it cannot be read in a vacuum. Instead, it exists and must be read in context with the entire act." *Bush v Shabahang*, 484 Mich 156, 191; 772 NW2d 272 (2009) (cleaned up), quoting *Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421; 662 NW2d 710 (2003). See also, *Honigman Miller Schwartz & Cohn LLP v City of Detroit*, 505 Mich 284, 309; 952 NW2d 358 (2020) ("words in a statute should not be construed in a void, but should be read together to harmonize their meaning, giving effect to the act as a whole") (cleaned up). This Court's interpretation of "owner" in *Twichel* best serves the purpose of § 3113(b).

Third, the majority opinion below is especially misguided because it grafts an exception into the No-Fault Act's security mandate, which is the lynchpin of the system. Courts may not read into a statute a requirement that the Legislature has seen fit to omit. *Book-Gilbert v Greenleaf*, 302 Mich App 538, 542; 840 NW2d 743 (2013). As explained above, the Legislature instituted a system of compulsory coverage to accomplish its goals of providing accident victims prompt, guaranteed recovery for economic losses and, simultaneously, offering such coverage at the lowest cost possible. See *Tebo,* 418 Mich at 360; *Dean*, 139 Mich App at 273. Compliance with the Act's security mandate is vital to accomplishing those goals, as it spreads the cost of the system across all Michigan's drivers. *Tuttle*, 411 Mich at 547.

The majority's opinion instead removes an important disincentive to violate the Act's coverage mandate where a vehicle is owned by a corporate entity who cannot suffer bodily injury. If the majority opinion is allowed to stand, vehicle owners can simply transfer the title of their vehicle to a solely owned limited liability company to avoid the Act's penalties, which are interwoven with the concept of vehicle ownership under the Act. See MCL 500.3102; MCL 500.3113(b); MCL 500.3135. With fewer participants in the system, the cost is not as widely

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spread, burdening those who comply with their legal duty to maintain security. Put simply, compounding its error, the majority's opinion contravenes both of the Act's underlying goals.

D. Plaintiff's Arguments Fail At Every Turn.

Plaintiff's arguments should be summarily rejected. Plaintiff argues first that the bobtail coverage is sufficient to satisfy the Act's security requirement because PIP insurance covers people, not vehicles. Next, Plaintiff argues that it was Land Trucking's responsibility to maintain security on the tractor, as it met the definition of an owner under § 3101(3)(l)(i). Plaintiff is wrong.

First, the tractor was not covered as required by § 3101, which requires the mandated security "be in effect during the period the motor vehicle is driven or moved on a highway." MCL 500.3101(1). Thus, while, "as a general principle, the no-fault statutory scheme centers on insuring people, not vehicles, against loss", "some [of the Act's] 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.'" *Turner v Farmers Ins Exch*, 507 Mich 858, 863 n 2; 953 NW2d 204 (2021) (Cavanaugh, J. dissenting). "In other words, whether a statutory provision ties…to the vehicle (such as the exclusion in MCL 500.3113(b) and *Dye*), it should be construed accordingly." *Id.* Thus, Justice Cavanaugh recognizes that the exclusion under § 3113(b) is tied to a vehicle's security requirements under § 3101. Because the bobtail policy does not offer PIP coverage at all times the vehicle is driven on Michigan's roads, because it has a business-use exclusion, it does not fulfill the Act's security mandate. Accordingly, the tractor was uninsured for purposes of § 3113(b).

Second, in *Ardt*, the Court of Appeals held that "where an uninsured motor vehicle involved in an accident has more than one owner, all the owners come under the statutory exclusion for

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personal protection insurance benefits." *Ardt*, 233 Mich App at 692. Section 3113(b) applies to all owners because, it is well settled that, while there can be more than one "owner" of a vehicle under the no-fault act, not every owner is required to purchase the security required by § 3101(1). *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 42; 748 NW2d 574 (2008). It is also true that an owner or owners may combine policies to satisfy § 3101(1)'s coverage mandate. *Integral Ins Co v Maersk Container Serv Co*, 206 Mich App 325, 332; 520 NW2d 656 (1994). However, security must nonetheless be maintained on a vehicle for all times it is operated on Michigan's roads. MCL 500.3101. Unlike the vehicle in *Integral*, the tractor in this case was not.

Thus, it is inconsequential whether Land Trucking was an "owner" of the tractor because whether it was or was not, *the tractor was not insured as required by the Act*. Plaintiff's argument that he is not excluded by § 3113(b) because Land Trucking, as a purported owner, failed to maintain the requisite security falls flat. As a constructive owner, Plaintiff was responsible for maintaining the requisite security. See MCL 500.3101. Land Trucking did not suffer bodily injury – Plaintiff did – therefore, it is only Plaintiff who is excluded from recovering no-fault benefits for his injuries arising out of the December 17, 2020 accident. Plaintiff cannot point the finger at Land Trucking.

CONCLUSION AND REQUEST FOR RELIEF

For all of the above reasons, this Court should grant leave to appeal.

Respectfully submitted,

Dated: December 23, 2024

By: */s/ Erin A. Sedmak*
Lori McAllister (P39501)
Erin A. Sedmak (P78282)
DYKEMA GOSSETT PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
Telephone: (517) 374-9152
esedmak@dykema.com

Attorneys for Defendant-Appellee Michigan Automobile Insurance Placement Facility

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CERTIFICATE OF COMPLIANCE

I certify that the Defendant-Appellee Michigan Automobile Insurance Placement Facility's Answer in Support of Auto Club Group Insurance Company's Application for Leave to Appeal complies with the type-volume limitation set forth in MCR 7.212(B). This brief uses a 12-point proportional font (Times New Roman), and the word count, based on the word count of the word-processing system used to produce this document, for this brief is 6,830 words.

Dated: December 23, 2024

By: */s/ Erin A. Sedmak*

Lori McAllister (P39501)
Erin A. Sedmak (P78282)
DYKEMA GOSSETT PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
Telephone: (517) 374-9152
esedmak@dykema.com

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

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PROOF OF SERVICE

I hereby certify that on December 23, 2024, I caused the foregoing paper to be filed with the Clerk of the Court using the Court's electronic filing system which will forward a copy via e-mail to all counsel of record.

Dated: December 23, 2024

By: */s/ Erin A. Sedmak*

Lori McAllister (P39501)
Erin A. Sedmak (P78282)
DYKEMA GOSSETT PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
Telephone: (517) 374-9152
esedmak@dykema.com

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

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EXHIBIT A

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

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.

FOR PUBLICATION
July 25, 2024
9:05 a.m.

No. 364797; 364866
Wayne Circuit Court
LC No. 21-006382-NF

Before: JANSEN, P.J., and REDFORD and D. H. SAWYER*, JJ.

D. H. SAWYER, J.

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

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In this consolidated first-party no-fault insurance dispute, we granted defendant, Auto Club Group Insurance Company ("Auto Club"), leave to appeal two orders.[1] First, in Docket No. 364866, Auto Club appeals the trial court's order denying its motion for summary disposition. The insurer sought summary disposition on the ground that plaintiff, Mohammed Abdulla ("Abdulla"), was barred from collecting personal protection insurance ("PIP") benefits from any of the defendant insurers by operation of MCL 500.3113(b) because Abdulla failed to maintain no-fault coverage on the semi-tractor he was driving at the time of the accident. The trial court denied the motion for summary disposition, finding both that Abdulla had maintained proper security on the tractor, and that Auto Club had top priority to pay PIP benefits among the defendant insurers. Second, in Docket No. 364866, Auto Club challenges the trial court's order granting partial summary disposition in Abdulla's favor concerning Auto Club's liability for "penalty interest and fees" for any overdue PIP claims for which the insurer is ultimately found liable. We affirm in part, reverse in part, and remand.

I. BACKGROUND

Abdulla sustained personal injuries in a December 2020 motor vehicle accident in Missouri, while driving a commercial tractor-trailer. The tractor was registered in Michigan, and titled to nonparty Tornado Trucking, LLC ("Tornado Trucking"), a closely-held limited-liability company owned solely by Abdulla. The trailer was titled to nonparty Land Trucking, LLC ("Land Trucking"). At the time of the accident, Abdulla was hauling cargo for Land Trucking, under the terms of a long-haul "Independent Contractor Lease Agreement." The lease agreement identified Tornado Trucking as the "contractor," and Land Trucking as the "carrier."

Tornado Trucking held a Michigan "bobtail" insurance policy[2] covering the tractor with defendant, Great American Insurance Company ("Great American"). Great American's policy identifies Tornado Trucking as the named insured, and the tractor as a covered vehicle. This policy provides nontrucking liability and physical damage coverage. The policy also had a Michigan PIP endorsement, which excluded coverage for PIP benefits when the bodily injury arose "out of the ownership, operation, maintenance, or use of a covered auto while being used in the business of any lessee or while being used to transport cargo of any type."

At the time of the accident, Land Trucking had an insurance policy with defendant, Progressive Southeastern Insurance Company ("Progressive"), providing liability and uninsured and underinsured motorist coverage to their company-owned motor vehicles and trailers. The

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[1] *Abdulla v Progressive Southeastern Ins Co*, unpublished order of the Court of Appeals, entered July 5, 2023 (Docket Nos. 364797 and 364866).

[2] "[I]n trucking parlance," the term "bobtail" generally denotes "the operation of a tractor without an attached trailer," and "for insurance purposes, it typically means coverage only when the tractor is being used without a trailer or with an empty trailer, and is not being operated in the business of an authorized carrier." *Hunt v Drielick*, 496 Mich 366, 373; 852 NW2d 562 (2014) (quotation marks, brackets, ellipsis, and citation omitted); see also *Integral Ins Co v Maersk Container Serv Co, Inc*, 206 Mich App 325, 331; 520 NW2d 656 (1994).

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Progressive policy did not list the tractor involved in the accident as a covered vehicle, and did not include PIP coverage.

Also at the time of the accident, Abdulla resided with his parents in Lincoln Park, Michigan. Auto Club provided Abdulla's father with a no-fault insurance policy at the time of the accident, which included PIP coverage. The policy did not list Abdulla as a named insured, nor did it list the tractor as a covered vehicle.

Abdulla sued Progressive, Auto Club, and Great American[3] alleging one of these insurers was first in priority to provide PIP benefits under the no-fault act. Abdulla further alleged the insurers refused to pay PIP benefits, which were overdue, entitling Abdulla to recover penalty interest and attorney fees, in addition to the PIP benefits.

Auto Club moved for summary disposition under MCR 2.116(C)(10), arguing because Abdulla owned the tractor, which was uninsured at the time of the accident, Abdulla was precluded from receiving PIP benefits under MCL 500.3113(b) from any insurer. Specifically, Auto Club argued that: (1) at the time of the accident, Abdulla qualified as an "owner" of the tractor, as defined under MCL 500.3101(3)(l), because it was undisputed that he had "the use of" the tractor "for a period . . . greater than 30 days" before the accident; (2) accordingly, under MCL 500.3101(1), Abdulla had been statutorily obliged to maintain PIP coverage on the tractor; (3) he had failed to do so, given that the Progressive policy did not provide no-fault coverage and that the Great American bobtail policy did not provide any coverage when, as here, the tractor was being used to haul freight; and (4) consequently, as a matter of law, Abdulla was not entitled to PIP benefits from any insurer under MCL 500.3113(b).

Abdulla responded: (1) in concert with the out-of-state coverage for the trailer provided under the Progressive policy, the Great American bobtail policy, which covered the tractor, had provided all required no-fault coverage for purposes of MCL 500.3101(1); (2) in any event, given that the tractor had been under lease to Land Trucking at the time of the accident under a "long-haul" lease agreement, and that neither he nor Tornado Trucking owned the trailer involved in the subject accident, there was—at minimum—a genuine issue of material fact whether Abdulla qualified as an "owner" or "registrant" of either the tractor or trailer, such that MCL 500.3113(b) would apply to him; and (3) under a "resident relative" theory, because he residing with his father at the time of the accident, and his father held a no-fault policy with Auto Club, the trial court should hold that Auto Club had top priority to pay the no-fault benefits in this case.

The trial court denied Auto Club's motion, succinctly stating: "Pursuant to MCL 500.3101 and MCL 500.3113(b) as the Plaintiff did maintain proper security on the tractor and therefore isn't excluded from PIP coverage; and pursuant to MCL 500.3114(4), ACIA is the highest in priority to pay benefits."

A week later, the trial court granted Abdulla's motion for partial summary disposition, stating: "At this point, any unpaid personal protection insurance benefits which were supported by

[3] The trial court granted summary disposition in favor of Great American and dismissed the insurer from the suit.

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reasonable proof and denied are overdue and Plaintiff is entitled to mandatory penalty interest and attorney fees for any claims in which Defendant is liable."

II. STANDARDS OF REVIEW

Appellate courts review summary disposition rulings de novo. *Grossman v Brown*, 470 Mich 593, 598; 685 NW2d 198 (2004). Likewise, a trial court's construction and application of a statutory provision is reviewed de novo. *Lockport Twp v City of Three Rivers*, 319 Mich App 516, 520; 902 NW2d 430 (2017). A request for attorney fees under MCL 500.3148(1) presents a mixed question of law and fact. *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008). The findings of fact underlying an award of attorney fees are reviewed for clear error, while underlying questions of law are reviewed de novo. *Brown v Home-Owners Ins Co*, 298 Mich App 678, 690; 828 NW2d 400 (2012).

III. PIP BENEFITS

Auto Club argues that the trial court committed error warranting reversal when it held that Auto Club owes coverage to the son of its insurer, and resultant interest and attorney fees, even though Abdulla did not maintain full and proper security on the tractor he was driving at the time of the accident as required by § 3101 of the no-fault act, MCL 500.3101. We disagree. The trial court correctly determined that Abdulla's suit was not barred by MCL 500.3113(b). It also correctly found Auto Club to be the higher- or first-priority insurer. Consequently, we do not find that the trial court erred when it denied Auto Club's motion for summary disposition.

The no-fault act requires an "owner or registrant of a motor vehicle to be registered in this state . . . [to] maintain security for payment of benefits under personal protection insurance, property protection insurance as required under this chapter, and residual liability insurance." MCL 500.3101(1). "The requirements for a motor vehicle liability policy may be fulfilled by the policies of 1 or more insurance carriers which policies together meet such requirements." MCL 257.520(j). The consequences for failing to obtain insurance as required by MCL 500.3101(1) are detailed in MCL 500.3113 as follows:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> * * *
>
> (*b*) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by . . . [MCL 500.]3101 was not in effect.

MCL 500.3101(3) defines the terms "owner" and "registrant" as follows:

> (*l*) "Owner" means any of the following:
>
> (*i*) A person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.

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* * *

> (*iii*) A person that holds the legal title to a motor vehicle or motorcycle, other than a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is greater than 30 days.

* * *

> (*n*) "Registrant" does not include a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is longer than 30 days.

There is no dispute that Land Trucking is the owner of the trailer. There is also no dispute that Tornado Trucking, and not Abdulla, holds legal title to the tractor. Its name, not Abdulla's, appears on the tractor's Michigan Motor Vehicle Registration. Tornado Trucking stored the trailer at a truck stop between long-haul jobs. At the time of the accident, the tractor was being used exclusively to haul loads for Land Trucking. There is no evidence that the tractor was being used for any purpose other than in furtherance of the business of Tornado Trucking. Importantly, Tornado Trucking is a limited-liability company and, thus, a separate legal entity distinct from Abdulla, which possesses "all powers necessary or convenient to effect any purpose for which the company is formed." MCL 450.4210. Although Abdulla is the sole member of Tornado Trucking, "a member has no interest in specific limited liability company property." MCL 450.4504(1), (2). Abdulla is merely an agent of Tornado Trucking. MCL 450.4406. There is no evidence that Abdulla used the tractor in a propriety or possessory manner. Rather, his use of the tractor was incidental to the business of Tornado Trucking and the long-haul trucking companies served by Tornado Trucking. Under these circumstances, the record lacks sufficient indicia of Abdulla's ownership of the tractor to find that Abdulla was either an owner or the registrant of the tractor for purposes of MCL 500.3101(3) and MCL 500.3113(*b*). *Ardt v Titan Ins Co*, 233 Mich App 685, 690-691; 593 NW2d 215 (1999). Moreover, the record contains no grounds to pierce the corporate veil of the limited-liability company and declare Abdulla the owner of the tractor for these statutory purposes. *Florence Cement Co v Vettraino*, 292 Mich App 461, 468-469; 807 NW2d 917 (2011). The trial court correctly denied summary disposition to Auto Club under MCR 2.116(C)(10).

The trial court also correctly determined priority among the insurers. Under MCL 500.3101(1) and MCL 500.3114(1), an individual injured as a result of a motor vehicle accident must seek benefits from his own insurer unless one of the exceptions enumerated in MCL 500.3114(2), (3), or (5) applies. *Farmers Ins Exch v Farm Bureau Gen Ins Co of Mich*, 272 Mich App 106, 111; 724 NW2d 485 (2006). None of these exceptions apply on the facts of this case. Consequently, the general rules apply, and Abdulla must look to the policy of a relative domiciled in the same household, MCL 500.3114(1), which, in this case, is the policy of insurance issued by Auto Club to Abdulla's father, with whom Abdulla is domiciled.

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IV. ATTORNEY FEES AND PENALTY INTERESTS

The trial court correctly found Auto Club responsible for penalty interest on any PIP claims for which it was liable. As stated in MCL 500.3142(2), PIP benefits are overdue if not paid within 30 days after an insurer "receives reasonable proof of the fact and of the amount of loss sustained." Overdue claims accrue penalty interest at a statutorily declared rate. MCL 500.3142(4). Abdulla presented unrebutted proof that Auto Club failed to pay his claims for PIP benefits within 30 days of the receipt of reasonable proofs. There being no genuine issue of material fact regarding whether, under MCL 500.3242(2) that Abdulla's PIP benefits were overdue, the trial court correctly granted partial summary disposition under MCR 2.116(C)(10).

The trial court erred, however, when it granted summary disposition on the issue of attorney fees.

MCL 500.3148(1) provides, in pertinent part:

> [A]n attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits that are overdue. The attorney's fee is a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment. . . . .

As observed by our Supreme Court in *Miller v Secura Ins*, 482 Mich 507, 519; 759 NW2d 833 (2008),

> MCL 500.3148(1) . . . provides that an attorney may only receive fees for representing a claimant in an action for "benefits which are overdue." In MCL 500.3142(2), the Legislature explains that overdue benefits are those benefits "not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained." Neither MCL 500.3142(2) nor MCL 500.3148(1) permits the recovery of attorney fees for actions in which a court awarded plaintiff benefits that were reasonably in dispute, or, stated slightly differently, benefits not yet overdue.

Benefits will not be considered overdue under MCL 500.31482(2), and attorney fee will not be awarded under MCL 500.3148(1), as a matter of law, "[i]f the insurer's refusal or delay in payment is the product of a legitimate question of statutory construction, constitutional law, or a bona fide factual uncertainty[.]" *Beach v State Farm Mut Auto Ins Co*, 216 Mich App 612, 629; 550 NW2d 580 (1996); see also *Detroit Med Ctr v Titan Ins Co*, 284 Mich App 490, 495; 775 NW2d 151 (2009) (Trial court did not err in finding that the initial denial of benefits was "not unreasonable given some indicia of ownership, and that the question of statutory construction was legitimate.").

In the present case, Auto Club denied Abdulla payment of benefits on the basis of legitimate questions of statutory construction and application concerning MCL 500.3101(3) and MCL 500.3113(b). A resolution of these questions goes to the heart of whether Abdulla is to receive PIP benefits. Auto Club's denial of benefits was not "unreasonable" under MCL 500.3148(1) and the circumstances presented. The trial court erred in awarding Abdulla attorney fees under MCL 500.3148(1).

Affirmed in part; reversed in part; and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ James Robert Redford

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

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.

FOR PUBLICATION
July 25, 2024

Nos. 364797; 364866
Wayne Circuit Court
LC No. 21-006382-NF

Before: JANSEN, P.J., and REDFORD and D. H. SAWYER*, JJ.

JANSEN, P.J. (*dissenting*).

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

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For the following reasons, I respectfully dissent. I would vacate the trial court order denying Auto Club Group Insurance Company's motion for summary disposition, and remand for further proceedings, because Mohammed Abdulla was barred from receiving personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*.

MCL 500.3101(1) provides 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 . . . as required under this chapter[.]" "Owner" is defined by the act as "[a] person renting a motor vehicle or 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*). An individual is disqualified from PIP benefits for accidental bodily injury if, at the time of the accident, that individual "was the owner or registrant of a motor vehicle . . . involved in the accident with respect to which the security required by [MCL 500.3101] was not in effect." MCL 500.3113(b). "[T]he purpose of the no-fault act is to keep insurance premiums at affordable rates while providing victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses. Because the act is remedial, it must be construed liberally in favor of those who are the intended beneficiaries of the act." *Hmeidan v State Farm Mut Auto Ins Co*, 326 Mich App 467, 478; 928 NW2d 258 (2018) (quotation marks, brackets, and citations omitted).

The majority concludes that Abdulla was not an owner or registrant of the tractor, i.e., the actual cab or truck part of the tractor-trailer, that he was driving when he was in an accident. The name on the title to the tractor is Tornado Trucking, LLC, a limited-liability company owned solely by Abdulla. The accident occurred in December 2020 in Missouri, when Abdulla was hauling cargo on a trailer titled to nonparty Land Trucking, LLC, under a long-haul lease agreement. Tornado Trucking had a "bobtail" insurance policy covering the tractor for nontrucking liability and physical damage coverage only; the policy specifically excluded PIP coverage when the tractor was used to transport cargo. Land Trucking had its own policy covering the trailer. At the time, Abdulla lived with his parents, who had a no-fault insurance policy from Auto Club; however, the policy did not list Abdulla as a named insured or the tractor as a covered vehicle. Thus, there was no PIP policy covering the tractor at the time of the accident.

The majority concludes that Abdulla was not an owner or registrant of the tractor for purposes of MCL 500.3101(3) and MCL 500.3113(b), because Tornado Trucking held legal title to the tractor and appeared on its Michigan registration, the tractor was exclusively used for long-haul loads for Tornado Trucking and was otherwise stored at a truck stop, and Tornado Trucking, an LLC, was a separate legal entity from Abdulla.

It defeats the purpose of the no-fault act to conclude that Abdulla has no ownership over the tractor. Abdulla is the sole owner of the LLC, Tornado Trucking, which was the titled and registered owner of the tractor. Abdulla admitted he was sole exclusive driver of the tractor, that there were no other drivers for Tornado Trucking at the time of the accident, and that Tornado Trucking entered into contracts to haul cargo for companies like Land Trucking. Abdulla testified that Tornado Trucking owned the tractor less than a year before the accident occurred, but that he worked with the owner of Land Trucking for about three years. It is against public policy for Abdulla to isolate himself from liability under the no-fault act by setting up the LLC and putting the tractor in its name. In *Ardt v Titan Ins Co*, 233 Mich App 685, 690; 593 NW2d 215 (1999), this Court held that the provisions of the no-fault act "operate to prevent users of motor vehicles

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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" others, there, a family member. 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." *Id*. Thus, the term "having the use" of a motor vehicle for purposes of defining "owner" in MCL 500.3101 means "using the vehicle in ways that comport with concepts of ownership." *Id*. "[O]wnership follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another." *Id*. See also *Kessel v Rahn*, 244 Mich App 353, 359-360; 624 NW2d 220 (2001) ("the Legislature believes it reasonable to require someone to ensure insurance coverage if they have use of a vehicle for more than thirty days in ways that comport with ownership.").

Abdulla had use of the vehicle for a period longer than 30 days as he was the sole owner of the LLC and the only person to drive the tractor for a time period less than a year before the accident. MCL 500.3101(3)(*l*)(*i*). He is, at minimum, a co-owner of the tractor, and therefore was required to maintain a no-fault policy under MCL 500.3101(1). See *Ardt*, 233 Mich App at 692 ("where an uninsured motor vehicle involved in an accident has more than one owner, all the owners come under the statutory exclusion for [PIP] benefits."). To rely on resident-relative coverage through his father's policy would undermine the statutory requirement in MCL 500.3101(1) that owners maintain insurance on their own vehicles. Because Abdulla failed to maintain this coverage as required, he was precluded from receiving PIP benefits under MCL 500.3113(b). As such, I would vacate the trial court order denying Auto Club summary disposition, as well as the order granting Abdulla partial summary disposition as to penalty interest and fees, and remand for further proceedings.

/s/ Kathleen Jansen