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STATE OF MICHIGAN

IN THE SUPREME COURT

CARLONDA NAISHE SWOOPE,

Plaintiff-Appellant

vs.

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellee.

Supreme Court No. 166790

Court of Appeals No. 364924
Wayne County Circuit Court
Case No. 21-011402

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DEFENDANT-APPELLEE CITIZENS INSURANCE COMPANY OF THE MIDWEST'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE (MOAA)

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

Pursuant to MCR 7.305(H)(1), on March 26, 2025, this Court issued an order directing the clerk to schedule oral argument on Plaintiff-Appellant's Application for Leave to Appeal the December 14, 2023 opinion of the Court of Appeals in this matter. Def. Appx. at 1-5, Ex. A. This Court further ordered the parties to file supplemental briefs addressing "whether the plaintiff is barred from recovering personal protection insurance benefits under the no-fault act, MCL 500.3101 et seq., because, at the time of the accident, she 'was willingly operating or willingly using a motor vehicle . . . that was taken unlawfully, and [she] knew or should have known that the motor vehicle . . . was taken unlawfully.' MCL 500.3113(a)."

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Whether Plaintiff-Appellant is barred from recovering personal protection insurance benefits under MCL 500.3113(a) because, at the time of the accident, she was willingly operating or willingly using a motor vehicle that was taken unlawfully, and she knew or should have known that the motor vehicle was taken unlawfully.

Plaintiff-Appellant answers:	Question of Fact.
Defendant-Appellee answers:	Yes.
The trial court answered:	Question Of Fact
The Court of Appeals answered:	Yes.
This Court should answer:	Yes.

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SUMMARY OF ARGUMENT

This case involves the unlawful taking of a vehicle within the meaning of MCL 500.3113(a). In the two courts below, Plaintiff argued that she did not know the vehicle was taken unlawfully because she assumed that the owner of the vehicle would have granted her authorization to use the vehicle had the owner been apprised of the purported emergency circumstances. The Court of Appeals held Plaintiff was not entitled to recover personal protection insurance ("PIP") benefits under § 3113(a). The court reached the right result because Plaintiff took the vehicle without the owner's authorization and Plaintiff readily admitted in her deposition that she lacked permission to abscond with the vehicle; thus, she *knew* she lacked permission, and she took no steps to determine whether the taking was authorized.

First, Plaintiff's argument that an unauthorized taking must follow an "express prohibition" both requires reading language into the statute and is ultimately premised on the presumption of consent, which was expressly rejected by this Court in *Spectrum Health Hosps v Farm Bureau Mut Ins Co*, 492 Mich 503, 521-23; 821 NW2d 117 (2012). One should not be allowed to use willful ignorance to avoid the penalty under § 3113(a). *Second*, Plaintiff's argument also requires applying the wrong scienter standard, essentially requesting this Court apply the standards associated with a pre-2014 version of the statute based on language that is no longer part of the statute. After amending § 3113(a) in 2014 to encompass the "knew or should have known" standard, the Legislature removed the ability of one to plead subjective ignorance, as Plaintiff attempts to do here, to avoid exclusion from benefits. *Third*, Plaintiff stresses the distinction between an unlawful use and an unlawful taking, but, here, *there was a taking*, making this point entirely inconsequential. While the opinion below incorporates the fact that Plaintiff was unlicensed into its analysis, when read in context, that fact was not the linchpin making this an

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unlawful taking. There was an unlawful taking here under the plain language of the statute and longstanding judicial precedent.

Put simply, this is not an appropriate case for leave and this Court should deny Plaintiff's Application.

COUNTER-STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

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

The 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.*[1] 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.

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 when the claimant is determined to be eligible. See MCL 500.3173a, MCL 500.3174; MCL 500.3175. However, the assigned insurer is reimbursed for that cost from the MAIPF.

[1] 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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The MAIPF is funded through assessments on each Michigan automobile insurer and self-insurer and include an amount necessary to fund the operation of the MACP, including amounts to pay claims and administer claims. See MCL 500.3171(1), (2). The last two annual assessments were nearly $554 million and $505 million dollars.[2] These assessments are ultimately borne by the 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. In fact, insurers may display a separate line item on the customer's declaration page, demonstrating their cost for the administration of the MACP.

For that reason, the MAIPF pursues subrogation where possible, including from uninsured owners of motor vehicles involved in accidents pursuant to MCL 500.3177.

II. FACTUAL BACKGROUND

On October 26, 2020, Plaintiff's friend, Kandice Valentine, picked her up in Ms. Valentine's 2008 Saturn vehicle and transported Plaintiff to Ms. Valentine's home, where Plaintiff spent the night. (Def. Appx. at 9, 15, Ex. B, Pl. Dep.) According to Plaintiff, on the morning of October 27, 2020, her mother called her and explained she was suffering chest pain but "the ambulance wasn't coming fast enough." (*Id.* at 9.) Plaintiff testified that she simply took Ms. Valentine's keys and vehicle to drive to her mother. Plaintiff testified as follows:

> Q. And you asked to borrow someone's vehicle; is that correct?
>
> A. *I didn't ask*, I just got the car because I had a family emergency. My mom needed to go to the hospital. So I was trying to hurry up to get to her.
>
> Q. So how did you get the keys to the vehicle?
>
> A. *I just took them.*

[2] https://www.michacp.org/assessment.aspx (last visited June 24, 2025).

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(*Id.*) (emphasis added).

Despite Plaintiff's contention that she took Ms. Valentine's vehicle due to an emergency situation, Plaintiff elected to stop at Burger King on the way to her mother's home. (*Id.* at 16.) Plaintiff planned to pick up food for her children who were at her mother's house. (*Id.*) However, after stopping at Burger King, Plaintiff was involved in a motor vehicle accident. (*Id.* at 15.)

Plaintiff explained that she had never driven Ms. Valentine's vehicle before, she never asked permission to drive Ms. Valentine's vehicle, and admitted that she lacked permission to drive Ms. Valentine's vehicle that day.

> Q…So have you ever used this vehicle that you – that's involved in this accident before this date?
>
> A. No.
>
> Q. Never at any point?
>
> A. No.
>
> Q. And you didn't ask for permission to use the vehicle?
>
> A. No.
>
> Q. *So is it fair to say you had no permission to operate this vehicle at the time that you were operating it?*
>
> A. *Correct.*

(*Id.* at 9) (emphasis added). Moreover, Plaintiff lacked a valid driver's license when she took Ms. Valentine's vehicle and had not had a valid driver's license for years. (*Id.* at 8.) Not surprisingly, she was uninsured, as she had no driver's license. Subsequently, Plaintiff submitted a signed application for benefits to the MAIPF seeking payment of benefits under the MACP. Plaintiff's claim was assigned to Citizens for payment and handling.

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III. PROCEDURAL BACKGROUND

A. Trial Court Proceedings

Plaintiff filed this action against Citizens, seeking payment of benefits under the MACP. Following discovery, Citizens filed a motion for summary disposition arguing that Plaintiff was excluded from recovering personal protection insurance ("PIP") benefits under MCR 500.3113(a), which bars recovery where a vehicle was taken unlawfully, because Plaintiff lacked permission to take Ms. Valentine's vehicle and lacked any reasonable basis to believe she had permission to take the vehicle, as she had never driven it previously and lacked a valid driver's license. (Def. Appx. at 21-70, Ex. C, Citizens' MSD.)[3] In response, Plaintiff argued that there was a question of fact that precluded summary disposition because a jury could reasonably conclude that Plaintiff had a *subjective* belief that she had "implied permission" to take Ms. Valentine's vehicle. (Def. Appx. at 71-81, Ex. D, Plaintiff's Resp. to MSD.) The trial court denied the motion on the praecipe without oral argument, stating "[w]hether Plaintiff had permission to use the vehicle is a question of fact for the trier of fact." (Def. Appx. at 82-83, Ex. E, Order Denying MSD.) Citizens thereafter appealed.

B. Proceedings in the Court of Appeals

On appeal, the parties agreed that there was no dispute that Plaintiff willingly operated Ms. Valentine's vehicle *and that the taking was unlawful*. *The parties agreed that the only issue in dispute was whether Plaintiff knew or should have known the taking was unlawful.* (Def. Appx. at 94-95, Ex. F, Citizens' Brf.; Def. Appx. at 120, Ex. G, Pl. Brf.) Citizens argued that Plaintiff's explanations that (i) she had been friends with Ms. Valentine for 4 years and (2) there was a family

[3] The motion contained an argument under MCL 500.3173a(4), which is irrelevant to Plaintiff's Application for Leave and the issue being reviewed by this Court.

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emergency, were insufficient to establish a question of fact as to whether Plaintiff could have had a reasonable belief that she had permission to take Ms. Valentine's vehicle.

Plaintiff argued that the existence of an emergency and the fact that Plaintiff testified that she had known Ms. Valentine for 4 years precluded summary disposition on the issue. Plaintiff contended that the fact that she stopped at Burger King on the way to her mother's home did not negate the fact that there was a genuine exigency because Plaintiff subjectively believed there was an ongoing emergency. Plaintiff further argued that that a person lacking a valid driver's license is not a basis to conclude that person did not reasonably believe they were entitled to take and operate a vehicle.

The Court of Appeals reversed. The court reasoned that, under *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1; 972 NW2d 860 (2021), a person must take steps to determine whether it is permissible to take another's vehicle and Plaintiff did not do so in this case. (Def. Appx. at 5, Ex. A, Opinion.) Plaintiff's failure to obtain the owner's permission combined with the fact that Plaintiff knew she lacked a valid driver's license and that a driver's license is required to operate a vehicle was enough to satisfy the third prong – Plaintiff knew or *should have known* the taking was unlawful. (*Id.* at 4-5.) While the parties did not dispute that the vehicle was taken unlawfully, the court addressed the issue and concluded the vehicle was indeed taken unlawfully, albeit the court's analysis on this point was virtually absent, with the court pointing to Plaintiff's own admission that she was unlicensed. (*Id.* at 4.) Finally, the court concluded that, given that Citizens established the prima facie elements of its defense under § 3113(a), the burden shifted to Plaintiff to set forth some documentary evidence raising a question of fact and Plaintiff failed to do so. (*Id.* at 5.) Accordingly, the court concluded that Citizens was entitled to summary disposition.

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ARGUMENT

I. STANDARDS OF REVIEW

A party seeking leave to appeal to this Court – a rare remedy – must show that the case meets one of the criteria in MCR 7.305(B). Relevant here, because Plaintiff has neither made a showing of the grounds under MCR 7.305(B)(3) or (5)[4], this Court should deny leave. This case concerns an unlawful taking within the meaning of MCL 500.3113(a), where Plaintiff took the vehicle of another person without the owner's authorization, without any attempt to determine the owner's authorization, and absconded off with the vehicle only to later be involved in a motor vehicle accident. As explained below, the Court of Appeals appropriately held there was an unlawful taking, as the facts in the record support the three elements of the defense.

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 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 BARRED FROM RECOVERING PERSONAL PROTECTION INSURANCE BENEFITS UNDER MCL 500.3113(A) BECAUSE, AT THE TIME OF THE ACCIDENT, SHE WAS WILLINGLY OPERATING OR WILLINGLY USING A MOTOR VEHICLE THAT WAS TAKEN UNLAWFULLY, AND SHE KNEW OR SHOULD HAVE KNOWN THAT THE MOTOR VEHICLE WAS TAKEN UNLAWFULLY

The Court of Appeals' holding should be affirmed because it is wholly consistent with the plain, unambiguous statutory language and prior caselaw interpreting the statute.

Currently[5], MCL 500.3113 states as follows in relevant part:

---

[4] Here, Plaintiff has requested leave under MCR 7.305(B)(3) and (B)(5)(a) and (b). MCR 7.305(B)(1), (2), (4), and (6) plainly do not apply.

[5] Section MCL 500.3113(a) dates from 2014 and "has not been changed since the 2014 amendment, although it has been reenacted twice in identical form. See 2016 PA 346; 2019 PA 21." *Ahmed*, 337 Mich App at 9 n 3.

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> 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:
>
> > (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

Accordingly, "the disqualification applies to any person (1) 'willingly operating or willingly using a motor vehicle or motorcycle' that (2) was unlawfully taken by someone, and (3) the person seeking benefits 'knew or should have known' that the motor vehicle was taken unlawfully." *Ahmed*, 337 Mich App at 10.

Here, it has never been disputed that Plaintiff was willingly operating Ms. Valentine's motor vehicle at the time of the accident. Thus, that element is met. Next, in the courts below, it was also undisputed that Plaintiff took the vehicle unlawfully. (Def. Appx. at 94-95, Ex. F, Citizens' Brf.; Def. Appx. at 120, Ex. G, Pl. Brf) However, now, Plaintiff argues there is a question of fact with respect to both the second and third elements – whether the vehicle was taken unlawfully and whether she knew or should have known the vehicle was taken unlawfully. Plaintiff asserts the same argument with respect to both – that her *subjective* belief that she had "implied" consent to take the vehicle creates a question of fact with respect to both elements. Plaintiff is wrong.

Here, Plaintiff took Ms. Valentine's vehicle without authority, which makes it unlawful, and, at the very least, she "should have known" the taking was unlawful because it is axiomatic that one may not simply abscond with another's property without determining whether the taking is authorized.

A. Plaintiff Unlawfully Took Ms. Valentine's Vehicle.

This Court defined the phrase "unlawful taking" in *Spectrum*, 492 Mich 503. This Court explained that because the phrase "taken unlawfully" was not defined by statute, courts "must

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accord the phrase its plain and ordinary meaning" and "may consult dictionary definitions because the no-fault act does not define the phrase." *Id.* at 516. See also, *Champine v DOT*, 509 Mich 447, 453; 983 NW2d 741 (2022) ("If a word in a statute is undefined, it must be given its 'plain and ordinary meaning'"). This Court defined "unlawful" as means "not lawful; contrary to law; illegal[.]" *Spectrum*, 492 Mich at 516-17. This Court explained that "the word 'take' is commonly understood as 'to get into one's hands or possession by voluntary action.'" *Id.* at 517. To take possession of something means to exercise control over it. See *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992) (possession can be where an object is in one's custody or can be constructive by asserting control over an object not in one's direct custody). The Cambridge English Dictionary defines "take" as "to remove something, especially without permission" or "to move something or someone from one place to another[.]"[6]

This Court held that "a taking does not have to be larcenous to be unlawful"; therefore, "MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it." *Spectrum*, 492 Mich at 518 (emphasis supplied). This Court looked to Michigan's joyriding statutes as follows:

> MCL 750.413 states that "[a]ny person who shall, wilfully and without authority, take possession of and drive or take away any motor vehicle, belonging to another, shall be guilty of a felony." Similarly, MCL 750.414 provides in pertinent part that "[a]ny person who takes or uses without authority any motor vehicle without intent to steal the same, or who is a party to such unauthorized taking or using, is guilty of a misdemeanor."

Id. at 517 (cleaned up).

[6] https://dictionary.cambridge.org/us/dictionary/english/take (last visited June 16, 2025).

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Thus, this Court concluded that both of Michigan's joyriding statutes[7] "make it unlawful to take any motor vehicle *without authority*, effectively defining an unlawful taking of a vehicle as that *which is unauthorized*." *Id.* at 517-18 (emphasis added).

Here, Plaintiff violated MCL 750.413 and/or MCL 750.414.[8] She testified that she gained possession of Ms. Valentine's vehicle because she took the keys and simply drove away with Ms. Valentine's vehicle, taking the vehicle away. (Def. Appx at 9, Ex. B, Pl. Dep.) Thus, Plaintiff admits she willfully took possession of Ms. Valentine's car, through a voluntary act, see *Spectrum*, 492 Mich at 517, and drove it away. (*Id.*) Moreover, she readily admitted she did so without Ms. Valentine's authority. (*Id.*) Thus, like the joyriders in *Spectrum*, Plaintiff gained possession of

[7] The difference between the felony joyriding offense under MCL 750.413 and the misdemeanor joyriding offense under MCL 750.414 is that "[t]he felony offense requires that 'possession of the vehicle be taken unlawfully from the owner,'" while the misdemeanor offense "is committed when an individual, who has been given lawful possession of a motor vehicle, uses it beyond the authority which has been granted to him by the owner." *Landon v Titan Ins Co*, 251 Mich App 633, 645; 651 NW2d 93 (2002), quoting *People v Blocker*, 45 Mich App 138, 142; 206 NW2d 229; (1973), aff'd 393 Mich 501; 227 NW2d 767; (1975) and *People v Hayward*, 127 Mich App 50, 61; 338 NW2d 549 (1983). See also *People v Crosby*, 82 Mich App 1, 3; 266 NW2d 465 (1978) ("Taking possession of a motor vehicle without authority is prohibited by MCLA 750.413; MSA 28.645. Taking possession of a motor vehicle without authority is not prohibited by MCLA 750.414; MSA 28.646. Otherwise, the two statutes prohibit the same conduct and have the same elements."). While *Landon* correctly differentiated between the two joyriding statutes, it was ultimately incorrectly decided because it held no taking occurred because the plaintiff violated MCL 750.414, which the Court of Appeals found could not form the basis of an unlawful taking in direct contravention to this Court's holding in *Spectrum*. *Landon*, 251 Mich App at 650. The result in *Landon* was also based, in part, on concepts underlying the chain-of-permissive-use doctrine – that because the plaintiff was a "bailee", she was entitled to a presumption of the owner's consent. *Landon*, 251 Mich App at 647-650. The chain-of-permissive-use doctrine and the application of presumed consent to an unlawful taking was expressly rejected in *Spectrum*. Accordingly, a bailee can commit an unlawful taking, as only one who already has possession of a vehicle can violate MCL 750.414. See also, n.7, *infra*.

[8] Plaintiff violated MCL 750.414 to the extent that, once she gained possession of Ms. Valentine's vehicle, she took it from one place to another without Ms. Valentine's authority. However, the felony offense is more appropriate here because Plaintiff did not already lawfully possess the vehicle before taking it (the act of – not the manner of – transporting it from one place to another) without authority. See n.7, *supra*.

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Ms. Valentine's vehicle and voluntarily asserted control over it to drive it away, *without authority* to do so, in violation of the law. There is no great mystery as to why Plaintiff did not dispute the second factor below – whether the vehicle was taken unlawfully. The element is plainly met in this case.

Moreover, Plaintiff violated MCL 257.301(1), which states "an individual shall not drive a motor vehicle on a highway in this state unless that individual has a valid operator's or chauffeur's license with the appropriate group designation and indorsements for the type or class of vehicle being driven or towed." While this provision is under the motor vehicle code, it carries criminal penalties through MCL 257.901. Here, Plaintiff was unlicensed when she took and operated Ms. Valentine's vehicle. (Def. Appx at 8, Ex. B, Pl. Dep.) Nonetheless, it is inconsequential whether Plaintiff's violation of MCL 257.301(1) was an unlawful taking, as opposed to an unlawful use, or whether it is an unlawful taking within the meaning of § 3113(a). The elements of an unlawful taking are plainly met for the reasons stated above. Accordingly, Plaintiff's argument, based on distinguishing a taking from a use, is a moot point. See discussion, *infra*.

B. Plaintiff "Should Have Known" The Taking Was Unlawful.

Plaintiff is barred from recovering PIP benefits because there was no genuine issue of fact that the scienter requirement was met under MCL 500.3113(a).

1. The Addition Of The "Should Have Known" Standard.

In 2014, through 2014 PA 489, § 3113(a) was amended to its current form, which incorporates the following scienter requirement: "*the person knew or should have known* that the motor vehicle or motorcycle was taken unlawfully." MCL 500.3113(a) (emphasis added). See *Ahmed*, 337 Mich App at 24. Prior to amendment, the statute excluded one from payment of PIP benefits where the person "using a motor vehicle or motorcycle which he or she had taken

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unlawfully, *unless the person reasonably believed that he or she was entitled to take and use the vehicle*." (See Def. Appx. pp. 191-196, Ex. J, House Substitute for SB 1140) (emphasis added).[9] While this Court in *Spectrum* solely addressed the definition of an "unlawful taking", it did not address the scienter requirement for an "unlawful taking" under § 3113(a). After *Spectrum*, this Court did so in *Rambin*, where it found the taker must possess the *mens rea* associated with the statute being violated that forms the basis of the unlawful taking. See *Rambin v Allstate Ins Co*, 495 Mich 316, 320, 331-32; 852 NW2d 34 (2014).

The pre-amendment version of § 3113(a) was structured so that the first portion established the factors that would trigger exclusion from benefits: "[t]he person was using a motor vehicle or motorcycle which he or she had taken unlawfully[.]" The second portion of the statute's language created an exception from exclusion – "*unless* the person reasonably believed that he or she was entitled to take and use the vehicle." (Emphasis added.) "The word 'unless' is commonly defined as meaning 'except under the circumstances that,' or 'except; but; save.'" *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 70; 718 NW2d 784 (2006) overruled on other grounds *Regents of the Univ of Mich v Titan Ins Co*, 487 Mich 289, 293; 791 NW2d 897 (2010). Thus the second portion was an exception – a safe-harbor provision.

However, § 3113(a) today is structured differently in that it contains no exceptions. Instead, it affirmatively sets forth three elements that, if met, excludes a person from benefits. This is supported by the fact that the statute uses the word "and" before "should have known that the motor vehicle or motorcycle was taken unlawfully[.]" "Plainly, the use of the conjunctive term 'and' reflects that both requirements must be met . . . ." *Karaczewski v Farbman Stein & Co*, 478

[9] Courts may take judicial notice of a public record. *Johnson v Dep't of Natural Resources*, 310 Mich App 635, 649; 873 NW2d 842 (2015).

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Mich 28, 33; 732 NW2d 56 (2007), overruled in part on other grounds *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455; 795 NW2d 797 (2010). "[T]he words 'and' and 'or' are not interchangeable and their strict meaning should be followed when their accurate reading does not render the sense dubious and there is no clear legislative intent to have the words or clauses read in the conjunctive." *In re AGD*, 327 Mich App 332, 348; 933 NW2d 751 (2019).

If the Legislature intended the "knew or should have known" language to be a "safe harbor" exception, it would have used the word "unless", just as it did in the pre-amendment version of the statute. "This Court cannot assume that language chosen by the Legislature is inadvertent." *Bush*, 484 Mich at 169. "To the contrary, this Court must assume that an express legislative change denotes either a change in the meaning of the statute itself or a clarification of the original legislative intent of the statute." *Id.* at 169-70.

Under the "knew or should have known" standard, the Legislature allows the scienter standard to be met either subjectively, by looking at what the plaintiff actually knew or, objectively, by analyzing what the plaintiff should have known. See *Moll v Abbott Laboratories, Atlanta, Inc*, 444 Mich 1, 17-18; 506 NW2d 816 (1993) ("While the term 'knows' is obviously a subjective standard, the phrase 'should have known' is an objective standard based on an examination of the surrounding circumstances."); *Prentis Family Foundation v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 47-48; 698 NW2d 900 (2005) (explaining that objective knowledge standard is implicated by "knew or should have known" language). Thus, the "knew or should have known" standard, which incorporates an objective component to the standard, perfectly reflects the plain, unambiguous language of the statute.

This case turns on this statutory change.

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2. *Ahmed v Tokio* Illustrated The Difference Between The Pre- and Post-Amendment Versions Of MCL 500.3113(a).

Ahmed v Tokio was the first published case to analyze the scienter standard in the amended statute and illustrated the difference in the pre- and post-amendment versions of the statute.[10] In *Ahmed*, the plaintiff, who was an unlicensed driver, lacked *actual* knowledge that his use of a rental vehicle was against the owner's prohibition where the plaintiff's wife rented a vehicle under a rental agreement that prohibited an unlicensed driver from operating the vehicle. While the plaintiff took the vehicle without the owner's authorization, in violation of MCL 750.414, he argued that he didn't know his license was suspended at the time of the accident or that he was prohibited from driving the vehicle. *Ahmed*, 337 Mich App at 6. While this may have been relevant under the pre-2014 version of § 3113(a), under the current statute, "actual knowledge is no longer necessary so long as a plaintiff should have known that he or she was taking a motor vehicle contrary to the owner's directives." *Id.* at 25. Under the current statute, a person unlawfully takes a vehicle under MCL 750.414 or MCL 750.413 if the person takes a motor vehicle or motorcycle knowing the taking was without the owner's authority or, if the person should have known the taking was without the owner's authority.

Analyzing the facts under the objective portion of that standard, the court held it was satisfied because the plaintiff knew the vehicle was rented by his wife, who was not the owner of the vehicle; he knew there was a written rental agreement; and he knew he was unlicensed and that only a licensed driver may drive. *Id.* at 26-27. "Under the 'should have known' standard, plaintiff

[10] While the Court of Appeals' decision in *Monaco* post-dated the statutory amendment to MCL 500.3113, the pre-amendment standard was applied in that case because the former version of the statute governed at the time of the accident in that case. See *Monaco*, 317 Mich App at 746-47. Thus to the extent the following statement in Plaintiff's brief should not be misunderstood to mean that *Monaco* applied the "knew or should have known" standard: "[a]fter the amendment to §3113(a), the Court of Appeals decided *Monaco*…" Pl. Brf., p. 14.

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was obligated to determine the scope of the authorization that the owner…had set under the rental agreement for a nonparty such as himself to take and drive the car." *Id.* at 26. "Thus, before simply driving off, plaintiff was obligated to learn the terms of the rental agreement…" *Id.* "[A] person may not simply take what he knows to be another's property *without taking any steps to determine if the owner authorized the taking*." *Id.* at 27 (emphasis added).

Here, Plaintiff could not simply take another's vehicle without taking steps to determine whether the taking is authorized. Her failure to take those steps causes her to be barred from recovering PIP benefits.

3. Applying The "Should Have Known" Standard In This Case.

First, and most significantly, *Plaintiff admitted she did not obtain Ms. Valentine's permission to take the vehicle.* Thus, she knew Ms. Valentine never actually authorized her taking. Put simply, Plaintiff knew or should have known that her taking was "without authority" or "unauthorized", which is, by definition, an unlawful taking. *Spectrum*, 492 Mich at 517-18.

Second, assuming that Ms. Valentine would have given her authority to take the vehicle had she been asked amounts to nothing more than speculation and is, thus, insufficient to establish the taking was authorized. Under *Ahmed*, one cannot simply drive off with another's property without taking steps to determine if the taking is authorized and "[b]y plaintiff's own admission, she failed to take any steps to ensure the taking was authorized." (Def. Appx at 5, Ex. A, Opinion.) Like in *Ahmed*, Plaintiff knew she was unlicensed, thus, knew she could not legally drive, and, therefore, had every reason to seek authorization from Ms. Valentine before taking her vehicle. (See *id.*) See also, *Spectrum*, 492 Mich at 518 n 25 ("driving while legally unable may have implications under MCL 500.3113(a) for a person who has taken a vehicle unlawfully because as a matter of law, one cannot reasonably believe that he or she is entitled to use a vehicle when the

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person knows that he or she is unable to legally operate the vehicle.) (internal quotations omitted). Simply put, it is objectively unreasonable for one to take another's vehicle, particularly where one lacks a license to drive, without taking steps to determine whether the owner of the vehicle consents to the taking. Thus, Plaintiff both "knew" and "should have known" her taking was unauthorized. Accordingly, the third element is met.

C. Plaintiff's Arguments Based On Her Subjective Belief Fail.

Despite only disputing that the third element below was met, Plaintiff now argues that her subjective belief that she had "implied consent" creates a question of fact as to both the second and third elements of an unlawful taking. Not so.

1. An Unauthorized Taking Does Not Require An "Express Prohibition."

Plaintiff argues that there was no "express prohibition", therefore, a question of fact exists as to whether the taking was unauthorized and whether Plaintiff "knew or should have known" it was without authority. But, a taking can be unauthorized even if not expressly prohibited because it is the lack of authorization – not the presence of prohibition – that makes a taking "unauthorized" or "without authority." Plaintiff states, "Citizens does not argue that Ms. Swoope took her friend's motor vehicle despite 'knowing' that her friend had prohibited the taking." Pl. Brf. p. 19-20. But, the issue is not whether the taking was expressly prohibited and whether Plaintiff knew as much – the issue is whether the taking was "without authority" and whether Plaintiff "knew or should have known" the same. See MCL 750.413; MCL 750.414.

First, nothing in the joyriding statutes limits an unauthorized taking to only one that is in violation of an "express prohibition." The language used in both statutes is "without authority." MCL 750.413; MCL 750.414. The word "without" in the phrase "without authority" means the

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absence of or lack of.[11] This Court explained that the authority referenced in the statute is that of the owner, therefore, an unlawful taking under the joyriding statues is a taking "which is unauthorized[.]" *Spectrum*, 492 Mich at 517-18, n 25. As this Court has recognized, "'[a]uthorize' means 'to give authority or formal permission for; sanction.'" *Liss v Lewiston-Richards, Inc*, 478 Mich 203, 212-13; 732 NW2d 514 (2007), quoting Random House Webster's College Dictionary (1997). This is an affirmative act. Simply put, an unlawful taking, in violation of the joyriding statutes, is a taking where the owner of the vehicle did not give formal permission, did not grant authority, or did not otherwise sanction. This includes, but, is not limited to, a taking in violation of an express prohibition. Where the affirmation of authority is not given, it is "without authority."

Second, Plaintiff's argument is premised on the fact that there is presumed consent absent an express prohibition. But, this Court expressly rejected the contention that any presumption of consent applies to § 3113(a) in *Spectrum*. The holding in *Spectrum* resulted from two cases in which the plaintiffs argued no unlawful taking occurred based on legal doctrines – the chain-of-permissive-use theory and the family-joyriding exception, both of which narrowed the scope of unlawful takings subject to § 3113(a). The Court struck down both doctrines, finding no statutory basis for either.

In the first case[12], Craig Jr. was not allowed to drive his father's vehicle because he was unlicensed, but took the vehicle when he was given the keys by his girlfriend who had permission

[11] https://www.merriam-webster.com/dictionary/without (last visited June 16, 2025).

[12] In the second case, Ryan DeYoung was an excluded driver on his wife's insurance policy and was prohibited from driving the family's vehicles. While his wife was sleeping "Ryan took the key to the Bravada out of [his wife's] purse and then took the vehicle…" . *Spectrum*, 492 Mich at 513. In finding an unlawful taking, this Court struck down the family joy-riding exception to the statute, which excluded teenagers or other family members who joyride in a family member's vehicle without permission from the statute's penalty. *Id.* at 510-11. The family joyriding exception was based on the contention that the "Legislature did not intend that a relative's 'joyride' be considered an unlawful taking under MCL 500.3113(a) because, given that most legislators are

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to possess the vehicle from Craig Jr.'s father. *Spectrum*, 492 Mich at 512. This Court rejected the chain-of-permissive-use theory that deemed a third party's use of a vehicle lawful where "a vehicle owner authorizes the vehicle's use by another person (the intermediate user), who in turn authorizes a third person (the end user) to use the vehicle." *Id.* at 509. The chain-of-permissive-use doctrine was derived from caselaw underlying the owner's liability statute, MCL 257.401, holding that "when an owner willingly surrenders control of his vehicle to others he 'consents' to assumption of the risks attendant upon his surrender of control regardless of admonitions which would purport to delimit his consent." *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 624; 499 NW2d 423 (1993) overruled by *Spectrum, supra*. In *Bronson*, the court applied "the broad definition of 'consent'" in the owner-liability context to unlawful takings under § 3113(a).

However, this Court overruled the chain-of-permissive-use theory. First, this Court reasoned that because the owner's liability statute considers whether the vehicle was being driven with consent from the perspective of the owner, but § 3113(a) examines whether the taking was authorized from the perspective of the person who took the vehicle, not the owner. *Spectrum*, 492 Mich at 521-22. Second, it was error to apply this overly broad definition of consent", as it *presumed* consent, requiring one to overcome the presumption with "positive, unequivocal, strong and credible evidence that a particular use was outside the scope of the consent." *Id.* at 523 (internal quotations omitted). This Court concluded that these concepts, applicable to the owner's liability statute, are inconsistent with the language of the no-fault act. *See id.* at 521.

Here, Plaintiff's argument is premised on her assertion Citizens is not entitled to summary disposition on the basis that Plaintiff took the vehicle without authority. This argument presumes

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parents and grandparents, they may have experienced children who used a family vehicle without permission and may have done so themselves." *Id.* This Court found no basis in the statute for the exception.

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consent absent an express prohibition. But, there is no presumption of consent following *Spectrum*.

Third, Plaintiff's argument that an "express prohibition is required" was rejected several times by the Court of Appeals. In *Mull v Citizens Ins Co*, the plaintiff argued that because the owner of a motorcycle never "explicitly told" him he was not allowed to use the motorcycle, he could not be precluded from recovery under § 3113(a). *Mull v Citizens Ins Co*, unpublished opinion of the Court of Appeals, issued Feb. 17, 2022, *4 (Docket No. 354725).[13] First, the court concluded that there was no genuine issue whether there was an unlawful taking "because [the plaintiff] did not receive permission from [the owner] to use the motorcycle." *Id.* at *3. The taking was unlawful due to the absence of permission. Next, the court addressed plaintiff's argument that there was no express prohibition, explaining that "[a]lthough this argument may have had merit under the previous version of the statute, it fails under the current 'knew or should have known' standard." *Id.* at *4. See also *Monaco v Home-Owners Ins Co*, 317 Mich App 738, 749; 896 NW2d 32 (2016) (the pre-amendment § 3113(a) permitted recovery where "the person reasonably believed that he or she was entitled to take and use the vehicle, despite the unlawful taking") (internal quotations omitted). That safe harbor provision is absent from the current statute which governs here.

In *Davis v Metlife Ins Co*, "there was no question of fact" that un unlawful taking occurred where a plaintiff "took the keys [to his girlfriend's vehicle]…and drove off" without asking her for permission, even though he had been granted permission on previous occasions and testified that he drove the vehicle about once a week. *Davis v Metlife Ins Co*, unpublished opinion of the

[13] Unpublished opinions are cited for their persuasive authority unless otherwise stated herein and are attached hereto as Exhibit H, Def. Appx at 126-187. See MCR 7.215(C).

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Court of Appeals, issued Jan. 19, 2023, *6 (Docket Nos. 359313, 360265). The court also held the third element was met because "no reasonable juror could conclude that plaintiff…did not know that he took the vehicle without authority" because "[b]y his own statement, plaintiff Davis did not have permission to take the vehicle, and so he knew that his taking of the vehicle was unauthorized." *Id.*

Likewise, in *Criswell v Avis Rent a Car Sys*, the court rejected the argument that the taking was lawful because there were no express statements to plaintiff that she could not drive because "there is no requirement for the vehicle owner to make an express statement regarding plaintiff's authority or lack thereof." *Criswell v Avis Rent a Car Sys*, unpublished opinion of the Court of Appeals, issued July 28, 2022, at *3 (Docket No. 355626). The reasoning in these cases are on point and thwart Plaintiff's argument that there must be an "express prohibition" to constitute an unlawful taking and that "express permission" is not required.

Permission is exactly what is required. This is logical, as it is manifestly accepted under any normal standards of decency that one may not simply take off in another's vehicle without the owner's permission. More importantly, it is an interpretation that applies the plain meaning of the joyriding statutes, which state "without authority." See *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 410; 987 NW2d 501 (2022) (where a statute is clear and unambiguous, it must be applied as written). "[T]he phrase 'taken unlawfully' in MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner[.]" *Spectrum*, 492 Mich at 518 (emphasis supplied). Here, Plaintiff lacked the authority of the owner.

Fourth, Plaintiff argues that an "express prohibition" is required because this Court in *Rambin*, explained that, in both cases underlying *Spectrum*, "the owners had expressly told each person injured while driving the motor vehicle that they could not use the motor vehicle" and the

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Spectrum decision was based on the notion that "a person cannot take a vehicle contrary to an owner's express prohibition and maintain that he or she did not 'unlawfully take"' the vehicle under MCL 500.3113(a)." *Rambin v Allstate Ins Co*, 495 Mich 316, 326-27; 852 NW2d 34 (2014). But, this Court did not hold that "express prohibition" was required. Instead, this Court's statements in *Rambin* explain that, in *Spectrum*, this Court "did not have occasion to reach the question whether MCL 500.3113(a) requires the 'person . . . using [the] motor vehicle or motorcycle' to know that such use has not been authorized by the vehicle or motorcycle owner." *Id.* at 327. But, as explained above, *Rambin* was decided prior to the Legislature's 2014 amendment, which is critical here the amendment added the "knew or should have known" scienter standard. Indeed, Plaintiff admits "[t]he *Spectrum Health* decision, therefore, did not involve interpretation of the 'knew or should have known' language that was added to §3113(a) two years later." Pl. Brf., p. 8, n.1.

Fifth, accepting Plaintiff's argument that an "express prohibition" is required for an unlawful taking within the meaning of § 3113(a) would incentivize persons to avoid seeking an owner's authority to avoid an "express prohibition" to avoid the penalty under § 3113(a) for an unlawful taking. Instead, the Legislature was clear that a person who "knew or should have known" the taking was without authority commits an unlawful taking within the meaning of § 3113(a).

2. Plaintiff's Argument Depends On The Wrong Scienter Standard.

While not stated expressly, Plaintiff effectively asks is that this Court reinstate the statute as it existed pre-2014 through judicial fiat because Plaintiff's argument is an attempt to revive the "reasonably believed" safe-harbor provision removed from § 3113(a) by the Legislature. Here, Plaintiff argues that a jury could find that she reasonably believed that her purported emergency

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circumstances entitled her to take and use Ms. Valentine's vehicle, despite not obtaining her authority to do so. The Legislature eliminated the "reasonably believed" safe-harbor provision in 2014 and this Court should not read it back into the statute. See *Bush*, 484 Mich at 167 ("courts must pay particular attention to statutory amendments, because a change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute").

First, Plaintiff leans heavily on *Rambin* because it held that, to establish an unlawful taking within the meaning of § 3113(a), based on a violation of MCL 750.414, a person must have possessed the requisite *mens rea* to commit the offense under MCL 750.414 – "that the taker must intend to take a vehicle 'without authority.'" *Rambin*, 495 Mich at 320. Thus, under *Rambin*, the taker must know the taking is without authority.[14] Notably, *Rambin* did not determine *any mens rea* under MCL 750.413, which states only that one who "wilfully" takes possession of and drives away one's vehicle without authority is guilty of a felony. There is no dispute in this case that Plaintiff wilfully did so. Regardless, as explained above, *Rambin* was superseded by statute as a result of the 2014 amendment substituting the "knew or should have known" standard for the *mens rea* necessary to violate a given criminal statute. See *Ahmed*, 337 Mich App at 22-23 (a legislative change in the language of a statute connotates a different meaning).

Second, as recognized in *Ahmed*, if the 2017 amendment "did not change the *mens rea* requirement that *Rambin* held applies in the context of MCL 750.414, the Legislature's enactment of the words 'knew or should have known' would be surplusage and nugatory, contrary to our

[14] In *Rambin*, the plaintiff was injured while operating a stolen motorcycle. Despite abandoning the motorcycle on the highway and lying to police when questioned, he claimed he was unaware the motorcycle was stolen. This Court held that he was entitled to present evidence at trial to establish that "he did not knowingly lack authority to take the motorcycle because he believed that he had authority to do so." *Rambin*, 495 Mich at 333.

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customary rules of construction." *Id.* at 25. It is an elementary principle of statutory interpretation that courts "must attempt to avoid any construction that would render portions of a statute surplusage or nugatory." *Rouch World*, 510 Mich at 410-11. Courts "must read the statute as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined." *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541; 840 NW2d 743 (2013) citing *In re Receivership of 11910 South Francis Road*, 492 Mich 208, 222; 821 NW2d 503 (2012).

Indeed, if the *mens rea* required for a violation of MCL 750.414 was required to establish an unlawful taking under § 3113(a), then the "knew or should have known" language of § 3113(a) would be nugatory surplusage. If one must have the *mens rea* to violate MCL 750.414 – intend to take a vehicle without authority – applying a second scienter standard – whether the injured person "knew or should have known" the taking was [without authority] – would be futile. One who takes a vehicle intending it to be taken without authorization will always know the taking was without authorization, thus, unlawful. There is simply no purpose for having dual scienter standards where the statute itself unambiguously defines the scienter standard the person claiming entitlement to benefits must have to be excluded. This is the standard the Legislature chose to best effectuate the statute's purpose of excluding the scope of persons intended. See *Spectrum*, 492 Mich at 534 n 94.

By instituting the "knew or should have known" standard, the Legislature removed the possibility that one could simply take off with another's property and then plead subjective ignorance in order to avoid the penalty under § 3113(a), which is precisely what Plaintiff attempts to do here. It is axiomatic that Plaintiff could have simply asked Ms. Valentine for her

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authorization to take the vehicle. But, she did not. Like the plaintiff in *Ahmed*, Plaintiff failed to take steps to determine the scope of the owner's authorization.

Third, Plaintiff brushes past the change in the scienter standard, focusing on the amendment's addition of the words "willingly operating or willingly" to the following portion of the statute: "The person was *willingly operating or willingly* using a motor vehicle…" MCL 500.3113 (emphasis added). See Pl. Brf., pp. 12-14, 32-33. To the extent Plaintiff's discussion could be interpreted as an argument that the Legislature did not intend to add a scienter standard for unlawful takings within the meaning of § 3113(a), Plaintiff is wrong for two reasons.

To begin, Plaintiff's argument depends on resorting to legislative history to *create* an ambiguity, instead of interpreting the statute according to its unambiguous language. *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 318 Mich App 338, 350 n 6; 897 NW2d 768 (2016), aff'd 502 Mich 695; 918 NW2d 756 (2018) ("Legislative history cannot be used to create an ambiguity where one does not otherwise exist.") (cleaned up). This is improper as "the legislative history of a statute is relevant to the statute's meaning only where the statute is ambiguous." *Rouch World*, 510 Mich at 429.

Next, the Legislative history is not so one-sided. Plaintiff argues the reason for amendment was to ensure that persons who did not participate in the unlawful taking, but who were aware of it and willingly operated the vehicle anyway, were also excluded from benefits under § 3113(a). While this was one legislative goal, there were others evidenced by other changes made to the statute that would not have been necessary to accomplish this single goal.

To broaden the statute to encompass persons beyond those who participated in the unlawful taking, the only changes required would be striking the words "which he or she had" and then clarifying that the reasonable belief to avoid exclusion would be a reasonable belief that the person

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who was using the vehicle or the person who unlawfully took the vehicle was entitled to take and use the vehicle. In fact, the bill originally introduced in the Senate did just that. (Def. Appx. at 188-190, Ex. I, Introduced Bill.) However, as the legislative process progressed, the statute was reworked in several respects, including changing the scienter standard to "knew or should have known." Notably, there is nothing in the Legislative analysis explaining the reason behind these additional changes, except that the analysis of the public act explained it was a response to court cases that interpreted § 3113 and altered the scope of its exclusions. Senate Legislative Analysis, SB 1140 (April 8, 2015). Thus, the Legislature reworked the statute's language to define its intended scope, making "the plain language of the statute" "the most reliable evidence of [the Legislature's] intent[.]" *Soaring Pine Capital Real Estate & Debt Fund II, LLC v Park Street Group Realty Servs, LLC*, 511 Mich 89, 128-29; 999 NW2d 8 (2023), quoting *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018).

While not expressly stated in any legislative history, the addition of the "should have known" standard is supported by sound policy. Where a person takes another's uninsured vehicle without permission and is injured in an auto accident involving the vehicle, an insurer, the MAIPF, or an assigned insurer "may recover all benefits paid, incurred loss adjustment costs and expenses, and incurred attorney fees from the owner or registrant of the uninsured motor vehicle or from his or her estate." MCL 500.3177. However, if that taking is an unlawful taking – a taking without permission – the taker would be excluded from the recovery of benefits under §3113(a); thus, the uninsured owner, who never gave his or her consent for the vehicle to be taken, is protected from a subrogation claim under § 3177. Narrowing the unlawful-takings doctrine would allow more takers benefits at the expense of innocent owners. Thus, the Legislature may have recognized this

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when making the 2014 amendment to broaden the scope of unlawful takings to anyone who "should have known" the taking was without authority.

Regardless, the absence of any clear explanation for all of the changes to the statute perfectly demonstrates why resorting to legislative history is disfavored, as it requires speculation. As this Court explained in *Rouch World*, "there are often practical difficulties with discerning legislative intent from legislative history" and "sources like bill analyses, committee reports, and floor debate, which may reflect the views of some group of legislators, are of dubious value."). *Rouch World, LLC*, 510 Mich at 429 n 19. "[L]egislative history is necessarily difficult, as 'dozens if not hundreds of legislators have their own subjective views on the minutiae of bills they are voting on—or perhaps no views at all because they are wholly unaware of the minutiae.'" *Id.*, quoting Scalia & Garner, Reading Law: The Interpretation of Legal Texts (St. Paul: Thomson/West, 2012), p 392. Here, "[t]he plain, unambiguous language of the statute is such that [this Court] need not speculate on its legislative history." *In re Certified Questions from United States Court of Appeals for Sixth Circuit*, 416 Mich 558, 569; 331 NW2d 456 (1982). The statute is unambiguous. Plaintiff has no basis for arguing that her subjective belief that an emergency provided her "implied consent" was reasonable, as a means of harboring her from exclusion under § 3113(a).

Nonetheless, even under the former safe-harbor provision, Plaintiff cannot prevail in this case. The evidence in the record here does not establish that Plaintiff had a reasonable belief that the taking was authorized. As this Court stated in *Spectrum*, "driving while legally unable may have implications under MCL 500.3113(a) for a person who *has* taken a vehicle unlawfully because as a matter of law, *one cannot reasonably believe that he or she is entitled to use a vehicle when the person knows that he or she is unable to legally operate the vehicle*." *Spectrum*, 492

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Mich at 518 n 25 (emphasis added). Accordingly, it is unreasonable for Plaintiff to believe she was entitled to take the vehicle because she could not operate it legally. It is unreasonable to believe one consents to an unlicensed and uninsured driver taking and operating one's vehicle in contravention of Michigan law. (Def. Appx at 8, Ex. B, Pl. Dep.) It is unreasonable to assume authorization where Plaintiff had never before driven the vehicle and had never before been given authorization to drive the vehicle throughout her 4-year relationship with Ms. Valentine. (*Id.* at 9.)

3. Plaintiff's Purported Subjective Belief Does Not Raise A Genuine Issue Of Fact.

Plaintiff failed to raise a genuine issue of material fact. Here, the Court of Appeals explained that because a *prima facie* defense under § 3113(a) was established, the burden shifted to Plaintiff to set forth some documentary evidence raising a question of fact. However, none of the evidence Plaintiff presented did so. (Def. Appx at 5, Ex. A, Opinion.)

First, Plaintiff argues that she testified that she knew Ms. Valentine for 4 years. However, there is nothing about the length of one's relationship that speaks to whether that person would consent to that person's vehicle being taken and driven by an unlicensed driver. Plaintiff also relied on her statement that, in her view, there was a medical emergency. However, again, Plaintiff's purported subjective belief of an emergency does not somehow indicate that Ms. Valentine authorized the taking of the vehicle, or would have authorized it, had she been informed of the purported medical emergency – which she wasn't. Plaintiff's argument requires layers of speculation. Mere conjecture is insufficient to raise a genuine issue of material fact. *Rasheed v Chrysler Corp*, 445 Mich 109, 130 n 36; 517 NW2d 19 (1994) ("Mere conjecture does not meet the burden" on a party to come "forth with some evidentiary proof that a genuine issue of fact does exist[.]"); *McNeill-Marks v MidMichigan Med Ctr-Gratiot*, 316 Mich App 1, 16; 891 NW2d 528

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(2016). ("Circumstantial evidence can be sufficient to establish a genuine issue of material fact, but mere conjecture or speculation is insufficient.").

Second, Plaintiff continues to argue that a lack of "express prohibition" or evidence that the taking was "expressly unauthorized" creates a question of fact. Pl. Brf., pp. 19-20. Plaintiff argues it would be error, and implies it is unreasonable, to grant Citizens' summary disposition simply because "Ms. Swoope failed to obtain express permission on the date of the accident in the midst of her mother's medical emergency, and instead merely assumed that she had permission to take the vehicle on the date of the accident." *Id.* at 21. But, Citizens does not argue that "express permission" is necessarily required. Instead, the owner's authority is required – whether that be verbal consent, ascertained by the reading terms of a rental agreement, a scope of authorization necessitated by the arrangement between the parties, or otherwise. Under the facts of *this case*, Ms. Swoope simply should have asked Ms. Valentine whose house she was in and whose purse she apparently had access to before swiping her keys and absconding with her vehicle.

Here, the taking was unauthorized and Plaintiff did not present any documentary evidence indicating that she was not or should not have been aware that her taking of Ms. Valentine's vehicle was unauthorized. To the contrary, Plaintiff *admitted* she "had no permission to operate this vehicle[.]" (Def. Appx at 9, Ex. B, Pl. Dep.) Thus, she *actually knew* the taking was unauthorized. This fact alone forecloses the issue.

Third, Plaintiff argues this case is like *Amos v Progressive*, unpublished opinion per curiam of the Court of Appeals, issued July 13, 2023 (Docket No. 360091) because in that case, the court found the fact that the plaintiff lacked a driver's license to be insufficient alone to find an unlawful taking, citing to *Monaco* for the proposition that § 3113(a) does not prohibit an unlawful operation

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of a vehicle. *Amos, supra* at *13. But what Plaintiff fails to mention is that much of the analysis in *Amos* supports Citizens' argument here.

In *Amos*, the plaintiff took his mother's keys while she was sleeping and took her vehicle without obtaining express permission. The court held there was a question of fact as to whether the plaintiff knew the taking was unlawful based on the fact that in a familial relationship, "the permissibility of one family member borrowing a vehicle from another is based on the nuances of the particular familial relationship and those relationships…" *Id.* at *5. The court analyzed the history of the plaintiff's authorized use of his mother's vehicle to determine whether he knew or should have known the taking was unauthorized. To the contrary, the court explained, "*It is clear that if an unrelated person takes someone else's vehicle without permission they would know that doing so is unlawful*." *Id.* (emphasis added).[15]

Here, Plaintiff failed to present any evidence about the specific nuances underlying of her relationship with Ms. Valentine and any past history of her use of Ms. Valentine's vehicle. Nothing in the record suggests that Plaintiff had any basis to presume she had Ms. Valentine's permission to take the vehicle. The Court of Appeals did not err in finding no genuine issue of material fact.

[15] *Amos* is a 2-1 unpublished opinion. Thus, while it is cited for purposes of responding to Plaintiff's arguments based on the case, its persuasive value is limited. The dissent in *Amos* points out that the record contained ample evidence suggesting the plaintiff knew he lacked permission to take the vehicle. *Amos*, dissent, at *3, 5-8._ (Letica, J. dissent). The dissent also correctly explains that after this Court's opinion in *Spectrum*, there does not exist any presumption of consent. *Id.* at *7.

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D. Because Plaintiff Both Took And Used The Vehicle Without The Owner's Authorization, Distinctions Between A Vehicle Being Taken Versus Used Are Inconsequential In This Case.

Plaintiff's brief meanders into an argument that the Court of Appeals erred by holding the taking was unlawful because Plaintiff lacked a driver's license – which exceeds the scope of the issue requested to be briefed by this Court. Plaintiff's also raises a strawman argument – neither asserted by Citizens nor the Court of Appeals below – only to take the opportunity to argue against it. For these reasons, this Court need not address Plaintiff's arguments in section C of Plaintiff's brief. However, should the Court wish to address them, Citizens responds below.

1. The Opinion Below Is Consistent With *Spectrum*.

Plaintiff argues the opinion below contravenes *Spectrum*, arguing that an unlawful taking differs from an unlawful use, relying, in part, on *Spectrum*, where this Court interpreted the phrase "taken unlawfully" in § 3113(a). *Spectrum* does not indicate error below.

As the Court of Appeals explained in *Ahmed*, "while it is possible to possess or 'take' a car without 'operating' or driving it, such as by placing it on a flatbed truck and moving it, or by using a tow truck, it is not possible to drive it without also taking it; the act of driving a car can only be accomplished by someone who is in possession of it and operating the controls."[16] *Ahmed*, 337 Mich App at 14.[17] Simply put, where a person drives a vehicle, that person gains control over the

[16] For the same reason, using a vehicle often involves driving or operating the vehicle, but there could be situations where a vehicle is used otherwise – such as an anchor or a platform.

[17] Contrary to Plaintiff's implication, *Ahmed* follows *Spectrum*. Moreover, to the extent it is suggested that *Ahmed* conflicts with *Monaco*, this is also untrue. In *Ahmed*, the court noted that because the phrase "taken unlawfully" in the statute had not been amended, it should be interpreted the same as it had under the pre-amendment statute because the language was the same. Thus, *Ahmed*'s interpretation of the phrase "taken unlawfully" is consistent with *Spectrum*, as it was taken directly from *Spectrum*. *Ahmed*, 337 Mich App at 11, citing *Spectrum*, 492 Mich at 537. Moreover, nothing in *Ahmed* concluded that an unlawful use of a vehicle without an unlawful taking subjects one to the penalty under § 3113(a). To the contrary, the court in *Ahmed* found the plaintiff unable to recovery benefits under § 3113(a) because he took the vehicle in contrary to the

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vehicle and exercises control to move the vehicle from one place to another, and that is a taking. This is precisely what transpired in *Spectrum*, where, Ryan DeYoung, while his wife was sleeping, "took the key to the Bravada out of [his wife's] purse and then took the vehicle…" *Spectrum*, 492 Mich at 513. Plaintiff's taking here is virtually identical, thus, an unlawful taking.

Further, in *Spectrum*, this Court stated that a taking is one that is unlawful, and explained that, because joyriding is a crime, a violation of the joyriding statues can form the basis of an unlawful taking within the meaning of § 3113(a). In doing so, this Court stated that the "Michigan Penal Code contains several statutes that prohibit 'takings,' including two that prohibit 'joyriding,'" – MCL 750.413 and MCL 750.414. *Id.* at 517. As explained above, because Plaintiff violated Michigan's joyriding statute, there is an unlawful taking here. *Spectrum* is consistent with the holding below.

2. Plaintiff's Focus On *Monaco* Is An Unnecessary Deviation From The Relevant Issues In This Case.

Plaintiff makes much ado about *Monaco*, claiming the Court of Appeals' opinion in this case, which found it relevant that Plaintiff violated MCL 257.301(1), strayed from the precedential *Monaco*. But, this focus on *Monaco* is much ado about nothing.

a. The Holding In *Monaco* Is Consistent With The Result Below In This Case.

The holding that there was not an "unlawful taking" in *Monaco* squarely rests on the fact that the plaintiff, a 15-year old girl named Alison, did not unlawfully take her mother's vehicle because her mother authorized her to take and drive the vehicle. See *Monaco*, 317 Mich App at 749.

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owner's authorization and should have known the taking was unlawful. *Id.* at 15, 27. *Ahmed* does not conflict with *Monaco*.

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In *Monaco*, the defendant argued that Alison unlawfully took the vehicle because she was only 15-years old and possessed only a restricted license, thus violating MCL 257.310e(4), despite the fact that she had the owner's permission to drive the vehicle. *Id.* at 746. The defendant also argued that because Alison's mother violated MCL 257.326 by granting her permission to take the vehicle, there was an unlawful taking.[18] *Id.* In reaching its conclusion, the court looked to the definition of "unlawful taking" premised on the *joyriding statutes* in *Spectrum*, reasoning that an owner of a vehicle could never violate the joyriding statutes by taking his or her own vehicle because an owner would always have his or her own authorization. *Id.* at 748. Thus, an owner, regardless whether the *use* is unlawful, cannot violate the joyriding statutes. See *id.* From that, the court concluded that an unlawful use or operation of a vehicle alone, without an unauthorized taking, cannot form the basis of an unlawful taking within the meaning of § 3113(a). *Id.* at 749.

To buttress its conclusion, the court pointed to statements from *Rambin* relevant to ascertaining the *mens rea* under MCL 750.414, which prohibits both an unlawful taking and unlawful use, that only the *mens rea* for a taking would be relevant to an unlawful taking analysis under 3113(a), as it existed at that time.[19] *Id.*, citing *Rambin*, 495 Mich at 331. While accurate,

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[18] Under MCL 257.326, "'[n]o person shall knowingly authorize or permit a motor vehicle owned by him or under his control to be driven by any person in violation of any of the provisions of [the MVC].'" *Monaco*, 317 Mich App at 738. Under MCL 257.310e(4), "'[a] person issued a level 1 graduated licensing status may operate a motor vehicle only when accompanied either by a licensed parent or legal guardian or, with the permission of the parent or legal guardian, a licensed driver 21 years of age or older.'" Put simply, the defendant argued that Alison necessarily unlawfully took the vehicle because she was only 15-years old and possessed only a restricted license, despite the fact that she had the owner's permission to drive the vehicle. *Monaco*, 317 Mich App at 746.

[19] As stated in *Rambin*, "the unlawful use of a vehicle under MCL 750.414 is not relevant under the unlawful taking language in MCL 500.3113[.]" This confirms MCL 750.413 and MCL 750.414 do not prohibit identical conduct. A person who unlawfully *gains possession* of a vehicle violates the felony statute. MCL 750.413. But, one who already has lawful possession of a vehicle can still, nonetheless, violate the misdemeanor statute by *taking* a vehicle. For example, where the owner of a vehicle allows her son to take her vehicle but instructs him that he may not use her

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this tangential discussion in *Rambin* is not relevant to this case. Moreover, this discussion does not suggest a court errs in its analysis under § 3113(a) by considering evidence demonstrating that a plaintiff lacked a driver's license, took a vehicle without the owner's express permission, and without determining the scope of owner's authorization. Next, the court in *Monaco* stated "the terms 'take' and 'use' are not interchangeable, citing to *Amerisure Ins Co v Plumb*, 282 Mich App 417, 425; 766 NW2d 878 (2009), which discussed the phrase "take and use" under the former "reasonably believed" safe-harbor provision. Plaintiff acknowledges that discussions of former statutory language are not relevant here. Pl. Brf., pp. 31-32.

The court in *Monaco* then analyzed whether Alison's taking was unlawful under MCL 257.326, concluding that "[a]lthough it may have been unlawful for plaintiff, as owner of the car, to authorize or permit Alison to drive the vehicle in violation of the law, *it had no bearing on, nor did it negate, the authorization and permission given by plaintiff for Alison to take the vehicle*." *Monaco*, 317 Mich App at 750.[20] Thus, *Monaco's* holding was rooted in the fact that Alison had permission, thus, the taking was not in violation of the *joyriding statutes*.

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vehicle to tow his boat, he would violate MCL 750.414 by using the vehicle to tow his boat. This is a use that is not an unlawful taking because it is the use that is unauthorized and not the taking – the act of absconding with the vehicle. However, where an owner allows her son to have custody of her vehicle in his garage over the winter while the owner snowbirds in Florida, but instructs him not to drive the vehicle because it is uninsured, and the son drives the vehicle regardless – that *is* an unlawful taking in violation of MCL 750.414 because the taking is unauthorized. Accordingly, respectfully, *VHS of Mich, Inc v Allstate Ins Co*, unpublished opinion of the Court of Appeals, issued Dec. 6, 2024 (Docket No. 368369) was wrongly decided. See also, *Ahmed*, 337 Mich App at 14 (one cannot drive a vehicle without also taking it). When a vehicle is taken without the authority of the owner, it is an unlawful taking. *Spectrum*, 492 Mich at 517-18.

[20] To the extent MCL 257.310e(4) was considered in the *Monaco* court's analysis, it was done so only as part of the analysis of whether Alison's *mother's* violation of MCL 257.326 formed the basis for an unlawful taking. Stated another way, the court "considered the legality of the taking from the perspective not of Alison, the driver, but from that of her mother, the…owner of the car." *Ahmed*, 337 Mich App at 19 n 8. But, § 3113(a) "examines the legality of the taking from the driver's perspective[.]" *Spectrum*, 492 Mich at 522. Therefore, the court "should have considered whether the taking was unlawful from the perspective of Alison, the driver and the person on

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In sum, the distinction between an unlawful taking and unlawful use is meaningless here because Plaintiff took Ms. Valentine's vehicle without the owner's authorization, unlike Alison in *Monaco,* who had permission. Thus, under the exact reasoning in *Monaco,* Plaintiff unlawfully took the vehicle within the meaning of § 3113(a) and is not entitled to recover PIP benefits.

b. *Ahmed's* Criticism Of *Monaco* Is Inconsequential And Irrelevant.

Plaintiff raises a strawman argument, stating "[a]ny contention that the Court of Appeals' holding in *Monaco* was undermined by the subsequent opinion in *Ahmed* is incorrect, as the criticism of *Monaco* is mere dicta…" Pl. Brf., p. 28. Citizens does not make any such argument and the opinion below does not rely on any such argument. Thus, this entire discussion is unnecessary.

But also, Plaintiff is correct that it is dicta where the court in *Ahmed* criticized of portions of the opinion in *Monaco*. See *Griswold Props, LLC v Lexington Ins Co,* 276 Mich App 551, 563; 741 NW2d 549 (2007) (stare decisis does not arise from an issue that is addressed and decided but not germane to the controversy in the case, as it is dictum). The holding in *Ahmed* was not premised on any distinction between using a vehicle and taking a vehicle. The court only discussed *Monaco* after the court concluded that the plaintiff's actions "constituted an 'unlawful taking' of the car because they constituted possession of it contrary to the owner's authorization[.]" *Ahmed*, 337 Mich App at 15.

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whose behalf an 'entitle[ment] to be paid personal protection insurance benefits' was sought." *Ahmed*, 337 Mich App at 19 n 8. Stated another way, the court neglected to answer the very question it was called onto answer – whether a violation of MCL 257.310e(4) forms the basis for an unlawful taking – and, subsequently, whether Alison reasonably believed she was entitled to take and use the vehicle, under the pre-amendment statute that governed at the time of Alison's accident. It is possible that court could have reached the same holding, as it may very well have found, under the former "reasonably believed" safe-harbor provision, it was reasonable for Alison, a minor, to believe she was entitled to take and use the vehicle where her mother advised her that she could.

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Moreover, the fact that Plaintiff argues that the court in *Ahmed* should have declared a conflict panel contradicts its argument that *Ahmed's* criticism of *Monaco* was dicta. A conflict panel may only be convened where a panel "follows a prior published decision only because it is required to do so" under the court rule and indicates as much in its opinion, but explains "its disagreement with the prior decision." MCR 7.215(J)(2). It was unnecessary for the court to do so in *Ahmed* because its decision did not turn on any "use" versus "taking" issue discussed in *Monaco*.

Instead, it was firmly rooted in the fact that the plaintiff was not authorized to take the rental vehicle and the fact that he lacked actual subjective knowledge of that fact did not preclude a finding that an unlawful taking within the meaning of § 3113(a) occurred because he wasn't entitled to simply abscond with another's vehicle without determining the scope of authorization. "The mere assumption or supposition that it must be permissible to take a third party's property, without more, does not satisfy the 'should have known' standard of MCL 500.3113(a)." *Ahmed*, 337 Mich App at 27. The reasoning of *Ahmed* is faithful to the statute, common sense, and is supported by sound public policy considerations that do not incentivize willful ignorance as a means to avoid the exclusionary effect of § 3113(a).

c. The Opinion Below Did Not Create Confusion Over Whether An Unauthorized Use Alone Amounts To An Unlawful Taking.

Contrary to Plaintiff's contention, the Court of Appeals' cursory analysis of the second factor in this case does not mean that an unlawful use alone constitutes a taking in contravention of *Monaco*. When read in context, it is apparent that the fact that Plaintiff was unlicensed was one factor, among several, that supported a finding that Plaintiff could not recover PIP benefits pursuant to § 3113(a). Plaintiff points to the unpublished opinion, *Pena-Cruz v State Farm Mut Automobile Ins Co* in an effort to convince this Court the standards for review under MCR 7.305

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are met. But *Pena-Cruz* did not rely on this case for finding that a violation of the Motor Vehicle Code alone constitutes an unlawful taking for purposes of § 3113(a). Instead, the court found that evidence of such unlawful use – in conjunction with a taking – is relevant to the analysis of whether an unlawful taking under § 3113(a) occurred. The court stated, "*Swoope* did not hold that the plaintiff's taking of the vehicle was unlawful solely because she lacked the owner's express permission; rather, that was merely one factor that the Court considered. And that fact was clearly necessary for *Swoope* to reach the conclusion that it did—if the driver in *Swoope* had the owner's express permission to use the vehicle, then under *Monaco*, the driver's taking of the vehicle was not unlawful." *Pena-Cruz v State Farm Mut Automobile Ins Co*, unpublished opinion of the Court of Appeals, issued Mar. 14, 2024, *15-16 (Docket No. 364284).[21] As Plaintiff admits, the holding in *Pena-Cruz* also turned on the fact that the plaintiff lacked the owner's permission. Pl. Brf., p. 38.

In *Pena-Cruz*, the issue was whether there was an unlawful taking, where the vehicle's owner neither expressly granted permission nor prohibited the taking and the taker lacked a valid driver's license. *Id.*, slip op. at 5. The plaintiff argued, like Plaintiff here, that express permission is not required and that the fact that he was unlicensed was irrelevant. The court rejected both arguments. The court found the facts in the record that were informative as to whether the person "knew or should have known" the taking was unlawful were ultimately informative to both the second and third prongs of the unlawful-taking analysis. Cf *Ahmed*, 337 Mich App at 14 (recognizing "there is no requirement… that different facts establish each of the elements [under § 3113(a)]"). In concluding an unlawful taking occurred, the court reasoned that the plaintiff did not have the owner's permission, knew he was unlicensed and unable to legally operate the vehicle,

[21] This opinion is cited for the purpose of responding to Plaintiff's arguments. See MCR 7.215(C).

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and took no steps to determine whether the owner authorized the taking. *Id.*, slip op. at pp. 14-15. Put simply, the court in *Pena-Cruz* understood that where there is a taking without the owner's permission but without a prior express prohibition, the fact that the taker possesses knowledge that one is taking a vehicle in violation of the Motor Vehicle Code yet fails to determine whether the owner authorizes the same, is relevant to the analysis under § 3113(a). The same reasoning applies here.

Likewise, Plaintiff cites to *Bradley v Westfield Ins Co*, ___Mich App___; ___NW2d___(2024)[22] as further proof that the opinion below has generated confusion over whether the lack of a driver's license alone renders a taking unlawful. But, in *Bradley*, the court found the plaintiff, who was unlicensed and operating her mother's vehicle *with her mother's permission*, did not unlawfully take the vehicle within the meaning of § 3113(a). *Id.*, slip op. at 2, 12. *Bradley* is virtually identical to *Monaco*. Nonetheless, the court unnecessarily delved into a discussion of this case, reasoning that "[t]he facts of *Swoope* cannot be meaningfully distinguished from the facts of *Monaco*. In each case, a vehicle was operated *with the owner's permission* but without a valid license." *Id.* (emphasis added). The panel in *Bradley* apparently misunderstood the facts of this case, believing that Plaintiff had Ms. Valentine's permission to take her vehicle and the sole basis of the court's holding in this case was the fact that Plaintiff was unlicensed.

Based on that misunderstanding of the *facts* of this case (not law), the panel in *Bradley* found the opinion below conflicted with *Monaco* and that, under MCR 7.215(J)(1), it was required to follow the older opinion – *Monaco*. *Bradley* is a published case and is now binding on Court of Appeals and Michigan's trial courts. Thus, to the extent a judge misinterprets this case to stand

[22] This Court held the application for leave in *Bradley* in abeyance pending the resolution of this case. *Bradley v Westfield Ins Co*, ___Mich___; 18 NW3d 16 (2025).

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for the proposition that a violation of the Motor Vehicle Code alone – without a taking – constitutes an unlawful use, *Bradley* prevents such a conclusion from being applied.

Plaintiff also cites to *Witt v Smithson*, an unpublished opinion of the Court of Appeals issued Jan. 16, 2025 (Docket No. 367792)[23], but in *Witt*, the court found the lack of a driver's license was insufficient to constitute an unlawful taking *where the taker had the owner's permission*. The court stated that the opinion below in this case did not require a different result because "[t]he driver in *Swoope* admitted during her deposition that the vehicle's owner did not give her permission to drive the car and failed to take any steps to ensure the taking was authorized." *Id.* at *4 (cleaned up). This case too disproves the contention that the opinion below has created irreconcilable confusion.

Finally, Plaintiff cites to *VHS of Mich, Inc v State Farm Mut Automobile Ins Co*, ___Mich App ___; ___ NW2d___ (2024) lv held in abeyance ___Mich___; 18 NW3d 14 (2025). But, again, that opinion found that an unlawful use does not constitute an unlawful taking. Regardless, the issue in that case is dissimilar to this case. In *VHS*, a mechanic, Michael Dantzler *knew* he was not authorized to take a customer's vehicle out for a late-night joyride but did so anyway, while intoxicated, with two minor children as passengers and crashed the vehicle. This was a clear violation of MCL 750.414, which prohibits joyriding in a vehicle where a person has lawful possession of the vehicle. See n.7, *supra*. In *VHS*, the court held that a "bailee" of a vehicle can never unlawfully take a vehicle within the meaning of § 3113(a) for the sole reason that the vehicle's owner consented to the bailee taking custody of the vehicle, thus, is presumed to consent to any further action taken by the bailee, regardless of the owner's actual scope of authorization. This is wrong because it directly conflicts with the plain language of MCL 500.3113(a) and this

[23] This opinion is cited for the purpose of responding to Plaintiff's arguments. See MCR 7.215(C).

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Court's opinion in *Spectrum* for three reasons. First, the idea that there is presumed consent was expressly rejected in *Spectrum*. Second, it is based on caselaw finding that MCL 750.414 cannot form the basis for an unlawful taking under § 3113(a), which directly conflicts with *Spectrum*. Third, *Spectrum* stresses that an analysis of § 3113(a)'s applicability to a set of facts must be faithful to the language of the statute – not based on speculations about classes of persons who the Legislature may have intended to immunize from § 3113(a). Thus, the issue in *VHS* is whether one who took a vehicle unlawfully and *undeniably knew* it was taken unlawfully is excluded from recovering benefits under § 3113(a).

Finally, even if the court's cursory analysis of the second factor below was substantively incomplete or constituted error, it is insignificant dicta. The only issue in dispute in this case below was whether the scienter requirement was met – which it was. Plaintiff conceded the taking was unlawful below. Because the issue was not in dispute below, the court's comments as to the basis of the unlawful taking were not necessary to the resolution of the case, thus, not necessary to the holding, making it dicta. *Griswold Props, LLC*, 276 Mich App at 563. Accordingly, this Court should deny leave to appeal.

CONCLUSION AND REQUEST FOR RELIEF

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

Respectfully submitted,

Dated: June 24, 2025

By: */s/ Erin A. Sedmak*

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CERTIFICATE OF COMPLIANCE

I certify that the Defendant-Appellees' Answer in Opposition to Plaintiff-Appellant'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 13,254.

Dated: June 24, 2025

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PROOF OF SERVICE

I hereby certify that on June 24, 2025, 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.

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