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STATE OF MICHIGAN

IN THE SUPREME COURT

MOHAMMED ABDULLA,

Plaintiff-Appellee,

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.

Supreme Court No. 167532-3

COA No. 364797; 364866

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

/

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

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STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction over this application for leave to appeal under MCR 7.305. Defendant-Appellant Auto Club Group Insurance Company ("Auto Club") seeks leave to appeal or peremptory reversal of: 1) the October 5, 2022 order denying Auto Club's motion for summary disposition (APX 0746a); 2) the January 13, 2023 order denying reconsideration of the circuit court's earlier October 5, 2022 order (APX 0998a-0999a); 3) the January 20, 2023 order granting Mohammed Abdulla's motion for partial summary disposition against Defendant Auto Club (APX 1047a); and the Court of Appeals opinion issued in *Abdulla v Auto Club Group Insurance Co*, ___ Mich App ___; ___ NW3d ___ (2024) (APX 1306a-1315a).

This Court granted oral argument on the application. (May 22, 2025 Order, APX 1328a-1329a).

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STATEMENT OF THE QUESTION PRESENTED

SHOULD THIS COURT REVERSE THE LOWER COURTS BECAUSE ABDULLA WAS AN "OWNER" OF THE MOTOR VEHICLE WITHIN THE MEANING OF MCL 500.3101(3)(L)(I) AND HE IS NOT ENTITLED TO PERSONAL PROTECTION INSURANCE BENEFITS AS A RELATIVE OF THE NAMED INSURED DOMICILED IN THE SAME HOUSEHOLD UNDER MCL 500.3111 AND MCL 500.3114?

Plaintiff-Appellee Mohammed Abdulla answers "No."

Defendant-Appellant Auto Club Group Insurance Company answers "Yes."

The Wayne County Circuit Court answered "No."

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STATEMENT OF FACTS

This appeal challenges a circuit court decision that a no-fault insurer, Auto Club Group Insurance Company, owes personal protection insurance benefits, penalty interest, and attorney fees to the plaintiff, Mohammed Abdulla ("Abdulla"), as a resident relative of his father, who is Auto Club's policyholder. The circuit court reversibly erred because Abdulla did not maintain full and proper no-fault coverage on the truck he was driving at the time of the accident, as required under MCL 500.3101(1). As a result, based on the uninsured status of his vehicle, Abdulla is prohibited from receiving personal protection insurance benefits under MCL 500.3113(b).

A. ABDULLA LACKED INSURANCE COVERAGE ON HIS VEHICLE AT THE TIME OF THE ACCIDENT

1. The motor vehicle accident involved a semi-truck hauling a truckload of tomatoes outside Michigan

The motor vehicle accident that is the subject of this action occurred on December 17, 2020. (Abdulla Dep Transcript, p 18, APX 0839a). At the time of the accident, Abdulla was a self-employed truck driver driving a semi-truck owned by his company, Tornado Trucking. (*Id.* at p 12, APX 0837a). When the collision occurred, Abdulla was making a run for Land Trucking, hauling a truckload of tomatoes to San Antonio, Texas. (*Id.* at p 18, APX 0839a). The truck/tractor he was driving was a 2012 Volvo ("the truck"). (Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 2, APX 0507a; Crash Report, p 4, APX 0523a). He had picked up the load from Livonia, Michigan before starting his route to Texas. (Abdulla Dep Transcript, p 42, APX 0845a). Abdulla explained that the accident occurred outside of Michigan:

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A. It was 2:00 at night. I was driving to go to Texas. I was on 55 Missouri. That was the highway. I passed a truck and I was driving about like 70 miles per hour.

***

A. Once I passed this truck and I'm driving in this lane -- so the other truck, you know, jumped from the other side to my lane and it was speeding, a very fast speed, and I was not able to avoid him.

Q. Was the other truck coming like from the other side of the highway, did they come into you head-on?

A. No. There was a separation line between us. Once I noticed that this truck came out of line and he was coming toward me, I tried to avoid him and I couldn't.

Q. What side was this other truck on from you?

A. In front of me.

Q. Were you driving in the same direction or opposite directions?

A. The opposite direction.

(*Id.* at p 19, APX 0839a).

The accident occurred in Missouri and was a tractor/trailer versus tractor/trailer collision. (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 3, APX 0666a).

2. Abdulla conceded that he owned the truck directly through his solely owned company

Abdulla admitted he owned the Volvo truck he was driving at the time of the accident:

Q. And what kind of truck were you driving?

A. A Volvo.

Q. Who owns the truck.

A. Myself.

Q. How long have you owed the truck?

A. I think less than a year.

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Q. Did you own it at the time of the accident?

A. Yes.

(Abdulla Dep Transcript, p 11, APX 0837a). Abdulla also admitted he is the sole owner of Tornado Trucking, and that Tornado Trucking owned the Volvo:

Q. What's your relationship to Tornado trucking?

A. *I am the owner of the company*.

***

Q. Does Tornado trucking have any ownership of the Volvo?

A. Yes.

Q. Does anybody else drive for Tornado Trucking other than you?

A. No.

Q. Are there any other owners of Tornado Trucking?

A. *No*.

(*Id.* at p 12, APX 0837a) (emphasis added).

Later in his deposition, Abdulla confirmed Tornado Tucking owned the truck, and that Tornado Trucking had owned the truck for what he believed to be more than six months before the accident:

Q. How long did Tornado Trucking own that vehicle before it was involved in the accident?

A. I don't remember. I don't know.

Q. More than a year?

A. Less than a year.

Q. *More than six months?*

A. *I think so.*

(*Id.* at p 42, APX 0845a) (emphasis added). Abdulla admitted that "Tornado Trucking owned and registered the tractor Mohammed Abdulla was driving" (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured

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Vehicle, p 3, APX 0666a), attaching the proof of insurance for the vehicle. (Insurance Identification Card, APX 0745a).

Abdulla added that before the accident, when he was not driving the truck, he stored the truck at a truck stop in Dearborn. (Abdulla Dep Transcript, pp 13-14, APX 0837a-0838a).

3. The lease agreement provided for full use of the truck by Tornado Trucking, which Abdulla solely owned and controlled

Tornado Trucking and Land Trucking entered an "Independent Contractor Lease Agreement" (the "lease agreement"). (Lease Agreement, APX 0859a-0863a). Under the lease agreement, "Land Trucking was leasing Tornado Trucking's tractor," and Tornado Trucking was transporting cargo for Land Trucking. (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 3, APX 0666a). The lease agreement identified Tornado Trucking as the "Contractor," and Land Trucking as the "Carrier." (Lease Agreement, p 1, APX 0859a). Abdulla explained the arrangement in his deposition as follows:

> Q. No problem. Can you explain how Tornado Trucking did business with Land Trucking?
>
> A. There was a contract between the two companies. They would give me the loads, the assignments and I would take it.
>
> Q. Who did you communicate with on what loads to take?
>
> A. With a dispatcher.

(Abdulla Dep Transcript, p 13, APX 0837a).

The terms of the lease agreement state that the contractor (i.e., Tornado Trucking) "shall be solely responsible for furnishing the power equipment used to provide service[.]" (Lease Agreement, p 2, APX 0860a). The lease further states: "Contractor [Tornado

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Trucking] shall at all times be free to set its hours of operations[,]" and that "Contractor is free to work when and where it chooses and shall accept or reject work assignments on a load-by-load basis." (*Id.*). The agreement also states that "Contractor . . . shall have the right to make all crucial decisions with respect to the maintenance and operation of [the leased] equipment[,]" and that "Contractor shall be free to set the method and time of performance for all delivery of loads accepted by it." (*Id.* at p 3, APX 0861a).

The "Termination" clause of the agreement states: "Either party has the right to terminate this agreement upon 24 hour notice." (*Id.* at p 5, APX 0863a). An exact date of termination is not stated within the lease agreement.

4. The insurance policies excluded or otherwise did not provide personal protection insurance coverage on the truck at the time of the accident

On the date of the accident, Tornado Trucking was the named insured on an insurance policy with Great American, which policy listed the 2012 Volvo as a scheduled auto. (Great American Policy, p 8 of 65, APX 0930a). But the policy enumerated several exclusions to its personal protection insurance coverage. The policy excluded personal protection insurance coverage while the truck was "being used in the business of any lessee or while being used to transport cargo of any type." The full exclusion reads:

A. Exclusions

We will not pay Personal Injury Protection benefits for bodily injury.

13. To anyone arising 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. For purposes of this exclusion the phrase "in the business of any lessee" means any of the following uses of the covered auto:

    a. use for the benefit of or to further the interest of any lessee or when conducting business of any type;

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b. use by any person or organization acting within the scope of employment by any lessee;

c. use by any person or organization acting under the direction, control or dispatch of any lessee;

d. use while traveling to or from any location for the purpose of picking up, delivering or transporting cargo on behalf of any lessee; or

e. use while traveling between any location where the covered auto is regularly garaged and

1) any terminal or facility of any lessee, or

2) any other location,

for the purpose of picking up, delivering or transporting any cargo; or

f. use while traveling from:

1) any terminal or facility of any lessee, or

2) any location at which the covered auto was present for the purpose of picking up, delivering or transporting cargo, to any location where the covered auto is regularly garaged.

(*Id.* at pp 35-36 of 65, APX 0957a-0958a). Thus, the Great American policy did not provide personal protection insurance coverage to Abdulla at the time of the accident because he was transporting cargo for the lessee, Land Trucking.

When the accident occurred, a policy of insurance had also been issued to Land Trucking by Progressive Southeastern Insurance Company. (Progressive Marathon's Motion for Summary Disposition, ¶ 4, APX 0028a). The policy was issued in the State of Indiana and did not provide medical payment coverage. (*Id.* ¶ 5, APX 0028a). Progressive Southeastern was "not authorized to write insurance in Michigan" and had "not voluntarily

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subjected itself to the Michigan No-Fault Act[.]" (*Id.* ¶ 8, APX 0028a). Rather, "[t]he contract for insurance was executed in Indiana between Progressive Southeastern, an entity conducting business in Indiana, and Plaintiff's contract employer [Land Trucking], an Indiana based company[.]" (*Id.* ¶ 9, APX 0028a). The Progressive policy did not list the 2012 Volvo, *and it did not include personal protection insurance coverage*. (Progressive Dec. Page and Policy, APX 0046a-0075a).

Abdulla lived with his parents at the time of the accident, including his father, "Abdulla Kader." (Abdulla Dep Transcript, p 8, APX 0836a). Auto Club insured Abdulkader Al-Shihry at the time of the accident via an Automobile Insurance Policy. (Auto Club Dec. Page and Policy, APX 0592a-0617a). The policy did not list Abdulla as a named inured and did not list the 2012 Volvo as a covered vehicle. (*Id.*).

B. ABDULLA SUED MULTIPLE INSURERS SEEKING PERSONAL PROTECTION INSURANCE BENEFITS FOR INJURIES HE SUSTAINED IN AN AUTOMOBILE ACCIDENT

Abdulla sued Progressive Marathon Insurance Company ("Progressive Marathon"), Auto Club Group Insurance Company ("Auto Club"), and Great American Insurance Company[1] ("Great American"), seeking personal protection insurance benefits for injuries he sustained in the automobile collision on December 17, 2020. (Complaint, APX 0007a-0016a). Abdulla claimed Auto Club owed benefits because he was a resident relative of Abdulkader Al-Shihry's household. (*Id*. ¶ 7, APX 0012a). Al-Shihry was a named insured on an automobile policy issued by Auto Club. (*Id.* ¶ 6, APX 0012a). Abdulla claimed

[1] In Great American's motion for summary disposition, Great American clarified that Abdulla improperly identified "Great American Insurance Company" in the caption, where its proper name is "Great American Assurance Company." (Great American's Motion for Summary Disposition, p 1, APX 0107a).

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Progressive Marathon owed coverage under a policy it issued to Land Trucking, LLC, which Abdulla alleged was the company that "dispatched/employed [Abdulla's] trucking company, Tornado Trucking, LLC, at the time of the December 17, 2020 collision[.]" (*Id.* ¶ 8, APX 0012a). Abdulla further claimed that Great American issued a policy to his trucking company, Tornado Trucking. (*Id.* ¶ 9, APX 0013a). Abdulla contended that either Auto Club, Progressive Marathon, or Great American "is first in priority to provide applicable Personal Protection Insurance benefits[.]" (*Id.* ¶ 12, APX 0013a). Abdulla sought outstanding personal protection insurance benefits, penalty interest, attorney fees, and "any and all other amounts he is entitled to recover[.]" (*Id.* ¶ 20, APX 0014a).

Auto Club answered the complaint, denying liability. (Auto Club's Answer to Complaint and Affirmative Defenses, APX 0017a-0024a). Auto Club raised several affirmative defenses, including that Abdulla was not entitled to payment of personal protection insurance benefits because he was the owner or registrant of a motor vehicle involved in an accident on which the security required by MCL 500.3101 was not in effect. (*Id.*, Affirmative Defenses ¶ 1, APX 0021a).

After initial motion practice, Abdulla amended the complaint to set forth three counts. (First Amended Complaint, APX 0086a-0094a). Count I claimed that Abdulla was entitled to personal protection insurance benefits from Progressive, Great American, Auto Club, or the unnamed servicing insurer. (*Id.*, APX 0088a). Abdulla claimed that Auto Club had to pay benefits because Abdulla was a resident relative of its named insured, Al-Shihry. (*Id.* ¶ 11, APX 0088a). Abdulla claimed that Progressive Southeastern had to pay benefits because it issued a policy to Land Trucking, the company that dispatched/employed Abdulla's trucking company, Tornado Trucking, at the time of the collision. (*Id.* ¶ 12, APX

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0088a). Abdulla claimed that Great American had to pay benefits because it issued a policy to Tornado Trucking. (*Id.* ¶ 13, APX 0088a-0089a). According to Abdulla, "[e]ither Defendant Auto Club, Defendant Progressive, Defendant Great American, or Defendant USI ["unnamed servicing Insurer"] is first in priority to provide applicable Personal Protection Insurance Benefits[.]" (*Id.* ¶ 16, APX 0089a).

The circuit court denied cross-motions for summary disposition as premature, adding that the parties "may refile after the close of discovery." (Nov. 2, 2021 Order, APX 1046a). But the court granted Great American's motion for summary disposition based on the business use exclusion. (*Id.*).

Months later, the Michigan Automobile Insurance Placement Facility/Michigan Assigned Claims Plan moved for summary disposition. (MAIPF and MACP's Motion for Summary Disposition, APX 0416a-0503a). The motion, based on MCL 500.3172, argued that Abdulla was not eligible for no fault benefits from the Michigan Automobile Insurance Placement Facility/Michigan Assigned Claims Plan because the motor vehicle accident occurred outside of Michigan (in Missouri). (*Id.* at p 9-11, APX 0424a-0426a).

Auto Club also filed its "Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle." (Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, APX 0504a-0657a). Auto Club explained that Abdulla conceded he was the sole owner of Tornado Trucking, and that he/Tornado Trucking owned the truck at the time of the accident. (*Id.* ¶¶ 3, 9, APX 0507a, 0508a). Auto Club also explained Abdulla (through Tornado Trucking) leased the truck to Land Trucking, and under the lease, Abdulla was driving with a load of tomatoes at the time of the collision. (*Id.* ¶ 4, APX 0507a). Although Land Trucking was insured with a fleet liability policy issued by

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Progressive Southeastern, that policy did not have personal protection insurance coverage. (*Id.* ¶¶ 5-6, APX 0508a). Further, Great American's bobtail policy on the truck did not provide personal protection insurance coverage when the vehicle was under dispatch hauling a load or when the truck was in use for the business of any lessee. (*Id.* at p 7, APX 0512a).

Auto Club also explained that because Abdulla had "proprietary and possessory use" of the truck for more than 30 days, he was a statutory owner of the truck under MCL 500.3101(3)(*l*)(*i*). (*Id.* at p 9, APX 0514a). As the owner of an uninsured vehicle at the time of the accident, Abdulla had no right to personal protection insurance benefits under MCL 500.3113(b). (*Id.* at pp 8-12, APX 0513a-0517a).

Both the Michigan Automobile Insurance Placement Facility and Progressive Southeastern concurred with Auto Club's motion for summary disposition. (MAIPF's Concurrence with Co-Defendant Auto Club's Motion for Summary Disposition, APX 0658a-0659a; Progressive's Concurrence with Co-Defendant Auto Club Group Insurance Company's Motion for Summary Disposition, APX 0660a-0663a).

Abdulla opposed Auto Club's motion for summary disposition. (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, APX 0664a-0745a). Abdulla admitted that he owned Tornado Trucking, and that Tornado Trucking owned and registered the truck he was driving at the time of the accident. (*Id.* at p 3, APX 0666a). Based on the Great American policy, Abdulla asserted that the truck he was driving at the time of the collision was not "uninsured," and so his claim should not be barred under MCL 500.3113(b). (*Id.* at p 10, APX 0673a). Relying on a non-binding federal court opinion (*Est of Dojcinovic by Dojcinovic v Citizens Ins Co of the*

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Midwest, 583 F Supp 3d 972 (ED Mich 2022)),[2] Abdulla further asserted that Auto Club "should have to provide [him] with personal protection insurance benefits." (*Id.* at p 14, APX 0677a).

The circuit court granted Michigan Automobile Insurance Placement Facility/Michigan Assigned Claims Plan's motion for summary disposition under MCL 500.3172, stating that "[t]hey are not in priority to pay for PIP benefits as the accident occurred out of state." (Oct. 5, 2022 Order Granting MAIPF/MACP's Motion for Summary Disposition, APX 0747a). On the same day, the court denied Auto Club's motion for summary disposition, 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 priority to pay benefits." (Oct. 5, 2022 Order Denying Auto Club's Motion for Summary Disposition, APX 0746a).

With only Auto Club and Progressive remaining as defendants, Progressive sought clarification of the October 5, 2022 orders, one of which dismissed the Michigan Automobile Insurance Placement Facility/Michigan Assigned Claims Plan, and the other of which stated that Auto Club is the "highest in priority to pay benefits" to Plaintiff. (Progressive's Motion for Clarification of Order, APX 0748a-0787a). Progressive later amended its motion. (Progressive's Amended Motion for Clarification of Order, APX 0788a-0805a). In its amended motion, Progressive sought "an Order clarifying the October 5, 2022 Orders, wherein it is addressed as to where Progressive, in relation to Auto Club, stands in

[2] State courts are not bound by the decisions of lower federal courts. See *Slis v State*, 332 Mich App 312, 361 n 25; 956 NW2d 569 (2020); *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004).

order of priority to pay no-fault benefits to Plaintiff." (*Id.* at p 4, APX 0793a).

Auto Club responded to the amended motion for clarification. (Auto Club's Response to Defendant Progressive's Amended Motion for Clarification, APX 1227a-1230a). Auto Club argued Progressive's request for dismissal was premature where time remained for an appeal or a motion for reconsideration. (*Id.* at p 4, APX 1230a). In the alternative, Auto Club argued Progressive's request should be denied in part and Progressive should be dismissed without prejudice only. (*Id.*).

The circuit court granted Progressive's motion for clarification of order. (Nov. 14, 2022 Order, APX 0813a-0815a). The court dismissed Progressive without prejudice, granting its motion "for the reasons stated on the record." (*Id.* at p 3, APX 0815a). At the hearing on the motion, the circuit court emphasized that the dismissal was without prejudice, noting the potential for appeal by Auto Club:

> Here's why I'm gonna do it without prejudice, Mr. Klenczar, because your motion was technically an SD and it didn't give everybody -- it didn't follow within the court rules time, 'cause I mean it is a dispositive motion on the merits.
>
> So why don't we do that, why don't we enter it without prejudice, because there is an issue I see with ACIA if they do take up an appeal and everything else, they had a little bit of a unique issue in this case.

(Nov. 11, 2022 Hearing Transcript, p 5, APX 0810a).

Auto Club moved for reconsideration of the October 5, 2022 Order denying its motion for summary disposition. (Auto Club's Motion for Reconsideration, APX 0816a-0997a). Auto Club argued the circuit court committed palpable error by: 1) "finding that Plaintiff complied with MCL 500.3101 by insuring his truck under a policy that never provides No-Fault benefits for the truck's primary, frequent, and regular purpose"; and 2)

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because "MCL 500.3114(4) does not place Auto Club in the order of priority for payment of PIP benefits." (*Id.* at p 5, APX 0820a).

Abdulla subsequently filed a motion for partial summary disposition, which argued: 1) that Abdulla maintained proper security on the truck and is not precluded from making a claim for personal protection insurance benefits (Plaintiff's Motion for Partial Summary Disposition Against Auto Club, p 14, APX 1061a); 2) that a priority dispute is not a defense to a claim for personal protection insurance benefits, and there has been no dispute that Auto Club is in the order of priority for payment of Abdulla's personal protection insurance benefits (*id.* at pp 14-18, APX 1061a-1065a); 3) that Abdulla is entitled to penalty interest under MCL 500.3142(2) (*id.* at pp 18-19, APX 1065a-1066a); and 4) that Abdulla is also entitled to payment of attorney fees under MCL 500.3148(1). (*Id.* at pp 19-23, APX 1066a-1070a). Abdulla also filed a supplemental brief, arguing that settlement offer letters sent by Auto Club to several of Abdulla's medical providers after the filing of his motion for partial summary disposition further show that Auto Club is responsible to issue payment on Abdulla's personal protection insurance benefits (as well as interest and attorney fees). (Plaintiff's Supplemental Brief, APX 1237a-1239a).

Auto Club opposed Abdulla's motion for partial summary disposition. (Auto Club's Response to Plaintiff's Motion for Partial Summary Disposition, APX 1245a-1259a). Auto Club argued Abdulla was the owner and operator of an uninsured motor vehicle at the time of the accident and is barred under MCL 500.3113(b) from recovering personal protection insurance benefits. (*Id.* at pp 3-4 of Brief in Support, APX 1251a-1252a). Auto Club also argued that Abdulla's motion must fail because the benefits are not "overdue" (*id.* at pp 5-6 of Brief in Support, APX 1253a-1254a), and attorney fees are not automatically owed

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where Auto Club did not act unreasonably due to a legitimate question of statutory construction and/or bona fide factual dispute. (*Id.* at pp 6-11 of Brief in Support, APX 1254a-1259a).

Abdulla replied. (Plaintiff's Reply Brief to Auto Club's Response to Plaintiff's Motion for Partial Summary Disposition, APX 1282a-1285a). Abdulla explained he sought a ruling that Auto Club's payment of benefits was late, which would allow for interest and attorney fees. (*Id.* at pp 2-3, APX 1283a-1284a).

In an order dated January 13, 2023, the circuit court denied Auto Club's motion for reconsideration. (Jan. 13, 2023 Order Denying Auto Club's Motion for Reconsideration, APX 0998a-0999a). In a later order, the circuit court granted Abdulla's motion for partial summary disposition. (Jan. 20, 2023 Order Granting Plaintiff's Motion for Partial Summary Disposition Against Auto Club, APX 1047a). The order states: "At this point, any unpaid personal protection insurance benefits which were supported by 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." (*Id.*).

C. AUTO CLUB SUCCESSFULLY SOUGHT INTERLOCUTORY REVIEW BY THE COURT OF APPEALS, WHICH ISSUED A MAJORITY OPINION PARTIALLY AFFIRMING AND PARTIALLY REVERSING OVER A STRONG DISSENT

On February 2, 2023, Auto Club filed an interlocutory application for leave to appeal from the October 5, 2022 order denying its motion for summary disposition and the January 13, 2023 order denying its motion for reconsideration. Then on February 8, 2023, Auto Club filed a second interlocutory application for leave to appeal from the January 20, 2023 order granting Mohammed Abdulla's motion for partial summary disposition against Auto Club. The Court granted both applications on July 5, 2023, and, on its own motion

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under MCR 7.216(A)(7), consolidated the two docket numbers. (July 5, 2023 Order Granting Leave, APX 1327a).

After briefing and oral argument, the Court of Appeals issued a divided opinion partially affirming and partially reversing the circuit court. (Opinion, APX 1306a-1315a). The panel majority agreed that the No-Fault Act requires the owner or registrant of a motor vehicle registered in Michigan to maintain insurance for payment of personal protection injury benefits. (*Id.* at p 4, APX 1309a). It also agreed that when a person fails to do so, that person is barred from obtaining benefits. (*Id.*). But the panel majority concluded that Tornado Trucking held legal title to the vehicle, and that Tornado Trucking stored its vehicle at a truck stop between long-haul jobs. (*Id.* at p 5, APX 1310a). The panel majority also concluded that the device of holding ownership in a separate legal entity was enough to mean that Abdulla was not an "owner" within the meaning of the statute, because the record lacked "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 barring his coverage. (*Id.*). The panel majority agreed that Abdulla was not entitled to attorney fees because Auto Club's refusal to pay was the product of a legitimate question of statutory interpretation. (*Id.* at p 6, APX 1311a). But the panel majority upheld the payment of penalty interest, based on its conclusion that Auto Club owed benefits and failed to pay them within 30 days of the receipt of reasonable proofs. (*Id.*).

The dissent disagreed, pointing out that the panel majority's ruling "defeats the purpose of the no-fault act to conclude that Abdulla has no ownership over the tractor." (Dissent, p 2, APX 1314a). The dissent pointed out that Abdulla was the sole owner of the LLC, Tornado Trucking, which was the titled and registered owner of the tractor. (*Id.*). The

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dissent also pointed out that "Abdulla admitted he was the 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." (*Id.*). In the dissent's view, "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.* at p 3, APX 1315a). Thus, the dissent concluded that "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." (*Id.*). The dissent also reasoned that Abdulla was "at a minimum, a co-owner of the tractor, and therefore was required to maintain a no-fault policy under MCL 500.3101(1)." (*Id.*). Thus, the dissent would have vacated the trial court order denying Auto Club summary disposition and the order awarding penalty interest and fees. (*Id.*).

From that opinion, the Auto Club seeks review and a reversal from this Court.

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STANDARD OF REVIEW

The grant or denial of summary disposition is reviewed de novo based on the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817, 822 (1999).[3] Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue about any material fact such that the moving party is entitled to judgment as a matter of law. *Wilson v Alpena Cnty Rd Comm'n*, 474 Mich 161, 166; 713 NW2d 717, 720 (2006). When considering a motion under MCR 2.116(C)(10), a court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in a light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact for trial. *Id.* See also *Maiden*, 461 Mich at 121, wherein this Court explained that the reviewing court should evaluate a motion under MCR 2.116(C)(10) "by considering the substantively admissible evidence actually proffered in opposition to the motion." Under MCR 2.116, when a motion under (C)(10) is made and supported, "an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4). If the adverse party does not so respond, "judgment, if appropriate, shall be entered against him or her." *Id.*

The interpretation of statutes and court rules, and the application of legal doctrines, are also reviewed de novo. *Estes v Titus,* 481 Mich 573, 578–79; 751 NW2d 493, 496

[3] And a trial court's decision to deny a motion for reconsideration is reviewed for an abuse of discretion. *Am Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 709; 609 NW2d 607, 615 (2000).

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(2008); see also *Silich v Rongers,* 302 Mich App 137, 143; 840 NW2d 1, 4 (2013) (the interpretation of a statute or court rule constitutes a question of law that is reviewed de novo). When a statute's language is clear and unambiguous, the Court applies the terms of the statute to the circumstances of the case. *PIC Maintenance, Inc v Dep't of Treasury*, 293 Mich App 403, 408; 809 NW2d 669, 673 (2011); see also *Shinn v Michigan Assigned Claims Facility,* 314 Mich App 765, 768; 887 NW2d 635, 637 (2016).

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. To this rule all others are subordinate." *McIntosh v Groomes,* 227 Mich 215, 218; 198 NW 954, 955 (1924). "If the language of the contract is clear and unambiguous, it is to be construed according to its plain sense and meaning; but if it is ambiguous, testimony may be taken to explain the ambiguity." *New Amsterdam Cas Co v Sokolowski,* 374 Mich 340, 342; 132 NW2d 66, 68 (1965); see also *Frankenmuth Mut Ins Co v Masters,* 460 Mich 105, 111–12; 595 NW2d 832, 837 (1999). The court will not create an ambiguity where the terms of the contract are clear. *Masters*, 460 Mich at 111. An insurance policy is much the same as any other contract and is interpreted in the same way. More specifically, "[a]n insurance policy is a contract and should be interpreted according to its plain meaning." *Wozniak v John Hancock Mut Life Ins Co of Bos, Mass*, 288 Mich 612, 615; 286 NW 99, 100 (1939).

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INTRODUCTION

This Court's May 22, 2025 order poses the following two questions to the parties: 1) whether Abdulla was an "owner" of the truck within the meaning of MCL 500.3101(3)(*l*)(*i*), and 2) whether Abdulla is entitled to personal protection insurance benefits under MCL 500.3111 and MCL 500.3114. The answer to the first question is yes—Abdulla is an owner of the truck under MCL 500.3101(3)(*l*)(*i*) because he had use of the truck "under a lease *or otherwise*" for more than 30 days. The scope of the "or otherwise" language is broad and extends ownership status to an individual—even where he or she is not the titled owner, registrant, or lessee of the vehicle—if that individual has use of the vehicle for a period greater than 30 days. Use of the phrase "or otherwise" plainly indicates that the Legislature intended the statute to extend beyond situations involving leases, rentals, or title ownership. The Legislature's use of such catchall terms in a statute is intended to save it from having to spell out in advance every contingency in which the statute could apply. Too narrowly construing a catchall term—as the Court of Appeals majority did here—eliminates this intended benefit. Abdulla's exclusive use of the truck for an extended period dictates his ownership, and the fact that Abdulla is the sole owner of his limited liability company, which holds legal title to the truck, cannot change Abdulla's status as an owner under MCL 500.3101(3)(*l*)(*i*). Whether directly or through the limited liability company that Abdulla controls, he is the owner of the truck.

The answer to this Court's second question is no—Abdulla is not entitled to personal protection insurance benefits because he owned the truck and did not properly insure it. MCL 500.3113(b). The out-of-state accident provision, MCL 500.3111, does not save Abdulla's claims because the unambiguous language in MCL 500.3113(b) applies even if the

accident occurs outside of Michigan. Abdulla cites no authority stating otherwise. This Court has confirmed that when the uninsured vehicle is involved in the accident—as it was here—the uninsured owner is disqualified from entitlement to personal protection insurance benefits. Application of that straightforward rule here reaches the correct result.

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ARGUMENT

THIS COURT SHOULD REVERSE THE LOWER COURTS BECAUSE ABDULLA WAS AN "OWNER" OF THE MOTOR VEHICLE WITHIN THE MEANING OF MCL 500.3101(3)(*l*)(*i*) AND HE IS NOT ENTITLED TO PERSONAL PROTECTION INSURANCE BENEFITS AS A RELATIVE OF THE NAMED INSURED DOMICILED IN THE SAME HOUSEHOLD UNDER MCL 500.3111 AND MCL 500.3114

The circuit court reversibly erred in holding that Auto Club owes coverage to the son of its insured, and resultant interest and attorney fees, even though he did not maintain full and proper security on the truck he was driving at the time of the accident as required by the Michigan No-Fault Act. The panel majority upheld this erroneous decision in a published opinion over a strong dissent. The mini-oral argument ordered by this Court allows it to correct this error and clarify the meaning of "or otherwise" "having the use of a motor vehicle" within the meaning of the No-Fault Act.

A. ABDULLA WAS AN "OWNER" OF THE MOTOR VEHICLE WITHIN THE MEANING OF MCL 500.3101(3)(*l*)(*i*), AND THE PANEL MAJORITY'S DECISION CONFLICTS WITH OTHER DECISIONS HOLDING THAT THE TEST FOR OWNERSHIP IS THE NATURE OF THE RIGHT TO USE THE VEHICLE

1. Abdulla is an owner of the truck under MCL 500.3101(3)(l)(i)

The Michigan No-Fault Act defines an "owner" in MCL 500.3101(3)(*l*) in relevant part as follows:

> (*l*) "Owner" means any of the following:
>
> *(i)* A person renting a motor vehicle or *having use of the motor vehicle*, under a lease *or otherwise*, for a period that is greater than 30 days.
>
> . . .
>
> *(iii)* A person that holds the legal title to a motor vehicle . . . other than a person engaged in the business of leasing motor vehicles . . . that is the lessor of a motor vehicle . . . under a lease that provides for the use of the motor vehicle . . . by the lessee for a period that is greater than 30 days.

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MCL 500.3101(3)(*l*)(*i*), (*iii*) (emphasis added). In other words, the statutory definition of owner includes much more than the mere title holder, and more than those having possession of a vehicle under a lease. The Legislature included the phrase "or otherwise" to provide a broad catch-all category to assure that those who routinely possess and use vehicles assure that those vehicles are insured. But the Court of Appeals panel majority has now offered a pinched interpretation of the statute's provision on ownership that opens a gaping loophole in the statutory fabric. Review is needed to correct it.

Abdulla testified in his deposition that he is the sole owner of Tornado Trucking (Abdulla Dep Transcript, p 12, APX 0837a), that Tornado Trucking owned the truck (*id.* at pp 12, 42, APX 0837a, 0845a), and that he believes Tornado Trucking owned the truck for more than six months before the accident occurred. (*Id.* at p 42, APX 0845a).[4] Abdulla explained that under the lease agreement between his company and Land Trucking, Land Trucking would give him the loads, and he would transport the loads to the desired destination. (*Id.* at pp 13, 43, 44, APX 0837a, 0845a). Abdulla also confirmed that when he was not driving the truck, he stored the truck at a truck stop in Dearborn, Michigan. (*Id.* at pp 13-14, APX 0837a–0838a). Abdulla admitted that in the six-to-twelve-month period before the accident when Tornado Trucking owned the 2012 Volvo truck, he went to "[m]any, many locations in Michigan" to pick up loads, and the loads were picked up for Land Trucking during the parties' engagement. (*Id.* at p 43, APX 0845a).

[4] Abdulla admitted in his response to Auto Club's motion for summary disposition that "[a]t the time of the accident, Tornado Tucking owned and registered the tractor Mohammed Abdulla was driving." (Plaintiff's Response to Defendant Auto Club's Motion for Summary Disposition Re: MCL 500.3113(b) Uninsured Vehicle, p 3, APX 0666a).

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The statute, MCL 500.3101(3)(*l*), defines "owner" to include both title holders (subsection *iii*) and those who rent or have use of a vehicle for more than 30 days (subsection *i*). The Legislature deliberately included the phrases "having use" of the motor vehicle under a "lease or otherwise" to assure that someone could not evade their obligation by a scheme such as this one. But the panel majority's published opinion has interpreted the language so narrowly as to vitiate the legislative plan to assure complete and universal coverage for vehicles.

Abdulla was the statutory owner of the vehicle under MCL 500.3101(3)(*l*)(*i*) at the time of the accident. The panel majority addressed this point in a conclusory manner and reached the wrong result. Abdulla's trucking company agreed to lease the truck to Land Trucking. But under the lease, Land Trucking gave Abdulla loads to transport to their desired destinations. (Abdulla Dep Transcript, pp 13-14, 43, APX 0837a-0838a, 0845a). In *Ardt v Titan Ins Co*, 233 Mich App 685; 593 NW2d 215 (1999), the Court explained that "having the use" of a motor vehicle when defining "owner" under MCL 500.3101(2)(g)(i) [now MCL 500.3101(3)(*l*)(*i*)] "means using the vehicle in ways that comport with concepts of ownership." *Id.* at 690. 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 (emphasis in original). *See* also *Kessel v Rahn*, 244 Mich App 353, 359–60; 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 proprietary and possessive use of the vehicle for more than 30 days, making him the owner under MCL 500.3101(3)(*l*)(*i*). Abdulla decided through the lease

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agreement between Tornado Trucking and Land Trucking when he would drive the truck to haul loads for Land Trucking. (Lease Agreement, p 2, APX 0860a). Over the course of more than 30 days, Abdulla drove the truck to pick up many loads for Land Trucking. (See Abdulla Dep Transcript, pp 42-43, APX 0845a). Abdulla parked the truck at a truck stop when he was not driving it to haul loads. (*Id.* at p 13, APX 0837a). Abdulla was the only person to drive the truck. (*Id.* at p 12, APX 0837a). In other words, Abdulla conceded that he had the only use of the truck for more than 30 days at the time of the accident.

The language of the lease agreement shows that it was Abdulla, by way of his company Tornado Trucking, who controlled use of the truck, not Land Trucking as the carrier lessee. The lease agreement states that the "Contractor [Tornado Trucking] shall at all times be free to set its hours of operations[,]" and that "Contractor is free to work when and where it chooses and shall accept or reject work assignments on a load by load basis." (Lease Agreement, p 2, APX 0860a). The lease agreement adds that "Contractor . . . shall have the right to make all crucial decisions with respect to the maintenance and operation of [the leased] equipment[,]" and that "Contractor shall be free to set the method and time of performance for all delivery of loads accepted by it." (*Id.* at p 3, APX 0861a).

In *Horace Mann Ins Co v Acuity*, 447 F Supp 3d 594 (ED Mich 2020), the lease agreement contained explicit language stating that the *lessee carrier* [i.e., Land Trucking here] "shall have the exclusive possession, control and use of the equipment for the duration of the lease" and that the carrier "shall be considered the 'owner' of the equipment[,]" which included the tractor. *Id.* at 599. But no language granting exclusive possession, control, and use of the truck to Land Trucking appears in the lease here. Without that language, and when Abdulla used and operated the truck for a period greater

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than 30 days, Abdulla is properly considered the statutory owner of the truuck under MCL 500.3101(3)(*l*)(*i*). Any reliance by the lower courts on other factors, such as where Abdulla parked the truck, was in error. Those facts do not show that Abdulla lacked statutory possession and control of the truck. For example, the fact that Abdulla kept the truck at a truck stop when he was not driving it simply shows that he did not park it at his home. The unambiguous language of the lease agreement shows that the other facts relied on by the trial court and Abdulla have no legal effect because under the lease, Abdulla had full use and possession of the truck.

This Court emphasized the broad reach of the statute's definition of owner in *Twichel v MIC Gen Ins Corp*, 469 Mich 524; 676 NW2d 616 (2004). This Court clarified the meaning of MCL 500.3101(2)(g)(i) [now MCL 500.3101(2)(*l*)(*i*)], explaining that "[n]othing in the plain language of [the statute] requires (1) that a person has at any time *actually used* the vehicle, or (2) that the person has *commenced* using the vehicle at least thirty days before the accident occurred." *Id.* at 530–31 (emphasis in original). Rather, "[t]he statute merely contemplates a situation in which the person *is renting or using* a vehicle for a period that is greater than thirty days." *Id.* at 531. This Court's focus in *Twichel* was on the nature of the right to use the vehicle: "It 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.

Here, Abdulla drove the truck to haul cargo. Abdulla was the only driver who had use of the truck for more than 30 days. The panel majority nevertheless concluded that because title was held by Tornado Trucking, Abdulla's solely owned limited liability

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company, Abdulla could not be held liable even where he had use of the truck for more than 30 days by leasing it "or otherwise." That "or otherwise" language encompasses this situation—where a truck driver creates a limited liability company to hold title, but preserves to himself complete ownership of that company and acts as the sole decisionmaker about that company and that truck, and yet fails to obtain personal protection insurance coverage.

In *King v Michigan Auto Ins Placement Facility*, 345 Mich App 240; 4 NW3d 804 (2023), the Court of Appeals recently discussed this language in a manner that is illustrative of the approach for this Court. The Court of Appeals emphasized the broad reach of the "or otherwise" language in MCL 500.3101(3)(l)(*i*). The Court explained that even where one of the plaintiffs, Emanuel King, was not the titled owner or the registrant of the vehicle he was driving at the time of the accident, he was still disqualified from benefits under MCL 500.3113(b) because "the no-fault act broadly defines an 'owner' of a vehicle as a person 'having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.'" *King*, 345 Mich App at 250, citing MCL 500.3101(3)(l)(*i*). Citing to *Twichel*, 469 Mich at 530, the Court held: "That capacious definition [of 'owner' under MCL 500.3101(3)(l)(*i*)] includes Emanuel King, who had use of the Pathfinder for more than 30 days." *King*, 345 Mich App at 250.

The Court also addressed the broad nature of the "or otherwise" language in *Chop v Zielinski*, 244 Mich App 677; 624 NW2d 539 (2001). In that case, the Court explained that "[t]he phrase 'or otherwise' plainly indicates that the Legislature intended this subsection to apply in situations other than those involving leases or rentals." *Id.* at 682. The Court emphasized that construing MCL 500.3101(2)(g)(i) [now MCL 500.3101(3)(*l*)(*i*)] to extend

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to situations beyond those involving lease and rental agreements comports with the legislative purpose "'to correct the injustice of allowing drivers who do not contribute to the no-fault system to recover damages from persons that do contribute to the system, and to provide an incentive for uninsured motorists to comply with the requirement that they maintain no-fault automobile insurance.'" *Chop*, 244 Mich App at 682, citing *Stevenson v Reese*, 239 Mich App 513, 519; 609 NW2d 195 (2000).

The far-reaching nature of the "or otherwise" language in MCL 500.3101(3)(l)(*i*) is also supported by Black's Law Dictionary, which states: "The term otherwise tends to be quite broad in scope." OTHERWISE, Black's Law Dictionary (12th ed. 2024). As explained by this Court, "[t]he Legislature's use of catchall terms in a statute is intended to save it 'from spelling out in advance every contingency in which a statute could apply[.]'" *People v Burkman*, 513 Mich 300, 326 n 11; 15 NW3d 216, 232 (2024), citing 2A Singer & Singer, Sutherland Statutory Construction (7th ed.), § 47:17, p. 386. This Court further cautioned that "too narrowly construing a catchall term eliminates this intended benefit." *Burkman*, 513 Mich at 326. To avoid circumventing the Legislature's intent here, the "or otherwise" language in MCL 500.3101(3)(*l*)(*i*) is properly construed to reach Abdulla's use of the truck for more than 30 days before the accident. This makes sense and avoids the use of a formal legal fiction (ownership by a solely owned LLC) to circumvent the obligation to obtain personal protection insurance benefits coverage.

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2. *Other decisions holding that when one driver has the right to and use of a vehicle for more than 30 days—even if the vehicle is titled in the name of another—that driver is deemed a co-owner illuminate the proper analysis that this Court can adopt here*

Past decisions of the Court of Appeals have held that the test for ownership under MCL 500.3101 is whether the driver had proprietary or possessory use of the vehicle for more than 30 days, irrespective of who holds title to the vehicle. The panel majority's analysis conflicts with—or at a minimum, is in tension with—these decisions. This creates confusion in the law, requiring leave so that this Court can decide the proper analytical approach.

In *Kessel*, the plaintiff was driving a vehicle titled in the name of her mother when she was rear ended. *Kessel*, 244 Mich App at 354. The vehicle did not have the insurance coverage required by law at the time of the accident. *Id.* In analyzing whether Kessel qualified as an owner of the vehicle under MCL 500.3101(2)(g)(i) (now appearing at MCL 500.3101(3)(*l*)(*i*)), the Court cited to *Ardt*, explaining that the *Ardt* Court "concluded that the operator of the vehicle could be deemed an 'owner' under § 3101 if the operator had a proprietary or possessory use of the vehicle (rather than merely incidental use) for more than thirty days." *Kessel*, 244 Mich App at 356.

Kessel testified that she had been using the vehicle for over a year at the time of the accident and that she "pretty much" had exclusive use of the vehicle during that time. *Id.* at 357. As a result, the Court held that Kessel "had a 'regular pattern of unsupervised usage,'" establishing proprietary and possessory use of the vehicle for more than thirty days and thus satisfying the definition of owner under MCL 500.3101. *Id.* at 358. The Court reached this holding even where Kessel's mother, and not Kessel herself, held title to the vehicle.

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The Court explained that imposing the responsibilities of an owner to maintain insurance on a person who has proprietary and possessory use of the vehicle for more than thirty days "clearly promotes the objectives of the mandatory insurance provisions[.]" *Id.* at 359. In other words, "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." *Id.* at 359–60. Contrary to the panel majority's crabbed approach here, the Court in *Kessel* looked to the daughter's testimony that she "'pretty much' had exclusive use[,]" *id.* at 357, even though that use was permissive, and title was in the mother's name. Here, Abdulla owned Tornado Trucking—and as owner—decided when and where to use the truck leased to Land Trucking. And Abdulla was the only driver. The fact that title was in his wholly owned limited liability company, and that he parked the truck at a truck stop and not his home, should not have changed the outcome.

Similarly, in *Chop*, the plaintiff, Donna Chop, was injured in a motor vehicle accident while driving a vehicle titled to her ex-husband. *See Chop*, 244 Mich App at 680. Chop regularly used the vehicle for months leading up to the accident, *id.* at 680–81, and the Court reasoned that such regular use revealed that Chop exercised ownership rights over the vehicle. *Id.* at 681. The fact that Chop did not hold legal title to the vehicle was not dispositive of whether she may be considered an "owner" because "[t]here may be multiple owners of a vehicle for purposes of the no-fault act." *Id.*

Further, in *Infinity Physical Therapy LLC v Nationwide Mut Fire Ins Co*, unpublished per curiam decision of the Michigan Court of Appeals, issued July 18, 2024 (Docket No 364890) (APX 1316a-1321a), the Court held that "[a] person having the use of a motor vehicle for more than 30 days may be deemed a constructive owner of the vehicle and be

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denied recovery under the no-fault act if the person fails to maintain mandatory no-fault coverage." *Id.* at *1. In *Infinity*, Elijah Smith was the only driver of a Chevrolet Impala for approximately nine months before the accident and had sole control and possession of the vehicle, but the vehicle was titled to another—Mildred Wainwright. *Id.* Even though the Impala was not titled to Smith, the Court of Appeals nevertheless held that Smith was a constructive owner as a matter of law, and as constructive owner, "Smith was required to ensure the vehicle had mandatory no-fault coverage before driving it." *Id.* The Court of Appeals emphasized that "Smith cannot convert a vehicle for his own use, have exclusive access to the vehicle for nine months, and then claim he had no duty to insure the vehicle before driving it." *Id.* at *6.[5]

If a person uses a wholly owned limited liability company to hold title but retains full use and control of a vehicle, the outcome should not be different. The panel majority's published decision puts an imprimatur on a strategy for flouting legislative policy by creating a wholly owned limited liability company to hold vehicle title. The statutory provisions of the No-Fault Act, including MCL 500.3101 and MCL 500.3113, "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[.]" See *Ardt*, 233 Mich App at 690. Abdulla should not be allowed use his solely owed LLC to violate this sound public policy. See *Fors v Farrell*, 271 Mich 358, 370; 260 NW 886, 890 (1935) ("Corporate entity will always be recognized by the courts and the law

[5] *Infinity* is cited to further emphasize that an individual who has proprietary or possessory use of a vehicle can qualify as an owner, even where that individual does not hold title to the vehicle.

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administered accordingly *unless it appears that the corporation is functioning in such a manner as to violate or at least evade the law or contravene public policy*." (Emphasis added)). *See* also 6 Mich. Civ. Jur. Corporations § 10 ("A corporation's separate existence will be respected, unless doing so would subvert justice or cause a result that would be contrary to some other clearly overriding public policy."). As the dissent properly recognized, Abdulla should be deemed a statutory owner of the truck and thus barred from collecting personal injury protection benefits. Review is needed to bring the law into accord with the legislative plan.

Abdulla was both the agent for the LLC *and* the exclusive driver of the vehicle. The fact that Abdulla did both—controlled the LLC and carried out its business *and* had exclusive use of the vehicle—is key here because it is Abdulla's proprietary and possessory use of the vehicle that makes him an owner under MCL 500.3101(3)(*l*)(*i*). An LLC that is solely owned by one person differs in this respect from one with multiple active owners. With a solely owned LLC, the agent managing the LLC is the same person who has exclusive use of the truck. Unlike a corporation with multiple shareholders, or an LLC with multiple members, in this situation the one person (Abdulla) necessarily maintains proprietary and possessory usage of the entity's property, as opposed to merely incidental usage under the direction of another. See *Ardt*, 233 Mich App at 691. It is Abdulla's *use of the truck* that dictates his ownership here. See *id.* at 690 (recognizing "the sound public policy imperative that users of motor vehicles maintain appropriate insurance for themselves as indicated by their actual patterns of usage[.]"). Abdulla conceded in his answer to Auto Club's application that public policy supports Auto Club's position that the truck should have been insured, stating: "Judge Jansen may not be wrong on public policy grounds – obviously it

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would be better if Land had purchased commercial auto coverage that included PIP benefits[.]" (Plaintiff's Answer, pp 5-6).

Abdulla should have purchased coverage. He chose not to despite his setting up a limited liability entity that he solely owns in an effort to evade his obligation to get coverage. If the Court of Appeals decision is upheld, it will open an enormous hole in the statutory plan that is directly contrary to the Legislature's broad "or otherwise" language, extending ownership status to situations like those present here. Thus, a reversal is required.

B. ABDULLA IS NOT ENTITLED TO PERSONAL PROTECTION INSURANCE BENEFITS AS A RELATIVE OF THE NAMED INSURED DOMICILED IN THE SAME HOUSEHOLD UNDER MCL 500.3111 AND MCL 500.3114

MCL 500.3101(1) requires that the owner of a vehicle maintain insurance coverage on the vehicle, which includes personal protection insurance. The statute states in pertinent 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." (Emphasis added). And MCL 500.3113(b) bars the owner of a motor vehicle from receiving personal protection insurance benefits when that individual fails to maintain insurance on the vehicle as required by the No-Fault Act. The language reads:

> 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 section 3101 or 3103 was not in effect.

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While the accident occurred out of state, the out-of-state accident provision of the No-Fault Act, MCL 500.3111, does not save Abdulla's claims. MCL 500.3111 states:

> Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions, or Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, the spouse of a named insured, a relative of either domiciled in the same household, or an occupant of a vehicle involved in the accident, if the occupant was a resident of this state or if the owner or registrant of the vehicle was insured under a personal protection insurance policy or provided security approved by the secretary of state under section 3101(5).

The out-of-state accident provision in MCL 500.3111 tracks the language in MCL 500.3114(1), which states: "Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." In *Wilson v League Gen Ins Co*, 195 Mich App 705; 491 NW2d 642 (1992), the Court of Appeals held that the plaintiff—the owner of a motor vehicle involved in an accident outside of Michigan—was precluded from recovery of no-fault benefits under MCL 500.3113(b), *even where the plaintiff was the resident relative of an insured covered under a Michigan no-fault policy*.

In *Wilson*, plaintiff, Tamatha Wilson, purchased a used vehicle while attending college in Texas and did not obtain insurance for the vehicle. *Id.* at 706. While driving that car from Texas to her mother's house in Michigan, Wilson lost control and struck a bridge pillar, sustaining serious injuries. *Id.* at 706–07. At the time of the accident, Wilson's mother was insured under a no-fault insurance policy issued by defendant League General, a Michigan insurance company. *Id.* at 707. Like Abdulla, Wilson was not listed on her

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mother's League General policy, but Wilson "considered her permanent residence to be with her mother in Michigan." *Id.* After League General denied coverage for the accident, Wilson sued, alleging entitlement to no-fault benefits under MCL 500.3111 based on her status as a resident relative of her mother. *Id.*

In affirming the trial court's grant of summary disposition to League General, the Court of Appeals agreed with League General that MCL 500.3113(b) applied to preclude Wilson's recovery of benefits: "The language of § 3113(b) clearly and unambiguously states that the owner of a vehicle involved in an accident, where the vehicle had no security required by § 3101 at the time of the accident, is not entitled to personal protection insurance benefits." *Id.* at 709. The Court clarified that the requirements of MCL 500.3113(b) are not limited to cars driven on Michigan highways. *Id.*

As *Wilson* confirms, Abdulla's assertion in his answer to the application that "[t]here is no statutory provision that negates Auto Club's obligation to provide PIP coverage for him under these circumstances" (Abdulla's Answer, p. 12) is incorrect.

Other cases support the application of MCL 500.3113(b) here. In *Vantol v Home-Owners Ins Co*, unpublished per curiam decision of the Michigan Court of Appeals, issued October 22, 2019 (Docket No 345639) (APX 1023a-1027a),[6] the Court noted that *it was Vantol, the self-employed truck driver and the driver of the semi-tractor under dispatch at the time of the accident*, who "had to ensure that the requisite insurance was maintained on the semi-tractor." *Id.* at *5. Similarly, in *Johnson v USA Underwriters*, 328 Mich App 223; 936 NW2d 834, 846 (2019), the Court explained that "[t]he obligation is on the owner or

[6] This unpublished decision is cited to emphasize the responsibility of the vehicle owner to ensure proper insurance coverage is maintained on the vehicle.

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registrant to procure the proper no-fault coverages." Abdulla did not satisfy that obligation here. Thus, under the language of MCL 500.3113(b), Abdulla is not entitled to receive personal protection insurance benefits.

The Great American policy on the truck was a bobtail policy which excluded personal protection insurance coverage while the truck was "being used in the business of any lessee" or while the truck was "being used to transport cargo of any type." (Great American Policy, p 36 of 65, APX 0163a). Abdulla was "in the business of" lessee Land Trucking at the time of the accident, transporting cargo (tomatoes), thus triggering the exclusion. Further, the Progressive Southeastern policy obtained by Land Trucking did not insure the 2012 Volvo, and it included no personal protection insurance coverage. (Progressive Dec. Page and Policy, APX 0046a-0075a). Abdulla, as the owner of the truck, thus failed to maintain full and proper personal protection insurance coverage on the truck as required by the No-Fault Act (MCL 500.3101(1)). So the truck was not covered by *any* personal protection insurance at the time of the accident when it was being used for its intended and primary purpose—to deliver goods while under dispatch. Without the mandatory security, MCL 500.3113(b) bars Abdulla from receiving personal protection insurance benefits via this action.

This result makes sense because the Legislature intended to ensure that those who obtain personal injury protection benefits are not free riders. In other words, those who do not secure appropriate coverage on their vehicles may not then obtain the benefits intended for everyone who does. Otherwise, the system would become unworkable in practice. For example, anyone could create an LLC, transfer vehicle title to it, and rely on another household member's insurance to pay for personal protection insurance benefits

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although that individual deliberately failed to insure his or her own vehicle. If this gaping loophole is allowed to remain, insurance premiums for those who properly insure their vehicles will no doubt rise.

Abdulla was responsible under the statute. He needed to ensure that personal protection insurance was maintained on his vehicle to obtain personal protection insurance benefits under the statute. He failed. The lease agreement that he entered on behalf of Tornado Trucking did not require Land Trucking to obtain personal protection insurance. It was silent on insurance obligations. And this silence violated 49 CFR 376.12(j), which requires such leases to specify the legal obligation of the authorized carrier to maintain insurance coverage for protection of the public, and to specify who is responsible for providing any other insurance coverage for operating the leased equipment. The regulation was intended to provide guidance to those engaged in trucking about the need for appropriate insurance and to confirm that the parties contractually agreed as to who would provide it—to ensure that the vehicle was properly covered. Had Abdulla done so, he would have been protected. But he did not—and he is left without the benefits that he now seeks.

Abdulla's disqualification from benefits here is not as harsh as Abdulla tries to suggest. In *Heard v State Farm Mut Auto Ins Co,* 414 Mich 139; 324 NW2d 1 (1982), this Court explained that an uninsured owner is only disqualified from entitlement to no-fault benefits if the uninsured motor vehicle is involved in the accident: "The disqualification of an uninsured owner from . . . no-fault benefits is not absolute. While the . . . owner of an uninsured 'motor vehicle involved in the accident' is not entitled to recover PIP benefits, the converse is equally true: the owner of an uninsured vehicle *is* entitled to recover PIP

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benefits if his uninsured motor vehicle is *not* 'involved in the accident[.]'" *Id.* at 145 (emphasis in *Heard*). In other words, if Abdulla had suffered injury while he was a pedestrian, a bicyclist, a motorcyclist, or a passenger in another vehicle, he may have still been entitled to recover benefits even though he did not properly insure his truck. *Id.* But because the truck Abdulla failed to properly insure was the vehicle involved in the accident, Abdulla is disqualified from coverage here. See *id.* ("the penalty for failing to purchase no-fault insurance is limited to disqualification for benefits when the uninsured vehicle is involved in the accident[.]"). And in any event, the Legislature enacted this provision to assure that those who do not pay for benefits are not able to get them after-the-fact when their uninsured vehicle is in an accident. This is not harsh since the decision to not insure the vehicle was made by Abdulla.

RELIEF

Wherefore, Defendant-Appellant, Auto Club Group Insurance Company, respectfully requests that this Court peremptorily reverse the lower courts and adopt the dissenting opinion of the Court of Appeals, or grant leave to appeal, and grant any other relief that is warranted in law and equity.

Respectfully submitted,

PLUNKETT COONEY

By: */s/Mary Massaron*

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WORD COUNT CERTIFICATE

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

1. She is a shareholder with the firm Plunkett Cooney, and is in principal charge of the above-captioned cause for the purpose of preparing the attached supplemental brief;

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

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

4. The word processing system counts the number of words in the supplemental brief as 10,656.

/s/Mary Massaron
MARY MASSARON