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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

CARLONDA NAISHE SWOOPE
Plaintiff-Appellant,

Supreme Court Case No. 166790

Court of Appeals Case No. 364924

v.

Wayne County Circuit Court
LC Case No. 21-011492-NF

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellee,

_____/

BRIEF AMICUS CURIAE

COALITION PROTECTING AUTO NO-FAULT (CPAN)

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STATEMENT OF INTEREST AMICUS CURIAE[1]

The Coalition Protecting Auto No-Fault, more commonly known as CPAN, was founded in 2003 by 26 professional associations in order to: (1) advance their strongly held belief that it was in the public interest to preserve Michigan's model No-Fault insurance system; and (2) ensure that the auto insurance industry kept the promise made to Michigan citizens when the No-Fault Act was passed.

Originally, CPAN membership consisted of 11 consumer groups and 15 major medical groups, representing constituencies with widely divergent political views. Despite their differences, these associations united behind the common objective of protecting the rights of no-fault patients and providers. In 2009, CPAN opened membership to the general public and now includes consumers, individual professionals, and private businesses, as well as professional organizations.

The members of CPAN now number over 750. They include the Michigan Association for Justice (MAJ), Michigan State Medical Society, Michigan Osteopathic Association, Michigan Association of Chiropractors, Eisenhower Center, Michigan Brain Injury Provider Council, Michigan Dental Association, Michigan Home Care and Hospice Association, Michigan Rehabilitation Association, Michigan Assisted Living Association, Michigan Orthotics and Prosthetics Association, Brain Injury Association of Michigan, ATPA Michigan, Michigan Protection and Advocacy, Michigan Paralyzed

[1] Pursuant to MCR 7.212(H)(4), neither party's counsel authored this brief in whole or in part or contributed money to fund the preparation or submission of this brief.

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Veterans of America, Peckham, NeuroRestorative of Michigan, Special Tree Rehabilitation Center, Origami Rehabilitation, PharmaScript, Hope Network Neuro Rehabilitation, Oppidan Rehabilitation Center, Lighthouse Neuro Rehabilitation, Rehab Without Walls, Siporin & Associates, The Recovery Project, Michigan Nurses Association, Care First Rehabilitation, Ambrose Consulting and other stakeholders, individuals, accident survivors, family members, and care providers.

This case is important to CPAN because deciding this case will require this Court to render an important interpretation of the "*unlawful taking*" exclusion in MCL 500.3113(a) of the auto no-fault act. Under this provision, a person is disqualified from receiving no-fault PIP benefits if *"[t]he 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."* Recent judicial interpretations of § 3113(a) have conflated the distinction between the unlawful "*taking*" of a motor vehicle or motorcycle and the subsequent unlawful "*use*" of that motor vehicle or motorcycle. As a result, many Michigan citizens are being improperly deprived of their right to no-fault PIP benefits on the basis of § 3113(a), well beyond what the Legislature intended.

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INTRODUCTION

This brief is being filed on behalf of the Coalition Protecting Auto No-Fault (CPAN) pursuant to this Court's March 26, 2025, Order, in which CPAN was invited to file a brief amicus curiae addressing the issue of:

> *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).*

With regard to this issue, it is CPAN's position that the Court of Appeals' decision below, and the authority on which it is based, applies the unlawful taking exclusion of MCL 500.3113(a) beyond the limited circumstances intended by the Legislature. In that regard, the Court of Appeals effectively held below that this exclusion applies whenever a vehicle is being "*used*" unlawfully at the time it was taken—regardless of whether or not the initial "*taking*" of the vehicle itself was *"unlawful."*

As a result, persons who are driving a motor vehicle without a driver's license (or on an expired license) have been held to be in violation of § 3113(a) on the basis that operating a vehicle without a valid license is deemed an *"unlawful taking."* The same argument could be extended to any passenger in that vehicle if the passenger knew that the driver did not have a valid license, or knew that the driver was engaged in some other illegal activity involving the operation of the vehicle. Such a broad application of this statutory provision results in numerous people losing their right to recover PIP benefits, thereby leaving unpaid thousands and thousands of dollars in medical expenses.

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While the unlawful use of a vehicle should not be encouraged, the unambiguous language of § 3113(a) reflects a public policy determination by the Legislature that full disqualification from no-fault is only warranted under this exclusion if the person claiming benefits has either engaged in or acquiesced in the unlawful "*taking*" of the motor vehicle (i.e., without the valid permission of the vehicle's owner).

WHEREFORE, for the foregoing reasons and the reasons stated herein, the Coalition Protecting Auto No-Fault (CPAN) requests that in rendering its decision in this case, this Court VACATE the decision of the Court of Appeals below and issue an Opinion and Order in which this Court:

(1) Reiterates the clear distinction that must be recognized between the concepts of "*taking*" and "*use*" in the context of the unlawful taking exclusion;

(2) Emphasizes that when determining whether a person is disqualified from no-fault under § 3113(a), the unlawfulness of a motor vehicle or motorcycle's "*use*" is irrelevant; and

(3) Adopts a workable element-based test in the manner discussed herein for determining whether a person is disqualified from receiving PIP benefits on the basis of an unlawful taking under MCL 500.3113(a).

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LAW AND ARGUMENT

I. Whether a person is disqualified from receiving no-fault PIP benefits on the basis of an "*unlawful taking*" under the meaning of MCL 500.3113(a) should be determined by applying a three-part test that considers: (1) Whether possession of the motor vehicle or motorcycle was acquired "*unlawfully*," (2) Whether the person claiming benefits had actual or constructive knowledge of that fact, and (3) Whether the person "*willingly*" proceeded to use or operate the motor vehicle or motorcycle, regardless.

The so-called *"unlawful taking"* exclusion at issue in this appeal is set forth in MCL 500.3113(a) of the no-fault act. For reference, § 3113(a) provides:

> *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.*

As written, this exclusion narrowly applies to persons who willingly operate a motor vehicle (or motorcycle) with actual or constructive knowledge that it *"was taken unlawfully."* By using the phrase *"was taken"* in the past tense, the Legislature unavoidably intended that the "*taking*" of the motor vehicle or motorcycle be understood as referencing a separate event that precedes the *"use or operation"* of that motor vehicle or motorcycle, which occurs afterward. When the language of § 3113(a) is properly read with a faithful adherence to this distinction, it clearly establishes a narrow legislative intent to disqualify persons from receiving PIP benefits for auto-related injuries that arise out of the unlawful "*taking*" of a motor vehicle or motorcycle—that the person claiming benefits either engaged in or knowingly acquiesced in.

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Thus, an analysis of whether or not a person is disqualified from receiving PIP benefits under § 3113(a) must begin with an initial determination of whether the involved motor vehicle or motorcycle was "*taken*" unlawfully. In other words, was possession of the motor vehicle or motorcycle acquired unlawfully? If the answer to this question is "*No*," then there can be no disqualification under § 3113(a). If, however, the answer to this question is "*Yes*," then disqualification will occur if the person had actual or constructive knowledge that possession of the motor vehicle or motorcycle was acquired unlawfully, and the person willingly proceeded to use or operate the vehicle, nevertheless.

Accordingly, at no point during a § 3113(a) disqualification determination does the lawfulness of the person's *"use or operation"* of the involved motor vehicle or motorcycle become relevant. Whether or not a person is disqualified under § 3113(a) can ultimately be determined by applying a simple element-based test that considers:

(1) Whether possession of the subject motor vehicle or motorcycle was acquired "*unlawfully*,"

(2) Whether the person claiming benefits had actual or constructive knowledge of that, and

(3) Whether the person "*willingly*" proceeded to use or operate the motor vehicle or motorcycle, regardless.

It is only when ***all*** three of these essential elements are satisfied that a person is barred from recovering PIP benefits under the *"unlawful taking"* exclusion of § 3113(a).

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II. Contrary to the decision of the Court of Appeals below, at no point during a § 3113(a) disqualification analysis does the lawfulness of the person's "*use or operation*" of the vehicle become relevant.

In its opinion below, the Court of Appeals effectively held that because the plaintiff lacked the legal authority to "*operate*" the subject vehicle, she is guilty of an unlawful "*taking*" under the meaning of § 3113(a). Specifically, on page 3 of its slip opinion, the Court of Appeals relied on the case of *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1 (2021) and held as follows:

> *"[A]ny violation of the criminal law that leads to a taking of a motor vehicle will constitute an 'unlawful taking' for purposes of MCL 500.3113(a)." Id. at 11 n 5. Violations of criminal law include certain provisions of the Michigan Vehicle Code, MCL 257.1 et seq. For example, MCL 257.301 concerns the legality of operating a vehicle without a valid driver's license. It states, in part: "[A]n 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." MCL 257.301(1). Violations of this statute are considered "unlawful" for purposes of MCL 500.3113(a) because there are related criminal penalties. See MCL 257.901; see also Ahmed, 337 Mich App at 20 n 8 ("Violation of [MCL 257.301 and MCL 257.310e(4)] was 'unlawful' . . . because there are associated criminal penalties.").*

Thus, in rendering its decision below, the Court of Appeals improperly applied an *"unlawful use"* test—despite the fact that the lawfulness of the vehicle's use is completely irrelevant when determining whether the requirements of § 3113(a) are met.

III. CPAN otherwise concurs in the arguments made by the Michigan Association of Justice in its 5/28/2024 brief amicus curiae filed in support of Plaintiff's Application for Leave.

In further support of the foregoing, CPAN hereby relies on the arguments made by the Michigan Association of Justice in its 5/28/2024 brief amicus curiae, which was filed in support of the Plaintiff's Application for Leave to Appeal. The arguments

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contained therein fully and accurately address this issue, and CPAN concurs with them in all respects.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the foregoing reasons and the reasons stated herein, the Coalition Protecting Auto No-Fault (CPAN) requests that in rendering its decision in this case, this Court VACATE the decision of the Court of Appeals below and issue an Opinion and Order in which this Court:

(1) Reiterates the clear distinction that must be recognized between the concepts of "*taking*" and "*use*" in the context of the unlawful taking exclusion;

(2) Emphasizes that when determining whether a person is disqualified from no-fault under § 3113(a), the unlawfulness of a motor vehicle or motorcycle's "*use*" is irrelevant; and

(3) Adopts a workable element-based test in the manner discussed herein for determining whether a person is disqualified from receiving PIP benefits on the basis of an unlawful taking under MCL 500.3113(a).

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Respectfully submitted,

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Dated: September 18, 2025

BY: ***/s/Joel T. Finnell***

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Statement of Word Count Pursuant to MCR 7.212(B)(3)

This Brief has a total word count of **2320 words**. This total is based on the word count calculated by the word processing software used to prepare this Brief, Microsoft Word.