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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 REPLY BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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PLUNKETT COONEY

By: MARY MASSARON (P43885)
BRIANA COMBS (P85366)
Attorneys for Defendant-Appellant
Auto Club Group Insurance Company
38505 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304
(313) 983-4801
mmassaron@plunkettcooney.com
bcombs@plunkettcooney.com

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ARGUMENT[1]

A. CONTRARY TO ABDULLA'S ARGUMENT, MCL 500.3101(3)(*l*)(*i*) DEFINES "OWNER" TO INCLUDE INDIVIDUALS THAT HAVE THE USE OF A VEHICLE FOR MORE THAN 30 DAYS, WHICH ABDULLA CONCEDES

Abdulla argues that because the truck was owned by Tornado Trucking, and Abdulla was its agent, Abdulla was never an owner. This argument conflicts with the statute.

The Legislature wrote MCL 500.3101(3)(*l*)(*i*) to broadly apply to prevent those driving vehicles from circumventing the requirement to make sure the vehicle is properly insured. The statute defines an "owner" as:

> A person renting a motor vehicle *or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days*.

MCL 500.3101(3)(*l*)(*i*) (emphasis added). To make sure unanticipated circumstances are covered, the Legislature included the broad words "or otherwise."

Abdulla tries to circumvent this broad language by arguing that—although he had complete control over the vehicle as its driver, and over the limited liability company as its sole owner—the mere existence of an LLC makes him not an owner. This is exactly the circumstance the Legislature sought to avoid with the broad "or otherwise" language. Abdulla's status as an owner is supported by the language in the statute, the legislative purpose, and by this State's background principles of law that disallow use of a corporate structure to contravene public policy.

Abdulla's argument that "[h]e did not have use of the truck[,]" but rather, "Tornado Trucking did" (Plaintiff's Brief, p 3), is incorrect. Abdulla possessed and drove the truck, not

[1] In violation of MCR 7.312(A)(1), MCR 7.212(D)(1), and MCR 7.212(C)(5), Abdulla's brief does not include a statement of the questions involved.

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Tornado Trucking. Abdulla's argument depends on this Court holding that since Tornado Trucking was the title owner, Abdulla cannot be an owner and is merely the driver. But the LLC is wholly owned by Abdulla—so Abdulla as owner directs the LLC and himself as driver. That is, as the owner or the agent of the owner, Abdulla is still the puppeteer pulling the strings. Abdulla as owner and driver had use of the vehicle.

Abdulla argues he "never used the truck for personal reasons" and that simply because he "'could have used' the truck for personal reasons" does not make him an owner. (Plaintiff's Brief, pp 3, 7). That is not what Michigan law says. The standard is the nature of the right to use the vehicle, not actual use. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 530; 676 NW2d 616, 620 (2004) ("it is not necessary that a person actually have used the vehicle for a thirty-day period . . . the focus must be on the nature of the person's right to use the vehicle.").

Abdulla's attempt to analogize this case to a situation involving "an employee of a corporation who uses a corporate delivery truck as part of his or her job" (Plaintiff's Brief, p 11) is misplaced. The key fact is that Abdulla was the *only* owner of Tornado Trucking and the *only* driver of the truck. (Abdulla Dep., p 12, APX 0837a). These facts confirm Abdulla's proprietary and possessory use of the truck. An LLC that is solely owned by one person differs from a corporation with multiple owners and employees. With a solely owned LLC, the agent managing the LLC is the same person who has exclusive possession and use of the truck. This is unlike Abdulla's example of an employee driving a corporate vehicle, because the driver would not be the puppeteer pulling all the strings but instead would be the puppet (to continue that analogy).

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Abdulla tries to blame Land Trucking (Plaintiff's Brief, p 6), but this argument also fails because a vehicle can have more than one owner. *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215, 219 (1999) ("where an uninsured motor vehicle involved in an accident has more than one owner, all the owners come under the statutory exclusion for personal protection insurance benefits."). Regardless of whether Land Trucking was also an owner, Abdulla is an owner and excluded from benefits under MCL 500.3113(b).

Abdulla admits that he "regularly used the truck." (Plaintiff's Brief, p 2). That alone is enough to qualify as an owner under the statute. MCL 500.3101(3)(*l*)(*i*). The standard for ownership, as Abdulla admits (Plaintiff's Brief, p 7), is "*proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another." *Ardt*, 233 Mich App at 691. "Proprietary" is defined as "[o]f, relating to, or holding as property[.]" PROPRIETARY, Black's Law Dictionary (12th ed. 2024). "Possessory" is defined as "[o]f, relating to, or having possession." POSSESSORY, Black's Law Dictionary (12th ed. 2024). "Possession" is further defined as: (1) "the exercise of dominion over property[,]" (2) "[t]he right under which one may exercise control over something to the exclusion of all others[,]" and (3) "[s]omething that a person owns or controls[.]" POSSESSION, Black's Law Dictionary (12th ed. 2024).

The record evidence confirms Abdulla's use of the truck was both "proprietary" (related to property) and "possessory" (because Abdulla exercised exclusive dominion and control over the truck). Abdulla admits he was the only person to drive the truck (Abdulla Dep., p 12, APX 0837a), and that over the course of more than 30 days, he drove the truck to pick up many loads for Land Trucking. (See *id.* at pp 42-43, APX 0845a). Thus, Abdulla concedes he had the only use of the truck for more than 30 days at the time of the accident.

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It is "a 'regular pattern of unsupervised usage' rather than 'spotty and exceptional' usage that will support a finding of ownership." *Roberts v Titan Ins Co*, 282 Mich App 339, 356; 764 NW2d 304, 314 (2009) (overruled on other grounds). Abdulla did not need permission to use the truck under the lease agreement. (See Lease Agreement, pp 2-3, APX 0860a-0861a, stating: "Contractor is free to work when and where it chooses" and "Contractor shall be free to set the method and time of performance for all delivery of loads accepted by it."). Under the lease, Abdulla had full use and possession of the truck.

MCL 500.3101(3)(*l*)(*i*) contains no "personal use" or "own benefit" requirement as Abdulla incorrectly contends. "Courts may not speculate regarding legislative intent beyond the words expressed in a statute." *Omne Fin, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591, 594 (1999). Abdulla argues Auto Club "mistakenly relies" on cases where family members operating a vehicle for more than 30 days were deemed co-owners, claiming that "[u]nlike those cases, Abdulla was at all times acting as an agent of Tornado." (Plaintiff's Brief, p 10). This is another attempt by Abdulla to write language into the statute. The statute does not contain a personal use versus agency distinction; the statute only requires use of the vehicle "for a period that is greater than 30 days." MCL 500.3101(3)(*l*)(*i*).

Abdulla's assertion that the "or otherwise" language in the statute was only intended to cover "leasing and family member scenarios" is unfounded. (Plaintiff's Brief, p 10). The Legislature included the "or otherwise" language without any qualifying language regarding personal use or agency. Michigan law is clear that "if the expressed language is clear, judicial construction is not permitted and the statute must be enforced as written." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567, 576 (2002). Abdulla's additional argument—that Auto Club contends for the first time on appeal that

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the "or otherwise" language applies—is incorrect. (Plaintiff's Brief, p 10). Auto Club has maintained throughout this case that Abdulla is an owner, arguing in its motion for summary disposition that "Plaintiff had proprietary and possessory use of the semi-truck for more than 30 days, and therefore, he was a statutory owner under section 3101([3])(*l*)(*i*)." (Auto Club's MSD, p 9, APX 0514a).

Michigan case law confirms that Abdulla's attempt to write a "personal use" requirement into the statute is wrong. For example, in *Bundles v Markel Ins Co of Canada*, unpublished per curiam decision of the Michigan Court of Appeals, issued Sept. 21, 2004 (Docket No. 248843) (APX 1039a-1042a), the plaintiff was hauling freight as a truck driver for Glory Transportation Services at the time of the accident. *Id.* at *1. Even though the plaintiff was not operating the truck for "personal use," the Court held the plaintiff was an owner and statutorily precluded from receiving benefits under MCL 500.3113(b). *Id.* at *3. See also *Toduti v Progressive Michigan Ins Co*, unpublished per curiam decision of the Michigan Court of Appeals, issued Sept. 2, 2021 (Docket No. 352716) (APX 1330a-1337a) (where the plaintiff was carrying a commercial load as "the sole proprietor of Toduti 4 LLC and its only employee[,]" the plaintiff "owned the semi-truck involved in the accident, either personally or through his sole proprietorship, Toduti 4 LLC." *Id.* at *8-9).[2]

Abdulla is wrong to advance an argument based on sympathy for his claim that he did not mastermind a scheme to avoid paying for the insurance required by the Legislature. (Plaintiff's Brief, p 5). This Court is asked to adopt an interpretation of a statute as it applies to everyone—and that analysis cannot be based on looking individually at each driver's

[2] These unpublished cases are cited as examples where Michigan courts deemed truck drivers "owners" even absent "personal" use.

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sophistication or intent. See *Black v Ward*, 27 Mich 191, 201 (1873) ("The rule is that ignorance of the law shall not excuse a man"); *Spohn v Van Dyke Pub Sch*, 296 Mich App 470, 487–88; 822 NW2d 239, 251 (2012) ("[I]f [courts] were to equate lack of legal training . . . with excusable mistake or inadvertence, it would undermine the familiar maxim that . . . ignorance of the law is no excuse."). The language of MCL 500.3101(3)(*l*)(*i*) governs, and a contrary interpretation will open a gaping loophole in the legislative plan.

B. MICHIGAN LAW IS CLEAR THAT A CORPORATION CANNOT BE USED TO VIOLATE OR EVADE THE LAW OR TO CAUSE A RESULT THAT CONTRAVENES PUBLIC POLICY

Abdulla's argument that Auto Club "turns a blind eye to well-established concepts of corporate ownership" (Plaintiff's Brief, p 8) is incorrect. Auto Club's brief properly states the law as to recognition of the corporate entity (Auto Club's Supplemental Brief, pp 30-31), but it is Abdulla who ignores the important exception that applies here. As stated by this Court, a corporate entity "will always be recognized . . . *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*." *Fors v Farrell*, 271 Mich 358, 370; 260 NW 886, 890 (1935) (emphasis added). Here, Abdulla tries to do just that—to hide behind his LLC to avoid the requirement under the No-Fault Act to insure the truck he drove on Michigan roads.

Abdulla cites *Ross v Auto Club Grp*, 269 Mich App 356; 711 NW2d 787 (2006) (Plaintiff's Brief, pp 3, 8), but the facts and circumstances of that case differ significantly from this case. In this Court's opinion affirming in part and reversing in part, *Ross v Auto Club Grp*, 481 Mich 1; 748 NW2d 552 (2008), this Court identified the issue as "whether someone can recover work-loss benefits under MCL 500.3107(1)(b) if he or she is the sole employee and shareholder of a subchapter S corporation that lost more money than it paid

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in wages." *Id.* at 7. *Ross* did not involve any facts that the vehicle involved in the accident was uninsured. And *Ross* recognized that 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." *Id.* at 8.[3]

This Court confirmed the defendant insurer in *Ross* presented no evidence to justify disregarding the corporate entity. See *id.* The critical distinction between this case and *Ross* is that here, there is clear justification for refusing to rely on the claimed separate existence of Tornado Trucking because Tornado Trucking is functioning to evade the law and the explicit requirement under the No-Fault Act that an owner must insure his vehicle. MCL 500.3101(1). Permitting Abdulla to rely on Tornado Trucking's status as an LLC would also contravene public policy, where 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[.]" *Ardt*, 233 Mich App at 690.

Abdulla also cites *Brown* (Plaintiff's Brief, p 8), but that case supports Auto Club. In *Brown*, the court held the plaintiff "presented evidence justifying the setting aside of the separate corporate existence of his business." *Brown*, 298 Mich App at 689. Several other cases cited by Abdulla (Plaintiff's Brief, pp 8-9) also support Auto Club. In *Gallagher v Persha*, 315 Mich App 647; 891 NW2d 505 (2016), the court explicitly recognized that: (1) "when the requisite evidence establishes that the corporate form has been abused, the

[3] Further, "[t]he holding in *Ross* . . . is limited to those situations in which the claimant's subchapter S corporation is operating at a loss." *Brown v Home-Owners Ins Co*, 298 Mich App 678, 689; 828 NW2d 400, 406 (2012).

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corporate form will be pierced[,]" *id.* at 654, and (2) piercing the veil of a corporate entity is invoked "to cure certain injustices that would otherwise go unredressed in situations where the corporate entity has been used to avoid legal obligations[.]" *Id.* (quotations omitted). Under the facts of *Gallagher*, the court held the plaintiffs could bring an action to pierce the corporate veil. See *id.* at 666.

Abdulla also cites *Wells v Firestone Tire & Rubber Co*, 421 Mich 641; 364 NW2d 670 (1984) and *Foodland Distributors v Al-Naimi*, 220 Mich App 453; 559 NW2d 379 (1996)—both of which support Auto Club. In *Wells*, this Court explicitly recognized that when "the fiction of a distinct corporate entity . . . is invoked to subvert justice, it is ignored by the courts." *Wells*, 421 Mich at 650. This Court then disregarded the separate existence of the corporations based on public policy considerations: "Our disregard of the separate corporate entities of Firestone and its wholly owned subsidiary is premised upon . . . the important public policies underlying the Michigan Worker's Disability Compensation Act and our belief that a contrary determination would be inequitable[.]" *Id.* at 651. Similarly, in *Foodland*, the court held that the trial court erred in failing to pierce the corporate veil. *Foodland*, at 455–56 ("the trial court should have pierced the corporate veil and permitted plaintiff to recover against all individual defendants."). Abdulla also cites *Seasword v Hilti, Inc*, 449 Mich 542; 537 NW2d 221 (1995), but that case is distinguishable because it involved the issue of parent-subsidiary liability, and Seasword "alleged no facts, nor offered any proof that [the corporations] . . . abused their presumably separate and distinct corporate forms." *Id.* at 549.

Abdulla's reliance on case law and statutes regarding limited liability companies does not advance his position (Plaintiff's Brief, p 9), because the same rules apply to LLCs.

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Florence Cement Co v Vettraino, 292 Mich App 461, 468–69; 807 NW2d 917, 922 (2011) ("The rules regarding piercing a corporate veil are applicable in determining whether to pierce the corporate veil of a limited-liability company."). Under *Florence*, Michigan courts properly look beyond the corporate veil of an LLC when the entity is used "as a mere instrumentality for . . . individuals[,]" *id.* at 469, and "to commit a wrong or fraud." *Id.* at 470. In *Florence*, the plaintiff "suffered a significant loss as a result of [the] defendants treating [the LLC] as a mere instrumentality of themselves[.]" *Id.* at 471. Similarly, here, Auto Club will suffer a significant loss if Abdulla is permitted to hide behind Tornado Trucking because, *as Abdulla himself admits*, "no premium was paid" for the truck Abdulla was driving at the time of the accident. (Plaintiff's Brief, p 4).[4]

C. *TITAN* AND OTHER DECISIONS FROM THIS COURT HAVE REJECTED ARGUMENTS LIKE ABDULLA'S ATTEMPTING TO FOIST THE FAILURE TO GET REQUIRED INSURANCE ONTO INSURERS BY ADOPTING A DUTY TO LOOK BEHIND STATEMENTS OF THEIR INSUREDS

Abdulla further argues Auto Club should have performed "more diligent underwriting" and "ask[ed] before writing PIP coverage . . . whether anyone residing in the household regularly drove a motor vehicle not otherwise disclosed." (Plaintiff's Brief, p 4).

But this Court has rejected arguments that underwriters should be held responsible. In *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012), this Court confirmed that underwriters do not have a duty to look behind the statements of their insureds, holding "an insurer has no duty to investigate or verify the representations of a potential insured." *Id.* at 570. There is no evidence that Auto Club should have anticipated insuring Abdulla's

[4] Abdulla's citation to the Limited Liability Company Act (Plaintiff's Brief, p 9) does not change the outcome—*Florence* still applies.

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use of a truck for commercial purposes. See *Toduti*, at *8 (APX 1337a) ("While Progressive insured plaintiff's personal vehicles, it cannot be said that Progressive or plaintiff anticipated, or should anticipate, that Progressive would be insuring against injuries plaintiff received while in the course of driving a semi-truck while delivering loads for Universal (or anyone else) for a commercial purpose.").

Abdulla also did not raise this argument in response to Auto Club's motion for summary disposition in the trial court (Plaintiff's Response, APX 0664a-0678a), and therefore, it is unpreserved. *Walters v Nadell*, 481 Mich 377, 390; 751 NW2d 431, 438 (2008). Since the argument was not raised below, Abdulla has no record about Auto Club's underwriting. But more importantly, the argument is irrelevant under *Titan*.

D. ABDULLA ADMITS THAT IF HE OWNED THE TRUCK, HE IS NOT ENTITLED TO BENEFITS AS A RELATIVE OF THE NAMED INSURED

Abdulla's argument regarding this Court's second question—"whether [Abdulla] is entitled to personal protection insurance benefits as a relative of the named insured" (APX 1328a)—admits that if he is an owner of the truck, he "will be completely precluded from recovering PIP benefits under MCL 500.3113(b)[.]" (Plaintiff's Brief, pp 11-12). Thus, Abdulla concedes MCL 500.3113(b) applies even when the accident occurs outside of Michigan.

Abdulla also admits that "no premium was paid" for the truck he was driving at the time of the accident and that permitting recovery from Auto Club "is not an optimal result[.]" (Plaintiff's Brief, p 4). These admissions confirm Auto Club's argument is the correct one—otherwise, if Abdulla is permitted to recover, anyone could create an LLC, transfer vehicle title to it, and rely on another household member's insurance without

paying a premium for that vehicle. The No-Fault Act is not designed to permit free riders without payment into the insurance system.

RELIEF

Auto Club 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 warranted in law and equity.

Respectfully submitted,

PLUNKETT COONEY

By: */s/Mary Massaron*

MARY MASSARON (P43885)
BRIANA L. COMBS (P85366)
Attorneys for Appellant Auto Club Group Insurance Company
38505 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304
(313) 983-4801
mmassaron@plunkettcooney.com
bcombs@plunkettcooney.com

Dated: December 1, 2025

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WORD COUNT CERTIFICATE

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

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

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

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

4. The word processing system counts the number of words in the supplemental reply brief as 3,200.

/s/Mary Massaron
MARY MASSARON