STATE OF MICHIGAN
IN THE SUPREME COURT

CENTRAL HOME HEALTH CARE SERVICES, INC.,

Plaintiff-Appellant,

vs.

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY, MICHIGAN ASSIGNED CLAIMS PLAN,

Defendant-Appellee,

and

UNNAMED SERVICING INSURER,

Defendant-Appellee.
_____/

Supreme Court No. 167421
Court of Appeals No: 364845
Circuit Court No. 2022-196193-nf

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DEFENDANTS-APPELLEES' ANSWER IN OPPOSITION TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE

ORAL ARGUMENT REQUESTED

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COUNTER-STATEMENT OF ORDER APPEALED FROM AND RELIEF SOUGHT

Defendants-Appellees Michigan Automobile Insurance Placement Facility ("MAIPF") and the Michigan Assigned Claims Plan ("MACP")[1] agree that Plaintiff-Appellant Central Home Health Care Inc.'s ("Plaintiff's") Application for Leave to Appeal the June 27, 2024 opinion of the Court of Appeals, which is attached hereto as Exhibit A, was timely filed within 42 days of the date the opinion was issued, pursuant to MCR 7.305(C)(2)(a).

[1] The Michigan Assigned Claims Plan is not an entity that can be sued, as it is a plan. The Michigan Automobile Insurance Placement Facility as the administrator of the MACP can be sued. Thus, the MACP was improperly named in this suit. Defendants-Appellees will be referred to as the MAIPF hereinafter.

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THIS COURT SHOULD GRANT LEAVE WHERE THE COURT OF APPEALS APPLIED THE UNAMBIGUOUS LANGUAGE OF MCL 500.3172, WHICH ALLOWS A PERSON INJURED IN A MOTOR-VEHICLE ACCIDENT "IN THIS STATE" TO CLAIM BENEFITS UNDER THE MICHIGAN ASSIGNED CLAIMS PLAN ("MACP"), DESPITE PLAINTIFF'S ARGUMENT THAT § 3172 SHOULD NOT BE APPLIED WHERE MCL 500.3114(4) DIRECTS A PERSON TO CLAIM BENEFITS UNDER THE MACP "UNDER SECTIONS 3171 TO 3175."

Plaintiff-Appellant answers:	Yes.
Defendants-Appellees answer:	No.
The trial court answered:	No.
The Court of Appeals answered:	No.
This Court should answer:	No.

SUMMARY OF ARGUMENT

Plaintiff-Appellant Central Home Health Care Services, Inc. ("Plaintiff") grasps at straws to attempt to convince this Court that it should grant leave to review the unpublished opinion below where the Court of Appeals applied the unambiguous MCL 500.3172 as written, just as it has been applied since its enactment. Section 3172(1) contains the Michigan Assigned Claims Plan's ("MACP's") threshold eligibility requirements and expressly states that a person injured "in this state" may claim benefits under the MACP in limited circumstances. The statue could not be more clear. Section 3172(1) remains substantively identical, despite wholesale Legislative changes to the Michigan No-Fault Act in 2019, indicating the Legislature's intent to maintain the same substantive eligibility requirements contained therein.

Plaintiff applies a shot-gun approach, contending that a combination of MCL 500.3114(4) and MCL 500.3111, canons of interpretation, and policy goals ultimately warrant reading § 3172(1) out of the Act where a person is injured in a motor vehicle accident outside of Michigan. Despite quoting statutory-interpretation axioms at nauseum, Plaintiff fails to identify a single textual statutory basis for reaching the result Plaintiff seeks. Plaintiff's arguments should be rejected because there is no legal foundation, statutory or otherwise, suggesting the Legislature intended that the plain and unambiguous language of § 3172 simply be circumvented and rendered void. To the contrary, a straightforward application of the relevant statutes, and every canon of interpretation cited by Plaintiff, indicates that the lower court reached the right result. Plaintiff's exact same arguments have been considered and rejected by several panels of the Court of Appeals, including *twice*, in *Steanhouse*, *infra*. This is not an appropriate case for leave and this Court should deny Plaintiff's Application.

COUNTER-STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

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

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

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

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

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

assigned insurer is reimbursed for that cost from the MAIPF.

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

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

II. FACTUAL & PROCEDURAL BACKGROUND

On May 18, 2020, Mylene Brevard allegedly sustained injuries in a motor vehicle accident that occurred in Toledo, Ohio, as a passenger in a vehicle. (Exhibit B, Police Report; Exhibit C, Application for Benefits.)

A. Dispositive Motions in the Trial Court

Plaintiff filed this action against the MAIPF seeking payment of no-fault benefits under the MACP for services Plaintiff allegedly provided to Brevard and seeking declaratory judgment in its favor requiring the MAIPF to assign the claim to a servicing insurer. (Exhibit D, Complaint.)

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

In lieu of filing an answer, the MAIPF filed a motion for summary disposition, arguing that because Brevard was injured in an out-of-state accident, she was not eligible to claim benefits under the MACP pursuant to the plain language of § 3172(1) that only allows persons injured in accidents "in this state" to seek benefits under the MACP. Plaintiff responded with a cross-motion for summary disposition, arguing that because MCL 500.3111 confers a general right to payment of no-fault benefits to occupants of out-of-state accidents and MCL 500.3114(4) directs an occupant of a vehicle injured in an accident (who does not have coverage through an insurance policy) to claim benefits under the MACP "under sections 3171 to 3175", § 3172(1) does not apply.

During oral argument, which took place on January 18, 2023, Plaintiff argued that the Court of Appeals' decision in *Steanhouse v Mich Automobile Ins Placement Fac*, ___Mich App___; ___NW2d___ (2022) (*Steanhouse I*), issued on December 22, 2022, was wrongly decided, and that because the plaintiff in that action failed to submit a brief in the Court of Appeals, the court did not have the benefit of considering the statutory-interpretation arguments, asserted in this case, concerning § 3111 and § 3114. (Exhibit E, Hearing Transcript, pp. 118-119.) In *Steanhouse I*, the Court of Appeals held that "MCL 500.3172(1) requires a claimant seeking benefits through the MACP to show that the accident giving rise to the claim occurred in Michigan" and, if the accident was not in Michigan, the MAIPF may deny the claim. *Steanhouse I, supra*, slip op. at 6.

The trial court granted the MAIPF's motion. (Exhibit F, Order Granting MSD.) Plaintiff appealed.

B. Proceedings In The Court Of Appeals

On appeal, Plaintiff again argued that "MCL 500.3172(1) was inapplicable because it applied only to accidents that occurred in Michigan; MCL 500.3111 and MCL 500.3114, however, applied, and they allowed uninsured Michigan residents who were involved in out-of-state car

accidents to claim PIP benefits through the MACP." (Exhibit A, Opinion, p. 2.) The MAIPF, again, argued that the plain, unambiguous language of the statute must be applied, which only permits persons injured in accidents "in this state" to claim benefits under the MACP. Nothing in § 3111 or § 3114 provided a basis to simply ignore § 3172(1).

After the parties submitted briefing in the Court of Appeals, Plaintiff filed a Notice of Supplemental Authority, notifying the court that this Court vacated the opinion in *Steanhouse I* and remanded *Steanhouse* back to the Court of Appeals ordering that, on remand, the Court of Appeals must "address the impact, if any, of MCL 500.3114 on whether the plaintiff is eligible to claim benefits through the Michigan Assigned Claims Plan." *Steanhouse v Mich Automobile Ins Placement Facility*, 512 Mich 928; 994 NW2d 512 (2023) (*Steanhouse II*). As a result, this case was held in abeyance pending the Court of Appeals' resolution of *Steanhouse* on remand. (Exhibit G, Abeyance Order.)

In *Steanhouse*, on remand, the Court of Appeals ordered supplemental briefing from the parties on the issue stated in this Court's remand order. Following the submission of supplemental briefing from the plaintiff and an amicus brief supporting the plaintiff – both advancing the exact same arguments Plaintiff asserts here – and a supplemental brief from the MAIPF, the Court of Appeals issued its opinion on April 11, 2024. *Steanhouse v Mich Automobile Ins Placement Facility (On Remand)*, ___Mich App___; ___NW2d___ (2024) (*Steanhouse III*). The Court of Appeals reached the same conclusion as it did in *Steanhouse I*, holding that "MCL 500.3172(1)…requires an individual claiming PIP benefits through the MACP to show that the accident giving rise to the claim occurred in Michigan" and that "MCL 500.3114 does not impact [a claimant's] eligibility to claim benefits through the MACP." *Id.*, slip op. at 9.

At oral argument, Plaintiff admitted that *Steanhouse III* controlled but urged the court to

convene a conflict panel. The court declined to do so. Instead, the Court of Appeals affirmed, quoting the *Steanhouse III* decision at length, which stepped through the exact arguments that Plaintiff makes here, rejecting each one. (Exhibit A.)

ARGUMENT

I. STANDARDS OF REVIEW

A party seeking leave to appeal to this Court – a rare remedy – must show that the case meets one of the criteria in MCR 7.305(B). Here, Plaintiff alleges the criteria under MCR 7.305(B)(1), (3), and (5)(a) apply. Plaintiff is wrong.

> MCR 7.305(B) states in relevant part as follows:
>
> (B) **Grounds**. The application must show that …
>
> (1) the issue involves a substantial question about the validity of a legislative act;
>
> (3) the issue involves a legal principle of major significance to the state's jurisprudence;
>
> (5) in an appeal of a decision of the Court of Appeals,
> (a) the decision is clearly erroneous and will cause material injustice;…

Plaintiff fails to make a showing of any of these grounds. *First*, while Plaintiff cites MCR 7.305(B)(1), this provision is inapplicable because this case does not involve a question regarding the validity of a legislative act. An example of such a claim would be a challenge to a legislative act on the basis that it was unconstitutional or that it was procedurally deficient. This case concerns the interpretation of statutes – not a question of whether they are valid.

Second, Plaintiff cannot meet the high bar of MCR 7.305(B)(3) or (5)(a) either. This case concerns the application of unambiguous statutory language – language that the Court of Appeals considered *twice* in *Steanhouse*, including a thorough analysis on remand, following significant briefing, and *twice* reaching the same inescapable conclusion – that § 3172(1) cannot simply be

read out of the Act. Every Court of Appeals panel to consider the issue has held in favor of the MAIPF. See e.g., *Miller v Mich Automobile Ins Placement Facility*, unpublished opinion per curiam of the Court of Appeals, issued July 25, 2024 (Docket No. 363600).[4] The cases speak with one voice confirming what the unambiguous statutory language says – that there is no right to benefits under the MACP where one is involved in an accident outside of Michigan.

While Plaintiff contends that Court of Appeals' unpublished decision below (and *Steanhouse*) somehow changes the status quo, the No-Fault Act has ***never*** offered coverage under the MACP for out-of-state accidents. See e.g., *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 529 n 9; 502 NW2d 310 (1993), citing MCL 500.3172(1) (because the accident was out of state, MACP coverage was not available to the plaintiff).[5] Indeed, Plaintiff cannot cite a single case that suggests there has ever been MACP coverage for out-of-state accidents because no such case exists. Nothing in the 2019 amendments provides any statutory basis for changing that longstanding fact; thus, the Legislature did not intend to expand MACP coverage to out-of-state accidents.

In short, the Court below reached the correct decision by applying the Act as written, just as it is required to do. If Plaintiff seeks to have MACP coverage expanded, its remedy is with the Legislature – not by asking this Court to simply erase § 3172(1) from the Act where out-of-state accidents are concerned.

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[4] This unpublished opinion is cited for its persuasive value and is attached as Exhibit H. See MCR 7.215(C).

[5] Plaintiff argues that *Rohlman* only confirmed whether a pedestrian (non-occupant) injured in an out-of-state accident was entitled to MACP coverage but not whether an occupant would have been entitled to MACP coverage. It is unclear on what basis Plaintiff contends a distinction existed, especially considering Plaintiff's argument that no-fault reform in 2019 – 26 years after *Rohlman* – warrants treating occupants injured in out-of-state accidents differently under the MACP. As explained below, there is no statutory basis for doing so.

Should the Court grant leave, this Court reviews a grant of summary disposition *de novo*. *Bush v Shabahang*, 484 Mich 156, 164; 772 NW2d 272 (2009). Questions of law and the interpretation of statutes are also reviewed *de novo*. *Haksluoto v Mount Clemens Regional Med Center*, 500 Mich 304, 309-310; 901 NW2d 577 (2017).

II. THE PLAIN AND UNAMBIGUOUS LANGUAGE OF MCL 500.3172 SHOULD BE APPLIED AS WRITTEN.

A. Section 3172(1) Unambiguously Requires That An Accident Occurs "In This State" For A Person To Be Able To Claim Benefits Under The MACP.

"The no-fault act is a comprehensive scheme of compensation designed to provide sure and speedy recovery of certain economic losses resulting from motor vehicle accidents." *Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan*, 507 Mich 498, 517; 968 NW2d 482 (2021) (cleaned up). The plain language of each relevant provision of Act demonstrates that the Legislature provides limited coverage under the MACP to claimants involved in accidents "in this state" only.

The Supreme Court's well-settled precedent requires that, when interpreting a statute, courts must "follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature." *Kostadinovski v Harrington*, 511 Mich 141, 150; 999 NW2d 318 (2023) quoting *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). Thus, courts "begin by examining the most reliable evidence of that intent, the language of the statute itself." *Whitman*, 493 Mich at 311. Courts "must read the statute as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined." *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541; 840 NW2d 743 (2013) citing *In re Receivership of 11910 South Francis Road*, 492 Mich 208, 222; 821 NW2d 503 (2012). "Effect must be given to every word, phrase, and clause in a statute, and the court must avoid a construction that would render part of the statute surplusage or nugatory." *Id.* citing

Johnson v Recca, 492 Mich 169, 177; 821 NW2d 520 (2012).

"If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted." *Kostadinovski*, 511 Mich at 150 quoting *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). See also, *Whitman*, 493 Mich at 311. Only "if the statute's language is ambiguous, this Court 'may refer to the history of the legislation in order to determine the underlying intent of the Legislature.'" *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 410; 987 NW2d 501 (2022) quoting *Luttrell v Dep't of Corrections*, 421 Mich 93, 103; 365 NW2d 74 (1984).

As with all questions of statutory interpretation, a court must begin its analysis with the plain language of the statute. *Ameritech Mich v PSC (In re MCI)*, 460 Mich 396, 411; 596 NW2d 164 (1999). The statute at issue here, § 3172(1), states:

> A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle ***in this state*** may claim personal protection insurance benefits through the assigned claims plan if any of the following apply:
>
> (a) No personal protection insurance is applicable to the injury.
>
> (b) No personal protection insurance applicable to the injury can be identified.
>
> (c) No personal protection insurance applicable to the injury can be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss.
>
> (d) The only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed.

MCL 500.3172(1) (emphasis added).

The statute unambiguously requires that in order to claim benefits through the MACP, the accidental bodily injury must arise "out of the . . . use of a motor vehicle as a motor vehicle in this state" – Michigan. The words of the statute provide the best evidence of legislative intent and the policy choices made by the Legislature. See *White v City of Ann Arbor*, 406 Mich 554, 562; 281 NW2d 283 (1979). Accordingly, ignoring the eligibility requirement that a person's claim arise from an accident "in this state" would be contrary to well-settled statutory-interpretation principles.

Here, Brevard was allegedly an occupant injured in a motor vehicle accident in Ohio. "MCL 500.3114 instructs a person to pursue his or her 'claim' for PIP benefits from insurers according to the listed order of priority." *Griffin v Trumbull Ins Co*, 509 Mich 484, 498; 983 NW2d 760 (2022). Section 3114(4) governs against whom an occupant injured in a motor vehicle accident must assert a claim for benefits and states as follows, in relevant part:

> Except as provided in subsections (2) and (3), a person who suffers accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle who is not covered under a personal protection insurance policy as provided in subsection (1) shall claim personal protection insurance benefits under the assigned claims plan *under sections 3171 to 3175*.

MCL 500.3114(4) (emphasis added).

Because § 3172 falls between "sections 3171 to 3172", it is expressly implicated by § 3114(4). As discussed above, § 3172(1) is the provision governing eligibility to make a claim under the MACP and only allows a person injured "in this state" to claim benefits under the MACP. Accordingly, because Brevard was injured in Ohio, she is ineligible to recover benefits under the MACP. Because this straightforward analysis forecloses the issue, this Court should deny leave.

B. Neither § 3114 Nor § 3111 Affects Whether § 3172(1) Is Applicable.

Plaintiff argues that because § 3114(4) expressly requires an uninsured occupant to claim benefits under the MACP and under § 3111, an occupant generally has a right to benefits when

injured in an out-of-state accident, when read together, the eligibility provisions under § 3172(1) must be read out of the Act. But, Plaintiff's theory fails at every turn. Nothing in either statute provides a basis for reading § 3172(1) out of the Act where an occupant is injured in an out-of-state accident.

1. Section 3114 Has No Effect On This Analysis.

Plaintiff's argument is premised, in part, on the contention that because § 3114(4) expressly directs an occupant to claim benefits under the MACP, § 3172(1) is inapplicable. Plaintiff's argument should be rejected for three reasons. *First*, priority statutes do not confer a right to coverage. *Second*, the mandatory language under § 3114(4), stating that an uninsured claimant "shall" claim benefits under the MACP works against Plaintiff because it also requires that the sections of the Act governing the MACP apply, which include § 3172. Under the plain language of § 3114(4) (as well as §3114(6) and § 3115), the statutes implicate "sections 3171 to 3175." *Second*, Plaintiff's juxtaposition between the mandatory language under the priority statutes with the permissive language of § 3172(1) is wholly meaningless here and provides no grounds for simply reading § 3172(1) out of the Act.

a. Priority Statutes Do Not Create Coverage.

"The priority statutes, MCL 500.3114 and MCL 500.3115, define against whom an individual may make a claim for benefits." *Covenant Med Ctr, Inc v State Farm Mut Automobile Ins Co*, 500 Mich 191, 215; 895 NW2d 490 (2017). See also, *Griffin*, 509 Mich at 498. "In this context, a claim for benefits is simply a demand to an insurer by its insured or a third party for payments that are ***believed*** to be due after a motor vehicle accident." *Griffin*, 509 Mich at 498. (emphasis added). This Court's statement is consistent with the dictionary definitions of a "claim", which is "a demand for something due or believed to be due." Merriam-Webster Collegiate Dictionary (11th ed). See also Black's Law Dictionary (11th ed) (defining a "claim" to mean

"[t]he assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional"). See *Williamson v AAA of Mich*, ___MichNW3d___; ___NW3d___ (2024), slip op. at 8 (this Court has defined claim in the context of the no-fault act consistent with its dictionary definitions – "a demand for something due or believed to be due and a right to something") (cleaned up). Thus, making a "claim" involves the act of asserting a right to benefits. See *Griffin*, 509 Mich at 500 (making a claim means "put[ting] potential insurers on notice and submit[ting] insurance claims stating an entitlement to benefits and requesting payment").

However, merely because the priority statutes define to whom a claim must be made, they do not confer any right to benefits that is independent of the Act's other provisions. See *Parks v Detroit Auto Inter-Insurance Exchange*, 426 Mich 191, 201; 393 NW2d 833 (1986) (priority statutes "the order in which various ***potentially*** liable insurers will be required to cover a claim for benefits") (emphasis added). See also, *Steanhouse III*, *supra*, slip op. at 4. It is axiomatic that the remainder of the Act's provisions must be heeded. Merely because an insurer is in the order of priority, it may nonetheless, have defenses to coverage or payment of benefits.[6]

For example, where there is a question whether the injury upon which the claim for no-fault benefits is based is the type of injury that the act is designed to compensate, courts have long looked to MCL 500.3105. "The act operates to compensate only a limited class of persons for economic losses sustained as a result of motor vehicle accidents." *Belcher v Aetna Cas & Surety*

[6] See, e.g. *Ward v Titan Ins Co*, 287 Mich App 552, 555; 791 NW2d 488 (2010) (where a claimant seeks wage-loss benefits, the claimant has the burden to prove the amount that would have been earned but for the injury); *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 632; 552 NW2d 671 (1996) ("a claimant must show that an exception to the parked vehicle exclusion applies and the injury arose out of the use of a motor vehicle as a motor vehicle); *Owens v Auto Club Ins Ass'n*, 444 Mich 314, 324; 506 NW2d 850 (1993) (a no-fault claimant 'also has the burden of establishing that he sought to obtain appropriate services from' the primary insurer, particularly where a policy contains a coordination of benefits provision).

Co, 409 Mich 231, 243; 293 NW2d 594 (1980). To determine whether an injury is the type the act is designed to compensate, the focus must be on the "nature of the injury and the circumstances under which it was suffered", which will "dictate whether no-fault insurance may operate as a source of recovery for losses flowing from the injury." *Id.* at 242. See also, *Dye v Esurance Prop & Cas Ins Co*, 504 Mich 167, 181; 934 NW2d 674 (2019), quoting MCL 500.3105 (same).[7] Simply put, the priority statutes define the order of insurers from whom a claimant must claim no-fault benefits, but they do not address the causation threshold that triggers entitlement to benefits. See *Douglas v Allstate Ins Co*, 492 Mich 241, 257; 821 NW2d 472 (2012).

Not a single case was identified where a court looked to a *priority* statute to determine whether a claimant was eligible for coverage under the Act. Stated another way, priority statutes dictate *from whom* one must claim benefits not whether one is *entitled* to benefits.

Like § 3105 is a general threshold provision governing eligibility for coverage under the Act, § 3172(2) is a more specific provision that governs threshold eligibility to claim benefits under the MACP. See also, discussion, *infra*. In sum, merely because a priority statute directs one to claim benefits under the MACP, it does not mean that person is necessarily eligible for benefits under the MACP.

The MACP's governing provisions illustrate this fact. To begin, after receiving a claim,

[7] The language of § 3105 has been analyzed by Michigan's appellate courts for decades and there exists a well-established body of caselaw discussing what types and circumstances of injury may qualify for coverage under the Act. See, e.g. *Cooke v Insurance Co of Pennsylvania*, 188 Mich App 453, 470 NW2d 432 (1991) (injury must arise from a single identifiable event); *Jasinski v National Indem Ins Co*, 151 Mich App 812, 391 NW2d 500 (1986); *Kelly v Inter-City Truck Lines, Inc*, 121 Mich App 208, 328 NW2d 406 (1982) (injury must arise from a motor-vehicle accident and a motor-vehicle is not a vehicle that has been modified so it is no longer appropriate for use on a public highway); *Thornton v Allstate Ins Co*, 425 Mich 643, 391 NW2d 320 (1986) ("arising out of" provision will be satisfied if the car's involvement in the injury is directly related to the car's character as a motor vehicle).

the MAIPF must "review a claim" and "make an initial determination of the eligibility for benefits[.]" MCL 500.3173a(1). However, to do so, the MAIPF must rely on information provided to it by the claimant. For that reason, a person "entitled to" claim benefits under the MACP "*under subsection (1)*" (§ 3172(1)) "shall file a completed application on a claim form provided by the Michigan automobile insurance placement facility and provide reasonable proof of loss to the Michigan automobile insurance placement facility." MCL 500.3172(3) (emphasis added). See also, *Steanhouse III supra*, slip op. at 6. See also, MCL 500.3173a(2) (placing a duty on a claimant to cooperate with the MAIPF "in its determination of eligibility" by, *inter alia*, providing a complete application and "reasonable proof of loss under the assigned claims plan as described in section 3172"). In short, the MACP's statutory claims process is designed so that the MAIPF may confirm that § 3172(1)'s eligibility provisions are met, which, in turn, confirms that § 3172(1) is not meant to be read out of that statute.

The panel in *Steanhouse III* recognized this fact explaining that § 3173a "governs the MAIPF's responsibility to review claims and make an eligibility determination." *Steanhouse III supra*, slip op. at 6. Section 3173a(1) states, in relevant part:

> The Michigan automobile insurance placement facility shall review *a claim for personal protection insurance benefits under the assigned claims plan*, shall make an initial determination of the eligibility for benefits *under this chapter and the assigned claims plan*, and shall deny a claim that the Michigan automobile insurance placement facility determines is ineligible *under this chapter or the assigned claims plan*.

MCL 500.3173a(1) (emphasis added). Thus, by statute, the MAIPF must review a claim for benefits under the MACP to ensure it meets the eligibility requirements of Chapter 31 of the Michigan Insurance Code, which includes § 3172(1), "and" the "assigned claims plan", which also implicates § 3172(1) (and the plan itself, which echoes § 3172(1)'s requirements).

The panel in *Steanhouse III* also recognized that § 3173a sets forth a claimant's duty to

cooperate, which includes providing reasonable proof of loss "as described in section 3172." *Steanhouse III supra,* slip op. at 6, citing MCL 500.3173a. The requirement under § 3172 is expressly referenced, which, in turn, expressly references the eligibility requirements under § 3172(1) as follows: "[a] person entitled to claim personal protection insurance benefits through the assigned claims plan *under subsection (1)* shall…. provide reasonable proof of loss…" MCL 500.3172(3). The panel explained, § 3173a's "requirements refer back to MCL 500.3172(3), which explicitly references MCL 500.3172(1) as a condition of eligibility when detailing the requirements to complete an application and provide proof of reasonable loss." *Steanhouse III supra,* slip op. at 6. Accordingly, the MACP's statutory claims process confirms that § 3172(1)'s eligibility requirements apply where one is directed to make a claim under the MACP "under sections 3171 to 3175."

For that same reason, this Court should reject Plaintiff's argument that § 3172(1) can be ignored despite § 3114(1) directing that a claim under the MACP must be made "under sections 3171 to 3175" because, according to Plaintiff, only the subsections within those statutes pertaining to the actual *procedure* of making a claim apply. The claims procedures expressly incorporate § 3172(1)'s eligibility requirements.

In sum, priority statutes direct a claimant whom to assert a claim for benefits against, but they do not govern eligibility for coverage.

b. Section 3114(4) Expressly Implicates § 3172(1).

Section 3114(4) expressly states that where a person directed to claim benefits under the MACP, that person's claim is subject to the MACP's governing statutes, including § 3172(1).

Sections 3114 and 3115 are the Act's priority statutes. Generally, under MCL 500.3114(1), one's own insurer is responsible to cover the loss unless one of the exceptions in subsections (2),

(3), or (5) apply. MCL 500.3114; see *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 262; 819 NW2d 68 (2012). The default rule is set forth under § 3114(1), which provides:

> 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.

Subsections (2), (3), and (4) address the order of priority where a person is either a passenger or an occupant of vehicles involved in the injury-causing motor vehicle accident. MCL 500.3114(2), (3), (4). Section 3114(4), which applies to occupants injured in motor vehicle accidents, echoes this requirement, placing one's own personal insurer highest in priority. MCL 500.3114(5) addresses the order of priority where a person is injured while an operator or passenger of a motorcycle involved in a motor vehicle accident. MCL 500.3114(5). Finally, MCL 500.3115 addresses the order of priority where a person "suffers accidental bodily injury while *not* an occupant of a motor vehicle" and, likewise, places one's own insurer highest in the order of priority. MCL 500.3115 (emphasis added).

"Before resorting to the MACP, the No-Fault Act contemplates that claimants will utilize MCL 500.3114's priority system to determine where to seek coverage among no-fault insurers." *Titan Ins Co v American Country Ins Co*, 312 Mich App 291, 304; 876 NW2d 853 (2015); (Gleicher, J., concurring). "At the end of the priority road stands the insurer of last priority: the Michigan Assigned Claims Plan (MACP)[.]" *Id.* at 303-04 (Gleicher, J., concurring).

While MCL 500.3114(2) and (3) do not expressly place the MACP in the order of priority, it is axiomatic that the MACP nonetheless may fall as the last resort insurer. See *Bazzi v Sentinel Ins Co*, 502 Mich 390, 419; 919 NW2d 20 (2018) (McCormack, J. dissenting) ("If no insurer can be identified, the Michigan Assigned Claims Plan (MACP) is the insurer of last resort. MCL 500.3171."). However, where an insurer under § 3114(2) or (3) is not identifiable, a person must

look to their own insurer before resorting to the MACP for coverage. See *Titan*, 312 Mich App 291; *Frierson v West American Ins Co*, 261 Mich App 732; 683 NW2d 695 (2004); *Parks*, 426 Mich 191; *Auto-Owners Ins Co v Lombardi Food Serv, Inc*, 137 Mich App 695; 358 NW2d 923 (1984).[8] For example, where an employee suffers accidental injury while "an occupant of a motor vehicle owned or registered by the employer", the employee is entitled to receive PIP benefits from "the insurer of the furnished vehicle." MCL 500.3114(3). However, if the vehicle is not covered by a PIP insurance policy and the employee has no coverage under § 3114(1), the employee would seek PIP benefits from the MAIPF. Where a person makes a claim for benefits under the MACP in this type of context, Plaintiff appears to accept that § 3172(1) applies.

Instead, Plaintiff takes issue with § 3172(1) applying where a claimant is expressly directed to claim benefits under § 3114(4). But, this identical direction actually occurs in three separate places in the priority statutes. To begin, § 3115 directs an uninsured injured pedestrian (a person injured while "not an occupant" of a vehicle) to "claim personal protection insurance benefits under the assigned claims plan *under sections 3171 to 3175*." MCL 500.3115 (emphasis added). Next, § 3114(5) sets forth a list of insurers from whom "an operator or passenger" of a motorcycle involved in a motor vehicle accident shall claim PIP benefits. Under § 3114(6), if a policy that falls in the order of priority under subsection (5) contains an exclusion of allowable-expense (PIP medical) benefits, and there are no other policies offering such benefits in the order of priority under subsection (5), "the injured person shall claim benefits…under the assigned claims plan

[8] Likewise, under § 3114(2), which applies where one in injured while in a vehicle "operated in the business of transporting passengers", the statute contains a list of vehicles that are used in the business of transporting passengers but are exempted from the statute for public policy reasons, sending an insured to their own insurer under § 3114(1). But, the list of exceptions is inapplicable where there exists no policy under § 3114(1), preventing the claim from going to the MACP. This too indicates the Legislature's policy that the MACP is a last-resort after all potential policy insurance.

under sections 3171 to 3175." MCL 500.3114(6) (emphasis added). Again, Plaintiff appears to agree that § 3172(1) would be applicable in these circumstances.

Finally, relevant here, under § 3114(4), an occupant of a motor vehicle, who was neither a passenger of a "motor vehicle operated in the business of transporting passengers" nor an occupant of an employer's furnished vehicle, and who does not have coverage under § 3114(1), "shall claim personal protection insurance benefits under the assigned claims plan *under sections 3171 to 3175*." MCL 500.3114(4) (emphasis added). According to Plaintiff, in *this* circumstance only, § 3172(1) must be ignored.

But, this contravenes the most basic principle underlying statutory interpretation. Courts must be sure that statutory wording is not ignored or rendered meaningless. *Mantei v Mich Pub Sch Emples Retirement Sys*, 256 Mich App 64, 72; 663 NW2d 486 (2003). Statutes must be applied as written. *Dye*, 504 Mich at 180 (cleaned up). In every priority provision that expressly directs a claimant to seek benefits under the MACP, it includes the exact same language, stating that the person must claim benefits "under sections 3171 to 3175", thereby expressly including § 3172 and its requirement that an accident occur "in this state[.]" Nothing in the language of the priority statutes suggests a legislative intent that § 3172(1) be read out of the Act where § 3114(4) (just like § 3115 and § 3114(6)) directs a claimant to seek benefits under the MACP "under sections 3171 to 3175." The language is the same – not different.

"[W]hen the Legislature uses different words, the words are generally intended to connote different meanings." *Honigman Miller Schwartz & Cohn, LLP v Detroit*, 505 Mich 284, 317; 952 NW2d 358 (2020). See also *Bauserman v Unemployment Ins Agency*, 503 Mich 169, 184 n 10; 931 NW2d 539 (2019) ("Different words used in the same, or a similar, statute are assigned different meanings whenever possible….[W]here different language is used in the same

connection, in different parts of the statute, it is presumed that the legislature intended it to have a different meaning and effect."). The Legislature is presumed to have acted intentionally and the difference in words selected must be given effect. *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 759; 641 NW2d 567 (2002). Accordingly, the converse is also true – where the Legislature uses identical language in the same statute, it should be interpreted the same. There is no basis to interpret "under sections 3171 to 3175" differently merely because it falls under § 3114(4) instead of § 3115 or § 3114(6).

The panel in *Steanhouse III* got it right, twice. The court explained:

> Steanhouse's interpretation ignores the unambiguous language of MCL 500.3114(4)—a qualifying individual who is not covered under a no-fault policy shall claim PIP benefits under the MACP "under sections 3171 to 3175"—by suggesting that an individual can claim benefits through the MACP without looking to the statutory provisions expressly referenced in the priority scheme. Under the priority statute, one must look to MCL 500.3171 through MCL 500.3175 to determine whether a claimant is eligible for benefits through the MACP. In this case, looking to MCL 500.3172(1), Steanhouse is ineligible for PIP benefits because his injury stems from an out-of-state accident.

Steanhouse III, supra, slip op. at 6. Looking at § 3172(1), the "'in this state' phrase…requires a claimant seeking benefits through the MACP to show that the accident giving rise to the claim occurred in Michigan." *Id.*, slip op. at 5-6, quoting *Steanhouse I, supra*, slip op. at 6. *Steanhouse III* is correct.

Plaintiff's argument entirely ignores the express language under § 3114(4) that states that an uninsured occupant must claim benefits under the MACP "under sections 3171 to 3175." A claimant's claim for benefits under the MACP is subject to the MACP's governing provisions, which include § 3172(1). Courts may not ignore plain statutory directives. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 222; 815 NW2d 412 (2012).

c. Section 3172(1)'s Eligibility Requirements Are Not Optional.

Plaintiff next contends that because § 3114(4) uses mandatory language, indicating an

uninsured occupant "shall claim personal protection insurance benefits under the assigned claims plan under sections 3171 to 3175" and that § 3172 uses permissive language indicating a claimant injured "in this state may claim personal protection insurance benefits through the assigned claims plan", that § 3172(1) can be ignored where § 3114(4) applies. This juxtaposition is wholly meaningless.

First, as explained above, the purpose of the priority statutes is not to confer an absolute right to benefits immune from all other provisions of the Act. This Court interpreted the mandatory language under the priority statutes in *Griffin*, concluding that it created an affirmative "legal obligation" on a claimant to make good-faith diligent efforts to claim benefits from insurers in the order of priority. *Griffin*, 509 Mich at 500. This is not an optional obligation. If one seeks to claim benefits, they "must be diligent in the pursuit of his or her claim for PIP benefits." *Id.* In contrast, § 3172(1) does not impose any affirmative obligation on a claimant. It is an eligibility provision. There is no need for mandatory language because there is no requirement that an uninsured person claim benefits under the MACP. Instead, it is a last-resort option in limited circumstances for those otherwise entitled to benefits under the Act. See MCL 500.3172(1).

Second, because the language in § 3114(4) is mandatory, it *requires* that a person's claim under the MACP be made "under sections 3171 to 3175." As explained above, the claims procedures under those statutes expressly incorporate § 3172(1)'s eligibility requirements and the process is designed to allow the MAIPF to fulfil its statutory duty of making an initial eligibility determination, which includes the first step of confirming § 3172(1)'s eligibility requirements are met. In other words, it mandates that § 3172(1) applies. In sum, there is no statutory basis under the priority statutes for reading § 3172(1) out of the Act.

Third, nothing under § 3172(1) indicates that its eligibility provisions are optional. The

threshold hurdle a claimant must clear in order to recover benefits under the MACP is demonstrating one of the four criteria under MCL 500.3172(1) is met. While the statute allows a person to claim benefits under the MACP, it does not require a person to do so. This makes perfect sense because the statute is not a priority statue, which requires mandatory language. If a priority statute contained permissive language, essentially making a claim to insurers in each level of priority optional, it would effectively eliminate any defined order of priority.

Moreover, the fact that a person injured "in this state" "may" make a claim for benefits under the MACP where one of four circumstances applies, does not somehow indicate that the eligibility requirements of § 3172(1) are optional. It only means that a person eligible to claim benefits under § 3172(1) is not *required to* make a claim for benefits under the MACP. For example, where there is a dispute between two (or more) policy insurers over their obligation to provide coverage to a claimant, the claimant may file suit against those insurers, the resolution of which will likely identify which insurer or insurers are obligated to pay the claimant's benefits. Or the claimant "may" make a claim for benefits under the MACP, pursuant to § 3172(1)(c).[9] See also, MCL 500.3172(6)(a) ("The insurers who are parties to the dispute shall, or the claimant ***may***, immediately notify the [MAIPF] of their inability to determine their statutory obligations.").

The fact that there is no statutory mandate requiring an eligible claimant to claim benefits under the MACP does not render its eligibility provisions optional. Nor does it extinguish them entirely. Plaintiff's interpretation widely strays from the plain language of the Act.

2. Section 3111 Has No Effect On This Analysis.

[9] In this circumstance, § 3172 contemplates that the MAIPF would assign the claim and the assigned insurer would initiate an action to determine which policy insurer or insurers are responsible for providing the claimant coverage. Once the court makes such a determination, the responsible insurer or insurers must reimburse the assigned insurer. MCL 500.3172.

Without any statutory basis in the priority statutes to read § 3172(1) out of the Act, it is evident that the true linchpin of Plaintiff's argument is that § 3111 provides a basis to do so. It does not. *First*, there is no conflict between § 3111 and § 3172(1). *Second*, even if there was a conflict, the more specific provision controls, which is § 3172(1).

Section 3111 "provides that personal protection insurance benefits are payable for injuries suffered in accidents occurring outside Michigan to certain people." *Auto-Owners Ins Co v State Farm Mut Automobile Ins Co*, 187 Mich App 617, 619; 468 NW2d 317 (1991). MCL provides as follows:

> 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).

MCL 500.3111.

Section 3111 is a broad coverage provision in the No-Fault Act that generally informs that benefits are payable for injuries arising from an out-of-state accident. But it does not include any language indicating a legislative intent to nullify the MACP's eligibility requirements under § 3172(1). Nor does § 3111 provide a "separate path to benefits" that somehow avoids § 3172(1), as Plaintiff contends. As explained above, the priority statutes tell a claimant against whom to assert a claim for benefits. Nothing in § 3111 does so. Relevant here, § 3114(4) directs that an uninsured occupant may claim benefits under the MACP "under sections 3171 to 3175", thus, clearly indicating that § 3172 applies.

Stated another way, while there is a general obligation for insurers to pay benefits for out-of-state accidents under § 3111, the remainder of the Act's eligibility requirements must also be

met to entitle a claimant to payment of benefits. Section 3111 does not confer an absolute right to payment of benefits in a vacuum any more than the priority statutes do. Statutory "language does not stand alone, and thus it cannot be read in a vacuum. Instead, it exists and must be read in context with the entire act." *Bush*, 484 Mich at 191 (cleaned up), quoting *Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421; 662 NW2d 710 (2003).

Plaintiff argues that the panel in *Steanhouse* erred by ignoring § 3111 and, therefore, the court's holding rendered it nugatory. Not so. Plaintiff's argument is grounded in its contention that because § 3111 states that benefits are payable for out-of-state accidents, it conflicts with § 3172(1)'s language stating only persons injured in accidents "in this state" are eligible to claim benefits under the MACP. But, these statutes can be read in harmony, consistent with statutory-interpretation principles. See *Honigman Miller*, 505 Mich at 309 ("words in a statute should not be construed in a void, but should be read together to harmonize their meaning, giving effect to the act as a whole") (cleaned up).

Merely because a person does not have a right to claim benefits under the MACP for an out-of-state accident does not render § 3111 nugatory in other circumstances. Section § 3111 plainly applies to persons covered by no-fault auto policies. Even where one is not insured under a policy pursuant to § 3114(1), there exists circumstances where § 3111 would still direct that an insurer is obligated to pay benefits as a result of an out-of-state accident. For example, an uninsured occupant injured in an out-of-state accident may recover benefits from a policy insurer as a passenger of a commercial transport vehicle or while an occupant of an employer's furnished vehicle. See MCL 500.3114(2) and (3).

As recognized in *Steanhouse*, even if there was a conflict between MCL 500.3172 and MCL 500.3111, where two statutes conflict, the more specific statute controls. "Where a statute

contains a general provision and a specific provision, the specific provision controls." *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 350; 952 NW2d 384 (2020) (cleaned up). "The conflict is dissipated by interpreting the specific provision as an exception to the general one." *Id.* (cleaned up). This Court explained that "[o]ne rationale behind this interpretative maxim is that, if the general provision were given effect over the specific one, the more specific provision would be rendered nugatory and ineffectual." *Milne v Robinson*, 513 Mich 1, 13; 6 NW3d 40 (2024). "Another frequently cited rationale is the quite reasonable assumption that the legislature's attention was probably focused more directly on the subject matter of the specific than on only one aspect of a much broader subject matter." *Id.* (cleaned up).

The *Steanhouse* panel explained that, in *Milne*, this Court cautioned against "mechanical application of the general/specific canon." *Steanhouse III*, *supra*, slip op. at 8. In *Milne*, this Court stated "the general/specific analysis is most likely to be probative of legislative intent when (1) two statutes relate to the same subject or share a common purpose such that they should be read together in *pari materia*, and/or (2) one statute addresses a broader topic while the other statute addresses a subset of situations within that broader topic." *Milne*, 513 Mich at 13-14. Here, both circumstances apply, making it appropriate to apply the general/specific analysis. First, § 3111 and § 3172(1) govern the availability of no-fault benefits. Second, " MCL 500.3111 addresses a broader topic within the no-fault act—when PIP benefits are payable for injuries arising from out-of-state accidents—while MCL 500.3172(1) tackles a narrower issue within that broader topic—whether claimants are eligible to receive PIP benefits through the MACP for injuries arising from out-of-state accidents." *Steanhouse III, supra*, slip op. at 8.

Section 3172(1) is more specific than § 3111; thus, it would control in the event of a conflict. Section 3111 broadly provides that benefits are payable by insurers for claims arising

from out-of-state accidents but, it is subject to the remainder of the Act, which may narrow circumstances where benefits are due. It does not unilaterally set an eligibility standard for Michigan no-fault benefits. See e.g. MCL 500.3106 (parked-vehicle exclusion), MCL 500.3107 (defining allowable expenses as "reasonable" and "necessary" services provided), MCL 500.3107c (limits of coverages available), MCL 500.3109 (set offs to no-fault benefits), etc. It is axiomatic that the standard set forth in MCL 500.3111 does not trump the remainder of the No-Fault Act and is a general statute subject to more specific applicable provisions. Moreover, § 3111 does not address eligibility to receive benefits through the MACP, which is the only issue in this case.

To the contrary, MCL 500.3172(1) sets forth the threshold eligibility requirements for making a claim for benefits through the MACP. As its title suggests, it applies to "[c]onditions to obtaining personal protection insurance benefits through assigned claims plan[.]" MCL 500.3172. Because its specific provisions address the only issue in this case, section 3172 is more specific and governs here. Accordingly, nothing in § 3111 provides a statutory basis to read § 3172(1) out of the Act where an out-of-state accident occurs.

The interplay between a broader statute like § 3111 and the more specific eligibility requirements of § 3172(1) can be illustrated by comparing how the more broad § 3105 interacts with the more specific § 3172(1). As explained above, "[t]he no-fault act's initial scope of coverage for PIP benefits is set forth in MCL 500.3105(1)[.]" *Kemp v Farm Bureau Gen Ins Co*, 500 Mich 245, 252; 901 NW2d 534 (2017). That statute provides:

> Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

MCL 500.3105.

While §3172(1) largely echoes the general scope-of-coverage language from § 3105, it is not identical because, unlike § 3105, § 3172 includes the requirement that the bodily injury arise

out of the "ownership, operation, maintenance, or use of a motor vehicle *in this state*[.]" MCL 500.3172(1) (emphasis added). The addition of "in this state" to § 3172 indicates that the Legislature did not intend for MACP coverage to be as broad as policy coverage. This is confirmed by § 3172(1). Under § 3172(1), "[t]he phrase 'a person entitled to claim" refers to a person who is entitled to claim PIP benefits under the no-fault act." *Spectrum Health Hosps v Mich Assigned Claims Plan*, 330 Mich App 21, 34; 944 NW2d 412 (2019). Otherwise, the language "a person entitled to claim" in § 3172(1) would be meaningless. Thus, like a funnel, the Act first defines a broad scope of injuries the Act was designed to compensate under § 3105. However, the funnel thereafter narrows. Because the MACP is a last resort, limited safety net, ultimately funded through Michigan's driving public; not every person entitled to claim benefits under the Act may qualify to recover benefits under the MACP. Instead, the more narrow threshold eligibility requirements of § 3172(1) must be met.

Nothing in § 3172(1) nullifies § 3105. Instead, § 3172(1) is simply a more narrow provision that applies specifically to eligibility under the MACP. The same reasoning applies equally to § 3111. Even if a person is generally entitled to payment of benefits for an out-of-state accident under the Act, that person must then meet the requirements of § 3172(1) to be entitled to payment of benefits under the MACP. Accordingly, this Court should deny leave.

C. The Fact That the No-Fault Act Was Amended Does Not Warrant Grafting Language Into The Act That The Legislature Chose To Omit.

The 2019 amendments do not warrant reading § 3172(1) out of Act where an uninsured occupant is injured in an out-of-state accident. Plaintiff argues that, prior to the 2019 amendments, an uninsured occupant injured in an auto accident could have sought benefits from the insurer of the owner or registrant of the involved vehicle or the insurer of the operator of the involved vehicle, thus, providing more options for recovery where a person is injured in an out-of-state accident.

However, the amended § 3114(4), sends uninsured occupants to the MACP pursuant to "sections 3171 to 3175." According to Plaintiff, if the decision below (and *Steanhouse*) are allowed to stand, the Act would offer a right to benefits without providing a claimant a remedy.

But, as explained above, there exists no conflict between § 3111 and § 3172(1), as the statute provides an avenue for benefits for *some* claimants injured in out-of-state accidents; thus, nothing in the language of § 3111 is rendered nugatory. Plaintiff's argument boils down to the fact that it is inconceivable that the Legislature intended that uninsured occupants of out-of-state accidents would *remain* ineligible to receive benefits under the MACP (just as they were prior to the statutory amendments). This argument fails for two reasons.

First, as explained above, "[w]hen a statute's language is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written." *Sunrise Resort Ass'n v Cheboygan Co Rd Comm*, 511 Mich 325, 334 (2023). "[T]he judicial branch cannot amend the no-fault act to make it 'better.' That is an authority reserved solely to the Legislature." *Johnson*, 492 Mich at 187. "Whether or not a statute is productive of injustice, inconvenience, is unnecessary, or otherwise, are questions with which courts . . . have no concern." *Id.* "Regardless of how unjust [a] statutory penalty might seem to this Court, it is not our place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree." *Stokes v Millen Roofing Co*, 466 Mich 660, 672; 649 NW2d 371 (2002) (quotation marks and citation omitted). "Statutes lose their meaning if an aggrieved party need only convince a willing judge to rewrite the statute under the name of equity." *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 407; 738 NW2d 664 (2007) (quotation marks and citation omitted). "It is well settled that when a statute provides a remedy, a court should enforce the legislative remedy rather than one the court prefers." *City of South Haven v Van Buren Co Bd of Comm'rs*, 478 Mich

518, 528; 734 NW2d 533 (2007). Ineligibility is not an absurd result as Plaintiff contends, it is the Legislature's chosen result here.

Second, the purpose of the 2019 reforms to the Michigan No-Fault Act were intended to reduce the cost of auto insurance to Michigan's drivers. "[A]n analysis of a statute's legislative history is an important tool in ascertaining legislative intent." *Bush*, 484 Mich at 167.

As this Court explained,

> It was well known and widely reported that prior to the enactment of 2019 PA 21 and 2019 PA 22, Michigan's automobile insurance premiums had risen to among the highest in the country. A key goal of the 2019 no-fault reforms was to drive down premiums for all operators of automobiles in Michigan and to curb what had been portrayed as exploitative billing by medical providers. In fact, the Legislature included in the title of 2019 PA 21 and 2019 PA 22 a statement that one purpose was "to provide for the continued availability and affordability of automobile insurance . . . in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates[.]"

Andary v USAA Cas Ins Co, 512 Mich 207, 269; 1 NW3d 186 (2023). Indeed, the Legislative history of the amendments support this Court's conclusion. Senator Theis explained, when the final bill was up for a vote, "Michiganders will soon be able to give up one 'we're number one' title they never wanted—that of the most expensive car insurance in the country." 2019 Senate Journal 52, p 588. The bi-partisan legislation was intended to fix the no-fault system which had reached its breaking point.

Benefits paid under the MACP, the administration cost of such claims, and the funds necessary to operate the MAIPF, which administers the MACP, are all borne from Michigan's driving public. See MCL 500.3171(1), (2); MCL 500.3176. As part of the 2019 reforms, the Legislature placed a statutory limit of $250,000 on most claims under the MACP, whereas prior to reform, MACP claimants were entitled to unlimited, lifetime benefits. See MCL 500.3172(7). While the change in the priority statutes now directly sends more claims to the MACP, the statutory limit theoretically aids in keeping the MACP assessments on auto-insurance premiums in control.

Because there was no MACP coverage for uninsured occupants involved in out-of-state accidents prior to reform, there exists no Legislative purpose underlying the amendments to create such coverage. To the contrary, to the extent that the change in the priority statute reduced benefits payable, such a change would be well supported by the underlying purpose of the amendments.

Plaintiff argues that this Court should apply its interpretation under the guise that the Act should be construed in favor of the persons who are intended to benefit from it. However, where a court interprets a statute, it must "determine and effectuate the intent of the Legislature through reasonable construction in consideration of the purpose of the statute and the object sought to be accomplished." *Frankenmuth Mut Ins Co v Marlette Homes*, 456 Mich 511, 515; 573 NW2d 611 (1998). The goal of the Act is the provision of an equitable and prompt method of redressing injuries in a way which makes mandatory insurance coverage affordable to all motorists. *Tebo v Havlik*, 418 Mich 350, 360; 408 NW2d 181 (1984). "The no-fault act was as concerned with the rising cost of health care as it was with providing an efficient system of automobile insurance." *Dean v Auto Club Ins Ass'n*, 139 Mich App 266, 273; 362 NW2d 247 (1984), appeal denied, 422 Mich 921 (1985). For that reason, "the proper interpretation" of a statute within the Act "comports both with the plain language of the statute and the legislative purpose of keeping insurance premiums at affordable rates while providing victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Joseph*, 491 Mich at 217-18. Accordingly, both the Act as a whole and the 2019 amendments placed controlling the cost of auto insurance in Michigan as a high priority. Those goals must be considered when interpreting its provisions.

In sum, the priority statutes expressly state that, where a claimant must claim benefits under the MACP, the claimant must do so "under sections 3171 to 3175." Nothing in the plain language of the statutes indicates the Legislature meant "under sections 3171 to 3175, except section

3172(1)." To read such language into the statute would be entirely inconsistent with the principles of statutory interpretation because it would be in contravention to the clear an unambiguous language, "under sections 3171 to 3175." Courts may not read into a statute a requirement that the Legislature has seen fit to omit. *Book-Gilbert*, 302 Mich App at 542. Courts "may not read into the statute what is not within the Legislature's intent as derived from the language of the statute." *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010) (quotation marks and citation omitted) (emphasis added).

The panel in *Steanhouse* agreed. The court explained: "We are also unpersuaded that the Legislature intended to broaden the scope of coverage through the MACP through the amendments to MCL 500.3111 and MCL 500.3114, without making any substantive amendments to MCL 500.3172(1)." *Steanhouse III, supra*, slip op. at 6. *Steanhouse* was correctly decided. In other words, the Legislature could have easily removed the language "in this state" from § 3172(1) when it made the other amendments to the Act in 2019. But it did not do so, indicating the Legislature intended § 3172(1)'s requirements to remain applicable and be applied as the threshold eligibility requirements to claim benefits under the MACP, just as they have been since the statute was enacted. This Court should deny leave.

D. The Absence Of An Exclusion From Coverage Under § 3113 Does Not Manufacture Eligibility For Benefits Under The MACP.

The fact that a claimant is not excluded from recovering no-fault benefits due to one of the circumstances under § 3113 does not mean that the claimant automatically satisfies the eligibility requirements to claim benefits under the MACP. Nonetheless, this is exactly what Plaintiff argues.

Put simply, at the risk of belaboring the point, § 3172(1) governs eligibility to claim benefits through the MACP. It is a clear and unambiguous statute and it must be applied as written. *McCormick v Carrier*, 487 Mich 180, 208; 795 NW2d 517 (2010) (courts' "role is to apply the

unambiguous statutory language, not improve it"). See also *Linden v Citizens Ins Co of America*, 308 Mich App 89, 101; 862 NW2d 438 (2014) lv denied 498 Mich 880; 869 NW2d 275 (2015) (courts must enforce statutes as written).

Moreover, where a person is excluded from recovering no-fault benefits under § 3113, that person is also excluded from recovering benefits under the MACP pursuant to § 3173 ("A person who because of a limitation or exclusion in sections 3105 to 3116 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury is also disqualified from receiving benefits under the assigned claims plan."). Thus, § 3173 is the provision within the MACP's governing statutes that addresses the effect of statutory exclusions from coverage under the other parts of the Act – not § 3172(1), which contains affirmative eligibility requirements.

Merely because the MACP is a "last resort" insurer that falls at the end of the road of priority, it is not a default insurer for all no-fault claims irrespective of § 3172(1)'s eligibility requirements. But, that is the ultimate premise of Plaintiff's argument, despite being wholly unable to provide any textual statutory basis for such a position. This Court should deny leave.

CONCLUSION AND REQUEST FOR RELIEF

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

Respectfully submitted,

Dated: September 5, 2024

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CERTIFICATE OF COMPLIANCE

I certify that the Defendant-Appellees' Answer in Opposition to Plaintiff-Appellant's Application for Leave to Appeal complies with the type-volume limitation set forth in MCR 7.212(B). This brief uses a 12-point proportional font (Times New Roman), and the word count, based on the word count of the word-processing system used to produce this document, for this brief is 10,453.

Dated: September 5, 2024

By: */s/ Erin A. Sedmak*

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PROOF OF SERVICE

I hereby certify that on September 5, 2024, I caused the foregoing paper to be filed with the Clerk of the Court using the Court's electronic filing system which will forward a copy via e-mail to all counsel of record.

Dated: September 5, 2024

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