STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
(Beckering, P.J., and O'Connell and Borrello, JJ)

Matthew Dye, by his Guardian, Siporin & Associates, Inc.,

Plaintiff-Appellee/Cross-Appellant,

v

Esurance Property & Casualty Insurance Company,

Defendant/Cross-Plaintiff/Appellant/ Cross-Appellee,

and

Geico Indemnity Company,

Defendant/Cross-Defendant/Appellee/ Cross-Appellant.

Supreme Court Docket No. 155784

Court of Appeals Docket No. 330308

Washtenaw Circuit Court Case No. 14-000516-NF

Robert E. Logeman (P23789)
LOGEMAN, IAFRATE & LOGEMAN, PC
Attorney for Matthew Dye
2950 S. State Street, Suite 400
Ann Arbor, MI 48104
(734) 994-0200
boblogeman@yahoo.com

Marcy A. Tayler (P41685)
Christina A. Ginter (P54818)
KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK
Attorneys for Esurance
One Woodward Ave, Suite 2400
Detroit, MI 48226
(313) 965-7841
marcy.tayler@kitch.com
christina.ginter@kitch.com

Drew W. Broaddus (P64658)
Sarah L. Walburn (P67588)
SECREST WARDLE
Attorneys for Geico
2600 Troy Center Drive, PO Box 5025
Troy, MI 48007
(616) 272-7966
dbroaddus@secrestwardle.com

Jesse A. Zapczynski (P74658)
Office of General Counsel
Attorney for Blue Cross Blue Shield
600 E. Lafayette Blvd., Mail Code 1925
Detroit, MI 48226
(313) 225-8137
jzapczynkski@bcbsm.com

Liisa R. Speaker (P65728)
Jennifer M. Alberts (P80127)
SPEAKER LAW FIRM, PLLC
Attorneys for Amicus Curiae
Coalition Protecting Auto No Fault
819 N. Washington Ave
Lansing, MI, 48906
(517) 482-8933
lspeaker@speakerlaw.com
jalberts@speakerlaw.com

Leo A. Nouhan (P30763)
LEO NOUHAN AND ASSOCIATES, PLC
Attorney for Priority Health
22930 E. 9 Mile Road
St. Clair Shores, MI 48080
(313) 550-0304
leonouhan@comcast.net

George T. Sinas (P25643)
Stephen H. Sinas (P71039)
Thomas G. Sinas (P77223)
SINAS DRAMIS BRAKE BOUGHTON & MCINTYRE, PC
General Counsel and Associate Legal Counsel for Amicus Coalition Protecting Auto No-Fault
3380 Pinetree Road
Lansing, MI 48911
(517) 394-7500
georgesinas@sinasdramis.com
stevesinas@sinasdramis.com
tomsinas@sinasdramic.com

AMICUS CURIAE BRIEF OF THE
COALITION PROTECTING AUTO NO-FAULT

TABLE OF CONTENTS

Index of Authorities iv

Statement of Question Presented 1

Statement of Interest of Amicus Curiae CPAN 1

Introduction 3

Statement of Facts 5

Argument 6

I. A plain reading of the No Fault Act demonstrates that its focus is on the existence of insurance covering a vehicle, not the identity of its purchaser...6

A. The No-Fault Act requires that an owner "maintain" insurance, and disqualifies the owner from coverage if such insurance is "not in effect." It does not, however, require the owner to be the "named insured," and if it did the Legislature would have explicitly stated so. 6

B. Allowing the Defendant insurer to deny PIP benefits in this case would set a trap for unsophisticated consumers who purchase no-fault insurance in an effort to comply with Michigan's compulsory insurance requirements, only to have the purchased policy declared unenforceable by an insurance company who collected the premiums and later denies coverage using "gotcha" tactics. 11

II. The insurable interest doctrine has no place in the system of No-Fault insurance and does not apply here. 14

Conclusion 17

Relief Requested 18

INDEX OF AUTHORITIES

Cases:

Barnes v Farmers Ins Exchange, 308 Mich App 1; 862 NW2d 682 (2014) 3-5, 11, 17, 18

Clevenger v Allstate Ins Co, 443 Mich 646; 505 NW2d 553 (1993) 14, 15

Jackson v PKM Corp, 430 Mich 262; 422 NW2d 657 (1988) 16

Kraft v Detroit Entm't, LLC, 261 Mich App 534; 683 NW2d 200 (2004) 16

Morrison v Secura Ins, 286 Mich App 569; 781 NW2d 151 (2009) 15, 17

Shavers v Attorney General, 402 Mich 554; 267 NW2d 72 (1978) 3

Smith v Allstate Ins Co, 230 Mich App 434; 584 NW2d 355 (1998) 14, 15

State Farm Fire & Cas Co v Old Republic Ins Co, 466 Mich 142; 644 NW2d 715 (2002) 6

United States Fid Ins & Guar Co v Mich Catastrophic Claims Ass'n, 484 Mich 1; 795 NW2d 101 (2009) 11

Statutes and Court Rules:

MCL 500.3101 . . . . . 2, 3, 6, 9, 10

MCL 500.3102 . . . . . 7, 8

MCL 500.3113 . . . . . 2, 8, 9, 10, 11

MCL 500.3114 . . . . . 9, 10

Other Authorities:

Merriam-Webster Collegiate Dictionary (11th ed.) 7

STATEMENT OF QUESTION PRESENTED

1. Does the No-Fault Act permit a non-owner to insure a vehicle for an owner, even though the non-owner is the "named insured" on the policy, because the statute's plain language does not indicate that an owner must be the "named insured" and requires only that the vehicle be insured?

   Court of Appeals answered: No.

   Appellant answers: Yes.

   Appellee answers: No.

   Amicus Curiae CPAN answers: Yes.

STATEMENT OF INTEREST OF AMICUS CURIAE CPAN

CPAN is a broad-based coalition formed to preserve the integrity of Michigan's model no-fault automobile insurance system. The central mission of CPAN is to protect and preserve the vitality of the Michigan auto no-fault insurance system so that it continues to provide assured, prompt, and comprehensive coverage for Michigan citizens injured in motor vehicle collisions.

CPAN consists of seventeen major medical groups and eight consumer organizations. CPAN's member organizations are identified below:

CPAN: Coalition Protecting Auto No-Fault	
Medical Provider Groups	**Consumer Organizations**
1. *Michigan Academy of Physician Assistants*	1. *Brain Injury Association of Michigan*
2. *Michigan Assisted Living Association*	2. *Michigan Association for Justice*
3. *Michigan Association of Chiropractors*	3. *Michigan Paralyzed Veterans of America*

4. *Michigan Brain Injury Provider Council*	4. *Michigan Protection and Advocacy*
5. *Michigan Home Care and Hospice Association*	5. *Michigan Disability Rights Coalition*
6. *Michigan Nurses Association*	6. *Michigan Senior Advocacy Council*
7. *Michigan Orthopaedic Society*	7. *Michigan Guardian Association*
8. *Michigan Orthotics and Prosthetics Association*	8. *Peckham*
9. *Michigan Osteopathic Association*	
10. *Michigan Rehabilitation Association*	
11. *Michigan Society of Oral and Maxillofacial Surgeons*	
12. *Michigan State Medical Society*	
13. *Michigan Dental Association*	
14. *Michigan Association of Neurological Surgeons*	
15. *Michigan Independent Case Management Council*	
16. *Michigan Committee on Trauma*	
17. *Michigan Podiatric Medical Association*	

It is CPAN's fervent belief that Michigan's auto no-fault insurance system cannot survive unless the Michigan Appellate Courts interpret the No- Fault Act as the Legislature intended, including applying the plain language of MCL 500.3101 and 500.3113. It is central to the attainment of the No-Fault Act's goal of assured, prompt, and adequate coverage that reasonably necessary medical expenses incurred by auto accident victims are promptly and fully reimbursed so long as the owner or the registrant of the vehicle

"maintains security for payment of benefits under personal protection insurance..." MCL 500.3101(1). In enacting the No-Fault Act, the Legislature did not mandate who must purchase the insurance policy, but instead simply placed the obligation on the owner or registrant to ensure that a policy is purchased for the vehicle. Interpreting this provision to require more than the Legislature intended would place individuals for whom others are paying premiums in a situation where they receive no benefits in spite of the fact that their vehicle was properly insured.

INTRODUCTION

The goal of the No-Fault Act is "to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978). The intent of the Legislature was to require every vehicle that is operated on Michigan highways to be insured so as to expand the pool of premium payers in order to keep insurance costs affordable and guarantee coverage for every accident. The focus of the No-Fault Act is, thus, on just that—making sure every "vehicle" is insured, not the identity of the named insured. The obligation to make sure that statutory scheme is fulfilled resides with vehicle owners, who bear ultimate responsibility to maintain the required insurance coverage.

In *Barnes v Farmers Ins Exchange*, 308 Mich App 1; 862 NW2d 682 (2014), the Court of Appeals held that an owner of a vehicle may not receive no-fault benefits unless at least one owner of the vehicle is the named insured on an insurance policy. The Court's ruling in *Barnes*, however, added into the No-Fault Act a requirement that is not there—that

not only the vehicle be insured, but the owner of the vehicle be the named insured on the policy.

Contrary to the decision in *Barnes*, the No-Fault Act requires only that the owner "maintain" insurance by ensuring it is "in effect" with respect to the owner's vehicle. The plain language of various provisions of the Act makes clear that the Act's focus is on the *vehicle* being insured, not the owner of the vehicle specifically. It is simply the owner who is subject to penalties if the vehicle is not insured at all. If the Legislature intended for the owner to have to be the named insured, it would have included that in the text of the statute.

If permitted to stand, the Court of Appeals' decision in this case would allow an insurance company to collect premiums under an insurance policy that covers a specific vehicle, but then deny benefits under that policy when that same insured vehicle is involved in an accident while being operated by its lawful owner. The specious justification for such an inequitable result derives from the fact that the owner of the insured vehicle was not listed on the policy as the "named insured" and was not the person who actually paid for the insurance. The infirmity of such reasoning is quickly exposed by a simple rhetorical question: where in the entire text of the Michigan No-Fault Act does it say that the vehicle owner must be listed on an insurance policy as the "named insured" and must be the purchaser of that policy, in order for the policy to be deemed compliant with §3101(1) of the act, and therefore enforceable? The answer is obvious: nowhere.

This Court should reverse the Court of Appeals' decision below and overrule *Barnes*. This Court should hold that the No-Fault Act merely requires that an owner's *vehicle* be insured in order for the owner to recover No-Fault benefits.

STATEMENT OF FACTS

Plaintiff Matthew Dye suffered a traumatic brain injury and other serious injuries in an automobile accident in September 2013. (04/04/17 COA Opinion, p. 2). He had purchased his vehicle only two months earlier, and at the time of purchase, his father, Paul Dye, registered the vehicle on Plaintiff's behalf and obtained insurance for it through Esurance. (04/04/17 COA Opinion, p. 2). Plaintiff's father has served as his power of attorney since 2010 when Plaintiff went to Afghanistan for military service. (04/04/17 COA Opinion, p. 4). The policy identifies only Paul, the father, as the named insured. (04/04/17 COA Opinion, p. 2). Plaintiff's wife owned her own vehicle insured under a Geico policy. (04/04/17 COA Opinion, p. 2).

Originally, Esurance paid Plaintiff's PIP benefits. (04/04/17 COA Opinion, p. 2). However, Esurance sought reimbursement from Geico because Plaintiff lived with his wife, making Geico the priority insurer. (04/04/17 COA Opinion, p. 2). Geico argued that Plaintiff was not entitled to benefits at all because he was the owner of the vehicle and was not the named insured. (04/04/17 COA Opinion, p. 5). The Trial Court rejected Geico's argument, finding Plaintiff's father to also be an owner of the vehicle, and ordered Geico to pay for the benefits. (04/04/17 COA Opinion, p. 5).

The Court of Appeals, relying on *Barnes v Farmers Ins Exchange*, 308 Mich App 1; 862 NW2d 682 (2014), however, reversed, concluding there was a question of fact as to whether Plaintiff's father was an owner of the vehicle. (04/04/17 COA Opinion, p. 12). This appeal followed, questioning the validity of *Barnes*.

ARGUMENT

I. A plain reading of the No Fault Act demonstrates that its focus is on the existence of insurance covering a vehicle, not the identity of its purchaser.

A. The No-Fault Act requires that an owner "maintain" insurance, and disqualifies the owner from coverage if such insurance is "not in effect." It does not, however, require the owner to be the "named insured," and if it did the Legislature would have explicitly stated so.

The No-Fault Act creates a system of compulsory insurance wherein each owner or registrant must "maintain" insurance for their vehicle. Specifically, MCL 500.3101 provides,

> (1) The owner or registrant of a motor vehicle required to be registered in this state **shall maintain** security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security is only required **to be in effect** during the period the motor vehicle is driven or moved on a highway.

MCL 500.3101(1) (emphasis added). As discussed below, the definition of "maintain," the language throughout the rest of the statute, and the statute's purposes all lead to the conclusion that the No-Fault Act merely requires an owner or registrant to ensure their *vehicle* is insured. In other words, under the No-Fault Act, it is the existence of insurance coverage, not the identity of who purchased it, or who is listed on a policy as a "named insured," that is at the center of the Act's compulsory insurance mandate.

When interpreting statutory language, this Court must ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute. *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). "When the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself, and judicial construction is not permitted." *Id.* "Because the proper role of the judiciary is

to interpret and not to write the law, courts do not have authority to venture beyond the unambiguous text of a statute." *Id.* Undefined statutory terms must be given their plain and ordinary meanings. *Id.*

"Maintain" is defined by Merriam-Webster's Dictionary as "to keep in an existing state" or "preserve from failure or decline." *Merriam-Webster Collegiate Dictionary* (11th ed.). The Court of Appeals' decision adds additional text into the statute that is not there: it requires the owner or registrant to be the *named insured*. But as the rest of the Act makes clear, it is the *vehicle*, not the owner or registrant, that must be insured. This conclusion is readily apparent for a number of reasons, as discussed below.

First, after the statute indicates that the owner or registrant is responsible for "maintaining" the insurance, it regularly uses the phrase "in effect" with respect to insurance on the *vehicle*. For example, MCL 500.3102 provides for criminal penalties in order to enforce the requirement of insurance. It states,

> (2) An owner or registrant of a **motor vehicle or motorcycle with respect to which security is required**, who operates the motor vehicle or motorcycle or permits it to be operated upon a public highway in this state, **without having in full force and effect** security complying with this section or section 3101 or 3103 is guilty of a misdemeanor. A person who operates a motor vehicle or motorcycle upon a public highway in this state with the knowledge that the owner or registrant does not have security **in full force and effect** is guilty of a misdemeanor.

MCL 500.3102(2) (emphasis added). Importantly, the section references the *"vehicle* or motorcycle with respect to which security is required." MCL 500.3102(2) (emphasis added). It does not indicate that the owner or registrant must be insured, only the vehicle.

Moreover, it does not state that the owner or registrant must purchase the insurance—only that the insurance must be "in full force and effect." MCL 500.3102(2).

Second, that same section further provides,

> (3) The failure of a person to produce evidence that **a motor vehicle or motorcycle has in full force and effect** security complying with this section or section 3101 or 3103 on the date of the issuance of the citation, creates a rebuttable presumption in a prosecution under subsection (2) that **the motor vehicle or motorcycle did not have in full force and effect** security complying with this section or section 3101 or 3103 on the date of the issuance of the citation.

MCL 500.3102(3) (emphasis added). Once again, the section refers to whether "*a motor vehicle* or motorcycle has in full force and effect" the appropriate insurance. MCL 500.3102(3) (emphasis added). Indeed, this section provides the enforcement mechanism for the requirement of insurance, and it only penalizes an owner or registrant if the *vehicle* does not have insurance. It does not provide criminal penalties for an owner or registrant who is not a named insured.

Third, MCL 500.3113, the only section that indicates when a person is not entitled to benefits, states,

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> > (b) The person was the owner or registrant of **a motor vehicle or motorcycle involved in the accident with respect to which** the security required by section 3101 or 3103 was **not in effect**.

MCL 500.3113 (emphasis added). Yet again, the No-Fault Act provides that an owner or registrant is not entitled to benefits if their vehicle is not insured—**not** if the owner or

registrant is not the named insured. Thus, although an owner or registrant is required to "maintain" insurance on a vehicle, criminal penalties are only imposed, and benefits are only precluded, if insurance is not "in effect." MCL 500.3113(b). MCL 500.3101, thus, only places the obligation on the owner or registrant to ensure their vehicle is insured—the owner or registrant is the one who is "on the hook" if the vehicle is not insured at all. It does not require the owner or registrant to be the one to purchase the insurance. It is clear from the provisions referencing the *vehicle* having insurance in effect that the intent is to have every *vehicle* insured.

Fourth, MCL 500.3114(4) is, likewise, consistent with this reading of the act, as it requires an occupant of a motor vehicle to claim benefits first from the insurer of the owner or registrant of the vehicle—that is, the insurance that the owner or registrant maintains on the vehicle.

Lastly, MCL 500.3101(4) allows the coverage required by MCL 500.3101(1) to be provided by any method approved by the secretary of state:

> (4) Security required by subsection (1) may be provided by **any other method approved by the secretary of state** as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is driven or moved on a highway. The person filing the security has all the obligations and rights of an insurer under this chapter. When the context permits, "insurer" as used in this chapter, includes a person that files the security as provided in this section.

MCL 500.3101(4) (emphasis added). This once again reinforces that the primary intent was simply that the vehicle have "security" in some way, without a focus on who provides it or how it is provided.

As noted previously, the Court of Appeals' decision adds a requirement to the statute that is not contained in the text: that the owner or registrant not only maintain insurance on the vehicle, but also be the named insured for the policy. The concept of the named insured is referenced at times in the No-Fault Act. However, it is absent from the requirement that the owner or registrant maintain insurance on the vehicle.

MCL 500.3114, for example, which governs priority of insurers, specifically references the "person named in the policy" multiple times:

> (1) 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. A personal injury insurance policy described in section 3103(2) 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 motorcycle accident. If personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person **under his or her own policy** and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer.

MCL 500.3114(1) (emphasis added). The Legislature could have used this same language in MCL 500.3101(1) (requirement of insurance) or MCL 500.3113(b) (persons not entitled to benefits), but chose not to do so. It could have explicitly required the owner or registrant to be the person named in the policy, or stated that a person is not entitled to benefits if the person is an owner or registrant of a motor vehicle and is not the named insured. Instead, the Legislature chose to limit non-entitlement to benefits to when insurance is "not

in effect." MCL 500.3113(b). "When the Legislature uses different words, the words are generally intended to connote different meanings. . . . If the Legislature had intended the same meaning in both statutory provisions, it would have used the same word." *United States Fid Ins & Guar Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009).

In *Barnes v Farmers Ins Exchange*, 308 Mich App 1, 8-9; 862 NW2d 682 (2014), the Court of Appeals erroneously concluded that an owner must be the named insured on an insurance policy for a vehicle, or no owner may recover benefits. This Court should overrule *Barnes* and reverse the Court of Appeals in this case, holding that the No-Fault Act merely requires the *vehicle* to be insured.

B. Allowing the Defendant insurer to deny PIP benefits in this case would set a trap for unsophisticated consumers who purchase no-fault insurance in an effort to comply with Michigan's compulsory insurance requirements, only to have the purchased policy declared unenforceable by an insurance company who collected the premiums and later denies coverage using "gotcha" tactics.

The trap that is being laid in this case is one that could ensnare thousands of unwitting parents who seek to obey the law and make sure their newly-licensed children are driving insured vehicles. This scenario of concern is commonplace: after high school graduation, parents sell a vehicle to, or purchase a vehicle for, their college-bound child and then title that vehicle in the child's name. Because their child has limited financial resources, the parents call their insurance company and have the vehicle added to their policy, which lists the parents as "named insureds." The parents then promptly pay the premium for the newly-added vehicle on behalf of their child. Under the theory advanced

by the defendant in this case, the insurance company in this hypothetical could deny PIP benefits if the child was injured in an accident while operating the insured vehicle simply because the child was the owner of the vehicle and was not identified on the policy as a "named insured"—even though the insurer never inquired about such facts.

This "Catch 22" gamesmanship should not be countenanced under the Michigan Auto No-Fault Act, which simply charges the owners of motor vehicles with the legal responsibility of making sure their vehicles are insured before driving them on the highways of our state. In the case at bar, that compulsory insurance mandate was fully satisfied.

Prohibiting insurance companies from engaging in such unfair practices, does not mean, however, that an insurance company has no way to protect itself when selling a policy to someone who may misrepresent certain essential facts regarding vehicle ownership. In this regard, insurance companies can easily protect themselves by simply asking the purchaser of the policy, on an insurance application, to specifically identify the following persons: (a) the owners of the insured vehicle; and, (b) all persons who will be driving the insured vehicle. If any persons so listed in the insurance application are deemed by the insurer to be "bad risks," the insurer can simply refuse to issue the policy. If the disclosures made in the insurance application are knowingly not truthful, the insurer can exercise its common law right to void the policy as to the purchaser and anyone complicit in the fraud. If an insurer chooses not to ask those simple questions, it should not be allowed to complain that it was wronged in the issuance of the policy.

C. This case is not, in any way, about fraud, as none has ever been alleged and none has ever taken place. Moreover, the purchase of the insurance policy at issue in this case, which was purchased on behalf of a military serviceman stationed overseas through his lawful power of attorney, further confirms the legitimacy of the transaction.

It is important to emphasize that this case involves no allegation that Plaintiff's father misrepresented anything to the insurance company. This case is not about fraud. There was no attempt to hide who the policy was for, or who would be driving the vehicle. The insurance company simply did not ask who owned the vehicle, and Plaintiff's father did not realize that it may matter. The insurance company offered a policy without determining that information in spite of Plaintiff's father answering all questions asked, and doing so honestly, and now the insurance company seeks to absolve itself of the obligations it undertook, even after accepting premiums for that policy. Indeed, the insurer did not alert Plaintiff's father to any issue with the policy. The insurer waited until a tragedy occurred, only to then tell him that he had been paying for nothing and his son would not receive the benefits he paid for.

It is also important to emphasize that the insurance purchase transaction that occurred in this case was completely legitimate. It was consummated on behalf of a U.S. serviceman who had given a lawful power of attorney to his father prior to his overseas deployment. This power of attorney gave Plaintiff's father the legal right to transact any business that Plaintiff himself would be legally permitted to transact. Pursuant to that power of attorney, Plaintiff's father continued to assist him after Plaintiff returned home with regard to a number of matters, including registering and purchasing insurance for Plaintiff's new automobile. In doing so, Plaintiff's father "stepped into the shoes of Plaintiff" and could do anything Plaintiff was permitted or obligated to do—including purchasing auto no-

fault insurance on a vehicle owned by Plaintiff. Therefore, it would be fundamentally unfair to void the insurance transaction that is the subject of this case, when it occurred pursuant to a legally valid power of attorney.

II. The insurable interest doctrine has no place in the system of No-Fault insurance and does not apply here.

Amicus Curiae CPAN maintains that this case may be adjudicated by simply applying the plain language of the No Fault Act as discussed in Part I of this amicus brief. However, in the parties' respective briefs, each party also made brief reference to the insurable interest doctrine. The insurable interest issue is not squarely presented in this case. But if this Court chooses to examine that issue, there are several points this Court must consider.

First, this Court has never truly examined whether the insurable interest doctrine continues to apply in the context of compulsory automobile insurance, the purchase of which is compelled under the Michigan No-Fault Act. Although this Court examined the doctrine in *Clevenger v Allstate Ins Co*, 443 Mich 646; 505 NW2d 553 (1993), the insured in that case clearly had an insurable interest as a registrant of the vehicle and thus the issue was easily disposed of without the necessity of considering whether the doctrine survives in the context of the Michigan Auto No-Fault Insurance Act. Since *Clevenger*, the Court of Appeals has presumed the insurable interest doctrine is applicable to auto no-fault policies. *See Smith v Allstate Ins Co*, 230 Mich App 434, 438-439; 584 NW2d 355 (1998). But even while doing so, multiple panels of the Court of Appeals have questioned the soundness of applying the insurable interest doctrine in the context of No-Fault insurance.

The Court of Appeals in *Smith*, for example, observed as follows:

> There is a legitimate question whether liability insurance requires an "insurable interest." *See Hall v Weston*, 323 S.W.2d 673, 678-680 (Mo, 1959). Indeed, the "insurable interest" doctrine seems to find its origin in public policy concerns. Among those concerns is a desire to prohibit the use of insurance as a form of wagering, and a desire to prevent the creation of socially undesirable interests, such as where a creditor buys insurance on the life of a debtor for an amount greatly exceeding the amount of the debt, such that the creditor "might be [tempted] to bring the debtor's life to an unnatural end." *Lakin v Postal Life & Casualty Ins Co*, 316 S.W.2d 542, 551 (Mo, 1958). These public policy concerns are not implicated in the case of liability insurance, because the holder of the insurance cannot collect cash on the policy. We also note that the no-fault automobile liability insurance required in Michigan is not simply for the benefit of the policy holder or other insured. Rather, it is intended "'to protect the members of the public at large from the ravages of automobile accidents.'" *Clevenger*, *supra* at 651, *quoting Coburn v Fox*, 425 Mich. 300, 309; 389 N.W.2d 424 (1986). Thus, in the case of automobile liability insurance, the insurable interest appears to lie, at least to some degree, with an injured party rather than an insured.
>
> While we have failed to discover any underlying rationale for application of the insurable interest requirement to liability insurance, we recognize that many jurisdictions observe such a requirement. *See* 1 ALR3d 1193, § 2, pp 1195-1196, and cases cited therein. In this case, the parties both appear to assume the applicability of the insurable interest requirement. Because *Clevenger* supports such a requirement, we conclude that, under Michigan law, an insured must have an "insurable interest" to support the existence of a valid automobile liability insurance policy.

Id.

Over a decade later, in *Morrison v Secura Ins*, 286 Mich App 569, 574; 781 NW2d 151 (2009), the Court of Appeals noted once again the inapplicability of the policy concerns that gave rise to the insurable interest doctrine in the context of No-Fault insurance:

> [T]he purpose behind the "insurable interest" requirement is not present here: we cannot imagine how Fisher, or anyone in her position, could possibly be tempted by the transfer of ownership to commit any illegal or unethical act in order to collect proceeds from the insurance policy at issue. The "insurable interest" requirement arose in the context of insurance policies payable to the insured. In such a circumstance, it is obvious how an insured with "nothing to lose" might be tempted to commit socially intolerable acts for financial gain. But the nature of the no-fault insurance at issue here is radically different. Because the insurance here is less likely to be exploitable as a "wager policy," the basis for the "insurable interest" requirement is weakened.

Second, in addition to the policy reasoning in the above two cases, the Michigan No-Fault Act was enacted with a clear statutory directive—to get as many vehicles insured as possible—and that directive preempts the prior existing insurable interest doctrine. Common law claims may be preempted by state statute. *See Jackson v PKM Corp*, 430 Mich 262, 279; 422 NW2d 657 (1988). "In general, where comprehensive legislation prescribes in detail a course of conduct to pursue and the parties and things affected, and designates specific limitations and exceptions, the Legislature will be found to have intended that the statute supersede and replace the common law dealing with the subject matter." *Kraft v Detroit Entm't, LLC*, 261 Mich App 534, 545; 683 NW2d 200 (2004).

As discussed in Part I of this brief, the No-Fault Act does not focus on who purchases insurance for a vehicle or who is the named insured but rather whether insurance is "maintain[ed]" and whether it is "in effect." Requiring owners or registrants to be "named insureds" on auto insurance policies in order for the policy to be enforceable is a requirement not contained within the statute and contravenes the statute's purpose of creating as large a pool of covered vehicles as possible. The No-Fault Act, unlike the insurable interest doctrine, is only concerned with whether a vehicle owner is maintaining

insurance on the vehicle, not with who the insurance policy lists as a "named insured."

Finally, there are numerous other reasons the insurable interest doctrine is inapplicable to the specific facts of this case. The Court of Appeals concluded that reasonable minds could differ as to whether Plaintiff's father is a constructive owner of the vehicle. (04/04/17 COA Opinion, p. 9). If he is, then he clearly has an insurable interest if the doctrine applies. Moreover, in *Morrison*, the Court of Appeals observed that the family unit is entitled to a special status in the law and public policy would not favor termination of a "family insurance policy" upon an intra-family vehicle transfer. *Morrison*, 286 Mich App at 574-575. Although in this case there was no "transfer" of ownership, similar policy concerns come into play when a parent is insuring their child. And last, there was an additional circumstance that made this case even more unique—Plaintiff's father served as Plaintiff's power of attorney and regularly took care of financial matters for him while his son served in the military. As his son's power of attorney, Plaintiff's father could act for his son, including by insuring his son.

For all of these reasons, this Court should not find that the insurable interest doctrine bars coverage in this case or any case under the No-Fault Act.

CONCLUSION

The Court of Appeals in *Barnes* erroneously added a requirement into the No-Fault Act that is not in the statute. The plain language of the No-Fault Act merely requires that insurance for a *vehicle* be in effect in order for an owner to obtain benefits. This ensures that vehicles are insured, while not punishing car owners when others

assist them in purchasing insurance, as long as insurance is on the vehicle. The purposes of the No-Fault Act are not achieved when insurance companies can deny benefits after individuals other than owners of vehicles pay good money for insurance for those vehicles. This Court must overrule *Barnes* in order to effectuate the Legislature's intent and the text of the Act.

RELIEF REQUESTED

Amicus Curiae CPAN respectfully requests that this Court reverse the decision of the Court of Appeals and hold that insurers are obligated to pay benefits to an owner of a vehicle that is insured by another.

Date: May 31, 2018

Respectfully submitted,

/s/ Jennifer M. Alberts
Jennifer M. Alberts (P80127)
Liisa R. Speaker (P65728)
SPEAKER LAW FIRM, PLLC
819 N. Washington Ave
Lansing, MI 48906

George T. Sinas (P25643)
Stephen H. Sinas (P71039)
Thomas G. Sinas (P77223)
SINAS DRAMIS BRAKE BOUGHTON & MCINTYRE PC
3380 Pinetree Rd
Lansing, MI 48911