STATE OF MICHIGAN

IN THE SUPREME COURT

MATTHEW DYE, by his Guardian,
SIPORIN & ASSOCIATES, INC.,

Plaintiff-Appellee/Cross-Appellant,

v

ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY,

Defendant/Cross Plaintiff/Appellee/
Cross Appellant,

and

GEICO INDEMNITY COMPANY,

Defendant/Cross Defendant-
Appellee/Cross-Appellant,

and

PRIORITY HEALTH and
BLUE CROSS BLUE SHIELD OF MICHIGAN

Defendants-Appellees.
_____/

SC No. 155784
COA No. 330308
LC No. 14-000516-NF
(Washtenaw Circuit Court)

BRIEF OF AMICUS CURIAE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA IN SUPPORT OF DEFENDANT/CROSS-DEFENDANT/APPELLEE/CROSS-APPELLANT GEICO INDEMNITY COMPANY

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STATEMENT OF INTEREST OF AMICUS CURIAE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

Amicus Curiae Property Casualty Insurers Association of America ("PCI")[1] supports the position of Defendant/Cross-Defendant/Appellee/Cross-Appellant GEICO Indemnity Company ("GEICO") with respect to the question upon which this Court has granted leave. PCI's interest is the proper development of Michigan automobile no-fault law. This includes as a top priority the proper interpretation and application the statutes affecting such insurance.

As explained in the following pages, the Court of Appeals decisions in this case and in *Barnes v Farmers Ins Exch*, 308 Mich App 1; 862 NW2d 681 (2014) correctly applied the principles of statutory interpretation and determined that the plain language of MCL 500.3101 and MCL 500.3113(b) precludes the owner or registrant of a motor vehicle involved in an accident from receiving personal protection insurance ("PIP") benefits for accidental bodily injury when no owner or registrant of the motor vehicle maintains security for payment of benefits under personal protection insurance. To read the statutes as Plaintiff Appellee/Cross-Appellant Matthew Dye ("Plaintiff") suggests, i.e., that an owner is not disqualified from receiving benefits under MCL 500.3113(b) so long as ***any*** person maintains security on the vehicle as required by MCL 500.3101(1), is not only contrary to the plain language of the statutes but also would undermine the risk assessment necessary to the no-fault insurance system's successful operation. It is well established that "[a]n insurance company cannot be

[1] PCI is a national property casualty trade association which promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers. PCI is composed of nearly 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write $220 billion in annual premiums, 37 percent of the nation's property casualty insurance. Member companies write 44 percent of the U.S. automobile insurance market, 30 percent of the homeowners market, 35 percent of the commercial property and liability market, and 37 percent of the private workers compensation market. PCI members write 41.8 percent of the personal automobile insurance market in Michigan and 45.7 percent of the personal automobile insurance market in North Carolina.

found liable for a risk it did not assume." *Group Ins Co of Michigan v Czopek*, 440 Mich 590, 597; 489 NW2d 444 (1992).

STATEMENT OF APPELLATE JURISDICTION

PCI agrees with and adopts the Statement of Jurisdiction found in Defendant/Cross-Defendant/Appellee/Cross-Appellant GEICO's Brief on Appeal.

STATEMENT OF FACTS

PCI concurs with the Statement of Facts set forth by GEICO in its Brief on Appeal, and does not repeat the facts here as it would be unnecessarily duplicative.

ARGUMENT

AN OWNER OR REGISTRANT OF A MOTOR VEHICLE INVOLVED IN AN ACCIDENT IS NOT ENTITLED TO PERSONAL PROTECTION INSURANCE BENEFITS FOR ACCIDENTAL BODILY INJURY WHERE NO OWNER OR REGISTRANT OF THE MOTOR VEHICLE MAINTAINS SECURITY FOR PAYMENT OF BENEFITS UNDER PERSONAL PROTECTION INSURANCE

In this case, the Court of Appeals, as it did in *Barnes v Farmers Ins Exch*, 308 Mich App 1; 862 NW2d 681 (2014), properly applied the principles of statutory interpretation to conclude that, under the plain language of MCL 500.3101 and MCL 500.3113(b), the owner or registrant of a motor vehicle involved in an accident is not entitled to PIP benefits for accidental bodily injury when no owner or registrant of the motor vehicle maintains security for payment of those benefits under personal protection insurance.

A. The plain language of MCL 500.3101 and MCL 500.3113(b) supports the Court of Appeals decision.

This Court has emphasized that "[w]hat is commonly referred to as 'the no-fault act' for the sake of convenience is in fact the no-fault ***insurance*** act. The purpose of the act can be derived from its express language." *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503, 535 n. 94; 821 NW2d 117 (2012) (emphasis in original). The outcome of this case is, therefore, governed by the well-established rules of statutory interpretation. "The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute." *Bukowski v City of Detroit*, 478 Mich 268, 273; 732 NW2d 75 (2007). "The first step in that determination is to review the language of the statute itself. Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary

meaning, taking into account the context in which the words are used." *Spectrum Health Hosps.*, 492 Mich at 515 (citation omitted). "If statutory language is unambiguous, the Legislature is presumed to have intended the meaning expressed in the statute," *Petersen v Magna Corp*, 484 Mich 300, 307; 773 NW2d 564 (2009)," and the statute must be enforced as written, *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 199; 895 NW2d 490 (2017). "A necessary corollary of this principle is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Iliades v Dieffenbacher N Am Inc*, No. 154358, 2018 WL 2338911, at *5 (Mich, May 23, 2018) (citation and quotation marks omitted). At the same time, "[i]n reviewing the statute's language, every word should be given meaning, and [the Court] should avoid a construction that would render any part of the statute surplusage or nugatory." *Omelenchuk v City of Warren*, 466 Mich 524, 528; 647 NW2d 493 (2002). Finally, "[c]ourts should not abandon common sense when construing a statute." *Diallo v LaRochelle*, 310 Mich App 411, 418; 871 NW2d 724 (2015).

Two provisions of the no-fault act are at issue here. MCL 500.3101(1) states in relevant part:

> The owner or registrant of a motor vehicle required to be registered in this state *shall maintain* security for payment of benefits under personal protection insurance, 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. . . . .

(Emphasis supplied). MCL 500.3113(b) provides that "[a] person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident . . . [t]he 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."

In *Spectrum Health*, which dealt with a related provision of the no-fault act, this Court recognized that "[g]iven that the express language of MCL 500.3113(a) excludes drivers from receiving benefits under these circumstances, it is the exclusion of benefits that effectuates the purpose of the no-fault act." 492 Mich at 535 n. 94. Likewise, under the circumstances presented here, to effectuate the purpose of the no-fault act, Plaintiff is properly excluded from receiving PIP benefits.

The issue in this case hinges on whether the phrase "[t]he owner or registrant of a motor vehicle required to be registered in this state ***shall maintain*** security," means that the owner (or at least ***an*** owner) must be the one to acquire the insurance policy, or whether it suffices for ***any*** person to provide the required security such that all that matters is that the vehicle is insured. In other words, the Court must decide whether the owner or registrant can "maintain" the necessary security by allowing a non-owner to purchase an insurance policy which does not include the owner as a named insured. Plaintiff contends that "as long as the vehicle has the required no-fault insurance . . . the vehicle is insured and the owner is not barred from no-fault benefits under MCL 500.3113(b)." Plaintiff's Brief on Appeal, p vi. To the contrary, the Court of Appeals has properly determined that an owner or registrant must maintain, i.e., acquire, the insurance.

This Court has recognized that the plain language of MCL 500.3101(1) "requires owners or registrants, but not operators, to maintain" the required insurance coverage. *Husted v Dobbs*, 459 Mich 500, 508; 591 NW2d 642 (1999). The parties discuss varying definitions of the word "maintain," see GEICO's Brief on Appeal, p 19, Plaintiff's Brief on Appeal, p 15. See also Merriam-Webster.com. Merriam-Webster, n.d. Web. 10 July 2018 ("Maintain" means "to keep in an existing state (as of repair, efficiency, or validity)," or "to support or provide for.") Although this Court has not previously considered the issue presented in this appeal or specifically discussed what "to maintain" means in this context, it has twice stated that the owner

or registrant of the vehicle must ***purchase*** the required coverage. "Michigan's no-fault act requires ***the owner*** or ***registrant*** of a motor vehicle to purchase an automobile insurance policy that provides among other coverage 'residual liability insurance.'" *Citizens Ins Co of Am v Federated Mut Ins Co*, 448 Mich 225, 228–29; 531 NW2d 138 (1995) (emphasis in original), citing MCL 500.3101(1). *Citizens* relied on an earlier case which explained:

> Sections 3101, 3131 and 3135 of the no-fault act, when construed together, make it plain that . . . the Legislature intended that
>
> 1. A person using a motor vehicle that causes certain types of damages shall remain liable in tort (§ 3135);
>
> 2. An insurance policy in this state shall afford coverage for such liability (§ 3131);
>
> 3. ***An owner or registrant of a motor vehicle shall purchase*** such a policy (§ 3101).

State Farm Mut Auto Ins Co v Ruuska, 412 Mich 321, 335; 314 NW2d 184 (1982) (emphasis supplied). Thus, as the Court of Appeals in this case observed, "the person who obtains the statutorily required insurance coverage must be an owner or registrant of the insured vehicle." Slip op, p 8. It follows that the owner or registrant of a motor vehicle involved in an accident is not entitled to personal protection insurance benefits for accidental bodily injury when no owner or registrant of the motor vehicle maintains security for payment of benefits under personal protection insurance, that is, has purchased an insurance policy as the named insured.

Previous published decisions from the Court of Appeals support this conclusion with solid reasoning based on the text of the no-fault act. In *Iqbal v Bristol W Ins Group*, 278 Mich App 31, 33; 748 NW2d 574 (2008), the Court determined that the plaintiff, who was alleged to be an owner of the vehicle involved in an accident but did not maintain insurance on that vehicle,

was nevertheless entitled to PIP benefits because his brother, an undisputed owner of the subject vehicle,[2] did in fact maintain an insurance policy thereon.

Plaintiff here fixates on *Iqbal*'s comment that "[t]he statutory language links the required security or insurance solely to the vehicle," and thus the question was whether the subject vehicle, not specifically plaintiff, "had the coverage or security required by MCL 500.3101." 278 Mich App at 39. Plaintiff also contends that MCL 500.3113(b) does not specify who is required to obtain the security, it only references the security required. See Plaintiff's Brief on Appeal, pp 9- 11. But "[w]hen the Legislature incorporates by reference a provision of an existing statute, that provision becomes part of the statute." *Diallo*, 310 Mich App at 418 (citation and punctuation omitted). Again, MCL 500.3113(b) refers to the security required by MCL 500.3101, i.e., insurance coverage, maintained by ***an owner or registrant***, not a third party. In *Iqbal*, "the security required by MCL 500.3101(1) was in effect for purposes of MCL 500.3113(b)" as it related to the subject vehicle because it was maintained by ***an*** owner. *Id*. at 40. Thus, despite *Iqbal*'s use of broad language, it clearly contemplated that ***an*** owner of a vehicle and not a random third party would maintain the required security.

This point was succinctly made in *Barnes*, wherein neither of the owners of the vehicle involved in the accident maintained the requisite insurance coverage, rather the insurance policy on the vehicle was procured by a third party. Moreover, the owners were not named insureds on that policy. The Court expressly rejected any broader interpretation of *Iqbal*'s language. "The [*Iqbal*] Court made it clear that it was addressing the problem of whether the statute required 'each and every owner' to maintain insurance on a vehicle." *Barnes*, 308 Mich App at 8. *Barnes* further noted that *Iqbal* relied on earlier cases which both "involved at least one owner having

[2] "There may be multiple owners of a vehicle for purposes of the no-fault act." *Chop v Zielinski*, 244 Mich App 677, 681; 624 NW2d 539 (2001).

obtained the insurance coverage." *Id.*[3] Again, "to hold otherwise would render nugatory the language of MCL 500.3101(1) that requires '[t]he owner or registrant of a motor vehicle' to maintain insurance, which is not favored." *Id*. at 8. Accordingly, the *Barnes* court correctly determined that, "under the plain language of MCL 500.3113(b), when none of the owners maintains the requisite coverage, no owner may recover PIP benefits" regardless of whether a third party has insured the vehicle. *Id*. at 8-9.

B. Plaintiff's public policy argument must be rejected.

Aside from relying on a strained reading of the applicable statutory language, Plaintiff appears to be making an argument based on either "public policy" or something akin to sentiment. Plaintiff suggests that many parents purchase insurance policies for their adult children who are not otherwise named insureds,[4] presumably because the adult children otherwise lack the financial wherewithal to maintain the policies on their own. His concern is that "[t]o leave *Barnes* standing will . . . create a tremendous hardship for many people doing the right thing." Plaintiff's Brief on Appeal, pp 20-21. Plaintiff's appeal to emotion and his apparent

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[3] In *Jasinski v Natl Indem Ins Co*, 151 Mich App 812, 818–19; 391 NW2d 500 (1986), the Court determined that ***each*** owner or registrant was not required to "have a separate policy covering the vehicle . . . ." In that case, the no-fault act had been satisfied because "the titled owner of the tractor, maintained security for payment of no-fault benefits as required by the lease agreement." *Id*. at 819.

In *State Farm Mut Auto Ins Co v Sentry Ins*, 91 Mich App 109; 283 NW2d 661 (1979), the Court of Appeals addressed MCL 500.3102, which also references MCL 500.3101, and provides:

> An owner or registrant of a motor vehicle with respect to which security is required who operates the motor vehicle 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 sections 3101 or 3103 is guilty of a misdemeanor.

Again, the Court stated that "[t]his subsection does not mean that ***each*** 'owner' or 'registrant' must have a separate policy covering the vehicle, but only that there must be ***a*** policy covering the vehicle." *Id*. at 115 (emphasis supplied). Thus, in that case, where a policy "was obtained by the registered title holder . . . the vehicle was, in fact, covered by the required security." *Id*.

[4] In this case, Plaintiff was not even listed as a driver on the insurance policy.

suggestion that the Court should espouse a policy mandating "fairness" or a policy of avoiding hardship in its interpretation of the no-fault act is contrary to well established principles.

First, this Court has flatly rejected results-oriented policy arguments unmoored to the actual language of the statute:

> We believe that the policy of the no-fault act is better understood in terms of its actual provisions than in terms of a judicial effort to identify some overarching public policy and effectively subordinate the specific details, procedures, and requirements of the act to that public policy. . . . The no-fault act, as with most legislative enactments of its breadth, was the product of compromise, negotiation, and give-and-take bargaining, and to allow a court of this state to undo those processes by identifying an all-purpose public policy that supposedly summarizes the act and into which every provision must be subsumed, is to allow the court to act beyond its authority by exercising what is tantamount to legislative power.

Titan Ins Co v Hyten, 491 Mich 547, 565–66; 817 NW2d 562 (2012). And again, in any event, the purpose of the no-fault act is "derived from its express language." *Spectrum Health Hosps*, 492 Mich 503, 535 n. 94. That Plaintiff believes widespread hardship can be avoided if a non-owner is permitted to insure a vehicle which the no-fault act otherwise requires to be insured by the owner or registrant is of no moment. "The fact that another statutory scheme might appear to have been wiser or would produce fairer results is irrelevant." *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 430; 617 NW2d 536 (2000). Instead, "courts must apply the statute as written," *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995), and cannot otherwise "write into the statutes provisions that the legislature has not seen fit to enact." *Paselli v Utley*, 286 Mich 638, 643; 282 NW849 (1938).

Second, and relatedly, Michigan appellate courts have recognized that "[i]t is impossible to hold an insurance company liable for a risk it did not assume." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992). See also *Dunn v Detroit Auto Inter-Ins Exch*, 254 Mich App 256, 270; 657 NW2d 153 (2002), citing *Ruddock v Detroit Life Ins Co*, 209 Mich 638, 653, 177 NW 242 (1920) ("Perhaps the most fundamental rule of Michigan insurance

jurisprudence is that an insurer can never be held liable for a risk it did not assume and for which it did not charge or receive any premium."); *Titan Ins Co v Am Country Ins Co*, 312 Mich App 291, 305; 876 NW2d 853 (2015) (citation omitted) (Addressing paragraph (2) of MCL 500.3114, the priority statute, which includes the "commercial" exceptions to the general rule that a person looks to his or her own insurance policy for PIP benefits, the Court observed that the Legislature intended "to place the burden of providing no-fault benefits on the insurers of these motor vehicles, rather than on the insurers of the injured individual," and pursuant to this framework, "[a] company issuing insurance covering a motor vehicle to be used in a [Subsection (2)] ... situation will know in advance the scope of the risk it is insuring.") Here, if the Court were to adopt Plaintiff's interpretation of MCL 500.3101(1) and MCL 500.3113(b) and allow a non-owner to obtain an insurance policy on an owner's vehicle without the owner as a named insured (or again, as in this case, not even a listed driver), the insurer would be prevented from properly assessing the risk, yet could still be required to provide coverage to the owner in the event of a motor vehicle accident.[5]

Third, although in any given case it may appear more "fair" to interpret the statutory language in favor of a policyholder, the same construction may produce a completely unfair

[5] The amicus brief submitted by the Coalition to Protect No-Fault (CPAN) protests that this case is not about fraud. CPAN's Brief on Appeal, p 12. There is, of course, voluminous authority allowing an insurer to rescind a policy – including a personal auto policy that provides PIP benefits – based on material misrepresentations in the application for insurance, including misrepresentations regarding owners and drivers of vehicles, as well as a driver's record. See *Hammoud v Metro Prop & Cas Ins Co*, 222 Mich App 485, 488; 563 NW2d 716 (1997); *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9; 369 NW2d 243 (1985); *Lake States Ins Co v Wilson*, 231 Mich App 327, 331-332; 586 NW2d 113 (1998). The underlying rational in these cases is based on the principle, equally applicable here, that an insurer is entitled to adequately assess the risk it assumes. See *Oade v Jackson Nat Life Ins Co of Mich*, 465 Mich 244, 253-254; 632 NW2d 126 (2001), citing *Keys v Pace*, 358 Mich 74, 82; 99 NW2d 547 (1959) (A material misrepresentation in a policy is "a fact or representation . . . where communication of it would have had the effect of 'substantially increasing the chances of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium.'")

result when applied to the facts of another case. This is why the text of a statute must govern, no matter which side benefits. *Barnes v United States*, 759 F3d 793, 798 (CA 7, 2014).

CONCLUSION

The Court of Appeals decisions in this case and in *Barnes* adhered to the well-established principles of statutory interpretation and determined that, under the plain language of MCL 500.3101 and MCL 500.3113(b), an owner or registrant of a motor vehicle involved in an accident is excluded from receiving PIP benefits for accidental bodily injury when no owner or registrant of the motor vehicle maintains security for payment of benefits – i.e., procures or purchases an insurance policy as an named insured. To read the statutes as Plaintiff suggests and allow such an owner to receive benefits under MCL 500.3113(b) so long as ***any*** person maintains security on the vehicle as required by MCL 500.3101(1) – regardless of whether the owner is named in the policy – is contrary to the plain language of the statutes and prohibits the insurer from properly assessing the risk undertaken.

RELIEF REQUESTED

Amicus Curiae Property Casualty Insurers Association of America joins in the Relief Requested found in GEICO Indemnity Company's Brief on Appeal.

Respectfully submitted,

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