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STATE OF MICHIGAN

IN THE SUPREME COURT

HOME-OWNERS INSURANCE COMPANY and AUTO-OWNERS INSURANCE COMPANY,	Supreme Court No. __________
Plaintiffs-Appellants/Cross-Appellees,	Court of Appeals No. 331934
v	15-0025-CK Honorable William E. Collette
RICHARD JANKOWSKI and JANET JANKOWSKI,	
Defendants-Appellees/Cross-Appellants.	

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APPELLEES/CROSS APPELLANTS RICHARD AND JANET JANKOWSKI'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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Exhibit 3: Michigan Secretary of State Website printout

Exhibit 4: Deposition of Richard Jankowski

Exhibit 5: *'Snowbirds' getting the attention of Republicans in Michigan and Florida*, MICHIGAN RADIO (August 27, 2012)

Exhibit 6: Eigenhouse*, Viewpoint: Those Michigan residents facing a tax on pensions may vote with their feet* (May 24, 2011)

Exhibit 7: Lawlor**,** *Snowbirds Flock Together for Winter*, NEW YORK TIMES (February 2, 2007)

Exhibit 8: Janet Galvez, The Florida Elusive Snowbird

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QUESTIONS PRESENTED

I. Can the Michigan Motor Vehicle Code be properly interpreted to require Michigan registration for vehicles that are purchased, titled, registered, insured, garaged, and driven solely in another state when:

A. It is clear on the face of the preamble to the Vehicle Code that its provisions are only intended to apply to vehicles used in this state;

B. Both the Federal Constitution and Michigan Supreme Court precedent prohibit a state from exercising control over personal property located in another state;

C. Construing the Motor Vehicle Code to ONLY require Michigan registration for vehicles driven in Michigan is consistent with what the Michigan Secretary of State instructs the general public; and

D. Interpreting the Michigan Motor Vehicle Code to require Michigan registration for vehicles not driven in Michigan offends public policy?

Appellant/Cross-Appellee Home-Owners Insurance Co answers, ***"YES."***

Appellees/Cross-Appellants Richard and Janet Jankowski answer, ***"NO."***

The Court of Appeals answered, ***"YES."***

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ORDER APPEALED FROM AND JURISDICTIONAL STATEMENT

This Application for Leave seeks review of an Opinion and Order issued by the Court of Appeals on May 11, 2017. A copy of this opinion is attached as ***Exhibit 1***. This application has been filed within 42 days of a *"Court of Appeals order denying a timely filed motion for reconsideration"* of the aforesaid Opinion and Order and is therefore timely under MCR 7.305(C)(2)(b). A copy of the Court's order denying reconsideration is attached as ***Exhibit 2***.

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INTRODUCTION AND STATEMENT OF GROUNDS JUSTIFYING REVIEW BY THIS COURT

This Application for Leave seeks review of an Opinion and Order dated May 11, 2017, in which the Court of Appeals ruled that a Lexus SUV owned by Defendants Richard and Janet Jankowski was required to be registered in Michigan despite the fact that it was undisputedly purchased, registered, and lawfully insured by the Jankowskis in the state of Florida in accordance with Florida law, and despite the fact that it was undisputedly never driven or otherwise taken to the state of Michigan. In other words, in its May 11, 2017 Opinion and Order, the Court of Appeals effectively ruled that a motor vehicle that has absolutely no connection to the state of Michigan nevertheless must be registered in Michigan. A copy of the Court of Appeals May 11, 2017 Opinion and Order is attached as ***Exhibit 1***.

As will be fully established in this Application, and as is summarized briefly below, the Court of Appeals clearly erred in reaching this ruling such that this Court should, at a minimum, issue a peremptory order of reversal. However, the vehicle registration question presented in this Application is a question of substantial importance, the answer to which has implications that reach far beyond the context of this case. Accordingly, should the Court not be amenable to issuing a peremptory order of reversal, this Court should alternatively grant leave to appeal and further review the merits of the Court of Appeals' May 11, 2017 ruling.

As for the clear incorrectness of the Court of Appeals' decision below, it is expressly stated in the language of the Motor Vehicle Code that its provisions only apply to *"certain motor vehicles operated upon the public highways of this state."* 1949 PA 300, Ch II, § 216. Consistent with this express language, the Michigan Secretary of State

instructs the public that Michigan vehicle registration is required for *"all motor vehicles used on Michigan roads."*[1] Thus, the Court of Appeals May 11, 2017 Opinion and Order directly conflicts with the language of the Motor Vehicle Code, as well as the Secretary of State's interpretation of the Motor Vehicle Code. Moreover, as will be further discussed herein, in so ruling, the Court of Appeals did not engage in any analysis of the relevant statutory language in the Motor Vehicle Code pertaining to vehicle registration. (See Opinion and Order, pp 5-6)(***Ex 1***).

Furthermore, as is fully discussed in **Section I-B** of this Application, interpreting the Michigan Motor Vehicle Code to require Michigan registration for foreign vehicles located and driven outside of Michigan violates longstanding principles of state and federal constitutional law. It is universally understood under both Michigan and federal law that: (1) a vehicle registration fee is considered to be a form of taxation on the use and possession of the vehicle; and (2) a state has no power to tax property or activities outside its territorial borders absent a sufficient connection to that state. Such a nexus is clearly lacking here as the Jankowski Florida Lexus SUV was undisputedly not located, titled, insured, or driven in Michigan. Accordingly, peremptory reversal of the Court of Appeals' ruling on the vehicle registration question is clearly appropriate.

Should the Court not be inclined to issue such an order, the vehicle registration question raised in this Application falls squarely within the limited category of issues that are ripe for further review by this Court. The question of whether a vehicle must be registered in Michigan when it is purchased, registered, insured, located, and driven

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[1] A printout of the Michigan Secretary of State's website verifying its view of Michigan vehicle registration is attached hereto as ***Exhibit 3***

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exclusively in another state is *"a question of major significance to the state's jurisprudence."* Thus, leave to appeal is warranted under MCR 7.305(B)(3).

This conclusion must be reached for several reasons. First, it is unclear whether a person can even successfully register a foreign vehicle in Michigan. As stated previously, the Secretary of State only recognizes a vehicle registration requirement for vehicles driven in Michigan. It remains to be seen whether or not the Secretary of State would even permit registration in Michigan of a foreign vehicle like the Jankowski's Lexus which was purchased, registered, insured, titled, and driven exclusively in another state.

Even if registration was permitted by the Secretary of State, any actual attempt to register such a vehicle in Michigan would likely fail nevertheless. To register a vehicle in Michigan, the vehicle must be insured with Michigan auto no-fault insurance. See MCL 500.3101. Michigan auto no-fault insurers will not even insure a vehicle like the Jankowski Florida Lexus that is purchased, registered, and titled exclusively in another state.[2] Thus, in all likelihood, any attempt to comply with a Michigan vehicle registration requirement for such foreign vehicles would be impossible for the simple fact that the requisite Michigan auto no-fault insurance cannot be obtained for such vehicles.

This being the case, if the Michigan Motor Vehicle Code were to be construed in a way that required Michigan vehicle registration for foreign vehicles, Michigan residents who own foreign vehicles would have no ability to comply with the compulsory insurance requirements of the Auto No-Fault Act. See MCL 500.3101 (requiring no-fault insurance for all vehicles required to be registered in Michigan).

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[2] See deposition of Richard Jankowski, pp 20-22, wherein he discusses his attempts to obtain Michigan auto no-fault insurance for the Florida Lexus. (Attached as ***Exhibit 4***)

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The practical problems created by this impossibility of compliance are compounded exponentially when the various penalties associated with non-compliance are further considered. For example, failing to properly register a vehicle in Michigan can render a person guilty of a civil infraction or a criminal misdemeanor punishable by up to 90 days in jail. See MCL 257.255 and MCL 257.901. This is particularly troubling when it is considered that the Secretary of State specifically instructs the public at large that Michigan vehicle registration is only required for vehicles driven in Michigan. (See ***Exhibit 3***).

Furthermore, failing to properly acquire auto no-fault insurance not only renders a person guilty of a criminal misdemeanor, it disqualifies a person from receiving no-fault benefits. See MCL 500.3113(b)(providing that a vehicle owner who fails to have in place the auto no-fault insurance required under § 3101 of the No-Fault Act is disqualified from receiving no-fault benefits). Indeed, as will be further discussed in this Application, that is exactly what has occurred in the case at bar. Richard and Janet are Michigan residents. However, like many other Michigan residents, they own a vacation home in Florida. They leased their Lexus SUV from a local Florida Lexus dealership for exclusive use in Florida while visiting their vacation home. They were tragically involved in an auto accident while driving the Lexus in Florida after celebrating their wedding anniversary with other members of their family at a restaurant in Naples, Florida. Richard Jankowski was very seriously injured during the accident. Following the accident, the Jankowskis made a claim for no-fault benefits under a policy of no-fault insurance issued by Plaintiff Home-Owners Insurance Company for other vehicles that the Jankowskis own and operate in

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Michigan.[3] Plaintiff Home-Owners Insurance denied their claim after taking the position that the Jankowski Florida Lexus was required to be registered in Michigan and was therefore subject to Michigan's compulsory insurance requirements in § 3101. On that basis, HOIC concluded that the Jankowskis were disqualified from receiving PIP benefits under § 3113(b) of the No-Fault Act. After denying their no-fault claim on this alleged basis, Home-Owners brought this suit against the Jankowskis seeking a declaration to that effect.

All things considered, the foregoing complications associated with construing the Michigan Motor Vehicle Code to require Michigan vehicle registration for foreign vehicles like the Jankowski Florida Lexus effectively cuts off a Michigan resident's ability to lawfully acquire an out-of-state vehicle for exclusive use outside the state of Michigan. This is not only an infringement on the rights of Michigan residents, it is further discriminatory against out-of-state auto dealers.

Further research reveals that the foregoing issues directly affect a large number of Michigan residents. Thousands of Michigan residents spend their winters in Florida. (*See 'Snowbirds' getting the attention of Republicans in Michigan and Florida,* MICHIGAN RADIO (August 27, 2012)(Attached as ***Exhibit 5***), available at <http://michiganradio.org/post/snowbirds-getting-attention-republicans-michigan-and-florida>; See also Eigenhouse*, Viewpoint: Those Michigan residents facing a tax on pensions may vote with their feet* (May 24, 2011), (Attached as ***Exhibit 6***). **In fact,**

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[3] Under MCL 500.3111 of the No-Fault Act, anyone who is a *"named insured"* under a Michigan auto no-fault policy is entitled to auto no-fault benefits for an out-of-state accident, regardless of whether the vehicle that the person was occupying at the time of the accident was insured with Michigan auto no-fault insurance.

Michigan residents make up the second largest group of the people who spend part of the year in Florida, only preceded by New York residents. (*See* Lawlor**,** *Snowbirds Flock Together for Winter*, NEW YORK TIMES (February 2, 2007)(Attached as ***Exhibit 7***). Additionally, studies have shown that migrant retirees are just as likely to buy Florida cars and own Florida homes as full time Florida residents are. (*See e.g.*, Janet Galvez, *The Florida Elusive Snowbird.* (Attached as ***Exhibit 8***).

Accordingly, the Michigan vehicle registration question raised in this Application reaches far beyond the context of this case. Thus, further review of this question by this Court is warranted. To the extent that Home-Owners Insurance will argue to the contrary based on a different interpretation of the Michigan Motor Vehicle Code, any counter arguments in that regard only confirm that, at a minimum, there is a bona fide ambiguity in the law with respect to whether vehicles like the Jankowski Florida Lexus (*i.e.* vehicles purchased, registered, insured, located, and driven exclusively outside the state of Michigan) are subject to the Michigan Motor Vehicle Code's mandatory vehicle registration requirements.

WHEREFORE, for the reasons as more fully discussed in this Application, Defendant-Appellees/Cross-Appellants, Richard and Janet Jankowski, respectfully request a peremptory order declaring that their Florida Lexus was not required to be registered in Michigan at the time of their Florida accident because it was never driven in or taken to the state of Michigan, and declaring that they are therefore not disqualified from receiving PIP benefits by § 3113(b) of the No-Fault Act. Alternatively, the Jankowskis request that this Court otherwise grant this Application for Leave and conduct further review of the Court of Appeals' May 11, 2017 decision.

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STATEMENT OF FACTS

A. Background Information

This is a declaratory action that was initiated by Plaintiff Home-Owners Insurance Company (HOIC) in order to perfect the denial of a no-fault insurance claim that Defendants Richard and Janet Jankowski pursued against HOIC for injuries arising out of an out-of-state motor vehicle accident that occurred in the state of Florida on May 25, 2014.

The Jankowskis are Michigan residents who also own a vacation home in Bonita Springs, Florida. (Deposition of Richard Jankowski, pp 5, and 11)(***Exhibit 4***); (Deposition of Janet Jankowski, pp 6-7)(***Exhibit 9***). The subject Florida accident occurred just after the Jankowskis had dinner with their family at Truluck's restaurant in Naples, Florida in celebration of Richard and Janet's wedding anniversary. While on their way back to their vacation home in Bonita Springs, a vehicle violently smashed into the driver's side of the vehicle that they were traveling in as they attempted to make a left turn. A copy of the Florida Traffic Crash Report dated May 25, 2014, is attached as ***Exhibit 10***.

As a result of the accident, Richard Jankowski and Janet Jankowski sustained several serious injuries. ***The injuries Richard Jankowski sustained include, but are not limited to, the following: eight (8) fractured ribs, fractured sternum, pneumothorax, pulmonary contusion, abdominal and pelvic ecchymosis, separated left shoulder, and traumatic brain injury/closed head injury. The injuries Janet Jankowski sustained include, but are not limited to, the following: traumatic brain injury/closed head injury, medial and lateral tears in the right knee, contusions of abdominal wall, contusion of chest wall, torticollis, and headaches.***

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B. The Jankowski Florida Lexus SUV

The vehicle that the Jankowskis were traveling in was a Lexus GX460 SUV, which was being driven by Richard Jankowski. The Jankowskis leased this vehicle from a local Florida Lexus dealership. They only drove it in Florida in connection with the use of their vacation home. The Florida Lexus vehicle was registered to Richard Jankowski in the state of Florida. However, because it was a leased vehicle, it was titled in name of the lessor, Toyota Leased Trust, which is located at 1178 S. Kalamath St, Denver, Colorado 80223-3117. (See public record attached as ***Exhibit 11***).

Upon making the decision to lease the Lexus GX460, the Jankowskis called their local Michigan Home-Owners insurance agent to obtain insurance for the vehicle. **However, Home-Owners informed the Jankowskis that they would not write a Michigan policy for the Lexus GX460 or otherwise insure it in Florida** (See R. Jankowski Dep Tr. pp 14: lines 5 to 15)(***Ex 4***). The Jankowskis therefore obtained a Florida insurance policy for the vehicle in accordance with Florida state law. The Jankowski's Florida policy was issued by Allstate Insurance Company. A copy of the Florida Allstate policy is attached as ***Exhibit 12***. The Lexus was ultimately totaled during the accident.

It is undisputed that throughout the entire time that the Jankowskis had possession and use of the subject Florida Lexus, it was fully insured in accordance with Florda law, it was lawfully registered in the state of Florida, it was never driven outside of the state of Florida, and it was never driven or otherwise taken to the state of Michigan.

C. The Jankowski's No-Fault Claim

In addition to the leased Florida Lexus, the Jankowskis owned two other vehicles that were registered and insured in Michigan. These vehicles were insured under a policy of Michigan Auto No-Fault Insurance issued by HOIC that provided PIP benefits to the Jankowskis in accordance with the provisions of the Michigan Auto No-Fault Act. Following the accident, the Jankowskis filed a claim for no-fault PIP benefits under their HOIC no-fault policy. They claimed entitlement to benefits under the out-of-state entitlement provisions in MCL 500.3111 of the No-Fault Act, which provide out-of-state accident victims with no-fault benefits if they are a named insured under a Michigan auto no-fault policy, or alternatively, if they are occupying a vehicle that is otherwise insured with Michigan auto no-fault insurance.

HOIC then denied the Jankowski's claim after taking the position that the leased Florida vehicle was required to be registered in Michigan under the Michigan Motor Vehicle Code; that the vehicle was therefore required to be insured with Michigan auto no-fault insurance under MCL 500.3101; that both Richard Jankowski and Janet Jankowski were *"owners"* of the Lexus for purposes of the No-Fault Act; and that their failure to procure Michigan auto no-fault insurance for their Florida Lexus barred them from receiving no-fault PIP benefits under the disqualification provisions in MCL 500.3113(b).

In denying benefits, Home-Owners does not dispute that (1) the Jankowski's injuries were suffered in an out-of-state accident; (2) the Jankowskis were named insureds under a policy of no-fault insurance issued for their Michigan vehicles; and (3) absent grounds for disqualification, the Jankowskis are otherwise entitled to no-fault PIP

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benefits under the out-of-state entitlement provisions in § 3111 of the No-Fault Act.

D. Proceedings Below

After denying the Jankowski's no-fault claim, Home-Owners filed this declaratory action seeking a judicial determination that no coverage was owed to the Jankowskis for the reasons stated above. The Jankowskis opposed this declaration on the basis that (1) under MCL 500.3101 of the No-Fault Act, their Florida Lexus is not required to be insured with Michigan auto no-fault PIP benefits because it is not required to be registered in Michigan; and that (2) they are therefore NOT disqualified from receiving PIP benefits under § 3113(b) of the No-Fault Act because that section only applies to owners of vehicles that are required to be insured with Michigan auto no-fault insurance under § 3010 of the No-Fault Act.

After the commencement of formal litigation, Home-Owners filed a Motion for Summary Disposition requesting a ruling as a matter of law that the Jankowski's Florida Lexus was required to be registered in Michigan; that the vehicle was therefore required to be registered with Michigan auto no-fault insurance under MCL 500.3101; that the Jankowskis were both owners of the Lexus SUV; and that they were therefore both disqualified from receiving PIP benefits under § 3113(b) due to the fact that their Florida Lexus was not insured with Michigan auto no-fault Insurance.

The trial court granted summary disposition for Home-Owners in part as to Richard Jankowski, but implicitly denied summary disposition in part as to Janet Jankowski. In doing so, the trial court agreed that the Florida Lexus was required to be registered in Michigan. The Court then noted that there was no issue that Richard Jankowski was an *"owner"* of the Lexus, and found that he was disqualified under § 3113(b) as an owner of

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a vehicle that was not properly insured with PIP. However, the trial court implicitly found that Janet Jankowski was not an *"owner"* and was therefore NOT disqualified from receiving PIP. Both parties sought reconsideration, which the trial court denied as to both parties. These rulings were rendered in three separate written opinions and orders, which are attached as ***Exhibit 13***, ***Exhibit 14***, and ***Exhibit 15***, respectively.

Following the trial court's rulings, Home-Owners filed an appeal as of right seeking review of the trial court's ruling with respect to Janet Jankowski, and the Jankowskis subsequently filed a cross appeal as of right seeking a reversal of the trial court's ruling that Richard Jankowski is disqualified from receiving PIP by § 3113(b). The Court of Appeals affirmed the trial court's rulings as to Richard Jankowski, and reversed the trial court's rulings as to Janet Jankowski. In doing so, the Court concluded that Janet Jankowski was a constructive *"owner"* of the Florida Lexus SUV, and noted that the parties did not dispute that Richard Jankowski was considered to be an *"owner"* of the Florida Lexus SUV. After finding ownership as to both of them in this manner, the Court found that both of them were disqualified from receiving PIP benefits under § 3113(b) due to the fact that the Jankowski's Florida Lexus SUV was not insured with Michigan auto no-fault insurance.

E. The Michigan Vehicle Registration Issue

The ultimate decision by the Court of Appeals in its May 11, 2017 Opinion and Order (*i.e.*, that the Jankowskis are both disqualified from receiving PIP benefits) rests entirely on a preliminary conclusion reached by the Court of Appeals that the Jankowski Florida Lexus was required to be registered in Michigan. As will be discussed in more detail in **Section II** below, and as was briefly summarized above, if the Jankowski Florida

Lexus was not required to be registered in Michigan, the Jankowski Florida Lexus SUV is not subject to the compulsory insurance requirements of the Michigan Auto No-Fault Act. See MCL 500.3101. The disqualification provisions in MCL 500.3113(b) of the Auto No-Fault Act relied on by HOIC only apply to owners of vehicles who fail to comply with the compulsory insurance requirements in § 3101. Thus, the absence of a Michigan vehicle registration requirement for the Jankowski Florida Lexus precludes the Jankowskis from being disqualified from receiving PIP benefits under § 3113(b).

In concluding that the Jankowski Florida Lexus SUV was required to be registered in Michigan, the Court of Appeals did not conduct any analysis of the relevant statutory language in the Motor Vehicle Code governing Michigan vehicle registration. Rather, the Court instead relied on a prior decision issued by the Court of Appeals in the case of *Wilson v League Gen Ins Co,* 195 Mich App 705, 707-708; 491 NW2d 642 (1992), wherein the Court ruled that the owner of an out-of-state vehicle ***that was not insured under any policy of insurance*** was properly disqualified from receiving PIP benefits under § 3113(b) of the No-Fault Act. (See Opinion and Order, at p 4)(***Ex 1***).

Following the issuance of the Court of Appeals' May 11, 2017 decision, the Jankowskis moved for reconsideration, which the Court of Appeals denied in an Order dated June 22, 2017. A copy of the Court's Order denying reconsideration is attached as ***Exhibit 2***.

The Jankowskis have therefore brought the instant Application for leave seeking further review of the vehicle registration issue by this Court. In doing so, the Jankowskis do not dispute that they are both considered to be *"owners"* of their Florida Lexus SUV. They narrowly dispute that their Florida Lexus SUV was required to be insured in Michigan

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and request a reversal of the Court of Appeals' ruling on that issue, together with a declaration that because their Florida Lexus SUV was not required to be registered in Michigan, they are not disqualified from receiving PIP benefits by MCL 500.3113(b) of the No-Fault Act.

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STANDARD OF REVIEW

Resolving this appeal requires interpreting the vehicle registration requirements in the Michigan Motor Vehicle Code. Questions of statutory construction and matters of statutory application are reviewed *de novo*. *Romain v Frankenmuth Mut Ins Co*, 483 Mich 18, 25 (2009). See also *DaimlerChrysler Corp v State Tax Comm'n*, 482 Mich 220 (2008).

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LAW AND ARGUMENT

I. The registration provisions of the Michigan Motor Vehicle Code cannot properly be construed to require Michigan vehicle registration for vehicles like the Jankowski Florida Lexus that are located and driven exclusively outside the state of Michigan, because such vehicles are NOT driven on Michigan roads and highways.

A. The Michigan Motor Vehicle Code expressly provides that its provisions only govern *"certain vehicles operated upon the public highways of this state . . . ."*

It is a well-established cannon of statutory construction that when interpreting a statute, the language of a statute cannot be selectively quoted and analyzed in a vacuum. In *G.C. Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421 (2003), this Court explained:

> *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, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute . . . ." Arrowhead Dev Co v Livingston Co Rd Comm, 413 Mich. 505, 516; 322 N.W.2d 702 (1982). "Words in a statute should not be construed in the void, but should be read together to harmonize the meaning, giving effect to the act as a whole." Gen Motors Corp v Erves (On Rehearing), 399 Mich. 241, 255; 249 N.W.2d 41 (1976)(opinion by COLEMAN, J.). Although a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context. McCarthy v Bronson, 500 U.S. 136, 139; 111 S. Ct. 1737; 114 L. Ed. 2d 194 (1991); Hagen v Dep't of Ed, 431 Mich. 118, 130-131; 427 N.W.2d 879 (1988). "In seeking meaning, words and clauses will not be divorced from those which precede and those which follow." People v Vasquez, 465 Mich. 83, 89; 631 N.W.2d 711 (2001), quoting Sanchick v State Bd of Optometry, 342 Mich. 555, 559; 70 N.W.2d 757 (1955).*

When these principles are applied here, the Motor Vehicle Code's registration requirements must be construed as only requiring registration for vehicles driven or kept in Michigan. Specifically, the relevant provisions of the Michigan Motor Vehicle Code

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governing when a vehicle is generally required to be registered in Michigan are set forth in MCL 257.216. This section provides in relevant part:

> *Sec. 216. Every motor vehicle, recreational vehicle, trailer, semitrailer, and pole trailer, when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of this act . . . .*

The preamble to the Michigan Motor Vehicle Code further clarifies that its provisions are only intended to apply to vehicles driven in this state. In that regard, 1949 PA 300, Ch II, § 216, states in pertinent part:

> *AN ACT to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; . . . .*

Thus, when this language is properly read together with MCL 257.216, it is unavoidable that the Michigan legislature only intended to require Michigan residents to register in this state vehicles ***driven in Michigan*** on highways, public-access places, and places accessible to motor vehicles. To hold otherwise impermissibly ignores the stated intent of the Motor Vehicle Code and impermissibly analyzes its registration requirements in a vacuum—in violation of the clear command of *G.C. Timmis & Co, supra*.

Consistent with the conclusion that only vehicles driven or kept in Michigan are required to be registered in Michigan, the Michigan Secretary of State explicitly instructs Michigan citizens that only vehicles used in Michigan are required to be registered in Michigan. Indeed, the Secretary of State's website instructs that *"**all motor vehicles <u>used on Michigan roads</u> must be registered . . . .**"* (See ***Exhibit 3***)(emphasis added). It is well settled that ***"the construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons."*** *Nelligan v Gibson Insulation Co*,

193 Mich App 274, 281 (1992). See also *Michelson v Voison*, 254 Mich App 691 (2003) (holding that the appellate court generally gives deference to administrative agency interpretations of statutes); and *Breuhan v Plymouth-Canton Cmty Schools*, 425 Mich 278 (1986) (recognizing that this Court has repeatedly given great deference to the construction placed upon a statute by the agency legislatively chosen to enforce it).

To the extent that the Court of Appeals relied on the case of *Wilson v League Gen Ins Co,* 195 Mich App 705 (1992) for a contrary conclusion, the Court's reliance on that decision was misplaced. In *Wilson*, the plaintiff was injured in an accident in Tennessee while driving an out-of-state vehicle owned by her that was not insured under any policy of insurance. The plaintiff sought to recover Michigan no-fault PIP benefits under a no-fault policy issued to her mother for other vehicles. The Court held that the plaintiff was disqualified from receiving PIP benefits under § 3113(b) of the No-Fault Act on the basis that her vehicle did not have in place the security required by MCL 500.3101 of the No-Fault Act. However, the dispositive rationale of the Court in reaching its decision was that the vehicle involved in the accident ***had no insurance whatsoever.*** In this regard, the *Wilson* Court noted that if a *"person who is covered by a no-fault policy [in Michigan] could own and* ***fail to insure*** *several other vehicles and still be permitted to recover under the one insurance policy*" it would produce an absurd result. *Id.* at 709.

In this case, the Jankowskis do not fall into the category of individuals who completely failed to insure their vehicles. Rather, the Jankowskis properly registered and insured their vehicle pursuant to the laws of Florida, which was the only state in which they ever operated the subject vehicle. Thus, the Court of Appeals' reliance on *Wilson* was improper.

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B. Interpreting the Michigan Motor Vehicle Code to require Michigan registration for foreign vehicles located and driven outside of Michigan violates longstanding principles of state and federal constitutional law.

It is well settled that absent a sufficient nexus, a state cannot enact laws that assert control over property located exclusively in another state. This proposition was first recognized in the context of a state's jurisdiction over foreign property. Over a century ago, the United States Supreme Court held in the case of *Pennoyer v Neff,* 95 US 714 (1877)(overruled in part on other grounds) that *"no State can exercise direct jurisdiction and authority over persons or property without its territory. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions." Id.* at 722 (citations omitted). Consistent with these principles, this Court's decisions squarely recognize that ***"no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction."*** *Sexton v Ryder Truck Rental, Inc,* 413 Mich 406, 434 (1982).

In the context of mandatory vehicle registration, it is universally recognized that vehicle registration fees are legally considered to be a tax. Indeed, the Michigan Motor Vehicle Code expressly refers to these fees as a *"registration tax."* See MCL 257.801. Consistent with this characterization, the United States Supreme Court recognized in the case of *American Trucking Ass'ns v Scheiner*, 483 US 266, 282-283 (1987), that *"[t]he State's vehicle registration fee has its counterpart in every other State and the District of*

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Columbia. <u>It is a tax</u> . . . ." In keeping with this principle, IRS publications similarly instruct that mandatory motor vehicle registration is a form of a state-based tax. Specifically, IRS Publication 17 provides in pertinent part that *"[a] yearly tax based on value qualifies as a personal property tax* ***even if it is called a registration fee and is for the privilege of registering motor vehicles or using them on the highways."*** A copy of IRS Publication 17 is attached as ***Exhibit 16***).

When it is properly recognized that mandatory vehicle registration is legally considered to be a form of taxation, state and federal case law involving the limitations of a state's power to tax squarely recognize that a state does not have the power to tax property or activities outside its territorial boundaries absent a sufficient nexus to the property or activity. For example, in the case of *Frick v Pennsylvania,* 268 US 473 (1925), the United States Supreme Court recognized that:

> *" . . . the exaction by a State of a tax which it is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment. . . . [W]hile a State may so shape its tax laws as to reach every object which is under its jurisdiction it cannot give them any extraterritorial operation; and . . .* ***as respects tangible personal property having an actual situs in a particular State, the power to subject it to state taxation rests exclusively in that State, regardless of the domicile of the owner****." Id.*

Later decisions of United States Supreme Court depart from a strict application of these principles, and allow exterritorial taxation—but only in limited situations where there is a sufficient connection or nexus between the subject property or activity and the state seeking to tax the property or activity. In the case of *Miller Bros Co v Maryland*, 347 US 340, 344-345 (1954), the U.S. Supreme Court clarified that in order to properly tax property or activities outside of a state's territorial borders, there must be *"some definite link, some minimum connection between a state and the person, property or transaction*

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it seeks to tax" Id. at 344-345 (1954). **In the more recent case of *Allied-Signal, Inc v Director, Div of Taxation*, 504 US 768, 778 (1992), the Supreme Court further clarified, however, that the requisite connection or nexus must be *"to the activity itself, rather than a connection only to the actor the State seeks to tax."***

When these principles are applied here, there clearly is not a sufficient nexus between the Jankowski's possession and use of their Florida Lexus SUV and the underlying purposes of the Michigan vehicle registration provisions. The purpose of the vehicle registration tax levied by the State of Michigan is to collect revenue for the Michigan Transportation Fund (MTF). In this regard, MCL 257.810 of the Motor vehicle code provides that *"[e]xcept as otherwise provided, all fees received and money collected under sections 801 to 810 shall be deposited in the state treasury and shall be credited to the Michigan transportation fund."* In turn, the money put into the MTF is used to support the Motor Fuel Tax Act, the Motor Carrier Act, and the regulatory functions described in sections 801 to 810 of the Michigan Motor vehicle code (which deal with titling, licensing, registration, etc.). See MCL 247.660. In short, the MTF funds the regulation of fuel, promotes safety and supervision of highways (including road maintenance), and provides money to the Secretary of State to help with licensing, titling, etc. See *Id.*

Neither the possession nor the use of the Jankowski's Florida Lexus SUV bears any rational relationship to these stated purposes. Given the fact that the Jankowskis never drove the Lexus in Michigan, they had no need to purchase fuel for the Lexus in Michigan. Accordingly, they did not benefit from the fuel regulation funded by the Motor Fuel Tax Act. Similarly, because they never drove the Lexus in Michigan, they also did not derive any benefit from the funding of the Motor Carrier Act (*i.e.*, by only driving their

Lexus in Florida, they did not benefit from increased highway safety and supervision on Michigan roadways.) Finally, because the Jankowski Lexus was titled, registered, and insured outside Michigan, it derived no benefit from the regulations in §§ 801-810.

Thus, neither the possession nor the use of the Jankowski Lexus SUV in the state of Florida has any connection to the state of Michigan. The vehicle's only connection to the state is the fact that it was leased by Michigan residents. However, as the U.S. Supreme Court's decision in ***Allied-Signal, Inc*** makes clear, that is not a sufficient connection to warrant the imposition of a vehicle registration tax. **The requisite nexus must be *"to the activity itself, rather than a connection only to the actor the State seeks to tax." Allied-Signal, Inc, supra* at 778.**

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II. Because the Jankowski Florida Lexus SUV is not required to be registered in Michigan, the Jankowskis are not disqualified from receiving PIP benefits under MCL 500.3113(b) of the No-Fault Act.

A review of the disqualification provisions in MCL 500.3113(b) of the No-Fault Act relied on by HOIC confirms that these provisions do not apply to the Jankowskis in the case at bar due to the fact that their Florida Lexus SUV was not required to be registered in Michigan. Specifically, § 3113(b) provides:

> *A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed: . . .*
>
> *(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 . . .was not in effect.*

Accordingly under this provision, the owner of a motor vehicle is only disqualified from receiving PIP benefits if the person is an owner of an involved vehicle that is not properly insured with the *"security required by section 3101."* Under the express terms of § 3101, the security required by this section only applies to motor vehicles that are required to be registered in Michigan. Specifically, § 3101 provides in relevant part:

> *Sec. 3101. (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. . . .*

Thus, because the Jankowski's Florida Lexus SUV was not required to be registered in Michigan, it was not required to have in place the security required by § 3101 of the No-Fault Act. Because the Jankowski Florida Lexus SUV was not required to have in place the security required by § 3101, the Jankowskis cannot be disqualified from receiving PIP by the disqualification provisions in MCL 500.3113(b)(*i.e.*, because those provisions only apply to owners of involved vehicles that fail to have in place the security

required by § 3101 of the No-Fault Act).

It is anticipated that HOIC will argue that this result is contrary to the intent of the No-Fault Act due to the fact that the Jankowski's claim is being asserted under the policy of no-fault insurance issued for their Michigan vehicles. However, any contention in that regard is incorrect. Decades of auto no-fault precedent uniformly holds that the right to receive no-fault PIP benefits is personal in nature, and that entitlement to PIP benefits is not per se contingent upon the person occupying a vehicle that is insured with PIP. In the case of *Lee v DAIIE,* 412 Mich 505 (1982), the Michigan Supreme Court clarified that:

> *". . . the Legislature, in its broader purpose, intended to provide benefits whenever, as a general proposition, an insured is injured in a motor vehicle accident, whether or not a registered or covered motor vehicle is involved; and in its narrower purpose intended that an injured person's personal insurer stand primarily liable for such benefits whether or not its policy covers the motor vehicle involved . . . ." Lee, supra* at 515.

Again, in the case of *Turner v Auto Club Ins*, 448 Mich 22, 44 (1995), the Supreme Court again reiterated that:

> *With regard to PIPs, the duty to provide coverage for the insured generally is not linked to the involvement of the insured's vehicle in the accident. As indicated, the insurer that is primarily liable for PIPs is the insurer of the injured person. The primary insurer's duty to provide PIPs is triggered when the insured is injured, and the injury arises out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. An insurer is primarily liable even though the insured does not own, operate, maintain, or use a vehicle involved in the accident -- all that is required is that the insured suffer an injury in an accident involving a motor vehicle.*

Even more recently, this Court reiterated in *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 255 (2012) that *"a no-fault insurance carrier can be responsible for PIP benefits even if the motor vehicle it insures was not the actual motor vehicle involved in the accident."* This Court further recognized in Corwin that ***"PIP coverage protects the person, not the motor vehicle."*** *Id.* at 255 (quoting *Amerisure Ins Co v Auto-Owners*

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Ins Co, 262 Mich App 10, 17 (2004)).

Finally, it is anticipated that HOIC will further argue that the absence of Michigan auto no-fault insurance on the Jankowski Florida Lexus SUV bars coverage under the language of the HOIC no-fault policy. However, any contention in that regard also fails. It is well-established that *"[a]n insurer who elects to provide automobile insurance is liable to pay no-fault benefits subject to the provisions of the [no-fault] act." Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 530 (2007). This Court has further clarified that *"[a] compulsory insurance statute in effect declares a minimum standard which must be observed, and a policy cannot be written with a more restrictive coverage. The statute is manifestly superior to and controls the policy, and its provisions supersede any conflicting provisions of the policy." Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 531 n 10 (1993). See also, *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588 (2002) (holding that the inclusion of an examination under oath provision may be included in a Michigan automobile no-fault insurance policy, but is only enforceable to the extent that it does not conflict with statutory requirements of the No-Fault Act).

Here, as stated above, the Jankowskis are entitled to no-fault benefits for their Florida accident because they satisfy the out-of-state entitlement provisions in MCL 500.3111 of the No-Fault Act, and there is no basis for otherwise disqualifying under the No-Fault Act's disqualification provisions. Any attempt to otherwise disqualify the Jankowskis from receiving PIP benefits pursuant to exclusionary language contained in the HOIC no-fault policy would impermissibly disqualify them in a manner that is more restrictive than the No-Fault Act and must be rejected pursuant to the dictates of this Court's decisions in *Rohlman* and *Cruz, supra.*

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CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for the reasons as more fully discussed in this Application, Defendant-Appellees/Cross-Appellants Richard and Janet Jankowski respectfully request a peremptory order declaring that their Florida Lexus was not required to be registered in Michigan at the time of their Florida accident because it was never driven in or taken to the state of Michigan, and declaring that they are therefore not disqualified from receiving PIP benefits by § 3113(b) of the No-Fault Act. Alternatively, the Jankowskis request that this Court otherwise grant this Application for Leave and conduct further review of the Court of Appeals May 11, 2017 decision.

Respectfully submitted:

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Dated: August 3, 2017

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