STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Court of Appeals
Gadola, P.J., Jansen and Saad, JJ.

HOME-OWNERS INSURANCE COMPANY and AUTO-OWNERS INSURANCE COMPANY,

Plaintiffs-Appellees,

v

RICHARD JANKOWSKI and JANET JANKOWSKI,

Defendants-Appellants.

Supreme Court No. 156240

Court of Appeals No. 331934

15-0025-CK
Honorable William E. Collette

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APPELLANTS RICHARD AND JANET JANKOWSKIS' SUPPLEMENTAL BRIEF

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QUESTION PRESENTED

Were Appellants Richard and Janet Jankowski required to register, in Michigan, their Florida Lexus SUV in order to be eligible to receive personal protection insurance (PIP) benefits pursuant to MCL 500.3111 of the Michigan Auto No-Fault Act, when that vehicle was undisputedly leased, registered, and insured in the State of Florida and was never operated in Michigan?

Appellants Richard and Janet Jankowski answer, ***"NO."***

Appellees Auto Owners Insurance and Home Owners Insurance, will answer *"Yes"*

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

INTRODUCTION & SUMMARY OF ARGUMENT

Home-Owners Insurance Company and Auto-Owners Insurance Company brought this auto no-fault declaratory action against Defendants Richard and Janet Jankowski seeking a legal ruling that they are disqualified from receiving no-fault PIP benefits under MCL 500.3113(b) of the Michigan Auto No-Fault Act for accident-related injuries that they suffered in a Florida accident while occupying a Lexus SUV that they owned and used exclusively in the state of Florida. In its Order dated May 25, 2018, this Court directed the parties to file supplemental briefing on the issue of *"whether, to be eligible to receive personal protection insurance (PIP) benefits, they were required to register, in Michigan, the vehicle involved in the accident, and were thus obligated to maintain security for the payment of PIP benefits pursuant to MCL 500.3101 or be precluded from receiving such benefits by MCL 500.3113(b)."* As will be fully confirmed by this brief, the answer to this question is unquestionably, *"no."*

In sum, the Jankowskis are your typical *"snow birds."* They maintain a Michigan residency, but they also own a second home in the state of Florida. The involved vehicle referenced in the Court's Order was a Lexus SUV that the Jankowskis leased in the state of Florida for their exclusive use in Florida while at their second home. There is no factual dispute in this case that the Jankowski Florida Lexus was: (1) purchased by way of a lease from a Florida dealership; (2) lawfully registered and insured in the state of Florida in accordance with all applicable Florida laws; (3) used only by the Jankowskis in the state of Florida; and (4) was never operated in Michigan, or even garaged in Michigan.

As will be fully established in **Section I** of this brief, under these undisputed circumstances, Richard and Janet Jankowski cannot be disqualified from receiving no-

fault benefits under MCL 500.3113(b) for failing to have Michigan PIP insurance in effect for their Florida Lexus. Because their Florida vehicle was never driven in Michigan, it was not required to be registered in Michigan under the relevant provisions of the Michigan Vehicle Code, Act 300 of 1949. Because it was not required to be registered in Michigan, it was not required by MCL 500.3101 to be insured with Michigan PIP insurance. Because it was not required to be insured with Michigan PIP insurance, the Jankowskis cannot be disqualified by § 3113(b) for not having that insurance—as the disqualification provisions of § 3113(b) only apply if the involved vehicle is *"required to be register in this state."* There is no dispute in this case, and the Court of Appeals correctly recognized, that if the Jankowskis are not disqualified by § 3113(b), they are eligible to recover no-fault PIP benefits under their Michigan auto policy pursuant to the out-of-state entitlement provisions of MCL 500.3111.

In arguing to the contrary throughout this litigation, the Appellee Insurers in this case contend, erroneously, that the motor vehicle registration requirements in the Michigan Vehicle Code apply without limitation to any vehicle owned by a Michigan resident that is driven on a public road—anywhere in the United States, or abroad. ***In taking this position, the Appellee Insurers in this case admittedly ignore express language in the Title to the Motor Vehicle Code that specifically limits the scope of its provisions to govern only vehicles "operated on the roads of this state."*** It has been well established for over 150 years that the scope of an act of legislation cannot exceed the object and purpose of the act stated in the legislative title of that act. Any provision of an act that exceeds the *"object"* expressed in the title to the act is invalid under the *"Title Object"* clause of the Michigan Constitution, which is presently stated in

Const 1963, art 4, § 24. When all of this is properly recognized, the legislative Title of the Michigan Vehicle Code is not only relevant to determining the scope of its provisions, it is legally controlling—as a matter of Michigan constitutional law. The factual and legal basis for this conclusion is in **Section I-C** of this brief.

In the same regard, interpreting the Michigan Vehicle Code to broadly require Michigan registration for vehicles that have absolutely no connection to the state of Michigan (*i.e.,* like the Jankowski Florida Lexus) would directly violate the United States Federal Constitution. It is universally understood that a motor vehicle registration requirement is considered to be a form of taxation. It is a fundamental principle of federal constitutional law that a state does not have the power or authority to tax personal properly located outside of its territorial borders absent a sufficient connection between the out-of-state property and the state seeking to impose the tax. Requiring Michigan registration for the Jankowski Florida Lexus would clearly violate this longstanding federal constitutional principle. The factual and legal basis for this conclusion in **Section I-D** of this brief.

Ultimately, as will be fully discussed in **Section II** of this brief, one of the fundamental purposes of the out-of-state entitlement provisions in § 3111 is to provide Michigan residents who are named insureds under a Michigan Auto No-Fault PIP policy with the protection of the no-fault insurance system outside the state of Michigan—regardless of whether or not the named insured is injured while occupying a vehicle that is insured with PIP. If the Jankowskis are disqualified from receiving no-fault PIP benefits on the basis that their Florida Lexus was not insured with Michigan auto no-fault insurance, it would destroy any ability to effectuate this purpose and would essentially nullify the out-

of-state entitlement provisions of § 3111 for owners of out-of-state vehicles that are not required to be registered or insured in Michigan.

Also, as will be discussed in **Section III** of this brief, a holding by this Court that the Jankowski Florida Lexus was not required to be registered in Michigan and insured with no-fault PIP insurance will not prejudice the insurance industry or force it to insure against a risk of loss that it has not contractually agreed to insure against. The language of § 3111 is clear that a named insured is entitled to recover no-fault benefits for an out of state accident regardless of whether the vehicle they are occupying is insured with PIP or not. Any unwanted financial exposure resulting from this entitlement can be cured by simply obtaining pertinent information from an insured regarding whether the insured owns any out of state vehicles, and adjust the premiums of those who do.

Finally, as will be discussed in **Section V** of this Brief, what the Appellee Insurers in this case are essentially asking this Court to do is interpret the motor vehicle registration requirements of the Michigan Vehicle Code so broadly that they will apply to any vehicle owned by a Michigan resident that is driven on any public road anywhere outside of Michigan. This broad interpretation would not only encompass motor vehicles located and driven exclusively in other states, it would conceivably encompass any vehicle owned and driven on public roads in foreign countries abroad—anywhere around the globe. Such a broad interpretation is patently absurd. Moreover, in addition to being absurd, such a broad interpretation of the motor vehicle registration requirements would, in many cases, be impossible to even comply with. Indeed, the Jankowskis specifically attempted to insure his Florida vehicle with Michigan auto no-fault insurance. However, the Appellee

Insurers in this case refused to insure the vehicle. (See J. Jankowski Dep Tr, p 14: lines 5 to 15) Appellants' ***Appendix B***, p 42a).

For these reasons as more fully discussed in this brief, the Court of Appeals decision issued below should be REVERSED and VACATED in its entirety. Moreover, in doing so, this Court should also take this opportunity to overrule the published Court of Appeals decision of *Wilson v League General Ins Co,* 195 Mich App 705; 491 NW2d 642 (1992). Despite the overwhelming clarity in the law that the Title of an Act of Legislation is controlling of its scope, the Court of Appeals held in *Wilson* that an out-of-state vehicle that was never operated in Michigan was nevertheless subject to the registration requirements of the Michigan Vehicle Code. In reaching this holding, the Court of Appeals similarly failed to consider the limiting language of the Title to the Michigan Vehicle Code, which clearly states otherwise. Given the fact that the *Wilson* case is a published Michigan decision, its flawed interpretation of the Michigan Vehicle Code is now binding on all Michigan residents. By nullifying the *Wilson* case, this Court would protect Michigan residents from that flawed interpretation, and it would provide formal clarification, without any ambiguity, that the provisions of the Michigan Vehicle Code do NOT apply to out-of-state vehicles—like the Jankowski Florida Lexus—that are never operated in Michigan.

STATEMENT OF FACTS

A. Background Information

The Jankowskis are Michigan residents who also own a vacation home in Bonita Springs, Florida. (Deposition of Richard Jankowski, p 5 and 11)(Appellants' ***Appendix A***, pp 3a-5a); (Deposition of Janet Jankowski, pp 6-7)(Appellants' ***Appendix B***, p 40a). 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. See Florida Traffic Crash Report, dated May 25, 2014. (Appellants' ***Appendix J***, pp 175a-177a).

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.***

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 confirming the Jankowskis' lease of their Florida Lexus)(Appellants' ***Appendix H***, p 82a).

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 J. Jankowski Dep Tr, p 14: lines 5 to 15) Appellants' ***Appendix B***, p 42a). The Jankowskis therefore obtained a Florida insurance policy for the vehicle in accordance with Florida state law. The Jankowskis' Florida policy was issued by Allstate Insurance Company. (See Florida Allstate Insurance policy)(Appellants' ***Appendix I***, pp 83a-174a). 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 Florida 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 Jankowskis' 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 Appellee Home Owners Insurance (HOIC). 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 Jankowskis' claim after taking the position that the leased Florida vehicle was required to be registered in Michigan under the Michigan 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 Jankowskis' 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 benefits under the out-of-state entitlement provisions in § 3111 of the No-Fault Act.

D. Proceedings Below

After denying the Jankowskis' 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 Jankowskis' 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 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.[1]

[1] See Trial Court Opinion and Order, dated January 4, 2016 (Appellants' ***Appendix C***, pp 65a-69a); Trial Court Opinion and Order, dated January 29, 2016 (Appellants' ***Appendix D***, pp 70a-72a); and Trial Court Opinion and Order, dated March 1, 2016 (Appellants' ***Appendix E***, pp 73a-75a)

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 Florida Lexus SUV was not insured with Michigan auto no-fault insurance. A copy of the Court of Appeals decision dated May 11, 2017 (Appellants' Appendix, pp 76a-80a).

The Jankowskis subsequently applied for leave to appeal in this Court requesting further review of the lower courts' decisions on the basis that the question of whether the Jankowski Florida Lexus was required to be registered in Michigan was jurisprudentially significant well beyond the specific facts of this case. Then, in an order dated May 25, 2018, this Court directed the Clerk to schedule oral argument on whether the Jankowskis' Application should be granted, or whether other action should be taken. In so ordering, the Court directed the parties to file further supplemental briefing on the motor vehicle registration question. In this regard, the Court's May 25, 2018 Order provides in relevant part:

> *The appellants shall file a supplemental brief within 42 days of the date of this order addressing whether, to be eligible to receive personal*

> *protection insurance (PIP) benefits, they were required to register, in Michigan, the vehicle involved in the accident, and were thus obligated to maintain security for the payment of PIP benefits pursuant to MCL 500.3101 or be precluded from receiving such benefits by MCL 500.3113(b).*
>
> (Supreme Court Order dated May 25, 2018)(Appellants' ***Appendix G***, p 81a).

This brief is being filed in accordance with this Order on behalf of the Jankowskis.

STANDARD OF REVIEW

Resolving this appeal requires interpreting the vehicle registration requirements in the Michigan Vehicle Code and requires applying the disqualification provisions in MCL 500.3113(b) of the Michigan Auto No-Fault Act . Questions of statutory construction and matters of statutory application are reviewed de novo. *Romain v Frankenmuth Mut Ins Co*, 483 Mich 18, 25; 762 NW2d 911 (2009). See also *DaimlerChrysler Corp v State Tax Comm'n,* 482 Mich 220; 753 NW2d 605 (2008).

LAW AND ARGUMENT

I. Richard and Janet Jankowski cannot be disqualified from receiving no-fault benefits under MCL 500.3113(b) for failing to have Michigan PIP insurance in effect for their Florida Lexus because that vehicle was NOT required to be registered in Michigan, and therefore, was NOT required by MCL 500.3101 to be insured with Michigan PIP insurance.

A. The disqualification provisions of MCL 500.3113(b) only apply if the involved vehicle is required by § 3101 to be insured with Michigan PIP insurance.

Disqualification from the right to receive Michigan auto no-fault benefits is governed by MCL 500.3113 of the no-fault act. The Jankowskis were found to be disqualified under the specific provisions of § 3113(b) for failing to have no-fault insurance in effect for their Florida Vehicle. This provision 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 or 3103 was not in effect.*

Here, the Jankowskis do not dispute that their Florida Lexus SUV is an owned motor vehicle, and there is no dispute that their Florida Lexus was not insured Michigan PIP insurance. Rather, it was fully insured with all required Florida insurances. Under the clear language of § 3113(b), however, these facts alone are not dispositive of whether the Jankowskis are disqualified from receiving PIP benefits. Given the language of § 3113(b), whether or not that is the case ultimately turns on whether their Florida Lexus was actually *"required"* by § 3101 to have Michigan PIP insurance in effect.[2]

[2] The security required under § 3103 applies only to motorcycles and is therefore irrelevant to the analysis in the case at bar.

B. Michigan PIP insurance is only required by § 3101 for vehicles that are required to be registered in Michigan.

The compulsory insurance that must be in effect for a motor vehicles is set forth in § 3101(1) of the no-fault act. This section of the act is limited on its face and only requires that Michigan PIP insurance be in effect for vehicles that are required to be registered in Michigan. Specifically, § 3101(1) provides in relevant part:

> *(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, under the clear language of this section, Michigan PIP insurance was only required to be in effect for the Jankowski Florida Lexus if that vehicle was *"required to be registered in this state."* As will be fully established in the next section of this brief, the answer to this question is clearly *"no"*—because it was never driven in Michigan.

C. The Jankowski Florida Lexus was not required by the Michigan Vehicle Code to be registered in Michigan because it was never driven or operated in Michigan.

1. The Legislative Title to the Michigan Vehicle Code, Act 300 of 1949, expressly limits the scope of its provisions to govern only vehicles ***"operated upon the public highways of this state."***

Vehicle registration in Michigan is governed by the Michigan Vehicle Code, MCL 257.1 *et seq*, Act 300 of 1949 (as amended). The Legislative Title to this Act contains an express limitation clarifying that its vehicle registration provisions only apply to vehicles operated in this State. Specifically, the Title to the Motor Vehicle Code states in relevant part that the object of that legislation is:

> *. . . 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 . . .

The vehicle registration requirements imposed by the MVC are set forth in MCL 257.216, which provides in relevant part:

> *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 . . .*

When the vehicle registration requirements of § 216 are read together with the limiting language of the preamble, there can be no question that the vehicle registration requirements in § 216 were only intended by the Legislature to apply to vehicles that are actually driven or moved on a Michigan street or highway.

Indeed, HOIC does not even dispute that the preamble says what it says, and HOIC does not disagree that if the limiting language of the preamble is factored in to the analysis, the vehicle registration requirements in § 216 would only apply to vehicles driven in Michigan***. HOIC has therefore asked this Court to simply ignore the preamble altogether.*** (See generally HOIC's Answer to the Jankowskis' Application for Leave)(arguing that the absence of any limiting language in the text of § 216 must be construed more broadly than the title to the Motor Vehicle Code to require Michigan vehicle registration for any vehicle driven on any public road anywhere if it is owned by a Michigan resident). Interpreting the title and registration provisions of § 216 to apply more broadly than the limited scope stated in the Title of the Motor Vehicle Code, however, would clearly be improper.

2. Under the *"Title Object"* clause in Const 1963, art 4, § 24 of the Michigan Constitution, the limiting language in the Title to the Motor Vehicle Code is controlling of its scope.

For over 150 years, this Court has universally recognized that under the "*Title*

Object" clause of the Michigan Constitution,[3] the provisions of an act of legislation cannot exceed the scope and *"object"* of the Act that is stated in the title to the act. This clause presently appears in Const 1963, art 4, § 24 of the Michigan Constitution as follows:

> ***No law shall embrace more than one object, which shall be expressed in its title.***

This clause first appeared in the Michigan Constitution of 1850 in Article 4, § 20,[4] and again in Article 5, § 21 of the 1908 Michigan Constitution.[5] In the case of *Esling v City National Bank & Trust Co*, 278 Mich 571, 270 NW 791 (1936), members of this Court observed that as a result, this provision *"has been frequently construed." Id.* at 587 (potter, J. concurring), citing *People v Collins*, 3 Mich 343 (1854); *People ex rel Drake v Mahaney*, 13 Mich 481 (1865); *Kurtz v People*, 33 Mich 279 (1876); *Hume v Village of Fruitport*, 242 Mich 698 (1928).

Notably, this Court recognized in the case of *Northwestern Mfg Co v Chambers*, 58 Mich 381, 384; 25 NW 372 (1885) that ***"[t]he purpose of [a] statute, so far as it is lawful, must be determined by its title, and it is not competent to use one title and explain in the body of the act that it means something else. The constitutional rule***

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[3] This Clause presently appears in Cost 1963 Art 4, § 24.

[4] "Sec. 20. **No law shall embrace more than one object, which shall be expressed in its title.** No public act shall take effect or be in force until the expiration of ninety days from the end of the session at which the same is passed, unless the legislature shall otherwise direct, by a two-thirds vote of the members elected to each house."

[5] Sec. 21. **No law shall embrace more than 1 object, which shall be expressed in its title.** No law shall be revised, altered, or amended by reference to its title only; but the act revised and the section or sections of the act altered or amended shall be reenacted and published at length. No act shall take effect or be in force until the expiration of 90 days from the end of the session at which the same is passed, except that the legislature may give immediate effect to acts making appropriations and acts immediately necessary for the preservation of the public peace, health or safety by a 2/3 vote of the members elected to each house.

requiring the title to contain the object of the act would be a farce if there were any power in the Legislature to give new meanings to language." Later that same year, this Court reiterated in the case of *Bissell v Durfee*, 58 Mich 237, 239; 24 NW 886 (1885), that ***"[t]he constitutional requirement confining the operation of laws by their titles should be honestly carried out,"*** and to do otherwise ***"would be a great perversion."***

Consistent with these decisions, other decisions issued by this Court dealing with the *"Title Object"* clause admonish that where ***"[t]he terms of the act are very general, . . . the title would restrict it."*** *Booth v Eddy*, 38 Mich 245, 246 (1878). In the case of *Wardle v Cummings,* 86 Mich 395, 401; 49 NW 212 (1981), this Court recognized that ***"[t]he Constitution requires that titles shall be truthful indexes to legislation."*** Later, in the case of *McKellar v Detroit*, 57 Mich 158, 159; 23 NW 621 (1931), this Court re-affirmed, ***"Under our Constitution the title of an act is significant, and usually controlling in determining its scope. . . . The body of the statute must reasonably harmonize with it. . . ."*** In the case of *Bates v Nelson,* 49 Mich 459; 13 NW 817 (1882) this Court rejected a circuit court's interpretation of a statute because it was ***"repugnant"*** to the title of that statute. In doing so, this Court reiterated, ***"The operation of the statute should be restricted to the object expressed in the title."***

Many years later in the case of *Bankhead v Mayor of River Rouge* 35 Mich App 7, 14-15; 192 NW2d 289 (1971), the Court of Appeals recognized that the Michigan Constitution's *"Title Object"* clause has been essential to ensuring fair notice of the law. Citing a multitude of decisions decided by this Court over many decades, the *Bankhead* court observed that ***"It is axiomatic that the body of an act must be reasonably harmonious with its title. The purpose of the constitutional requirement is to make***

certain that the title of a legislative act must give notice to legislators, and others interested, of the object of the law, thereby assuring them that only matters germane to the object expressed in the title will be enacted into law." *Id.* at 14-15, citing *Continental Motors Corporation v Township of Muskegon*, 376 Mich 170, 179 (1965); *Leininger v Secretary of State*, 316 Mich 644; 26 NW2d 348 (1947); *Regents of University of Michigan v Pray*, 264 Mich 693; 251 NW 348 (1933); *People v Carroll*, 274 Mich 451; 264 NW 861 (1936); *People v Wohlford*, 226 Mich 166; 197 NW 558 (1924).

In *Bankhead, supra,* the Court of Appeals recognized that *"[t]he constitutional test to be applied"* when determining whether a purported law will pass muster under the *"Title Object"* clause of the Michigan Constitution was stated by this Court in the case of *Vernor v Secretary of State,* 179 Mich 157, 160; 146 NW 338 (1914), where this Court made it clear:

> *. . . a title must embrace the object of the act, and the body of the act must not be inconsistent with the title. The pertinent questions should be: Does the title of the act fairly indicate the purpose of the legislation? Is the title a fair index of the act? Does the title of the act fairly inform the legislators and the public of its purposes, as a whole?*

More recently, in the case of *Pohutski v City of Allen Park*, 465 Mich 675, 691; 641 NW2d 219 (2002), this Court expressed the same view and reiterated:

> *This constitutional provision requires that (1) a law must not embrace more than one object, and (2) the object of the law must be expressed in its title. This constitutional limitation ensures that legislators and the public receive proper notice of legislative content and prevents deceit and subterfuge. . . .*
>
> *Id.* at 691, citing *Livonia v Dep't of Social Services,* 423 Mich 466, 496; 378 NW2d 402 (1985), *Advisory Opinion re Constitutionality of 1972 PA 294,* 389 Mich 441, 464; 208 NW2d 469 (1973).

Applying these principles here, interpreting the Motor Vehicle Code beyond the limited scope expressed in its preamble clearly does NOT pass constitutional muster. ***As***

was previously discussed and quoted above, the Title to the Motor Vehicle Code specifically articulates, in no uncertain terms, that it is intended to only regulate the titling and registration of vehicles driven on the public roads "of this state." Thus, none of the provisions in the Code (including the registration requirements in § 216) can be interpreted to apply more broadly than that. To hold otherwise would render the provisions unconstitutional on grounds of excessiveness.

The fact that the specific language of the registration provisions in MCL 257.216 does not contain a similar limitation is of no significance. No such limiting language is needed in that statute to discern its scope given the blanket limitation on scope that is already contained in the Title to that Act of Legislation. ***Because the "object" of the Vehicle Code is already limited by the express language in its Title, any additional language to that effect contained in the specific provisions of the Act governing vehicle registration would be a needless redundancy.***

Thus, unless we are going to disregard the express command of the Michigan Constitution—and unless we are going to disregard over a century of Michigan Supreme Court precedent—the limiting language in the preamble of the motor vehicle code is controlling as to the scope of the vehicle registration provisions contained in MCL 257.216. Accordingly, because the *"object"* of the Motor Vehicle Code, as expressed in its preamble, is to govern vehicles driven or moved on the public highways *"of this state,"* the vehicle registration requirements in § 216 can only be construed to govern vehicles driven in this state.

Indeed, that is exactly how the Michigan Secretary of State has interpreted the registration requirements of MCL 257.216, and that is exactly what the Secretary of State

advises the public. Specifically, the Michigan Secretary of State's website currently advises:

> *All motor vehicles and trailers **used on Michigan roads** must be registered and display valid license plates.*[6]

When all of the foregoing is correctly recognized and applied in the case at bar, the Jankowski Florida Lexus was clearly NOT required to be registered in Michigan—because it was undisputedly never driven or otherwise *"operated"* in Michigan. Thus, because the Jankowski Florida Lexus was not required to be registered in Michigan, it was not required by § 3101 of the Auto No-Fault Act to be insured with Michigan Auto no-fault insurance. Because it was not required by § 3101 to be insured in Michigan, the Jankowskis cannot be disqualified by § 3113(b) for not having no-fault insurance in effect for the vehicle—as the insurance requirements of § 3101 only apply to vehicles that are required to be registered in Michigan.

D. Interpreting the Michigan Vehicle Code to require Michigan vehicle registration for the Jankowski Florida Lexus also violates the Federal Constitution of the United States.

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; 24 L Ed 565 (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*

[6] See https://www.michigan.gov/sos/0,4670,7-127-1585_1587---,00.html, last visited 7/29/2018.

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; 320 NW2d 843 (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 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, 282-83; 107 S Ct 2829; 97 L Ed 2d 226 (1987), that *"[t]he State's vehicle registration fee has its counterpart in every other State and the District of 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)(Appellants' Appendix 178a-180a).

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; 45 S Ct 603; 69 L Ed 1058 (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 the United States Supreme Court depart from a strict application of these principles, and allow extraterritorial 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, 344-45; 74 S Ct 535; 98 L Ed 744 (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 it seeks to tax" Id.* at 344-45 (1954). **In the more recent case of *Allied-Signal, Inc v Director, Div of Taxation*, 504 US 768, 778; 112 S Ct 2251; 119 L Ed 2d 533 (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 Jankowskis' 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 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 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 leased, 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.**

II. Requiring Michigan PIP insurance for the Jankowski Florida Lexus would frustrate one of the fundamental purposes of § 3111—which is to provide Michigan residents who are named insureds under a Michigan Auto No-Fault PIP policy with the protections of the no-fault insurance system outside the state of Michigan, even when a named insured is occupying an out-of-state vehicle.

It is crystal clear upon a faithful reading of the plain language of the out-of-state entitlement provisions in MCL 500.3111 that one of the fundamental purposes of that statutory provision is to provide persons who are named insureds under Michigan PIP policies with no-fault insurance protection outside of Michigan—regardless of whether the vehicle the person is occupying while out of state is insured with Michigan PIP insurance. Specifically, § 3111 of the No-Fault Act provides:

> *Sec. 3111.*
>
> *Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant of a vehicle involved in the accident whose owner or registrant was insured under a personal protection insurance policy or has provided security approved by the secretary of state under subsection (4) of section 3101.*

As the quoted statutory language above makes clear, PIP benefits are ultimately payable for out-of-state accidents in two alternative scenarios: (1) where the out-of-state accident victim is a named insured under a Michigan no-fault PIP policy; or (2) where a person who is not a named insured is otherwise occupying a vehicle insured with Michigan auto no-fault PIP insurance. Thus, a person's status as a named insured is all that must be established in order for that person to be entitled to no-fault PIP benefits for an out-of-state accident. ***It is only when a person is not a named insured that the***

insurance status of the involved vehicle becomes relevant.

Thus, requiring the owners of an out-of-state vehicle that is not required to be registered in Michigan to insure the vehicle with Michigan PIP insurance effectively swallows up a named insured's right to PIP benefits for an out-of-state accident simply because he or she has elected to own an out-of-state vehicle for exclusive use outside the state of Michigan. Moreover, interpreting § 3111 to require no-fault PIP insurance for owned vehicles would require judicially inserting a limitation that is clearly not expressed in the language of the statute. In other words, there is nothing in the language of § 3111 that imposes a requirement of Michigan PIP insurance for occupants of owned out-of-state vehicles. The language of § 3111 is clear that when a person is a named insured under a Michigan PIP policy, the PIP benefits owed under that policy for an out-of-state accident are personal in nature and not tied to the involved out-of-state vehicle.

III. The Michigan no-fault insurance industry will in no way be prejudiced by applying the provisions of § 3111 as written—for the simple reason that any financial exposure resulting from the obligation to pay PIP benefits to a Michigan "named insured" can be appropriately compensated for by adjusting policy premiums as needed on a case-by-case basis.

It is anticipated that the Appellee Insurers in this case will staunchly argue to this Court that they will be unfairly prejudiced by a recognition that the owner of an out-of-state vehicle can recover PIP benefits under § 3111 regardless of whether that vehicle is insured with Michigan PIP insurance, and that a ruling to that effect would force an insurer to insure against risk of loss that it did not contractually agree to. Any such argument in either regard, however, is without merit—for a multitude of reasons.

First, such a ruling will absolutely NOT force an insurer to insure against a risk that it did not contractually agree to insure against. It is well settled that an insurer cannot contractually avoid providing the compulsory coverages mandated by the auto no-fault act, regardless of what the insurer writes in its policy. See *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 530 (2007)(*"[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."*). See also *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 531 n 10 (1993)(*"[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."*); and *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).

As was previously discussed in Section II above, the entitlement to PIP benefits for an out of state accident is not contingent upon having Michigan PIP insurance in place for the involved vehicle if the person claiming benefits is already a named insured under a Michigan PIP policy, and the involved vehicle is not otherwise required to be registered in Michigan. Thus, all Michigan no-fault insurers already have a compulsory obligation to provide no-fault coverage to such individuals, including the Jankowskis

Ultimately, if the Appellee insurers in this case have come to the conclusion that payment of PIP benefits for accident-related injuries suffered by a named insured while occupying an owned out-of-state vehicle is causing them to suffer excess financial exposure, the proper solution for the insurer to implement is to re-analyze the risk of loss associated with paying those benefits and adjust policy premiums accordingly. Insurers have full and immediate access to virtually any information they would need to accurately do that. For example, an insurer could inquire in its application whether the insured owns a vehicle out-of-state. In the same regard, an insurer could inquire whether the insured owns any other type of real property outside of Michigan. For that matter, an insurer could ultimately require an applicant for insurance to disclose detailed information regarding the frequency of travel outside of Michigan that the insured engages in throughout the year. Knowledge of these types of facts would allow an insurance company to calculate to a reasonable degree of certainty the probability with which a named insured would become injured in an out of state auto accident and be entitled to receive no-fault PIP benefits under § 3111.

Accordingly, no-fault insurers will not be prejudiced in any way whatsoever by a ruling that a named insured is entitled to PIP benefits under § 3111 for auto-related

injuries suffered in an out-of-state accident while occupying an owned vehicle that is not insured with Michigan PIP insurance.

IV. The Courts of Appeals holding in *Wilson v League General Ins Co,* 195 Mich App 705; 491 NW2d 642 (1992) (requiring Michigan vehicle registration and insurance for a vehicle not operated in Michigan) is contrary to Michigan law and must be vacated.

In holding that the Jankowskis were disqualified from receiving no-fault PIP benefits, the Court of Appeals in this case relied heavily on the published Court of Appeals decision of *Wilson v League General Ins Co,* 195 Mich App 705; 491 NW2d 642 (1992). In *Wilson*, the Court of Appeals erroneously held that a vehicle that was not operated in the state of Michigan was nevertheless required to be registered in Michigan. In this regard, the Court of Appeals in *Wilson* concluded:

> *[MCL 257.216;] MSA 9.1916 does not specifically limit the requirements of § 3113(b) of the no-fault act only to cars driven on Michigan highways. Because the language of § 3113(b) is unambiguous, we will not read additional provisions into the language. Further, to so interpret the language would produce the absurd result that a person who is covered by a no-fault policy in this state could own and fail to insure several other vehicles in other states and still be permitted to recover under the one insurance policy for accidents occurring in the other states involving the vehicles for which security had not been obtained. Wilson, supra,* at 709.

For all of the reasons previously discussed in this brief, the registration requirements of the Michigan Vehicle Code only apply to vehicles operated in the state of Michigan. Accordingly, to the extent that the published decision of *Wilson* is inconsistent with that, it must be vacated.

V. Interpreting the vehicle registration provisions of the Michigan Vehicle Code to endlessly encompass any vehicle driven on any public road, anywhere, is patently absurd, and it would unfairly prejudice Michigan residents who own out-of-state vehicles operated exclusively outside of Michigan.

What the Appellee Insurers in this case are essentially asking this Court to do is interpret the motor vehicle registration requirements of the Michigan Vehicle Code so broadly that they will apply to any vehicle owned by a Michigan resident that is driven on any public road anywhere outside of Michigan. This broad interpretation would not only encompass motor vehicles located and driven exclusively in other states, it would conceivably encompass any vehicle owned and driven on public roads in foreign countries abroad—anywhere around the globe. Such a broad interpretation is patently absurd.

Moreover, in addition to being absurd, such a broad interpretation of the motor vehicle registration requirements would, in many cases, be impossible to even comply with. Indeed, it is important to remember in this case, for example, that Richard Jankowski attempted to insure his Florida vehicle with Michigan auto no-fault insurance. However, the Appellee Insurers in this case refused to insure the vehicle. (See J. Jankowski Dep Tr, p 14: lines 5 to 15)(Appellants' Appendix p 42a). Because he was unable to obtain the Michigan no-fault insurance for his Lexus SUV, there is no way that he would have even been able to register his vehicle in Michigan—as every vehicle registered in Michigan must be insured with Michigan auto no-fault insurance in order to be registered. Accordingly, such a broad interpretation would often be impossible to comply with.

Obviously, there is an inherent unfairness associated with this impossibility. This unfairness is then compounded exponentially when it is further considered that the failure

to properly comply with the Michigan motor vehicle requirements, and the Michigan auto no-fault insurance requirements, is a misdemeanor offense in Michigan. Accordingly, if the Appellee Insurers' interpretation of the Motor Vehicle Code is correct, it results in quite a conundrum for owners of out-of-state vehicles who reside in Michigan. Anyone wishing to purchase a vehicle for exclusive use in another state will effectively be forced to purchase that vehicle in Michigan, register it in Michigan, insure it with Michigan auto no-fault insurance, and then have the vehicle transported to wherever it will ultimately be used. Even then, it is not clear whether the no-fault PIP coverage could be maintained after the vehicle is taken out of the state of Michigan.

To this end, one would not have to resort to hyperbole to characterize the proposition of such an all-encompassing vehicle registration requirement as being a *"scary proposition."*

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for these reasons as more fully discussed above, Appellants Richard and Janet Jankowski respectfully respects that the Court of Appeals decision issued below be REVERSED and VACATED in its entirety, and that this Court issue an Opinion and Order declaring that Richard and Janet Jankowski are not disqualified from receiving no-fault benefits under MCL 500.3113(b) for failing to have Michigan PIP insurance in effect for their Florida Lexus because that vehicle was NOT required to be registered in Michigan, and therefore, was NOT required by MCL 500.3101 to be insured with Michigan PIP insurance.

FURTHER, in doing so, this Court should also take this opportunity to overrule the published Court of Appeals decision of *Wilson v League General Ins Co,* 195 Mich App 705; 491 NW2d 642 (1992). Despite the overwhelming clarity in the law that the Title of an Act of Legislation is controlling of its scope, the Court of Appeals held in *Wilson* that an out-of-state vehicle that was never operated in Michigan was nevertheless subject to the registration requirements of the Michigan Vehicle Code. In reaching this holding, the Court of Appeals similarly failed to consider the limiting language of the Title to the Michigan Vehicle Code, which clearly states otherwise. Given the fact that the *Wilson* case is a published Michigan decision, its flawed interpretation of the Michigan Vehicle Code is now binding on all Michigan residents. By nullifying the *Wilson* case, this Court would protect Michigan residents from that flawed interpretation, and it would provide formal clarification, without any ambiguity, that the provisions of the Michigan Vehicle Code do NOT apply to out-of-state vehicles—like the Jankowski Florida Lexus—that are never operated in Michigan.

Respectfully submitted:

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