STATE OF MICHIGAN
IN THE SUPREME COURT

HOME-OWNERS INSURANCE COMPANY,
And AUTO-OWNERS INSURANCE COMPANY,

Plaintiffs/~~Counter-Defendants/Appellants/Cross~~-Appellees,

Supreme Court No. 156240
Court of Appeals No. 331934
Ingham Circuit No. 15-25-CK

v

RICHARD JANKOWSKI, and
JANET JANKOWSKI,

Defendants/~~Counter-Plaintiffs/Appellees/Cross~~-Appellants.

PLAINTIFF/COUNTER-DEFENDANT/APPELLANT/CROSS-APPELLEE HOME-OWNERS INSURANCE COMPANY'S AND PLAINTIFF/COUNTER-DEFENDANT/CROSS-APPELLEE AUTO-OWNERS INSURANCE COMPANY'S SUPPLEMENTAL BRIEF

Respectfully submitted,

Willingham & Coté, P.C.
Attorneys for Plaintiffs/Counter-Defendants/Cross-Appellees

BY: Kimberlee A. Hillock (P65647)
David Nelson (P69471)
333 Albert Avenue, Suite 500
East Lansing, MI 48823
(517) 351-6200
Fax: (517) 351-1195

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ISSUE PRESENTED

I. Whether, to be eligible to receive personal protection insurance (PIP) benefits, Michigan residents are required to insure or register, in Michigan, the vehicle involved in the accident, and are 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)?

Plaintiffs/Appellees say: No.
Defendants/Appellants say: Yes.
Trial Court said: No
Court of Appeals said: Yes

INTRODUCTION

Michigan residents injured in owned vehicles uninsured for Michigan PIP may not collect Michigan PIP benefits. The Jankowskis, Michigan residents, were injured in Florida while driving a vehicle they owned, which was insured only by a Florida policy for cheaper Florida no-fault coverage with less medical benefits, and which was not insured for Michigan PIP coverage. Under *Wilson v League Gen Ins Co, infra,* owners of accident vehicles uninsured for Michigan PIP coverage, are not entitled to PIP benefits under MCL 500.3113(b). This is consistent with statute. Appellants are asking this Court to hold that they need not insure their owned vehicles in Florida with Michigan coverage, because they are not required by MCL 500.3101 to maintain Michigan coverage on their Florida registered vehicle, yet they are still entitled to Michigan PIP coverage when injured out-of-state in their Florida insured vehicle. The ultimate flaw in their position is that they are asking for the disqualification statute to be read narrowly to not apply to their Florida registered and insured vehicle so they can collect under non-accident vehicle policies in Michigan, when the logic of their position would actually rule out coverage because there would be an equally broad insuring obligation that was unfulfilled, leaving them excluded from Michigan PIP coverage.

MCL 500.3113(b) precludes recovery to the owner of an accident vehicle if the accident vehicle does not have the security required by MCL 500.3101(1). The security required by § 3101(1) has three components: (1) personal protection insurance (PIP), (2) property protection insurance (PPI), and (3) residual liability insurance. This statute triggers an owner's insuring obligation to maintain all three coverages if the owner has "*a* motor vehicle required to be registered in this state." It does not say the particular vehicle required to be registered in this

state. Thus, a Michigan resident with a second residence in another state,[1] who is required to register any vehicle in Michigan, is required to obtain Michigan coverages on all owned vehicles, even those in other states. Unless these coverages are in place on an owned vehicle, § 3113(b) applies, and benefits under PIP coverage are excluded.

There are narrower grounds to affirm the result without addressing whether the Motor Vehicle Code mandates Michigan registration by Michigan residents of vehicles acquired in other states. This policy on a non-accident vehicle that has been invoked for coverage, had an exclusion from PIP for an owned but uninsured vehicle. This Court has long enforced owned but uninsured vehicle exclusions, albeit as to another of the three components, liability insurance.[2] And, this Court has in the context of insurer reimbursement by the Michigan Catastrophic Claims Association, ruled that for out-of-state vehicles not insured per MCL 500.3101 and as to which no payment has been made for the Michigan Catastrophic Claims assessment, there is no reimbursement allowed because there is no coverage under MCL 500.3101.[3]

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[1] While decided in the context of children of divorced parents, the holding that a person can have only one domicile but two legal residences for no-fault act purposes, in *Grange Ins Co v Lawrence*, 494 Mich 475, 492-495; 835 NW2d 363 (2013), affects the interpretation of the entire act where Michigan residents have obligations to insure and rights to coverage, notwithstanding a second residence in another state.

[2] See, e.g., *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999).

[3] *United Services Auto Ass'n v Michigan Catastrophic Claims Assn (Mem)*, 489 Mich 869; 795 NW2d 594 (2011) (vacating Court of Appeals published opinion, but reinstating summary disposition for MCCA, disallowing recovery). *Cf In re Certified Question re Preferred Risk Mut Ins Co v Michigan Catastrophic Claims Assn*, 433 Mich 710, 725; 449 Mich 660 (1989):

> "In our view, the fact that the Legislature granted the CCA the authority to chare premiums only with respect to policies written in Michigan providing the security required by Section 3101(1) for the owners or registrants of vehicles required to be registered in the state, compels the conclusion that it intended to similarly limit the CCA's liability for indemnification under Section 3104(2). Put simply, we can think of no reason why the Legislature would want to provide such indemnification coverage to insurers, even member insurers who do a significant amount of business in this state, absolutely free of charge or, perhaps more appropriately, at no cost *to them.*" (Emphasis in original.)

The Court of Appeals has reached the same result, with alternative reasoning that registration of all owned vehicles is mandated by the Motor Vehicle Code, hence triggering an insuring obligation under MCL 500.3101 because MCL 500.3101(1) mandates that owners and registrants of motor vehicles required to be registered in Michigan must insure their vehicles for Michigan PIP. MCL 257.216 is broadly written to require Michigan registration of all vehicles driven on all roads unless excepted. Provisions in the Michigan Vehicle Code in turn except from Michigan registration only vehicles owned by nonresidents. The net effect under the Court of Appeals published precedent is that all Michigan residents must register all their vehicles in Michigan, and hence insure them to avoid the exclusion in MCL 500.3113(b). This is supported by the Motor Vehicle Code, which even has a provision allowing Michigan residents whose vehicles are registered in other states, to register their vehicles in Michigan but keep their plates and titles in other states so long as they register in Michigan.

The Jankowskis attack the registration requirement on various grounds as a way to get back to their inconsistent position that they were not required to register their Florida vehicle in Michigan and insure it with Michigan coverage, to avoid the disqualification of MCL 500.3113(b), yet may collect from the system. While their constitutional and other attacks are incorrect as briefed *infra,* the narrower grounds to affirm the result below are that owned but uninsured vehicle exclusions are valid since not prohibited by statute and further the legislative intent for owners to insure for no-fault coverage, and, that MCL 500.3101(1) imposes an insuring obligation for all owned vehicles if an owner has "a" and hence any vehicle required to be registered in this state, and so the statutory disqualification of MCL 500.3113(b) applies.

The Jankowskis' other main argument – that MCL 500.3111 should provide coverage for out-of-state accidents notwithstanding lack of Michigan PIP coverage on the accident vehicle is

also incorrect. It would require this Court to nullify MCL 500.3113(b), MCL 500.3101(1), and other no-fault provisions previously cited. The means of qualifying for benefits under § 3111 reflect the means of qualification under MCL 500.3114. To preclude application of § 3113(b) to § 3111 would therefore nullify § 3113(b).

The Jankowskis' argument – that there is no prejudice because MCL 500.3111 already requires insurers to cover out-of-state accidents is also incorrect, mainly because this Court has already in the MCCA context ruled out insurer reimbursement where out-of-state vehicles are not insured with Michigan coverages and so owners have not paid the per vehicle assessment required by MCL 500.3104(7)(d). Insurers would thus be per se prejudiced by having to pay PIP on vehicles not insured for PIP without MCCA reimbursement, even apart from the other farragoes of appellants.

The notion that the Jankowskis could not get Michigan coverage is not supported by a full record, but quite suspect because their Florida insurer, Allstate, also writes in Michigan, and, there is no record that they invoked the Essential Insurance Act remedy in MCL 500.2113(3) to go to the Insurance Commissioner over a denial of policy coverage. Regardless, it was their duty to read the policies and buy the coverages they wanted. The bottom line is that the Jankowskis purchased cheaper Florida insurance that has only $10,000 of medical coverage instead of Michigan unlimited coverage, with MCCA backup. They made a tradeoff: cheaper premiums for far less benefits. Their non-accident Michigan auto policy rightly excludes PIP for an owned but uninsured vehicle. They should not be permitted after-the-fact to claim Michigan's unlimited no-fault PIP benefits.

Leave to appeal should be denied.

COUNTER-STATEMENT OF FACTS

Richard Jankowski and his wife Janet Jankowski own one home in Michigan and another in Naples, Florida.[4] They consider Michigan to be their permanent domicile.[5] They own vehicles in both Florida and Michigan; the Michigan vehicles were insured for Michigan no-fault coverage through Home-Owners Insurance Company, while the Florida vehicles were insured for Florida coverage through a policy issued by Allstate.[6]

In November 2013, the Jankowskis drove their 2006 Lexus RX 350 from Michigan to Florida.[7] The RX 350 was insured for Michigan PIP by Home-Owners. In January 2014, while in Florida, the Jankowskis traded the RX 350 in for the vehicle ultimately involved in the accident, a 2014 Lexus GX460 (hereinafter "accident vehicle").[8] While at the Florida dealership, the Jankowskis contacted their Michigan Home-Owners Insurance agent and cancelled Michigan insurance on the 2006 Lexus RX 350.[9]

Mr. Jankowski deferred to his wife as to whether they sought Michigan coverage for the Florida vehicle. Although he believed that the Michigan agent was unable to sell insurance in Florida, he did not know why.

> Q. And that Allstate policy was the policy that was intended to cover that vehicle in Florida that you were driving, that Lexus that you purchased?
>
> A. Yes.
>
> Q. Okay. And at any time did you ask your agent here in Michigan to provide coverage for that vehicle that was in Florida?

[4] Deposition of Richard Jankowski, 7/29/15, p 5, appellant's appendix p. 31.
[5] Richard Dep, p 5, appellant's appendix p. 3a; Deposition of Janet Jankowski, 7/29/15, p 6, appellant's appendix p. 40a.
[6] Richard Dep, pp 7-10, appellant's appendix pp. 4a-5a.
[7] Richard Dep, pp 15-16. (Record correction, changing date from 2015 to 2014 for all questions, on pp 38-39), appellant's appendix p. 6a.
[8] Richard Dep, pp 13, 16, appellant's appendix pp. 5a-6a.
[9] Richard Dep, p 17, appellant's appendix p. 6a.

A. I'll defer to my wife on that, but I believe that he wasn't able to sell insurance in Florida.

Q. Why not? Did he give you a reason that you know of?

A. No.[10]

He acknowledged, however, that nobody told him he was purchasing Michigan no-fault coverage for the accident vehicle:

Q. Did the agent in Florida represent to you that you were purchasing Michigan No-Fault insurance to cover that vehicle in Florida?

A. I don't believe we had any conversation about that.[11]

According to Mrs. Jankowski, the Michigan agent told them he could not write a policy for a vehicle registered in Florida.

Q. So Mr. McCarthy didn't misrepresent to you that you were going to have insurance in Michigan, did he, on this vehicle you bought?

A. No, he didn't say anything about our insurance not covering anything. He just said he couldn't write or take a policy for Florida.

Q. Okay. When he told you he couldn't write a policy for the car in Florida, what did you think that meant?

A. I had no idea. I just thought he meant he couldn't give me the paperwork.[12]

Both Michigan and Florida require an agent to be licensed to sell insurance before the agent may write a policy in those states. See MCL 500.1201a, Fla Stat 626.112.

The Jankowskis called their home insurance agent in Florida and obtained a Florida policy of insurance through Allstate on the accident vehicle.[13] The Allstate policy provided only Florida PIP coverage "[i]n accordance with the Florida Motor Vehicle No-Fault Law."[14] Allstate

[10] Richard Dep, pp 21-22, appellant's appendix pp. 7a-8a.
[11] Richard Dep, p 22, appellant's appendix p. 8a.
[12] Janet Dep, pp 14-15, appellant's appendix p.42a.
[13] Janet Dep, pp 14-15, 18, appellant's appendix pp. 42a-43a.
[14] Florida Allstate policy, appellant's appendix p. 123a.

Fire and Casualty Insurance Company is an admitted insurer in Michigan.[15] Mrs. Jankowski testified that she did not think about whether the Florida policy had Michigan no-fault coverage; however, none of the agents told her she was purchasing Michigan no-fault coverage:

> Q. Okay. Were you ever under the impression that the insurance that you were purchasing in Florida to cover this brand new vehicle was going to be Michigan No-Fault insurance?
>
> A. I never thought about it.
>
> Q. Okay. Did any of the agents tell you that that's what you were purchasing?
>
> A. No.[16]

As of the May 25, 2014 date of the Florida accident with the Florida-insured accident vehicle, the Jankowskis also owned a 2005 Audi A4 and a 2009 Lexus GS350. Those were garaged in Michigan and insured for Michigan PIP coverage through Home-Owners Insurance Company. They had two other Florida vehicles, including the accident vehicle, which were garaged, titled, registered, and insured in Florida.[17] None of the Florida vehicles were insured for Michigan PIP coverage but were insured by Allstate through the Florida policy.[18]

On May 25, 2014, the Jankowskis were returning from their anniversary dinner at a Florida restaurant.[19] Mr. Jankowski was driving and Mrs. Jankowski was in the passenger seat.[20] The Jankowskis were driving north through an intersection controlled by a traffic light, when they were struck by a vehicle driven by Adam Ross Rego.[21]

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[15] NO FAULT CERTIFICATION LIST INSURERS REQUIRED TO OR THAT VOLUNTARILY COMPLY WITH SECTION 500.3163, p 6 of 115 <https://www.michigan.gov/documents/cis_ofis_cert_3163_25526_7.pdf>, (Accessed August 7, 2018), relevant pages attached as appellee's appendix pp. 2b-3b.
[16] Janet Dep, p 17, appellant's appendix 42a.
[17] Richard Dep, pp 8-10, appellant's appendix pp. 4a-5a.
[18] Allstate policy, p 14, appellant's appendix p. 135a.
[19] Richard Dep, pp 27, 29, appellant's appendix p. 9a.
[20] Richard Dep, p 30, appellant's appendix p. 10a.
[21] Florida traffic crash report, appellant's appendix pp. 175a-177a.

The Jankowskis submitted a claim under the Florida Allstate policy, which paid $10,000 (the Florida PIP limits for medical) for each regarding the injuries sustained.[22] The majority of the Jankowskis' medical bills were paid by their primary health insurer Blue Cross Blue Shield.[23] The Jankowskis then submitted a PIP claim to Home-Owners,[24] even though Exclusion j of the Home-Owners policy excludes coverage for injuries sustained by an insured when occupying an owned vehicle that did not have the coverage under the Michigan no-fault act:

> 2. EXCLUSIONS
>
> We will not pay personal injury protection benefits for:
>
> * * *
>
> j. bodily injury sustained by the named insured while occupying, or through being struck by while not occupying, any motor vehicle owned or registered by the named insured and which does not maintain an insurance policy providing benefits under Chapter 31 of the Michigan Insurance Code.[25]

The Jankowskis did not have Michigan PIP coverage on the accident vehicle under MCL 500.3101. In addition to their Michigan PIP claim to Home-Owners, they also made a claim for underinsured motorist (UIM) benefits under the policy.[26] (Because the issue this Court directed the parties to address in its order granting mini oral argument on the application does not pertain to UIM benefits, the proceedings pertaining to UIM benefits will not be discussed further). Home-Owners Insurance Company and Auto-Owners Insurance Company brought the instant declaratory judgment action seeking a determination the insurers did not owe PIP benefits to the Jankowskis for the Florida accident involving the accident vehicle garaged in Florida, registered

[22] Janet Dep, pp 37-38, appellant's appendix pp. 47a-48a.
[23] Janet Dep, pp 38-39, appellant's appendix p.48a.
[24] Application for benefits, 6/19/14, attached as Exhibit E to plaintiffs' summary disposition motion, 11/3/15.
[25] Form 19942 (1-10)Y, page 4 of 6, appellee's appendix p. 16b.
[26] Complaint, 8/12/14, ¶¶ 5, 6, 12; Answer, ¶¶ 5, 6, 12, 15.

in Florida, and insured only for Florida coverage. The basis was that the accident vehicle was not a covered vehicle under the Michigan auto policy.[27]

On November 3, 2015, Home-Owners and Auto-Owners moved for summary disposition. Home-Owners argued that the Jankowskis were not entitled to PIP benefits because they were injured while occupying a vehicle they owned for which the security required by MCL 500.3101 was not in effect, and which was specifically excluded from coverage under the policy exclusions.

The Jankowskis opposed the motion and sought summary disposition under MCR 2.116(I)(2) on December 2, 2015. They argued that they were entitled to Michigan PIP coverage for the Florida accident under MCL 500.3111, because they were named insureds on the auto policy issued by Home-Owners. They claimed that they were not required to purchase Michigan no-fault insurance for vehicles never used in Michigan,[28] and therefore were not excluded from coverage under MCL 500.3113(b). They claimed that Home-Owners' policy language was contrary to the no-fault act and could not be enforced.

On December 4, 2015, Home-Owners and Auto-Owners filed a reply to support their motion.[29] They pointed out that the Court in *Wilson v League Gen Ins Co*, 195 Mich App 705, 709; 491 NW2d 642 (1992), had already rejected the Jankowskis' argument they did not have to insure their out-of-state vehicle with Michigan coverage if they were to collect Michigan PIP. They additionally pointed out that MCL 500.3113(b) linked the required security solely to the vehicle involved in the accident, and they disputed the Jankowskis' interpretation of case law.

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[27] *Id.*

[28] Although the Jankowskis make much of the fact that the accident vehicle was not driven outside of the State of Florida, they do not explain how they planned to get back home to Michigan when they traded in the vehicle they drove from Michigan for the accident vehicle.

[29] Plaintiffs' reply brief and brief in opposition to defendants' request for cross-relief pursuant to MCR 2.116(I)(2), 12/4/15.

The motion was heard December 9, 2015.[30] Counsel for the insurers pointed out there was no exception in MCL 500.3113 for MCL 500.3111.[31] He pointed out that the motor vehicle code provision pertaining to titling, sale, transfer, and registration of motor vehicles was not limited to roads in Michigan, and the only exception to the registration requirement pertained to nonresidents of Michigan.[32]

Counsel for the Jankowskis argued there were two ways to be covered under MCL 500.3111: as a named insured, or as an occupant of a vehicle actually insured with no-fault. They would only be disqualified under MCL 500.3113(b) if they failed to obtain the insurance required by MCL 500.3101; but they did not have to obtain insurance under §3101 because they did not have to register the vehicles in Michigan under MCL 257.215 and MCL 257.216.

The trial court indicated it was confused and unfamiliar with the provisions making a person an owner by use.[33] It took the motions under advisement.[34] On January 4, 2016, the trial court issued an opinion and order that held (a) that Mr. Jankowski was excluded from coverage under MCL 500.3113(b), and (b) that Mrs. Jankowski was not an owner for MCL 500.3113(b). Implicit in the trial court's ruling was that Mrs. Jankowski was entitled to PIP coverage because not an owner under MCL 500.3113(b).

Both parties moved for reconsideration. Home-Owners and Auto-Owners asked the court to reconsider its implicit ruling that Mrs. Jankowski was not an owner, citing two unpublished

[30] M Tr 12/9/15, appellee's appendix pp. 55b-62b. At the outset, counsel for Auto-Owners explained that Auto-Owners had been brought into the suit because it was initially believed that the umbrella policy issued by Auto-Owners might afford UIM coverage, but that there was no dispute that the umbrella policy did not provide such coverage. *Id.* at 3-4.
[31] M Tr 12/9/15, p 6, appellee's appendix p. 57b.
[32] M Tr 12/9/15, pp 7-8, appellee's appendix p. 58b.
[33] M Tr 12/9/15, pp 16-18, appellee's appendix p. 60b
[34] M Tr 12/9/15, pp 21-22 appellee's appendix p. 61b.

cases and one published case holding she was an owner by use.[35] The trial court denied this motion for reconsideration on January 29, 2016.[36] The Jankowskis sought reconsideration of the court's ruling that MCL 500.3113(b) applied, arguing for the first time that the accident vehicle was a foreign leased vehicle not required to be registered under MCL 257.218(3), and arguing that *Wilson v League Gen Ins Co* was no longer good law because it relied on the doctrine of absurd results.[37] The trial court denied the Jankowskis' motion for reconsideration on March 1, 2016.[38]

Home-Owners timely filed a claim of appeal in the Court of Appeals on March 11, 2016, with regard to the court's ruling that Mrs. Jankowski was not an owner by use. The Jankowskis filed a cross-appeal. In their cross-appeal, the Jankowskis argued that the preamble to the Motor Vehicle Code, MCL 257.1, *et seq.* required that MCL 257.216 be interpreted to apply only to Michigan highways. They argued that the right to receive no-fault PIP benefits is personal in nature, and that entitlement to PIP benefits was not contingent upon the person occupying a vehicle that was insured with PIP, but they ignored a significant body of case law stating that the *exclusion* from PIP benefits under MCL 500.3113(b) applies if the person's uninsured *vehicle* was involved in the accident. Although the Jankowskis had made vague and amorphous statements at the trial court level, claiming unspecified constitutional complications and implications, these statements contained no specifics as to how or why these purported constitutional concerns existed, and no citation to authority. Thus, the Jankowskis' constitutional arguments were unpreserved in the Court of Appeals. Nevertheless, Home-Owners pointed out the errors of the constitutional arguments.

[35] Plaintiffs' motion for partial reconsideration, 1/21/16.
[36] Appellant's appendix pp. 70a-72a.
[37] Jankowskis' motion for reconsideration, 1/25/16.
[38] Appellant's appendix pp. 73a-75a.

The Court of Appeals agreed with Home-Owners that Mrs. Jankowski was an owner by use and therefore precluded by MCL 500.3113(b) from receiving Michigan no-fault benefits. The Court disagreed with the Jankowskis' argument that because the vehicle involved in the accident was never driven in Michigan, it was not required to be registered in Michigan, and thus was not required to carry the security required in MCL 500.3101(1). The Court declined to address the Jankowskis' unpreserved arguments because it concluded that the arguments lacked merit.[39] The Court then denied the Jankowskis' motion for reconsideration.

On August 8, 2017, the Jankowskis applied for leave to appeal in this Court. On May 25, 2018, this Court granted mini oral argument on the application and directed the parties to address:

> whether, to be eligible to receive personal protection insurance (PIP) benefits, [appellants] 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).[40]

[39] Appellant's appendix pp. 76a-80a.
[40] Appellant's appendix p. 81a.

LAW AND ARGUMENT

I. To be eligible to receive personal protection insurance (PIP) benefits, Michigan residents are required to insure or register, in Michigan, the vehicle involved in the accident, and are 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).

A. Standard of Review

Decisions regarding summary disposition motions are reviewed de novo. *In re Bradley Estate,* 494 Mich 367, 376; 835 NW2d 545 (2013). Issues of statutory interpretation are reviewed de novo. *Boyle v Gen Motors Corp,* 468 Mich 226, 229-230; 661 NW2d 557 (2003).

B. The Jankowskis, as Michigan residents, were statutorily required to insure all their vehicles for Michigan PIP coverage

Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, *subject to the provisions of this chapter*. MCL 500.3105(1) (emphasis added). However, there is no free lunch. "Owners and registrants of motor vehicles required to be registered in Michigan are expected to contribute to the fund out of which no-fault benefits are payable." *Belcher v Aetna Cas and Surety Co,* 409 Mich 231, 260; 293 NW2d 594 (1980).

The plain language in MCL 500.3113(b) precluding recovery of PIP benefits links the security or insurance requirement to the vehicle. "Section 3113(b) represents a policy decision by the Legislature to exclude the payment of no-fault benefits in situations where the injury upon which the claim to benefits is based is suffered by a person whose uninsured vehicle is involved in the accident." *Belcher,* at 260. The statute precludes PIP coverage to the owner of the accident vehicle if, at the time of the accident, the accident vehicle did not have in effect the security required by MCL 500.3101:

> 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*. (Emphasis added). [MCL 500.3113(b)]

"To which" means the thing already mentioned.[41] The use of "which" rather than "who" or "whom" clarifies that the pronoun refers to a thing rather than a person;[42] therefore, in the above statute, to which refers to the motor vehicle involved in the accident. "With respect to" means concerning.[43] Thus, the security required by section 3101 referenced in section 3113(b) pertains to the vehicle, not the person.

This language, "security required by section 3101," appears in multiple no-fault statutes, including MCL 500.3104(1)[44]; MCL 500.3104(7)(d)[45]; MCL 500.3135(2)(c)[46]; MCL 500.3135(3)[47]; MCL 500.3177(1)[48]. Thus, resolution of this case affects more than just coverage

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[41] https://english.stackexchange.com/questions/322836/how-to-correctly-apply-in-which-of-which-at-which-to-which-etc/322866, appellee's appendix p. 65b.

[42] Sabin, *The Gregg Reference Manual*, (Tribute ed. 11th ed.) (New York: McGraw-Hill, 2011), p 336, appellee's appendix p. 68b.

[43] <https://www.macmillandictionary.com/us/dictionary/american/with-respect-to>, accessed August 10, 2018, appellee's appendix p. 70b.

[44] Each insurer engaged in writing insurance coverages that provide the *security required by section 3101(1)* within this state, as a condition of its authority to transact insurance in this state, shall be a member of the [Michigan Catastrophic Claims Association] and shall be bound by the plan of operation of the association

[45] Each member shall be charged an amount equal to that member's total written car years of insurance providing the *security required by section 3101(1)* or 3103(1), or both, written in this state during the period to which the premium applies, multiplied by the average premium per car. The average premium per car shall be the total premium calculated divided by the total written car years of insurance providing the *security required by section 3101(1)* or 3103(1) written in this state of all members during the period to which the premium applies.

[46] Damages shall not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle the *security required by section 3101* at the time the injury occurred.

[47] Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the *security required by section 3101* was in effect is abolished except as to . . .

[48] An insurer obligated to pay personal protection insurance benefits for accidental bodily injury to a person arising out of the ownership, maintenance, or use of an uninsured motor vehicle as a motor vehicle may recover such benefits paid and appropriate loss adjustment costs incurred from the owner or registrant of the uninsured motor vehicle or from his or her estate. . . . An

preclusion under MCL 500.3113(b). It affects MCCA membership, MCCA assessments, recovery of noneconomic damages, and an insurer's right of reimbursement against owners of uninsured vehicles.

The security required by MCL 500.3101(1) is "personal protection insurance, property protection insurance, and residual liability insurance." The inquiry could stop here. If a vehicle is not insured for personal protection insurance, property protection insurance, and residual liability insurance, coverage should be precluded under MCL 500.3113(b). However, should this Court choose to examine MCL 500.3101(1) further, this statute states in relevant part:

> The owner or registrant of <u>*a*</u> 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. [Emphasis added.]

There are three grounds on which this insuring obligation results in non-coverage where, as here, a Michigan resident has at least one vehicle registered and insured in Michigan and another registered and insured in another state. Two of these grounds do not depend on Michigan registration and so negate PIP coverage even if it were to be said that there was no registration requirement in Michigan for this vehicle.

First, there is a contractual PIP exclusion for injury from an owned vehicle, for "any motor vehicle owned or registered by the named insured and which does not maintain an insurance policy providing benefits under Chapter 31 of the Michigan Insurance Code." (Exclusion 2. J). PIP is one of the three components of security in MCL 500.3101(1). If any is missing, even liability, the policy does not comply [and disqualification applies to PIP under MCL 500.3113(b).] See *Bronson Methodist Hospital v Michigan Assigned Claims Facility*, 298

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uninsured motor vehicle for the purpose of this section is a motor vehicle with respect to which *security as required by sections 3101* and 3102 is not in effect at the time of the accident.

Mich App 192, 198; 826 NW2d 198 (2012) (named excluded driver exclusion for liability resulted in no PIP coverage because liability coverage was required but lacking).

Here there are three separate owned but uninsured vehicle exclusion provisions in the non-accident policy of Home-Owners, for all three Section 3101 coverages.[49] This Court has approved owned vehicle exclusions for liability insurance, another of the component coverages. See, eg, *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563 & n7; 596 NW2d 915 (1999) ("Because the limitation of residual liability coverage pursuant to the nonowned automobile clause is valid under the no-fault act, the question is one of contract interpretation.")[50]. There logically is likewise no statutory prohibition on an owned but uninsured vehicle exclusion as to PIP, since PIP also is within the same statutory mandate which requires the owner to procure insurance. This cannot be overstressed, that the owner (or registrant) is obligated to get mandatory coverages as to each vehicle. See *State Farm Mut Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 31-32; 549 NW2d 345 (1996). If not mandatory for the owner to procure PIP under Section 3101 as to another owned vehicle like the accident vehicle here, there is no logic to saying it is mandatory coverage not subject to a contractual exclusion in another policy on another vehicle. It is either mandatory or it is not, but in any case, the mandate is on the owner or

[49] PIP is excluded by Exclusion 2.J, in Form 1994291-10)Y, appellee's appendix p. 16b. Property Protection is excluded by the insuring agreements in Form 19942 (1-10)Y, Section III Property Protection Insurance, Para 1 Coverage, a. as to an "insured motor vehicle" as defined, and, b. "a motor vehicle operated by the named insured or a relative; (1) that is not owned by the named insured or a relative", appellee's appendix p. 16.b. Liability is excluded in Form 79001 (3-99)Y, page 2 of 12, Coverage paragraph 1. A., by the limitation to legal liability arising out of the ownership, maintenance or use of "your automobile", which is defined as "the automobile described in the Declarations", appellee's appendix pp. 28b. Definitional exclusions as to owned vehicles was approved in *Nikkel, infra.*

[50] *Nikkel* in Footnote 7, cited and followed *State Farm Mut Auto Ins Co v Ruuska*, 412 Mich 321, 342-343; 314 NW2d 184 (1982), an opinion of Justice Levin, concurred in this part by Justice Coleman; Justice Coleman's opinion was concurred in by Justices Kavanagh and Ryan. Thus it, too, is a holding that an owned but uninsured vehicle contractual exclusion is valid under the no-fault act.

registrant. If it is mandatory, it was the obligation of the Jankowskis to procure it. They did not, and as a result are excluded contractually and by statute disqualified by MCL 500.3113(b). If not mandatory for the owner to procure, a no-fault policy always may validly exclude coverage. *Husted v Dobbs*, 459 Mich 500, 513; 391 NW2d 642 (1995).

Second, the narrowest ground to affirm under the act is that apart from registration issues on the accident vehicle, MCL 500.3101(1) is triggered for an owner if there is "a" vehicle that the owner is required to register in this state. Thus, since there is such "a" vehicle required to be registered in Michigan, the Jankowskis were thus obligated to maintain all Section 3101 coverages, even on an owned vehicle in another state, and so the Section 3113(b) disqualification applies. It is acknowledged that there is a statement in *Parks v Det Auto Inter-Ins Exch*, 426 Mich 191, 206; 393 NW2d 833 (1986) that says, "First, the plain language of Section 3101(1) subjects only those vehicles required to be registered in this state to the mandatory security requirements." However, *Parks* should be limited to its facts. It is dicta as to this case because it did not address the situation of an owner who admits a registration requirement in Michigan, but, is a claimant who seeks to avoid disqualification under Section 3113(b) as to a vehicle registered in another state and so collect without paying into the system for the accident vehicle. The statute plainly says an owner with "a" vehicle subject to registration in this state has to maintain the three coverages. The word "a" means any. *Allstate Ins Co v Freeman*, 432 Mich 656, 694; 443 NW2d 734 (1989). Thus, a single vehicle requiring registration in Michigan triggers an insuring obligation for all owned vehicles, even out-of-state vehicles, and regardless of registration issues as to those out-of-state vehicles. The MCL 500.3113(b) exclusion thus applies. This is one of the "situations where the injury upon which the claim to benefits is based

is suffered by a person whose uninsured vehicle is involved in the accident." *Belcher*, *supra* at 260-260. *Belcher* thus supports disqualification under MCL 500.3113(b).

If the claimants want to claim broad coverage under a non-accident Michigan policy based on an expansive interpretation of no-fault act provisions, they logically must be held to the breadth of this plain language that imposes on them as owners an insuring obligation for the accident vehicle because of any registration requirement in Michigan, even for a non-accident vehicle, and that triggers a broad insuring obligation in MCL 500.3101(1) as to all owned vehicles. Not having this required coverage in place as to the accident vehicle, both because of the owned but uninsured vehicle exclusions as to PIP, PPI and liability, as well as the failure to have coverage required by MCL 500.3101(1), they are excluded by MCL 500.3113(b).

Third, the ground specified in the Court of Appeals for a registration requirement if a resident of Michigan, is not the narrowest ground to affirm, but it, too, applies if Section 3101 is read as mandating coverage on the accident vehicle only if it is required to be registered in Michigan.

The Michigan registration statutes are pervasive as to Michigan residents. Moreover, "It is a well-known principle that the Legislature is presumed to be aware of, and thus to have considered the effect on, all existing statutes when enacting new laws." *Walen v Dep't of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993). Thus, when the Legislature enacted the no-fault act, it was surely aware that whether a vehicle was required to be registered was set forth in the Motor Vehicle Code. Provisions of the vehicle code and the no-fault insurance act are in *pari materia*, *Clevenger v Allstate Ins Co*, 443 Mich 646, 660; 505 NW2d 553 (1993), and should be interpreted together to ascertain the Legislature's intent, *Duffy v Michigan Dept of Nat. Res*, 490 Mich 198, 206; 805 NW2d 399, 404 (2011). The broad language used in MCL 257.216

demonstrates the Legislature's intent that the general rule be broadly applied to all Michigan residents. The exception is only for nonresidents:

> *Every* motor vehicle . . . when driven or moved on *a* street or highway, is subject to the registration and certificate of title provisions of this act except the following:
>
> (a) A vehicle driven or moved on a street or highway in conformance with the provisions of this act relating to . . . nonresidents. [*Id.* (emphasis added).]

"Every" is relevantly defined to mean "all possible; the greatest possible degree of." *Random House Webster's College Dictionary*. "A" is an indefinite article with indefinite or generalizing force meaning an unspecified thing, i.e., "an insured" means "any insured." See *State v McQueen*, 493 Mich 135, 156; 828 NW2d 644 (2013). There is no limitation in MCL 257.216 to streets or highways in Michigan. Instead, this general rule is broadly written to cover *all* vehicles driven on *all* streets unless excepted.

The Motor Vehicle Code then provides exceptions for those vehicles not required to be registered, indicating the Legislature's intent that the general rule be broadly applied and the exceptions to be narrowly interpreted. Cf. *Maskery v Bd of Regents of Univ of Michigan*, 468 Mich 609, 614; 664 NW2d 165 (2003) (The term "governmental function" is to be broadly construed, and the statutory exceptions are to be narrowly construed).

At least one legislative analysis of MCL 257.216 confirms the Legislature's intent:

> The Code currently specifies that *every motor vehicle* . . . when driven or moved on a highway, *is subject to the Code's registration* and certificate of title provisions, *except for those vehicles specifically exempted* under the Code. [Senate Fiscal Analysis, HB 5044, February 28, 1996 (emphasis added).]

None of the exceptions in the Motor Vehicle Code, however, pertain to the Jankowskis. For instance, one exception, MCL 257.243 permits a *nonresident* owner to drive a vehicle not registered in Michigan, if the vehicle is properly registered in the state where the owner resides. Unlike the broad reach of MCL 257.216, this exception is limited to operation "within this state."

"The omission of language from one part of a statute that is included in another part should be construed as intentional." *Mericka v Dep't of Community Health*, 283 Mich App 29, 39; 770 NW2d 24 (2009). Thus, the "within this state" limiting language may not be imported into MCL 257.216. No exception similar to MCL 257.243 is provided for a Michigan resident. However, even MCL 257.243 makes clear that the vehicle would otherwise be subject to registration in Michigan:

> A *nonresident owner*, except as otherwise provided in this section, owning any foreign vehicle of a type *otherwise subject to registration* under this act may operate or permit the operation of the vehicle within this state without registering the vehicle in, or paying any fees to, this state if the vehicle at all times when operated in this state is duly registered in, and displays upon it a valid registration certificate and registration plate or plates issued for the vehicle in the place of residence of the owner. [*Id.* (emphasis added).]

"Subject to" is relevantly defined to mean, "in a situation where you have to obey a rule or a law." *Macmillan Dictionary*. "'Subject to motor vehicle registration' means not that the vehicle is *capable* of being registered but rather that it *must* be registered if it is to be driven on a highway." *Coffey v State Farm Mut Automobile Ins Co*, 183 Mich App 723, 729; 455 NW2d 740 (1990), citing *Reaver v Westwood*, 148 Mich App 343; 384 NW2d 156 (1986). And the definition of foreign vehicle likewise indicates that all vehicles must be registered:

> (1) "Foreign vehicle" means a vehicle of a type *required to be registered under this act* and *brought into this state from another state*, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer, and not registered in this state. [MCL 257.18 (emphasis added).]

Thus, MCL 257.216 broadly covers every vehicle owned by every Michigan resident. This all-encompassing interpretation of MCL 257.216 as it pertains to MCL 500.3101(1) and the overall statutory scheme of the no-fault act makes sense. The extraterritorial reach of MCL 257.216 coincides with the extraterritorial reach of no-fault coverage under MCL 500.3111. If it did not, an anomalous result would occur where a Michigan resident driving his uninsured motor

vehicle in Michigan would not be covered, but the same resident in the same vehicle would have broader coverage outside Michigan.

The extraterritorial reach of MCL 257.216 captures MCCA assessments for vehicles owned by Michigan residents but located out-of-state, under MCL 500.3104(7)(d),[51] which in turn lowers the overall per-vehicle assessment as the risk for out-of-state catastrophic accidents under MCL 500.3111 is captured. As correctly noted by Justice McCormack in *Bazzi v Sentinel Ins Co*, ___ Mich ___, ___ n 2; ___ NW2d ___ (2018), "All insurers who write automobile insurance policies must be members of the MCCA, which provides 'indemnification for 100% of the amount of ultimate loss sustained under personal protection insurance coverages' that exceed a certain dollar amount calculated biennially." This contemplates Michigan policies on Michigan registered vehicles. Otherwise an insurer does not get reimbursement for an out-of-state accident if the accident vehicle's owner did not pay the MCCA assessment through a Michigan policy that was in effect on the date of the accident. See, eg, *United Services Auto Ass'n v MCCA, supra*, 489 Mich 869, and the Court of Appeals decision this Memorandum decision vacated. This Court ruled to reinstate summary disposition for MCCA. That meant MCCA did not have to pay the insurer which paid PIP on a vehicle that had been omitted from the Michigan policy but the policy was retroactively reformed after the accident to include the Florida vehicle. See 289 Mich App 24, 26; 795 NW2d 185 (2010).

The extraterritorial reach of MCL 257.216 further brings the limitations on tort recovery by Michigan residents for out-of-state accidents in line with recovery for in-state accidents under MCL 500.3135(2)(c) by precluding tort recovery altogether when driving a vehicle not insured under MCL 500.3101. It was a specific purpose of the Legislature in enacting the Michigan no-

[51] A member insurer pays an amount equal to its total written car years of insurance multiplied by the average premium per car.

fault act to partially abolish tort remedies for injuries sustained in motor vehicle accidents and to substitute for those remedies an entitlement to first-party insurance benefits. *Shavers v. Attorney Gen,* 402 Mich. 554, 578-579, 267 N.W.2d 72 (1978). It would make little sense to permit a Michigan resident who is injured in an out-of-state accident while driving his or her vehicle not insured for Michigan PIP to be able to recover *both* Michigan PIP *and* unlimited non-economic tort benefits (because not restricted by MCL 500.3135(2)(c)) when a Michigan resident who is injured in a Michigan accident while driving his or her vehicle not insured for Michigan PIP may recover *neither* PIP nor non-economic tort benefits.

Michigan residents who acquire a vehicle in another state but do not insure it with Michigan PIP are barred by MCL 500.3113(b) from receiving Michigan PIP benefits. In *Wilson v League Gen Ins Co,* 195 Mich App at 709,[52] the Court of Appeals held that a Michigan resident must register and maintain Michigan PIP coverage on an owned vehicle regardless whether the vehicle has been used in Michigan. In *Wilson,* a Michigan resident who lived with her mother in Michigan had purchased a vehicle in Texas where she was going to school. The plaintiff daughter was the owner of the vehicle she had purchased in Texas. She did not insure the vehicle with a Michigan PIP policy. On the way to her mother's house in Michigan, the daughter was involved in a motor vehicle accident in Tennessee. Because her mother had PIP coverage on her household automobiles, the daughter sought PIP benefits under her mother's policy on the basis that she was a resident relative of her mother's household. In making this PIP claim, the daughter argued that she did not have to register her own vehicle or insure the vehicle

[52] The Jankowskis now urge this Court to overrule *Wilson,* because they believe *Wilson* was wrongly decided. However, their mere disagreement with the reasoning in *Wilson* is not a basis to overrule a decision that applies the law as written. The judiciary is not at liberty to impose its preferences in contravention of these legislative choices. Cf. *Trentadue v Buckler Lawn Sprinkler Co*, 479 Mich 378, 392; 738 NW2d 664 (2007).

under § 3101 because the vehicle was not routinely driven in Michigan. She asserted that she did not have to register or insure her vehicle under the no-fault act because MCL 257.216 only required registration for vehicles used in Michigan on Michigan highways. This is the same basic argument that the Jankowskis are making here.

The Court of Appeals in *Wilson* unequivocally rejected this assertion, saying, "[w]e reject plaintiff's interpretation of § 3113(b) and MCL 257.216." The Court stated that MCL 257.216 "*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." 195 Mich App at 709. (Emphasis added.) Because the security required by MCL 500.3101 was not in effect, the plaintiff was not entitled to PIP benefits. *Wilson*, 195 Mich App at 709-710.

The *Wilson* Court gave a second reason, Michigan public policy, and explained that a contrary ruling 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*, 195 Mich App at 709.

The Court of Appeals in *Guraj v Connecticut Indemnity Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2006 (Docket No. 257509),[53] characterized

[53] Appellee's appendix pp 72b-75b. The undersigned did not find a published case with analogous facts that similarly characterized *Wilson*, or has held directly that Michigan residents are required to register in Michigan and insure vehicles acquired in other states for Michigan no-fault. In *Witt v American Family Mut Ins Co*, 219 Mich App 602, 607; 557 NW2d 163 (1996), the Court of Appeals held that the plaintiff, "as a Michigan resident, was required to register his vehicle in Michigan, MCL 257.216, and was required to maintain no-fault insurance, MCL 500.3101(1). Having failed to do so, under §3113(b) he was not entitled to no-fault benefits" regardless of the fact that the plaintiff had insured his Iowa-registered vehicle with an Iowa

Wilson as having "implicitly concluded that Michigan residents are required to register their vehicles in the state," and similarly concluded that a Michigan resident plaintiff who only obtains an out-of-state policy for his vehicle is barred from PIP by MCL 500.3113(b), notwithstanding not operating the vehicle in Michigan, and although the accident occurred out of state. Under *Wilson*, as explained by *Guraj*, Michigan residents must register and maintain Michigan PIP insurance on their owned vehicles under MCL 500.3101 regardless whether the vehicles are ever used in Michigan. If they do not have Michigan PIP on their out-of-state vehicle, they are barred from recovering Michigan PIP benefits.

Wilson makes sense. Those who do not purchase Michigan PIP coverage on their vehicles are not entitled to Michigan PIP benefits. Those who purchase the insurance coverage of another state are only entitled to the coverage of the other state. A vehicle owner is entitled only to the coverage purchased for the vehicle, MCL 500.3113(b). An insurer is not liable for a risk it never collected premiums on or agreed to assume. *Auto-Owners Ins Co v Churchman,* 440 Mich 560, 567; 489 NW2d 431 (1992).

While in the lower court the Jankowskis decried the *Wilson* Court's "absurd results" reasoning as no longer valid rationale in their motion for reconsideration, they did not address the *Wilson* Court's primary basis for its ruling: it would not read language that did not exist into an unambiguous statute. The Court of Appeals merely added that to read the non-existent language into the statute would produce absurd results. The Court's logic is sound: it is indeed absurd for a Michigan resident to claim nonresident vehicle status to avoid the registry and insurance procurement requirements, yet still attempt to collect Michigan PIP as a Michigan resident once an accident occurs outside Michigan in a vehicle owned but not insured for

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policy. However, *Witt* is not directly on point because it involved an accident that occurred in Michigan.

Michigan PIP. The legislative intent embodied in MCL 500.3113(b) ties coverage to an owner's insured vehicle, as does the Catastrophic Claim per car assessment in MCL 500.3104(7)(d).

The answer is simple. If a Michigan resident wants Michigan PIP coverage for out-of-state accidents, the Michigan resident should purchase Michigan PIP coverage for his or her vehicle.

C. The Jankowskis have failed to establish that they were exempted from registering their vehicle in Michigan.

The Jankowskis submit five basic arguments that they were not required to register their vehicle in Michigan:

1. The title of the Motor Vehicle Code limits the scope to vehicles operated on roads in Michigan, and the scope of an act cannot exceed the object and purpose of the act under Const. 1963, art. 4, § 24.

2. Motor vehicle registration is a form of taxation, and a state does not have authority to tax personal property outside its borders absent a sufficient connection between the property and the state.

3. The purpose of MCL 500.3111 is to provide Michigan residents protection in out-of-state accidents. If the Jankowskis are disqualified because the vehicle was not insured for Michigan PIP, it would destroy the purpose of MCL 500.3111 and nullify the out-of-state entitlement provisions.

4. There is no prejudice to the insurance industry because MCL 500.3111 already requires insurers to cover out-of-state accidents, and financial exposure can be cured by obtaining information from insureds regarding out-of-state vehicles and adjusting their premiums.

5. Any vehicle on any road could encompass foreign countries and is absurd. The Jankowskis tried to insure their Florida vehicle in Michigan, but the insurers refused to insure.

Each of these arguments will be addressed and rebutted seriatim.

1. The Preamble of the Michigan Vehicle Code is far more broad than registration of vehicles operating in Michigan; thus, the scope or general purpose of the act should not be so narrowly defined so as to render germane provisions unconstitutional under Const. 1963, art. 4, § 24.

Const. 1963, art. 4, § 24, states:

> No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

This does not restrict the breadth of the Motor Vehicle Code registration requirements. The reason for this identical constitutional provision was explained by Justice Cooley in 1865, to prevent trickery in legislation drafting with diverse subjects that are not connected. It does not restrict the breadth of a single subject:

> But it is insisted that the whole law is unconstitutional and void, because in violation of section twenty of article four of the constitution, which provides that "no law shall embrace more than one object, which shall be expressed in its title." The history and purpose of this constitutional provision are too well understood to require any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the state. It was scarcely more so, however, than another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills of which the titles gave no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effect. There was no design by this clause to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and thus multiplying their number; but the framers of the constitution meant to put an end to legislation of the vicious character referred to, which was little less than a fraud upon the public, and to require that in every case the proposed measure should stand upon its own merits, and that the legislature should be fairly notified of its design when required to pass upon it. [*People ex rel Drake v Mahaney*, 13 Mich 481, 494–495 (1865).]

The Jankowskis argue that the preamble to the Michigan Vehicle Code, MCL 257.1, *et seq.* requires that MCL 257.216 be interpreted to apply only to Michigan highways. They assert

that to interpret the statute as written would violate the title-object clause of the Michigan Constitution. The Jankowskis' argument is incorrect.

The Jankowskis cite a case from 1891 for the proposition that "the Constitution requires that titles shall be truthful indexes to Legislation."[54] However, that principal is incomplete. "It is sufficient if the title fairly expresses the subject, or is sufficiently comprehensive to include the several provisions relating to or connected with that subject." *Westgate v Adrian Twp*, 161 Mich 333, 335; 126 NW 422 (1910). "[I]t is a familiar doctrine that this constitutional provision does not require in the title details, incidents, or means of carrying out the object of the legislation, nor an index of the body of the act, but it is enough if it fairly indicates to the inquiring mind the general scope, intent, and purpose of the law." *Mackin v Detroit-Timkin Axle Co,* 187 Mich 8, 21; 153 NW 49 (1915).

While the Jankowskis cite *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002), they fail to mention the following portion of the *Pohutski* opinion:

> The "object" of a law is defined as its general purpose or aim. . . . The "one object" provision must be construed reasonably, not in so narrow or technical a manner that the legislative intent is frustrated. . . . The act may include all matters germane to its object, as well as the provisions that directly relate to, carry out, and implement the principal object. . . . Finally, the constitutional requirement is not that the title refer to every detail of the act; rather, "*[i]t is sufficient that 'the act centers to one main general topic or purpose which the title comprehensively declares, though in general terms, and if provisions in the body of the act not directly mentioned in the title are germane, auxiliary, or incidental to that general purpose.*'" [*Pohutski*, at 691-692 (internal citations omitted)(emphasis added).]

[54] Their citation to other cases is likewise misplaced. While *Bissell v Durfee*, 58 Mich 237; 24 NW 886 (1885), *Booth v Eddy*, 38 Mich 245 (1878), and *McKellar v City of Detroit*, 57 Mich 158; 23 NW 621 (1885), all generally mention that the title of the act determines the scope of the act, these cases all pertained to whether a claimed cause of action could be brought under a particular statute, not whether a statute was rendered unconstitutional by the title-object clause in the constitution. Therefore, these cases are inapposite.

"The proper test for determining whether a statute violates the Title-Object Clause is whether it contains 'subjects diverse in their nature and having no necessary connection.'" *Mann v St Clair Co Rd Com'n*, 470 Mich 347, 354; 681 NW2d 653, 657 (2004), quoting *People ex rel Drake v. Mahaney*, 13 Mich 481, 494-495 (1865), *Pohutski v City of Allen Park*, 465 Mich 675, 691, 641 NW2d 219 (2002). It cannot be said that MCL 257.216 is diverse in its nature to the Michigan Vehicle Code or that it has no necessary connection.

The title of the act in question is the "Michigan Vehicle Code." MCL 257.923. The preamble to the Michigan Vehicle Code is quite extensive, but it goes beyond highways of this state:

> 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 . . . to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles . . . to provide for civil liability of . . . owners, and operators of vehicles and service of process on residents and nonresidents . . . to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies . . .. [Emphasis added.]

The preamble is thus far more broad than just registration of vehicles operated in Michigan. It even includes financial responsibility required of operators and owners of vehicles. It includes civil liability of owners and operators of vehicles. It provides for service of process against both residents and nonresidents. And it includes provisions for the enforcement of the act.

It is worth noting that while the Jankowskis now claim, after the fact and with a clear interest in obtaining Michigan PIP coverage, that they had no intention of driving the newly-acquired vehicle in Michigan, the facts show that they drove a Michigan-registered vehicle to Florida, and traded it in for the accident vehicle. However, I-75 is a two-way highway. Their

assertion of seeking Michigan no-fault coverage belies having ruled out Michigan operation. So which is it? Did they intend to drive the vehicle in Michigan as all the evidence suggests? Or did they not intend to do so as they now claim for the purpose of obtaining the coverage they did not purchase?

Vehicles with the potential of being operated in Michigan can be subject to registration. And this would include any vehicle owned by a Michigan resident. The title of MCL 257.216 is "Vehicles subject to registration and certificate of title provisions; exceptions." MCL 257.216 exempts from registration requirements vehicles driven on a highway by nonresidents. Surely vehicles subject to registration and certificate of title provisions as well as exceptions thereto would be germane to the Michigan Vehicle Code. Therefore, there is no title-object violation.

Moreover, a preamble does not control the meaning of an unambiguous provision. "'[T]he preamble is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous . . . .'" *Nat'l Pride at Work, Inc v Gov of Michigan*, 481 Mich 56, 79 n 20; 748 NW2d 524 (2008), quoting *Yazoo & M V R Co v Thomas*, 132 US 174, 188; 10 S Ct 68; 33 L Ed 302 (1889). "Although a preamble is not to be considered authority for construing specific statutory terms, it is useful for determining the subject matter addressed by the statute." *Detroit Edison Co v Spartan Express, Inc.*, 225 Mich App 629, 634; 572 NW2d 39 (1997). "'A preamble is not to be considered authority for construing an act, but it is useful for interpreting statutory purpose and scope.'" *Taylor v Currie*, 277 Mich App 85, 97; 743 NW2d 571, 578 (2007), quoting *King v. Ford Motor Credit Co.*, 257 Mich.App. 303, 311–312, 668 N.W.2d 357 (2003).

There is nothing ambiguous about the general rule in MCL 257.216.

> *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* except the following . . . .

"Every" means "all possible." *Random Webster's College Dictionary.* "Motor vehicle" is defined as "every vehicle that is self-propelled" with some exceptions not applicable here. MCL 257.33. "Highway or street" is defined without a limitation as to Michigan: "'Highway or street' means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." MCL 257.20. Had the Legislature intended MCL 257.216 to pertain only to vehicles driven or moved on streets or highways in Michigan, it could easily have said so. See, for instance, MCL 257.301, which prohibits a person from driving a motor vehicle "upon a highway in this state unless that person has a valid operator's license . . ." The Legislature did not similarly see fit to limit MCL 257.216 to highways in this state. Courts may not read into the statute a requirement that the Legislature has seen fit to omit. *Book-Gilbert v Greenleaf*, 302 Mich App 538, 542; 840 NW2d 743 (2013).

While the Jankowskis correctly assert that statutory provisions must not be read in a vacuum but must be read in context with the entire act, *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014), they (a) fail to actually read MCL 257.216 in context with the entire act, and (b) fail to recognize that MCL 257.216 must be read *in pari materia* with statutes relating to the same common purpose. *Apsey v Memorial Hosp*, 477 Mich 120, 129 n 4; 730 NW2d 695 (2007).

The statute is unambiguous when read in context with other provisions of the Michigan Vehicle Code. As previously noted, MCL 257.216 was broadly written to cover all vehicles of Michigan residents with limited, specified exceptions. One exception, MCL 257.243, exempts a *nonresident* owner from registering a vehicle in Michigan if the vehicle is properly registered in

the state where the owner resides. However, even MCL 257.243 makes clear that the vehicle would otherwise be subject to registration in Michigan. The Jankowskis have failed to point to a similar exemption for a Michigan resident.

The Michigan Vehicle Code's registration provisions are not limited to Michigan. This is shown by MCL 257.218, which requires registration of foreign vehicles, yet permits the owner to simultaneously retain registration in another state:

> (1) If a vehicle to be registered is a . . . foreign vehicle, that fact shall be stated in the application. With reference to each foreign vehicle which has been previously registered in another state, the owner shall surrender to the secretary of state all registration plates, registration certificates, and certificates of title or other evidence of foreign registration, as are in the owner's possession or under the owner's control, except as provided in subsections (2) and (3).
>
> (2) If the owner in the course of interstate operation[55] of a vehicle desires to retain registration of a vehicle in another state, the owner shall not be required to surrender, but shall submit for inspection, evidence of the foreign registration and the secretary of state, upon a proper showing and upon application and payment of the registration fee, shall register the vehicle in this state.
>
> (3) If the owner of a vehicle previously registered in another state in which the certificate of title or other proof of ownership of a vehicle is in the possession of a holder of a security interest in the vehicle, the owner of the vehicle may apply to the secretary of state for registration of the vehicle for this state after payment of all fees required by this act and submission of proof of ownership of the vehicle to the secretary of state.

The registration statute is unambiguous when read in *pari materia* with provisions of the no-fault act. Had the Legislature intended MCL 257.216 to pertain only to vehicles driven or moved on streets or highways in Michigan, it could easily have said so. It did not. See *Wilson,*

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[55] "Operate" or "operating" is defined as:

> (a) Being in actual physical control of a vehicle. This subdivision applies regardless of whether or not the person is licensed under this act as an operator or chauffeur.
>
> (b) Causing an automated motor vehicle to move under its own power in automatic mode upon a highway or street . . . [MCL 257.35a.]

195 Mich App at 709. The Jankowskis' interpretation of MCL 257.216's provision "driven or moved on a street or highway" to mean only when driven or moved on a street or highway *in Michigan*, not only inserts words in the statute not included by the Legislature, it is contrary to *Wilson* and would cause havoc with the entire no-fault system when MCL 257.216 is read in *pari materia* with MCL 500.3101. Statutes that address the same subject matter or share a common purpose are in *pari materia* and must be read collectively as one law. *Maple Grove Twp v Miseguay Creek Intercounty Drain Bd,* 298 Mich App 200, 212; 828 NW2d 459 (2012). When the Legislature uses the same phrase, the phrase should be given the same meaning. *Paige v Sterling Hts*, 476 Mich 495, 520; 720 NW2d 219 (2006) (indicating that identical phrases in our statutes should have identical meanings). MCL 500.3101(1) contains the nearly identical phrase "driven or moved on a highway," and only requires insurance to be in effect during the time the vehicle is driven or moved on a highway:

> (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. *Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway*. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not *driven or moved on a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages* under the policy and maintain the comprehensive coverage portion of the policy in effect. [Emphasis added.]

Under the Jankowskis' definition of this phrase, an owner of a motor vehicle would never need to insure his or her vehicle outside of Michigan because the owner would only be required to provide security when the vehicle was driven on a highway in Michigan. Once the owner reached the Michigan-Ohio border, the owner could call his or her insurance agent and cancel PIP coverage on that vehicle but still collect PIP under policies insuring vehicles not involved in an out-of-state accident but involving vehicles *not* insured for PIP. If an owner of a single vehicle did not have to maintain security on his or her vehicle outside of Michigan, then how

would the owner or registrant be insured when injured in an out-of-state motor vehicle accident under MCL 500.3111? Yet, this is precisely what the Jankowskis ask this Court to hold: That they need not insure their vehicles located out-of-state, but are still entitled to PIP coverage when injured out-of-state in a non-Michigan-PIP-covered vehicle. The Jankowskis should not be permitted to pick and choose which Michigan statutes they wish to be governed by. If they are governed by MCL 500.3111, then they are likewise governed by MCL 500.3113(b), MCL 500.3101(1), MCL 257.216, and the remaining Michigan statutes cited herein.

2. Assuming for the sake of argument that motor vehicle registration is a form of taxation, Michigan has the authority to require registration of vehicles outside its borders because a sufficient nexus exists between the provision of unlimited no-fault PIP benefits to Michigan residents injured in out-of-state accidents and the vehicles of Michigan residents being driven in those accidents.

"[V]isible territorial boundaries do not always establish the limits of a state's taxing power or jurisdiction." *Miller Bros Co v State of Md*, 347 US 340, 342; 74 S Ct 535, 537–38; 98 L Ed 744 (1954). "If there is some jurisdictional fact or event to serve as a conductor, the reach of the state's taxing power may be carried to objects of taxation beyond its borders." *Id.* at 343. Moreover, the Jankowskis' assertion that the nexus must be to the activity itself does not help their case. The activity is driving and insurance coverage. There is no question that a sufficient nexus exists between the state of Michigan, PIP insurance for Michigan residents, and registration of vehicles owned by Michigan residents.

In *Shavers v Atty Gen*, 402 Mich 554, 599; 267 NW2d 72, 87 (1978), this Court recognized the inextricable tie between driving, vehicle registration, and compulsory no-fault insurance: "In choosing to make no-fault insurance compulsory for all motorists, the Legislature has made the registration and operation of a motor vehicle inexorably dependent on whether no-fault insurance is available at fair and equitable rates."

> Furthermore, the operation of a motor vehicle, even when it affects no one but the driver, results in serious and immediate danger to a large section of society. *West Coast Hotel Co v Parrish*, 300 US 379, 394; 57 SCt 578, 81 LEd 703 (1937). This principle, that those who use the public highways may properly be required to provide security for loss that may predictably be suffered by others on account of such use, can properly be extended to require security for the loss that the state itself might otherwise incur on account of such use. [*Shavers*, at 596–597.]

As previously set forth, the language, "security required by section 3101" appears in many statutes throughout the no-fault act. The extraterritorial reach of MCL 257.216 coincides with the extraterritorial reach of no-fault coverage under MCL 500.3111. Thus, coverage extends as far as registration and compulsory insurance. Moreover, the extraterritorial reach of MCL 257.216 captures MCCA assessments for vehicles owned by Michigan residents but located out-of-state, under MCL 500.3104(7)(d),[56] which in turn lowers the overall per-vehicle assessment by capturing the risk for out-of-state catastrophic accidents under MCL 500.3111. MCL 500.3101(1) states that "[s]ecurity is only required to be in effect during the period that the motor vehicle is driven or moved on a highway." MCL 257.217 states that "*Every* motor vehicle . . . when driven or moved on *a* street or highway, is subject to the registration and certificate of title provisions of this act" with exceptions. Neither MCL 500.3101(1) nor MCL 257.217 is limited to Michigan streets or highways.

The case law cited by the Jankowskis does not require a different result. Even if this Court considers the Jankowskis' unpreserved argument, the argument has no merit. The Jankowskis' primary authority, *Pennoyer v Neff*, 95 US 714; 24 L Ed 565 (1877), is off-point for a multitude of reasons. First, the case is in no way factually similar. Second, *Pennoyer* pertained to long-arm jurisdiction, not whether a state has the authority to direct its own citizens to comply with its laws. Third, *Pennoyer* has been overruled. This case was analyzed in great

[56] A member insurer pays an amount equal to its total written car years of insurance multiplied by the average premium per car.

detail in the answer to the application for leave to appeal, which will not be repeated here. In addition, the insurers' answer to the application rebutted the Jankowskis' reliance on the following cases: *American Trucking Ass'ns, Inc v Pennsylvania Secretary Dep't of Revenue*, 483 US 266; 107 S Ct 2829; 97 L Ed 2d 226 (1987), *Sexton v Ryder Truck Rental, Inc*, 413 Mich 406, 438-439; 320 NW2d 843 (1982), *Frick v Pennsylvania*, 268 US 473, 486; 45 S Ct 603; 69 L Ed 1058 (1925), *Miller Bros v State of Maryland*, 347 US 340; 75 S Ct 535; 98 L Ed 744 (1954), and *Allied-Signal, Inc v Director, Division of Taxation*, 504 US 768; 112 S Ct 2251; 119 L Ed 2d 533 (1992). The insurers adopt and incorporate their analysis of these cases here.

3. The Jankowskis' argument – that MCL 500.3111 should provide coverage for out-of-state accidents notwithstanding lack of Michigan PIP coverage on the accident vehicle – would require this Court to nullify MCL 500.3113(b), MCL 500.3101(1), and other no-fault provisions previously cited.

The Jankowskis essentially assert that MCL 500.3111 requires coverage for out-of-state accidents notwithstanding any other provision in the no-fault act. MCL 500.3111 states:

> 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.

The crux of the Jankowskis' inconsistency is that "a" policy here allows them to trigger a non-accident vehicle policy, but this is inconsistent with not similarly saying that for Section 3101(1) "a" vehicle subject to registration means that any registration requirement triggers a coverage requirement on all owned vehicles such that 3113(b) applies if they are in a vehicle they own that lacks the coverage. The argument is apparently that because there are two disjunctive ways to qualify for out-of-state benefits, one of which requires occupancy of a

vehicle owned by an insured owner and one of which requires named-insured status, qualification under one way means that the other provisions of the no-fault act do not apply. The error in Jankowskis' argument is that the means of qualifying for PIP coverage in § 3111 for out-of-state accidents reflect the same means of qualifying for PIP coverage in MCL 500.3114 for in-state accidents. Coverage is provided for a named insured and resident family members under MCL 500.3114(1), and it is provided for an occupant of a vehicle under MCL 500.3114(4). And there is no question that MCL 500.3113(b) defeats coverage under MCL 500.3114. Thus, § 3111 does not confer any super-insured status on a named insured that would defeat the coverage exclusion in MCL 500.3113(b). Section 3111, as a general statute, would always be subject to the specific exclusion in Section 3113(b). See *Miller v Allstate Ins Co,* 481 Mich 601, 613; 751 NW2d 463 (2008) ("'Specific provisions … prevail over any arguable inconsistency with the more general rule….'")

Cases spanning four decades hold that the specific *exclusion* from PIP benefits under MCL 500.3113(b) applies if the person's uninsured *vehicle* was involved in the accident. See *Belcher v Aetna Cas & Surety Co, supra,* 409 Mich 231, 259 (§3113(b) is one of three circumstances where PIP is not payable because of the relationship between the person suffering bodily injury and the uninsured vehicle involved in the accident); *DeSot v Auto Club Ins Ass'n,* 174 Mich App 251, 256; 435 NW2d 442 (1988), citing *Lewis v Farmers Ins Group,* 154 Mich App 324, 327; 397 NW2d 297 (1986) ("[MCL 500.3113(b)] represents a legislative policy to deny benefits to those whose uninsured vehicles are involved in accidents"). See also *Wilson,* 195 Mich App at 707-708 ("if plaintiff was the owner or registrant of the vehicle involved in the accident, and the security required by § 3101 or 3103 was not in effect with respect to that vehicle, then she is precluded from recovery of personal protection insurance benefits"); *Witt v*

American Family Mut Ins Co, 219 Mich App 602, 607; 557 NW2d 163 (1996) ("plaintiff, as a Michigan resident, was required to register his vehicle in Michigan, MCL 257.216; MSA 9.1916, and was required to maintain no-fault insurance, MCL 500.3101(1); MSA 24.13101(1). Having failed to do so, under § 3113(b) he was not entitled to no-fault benefits"); *Barnes v Farmers Ins Exch,* 308 Mich App 1, 7; 862 NW2d 681 (2014), quoting *Iqbal v Bristol West Ins Group,* 278 Mich App 31, 39-40; 748 NW2d 574 (2008) ("'[MCL 500. 3113(b)] when read in proper grammatical context, defines or modifies the preceding reference to the motor vehicle involved in the accident . . . and not the person standing in the shoes of an owner or registrant. The statutory language links the required security or insurance solely to the vehicle").

Thus, the Jankowskis' apparent argument that they are entitled to coverage because it is personal notwithstanding the lack of coverage on the accident vehicle does not withstand scrutiny. The Legislature has spoken. If there is no Michigan PIP coverage on the accident vehicle, the owner of the accident vehicle may not receive Michigan PIP benefits.

4. The Jankowskis' argument – that there is no prejudice because MCL 500.3111 already requires insurers to cover out-of-state accidents, and financial exposure can be cured by obtaining information from insureds regarding out-of-state vehicles and adjusting their premiums – neglects to note (a) the undue burden it would place on insurers to keep track of out-of-state but uninsured-for-PIP vehicles for approximately 7,074,674 licensed drivers in Michigan; (b) imposing such a burden on insurers would not have solved a situation like here where Michigan residents acquired a non-registered vehicle mid-policy; and (c) the constitutional and statutory implications to insurers who are required to set rates that are neither excessive, too low, nor unfairly discriminatory.

The Jankowskis' argument – that MCL 500.3111 already requires insurers to cover out-of-state accidents fails to factor in the preclusive effect of MCL 500.3113(b) and exclusion 2.J briefed above. Thus, for all the reasons previously set forth, there is no coverage required by statute for owners in the case of a vehicle uninsured for Michigan PIP.

The Jankowskis' argument that insurers can simply ask their insureds if they have out-of-state vehicles places a substantial and unworkable investigatory burden on insurers. Surely they joke.

The Jankowskis' proposed solution would have failed in this very case. The policy premium for the coverage period had already been paid. At the time it was paid, the accident vehicle was nonexistent to the Jankowskis. So, by judicial fiat will insurers be required to call each insured each day to ask if they have any new cars they would like to confess? In 2016, there were 7,074,674 licensed drivers in Michigan.[57] Under the Jankowskis' "simple solution," insurers will have to ask each of these 7,074,674 people each day whether they have a vehicle registered outside the state of Michigan, *and then keep track of all these out-of-state vehicles not included on Michigan PIP policies*, rather than the simpler solution of requiring those of the 7,074,674 who have vehicles out-of-state to simply insure their vehicles for Michigan PIP if they want to collect Michigan PIP. This Court has declined to impose such an unreasonable sentry duty on insurers. Cf. *Koski v Allstate Ins Co*, 456 Mich 439, 446; 572 NW2d 636, 640 (1998) (no sentry duty to check on lawsuit filings against an insured.)

Insureds have the burden of establishing coverage. Insurers issue no-fault certificates if there is coverage on a vehicle. This is simple. It is clear. The responsibility should be on insureds to buy the coverage they want.

5. The Jankowskis argument – that requiring registration of any vehicle on any road could encompass foreign countries and is absurd – is itself absurd.

The Jankowskis' argument that requiring registration of any vehicle on any road could encompass foreign countries is itself absurd. As noted in the answer to the application, MCL

[57] Total number of licensed drivers in the U.S. in 2016, by state, <https://www.statista.com/statistics/198029/total-number-of-us-licensed-drivers-by-state/>, (Accessed August 17, 2018), appellee's appendix p 77b

257.218, requires registration of foreign vehicles, yet permits the owner to simultaneously retain registration in another *state*. There is no mention in this statute of other countries. Moreover, the reach of the no-fault act does not extend to foreign countries beyond Canada. See, for instance, MCL 500.3111, which provides coverage 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." See also MCL 500.3131 ("Residual liability insurance shall cover bodily injury and property damage which occurs within the United States, its territories and possessions, or in Canada").

6. The Jankowsks argument – that they were denied a Michigan policy is incorrect and presented in the wrong forum.

The Jankowskis incorrectly assert without any evidence that Richard Jankowski sought to insure his Florida vehicle with Michigan no-fault insurance, and that *the insurers refused to insure the vehicle*. This is not in the record. Mr. Jankowski actually testified as follows:

Q And as you're sitting in the dealership, did you have to make arrangements for insurance for the vehicle?

A Correct.

Q And did you cancel the Auto-Owner -- or Home-Owners policy to buy Florida insurance?

A On that specific car, yes.

Q Okay. And who made those arrangements? Did you call an agent in Florida or did the dealership work that out for you?

A I probably called Tom McCarthy, but I don't remember.

Q In Michigan?

A Correct.

Q And he would have sold you a policy in Florida?

A No. He cancelled --

Q Okay.

> A the policy on the car we traded in, and he had us purchase insurance in Florida because the car was registered in Florida.[58]

According to Mrs. Jankowski, the Michigan agent told them he could not write a policy in Florida.

> Q. So Mr. McCarthy didn't misrepresent to you that you were going to have insurance in Michigan, did he, on this vehicle you bought?
>
> A. No, he didn't say anything about our insurance not covering anything. He just said he couldn't write or take a policy for Florida.
>
> Q. Okay. When he told you he couldn't write a policy for the car in Florida, what did you think that meant?
>
> A. I had no idea. I just thought he meant he couldn't give me the paperwork.[59]

Both Michigan and Florida require an agent to be licensed to sell insurance before the agent may write a policy in those states. See MCL 500.1201a, Fla Stat 626.112. The mere fact that the Jankowskis' Michigan agent was not able to write a policy in Florida does not mean that Auto-Owners denied them coverage. There are at least 20 agents near Bonita Springs, FL who sell Auto-Owners insurance.[60] There is no evidence that Auto-Owners refused to insure the Jankowskis. Agent Thomas McCarthy sold insurance for multiple insurance companies,[61] was an independent agent, and thus, was the agent of the insureds, not the insurer. See *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 20–21; 592 NW2d 379, 382 (1998).

Moreover, Allstate, the insurance company from which the Jankowskis purchased coverage for the accident vehicle, is licensed to provide Michigan no-fault coverage in Michigan.[62] Had the Jankowskis truly been seeking Michigan no-fault coverage for the accident vehicle, they could have obtained it from Allstate. Cf. *Farm Bureau Ins Co v Allstate Ins Co*,

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[58] Deposition of Richard Jankowski, p 17, appellant's appendix p. 6a.
[59] Janet Dep, pp 14-15, appellant's appendix p. 42a.
[60] Appellee's appendix p. 79b.
[61] Appellee's appendix, pp. 82b-88b.
[62] <https://www.michigan.gov/documents/cis_ofis_cert_3163_25526_7.pdf> (accessed August 18, 2018), pp 6-7, appellee's appendix pp 2b-3b.

233 Mich App 38, 41; 592 NW2d 395 (1998), citing MCL 500.3012. Thus, there is no support (and certainly no authority cited) for the Jankowskis' "parade of horrors" analysis. Requiring a Michigan resident to register and insure a vehicle in Michigan in order to obtain Michigan PIP coverage is neither unfair nor unreasonable.

If the Jankowskis thought they were wrongly denied a Michigan auto policy, before the accident they should have invoked their statutory remedy in the Essential Insurance Act, through the Insurance Commissioner. See MCL 500.2113. The judiciary does not re-write a policy to cure such contrived woes that are within the jurisdiction of the executive branch and committed to the Insurance Commissioner.[63] See *Rory v Continental Ins Co*, 473 Mich 457, 475-476, 491; 703 NW2d 23 (2005).

CONCLUSION AND RELIEF REQUESTED

Leave to appeal should be denied. Whether or not they were required to register their Florida vehicle they are not entitled to coverage under a non-accident policy in Michigan since they chose to get cheaper Florida coverage for their owned vehicle and so are excluded by the non-accident vehicle policy and disqualified by statute for PIP. This issue was decided more than 25 years ago in a published Court of Appeals opinion that is fully consistent with cases of this Court such as *Belcher* disallowing benefits where an owned but uninsured vehicle is involved. Because the Jankowskis have failed to establish that (a) they were not required to register their vehicles under MCL 257.216, (b) any type of constitutional violation exists as a result of Michigan's exercise of its power over them as citizens, or (c) any valid public policy argument, they have not established that they were entitled to Michigan PIP benefits. Home-Owners and Auto-Owners request that this Court deny leave to appeal or issue an opinion affirming the Court

[63] The Insurance Commissioner is now identified as the Director of the Department of Insurance and Financial Services. See Executive Reorganization Order No. 2013-1, Effective March 19, 2013, compiled at MCL 550.991.

of Appeals decision and clarifying once and for all that Michigan residents must obtain Michigan no-fault PIP coverage for *all* their vehicles if Michigan residents intend to claim Michigan no-fault PIP benefits for out-of-state accidents.

Respectfully submitted,

WILLINGHAM & COTÉ, P.C.
Attorneys for Plaintiffs/Counter-Defendants/Cross-Appellees

Dated: August 24, 2018

BY /s/ Kimberlee A. Hillock

Kimberlee A. Hillock (P65647)
David Nelson (P69471)
333 Albert Avenue, Suite 500
East Lansing, MI 48823
(517) 351-6200
Fax: (517) 351-1195

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