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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Court of Appeals
(Gadola, P.J., and Jansen and Saad, JJ)

Home-Owners Insurance Company, Plaintiff-Appellee, and Auto-Owners Insurance Company, Plaintiff, v Richard Jankowski and Janet Jankowski, Defendants-Appellants.	Supreme Court Docket No. 156240 Court of Appeals Docket No. 331934 Ingham County Circuit Court Case No. 15-000025-CK

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AMICUS CURIAE BRIEF BY THE COALITION PROTECTING AUTO NO-FAULT

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STATEMENT OF QUESTION PRESENTED

1. Does the Michigan No-Fault Act require an insurer to provide PIP benefits to a named insured on a Michigan PIP policy who is also the owner of an out-of-state vehicle involved in the accident that is not covered by the PIP policy because it is never driven in Michigan and not required to be registered in Michigan?

   Court of Appeals answered: No.

   Appellants answer: Yes.

   Appellee answers: No.

   Amicus Curiae CPAN answers: Yes.

STATEMENT OF INTEREST OF AMICUS CURIAE CPAN

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

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

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

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

The Michigan No-Fault Act assures coverage to Michigan residents who have No-Fault PIP policies even when they are traveling out of state. To preserve this coverage, and ensure Michigan residents can rely on their coverage even when they travel, it is imperative that MCL 500.3111 be applied the way the Legislature intended. That is, as long as the accident victim is "a named insured under a personal protection insurance policy," they obtain their benefits, regardless of what vehicle they are in at the time of the accident. MCL 500.3111.

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Moreover, Sections 3101 and 3113 must be applied the way the Legislature intended and not as a means of excluding coverage for these traveling residents who have fully complied with the No-Fault Act. These Sections, taken together, exclude from coverage **only** owners or registrants who fail to comply with the No-Fault Act by not insuring vehicles that are **required to be registered in Michigan because they are driven in Michigan**. It is contrary to the purposes of the No-Fault Act to deny coverage to these Michigan residents who have insured every Michigan vehicle they own, simply because they also own a vehicle that is never driven in Michigan and thus not registered and insured in Michigan.

INTRODUCTION

The primary legal significance of this case pertains to the proper interpretation of the Motor Vehicle Code. This is because the requirement of insurance under the No-Fault Act is directly tied to whether the vehicle must be registered in Michigan under the Motor Vehicle Code. Because the Motor Vehicle Code is distinct from the No-Fault Act, an improper interpretation of the Code could have broader implications. If this Court allows the Court of Appeals' decision to stand, all Michigan residents will have to register all motor vehicles in Michigan, regardless of whether they are ever driven on Michigan roads. Such a requirement is beyond the scope of the Motor Vehicle Code, as indicated clearly by the statute's title. This Court must clarify that the Motor Vehicle Code applies only to vehicles driven in Michigan.

Secondarily, this case concerns the rights of consumers who purchase No-Fault

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insurance to be covered by their insurance wherever they travel. These consumers purchase No-Fault insurance with the understanding that the insurance covers them as a person, not simply their vehicle, and applies no matter where they go and within which vehicle they drive. Indeed, that is part of the value of no-fault insurance as a product and contributes to the price of the product. The Court of Appeals' decision in this case deprives consumers of some of that value by holding that Section 3111 does not allow coverage out-of-state when a person **owns** a vehicle out-of-state, simply because the vehicle is uninsured, even though the **person** is a named insured under a No-Fault policy. This goes against the general principle that No-Fault personal protection insurance covers individuals, not vehicles.

If a person merely rents a car outside of Michigan, they are undisputedly entitled to their PIP benefits. If they ride in a friend's car outside of Michigan, they are entitled to their PIP benefits. If they ride in a taxi outside of Michigan, they are entitled to their PIP benefits. Section 3111 of the No-Fault Act ensures that Michigan residents receive their PIP benefits even when they travel and are involved in out-of-state accidents. The Court of Appeals concluded, however, that if a person is an owner or registrant of the vehicle they use only in another state, then they can no longer recover those PIP benefits. Obviously, since PIP benefits are for personal injuries and not damage to a vehicle, the actual liabilities incurred by the insurer are the same regardless whether the person is in a taxi, a friend's car, or an owned car. But Home Owners contends that in the particular circumstance of vehicle ownership, a person should be disqualified from receiving PIP benefits under MCL 500.3113(b).

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The Court of Appeals erred when it interpreted the Motor Vehicle Code to apply well beyond its scope, and when it interpreted Section 3113 in such a way as to swallow up an individual's rights under Section 3111 for an out-of-state accident. This Court must apply the proper scope of the Motor Vehicle Code, as indicated by its title, and apply the plain language of MCL 500.3111, as well as MCL 500.3101(1) and MCL 500.3113(b), to hold that Michigan residents are not required to register or insure their vehicle that is never driven in Michigan in order to recover No-Fault PIP benefits for an accident in which that vehicle is involved, and are not disqualified from receiving PIP benefits for failing to do so when they are a named insured on a Michigan No-Fault PIP policy.

STATEMENT OF FACTS

This case involves two residents of Michigan—Richard and Janet Jankowski—who are named insureds under a Michigan No-Fault insurance policy issued by Home-Owners Insurance Company. *Home-Owners Ins Co v Jankowski*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2017 (Docket No. 331934), at 2. They own two vehicles in Michigan, and four months prior to the accident, they leased a Lexus SUV in Florida to serve as their vehicle while vacationing in Florida. *Id.* at 1-2. They never operated this vehicle in Michigan. On May 25, 2014, while in Florida, the Jankowskis were driving in the Lexus SUV, and were struck by another motor vehicle, causing them both to sustain serious injuries. *Id.* at 1.

The Jankowskis sought to recover PIP benefits from Home-Owners, but the Trial Court and Court of Appeals concluded that they could not. Specifically, they concluded that the Jankowskis could not recover PIP benefits due to the MCL 500.3113(b) exclusion,

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because they owned the Florida vehicle and it was not a listed vehicle on their Michigan No-Fault policy.

This appeal followed.

ARGUMENT

I. Under the Motor Vehicle Code, vehicles not driven in Michigan are not "required to be registered in this state," and thus are not required to be insured under the Michigan No-Fault Act.

A. The exclusion of MCL 500.3113(b) applies only if a vehicle is required to be insured by MCL 500.3101(1), and thus only if the vehicle is required to be registered in Michigan.

The question posed by this Court is 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)." (05/25/18 S. Ct. Order). As implied by the question, it is the requirement of registration that triggers the obligation to maintain security on a vehicle and only when one is obligated to maintain security is one disqualified under MCL 500.3113(b) for failing to do so.

MCL 500.3113(b) provides,

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

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effect.

MCL 500.3113(b) (emphasis added).

Security is only required under Section 3101 when a vehicle is required to be registered in Michigan. Specifically, MCL 500.3101(1) provides,

> (1) The owner or registrant **of a motor vehicle required to be registered in this state** shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance.

MCL 500.3101(1) (emphasis added).

Taken together, these provisions make clear that a person is not entitled to benefits under MCL 500.3113(b) only if security is required to be in effect under MCL 500.3101(1), and security is only required to be in effect if the vehicle is required to be registered in this state. As discussed in part B, the vehicle at issue in this case was not required to be registered in Michigan. Thus, the exclusion of MCL 500.3113(b) is inapplicable in this case.

B. A vehicle not driven in Michigan is not required to be registered in Michigan because the Motor Vehicle Code must be interpreted to operate within the scope of its title.

Michigan statutes are required by the Michigan Constitution to not exceed the scope of their title. This limitation is contained in the Title-Object clause of the Michigan Constitution, which states, "No law shall embrace more than one object, which shall be expressed in its title." Const. 1963, art 4, § 24.

"This constitutional limitation ensures that legislators and the public receive proper notice of legislative content and prevents deceit and subterfuge." *Pohutski v City of Allen*

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Park, 465 Mich 675, 691; 641 NW2d 219 (2002). "The 'object' of a law is defined as its general purpose or aim." *Id.* "The act may include all matters germane to its object, as well as all provisions that directly relate to, carry out, and implement the principal object." *Id.* It may not, however, contain provisions that exceed the scope of the title.

This Court has faithfully enforced the requirements of the Title-Object clause by overturning provisions in statutes that exceed the scope of the statute's title or interpreting them in a way that places them within that scope. In *Maki v East Tawas*, 385 Mich 151; 188 NW2d 593 (1971), for example, this Court examined the Governmental Immunity Act, the title of which read as follows:

> An act to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, when engaged in a governmental function, for injuries to property and persons **caused by negligence**; to define and limit such liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of such liability; to provide for defending certain claims made against public officers and paying damages sought or awarded against them; and to repeal certain acts and parts of acts.

Id. at 156 (emphasis added). The *Maki* case concerned Section 7 of the Governmental Immunity Act, which provided,

> Except as in this act otherwise provided, all governmental agencies shall be immune from **tort liability** in all cases wherein said government agency is engaged in the exercise and discharge of a governmental function. Except as otherwise provided herein, this act shall not be construed as modifying or restricting the immunity of the state from tort liability as it existed heretofore, which immunity is hereby affirmed.

Id. at 155-156 (emphasis added). Because the Act's title referred only to liability with

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respect to negligence, and Section 7 attempted to limit liability in the much broader area of torts, this Court held that Section 7 was unconstitutional. *Id.* at 159.

Similarly, in *People v Stanton*, 400 Mich 192, 193; 253 NW2d 650 (1977), this Court examined a statute designed to keep weapons, liquor, and narcotics out of the prison system, the title of which stated,

> AN ACT to prohibit the **bringing into prisons** of all weapons, or other implements which may be used to injure any convict or person or in assisting any convict to escape from punishment, **or the selling or furnishing of same to convicts**; to prohibit the bringing into prisons of all spirituous or fermented liquors, drugs, medicines, poisons, opium, morphine or any kind or character of narcotics, or the giving, selling or furnishing of spirituous or fermented liquors, drugs, medicines, poisons, opium, morphine or any other kind or character of narcotics to convicts or paroled prisoners and providing a penalty for the violation hereof.

Section 3 of the Act, however, stated,

> A convict without authorization, **shall not have on his person or under his control or in his possession** any weapon or other implement which may be used to injure any convict or other person, or to assist any convict to escape from imprisonment.

Id. at 194. This Court held that the above sentence of Section 3, added by an amendment, was unconstitutional because it exceeded the scope of the title of the Act. *Id.* at 195. The title referred only to bringing weapons into prisons, whereas the amendment outlawed mere possession. *Id.*

Lastly, in *Bankhead v Mayor of River Rouge*, 387 Mich 610, 612; 198 NW2d 414 (1972), this Court used the title to interpret a provision of the Act in question, in order to keep that provision within the scope of the title. The Act in question stated the following in

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its title:

> An act to authorize any city, village or township to purchase, acquire, construct, maintain, operate, improve, extend and repair housing facilities; to eliminate housing conditions which are detrimental to the public peace, health, safety, morals or welfare; . . . to create by a commission with power to effectuate said purposes, . . . to authorize any such city, village or township to issue notes and revenue bonds; . . . to regulate the rentals of such projects and the use of the revenues of the projects; to prescribe the manner of selecting tenants for such projects; to provide for condemnation of private property for such projects; . . . to receive aid and cooperation of the federal government; to provide for a referendum thereon; **to create a board of tenant affairs in any city of 1,000,000 or over having a housing commission and operating 1 or more housing projects**; . . . ."

Id. (emphasis added). Section 49 of the Act, on the other hand, simply stated,

> There is created a board of tenant affairs for each city, village or township having a housing commission and operating 1 or more housing projects as provided by this act.

Id. This Court interpreted Section 49 to apply only to cities of 1,000,000 or more people because the limitation within the title must apply to the Act. *Id.* at 615.

Here, the Motor Vehicle Code is similar. The title of the Act indicates that the Act provides for the registration of vehicles *operated in Michigan*, as quoted in relevant part below:

> 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; . . . .

1949 PA 300, title (emphasis added).

Although MCL 257.216 does not specify that only vehicles operated in Michigan are

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subject to the registration requirements, MCL 257.216 may not be broader than the Act's title. MCL 257.216 provides,

> 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 . . .

MCL 257.216. Much like in *Bankhead*, this Court must interpret Section 216 to be within the scope of the Act's title, and thus to mean only every motor vehicle driven or moved on a street or highway in *Michigan* is subject to the provisions of the Act. To do otherwise would violate the Title-Object clause of the Michigan Constitution.

Because a vehicle never driven in Michigan is not required to be registered in Michigan, MCL 500.3113(b) does not prevent a driver of such vehicle from recovering their Michigan No-Fault benefits from their personal insurer.

II. No-Fault personal protection insurance covers the individual, not the vehicle, and thus under MCL 500.3111, an insured may recover personal protection benefits for injuries sustained in out-of-state accidents in *any* vehicle, so long as they are the named insured on a Michigan PIP policy.

Even if this Court interprets the Motor Vehicle Code to require registration of out-of-state vehicles that are never driven in Michigan, this Court must consider Section 3111 of the No-Fault Act and must not interpret Section 3113 in such a way that it swallows up a consumer's rights under Section 3111 when that consumer happens to own an out-of-state vehicle. Michigan citizens purchase No-Fault PIP insurance to protect themselves as individuals. When they purchase that product, they expect that this insurance will protect them no matter where they drive, and no matter in which vehicle they ride. That is what

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Section 3111 assures them, as long as they are the named insured on a Michigan No-Fault policy.

Indeed, this Court held in *Lee v Detroit Auto Inter-Insurance Exchange*, 412 Mich 505; 315 NW2d 413 (1982), that the particular vehicle involved in an accident need not be insured or registered in Michigan in order for an insured to receive No-Fault benefits from their personal No-Fault insurer. This Court explained,

> [T]he Legislature, in its broader purpose, intended to provide benefits whenever, as a general proposition, an insured is injured in a motor vehicle accident, whether or not a registered or covered motor vehicle is involved; and in its narrower purpose intended that an injured person's personal insurer stand primarily liable for such benefits whether or not its policy covers the motor vehicle involved and even if the involved vehicle is covered by a policy issued by another no-fault insurer.

Id. at 515. In that case, the vehicle involved was a government-owned mail truck, which was not required to be registered in Michigan pursuant to MCL 257.216(f). *Id.* at 508 n.2. However, the same principles apply here.

More recently, this Court has reiterated that PIP insurance is tied to the individual, not the insured vehicle:

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

Turner v Auto Club Ins, 448 Mich 22, 44; 528 NW2d 681 (1995).

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In *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 255; 819 NW2d 68 (2012), the Court of Appeals also recognized this general principle when it noted that "PIP coverage protects the person, not the motor vehicle." Indeed, it is well established that "[a] no-fault insurance carrier can be responsible for PIP benefits even if the motor vehicle it insures was not the actual motor vehicle involved in the accident." *Id.*

With respect to out-of-state accidents specifically, MCL 500.3111, likewise, allows an insured to recover PIP benefits for an out-of-state accident without regard to whether the particular vehicle they were driving was insured by a Michigan policy. The section focuses instead on whether the person seeking to recover benefits was the named insured on a Michigan PIP policy. Specifically, MCL 500.3111 provides,

> 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.

MCL 500.3111 (emphasis added).

Absent from the plain language of MCL 500.3111 is any requirement that the vehicle involved be insured by the Michigan PIP policy. Only if a person is not a named insured under their own policy must they look to the insurance of the owner or registrant of the vehicle involved. Interpreting MCL 500.3111 to require the particular vehicle involved to be insured would be inconsistent with the section's plain language and with the well

established principle that No-Fault PIP insurance protects people, not vehicles.

Indeed, it is well-established that an insurance company must pay benefits if a person is in an accident while renting a car outside of Michigan. Similarly, they are entitled to benefits if they are in an accident while riding in a friend's car outside of Michigan, or if they are in an accident while riding in a taxi outside of Michigan. Section 3111 of the No-Fault Act ensures that Michigan residents receive their PIP benefits even when they travel and are involved in out-of-state accidents. The Section's purpose is to assure Michigan residents of their coverage, no matter where they are and what vehicle they are riding in.

To exclude a person from recovering benefits simply because he or she owns an out-of-state vehicle punishes that individual for owning a vehicle out-of-state rather than renting, or driving someone else's vehicle, even though the vehicle is not used in Michigan and not required to be registered in Michigan. Indeed, the Jankowskis in this case were unable to obtain Michigan No-Fault insurance specifically for their Florida vehicle *because* it was a Florida vehicle. But as Michigan residents, they are supposed to be protected by their No-Fault insurance no matter where they go. When they are denied benefits based on mere ownership of an out-of-state vehicle, they are denied the assured coverage that they paid for when they purchased Michigan No-Fault PIP insurance. The Court of Appeals' interference with these individuals' rights to PIP benefits cannot be allowed to stand.

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III. Because the No-Fault personal protection insurance benefits follow the individual, not the vehicle, insurers are always underwriting the risk of accidents involving other vehicles; thus, they are not prejudiced by interpreting MCL 500.3111 in accordance with its plain language.

This Court has previously recognized a principle of insurance law that an insurance company may be held liable only for the risks it assumes. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 N.W.2d 431 (1992). Interpreting MCL 500.3111 and 500.3101 in accordance with their plain language does not, however, prejudice insurance companies, or hold them responsible for risks they did not choose to underwrite.

Every insurer who provides Michigan No-Fault coverage understands and agrees to provide the coverage required by statute. The minimum coverage for personal protection benefits is dictated by statute, and an insurer may not alter that coverage to provide less than the statute requires. See *Rohlman v Hawkeye-Sec Ins Co*, 442 Mich 520, 524-525; 502 NW2d 310 (1993). Moreover, as discussed in Part II, it is well-established that when insurers issue personal protection policies, those personal protection policies follow the person, not merely the vehicle insured. For this reason, insurers who issue personal protection policies under Michigan No-Fault *are* assuming the risks associated with out-of-state accidents involving their insureds, and accidents not involving the insured vehicle, as well.

This case concerns the narrow circumstance of when a person *owns or leases* a car in another state. There is no dispute that an insurer would be liable for numerous other types of out-of-state accidents that do not involve an owned vehicle. For example, if a Michigan resident with a PIP policy is driving a rental car out of state, they are covered by their PIP policy even though that policy does not cover the rental car. The exclusion of

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MCL 500.3113(b) would undisputedly not apply in that situation, nor does any other exclusion. They are similarly covered if they are in their friend's car out-of-state, or in a taxi out-of-state, or on a bicycle but in an accident with a motor vehicle in another state. An insurer is undisputedly underwriting all of these risks. There is no reason driving a car owned in another state should be treated any differently.

Thus, insurers will not be prejudiced if MCL 500.3111 is interpreted in accordance with its plain language to provide coverage when a person is the named insured on a PIP policy, without respect to the vehicle involved in the accident.

CONCLUSION

In enacting the No-Fault Act, the Legislature intended that any named insured on a PIP policy could recover for an out-of-state accident, regardless of whether the vehicle involved was insured. It further required only vehicles driven in Michigan to be insured by a Michigan No-Fault policy. The Jankowskis complied with the Michigan No-Fault Act by insuring all vehicles driven in Michigan and are entitled to No-Fault PIP benefits for even an out-of-state accident as a result.

RELIEF REQUESTED

Amicus Curiae CPAN respectfully requests that this Court reverse the decision of the Court of Appeals and hold that failure to insure a vehicle that is never driven in Michigan does not disqualify a person from PIP benefits.

Date: September 14, 2018

Respectfully submitted,

/s/ Jennifer M. Alberts

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