STATE OF MICHIGAN

IN THE SUPREME COURT

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

Plaintiffs-Appellees,

-vs-

RICHARD JANKOWSKI
and JANET JANKOWSKI,

Defendants-Appellants.

SUPREME COURT DOCKET NO: 156240

COURT OF APPEALS DOCKET NO: 331934

INGHAM COUNTY CIRCUIT COURT
DOCKET NO.: 15-0025-CK
HON. WILLIAM E. COLLETTE

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***AMICUS CURIAE* BRIEF BY THE INSURANCE ALLIANCE OF MICHIGAN**

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STATEMENT OF INTEREST OF *AMICUS CURIAE* INSURANCE ALLIANCE OF MICHIGAN

The Insurance Alliance of Michigan was formed in 2017, following the merger of the Michigan Insurance Coalition and the Insurance Institute of Michigan. Together, its member insurers write nearly 70 percent of all property and casualty insurance policies in the State of Michigan. Its members include over 35 insurers, including many well-known insurers such as AAA of Michigan, Allstate Insurance Company, Farm Bureau Insurance Group of Companies, Farmers Insurance Group, Hanover/Citizens Insurance Company, Nationwide and Progressive.

The Insurance Alliance of Michigan is a non-profit Michigan corporation, which exists to serve not only the Michigan insurance industry, but also Michigan insurance consumers as a source of information regarding insurance issues. The Insurance Alliance of Michigan provides information to the media, the government and the public at large. Its primary mission includes generating public awareness of the insurance business in the State of Michigan, and the benefits to the Michigan economy of a strong, private insurance market and risk management industry. Such awareness is generated through educational and public relations programs, loss prevention activities, legislative and lobbying efforts, judicial and legal assistance, consumer programing, and other activities that promote a more accurate understanding of the purpose and principles of insurance. In doing so, the Insurance Alliance of Michigan exists to assist the public in addressing their personal insurance needs, as well as Michigan businesses with regard to their commercial insurance needs.

The website maintained by the Insurance Alliance of Michigan contains valuable information for insurance consumers. There is information regarding the purposes for insurance, and how insurers spend the premium dollars paid by policyholders. There is information on how the Michigan no-fault insurance system works, particularly with regard to payment of first-party, no-fault insurance benefits and the operation of the Michigan Catastrophic Claims Association.

There is also valuable information regarding annual premium costs for auto insurance in the State of Michigan, and why those costs are so high. The issue involved in this case could, unfortunately, result in even higher premiums for Michigan consumers.

It is generally recognized that the State of Michigan has the highest auto insurance premiums, given the generous no-fault insurance benefits provided under the Michigan No-Fault Insurance Act. See *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38, 592 NW2d 395 (1998). For those Michigan residents who may own a second or even a third home out of state, such as the Jankowski Defendants in this case, the enticement to insure vehicles used in those other states for a far less premium, all the while secure in the knowledge that, if injured, they could still recover Michigan's generous no-fault insurance benefits (without paying the higher premium for same) is certainly appealing to one's pocketbook. The problem, though, is that by failing to secure a proper premium for a vehicle owned by a Michigan resident, utilized out of state, it simply shifts the burden onto other Michigan policyholders who are forced to contribute to the insurance pool covering such individuals. The potential drain on the insurance system, if the Jankowski Defendants and their supporting *amici* prevail in this appeal, was succinctly summarized by the Court of Appeals in *Wilson v League Gen'l Ins Co*, 195 Mich App 705, 491 NW2d 642 (1992):

> "Further, to so interpret the language in the manner suggested by Plaintiff [and, for that matter, the Jankowski Defendants and their supporting *amici* in this case] 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 other states involving vehicles for which security had not been obtained."
>
> *Wilson*, 491 NW2d at 644.

Indeed, one can imagine a situation where a Michigan resident buys an inexpensive piece of property, buys an old, beat-up car and obtains the least expensive Michigan no-fault policy on that

"clunker," and then proceeds to buy multiple homes in multiple other states, replete with much nicer vehicles insured under the insurance laws of those states (which undoubtedly require less in the way of insurance premiums), secure in the knowledge that if they are injured anywhere, at any time, while operating any of those vehicles in the United States or even Canada, they will be able to take advantage of the generous no-fault benefits available through the Michigan no-fault insurance system. Despite having paid only a minimal premium for the "clunker" to obtain such coverages, such individuals would be able to secure Michigan no-fault benefits no matter which car they were using and no matter which other state they may be travelling in!

This Court has recognized that the insurance industry is "affected with the public interest." *Attorney Gen'l v Michigan Surety Co*, 364 Mich 299, 325; 110 NW2d 677 (1961). To the extent that the no-fault insurance industry, in the State of Michigan, is forced to pay generous Michigan no-fault insurance benefits to individuals, such as the Jankowski Defendants, who are admittedly Michigan residents but who failed to insure vehicles **which they own** for Michigan no-fault insurance benefits, the more the no-fault insurer must pass along those increased costs to every person in the State of Michigan who chooses to follow the law and insure all of their motor vehicles (even those situated outside of the State of Michigan), as required by both the Michigan No-Fault Insurance Act, MCL 500.3101, and the Michigan Vehicle Code pertaining to registration of said vehicles, MCL 257.216. Surely, it is in the public interest to ensure that the vehicle owners are paying the appropriate premiums for the coverages they wish to obtain. This, in essence, is the interest of the Insurance Alliance of Michigan, with regard to the instant controversy.

Simply put, the Insurance Alliance of Michigan's interests are aligned with the public interest in seeing to it that insurance costs are kept to a minimum, which will, in turn, result in the no-fault insurance system being more affordable to the Michigan motoring public. In other words,

when the number of policyholders increase (due to the more affordable premiums), the less of a load the rest of the policyholders in this state are forced to carry. In this regard, the Insurance Alliance of Michigan would like to extend a special thanks to this Court for inviting it to appear as *amicus curiae* in support of the position taken by Plaintiffs/Counter-Defendants/Appellants/Cross-Appellees Home-Owners Insurance Company and Auto-Owners Insurance Company in this Appeal.

STATEMENT OF FACTS

As noted in the Supplemental Brief filed by Plaintiff/Counter-Defendant/Appellant/Cross-Appellee Home-Owners Insurance Company and Plaintiff/Counter-Defendant/Cross-Appellee Auto-Owners Insurance Company (hereinafter referred to as "Plaintiffs" or "Home-Owners"), Defendants-Appellants Richards Jankowski and Janet Jankowski (hereinafter "the Jankowski Defendants") are domiciliaries of the State of Michigan, even though they have residences in both the State of Michigan and the State of Florida. They also owned multiple vehicles, with the Michigan vehicles being insured for Michigan no-fault insurance coverage through Home-Owners Insurance Company, and the Florida vehicle, involved in the accident, being insured for **Florida** no-fault benefits through a **Florida** policy issued by Allstate Insurance Company.

Prior to the motor vehicle accident of May 25, 2014, the Jankowskis had driven their Michigan-registered and Michigan-insured 2006 Lexus RX350 from Michigan to Florida. In January 2014, they traded in the Michigan-registered and Michigan-insured 2006 Lexus for a lease on a 2014 Lexus GX360, which was later involved in the motor vehicle accident of May 25, 2014. *Amicus curiae* Insurance Alliance of Michigan is at a loss to understand why the Jankowskis could not have simply registered the 2014 Lexus in the State of Michigan and, at the same time, obtain Michigan no-fault insurance coverage on said vehicle. In the day and age of the internet, persons buy and sell motor vehicles across state lines rather easily. Furthermore, as also noted by Home-Owners, in footnote 28 of its Supplemental Brief, the Jankowskis actually drove their Michigan-registered and Michigan-insured 2006 Lexus from Michigan to Florida in November 2013; yet, after trading in the vehicle for the 2014 Lexus involved in the accident, they failed to explain how they intended to return to the State of Michigan. Whatever the case may be, the Jankowskis decided not to register and insure their newly-acquired Lexus in the State of Michigan (at a higher insurance

premium cost) and instead opted to register and insure the newly-acquired Lexus in the State of Florida, under a less expensive Florida insurance policy issued by Allstate.

On May 25, 2014, the Jankowskis were injured in a motor vehicle accident occurring in the State of Florida, while operating the Florida-registered and Florida-insured motor vehicle. After exhausting their Florida PIP coverage which, as noted by Home-Owners, was $10,000.00 per person, the Jankowskis filed a claim for **Michigan** no-fault benefits under the Michigan no-fault policies covering the non-involved vehicles, despite not having paid the appropriate premium for securing Michigan no-fault benefits for this motor vehicle which the Jankowski Defendants undoubtedly owned! Home-Owners denied coverage on the basis that both Defendants were the owners of a motor vehicle which did not carry the three mandatory insurance coverages necessary to qualify for Michigan no-fault insurance benefits under MCL 500.3101(1) – personal injury protection benefits, property protection insurance benefits, and residual liability coverage. The absence of any one of these coverages results in a finding of no coverage. *Bronson Methodist Hosp v Michigan Assigned Claims Facility*, 298 Mich App 192, 826 NW2d 198 (2012); MCL 500.3113(b). The Circuit Court determined that while Defendant Richard Jankowski was disqualified as an "owner" of the motor vehicle which did not carry the necessary three components of no-fault coverage, Defendant Janet Jankowski was not an "owner" of said vehicle and, as a result, she was entitled to benefits. On appeal, the Court of Appeals reversed and held that both Richard Jankowski and Janet Jankowski were "owners" of the motor vehicle which simply did not carry the necessary insurance coverages to trigger entitlement to Michigan no-fault insurance benefits. This Appeal ensued.

LEGAL ARGUMENT

I. THE MICHIGAN VEHICLE CODE MAKES IT CLEAR THAT ALL VEHICLES OWNED BY MICHIGAN RESIDENTS ARE REQUIRED TO BE REGISTERED IN THE STATE OF MICHIGAN, WHICH WOULD INCLUDE THE 2014 LEXUS INVOLVED IN THE SUBJECT ACCIDENT

It is axiomatic that Michigan law governs the conduct of Michigan domiciliaries, such as the Jankowski Defendants in this case. To put it another way, the extra-territorial reach of Michigan statutes do not end once a person crosses the Michigan-Ohio border. As Michigan domiciliaries, the Jankowskis were bound by provisions of the Michigan Vehicle Code, including the registration provision in MCL 257.216. This statute 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: . . ."

The Jankowski Defendants and their supporting *amicus curiae* take the position that the proper interpretation of MCL 257.216 is limited by the preamble to the Michigan Vehicle Code, which provides:

> "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. . ."

The Jankowski Defendants and their supporting *amicus curiae* argue that, even though the Jankowskis are Michigan residents, MCL 257.216 does not apply to them because it only references vehicles being operated in this state, not in other states, according to the preamble of the Michigan Vehicle Code.

As noted by Home-Owners, though, this argument is misplaced for two reasons. First, the Jankowski Defendants and their supporting *amicus curiae* overlook the fact that the preamble references not just the operation of motor vehicles "upon the public highways of this state," but also

"any other place open to the general public or generally accessible to motor vehicles." Are the Jankowski Defendants and supporting *amicus curiae* really suggesting that the highways of the State of Florida, where these Michigan domiciliaries were using their vehicle, do not qualify as "any other place open to the general public or generally accessible to motor vehicles"? A plain reading of MCL 257.216, laid alongside the preamble, makes it clear that the argument proffered by the Jankowski Defendants and their supporting *amicus curiae* are without merit.

Second, because the language set forth in MCL 257.216 is clear and unambiguous, there is no need to even look at the preamble. This Court and the Court of Appeals have long stated that if the language of a statute is clear and unambiguous, the statute must be enforced as written, and no further judicial construction or interpretation is permitted. *Whitman v City of Burton*, 493 Mich 303, 311, 831 NW2d 223 (2013); *Allstate Ins Co v State Farm*, 321 Mich App 543, 909 NW2d 495 (2017). Furthermore, the preamble itself is not even considered to be part of the act, and cannot be used to limit or extend the meaning of the statute which is otherwise clear on its face. As stated by this Court in *National Pride at Work v Governor*, 481 Mich 56, 748 NW2d 524 (2008):

> "This view of the preamble is consistent with the well-established rule that 'the 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 . . . .' *Yazoo & M V R Co v Thomas*, 132 US 174, 188; 10 S Ct 68; 33 L Ed 302 (1889) . . . . That is, a 'preamble no doubt contributes to a general understanding of a [provision], but it is not an operative part of the [provision],' and '[w]here the enacting or operative parts of a [provision] are unambiguous, the meaning of the [provision] cannot be controlled by language in the preamble.' *Nat'l Wildlife Federation v EPA*, 351 US App DC 42, 57-58; 286 F3d 554 (2002)."
>
> *Id*, 748 NW2d at 539, n. 20.

See also *King v Ford Credit Co*, 257 Mich App 303, 668 NW2d 357 (2003), in which the Court of Appeals adopted the following rules regarding the relationship between the preamble and the operative statutory language:

> "A preamble consists of statements which come before the enacting clause in a statute. It usually gives reasons for the operative provisions which follow . . .
>
> * * *
>
> The preamble can neither limit nor extend the meaning of a statute which is clear. Similarly, it cannot be used to create doubt or uncertainty. If the statute is clear and the whole act method of interpretation is used, the true meaning is derived from all parts of the act regardless of whether the preamble is more or less extensive than the purview. Whole act interpretation produces a more defensible result than exclusion of the preamble even though the result may be the same.
>
> The preamble may be employed to extend the meaning of an ambiguous statute beyond the limited language of the purview. This rule must be qualified by the explanation that the result must be consistent with other rules of interpretation."
>
> *Id*, 668 NW2d at 363, quoting 2A Singer, Sutherland Statutory Construction (6th ed), § 47:04, pp 219-226

Frankly, there is nothing ambiguous about the scope of MCL 257.216, which requires Michigan residents to register and insure vehicles in this state if they wish to receive the benefits of the No-Fault Insurance Act.

The Michigan Court of Appeals addressed this very issue in *Wilson v League Gen'l Ins Co*, 195 Mich App 705, 491 NW2d 642 (1992). In that case, Plaintiff was a Michigan domiciliary, who was attending college in Texas. While in Texas, she purchased a used vehicle but did not bother to obtain insurance on the vehicle – certainly not the insurance required under Michigan law! While traveling from Texas to Michigan, Plaintiff was involved in a motor vehicle accident in the State of Tennessee and sustained injuries. She attempted to file a claim with her mother's insurer, League General. However, League General denied the claim on the basis that Plaintiff was the owner of a motor vehicle that did not carry the three mandatory insurance requirements set forth in MCL 500.3101(1) – personal injury protection (PIP) benefits, property protection insurance (PPI)

benefits and residual liability coverage. Accordingly, League General argued that Plaintiff was disqualified from recovering no-fault benefits pursuant to MCL 500.3113(b), which provides:

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

Like the Jankowski Defendants in this case, and their supporting *amicus curiae*, Plaintiff argued that, because her vehicle was not required to be registered in the State of Michigan, she was not required to insure it for Michigan no-fault insurance coverage. Applying the plain and unambiguous language of MCL 257.216, the Court of Appeals rebuffed Plaintiff's argument:

> "We reject Plaintiff's interpretation of §3113(b) and MCL §257.216. The Legislature is presumed to have intended the meaning plainly expressed in a statute. If the meaning of a statutory language is clear, judicial construction is unnecessary and not permitted. *Rosner v Michigan Mut'l Ins Co*, 189 Mich App 229, 231, 471 NW2d 923 (1991).
>
> The language of §3113(b) clearly and unambiguously states that the owner of a vehicle involved in an accident, where the vehicle had no security required by §3101 at the time of the accident, it is not entitled to personal protection insurance benefits. See *Coffey v State Farm Mut'l Automobile Ins Co*, 183 Mich App 723, 730, 445 NW2d 740 (1990); *Childs* [*v American Comm'l Liability Ins Co*, 177 Mich App 589, 592, 443 NW2d 173 (1989)]. 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."
>
> *Wilson*, 491 NW2d at 644

Wilson is directly on point with the facts and circumstances involved in this case. There is no need for this Court to revisit this long-standing and well-reasoned Opinion of the Court of Appeals. The vehicle being used by the Jankowski Defendants, which they clearly owned, simply lacked the three

mandatory coverage components required in MCL 500.3101. As such, the Jankowski Defendants were disqualified from recovering benefits under MCL 500.3113(b). The plain and unambiguous language of MCL 500.3113(b) simply describes **what insurance** a vehicle must have- "the security required by section 3101"- in order to trigger entitlement to Michigan no-fault benefits. It makes no reference to **when** the insurance is required. The Court of Appeals reached the right result for the right reason, and there is no need for this Court to disturb that ruling. The Application for Leave to Appeal ought to be denied.

II. IN ORDER TO EFFECTUATE THE PURPOSES BEHIND THE UNINSURED VEHICLE EXCLUSION, SET FORTH IN MCL 500.3113(b), IT IS IMPERATIVE THAT THE PREMIUM REQUIREMENTS BE TIED TO OWNERSHIP OF THE ACTUAL VEHICLE INVOLVED IN THE ACCIDENT

The Jankowski Defendants and their supporting *amicus curiae* go to great lengths to argue that because no-fault insurance coverage is personal in nature, they are entitled to no-fault benefits under MCL 500.3111, simply because they are a named insured on a Michigan policy of insurance. In other words, it does not matter how many vehicles the Jankowskis may have owned, registered and insured outside the State of Michigan. Rather, so long as a single motor vehicle is registered and insured in the State of Michigan, they could have a fleet of other motor vehicles scattered throughout the remaining 49 states, and the provinces in Canada and yet still be able to collect Michigan no-fault benefits should they be involved in an accident involving one of those vehicles.

Many years ago, some insurance companies were taking the position that, for purposes of the disqualification provision in MCL 500.3113(b), the coverage was tied to the person, not to the motor vehicle. In other words, if there were multiple owners of a motor vehicle, each owner had to be insured under a Michigan no-fault insurance policy, or risk disqualification. Indeed, there were two unpublished decisions from the Court of Appeals that had accepted this proposition. See *Nidy v Farmers Ins Exch*, Court of Appeals docket no. 245134, rel'd 3/18/2004 and *Bristol West Ins Co v Gonzalez*, Court of Appeals docket no. 270527, rel'd 1/16/2007. However, in a published opinion, the Court of Appeals, in *Iqbal v Bristol West Ins Grp*, 278 Mich App 31, 748 NW2d 574 (2008) made it clear that based upon the grammatical structure of MCL 500.3113(b), the inquiry as to whether or not "the security required by section 3101" was in effect necessitates an examination of the insurance status of the vehicle involved in the accident – not the person.

In *Iqbal*, Plaintiff was operating a motor vehicle owned by his brother and insured with AAA. At the time of the accident, Plaintiff was living with his sister, who was insured under a

policy of insurance issued by Bristol West. Under the "general rule" of priority set forth in MCL 500.3114(a), Plaintiff would normally turn to his sister's no-fault insurer for payment of his benefits, since Plaintiff himself did not own an insured motor vehicle. Plaintiff admitted that he had primary use of his brother's motor vehicle, thereby rendering him an "owner" of said vehicle pursuant to MCL 500.3101(2)(l)(i). Bristol West denied Plaintiff's claim, arguing that despite the fact that the titled owner (Plaintiff's brother) had insured the vehicle, Plaintiff himself had failed to insure it in his name. The Court of Appeals rejected this argument and, in doing so, clearly held that for purposes of applying the statutory exclusion set forth in MCL 500.3113(b), one need only examine whether or not the three mandatory insurance components were in effect for the involved vehicle – not that person – on the date of the accident. After reviewing the statutory language of MCL 500.3113(b), and putting it into its proper grammatical context, the Court of Appeals noted:

> "Viewing the statutory language in the context of the given facts, the statute would preclude Plaintiff from being entitled to PIP benefits if Plaintiff 'was the owner . . . of [the BMW] . . . involved in the accident with respect to which the security required by §3101 . . . was not in effect. As part of the process of construing MCL 500.3113(b), we shall make the assumption that Plaintiff was an 'owner' of the BMW, as that term is defined in MCL 500.3101(2)(g)(i) [now MCL 500.3101(2)(l)(i)]. Next, the phrase 'with respect to which the security required by §3101 . . . was not in effect,' §3113(b), defines or modifies the preceding reference to the *motor vehicle involved in the accident*, here the BMW, 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 question becomes whether the BMW, and not Plaintiff, had the coverage or security required by MCL 500.3101. **As indicated above, the coverage mandated by MCL 500.3101(1) consists of 'personal protection insurance, property protection insurance and residual liability insurance.'** While Plaintiff did not obtain this coverage, there is no dispute that the BMW had the coverage, and that is the only requirement under MCL 500.3113(b), making it irrelevant whether it was Plaintiff's brother who procured the vehicle's coverage or Plaintiff. Stated differently, the security required by MCL 500.3101(1) was in effect for purposes of MCL 500.3113(b) as it related to the BMW."

Iqbal, 748 NW2d at 579-580 (italics in original, emphasis added)

Ironically, the Jankowski Defendants and their supporting *amicus curiae* apparently want to "turn back the clock" and make the statutory exclusion embodied in MCL 500.3113(b) personal, and no longer tied to the motor vehicle. In the case at bar, there is simply no dispute but that the security mandated by MCL 500.3101(1) was not in effect on the specific vehicle, owned by the Jankowski Defendants, which was involved in the subject accident. Again, the proper focus of MCL 500.3113(b) is on **what insurance** is required to give rise to entitlement to Michigan no-fault benefits- "the security required by section 3101"- not when it is required. As such, the Jankowski Defendants are disqualified from recovering benefits, as the Court of Appeals properly ruled in this case. There is no need for this Court to depart beyond the clear and unambiguous statutory language embodied in MCL 500.3113(b), and the Application for Leave to Appeal, filed by the Jankowski Defendants, ought to be denied.

The Jankowskis and their supporting *amicus curiae* argue that, from an insurer's standpoint, there are no differences in risk management where a Michigan resident, residing out of state, is involved in an accident as a pedestrian, while occupying another individual's motor vehicle or while occupying his own motor vehicle registered and insured outside of the State of Michigan. The Jankowski Defendants and their supporting *amicus curiae* argue that, under all three situations, the Michigan resident traveling out of state should still be entitled to recover benefits simply by virtue of the fact that they are a named insured on a single non-involved vehicle registered and insured in the State of Michigan. Applying common sense refutes this assertion. If one has their own motor vehicle available to him or her at their out-of-state residence, that individual is more likely to be operating that vehicle on the highway, as opposed to walking or obtaining rides from other individuals. The fact that a motor vehicle is being used on a highway increases the risk that an insured loss would occur, which makes it all the more imperative that the appropriate premium be

charged for the coverages being sought. This is especially important when it comes to MCCA assessments, which are assessed on a per vehicle basis, not a per person, basis. See MCL 500.3104(7)(d). Both this Court and the Court of Appeals have made it clear that, before the Michigan Catastrophic Claims Association (MCCA) is obligated to reimburse a no-fault insurer for losses above the self-retention level, a premium assessment must have been charged for the involved vehicle in cases where the Claimant, injured out of state, was the owner of that involved motor vehicle. See *In Re Certified Question: Preferred Risk Mut'l Ins Co v MCCA*, 433 Mich 710, 449 NW2d 660 (1989); *United Services Automobile Assoc v MCCA*, 489 Mich 869, 795 NW2d 594 (2011), in which this Court vacated the Court of Appeals' Opinion in *United Services Automobile Assoc v MCCA*, 289 Mich App 24, 795 NW2d 185 (2010).

USAA v MCCA involved the case of a physician who had previously been a resident of the State of Michigan, but had been in Florida for a number of years. Because he owned a residence in Michigan, he insured some of his vehicles under Michigan no-fault insurance. However, the particular vehicle involved in the accident was not insured for Michigan no-fault benefits at the time of the accident. After paying no-fault benefits to the injured Claimant, the insurer sought indemnification from the MCCA for losses above the self-retention level. The Trial Court observed that, because no premiums were paid for the Michigan no-fault insurance coverage, the insurer should not have paid benefits in the first instance and, as a result, the MCCA was not obligated to make any indemnification payments.

The Court of Appeals affirmed the decision of the lower court, albeit on the grounds that, because the vehicle was only being operated in Florida, it was not required to be registered in the state and therefore not required to be insured for no-fault benefits. On further appeal to this Court, this Court **vacated** the reasoning of the Court of Appeals and remanded the matter back to the Trial

Court for reinstatement of the original summary disposition order in favor of the MCCA. By doing so, this Court impliedly rejected the Court of Appeals' reliance on the residency and Michigan registration issues discussed by the Court of Appeals, and instead emphasized the fact that where no premium was paid for the Michigan no-fault insurance benefits at issue (including the MCCA assessments), no benefits should have been paid in the first instance.

Assume, for the sake of discussion, that the injuries sustained by the Jankowski Defendants exceed the self-retention limit for MCCA reimbursement. Under this scenario, Home-Owners faces the untenable prospect of having to afford lifetime, unlimited no-fault benefits to Michigan residents, arising out of the use of a motor vehicle **that they own**, without indemnification by the MCCA because no MCCA premium assessment was made with regard to the Florida-registered and Florida-insured vehicle. Again, common sense tells us that, by virtue of the fact that the Jankowski Defendants had a vehicle readily available to them, they were more likely to be involved in an accident while operating said motor vehicle as opposed to, say, walking as a pedestrian or obtaining a ride from their Florida neighbors. This is precisely why it makes sense for the availability of Michigan no-fault insurance benefits to be tied to the vehicles owned by the injured Claimant, as recognized by the Court of Appeals in *Iqbal*, supra. In cases where the Michigan resident may own a vehicle and fails to insure it for the three mandatory coverages set forth in MCL 500.3101(1), the unambiguous language of MCL 500.3113(b) provides that such individuals are disqualified from recovering benefits. The Court of Appeals reached the right result for the right reason and there is no need for this Court to expend valuable judicial resources to overturn not only the well-reasoned decision of the Court of Appeals' decision in this case, but also the long-established precedent established by the Court of Appeals in *Wilson*, supra.

CONCLUSION AND RELIEF REQUESTED

Again, the Insurance Alliance of Michigan would like to extend its thanks to the members of this Court for the privilege of sharing its viewpoint regarding this important issue of law. As this Court observed long ago in *Shavers v Kelly*, 402 Mich 554, 267 NW2d 72 (1978), it is imperative, given the mandatory nature of Michigan no-fault automobile insurance, and the generous benefits provided under the Act, that the costs to the system be kept as low as possible, in order to make insurance more affordable for everyone. This goal is not accomplished by allowing individuals, such as the Jankowski Defendants, to receive Michigan no-fault insurance benefits, in an accident arising out of their own, yet uninsured motor vehicle. As discuss *infra*, the insurance requirement is necessarily intertwined with the vehicle itself – not just the person. If it were otherwise, as argued by the Jankowski Defendants and their supporting *amicus curiae*, a Michigan resident having multiple homes scattered throughout the United States and the provinces of Canada could insure a single vehicle here in Michigan and still obtain no-fault benefits while traveling outside of the State of Michigan in the fleet of automobiles available to them at these various residences outside the State of Michigan, which were not insured for Michigan no-fault insurance benefits. The Jankowski Defendants got what they bargained for – Florida PIP coverage for a Florida insurance premium payment. They should not now be allowed to recover the far more generous Michigan no-fault benefits, arising out of the use of a motor vehicle which they owned, but for which no applicable Michigan insurance premiums were paid. Had the Jankowski Defendants wished to obtain the benefits provided by the Michigan No-Fault Act, there was nothing to prevent them from titling and registering their vehicle in Michigan, with the attendant requirement that the vehicle carry "the security required by section 3101" or risk disqualification under MCL 500.3113(b).

Accordingly, *amicus curiae* Insurance Alliance of Michigan fully supports the position taken by Home-Owners Insurance Company in this matter, and respectfully requests that this honorable Court either deny the Application for Leave to Appeal submitted by the Jankowski Defendants or, in the alternative, affirm the well-reasoned opinion of the Michigan Court of Appeals in this case.

Respectfully Submitted,

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