STATE OF MICHIGAN

IN THE SUPREME COURT

KAITLIN HAHN,

Plaintiff-Appellee,

v

GEICO INDEMNITY COMPANY,

Defendant-Appellant,

and

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant.

Supreme Court No. _____

Court of Appeals No. 336583

Oakland County Circuit Court
No. 16-152229-NI

APPLICATION FOR LEAVE TO APPEAL OF DEFENDANT-APPELLANT, GEICO INDEMNITY COMPANY

PROOF OF SERVICE

GARAN LUCOW MILLER, P.C.
DANIEL S. SAYLOR (P37942)
SARAH NADEAU (P60101)
Attorneys for Defendant-Appellant,
GEICO Indemnity Company
1155 Brewery Park Blvd, Ste. 200
Detroit, Michigan 48207-2461
(313) 446-5520
dsaylor@garanlucow.com

TABLE OF CONTENTS

Page

Table of Exhibits:

INDEX OF AUTHORITIES

Cases **Page(s)**

Statutes and Court Rules

STATEMENT OF QUESTIONS PRESENTED

1. Should the Court overrule *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38 (1998), and its §3012-based insurance coverage rule, under which non-Michigan auto insurance policies are deemed to provide Michigan no-fault coverage when the insurer knows–or has reason to know–that its policy purchaser resides in Michigan, where the rule is conclusively unsupported by the text of the statute and effectively imposes a duty on agents of non-Michigan insurers that conflicts with well-established Michigan law?

   Defendant-Appellant GEICO answers, "Yes."

   Plaintiff-Appellee Hahn would answer, "No."

2. Even if the insurance coverage rule of *Farm Bureau v Allstate* is valid, did the lower courts nevertheless reversibly err in finding any potential liability on the part of GEICO where the facts identified in *Farm Bureau* and found to support liability in *Gordon* are materially distinguishable from those in the case at bar?

   Defendant-Appellant GEICO answers, "Yes."

   Plaintiff-Appellee Hahn would answer, "No."

JUDGMENT BEING APPEALED, ALLEGATIONS OF ERROR AND RELIEF SOUGHT

This application challenges the insurance coverage rule formulated by the Court of Appeals in *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38; 592 NW2d 395 (1998) – held by the Court of Appeals in *this* case to be binding precedent – under which a non-Michigan auto insurance policy is transformed to extend coverage for unlimited personal protection insurance benefits as if it were a Michigan no-fault insurance policy. The North Carolina policy purchased by GEICO's insured, fully in accord with North Carolina law, was for a vehicle the insured properly registered, garaged, and operated in North Carolina. Yet as applied here, the *Farm Bureau* rule would require Defendant-Appellant, GEICO Indemnity Company to provide *Michigan's* life-long PIP benefits to quadriplegic accident victim, Plaintiff-Appellee, Kaitlin Hahn.

The appealed judgment is the Court of Appeals opinion of June 12, 2018 (**Exhibit 1**) – *Hahn v GEICO Indemnity Co*, unpublished per curiam opinion of the Court of Appeals, No. 336583, June 12, 2018), which affirmed, in material part, the Wayne County Circuit Court's denial of GEICO's motion for summary disposition (**Exhibit 2** – Opinion & Order Regarding Respective Motions for Summary Disposition, January 10, 2017). In these rulings, the lower courts relied on *Farm Bureau Ins Co v Allstate Ins Co* to hold that Plaintiff Hahn possesses a viable claim against Defendant GEICO for Michigan PIP benefits based on MCL 500.3012. This brief will show, as indeed the text of the statute itself makes manifest, that §3012 provides no basis whatsoever for the policy reformation theory established by the Court of Appeals in *Farm Bureau*.

This application will be regarded as an interlocutory appeal. It is one the Court should accept. Under the Court of Appeals' ruling, this case will return to the trial court for proceedings on Plaintiff's claim that Defendant knew ("or should have known") that the purchaser of its North Carolina auto policy was, despite residing in North Carolina for a period of years in military service, a resident of the State of Michigan. If so, under the §3012-based coverage rule articulated by the court in *Farm Bureau*, Defendant will be adjudged liable to Plaintiff for payment of Michigan no-fault insurance benefits:

> ... We agree with the trial court's determination. *Farm Bureau Ins Co* indicates that if an insurer knows, or has reason to know, that the individual seeking insurance is a Michigan resident, but the insurer nevertheless issues a policy that does not provide Michigan no-fault coverage, MCL 500.3012 may be invoked to reform the policy to one providing Michigan no-fault coverage. See *Farm Bureau Ins Co*, 233 Mich App at 41 (finding no basis to invoke the statute under the factual circumstances of that case because "there is no evidence from which one may reasonably determine that Allstate should have known that [its insured] was a Michigan resident.").
>
> * * *
>
> ... Under the circumstances, we agree with the trial court that genuine issues of material fact existed with regard to whether Geico knew, or should have known, that Waller was a Michigan resident who required a Michigan no-fault policy. Under *Farm Bureau Ins Co*, this is enough to trigger potential applicability of MCL 500.3012.

(**Exhibit 1**, Court of Appeals opinion, slip op at 5).

This action now is proceeding solely on the premise that the *Farm Bureau* reformation rule is valid; yet, as the following discussion will demonstrate, the rule is wholly *unsupported* by the statute on which it is purportedly based and is otherwise contrary to Michigan law. The issue is purely one of law, and its resolution either will render any remand to the trial court unnecessary or, if not addressed until after entry of a final judgment below, will render the

discovery and trial proceedings on remand a waste of the parties' and lower courts' time and resources. The interests of justice will be advanced, therefore, by this Court granting review at this time.

Furthermore, this appeal meets the Court's criteria for granting leave to appeal, MCR 7.305(B)(3) and MCR 7.305(B)(5)(a), as the issue presented involves a legal principle of major significance to the state's jurisprudence, and the challenged decision is clearly erroneous and will cause material injustice. Defendant-Appellant GEICO is just one of many Michigan insurers that issue auto policies in several states other than Michigan. The holding in *Farm Bureau*, on which the decision below is predicated, impacts and causes harm to all such insurers due to the potential for their out-of-state policies (such as the North Carolina GEICO policy at issue here) to be treated as Michigan no-fault policies without the carrier having collected a premium based on the unlimited lifetime benefits required by Michigan law. It is critical that the parameters of an insurer's responsibility be clearly defined, in accord with the plain meaning of governing statutes, in order for insurers to properly allocate risks and maintain premiums that are fair to insurers and consumers alike. The *Farm Bureau* rule thus needs to be addressed and disavowed, GEICO submits, to remedy the uncertainty and unduly expanded liability the rule creates. It is a question of first impression for this Court.

Defendant-Appellant GEICO thus respectfully urges the Court to examine the issues raised in this application. Either on plenary review or in lieu of granting leave to appeal, the Court is requested to reverse the holdings of the lower courts insofar as they permit Plaintiff's claim based on *Farm Bureau* and §3012 to proceed, and direct that summary disposition be granted in favor of GEICO.

STATEMENT OF FACTS AND PROCEEDINGS

Introduction

In the early morning hours of July 18, 2015, Plaintiff-Appellee, Kaitlin Hahn, and her husband, Zachary Waller, were involved in a single-vehicle accident in Monroe County, Michigan, which left Hahn seriously and permanently injured as a quadriplegic (**Exhibit 4** – Traffic Crash Report). The two had been driving all night from their newly purchased townhouse in Sneads Ferry, North Carolina, to celebrate their recent marriage with friends and family while visiting Michigan during Waller's two-week leave from military service at Camp Lejeune, North Carolina (**Exhibit 11** – deposition of Z. Waller, pp. 20, 38).

This action concerns insurance coverage for Hahn's injuries. Waller, who had been stationed in North Carolina for more than two years since his enlistment in January 2013, was the named insured on a North Carolina auto insurance policy issued by Defendant-Appellant, GEICO Indemnity Company. Waller had purchased the policy for a 2002 GMC Sierra 2500 pickup truck he had bought and registered in North Carolina (**Exhibit 11**, pp. 11-12, 37). This was the vehicle he and Hahn were occupying at the time of their accident.

By its terms, the GEICO policy provided only those coverages mandated under North Carolina law (**Exhibit 5**). Because GEICO also transacts insurance business in Michigan, however, it maintains certification in Michigan under MCL 500.3163. Where applicable, this certification extends the North Carolina policy's coverage to provide for payment of Michigan personal protection insurance ("PIP") benefits in accordance with the provisions of §3163 if its non-Michigan insured is involved in a Michigan accident.

Thus, on the basis that Waller, a resident of North Carolina, was involved in a Michigan accident and that Hahn, his wife, also qualified as an insured under Waller's policy, GEICO acknowledged coverage in accord with MCL 500.3163 and paid benefits for Hahn's injuries up to the $500,000 maximum set forth in MCL 500.3163(4) (**Exhibit 9** – GEICO letter to Plaintiff's counsel, February 22, 2016, acknowledging coverage).

In this lawsuit Plaintiff is seeking *unlimited* PIP benefits under the Michigan no-fault act. As detailed below, Plaintiff's theory was that either Defendant Auto Club Insurance Association owed her full no-fault benefits under a Michigan auto policy issued to her father, or that a "mend-the-hold" estoppel theory would apply to prevent GEICO from limiting its liability to the $500,000 maximum stated in §3163(4).

On motions for summary disposition, the trial court determined as a matter of law that Hahn and Waller were domiciled in Michigan and thus were *not* out-of-state residents of Michigan (**Exhibit 2** – Opinion & Order, pp. 11, 34). Based on this determination, it appeared that GEICO would have no liability for payment of *any* no-fault benefits under its §3163 certification, let alone for benefits beyond the $500,000 it already had paid, since liability under §3163 only applies where the accident involves an *out-of-state* resident's ownership or operation of a motor vehicle.

Yet the trial court denied GEICO's motion for summary disposition. It concluded, based on MCL 500.3012–as interpreted by *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38; 592 NW2d 395 (1998), that Plaintiff had a valid claim that the North Carolina policy GEICO issued to Waller should be deemed a Michigan no-fault insurance policy (**Exhibit 2**,

pp. 31-33). It also held that Plaintiff's estoppel-based claim against GEICO was potentially viable (**Exhibit 2**, pp. 30-31).

On appeal, the Court of Appeals reversed at to the estoppel theory, holding that GEICO is entitled to summary disposition under §3163 (**Exhibit 1**, slip op at 6-8); but it affirmed the trial court's holding that Plaintiff has a jury-submissible claim for unlimited Michigan PIP benefits against GEICO under MCL 500.3012. It held that *Farm Bureau v Allstate* constitutes binding precedent for the proposition that an out-of-state insurance policy will be reformed to one providing coverage under Michigan's no-fault act when the insurer "knows, or has reason to know," that the purchaser of the policy is a Michigan resident (**Exhibit 1**, slip op at 4-6).

The §3012-based policy reformation rule of *Farm Bureau v Allstate* is now the exclusive ground on which this case is proceeding; yet it is utterly unfounded and should be disavowed. Either on plenary review or in lieu of granting leave to appeal, the Court should so conclude, overrule *Farm Bureau v Allstate*, and direct that summary disposition be granted in favor of GEICO.

Underlying Facts

In April of 2015, GEICO issued an auto insurance policy to Zachary Waller, a marine stationed at Camp Lejeune, North Carolina. The policy, identifying a coverage period of May 24, 2015 to November 24, 2015 (thus encompassing the subject accident date), provided coverage for a 2002 GMC Sierra 2500, which Waller had purchased in North Carolina (**Exhibit 5** – GEICO policy declarations; **Exhibit 11**, Waller, p. 37; **Exhibit 13** – deposition of D. Snell, pp. 25-26). The vehicle was registered in North Carolina (**Exhibit 11**, pp. 10-12; **Exhibit 4** – Traffic Crash Report) and was garaged in North Carolina (**Exhibit 5**, GEICO

policy, pp. 1, 3). As such, Waller was mandated by North Carolina law to secure North Carolina insurance on the vehicle.[1] The policy provided bodily injury liability and other coverages in accordance with North Carolina law (*id.*).

Waller had arrived in North Carolina from Michigan in January of 2013, when he began active duty under his enlistment with the marines. His enlistment papers of April 3, 2012, and his State of Legal Residence Certificate, filled out at the commencement of his service (**Exhibit 6**; **Exhibit 11**, Waller, p. 19), identified his mother's address at 5750 St. Johns Road, Grass Lake, Michigan.

In April of 2015, however, with nearly two years remaining in his enlistment, Waller's then-fiancé, Plaintiff Hahn, traveled to North Carolina to move into the townhouse Waller was purchasing near Camp Lajeune, North Carolina (**Exhibit 10** – deposition of K. Hahn, pp. 27-31; **Exhibit 11**, Waller, pp. 11, 23). On May 8, 2015, the two were married in North Carolina (**Exhibit 7**; **Exhibit 11**, p. 33), and on May 21, 2015, they both signed the mortgage ("Deed of Trust") and acquired their warranty deed to the townhouse -- 602 Ebb Tide Lane, Sneads Ferry, North Carolina (**Exhibit 8**). From that time onward, up to and including the date of the

---

[1] NC Gen Stat § 20-309(a) and (b) (requiring owners of motor vehicles to maintain financial responsibility – a liability insurance policy under the referenced North Carolina statutes – continuously throughout the period of North Carolina registration); NC Gen Stat § 20-50(a) and NC Gen Stat § 20-52(a)(1a)b.2, 4 (mandating North Carolina registration of vehicles owned by persons on active duty in the Armed Forces stationed in North Carolina or by other persons who, although possessing a driver's license from a different home state, certifies that the vehicle will be principally garaged in North Carolina); *Hendrickson v Lee*, 119 NC App 444; 459 SE2d 275, 282 (1995): "[I]t is uncontroverted that at the time of his automobile accident, plaintiff was operating a ... vehicle which was principally garaged and registered in North Carolina and which bore a North Carolina license plate. Under NC Gen State § 20-309 (1993), financial responsibility as provided in Article 9A of Chapter 20 of our General Statutes–i.e., the Financial Responsibility Act–must be maintained upon all motor vehicles registered in this State."

subject accident, Waller and Hahn lived together as husband and wife in their North Carolina townhouse. Although they intended eventually to return to Michigan following Waller's enlistment, they had no plan as to where in Michigan they might decide to live (**Exhibit 11**, Waller, pp. 16-17, 20, 27, 32; **Exhibit 10**, K. Hahn, pp. 32, 52-53, 70-71). Had there been no accident on July 18, 2015, Waller and Hahn would have returned to North Carolina and continued to reside in their townhouse through the end of Waller's enlistment in January 2017 (**Exhibit 11**, pp. 17, 19-20, 27).

In July of 2015, Waller received two weeks leave from Camp Lejeune to travel with his wife to Michigan, where the couple intended to celebrate their recent marriage with family and friends (**Exhibit 11**, Waller, pp. 20, 38). They left North Carolina the evening of July 17, 2015, and drove straight through to Michigan in Waller's 2002 GMC Sierra 2500. At approximately 4:00 a.m. on July 18, 2015, in Monroe County, Michigan, Hahn was riding in the passenger seat when Waller lost control of the vehicle. The resulting single-vehicle accident left Hahn seriously and permanently injured as a quadriplegic (**Exhibit 3** – Amended Complaint, ¶¶ 6-10; **Exhibit 4** - Traffic Crash Report).

Following the accident, Plaintiff claimed entitlement to Michigan personal protection insurance ("PIP") benefits from GEICO. Pursuant to its auto liability policy issued to Waller, and in recognition of its certification in Michigan under MCL 500.3163, GEICO paid Plaintiff $500,000.00 in Michigan PIP benefits on the basis that Waller, the policyholder, and Plaintiff Hahn, also an "insured" under the policy as a resident spouse of the named insured, were residents of North Carolina at the time of the accident and thus "out of state residents" for

purposes of the Michigan no-fault act, MCL 500.3163(1).[2] In a letter to Plaintiff's counsel dated February 22, 2016, GEICO disclaimed responsibility for payment of benefits beyond the $500,000 limit set forth in MCL 500.3163(4):

> We have completed our investigation and determined that your client does qualify for the Michigan Deemer Coverage with a $500,000 limit under our insured Zachary Waller's Policy. I have enclosed a copy of the payment log to show the medical bills received and paid to date. Should you have any questions, please contact me directly.

(**Exhibit 9**). Shortly after receiving this letter Plaintiff's counsel initiated this lawsuit (Complaint, March 29, 2016).

Proceedings Below

Plaintiff Hahn filed her lawsuit against Defendants GEICO and ACIA seeking to establish unlimited coverage for no-fault insurance benefits applicable to her accident injuries. As against ACIA, Plaintiff alleged that she was a resident of the household of ACIA's policyholder, Plaintiff's father, and thus was covered for PIP benefits under his policy (**Exhibit 3** – Amended Complaint, ¶23). See MCL 500.3114(1). As against GEICO, Plaintiff alleged that the injuries Hahn sustained in Michigan, arising out of the ownership or operation of a motor vehicle by GEICO's insured [Waller] under its automobile liability policy, were subject to the PIP coverage of Michigan's no-fault act based on GEICO's certification in Michigan (**Exhibit 2**, ¶22). See MCL 500.3163(1). Plaintiff thus alleged that either GEICO

---

[2] Under the GEICO policy, a named insured's spouse residing with the named insured is elevated to the status of "**you**" – an additional named insured on the policy (**Exhibit 5** - Personal Automobile Policy form, Definitions, page 3 of 22). GEICO's payment log confirmed payment of $500,000 in benefits for Plaintiff Hahn (Exhibit M of GEICO's Response to ACIA's Motion for Summary Disposition, 12/1/2016).

or ACIA was required to provide continuing payment of no-fault benefits without limitation (**Exhibit 3**, "Wherefore" clause, pp. 5-6).

Following extensive discovery on the issue of where Hahn and Waller are deemed to have resided at the time of the accident, both GEICO and ACIA filed motions for summary disposition. GEICO maintained that it already had paid its entire $500,000 of coverage due Hahn in accordance with its §3163 certification; and that if Hahn and Waller should indeed be regarded as being at all times domiciled in Michigan and thus *not* out-of-state residents, then GEICO would in fact have *no* liability for payment of PIP benefits, since GEICO's §3163 certification is applicable only where its insured is a non-resident of Michigan. Either way, GEICO maintained, no liability for further payment of no-fault benefits can be imposed on GEICO under the facts presented (GEICO's Motion for Summary Disposition, 11/3/2016; GEICO's Response to ACIA's Motion for Summary Disposition, 12/1/2016).

ACIA also moved for summary disposition, contending either that it owed no coverage to Hahn on grounds that she was not domiciled in the household of its policyholder, David Hahn (Plaintiff's father), or if it did owe resident-relative coverage to Hahn, such coverage would be secondary to GEICO's coverage since, according to ACIA, MCL 500.3012 applies to render the GEICO policy a Michigan no-fault insurance policy (ACIA's Motion for Summary Disposition, 10/31/2016, and ACIA's Response to GEICO's Motion for Summary Disposition, 12/1/2016). Plaintiff Hahn opposed both defendants' motions, asserting against GEICO that it should be estopped from deviating (i.e., "mending the hold") from the coverage position it had expressed in its "denial" letter of February 22, 2016 (**Exhibit 9**) (Plaintiff's Response to Defendants' Motions for Summary Disposition, 11/30/2016).

Without hearing oral arguments on the motions, the trial court decided the issues presented in a lengthy Opinion and Order (**Exhibit 2**). The court concluded that Plaintiff Hahn was *not* domiciled in the household of ACIA's insured, Hahn's father, and thus granted ACIA's motion for summary disposition (**Exhibit 2**, p. 30).[3] The court also concluded, however, that both Waller and Hahn nevertheless were domiciled in Michigan, based in large part on the "military service rule" and its presumption that because Waller was enlisted in the military, his domicile remained in Michigan even though he was serving in North Carolina, and that Plaintiff, his spouse, is deemed to be domiciled with her husband (*see*, **Exhibit 2**, pp. 13-14, 25, 29).

Notwithstanding its conclusion that Waller and Hahn were domiciled in Michigan, the trial court denied GEICO's motion for summary disposition, holding that two theories remained viable for jury resolution. First, the court accepted Plaintiff's contention that GEICO may have liability under the "mend-the-hold" estoppel theory. Attempting to summarize Plaintiff's theory, the court noted that GEICO did not raise the inapplicability of §3163 in its "declination letter" of February 22, 2016, but instead paid its maximum exposure of $500,000 in benefits to Plaintiff pursuant to MCL 500.3163(4); accordingly, the theory goes, GEICO should be barred from defending on the basis that MCL 500.3163 does not apply (**Exhibit 2**, pp. 31, 34).[4]

---

[3] Plaintiff did not appeal or cross-appeal the trial court's ruling in favor of ACIA.

[4] In ultimately reversing this portion of the trial court's decision, the Court of Appeals observed that the "logic [of Plaintiff's estoppel theory] was not exactly clear[.]" (**Exhibit 1**, slip op at 3).

The second theory the court allowed to proceed, advanced not by Plaintiff but by co-defendant ACIA,[5] is the claim that MCL 500.3012, as interpreted, might apply to transform GEICO's North Carolina auto policy into a Michigan no-fault policy (**Exhibit 2**, pp. 31-33). GEICO had opposed this theory on grounds that MCL 500.3012 and the case law on which ACIA relied, *Farm Bureau Ins Co v Allstate Ins Co*, *supra*, and *Gordon v GEICO Gen Ins Co*, unpublished per curiam opinion of the Court of Appeals, No. 301431 (March 20, 2012) (**Exhibit 15**) (which followed *Farm Bureau*) does not impose liability on GEICO as claimed. GEICO did not "purport" to provide Michigan PIP coverage in its North Carolina policy, and even if GEICO might have known Waller had connections to Michigan, it also knew the vehicles listed on its policy were garaged and driven in North Carolina and registered in North Carolina. Its policy, therefore, could not be reformed or deemed to be a Michigan no-fault policy (GEICO's Reply to ACIA's Response to GEICO's Motion for Summary Disposition, 12/14/2016). The trial court rejected GEICO's arguments and thus denied its motion for summary disposition "due to questions regarding ... the applicability of MCL 500.3012" (**Exhibit 2**, p. 33 and "Order," p. 34, ¶3).

GEICO timely filed an application for leave to appeal, which the Court of Appeals granted by order of May 17, 2017. In an opinion issued June 12, 2018 (**Exhibit 1**), the Court of Appeals reversed the denial of GEICO's motion for summary disposition on Plaintiff's "mend-the-hold" estoppel theory (*id.*, slip op at 6-8), but upheld the trial court's ruling that

---

[5] The trial court's opinion correctly attributes the argument to ACIA, but then mistakenly references "Plaintiff's response at 6-10" (**Exhibit 2** – Opinion & Order, p. 31) when, in fact, both context and the included citations make it clear that it was ACIA's Brief in Response to GEICO's Motion for Summary Disposition, pp. 6-10, the court intended to reference.

GEICO is subject to a claim of liability for payment of unlimited Michigan no-fault benefits based on MCL 500.3012, as construed in *Farm Bureau Ins Co v Allstate Ins Co*, *supra*:

> In the present matter, the trial court found that a factual question existed regarding whether reformation was appropriate under MCL 500.3012. ... We agree with the trial court's determination. *Farm Bureau Ins Co* indicates that if an insurer knows, or has reason to know, that the individual seeking insurance is a Michigan resident, but the insurer nonetheless issues a policy that does not provide Michigan no-fault coverage, MCL 500.3012 may be invoked to reform the policy to one providing Michigan no-fault coverage. See *Farm Bureau Ins Co*, 233 Mich App at 41[.] ...
>
> ... Under the circumstances [citing evidence that GEICO had reason to know that Waller was a Michigan resident], we agree with the trial court that genuine issues of material fact existed with regard to whether Geico knew, or should have known, that Waller was a Michigan resident who required a Michigan no-fault policy. Under *Farm Bureau Ins Co*, this is enough to trigger the potential applicability of MCL 500.3012.

(**Exhibit 1** – Court of Appeals opinion, slip op at 5) (emphasis added).

As in the instant application, GEICO's primary contention in the Court of Appeals was that *Farm Bureau Ins Co*'s construction of MCL 500.3012 and, in particular, its articulation of a policy reformation rule to be applied to non-Michigan auto policies, are legally unfounded and should be disavowed. GEICO urged the Court of Appeals to reject the *Farm Bureau Ins Co* analysis, contending that it need not be followed since it was mere obiter dictum. The Court disagreed, stating initially that these particular arguments were not made below nor raised in the application for leave to appeal, although observing that the issues "present legal questions, and as such, may be addressed by this Court." (**Exhibit 1**, slip op at 6). Then, notwithstanding whether the questions were properly raised previously, the Court proceeded

to hold that *Farm Bureau Ins Co*'s discussion of MCL 500.3012, even if "not seen as dispositive," does qualify as controlling precedent to which the Court of Appeals is bound:

> Thus, the *Farm Bureau Ins Co* Court's holding with respect to MCL 500.3012 is not obiter dictum. We therefore reject Geico's invitation to not follow binding precedent of this Court with respect to MCL 500.3012.

(**Exhibit 1** – Court of Appeals opinion, slip op at 6).

GEICO now seeks review by this Court, which is *not* bound by the holding in *Farm Bureau Ins Co* nor required to permit its baseless policy reformation rule to stand. The Court is respectfully urged to take this case and overrule *Farm Bureau Ins Co*.

STANDARD OF REVIEW

This is an appeal from a trial court's opinion and order rendered on motions for summary disposition brought under MCR 2.116(C)(10). A court's rulings on such motions are subject to de novo review on appeal. *Spiek v Dept of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition under MCR 2.116(C)(10) is appropriately granted where no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. *Grange Ins Co of Michigan v Lawrence*, 494 Mich 475, 489-490; 835 NW2d 363 (2013).

Further, resolution of the issues presented in this application require interpretation and application of statutes and a contract of insurance, which the appellate courts regard as questions of law subject to the de novo standard of review. *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 172; 848 NW2d 95 (2014); *Ameritech Mich v PSC (In re MCI)*, 460 Mich

396, 413; 596 NW2d 164 (1999); *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

ARGUMENT

Where MCL 500.3012 does not apply to impose liability on GEICO for payment of Michigan no-fault benefits under the non-Michigan auto policy it issued pursuant to North Carolina law, the lower courts reversibly erred, relying on *Farm Bureau Ins Co v Allstate Ins Co* as binding precedent, in holding that a viable claim under §3012 exists for trial.

Following the subject accident of July 18, 2015, having received Plaintiff's claim for personal protection insurance benefits, GEICO paid Plaintiff's accident-related medical expenses under MCL 500.3163. GEICO did so in accord with its recognition that, although the accident had occurred in Michigan, named insured Zachary Waller was residing together with his wife, Plaintiff Hahn, in North Carolina, where the covered vehicles were registered and principally garaged. GEICO paid Michigan PIP benefits up to its maximum exposure of $500,000.00, pursuant to MCL 500.3163(4), since Plaintiff qualified as an insured under the North Carolina auto policy and the accident had occurred while she was occupying the North Carolina-registered vehicle.[6] (**Exhibit 9** – GEICO letter to Plaintiff's counsel, 2/22/16).

In this litigation, co-defendant ACIA raised the argument that GEICO should not be permitted to limit its exposure to $500,000.00 under §3163(4), since §3163 is altogether

[6] "If an insurer of an out-of-state resident is required to provide benefits under subsections (1) to (3) [of MCL 500.3163] to that out-of-state resident for accidental bodily injury for an accident in which the out-of-state resident was not an occupant of a motor vehicle registered in this state [Michigan], the insurer is only liable for the amount of ultimate loss sustained up to $500,000.00. ..." MCL 500.3163(4).

inapplicable given that Plaintiff and Waller were domiciled in Michigan. Rather, citing MCL 500.3012, ACIA asserted that GEICO should be deemed simply to have issued Waller a Michigan no-fault insurance policy providing unlimited personal protection insurance benefits. By its terms, MCL 500.3012 does not address imposition of Michigan no-fault coverage on a non-Michigan automobile insurance policy. Yet relying on *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38; 592 NW2d 395 (1998), ACIA was able to assert the proposition that, under MCL 500.3012, an insurer issuing a non-Michigan insurance policy outside the state of Michigan can be deemed responsible for payment of Michigan PIP benefits as if the policy was a Michigan no-fault insurance policy. No such liability was held to exist under the facts presented in the *Farm Bureau* case itself; but ACIA relied on *Gordon v GEICO Gen Ins Co*, unpublished Court of Appeals opinion No. 301431 (March 20, 2012) (**Exhibit 15**), which applied *Farm Bureau Ins Co*'s construction of §3012 to hold, based on the facts presented, that the insurer in that case was responsible for payment of Michigan benefits even though its policy was issued in Mississippi and only provided coverage required by Mississippi law.

In the case at bar, the trial court accepted ACIA's argument, relying exclusively on the *Farm Bureau* and *Gordon* cases, to deny GEICO's motion for summary disposition and hold that a viable claim existed against GEICO on the basis of §3012 (**Exhibit 2** – Opinion & Order, pp. 31-33). The Court of Appeals affirmed, concluding that *Farm Bureau Ins Co*'s construction of §3012 constitutes a stare decisis holding that binds the Court of Appeals and lower courts under MCR 7.215(J)(1) (**Exhibit 1** – Court of Appeals opinion, slip op at 6).

GEICO submits that the holding in *Farm Bureau Ins Co* should be overruled and the decisions of the lower courts in this case reversed. The interpretation of §3012 expressed in *Farm Bureau* and applied in *Gordon* is not remotely tenable based on the text of the statute. And even if the reformation of coverage rule announced by the *Farm Bureau* court were a proper construction of the statute, the facts suggested as supportive of liability in *Farm Bureau* and found to exist in *Gordon* are materially distinguishable from those presented here. The Court should review the decisions of the lower courts in this case and conclude that there is no legal basis for holding GEICO liable for payment of Michigan PIP benefits under MCL 500.3012.

A. The Court should overrule *Farm Bureau v Allstate* and its §3012-based insurance coverage rule as conclusively unsupported by the text of the statute and effectively imposing a duty on agents of non-Michigan insurers that conflicts with well-established Michigan law.

The lower courts in this case hold that Defendant GEICO potentially bears liability to Plaintiff under MCL 500.3012 for payment of Michigan no-fault benefits, even though the policy Waller purchased was a *North Carolina* insurance policy. For the proposition that §3012 provides such a "remedy," the trial court discussed and relied upon the unpublished opinion in *Gordon v GEICO Gen Ins Co*, *supra* (**Exhibit 15**), and the binding precedent of *Farm Bureau Ins Co v Allstate Ins Co*, *supra*:

> The Court [of Appeals] in *Gordon* cited *Farm Bureau* to conclude "[t]herefore, if Geico [the defendant insurer in *Gordon*] had issued a policy that purported to comply with Michigan law, **then MCL 500.3012 provides a remedy wherein courts may impose PIP benefits even if the contract language does not provide for same**." *Gordon*, *supra* [slip op] at *3. Because the

> record in *Gordon* was "clear" that [the defendant insurer] did know, or clearly should have known it was dealing with a Michigan resident but failed to issue her a policy for no-fault coverage in Michigan (instead it issued a Mississippi policy), the Court held that MCL 500.3012 applied. *Id*.

(**Exhibit 2** – Opinion & Order, p. 32, concluding that the facts in the instant case "are much stronger in support of invoking **MCL 500.3012's remedy**") (emphasis added). The Court of Appeals affirmed on the basis that *Farm Bureau Ins Co v Allstate Ins Co*, *supra*, is directly on point and constitutes binding precedent (**Exhibit 1**, slip op at 5-6).[7]

The text of MCL 500.3012, however, provides no such remedy. By its terms, §3012 and the preceding sections of the statute it references mandate that certain specified provisions be included in any liability insurance policy issued in Michigan (i.e., that auto liability policies provide limits of at least $20,000/$40,000 in bodily injury coverage; that an insured's bankruptcy shall not release the insurer from payment of damages up to the amount of its policy limits; and that, where a policy requires that some "notice" be given to the insurer, notice to any authorized agent of the insurer shall be deemed notice to the insurer, MCL 500.3006, MCL 500.3008, MCL 500.3009). These sections then are followed by §3012, which declares that any such liability insurance policies that fail to include these provisions are *not* thereby rendered invalid by such omission but will be deemed to include the provisions.

---

[7] In the appeal below, GEICO argued that the Court of Appeals was not bound by the *Farm Bureau* construction of §3012 since the test for reformation it articulated was determined not to be satisfied by the facts of the case. See *Farm Bureau*, 233 Mich App at 41. It was GEICO's contention that this scenario rendered *Farm Bureau*'s §3012 remedy mere dicta much as this Court regarded its conclusions concerning the common law tort of intentional infliction of emotional distress as dicta in *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 597-598; 374 NW2d 905 (1985), since it determined that the facts necessary to support such a putative claim were not presented. The Court of Appeals rejected GEICO's contention, however, and held that the *Farm Bureau* reformation rule qualifies as binding precedent. (**Exhibit 1**, slip op at 6).

In short, §3012 dictates only that a liability insurance policy *issued in the State of Michigan* without the three specified provisions stated in the preceding sections shall be deemed to include them; nothing more, nothing less.

Yet from the text of §3012 the Court of Appeals in *Farm Bureau* gleaned an underlying "purpose" of the statute. Based on this purpose, the Court opined that under §3012 a *non-Michigan* automobile insurance policy issued by an insurer in another state shall be deemed to conform not merely to the content requirements of the provisions referenced in §3012 but, indeed, to those of the entire no-fault act (of which, notably, §3012 is not even a part)[8] when the insurer issuing the non-Michigan policy knew or had reason to know that the person purchasing the policy was a Michigan resident and thus ostensibly would need Michigan no-fault coverage. The *Farm Bureau* opinion quotes §3012 in full, then states:

> In our view, it is evident that the basic purpose of §3012 is to treat an insurance policy that an insurer issues *purporting to be a Michigan policy that complies with law* as such even if the written terms of the policy are inconsistent with Michigan law.

Farm Bureau Ins Co v Allstate Ins Co, 233 Mich App at 41 (emphasis in original).

The opinion proceeds with the caveat that an out-of-state insurer is not required to provide Michigan no-fault coverage if the policy is issued to a person "who provides no indication to the insurer of being a Michigan resident." *Id*., at 42-43. There is no imposition of Michigan no-fault coverage on a non-Michigan policy in the absence of evidence that the insurer "should have known that [the insured] was a Michigan resident." *Id*., at 41. But the opinion then concludes with a footnote to add that "a case in which an insurer is aware that it

[8] MCL 500.3004 to MCL 500.3012 are part of the insurance code, but they are not encompassed within the no-fault automobile insurance act, MCL 500.3101, *et seq.*

is dealing with a Michigan resident and nevertheless issues an out-of-state automobile insurance policy that does not comport with Michigan's no-fault act would be a far different circumstance." *Id*., at 43 n. 2.

Fourteen years later, the Court of Appeals regarded the facts presented in *Gordon v GEICO Gen Ins Co* to be such a case. Relying on *Farm Bureau*, the Court held the defendant insurer liable to the plaintiff for payment of Michigan no-fault benefits based on a Mississippi automobile insurance policy.

By this application, the Court is urged to address *Farm Bureau*'s construction of §3012 and hold that it imposes no such duty and no such potential liability on insurers issuing non-Michigan policies outside the State of Michigan. The coverage rule declared in *Farm Bureau* not only is fatally detached from the actual text of the statute on which it depends but also effectively imposes on agents of non-Michigan insurers a duty Michigan law does not even impose on insurance agents in this state. As the following will show, there simply is no legal support for the proposition that "MCL 500.3012 provides a remedy where courts may impose PIP benefits even if the contract language does not provide for same." *Gordon v GEICO Gen Ins Co* (**Exhibit 15**), slip op at 3, following *Farm Bureau Ins Co v Allstate Ins Co*, *supra*.

When interpreting a statute, courts seek to effectuate the Legislature's intent by looking at the statutory text, giving meaning to every word, phrase, and clause in the statute "and considering both their plain meaning and their context." *Liss v Lewiston-Richards, Inc*, 478 Mich 203, 207; 732 NW2d 514 (2007). "'If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further construction is permitted.' ... 'When the Legislature fails to address a concern in the statute with a specific provision, *the*

courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose.'" *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541-542; 840 NW2d 743 (2013), quoting *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013), and *Mich Basic Prop Ins Assoc v Office of Fin and Ins Regulation*, 288 Mich App 552, 560; 808 NW2d 456 (2010) (emphasis added).

In accord with the above tenets, discerning the plain meaning of §3012 requires that it be read in context with the preceding provisions referenced in the statute, §§ 3004, 3006, 3008, 3009, 3010, and 3011.[9] The first section, MCL 500.3004, is an affirmative directive that certain liability insurance policies issued in Michigan must contain the provisions identified in §§ 3006 and 3008:

> **No policy of insurance** against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or against loss or damage to property caused by draft animals or by any vehicle drawn, propelled or operated by any motive power, and for which loss or damage the person insured is liable, **shall be issued or delivered *in this state*** by any insurer authorized to do business in this state, unless there shall be contained within such policy the provisions required under sections 3006 and 3008.

MCL 500.3004 (emphasis added).

The next two provisions, §§ 3006 and 3008, state that "such liability insurance policies" (i.e., those "issued or delivered in this state") must contain a provision "that the insolvency or bankruptcy of the person insured shall not release the insurer from the payment of damages for injury or loss occasioned during the life of the policy...," MCL 500.3006, and a provision "that

---

[9] MCL 500.3012 refers to "sections 3004 through 3012." There are no sections 3005 and 3007.

notice given ... to any authorized agent of the insurer within this state ... shall be deemed to be notice to the insurer" and that any timing of notice requirement in the policy shall be subject to a specified "as soon as reasonably possible" exception. MCL 500.3008.

The next provision, MCL 500.3009, sets Michigan's bodily injury liability insurance limits at a minimum of $20,000 per person and $40,000 for any one motor vehicle accident, stating in pertinent part:

> **An automobile liability or motor vehicle liability policy** insuring against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle **shall not be delivered or issued for delivery *in this state* with respect to any motor vehicle *registered or principally garaged in this state*** unless the liability coverage is subject to [the specified limits][.]

MCL 500.3009(1) (emphasis added). The statute also authorizes use of a named driver exclusion and provides mandatory warning language for such use. MCL 500.3009(2).

The next section, MCL 500.3010, requires insureds, subject to certain stated exceptions, to report fire or explosion losses to an insured motor vehicle to fire or law enforcement authorities, and prohibits insurers from paying a claim of more than $2,000 on such a loss until such a report is made; and the section after that, MCL 500.3011, is essentially the same as §3010 except that it addresses fire and explosion losses to insured buildings or other structures or property.

Then comes MCL 500.3012 itself, the statute relied upon in *Farm Bureau* and ostensibly supporting the cause of action in the case at bar. In its entirety, it states as follows:

> **Such a liability insurance policy** [i.e., one issued or delivered "*in this state*"] issued in violation of sections 3004 through 3012

> **shall**, nevertheless, be held valid but **be deemed to include *the provisions required by such sections***, and when any provision in such policy or rider is in conflict **with the provisions *required* to be contained *by such sections***, the rights, duties and obligations of the insured, the policyholder and the injured person **shall be governed by the provisions *of such sections***: Provided, however, That the insurer shall have all the defenses in any action brought under the provisions of such sections that it originally had against its insured under the terms of the policy providing the policy is not in conflict with the provisions of such sections.

MCL 500.3012 (emphasis added). Rather clearly, this statute, along with the preceding sections it references, merely requires that the specified provisions (bankruptcy of the insured; notice to an insurer; and auto liability insurance limits) be included in the identified liability insurance policies, and that their absence will not render the policies invalid but will simply be deemed to be included in them.

These provisions do not address insurance policies issued or delivered in other states. On the contrary, they explicitly limit their application to policies issued or delivered in Michigan. Nothing in the text of these provisions authorizes a court to hold an insurer liable for payment of no-fault insurance benefits when the terms of its policy do not provide such coverage – particularly when the policy is issued in a state other than Michigan in accordance with the insurance laws of such other state.

In nevertheless discerning such authority in §3012, the court in *Farm Bureau* did not identify any textual support whatsoever for its construction of the statute; instead, it relied on what it perceived generally to be "the basic purpose" of the statute. 233 Mich App at 41 ("In our view, it is evident that the basic purpose of §3012 is to treat an insurance policy that an insurer issues *purporting to be a Michigan policy that complies with Michigan law* as such

even if the written terms of the policy are inconsistent with Michigan law.") (emphasis in original). This constitutes clearly improper and impermissible statutory construction. "It is not the role of the Court to judicially legislate by adding language to a statute[.]" *Chelenyak v Veith (Estate of Jajuga)*, 312 Mich App 706, 731; 881 NW2d 487 (2015), citing *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421; 565 NW2d 844 (1997); *accord*, *Morales v Mich Parole Board*, 260 Mich App 29, 48; 676 NW2d 221 (2003) ("We recognize that '[a] court must not judicially legislate by adding into a statute provisions that the Legislature did not include'").

The theory of §3012 insurance coverage expressed in the opinions of *Farm Bureau* and *Gordon*–based solely on a perceived "purpose" of the statute and not on its actual text–thus is a prime example of "judicial legislation" disallowed by our rules of statutory construction. In addition to this fatal defect, however, the *Farm Bureau* construction also inevitably clashes with well-established Michigan law.

Under the rule declared to be law by the Court of Appeals in *Farm Bureau* and actually applied in the unpublished opinion in *Gordon v GEICO Gen Ins Co*, an insurer in another state, having issued an auto policy in conformity with the laws of that state, can be *deemed* to have issued its customer a policy providing Michigan no-fault insurance coverage if the customer's circumstances suggest that he or she actually needed Michigan no-fault insurance.

It is unclear in the *Farm Bureau* opinion (again, no imputed coverage ultimately occurred) whether the coverage can be imposed only when the insurer–i.e., the agent making the sale–is actually "*aware* that it is dealing with a Michigan resident," 233 Mich App at 43 n. 2 (emphasis added), or even when the agent is not aware but "*should have known*" that the

customer "was a Michigan resident." *Id*., 233 Mich App at 41 (emphasis added). In *Gordon* the panel held it appropriate to apply a "knows *or has reason to know*" standard. *Gordon v GEICO Gen Ins Co* (**Exhibit 15**), slip op at 4 (emphasis added). Either way, the rule emanating from these opinions unavoidably imposes an affirmative duty on insurance agents to discern the insurance needs of their customers and advise them to purchase more or different coverage than is provided by the (non-Michigan) policy they have selected.

Such a duty is contrary to Michigan law. In *Harts v Farmers Ins Exchange*, 461 Mich 1; 597 NW2d 47 (1999), this Court reiterated and confirmed the rule that "an insurance agent whose principal is the insurance company *owes no duty to advise a potential insured* about any coverage. Such an agent's job is to merely present the product of his principal and take such orders as can be secured from those who want to purchase the coverage offered." 461 Mich at 8 (emphasis added). Rather, the opinion notes, it remains "*the insured*'s obligation" to read the insurance policy it purchases and raise any questions regarding the sufficiency of the coverage. *Id*., at 8 n. 4. While a duty can arise under certain specified circumstances (often referred to as where a "special relationship" exists between the agent and the insured), the Court held that the rule of no-duty-to-advise is the general rule, under which "the agent functions as simply an order taker for the insurance company[.]" *Id*., 461 Mich at 9-10.

In *Farm Bureau*, the Court of Appeals went far beyond the text of §3012 effectively to impose a duty on the agents of non-Michigan insurers (a) to determine where (i.e., in what state) the insurance customer is actually domiciled (since the insurer's coverage will turn on what the agent "knew or should have known"), and (b) to advise the customer, where the discerned facts so warrant, that they actually need and should purchase coverage different from

what is provided in the non-Michigan auto policy being requested. Unquestionably, such a duty is counter to the prevailing rule described in *Harts*. Indeed, pertinent to the very issue in this case, the Court in *Harts* expressly declined the plaintiff's invitation to impose a duty to advise in all cases concerning the purchase of insurance, stating that the Court should not take upon itself the legislative role of deciding whether to impose a duty on insurers' agents to advise their customers about the insurance they should be purchasing. *Harts*, 461 Mich at 11-12.

In short, the rule fabricated by the court in *Farm Bureau* and applied in *Gordon* conflicts with already well-established Michigan law, and is not articulated or even implied in the text of MCL 500.3012 or its preceding provisions. This Court is respectfully urged to grant review in this case and overrule *Farm Bureau Ins Co v Allstate Ins Co*, *supra*.

B. Even if the insurance coverage rule of *Farm Bureau v Allstate* were valid, the lower courts nevertheless reversibly erred in finding any potential liability on the part of GEICO where the facts identified in *Farm Bureau* and found to support liability in *Gordon* are materially distinguishable from those in the case at bar.

In the event the §3012 theory enunciated in *Farm Bureau Ins Co v Allstate Ins Co* and applied in *Gordon v GEICO Gen Ins Co* is regarded as valid, the Court of Appeals nevertheless should be held to have erred in failing to reject the theory's application in this case based on key distinctions in the facts.

Under the rule envisioned by the court in *Farm Bureau*, when an insurer issues a non-Michigan auto insurance policy "*purporting to be a Michigan policy that complies with Michigan law*," it will be treated as such, even though the actual terms of the policy are

inconsistent with Michigan law (i.e., they comport with the laws of the state in which the policy was issued). *Farm Bureau Ins Co*, 233 Mich App at 41 (emphasis in original). In *Farm Bureau*, the Indiana auto insurance policy issued by Allstate did not "purport[] to be a Michigan policy" because, although the insured who purchased the policy was residing in Cass County, Michigan, Allstate had no way of knowing this, so the Indiana auto policy it issued remained an Indiana auto policy. Had Allstate known, however, that the insured resided in Michigan and thus was required under Michigan law to maintain a Michigan policy, it "would be a far different circumstance." *Id*., at 43 n. 2. The key inquiry, then, according to the test enunciated in *Farm Bureau*, is whether, under the circumstances, the non-Michigan policy that was issued should instead have been a Michigan policy in which case it would be regarded as such.

In *Gordon*, the insured, Tamika Gordon, originally had bought her Mississippi GEICO policy while a resident of Mississippi where she lived with her father. By the time she renewed her policy, however, she had moved back to Michigan where her car was now garaged. The court in *Gordon* relied on evidence showing that the insurer knew or at least had reason to know that Tamika was, in fact, residing and driving her car in Michigan, since she had informed the insurer that she would be traveling to Michigan; she submitted two vehicle damage claims under the policy, both of which occurred in Michigan; and the insurer had copies of her Michigan drivers license and Michigan vehicle registration. Under these circumstances, even though her renewal policy only provided Mississippi insurance coverages, the court applied the *Farm Bureau* rule to treat the renewal policy as a Michigan policy that complies with Michigan law. *Gordon v GEICO Gen Ins Co* (**Exhibit 15**), slip op at 3-4.

Materially distinguishable in the case at bar is the fact that the North Carolina policy GEICO issued to Zachary Waller *cannot* be regarded as having been issued "purporting to be a Michigan policy." Unlike the insureds in *Farm Bureau* and *Gordon*, who not only were physically residing in Michigan but were garaging their vehicles in Michigan and, accordingly, should have purchased Michigan insurance policies instead of the non-Michigan policies they were issued, Zachary Waller was at all pertinent times residing in North Carolina and was garaging and operating his insured vehicle(s) in North Carolina. *Since he in fact was required to have the North Carolina policy he purchased*, NC Gen Stat §20-309,[10] it cannot be said that his policy was issued "purporting to be a Michigan policy."

Unlike *Gordon* and *Farm Bureau*, the policyholder in this case, Waller, did not intend to return to Michigan during the policy period nor *did* he return to Michigan other than for the brief, ultimately fateful visit while on leave from Camp Lejeune for two weeks. GEICO not only believed that Waller's insured vehicle was registered, garaged and operated in North

---

[10] Waller purchased his North Carolina automobile insurance policy from a GEICO agent on or about April 8, 2015. The policy covered a 2002 GMC Sierra pickup truck owned by Waller, which was being garaged, as noted on the policy declarations, in Camp Lejeune, North Carolina, for the policy period extending through November 24, 2015 (**Exhibit 5** – policy declarations; **Exhibit 11**, Waller, p. 12). In accordance with North Carolina law, the vehicle was registered in North Carolina (**Exhibit 11**, pp. 11-12). NC Gen Stat §20-50; NC Gen Stat §20-52.

By the time he purchased his GEICO policy, Waller himself had been at Camp Lejeune, North Carolina, for more than two years since his enlistment with the marines in January 2013, and would remain there until his enlistment concluded in January 2017 (**Exhibit 11**, pp. 10-11, 16). In the summer of 2015 when the accident happened, Waller was living off base with his wife, Plaintiff Hahn, in the townhouse Waller had purchased just prior to their wedding in May 2015. The address of the townhouse was 602 Ebb Tide Lane, Sneads Ferry, North Carolina. Had there been no accident, the two had intended to remain there through the end of his enlistment in January 2017 (**Exhibit 11**, pp. 10-11, 17, 19-20, 27).

Carolina, it in fact *was* registered, garaged and operated in North Carolina, again, distinguishing this case from both *Gordon* and *Farm Bureau* on its facts.

Indeed, even in *Auto-Owners Ins Co v Integon Nat Ins Co*, unpublished Court of Appeals opinion No. 321396 (September 17, 2015) (**Exhibit 16**), another opinion addressing *Farm Bureau*'s §3012 theory, where the court ultimately reversed a §3012-based judgment rendered against the defendant insurer, the insureds, Laura and Terry Dunn, had relocated to Michigan from North Carolina where they had obtained their North Carolina insurance policy. The defendant insurer was held not to have known about their relocation and thus, unlike the insurer in *Gordon*, was held not to owe PIP benefits under Michigan law for their insured's accident in Michigan. The court so concluded, even though both Laura and Terry had shown the insurer their Michigan drivers licenses and their Michigan vehicle registration. The state in which the vehicles were actually garaged "was critical in determining whether to issue a North Carolina policy", *id*., slip op at 2 and 6, and here the insurer never was informed "that the vehicles were garaged anywhere other than North Carolina." *Id*., at 6.

In the case at bar, as in *Auto-Owners Ins Co v Integon Nat Ins Co*, *supra*, the mere fact of the North Carolina insurer's potential awareness of the policyholder's "Michigan connection" is insufficient to trigger a reformation of the North Carolina policy into a Michigan no-fault policy on the facts presented, even if the §3012-based theory espoused in *Farm Bureau* were to be followed. Waller's extended residence in North Carolina, albeit stemming from his military service, and the continuous garaging of his insured vehicle(s) there, required that he register his vehicle and maintain insurance under North Carolina law.

Contrary to the facts envisioned in *Farm Bureau* to be actionable, therefore, it cannot be said that the policy GEICO issued to Waller "purport[ed] to be a Michigan policy that complied with Michigan law." *Id*., 233 Mich App at 41. It *necessarily* purported to be a North Carolina auto insurance policy. Accordingly, even if persuaded that the *Farm Bureau* construction of §3012 is properly applicable in an appropriate case, this Court nevertheless should grant relief to GEICO by reversing the lower courts' conclusion that any such potential liability exists here under §3012 because the requisite facts to support such liability are conclusively absent.

CONCLUSION

GEICO paid $500,000 in no-fault PIP benefits on behalf of Plaintiff Hahn for the tragic injuries she suffered in her accident of July 18, 2015. It did so on the premise that it was obligated to do so under MCL 500.3163, even though, as it turns out, §3163 did not apply in light of the insureds' Michigan residency. There is no tenable legal basis, however, for holding GEICO responsible for paying any additional benefits. The contrary rulings of the lower courts in this case should be reversed.

The contention based on MCL 500.3012–that GEICO is in fact required to pay benefits as if its North Carolina policy purported to be a Michigan no-fault policy and thus owes unlimited no-fault PIP coverage–is supported by the Court of Appeals' decision in *Farm Bureau Ins Co v Allstate Ins Co*, *supra*, but is fundamentally unsupported by the text of the statute and at odds with Michigan law. The Court should review and reject this theory,

overrule the holding in *Farm Bureau Ins Co*, and direct that summary disposition be granted in favor of GEICO.

RELIEF REQUESTED

For all the foregoing reasons, Defendant-Appellant, GEICO Indemnity Company, respectfully requests that this Honorable Court grant leave to appeal or, in the alternative, on a peremptory basis, reverse the judgments of the lower courts and direct that summary disposition be granted in favor of GEICO.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

/s/ Daniel S. Saylor
DANIEL S. SAYLOR (P37942)
SARAH NADEAU (P60101)
Attorneys for Defendant-Appellant,
GEICO Indemnity Company
1155 Brewery Park Boulevard, Ste. 200
Detroit, Michigan 48207-2641
(313) 446-5520
dsaylor@garanlucow.com

July 24, 2018

Document: Hahn - S Ct App for Leave.wpd

STATE OF MICHIGAN

IN THE SUPREME COURT

KAITLIN HAHN,

Plaintiff-Appellee,

v

GEICO INDEMNITY COMPANY,

Defendant-Appellant,

and

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant.

Supreme Court No. _____

Court of Appeals No. 336583

Oakland County Circuit Court
No. 16-152229-NI

PROOF OF SERVICE

DANIEL S. SAYLOR certifies that he is associated with the law firm of GARAN LUCOW MILLER, P.C., attorneys for Defendant-Appellant, GEICO Indemnity Company, and that on **July 24, 2018**, he electronically filed said party's **Application for Leave to Appeal**, and this **Proof of Service**, with the Clerk of the Supreme Court using the *TrueFiling* service and filing system, which will send notification and copies of such filing to counsel for Plaintiff-Appellee by e-serving **Nicholas S. Andrews, Esq.**, 39400 Woodward Avenue, Ste. 200, Bloomfield Hills, MI 48304, at nandrews@lissfirm.com; and to counsel for Defendant Auto Club Insurance Association, **James G. Gross, Esq.**, 615 Griswold Street, Ste. 723, Detroit, MI 48226, at jgross@gnsappeals.com, and **Michael G. Kramer, Esq.**, 150 W. Jefferson Avenue, Ste. 1500, Detroit, MI 48226, at mgkramer@aaamichigan.com.

/s/ Daniel S. Saylor
DANIEL S. SAYLOR