STATE OF MICHIGAN

COURT OF APPEALS

GEICO INDEMNITY COMPANY,

Plaintiff/Counter-Defendant-Appellee,

v

BELINDA GOLDSTEIN,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee,

and

DANIEL LEON,

Defendant/Counter-Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Third-Party Defendant/Appellant.

UNPUBLISHED
January 19, 2010

No. 288418
Oakland Circuit Court
LC No. 2006-073586-NF

Before: Wilder, P.J., and O'Connell and Talbot, JJ.

PER CURIAM.

In this action for no-fault benefits, appellant Farmers Insurance Exchange (Farmers), the insurer assigned to provide no-fault benefits to appellee Belinda Goldstein, challenges the trial court's grant of summary disposition to appellee Geico Indemnity Company (Geico) and the denial of Farmers' motion for summary disposition against Goldstein, both pursuant to MCR 2.116(C)(10).

I. Facts and Procedural History

In 2005, Goldstein lived in an apartment in Keego Harbor, Oakland County, Michigan, with her boyfriend, appellee Daniel Leon. Goldstein had been diagnosed with multiple sclerosis (MS) some time before the accident at issue in this case, and there is no indication that she was

working at the time of the accident. Goldstein did not own a motor vehicle, nor did she live with a resident relative who owned a vehicle that had no-fault coverage. Apparently Goldstein had leased and owned vehicles in the past, but her last vehicle had been repossessed some time before. Goldstein claimed that after receiving her MS diagnosis, she had no plans to purchase or lease another vehicle.

The motor vehicle at issue in this case, a 1992 Plymouth Acclaim, was owned by Goldstein's mother, Sue Horwitz, a resident of New Mexico. The parties admit that the Plymouth Acclaim was registered in the state of New Mexico, not in the state of Michigan. They also agree that at the time of the accident, Geico was insuring the vehicle under the provisions of a New Mexico motor vehicle policy issued to Horwitz, that Horwitz was a New Mexico resident, and that Horwitz was the registered owner of that vehicle in New Mexico.

Horwitz had moved to New Mexico in 2002, and she would come to Michigan to visit Goldstein about once a year. Horwitz admitted that she did not like to fly, so she would usually drive to Michigan with another daughter. Horwitz also owned a truck and had purchased another car in the summer of 2005. She claimed that after purchasing the additional car, she began talking about leaving the Acclaim in Michigan so she would have access to a car whenever she visited Michigan. Horwitz claimed that she planned to leave another car that she owned with family in Houston because she liked "to have a car wherever [she] went" and planned to visit Michigan and Houston often. On October 15, 2005, Horwitz called Geico, apparently to discuss an insurance quote with them. According to the Geico policy log inquiry, she told the Geico representative that she was thinking about keeping the Acclaim with Goldstein in Michigan and just flying to see Goldstein whenever she visited.[1]

Also, by November 2005, Leon's vehicle had broken down. He and Goldstein did not have the money to pay for repairs or to continue car insurance payments. Although Leon was able to use his employer's vehicle, he and Goldstein did not have access to another vehicle.

Apparently in light of Horwitz's desire that the Acclaim be in Michigan, Horwitz and Goldstein arranged for Goldstein to travel to New Mexico by train in November 2005, visit Horwitz for approximately two weeks, and drive back to Michigan in the Acclaim after Thanksgiving. Goldstein arrived in New Mexico on November 7 and met Horwitz the following day. Although Goldstein apparently spent Thanksgiving with her mother, she did not know exactly when she left New Mexico and began the drive back to Michigan. When Goldstein left, Horwitz gave her $400 to cover trip-related expenses, including gas, meals, hotel expenses, and emergencies. The trip back took about three days.

As soon as she returned to Michigan, Goldstein registered the Acclaim with her apartment complex in order to prevent the car from being towed. The registration for the Acclaim was issued on November 29, 2005. Goldstein also took the Acclaim in for an oil

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[1] Horwitz never told Geico before the accident at issue in this case about her daughter's use of the vehicle. Further, although Horwitz renewed the policy on the Acclaim five days before the accident, she did not change the insurance to reflect that Goldstein would also use the car.

change soon after she returned to Michigan. Leon performed some minor repairs to the Acclaim; in particular, he replaced a thermostat and placed a piece of cardboard in front of the radiator in order to address a problem with the radiator not retaining heat. Horwitz asked Goldstein if she would occasionally start the car to keep the car from "freezing up," but Horwitz and Goldstein did not have an agreement regarding how often Goldstein would do this, and Horwitz did not regularly remind Goldstein to do this when they talked.

Goldstein admitted that the purpose for the trip was to bring the Acclaim back to Michigan. Goldstein explained that the car "was not meant for me at all. It was, it was her car period. If I needed it I would ask her permission to drive it, but I always had permission." Although Goldstein had a driver's license and had driven the Acclaim in the past, she claimed that she never drove the Acclaim during her time in New Mexico. When asked if Goldstein went to New Mexico to retrieve her mother's car so they could have a vehicle to use, Leon responded, "I wouldn't think the car would be that reliable, but it was more or less for Sue to come up here to have a vehicle to help her out when she comes up here." According to Leon, Goldstein and Horwitz had arranged that if Goldstein went to New Mexico and drove the car to Michigan, "she could use it as long as she called Sue."

According to Goldstein, she drove the Acclaim two or three times before the date of the accident. Goldstein claimed that she called Horwitz and asked for permission to use the car every time she planned to use it. Leon never drove the vehicle. Horwitz agreed that she had told Goldstein that she must call and ask for permission any time she needed to use the Acclaim, but she also noted that because she and Goldstein talked almost daily, asking for permission would not be inconvenient. According to Horwitz, Goldstein would often mention that she needed to use the car and ask for permission during their conversations.

Horwitz explained that Goldstein could not "get out very often" because of her medical condition, and she and Leon both claimed that Goldstein primarily needed a car to pick up medication and go to doctors' appointments.[2] Goldstein agreed that even before the accident, she only left the apartment when she had doctors' appointments, for light grocery shopping, and occasionally to socialize with a girlfriend.

On December 24, 2005, as Goldstein was driving herself and Leon in the Acclaim to a Christmas celebration at Leon's mother's house, they were involved in a motor vehicle accident and suffered injuries.[3] According to Leon, this was the first time that they used the Acclaim for a social reason. Horwitz claimed that Goldstein had called her that day and asked for permission to use the vehicle, which Horwitz had given.

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[2] Specifically, Horwitz said, "I just told her that she had to call and ask my permission before she could use [the car]. Which we talked everyday so I mean it didn't matter, she'd just say I'm going to use it today, can I use it today. Which wasn't that frequently. She can't get out very often, just for her medicines and hospital visits so I wasn't concerned."

[3] Apparently the Acclaim was hit at approximately 6:30 p.m. at an intersection on the corner of Orchard Lake and Maple Roads in West Bloomfield, Michigan, as Goldstein was making a left turn.

Goldstein and Leon subsequently submitted a claim to Geico for personal injury protection (PIP) benefits. Geico denied the claim, maintaining that Goldstein and Leon were not entitled to receive benefits under the terms and conditions of the Geico policy or under the Michigan no-fault statute. Geico then filed a complaint against Goldstein and Leon, alleging that it was not responsible for providing no-fault benefits to them under the terms of the Geico policy on the Acclaim because Goldstein was not a listed driver on the insurance policy, Geico had not been made aware of the transfer of possession of the vehicle, and although Goldstein was a statutory owner of the vehicle pursuant to MCL 500.3101(2)(g), she had failed to maintain Michigan no-fault insurance coverage on the vehicle. Soon thereafter, Goldstein and Leon filed a counter-complaint claiming that Geico failed to pay insurance benefits under the terms of Horwitz's policy for the Acclaim.

Sometime after the accident, the Michigan Assigned Claims Facility assigned Farmers to provide no-fault insurance benefits to Goldstein, and Goldstein subsequently filed a third-party complaint against Farmers, seeking no-fault recovery. After discovery, Farmers filed a motion for summary disposition under MCR 2.116(C)(10), claiming that Goldstein was the constructive owner of the Acclaim at the time of the accident and, accordingly, was barred from recovering PIP benefits for her injuries pursuant to MCL 500.3113(b) and MCL 500.3173. Goldstein filed a counter-motion for summary disposition, arguing that since Farmers was basing its entire claim against her on the premise that she was the constructive owner of the Acclaim, and no evidence existed that she had possession, use, or control of the Acclaim for over 30 days, there was no genuine issue of material fact regarding whether Farmers was required to pay her PIP benefits and Goldstein was entitled to summary disposition in her favor on this claim.

Soon thereafter, Geico also moved for summary disposition under MCR 2.116(C)(10), arguing that it was not required to provide no-fault benefits to Goldstein and Leon because the Geico policy that Horwitz had purchased for the Acclaim did not include medical coverage or an endorsement for PIP coverage under the Michigan no-fault law. Geico also argued that it had no statutory obligation to provide these benefits under MCL 500.3163 because the application of this statute "is limited to claims brought by *out-of-state residents* who suffer accidental bodily injuries arising out of the operation or use of a motor vehicle law in the State of Michigan."[4]

The trial court granted Geico's motion for summary disposition, holding that Goldstein and Leon were not entitled to receive Michigan no-fault insurance benefits from Geico. The trial court also dismissed Goldstein and Leon's counterclaim against Geico and specified that entry of this order did not conclude the litigation and close the case. The trial court denied Farmers' motion for summary disposition and granted Goldstein's motion, concluding that Goldstein was not an owner of the car and, therefore, was not precluded from receiving no-fault benefits. The court also specified that entry of these orders did not conclude the litigation and close the case.

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[4] Geico also claimed that Goldstein's claim for PIP benefits was barred under MCL 500.3113(b) because she was a statutory owner of the Acclaim and Michigan no-fault insurance required under MCL 500.3101 was not in effect at the time.

After the trial court ruled on Farmers' motion, the parties stipulated to a stay of the trial court proceedings until this Court rendered a decision regarding Farmers' application for leave to appeal the trial court's orders granting Geico's motion for summary disposition and denying its motion for summary disposition. This Court denied Farmers' application for leave to appeal. *Geico Indemnity Co v Goldstein*, unpublished order of the Court of Appeals, entered February 8, 2008 (Docket No 278903).

There is no indication that the trial in this case that was scheduled for November 2007 had been rescheduled. However, on September 30, 2008, Goldstein and Farmers entered into a stipulation and order for dismissal, stipulating to dismissal of the case with prejudice and without costs to either party, "as it relates to all benefits up to the date of Facilitation, that being August 14, 2008." The stipulation also indicated that the parties had agreed to the dismissal of eight months of future benefits, up to April 2009. Finally, the parties stipulated that their order was a final order and that "Farmers Insurance Exchange may proceed with its appeal regarding the 'Geico coverage issue' and the 'constructive ownership' issue."

II. Procedural Challenges

In its appellee brief in this case, Geico raised several procedural challenges to Farmers' appeal in this case. In particular, Geico argued that Farmers did not have standing to challenge the order for summary disposition in Geico's favor because it was entered against Goldstein. However, Farmers is the assigned claims provider, and in the absence of findings that Geico is responsible for providing no-fault benefits or that Goldstein is not entitled to such benefits, Farmers is obligated to provide these benefits to Goldstein. Accordingly, Farmers has a pecuniary interest in pursuing an appeal of the challenged orders and, therefore, is an aggrieved party for purposes of appellate standing. See *Manuel v Gill*, 481 Mich 637, 643-644; 753 NW2d 48 (2008).

Geico also claimed that Farmers did not have the right to claim that it was an aggrieved party because it failed to file any claim directly against Geico during the pendency of the underlying litigation. This Court addressed this issue in *Tevis v Amex Assurance Co*, 283 Mich App 76; 770 NW2d 16 (2009). Geico, the insurer for the parents of the plaintiff (with whom the plaintiff lived), was involved in similar litigation and raised a procedural argument against Amex, the insurer of the automobile that hit the plaintiff, claiming that Amex lacked standing to bring a cause of action against Geico because it did not directly file a cross-claim against Geico. *Id.* at 79. The *Tevis* Court determined that because Amex was an aggrieved party with respect to the summary disposition ruling at issue in the appeal, it had standing to challenge the trial court's ruling. *Id.* at 79-80. Similarly, Geico cannot claim that Farmers is not an aggrieved party simply because it did not file a claim directly against Geico during the trial court proceedings.

III. Motions for Summary Disposition

A. Ownership of Insured Vehicle by an Out-of-State Resident

Farmers argues that the trial court erred in granting Geico's motion for summary disposition because the plain language of MCL 500.3163 indicates that Geico, as an authorized and certified no-fault insurer in Michigan, is required to provide no-fault benefits because the

injury in this case arose from the ownership of a motor vehicle by an out-of-state resident. We agree.

We review de novo the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "A trial court tests the factual support of a plaintiff's claim when it rules upon a motion for summary disposition filed under MCR 2.116(C)(10)." *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). "The court's task is to review the record evidence, and all reasonable inferences therefrom, and determine whether a genuine issue of material fact exists to warrant a trial." *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). Documentary evidence submitted by the parties is viewed in the light most favorable to the nonmoving party. *Greene v A P Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). In addition, the proper interpretation and application of a statute presents a question of law that this Court considers de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

MCL 500.3163(1) states:

> An insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system under this act.

Farmers' argument presents a question of statutory interpretation.

> The paramount rule of statutory interpretation is that we are to effect the intent of the Legislature. To do so, we begin with the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written. In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory. [*Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001) (citations omitted).]

"Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *In re Smith Estate*, 252 Mich App 120, 124; 651 NW2d 153 (2002).

Farmers argues that the phrase "ownership, operation, maintenance or use" in MCL 500.3163(1) is written in the disjunctive, "any one of the four conditions can operate as the modifier to the phrase 'out-of-state resident.'" Accordingly, if the accidental bodily injury for which no-fault benefits are being sought has arisen from the ownership of a motor vehicle by an out-of-state resident, Farmers argues, Geico would be required to provide no-fault benefits in this case. We agree.

This Court's opinion in *Tevis*, *supra*, directly addresses this issue. In *Tevis*, the plaintiff sustained injuries after his motorcycle was involved in an accident with an automobile. *Id.* at 79. Amex, an out-of-state insurance company, insured the automobile involved in the accident. *Id.* Pursuant to MCL 500.3163(2), Amex had filed certification in this case subjecting itself to Michigan's no-fault system and, therefore, was bound by the provisions of MCL 500.3163(1). *Id.* at 83. Although plaintiff did not have a no-fault insurance policy, he resided with his parents, who had a policy issued by Geico. *Id.* at 79. Both Amex and Geico refused to pay PIP benefits to plaintiff, each claiming that the other insurer was the insurer of first priority for purposes of paying PIP benefits. *Id.* Because Amex had agreed to be governed by Michigan's no-fault system when an accident involving its insured's vehicle occurred in Michigan, the *Tevis* Court explained that the central issue in the case was "whether, as Geico contends (and plaintiff concurs), MCL 500.3163 places Amex in the priority position for purposes of PIP benefits to a Michigan resident who was injured in an accident involving an out-of state vehicle insured by out-of state insurer Amex." *Id.* at 83, 85.

This Court held that "Amex, being the insurer of the owner of the motor vehicle involved in the accident, is the priority insurer for purposes of no-fault benefits payable to, or on behalf of, plaintiff." *Tevis, supra* at 86. The *Tevis* Court explained,

> Michigan cases addressing the application of MCL 500.3163 generally involve situations where a nonresident, insured by an out-of state insurer who has filed the certification set forth in MCL 500.3163(1), is seeking benefits from that out-of-state insurer for injuries that occurred in a Michigan automobile accident. These cases initially appear to support an argument that the statute imposes liability for benefits on an out-of-state insurer only where its own insured suffers injuries. In *Transport Ins Co v Home Ins Co*, 134 Mich App 645, 651; 352 NW2d 701 (1984), for example, a panel of our Court determined that the only conditions for an insurer's liability under § 3163 are: (1) certification of the carrier in Michigan, (2) existence of an automobile liability policy between the nonresident and the certified carrier, and (3) a sufficient causal relationship between the *nonresident's injuries* and his or her ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. *Transport Ins Co* appears to indicate liability only attaches to an out-of-state insurer with respect to injuries incurred by an out-of-state resident. Later Michigan cases involving § 3163 have employed this same standard. *Liberty Mut Ins Co v Michigan Catastrophic Claims Ass'n*, 248 Mich App 35, 40; 638 NW2d 155 (2001), for example, noted that "[u]nder MCL 500.3163(1), insurers authorized to transact PIP insurance in Michigan are required to pay Michigan PIP benefits to their out-of-state resident insureds in the event of a motor vehicle accident occurring in Michigan." See, also, *Goldstein v Progressive Casualty Ins Co*, 218 Mich App 105, 110; 553 NW2d 353 (1996) ("the apparent intent of § 3163 . . . is to guarantee that insured nonresidents injured in Michigan are protected against economic losses to the same extent as Michigan residents"). None of these cases, however, involved or addressed the very narrow issue presented to this Court—whether no-fault benefits are payable by an out-of-state insurer to, or on behalf of, a *Michigan* resident injured in an accident resulting from its nonresident insured's ownership of a motor vehicle. The above cases provide little guidance.

> The explicit language of MCL 500.3163 provides that an insurer may file a certification that *any* accidental bodily injury or property damage occurring in Michigan and arising from the ownership of a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies is subject to the personal and property protection insurance system under the Michigan no-fault act. There is no language limiting an out-of-state insurer's liability only to situations where the accidental bodily injury is sustained by its insured, nor is there any restriction on the application of the no-fault act. Instead, the above language unequivocally subjects the out-of-state insurer to the *entire* Michigan personal and property insurance system when *any* accidental bodily injury arising from an out-of-state insured's ownership or use of a motor vehicle occurs.
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> MCL 500.3163(3) also explicitly provides that if the certification applies to accidental bodily injury or property damage, not only do the insurer and its insureds have the rights and immunities under the no-fault act for personal and property protection, *claimants* have the rights and benefits of personal and property protection insurance claimants, "including the right to receive benefits from the electing insurer as if it were an insurer of personal and property protection insurance applicable to the accidental bodily injury or property damage." By including such language, the Legislature clearly contemplated that persons other than an out-of-state insurer's insureds may have a right to recover benefits from the out-of state insurer. The language in MCL 500.3163 being clear and unambiguous, judicial construction is neither required nor permitted, and we must apply the statute as written. *Liberty Mut Ins Co, supra*. In doing so, we conclude that the trial court properly determined that MCL 500.3163 applies. [*Id.* at 83-85 (emphasis in original).]

The *Tevis* Court's interpretation of MCL 500.3163(1) is applicable to this case. The parties do not appear to dispute that even though the policy in question was issued for a New Mexico vehicle, Geico is certified to provide insurance in Michigan, and an automobile liability policy exists between the nonresident, Horwitz, and the certified carrier, Geico. However, as the *Tevis* Court explains, the test for determining an insurer's liability under MCL 500.3163 that is set forth in *Transport Ins Co* presumes that the liability at issue in MCL 500.3163 only concerns injuries incurred by an out-of-state resident, and does not take into account an insured's liability under the circumstances presented in this case, namely, when a Michigan resident is injured in an accident in which a nonresident insured owns the motor vehicle in question. However, *Tevis* also indicates that a plain-language reading of MCL 500.3163 indicates that an insurer who is subject to the Michigan personal and property insurance system is liable for any accidental bodily injury that occurs in Michigan and arises from an insured out-of-state resident's ownership of a motor vehicle, even if the injury occurs to an individual who is a Michigan resident but not insured. Accordingly, because Geico is subject to the Michigan personal and property insurance system, the Acclaim was insured under a Geico policy, and the owner of the Acclaim was an out-of-state resident, MCL 500.3163 requires Geico to provide no-fault benefits in this case.

B. Constructive Ownership of the Vehicle

Next, Farmers claims that Goldstein was a constructive owner of the vehicle and, therefore, was barred from recovering PIP benefits. We conclude that a question of fact exists regarding whether Goldstein had constructive ownership of the vehicle, necessitating remand for an evidentiary hearing.

The Michigan no-fault act requires the owner of a motor vehicle to maintain insurance on that vehicle; if the owner fails to do so, they cannot recover PIP benefits for injuries in a subsequent accident. MCL 500.3101(1)[5]; MCL 500.3113(b)[6]; *Twichel v MIC General Ins Corp*, 469 Mich 524, 527; 676 NW2d 616 (2004). "[U]nder MCL 500.3173, a person who is disqualified from receiving personal protection insurance benefits is also disqualified from receiving benefits under the assigned claims plan." *Cooper v Jenkins*, 282 Mich App 486, 489 n 1; 766 NW2d 671 (2009). Pursuant to MCL 500.3101(1), if Goldstein is an "owner" of the Acclaim, she is required to maintain the insurance required by the state no-fault act on the vehicle in order to be eligible for PIP benefits.

"The purpose of the owner's liability statute is . . . to place the risk of damage or injury upon the person who has ultimate control of a vehicle." *Ringewold v Bos*, 200 Mich App 131, 134; 503 NW2d 716 (1993). Accordingly, for no-fault purposes, an "owner" of a vehicle does not need to hold legal title to the automobile in question. *Id.* at 135. According to MCL 500.3101, for purposes of the no-fault act, an "owner" is defined as follows:

> (h) "Owner" means any of the following:
>
> (*i*) A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days.
>
> (*ii*) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor

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[5] MCL 500.3101(1) states, in pertinent part:

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

[6] MCL 500.3113 states:

> 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:
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> * * *
>
> (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 [MCL 500.3101 or MCL 500.3103] was not in effect.

> vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.
>
> (*iii*) A person who has the immediate right of possession of a motor vehicle under an installment sale contract.

Because the parties agree that Goldstein did not hold legal title to the Acclaim and did not enter into a purchase agreement with her mother for the vehicle, Goldstein's "ownership" of the Acclaim is predicated on establishing whether she had use of the motor vehicle "for a period that is greater than 30 days."

In *Twichel*, our Supreme Court interpreted this statutory provision and concluded that the 30-day requirement in MCL 500.3101(h)(*i*) does not create a time limit that must be exceeded before ownership can be acquired. *Twichel*, *supra* at 530. The *Twichel* Court noted, "it is not necessary that a person *actually* have used the vehicle for a thirty-day period before a finding may be made that the person is the owner. Rather, the focus must be on the nature of the person's right to use the vehicle." *Id.* Reading this definition to require expiration of a 30-day period before "ownership" can be conferred "requires substitution of the phrase 'having used the vehicle' for the phrase 'having the use thereof.'" *Id.* The *Twichel* Court explained,

> Nothing in the plain language of MCL 500.3101(2)(g)(i)[7] requires (1) that a person has at any time *actually used* the vehicle, or (2) that the person has *commenced* using the vehicle at least thirty days before the accident occurred. The statute merely contemplates a situation in which the person *is renting or using* a vehicle for a period that is greater than thirty days.
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> Accordingly, if the lease or other arrangement under which the person has use of the vehicle is such that the right of use will extend beyond thirty days, that person is the "owner" from the inception of the arrangement, regardless of whether a thirty-day period has expired. For example, in the case of a lease running longer than thirty days, the plain language of the statute would make that person an "owner" from the inception of the lease; the person's status would not change simply because of the passage of time. [*Id.* at 530-531 (emphasis in original).]

The *Twichel* Court concluded, "It is the nature of the right to use the vehicle—whether it is contemplated that the right to use the vehicle will remain in effect for more than thirty days—that is controlling, not the actual length of time that has elapsed." *Id.* at 532.

Goldstein argues that no question of fact exists regarding whether she was an "owner" of the Acclaim because it is undisputed that she had possession of the vehicle for less than 30 days. However, pursuant to *Twichel*, it is not particularly important when Goldstein first acquired the car because Farmers merely had to establish that Goldstein had a right to use the vehicle that

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[7] MCL 500.3101(2)(g) is now MCL 500.3101(2)(h). 2008 PA 241.

extended for more than 30 days. It is irrelevant that Goldstein might not have *actually* used the vehicle for the 30-day period, or that her right to use the vehicle commenced within 30 days of the accident. *Twichel*, *supra*.

Instead, we conclude that a question of fact exists regarding whether the arrangement under which Goldstein was permitted to use the Acclaim qualifies her as an "owner" of the vehicle under the no-fault act. In particular, a question of fact exists regarding whether Goldstein had a right to use the vehicle for more than 30 days. Goldstein, Horwitz, and Leon testified that Horwitz had an extra vehicle and wanted to store it in Michigan so she would have access to a vehicle when she was in Michigan. They presented Goldstein's trip to New Mexico to retrieve the Acclaim and drive it back to Michigan as an opportunity for Goldstein to do a favor for her mother, and Horwitz gave Goldstein $400 to cover the costs associated with the drive from New Mexico to Michigan. Further, although Goldstein used the Acclaim after returning to Michigan, both she and Horwitz maintained that Goldstein asked for permission to use the Acclaim before each trip. A fact-finder could rely on these facts to determine that Goldstein did not have a right to use the vehicle that extended for more than 30 days but, instead, was merely storing her mother's car. A fact-finder could conclude that Horwitz and Goldstein did not contemplate a relationship in which Goldstein had a continuous right to use the vehicle that would extend indefinitely, but that each request for permission to use the car constituted a separate arrangement to use the car for a distinct trip.

However, the facts presented in this case could also lead a fact-finder to conclude that Horwitz and Goldstein actually arranged for Goldstein to have primary access to the car and a general right to use the car that extended for more than 30 days and, accordingly, would make her a constructive owner of the Acclaim for no-fault purposes. Goldstein did not have access to a vehicle at the time, and although Leon would use his employer's vehicle, he and Goldstein did not have the money to repair Leon's vehicle or pay for insurance on a personal vehicle. Further, although Goldstein did not leave her apartment often, the evidence indicates that she needed transportation to go to doctor's appointments and to pick up medication, even during times when Leon was at work. Although Goldstein claims that she only used the Acclaim two or three times before the date of the accident, this does not appear to be inconsistent with a pattern of not leaving the apartment often that Goldstein appears to have established before November 2005. A fact-finder could conclude that Goldstein's infrequent use of the Acclaim was indicative of her general pattern of not leaving home often and corresponds with what might have been her normal use of a car, if she were to have had one in her possession that did not have any restrictions placed on its use.

Further, although Horwitz, Goldstein, and Leon maintained that Horwitz wanted to store the car with Goldstein in Michigan simply so she could have a vehicle available for her personal use when she visited Michigan, the circumstances of this case could lead a fact-finder to conclude that a desire to provide Goldstein with access to a car might have been an alternate factor in Horwitz's decision to have Goldstein take the car with her to Michigan. Horwitz apparently had only visited Michigan a couple times after moving to New Mexico, and she admitted that she only planned to come to Michigan within a year after handing over the keys of the Acclaim to Goldstein. A fact-finder might find it unusual that if Horwitz only wanted the Acclaim to be in Michigan so she could use it during her occasional trips to the area, she would have Goldstein "store" her Acclaim in the parking lot of an apartment complex, presumably for a

fee and where it presumably would be exposed to the elements (including a Michigan winter), when placing the vehicle in a long-term storage facility might be more wise. Instead, a fact-finder might conclude that by storing the Acclaim with Goldstein, Horwitz could also ensure that Goldstein would have access to a car when she needed it, especially to go to doctor's appointments. A fact-finder might determine that Horwitz, the mother of a disabled, impoverished daughter who lived thousands of miles away, might want to "store" her extra car with her daughter to ensure that her daughter would have the transportation that she needed in order to go to doctor's appointments and the pharmacy.

Further, although Horwitz, Goldstein, and Leon maintained that Goldstein was required to seek permission to use the Acclaim, there is no indication that Horwitz might ever refuse permission or that such a request was anything more than an act of courtesy. In particular, Horwitz stated that she did not think that it was an imposition for Goldstein to ask permission when she wished to use the car because they talked almost daily and Goldstein would simply mention her need to use the car during a conversation.[8] Further, practically speaking, Horwitz lived thousands of miles away from Goldstein and Leon; if they wanted to use the Acclaim without Horwitz's permission, there is little chance that Horwitz would have found out. Also, Goldstein changed the oil in the car as soon as she arrived in Michigan, and Leon made minor repairs to the car that apparently addressed problems with the car's heating system; such actions would not be immediately necessary if Goldstein and Leon did not contemplate that Goldstein would be using the Acclaim in the near future.

Accordingly, the circumstances surrounding Goldstein's acquisition of the Acclaim might lead a fact-finder to conclude that the parties contemplated for Goldstein to have use of the Acclaim for an indefinite period that would extend beyond 30 days. In fact, we suspect that a conclusion regarding whether Goldstein was a constructive owner of the Acclaim would depend primarily on a fact-finder's determination of the credibility of Horwitz, Goldstein, and Leon and the believability of the reasons that they gave for storing the Acclaim in Michigan, especially in light of circumstances that could also indicate that Horwitz was effectively providing Goldstein with access to a car when she needed one. Accordingly, we reverse the trial court's motion granting summary disposition to Goldstein on this issue and remand this case for factfinding regarding whether Goldstein had a right to use the vehicle that made her a constructive "owner" for no-fault purposes.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Michael J. Talbot

[8] Some fact-finders might see such a request as typical of a concerned, slightly overbearing mother who might simply want to keep track of her disabled daughter's whereabouts.