

STATE OF MICHIGAN
IN THE SUPREME COURT

**Appeal from the Michigan Court of Appeals
The Hon. E. Thomas Fitzgerald, Presiding, the Hon. Michael J. Talbot,
and the Hon. Douglas B. Shapiro (dissenting)**

ESTATE OF MIRA E. ABAY, deceased, by
its Personal Representative, Maria C. Abay,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER INSURANCE
COMPANY (n/k/a CHRYSLER
INSURANCE COMPANY),

Defendant, Counter Plaintiff,
Cross-Plaintiff & Third Party
Plaintiff-Appellee,

and

DAIMLERCHRYSLER CORPORATION
(n/k/a OLD CARCO LLC)

Defendant, Counter Plaintiffs,
Cross-Plaintiff & Third Party
Plaintiff,

and

JAMES E. TRENT and KELLY ROSE
BROOKS,

Defendants & Cross-Defendants,

and

AUTO CLUB GROUP INSURANCE
COMPANY, d/b/a AAA of Michigan, an
insurance company, and ALVIN JEROME
TAYLOR,

Third Party Defendants.

Supreme Court No. 139725

Court of Appeals No. 281157

Oakland County Circuit Court
No. 06-075016-CK

BRIEF AMICI CURIAE

ORAL ARGUMENT REQUESTED

Submitted by:

CHRISTINE M. SUTTON (P61005)
Hewson & Van Hellemont, P.C.
Attorney for Amici Curiae,
Allstate Insurance Company and
Auto Club Insurance Association
25900 Greenfield Road, Suite 326
Oak Park, MI 48237
(248) 968-5200

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STATE OF MICHIGAN

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STATEMENT OF INTEREST OF AMICI CURIAE

Amicus Curiae Allstate Insurance Company (“Allstate”) is one of Michigan’s major underwriters of no-fault automobile insurance. Allstate writes almost 6.5% of all automobile insurance policies purchased by Michigan residents. Thus, Allstate Insurance Company has an interest in the correct interpretation and application of any law affecting no-fault insurance, no-fault insurers, and no-fault insureds.

Amicus Curiae Auto Club Insurance Association (“ACIA”) is one of Michigan’s major underwriters of no-fault automobile insurance, writing approximately 16-18% of all of the automobile policies purchased by Michigan residents. ACIA has an even more obvious interest in the correct interpretation and application of any law affecting no-fault insurance, no-fault insurers, and no-fault insureds.

Allstate and ACIA are interested in this particular matter because they have encountered a number of claims involving DaimlerChrysler Insurance Company’s (“DCIC”) no-fault policy. DCIC, by issuing no-fault policies that are in violation of the Michigan No-Fault Act, places an excessive burden on other no-fault carriers in the state to fill the void in coverage left by the DCIC policy. DCIC has unlawfully constructed its policy in such a way that it is never required to pay PIP benefits if there is another no-fault policy in the claimant’s household. This unlawful shifting of DCIC’s primary responsibility to pay benefits to other no-fault insurers in the household, or to the Assigned Claims Facility in the case of an injured pedestrian with no other no-fault coverage in the household, creates an unreasonable hardship on the other no-fault insurers who did not anticipate this additional risk.

Amici Allstate and ACIA believe that the Court of Appeals’ majority opinion in this case reflects a clear misunderstanding and misinterpretation of Michigan law on this issue.

STATEMENT OF JURISDICTIONAL BASIS

Amici Curiae, Allstate Insurance Company (“Allstate”) and the Auto Club Insurance Association (“ACIA”), do not object to the Statement of Basis for Jurisdiction provided by Plaintiff-Appellant. On February 1, 2010, Allstate and ACIA filed their Motion for Leave to File Brief Amici Curiae in Support of Plaintiff-Appellant’s Application for Leave to Appeal. On March 24, 2010, in the same Order granting Plaintiff-Appellant’s Application, this Court granted Allstate and ACIA’s Motion for Leave to File Brief Amici Curiae.

STATEMENT OF QUESTIONS PRESENTED

- I. ARE THE TERMS OF DAIMLERCHRYSLER INSURANCE COMPANY'S POLICIES OF INSURANCE AMBIGUOUS SO AS TO CREATE AN ABSURD RESULT?

Amici Curiae Answer "Yes".

- II. DO NO-FAULT POLICIES ISSUED BY DAIMLERCHRYSLER INSURANCE COMPANY FOR VEHICLES LEASED THROUGH THE DAIMLERCHRYSLER COMPANY VEHICLE LEASE PROGRAM VIOLATE THE MICHIGAN NO-FAULT ACT?

Amici Curiae Answer "Yes".

- II. IS THE REMEDY FOR SUCH VIOLATION TO REFORM THOSE POLICIES BY READING INTO THOSE POLICIES THE PROVISIONS OF THE MICHIGAN NO-FAULT ACT DISREGARDED BY THE POLICIES AS WRITTEN?

Amici Curiae Answer "Yes".

STATEMENT OF FACTS

Amici Curiae, Allstate Insurance Company (“Allstate”) and the Auto Club Insurance Association (“ACIA”), rely upon the Statement of Facts contained in Plaintiff-Appellant’s Appeal Brief at 4-22. In addition, Amici Curiae bring the following facts to the attention of this Court.

DaimlerChrysler’s Vehicle Lease Program, also known as the Company Car Program, is a program where eligible employees and/or retirees, based on their Salary Band Level (pay scale) may lease a Chrysler vehicle for personal use directly from Chrysler, formerly known as DaimlerChrysler Corporation (“DCC”), usually at a reduced rate.¹ (1142a-1205a; 1218a). Employees/retirees who participate in the Vehicle Lease Program pay a monthly payment to Chrysler for the vehicle which is deducted from the employee’s paycheck or the retiree’s pension check. (1142a-1205a; 1208a; 1220a-1226a). Monthly premium payments for insurance of the vehicles that are part of the Lease Program are included in the monthly payments paid by the DCC employees. (902a-903a; 1220a-1221a). According to the terms of the Lease Program, the lessees are not allowed to procure their own no-fault insurance for the leased vehicles. (914a-915a; 1198a). According to the terms of the Lease Program, all insurance, including no-fault insurance, for the subject vehicles is to be issued by DaimlerChrysler Insurance Company (“DCIC”).² (914a-915a). DCC secures (secured)

¹For purposes of consistency with prior pleadings and court opinions, the entity now known as Chrysler, LLC (“Chrysler”) will be referred to in this brief as DaimlerChrysler Corporation or “DCC.”

²For purposes of consistency with prior pleadings and court opinions, the entity now known as Chrysler Insurance Company will be referred to in this brief as DaimlerChrysler Insurance Company or “DCIC.”

insurance for each of the vehicles through DCIC. (914a-915a; 1198a).

In the present case, DCC was not the title owner or registrant of the vehicles leased by DCC to Mr. Trent , rather, GELCO was. (Appellant’s Appeal Brief at 6; and 1229a-1231a). Gelco then immediately leased the vehicle to DCC, which leased the vehicle to Mr. Trent under the Company Car Program. (Appellant’s Appeal Brief at 6). However, in other cases involving vehicles leased under the DCC Vehicle Car Program and DCIC policy(ies), Chrysler f/k/a DaimlerChrysler Corporation remained on the title and registration for the vehicles leased.³ All such vehicles are still covered by the DCIC policy of insurance.

In addition to the relevant terms of the DCIC policy set forth in Plaintiff-Appellant’s Brief, Amici Curiae brings the following terms to the Court’s attention as being significant in the Court’s determination of whether the DCIC policy violates the Michigan No-Fault Act, MCL 500.3101 *et seq.* Endorsement No. 10 of the policy covers “Michigan Personal Injury Protection”. (479a) It provides, in pertinent part:

“We will pay personal injury protection benefits to or for an ‘insured’ who sustains ‘bodily injury’ caused by an accident and resulting from the ownership, maintenance or use of an ‘auto’ as an ‘auto’. These benefits are subject to the provisions of Chapter 31 of the Michigan Insurance Code.”

DCIC Policy, Endorsement 10 at 1, Part A, Coverage. (479a).

Part B of that same endorsement defines “Who is An Insured”. That Part provides:

“B. Who Is An Insured.

1. You or any ‘family member’.
2. Anyone else who sustains ‘bodily injury’:

³See *Robert Mason v Allstate Insurance Company v DaimlerChrysler Insurance Company, et al*, pending Court of Appeals No. 297891 (Oakland County Circuit Case No. 08-089794-NI).

- a. While “occupying” a covered “auto”, or
- b. As the result of an ‘accident’ involving any other ‘auto’ operated by you or a ‘family member’ if that ‘auto’ is a covered ‘auto’ under the policy’s Liability Coverage, or
- c. While not ‘occupying’ any ‘auto’ as a result of an ‘accident’ involving a covered ‘auto’.”

DCIC Policy, Endorsement 10 at 2, Part B. (480a).

The DCIC policy defines “you” under the policy:

“Throughout this policy, the words “you” and “your” refer to the Named Insured shown in the Declarations. The words “we”, “us” and “our” refer to the Company providing this insurance.”

(117a; 448a).

The Declaration Sheet for the policy that purportedly provides insurance coverage for private passenger, non-commercial vehicles under the Company Vehicle Lease Program/ Company Car Program defines “Named Insured” as “DaimlerChrysler Corporation and/or Chrysler Corporation and its U.S. subsidiaries”. (Declaration Sheet; 26a; 446a). Endorsement No. IL-A amends that definition. It defines “Named Insured” as:

“DaimlerChrysler Corporation, Chrysler Corporation, and its United States Subsidiaries, and its present and future subsidiaries, owned, controlled and managed companies and corporations, any associated or affiliated companies, now or hereafter constituted, or previously existing.”

(Endorsement No. IL-A; 1277a).

ARGUMENT

Standard of Review

The issue presented by this case and highlighted by this brief *amici curiae* is whether no-fault policies issued by DaimlerChrysler Insurance Company for vehicles leased through DaimlerChrysler Company Car Programs violate the Michigan No-Fault Act, MCL 500.3101, *et seq.* Issues concerning statutory construction, and interpretation and application of contracts of insurance are reviewed *de novo*. *Cohen v Auto Club Insurance Association*, 463 Mich 525, 528; 620 NW2d 840 (2001).

The goal of statutory construction is to give effect to the intent of the Legislature embodied in the passage of the statute in question. *Hoover v Michigan Mutual Insurance Company*, 281 Mich App 617, 622; 761 NW2d 801 (2008). The plain language of the statute is usually the most reliable indicator of legislative intent. *Shinholster v Annapolis Hospital*, 471 Mich 540, 549; 685 NW2d 275 (2004). “When the language of a statute is unambiguous, the Legislature’s intent is clear and judicial construction is neither necessary nor permitted.” *Renny v Michigan Department of Transportation*, 478 Mich 490, 495; 734 NW2d 518 (2007), quoting *Griffith v State Farm Mutual Automobile Ins. Co.*, 472 Mich 521, 526; 697 NW2d 895 (2005).

The construction or interpretation of insurance policies is governed by general principles of contractual interpretation. *E.g.*, *Rory v Continental Insurance Company*, 473 Mich 457, 461; 703 NW2d 23 (2005); *Farm Bureau Mutual Insurance Company of America v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). Interpretation of a contract is reviewed *de novo*. *Rednour v Hastings Mutual Insurance Company*, 468 Mich 241, 243; 661 NW2d 562 (2003); *Archambo v Lawyers Title Insurance Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002); *Cohen, supra*.

I. NO-FAULT POLICIES ISSUED BY DAIMLERCHRYSLER INSURANCE COMPANY FOR VEHICLES LEASED THROUGH THE DAIMLERCHRYSLER VEHICLE LEASE PROGRAM VIOLATE THE MICHIGAN NO-FAULT ACT, MCL 500.3101 *et seq.*

No-fault policies covering vehicles leased through the DaimlerChrysler Vehicle Lease Program, issued by DaimlerChrysler Insurance Company, violate the Michigan No-Fault Act, MCL 500.3101, *et seq.* No-Fault insurance coverage is mandatory for every vehicle registered in Michigan. MCL 500.3101(1) provides, in relevant part:

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

The terms “Owner” and “Registrant” are defined in MCL 500.3101(2):

“(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 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.
- (i) “Registrant” does not include a person engaged in the business of leasing motor vehicles who is the lessor of a motor 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.”

Accordingly, as a matter of law, since the vehicles under the Vehicle Lease Program/Company Car Program are leased to the employees/retirees for more than 30 days, the lessor, DaimlerChrysler is neither an “Owner” nor “Registrant” of the vehicles it leases.

MCL 500.3101(3) provides:

“(3) Security may be provided under a policy issued by an insurer duly authorized to transact business in this state which affords insurance for the payment of benefits described in subsection (1). **A policy of insurance represented or sold as providing security is considered to provide insurance for the payment of the benefits.**”

(Emphasis added).

This security is in the form of a valid Michigan no fault policy. In order to comply with MCL 500.3101(1) and (3), all Michigan no-fault policies must provide coverage in the form of personal protection benefits:

“Under personal protection insurance, an insurer is liable to pay benefits for accidental bodily injury **arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle**, subject to the provisions of this chapter.”

MCL 500.3105(1) (emphasis added).

In addition, subsections (1) and (4) of §3114 of the No-Fault Act delineate to whom that type of insurance is available and, where applicable, the priority for the provision of personal protection insurance benefits:

“(1) Except as provided in subsections (2), (3), and (5), **a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person’s spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.** A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the

person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motorcycle accident. . . .

* * *

- (4) Except as provided in subsection (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
 - (a) The insurer of the owner or registrant of the vehicle occupied.
 - (b) The insurer of the operator of the vehicle occupied.”

MCL 500.3114 (emphasis added).

The DCIC policy violates the Michigan No-Fault Act because it does not bear primary liability for the provision of personal protection insurance benefits for injuries arising out of accidents involving the vehicles it ostensibly insures.⁴ Instead, to the extent that the DCIC policy assumes any liability for such benefits, except in rare situations, such liability is secondary to other no-fault insurance.

Endorsement No. 10 of the DCIC policy covers “Michigan Personal Protection”.

⁴*Michigan Township Participating Plan v Pavolich*, 232 Mich App 378; 591 NW2d 325 (1999), discussed by both the majority and dissenting opinions in the Court of Appeals, is factually distinguishable on this ground. The coverage at issue in *Pavolich* was not mandatory coverage--and, therefore, did not need to be included in a no-fault policy to be in compliance with the No-Fault Act--concluding that the coverage language was surplusage, in light of the way the “named insured” under the policy was designated as it related to the defendant’s entitlement to underinsured motorist coverage, did not render the *Pavolich* policy violative of the Act.

That result cannot simply be extrapolated to situations in which mandatory coverage is at issue. To hold that mandatory coverage may be surplusage due to the designation of the “named insured” would, indeed, render such a policy violative of the No-Fault Act. As the accompanying text demonstrates, the DCIC policy does exactly that. Thus, the holding and analysis of *Pavolich* is simply not applicable or relevant to the arguments presented by Amici Curiae herein.

Ostensibly, it provides the coverage required by §3105(1) of the No-Fault Act. It states, in pertinent part:

“We will pay personal injury protection benefits to or for an ‘insured’ who sustains ‘bodily injury’ caused by an accident and resulting from the ownership, maintenance or use of an ‘auto’ as an ‘auto’. These benefits are subject to the provisions of Chapter 31 of the Michigan Insurance Code.”

(DCIC Policy, Endorsement 10 at 1, Part A, Coverage; 479a).

The problem is with the definition of “insured”. Part B of that same endorsement defines “Who is An Insured”:

“B. Who Is An Insured.

1. You or any ‘family member’.
2. Anyone else who sustains ‘bodily injury’:
 - a. While “occupying” a covered “auto”, or
 - b. As the result of an ‘accident’ involving any other ‘auto’ operated by you or a ‘family member’ if that ‘auto’ is a covered ‘auto’ under the policy’s Liability Coverage, or
 - c. While not ‘occupying’ any ‘auto’ as a result of an ‘accident’ involving a covered ‘auto’.”

(DCIC Policy, Endorsement 10 at 2, Part B; 480a).

In order to determine if an injured person is entitled to benefits under that definition, it is first necessary to ascertain just who “you” is. At the beginning of the DCIC Policy, the policy states:

“Throughout this policy, the words, ‘you’ and ‘your’ refer to the Named Insured shown in the Declarations. The words ‘we’, ‘us’ and ‘our’ refer to the Company providing this insurance.”

(117a; 448a). Applying that definition to this particular policy endorsement, ostensibly

providing personal protection (first-party no-fault) benefits, results in an absurdity.

As set forth by the Court of Appeals, “[t]he ‘named insured’ shown on the declarations page is ‘DaimlerChrysler Corporation and/or Chrysler Corporation and its U.S. Subsidiaries’”. *Abay v DaimlerChrysler Insurance Company*, unpublished opinion *per curiam* of the Court of Appeals issued August 13, 2009 (Docket No. 283624). (See, Declaration Sheet; 26a; 446a; and amendatory Endorsement No. IL-A, 1277a). Therefore, “you” is not a human being but one or more corporate entities. For purposes of obtaining first-party benefits, an injured person, therefore, is not “you”. Yet, the very purpose behind the enactment of the No-Fault Act, as expressed by this Court, was “to afford protection to **persons** suffering injury arising out of the ownership, maintenance, or use of a motor vehicle”. *Clevenger v Allstate Insurance Company*, 443 Mich 646, 651; 505 NW2d 553 (1993) (emphasis added). Reading the DCIC policy literally, its provisions do not afford that protection to “you” because *a corporation*, the literal “you”, *cannot suffer bodily injury arising out of the ownership, maintenance or use of a motor vehicle and **a person who actually suffered such injury is not included within the definition of “you”***. Not only is that conclusion “absurd”, it is also at odds with the statutory requirements of the No-Fault Act.

Recently, the Court of Appeals, in the context of statutory construction, observed that, in *Cameron v Auto Club Insurance Association*, 476 Mich 55; 718 NW2d 784 (2006), this Court had resurrected “the absurd-results rule”. *Detroit International Bridge Company v Commodities Export Company*, 279 Mich App 662, 674; 760 NW2d 565 (2008). *Accord: Capitol Properties Group, LLC v 1247 Center Street, LLC*, 283 Mich App 422, 437; 770 NW2d 105 (2009). In *International Bridge*, the Court of Appeals paraphrased Justice

MARKMAN's opinion in *Cameron* in concluding that "a statute need not be applied literally if no reasonable lawmaker could have conceived of the ensuing result". *Id.* at 675.

In addition, in *Rohlman v Hawkeye-Security Insurance Company*, 442 Mich 520; 502 NW2d 310 (1993), this Court had arrived at much the same principle in the context of interpreting insurance policies in light of statutory requirements:

"The policy and the statutes relating thereto must be read and construed together as though the statutes were a part of the contract, for it is to be presumed that the parties contracted with the intention of executing a policy satisfying statutory requirements, and intended the contract to carry out its purpose."

Id. at 525, fn 3 (emphasis added).

The revival of the "absurd-results" canon of statutory construction has applicability in the appropriate interpretation of an insurance policy. It is well-established that the construction or interpretation of insurance policies are governed by general principles of contractual interpretation. *E.g.*, *Rory v Continental Insurance Company*, 473 Mich 457, 461; 703 NW2d 23 (2005); *Farm Bureau Mutual Insurance Company of America v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999); *Klida v Braman*, 278 Mich App 60, 63; 748 NW2d 244 (2008); *Fromm v Meemic Insurance Company*, 264 Mich App 302, 311; 690 NW2d 528 (2004). Furthermore, the canons of statutory construction are generally congruent with principles of contract interpretation. *See, American Alternative Insurance Company, Inc v York*, 469 Mich 955; 670 NW2d 567 (2003), (MARKMAN, J., concurring).

To the extent, then, that a literal reading of "you" in the DCIC policy would represent a construction that "no reasonable [drafter] could have conceived" of because it would conflict with the presumption that "that the parties contracted with the intention of executing a policy satisfying statutory requirements, and intended the contract to carry out its

purpose”, such a reading should be eschewed by this Court.⁵ Instead, “you” should be defined to represent a human being. This conclusion is strengthened by the fact, as observed by dissenting Judge SHAPIRO, that the term “you” is used elsewhere in the policy to mean the lessee of the vehicle in question--a human being:

“The policy’s definition of ‘you’ also renders many other provisions meaningless, particularly since the policy defines ‘we’ and ‘our’ as ‘the Company providing this insurance’, creating the absurd result that both ‘you’ and ‘we’ are the same entity under the policy. The anomaly of the insured and insurer being the same wreaks havoc with the entire policy and belies any notion that the policy can simply be read as ‘plain language’. The policy is replete with provisions that are meaningless, ambiguous or confusing given the identity of ‘you’ and ‘we’.

* * *

And these provisions cannot be rationally understood unless ‘you’ is interpreted to mean the lessee.”

SHAPIRO, J., *supra*, dissenting, at 6.

The validity of dissenting Judge SHAPIRO’s analysis is brought into ever sharper focus by this Court’s admonition as to reconciling a contract with overriding statutory requirements:

“[W]e are obligated to construe contracts that are potentially in conflict with a statute, and thus void against public policy, where reasonably possible, to harmonize them with the statute.”

Cruz v State Farm Mutual Automobile Insurance Company, 466 Mich 588, 599; 648 NW2d 591 (2002) (emphasis added). As more fully explained in Issue II, the only way to discharge that responsibility with respect to the DCIC policy is to construe “you” as referring to a human being.

⁵Appellee’s assertion that, “There is no requirement in MCL 500.3114, in 500.3101, or anywhere in the no fault act, as to the required identity of the ‘person named in the policy,’ or the “named insured’, may be accurate, however, for Appellee to conclude that the No-Fault Act contemplates providing PIP coverage to *anything* other than human beings is an absurdity. (See Appellee’s Brief at 39.)

The same infirmities that beset the policy's use of "you", when "you" is defined to mean the "Named Insured" when the "Named Insured" is an inanimate business entity and not the lessee of the vehicle, also appear with the use of the term "family members." The Named Insured on the DCIC policy, "DaimlerChrysler Corporation and/or Chrysler Corporation and its U.S. Subsidiaries", cannot have "family members". Therefore, no personal protection benefits are afforded to family members through this policy. This conclusion further emphasizes the need to have "you", in the DCIC policy, defined as a human being in order to comport with the statutory scheme of the Michigan No-Fault Act.

Nor can resort to subsection 2 of Part B of Endorsement 10 alleviate the problems presented by subsection 1 and explicated immediately above. Subsection 2 ostensibly covers (a) an occupant of a motor vehicle covered by the policy; (b) anyone else suffering bodily injury in an accident involving vehicles both of which are covered by DCIC policies, and (c) anyone sustaining bodily injury while not an occupant of a motor vehicle covered by the policy. But what the policy gives with one hand, it takes away with the other. Endorsement 10 contains exclusions also pertinent to this inquiry. Part C of Endorsement 10 provides, in pertinent part:

"We will not pay personal injury protection benefits for 'bodily injury':

* * * *

6. To anyone entitled to Michigan no-fault benefits **as a Named Insured under another policy**. This exclusion does not apply to you or anyone 'occupying' a motorcycle.
7. To anyone entitled to Michigan no-fault benefits **as a 'family member' under another policy**. This exclusion does not apply to you or any 'family member' or anyone 'occupying' a motorcycle."

(DCIC Policy, Endorsement 10 at 2, Part C, Exclusions; 480a) (emphasis added).

Thus, in every household in which there is another vehicle insured by a no-fault insurer other than DCIC (the vast majority of relevant households), according to the terms of the DCIC policy, a person injured in a motor vehicle accident who would otherwise come under the coverage of the DCIC policy must first look to the insurer of the other household vehicle for primary coverage for personal protection benefits--regardless of how "you" is defined.⁶ Such priority shifting is violative of MCL 500.3114(1) and (4) and the purpose of the No-Fault Act. *Clevenger, supra*. Thus, the provisions of the DCIC policy violate the Michigan No-Fault Act. See *Abay v DaimlerChrysler Insurance Company, supra*, SHAPIRO, J., dissenting opinion at 4-5; 2015a-2016a.

Those provisions also violate public policy. The Declarations page of the DCIC policy clearly provides for personal protection coverage for personal injury protection. (DCIC Policy, Declarations Page, 446a). Yet, as the foregoing analysis establishes, that

⁶Judge SHAPIRO correctly concludes in his dissent:

"[A]lthough DCC purports to be providing the required no-fault insurance, its policy actually results in insurers who should be secondary under the no-fault act becoming primary and DCC never has to pay any claims under the policy for PIP benefits anytime the lessee or his family member owns and insures another vehicle. By making itself the sole named insured, DCC avoids its duty to provide PIP benefits required by law."

Abay v DaimlerChrysler Insurance Company, supra, SHAPIRO, J., dissenting opinion at 4-5 (2015a-2016a). E.g., *Robert Mason v Allstate Insurance Company v DaimlerChrysler Insurance Company, et al*, pending Court of Appeals No. 297891 (Oakland County Circuit Case No. 08-089794-NI); *Corwin and ACIA v DaimlerChrysler Insurance Company, et al*, pending in Oakland County Circuit Court, Case No. 08-093529; *DaimlerChrysler Insurance Company v Allstate and Lubienski, on behalf of Richard and Norma Bluhm*, Oakland County Circuit Court Case No. 02-041634-NF; *State Farm Mutual Automobile Insurance Company v DaimlerChrysler Insurance Company*, Oakland County Circuit Court Case No. 05-063494-CK.

coverage is wholly illusory for any household owning a motor vehicle that is not insured under a DCIC policy. As the Court of Appeals concluded in *Farm Bureau Insurance Company v Allstate Insurance Company*, 233 Mich App 38; 592 NW2d 395 (1999):

“It would be unconscionable to permit an insurance company offering statutorily required coverage to collect premiums for it with one hand and allow it to take the coverage away with the other by using a self-devised ‘other insurance’ limitation. Nothing could more clearly defeat the intention of the Legislature.”

Id. at 42 (italics in the original) (emphasis added). It is also noteworthy that, just a few years later, in *Farmers Insurance Exchange v Kurzmann*, 257 Mich App 412; 668 NW2d 199 (2003), the Court of Appeals noted:

“For more than twenty years, it has been against the public policy of this state to include a provision in any insurance policy that excludes coverage for bodily injury to any insured or a member of the insured’s family. *State Farm Mut. Automobile Ins. Co. v Sivey*, 404 Mich 51, 57-58, 272 NW2d 555 (1978).”

Id. at 418. As dissenting Judge SHAPIRO observed: “MCL 500.3114(3) provides that where the motor vehicle is registered in the name of a person’s employer, the policy shall provide primary PIP coverage for the ‘employee, his or her spouse [and] a relative of either domiciled in the same household.’” *Abay v DaimlerChrysler Insurance Company, supra*, SHAPIRO, J., dissenting opinion at fn. 3. This Court should not permit by artifice that which cannot be done directly.

What is worse, DCIC’s interpretation of its own policy language could potentially leave an injured person with no first-party coverage whatsoever. Recall that the DCIC policy exclusion at issue, with respect to mandatory personal protection insurance benefits, applies where the injured person is a named insured on another policy of no-fault insurance with another no-fault insurer—regardless of the definition of “you”. However,

policies written by other no-fault insurers may exclude coverage for their named insureds under certain circumstances. See *Frankenmuth Mutual Insurance Company v Titan Insurance Company*, unpublished opinion *per curiam* of the Michigan Court of Appeals issued October 25, 2005 (Docket No. 262345) (13b-15b) (noting “that many car insurance policies, including plaintiff’s, ordinarily exclude coverage for accidents that occur in automobiles that the owner does not expressly insure under the policy, but, instead insure with a different company under a different policy”) (14b). See, *Raska v Farm Bureau Mutual Insurance Company of Michigan*, 412 Mich 355; 314 NW2d 440 (1982) (The “owned automobile” exclusion does not violate public policy.).

Allstate Insurance Company’s standard Michigan no-fault insurance policy does just that, and it does not violate the mandatory requirements of the Michigan No-Fault Act. It includes the following exclusion regarding its coverage for first-party no-fault benefits:

“This coverage does not apply to:
* * * *

- “4. **bodily injury to you:**
 - a) while in, on, getting into or out of; or;
 - b) when struck while not in, on, getting into or out of, a **motor vehicle you** own or have registered in **your** name that is not an **insured motor vehicle.**”

(Allstate Michigan Auto Insurance Policy, Part III, Personal Protection Insurance Benefits-- Coverage VA; Exhibit 1, at 12).

The fact that the term “insured motor vehicle” is in bold print signifies that it is defined within the body of the coverage:

- “5. **“Insured Motor Vehicle”** means a **motor vehicle**
 - a) covered under this policy for bodily injury liability insurance; and
 - b) to which **you** are required to maintain security by Chapter 31 of the Michigan Insurance Code.”

(Allstate Auto Insurance Policy, Part III, Personal Protection Insurance Benefits--Coverage VA; Exhibit 1 at 11).⁷

Thus, no vehicle leased through the DaimlerChrysler's Vehicle Lease Program will be insured through an Allstate Insurance Company no-fault insurance policy. The Lease Program requires that no-fault insurance for the leased vehicle be purchased through DCIC. Indeed, a lessee under the Program is forbidden to acquire other no-fault insurance for the vehicle. (See Plaintiff-Appellant's Brief at 3; 914a-915a; 1198a). Accordingly, no vehicle leased through DaimlerChrysler's Vehicle Lease Program will be "covered under this [Allstate's] policy for bodily injury liability insurance". As a result thereof, no vehicle leased through the DaimlerChrysler Vehicle Lease Program constitutes an "**Insured Motor Vehicle**" for purposes of the Allstate policy.

Applying that rationale to the language exclusion means that the Allstate policy does not provide personal protection benefits to the Allstate policyholder if that individual suffers bodily injury in a motor vehicle owned by the policyholder that is not an "**Insured Motor Vehicle**" under Allstate's policy. See *Frankenmuth v Titan*, *supra*. Since the leases emanating from the DaimlerChrysler's Vehicle Lease Program are over 30 days in duration, pursuant to MCL 500.3101(2)(h), DaimlerChrysler's Vehicle Lease Program lessees are "owners" of the leased vehicles. *E.g.*, *Roberts v Titan Insurance Company* (On

⁷In *DaimlerChrysler Insurance Company v Allstate and Lubienski*, on behalf of Richard and Norma Bluhm, Oakland County Circuit Court Case No. 02-041634-NF, discussed in Appellant's Brief at 23-24, Judge Andrews did not recognize that the term "**Insured Motor Vehicle**" is a term of art defined by the Allstate policy to mean a motor vehicle "covered under this [Allstate's] policy for bodily injury liability insurance." Judge Andrews simply found that since the subject Chrysler vehicle was insured (by DCIC), Allstate's policy exclusion did not apply. (1794a). That is simply not the case and an incorrect finding. (See Exhibit 1, 11-12).

Reconsideration), 282 Mich App 339, 355; 764 NW2d 304 (2009); *Ball v Chrysler Corporation*, 225 Mich App 284, 290; 570 NW2d 481 (1997). Therefore, any vehicle leased through DaimlerChrysler's Vehicle Lease Program is owned by the lessee.

To recapitulate, since a lessee of a vehicle leased through the DaimlerChrysler Vehicle Lease Program owns the vehicle and since the vehicle is not covered by the Allstate no-fault policy, a lessee injured in the leased vehicle cannot look to an Allstate no-fault policy for first-party no-fault benefits even if the lessee is also the named insured on the Allstate policy. The lessee is then left with no personal protection benefits whatsoever--according to DCIC's interpretation of its policy, the lessee is required to look to the other insurance (Allstate) and the other insurance has a valid exclusion precluding such coverage. DCIC's interpretation cannot be sustained in light thereof because it would result in a violation of the mandatory requirements of the Michigan No-Fault Act.

A similar situation exists with respect to the standard Michigan No-Fault policy issued by ACIA. That policy excludes the following from its personal protection insurance coverage:

"1. Bodily Injury Not Covered: This insurance does not apply to **bodily injury** to:

* * * *

c. **you** while **occupying**, or through being struck by while not **occupying**, a **motor vehicle** owned or registered by **you** and which is not an **insured motor vehicle**. * *

* "

(Auto Club Insurance Association Car Insurance Policy, effective 1/1/2010, Part I--Bodily Injury and Property Damage Liability Coverages; Exhibit 2 at 6-7). See, *Raska v Farm Bureau Mutual Insurance Company of Michigan*, 412 Mich. 355; 314 NW2d 440 (1982) (The "owned automobile" exclusion does not violate public policy.).

Again, as with Allstate, terms in bold print indicate that they have a specific meaning defined in the policy. Once again, therefore, it is necessary to look to the policy to determine the meaning of “insured motor vehicle”:

- “3. **Insured Motor Vehicle** means:
- a. A **motor vehicle** described on the Declaration Certificate and identified by a vehicle reference number for which:
 - (1) the Liability Insurance of this policy applies, and
 - (2) the **named insured** is required to maintain security under the provisions of the **Code**; or
 - b. A **motor vehicle** to which the Liability Insurance of this policy applies, if it:
 - (1) does not have the security required by the **Code**, and
 - (2) is operated, but not owned, by **you** or a **resident relative**.”

(Auto Club Insurance Association Car Insurance Policy, effective 1/1/2010, Part I--Bodily Injury and Property Damage Liability Coverages; Exhibit 2 at 6).

Looking first at the language of the ACIA exclusion, a person suffering bodily injury as a result of occupying a motor vehicle owned or registered by any person named on the Declaration Certificate and which is not an “insured motor vehicle” cannot look to ACIA for first-party no-fault benefits. It has already been established that the lessee of a vehicle leased through the DaimlerChrysler Vehicle Lease Program is an “owner” of the vehicle pursuant to MCL 500.3101(2)(h). Thus, the only way to avoid the effect of the ACIA exclusion is if the lease vehicle qualifies as an “insured motor vehicle”.

The definition of “insured motor vehicle” in the ACIA no-fault policy, however, renders such an endeavor futile. Looking first at subsection (a) of the definition, it has

already been established that no vehicle leased through the DaimlerChrysler Vehicle Lease Program will be insured through an ACIA no-fault insurance policy, as the Program requires all vehicles to be insured by DCIC and lessees are prohibited from obtaining insurance from any other insurance company. Thus, subsection (a), requiring that the vehicle be described on the Declaration Certificate, cannot apply.

Subsection (b) is also inapplicable. A vehicle leased through the DaimlerChrysler Vehicle Lease Program does “have the security required by the **Code**”, security issued by DCIC. Thus, despite the fact that the lessee is considered an “owner” of the leased vehicle, the leased vehicle still does not meet the definition of an “**Insured Motor Vehicle**” under the ACIA policy. (*E.g., see, 1819a-1824a regarding the Chlebos claim.*)

As with the situation involving an Allstate no-fault policy, the consequences of this conclusion are relevant to this inquiry. Since a lessee of a vehicle leased through DaimlerChrysler’s Vehicle Lease Program “owns” the vehicle, pursuant to MCL 500.3101(2)(h), and since the vehicle is not covered by the ACIA no-fault policy, a lessee injured in the leased vehicle cannot look to an ACIA no-fault policy for first-party no-fault benefits, even if the lessee is also the named insured on the ACIA policy. The lessee is then left with no personal protection benefits whatsoever--according to DCIC’s interpretation of its policy, the lessee is required to look to the other insurance (ACIA) and the other insurance has a valid exclusion precluding such coverage. Once again, DCIC’s interpretation of its policy cannot be sustained in light thereof because it would result in a violation of the mandatory requirements of the Michigan No-Fault Act.

The fact that the DCIC policy explicitly violates the Michigan No-Fault Act and violates Michigan public policy is of no small significance. A contract that is in violation of

a statute or public policy is illegal. *Mino v Clio School District*, 255 Mich App 60, 72; 661 NW2d 586 (2003), citing *American Trust Company v Michigan Trust Company*, 263 Mich 337, 339; 248 NW 829 (1933). Such a contract is void. *Badon v General Motors Corporation*, 188 Mich App 430, 439; 470 NW2d 436 (1991). See *Stokes v Millen Roofing Company*, 466 Mich 660, 672; 649 NW2d 371 (2002). Indeed, a policy exclusion that conflicts with mandatory coverage requirements of the no-fault act is void as contrary to public policy. *Husted v Auto-Owners Insurance Company*, 459 Mich 500, 512; 591 NW2d 642 (1999), citing *Citizens Insurance Company of America v Federated Mutual Insurance Company*, 448 Mich 225, 232; 531 NW2d 138 (1995).

In like measure, it is well-established “that the no-fault act requires car **owners** to be **primarily** responsible for insurance coverage on their vehicles”. *State Farm Mutual Automobile Insurance Company v Enterprise Leasing Company*, 452 Mich 25, 34; 549 NW2d 345 (1996) (emphasis added), citing *Citizens Insurance*, *supra*.⁸ Any attempt to evade that statutory obligation is void, even by agreement of parties to a contract or policy. *Enterprise Leasing*, *supra* at 34-35. Such a result is in keeping with the general legal principle that a contract and/or policy that requires one or more parties thereto to act in a manner prohibited by statute is void. *Michelson v Voison*, 254 Mich App 691, 694; 658 NW2d 188 (2003); *Maids International, Inc v Saunders, Inc*, 224 Mich App 508, 511; 569 NW2d 857 (1997).

In this case, the dissenting opinion from the Court of Appeals identifies such a

⁸In his dissent, Judge SHAPIRO properly observes: “[T]he Car Program by barring the purchase of any other policy, forces its lessees to violate the no-fault act in the context of PIP coverage.” *Abay v DaimlerChrysler Insurance Co*, *supra*, SHAPIRO, J., dissenting opinion at 5 (2016a).

circumstance, adding further weight to the inexorable conclusion that, as presently written, the DCIC policy is void. Dissenting Judge SHAPIRO notes:

“Although DCC is the lessor, it is not the ‘owner’ of the car for purposes of the no-fault act. Pursuant to MCL 500.3101 and this Court’s holding in *Ball v Chrysler Corp*, 225 Mich App 284, 290; 570 NW2d 481 (1997), it is Trent, as lessee, who is the owner. Accordingly, **it is Trent who is required to provide no-fault insurance for the vehicle. Despite his statutory duty to obtain insurance that complied with the no-fault act, however, Trent was not free to choose his insurer or his coverage. Under the Car Program, he was required to purchase the instant policy and his lease payments to DCC included insurance coverage premiums for that coverage even though, as noted, DCC never paid any premiums to DCIC. Finally, even if Trent wanted to purchase insurance that provided him and his family with additional coverage, i.e., coverage that actually complied with the no-fault act, he was barred from doing so under the terms of the Car Program, which prohibited him from securing additional or alternative insurance from other auto insurers.**”

Abay v DaimlerChrysler Insurance Company, supra, SHAPIRO, J., dissenting opinion at 5 (emphasis added).⁹

In light of the foregoing, in this case, the majority opinion’s sole focus on Endorsement 19 was erroneous. Judge SHAPIRO reached the same conclusion, albeit from a different perspective:

“The majority correctly notes that the non-owned vehicle coverage at issue here is also a non-mandatory coverage. However, since we are to read the policy as a whole, we cannot simply ignore the fact that **applying that definition voids coverages that are mandatory.**”

Abay v DaimlerChrysler Insurance Company, supra, SHAPIRO, J., dissenting opinion at 7,

⁹Judge SHAPIRO’s observation also illustrates how every person who leased a vehicle through the Car Program was the victim of fraud by being forced to pay for no-fault insurance from which the person, his or her family, and all occupants of the leased vehicle could reap no benefits due to the no-fault insurance shell game perpetrated by DCIC--premiums are paid but mandatory coverage is not provided. See *Farm Bureau Insurance Company v Allstate Insurance Company, supra*.

n 8 (emphasis added). See fn 4, *supra*. The question of the validity of Endorsement 19 does not matter if the no-fault policy to which Endorsement 19 is a part is otherwise void. The majority opinion's failure to address the fact that the DCIC policy violates MCL 500.3105(1), MCL 500.3114(1) and MCL 500.3114(4) strongly militates in favor of this Court reversing the Court of Appeals' decision and reforming the policies to incorporate and comply with the requirements of the Michigan No-Fault Act, MCL 500.3101 *et seq.*

II. THE REMEDY FOR SUCH VIOLATION IS TO REFORM THOSE POLICIES BY READING INTO THOSE POLICIES THE PROVISIONS OF THE MICHIGAN NO-FAULT ACT DISREGARDED BY THE POLICIES AS WRITTEN.

In Issue I, Amici Curiae maintain that, as presently written, the DCIC policy violates the No-Fault Act and public policy. Accordingly, pursuant to the case law contained therein, the policy is void. That conclusion could raise the specter of DCIC trying to avoid responsibility for the deficiencies in its policy by arguing that, if the policy is void, then DCIC owes no obligation thereunder. However, Michigan law makes clear that this Court need not heed such a siren song.

A long line of Michigan cases holds that mandatory statutory provisions must be read into insurance policies.¹⁰ *E.g.*, *Auto-Owners Insurance Company v Martin*, 284 Mich App 427, 434; 773 NW2d 29 (2009); *Depyper v Safeco Insurance Company of America*, 232 Mich App 433, 437; 591 NW2d 344 (1999), quoting *Rohlman v Hawkeye Security Insurance Company*, *supra*, itself quoting 12A Couch, *Insurance*, 2d (rev ed.), §45:694, p.

¹⁰This is so even if the parties to a policy consciously omit them. See: *Casey v Auto-Owners Insurance Company*, 273 Mich App 388, 399; 729 NW2d 277 (2007). In *Kuebler v Equitable Life Assurance Society of United States*, 219 Mich App 1; 555 NW2d 496 (1996), the Court of Appeals quoted approvingly from a California case, *Homestead Supplies, Inc v Executive Life Insurance Company*, 81 Cal App 3d 978-988-989; 147 Cal Rptr 22 (1978), itself quoting 5 Couch, *Cyclopedia of Insurance Law* [2d ed], § 30:64, pp. 583-584:

“” In the absence of a legislative expression of intent to the contrary, an insurer cannot--at least, as against an innocent insured who is not in pari delicto--accept and retain benefits and then plead as a defense its own violation of a statute [thereby] setting up [the proposition] that such contract is void[.] * * * In other words, the insurer cannot say that the contract of insurance is void because of a violation of [a] * * * statute for the purpose of defeating the insured, and thus take advantage of its own wrong.””

Id. at 11.

331-332; *Randolph v State Farm Fire & Casualty Company*, 229 Mich App 102, 104; 580 NW2d 903 (1998), citing *Stine v Continental Casualty Company*, 419 Mich 89, 104; 349 NW2d 127 (1984). It is of no small irony that the excerpt from Couch, quoted by this Court in *Rohlman, supra*, includes the following:

“A policy of insurance must be construed to satisfy the provisions of the law by which it was required, **particularly when the policy specifies that it was issued to conform to the statutory requirement[s.]**”

Id. at 525, fn 3 (emphasis added). In this case, with respect to personal protection benefits, the DCIC policy specifies:

“These benefits are subject to the provisions of Chapter 31 of the Michigan Insurance Code. ”

DCIC Policy, Endorsement 10 at 1, Part A. (479a). See, *Cruz, supra* (“[W]e are obligated to construe contracts that are potentially in conflict with a statute, and thus void as against public policy, where reasonably possible, to harmonize them with the statute.”) citing *Universal Underwriters Insurance Company v Kneeland, infra*.

Applying this principle to the DCIC policy would result in the revision of the policy in the following particulars. First, as initially set forth in Issue I, *supra*, the definition of “you” at the beginning of the policy would have to be expanded to include the Named Insured, the lessee/owner of the vehicle being insured and the operator of the vehicle being insured. That would result in subsection 1 of Part B of Endorsement 10 covering the owner and operator of the vehicle and his or her family members for personal protection insurance benefits as required by MCL 500.3105(1).

In addition, the facially void exclusions contained in subsections 6 and 7 of Part C of Endorsement 10 would be stricken from the policy. That would result in the coverage

provided in Endorsement 10 being primary, thus meeting the requirements of MCL 500.3114(1) and MCL 500.3114(4) and, simultaneously, meeting the obligation of the owner of the vehicle to obtain and maintain statutorily-required no-fault insurance coverage on the vehicle. MCL 500.3101(1). It would also mean that the insured lessees who have paid insurance premiums for the vehicle would actually be able to obtain the benefits of the DCIC policy if the insured has sustained bodily injury in one of the situations envisioned by MCL 500.3105(1).

Then, and only then, would it be appropriate for this Court (and the Court of Appeals) to review the validity of Endorsement 19. In light of the changes to the definition of “you”,¹¹ dissenting Judge SHAPIRO’s conclusion is particularly apropos, “I would affirm the trial court’s conclusion that Endorsement 19 provides coverage to Trent and his ‘family member[s]’ as defined in the policy”. *Abay v DaimlerChrysler Insurance Company, supra*, SHAPIRO, J., dissenting opinion at 8.

It should be noted that, even if these revisions might cause certain incongruities with other parts of the policy, the revisions should be given effect both because the revisions are statutorily required and because of the legal principle governing interpretation of insurance policies acknowledged by this Court in *Universal Underwriters Insurance Company v Kneeland*, 464 Mich 491; 628 NW2d 491 (2001). In that case, this Court stated:

“[I]t is very commonly stated that when the terms of the agreement have two possible interpretations, by one of which the agreement would create a valid

¹¹Dissenting Judge SHAPIRO offers a differently-worded revision to the definition of “you” but it is of indistinguishable semantic and linguistic effect. *Abay v DaimlerChrysler Insurance Company, supra*, SHAPIRO, J., dissenting opinion at 8.

contract and by the other it would be void or illegal, the former will be performed.”

Id. at 495 quoting 3 Corbin, *Contracts*, §546, pp.170-171. *Accord: Roberts v Titan Insurance Company (On Reconsideration)*, *supra* at 359.

The reason why it is necessary to reform the language of the DCIC policy as proposed by *amici curiae* is to conform the DCIC policy to the requirements of the No-Fault Act. The reformation proposed by *amici curiae* goes only as far as is necessary to meet that goal. The proposed revisions of the DCIC policy, both as set forth herein and in the dissenting opinion of Judge SHAPIRO, would conform the DCIC policy to the Michigan No-Fault Act and are consistent with the rule of construction quoted above. Without that reformation, the DCIC policy remains void and against public policy.

For the reasons set forth herein, this Court should reverse the Court of Appeals decision and adopt the proposed revisions discussed herein.

III. IT IS DAIMLERCHRYSLER INSURANCE COMPANY, NOT *AMICI CURIAE*, WHO MUST LOOK TO THE LEGISLATURE FOR RELIEF FROM THE APPLICATION OF THE PLAIN LANGUAGE OF THE NO-FAULT ACT .

Contrary to DCIC's assertions (see Appellee's Brief at 44), it is DCIC, not *amici curiae*, who must look to the Legislature for relief from application of the plain language of the No-Fault Act as presently written if it wishes to preserve its policy as presently written. Section 3101(1) of the No-Fault Act requires that an owner of a motor vehicle obtain and maintain statutorily-required no-fault insurance coverage on the vehicle. MCL 500.3101(1). As presently written, the DCIC policy is in violation of that provision of the Act because the "Named Insured" under the policy is not the owner or registrant of the vehicle.¹² The reformation of the policy proposed by *amici curiae* redresses that deficiency. If DCIC is unhappy with that which must be done to put its mandatory coverage into compliance with the Act, DCIC is free to try to persuade the Legislature to rewrite section 3101(1) thereof. Unless and until that occurs, DCIC is not free to ignore the plain language of the Act.

Section 3105(1) of the No-Fault Act requires a no-fault insurer to pay first-party no-fault benefits for "accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle". MCL 500.3105(1).¹³ As

¹² It should be remembered that, by statutory mandate, DaimlerChrysler is neither an "Owner" nor "Registrant" of vehicles it leases. Instead, by operation of law, the lessees of the vehicles are considered to be "owners" and/or "registrants".

However, DCC acknowledges that it maintains the title and registration for the vehicles included in the Vehicle Lease Program. Thus, at a minimum, DCIC should have equal priority under MCL 500.3114 and be required to pay a pro rata share for PIP benefits incurred as a result of an accident involving a DCC owned, registered and leased vehicle.

¹³See fn 12, *supra*.

presently written, the DCIC policy is in violation of that provision of the Act. See, Arguments I and II, *supra*. The reformation of the policy proposed by *amici curiae* redresses that deficiency and brings it into compliance with the No-Fault Act. DCIC is free to try to persuade the Legislature to rewrite section 3105(1) if DCIC is unhappy with that which must be done to put its mandatory coverage into compliance with the Act. However, unless and until that occurs, DCIC cannot ignore the plain language requirements of the Act.

Finally, sections 3114(1) and (4) of the No-Fault Act set forth the priority among no-fault insurers for the payment of no-fault benefits. MCL 500.3114(1), MCL 500.3114(4). As presently written, the DCIC policy is in violation of those provisions of the Act. The reformation of the policy proposed by *amici curiae* remedies that deficiency. If DCIC is unhappy with that which must be done to put its mandatory coverage into compliance with the Act, DCIC is free to try to persuade the Legislature to rewrite sections 3114(1) and (4) thereof. But unless and until that occurs, DCIC cannot ignore the plain language of the Act.

As the foregoing demonstrates, it is *amici curiae* who seek to require DCIC to conform to the No-Fault Act as written. Certainly in this context, *amici curiae* have no need to petition the Legislature for any change to the Act.

The ultimate issue posed by this appeal is stark and simple: Will DCIC be allowed to continue the massive violation of the No-Fault Act and Michigan public policy by permitting its policy to remain as written, with all of the deficiencies outlined by Plaintiff, *amici curiae*, and dissenting Judge SHAPIRO in the Court of Appeals in this case? The time has come for this Court to put an end to DCIC's PIP shifting scheme. The legal rights of

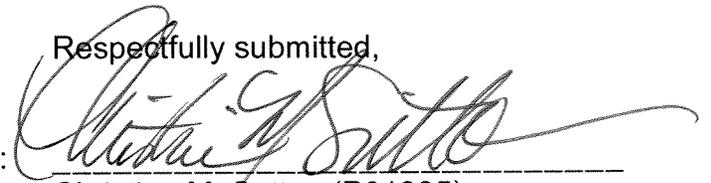
DCIC's policyholders who have faithfully paid premiums for illusory coverage demand nothing less, as do Michigan No-Fault insurers, including Amici Curiae, that have been forced to pay claims which DCIC conveniently shifted its responsibility to pay, according to the terms of its carefully crafted policies.

RELIEF REQUESTED

WHEREFORE, Amici Curiae, Allstate Insurance Company and Auto Club Insurance Association respectfully request that this Honorable Court reverse the Court of Appeals decision and adopt the proposed revisions discussed herein for reasons stated by the dissent of the Court of Appeals, the trial court, and as set forth in this Brief.

Respectfully submitted,

BY:



Christine M. Sutton (P61005)
Hewson & Van Hellemont, P.C.
Attorneys for Amici Curiae
25900 Greenfield Road, Suite 326
Oak Park, MI 48237
(248) 968-5200

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